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TRANSMITTAL: 93 INF-43

TO: Commissioners of Social Services
 Directors of Authorized Agencies

DIVISION: Services and
 Community
 Development

DATE: October 15, 1993

SUBJECT: Expediting Adoption Proceedings for Children
 in Foster Care

SUGGESTED

DISTRIBUTION: Foster Care Staff
 Adoption Staff
 Legal Staff
 Staff Development Coordinators

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ATTACHMENTS: Chapter 588 of the Laws of 1991
 Chapter 294 of the Laws of 1993
 (Not available on-line)

FILING REFERENCES

| Previous ADMs/INFs | Releases Cancelled | Dept. Regs. | Soc. Serv. Law & Other Legal Ref. | Manual Ref. | Misc. Ref. |
|-----------------------|-----------------------|-------------|---|-------------|------------|
| | | 18NYCRR | SSL | | |
| | | 421 | 383-c | | |
| | | 421.24 | 384-b | | |
| | | | 453 | | |
| | | | 453-a | | |
| | | | DRL | | |
| | | | 112 | | |
| | | | FCA | | |
| | | | 632 | | |

PURPOSE

There are two purposes for providing this release to social services districts and voluntary authorized agencies:

- This will serve as an interim release pending promulgation of Department regulations which will be filed on an emergency basis to implement the provisions of Chapter 294 of the Laws of 1993 in relation to expediting adoption proceedings for children in foster care.
- It will also provide clarification in response to inquiries regarding implementation of the provisions of Chapter 588 of the Laws of 1991 which is the original chapter law intended to deal with expediting adoption proceedings.

BACKGROUND

Chapter 588 of the Laws of 1991 permits the scheduling of an adoption proceeding at the time the guardianship and custody of the child is committed to an authorized agency either by the involuntary termination of parental rights, or at the time of a judicial surrender. Chapter 294 of the Laws of 1993 builds on Chapter 588 to include specific responsibilities for the attorney for the authorized agency and the Chief Administrator of the Court to expedite adoption proceedings.

Prior to the enactment of Chapter 588 of the Laws of 1991, the law did not require the court to consider the likelihood of a child being adopted at the proceeding to terminate parental rights or to approve a surrender. Although the purpose of terminating parental rights or to approve a surrender is to secure a permanent future for the child, the court viewed the termination proceeding as strictly for the purpose of proving the parent's inability or unwillingness to care for the child, and not an appropriate proceeding for facilitating the adoption of the child. Consequently, a separate proceeding had to be initiated to consider the adoption of the child. The results have been that many children in foster care whose parents' rights have been terminated or surrendered, were left in legal limbo for periods of up to two years before their adoption was finalized.

Chapter 588 provides the needed connection between termination of parental rights or approval of the surrender and the adoption of the child. It provides an opportunity for the court to consider the adoption of the child at the time of the order committing the guardianship and custody of the child to the authorized agency or at the approval of a judicial surrender, without the time and expense of an entirely separate proceeding. In either proceeding, the judge must inquire whether there is any person interested in adopting the child. If so, the court must accept the adoption petition for the child and thereafter set a schedule for completion of the adoption.

To further expedite the process, Chapter 588 also requires that the termination and the adoption proceedings are to be conducted in the same family court which heard the most recent article ten proceeding, and where practicable, must be assigned to the judge who had conducted that proceeding. By requiring the court and judge familiar with the child's case to conduct the termination proceeding, accept the adoption petition, and set a schedule for completion of the adoption, it is expected that the timeliness of the process will be improved.

There were difficulties in implementing Chapter 588 because the actual sequence of activities in termination proceedings often differ from the sequence reflected in the language of the chapter. For example, the new provision in Section 384-b of the Social Services Law (SSL) provides for the judge to inquire if anyone is interested in adopting at the time he or she enters the order committing the guardianship and custody of a child to an authorized agency. However, in actual practice, the written order is usually not physically entered until after the conclusion of the dispositional hearing. Thus, the interested parties are usually not present in the court room. Consequently, the Department working in consultation with the Office of Court Administration and other entities such as the Task Force on Permanency Planning for Children in Foster Care to promote a more effective implementation of Chapter 588, proposed additional amendments to deal with those areas in the new law that require additional clarification.

With the enactment of Chapter 294 of the Laws of 1993, which became effective September 19, 1993, Social Services Law and Domestic Relations Law (DRL) have been amended to specify the sequence of activities necessary for the expedited calendaring of adoption proceedings for children in foster care, and the specific responsibilities of the authorized agency, the attorney for the agency, and the court in these proceedings.

SUMMARY OF PROVISIONS

Chapter 588 of the Laws of 1991

- Scheduling of adoption proceeding: At the time the judge enters the order committing the guardianship and custody of a child to an authorized agency, or when the court accepts a judicial surrender of a child in foster care, the judge must inquire whether any foster parent, parents with whom the child resides, or any relative of the child, or any other person seeks to adopt the child. If so, the judge must accept the petition for adoption along with the home study, if completed by an authorized agency or a disinterested person as defined in law. The court must then establish a schedule for completion of any inquires and investigations necessary to review the adoption of the child and also set a schedule for completion of the adoption (Sections 383-c and 384-b of the SSL).
- Unless the termination proceeding is convened in the surrogate court that originally placed the child in foster care pursuant to Article 10 of the Family Court Act (FCA), the proceeding must originate in the family court and be handled by the judge that last heard the Article 10 proceeding. Also, to the extent possible, the court must appoint a law guardian who has previously represented the child (Section 384-b of the SSL).

- Filing of the adoption petition: An adoption petition can be filed with the court where a termination proceeding is pending. The clerk must accept the adoption petition for filing and processing, and must inquire of the State Department of Social Services whether the child or the adoptive parents is the subject of an indicated report of child abuse or maltreatment. The petition and supporting documentation will not be submitted to the judge of the termination proceeding until the fact finding of the termination proceeding is concluded (Section 112 of the DRL).
- Subsidy application: An application for subsidy can be accepted prior to the commitment of the guardianship and custody of the child to an authorized agency. Approval of the subsidy application may be granted contingent upon commitment of guardianship and custody (Sections 453 and 453-a of the SSL).

Chapter 294 of the Laws of 1993

- Responsibilities of authorized agency and attorney for the agency: The attorney for the authorized agency must promptly serve notice of the court's order approving a surrender or the entry of the court's order transferring custody and guardianship to the commissioner, upon such persons approved by the agency to adopt the child and advise them that an adoption proceeding may be commenced.
 - The authorized agency must advise such persons of the procedures necessary for the adoption of such children in accordance with department regulations, and cooperate in providing necessary documentation (Sections 383-c and 384-b of the SSL).
- Calendaring of adopting proceeding: The adoption proceeding will be considered filed upon receipt by the clerk of the court of all documents as required by the DRL and the rules of the court. An affidavit of readiness from the petitioner's attorney must be included with the documents. It must attest that the petitioner has prepared a petition for the adoption of the child and has collected documentation as required by the DRL and the rules of the court.
 - Once the documents are filed, the court must schedule the proceeding for a review to take place within the time frames established by the administrator of the court, to determine if there is adequate basis for approving the adoption. If such basis is found, the appearance of the adoptive parents and the child before the court for approval of the adoption must be calendared. If there is not adequate basis for approval, the court must direct further hearings submissions or appearances as necessary, and this proceeding must be adjourned as required for such purposes.
 - The chief administrator of the court must establish by rule, time frames for the calendaring and disposition of adoption proceedings and is required to report to the Governor and the legislature by December thirty-first each year on the implementation of such rules and their impact upon adoptions from authorized agencies (Section 112 of the DRL).

IMPLEMENTATION

The provisions of Chapter 588 will not apply to all termination cases. Consequently, agencies should review their caseloads and identify those cases that can be expedited by utilizing the provisions of this law. There are a number of factors the agency should consider in determining which cases can be expedited under the new statutory provisions. They should be cases in which:

- A decision has been made to file a petition to terminate parental rights or the parents have indicated an interest in pursuing a judicial surrender of their child in foster care; and
- The foster parent or approved relative has been informed of the petition to terminate parental rights and has indicated an interest in adopting the child; and
- The child has resided with the foster parents or relative for at least six months; and
- The home study has been completed and the parent or relative approved as the prospective adoptive parent for the child; and
- There is no indication that the parents will file an appeal or that an appeal will be filed on their behalf.

EARLY INITIATION OF ADOPTION SERVICES - It will be necessary for agencies to reconsider their approach to the delivery of foster care and adoption services for those cases that will be impacted by the new statute. Consequently, unlike current practices in many agencies, it will be necessary to complete certain adoption-related activities prior to the child being freed for adoption and prior to the child's case being assigned to the adoption unit.

As soon as the goal of adoption is set and either the parent(s) will surrender the child, or the agency will file a petition to terminate parental rights, preparation of the child and the prospective adoptive family for adoption must begin. Since this is an expedited process, most of the following requirements for adoption as well as approval of the parents to adopt the child must be completed or in the process of being completed when the attorney serves notice to the prospective adoptive parents that an adoption proceeding may be commenced.

- Home Study - it is recommended that the summary include an assessment of the current functioning of the prospective adoptive family and the child to be adopted (judges prefer an assessment completed with the last year).
- Medical Report - report from a physician about the health of each member of the household (should contain any medical changes within the last year).

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- Marital status - if married, proof of marriage (regulation requires prospective adoptive parents to be married as least one year); if separated and apart from their spouse, either proof of a legal separation agreement, or an affidavit executed by the prospective adoptive parent attesting that he or she has been or will be living separate and apart from his or her spouse for a period of three years or more prior to the commencement of the adoption.
 - Evidence of employment - if applicable, documentation of employment indicating occupation and approximate salary for each applicant (e.g., W-2 form or wage stub).
 - Subsidy - indicate if maintenance and/or medical assistance (subsidy) is to be received on behalf of the adoptive child from the social services district.
 - Inquiry to the State Central Register(SCR) - a copy of the response from the State Department of Social Services regarding any indicated child abuse or maltreatment report. To avoid delays, an inquiry should be made as early in the process as possible.
 - Finger Printing - prospective adoptive parents should be finger printed in those cases where the worker is aware that the judge will require it.
 - Inquiry of Criminal Conviction Records - the prospective adoptive parent must provide a sworn statement indicating whether, to the best of his or her knowledge, he or she has ever been convicted of a crime in this State or any other jurisdiction.
 - Length of adoptive placement - verification of the period of time the child has resided with the prospective adoptive parent(s).
 - Information on the child and biological parents - ensure that the medical, religious and placement information about the child, as well as the medical, religious and information about the heritage of the biological parents and other information required by Section 112 of the DRL, as available in the case record, is provided to the prospective adoptive parents.

SERVICES THAT MUST BE PROVIDED TO PROSPECTIVE ADOPTIVE PARENTS - When an adoption case can be expedited by utilizing the provisions in law, Chapter 294 requires the attorney for the agency to serve notice to the parent (s) approved by the agency to adopt the child, that the order approving the surrender or transferring custody and guardianship of the child has been entered and that the prospective adoptive parent(s) can commence an adoption proceeding. In addition, the agency must advise the parent(s) of the procedural steps necessary to complete the adoption in accordance with Department regulations.

Important note: It is important the the parents' attorney be included in this process. According to some judges, in too many cases, the petition is incomplete at the time of filing which results in extended delays in order to complete the filing, or will result in dismissal of the petition. Therefore, it is important for agencies to inform the attorney for the prospective adoptive parents, that judges prefer the adoption petition to be

completed or close to completion at the time of filing in order to calendar the proceeding for finalization of the adoption. Their attorney should be informed that in addition to the petition package he or she is required by law to include an affidavit of readiness that attests that the petitioners have prepared a petition for the adoption of the child and have collected documentation as required by Section 112 of the DRL. Adoptive parents should be advised to hire an attorney who is familiar with and has worked on agency adoptions.

SUBSIDY APPLICATION PRIOR TO FREEING - To expedite the adoption process, Chapter 588 provides for an application for adoption subsidy to be submitted prior to the commitment of the guardianship and custody of the child to the authorized agency. Effective September 9, 1992, department regulations were promulgated to implement this provision. To avoid delay in the process, the adoption subsidy application must be completed by the prospective adoptive parents and submitted for approval with all the necessary documentation at the same time the termination petition is filed or when the court calendars the hearing for the judicial surrender of the child. The agency should indicate that the child is not yet freed for adoption, but that a termination proceeding is pending and that an application for adoption has been filed with the clerk of the court or will be filed at the conclusion of the dispositional hearing or at the judicial surrender.

All courts having jurisdiction for termination and surrender proceedings should be familiar with the provisions of the law related to expediting adoption proceedings for children in foster care. However, if an agency finds that a particular court is not familiar with the changes in the law, the agency attorney should bring it to the attention of the court.

ADDITIONAL INFORMATION: Information regarding timeframes that must be established by the chief administrator of the court for the expedited calendaring of adoption proceedings as well as specific procedures and guidelines established by Department regulations will be provided in the next update of the Adoption Services Program Manual.

Successful implementation of Chapters 588 and 294 is dependent on strong cooperation among the involved parties: The judges and chief administrator of the court, attorneys, prospective adoptive parents, and child welfare professionals.

A copy of Chapter 588 of the Laws of 1991 and Chapter 294 of the Laws of 1993 are attached for your information.

Frank Puig
Deputy Commissioner
Division of Services
and Community Development