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| LOCAL COMMISSIONERS MEMORANDUM |
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DSS-4037EL (Rev. 9/89)

Transmittal No: 90 LCM-160

Date: October 9, 1990

Division: Family & Children
Services

TO: Local District Commissioners

SUBJECT: Laws of 1990: 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 Program 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.

Following is a summary description of changes to various sections of Article 10 of the Family Court Act (FCA) and the Social Services Law (SSL) made by the Chapter Laws of 1990. The Chapter Laws have been grouped under the following headings:

- o Law Guardians (new responsibilities)
- o Documentation/Procedures (new local district and Family Court responsibilities)
- o Due Process
- o Other Amendments

Law Guardians

- o Chapter 319 added a new Section 1016 to the FCA to set forth procedures for the appointment and reimbursement of law guardians in child protective proceedings. The Family Court must appoint a law guardian to represent an allegedly abused or maltreated child upon the earliest occurrence of: notice to the court of the emergency removal of the child from his or her home, application to the court for an order for removal of the child from his or her home; or the filing of an abuse or neglect petition. Additionally, Section 1016 of the FCA provides that the assignment of a law guardian will continue through the period of any order arising from the disposition of the Article 10 proceeding.

Section 1016 also entitles a law guardian to compensation under applicable provisions of law for services rendered up to and including disposition of a petition and, by separate application, for services rendered after disposition of the petition. Chapter 319 becomes effective January 1, 1991.

- o Chapter 317 amended Sections 422 and 424 of the SSL and Sections 1039-a and 1052-a of the FCA to require that the local child protective agency notify a child's law guardian when a report of child abuse or maltreatment is indicated against the respondent in a previous child protective proceeding while certain dispositional orders remain in effect. Dispositional orders include suspended judgment, placement, protection and supervision. Chapter 317 became effective September 1, 1990.
- o Chapter 316 added a new Section 1075 to the FCA to give law guardians additional responsibilities during Article 10 child protective proceedings. A law guardian, upon receipt of a report from a child protective agency concerning the status of a child who is a subject of a court order in a child protective proceeding, must review the information contained in such report. If the law guardian determines that there is reasonable cause to suspect that the child is at risk of further abuse and neglect or that a substantive violation of a court order has in fact occurred, the law guardian must apply to the court for appropriate relief as provided for in Section 1061 of the FCA. Chapter 316 became effective September 1, 1990.

Documentation/Procedures

Chapter 318 added a new Section 1058 to the FCA to require the child protective agency to notify both the Family Court and the child's law guardian concerning the family's status and location when a child protective order of disposition or a period of adjournment in contemplation of dismissal (ACD) is due to expire and no application for an extension of such or adjournment has been made. This notice must precede the order's expiration by 60 days, and include information regarding any actions taken or contemplated by the child protective agency. Additionally, where a child has been removed from his or her family and placed pursuant to Section 1055, of the FCA the report must include an assessment of whether returning the child to the family would subject the child to imminent risk. Chapter 318 became effective September 1, 1990.

Chapter 187 amended Section 1051 of the FCA to require the Family Court to state on the record the grounds for the dismissal of a petition of abuse or neglect. Chapter 187 became effective on September 1, 1990.

- o Chapter 167 amended Section 1039 of the FCA to allow the petitioner or the child's attorney or law guardian to apply to the court for an order directing the child protective service to comply with its responsibilities to provide the respondent and family adequate supervision or services as specified in an ACD order. Chapter 167 became effective on May 21, 1990.
- o Chapter 323 amended Sections 1039, 1053, 1054, 1055, and 1057 of the FCA to require the local child protective service agency supervising a family under an ACD order to report to the court and other involved parties about implementation of the order no later than 90 days after its issuance unless the court determines that the facts and circumstances of the case do not require such reports to be made.

Also, when the court enters an order suspending judgment, or returning the child home under agency supervision, placing or extending placement of children who are abuse or neglected, or supervising the respondent by a child protective agency, the court is authorized to direct the CPS agency to make progress reports to the court, the parties, and the law guardian on the implementation of such order. Where the order is issued upon the consent of the parents and the child's law guardian, the CPS is required to report to the aforementioned entities no later than 90 days after the issuance of the order unless the court determines that the facts and circumstances of the case do not require such reports to be made. Chapter 323 became effective September 1, 1990.

- o Chapter 283 amended Section 1055 of the FCA to prescribe the diligent efforts an authorized agency must take to encourage and strengthen a child's relationship with his or her parents, when such child has been placed in foster care. Such agency is required to encourage and facilitate visitation by the parent, other person legally responsible for the child or, if an order of visitation has been obtained, a non-custodial parent or grandparent. Such diligent efforts may also include encouraging and facilitating visitation by the child's siblings. Chapter 283 became effective September 1, 1990.
- o Chapter 622 amended Section 1056 of the FCA to include an exception to the Family Court's general authority to issue orders of protection in Article 10 proceedings. The court may enter the following described order independent of any dispositional order issued under Article 10. Such order of protection applies against a person who was a member of the child's household or a person legally responsible for the child if such person is no longer a member of the child's household at the time of the disposition and is not related by blood or marriage to the child or member of the child's household. Such order would apply to paramours, live-in babysitters and boarders. This amendment addresses situations where no dispositional order other than an order of protection is appropriate. This often occurs where the abuse or neglect is committed by a paramour and the parent is not responsible for abusing or neglecting the child. The order of protection could be for any period up to the child's 18th birthday and can set conditions as the court may deem appropriate to protect the health and safety of the child and child's caretaker. Chapter 622 became effective July 18, 1990.
- o Chapter 320 amended Section 421 of the SSL to require the State Department of Social Services to promulgate regulations to establish minimum standards and practices for the delivery of child protective services as ordered by the family court in relation to the local districts' monitoring and supervision of the respondents and their families. Chapter 320 became effective September 1, 1990.
- o Chapter 206 amended Sections 1054 and 1057 of the FCA to require that orders of supervision issued in child protective proceedings include the terms and conditions of supervision which a respondent must meet, together with the duties and responsibilities of the supervisory agency. Chapter 206 became effective September 1, 1990.

- o Chapter 141 amended Section 1048 of the FCA to authorize the Family Court, after the fact-finding stage of a child abuse or neglect proceeding, to order a reasonable period of adjournment of the proceedings to permit the carrying out of court ordered investigations to assist the court in making an appropriate dispositional order. The court may adjourn the proceeding on its own motion or on the motion of the respondent, petitioner, or law guardian. Chapter 141 became effective September 1, 1990.
- o Chapter 194 amended Section 1039 of the FCA in relation to violations of ACD orders. The Family Court is required to proceed to a fact finding hearing no later than 60 days after an application is granted to restore the matter to the court calendar. The court must dismiss the petition or proceed to a fact-finding hearing within the 60 days unless the period is extended for good cause shown. Chapter 194 became effective on September 1, 1990.

Due Process

- o Chapter 205 amended Section 1021 of the FCA to require: a) that consent for the temporary removal of an abused or neglected child from his or her parent or other person legally responsible for the child's care be in writing; b) a copy of the written consent be appended to the abuse or neglect petition which is filed; and c) that the written consent be made a part of the permanent court order of the proceeding. Chapter 205 became effective on September 1, 1990.
- o Chapter 170 amended Sections 1023 and 1024 of the FCA to require authorized persons, removing a child without a court order or parental consent, to provide the child's parent or other person legally responsible written notice to inform such person of the right to be represented by counsel in proceedings brought in accordance with Article 10 of the FCA. Such notice, must also inform the parent or person legally responsible of the procedures for obtaining counsel if he or she is indigent. Chapter 170 became effective September 1, 1990.
- o Chapter 140 amended Section 1028 of the FCA to eliminate an existing provision which stated that a parent or other person legally responsible for a child's care was not entitled to a hearing seeking return of a child temporarily removed from the parent or person legally responsible, if there had previously been a hearing on removal at which the parent or person legally responsible had an adequate opportunity to be present. Such person is now entitled to a hearing to seek return of the child unless a hearing on removal was previously held and the parent was actually present at such hearing and had the opportunity to be represented by counsel. Chapter 140 became effective on September 1, 1990.

- o Chapter 336 added new sections 1033-a, 1033-b, and 1022-b to the FCA to establish a formal initial appearance procedure to make Family Court proceedings more uniform across the state. It requires the court, at the first proceeding after the filing of an abuse or neglect petition in which the respondent appears before the court, to appoint a law guardian for the child, advise the respondent of his or her right to request an adjournment to obtain counsel, appoint counsel for an indigent respondent, advise the respondent of the allegations in the abuse or neglect petition and, for cases in which the child has already been removed from respondent, advise such person of his or her right to a hearing seeking return of the child. Chapter 336 became effective September 1, 1990.

- o Chapter 171 amended Sections 1022, 1027, and 1031 of the FCA to require the Family Court to document certain court findings when issuing an order directing the temporary removal of a child from the home in an Article 10 proceeding. An order, pursuant to FCA 1022 directing the temporary removal of a child, or a finding pursuant to FCA 1027 that removal of a child from his or her home is necessary to avoid imminent risk to the child, must contain the court's specific findings. Such findings must include facts which support the necessity of such removal, whether the respondent was present at the hearing, and if not, what notice of the hearing was given to the respondent, and whether the removal or request for removal was made pursuant to Section 1021, 1022 or 1024 of the FCA. Additionally, Chapter 171 requires a child protective agency, which has removed a child from his or her home prior to the filing of an abuse or neglect petition, to state in the petition the date and time of the removal, the circumstances necessitating the removal, the statutory authority for such removal and, if the removal occurred without a court order, the reason why there was not sufficient time to obtain a court order. Chapter 171 became effective September 1, 1990.

- o Chapter 268 amended Sections 1036 of the FCA to permit the Family Court to authorize an out-of-state service of a summons in child protective proceedings where the child resides within New York State but the respondent lives out-of-state. Service of summons upon a non-resident or non-domicillary respondent must be made within 10 days after issuance, but this period may be extended for good cause shown upon application to the court. Chapter 268 authorizes the court to proceed to a fact-finding hearing when a properly served respondent fails to appear. Chapter 268 became effective on September 1, 1990.

Other Amendments

- o Chapter 156 amended Section 422 of the SSL to clarify the elements which must be certified by police officers, district attorneys, assistant district attorneys and district attorneys' investigators in order to obtain access to SCR and CPS information. The aforementioned persons must certify that the CPS or SCR information is necessary in order to conduct a criminal investigation or prosecution of a person, that there is reasonable cause to suspect that such person may be the subject of a report and that, due to the nature of the crime being investigated or prosecuted, there is reasonable cause to suspect that the investigation or prosecution is related to the allegations in the report. Chapter 156 became effective on May 17, 1990.

- o Chapter 55 extends the provisions of the Child Abuse Prevention Act of 1985 and a subsequent amendment of the Act for an additional 15 months, through June 30, 1991. This continues the existing practice of State staff conducting CPS investigations in group residential programs. Chapter 55 became effective March 31, 1990.

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