



# Office of Children and Family Services

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Commissioner

## Administrative Directive

<b>Transmittal:</b>	20-OCFS-ADM-22
<b>To:</b>	Commissioners of Social Services Executive Directors of Voluntary Authorized Agencies
<b>Issuing Division/Office:</b>	Division of Youth Development and Partnerships for Success
<b>Date:</b>	December 14, 2020
<b>Subject:</b>	<b>Persons In Need of Supervision Reform Changes</b>
<b>Suggested Distribution:</b>	Directors of Social Services Child Protective Services Supervisors Child Welfare Supervisors Foster Care Supervisors Staff Development Coordinators Fiscal Directors CONNECTIONS Implementation Coordinators Runaway and Homeless Youth Coordinators and Programs
<b>Contact Person(s):</b>	See section VI.
<b>Attachments:</b>	Attachment A— <i>System Instructions for Youth Ordered to Pre-dispositional Placement in a Foster Care Setting and Post-dispositional Placement Under Article 7.</i>

### Filing References

Previous ADMs/INFs	Releases Cancelled	NYS Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
19-OCFS-ADM-17	19-OCFS-ADM-22		Chapter 59 of the Laws of 2017 A-3009c/S-2009c Part WWW		
18-OCFS-ADM-24			Family Court Act (FCA) sections 718, 720, 725, 728, 739, 747, 748, 756		
16-OCFS-ADM-09					
15-OCFS-ADM-16			Social Services Law section 447-a; section 458-m		

			(bill section 18-b); section 458-n		
			Executive Law sections 529-b, bill section 20; section 530 Chapter 362 of the Laws of 2018		
			Part K of Chapter 56 of the Laws of 2019		

**I. Purpose**

The purpose of this Administrative Directive (ADM) is to provide an updated outline and description of the changes made to Article 7 of the Family Court Act (FCA) to enact Persons In Need of Supervision (PINS) reform effective January 1, 2020. Please note that provisions related to truancy allegations of youth, pursuant to Chapter 362 of the Laws of 2018, went into effect as of March 7, 2019.

In accordance with legislation enacted in 2017, all state reimbursement funding for PINS placements was eliminated as of January 1, 2020. As such, this guidance is necessary to outline the impacts of the 2019 Persons In Need of Supervision (PINS) reform legislation, which limits the settings PINS respondent youth can be placed, eliminates the use of detention for PINS youth, and sets firm time limits regarding placement periods and the filing of placement extensions. This ADM replaces 19-OCFS-ADM-22—*Persons In Need of Supervision Reform Changes*, which was previously issued.

**II. Background**

On April 10, 2017, New York Governor Andrew M. Cuomo signed legislation raising the age of criminal responsibility to age 18 to provide young people in New York who commit non-violent crimes with the intervention and evidence-based treatment they need. The new measures were phased in over time, raising the age of criminal responsibility from age 16 to age 17 beginning on October 1, 2018, and subsequently raising the age to 18 on October 1, 2019 (18-OCFS-ADM-24). The Raise the Age (RTA) legislation included provisions to eliminate state funding for PINS placement and detention as of January 1, 2020, but did not alter the ability of the family courts of New York State to order such placements, which led to the enactment of the 2019 PINS reform legislation.

The PINS reform legislation reinforces the broad youth justice reforms in New York State as well as the federal Family First Prevention Services Act. Emphasis is placed on the use and delivery of services safely in the community, exhausting all diversion efforts prior to court intervention, avoiding all unnecessary out-of-home placements, and safely and swiftly returning youth back to their communities if placed. This includes exploring all natural resources for the youth and family, providing equitable access to community-based, trauma-informed, gender-responsive interventions, as well as opportunities for positive youth development supports. By preserving important connections to a youth’s home community, family and culture, youth have the support to meet their needs in a manner that

is individualized and thereby effective to the unique circumstances of each family. For youth who do require out-of-home placement related to an Article 7 petition, the reform legislation limits the settings in which these can occur, and outlines mandated, time-limited placements requiring immediate and focused permanency planning.

### III. Program Implications

Effective January 1, 2020, there is no state funding reimbursement for any PINS placements. The requirements described by the PINS reform legislation limit both the allowable reasons for placement and length of stay in any foster or congregate care setting. By necessity, these limitations require timely casework practice, making effective use of services for youth prior to family court involvement, and promoting the least restrictive environment for PINS respondent youth, with a clear plan toward permanency. The primary goal of all work with PINS respondent youth should be safely maintaining, or reintegrating, the youth back to their home community whenever possible.

#### PINS Diversion

PINS diversion services, via the designated PINS diversion services lead agency, either the local department of social services (LDSS) or county probation department, remains largely unchanged by the reform legislation. A locality's lead agency for PINS diversion services should continue to make every effort to coordinate any needed services for youth and families to prevent the filing of a petition in family court, including the use of crisis intervention and respite services. These services are required to be available to youth participating in PINS diversion services. For more information, please consult the *Preventive Services Practice Guidance Manual*, Chapter 3.

The PINS reform legislation contains provisions requiring PINS diversion lead agencies, as part of PINS diversion services, to assess whether a youth may be sexually exploited. This is a new requirement for probation department lead agencies but is a continued requirement for LDSS lead agencies (15-OCFS-ADM-16). Guidance on this responsibility was issued for probation department lead agencies by the New York State Division of Criminal Justice Services (DCJS).

#### Funding for Services

Although as of January 1, 2020, there is no state funding reimbursement for any PINS placements, the PINS reform legislation expanded the target population for the Supervision and Treatment Services for Juveniles Program (STSJP) to include funds for youth at risk of becoming PINS. STSJP provides localities (up to their allocation) with 62 percent state reimbursement for services meant to prevent detention and placement for certain classifications of youth, including PINS. Localities may transfer funds from their detention allocation (reimbursed at 49 percent) to support STSJP and, as a result, localities will receive a higher reimbursement rate (62 percent). The PINS reform legislation expanded STSJP to include funds for youth at risk of becoming PINS to gain access to the following services:

- Prevention
- Early Intervention
- Alternatives to Pre-dispositional Placement
- Alternatives to Placement
- Reentry/Aftercare

- Family Support Services Programs

The PINS reform legislation created a new Title 12 of Article 6 of the Social Services Law relating to family support service programs, which may be created locally. One or more municipalities located in close geographic proximity may join together to operate a regional program. The goal of family support service programs is to provide community-based services to children and families to prevent the filing of PINS petitions, PINS adjudications, and PINS out-of-home placements.

If a locality chooses to create a family support services program, it shall provide comprehensive services to such children and their families, either directly or through referrals with partner agencies, including but not limited to the following:

- Rapid family assessments and screenings
- Crisis intervention
- Family mediation and skills building
- Mental and behavioral health services including cognitive interventions
- Case management
- Respite services
- Education advocacy
- Other family support services

The services that are provided shall be trauma responsive, family focused, gender responsive, evidence based or informed, strengths based, and shall be tailored to the individualized needs of the child and family based on the assessments and screenings conducted. The program shall have the capacity to serve families outside of regular business hours, including evenings and weekends.

#### Truancy

There are special provisions regarding truancy allegations of youth, pursuant to Chapter 362 of the Laws of 2018:

- As part of PINS diversion, the lead agency (LDSS or probation) must review the steps taken by the school district to resolve the educational issues prior to a PINS petition being filed, regardless of whether the school district is the petitioner.
- All PINS petitions that include an allegation of truancy must detail the steps taken by the school district to address the truancy issue.
- In any PINS cases that include an allegation of truancy where the school district is not the petitioner, the courts may at any time, where they believe the assistance of the school district would be helpful in resolving the underlying issue, notify the school district and provide them an opportunity to be heard on the matter.

Per the PINS reform legislation of 2019, if the only allegation or finding made against the child is truancy, no placement shall be ordered, either pre-dispositional or post-dispositional.

### Pre-dispositional Placements

A pre-dispositional placement may occur when a PINS petition has been filed against a youth, but prior to a dispositional hearing in family court. Pre-dispositional placements are time-limited, and the time frames must be strictly adhered to. Such out-of-home placements shall only be utilized if the court finds there is a substantial likelihood that a youth will not return to their court appearance and that all alternatives have been exhausted, including the use of respite services.

The findings required for a pre-dispositional order are substantially different from the requirements for a remand to a non-secure detention. Under Family Court Act (FCA) section 739, for a pre-dispositional placement order, **the court must find and state in its written order:**

- there is a substantial probability that the respondent will not appear in court on the return date and all available alternatives to such placement have been exhausted;
- reasonable efforts were made prior to the court order directing pre-dispositional placement to prevent or eliminate the need for removal of the respondent youth from his or her home, or if the respondent had been removed prior to the court appearance, reasonable efforts were made to safely return the respondent youth to his or her home;
- there is no substantial likelihood that the respondent youth and his or her family will continue to benefit from diversion services, including, but not limited to, any available respite services;
- any and all alternatives to placement have been exhausted;
- pre-dispositional placement is in the best interest of the respondent youth; and
- that it would be contrary to the respondent's welfare to remain in their own home.

Under FCA section 720(4)(b), a family court cannot order or direct pre-dispositional placements for youth age 16 or older unless the court determines and states in its order that special circumstances exist to warrant the placement.

If a court does order a respondent youth into a pre-dispositional placement, it can last **no longer than three days**, unless

- the respondent youth waives a determination that probable cause exists to believe they are a PINS; or
- the court finds, pursuant to the evidentiary standards applicable to a hearing on a felony complaint in a criminal court, that such probable cause exists; or
- special circumstances exist, in which case such pre-dispositional placement may be extended for not more than an additional three days, exclusive of Saturdays, Sundays, and public holidays.

If the youth is in pre-dispositional placement, fact-finding for the Article 7 petition must commence within three days of the filing, and the court may adjourn the fact-finding for good cause either upon motion of the court, petitioner, or upon motion of the youth or a person legally responsible for the youth. If the adjournment is on motion by the court, or petitioner, it may be for a period no more than three days; if the adjournment is on motion of the youth or person legally responsible for the youth, it may be for a reasonable period of time.

Pre-dispositional placements can only occur in the following settings:

- Foster care settings, certified or licensed by the New York State Office of Children and Family Services (OCFS) or another authorized agency, such as:
  - Foster boarding home
  - Group Home
  - Residential Treatment Center
- A short-term safe house as defined in Social Services Law 447-a for youth who have been determined by the court to be sexually exploited. Such placement requires the consent of the respondent youth if it is in a runaway and homeless youth program, as these settings are voluntary.

For any pre-dispositional placements to occur, localities must have access to pre-dispositional care and maintenance services for PINS youth.

Please note the following contract restriction:

- The foster care template contract cannot be used for this purpose, as the placement is not considered foster care.

Additionally, the following contract suggestions are offered to localities for consideration:

- In the immediate term, utilize the approved small dollar amount contract mechanism in the county that satisfies the Office of State Comptroller rules.
- Consult with your county legal department and explore an addendum to county preventive respite contracts that now also purchase pre-dispositional care and maintenance services. Please note that pre-dispositional care and maintenance services are not eligible for preventive funding.
- Create new contracts for pre-dispositional care and maintenance services.

No state or federal funding may support pre-dispositional placements, as at the point of pre-dispositional placement, the court has not transferred legal care and custody of the child to the LDSS commissioner. Therefore, the child is **not in foster care**, despite the placement being in a foster care setting. Any pre-dispositional placement must be funded entirely by local share.

#### PINS Warrants

Under FCA sections 725 and 718, the ability to issue warrants and the return of runaways, respectively, remains unchanged by the PINS reform legislation. However, youth may NOT be brought to a pre-dispositional placement without a prior court order containing the necessary findings outlined above.

If family court is not open at the time a youth is taken into custody, the youth must be returned to a parent or legal guardian, or another resource named by the parent/legal guardian, who then must appear before the court at the earliest possible instance to answer the warrant, unless the youth was already in a pre-dispositional placement by a valid court order. If a youth is absent without consent from either a pre-dispositional placement in a foster care setting or a post-dispositional placement and a warrant has been issued, the youth may be returned to the placement, if there exists a valid family court order for such placement.

All requirements related to 16-OCFS-ADM-09, *Protocols and Procedures for Locating and Responding to Children and Youth Missing From Foster Care and Non-Foster Care*, must be followed.

### Post-dispositional Placements

Post-dispositional placement occurs when a family court orders the placement of a PINS respondent youth at the disposition hearing for a PINS petition.

The PINS reform legislation narrows the ability of family courts to order foster care placements at disposition. If placement is ordered, the court must state in the written order

- that the placement is in the best interest of the child, and
- that it would be contrary to the welfare of the child to continue in his or her own home.

The PINS reform legislation emphasizes the importance of youth being placed in the least restrictive, family-like setting appropriate to the child's and family's needs. Preserving a youth's connection to his or her home community and building a framework of support from within that community is paramount to the long-term success of PINS youth.

Post-dispositional placements can only occur in the following settings:

- The child's own home (not foster care)
- Placed in the custody of a suitable relative/private person (direct Article 6 placement/custody)
- Ordered into the custody of the commissioner of the LDSS and placed in a foster care setting such as:
  - Foster Boarding Home (including Kinship Foster Homes)
  - Group Home
  - Residential Treatment Center
- Placed in an available long-term safe house, if the court finds that the youth has been sexually exploited, as defined by Social Services Law 447-a.

There are specific time limitations on all PINS post-dispositional placements that include permanency hearings at prescribed intervals. Extensions of PINS placements must occur in accordance with FCA section 756-a. An extension of placement for a PINS respondent youth should only occur when there are clear indicators of substantial risk that the youth is unable to safely reside in his or her home. Every effort must be made to safely return a PINS-placed youth to his/her home prior to the filing of any placement extensions. Any significant safety concerns regarding the timely reunification of youth with their parent or guardian must be accurately documented in casework notes, service plans and the required permanency hearing reports. Each request for an extension of placement triggers a permanency hearing for the respondent youth at which the court must consider the continuing need for placement.

As of January 1, 2020, no state dollars may be used to fund PINS post-dispositional placement, including placements of youth in foster care related to an Article 7 disposition ordered prior to January 1, 2020. Post-dispositional PINS placements are Title IV-E eligible if the youth meets the IV-E eligibility criteria for foster care youth. It is important to note that all requirements of the Family First Prevention Services Act will apply to youth in post-dispositional placements under Article 7 after September 2021. For the purposes of post-dispositional placements for dually eligible TANF-EAF and Title IV-E eligible children, the local share requirements for Title IV-E cannot be matched with other federal funds, including TANF-EAF. Title IV-E federal matching requirements prohibit the use of federal funds for local or state match. Counties may use TANF-EAF funds to cover 100 percent of the post-dispositional placement of PINS.

Preventive funding may be utilized to provide supportive and rehabilitative services, in accordance with Social Services Law 409, to expedite the safe return of a youth in foster care back to their home or to another permanency resource; all preventive funding eligibility requirements apply. Chaffee funds may also be utilized, as per eligibility requirements, to support the youth while in foster care, but may not be utilized to fund the PINS placement (19-OCFS-LCM-08).

#### IV. Required Action

Pursuant to Chapter 362 of the Laws of 2018, as part of PINS diversion services, the lead agency (LDSS or probation) must review the steps taken by the school district to resolve youth truancy issues prior to a PINS petition being filed, regardless of whether the school district is the petitioner. Also, all PINS petitions that include an allegation of truancy must detail the steps taken by the school district to address the truancy issue.

LDSSs must have access to pre-dispositional placement settings, should such be ordered by the court. This may occur via executed contracts with voluntary authorized agencies for pre-dispositional placement of PINS youth in foster care settings and short-term safe-house settings for sexually exploited youth. These contracts must be distinct from the localities' foster care contracts.

Services provided under pre-dispositional placement should include, but not be limited to, intake requirements including obtaining consents and information regarding medical, mental health, developmental needs and education needs from parents/guardians, transportation to court where relevant, and visitation/access to family members. Also, the Preventing Sex Trafficking and Strengthening Families Act screening requirements apply. (15-OCFS-ADM-16).

LDSSs must closely and consistently monitor the maximum time frames of pre-dispositional placements of PINS youth, and post-dispositional PINS placements also have time limits that must be strictly adhered to. As such, diligent permanency planning from day one of the post-dispositional placement must occur.

PINS post-dispositional placement may be ordered for a period of up to 60 days prior to the first permanency hearing. With this limited time frame, it is crucial that assessment and service planning occur expeditiously. Therefore, the initial Family Assessment and Services Plan (FASP) for PINS post-dispositional placement cases is due **within 14 days of the post-dispositional placement**, with all corresponding service plan review requirements for foster care cases to be followed. Any assessments of the youth prior to post-dispositional placement should be obtained and incorporated into this case planning. This includes the Pre-disposition Investigation (PDI) completed for the court prior to the post-dispositional placement of the youth.

Diligent permanency planning, required for all foster care cases, must be followed with a continual search for all appropriate natural resources and community-based services and supports.

If an extension of placement is needed based on the needs of the youth, subsequent periods of post-dispositional placement are time-limited as follows:

- The first extension of placement can be for a period **no longer than six months**.
- The second extension of placement can be for a period **no longer than four months, unless**
  - the attorney for the child, at the request of the respondent youth, requests an extension and the court determines that it is in the youth's best interest; or
  - the court finds that extenuating circumstances exist, which necessitate the child be placed out of the home.

If the court makes one of these findings, the second extension of placement can only be for a **period determined by the court at this second permanency hearing**.

**No additional extensions can be ordered.**

For PINS placements prior to January 1, 2020, all previous extensions of placement count toward the maximum number of extensions allowable under the PINS reform legislation. For example, if a PINS respondent youth has had two previous extensions of placement, as of January 1, 2020, **no more extensions of placement may be filed**.

If a youth has remained in a PINS placement due to safety concerns in his or her home, the LDSS responsible should seek legal guidance as to whether removal and placement via an Article 10 neglect petition against the youth's parent(s) and/or caretaker(s) is appropriate.

The following protocols must be followed when filing for an extension of placement:

- The first request for an extension of placement must be filed 15 days prior to the end of the initial placement.
- Any subsequent extensions of placement must be filed 30 days prior to the expiration of the placement period.

Each extension of placement request will trigger a permanency hearing in family court. LDSS case managers and caseworkers must complete the permanency hearing report in New York State CONNECTIONS in accordance with their LDSS local protocol. At a minimum, annual permanency hearings must occur while the youth is placed in foster care. All other case management and case planning requirements for foster care cases apply.

## V. Systems Implications

As no state funding is available for any placement of youth for a PINS matter after January 1, 2020, there are several changes in how data on youth must be entered into CONNECTIONS to ensure compliance with the law. Attachment A, *System Instructions for Youth Ordered to Pre-dispositional Placement in a Foster Care Setting and Post-dispositional Placement Under Article 7*, provides detailed instructions for entering youth data in CONNECTIONS, opening a case, choosing a program type, and coding them appropriately. These steps are required.

For youth who are court ordered to pre-dispositional placement in a foster care setting, the LDSS must utilize the CONNECTIONS placement module. In the placement module, users must use the **exact resource search** function to select the appropriate foster care setting the LDSS will utilize for pre-dispositional placement. The LDSS will also need to enter the corresponding "Legal Activity" codes for PINS pre-dispositional placement. (See Attachment A.)

For youth placed in foster care in a PINS post-dispositional placement, all systems requirements for foster care cases apply to these youth and their families, which includes opening or updating a case in CONNECTIONS upon the placement of the youth in a timely manner (see Attachment A). Additionally, when available in CONNECTIONS, localities are required to upload all court orders for pre-dispositional and post-dispositional placement of PINS youth into CONNECTIONS with the file category of **Legal** and subcategory of **Placement Order**. The file should be kept directly on the stage or attached to a progress note. Original placement court orders must be maintained by LDSSs following all local protocols.

For PINS post-dispositional placements and court-ordered extensions of such placements, which occurred on or after January 1, 2020, there may be instances where the LDSS will need to update the "Legal Activity" codes in CONNECTIONS to ensure proper Title IV-E reimbursement. OCFS will individually communicate with counties in these identified instances.

There are forthcoming changes to the Welfare Management System (WMS) and the Benefits Issuance Control System (BICS) regarding PINS post-dispositional placements as no state funding shall support such placements as of January 1, 2020.

## VI. Contacts

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**VII. Effective Date**

This policy is effective immediately.

*/s/ Nina Aledort, Ph.D., LMSW*

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**Issued by:**

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