

## 2007 Chapters of Interest

### OCFS Departmentals

#### ***Federal compliance - Chapter 327 of the Laws of 2007*** (S.4551-A/A.9045)

Kruger/Scarborough)

- Implements federal requirements enacted by the Safe and Timely Interstate Placement of Foster Children Act, Adam Walsh Child Protection and Safety Act of 2006, and the Child and Family Services Improvement Act of 2006.
- **Part A** - SCR checks: Amends Social Services Law (SSL) §422 to permit an **entity in another state** with appropriate legal authority to request information from the Statewide Central Register of Child Abuse and Maltreatment (SCR) in relation to certification or approval of a person as a foster or adoptive parent.
- **Part B** - Permanency hearings: Clarifies that a foster parent, pre-adoptive parent or relative caring for a child has a **right to be heard** at any permanency hearing involving the child. Requires the court at the permanency hearing to **consult with the child** in an age-appropriate manner regarding the permanency plan. Requires the court to consider appropriate **in-state and out-of-state placements** as part of the court's findings on reasonable efforts.

Status: Effective 12/31/07.

#### ***Adoption practices - Chapter 469 of the Laws of 2007*** (S.4962/A.8093)

Kruger/Scarborough)

- Permits entry of an order committing the guardianship and custody of a child **after the child's 18th birthday**, with the child's consent, where a termination of parental rights proceeding was properly commenced prior to, but not concluded, until after the child's 18th birthday.
- Clarifies responsibility for the payment of adoption subsidy and permits payment of an adoption **subsidy to a legal guardian or custodian** appointed after the death of the adoptive child's parent where the parent was receiving an adoption subsidy on behalf of an eligible child.
- Amends Public Health Law (PHL) §4138-c, pertaining to the Department of Health's (DOH) Adoption Information Registry, to permit **birth parents whose parental rights were terminated** to provide information to the Adoption Information Registry and consent to the release of identifying information for a possible match with an adult adopted child who is voluntarily registered.
- Amends PHL §4138-d, pertaining to the Mutual Consent Voluntary Adoption Registry maintained by individual adoption agencies, to permit **birth parents whose parental rights were terminated** to register with an individual adoption agency, provide information for release, and consent to the release of identifying information with an individual adoption agency for a possible match with an adult adopted child who is voluntarily registered.

Status: Effective 11/29/07.

## Child Protective Services

### ***Human trafficking (Governor's Program Bill) - Chapter 74 of the Laws of 2007***

(S.5902/A.8679 Padavan/Dinowitz)

- Creates the crimes of sex trafficking as Penal Law (PL) §230.34 and labor trafficking as PL §135.35, and amends the Criminal Procedure Law and the Correction Law to strengthen the penalties against persons who commit or benefit from these crimes.
- Requires the Office of Temporary and Disability Assistance (OTDA) to take the lead in coordinating with law enforcement agencies and district attorney's offices to facilitate human trafficking victim access to appropriate services.
- A human trafficking victim who is under the age of 18 must be referred to the local social services district (LDSS) for services.
- Establishes a Task Force consisting of the state agencies: OTDA; DOH; OCFS; Division of Criminal Justice Services (DCJS); Office of Mental Health (OMH); Department of Labor (DOL); Office of Alcoholism and Substance Abuse Services (OASAS); Crime Victims' Board (CVB); Office for Prevention of Domestic Violence (OPDV); and Division of State Police (DSP).

Status: Criminal law provisions effective 11/1/07, SSL provisions effective 6/6/07.

### ***Ban mandated reporter use of designees - Chapter 193 of the Laws of 2007***

(S.3913-A/A.3053-A Saland/Paulin)

- Amends SSL §413 pertaining to **mandated reporters** of child abuse and maltreatment.
- Clarifies "**school officials**", includes school teachers, school guidance counselors, school psychologists, school social workers, school nurses, school administrators and other school personnel required to hold a teaching certificate.
- A mandated reporter on staff of a medical or other public or private institution, school, facility or agency must **personally make the report** of suspected child abuse or maltreatment and immediately notify the person in charge of or designated agent at such institution, school, facility or agency.
- The person in charge or designated agent is responsible for "all subsequent administration necessitated by the report". Any report must include the name, title and **contact information** for every staff person of the institution who is believed to have direct knowledge of the allegations in the report.
- Requires **one report** to the SCR where more than one mandated reporter from a single organization has reasonable cause to suspect child abuse or maltreatment regarding the same incident or situation.
- Bans any "school, school official, child care provider, foster care provider, residential care facility provider, hospital, medical institution provider or mental health facility provider" from imposing "any conditions, including **prior approval or prior notification**" upon a member of its staff required to report under Title 6 of Article 6 of the SSL.
- Bans **retaliatory action** by an employer for mandated reporting.
- See **08-OCFS-INF-01** for further information on Chapter 193 of 2007.

Status: Effective 10/1/07.

***Differential Response - Chapter 452 of the Laws of 2007*** (S.4009-B/A.6610-B  
*Rath/Paulin*)

- Enacts a new SSL §427-a enabling OCFS to establish a differential response program offering an alternative to addressing matters in family settings now investigated as abuse or maltreatment. Differential response cases are assigned to either an investigation track or a family assessment and services track. Cases assigned to the family assessment and services track are not subject to requirements otherwise applicable to case under Title 6 of Article 6 of the SSL.
- LDSS **outside of NYC** are eligible to apply to OCFS to participate, must meet the criteria in the bill and other criteria developed by OCFS after consultation with OPDV.
- OCFS must complete a report to the Governor and Legislature by 1/1/11 evaluating the differential response program and recommending whether to continue the program.

Status: Effective 8/1/07 expires 6/1/11.

***Xctasy Garcia's Law - Chapter 513 of the Laws of 2007*** (S.849-A/A.1693-A *Farley/Tonko*)

- Amends SSL §413 pertaining to **mandated reporters** of child abuse and maltreatment.
- Adds a new requirement for a mandated reporter who is a **social services worker** to make a report where a person coming before the social services worker in his or her professional capacity states from personal knowledge facts, conditions or circumstances which provide the social services worker with reasonable cause to suspect that a child is abused or maltreated.
- See **07-OCFS-ADM-15** for further information on who is considered to be a “social services worker” as used by Chapter 513 of 2007.

Status: Effective 10/14/07.

***SCR check for guardians - Chapter 525 of the Laws of 2007*** (S.2586-A/A.577-A  
*Morahan/Dinowitz*)

- Amends Surrogate's Court Procedures Act (SCPA) §1706, which requires that the court inquire of OCFS whether a person nominated to be guardian of a child or any person over the age of 18 residing in the home is the subject of an **indicated** report of child abuse or maltreatment.
- Adds a new requirement that OCFS also inform the court whether the proposed guardian or person over the age of 18 residing in the home is the subject of a report of abuse or maltreatment **under investigation** at the time of inquiry.
- Where an investigation is pending at the time of inquiry, the bill requires OCFS to inform the court of the **outcome** of the investigation at such time as the investigation is completed.

Status: Effective 8/15/07.

**Foster Care**

***No for-profit authorized agencies - Chapter 107 of the Laws of 2007*** (S.4634-A/A.4138-A  
*Padavan/Scarborough*)

- Amends the definition of an “authorized agency” in SSL §371 to exclude a for-profit corporation or entity from operating an authorized agency in NYS.

Status: Effective as of 6/1/07.

## **Child Care**

### ***Administration of meds in child day care - Chapter 16 of the Laws of 2007***

(S.3689/A.6579 LaValle/Paulin)

- Makes permanent the authority under Education Law §6908 for a child day care provider, acting at the direction of the parent and in compliance with OCFS regulations, to administer medications or treatment to a child while in a child day care setting.
- Extends until March 31, 2009 SSL §390(2-a)(a-1) requiring OCFS, in consultation with the Department of Health and the State Education Department, to promulgate standards for the administration of medications in child day care settings.

Status: Effective 3/31/07.

### ***Report on insurance for child day care providers - Chapter 65 of the Laws of 2007***

(S.2140-A/A.2093-A Seward/Lifton)

- Adds a new SSL §390-f requiring OCFS, in consultation with the Superintendent of Insurance, to study the availability, accessibility and affordability of homeowner's and health insurance coverage for child day care providers.
- A report on the study is due to the Governor, Temporary President of the Senate and Speaker of the Assembly by no later than 1/1/09.

Status: Effective as of 7/4/07

### ***Child care in lieu of public assistance - Chapter 135 of the Laws of 2007***

(S.4550/A.8096 Kruger/Wright)

- Expands the availability of the child care guarantee to families opting to receive child care in lieu of receiving public assistance to include employed families working less than the required number of hours provided the number of hours worked times the amount of pay equals or exceeds the required number of hours times minimum wage.
- OCFS and OTDA are implementing Chapter 135.
- See "Resources for Working Families - Child Care Subsidies" on the OTDA website for more information.

Status: Effective 7/3/07.

## **Criminal Law**

### ***Civil confinement for sexually violent predators (Governor's Program Bill) - Chapter 7 of the Laws of 2007*** (S.3318/A.6162 Volker/Silver)

- Provides for sex offender treatment and management and permits post incarceration civil confinement in a mental hygiene facility for certain sex offenders determined to have a mental abnormality that causes the offender to be predisposed to conduct constituting a sex offense and results in the person having serious difficulty in controlling such conduct.
- Civil confinement provisions potentially include Juvenile Offender (JO) sex offenders.

Status: Effective 4/13/07

***Cemetery vandalism repair for Juvenile Delinquents and Persons in Need of Supervision - Chapter 575 of the Laws of 2007*** (S.3154/A.1353 Montgomery/Aubertine)

- Amends restitution provisions as a condition of placement, probation or conditional discharge for youth adjudicated juvenile delinquent (JD) or person in need of supervision (PINS) to authorize the Family Court judge to order maintenance or repair of a cemetery, grave, burial place or other place of internment “as services for the public good” upon adjudication for the willful, malicious or unlawful damage or destruction of such property.

Status: Effective 11/1/07.

**Commission for the Blind and Visually Handicapped**

***Interagency council on deaf, deaf-blind and hard of hearing - Chapter 174 of 2007*** (S.1923-A/A.2461-A Robach/Morelle)

- Establishes an interagency council under the purview of the Commission on the Quality of Care and Advocacy for Persons with Disabilities (CQCAPD), which includes OCFS and several other state agencies.
- The council is directed to promote coordinated services and act as a resource for persons who are deaf, deaf-blind or hard of hearing, and issue a series of reports to the Governor and Legislature.

Status: Effective 7/1/08.

***Senior vision program - Chapter 573 of the Laws of 2007*** (S.522/A.897 Maziarz/Englebright)

- Requires that the State Office for the Aging establish a senior vision services program in consultation with the Commission for the Blind and Visually Handicapped to award grants to not-for-profit services providers. The awarding of grants is subject to an appropriation.

Status: Effective 8/15/07.

**VETOED LEGISLATION**

***Veto Message #39 - Workplace violence prevention - not-for-profit employers*** (S.5880/A.6436 Maltese/John)

- Would have extended workplace violence prevention program requirements applicable to state and local government employers to not-for-profit employers who receive 50% or more of their budget from government sources.

***Veto Message #132 - Transfer Council on Children and Families (CCF) to Executive Dept.*** (A.7129-A/S.3967-A Millman/Golden)

- Would have transferred CCF from OCFS to the Executive Department effective April 1, 2008.
- Would have repealed statutes pertaining to CCF in the SSL and returned the statutory authority for CCF to the Executive Law.

**Veto Message #127 - *DASNY construction of facilities to avoid out of state placements***  
(S.1288-B/A.3300-A *Golden/Millman*)

- Would have established a capital construction program for the Out-of-State Placement Committee within CCF.
- Would have required the Out-of-State Placement Committee to survey congregate residential programs and residential schools in NYS to quantify the need for new capacity to serve children who are at risk of placement in out-of-state facilities because of the lack of sufficient and appropriate capacity in NYS.

**Veto Message # 137 -*SCR checks for orders of visitation or custody*** (S.4877-A/A.7329-A  
*DeFrancisco/Weinstein*)

- Would have amended the Domestic Relations Law §240 and Family Court Act §651 to require the court to inquire whether the person is the subject of an indicated SCR report, an order of protection, or is a registered sex offender before issuing a temporary or final order of visitation or custody. The court must disclose the results of this inquiry to counsel, including the law guardian.
- The legislation was silent on due process prior to release of SCR information about a report that was indicated at the “some credible evidence” level of proof.
- Would have had the potential to cause unnecessary placements of children into foster care if the SCR response were delayed due to the need to differentiate between numerous SCR hits on persons with common names.
- Would have amended SSL §422 to require that indicated reports be promptly disclosed to the court.