



Office of Children and Family Services

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Informational Letter

Transmittal:	16-OCFS-INF-09
To:	Commissioners of Social Services Executive Directors of Voluntary Authorized Agencies
Issuing Division/Office:	Office of Strategic Planning and Policy Development
Date:	September 22, 2016
Subject:	Expansion of Severe or Repeated Abuse Findings and of the Statewide Automated Registry of Orders of Protection and Warrants
Suggested Distribution:	Directors of Social Services Agency Attorneys Staff Development Coordinators Directors of Voluntary Agencies Child Protective Services Supervisors/Staff
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Attachments:	None

Filing References

Previous ADMs/INFs	Releases Cancelled	NYS Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
82-INF-26 95-INF-20			SSL §§ 384-b and 412; FCA §§ 1012, 1046(b), and 1051;		

			Penal Law § 10.00 and Articles 125 and 130; Executive Law § 221-a; Family Protection and Domestic Violence Intervention Act of 1994 (Chapter 222 of the Laws of 1994); Adoption and Safe Families Act (P.L. 105-89).	
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I. Purpose

The purpose of this informational letter is to explain the impact of the amendments made to the Family Court Act (FCA) and Executive Law by Chapter 492 of the Laws of 2015, which became effective February 18, 2016. The changes authorize family courts to issue findings of severe or repeated abuse against non-parents in child abuse and neglect proceedings brought pursuant to Article 10 of the FCA. They also require that certain orders of protection issued in child abuse cases be maintained in the statewide computerized system for orders of protection and warrants of arrest.

II. Background

A family court may order the foster care placement of a child who is alleged or found to have been abused or neglected. While it is often in the child’s best interests to return to the care of their parents, that may not be the best option in all situations. A permanency goal of adoption may be best for a child. For a goal of adoption to be an option for such a child, the rights of the parents must be terminated or surrendered. Among the grounds for a termination of parental rights (TPR) is a determination that severe or repeated abuse of the child occurred. Social Services Law (SSL) § 384-b(8) provides the statutory authority under which a severely or repeatedly abused child may be freed for adoption and parental rights terminated. A TPR may only be granted if the grounds, including severe and repeated abuse, have been established by clear and convincing evidence.¹ An Article 10 proceeding where a finding of severe and repeated abuse has been made is admissible during a TPR proceeding brought on the same grounds. Prior to Chapter 492, however, it was not clear whether a finding of severe or repeated abuse could be made against a person who was not a parent of the abused child.

A statewide automated registry of orders of protection and warrants was established by the Family Protection and Domestic Violence Intervention Act of 1994² to assist law enforcement in enforcing orders of protection. The 1994 law focused on orders pertaining to domestic violence issued pursuant to Criminal Procedure Law §530.13, Domestic Relations Law §§ 240 and 252, and orders issued by courts of competent jurisdiction in other states, territories or tribal jurisdiction. Only four articles of the FCA were specified (articles four, five, six, and eight) for inclusion in the registry. Article 10, which deals with orders of protection issued in child abuse and neglect cases, was not included by the 1994 law in the statewide automated registry.

¹ SSL 384-b(3)(g)(i).

² Chapter 222 of the Laws of 1994.

III. Program Implications

The amendments to FCA § 1051 by Chapter 492 permit a family court to make a finding of severe or repeated abuse against a person who is not a parent of the abused child. This includes any other individual in the household who is “a person legally responsible”³ for the abused child. The term “person legally responsible” includes the child’s custodian, guardian, or other person responsible for the child at the time of the alleged abuse. The amendments to the FCA allow for an adjudication of derivative severe abuse⁴ regarding the children of the person legally responsible, so that these children can also be protected.

Chapter 492 also amended Executive Law § 221-a(1) by adding orders of protection issued pursuant to Article 10 of the FCA to the list of orders which must be included in the statewide automated registry of orders of protection and warrants. The inclusion of these orders of protection in the registry supports an integrated response in all family violence cases, and makes the registry a more complete database of orders for protection for all victims of domestic abuse, adults and children.

/s/ Thomas R. Brooks

Issued By:

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Division/Office: Strategic Planning and Policy Development

³ Family Court Act §1012 (g).

⁴ A derivative finding refers to a determination by the court that the behavior of the respondent in abusing or maltreating one child poses sufficient harm or risk of harm to other children residing in the home that the respondent should also be deemed to have been abusive or neglectful of those other children.