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### Administrative Directive

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<b>To:</b>	Commissioners of Social Services Executive Directors of Voluntary Authorized Agencies
<b>Issuing Division/Office:</b>	Strategic Planning & Policy Development
<b>Date:</b>	February 27, 2009
<b>Subject:</b>	<b>New Statutes Affecting Kinship Care: Chapters 404 and 519 of the Laws of 2008</b>
<b>Suggested Distribution:</b>	Directors of Services Child Welfare Attorneys Child Protective Services Supervisors Child Welfare Supervisors Adoption Supervisors Staff Development Coordinators
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<b>Attachments:</b>	No
<b>Attachment Available Online:</b>	NA

## Filing References

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
			FCA 657, 661 FCA 1017, FCA 1055, 1055-b FCA 1089-a DRL 74 SCPA 1701-1704, 1706-1707		

### I. Purpose

The purpose of this Administrative Directive (ADM) is to advise social services districts and voluntary authorized agencies about two new laws that relate to permanency and the appointment and legal rights of guardians and custodians. Chapter 404 of the Laws of 2008 clarifies the authority of persons appointed guardian or awarded legal custody of a child and creates a new legal status of “permanent guardianship” of a child, and Chapter 519 of the Laws of 2008 clarifies placement options available under Article 6 of the Family Court Act (FCA), in relation to Article 10 (abuse/neglect) proceedings.

### II. Background

Prior to the enactment of Chapter 404 of the Laws of 2008, the lack of definition for the roles of a guardian and a custodian of a child caused confusion to parties, schools, health and medical service providers alike. Chapter 404 clarifies the respective roles of a guardian and a custodian by amending the FCA, Domestic Relations Law (DRL), and the Surrogate Court Procedures Act (SCPA). Chapter 404 creates a new legal status – permanent guardianship – that can be established for a freed or orphaned child, granting all the necessary rights and responsibilities to care for the child upon the permanent guardian.

Prior to enactment of Chapter 519 of the Laws of 2008, the law regarding how and when relatives could intervene in an Article 10 proceeding to be considered as placement resources for a child was unclear and, at times, conflicting. As a result, divergent practices emerged around the state that sometimes prevented suitable family members from caring for children outside of the foster care system. Some Family Courts only placed children with relatives under Article 10 of the FCA, while other Family Courts granted guardianship or custody to relatives under Article 6 of the FCA. Some Family Courts questioned whether they had the authority to place relatives who are caring for children under Article 10 under the supervision of the applicable social services district. Chapter 519 now establishes clear authority and procedures to enable appropriate family

members or other suitable persons to care for such children while protecting the children's safety.

### **III. Program Implications**

#### Chapter 404 of the Laws of 2008

This chapter amends FCA 661 to create the legal status of “permanent guardianship” for those children freed for adoption or orphaned whose guardianship and custody rests with a Commissioner of Social Services or a voluntary authorized agency. The court has the authority, upon a finding of best interests, to appoint a permanent guardian for the child as an alternative to adoption. The legal status of permanent guardian can continue after the child reaches age 18, up to his or her 21<sup>st</sup> birthday, with the child’s consent. The status may be vacated by the court based on clear and convincing evidence that the guardian failed to or is unable or unwilling to provide proper care, and guardianship is no longer in the child’s best interests.

The chapter provides that the permanent guardian is authorized to consent to a child’s adoption. The permanent guardian has the right and responsibility to make decisions on behalf of the child, including those relating to the child’s protection, education, care and control, health and education.

Where permanent guardianship is sought, social services districts must prepare an assessment of the proposed permanent guardian, and provide the court with a report and recommendation that is to be attached to the petition seeking appointment of the person as a permanent guardian.

The establishment of a permanent guardian means that the child has achieved permanency, and for a foster child, it means that his or her status as a foster child will end. Temporary Assistance (TA) is available (child only case) based on the child’s own income.

A permanent guardian is permitted to sign a Voluntary Placement Agreement (VPA) pursuant to section 384-a of the SSL if the child needs to enter or return to foster care.

Chapter 404 of the Laws of 2008 also establishes that guardians and custodians have the right to enroll the child in the school district where they reside and make educational decisions. The chapter amends the FCA and DRL to provide that persons possessing a legal order of guardianship or custody are able to enroll the child in any employer-based health insurance, if the plan permits enrollment of a child. As before, guardians, and now permanent guardians, are authorized to make medical decisions for their wards, including issuing any necessary consent for the child’s medical treatment. As before, legal custodians may make medical decisions only if authorized by court order or if there is a note or form designating the

custodian as a person in parental relationship to the child. The child's ability to consent to his or her own medical care, as otherwise provided by law, is not limited by Chapter 404 of the Laws of 2008.

Chapter 404 of the Laws of 2008 became effective November 3, 2008.

#### Chapter 519 of the Laws of 2008

The chapter makes several significant changes to placement and permanency options available in Articles 6 (guardianship/custody) and 10 (abuse/neglect) of the FCA.

Section 1017 of the FCA is amended to clarify that the Family Court has the option of placing a child directly with relatives or other suitable persons while the abuse/neglect petition under Article 10 of the FCA is pending, or to place the child directly with relatives or other suitable person pursuant to Article 6 of the FCA, under the conditions established by a new section 1055-b of the FCA. Where a child is placed with a relative or other suitable person under Article 10 of the FCA, the relative or other suitable person must consent to the jurisdiction of the Family Court and agree to the supervision of the local child protective services agency, social services district or voluntary authorized agency. In addition, the court may issue a temporary order of protection applicable to such placement. These provisions provide a mechanism, in appropriate cases, for the child to be seen regularly by caseworkers to determine how the child is progressing and whether any restrictions to visitation or contact between the child and the parent are being followed. It also allows the caseworker to identify and provide, as appropriate, supports necessary for the ultimate reunification of the child with his/her parent(s).

Recognizing that some relatives interested in caring for a child are not in need of supervision and/or support from a social services district, there is now a mechanism for a relative or other suitable person to apply for guardianship or custody under Article 6 of the FCA while an Article 10 proceeding is pending. The new section 1055-b of the FCA establishes the ability of a relative or other suitable person to petition the court for guardianship or custody of the child under Article 6 of the FCA while an Article 10 proceeding is pending. Section 1055-b of the FCA also sets forth the standards for the court to grant a petition for guardianship or custody, including where the parent consents or refuses to consent to the petition.

The chapter adds a new section 1089-a of the FCA to authorize a relative or other suitable person to file an Article 6 petition seeking guardianship or custody at the permanency hearing stage for a child placed under Article 10 of the FCA. Section 1089-a of the FCA sets forth the criteria necessary for the court to grant such a petition, including where the parent consents or refuses to consent to the petition.

Under either the new section 1055-b or 1089-a of the FCA, the Family Court must make certain *findings* in granting the petition, including:

- the court must find it is in the child's best interests and the child's safety will not be jeopardized without supervision or services; and the arrangement will provide the child with a safe and permanent home; and
- with regard to *consent*, all parties must consent; *or* if the parent(s) fail to consent – the court must find extraordinary circumstances exist that support granting the guardianship or custody petition; *or* if a party other than the parent(s) fail to consent – the court must find that granting guardianship or custody is in the best interests of the child.

Note: Whose consent is considered in regard to the placement provisions of section 1055-b of the FCA includes all parties of the Article 10 proceeding, including the parents. In regard to section 1089-a of the FCA, the persons whose consent is considered include: the parents, social services district, child's law guardian and the foster parent of the child who has been the child's foster parent for one year or more.

**Such an order concludes the Article 10 proceeding. The court may not require the social services district to provide services to the guardian/custodian when granting the order of guardianship or custody and the court may not order supervision of the placement. No further permanency hearings will be held after the child is placed pursuant to Article 6.** The order granting guardianship or custody pursuant to Article 6 may require that the department of social services and the law guardian for the child receive notice of and be made parties to any subsequent proceeding to modify the order of guardianship or custody.

Chapter 519 of the Laws of 2008 also outlines which dispositional options may be combined (such as placement of the child and supervision of the parent) and which combinations are precluded because the combination is incongruent or might place a child in danger. For example, an order placing a child outside the home is impermissible with an order of suspended judgment.

Chapter 519 of the Laws of 2008 takes effect on March 1, 2009.

#### **IV. Required Action**

##### Chapter 404 of the Laws of 2008

Social services districts have specific duties in regards to preparing a written assessment of the person seeking to become a permanent guardian and reporting to the court. The assessment must include:

- the full name and address of the person seeking to become the guardian;
- the ability of the guardian to assume permanent care of the child;
- the child's property and assets, if known;
- the wishes of the child, if appropriate;
- the results of the criminal history record check with the Division of Criminal Justice Services (DCJS) of the guardian and any person eighteen years of age or older residing in the guardian's household conducted by the OCFS pursuant to section 378-a(2) of the SSL, if such a criminal history record check had been completed;
- the results of an SCR search, if such a search had been conducted;
- the results of all inspections and assessments of the guardian's home and the child's progress while placed in the home, if any;
- a certified copy of the order or orders terminating the parental rights of the child's parents or approving the surrender of the child or the death certificates of the child's parents, as applicable;
- the recommendation of the authorized agency involved, if any; and
- a statement regarding the suitability, ability and commitment of the permanent guardian to assume full legal responsibility for the child and raise the child to adulthood.

With regard to the above, it should be noted that the referenced criminal history record check and results of a search of the SCR records are only required to be given to the court if one has been previously done (generally because the prospective permanent guardian had previously applied to be certified or approved as a foster parent or adoptive parent). There is no requirement for new criminal history or SCR record checks to be done by child welfare staff in order to meet the requirements of the new chapter. It should be further noted that prior to the appointment of a permanent guardian, the court must submit an SCR data base check directly to the SCR and receive the results. Furthermore, the court has the authority, but not the obligation, to order a criminal history record check of the proposed permanent guardian and other adult household members directly through DCJS. If there is any record of conviction(s) found that would constitute a mandatory disqualification for prospective adoptive or foster parents, such disqualification would *not* apply to a prospective guardian. Such conviction(s) should be assessed on a case by case basis.

#### Chapter 519 of the Laws of 2008

Pursuant to Chapter 519 of the Laws of 2008, social services districts must supervise all placements made under Article 10 of the FCA where the child is placed directly with a relative or other suitable person and follow all related court orders, including any specific terms ordered by the court to effect such supervision. Such supervision includes determining how the child is progressing and whether any restrictions on visitation or contact between the child and the parent are being followed and allows the caseworker to identify and provide, as

appropriate, supports necessary for the ultimate reunification of the child with his/her parent(s).

As permanency hearing reports are required for such placements, it is important to include in each such report sufficient information so that where a petition for guardianship or custody has been filed by a relative or other suitable person, the Family Court can make a judgment that granting the petition is in the child's best interests and the child's safety will not be jeopardized without supervision or services, and the arrangement will provide the child with a safe and permanent home.

## V. Systems Implications

Upon issuance of legal disposition assigning Permanent Guardianship, update CCRS with appropriate legal activity (e.g. L300), appropriate Type of Event/MOD A (typically **13** - Other Family Court or **14** - Other Court - Non-Family) and Disposition code (MOD B or C) **83 Permanent Guardianship**. Date Certain/MOD D is not required.

Foster Care discharge should be reported using M990/M999 with reason **591 Discharged to Permanent Guardian**.

WMS should also be closed using Reason Code **591 Discharged to Permanent Guardian**.

The CCRS and WMS codes will be available on March 6, 2009.

## VI. Effective Date

The effective date of Chapter 404 of the Laws of 2008 is November 3, 2008. The effective date of Chapter 519 of the Laws of 2008 is March 1, 2009.

/s/ Nancy W. Martinez

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**Issued By:**

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