



Raising the Lower Age of Juvenile Delinquency Differential Response Frequently Asked Questions

Eligibility for the Differential Response Program

- Q.** What does the new legislation raising the lower age (RTLA) of juvenile delinquency refer to?
- A.** The Administrative Directive [22-OCFS-ADM-23](#) outlines key provisions of Chapter 810 of the laws of 2021 amended by Chapter 38 of the Laws of 2022. This law, as of December 29, 2022, raises the lower age of juvenile delinquency (JD) under the Family Court Act (FCA) from 7 to 12 years of age, with an exception for alleged homicide charges. In addition, the amendment raises the age for youth in secure detention from 10 to 13 years of age unless the youth is alleged to have committed a homicide offense.
- Q.** Are there any regulatory changes made based on the RTLA legislation?
- A.** Yes. New regulations were promulgated by the New York State Office of Children and Family Services ([Title 18 NYCRR Part 437](#)). The legislation and regulations require:
- an RTLA differential response (DR-RTLA) program for eligible children and their families;
 - the development of a DR-RTLA plan by each local department of social services (LDSS); and
 - the LDSS submission of the LDSS's DR-RTLA annual plan to OCFS for review and approval prior to initial implementation. The plan must also be submitted annually thereafter, as part of the OCFS's review and approval of the LDSS's child welfare services plan (county plan)
- Q.** Who is eligible to be served by the DR-RTLA program?
- A.** The DR-RTLA program is intended to serve children under 12 years of age who will no longer be included in the definition of a JD under the FCA, **and** whose behavior would otherwise bring them under the jurisdiction of the family court pursuant to Article 3 of the FCA, but for their age. The DR-RTLA program is only for these eligible children and their families.
- Q.** Where can I find additional resources about the RTLA legislation and local district requirements?
- A.** Information, including the OCFS policy, DR-RTLA points of contact and available forms can be found on the OCFS website linked here: [OCFS RTLA Resources](#)

Intake

- Q.** Who are the permitted referral sources to the DR-RTLA program?
- A.** The legislation did not limit the permitted referral sources to the DR-RTLA program.
- Q.** Is there a required referral form to be used for the DR-RTLA program?
- A.** OCFS has not mandated the use of a specific referral form, however, [OCFS-2210—Raising the Lower Age of Juvenile Delinquency Differential Response Referral Form](#), can be utilized by LDSSs with local stakeholders, including but not limited to law enforcement.

- Q.** Can LDSS utilize contracted agencies to operate the RTLA Differential Response program?
- A.** Yes, however, probation departments shall not provide the DR-RTLA program for children under 12 years of age on behalf of an LDSS.
- Q.** What if a child is not eligible for differential response services?
- A.** The program is required to provide the referral source with community-based interventions that may address the needs of the child and family, based on the available information at the time of the referral to the differential response program.

Differential Response Program is Voluntary

- Q.** What are the OCFS practice recommendations if a child and or their parent refuses services, and problematic behaviors continue or worsen with interventions in place?
- A.** Participation in the DR-RTLA is voluntary. The DR-RTLA program should explore with the child and family their assessment as to the contributing factors for continued behaviors. This could occur using interdisciplinary teams, family team meetings, dispute resolution centers, and restorative practices. If appropriate, the child may be eligible for PINS Diversion Services for additional supports and if all diversion efforts are exhausted, a PINS petition may be appropriate (FCA §735). If a family is refusing services, and there is a suspicion of child abuse or maltreatment, the New York State Central Register of Child Abuse and Maltreatment (SCR) must be contacted. If the SCR does not register the report, document that it was not registered.
- Q.** What happens if the parents agree to services and the child refuses to engage? What should LDSS do in this scenario?
- A.** In this circumstance, it would depend on what the assessment and agreed-upon needs and most appropriate interventions are. The DR-RTLA program will need to assess any safety concerns, and if the parent is agreeable to services/supports, link that family to such. The DR-RTLA program would then keep the DR-RTLA case open and follow up with providers as required until 90 days from the initial referral to the DR-RTLA program or until the child turns 12, whichever is sooner.

Assessment

- Q.** What are acceptable assessment tools to utilize during the DR-RTLA program intake process?
- A.** OCFS has not designated a list of acceptable assessments at this time. Any assessment that the LDSS uses must include an assessment of:
- the current safety of the child and concerns related to the child's behaviors that led to the DR-RTLA referral;
 - the strengths, concrete needs and challenges of the eligible child and family;
 - any individualized vulnerabilities and cultural considerations;
 - indicators of child sex trafficking via the [OCFS-3920](#), *Child Sex Trafficking Indicators Tool* and the [OCFS-3921](#), *Rapid Indicator Tool to Identify Children who May Be Sex Trafficking Victims or Are at Risk of Being a Sex Trafficking Victim*.

Examples of strength- based assessment tools that meet the above criteria include, but are not limited to the:

- Child and Adolescent Strength and Needs Assessment (CANS),
- The Child and Adolescent Service Intensity Instrument (CASII), and the
- Family-Led Assessment Guide (FLAG).

Support Plan Development

- Q.** Can information be disclosed to the Voluntary Agency (VA) that is providing services based on the child's placement in foster care regarding the child's referral and eligibility to the DR-RTLA program?
- A.** Information may only be disclosed to the VA if the VA meets the definition in [SSL 458-0 \(3\) \(c\) \(iii\)](#) of a community-based agency that contracts with LDSS to carry out activities for the LDSS under the DR-RTLA program. If that is the case, the LDSS can disclose information to the VA without a release of information. If this is not the case, then the VA will need to get a release of information from the eligible child's parent (this will be the most likely scenario).
- Q.** How will the DR-RTLA program work with existing service providers (e.g., a child placed in at a VA setting with an active services plan, based on the individual needs of the child and/or the needs of their parents)?
- A.** The local DR-RTLA program will become involved based on the child's behaviors that would otherwise bring them under the jurisdiction of the family court pursuant to Article 3 of the FCA, but for their age. With permission from the family, via a release of information, existing service providers would participate with the family in the assessment and support plan development to ensure continuity of care, alignment of goals and avoidance of duplicative intervention. This may also include a need to update the current service plan of the open child welfare case to align services, supports and resources for the family.
- Q.** Can you describe what family support services would look like?
- A.** Under [FCA §458-m](#), programs designated as Family Support Services (FSS) are established to provide services to children and families with the goal of: 1) preventing a child from being adjudicated as a person in need of supervision and help prevent out-of-home placements of such youth, 2) preventing a petition from being filed under Article 7 of the Family Court Act (FCA), or 3) reducing future interaction with the juvenile justice and/or child welfare system for children under 12 years of age who do not fall under the definition of a JD and whose behavior would otherwise bring them within the jurisdiction of the family court under Article 3 of the FCA. These programs shall provide comprehensive services to such children and their families, either directly, or through referrals with partner agencies, including but not limited to:
- Rapid family assessments and screenings
 - Crisis intervention
 - Family mediation and skills building
 - Mental and behavioral health services including cognitive interventions
 - Case management
 - Respite services
 - Educational advocacy; and
 - Other family support services.
- The services shall be trauma-responsive, family focused, gender-responsive, and evidence based or informed, and strengths based and shall be tailored to the individualized needs of the child and family, based on the assessments and screenings conducted by the FSS program. The programs must have capacity to serve families outside of regular business hours, including evenings and weekends.

Successful Intervention Engagement

Q. What is meant by successful intervention engagement?

A. Successful intervention engagement means the DR-RTLA program is supporting and guiding the family to promote successful connection to interventions. Upon collective plan agreement, the DR-RTLA program will contact the agreed upon providers and strategize how to ensure the family is supported and communicated with during this critical transition time.

Q. What are some examples of strategies to support successful intervention engagement?

A. Examples of strategies to support successful intervention engagement include:

family team meetings, other family-led forums, and offering peer supports. For more information about Family led engagement strategies please visit:

<https://www.aecf.org/resources/four-approaches-to-family-team-meetings>

<https://www.childwelfare.gov/topics/famcentered/decisions/>

Assessment of Child's Progress

Q. How will the DR-RTLA program assess the child's progress?

A. The DR-RTLA program will assess progress by obtaining all evaluations and assessments of the child's progress, as permitted by the family with the use of release of information forms and reviewing to collectively determine if there is a need for further supports to the child and family. This contact should take place on or about thirty days from the support plan development and then again within seven days prior to the anticipated DR-RTLA case completion.

Q. What if the DR-RTLA-eligible child and family want to continue with interventions beyond the DR-RTLA case completion time frame?

A. The family and child can continue with those interventions; the DR-RTLA case completion has no impact on their continued participation in community-based services and supports. It is only the DR-RTLA case that needs to close within the completion timeframe.

Q. What happens to the differential response case if the family moves to a new county 30 days from the initial referral to the DR-RTLA program?

A. The DR-RTLA should have a conversation with the family if they would like to engage with the DR-RTLA program and interventions in the new county, and if they are agreeable, assist them in connecting to the DR-RTLA program in the new county. **Participation in the DR-RTLA continues to be voluntary and with permission of the family and a release of information the case activity completed can be shared with the new DR-RTLA program.** If there are safety concerns, the DR-RTLA program would need to act on those immediately in accordance with existing policy, regulations, and law.

DR-RTLA Case Documentation

Q. What case documentation is required for the DR-RTLA program case records?

A. The information maintained in the DR-RTLA case record must be maintain locally and shall not be entered into any New York State electronic system. The DR-RTLA case file must contain, but is not limited to, the following:

- the referral and intake information that support the child's eligibility for the DR-RTLA program
- Assessment documentation
- Services offered to the child and family

- Services declined and/or accepted by the child and family
- The support plan agreed upon with the child and family
- Documentation of the successful connections to appropriate interventions and any referrals to supports that were unsuccessful and the barriers preventing a successful outcome
- Documentation of any team meetings with the family, child, and providers
- Documentation of all evaluations and assessments by providers of the child's progress in interventions, as permitted by the family, while the DR-RTLA is active
- Documentation of any family decision to not provide consent to contact providers
- Documentation of contact with the family, child, and providers on or about 30 days after the support plan development and within 7 days prior to the anticipated DR-RTLA case completion to assess the child's progress and collectively determine if there is a need for any further supports to the child and family
- Documentation of the completion of the DR-RTLA case

DR-RTLA Case Completion

- Q.** If more than one referral is received by the DR-RTLA program within 90 days from the initial referral to the DR-RTLA program and the child has not turned 12, does the 90-day time frame start again with the second referral date to the DR-RTLA program?
- A.** If the referrals to the DR-RTLA program are regarding the same incident, the 90-day timeframe would be based on the initial DR-RTLA referral and would not restart. If the referrals to the DR-RTLA are regarding separate incidents, the 90-day timeframe would restart based on the most recent referral received to the DR-RTLA program.
- Q.** When the DR-RTLA case closes, do the interventions that the child and family have been connected to also need to end?
- A.** No. The DR-RTLA case completion has no impact on the child and family's continued participation in community-based interventions, including but not limited to child welfare preventive services to eligible families. Continuation in those interventions should be based solely on the needs and goals of the child and family.

Differential Record Retention

- Q.** What are the record retention and confidentiality requirements for each DR-RTLA- eligible case file?
- A.** Records created under the districts DR-RTLA program shall be maintained locally and individualized for each eligible child served by the DR-RTLA program. Each DR-RTLA case record will be maintained for five years after an eligible child has been referred to the DR-RTLA program or until the child turns the age of 12, whichever is sooner. The district shall destroy the DR-RTLA program records when they reach the records retention benchmark. DR-RTLA records are to be kept confidential and shall not be disclosed except as set forth in section 458-o(3)(c) of the Social Services Law.
- Q.** Does LDSS need to keep records of DR-RTLA program referrals for non- eligible children?
- A.** OCFS has developed a spreadsheet for each LDSS to keep track of all referrals to the DR-RTLA program for children who reside within the county, including any non-eligible children. For any child determined to be ineligible to for the DR-RTLA program, the DR-RTLA program will provide the child and family with information about community supports that will best meet the needs of the

child based on the presenting information. The legislation and adopted regulations do not require the retention of records for children ineligible for the DR-RTLA.

Funding

Q. What funding will be available for the DR-RTLA program?

A. The Supervision and Treatment Service to Juveniles Program (STSJP) funding can be utilized to support the required activities of the DR-RTLA program. DR-RTLA eligible children can also be referred to STSJP-funded interventions such as FSS programs if eligible and available in your locality, and child welfare preventive services if the child is eligible for such preventive services. See the OCFS website on STSJP for more information: [Supervision and Treatment Services for Juveniles Program | STSJP | OCFS \(ny.gov\)](#)

Additional Considerations

Persons Harmed

Q. What if the DR-RTLA program becomes aware of individuals harmed due to the behaviors of the DR-RTLA- eligible child?

A. The DR-RTLA program will inform the individual or family members of any child(ren) harmed that they can access services through the Office of Victim Services (OVS) with a law enforcement incident report. OVS has an on-line portal to assist those harmed in connecting to local resources: [NYS OVS Victim Services Portal](#). The DR-RTLA program can connect person(s) harmed to any additional services or supports they are aware of in the local community.

Q. Can the DR-RTLA- eligible child's records or information be shared with persons harmed or service providers?

A. The DR-RTLA case record for the eligible child cannot be disclosed.

Q. What is the best practice if a child discloses details of an incident that happened in the recent past but the child who engaged in the harmful behavior is now 12 years old?

A. Although the 12-year-old child is no longer eligible for the DR-RTLA program, if the LDSS becomes aware of such situation, best practices would include assisting the family in engaging in appropriate services and supports. If there are known safety concerns, the LDSS must act on those immediately in accordance with existing policy, regulations and law.

Law Enforcement Training

Q. Has any guidance been released to local law enforcement?

A. OCFS has collaborated with the New York State Division of Criminal Justice Services (DCJS) Office of Public Safety (OPS) on the requirements and practice considerations of the raising the lower age of juvenile delinquency legislation. The OPS has shared the [OCFS-2210, Raising the Lower Age of Juvenile Delinquency Differential Response Referral Form](#) with law enforcement agencies to support connecting an eligible child and their family to the local DR-RTLA program. The training set forth in section 840 of the Executive Law for police officers – whose main responsibilities are juveniles – provides instruction, among other areas, on the differential response program. It includes the definition of the program's eligible population and best practices by law enforcement that involve the collaboration with LDSSs for children under the age of 12 who are eligible for the LDSS differential response program. This training is being developed and will be released to law

enforcement by the New York State Division of Criminal Justice Services.

Documentation in open child welfare services

- Q.** What information regarding the DR-RTLA-eligible child and family can be documented in open child welfare services case records?
- A.** With appropriately signed releases from the family, any information needed for the continuity of services and on-going support of the family can be documented. This may include but is not limited to, the behaviors of the child that led to the referral to the DR-RTLA program, assessment completed by the DR-RTLA program, and agreed upon interventions to support the family and child.

Pending JD Petitions prior to December 29, 2022

- Q.** How should pending JD petitions filed prior to December 29, 2022, for DR-RTLA-eligible children, be handled?
- A.** LDSSs should consult with their legal counsel regarding JD petitions that are pending in family court and were not disposed of before the implementation date of RTLA (12/29/2022). Motions by the Attorney for the Child and/or the County Attorney's office may be used to request amendments or dismissals of those petitions with a referral to the DR-RTLA program.

System Implications

- Q.** What will LDSS need to do for legal Activities coding entered into Connections for JD petitions filed in Family Court prior to December 29, 2022, for DR-RTLA-eligible children?
- A.** As with any other JD petitions, the LDSS will complete the appropriate legal entries based on the findings and disposition in the court order. There are no new or unique codes for DR-RTLA eligible children.

Detention Impacts

- Q.** Are there any impacts to the locally administered Detention Programs?
- A.** For youth who fall under the juvenile delinquency definition of the FCA as of December 29, 2022, no youth under the age of 13 may be remanded to secure detention unless they are charged with a homicide offense. Please refer to the related policy [22-OCFS-ADM-14](#).
- Q.** Can a child aged 7 up to age 12 who is remanded to detention for a pending JD petition filed prior to December 29th, 2022, remain in detention during the pendency of their court case?
- A.** Any child 7 years old up to 12 years old who was remanded to a detention setting on a pending JD petition prior to December 29, 2022, can remain in that setting with a valid court order.