



Office of Children and Family Services

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Administrative Directive

Transmittal	22-OCFS-ADM-14
To:	Detention Administering Agencies Detention Operating Agencies Local Departments of Social Services
Issuing Division/Office:	Division of Youth Development and Partnerships for Success
Date:	June 23, 2022
Subject:	Juvenile Justice-Related Chapters of the Laws of 2021 and Changes to the Juvenile Justice and Delinquency Prevention Act
Suggested Distribution:	County Sheriff's Offices County Probation Departments Local Departments of Social Services
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Attachments:	None.

Filing References

Previous ADMs/INFs	Releases Cancelled	NYS Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. ref.
			Juvenile Justice Delinquency Prevention Act, 34 U.S.C. §§ 11101 et seq. Chapters 456, 754, 755, 809, 810, and 813 of the Laws of 2021 Chapters 26 and 28 of the Laws of 2022		

I. Purpose

This Administrative Directive (ADM) outlines key provisions and recent statutory changes in the New York State (NYS) Chapter Laws of 2021 and the federal Juvenile Justice and Delinquency Prevention Act (JJDP) that impact juvenile detention.

II. Background

As part of the ongoing New York State reforms to its juvenile justice system, several new laws were enacted in 2021 that impact juvenile detention and court processing. Specifically, changes were made regarding the following:

- The execution of bench warrants in juvenile delinquency cases
- The adjudication of youth for charges of violations in family court
- The issuance of high school diplomas in certain facilities
- The provision of records upon receipt of a complaint of abuse or neglect of an individual with a disability
- The impact of guilty pleas and the removal of adolescent offender proceedings to the family court
- Raising the lower age of juvenile delinquency jurisdiction from seven to 12 years of age, effective December 29, 2022

At the federal level, the JJDPa supports local and state efforts to prevent delinquency and improve the juvenile justice system. The four core requirements of the JJDPa are: 1) deinstitutionalization of status offenders (removing Persons in Need of Supervision from secure detention or placement); 2) sight and sound separation of detained or placed youth from adult inmates; 3) removal of youth from adult jails; and 4) addressing disproportionate contact of minority youth with the juvenile justice system. The JJDPa was reauthorized in 2018, substantially amending the statutory language. Most notably, the amendments restricted the detention or placement of youth in adult facilities as of December 21, 2021.

III. Program Implications

A. Effective Immediately

1. Laws Impacting Admission to Detention:

Family Court Bench Warrants: Chapter 456 of the Laws of 2021 amends § 312.2 of the Family Court Act by requiring that juvenile delinquents (JDs) who are taken into police custody on a bench warrant be brought before the family court or, if the court is closed, to the most accessible magistrate. Detention administrators may not take physical custody of a youth on an active bench warrant unless neither the court or an accessible magistrate is available. Detention administrators must first determine if the youth has a judicial remand order to detention. This law went into effect on **December 7, 2021**.

2. Violations:

Chapter 813 of the Laws of 2021 amends §§ 301.2, 302.1, 304.1, 308.1, 315.3, 320.6, 345.1, 350.1, 352.2, 360.3, and 375.2 of the Family Court Act and amends § 510.15 of the Criminal Procedure Law in relation to JD charges of violations in family court. The new chapter limits detention and placement for violations. Now, only 16- and 17-year-old JDs are responsible for violations committed in the same transaction as a crime. JDs younger than 16 years of age cannot be held responsible for a violation.

Where a finding exists that the youth committed a violation alone, there is a rebuttable presumption that the matter should be adjourned in contemplation of dismissal, referred for a probation adjustment, or dismissed. If a violation alone is referred to probation, probation must adjust the matter unless good cause exists not to make the adjustment. If the youth receives a conditional discharge, probation may change the conditions of release but may not impose a different disposition.

Detention is not permitted when

- a. a youth is adjudicated on a violation alone, or
- b. a youth is awaiting disposition on a violation alone.

An adjudication for a violation will result in such records being automatically sealed.

3. Other Juvenile Justice Laws:

- a. **Diplomas in State Agency and Correctional Facilities:** Chapter 754 of the Laws of 2021 amends the Education Law by adding § 112-a. The new section relates to youth who are placed, committed, supervised, detained or confined in certain facilities, and to the issuance of diplomas to youth who participate in an educational program provided by such facilities and complete the minimum New York State diploma requirements. The school district in which the facility is located (i.e., the school district of location) must issue the diploma after a determination that the youth has met those requirements. As amended by Chapter 26 of the Laws of 2022, included in this section are facilities operated or administered by a state department, agency, or political subdivision, or a correctional facility, unless credit bearing educational programming is provided by a school district other than the district of location.
- b. **Disability Rights New York:** Chapter 755 of the Laws of 2021, as amended by Chapter 28 of the Laws of 2022, clarifies the authority of Disability Rights New York (DRNY), as the designated New York State Protection and Advocacy System to access facilities serving individuals with disabilities and records of such individuals, as set forth in Executive Law § 558(b)(iii). In particular, the law requires that copies of records be provided free of charge to DRNY as follows: (1) in electronic format if maintained in that format, (2), within three business days of receipt of a written request, or (3) within 24 hours of receipt of a written request in the case of DRNY receiving a complaint of health or safety placing individuals in serious and immediate jeopardy, or (4) in the case of the death of an individual with a disability in a facility. If the request cannot be fulfilled within the specified timelines, DRNY must be provided with a statement of the reasons for the delay within one business day after the deadline lapses.
- c. **Removals From Youth Part to Family Court:** Chapter 809 of the Laws of 2021 amends § 30.00 of the Penal Law as well as §§ 220.10, 725.05, and 725.10 of the Criminal Procedure Law in relation to a misdemeanor charge, a guilty plea to a misdemeanor offense for a felony charge, and removal of adolescent offender (AO) proceedings to family court. A guilty plea to a misdemeanor is now removed to family court by operation of law, and the plea is deemed to constitute an order of fact-finding in the juvenile delinquency proceeding. Unless the youth is in detention,

in the custody of the sheriff, or the matter involves an ineligible offense (high-level felonies identified in Family Court Act § 308.1), the order of removal to family court must include a direction for the youth to appear before probation for adjustment consideration.

B. Changes to Alternate Jail Placements Pursuant to the Juvenile Justice and Delinquency Prevention Act (JJDP) Effective December 21, 2021:

1. A presentment agency, district attorney, detention administering agency, or law enforcement agency may apply to the New York State Office of Children and Family Services (OCFS), in consultation with the State Commission of Correction (SCOC), for approval of an alternate location to hold youth for whom the securing order specifies a juvenile detention facility. As of December 21, 2021, youth under the age of 18 must **also** be given a court hearing to determine that such alternate placement is in the interest of justice. Specifically, for youth under 18 years of age:

a. Any youth who is an alleged AO or juvenile offender (JO) for whom an alternate jail placement is sought, as well as any youth who is currently in an alternate jail placement, **requires a court hearing** to assess if detention in the adult facility is in the interest of justice.

The determination of whether such detention would be in the interest of justice must (1) be after a hearing, (2) be in writing, and (3) take into consideration several criteria including: the youth's age, youth's physical and mental maturity, youth's present mental state, the nature and circumstances of the alleged offense, any prior delinquent acts, the ability of the available juvenile and adult facilities to meet the youth's needs and protect public safety, and any other relevant factor.

The court retains authority to commit individuals who are 18 years of age and older directly to the custody of a sheriff for lodging in a local correctional facility. Such individuals are not committed to the custody of a juvenile agency and are considered "adult inmates." An interest of justice hearing is not required in such cases; however, one may be sought.

b. Unless found by a court to be in the interest of justice, juveniles who are being charged and tried as adults (1) may not have sight or sound contact with adults and (2) may not be detained in a jail or lockup for adults.

c. When the court finds detention in an adult jail to be in the interest of justice, additional requirements must be met:

i. Youth under 18 years of age may not have sight or sound contact with detained or incarcerated adults under any circumstances.

ii. When the court finds it is in the interest of justice to temporarily lodge the youth in an alternate setting, there must be a hearing at least every **30 days** (or **45 days** for rural jurisdictions). No youth shall be lodged in an alternate adult setting for longer than **180 days** unless (a) the court finds good cause, or (b) the youth expressly waives the limitation of 180 days.

- iii. The local detention administering agency of the county with jurisdiction over the proceeding will be responsible for assessing the health and well-being of the youth during their stay.
 - iv. Staff who work with both juveniles and adult inmates (including in co-located facilities) must be trained and certified to work with juveniles.
 2. The interest of justice **hearing is not required** (but approval from OCFS for youth under 18 years of age is still required) for a youth to be held in an adult facility with sight and sound separation from incarcerated adults if the period does not exceed six hours and if the youth:
 - a. is held for processing or release,
 - b. is held while awaiting transfer to a juvenile facility, or
 - c. makes a court appearance within the six-hour time period.
 3. The interest of justice **hearing is not required** for youth who are awaiting an initial court appearance that will occur within 48 hours after being taken into custody (excluding Saturdays, Sundays, and legal holidays) to be held in an adult facility with sight and sound separation from incarcerated adults and **either**:
 - a. the youth is held in a jail or lockup located in a rural jurisdiction, that has no existing acceptable alternative placement available;
 - b. conditions of distance to be traveled or the lack of a highway, road, or transportation does not allow for court appearances within 48 hours so that a brief delay (not to exceed an additional 48 hours) is excusable; or
 - c. conditions of safety exist (such as severe adverse, life-threatening weather conditions that do not allow for reasonably safe travel), in which case the time for an appearance may be delayed until 24 hours after the time that such conditions allow for reasonable safe travel.

C. Effective December 29, 2022

1. **Raise the Lower Age:** Chapter 810 (Raise the Lower Age) amends §§ 301.2, 304.1, 306.1, 308.1, 353.2, 353.6, and 354.1 of the Family Court Act; amends §§ 409-a and 458-m of and adds § 458-o (Title 12-A) to the Social Services law; and amends §§ 502, 507-a, and 840 of the Executive Law. The amendment raises the lower age of delinquency from seven to 12 years of age, with an exception for 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 has committed a homicide offense. **After December 29, 2022, no youth under the age of 13 may be remanded to secure detention unless they have allegedly committed a homicide offense.**

The chapter of the law also requires local departments of social services to establish differential response programs for youth under 12 who, but for their age, could be subject to a delinquency petition. Further guidance to LDSSs on the differential response requirements is forthcoming.

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

Issued by:

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Additional Resources:

<https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/252961.pdf>

<https://ojjdp.ojp.gov/about/legislation>