



Office of Children and Family Services

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Administrative Directive

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| Transmittal: | 22-OCFS-ADM-23 |
| To: | Local Departments of Social Services Commissioners Executive Directors of Voluntary Authorized Agencies |
| Issuing Division/Office: | Division of Youth Development and Partnerships for Success |
| Date: | October 24, 2022 |
| Subject: | Raising the Lower Age of Juvenile Delinquency — A Differential Response for Children Under 12 Years of Age |
| Suggested Distribution: | Directors of Social Services Voluntary Authorized Agency Directors and Supervisors Child Welfare Supervisors Staff Development Coordinators Runaway and Homeless Youth Coordinators and Programs Supervision and Treatment Services for Juveniles Program lead agencies Youth Bureaus |
| Contact Person(s): | See section VI. |
| Attachments: | OCFS-2211 , <i>Raising the Lower Age of Juvenile Delinquency Differential Response for Children Under 12 Years of Age 2022 Annual Plan</i> ; Raising the Lower Age of Juvenile Delinquency Differential Response Annual Plan Desk Aid Raising the Lower Age of Juvenile Delinquency Differential Response Practice Guide |

Filing References

| Previous ADMs/INFs | Releases Cancelled | NYS Regs. | Soc. Serv. Law & Other Legal Ref. | Manual Ref. | Misc. Ref. |
|--------------------|--------------------|---|---|-------------|------------|
| 22-OCFS-ADM-14 | | 18 NYCRR part 423, 18 NYCRR part 437 | Chapter 810 of the laws of 2021 amended by chapter 38 of the laws of 2022, FCA 301.2, SSL 409-a, SSL 409-d, SSL 458-m, SSL 458-o | | |

I. Purpose

This Administrative Directive (ADM) outlines key provisions of Chapter 810 of the Laws of 2021 amended by Chapter 38 of the Laws of 2022. This law, as of December 29, 2022, raises the lower age (RTLA) of juvenile delinquency under the Family Court Act (FCA) from 7 to 12 years of age, with an exception for alleged homicide offenses. In addition, the amendment raises the lower age for youth in secure detention from 10 to 13 years of age unless the youth is alleged to have committed a homicide offense.

This ADM outlines the requirements of the legislation and the emergency proposed regulations (18 NYCRR Part 437), that went into effect on August 18, 2022, which require

- an RTLA differential response (DR-RTLA) program for eligible children and their families;
- the development of a DR-RTLA plan by each local department of social services (LDSS); and
- the New York State Office of Children and Family Services (OCFS) to review and approve the LDSS's DR-RTLA plan prior to initial implementation and annually thereafter as part of OCFS's review and approval of the LDSS's child welfare services plan (county plan).

The DR-RTLA is different than the differential response program, [Family Assessment Response](#), which is an alternative child protective services response (18 NYCRR 432.13). DR-RTLA program is also distinct from Persons in Need of Supervision ([PINS](#)) and the related PINS diversion services. Eligibility for, and services provided under PINS diversion services are different and are outlined in Article 7 of the FCA.

II. Background

Prior to this legislative change, children 7 through 11 years of age who were arrested in New York State could potentially be petitioned to family court as a Juvenile Delinquent (JD) under Article 3 of the FCA. As of December 29, 2022, the legislation requires a DR-RTLA program for children under 12 years of age who will no longer be included in the definition of a JD under the FCA, **and** whose behavior would otherwise bring them under the jurisdiction of the family court pursuant to Article 3 of the FCA, but for their age. The DR-RTLA program is only for these eligible children and their families. This change provides a critical opportunity to shift from criminalizing certain behaviors to providing young people with support services and assistance from differential response programs with the goal to prevent future interaction with the juvenile justice system.

The DR-RTLA program is voluntary to the child and family. However, if there are known safety concerns (e.g., immediate danger of serious harm or serious threat to the physical, mental or emotional well-being of the child or others related to the child's behaviors), the DR-RTLA program must immediately act in accordance with existing policy, regulations, and law.

Children of color and their families are disproportionately represented at every stage of the child welfare and juvenile justice systems, and those systems have produced poor outcomes overall for children and families who experience them.¹ These disparities show up even for the youngest age group of children who come through the juvenile justice system.

The legislation and regulations require an intentional focus on addressing adverse impacts on marginalized communities while continually assessing the communities' strengths and resources that can meet the needs of the eligible children and their families. The incorporation of family and community

¹ Child Welfare Information Gateway, *Child Welfare Practice to Address Racial Disproportionality and Disparity*, Bulletins for Professionals Series, April 2021; and Annie E. Casey Foundation, *The Studies Show Dramatic Racial Disparities in Front End of Juvenile Justice System*, April 20, 2021.

partnership at every level is key to increasing equitable access to the DR-RTLA program and intervention array and supports that reflect the needs of children and families.

OCFS appreciates the input received from families and young adults who shared their own experiences, insights, and recommendations, as well as the partnership of other critical stakeholders while developing this guidance.

III. Program Implications

Pursuant to Chapter 810 of the Laws of 2021, as amended by Chapter 38 of the Laws of 2022, and 18 NYCRR Part 437, all LDSSs are required to establish a program that implements a DR-RTLA for children under 12 years of age who do not fall under the definition of JD under section 301.2 of the FCA, **and** whose behavior would otherwise bring them under the jurisdiction of the family court pursuant to Article 3 of the FCA, but for their age. LDSSs must include details of their DR-RTLA for these eligible children under 12 years of age in their child welfare services plan (county plan).

For the first year of implementation, each LDSS will complete [OCFS-2211](#), *Raising the Lower Age of Juvenile Delinquency Differential Response for Children Under 12 Years of Age 2022 Annual Plan*, and submit the form to OCFS by November 14, 2022, at RTLA@ocfs.ny.gov. OCFS will review the DR-RTLA plans for approval prior to implementation and upload approved plans to the corresponding LDSS's county plan for 2022. LDSSs will be notified in writing of the outcome of the OCFS review.

For subsequent years, the LDSS shall record the LDSS DR-RTLA plan within a new section of the county plan. OCFS guidance on this will be forthcoming.

Probation departments shall not provide the DR-RTLA for children under 12 years of age on behalf of an LDSS.

The required elements of the LDSS DR-RTLA plan are outlined below and are explained in more detail in the [Raising the Lower of Age of Juvenile Delinquency Differential Response Annual Plan Desk Aid](#).

- A. A description of how the DR-RTLA will enhance the ability of the LDSS to reduce the likelihood of the eligible child's interactions with the juvenile justice and child welfare systems in the future and ensure the safety and well-being of the eligible children. Such description must also include how family needs and concerns will be supported.
- B. A description of how such DR-RTLA addresses adverse impacts on marginalized communities. LDSSs should consider various equity approaches based on known local factors contributing to disparities.
- C. A description of the assessments that shall be utilized to determine whether services are necessary and, if necessary, the least restrictive interventions that meet the needs of the eligible child and their family. LDSSs may identify the strength-based assessment to be utilized for the DR-RTLA.
- D. A description of services and supports to be provided to the eligible child and their family to include, but not be limited to, preventive services, if eligible, in accordance with Social Services Law (SSL) 409-a and [18 NYCRR Part 423](#), and family support services programs as defined in SSL 458-m, as required or available, and how the services will be offered. Services offered through the DR-RTLA are voluntary and must be identified as such in the plan.
- E. A description of the process to be followed by the LDSS for planning and monitoring the services provided under the DR-RTLA.

- F. A description of the training to be required for staff engaged in implementation of the DR-RTLA. This includes training for district and relevant non-district staff who will be working with eligible children and their families. Such description shall include the training for law enforcement within the district whose main responsibilities are juveniles, pursuant to section 840 of Executive Law.
- G. A description of any funding that shall be made available to enhance the DR-RTLA. This funding may include, but not be limited to, grant funding secured by the LDSS.

Data Collection

All referrals to the LDSS DR-RTLA program must be accounted for in a tracking mechanism maintained locally. Starting in 2023, each LDSS will need to report annually to the OCFS aggregate data and a status update on elements of the DR-RTLA plan. The [Raising the Lower of Age of Juvenile Delinquency Differential Response Annual Plan Desk Aid](#) includes details of the required information.

Funding for Services

The RTLA legislation includes the opportunity for the LDSS to use Supervision and Treatment Services for Juveniles Program ([STSJP](#)) funding to support expenditures of the DR-RTLA for children under 12 years of age and [Family Support Services Programs](#). DR-RTLA would be considered an STSJP indirect service, which does not provide ongoing services to youth but does support the ultimate goals of STSJP.

IV. Required Action

A. DR-RTLA Program Implementation

Each LDSS must develop a program to provide a DR-RTLA for the eligible population as described above: children under 12 years of age whose behavior, but for their age, would bring them under the jurisdiction of the family court pursuant to Article 3 of the FCA, and their families. For additional information, please consult the [Raising the Lower Age of Juvenile Delinquency Differential Response Practice Guide](#).

The LDSS DR-RTLA must include the following responses to eligible children and their families:

- Intake and initial screening for child eligibility
- Assessment of the eligible child and their family
- Service plan development with the eligible child and family
- Facilitated referrals to the appropriate interventions
- Follow-up on all evaluations and assessments of the child's progress in accepted interventions

Intake

DR-RTLA programs shall be available to receive referrals at a minimum during LDSS regular business hours. Each LDSS must have a point of contact for their DR-RTLA, which shall be made public on the OCFS [RTLA webpage](#). A determination of the child's eligibility for the DR-RTLA will be made based on the referral information to the DR-RTLA.

For those children who are not eligible for the DR-RTLA, the program is required to provide the referral source with community-based interventions that may address the needs of the child and family, based on the available information.

For eligible children residing in the district, DR-RTLA programs will complete the following activities:

- Contact the family of an eligible child within one business day of receiving a referral. This contact will include an explanation of the DR-RTLA and confirmation of all methods to contact the family, including their preferred method (e.g., text, email, phone call).

- Schedule an appointment, within seven business days, with the child, family, and any familial supports identified by the family at a time and place convenient for the family. Any barriers to attending the appointment (e.g., transportation) should be addressed with the family at the time of the initial contact.
- Ask the family if they are currently working with child protective services, child welfare preventive services, or foster care services and obtain permission to speak to the LDSS case manager/caseworker for any applicable information.

NOTE: The DR-RTLA program is voluntary to the child and family. However, if there are safety plans in place or known safety concerns, the DR-RTLA program must immediately act in accordance with existing policy, regulations, and law.

If no known safety concerns exist and the family declines the DR-RTLA, the program will provide the family with the DR-RTLA contact information orally and in writing. The DR-RTLA will also provide information for community-based supports that can address any known needs of the child and family, and ask the family if they would like the DR-RTLA to contact them in approximately 30 days for a check-in.

If the family agrees to the 30-day check-in, the current referral is closed; however, the DR-RTLA program will reach out to the family 30 days after their initial contact to determine if the family has reconsidered engagement with the DR-RTLA program. If so, a new family referral will be opened with the DR-RTLA program, and the required DR-RTLA procedures shall be followed. If the family declines the DR-RTLA, the program will provide the family again with the DR-RTLA contact information.

Assessment

The DR-RTLA assessment must include an assessment of

- the current safety of the child and safety concerns related to the child's behaviors that led to the DR-RTLA referral, which could include, but is not limited to, the safety of other children in the family;
- the eligible child's and family's strengths, concrete needs, and challenges or concerns;
- any individualized vulnerabilities;
- cultural considerations; and
- indicators of child sex trafficking ([OCFS-3920, Child Sex Trafficking Indicators Tool](#), and [OCFS-3921, Rapid Indicator Tool to Identify Children Who May Be Sex Trafficking Victims or Are at Risk of Being a Sex Trafficking Victim](#)).

Support Plan Development

The support plan development for the DR-RTLA shall be family- and child-led. It should be initiated within 15 days of the referral to the DR-RTLA. Based on the assessment, the DR-RTLA program will make recommendations for interventions to best meet the needs of the child and family and continue to build strengths and the overall well-being of the familial unit.

If there are current providers working with the family, the DR-RTLA program will include them, with permission from the family, in the support plan development to ensure continuity of care, alignment of goals, and avoidance of duplicative intervention.

The support plan will consist of those interventions that the child and family agree to, as all recommended interventions are voluntary. If the family declines the recommended interventions and

there are no known safety concerns, the DR-RTLA program will provide the family with contact information for the DR-RTLA and the recommended interventions, orally and in writing. However, if there are safety plans in place or identified safety concerns, the LDSS DR-RTLA must act immediately in accordance with existing policy, regulations, and law.

Successful Intervention Engagement

Upon collective plan agreement, the DR-RTLA program will contact the agreed-upon providers and facilitate family and child engagement with the supports.

Assessment of Child's Progress

The LDSS DR-RTLA is required to obtain all evaluations and assessments of the child's progress in interventions from the providers, as permitted by the family via a release of information form while the DR-RTLA is active. The DR-RTLA program will also have contact with the family, child, and providers on or about 30 days from the development of the support plan, and within seven days prior to the anticipated DR-RTLA case completion to assess the child's progress and collectively determine if there is a need for any further supports to the child and family.

DR-RTLA Case Completion

The DR-RTLA case completion shall occur 90 days from the initial DR-RTLA referral or when the child turns 12 years of age, whichever is sooner.

Please note that the DR-RTLA case completion has no impact on the child and family's continued participation in community-based interventions, including but not limited to child welfare preventive services to eligible families. Continuation in those interventions should be based solely on the needs and goals of the child and family.

Case Documentation

The LDSS DR-RTLA shall maintain an individualized case file at the local level for every case. This case information shall not be entered into any New York State electronic system, including but not limited to the CONNECTIONS system. The DR-RTLA case file must contain documentation related to the required activities of the DR-RTLA. Please see the [Raising the Lower Age of Juvenile Delinquency Differential Response Practice Guide](#) that includes the detailed guidance on the required documentation.

Records

Records created under a district's DR-RTLA program shall

- include, at a minimum, information outlined in the Case Documentation section above;
- be locally maintained and individualized for each eligible child served by the DR-RTLA; and
- be maintained for five years after an eligible child has been referred to the DR-RTLA or until the eligible child reaches the age of 12, whichever is sooner.

Records are confidential and shall not be disclosed except as set forth in section 458-o(3)(c) of the Social Services Law. Each LDSS must establish policies and protocols to ensure compliance with the DR-RTLA documentation requirements, individualized nature of the records, record retention schedules, and confidentiality of these records.

B. Additional Considerations

Article 3 of the FCA Cases Prior to December 29, 2022

Children ordered to foster care placement prior to December 29, 2022, under Article 3 of the FCA, who would otherwise be eligible for the DR-RTLA as of December 29, 2022, can remain in foster care under the current valid court order. Children eligible for the DR-RTLA who have a petition pending in family court under Article 3 of the FCA as of December 29, 2022, (pre-adjudication) shall be referred to the DR-RTLA program, as they will no longer meet the definition of a JD under Article 3 of the FCA. LDSSs should actively engage their county attorney/presentment agency's office, prior to December 29, 2022, to discuss the DR-RTLA available to eligible children.

Detention Impacts

Per the RTLA legislation, for youth who fall under the juvenile delinquency definition of the FCA as of December 29, 2022, no youth under the age of 13 may be remanded to secure detention unless they are charged with a homicide offense.

V. Systems Implications

Starting in 2023, the county plan will include a new section for the LDSSs to submit their DR-RTLA plan for children under the age of 12 to OCFS annually.

VI. Contacts

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VII. Effective Date

This ADM is effective immediately.

/s/ Nina Aledort, Ph.D.

Issued by:

Name: Nina Aledort, Ph.D.

Title: Deputy Commissioner

Division/Office: Division of Youth Development and Partnerships for Success