



Office of Children and Family Services

Andrew M. Cuomo
Governor

52 WASHINGTON STREET
RENSSELAER, NY 12144

Sheila J. Poole
Acting Commissioner

Administrative Directive

| | |
|---------------------------------|--|
| Transmittal: | 16-OCFS-ADM-07 |
| To: | Commissioners of Social Services Executive Directors of Voluntary Authorized Agencies |
| Issuing Division/Office: | Office of Strategic Planning and Policy Development |
| Date: | March 24, 2016 |
| Subject: | Sharing Child Protective Services Information with Law Enforcement When a Child Is Missing |
| Suggested Distribution: | Directors of Social Services Child Protective Services Supervisors Child Welfare Supervisors Local Law Enforcement Agencies |
| Contact Person(s): | Any questions concerning this release should be directed to the appropriate OCFS regional office: Buffalo Regional Office - Dana Whitcomb (716) 847-3145 Dana.Whitcomb@ocfs.ny.gov Rochester Regional Office - Karen Buck (585) 238-8201 Karen.Buck@ocfs.ny.gov Syracuse Regional Office - Sara Simon (315) 423-1200 Sara.Simon@ocfs.ny.gov Albany Regional Office - Kerri Barber (518) 486-7078 Kerri.Barber@ocfs.ny.gov Spring Valley Regional Office - Yolanda Désarmé (845) 708-2498 Yolanda.Desarme@ocfs.ny.gov New York City Regional Office - Raymond Toomer (212) 383-1788 Raymond.Toomer@ocfs.ny.gov Native American Services - Heather LaForme (716) 847-3123 Heather.LaForme@ocfs.ny.gov |
| Attachments: | None |

Filing References

| Previous ADMs/INFs | Releases Cancelled | NYS Regs. | Soc. Serv. Law & Other Legal Ref. | Manual Ref. | Misc. Ref. |
|--------------------|--------------------|-----------|-----------------------------------|-------------|------------|
| | | | SSL §422 SSL §427-a(5) | | |

I. Purpose

The purpose of this Administrative Directive is to convey to local social services districts (local districts) the provisions of Chapter 436 of the Laws of 2015 as amended by Chapter 13 of the Laws of 2016. These chapters revise the New York State Social Services Law (SSL) in relation to sharing information in child protective services reports with law enforcement during a situation in which a child is missing.

II. Background

Chapter 436 of the Laws of 2015 (Chapter 436), was enacted in November 2015 in response to a concern about the ability of law enforcement officials to quickly access information that may be crucial to locate a child who has gone missing. This concern arose following an incident in 2014 in which a child was missing and law enforcement officials were unable to obtain access to child protective services (CPS) records about persons who were involved in the situation because the standards for providing such information were not sufficiently clear in the law. Although it subsequently became known that the information in the CPS reports would not have been helpful in that particular search, this incident highlighted the difficulty that law enforcement officials could encounter in attempting to quickly obtain access to CPS information when such access might be crucial in an emergency. To address this concern, the state legislature passed Chapter 436, which revised and clarified the standards for providing CPS information when law enforcement is conducting an investigation of a missing child.

However, when Governor Andrew Cuomo signed the legislation, he also issued an approval memorandum in which he stated that the bill was overbroad, cumbersome to implement during exigent circumstances, and would not offer adequate safeguards to protect sensitive personal data. Governor Cuomo wrote that he was signing the bill on the basis that the New York Assembly and Senate had agreed to pass legislation in the upcoming session to address and correct these concerns. The state legislature fulfilled its agreement and the governor signed the revisions into law as Chapter 13 of the Laws of 2016 (Chapter 13), which repealed some parts and revised some parts of Chapter 436. Chapter 13 was signed on March 21, 2016, and was effective retroactively to January 19, 2016.

The information provided in the following sections of this ADM reflects the law regarding the provision of CPS information to law enforcement officials as it exists on the date of this ADM, which includes the revisions made in Chapter 436 as amended by Chapter 13.

III. Program Implications

Information contained in CPS reports is confidential and may not be disclosed except as the law expressly authorizes. SSL §422(4)(A) lists those entities to which OCFS or a local district must make available confidential CPS information; for some of the entities, this law specifies the circumstances in which the CPS information can be shared. This section of the law applies only to information in CPS reports in which a subject was indicated or where the report is under investigation at the time that access to the information is sought, and does not apply to reports that have been sealed, which includes both reports

that were unfounded and reports that were assigned to a family assessment response (FAR)¹. Chapters 436 and 13 made the following changes to SSL §422(4)(A)(l).

- A. The definition of “criminal justice agency,” which is one of the types of entities entitled to CPS information under certain circumstances, has been expanded to include county park police and Indian police officers. A criminal justice agency is now defined as “...a district attorney, an assistant district attorney or an investigator employed in the office of a district attorney; a sworn officer of the division of state police, of the regional state park police, of a county department of parks, of a city police department, or of a county, town or village police department or county sheriff's office or department; or an Indian police officer.”
- B. Specific requirements have been added to the law pertaining only to those circumstances in which a criminal justice agency is conducting an investigation regarding a missing child and requests CPS information to assist in the investigation. The law now specifies that OCFS and local districts must share CPS information with a criminal justice agency when:
 1. the criminal justice agency is conducting an investigation of a missing child; and
 2. the criminal justice agency has reason to suspect that the missing child's parent, guardian or other person legally responsible for the child is or may be the subject of a report, or the missing child or the missing child's sibling is or may be another person named in a report of child abuse or maltreatment; and
 3. any such CPS information is or may be needed to further the investigation to find the missing child.

The requirements for sharing information with criminal justice agencies detailed in SSL §422(4)(A)(l) prior to the enactment of Chapters 436 and 13 remain unchanged. The law continues to require OCFS and local districts to share CPS information when a criminal justice agency requests such information in instances in which the criminal justice agency states that:

1. the information is necessary to conduct a criminal investigation or criminal prosecution of a person, and
2. there is reasonable cause to believe that such person is the subject of a report and it is reasonable to believe that due to the nature of the crime under investigation or prosecution, such person is the subject of a report, and
3. it is reasonable to believe that due to the nature of the crime under investigation or prosecution, such records may be related to the criminal investigation or prosecution.

IV. Required Action

Whenever a local district receives a request for CPS information from a criminal justice agency (i. e., any of those types of agencies denoted in section III.A, above) for any of

¹ See section 427-a(5) of the New York State Social Services Law for confidentiality provisions that apply to FAR, <http://codes.findlaw.com/ny/social-services-law/sos-sect-427-a.html>.

the reasons listed in Section III.B above, the local district must provide the criminal justice agency with information from the records of any pertinent **indicated** CPS report or any CPS report that is **under investigation** at the time of the request. The local district may also provide any ancillary information it may have about the family that pertains to those records but is not included in the records.

In those instances in which a criminal justice agency states that it is conducting an investigation of a missing child, the standard to use for determining whether to provide the confidential information to the criminal justice agency is if such agency states that:

- it has reason to suspect that a parent, guardian or other person legally responsible for the child is or **may** be the subject of a report, or that the child or the child's sibling is or **may** be named in a report; and
- any such information is or **may** be needed for the investigation.

A local district must **not** share information with a criminal justice agency from the record of any CPS report that was **unfounded** or assigned to **FAR**.

V. Systems Implications

None.

VI. Additional Information

Before providing confidential information to a criminal justice agency or any other entity, local districts must be certain that the requestor is actually an individual authorized to have access to that information or is making a request on behalf of an agency authorized to have access to that information.

Whenever a local district provides information to a criminal justice agency or any other entity, the local district must keep a record of that communication. If the case is closed, CPS staff can add an addendum to the CONNECTIONS record by using the "Investigation Conclusions" tab.

VII. Effective Date

This policy is effective as of January 19, 2016.

/s/ Thomas R. Brooks

Issued By:

Name: Thomas R. Brooks

Title: Deputy Commissioner

Division/Office: Strategic Planning and Policy Development