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### Administrative Directive

<b>Transmittal:</b>	07-OCFS-ADM-02
<b>To:</b>	Commissioners of Social Services Executive Directors of Voluntary Authorized Agencies
<b>Issuing Division/Office:</b>	Office of Strategic Planning and Policy Development
<b>Date:</b>	February 8, 2007
<b>Subject:</b>	Revised Judicial and Extra-Judicial Surrender Forms and Voluntary Placement Agreement
<b>Suggested Distribution:</b>	Directors of Services Child Welfare Supervisors Child Welfare Legal Staff
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<b>Attachments:</b>	No
<b>Attachment Available Online:</b>	No

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
	91 ADM-12 00 OCFS ADM-2 02 OCFS ADM-1	18 NYCRR 421.6 421.17	Chapter 3 of the Laws of 2005 SSL 383-c SSL 384 SSL 384-a FCA 1055-a FCA 1089 DRL 112-b		

## I. Purpose

The purpose of this Administrative Directive is to formally advise social services districts and other authorized agencies that new mandated section 383-c Judicial and Extra-Judicial Surrender forms and a new recommended section 384-a Model Voluntary Placement Agreement have been developed, primarily to comply with new provisions contained in Chapter 3 of the Laws of 2005 (the Governor's Permanency Bill). The surrender forms and model agreement have been made into templates (in English and Spanish) and are available on the OCFS Internet <http://www.ocfs.state.ny.us/main/legal/legislation/permanency/>. (Note: E-mail communication concerning the availability of the these templates was provided in December 2005.)

## II. Background

Chapters 479 and 480 of the Laws of 1990 enacted procedures for the surrender of a foster child and a non-foster child pursuant to section 383-c or 384 of the Social Services Law. Pursuant to these chapter laws, the surrender instrument "shall be upon such terms and subject to such conditions as may be agreed upon by the parties." Chapter 76 of the Laws of 2002 amended the 1990 provisions by requiring that specific action be taken by the authorized agency that accepted the surrender to inform the parent, law guardian of the child and the court within 20 days of a substantial failure of a material condition, if such failure occurs before the child is adopted. Within 30 days of the failure, the authorized agency must petition the court unless there is "good cause" not to, in order for the court to review the failure and to decide if it is necessary to hold a hearing. In Chapter 3 of the Laws of 2005, further amendments were made requiring the revision of the surrender instruments, both section 383-c and 384 surrenders, particularly in relation to provisions dealing with the enforcement of conditions to the surrender, both pre and post adoption. This Administrative Directive cancels 02 OCFS ADM-1 dealing with section 383-c surrenders. Note, OCFS is not issuing a prescribed or model section 384 surrender.

Prior directives, 91 ADM 12 and 00 OCFS ADM-2, which are canceled by the issuance of this Administrative Directive, promulgated recommended versions of a Model Voluntary Placement Agreement. Chapter 3 of the Laws of 2005 requires another revision of the model Agreement, primarily to make it consistent with the accelerated minimum time frames for the convening of permanency hearings.

### **III. Program Implications**

Both the OCFS prescribed section 383-c Judicial Surrender (LDSS-4315) and the Extra-Judicial Surrender (LDSS 4316) forms have been revised in collaboration with the Office of Court Administration. In the process of making the revisions required by Chapter 3 of the Laws of 2005, OCFS also re-formatted both forms with the intent of making them clearer and more user-friendly. Each surrender form now has an Attachment that is intended to be used to document any conditions enumerated by the parent, as well as provide the parent with an understanding of when and how any “substantial failure of a material condition” will be enforced.

In addition to reformatting the surrender instruments and adding an Attachment to both surrender forms, new provisions were added. There is a clause added in the Attachment to each conditional surrender that describes how a post-adoption failure of a material condition is to be addressed in accordance with the new section 112-b of the Domestic Relations Law. There are also specific references in the respective Attachment to new provisions concerning the parent receiving certain notices of a pre-adoption substantial failure of a material condition, unless the parent expressly agreed not to receive such notice.

Both a section 383-c and 384 surrender may provide for communication or contact between the child and the child’s parent or parents on terms and conditions agreed to by the parties, including the person designated as the adoptive parent, if known. Such agreement may also provide for communication and contact between the child and the child’s biological siblings or half-siblings, provided, however, such terms are not enforceable in regard to a sibling or half-sibling over the age of 14, without such sibling’s or half-sibling’s consent. An agreement concerning communication and contact is subject to the approval of the court, based on the standard of the best interests of the child.

Chapter 3 of the Laws of 2005 enacted standards for the enforcement of conditions of surrenders in section 1055-a of the Family Court Act (pre-finalization) and section 112-b of the Domestic Relations Law (post-finalization).

The Model Voluntary Placement Agreement has been revised to a lesser degree. It was amended to delete references to Section 392 of the Social Services Law, which was repealed by Chapter 3 of the Laws of 2005; to reflect the new permanency hearing time frames; and to include the new requirement that the

parent entering into the Agreement provide specified information concerning the other parent.

#### IV. Required Action

##### Judicial and Extra-Judicial Surrender Forms

Authorized agencies that accept the surrender of a child must implement the following:

- The revised versions of LDSS-4315 and 4315-S (rev. 12/05) Judicial Surrender, and LDSS-4316 and 4316-S (rev. 12/05) Extra-Judicial Surrender forms must be used when a parent or guardian surrenders a child in foster care (SSL 383-c) to an authorized agency, or when the parent or guardian surrendering the child is also a foster child.
- If the surrender, either a section 383-c or 384 surrender, is to be conditional and the birth parent(s) specifies a specific individual(s) to adopt the child, the authorized agency may only accept the surrender instrument if the individual(s) is "a certified or approved foster parent...or the agency has fully investigated and approved such person as an adoptive parent in accordance with applicable statute and regulations."

**Note:** If the specified individual(s) is a certified or approved foster parent and is not already an approved adoptive parent, it would still be necessary to approve such individual as an adoptive parent, pursuant to 18 NYCRR 421.19, prior to finalizing an adoptive placement.

- When there is a substantial failure of a material condition agreed to in the surrender prior to the finalization of the adoption, except where the authorized agency can show good cause, the agency must file a petition (under FCA 1055-a ) within 30 days of the failure for the court to review the failure and, where necessary, hold a hearing. At the time of the filing of the petition, the authorized agency must notify the birth parent, the law guardian and the court of the filing of the petition, unless notice is expressly waived by the parent in a written statement (for section 383-c surrenders, see #4 of Attachment A to the section 383-c surrender instrument).

**Note:** When there is a substantial failure of a material condition of the surrender, OCFS cannot envision any circumstances where an authorized agency would have good cause not to file a petition.

- The authorized agency is responsible for providing the information and determining that the agency employee responsible for taking surrenders understands the following:

1. The statutory provisions related to conditional surrenders and the consequences and procedures that must be followed when there is a "substantial failure of a material condition," and that these provisions are contained within the revised surrender forms that must be read in full to the surrendering parent(s).
2. The employee witness must inform the birth parent(s) who wishes to name an individual in a surrender instrument to adopt the child that the agency cannot accept the surrender unless the individual has been fully investigated and approved by the authorized agency as a prospective adoptive parent, or the individual has been certified or approved by the authorized agency as a foster parent (and will seek approval to become an adoptive parent).
3. Where terms and conditions have been agreed to in the surrender instrument, the employee witness must inform the parent(s) that:
  - The parent(s) has a right to be notified if there is a substantial failure of a material condition agreed to in the surrender, unless the parent waives such right to notice in writing in the surrender instrument.
  - If, prior to the adoption, there is a substantial failure of a material condition agreed to in the surrender and the authorized agency fails to petition the court within 30 days of such failure, the parent may petition the court up to 60 days after being notified of such failure.
  - If, after the adoption is completed, there is a failure to comply with a condition agreed to in the surrender, the parent may petition the court to seek enforcement of such condition (incorporated in the adoption order). The court will only enforce the condition after the adoption is finalized if it finds that enforcement is in the child's best interests. Regardless of whether the court orders enforcement of the condition, the failure to comply with the condition is not grounds for setting aside the adoption decree.
  - The parent(s) must provide a current address and any subsequent changes in that address at which the parent(s) can receive notice of any substantial failure of a condition of the surrender, unless the parent has expressly waived such notification by a written instrument.

#### Model Voluntary Placement Agreement

Social services districts should use a voluntary placement agreement that includes all the content contained in the Model Voluntary Placement Agreement template referred to earlier in this administrative directive and available at <http://www.ocfs.state.ny.us/main/legal/legislation/permanency/>. The newly

required language, by statute, must be printed in lay terms in a large typeface of at least 18-point type.

**V. Systems Implications**

None.

**VI. Additional Information**

None

**VII. Effective Date**

This directive is effective immediately for the purpose of meeting the new requirements of Chapter 3 of the Laws of 2005, pertaining to the section 383-c Adoption Surrender forms and the Model Voluntary Placement Agreement, which became effective December 21, 2005.

**S/S Nancy W. Martinez**

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**Issued By:**

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Title: Director

Division/Office: Strategic Planning and Policy Development