



# Office of Children and Family Services

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## Administrative Directive

<b>Transmittal:</b>	17-OCFS-ADM-02-R1 <b>Revised February 28, 2023</b>
<b>To:</b>	Local Departments of Social Services Commissioners Executive Directors of Voluntary Authorized Agencies
<b>Issuing Division/Office:</b>	Office of Strategic Planning and Policy Development
<b>Date:</b>	<b>Revised (R1): February 28, 2023</b> ; Original Publication: April 13, 2017
<b>Subject:</b>	<b>Changes to the Family Court Act Regarding Child Protective and Permanency Hearings, Including Changes Affecting the Rights of Non-Respondent Parents</b>
<b>Suggested Distribution:</b>	Legal Staff Directors of Social Services Child Protective Services Supervisors Child Welfare Supervisors Foster Care Supervisors
<b>Contact Person(s):</b>	See Section VII.
<b>Attachments:</b>	None

### Filing References

Previous ADMs/INFs	Releases Cancelled	NYS Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
			Family Court Act §§ 651, 1012, 1017, 1022-a, 1027, 1035, 1052, 1054, 1055-b, 1057, and 1089-a; DRL §240		

**R1:** This ADM is being revised and reissued on February 28, 2023 to update instructions for recording in CONNECTIONS when the disposition of a case is to release a child to a non-respondent parent. See Section V. Systems Instructions (#1).

### I. Purpose

The purpose of this Administrative Directive (ADM) is to inform local social services districts (LDSSs) and authorized voluntary agencies about the provisions of Chapter 567 of the Laws of 2015 (Chapter 567), which revised the Family Court Act (FCA) and the Domestic Relations Law (DRL), particularly

regarding the participation of non-respondent parents<sup>1</sup> in proceedings conducted pursuant to Articles 10 (abuse and neglect hearings) and 10-A (permanency hearings) of the FCA (hereinafter referred to as Articles 10 and 10-A, respectively). Chapter 567 also includes numerous changes applicable to the available dispositions and placements of children who are subject to those proceedings.

## II. Background

Chapter 567 was the result of a departmental bill advanced by the New York State Office of Court Administration (OCA) upon the recommendation of the Family Court Advisory and Rules Committee.

## III. Program Implications

The following is a summary of some, but not all, of the changes enacted in Chapter 567.

1. Definitions of “parent,” “relative,” and “suitable person” were added to FCA §1012.
  - a. Parent means a person who is recognized under the laws of the state of New York to be the child’s legal parent.
  - b. Relative means any person related to the child by blood, marriage or adoption, excluding parents, putative parents, and relatives of putative parents.
  - c. Suitable person means any person who plays or has played a significant positive role in the child’s life or in the life of the child’s family.
2. FCA §1017 now requires that an LDSS, in its search for potential resources for a child who is temporarily removed, must also seek to identify, locate, and notify the following persons about the pendency of an Article 10 proceeding:
  - a. Any non-respondent parents (not just those deemed “suitable”)
  - b. All relatives (not just “suitable” relatives), including, but not limited to, all those identified by a respondent or non-respondent parent or by a child over the age of five
  - c. All suitable persons identified by a respondent or non-respondent parent

The LDSS must report the findings of its search for a putative father to the court and to all interested parties, including the attorney for the child. The LDSS must also notify the persons whom it has located in writing of the pendency of the court proceedings and of their rights, as applicable, to seek the release or placement of the child, to provide free care, or to seek custody under Article 6. These notices are set by OCA through a uniform statewide rule. The notices are posted on the OCA website, at <http://www.nycourts.gov/forms/familycourt/>.

The LDSS must conduct an investigation to locate any person who is not recognized to be the child’s legal parent and does not have the rights of a legal parent under the laws of New York State, but who has filed an instrument with the state’s Putative Father Registry acknowledging paternity of the child pursuant to section 4-1.2 of the Estates, Powers and Trusts Law; or who has a pending paternity petition for the child; or who has been identified as the child’s parent by the child’s other parent in a written sworn statement. The LDSS must report the results of its efforts to locate any putative father to the court and parties, including the attorney for the child.

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<sup>1</sup> The Family Court Act defines “Respondent” in the following manner: “includes any parent or other person legally responsible for a child’s care who is alleged to have abused or neglected such child.” Therefore, a non-respondent parent is a parent who is *not* alleged to have abused or neglected his or her child.

The court must check New York's Sex Offender Registry, the registry of orders of protection, and previous Article 10 filings regarding any person who seeks to have the child under any FCA §1017 placement.

The court can order the LDSS to immediately begin an investigation of the home of a non-respondent parent to whom a child has been temporarily released or of a relative or suitable person with whom a child has been temporarily placed (described in more detail below in section IV).

3. Amendments to FCA §§ 651, 1017, 1052, and 1055-b now allow, but do not require, Family Courts conducting FCA Article 10 or 10-A hearings to jointly hear certain pending matters brought under FCA Article 6, as well as custody and visitation proceedings for a child of a marriage brought under DRL §240(1)(a) provided that if a motion is filed under section 240 of the DRL, the Supreme Court must refer the matter to the Family Court in order for the Family Court to jointly hear it. The Family Court must determine any such pending matter according to the rules of FCA Article 6 or DRL §240, as applicable.
4. Chapter 567 uses a new term, "release," to replace the term "custody and care," when referring to the temporary placement of a child during pendency of an FCA Article 10 hearing with a non-respondent parent, respondent parent, or legal custodian or guardian. While the law does not define this term, it appears to have the same meaning as placement, while inferring the unique relationship between a child and a parent, custodian or guardian.
5. Amendments to FCA §§1022-a and 1035 now require that
  - a. at an FCA §1022 hearing, the court must inform a non-respondent parent of the allegations against the respondent(s).
  - b. the court must inform non-respondent parents as well as respondent parents of their eligibility for appointed counsel under section 262.
  - c. the notice of the pendency of a child protective proceeding provided by the LDSS must now advise the parent or parents, *including* non-respondent parents, of their right to counsel, including assigned counsel.
6. When a court temporarily releases a child to a non-respondent parent or places a child with a relative or suitable person pursuant to FCA §1017, the court may no longer place the person under supervision. However, the non-respondent parent, relative or suitable person must consent to submit to the jurisdiction of the court with respect to the child. A court order will specify the terms and conditions of the release or placement that are applicable to the person who will be caring for the child and to the LDSS, and any other social services agency, with respect to the child. The statute expressly authorizes the court to issue an order directing such parties to take various actions, including, but not limited to, ordering that they "cooperate in making the child available for court-ordered visitation with respondents, siblings and others and for appointments with and visits by the child protective agency, including visits in the home and in-person contact with the child protective agency, social services official or duly authorized agency, and for appointments with the child's attorney, clinician or other individual or program providing services to the child during the pendency of the proceeding."

#### 7. Orders of Release

Amendments to several sections of Article 10 change some of the court's **options available at disposition** with respect to the release or custody or guardianship of children and the supervision of respondent parents. The following provisions now apply to orders of release:

- a. The court may release a child to non-respondents, including parents, legal custodians and guardians. However, the court may no longer release a child to a person legally responsible for the child who is not the child's parent or legal custodian or guardian.
  - b. The court may release a child to a respondent parent or place a respondent parent under supervision, or both.
  - c. All orders of release at disposition are limited in time to one year and may be extended for up to one additional year for good cause.
  - d. The court may not place a non-respondent person to whom the child is released under supervision. However, the court may order that any such person to whom the child is released must submit to the jurisdiction of the court with respect to the child, which may include requirements that the child be made available for visits with the respondent, siblings, and others, and for appointments and visits by the child protective agency or other social service agencies, the child's attorney, and clinicians.
  - e. In conjunction with the release of a child to a non-respondent, the court may also issue an order of supervision for a respondent parent, and/or may direct that the LDSS provide services to the respondent parent. Such orders are limited to a period of one year and may be extended once for up to one additional year for good cause.
  - f. When the court issues an order of release upon consent of the parties and the attorney for the child, the LDSS must submit a report to the court 60 days prior to the expiration of the order, unless otherwise ordered by the court. This is in addition to the previous requirement to submit a report no later than 90 days after the issuance of the order.
8. Custody and Visitation Petitions by Respondent and Non-Respondent Parents
- a. Non-respondent parents
    - (1) Non-respondent parents seeking custody or visitation must do so by filing an Article 6 petition. The Family Court conducting the Article 10 or 10-A proceeding may, but is not required to, hear the Article 6 petition jointly with the Article 10 or 10-A proceeding. If it does hear the Article 6 matter, the court must use Article 6 rules to decide on the petition.
    - (2) In cases where custody or visitation for a non-respondent parent would be decided under DRL §240, the Family Court could hear the proceeding jointly with the Article 10 or 10-A proceeding, but only if the Supreme Court referred the matter to the Family Court. The provisions of the DRL must be applied in making the determination.
  - b. Respondent parents
    - (1) Respondent parents may now petition for custody or visitation of a child who is subject to an Article 10 or 10-A proceeding, pursuant to Article 6 or DRL §240 during the pendency of the Article 10 or 10-A proceeding. The court conducting the Article 10 or 10-A proceeding may, but is not required to, hear the Article 6 petition jointly. If such court does hear the Article 6 matter, the court must use Article 6 rules to decide on the petition.
    - (2) In cases where custody or visitation for a respondent parent would be decided under DRL §240, the Family Court may, but is not required to, upon referral from the Supreme Court, hear the custody proceeding jointly with the Article 10 or 10-A proceeding. In such cases, the rules pursuant to DRL §240 apply.
    - (3) If a respondent parent has filed a custody petition and *any party other than a parent* objects, to grant the petition the court must find either that the objecting party has failed to establish extraordinary circumstances or, if the objecting party *has* established extraordinary circumstances, that granting custody to the petitioning respondent parent would nonetheless be in the child's best interests.

- (4) If a respondent parent has filed a petition and the *other parent objects*, to grant the petition the court must find only that granting custody to the petitioning respondent parent is in the child's best interests.

9. Custody, Guardianship, and Visitation by Relatives or Other Suitable Persons

This enacted legislation did not make any substantive changes to the law regarding the ability of relatives and suitable persons to seek visitation, custody, or guardianship of a child who is the subject of an Article 10 or 10-A proceeding during the pendency of such proceeding. However, if an Article 6 petition is filed by a relative or other suitable person seeking visitation, custody or guardianship of a child who is the subject of an Article 10 or 10-A proceeding during the pendency of such proceeding, the Family Court conducting the Article 10 or 10-A hearing may, but is not required to, hear the Article 6 petition jointly. If that court does hear the Article 6 matter, the court must use Article 6 rules to decide on the petition.

**IV. Required Action**

The following describes changes enacted by Chapter 567 that affect the responsibilities and activities of LDSSs and/or authorized voluntary agencies.

1. Locating Potential Placement Resources for Children Removed From Their Homes

- a. When an LDSS searches to locate potential placement resources for a child removed from the home pursuant to FCA §1017, the LDSS must now attempt to locate
  - (i) *all* relatives of the child identified by all respondent and non-respondent parents (previously limited to *suitable* relatives identified by the listed parties) and any relative identified by a child over the age of 5 as playing or having played a significant role in their life, and
  - (ii) all suitable persons identified as such by any of the child's respondent and non-respondent parents (suitable person being defined as "any person who plays or has played a significant positive role in the child's life or in the life of the family").
- b. The LDSS must also try to locate any person who is not recognized as a legal parent and does not have the rights of a legal parent under the laws of New York State but who has filed an instrument with the Putative Father Registry acknowledging paternity for the child pursuant to section 4-1.2 of the Estates, Powers and Trusts Law; or has a pending paternity petition for the child; or has been identified as a parent of the child by the child's other parent in a written sworn statement. The LDSS must report the results of its efforts to locate any putative father to the court and the parties, including the attorney for the child.
- c. The LDSS must provide the report of the results of its efforts to locate non-respondent parents, relatives and suitable persons to the court and to the parties involved, including the attorney for the child.
- d. As part of thorough record-keeping, the LDSS must document its efforts to locate potential placement resources and the results of its efforts in the CONNECTIONS case record.

2. Notifications

- a. The LDSS must provide written notice to all non-respondent parents, relatives, and suitable persons located as potential resources for the child about the pendency of the Article 10 hearing.

These notices will be determined by the Uniform Rules of the Court (see <http://www.nycourts.gov/forms/familycourt/>) and, at minimum, must inform

- (i) non-respondent parents of the opportunity to seek the temporary release of the child under Article 10 or custody under Article 6; and
- (ii) relatives and suitable persons of the opportunity to seek to become foster parents or to provide free care under Article 10, or to seek custody (relatives) or guardianship (suitable persons) under Article 6.

### 3. Investigations Ordered by the Court

- a. When a court temporarily releases or temporarily places a child with a non-respondent parent or with a relative or suitable person, the court may require the LDSS to begin an investigation of such person's home within 24 hours. The LDSS must report the results of the investigation to the court and the parties, including the attorney for the child. If the LDSS finds the home to be inadequate for the temporary release or placement, its report must include the reasons for that finding.
- b. There is a similar requirement regarding the LDSS's report made following its investigation of a home when the court remands or places a child with the LDSS and directs the LDSS to have the child reside with a relative or suitable person. If the LDSS finds the home to be unqualified, and therefore cannot approve the person as a foster parent, the LDSS must report the *reasons* for its finding to the court and to the parties, including the attorney for the child.

### 4. Court-Ordered Supervision and Court-Ordered Services

- a. In an Article 10 proceeding, a Family Court may no longer place a non-respondent parent under court-ordered supervision. However, the court may still issue orders requiring a non-respondent person to whom it releases, places, or remands a child to cooperate in making the child available for court-ordered visitation with respondents, siblings, and others, and for appointments with the child protective agency, including for in-person and in-home visits, and appointments with the child's attorney, clinical, or other individual or program providing services to the child. This enacted legislation did not change the provisions in FCA §1015-a that preclude the court from issuing an order requiring that any service or assistance be provided to the child and their family that is not authorized or required to be made available pursuant to the comprehensive annual services program plan then in effect.
- b. If a court releases a child to a non-respondent parent, custodian, or guardian, either before or at disposition, and the court issues an order placing the *respondent* parent under the supervision of the child protective agency, the LDSS must adhere to any such order by providing the supervision and any services the court requires. Please see section V.2 of this document for information on how to address this scenario in CONNECTIONS.
- c. The court may no longer place a person legally responsible for a subject child who is not the subject child's legal custodian or guardian under court-ordered supervision.

### 5. Reporting for Certain Orders of Disposition Issued Upon Consent

When a court issues an order of disposition releasing a child to a respondent parent, non-respondent parent, legal custodian, or guardian upon the consent of the parties and the child's attorney, or when it issues an order of supervision upon the consent of the parties and the child's attorney, the LDSS must provide a progress report to the court, the parties, and the child's attorney no later than 60 days prior to the expiration of the order, unless the court determines that the report

is not necessary. This report is in addition to the existing requirement to report to the court within 90 days of the issuance of the order.

## V. Systems Implications

If LDSS staff need assistance or have questions regarding how to properly document in CONNECTIONS court-order information or any other information that results from this enacted legislation, they are urged to reach out to their OCFS regional office's CONNECTIONS implementation team. Contact information for these teams is at:

<http://ocfs.ny.gov/connect/contact.asp>.

OCFS offers the following guidance to CONNECTIONS users regarding the documentation of information resulting from this enacted legislation, which should be implemented immediately:

1. Whenever the disposition of a case is to release a child to a non-respondent parent, the disposition must be recorded in CONNECTIONS as "Return to Non-Respondent Parent" (code 46A) and must not be recorded as "Return child to parent" (code 46) or "Return child to a relative" (code 48). This must be done irrespective of the role that the non-respondent parent played in the child's life before the Article 10 proceeding. In all instances, a non-respondent parent is to be identified as a non-respondent parent.
2. If, at the conclusion of an Article 10 or 10-A proceeding, a court orders that the child or children live with someone other than the respondent parent and also places the respondent parent under supervision, LDSS staff should close the Family Services Stage (FSS) and open a Family Services Intake (FSI), coding it as a COI (Court-Ordered Investigation). This will allow the LDSS to document progress notes on its supervision of that parent while eliminating the need for it to complete any Family Assessment and Service Plans and will facilitate reimbursement for services for the parent.
3. It is important that LDSSs use appropriate staff to read each court order in order to interpret the information correctly before entering the information into CONNECTIONS. Each case and each judge is different, and the orders are sometimes complicated. Furthermore, following the enactment of Chapter 567, some court orders issued at child protective proceedings may differ from those that were issued previously. Documenting court dispositions in CONNECTIONS correctly will help facilitate appropriate reimbursement for LDSSs.

If OCFS makes changes to CONNECTIONS to address the changes enacted by Chapter 567, including adding or changing codes, OCFS will inform field workers of such changes through the *CONNECTIONS Technical Bulletin*.

## VI. Additional Information

OCA has revised several forms and notices used by LDSSs in conjunction with the court proceedings that follow the removal of a child from their home so that the documents comport with the provisions of the new law. LDSSs can access these forms on OCA's website: <http://www.nycourts.gov/forms/familycourt/>.

If an LDSS uses any locally created documents for any of the purposes described in this release, the LDSS must make any changes that are necessary so that the information on the document comports with the provisions of Chapter 567.

The LDSS must document in the child's case record its efforts to search for placement resources as well as all other activities it conducts and any reports it creates pursuant to the requirements described in this release.

## VII. Contacts

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## VIII. Effective Date

The provisions of Chapter 567 went into effect on June 18, 2016. This ADM is effective immediately upon issuance.

*/s/ Thomas R. Brooks, Esq.*

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Issued by:

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