

NEW YORK STATE
DEPARTMENT OF SOCIAL SERVICES
40 NORTH PEARL STREET, ALBANY, NEW YORK



BARBARA B. BLUM
Commissioner

[An informational letter informs local districts of potential developments in the Social Services field, or of actual or potential developments in collateral fields of interest]

INFORMATIONAL LETTER

TRANSMITTAL NO.: 81 INF-19
[Services]

TO: Commissioners of Social Services

SUBJECT: Writs of Habeas Corpus in Family Court to
Obtain the Care and Custody of Children

DATE: September 9, 1981

SUGGESTED DISTRIBUTION: Commissioner
All Child Welfare Staff
Social Services Attorney
County Attorney
Voluntary Child Caring Agency Directors

CONTACT PERSON: Any questions concerning this release should be directed to
Mr. H. A. Harkess, Office of Policy Planning, Division of
Services, phone 1-800-342-3715, extension 4-9574.

I. PURPOSE

The purpose of this letter is to inform local districts, social services attorneys and county attorneys of the amendment to Section 384-a of the Social Services Law made by Chapter 28 of the Laws of 1980. This amendment adds the Family Court as a court of jurisdiction for writs of habeas corpus seeking return of the care and custody of children.

II. BACKGROUND

Section 384-a of Social Services Law, initially enacted in 1975, provides for the transfer of care and custody of a child by a parent or guardian to an authorized agency by means of a written instrument, known as a voluntary surrender. This instrument may specify conditions by which the care and custody of the child may be returned to the parent or guardian. Section 384-a, subdivision 2, makes provision for a parent or guardian to request the return of a child surrendered by means of such an instrument. In the event that an authorized agency denies or fails to act on the parent's or guardian's request for the return of the child, this same subdivision 2 provides that the parent or guardian may seek the return of the child by

FILING REFERENCES

Previous INFs/ADMs	Dept. Regs.	Social Services Law and Other Legal References	Bulletin/Chapter Reference	Miscellaneous References
78 INF 30		FCA 651 SSL 384-a		


petition of the family court or by a writ of habeas corpus to the Supreme Court.

III. IMPLICATIONS

Although Section 651 of The Family Court Act gave Family Court Jurisdiction to accept writs of habeas corpus for the custody of minors, the original provisions of SSL 384-a relative to writs of habeas corpus for the return of care and custody of a child referred only to the Supreme Court. Chapter 28 of the Laws of 1980 clarifies the Family Court's authority to accept jurisdiction over any writ of habeas corpus for the custody of a minor and extends to the Family Court the specific authority to accept jurisdiction over a writ of habeas corpus for the return of care and custody of a child who had been voluntarily surrendered. In this way, hearings on such matters may be expedited by the Family Court's greater familiarity with the terms of the case. In addition, attorneys for the authorized agencies and local social services districts may respond to applications for such writs in the more familiar grounds of the Family Court.

IV. RECOMMENDATIONS

None.


Norris P. Phillips
Deputy Commissioner
DIVISION OF SERVICES