

+-----+
| LOCAL COMMISSIONERS MEMORANDUM |
+-----+

Transmittal No: 91 LCM-8

Date: January 16, 1991

Division: Family and Children
Services

TO: Local District Commissioners

SUBJECT: Surrenders of Children in Foster Care

ATTACHMENTS: Regulation (Not Available On-Line)
Surrender Forms (Not Available On-Line)

The purpose of this communication is to inform social services districts that effective January 1, 1990 new procedures take effect regarding the execution of surrenders of foster children. The new requirements were enacted as a result of Chapters 479 and 480 of the Laws of 1990 which enacted a new Section 383-c of the Social Services Law and which amended Section 384 of the Social Services Law. As a result of the new statute, the Department is issuing new extra-judicial and judicial surrender forms which must be used where an authorized agency (social services district and voluntary agency) intends to accept either the judicial or extra-judicial surrender of a child who is already in foster care.

The forms are to be used in conjunction with Department regulation 18 NYCRR 421.6 which also implements the provisions of Chapters 479 and 480 of the Laws of 1990 concerning the taking of surrenders of children in foster care (see attached regulation).

Under the new statute, authorized agencies will have the option of utilizing either an extra-judicial or a judicial surrender in order to transfer the custody and guardianship of a foster child. The availability of an extra-judicial surrender will be useful, for example, where a parent is unable or reluctant to appear before a judge to surrender the foster child for adoption.

Department regulation Section 421.6 implements the statutory requirements of Section 383-c of the Social Services Law concerning the taking of an extra-judicial surrender. The regulation provides that the surrender of a child in foster care not executed and acknowledged before a judge of the family court or surrogate must be executed and acknowledged by the parent or legal guardian, in the presence of at least two witnesses, before a notary public or other officer authorized to take proof of deeds.

The regulation provides that at least one witness must be an employee of the authorized agency which is accepting the surrender. Such employee must receive in-service training and instruction provided by the authorized agency on taking an extra-judicial surrender. The regulation outlines the minimum topics to be covered in the in-service training, including legal responsibilities in execution of the document and the required affidavits, responsibility to the parent(s), and the required knowledge concerning the legal requirements for taking an extra-judicial surrender and for submitting the signed surrender to the court. Upon completion of such in-service training, the employee is qualified to serve as a witness to an extra-judicial surrender.

The second witness to an extra-judicial surrender must be an impartial witness. The impartial witness must be either a certified social worker or an attorney duly admitted to the practice of law before the courts of this state. The impartial witness cannot be an employee, volunteer, consultant or an attorney for the authorized agency to which the child is being surrendered. The regulations provide specific conditions to be followed to ensure the impartial selection and independence of the impartial witness. The impartial witness cannot receive payment or any type of compensation for serving as a witness to the extra-judicial surrender.

Both witnesses are required to sign affidavits which are to accompany the executed extra-judicial surrender which must be submitted subsequently to the court for approval. The contents of the affidavits are provided in Section 383-c of the Social Services Law and in the regulation.

The new procedures arising from Chapters 479 and 480 of the Laws of 1990 apply to the surrender of children who are already in foster care. They do not apply where the child is not already in foster care. In addition, they do not apply where the parent surrendering the child is also a foster child. Section 384 of the Social Services Law, as amended by Chapter 479 of the Laws of 1990, applies to these two situations.

Date January 16, 1991

Trans. No. 91 LCM-8

Page No. 3

Specific procedures and guidelines for implementing the requirements in statute and regulation concerning the surrender of a child in foster care will be provided in an update of the Adoption Services Program Manual.

Several copies of the interim forms are attached for your use. Copies of the final forms will be distributed to districts as soon as they are available. Please make this material available to your counsel's office and child welfare units immediately. The Department is sharing this information with the directors of voluntary agencies.

Please contact your Regional Office if there are any programmatic questions about the forms or the regulation. Legal questions should be directed to John Stupp of the Division of Legal Affairs at (518) 474-8490.

Joseph Semidei
Deputy Commissioner