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Administrative Directive

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To:	Commissioners of Social Services Executive Directors of Voluntary Authorized Agencies
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Subject:	Destitute Child Placement Procedures and Guidelines
Suggested Distribution:	Directors of Social Services Foster Care Supervisors Child Protective Services Supervisors Legal Staff Staff Development Coordinators CONNECTIONS Implementation Coordinators
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Filing References

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
			FCA §1089; FCA §§1092-1096; SSL §371(3); SSL §398(1); and SSL §458-a		

I. Purpose

The purpose of this Administrative Directive (ADM) is to advise local departments of social services (LDSS) and voluntary authorized agencies of the provisions of Chapters 605 and 607 of the Laws of 2011, and Chapter 3 of the Laws of 2012. These Chapter laws enacted a new Article 10-C of the Family Court Act (FCA) and amended Social Services Law (SSL) in relation to the definition and procedures for destitute children. These laws became effective on September 18, 2012, the date on which New York State received approval from the U.S. Department of Health and Human Services of an amendment to the federal IV-E state plan reflecting the changes enacted by these laws. In addition, the Office of Children and Family Services (OCFS) is in the process of filing proposed regulations that make conforming changes to 18 NYCRR. This ADM provides guidance to LDSSs and voluntary authorized agencies regarding the handling of destitute child cases.

II. Background

Prior to Chapters 605 and 607 of the Laws of 2011, and Chapter 3 of the Laws of 2012, LDSSs were required to assume charge of destitute children and provide services to them. However, there was no specific mechanism in law through which LDSSs could obtain a court order placing a destitute child in their care and custody into foster care. In those rare cases where the court agreed to place a child who satisfied the definition of a destitute child into foster care, prior law did not set forth a process for periodic court review of the placement. As a result, LDSSs often faced difficulties in providing care and services to destitute children. In addition, LDSSs were unable to obtain federal Title IV-E reimbursement for the care provided to destitute children due to the lack of court involvement and the mandated Title IV-E court determinations of best interests and reasonable efforts. The statutory changes as a result of the chapter laws named above address these issues and provide clear procedures for LDSSs to obtain custody of, provide services to, and, where otherwise eligible, receive federal reimbursement for destitute children in their care.

Chapter 605 of the Laws of 2011 amended the definition of destitute child and created procedures for the entry of destitute children into foster care. Chapter 607 of the Laws of 2011 amended the SSL to add destitute children to the categories of children who may be eligible for the kinship guardianship assistance program. Chapter 3 of the Laws of 2012 further amended Chapter 605 of the Laws of 2011. The chapters updated and

clarified the definition of a destitute child in the SSL. In addition, the chapters enacted procedures for the entry of a child into foster care as a destitute child and for the periodic court review of such placements.

For the purpose of entry into foster care, a destitute child is defined as:

- A child under the age of 18 who is in a state of want or suffering due to a lack of sufficient food, clothing, shelter, or medical or surgical care; and
 - Does not fit within the definition of an “abused child” or “neglected child” as defined in §1012 of the FCA; and
 - Is without any parent or caretaker, as defined in §1092 of the FCA, to sufficiently care for him or her, due to:
 - The death of a parent or caretaker; or
 - The incapacity or debilitation of a parent or caretaker to the extent that he or she is unable to knowingly or voluntarily enter into a written agreement to transfer the care and custody of the child pursuant to §358-a or §384-a of SSL; or
 - The inability of the LDSS to locate any parent or caretaker, after making reasonable efforts to do so; or
 - A parent or caretaker being physically located outside of New York State and the LDSS is or has been unable to return the child to the parent or caretaker after having made reasonable efforts to do so, unless the lack of such efforts was appropriate.

For the purpose of the definition of a destitute child in the SSL, in addition to the above referenced FCA definition, the SSL definition of a destitute child now also includes:

- A child who is under the age of 18 years and absent from his or her legal residence without the consent of his or her parent(s), legal guardian(s) or custodian(s); or
- A child under the age of 18 who is without a place of shelter where supervision and care are available, who is not otherwise covered under §371(3)(a) of SSL; or
- A person who is a former foster care youth under the age of 21 who was previously placed in the care and custody or custody and guardianship of a local commissioner of social services or other entity authorized to receive children as public charges, and who was discharged from foster care due to a failure to consent to the continuation in placement, who has returned to foster care pursuant to §1091 of the FCA.¹

The first two additions to the SSL definition of a destitute child were needed to avoid eliminating any responsibility LDSSs have in regard to runaway and homeless youth. They clarify that LDSSs are not required to file Article 10-C petitions for runaway and homeless youth who are otherwise served under the Runaway and Homeless Youth Act.

¹ §371(3) of SSL

The third addition relates to re-entry of youth into foster care after the age of 18 in accordance with section 1091 of the FCA.

Upon an adjudication that a child is destitute in accordance with Article 10-C of the FCA, the new destitute child chapter laws follow most of the court-related procedures of children who are in foster care pursuant to Article 10 of the FCA as abused and/or neglected children, including the permanency hearing requirements set forth in Article 10-A of the FCA.

III. Program Implications

LDSSs and voluntary authorized agencies may encounter destitute children who are discovered in many different circumstances where a parent or caretaker is not available or unable to sufficiently care for them for various reasons. Examples of destitute children include, but are not limited to, orphans, unaccompanied children, children whose parent, guardian or custodian's whereabouts are unknown, and children whose parent or only known or available parent or guardian suffers from mental incapacity such as dementia, or is in a coma, and there is no person who may be able or willing to execute a voluntary placement agreement, in accordance with §384-a of the SSL.

Guidance

Below is some guidance to LDSSs and voluntary agencies in regard to some of the more difficult or complicated situations that may result in a child being a destitute child who needs care and services.

Unaccompanied Children

These are children who are on their own in the United States (U.S.) with no parent, caretaker, or relative caring for them. Their parent or caretaker is in another country either because they sent the child here on their own or they were deported while the child remained here in the U.S. In this situation, it may be very difficult to obtain information on the parents and other family resources in the other country; however, good casework practice would be to contact the consular office of that country to request assistance in exploring resources for the child in the other country.

If the parent is in the U.S. undergoing deportation proceedings, every effort should be made to have discussions with the parent in regard to a placement and permanency plan for the child, including the possibility of executing a voluntary placement agreement. In addition, the parent should be asked if there are any relatives or other individuals who may be able and willing to obtain custody or guardianship of the child or become a foster parent to the child, if financial/medical support is needed to care for the child. If the child would satisfy the definition of an abused or neglected child, the LDSS should proceed with an Article 10 proceeding. Parental rights should not be terminated simply because the parent is being deported, unless there are other issues present that would preclude the child from being reunified with the parent and would qualify the child as being permanently neglected or abandoned. LDSSs and voluntary authorized agencies need to use interpreters when communicating with a parent whose first language is not

English to make sure they understand the status of their child, their parental rights, and what they need to do to reunify with the child.

Parent's Whereabouts Unknown

At times, LDSSs and voluntary authorized agencies may encounter a child whose parent(s) or caretaker's whereabouts may be unknown and as a result the child enters foster care as a destitute child. This may be the case for a runaway child. One example of a child who may be on his or her own with parents whose whereabouts may be unknown is a child who is a victim of human trafficking². The child may have been living on the streets for a while and may have been moved around from state to state or county to county by his or her trafficker. If a trafficked child is in need of foster care, he or she may qualify to enter foster care under Article 10-C as a destitute child.

In these situations where a parent's whereabouts are unknown, the LDSS or agency should make every effort to locate the parent(s) or caretaker(s) to determine if they are appropriate resources for the child or if they are aware of someone else who would be an appropriate resource.

Runaways

There are many reasons that a child may run away from home, and in some circumstances it may be more appropriate for the child to enter foster care under an Article 10-C destitute child order instead of an Article 7 Persons in Need of Supervision (PINS) order. A PINS is a child who is under the age of 18 who does not attend school, or behaves in a way that is dangerous or out of control, or often disobeys his or her parents, guardians or other authorities. In some cases, a child who is a runaway may meet the level of being considered incorrigible, ungovernable, or habitually disobedient and beyond the control of the parent, and therefore, may be deemed a PINS child. However, there are some circumstances where a child may have run away, but may not need the same level of supervision as a PINS child. In this case, if the child meets the statutory definition of a destitute child, an LDSS may choose to seek placement through an Article 10-C destitute child petition instead of a PINS one.

If the child is a runaway from another state, the LDSS or voluntary agency worker should contact the Interstate Compact on Juveniles (ICJ) office at OCFS to determine if there is a runaway warrant out for the child from another state. The ICJ is an agreement between states to facilitate the return of runaways and juvenile delinquents to their home state. The ICJ office is part of the Bureau of Classification and Movement at the Division of Juvenile Justice and Opportunities for Youth (DJJOY) at OCFS. The ICJ Coordinator is Paul Ottati and he can be reached at 518-473-4512 or at Paul.Ottati@ocfs.state.ny.us.

Parent Lives Out-of-State

If the parent is located, but is across state lines, an Interstate Compact on the Placement of Children (ICPC) request for a home study and approval of the parent's home for the

² 09-OCFS-ADM-01, New York State Anti-Trafficking Statute administrative directive, is found at: http://www.ocfs.state.ny.us/main/policies/external/OCFS_2009/

purposes of reunification will be necessary, unless the court plans to reunify the child with the parent without a home study or supervision. The New York State Adoption Service (NYSAS) is the office that handles all ICPC cases for New York State. For more information on the ICPC process, please see the OCFS website at http://www.ocfs.state.ny.us/adopt/adopt_faq.asp#icp or contact NYSAS at 518-474-9406 or 800-345-5437. In this circumstance, if the parent is found to have a safe home for the child, they can be reunited once the other state approves the placement back into the parent's home.

IV. Required Action

LDSSs continue to be required to provide services and care to children who meet the definition of destitute child, but now have an expanded definition in Article 10-C of the FCA. When an LDSS encounters a child that meets the definition of destitute child, the law authorizes the district to take temporary custody of the child, if necessary, and to initiate family court proceedings to determine whether the child needs to be placed in foster care or if the parent, relative or other suitable resource is available to care for the child. The destitute child petition must be filed within 14 days of the LDSS accepting the care and custody of a child who appears to be a destitute child.

Court Proceedings

Only a commissioner of social services may initiate a proceeding pursuant to Article 10-C of the FCA by filing a petition in Family Court alleging that a child is a destitute child as defined by §1092 of the FCA. This petition will include the following information:

- The manner, date and circumstances under which the child became known to the LDSS;
- The child's date of birth, if known;
- That the child is a destitute child as defined in §1092 (a) of the FCA;
- The identity of the parent(s) of the child, if known;
- Whether the parent(s) are living or dead, if known;
- The whereabouts or last known address of the parent(s), if known;
- The identity of a caretaker or interested adult, if known;
- The efforts, if any, that were made prior to the filing of the petition to prevent removal of the child from home, and if such efforts were not made, the reasons they were not made; and
- The efforts, if any, that were made prior to the filing of the petition to allow the child to return or remain safely home, and if such efforts were not made, the reasons they were not made.

New destitute child court forms are posted at the Office of Court Administration / Unified Court System website at:

<http://www.nycourts.gov/forms/familycourt/index.shtml>

The petition must contain a notice in conspicuous print providing that if the child remains in foster care for fifteen of the most recent twenty-two months, the agency may be required by law to file a petition to terminate parental rights³. If a living parent, caretaker or interested person is named in the petition, a copy of the petition and a summons to appear at the court hearing must be issued the same day the petition is filed. The petition must contain language requiring appearance of the parent, caretaker or interested party on the return date of the petition. If the parents' whereabouts are unknown, resources that can be used for locating them include the Federal Parent Locator Service (FPLS) and the State Parent Locator Service (SPLS), through referral to the New York State Office of Child Support Enforcement. Information on the locator services can be found in 07-OCFS-ADM-09, *Access to the Federal Parent Locator Service (FPLS), State Parent Locator Service (SPLS), and Additional Financial Information in Child Welfare Cases for the Purposes of Permanency* found at http://www.ocfs.state.ny.us/main/policies/external/OCFS_2007/. In addition, LDSSs can consult 05-OCFS-INF-05 *Locating Absent Fathers and Extended Family Guidance Paper* found at: http://www.ocfs.state.ny.us/main/policies/external/OCFS_2005/.

At the initial hearing, if the parent(s), caretaker(s) or interested person(s) make an appearance, he or she will have an attorney appointed to represent them if he or she is financially unable to obtain counsel. The child will also have an attorney appointed to represent him or her at the court proceeding(s). In addition, at this initial court hearing, a determination will be made whether temporary care is necessary to avoid imminent risk to the child's life or health and whether it would be contrary to the welfare of the child to continue in or return to his or her home, and if so, whether the child should be placed in the temporary care and custody of a relative or other suitable person or the commissioner of an LDSS. Also, the court must make a determination whether reasonable efforts were made to prevent or eliminate the need for removal and, if such efforts were not made, whether the lack of reasonable efforts were appropriate under the circumstances.

If it is determined that the child needs to be temporarily placed, the LDSS will investigate whether there are any parents, caretakers or interested adults not named in the petition, or any other relative or suitable person with whom the child may safely reside, and if so, the child may be temporarily placed with such person. The relative or suitable person should be given information on the placement options for the child. For relatives, there are two handbooks that provide this information, *Having a Voice & a Choice, New York State Handbook for Relatives Raising Children*, and *Know Your Permanency Options: The Kinship Guardianship Assistance Program (KinGAP)*. These materials can be found at <http://www.ocfs.state.ny.us/kinship/resources.asp>.

If the court determines that a foster care placement is necessary to prevent imminent risk to the child, and the child is adjudicated a destitute child and placed in the care and custody of LDSS, the child's placement then becomes subject to the requirements for permanency hearings in accordance with Article 10-A of the FCA.

³ Public Law 105-80, Adoption and Safe Families Act (ASFA) of 1997; FCA§1093(c)(1)(ix).

Foster Care Requirements

A child who is placed into the care and custody of an LDSS would be subject to many of the same requirements as that of a child in an Article 10 abuse and neglect case, including but not limited to:

- A fact-finding and dispositional hearing;
- Initial permanency hearing within eight months of placement and then every six months thereafter;
- There must be reasonable efforts made to reunify the child with the parent(s), including a visitation plan, or if the permanency goal is not reunification, reasonable efforts made to finalize the child's permanency plan;
- Uniform case record documentation requirements, including progress notes and family assessment and services plans (FASPs);
- Sibling placement and/or sibling visitation requirements;
- Filing a petition to terminate parental rights (TPR) , if the child remains in foster care for 15 of the most recent 22 months, unless a compelling or other reason exists not to file the petition⁴;
- The child may be eligible for the Kinship Guardianship Assistance Program (KinGAP) if they meet the KinGAP eligibility requirements⁵; and
- If the child is age 14 or older, he or she is eligible for independent living services.

Title IV-E Reimbursement Eligibility

A Title IV-E determination is to be made for each destitute child who enters foster care pursuant to Article 10-C of the FCA. One requirement for Title IV-E eligibility is that the child meet the Aid to Families with Dependent Children (AFDC) eligibility requirements as outlined in section 472(a)(3) of the Social Security Act (SSA). As such, the LDSS must be able to establish and verify financial need and deprivation of parental support based on the home from which the child was removed. Determining a child's financial need requires an LDSS to examine the parent's income and resources. In cases in which the identity of the parents is unknown, the LDSS will not have any financial information on which to make an AFDC eligibility determination. Therefore, it is unlikely that an LDSS would be able to determine Title IV-E eligibility for a child whose parents are unknown.

It is anticipated that in most destitute child cases, there would be some level of information on the parent, though it may be difficult to obtain wage information if his or her whereabouts are unknown. LDSSs will need to use resources to try to locate the parents, such as those listed on page 7 of this ADM. The Eligibility Manual for Child Welfare Programs found at <http://www.ocfs.state.ny.us/main/publications/eligibility/>

⁴ Ibid SSL §384-b(3)(1) and 18 NYCRR 431.9.

⁵ §458-a of SSL; 11-OCFS-ADM-03 The Kinship Guardianship Assistance Program (KinGAP), found at http://www.ocfs.state.ny.us/kinship/support_docs.asp

is in the process of being updated to include destitute children, and will be posted as soon as the revisions are complete.

V. **Systems Implications**

CONNECTIONS

In CONNECTIONS, on the stage composition window select the caretaker button, which will bring up the Primary/Secondary Caretakers window. The check box labeled “No Primary Caretaker Exists” should be checked if the parent is deceased or cannot be identified. The child can exist alone in a CWS case, can be tracked in the stage, and parent/caretaker scales and other pertinent parent-related questions will not be enabled.

Welfare Management System (WMS)

No changes.

Child Care Review Services (CCRS)

A new CCRS Type of Legal Event code 27 “Article 10-C Destitute Child” and new Disposition code 90 “Destitute Child” have been created.

- Initial Hearing
 - L300 with MOD A = 27 – Article 10-C Destitute Child
 - MOD B = 43 – Care and Custody to Local Social Services District
 - MOD D = Date Certain/Next Hearing Date*
- Adjudication Hearing
 - L300 with MOD A = 27 – Article 10-C Destitute Child
 - MOD B = 90 – Destitute Child
- Subsequent Periodic 1089 Permanency Hearings will be required on the same frequency as Article 10 placements
 - L300 with MOD A = 21- 1089 Permanency Hearing Review
 - MOD B = 44 – Foster Care Placement to Continue
 - MOD D = Date Certain/Next Hearing Date*

* Date entered in MOD D will populate Hearing Date Certain field in CONNECTIONS, which is found by selecting the Removal Information tab on the Tracked Children Detail window. Highlighting the child’s name on this window will fill the Next Permanency Hearing Date Certain field.

Benefits Issuance and Control System (BICS)

Appropriate claiming/reimbursement are dependent on system entered documentation that Legal Authority is in effect (L300 w/MOD A 27 and MOD B/C 43).

Medicaid

All children who are in the care and custody of LDSS and who are citizens or have satisfactory immigration status are categorically eligible for Medicaid. Therefore, children who meet the definition of a destitute child and enter care through Article 10-C of the FCA, who are citizens or have satisfactory immigration status, will be eligible for Medicaid. Children who do not have satisfactory immigration status will be eligible for Child Health Plus (CHP), because that program does not consider immigration status.

VI. Effective Date

This administrative directive is effective as of September 18, 2012.

/s/ Nancy W. Martinez

Issued By:

Name: Nancy W. Martinez

Title: Director

Division/Office: Strategic Planning and Policy Development