



New York State  
Office of  
Children & Family  
Services

September 2005

**RE: Permanency Bill - Chapter 3 of the Laws of 2005**

Dear Commissioners:

George E. Pataki  
*Governor*

John A. Johnson  
*Commissioner*

We are pleased to inform you that the Governor signed the Permanency Bill, Chapter 3 of the Laws of 2005, on August 23, 2005. The Bill is broad in scope. Among the areas of impact are child protective removal procedures, grounds for termination of parental rights, conditional surrenders and permanency planning timelines and processes. These changes affect the Family Court, local social services districts and voluntary agencies.

The relevant provisions of Chapter 3 for the purpose of this letter require:

- Courts to calendar a “date certain” for each permanency hearing for a child placed under Family Court Act (FCA) Article 10 and regarding a child voluntarily placed or surrendered, or otherwise freed for adoption, until all orders expire or all appeals are decided.
- Courts to set a date certain for the first permanency hearing at the removal hearing or the hearing approving the voluntary placement agreement or surrender of a child, if the child remains in foster care.
- The first permanency hearing after a child is removed from home must be commenced on the date certain set by the court – within 8 months of removal from home.
- Subsequent permanency hearings must be commenced at least every 6 months thereafter if the child remains in foster care, on a date certain set by the court at the completion of the previous permanency hearing.
- All actions under FCA Article 10 and regarding a child voluntarily placed or surrendered which previously required that a new proceeding be initiated with a petition and jurisdiction obtained over the parties at each step of the process may now be commenced by motion.
- Providing eligible parents with an appointed attorney to represent them while their child remains in foster care (the same attorney, until replaced upon application to the court), until all appeals are finally determined or all orders expire.

The effective date of these provisions of the Bill is December 21, 2005. These provisions apply to children placed in foster care under FCA Article 10, children directly placed with relatives under FCA Article 10, children voluntarily placed or

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surrendered under the Social Services Law, and all children completely freed for adoption.

The new law will impact current social services district and agency procedures and practices as well as relationships between districts, agencies and the Family Court. Since passage of the bill, the Office of Children and Family Services (OCFS) has been working in collaboration with representatives of the Unified Court System (UCS) and the Office of Court Administration (OCA), New York City Administration for Children's Services (ACS) and other local court and social services district representatives to identify steps that should be taken by the courts and social services districts in preparation for implementing the Bill. These steps will position both the courts and the social services districts to conduct their work within the requirements and the spirit of the legislation upon its effective date.

### **Administrative Memorandum and Transition Period**

Chief Administrative Judge Jonathan Lippman has issued the attached Administrative memorandum to all family court judges and clerks in the State, effective immediately. It mandates a number of implementation steps to be taken by the courts during the transition period and thereafter.

The Administrative memorandum requires all cases coming before each family court in the next 120 days to have a date certain calendared for a permanency hearing.

For the group of children in foster care or directly placed with relatives who will not otherwise come before the court for a permanency or other hearing during the transition period and whose next permanency hearing would not be scheduled until after December 21, 2005, we strongly recommend close collaboration between the social services district and the family court to discuss how and when such date certain permanency hearings should be calendared.

As detailed in the Administrative Memorandum, Court Clerks must, in collaboration with local social services districts:

- Issue a scheduling order setting a date certain for a permanency hearing, which must be sent to all parties and the Law Guardian by the usual distribution process used in that jurisdiction.
- The scheduling order should also reassign counsel, whether an 18-b panel attorney or institutional representative through Public Defender's Office.

### **Attached Reports Listing Children In Foster Care**

To assist local courts and districts with this endeavor, OCFS and UCS have developed a list of children in foster care. The list is a combination of data elements from the Child Care Review System (CCRS) and the Unified Court Management System (UCMS) of foster children who are, or may be, subject to the date-certain provisions of the permanency bill. This list will serve as a tool to facilitate services administrators' and court clerks' ability to identify the universe of foster children for whom date certain permanency hearings must be calendared (because under the old statutory provisions their permanency hearings would not be due to be held before the new legislation's effective date). The list is over-

inclusive and may include both foster children whose Permanency hearings are scheduled to be conducted within the transition period, as well as children who have been discharged from care.

### **Other Recommended Considerations for Prioritization of Scheduling of Permanency Hearings**

Following are a set of considerations that we recommend be incorporated into the decision-making process that your district and your family court decide to use to prioritize the scheduling of permanency hearings:

- Permanency hearings that would be coming due shortly after the bill's effective date should be calendared as early as possible so as to avoid a child staying in foster care for more than 12 months without a permanency hearing, and causing the case to be out of federal compliance.
- To the extent possible, permanency hearings for siblings should be combined so that the reviews take place together, thus maintaining a family focus and providing efficiency for the family, the attorneys and the court. For siblings who were placed in foster care at different times, this can be achieved by shortening the Permanency hearing timeframes for some of the siblings.
- If possible, cases should be scheduled that takes into account the attorneys, law guardian or caseworkers assigned.
- Other criteria that might be considered in the calendaring process, could include scheduling earlier permanency hearings for foster children whose permanency goal would be more likely to be achieved by the holding of an earlier hearing; taking into account the caseworkers assigned to the foster children and the possibility of trying to schedule several of the same workers' cases consecutively; and trying to calendar the hearings to move as close as is operationally feasible to comply with the new requirement for permanency hearings every 6 months.

### **Federal Title IV-E Review**

The State of New York anticipates that the federal government will conduct another Title IV-E eligibility review in the second half of 2006. This review will evaluate Title IV-E compliance, including compliance with court related standards, for cases in which Title IV-E was claimed during the period from 10/01/05 until 3/31/06. Title IV-E court related standards include: legal authority, best interests and reasonable efforts to prevent removal and to finalize the child's permanency plan. Should the non-compliance rate for the cases examined during the eligibility review exceed the federally allowable rate, a federal sanction will be extrapolated against the Title IV-E claim for the entire state. Accordingly, we encourage local districts, when carrying out the permanency hearing calendaring initiative, to do so in conjunction with their efforts to review their caseloads for Title IV-E compliance in anticipation of the above referenced review.

### **Other State Level Implementation Steps**

Permanency Hearing Report – In further support of Chapter 3, OCFS in collaboration with OCA, the FCRAAC and with input from a number of local districts is developing a series of templates for the required Report and Notice to be used statewide to meet the requirements of FCA Section 1089. There will be three templates: one for multiple children in the same case who are not freed for adoption; one for an individual child not freed for adoption, and another for an individual child freed for adoption. In addition, a “Notice” template will also be available to inform all required parties of the scheduled permanency hearing. It is anticipated that the use of these templates is temporary and that shortly after the implementation of Build 19, CONNECTIONS will generate the Notice and Permanency Report, customized for the child’s age and permanency planning goal, with much of the data pre-filled.

Other OCFS activities to support users to meet the requirements of Chapter 3 include:

- making changes to CONNECTIONS Build 18;
- making changes to CCRS;
- making changes to BICS; and
- enhancing the design of CONNECTIONS Build 19.

Based upon the work that OCFS has begun and will have in place in the near future, it is unnecessary for local social services districts to take any steps to implement local reports or other systems support during the transition period.

This new law is expected to bring important child welfare reform that will benefit children in foster care and their families, as well as local social services districts and family courts. Please know that we recognize that implementation of changes of this scope requires considerable effort on your part, and those efforts are greatly appreciated. If you have questions or concerns about the attached report or anything contained in this letter, please don’t hesitate to contact your OCFS Division of Development and Prevention Services Regional Office.

Sincerely,

Sincerely,



Larry G. Brown  
Deputy Commissioner  
Division of Development  
and Prevention Services

Nancy W. Martinez  
Director  
Strategic Planning  
and Policy Development

CC: Director of Services

Attachments