



M E M O R A N D U M

January 21, 2009

To: Administrative Judges
From: Ann Pfau *AP*
Subject: Custody/Visitation Legislation

Chapter 595 of the Laws of 2008 amends Section 240(1) of the Domestic Relations Law and Section 651 of the Family Court Act to require a check of various databases to be done before the issuance of custody or visitation orders. The new law takes effect on January 23, 2009.

Specifically, Chapter 595 requires that prior to issuing temporary, permanent or successive orders of custody or visitation, courts must check:

- The Domestic Violence Registry
- The Family Court "Universal Case Management System" (for child protective decisions and orders as well as Family Court warrants) and
- The Sex Offender Registry

The court must notify the attorneys, self-represented parties and attorneys for children of the results of the review. This notification may be made orally on the record or incorporated into a written order. With respect to the Sex Offender Registry, the Division of Criminal Justice Services has requested that, in light of social security numbers and other confidential information contained in the Registry, the courts not provide copies of any reports generated by the Registry search.

In rare situations where the information from these sources is not available on a timely basis, the court may issue a temporary emergency order to "serve the best interest of the child" pending review of the information within 24 hours. Upon such review and notification of counsel and parties, the court may then issue temporary or permanent orders.

Where more than 30 days has elapsed since issuance of the last order, checks must be performed anew before issuance of a new order.

The statute currently requires a check of criminal warrants. We have determined that there is no practical way to comply with this mandate. We have discussed with the Legislature the need to eliminate this requirement and such legislation has been introduced. In his approval memorandum for Chapter 595, the Governor also acknowledged the need for a chapter amendment to eliminate the requirement of a criminal warrant check. Pending enactment of such a chapter amendment, we are advising the courts not to attempt to comply with this aspect of Chapter 595.

Attached is a memorandum from Ron Younkens, addressing various implementation issues. Please provide this information to affected Judges and nonjudicial personnel.

We appreciate the impact that this legislation will have on the work of the courts and will closely monitor implementation to ensure that you have the necessary resources and support. Thank you for your assistance and cooperation.

cc: Hon. Joan B. Carey
Hon. Jan H. Plumadore
Hon. Judy Harris Kluger
Ronald Younkens
Maria Logus
David Sullivan



M E M O R A N D U M

January 21, 2009

To: Administrative Judges
From: Ronald Younkins *RY*
Subject: Custody/Visitation Legislation

Effective January 23, 2009, Chapter 595 of the Laws of 2008 requires the Supreme and Family Courts to conduct a check of multiple databases when issuing permanent, temporary or successive custody or visitation orders. This memorandum addresses implementation issues, including training, automation enhancements that were made to simplify the database checks, and new uniform Family Court orders. Please provide this information to affected Judges and nonjudicial personnel.

Training

The Judicial Institute has posted materials and a video training about Chapter 595 on its web site. In addition, selected Family Court staff throughout the State have received "train the trainer" instruction and have been training clerks, in both Family and Supreme Courts, on how to conduct the database searches and how to present the information to the court.

Also note that the Spring 2009 series of the Family Violence Task Force seminars will address this legislation.

Family Court Implementation

Automation The UCMS Family Court application provides direct access to the statewide Domestic Violence Registry, child protective data, and Family Court warrants. UCMS-FC has been modified to so that all of these searches are performed in one step. In addition, if custody or visitation cases appear on a Family Court calendar, UCMS-FC will automatically perform the checks. Once the process has been completed, a report of the search results will be generated for the Judge.

In addition to the UCMS checks, the legislation requires a search of the Sex Offender Registry, which is maintained by the Division of Criminal Justice Services. DCJS has provided passwords for court users to permit access to information about Level I offenders, which is not usually available to persons outside of DCJS.

Uniform Orders New Family Court order forms have been issued for 1) a petition for custody or visitation, 2) a petition to modify an order of custody or visitation, and 3) a petition to enforce an order of custody or visitation. These orders have been modified to include a paragraph stating that the databases have been reviewed as required by Chapter 595, as well as a paragraph specifying what, if any, information from the databases was relied upon by the court in issuing an order.

The forms are being posted on the Unified Court System CourtNet and Internet (www.nycourts.gov) web sites. Please ensure that the existing forms are replaced with the newly promulgated forms.

Supreme Court (Matrimonial and IDV) Implementation

Supreme Court staff who are involved in processing matrimonial cases and IDV matters with family and/or matrimonial components are being given direct access to the Family Court universal case management system. As noted above, UCMS-FC provides access to the statewide Domestic Violence Registry, child protective data, and Family Court warrant information. All new users have received training, as well as an ID and password, which will permit full access to information stored in the database.

Supreme Court Matrimonial users will have the ability to perform the same UCMS-FC 'three-in-one' search by making individual entries of the names of the parties and a report similar to that described above will be provided to the court.

If calendaring related family court matters through UCMS-FC, Supreme Court IDV users may take advantage of the automated search process. If these matters are calendared by some other means, or if there is a related matrimonial action, then the individual entry method described in the immediately preceding paragraph for matrimonial users must be used.

The check of the DCJS maintained Sex Offender Registry is completed as a separate process. As with Family Court users, DCJS has provided secure passwords to all designated Supreme Court users.

If you have any questions about Chapter 595, please call me, or contact Peter Passidomo of the Judicial Institute at 914-824-5703, or Maria Barrington of the Division of Trial Court Operations at 518-238-4329. Thank you for your assistance.

cc.: Hon. Joan B. Carey
Hon. Jan H. Plumadore
Hon. Judy Harris Kluger
Maria Logus
David Sullivan
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District Executives
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