

+-----+
 | INFORMATIONAL LETTER |
 +-----+

TRANSMITTAL: 90 INF-58

TO: Commissioners of
 Social Services
 Directors of
 Voluntary Agencies

DIVISION: Family and
 Children
 Services

DATE: October 26, 1990

SUBJECT: 1990 State Laws Affecting Foster Care and Adoption

SUGGESTED
 DISTRIBUTION: Directors of Services
 Foster Care Staff
 Adoption Staff
 Legal Staff
 Staff Development Coordinators

CONTACT PERSON: Your Regional Office Director:
 Albany: John O'Connor, (518) 432-2751
 Buffalo: Linda Brown, (716) 847-3145
 Metropolitan: Fred Cantlo, (212) 804-1202
 Rochester: Linda Kurtz, (716) 238-8200
 Syracuse: Jack Klump, (315) 428-3235

ATTACHMENTS: There are no attachments to this release.

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
			SSL 358-a		
			373		
			374-b		
			374-c		
			383-c		
			384		
			384-a		
			398		
			451		
			FCA 1027-a		
			1055		
			DRL 115-a		
			115-d		
			PHL 27-F		

I. Purpose

The purpose of this Informational Letter is to inform you of bills passed in the 1990 legislative session related to foster care and adoption. These bills have now been signed into law by Governor Mario Cuomo. Effective dates are listed, along with a summary of the requirements of each bill. The Department will follow up with regulatory amendments or administrative directives as necessary for implementation.

II. New State Laws Related to Adoption

A. Surrender of Children in Foster Care

Chapter 479 of the Laws of 1990 adds a new Section 383-c to the Social Services Law that applies to the surrender of children already in foster care, and amends Section 384 of SSL to refer to the surrender of children not in foster care. The major change provides that out-of-court surrenders of children in foster care may be taken in front of two witnesses who are required to sign affidavits concerning the protection of the rights of the parents. The parents have the right to legal counsel, to receive supportive counseling and to have an attorney or any other person present at the signing of the surrender. The surrender must contain, in plain language, all the terms of the surrender, including the timeframe for revocation of the surrender which has been changed to forty-five days after the signing. The agency must file an application for approval by the court within fifteen days of the signing of the surrender. This law does not authorize out-of-court surrenders to be executed by parents or guardians who themselves are in foster care. Such surrenders must be taken before a Family Court judge. Effective January 1, 1991.

Chapter 480 of the Laws of 1990 makes the following technical amendments to clarify the new Section 383-c of SSL: 1) the affidavits of all witnesses to the surrender must accompany the court application for approval; 2) the term "surrender paper" applies exclusively to the surrender of children for adoption to an authorized agency; and 3) a parent's revocation of an out-of-court surrender must be mailed and postmarked or otherwise delivered to the court. Effective January 1, 1991.

Chapter 376 of the Laws of 1990 amends subdivision 6 of Section 398 of SSL to allow for either a mother or father who surrenders a child born out-of-wedlock to be relieved from any and all liability for support of the child. Effective July 10, 1990.

B. Abandonment

Chapter 605 of the Laws of 1990 amends Section 1055 of the Family Court Act to specify procedures to be followed when a child under the age of one has been abandoned, and the court, in a child protective proceeding, places the child with the local social services commissioner. The law directs that if the parents fail to appear at the proceeding after due notice, the court must include the following in its disposition: (1) The local social services commissioner must commence a diligent search for the child's parents or other known relatives who are legally responsible for the child; and (2) a written notice must be sent to the child's parents or known relatives specifying the terms of the placement. These terms include the requirement that if no visitation and communication occurs within six months of the date of placement, the child will be considered abandoned, and a proceeding will commence to commit the guardianship and custody of the child to the commissioner. Effective October 1, 1990.

C. Subsidy Payments

Chapter 253 of the Laws of 1990 amends SSL to permit adoption subsidy payments for a "hard to place" or handicapped child whose guardianship was surrendered to, and who was placed out for adoption by, a voluntary authorized agency. The law also provides for a fair hearing to contest a Departmental decision concerning the provision of subsidy. Effective July 19, 1990.

Chapter 303 of the Laws of 1990 amends Section 451 of SSL and gives the social services district placing a child for adoption in another district the discretion to use either the placing district's board rate or the board rate of the district where the adoptive parents reside in determining the adoption subsidy payment. Effective October 28, 1990.

D. Medical Histories of Adopted Children

Chapter 165 of the Laws of 1990 amends Section 373 of the SSL to allow former foster children who have been adopted to request and receive their medical histories and that of their natural parents with identifying information on the natural parents eliminated. Effective July 18, 1990.

E. Adoption by Step-parents

Chapter 508 of the Laws of 1990 amends Domestic Relations Law pertaining to private adoptions. This law exempts step-parents from the requirement for pre-adoptive certification when the child has resided with the natural parent and the step-parent for a continuous period of at least one year. Effective July 18, 1990.

F. Foreign Adoption

Chapter 547 of the Laws of 1990 amends Domestic Relations Law to permit residents of New York State who finalize an adoption outside the United States to petition the court in their county of residence for a readoption under New York State Law. The law also establishes that proof of finalization in the foreign country is prima facie evidence that the necessary consent was given for the adoption. Effective July 18, 1990.

III. New State Laws Related to Foster Care

A. Required Notice to Local Officials Prior to Site Selection for Agency Operated Boarding Homes or Group Homes

Chapter 365 of the Laws of 1990 amends Sections 374-b and 374-c of Social Services Law (SSL) to require authorized agencies to notify local public officials in writing of their intention to locate an agency boarding home or group home in a municipality. This notice must include a description of the nature, size and community support requirements of the program. The bill defines a municipality as a town, village or city except that in New York City "municipality" refers to the local community board with jurisdiction over the proposed site. Effective July 2, 1990.

B. Placement of Siblings Together

Chapter 854 amends Sections 358-a and 384-a(1-a) of SSL and Sections 1027-a and 1055 of the Family Court Act (FCA) to require the placement together in foster care of minor siblings and half-siblings, or, when this is not possible, to provide for visitation or other forms of regular communication. Placement together and/or regular visitation and communication is presumed to be in the child's best interest unless there is evidence that placement together or contact would be contrary to the child's health, safety, or welfare. In the case of visitation, the lack of geographic proximity may be reason for other types of contact to be provided. Effective September 1, 1990.

C. Voluntary Placement Agreements

Chapter 256 amends Section 384-a(2)(c) of SSL to list eight items which must be incorporated in all voluntary placement agreements. According to the law, these eight items must be printed in lay terms and in a large typeface of at least 18 point type. Normal typeface for newspapers and typewriters is 8-12 points. An example of a form printed in 18 point type is Adoption Form 2-G, the extrajudicial consent form for private adoptions. (See the 1989 Supplement, CLS Family Court Forms, p. 189.) A new voluntary placement agreement form for statewide distribution will be prepared by the Department.

The eight items to be incorporated in the larger type are as follows:

- (1) the right of the parent or guardian, before signing the voluntary placement agreement, to a legal representative of the parent's or guardian's choice and to a list provided by the agency of attorneys or legal services organizations, if any, which may offer free legal services when necessary;
- (2) the parent's or guardian's right of refusal to sign an agreement transferring the care and custody of the child to an agency, and the assurance that there will be no penalty for refusal to sign an agreement;
- (3) the right to the child's return to the parent or guardian within 20 days of a request for return unless the court orders otherwise; or the return of the child according to a specific date or event stated in the agreement;
- (4) the right of the parent or guardian to supportive services, including those services listed as available in the Consolidated Services Plan, and the right to visit the child and to determine jointly with the agency the terms and frequency of visitation;
- (5) the obligation of the parent or guardian to:
 - (a) visit the child placed in care;
 - (b) plan for the future of the child;
 - (c) meet and consult with the agency to plan for the child;
 - (d) contribute to the support of the child to the extent of financial ability to do so;
 - (e) inform the agency of any change in name or address;
- (6) failure of the parent or guardian to meet the obligations listed above in (5) could be used as the basis for court action to transfer custody and guardianship of the child to an agency, terminating parental rights;
- (7) the right of parent or guardian to a fair hearing if the agency fails to permit visitation of the child or to provide supportive services included in the Consolidated Services Plan to the child and to the parent or guardian;
- (8) the amount of money to be contributed by the parent or guardian for the support of the child and the schedule for payment, if known.

Effective September 1, 1990.

D. Redisclosure of Confidential HIV Information Related to Minors

Chapter 592 amends several sections of Article 27-F of Public Health Law concerning disclosure and redisclosure of HIV-related information regarding minors. The definition of capacity to consent is expanded to include an individual's ability to understand and appreciate the nature and consequences of a proposed disclosure of confidential HIV-related information.

A law guardian appointed to represent a minor is added to those persons who have legal access to HIV-related information concerning the child for the purpose of representing the minor. Redisclosure by the law guardian is restricted to "the sole purpose of representing the minor" if the child lacks capacity to consent. If the child has capacity to consent, the law guardian may only disclose with the child's permission.

Foster parents are permitted to redisclose confidential HIV-related information concerning the children placed in their care in accordance with regulations of the Department and for the purpose of providing care, treatment or supervision of the child. The new statute gives foster parents the ability to redisclose without other authorization if one of these three criteria (care, treatment or supervision) is met. Further information on departmental policy regarding standards for disclosure will be forthcoming. Redisclosure of confidential HIV-related information by prospective adoptive parents with whom a child has been placed for adoption is not restricted by the statute.

This bill exempts public health officers, as well as physicians, from criminal or civil liability for disclosure in good faith and without malice, or non-disclosure, of HIV-related information.

Effective July 18, 1990.

An administrative directive concerning confidential HIV-related information regarding foster children is being prepared for release.

Joseph Semidei
Deputy Commissioner
Division of Family
and Children Services