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| LOCAL COMMISSIONERS MEMORANDUM |
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Transmittal No: 92 LCM-167

Date: October 26, 1992

Division: Services and
Community Development

TO: Local District Commissioners

SUBJECT: Chapter Laws of 1992: Child Abuse and Maltreatment

ATTACHMENTS: There are no attachments to this LCM

The purpose of this memorandum is to inform you of the provisions of recently enacted legislation pertaining to child protective services. The Child Protective Services Manual will be updated to provide information regarding many of these provisions, including any which require necessary action to be taken by local CPS staff. Further, regulations will be amended, as necessary, for implementing the chapter laws discussed in this memorandum.

Following is a summary description of the 1992 changes to the laws of the State of New York.

Chapter 32 amends various sections of the Social Services Law, the Mental Hygiene Law, the Education Law, and the Executive Law relating to the reporting, investigation, determination, remediation and prevention of abuse or neglect of children in residential care. Further, these provisions concerning the handling of reports of suspected child abuse and neglect involving children in residential care are made permanent. Chapter 32 does not impact upon child abuse or maltreatment in familial settings. Chapter 32 became effective on 10/1/92.

Chapter 65 amends Section 1038(c) of the Family Court Act (FCA) to require either the person operating the video camera used to videotape a validation interview or the person actually conducting the interview to submit a verified statement to the court that the videotape is a complete and unaltered record of the examination. Such statement must be submitted prior to the admitting of the videotape into evidence. Prior to the enactment of Chapter 65 only the person conducting the validation interview was authorized to submit the verified statement to the court. Chapter 65 became effective on 7/13/92.

Chapter 111 amends Section 1033-b(1)(b) of the FCA to permit the waiver of the requirement that the court recite to the respondent in open court the allegations contained in the petition at the respondent's initial appearance. The requirement is waived upon consent of the counsel for the respondent when such counsel stipulates on the record that he or she has explained the allegations contained in the petition and has provided the respondent a copy of the petition. Further, in order for the waiver to be permitted, the respondent must acknowledge that he or she received from counsel a copy of the petition and was provided an explanation concerning the allegations contained in the petition. Chapter 111 became effective on 5/21/92.

Chapter 268 amends Article 10-A of the Social Services Law (SSL) to rename the Children and Family Trust Fund Act as the William B. Hoyt Memorial Children and Family Trust Fund Act. Chapter 268 became effective on 6/30/92.

Chapter 538 amends Section 1052(b)(i)(B) of the FCA to authorize the Family Court in a dispositional hearing to direct a social services district, which the court finds has not made reasonable efforts to prevent or eliminate the need for placement, to provide services pursuant to Section 1015-a of the FCA. Where the Family Court finds that additional time is necessary to provide such services, the dispositional hearing may be adjourned for a reasonable but unspecified period of time.

Chapter 538 amends Section 1055(b)(iii) of the FCA to require service by mail of the notice of hearing and petition for extension of placement of an abused or neglected child in foster care upon the child's parent or other person legally responsible for the child. Service is required by mail to such person's last known address at least eight days prior to the time for court appearance stated in the notice of hearing. The hearing can not commence without satisfactory proof of actual notice of hearing. The Family Court may direct that service be made under the provisions of Civil Practice Law and Rules if such proof of actual notice is not before the court.

Chapter 538 amends Section 1055(b) of the FCA to require the court to determine, as part of a hearing on the extension of placement, whether the situation which gave rise to the initial foster care placement still exists, whether the child's service plan requires review, adjustment or modification. The degree of compliance with the Family Court order by both the respondent and supervising agency, whether an extension of placement would be in the child's best interests, whether the child would be at risk of abuse or neglect if returned to his or her home and any other factors the Family Court deems relevant. If the court finds that the service plan requires review, adjustment or modification, the court may adjust or modify such plan and may issue orders pursuant to Section 1015-a of the FCA. The Family court's findings must be in writing. The court must provide to the respondent a copy of the order and child service plan. Chapter 538 became effective on 9/1/92.

Chapter 697 amends Section 1028 of the FCA to require the court, when a parent or other person legally responsible for a child waives his or her right to a hearing concerning whether a child temporarily removed should be returned home, to advise such parent or other person legally responsible that an application for a hearing seeking return of the child may be made at any time during the pendency of the child protective court proceeding. Chapter 697 became effective on 7/31/92.

Chapter 707 amends Section 422(4)(A)(k) of the SSL to expand the circumstances in which child protective service (CPS) information would be provided to local probation services and the State Division of Parole. Chapter 707 also amends Sections 256-a and 259-k of the Executive Law (EL) to provide that local probation services and the State Division of Parole provide relevant records and other information to a child protective service.

A local probation service and the State Division of Parole are authorized to receive CPS information from either the social services district or the State Central Register when a local probation service is conducting a pre-sentencing investigation under the Criminal Procedure Law or when a local probation service or the State Division of Parole is providing supervision under certain specific provisions of the Penal Law.

Access to CPS information would be permitted when the subject of investigation or supervision has been convicted of certain offenses under the Penal Law which are listed in Section 422(4)(A)(k) of the SSL or has been indicted of any of the listed offenses and, as a result, has been convicted of a crime under the Penal Law.

Access to the information would be provided when the local probation service or the State Division of Parole certifies that there is reason to suspect that such person is the subject of an indicated report of child abuse or maltreatment and that such information is necessary for making a recommendation to the court or providing supervision. Chapter 707 only allows for the release of CPS information from indicated reports to such local probation service or State Division of Parole.

Chapter 707 amends Sections 256-a and 259-k of the Executive Law to allow a child protective service to access either probation service or Division of Parole records. A probation service or the Division is authorized to provide relevant records and other information to a child protective service conducting an investigation of a report of suspected child abuse or maltreatment involving an individual who is being supervised by a local probation service or the State Division of Parole. Chapter 707 became effective on 10/1/92.

Chapter 725 amends Section 409-e of the SSL to rename the child service plan the family service plan. Chapter 725 adds Section 409-e(1)(d) of the SSL to require the assessment of the child and family include the following where placement in foster care is determined to be necessary: (i) the reasonable efforts made to prevent or eliminate the need for placement or the reason such efforts were not made; (ii) the kind and level of placement and the reasons therefore; (iii) whether the child will be placed with the child's siblings and half-siblings and, if not, the reasons therefor and the

arrangements made for contact between siblings and half-siblings; (iv) identification of all available placement alternatives and the specific reasons why they were rejected; (v) an estimate of the anticipated duration of placement; and (vi) a plan for termination of services under appropriate circumstances, with specific explanation of the reasons for such termination plan.

Chapter 725 amends Section 409-e(2) of the SSL to provide that upon completion of the assessment, the family service plan must be completed in consultation with the child's parent or guardian, unless such person is unavailable or unwilling to participate, or such participation would be harmful to the child. If the child is in foster care and is 10 years of age or older, the plan must be prepared in consultation with the child and, when appropriate, with the child's siblings. Consultation must be in person, unless such consultation is impracticable or would be harmful to the child. The effectiveness of services identified as necessary and appropriate for members of the family must be assessed and documented in the service plan before such services are included in the plan. The assessment must consider the family's concurrence with the plan; the ability and motivation of the family to access services, including geographic accessibility; the relatedness of the services to the family's needs and socio-economic and cultural circumstances; and other factors which have an impact upon the effectiveness of the family service plan. These procedures also would apply to subsequent reviews and revisions of the family service plan.

Chapter 725 also amends Section 409-e(4) of the SSL to require that relevant portions of the assessment of the child and the family and a complete copy of the family service plan be given to the child's parent or guardian, counsel for such parent or guardian, and the child's law guardian if any, within 10 days of preparation of any such plan.

Finally, Chapter 725 amends Section 409-f of the SSL to require that when a hearing has been requested, a copy of the portions of the uniform case record relevant to the hearing must be made available to the child's parent or guardian, counsel for the parent or guardian, and, if he or she is participating in the hearing, the child's law guardian. Chapter 725 became effective on July 31, 1992.

Please contact your Regional Office Director with any questions:

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