



Andrew M. Cuomo  
Governor

NEW YORK STATE  
OFFICE OF CHILDREN & FAMILY SERVICES  
52 WASHINGTON STREET  
RENSSELAER, NY 12144

Gladys Carrión, Esq.  
Commissioner

**Administrative Directive**

<b>Transmittal:</b>	11-OCFS-ADM-7				
<b>To:</b>	Commissioners of Social Services Executive Directors of Voluntary Authorized Agencies				
<b>Issuing Division/Office:</b>	Strategic Planning and Policy Development				
<b>Date:</b>	June 15 <sup>th</sup> 2011				
<b>Subject:</b>	Incarcerated Parents and Parents in Residential Substance Abuse Treatment with Children in Foster Care: Termination of Parental Rights and Other Issues				
<b>Suggested Distribution:</b>	Directors of Social Services Child Welfare Supervisors				
<b>Contact Person(s):</b>	See pg. 9 Section V “Contacts”				
<b>Attachments:</b>	Attachment 1 “Connectivity Between Children and Their Incarcerated Parents” (Power Point) Attachment 2 “ <i>You Don’t Have to Stop Being a Parent</i> ” (A & B) Attachment 3 Model Release of Information Form				
<b>Attachment Available Online:</b>	Yes attachments 2 A & B are on the OCFS Website ( <a href="http://www.ocfs.state.ny.us">www.ocfs.state.ny.us</a> ) under “publications”				
<b>Previous ADMs/INFs</b>	<b>Releases Cancelled</b>	<b>Dept. Regs.</b>	<b>Soc. Serv. Law &amp; Other Legal Ref.</b>	<b>Manual Ref.</b>	<b>Misc. Ref.</b>
98 OCFS INF-3		18 NYCRR 431.9 (e)	SSL 384-b (8) SSL 409-e		

**I. Purpose**

The purpose of this Administrative Directive (ADM) is to inform social services districts (districts) and voluntary authorized agencies (agencies) of Chapter 113 of the Laws of 2010 (Chapter 113) which was signed into law on June 15<sup>th</sup>, 2010. Chapter 113 amends Social Services Law 384-b by adding additional considerations to the requirement that social services districts file petitions to terminate parental rights (TPR) when a child has been in foster care for 15 of the most recent 22 months. An exception to the requirement

to file a TPR may apply to some parents who are currently incarcerated or in a residential substance abuse treatment program or to parents whose past term of incarceration or participation in a residential substance abuse treatment program was a significant factor in the child's remaining in foster care for 15 of the most recent 22 months. In such cases, before filing a TPR petition the agency must assess whether the parent maintains a meaningful role in the child's life and whether terminating the parent's rights is in the child's best interests. For purposes of this law, the term "incarceration" includes a parent's placement in Office of Children and Family Services' (OCFS) custody.

In assessing whether the parent maintains a meaningful role in the child's life, the agency must base its determination on evidence, including but not limited to the parent's communications with the child, the parent's communications with the district or foster care agency, and information regarding the parent's participation in services to assist him or her in complying with the service plan. The district or agency should gather input from the parent, the child, the child's attorney, the parent's attorney, individuals of importance to the child's life and individuals providing services to the parent. If the district assesses that a parent maintains a meaningful role in the child's life, it must then determine whether the continued involvement of the parent in the child's life is in the child's best interests. An exception to file for a TPR exists only if both these conditions are met.

Additionally, Chapter 113 requires the court to take into account the particular barriers and challenges faced by a parent who is or has been incarcerated or in a residential substance abuse treatment program during the child's placement in foster care when determining whether a child is permanently neglected. The law requires districts and agencies to distribute information provided by OCFS to these parents, outlining their legal rights and obligations and providing information on social and rehabilitative services available in the community to which they will return.

Finally, Chapter 113 requires the family's service plan to reflect the special challenges of a parent who is incarcerated, or in a residential substance abuse treatment program, and allows the district or agency to utilize available technology, such as video or teleconferencing, as a means for the parent to participate in reviews if it is impractical to hold such consultations in person.

## **II. Background**

In 1997, the federal Adoption and Safe Families Act (ASFA) was enacted to address the needs of children "adrift" in long-term foster care without achieving permanency. ASFA requires agencies to file a termination of parental rights (TPR) petition when a child has been in foster care 15 of the last 22 months, unless there is a compelling or other reason for not filing such a petition. New York State enacted comparable ASFA legislation: Chapter 145 of the Laws of 2000. For more information about compelling and other reasons not to file a TPR, refer to 18 NYCRR 431.9 (e) and 98 OCFS INF-3.

Chapter 113 was enacted to address the situation of foster children with parents who are currently incarcerated or in residential substance abuse treatment and foster children with

parents whose past incarceration, or placement in residential substance abuse treatment, is a significant factor in why the child remained in foster care for 15 of the most recent 22 months. This legislation provides a possible exception to the requirement to file a TPR against these parents and sets forth other provisions specific to these parents.

### **III. Program Implications**

Chapter 113 applies to parents of foster children who are currently incarcerated or in residential substance abuse treatment programs. It may also apply to parents of foster children who in the past were incarcerated or in a residential substance abuse treatment program, but only if that past term of incarceration or time in a residential treatment played a significant factor in the child's presence in foster care for 15 of the most recent 22 months. In some cases, parental incarceration or time in a residential substance abuse treatment program may form the basis of an exception to the requirement to file a TPR petition when a child has been in foster care for 15 of the last 22 months. This must be determined on a case-by-case basis.

In order to determine whether an exception to the requirement to file a TPR is warranted, Chapter 113 requires that the agency or district assess whether the parent maintains a meaningful role in the life of a child and, if so, whether the continued involvement of the parent in the child's life is in the best interests of the child. Chapter 113 defines evidence of the parent's meaningful role in the life of the child to include, but not be limited, to the following:

- a parent's expression or acts manifesting concern for the child such as letters, telephone calls, visits, participation in planning, and other forms of communication with the child; and
- efforts by the parent to communicate and work with the district or agency, the child's attorney, the foster parent, the court, the parent's attorney and others providing services to the parent, such as correctional, mental health, and substance abuse treatment program staff.

The agency is required to gather information from the parent, the child and others providing services to the parent for the purpose of complying with the service plan and repairing, maintaining, or building the parent-child relationship. This includes correctional, mental health and substance abuse treatment program personnel, the child's attorney and the parent's attorney.

When determining whether the parent's continued involvement in the child's life is in the best interests of the child, districts and agencies are encouraged to consider the following:

- whether the parent was the child's primary caregiver prior to the child's placement;
- the parent's role in the child's life prior to the parent's incarceration or residential substance abuse treatment;
- the parent's current role in the child's life;

- the age of the child at the time of the child's placement;
- the length of the parent's period of incarceration or residential treatment;
- the length of time the child has been in foster care;
- the child's primary attachment;
- any special needs or vulnerabilities of the child; and
- whether the parent has addressed safety concerns, if any.

The parent/child assessment and best interests determination must be documented in the child's periodic Family Assessment and Service Plan (FASP), and all efforts made to reach the permanency goal of the child must be documented in the case record.

During the child's placement, agency and district caseworkers are to make suitable arrangements with a correctional facility, or a residential substance abuse treatment program, for the parent to visit with the child within the facility or program unless such visiting would be harmful to the child.

The initial family service plan and the ensuing Service Plan Reviews (SPRs) must be done in consultation with the incarcerated parent, or parent in a residential substance abuse treatment program, unless such consultation is deemed harmful to the child. If it is impractical to hold such consultation in person as a result of incarceration, or placement in a residential substance abuse treatment program, such consultation may be done utilizing available videoconferencing or teleconferencing technology.

In addition, social services districts and agencies must provide information developed by the Office of Children and Family Services to these parents outlining their legal rights and obligations. (See Attachment 2, "***You Don't Have to Stop Being a Parent.***" Version A is for Incarcerated Parents, Version B is for Parents in Residential Substance Abuse Treatment Centers.) Social services districts and agencies must also provide parents with a list including, but not limited to, social or rehabilitative services available in the community, including family visiting services to aid in the development of a meaningful relationship between the parent and child. When possible, such information should include transitional and family support services in the community to which an incarcerated parent, or parent in a residential substance abuse treatment program will return. This information must be provided as soon as the district or agency has located the parent and must include information on how the parent is to communicate with the agency or caseworker. Attachments 2 A and 2 B, "***You Don't Have to Stop Being a Parent.***" translated in Spanish, are forthcoming.

#### IV. Required Actions

##### **For Parents Incarcerated in New York State Department of Corrections (DOCS) Facilities**

The agency and district caseworkers must familiarize themselves with the means to access NYS DOCS facilities by reviewing the attached PowerPoint: “Connectivity Between Children and Their Incarcerated Parents: How to Navigate the New York State Department of Correctional Services.” **See Attachment 1**

Once the caseworker has information that a child in foster care has a parent incarcerated in a DOCS facility, the caseworker must gather information about that parent in order to locate him or her using the DOCS Lookup website.

In order to successfully utilize the Inmate Lookup, agency or district caseworkers should attempt to learn the following information regarding the incarcerated parent:

- Full Name and any aliases
- Date or year of birth
- County of commitment

The Inmate Lookup will provide the incarcerated parent’s Department Identification Number (DIN) and facility location. It is essential that all correspondence to the incarcerated parent include the parent’s DIN, according to NYS DOCS inmate mail procedures.

The DOCS Inmate Lookup is available at:

<http://nysdocslookup.docs.state.ny.us/>

The DOCS Facility Lookup is available at:

<http://www.docs.state.ny.us/faclist.html>

The NYS DOCS website is available at:

<http://www.docs.state.ny.us/>

Once the incarcerated parent has been located:

1. Caseworkers must contact the deputy superintendent of the appropriate facility to determine the parent’s corrections counselor. Deputy superintendent phone numbers can be found on the NYS DOCS website (URL above). The deputy superintendent at any NYS DOCS facility is reachable at extension 4000.
2. The inmate-parent must be mailed “*You Don’t Have to Stop Being a Parent*” (see attachment 2 Version A also posted on the OCFS website)

[www.ocfs.state.ny.us](http://www.ocfs.state.ny.us) under publications # 5113). A list of social or rehabilitative services available in the community, including family visiting services, to aid in the development of a meaningful relationship between the parent and child must be included. Despite the fact that an adult's incarceration and the location are public information, any programmatic information such as drug treatment, mental health treatment, etc. is still confidential and would require a release of information form signed by the parent. A model release of information form is included in this ADM as attachment 3. The district or agency should include a "release of information" form for the parent to sign allowing the agency or district, and the facility staff, to communicate with each other regarding the parent. The district or agency must clearly identify its return address. DOCS recognizes correspondence from districts and agencies as "legal mail" and the parent's receipt of mail from the agency or district will be documented by DOCS staff.

3. Once a parent's corrections counselor is identified, the caseworker must initiate contact with the counselor to discuss visiting arrangements between the parent and foster child, the parent's participation in SPRs, and any other pertinent information.
4. The caseworker should also determine the availability of videoconference or teleconference capacity within the facility in order to accommodate the parent's participation in Service Plan Reviews. The use of alternate technology, where available, is required by law when a parent's physical attendance is impractical.
5. The caseworker must coordinate with the corrections counselor to obtain an acceptable time for phone contact with the parent.
6. The caseworker must contact the parent by phone to explain any court or Service Plan Review dates, visitation schedules, and provide an update on the progress of the child.

Any correspondence between the caseworkers and the corrections counselors is to be mailed directly. DOCS has advised OCFS that the deputy superintendent of the correctional facility is to be contacted should there be any communication difficulties with the parent's correctional counselor.

### **For Parents in a Residential Substance Abuse Treatment Program**

The process for assisting parents in a residential substance abuse treatment program is somewhat different from the process used to assist incarcerated parents because treatment programs are prohibited by law from disclosing any information about their clients without a signed release of information. If the parent is there as the result of a court order, the caseworker should make every effort to get a release signed by the parent before the parent goes into the treatment facility. If the parent is already in a

treatment facility and the caseworker knows where the parent is located but does not have a release the caseworker must mail a blank release to the parent in care of the facility. The caseworker should include a cover letter explaining the purpose of the release and should enclose a self-addressed stamped envelope so the parent can mail back the signed release. The agency fax number should also be included in case the facility is willing to fax the signed release back to the caseworker and then mail the original. Once the caseworker has the signed release, a copy should be faxed to the facility. At this point, information may be exchanged between the parent's counselor/clinician at the facility and the caseworker. If the caseworker wishes to share information regarding the parent and child with the treatment provider, the release must also authorize the child welfare agency to do that.

In cases where the parent has entered treatment voluntarily, and has not notified the caseworker of his or her location, the caseworker will have to learn the parent's location from family members or other collateral sources. Once the parent's location has been determined, the caseworker must follow the procedures above.

The signed release must be included in the child's record and a copy should also be retained by the identified treatment provider. Even if a parent refuses to sign a release, the caseworker must document the efforts to obtain a release and keep copies of all correspondence in the case record. Once the release has been signed, caseworkers must again contact the program manager in order to determine the primary counselor/clinician for the parent. A model release of information form is included in this ADM as attachment 3. The caseworker must then follow steps 2-6 above (using attachment 2, Version B: ***"You Don't Have to Stop Being a Parent while you are in a residential treatment facility"*** OCFS Publication #5114) to satisfy the requirements of Chapter 113.

Here is the link for New York State Office of Alcohol and Substance Abuse Services (OASAS) program directory:

<http://www.oasas.state.ny.us/providerDirectory/index.cfm>

OCFS has provided OASAS with a list of social services districts and foster care agencies. In addition, OASAS recognizes correspondence from districts and agencies as "legal mail."

### **For Parents in OCFS Custody**

The process for assisting parents in OCFS custody is described below. Caseworkers must work with facility directors and youth counselors in OCFS facilities. In the event that the parent in OCFS custody is placed in a facility at a known location, caseworkers will utilize the Division of Juvenile Justice and Opportunities for Youth web page for the Regional Listing of OCFS facilities and directors located at:

<http://www.ocfs.state.ny.us/main/rehab/regionalListing.asp>

In the event that a parent in OCFS custody and his/her placement location is not known, the following procedure must be followed due to the confidential nature of placement location of juvenile delinquents and offenders:

- The caseworker must fax a release of information form to the OCFS Legal Division's Juvenile Justice Unit at **518-402-6526**. Once the release of information is approved, the Legal Division's Juvenile Justice Unit can provide the location and refer inquiries to the website for the contact person.

Caseworkers must contact the appropriate facility director who will identify the Youth Counselor I (YCI) who has the parent on his or her caseload. The caseworker must, with the assistance of the YCI, follow steps 2-6 above to satisfy the requirements of Chapter 113. A model release of information form is attached to this ADM as attachment 3.

In the event that a parent is incarcerated or placed in a facility other than NYS DOCS, an OASAS licensed residential substance abuse treatment center, or an OCFS facility, the caseworkers is to initiate the appropriate contacts with that facility. These other facilities may include parents incarcerated in county jails, federal prisons, or immigration detention facilities. Once contact is made, the caseworker is to follow steps 2-6 above to satisfy the requirements of Chapter 113.

Below are additional websites to assist caseworkers in finding parents in local jails, federal prisons and immigration detention facilities:

New York City Department of Correction inmate lookup:

<http://a072-web.nyc.gov/inmatelookup/>

Other county inmate lookups:

[http://www.theinmatelocator.com/New\\_York\\_Inmates\\_Search.html](http://www.theinmatelocator.com/New_York_Inmates_Search.html)

Federal Bureau of Prisons inmate lookup:

<http://www.bop.gov/iloc2/LocateInmate.jsp>

US Immigration and Customs Enforcement inmate lookup:

<https://locator.ice.gov/odls/homePage.do>

## **V. System Implications**

There are no system implications at this time. It should be noted that CONNECTIONS HELP has not been updated to add incarceration or placement in residential substance abuse treatment as possible exceptions for filing a TPR.



**VI. Contact Information**

Any questions concerning this release should be directed to the appropriate Regional Office, Division of Child Welfare and Community Services:

Buffalo Regional Office- Dana Whitcomb (716) 847-3145

[Dana.Whitcomb@ocfs.state.ny.us](mailto:Dana.Whitcomb@ocfs.state.ny.us)

Rochester Regional Office- Karen Buck (585) 238-8200

[Karen.Buck@ocfs.state.ny.us](mailto:Karen.Buck@ocfs.state.ny.us)

Syracuse Regional Office- Jack Klump (315) 423-1200

[Jack.Klump@ocfs.state.ny.us](mailto:Jack.Klump@ocfs.state.ny.us)

Albany Regional Office- Kerri Barber (518) 486-7078

[Kerri.Barber@ocfs.state.ny.us](mailto:Kerri.Barber@ocfs.state.ny.us)

Spring Valley Regional Office- Patricia Sheehy (845) 708-2499

[Patricia.Sheehy@ocfs.state.ny.us](mailto:Patricia.Sheehy@ocfs.state.ny.us)

New York City Regional Office- Patricia Beresford (212) 383-1788

[Patricia.Beresford@ocfs.state.ny.us](mailto:Patricia.Beresford@ocfs.state.ny.us)

Native American Services- Kim Thomas (716) 847-3123

[Kim.Thomas@ocfs.state.ny.us](mailto:Kim.Thomas@ocfs.state.ny.us)

Any questions concerning this release as it pertains to parents in OCFS custody should be directed to the OCFS Juvenile Justice Unit in the Division of Legal Affairs:

Kristen Northrup, Senior Attorney (518) 402-6723

[Kristen.Northrup@ocfs.state.ny.us](mailto:Kristen.Northrup@ocfs.state.ny.us)

**VII. Effective Date**

Chapter 113 was effective on June 15, 2010 and this ADM is effective immediately.

*/s/ Nancy W. Martinez*

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**Issued By:**

Name: Nancy W. Martinez

Title: Director

Division/Office: Strategic Planning and Policy Development