

NEW YORK STATE
 DEPARTMENT OF SOCIAL SERVICES
 40 NORTH PEARL STREET, ALBANY, NEW YORK 12243



~~SECRET~~ Arthur Y. Webb
~~CONFIDENTIAL~~ Acting Commissioner

[An Administrative Directive is a written communication to local Social Services Districts providing directions to be followed in the administration of public assistance and care programs.]

ADMINISTRATIVE DIRECTIVE

TRANSMITTAL NO.: 82ADM-60
 [Services]

TO: Commissioners of Social Services

SUBJECT: Neglected Child by Reason of Misuse
 of Drugs or Alcohol by Parent or
 Other Person Legally Responsible

DATE: September 10, 1982

SUGGESTED DISTRIBUTION: Commissioner
 Director of Services
 All Child Protective Services Staff
 Social Services and/or County Attorneys

CONTACT PERSON: All inquiries regarding this release should be directed to Mr. H. A. Harkess, Bureau of Policy Planning, Division of Services, 40 North Pearl Street, Albany, New York 12243 or by calling toll free 1-800-342-3715, extension 4-9574.

I. PURPOSE

The purpose of this directive is to advise social services officials of amendments to the Family Court Act and Social Services Law concerning the definition of "neglected child" in cases where there is an allegation of misuse of a drug or drugs or of alcoholic beverages by a parent, guardian, or other person legally responsible for a child's care or guardianship. This directive also requires local districts to apply its provisions to child protective services investigations and reports and to Family Court petitions alleging such misuse.

II. BACKGROUND

As was noted in 81 INF 8 (March 4, 1981), there had been some confusion regarding the handling of reports and the making of determinations regarding reports alleging child neglect by reason of misuse of a drug or drugs or of alcoholic beverages by a parent, guardian or other person legally responsible for a child's care or guardianship. In 81 INF 8, the Department

FILING REFERENCES

| Previous ADMs/INFs | Releases Cancelled | Dept. Regs. | Social Services Law and Other Legal References | Bulletin/Chapter Reference | Miscellaneous Reference |
|--------------------|--------------------|-----------------|--|----------------------------|-------------------------|
| | | 432.1(b)(1)(ii) | SSL 371.4-a(i)(B) 412.2(a) FCA 1012(f)(i)(B) 1046(a)(iii) | MB 192 | |

SS-296 (Rev. 5/78)

reaffirmed that section 1012 of the Family Court Act and Section 371.4-a(i) of the Social Services Law require that it must not only be shown that a parent, guardian or other person legally responsible for a child misuses a drug or drugs or alcoholic beverages to the extent that the parent, guardian or other person loses self-control but that it must also be shown that the child's physical, mental or emotional condition has been impaired or is in imminent danger of being impaired by such person's misuse of a drug or alcoholic beverages.

In order to make this interpretation explicit, at least insofar as it applies to a person who has misused a drug or drugs or alcoholic beverages and who is in a rehabilitative program to correct the misuse of drugs or alcohol, the legislature enacted Chapter 984, Laws of 1981. Chapter 984 makes amendments to Section 1012(f)(i)(B) of the Family Court Act, Section 1046(a)(iii) of the Family Court Act and Section 371.4-a(i)(B) of the Social Services Law. In order that these amendments may be clear, a copy of Chapter 984 is attached for information and reference.

III. IMPLICATIONS

The specific changes made by Chapter 984 require that to substantiate an allegation of child neglect/maltreatment by reason of misuse of a drug or drugs or alcoholic beverages by a parent, guardian or other person legally responsible for a child and it is found that the parent, guardian or other person legally responsible is voluntarily and regularly participating in a rehabilitative program to correct his/her misuse of drugs or alcohol, there must be evidence of impairment or imminent danger of impairment of the child's physical, mental or emotional condition as a result of the misuse of drugs or alcohol by the parent or other person legally responsible. As was noted in 81 INF 8, however, the Department has taken the position that any allegation of neglect due to misuse of drugs or alcohol requires evidence of impairment or of imminent danger of impairment to the child. This is the minimum requirement to create a reasonable cause to suspect with regard to such reports alleging neglect taken by the State Central Register of Child Abuse and Maltreatment. It also constitutes the minimum requirement of some credible evidence for a determination of "indicated" by a local child protective service in such cases. It also provides the necessary basis for completing a petition to Family Court when a formal adjudication of neglect is sought alleging misuse of drugs or alcohol.

OFFICIAL COPY

STATE OF NEW YORK

6716-C

Cal. No. 733

1981-1982 Regular Sessions

IN ASSEMBLY

CHAP 984 March 17, 1982 LAWS OF 1982

Introduced by M. of A. VANN, EVE—Multi-Sponsored by—M. of A. GREEN, HIRSCH, NEWBURGER, SANDERS, WILSON—read once and referred to the Committee on Child Care—committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee—reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading—passed by Assembly and delivered to the Senate, recalled from Senate, vote reconsidered, bill amended, ordered reprinted and restored to third reading

AN ACT to amend the family court act and the social services law, in relation to evidence of abused or neglected children

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. Subparagraph (B) of paragraph (i) of subdivision (f) of
2 section ten hundred twelve of the family court act, as added by chapter
3 nine hundred sixty-two of the laws of nineteen hundred seventy, is
4 amended to read as follows:
5 (B) in providing the child with proper supervision or guardianship,
6 by unreasonably inflicting or allowing to be inflicted harm, or a sub-
7 stantial risk thereof, including the infliction of excessive corporal
8 punishment; or by [using] misusing a drug or drugs; or by [using] misus-
9 ing alcoholic beverages to the extent that he loses self-control of his
10 actions; or by any other acts of a similarly serious nature requiring
11 the aid of the court; provided, however, that where the respondent is
12 voluntarily and regularly participating in a rehabilitative program,
13 evidence that the respondent has repeatedly misused a drug or drugs or
14 alcoholic beverages to the extent that he loses self-control of his ac-
15 tions shall not establish that the child is a neglected child in the ab-
16 sence of evidence establishing that the child's physical, mental or emo-

EXPLANATION—Matter in italics (underscored) is new; matter in brackets [] is old law to be omitted.

LBD1-44-24-1276C

The following information was obtained from the records of the
 Department of Social Services, State of New York, for the period
 from 1/1/68 to 12/31/68. The information is being furnished to you
 for your information only. It is not intended to be used for any
 other purpose. The information is being furnished to you in confidence
 and should not be disclosed to any other person.

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1 tional condition has been impaired or is in imminent danger of becoming
2 impaired as set forth in paragraph (i) of this subdivision; or

3 § 2. Paragraph (iii) of subdivision (a) of section ten hundred forty-
4 six of such act, as added by chapter nine hundred sixty-two of the laws
5 of nineteen hundred seventy, is amended to read as follows:

6 (iii) proof that a person repeatedly [uses] misuses a drug or drugs
7 or alcoholic beverages, to the extent that it has or would ordinarily
8 have the effect of producing in the user thereof a substantial state of
9 stupor, unconsciousness, intoxication, hallucination, disorientation, or
10 incompetence, or a substantial impairment of [judgement] judgment, or a
11 substantial manifestation of irrationality, shall be prima facie evi-
12 dence that a child of or who is the legal responsibility of such person
13 is a neglected child except that such drug or alcoholic beverage misuse
14 shall not be prima facie evidence of neglect when such person is volun-
15 tarily and regularly participating in a recognized rehabilitative
16 program; and

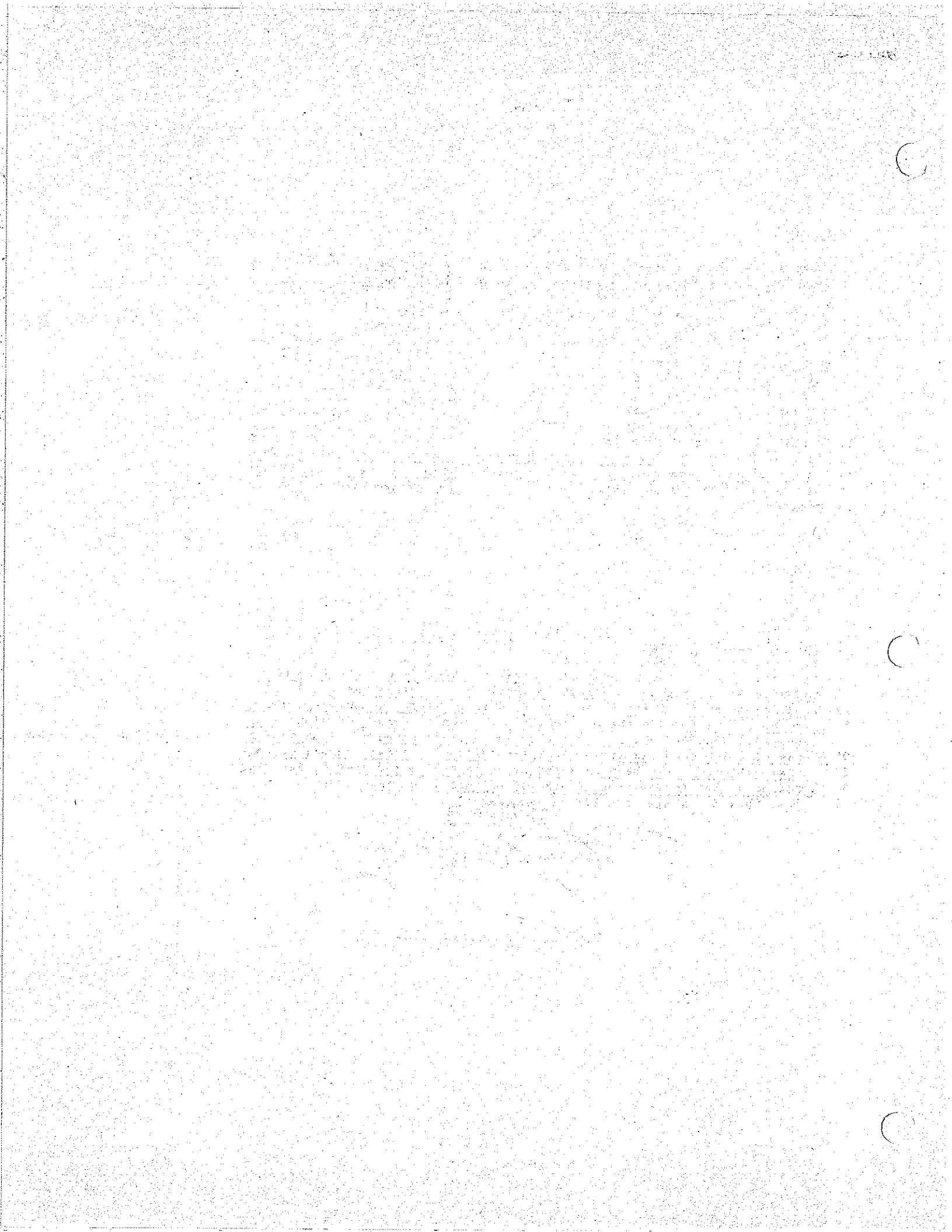
17 § 3. Subparagraph (B) of paragraph (i) of subdivision four-a of sec-
18 tion three hundred seventy-one of the social services law, as added by
19 chapter seven hundred eighty-two of the laws of nineteen hundred
20 seventy-one, is amended to read as follows:

21 (B) in providing the child with proper supervision or guardianship,
22 by unreasonably inflicting or allowing to be inflicted harm, or a sub-
23 stantial risk thereof, including the infliction of excessive corporal
24 punishment; or by [using] misusing a drug or drugs; or by [using] misus-
25 ing alcoholic beverages to the extent that he loses self-control of his
26 actions; or by any other acts of a similarly serious nature requiring
27 the aid of the court; provided, however, that where the respondent is
28 voluntarily and regularly participating in a rehabilitative program,
29 evidence that the respondent has repeatedly misused a drug or drugs or
30 alcoholic beverages to the extent that he loses self-control of his ac-
31 tions shall not establish that the child is a neglected child in the ab-
32 sence of evidence establishing that the child's physical, mental or emo-
33 tional condition has been impaired or is in imminent danger of becoming
34 impaired as set forth in paragraph (i) of this subdivision; or

35 § 4. This act shall take effect immediately.

APPROVED

JUL 5 1981

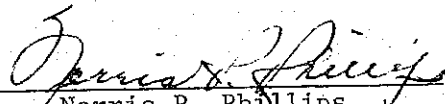


IV. REQUIRED ACTION

In order to implement the changes required by Chapter 984, the Department is amending Section 432.1(b)(1) of its regulations in order to incorporate the statutory language of the Chapter 984 amendments. Local districts and local child protective services are directed to review their policies and procedures relating to investigations and determinations regarding reports alleging neglect by reason of the misuse of drugs or alcoholic beverages. These policies and procedures must conform to the requirements of the amended law and to Section III of this directive.

V. IMPLEMENTATION DATE

The changes contained in Chapter 984 became effective upon passage, July 31, 1981 and apply specifically to all cases alleging misuse of drugs or alcoholic beverages where the parent, guardian or other person legally responsible is voluntarily and regularly participating in a rehabilitative program. As noted in the text of this directive, however, the Department intends that these provisions be applied to all cases involving misuse of drugs or alcoholic beverages as part of an allegation of child neglect or maltreatment. As this makes no change in policy or procedure, no new implementation date is necessary with regard to this directive.



Norris P. Phillips
Deputy Commissioner
Division of Services

Attachment

