



Office of Children and Family Services

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Administrative Directive

Transmittal:	24-OCFS-ADM-06
To:	Local Departments of Social Services Commissioners Voluntary Authorized Agencies Executive Directors
Issuing Division/Office:	Division of Youth Development and Partnerships for Success
Date:	March 8, 2024
Subject:	Records Related to Persons in Need of Supervision
Suggested Distribution:	Local Departments of Social Services Directors Voluntary Authorized Agencies Program Directors Child Welfare Supervisors CONNECTIONS Implementation Coordinators Foster Care Supervisors
Contact Person(s):	See section VI.
Attachments:	None

Filing References

Previous ADMs/INFs	Releases Cancelled	NYS Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
20-OCFS-ADM-22-R1		18 NYCRR 423.6. 423.7	Laws of 2023, ch.691 as amended by Laws of 2024, ch.94; Social Services Law (SSL) sections 409, 422-a, Article 6; Family Court Act (FCA) sections 733, 735, 742, 749, 783, 784; Penal Law sections 221.05 (repealed), 230.00		

I. Purpose

The purpose of this Administrative Directive (ADM) is to inform local departments of social services (LDSSs) of the outline key provisions of Chapter 691 of the Laws of 2023, as amended by Chapter 94 of the Laws of 2024, that amends the Family Court Act (FCA) in relation to the expungement and sealing of records in persons in need of supervision (PINS) cases. This change goes into effect March 7, 2024.

II. Background

Prior to this legislative change, records regarding PINS proceedings were not protected explicitly under Article 7 of the FCA. The recent amendments now provide for the automatic sealing or expungement of records pertaining to youth who are the subject of PINS proceedings and afford youth the same protections given to children who are subject to a delinquency proceeding under Article 3 of the FCA.

III. Program Implications

The amendments to Article 7 of the FCA include the following:

- A prohibition of court records being admitted as evidence against a youth in any other court.
- Automatic expungement of court records of a proceeding that is terminated in favor of a youth respondent, which includes where the proceeding has been
 - diverted prior, or after, the filing of a PINS petition; or
 - withdrawn or dismissed for failure to prosecute, or for any other reason at any stage; or
 - dismissed following an adjournment in contemplation of dismissal (ACOD); or
 - resulted in an adjudication where the only finding was for a violation of former section 221.05¹ or section 230.00² of the Penal Law; however, the expungement in this case shall not take place until the conclusion of the period of disposition or extension.

- The court clerk is to notify and direct the appropriate probation department, designated lead agency, a local education agency if the petitioner, and the presentment agency, if involved in the proceeding, that records of such proceeding on file with these agencies shall be expunged.

However, where the proceeding has been diverted prior to the filing of a petition, the designated lead agency shall **seal** any records related to the proceeding that are in its possession. If a proceeding is diverted after the filing of a petition, the designated lead agency, upon notice from the court shall **seal** any records related to the proceeding that are in its possession.

- If the respondent youth has been the subject of a warrant or an arrest in connection with the proceeding or if law enforcement was the petitioner, the court notice to expunge shall also be sent to such law enforcement agency.
- If the designated lead agency diverts a case either prior or after the filing of a petition, and the youth was the subject of a warrant or law enforcement was the referring agency, the designated lead agency shall notify the appropriate probation department and law enforcement agency in writing of such diversion, and those agencies shall expunge any records regarding the youth.
- If the petitioner, or if applicable the presentment agency, elects not to file a PINS petition, the petitioner or applicable presentment agency must notify the probation department and designated lead agency of such determination, as well as any applicable referring law enforcement agency, or if a warrant was issued for the youth as part of the proceeding. Upon the receipt of such notification, the records regarding the youth shall be expunged; however, the designated lead agency may have access to its own records and therefore shall **seal** them.

Access to sealed records can only occur by the designated lead agency for the following purposes:

- Where there is continuing or subsequent contact with the youth as a PINS.

¹ Unlawful possession of marijuana (repealed 2021).

² Prostitution (amended January 2024).

- Where the information is necessary to determine services arranged or provided to the family or the information is necessary for the commissioner to comply with disclosure under SSL 422-a.

Sealed records must be made available to the youth or their agent and where the petitioner or potential petitioner is the parent, or person legally responsible for the youth. No statement made to the lead agency contained in the sealed records shall be admissible in any court proceeding except upon the consent of the youth, parent or person legally responsible for the youth.

A respondent youth whose PINS case was terminated in favor of them prior to the effective date of this legislation can file a motion with the court for their records to be expunged and shall be granted such request. The designated lead agency must determine if any of such records should be sealed in accordance with FCA Section 783(c)(v), in which case they should be sealed as outlined above.

If a PINS adjudication and disposition has occurred under Article 7 of the FCA and upon motion of the respondent youth, the court may, in the interest of justice, expunge the records of the proceeding. If the court orders such, all records in possession of the designated lead agency, the probation service, and any applicable presentment agency and law enforcement agency shall expunge their records, except in the cases where records shall be **sealed** as outlined above.

All court records related to a PINS proceeding will automatically be expunged upon the respondent youth's 21st birthday, or after the conclusion of any period of disposition or extension.

IV. Required Action

Where a local department of social services (LDSS) is the designated lead agency, the LDSS must comply with the above record retention rules regarding the expungement and sealing of records related to a PINS matter. **However, preventive and foster care records maintained by LDSSs relating to a PINS matter are not subject to expungement or sealing and shall be held confidential in accordance with SSL Article 6.**

Therefore, all PINS Diversion Services records that are not part of a preventive or foster care record shall be sealed upon successful conclusion of the diversion case by the LDSS lead agency. This includes all copies and duplicates of such records. The LDSS shall notify the appropriate probation department and law enforcement agency in writing of such diversion when the diversion case involved a youth being the subject of a warrant or the referring agency was law enforcement, and upon receipt of the notification, those agencies shall expunge any records regarding the youth.

Upon notice from the court that the PINS matter has been withdrawn or dismissed for failure to prosecute, withdrawn or dismissed for any other reason at any stage, or related to an ACOD, the LDSS, must **expunge** all PINS Diversion Services records that are not part of a preventive or foster care record.

Upon notice from the court, or if the LDSS has knowledge of a PINS proceeding being terminated in favor of a respondent youth (as defined above), all PINS pre-dispositional placement (PDP) cases must be **expunged**.

To be in compliance with the legislation, as of March 7, 2024, PINS PDP cases **shall not** be entered into CONNECTIONS. Such case files must be confidentially maintained separately at the local level.

Aggregate data regarding the number of PDP admissions and the number of unique youth, per those admissions, shall be submitted by each municipality for which a PINS PDP was ordered on a calendar-

year quarterly basis to the PINS mailbox at PINS@ocfs.ny.gov. To fulfill this data submission requirement, all municipalities will use the OCFS *PINS Pre-Dispositional Placement Quarterly Data* sheet at the following webpage: <https://ocfs.ny.gov/programs/youth/pins/resources.php>.

V. Systems Implications

CONNECTIONS system changes are being implemented that will no longer allow for the entry of a PINS PDP (L300, 06, 97) or an extension of a PINS PDP (L300, 06, 98) in the Activities Window of CONNECTIONS.

To maintain accurate foster care resource availability within CONNECTIONS, workers with modify access to the Characteristics hyperlink from the Foster and Adoptive Home Development (FAD) stage or the Characteristics tab from the Resource Directory must mark the resource bed “Unavailable” where the youth has been placed for a PINS PDP. Once the youth is discharged from the PINS PDP, please go back into CONNECTIONS and update the placement resource to show current availability.

For respondent youth who are under a valid court order for PINS PDP as of March 7, 2024, that began prior to March 7, 2024, please follow the previously issued guidance contained in [Attachment A of 20-OCFS-ADM-22-R1](#) to complete the corresponding CONNECTIONS Activities Window until the youth is discharged from the current PINS PDP.

VI. Contacts

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VII. Effective Date

This ADM is effective March 7, 2024.

/s/ Nina Aledort, Ph.D.

Issued by:

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Title: Deputy Commissioner

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