

FREQUENTLY ASKED QUESTIONS – NEW PINS LAW

TERMS USED

ACOD – Adjourned in Contemplation of Dismissal. Also referred to as an ACD.

APU – Annual Plan Update

CCRS – Child Care Review Service

COPS – Community Optional Preventive Services

County or counties – As used in the questions and answers, the term also includes New York City

CPS – Child Protective Services

CSE – Committee on Special Education

DPCA – New York State Division of Probation and Correctional Alternatives

FAQ's – Frequently Asked Questions

FASP – Family Assessment and Service Plan

FCA – Family Court Act

FFFS – Flexible Fund for Family Services

JD – Juvenile Delinquent

ICP – Integrated County Plan

Ldss – Local department of social services. May also appear as LDSS, DSS or Idss.

LEA – Local Educational Agency

MOU – Memorandum of Understanding

MST – Multi-Systemic Therapy

NYCRR – New York Code, Rules and Regulations

OCA – New York State Office of Court Administration

OCFS – New York State Office of Children and Family Services

OMH – New York State Office of Mental Health

OMRDD – New York State Office of Mental Retardation and Developmental Disabilities

Parent – As used in the questions and answers, the term also includes guardians and other persons with legal custody of children

PINS – Person in Need of Supervision

Police Officer – As used in the questions and answers, the term also includes peace officers

RHYA – Runaway and Homeless Youth Act

SCR – Statewide Central Register of Child Abuse and Maltreatment

SSL – Social Services Law

TILSP – Transitional Independent Living Support Program

24/7 – Twenty four hours a day, seven days a week

UCR – Uniform Case Record

VIFH - Voluntary Interim Family Home. Also referred to as "interim family home" or "interim family"

YASI - Youth Assessment and Screening Instrument

A. EFFECTIVE DATE

- 1) Are the requirements of Chapter 57 of the Laws of 2005 applicable to PINS cases that were initiated prior to the April 1, 2005 effective date?

The provisions of Chapter 57 apply to cases opened for diversion services prior to April 1, 2005 and to pending PINS cases filed with the court. For cases for which a petition has not been filed, the new diversion and documentation requirements apply. For cases where a PINS petition has been filed, the court should review the petition based upon the new requirements for exhaustion of diversion. The limitations on remand to detention also apply. There are no ex post facto issues, as the new law increases services and benefits to youth.

- 2) What do you recommend that the lead agency do with petitions filed in April, filed in good faith, by petitioners who did not have knowledge of the new law, that do not include the necessary new prerequisites (example: parent petitions without diversion; police petitions involving marijuana without diversion; and school petitions without necessary documentation)?

The petitions should be referred back for diversion or for the necessary documentation to be submitted.

- 3) What happens to youngsters who are in non-secure detention for over 30 days?

Section 19 of the new PINS diversion law amends Section 398(3)(c) of the SSL to reduce the period of time that an adjudicated PINS may be held in detention from 30 to 15 days (leaving New York City with its pre-existing 15 day standard); to restrict extensions

Statewide to 15 days; and to further restrict extensions to situations where written documentation is provided to OCFS that the youth is in need of specialized treatment or placement and the Idss has made diligent efforts to locate an appropriate placement.

As of 4/1/05, any requests received for extensions of post dispositional detention remands while a foster care placement is found may be approved only for a 15 day period and may only be approved if the Idss has provided written documentation to OCFS that (1) the youth is in need of specialized treatment or placement and (2) the Idss has made diligent efforts to locate an appropriate placement. If that showing is made, an extension of 15 days may be approved.

If a youth remains in detention for more than 30 days post disposition awaiting placement, there will be no state reimbursement for that portion of the detention stay that is over 30 days.

4) Will the new law affect existing PINS cases?

For PINS petitions referred for adjustment (now diversion) services prior to 4/01/05, there is no time cut off for diversion services. Diversion services must continue until there is a determination made that there is no substantial likelihood that the youth and his or her family will continue to benefit from diversion services. If a petition is filed, it must have appended the documentation required under the new law.

For petitions pending before the court as of 4/01/05, the new criteria for a detention remand applies. The court may order additional diversion services be provided.

For youth remanded to detention awaiting placement, the 15-day limitation and requirements regarding extensions also will apply.

B. PLANNING

1) What will OCFS and DPCA require in the Annual Plan Update to the Multi-Year Consolidated Services Plan and the County Comprehensive Plan?

All counties will now be required to include PINS diversion in their required county plan (Consolidated Services Plan or Integrated County Plan) for OCFS. All counties are required to submit a county Annual Plan Update (APU). As part of that APU, each county must develop and submit a Memorandum Of Understanding (MOU) for Cooperative Diversion Procedures Between Probation Department and Local Social Services District as part of that update. This MOU is due July 1, 2005. The full APU is due September 1, 2005.

2) With changes made to the ICP requirement, is there any possibility of getting an extension?

There will be no requests for extension to the MOU due July 1, 2005. Requests for extension to the submission of the APU on September 1, will be considered if based on extenuating circumstances.

- 3) What is the status of PINS adjustment plans approved under Executive Law §243-a – which is now repealed?

PINS adjustment plans are superseded by the PINS diversion services requirements of Chapter 57 of the Laws of 2005. To the extent that elements of a PINS adjustment plan are consistent with Chapter 57 of the Laws of 2005, those elements may be included in the Annual Plan Update that is due on 9/1/05.

- 4) Is there a standard format to designate a lead agency?

The county must document the designation of lead agency in the Memorandum of Understanding between the Idss and probation department that must be submitted by 7/1/05 as part of its consolidated services or integrated county plan update. Please note that only the memorandum of understanding is due 7/1/05. The rest of the plan update is not due until 9/1/05.

C. DESIGNATED LEAD AGENCIES

- 1) Do OCFS or DPCA have a recommendation whether probation or the Idss should be the designated lead agency?

No. It is expected that each locality will make that decision based upon their individual circumstances.

- 2) Can there be more than one lead agency?

No.

- 3) Although a county may only designate one lead agency, can the designated lead agency delegate some of the responsibilities under this law to be performed by an agency that was not designated as the lead?

Yes, the designated lead agency may enter into an agreement with another agency or provider to provide diversion and/or crisis intervention services.

- 4) Must the lead agency always file the PINS petition?

It is expected that the lead agency will collaboratively determine the appropriate procedure, including responsibility for preparation of the PINS petition, based upon local resources and practice.

- 5) Does the court or the designated lead agency determine whether there is “no substantial likelihood of benefit” from further diversion services?

The designated lead agency will make the initial determination that there is no substantial likelihood that the youth and his or her family will benefit from further diversion, subject to review by the court upon the filing of a PINS petition. The PINS petition must include documentation of diversion efforts and the basis for the determination that there is no substantial likelihood that the youth and his or her family will benefit from further diversion

services. The court may order additional diversion services or order the parents or youth to cooperate where lack of cooperation has been a barrier to diversion.

- 6) Once the youth is referred, how quickly must the designated lead agency meet with the potential respondent and his or her family?

Each county must determine its process and document it in the annual plan update, subject to review by OCFS and DPCA. Reasonable time constraints designed to be responsive to youth and their families may be employed. However, immediate access to crisis intervention services and respite must be available.

- 7) Will the county be able to change the designated lead agency, if it desires to do so?

Yes, the designated lead agency may be changed as part of an amendment to the county's plan or in the Annual Plan Update.

- 8) Is the designated lead agency expected to be available 24 hours a day, 7 days a week?

Yes, similar to the 24/7 coverage provided by detention administering agencies and runaway and homeless youth coordinators. Each county's PINS diversion plan should address how this will be accomplished.

- 9) If local probation and Idss currently have amicable working relationships and equally share "lead agency" duties in a former "735 County," is there any reason why this collaborative arrangement, with both agencies sharing lead agency duties, could not continue under the new law?

No, there is no reason that this could not continue. However, under the new law, either probation or the Idss must be designated the lead agency and the division of required activities must be outlined in the plan to be submitted September 1, 2005.

- 10) In New York City, who refers a youth to respite services?

As in any other jurisdiction, New York City must designate a lead agency for diversion services.

D. DIVERSION SERVICES

- 1) How does the parent determine whom to contact for assistance to begin the PINS diversion process?

The county must determine collaborative procedures to provide the easiest access to diversion for families, including immediate crisis intervention where necessary. One of the areas that must be included in the MOU is an explanation of how the lead agency has and will inform the public and stakeholders of the county procedures.

- 2) What is meant by crisis intervention?

Crisis intervention means immediate services, as appropriate, to avert an impairment or disruption of the family. Crisis intervention services may and should be provided in conjunction with residential respite, if appropriate.

- 3) Prior to 4/1/05, parents were told they have to wait up to three months to file a petition. Will this change?

Yes. Parents cannot file a petition until the lead agency determines there is no substantial likelihood that the youth and the family will benefit from diversion services. Under the new law, there are no artificial time frames imposed.

- 4) If a parent, the school, and a neighbor file PINS petitions regarding the same youth, would initial attempt on one petition coupled with new filings be sufficient to file a PINS petition without an attempt to provide diversion based upon the other petitions?

A neighbor may not file a PINS petition unless the neighbor has witnessed or suffered injury as a result of the alleged PINS behavior. If a multiple parties attempt to file PINS petitions simultaneously or while a youth and his or her family are already engaged in diversion services, there must be an assessment of the issues in all petitions and appropriate services necessary to work with the youth, family and school district to ameliorate the issues that underlie the alleged PINS behavior of the youth. Regardless of the number of complaints received, a petition may not be filed until a determination is made that there is no substantial likelihood that the youth and his or her family will benefit from further diversion services. If subsequent complaints highlight new issues, those issues should be addressed through appropriate diversion services.

- 5) Is an eligibility determination still needed in order to provide diversion services?

All youth and their families are eligible for diversion services, if the youth is at risk of having a PINS petition filed.

- 6) If the Idss is the county's designated agency, when do preventive services cases have to be opened for services?

If the case is being opened as a mandated preventive services case, the regulations pertaining to mandated preventive services must be followed. A parent should be asked to sign an application for preventive services as soon as feasible. The date the application is signed would establish the case initiation date for preventive services.

Counties may currently have an approved or may apply with OCFS for approval of a Community Optional Preventive Services (COPS) plan to fund pre-petition detention services, except respite. Those counties using COPS will have to do a sufficient assessment to meet the needs of the youth and family and document their efforts, but may have Uniform Case Record (UCR) and Child Care Recording Service (CCRS) requirements waived through an application to the applicable OCFS Regional Office.

- 7) Is there any time limit or age limit on provision of diversion services?

Unlike adjustment services prior to 4-1-05, there is no 60 or 90 day cut off for diversion services. Diversion services may be provided until the case is successfully closed or until

the lead agency determines that there is no substantial likelihood that the youth and family will benefit from further services.

If diversion services are funded as a mandated or community optional preventive service, services cannot be funded for a youth past his or her 18th birthday. However, the lead agency may opt to continue to provide services using local funding sources.

- 8) Are all cases presented eligible for diversion?

If a youth is at risk of becoming the subject of a PINS petition, the youth is eligible for diversion services. However, if the youth is not available to participate because he or she has run away, the parent may file a PINS petition seeking a warrant. The lead agency would document that there is no substantial likelihood that the youth will benefit from diversion services because the youth is not available to participate. Once the youth is returned on the warrant, the case should be referred back for diversion by the court.

- 9) Will DPCA or OCFS provide criteria to help determine when a diversion case should be closed?

While no specific criteria have been issued at this time, to promote consistency across the State, OCFS and DPCA recommend that the lead agency, on a case by case basis, review whether: (1) diversion services have included an assessment of risk, needs, and strengths; (2) the agencies involved have worked to engage the youth and family in the provision of services to reduce the risks and meet the needs; and (3) there is no substantial likelihood that the youth and his or her family will benefit from continuation of such services or additional services.

- 10) How many diversion services must be put in place before filing a PINS and who measures the services or lack of success of such services?

The lead agency must review whether the diversion services provided have addressed the youth and family's identified risks and needs and determine whether additional services are available to meet the identified needs. If the lead agency determines there is no substantial likelihood that the youth and his or her family will benefit from further diversion attempts and the PINS petition is filed, the court serves as the check and balance and must review the documentation provided. If the court determines that the efforts or services provided to the youth were insufficient, the court may order additional diversion attempts.

- 11) If a potential respondent (youth) refuses to participate in diversion services, is that a basis for immediate petition?

No. The lead agency must make and document good faith diligent efforts to provide diversion services and prevent the filing of a petition. Alternative approaches should be used with the youth to attempt to engage him or her in the diversion process.

- 12) If the youth refuses to come to the office of the lead agency to begin the diversion process, may a petition be filed?

No. The lead agency must make and document good faith diligent efforts to provide diversion services and prevent the filing of a petition. An alternative would be to approach

the youth at school or home. A number of counties have instituted this approach with success.

- 13) Does the 24/7 access refer to a parent's ability to begin the diversion process?

Yes, immediate access must be provided to crisis intervention.

- 14) Does the 24/7 access apply to 24/7 access once diversion services are put into place?

Crisis intervention should be available at the initiation of contact with a youth or family and after initiation of the diversion process.

- 15) In relation to 24 hour crisis intervention accessibility, Multi-systemic Therapy (MST) provides 24/7 response. Would that meet the statutory requirement and could the lead agency enter into an agreement with the MST provider to meet the 24/7 requirement?

Yes.

- 16) Can diversion services be provided after a case has been sent to court for petition?

Yes, FCA §735 (f) specifically provides that efforts at diversion may continue after the filing of a petition where the lead agency determines that the youth and his or her family will benefit from further attempts to prevent the youth from entering foster care.

- 17) Once the youth is referred, how quickly must the designated lead agency meet with the potential respondent and his or her family?

Each county must determine its process. Reasonable time constraints designed to be responsive to youth and their families should be employed. However, immediate access to crisis intervention services must be provided. Immediate access to respite must also be provided where warranted.

- 18) Is it sufficient for the lead agency to conclude diversion services when the youth has run away and his or her whereabouts are unknown? Should this circumstance allow the complainant parent immediate access to the court to file a PINS petition seeking a warrant?

If the youth is not available to participate in diversion because he or she has run away, the parent may file a petition seeking a warrant. The lead agency would document that there is no substantial likelihood that the youth will benefit from diversion services because the youth is not available to participate. Once the youth is returned on the warrant, the case should be referred back for diversion by the court.

- 19) Does the lead agency handle all PINS cases returned for diversion services from the court?

Yes, the lead agency is responsible to provide additional diversion services to PINS youth and their families when a PINS case is returned from court for further diversion services.

- 20) Does the requirement that the designated lead agency schedule and hold, on reasonable notice, at least one conference with the youth and his/her family and the person or

representative of the entity seeking to file a PINS petition mean that all parties: the youth, family and representative of the entity seeking to file a PINS petition MUST attend the conference at the same time?

The appropriate procedure to be used in each case must be determined on a case-by-case basis, based upon the youth and family's presenting circumstances.

- 21) If, after reasonable notice, the representative of the entity seeking to file the PINS petition fails to appear for the scheduled conference, can the case be closed?

The lead agency should ascertain whether the person or entity received the notice and whether they intend to proceed with the diversion process. However, although the entity indicates they do not intend to proceed, if work with the youth has identified issues that make the youth at risk of having a PINS petition filed, the family could be referred for preventive services.

- 22) Are there exceptions whereby cases may be deemed not suitable (i.e., previous attempts at adjustment; assaultive behavior at home)?

No, there are no statutory exceptions. For each PINS case, an assessment and determination must be made that there is no substantial likelihood that the youth and his or her family will benefit from diversion services before a petition may be filed. If the allegations would constitute juvenile delinquency, then a juvenile delinquency petition may be pursued.

- 23) When you have a 16 or 17 year old who has previously run the gamut of services for PINS (Diversion, ACOD, Probation, OMH placement and DSS placement) and a new PINS complaint is filed within months of the youth's return from placement back to parents, and the allegations are a continuation of the previous case that resulted in placement only now the youth is older, more defiant and uncooperative, does the county have to start from scratch and offer PINS Diversion services just as they would for a first time entry into the system?

Yes. There may be different issues presenting and different services may be appropriate and available to work with the youth and his or her family in the community and avert another out of home placement. For each PINS case, an assessment and determination must be made that there is no substantial likelihood that the youth and his or her family will benefit from diversion services before a petition may be filed.

- 24) There appears to be no time limit on the provision of PINS services. Is that the intent of the law?

Yes. The law is intended to provide greater flexibility to jurisdictions in working with youth and their families to maximize diversion efforts.

- 25) Are extensions still required from the court for diversion cases?

No. There is no longer a need to make a formal request to the court for an extension of the provision of diversion services. Unlike adjustment services prior to 4-1-05, there is no initial 60 or 90 day cut off for diversion services, nor a 60 or 90 day court extension necessitated.

- 26) Does this mean that a diversion case can be open indefinitely? What if a youth is on diversion for a year or longer?

Diversion services may be provided until the case is successfully closed or until the lead agency determines that there is no substantial likelihood that the youth and family will benefit from further services. If diversion services are funded as a mandated or community optional preventive service, services cannot be funded for a youth past his or her 18th birthday. However, the lead agency may opt to continue to provide services using local funding sources.

- 27) Prior to 4/01/05, under the old PINS FCA §735, there was a required time frame for completing the initial assessment. Will there be a similar requirement under the new law?

Presently, specific timeframes have not been established, and should be addressed in your jurisdiction's comprehensive plan.

- 28) When a parent/school ultimately files a petition in court, will allegations from the entire time the case was open in addition to the incidents that lead to the diversion referral in the first place be required?

If the initial referring behavior has not been ameliorated through the diversion services provided, those allegations should be included. If additional PINS type behavior has also been alleged, that should also be included. In addition, there must be documentation provided regarding the diversion services provided and the basis for the determination that there is no substantial likelihood that the youth and family will benefit from further services.

- 29) What is viewed as diligent efforts? Is there a base line to determine "diligent efforts" by the school, by preventive, by diversion?

It is expected that each jurisdiction will work collaboratively to determine acceptable diligent efforts, taking into account the available community and cross-systems resources and the needs of youth. In addition, the court will provide the "check and balance" in its review of the diligent efforts documentation.

- 30) For diversion cases opened prior to the youth's 18th birthday, how long after the youth turns 18 can diversion services be offered?

With respect to diversion services provided by either a probation or local social services department lead agency, diversion may continue beyond the youth's 18th birthday with the consent of the youth and his or her parent. If diversion services are funded as a mandated or community optional preventive service, services cannot be funded for a youth past his or her 18th birthday unless there is a minor youth involved in the home, or the PINS youth is pregnant. However, the lead agency may opt to continue to provide services using local funding sources.

A PINS petition may not be filed with the court after the youth's 18th birthday if diversion services are unsuccessful.

- 31) Can a criminal proceeding against a youth aged 16 – 17 be adjourned in contemplation of dismissal (ACOD OR ACD) with a requirement that the underlying allegations be sent to

family court as a PINS, with a requirement that the underlying allegations be sent to the lead agency for diversion?

No. There is no statutory authority in the Criminal Procedure Law for an ACOD of a criminal proceeding and transfer of the matter to Family Court as a PINS.

- 32) Please clarify the instances where it may be appropriate to continue with interim diversion services after a PINS petition has been filed?

A determination must be made on a case-by-case basis by the lead agency where there has been no change or an escalation in the underlying PINS behavior and it appears there is no substantial likelihood that the youth and his or her family will benefit from further diversion services whether court intervention is warranted. Where court intervention is warranted and a PINS petition is filed, the determination will have to be made whether services such as substance abuse interventions or other services that appear to be working, should continue, despite the need to bring the matter to court. In addition, where a youth is cooperating and a petition must be filed to achieve parent participation, it is appropriate to continue services in which the youth is participating.

- 33) How much evidence is needed to support "substantial likelihood"? Is it similar to the standard of "beyond a reasonable doubt" or to "preponderance of evidence"?

A determination that there is no substantial likelihood that the youth and his or her family will benefit from further diversion services is not an evidentiary standard. The term refers to the probability that further or additional services will resolve the underlying issues. The lead agency must review whether the diversion services provided have addressed the youth and family's identified risks and needs and determine whether additional services are available to meet the identified needs. If the lead agency determines there is no substantial likelihood that the youth and his or her family will benefit from further diversion attempts and the PINS petition is filed, the court serves as the check and balance and must review the documentation provided. If the court determines that the efforts or services provided to the youth were insufficient, the court may order additional diversion attempts.

- 34) When the 'lead agency' refers a youth and his or her family to a diversion service or services, must the lead agency follow up on the referral?

The lead agency must document services and the basis for a determination that there is no substantial likelihood that the youth and his or her family will benefit from further diversion services if a PINS petition is ultimately filed. It is anticipated that the lead agency will follow up with the youth and family and monitor whether the services provided are appropriate and effective to be able to fulfill its statutory responsibility.

- 35) What are the requirements for the family court when a parent and youth appear before the court after the youth is picked up on a warrant issued by the family court for a runaway petition and diversion has not occurred?

The court must refer the youth and his or her family to the lead agency for diversion services.

- 36) What steps will be taken through OCFS and OCA to ensure that juvenile delinquents are not being pleaded down to PINS? This often happens in court and may preclude diversion if mixing PINS with JD's populations?

Article 3 of the Family Court Act still permits a JD to be pleaded down to a PINS Article 7 petition. This should generally be done where the JD youth is identified as someone who would be appropriate for PINS diversion. Since if pleaded down to a PINS, the youth is no longer a JD and the diversion services provided should be tailored to the youth and family's particular circumstances, there should not be issues with mixing of PINS and JD populations.

E. POLICE OFFICER CUSTODY

- 1) What is a police officer expected to do with a runaway youth on a night or weekend?

The police officer's first option is to return the youth home unless the officer determines it is unsafe to do so. If the officer determines it is unsafe or is unable to return the youth home and is able to contact the youth's parents and obtain their consent, the officer may bring the youth to a respite program. The officer may still bring the youth to a runaway program, where the parent does not consent to respite.

- 2) How will a police officer determine whether it is "unsafe" to return the youth home?

If the youth makes an allegation that he or she would be unsafe if returned home, such as sexual abuse or fear of physical abuse, the officer should not return the youth home.

- 3) Can a police officer bring a youth to the lead agency? Will the lead agency be required to locate respite/runaway placement for youth?

The county must collaboratively determine whom law enforcement will contact outside of normal business hours when necessary. The county should develop protocols for deciding who will be responsible for locating respite under various circumstances, such as during normal business hours and after hours.

- 4) The new law provides police with the option to release the youth to the custody of his or her parent upon the written promise that the parent will produce the youth before the lead agency at a time and place specified in writing. Does this mean that police must now provide written information to the parent as to the lead agency, and the time and place they must appear at the lead agency?

Yes. OCA has promulgated a form entitled "Recognizance to Produce Child" Form 7-1. This and other OCA forms developed in response to the new law are available on their website <http://www.nycourts.gov/forms/familycourt/index.shtml>

- 5) Under the new law where probation is not designated as the lead agency, can a police officer drop off a potential PINS runaway respondent at probation intake?

If probation is not designated the lead agency, a police officer may not drop off a potential PINS runaway at probation intake unless the lead agency has entered into an agreement with probation to provide this service.

- 6) Where a youth is taken into custody on a warrant, may the police officer bring the youth to either family court or detention?

Where a police officer takes a youth into custody on a warrant, during normal business hours, the police officer must bring the youth to court. When the court is not in session, the police officer may bring the youth to non-secure detention.

- 7) If the youth is a chronic runaway, does that qualify as a situation where it is unsafe to return a youth home?

The police officer must make a case-by-case determination of the underlying reasons for the youth's chronic runaway behavior. If the youth refuses to return home, the youth may be brought to a runaway shelter, if he or she agrees.

- 8) What criteria will police use to determine whether it is unsafe to return a youth home?

The police officer should use his or her experience, assessment of the home situation and allegations of the youth to determine whether it is safe to return a youth home.

- 9) If a police officer picks up a prospective PINS, under what circumstances can a warrant be issued?

A warrant would not be issued. OCA has promulgated a form entitled "Recognizance to Produce Child" Form 7-1. This and other OCA forms developed in response to the new law are available on their website <http://www.nycourts.gov/forms/familycourt/index.shtml>.

F. PARENTS

- 1) If a parent refuses to cooperate with diversion efforts will this trigger a report of neglect to the Statewide Central Register?

Although a report to the SCR may be appropriate in some cases, generally rather than making a report, the designated lead agency may file a PINS petition with documentation to the court that the parent refuses to cooperate with diversion services. The new law provides the court with enhanced ability to require a parent to cooperate with diversion.

- 2) What can the Family Court do about an uncooperative parent?

The court has the ability to order the parents to cooperate with additional diversion efforts where a PINS petition is filed due to the failure of diversion efforts because of lack of parental cooperation. If appropriate, the court could enforce its order by a contempt proceeding.

- 3) May a parent who refuses to cooperate with diversion efforts attempt to voluntarily place the youth by signing a voluntary placement agreement pursuant to Social Services Law §358-a?

The Idss must agree to any voluntary placement. In most cases, the appropriate direction to the parent would be a referral to the lead agency for diversion services. Generally, the

Idss should not accept custody of the youth where the parent has failed to cooperate with diversion efforts.

- 4) If a parent refuses to take a youth home from the court hearing because they will not tolerate the youth's behavior any longer or feel they cannot safely supervise the youth, and the youth will not cooperate with efforts to place him voluntarily in a respite program, will the youth be placed in DSS custody at that time?

Respite may not be ordered by a court. Respite is available pre-petition, if the youth and his or her parent consent. Once a petition is filed, the court may order a detention remand if the court finds that there is a substantial probability that the respondent will not appear in court on the return date and all available alternatives to detention have been exhausted. A youth may not be placed in the custody of the local DSS commissioner unless the court places the youth in the DSS commissioner's custody at disposition.

- 5) At what point could a local CPS be brought on board to collaboratively to address any parental neglect/irresponsibility that may lead to an unsafe/unsupervised home environment?

CPS will become involved if there is a report of alleged child abuse or maltreatment made to the SCR. However, while a report to the SCR may be appropriate in some cases, generally rather than making a report, the better course will be for the designated lead agency to seek to engage the family in diversion services. If the parents do not cooperate with diversion services, the lead agency may then file a PINS petition with documentation to the court that the parent refuses to cooperate with diversion services. The new law provides the court with enhanced ability to require a parent to cooperate with diversion and the lead agency may request in the petition that the court require parental cooperation.

- 6) If a custodial parent or legal guardian refuses to cooperate with diversion recommendations in a school PINS case can the matter be taken directly back to court?

Where a parent refuses to cooperate with diversion services, the lead agency may file a PINS petition with documentation that the parent refused to cooperate with diversion services. If the parent refused to cooperate with services in a school PINS case, an educational neglect report could be made regarding the parent where there has been a pattern of illegal absences from school that have resulted in impairment of the youth's educational progress.

- 7) If a parent is prohibited from filing a PINS petition after diversion is terminated due to their lack of cooperation, and the youth's behavior remains problematic as a result, what is the next step?

Under the existing authority of FCA §733, the lead agency may file a PINS petition with documentation that there is no substantial likelihood that the youth and his or her family will benefit from further diversion services based upon the parent's refusal to cooperate.

- 8) If a non-custodial parent files a PINS but custodial parent refuses to cooperate with adjustment services can non-custodial parent take the matter directly to court?

A non-custodial parent could participate with the youth in diversion services, if appropriate. If no progress is made and the lead agency determines that there is no substantial

likelihood that the youth and family will be able to benefit from further diversion services, the petition may be filed.

- 9) The court may order the youth and parent to participate in additional diversion services. What does this actually mean? The complainant might be a school or law enforcement entity. If the parent refuses to cooperate with proposed diversion services and the matter then appears before the court, what power does the court actually have to compel a reluctant parent to cooperate to resolve the problem besides placement of the youth? This seems like a scenario that will result in either more CPS reports (inadequate guardianship) or simply allowing the matter to further deteriorate until the youth might be charged as an adult criminal/ juvenile delinquent. It is recognized that the court may order the parent to provide, either directly or by means of medical and health insurance for expenses incurred for treatment for the youth, but if the parent has no income other than public assistance what recourse does the court actually have to compel the parent's cooperation besides the threat of placement of the youth?

If the court refers a petition back for further diversion services, orders the parent to cooperate and the parent still refuses to cooperate, a proceeding may be brought to hold the parent in civil contempt under the Judiciary Law. The court also has expanded powers under FCA §759 to issue an order of protection requiring the parent to participate in services deemed necessary for the rehabilitation of the youth. §780 of the FCA pertains to violation of a FCA §759 order of protection. It permits the court, upon a finding that the person without just cause failed to comply with the order, to modify or revoke the order or to commit the person to jail for up to six months. FCA §780 also permits the court to suspend the order of commitment on the condition the person complies with the order of protection.

- 10) What does the lead agency file to bring a parent to court without filing a PINS? If the youth cooperates and parent does not, is it fair to bring a PINS petition?

The new amendments to the law are meant to provide the court with the means within the PINS system to also hold a parent accountable for his or her actions or lack of actions by allowing the court to order parental participation in the diversion process and expansion of the court's authority under a §759 order of protection. However, once a PINS petition is filed, if appropriate, the court may still on its own motion substitute a neglect petition under Article 10 for the PINS petition under §716 of the FCA.

- 11) If the lead agency decides to petition the parent to court for non-compliance could the parent just withdraw the PINS and avoid court?

No, because the lead agency is the petitioner, not the parent.

- 12) What happens in event of court ordered diversion services and the parents refuse to comply, can they be arrested?

No. A proceeding may be brought to hold the parent in civil contempt under the Judiciary Law.

G. RESPITE

- 1) Can a respite program admit a runaway youth without parental consent?

No, but a runaway youth can be admitted to a runaway program without parental consent.

- 2) What if there is no respite program in the county?

Where geographically feasible, respite can be offered on a regional basis. However, the new law requires the county make provisions to have available respite.

- 3) May a group home or residence be used as preventive respite? Can populations be mixed?

With the requisite certification or license to provide residential care to youth and the approval of the Idss, respite may be provided in the following settings: foster boarding homes, emergency foster boarding homes, agency boarding homes, group homes, group residences, institutions, programs certified or approved by OMH or OMRDD, approved runaway programs, transitional independent living support programs and by individuals. If approved, these populations could be mixed.

- 4) What are the criteria for approval?

For foster boarding homes and emergency foster boarding homes, there is a further condition that the Idss or voluntary authorized agency must approve the home to provide respite care. For agency boarding homes, group homes, group residences, institutions, and programs certified by OMH or OMRDD, there is a further condition that a Idss must approve the facility to provide respite care. The Idss must also approve use of certified or licensed runaway programs and transitional independent living support programs to provide respite care. For individuals to be respite providers, the Idss, voluntary authorized agency or preventive services agency must approve the individual for that purpose. The regulations at 18 NYCRR Section 435.6 set forth the criteria to be used for approval of individuals as respite providers. Otherwise, the Idss has discretion to approve respite providers.

- 5) Does each type of respite program have a maximum capacity?

The maximum capacity is governed by the certification or licensing requirements for that setting: group home, foster boarding home, etc.

- 6) What if the youth refuses to agree to respite? What if the parent withdraws his or her consent?

Respite is not the appropriate response in every situation. Respite requires that the youth and family be willing participants. In the absence of such agreement, alternative diversion services should be provided.

- 7) Is there any ability to extend the 21-day maximum length of stay for respite?

No, respite is a temporary program designed to relieve a family crisis.

- 8) Are residential respite services required for 21 days?

The law provides for respite up to 21 days, if the need exists and the youth and parent agree. However, the goal while the youth is in respite must be to reunify the family as quickly as possible.

- 9) Will there be requirements for parents to pay for respite services?

No. Respite is a mandated preventive service and no fees are authorized in regulation for this type of preventive service.

- 10) Is there a bed limit per institutions (RTCs) interested in providing respite care? (Over or under a certain size?)

For an institution operated by a voluntary agency, the bed limit would be the maximum capacity of the facility; a facility could not exceed its maximum capacity by using some (or all) of its beds for respite purposes. There are no requirements or restrictions that would establish minimum or maximum numbers of respite beds for institutions unless such limits were established by the Idss as a condition of approval of the use of the facility for respite purposes. We would also expect institutions considering using some of their beds for respite purposes to consider the impact of such use on both the respite population and the rest of the resident population of the facility, and to make arrangements where appropriate to house and/or program separately for the two populations.

- 11) Is the 21 day respite limit tied to each event or per year?

The 21 day respite limit is per event. 18 NYCRR 435.5 provides that a period of seven days must elapse before respite may be provided again. In any one year, respite may be provided for a maximum of seven weeks.

- 12) Is a family receiving OMH funded services eligible for respite services in an OCFS certified foster family or congregate care facility, upon filing a PINS petition? How are respite services paid for in such instances?

Where respite is necessary, it is available pre-petition and may be provided in any of the types of respite programs available (foster boarding homes, emergency foster boarding homes, agency boarding homes, group homes, group residences, institutions, individuals approved as respite providers, programs certified by OMH or OMRDD, approved runaway programs and transitional independent living support programs) that have been approved for use for respite purposes. Funding for the PINS diversion services would depend on the funding mechanism being used (preventive services, probation services, etc.).

- 13) For short term respite, who is responsible for education services?

It is expected that respite will be geographically accessible and provided in the youth's own community to enable the youth, whenever possible, to attend his or her own school. If appropriate and necessary, the parent, respite provider, lead agency or school district could provide transportation. The procedures should be a local, collaborative determination.

- 14) Will respite type programs, which include OMH & OMRDD, be required to have a 24/7 bed available? We have had situations where such option would have been appropriate.

Respite may be provided in a home or facility approved or certified by OMH or OMRDD, if the Idss has approved such home or facility to provide respite services when a youth needs the additional services, support or structure available in such settings. There is no explicit regulatory requirement that a respite provider have beds available 24/7; however, there is an expectation that the county must have sufficient respite beds available to meet the anticipated need, including respite “slots” that could be used at any time of the day. Therefore, it would be the determination of the approving Idss whether a particular approved program would be required to have a respite bed available 24/7 as a condition of approval.

- 15) Where a parent wants the youth out of home and the youth wants out of the home yet will not consent to respite, what are options if youth will not go to relative or other resource and PINS has yet to be filed or diversion has not yet been attempted. Do you presume non-secure – pre-petition detention just to keep youth from leaving jurisdiction?

Pre-petition detention is not an option. The youth could be brought to a runaway shelter or may stay with a relative or friend of the family. Counties are encouraged to continue to use community and family supports as appropriate.

- 16) The current respite and crisis intervention programs are for youth with mental health/Axis I diagnosis. Are these programs going to offer these services to any family we refer, regardless of their mental health/developmental status?

It is understood that for many youth, mental health issues underlie PINS-type behavior. If the programs are willing to be PINS diversion respite providers and they are approved as such by the Idss, the service they would be expected to offer would be PINS diversion respite services. However, being a PINS diversion client does not qualify the client for specialized services that have their own separate eligibility criteria. If the referenced service or program has special eligibility criteria, that service or program would be available to a PINS diversion youth only if the youth met the special eligibility criteria.

- 17) What services are expected to be provided during respite?

It is expected that crisis intervention services would be provided to the youth and his or her family during respite. In addition, an array of diversion services targeted to resolving the underlying issues and reuniting the youth with his or her family should also be provided.

- 18) As detention placements shrink, can the detention program become a respite provider?

Detention providers may only provide respite if they are an authorized agency (or become an authorized agency if not already) and if there was an appropriately licensed separate physical location (e.g., a separate group home accepting youngsters for respite). Detention programs cannot put PINS diversion youth into detention programs or have mixed detention/respite populations.

H. RUNAWAY AND HOMELESS YOUTH

- 1) What if there is no runaway shelter in the county?

Where geographically feasible, runaway shelters can serve a region.

- 2) What is the procedure for an approved runaway shelter or a transitional independent living support program to provide respite and/or crisis intervention services?

The runaway program should contact the county's designated lead agency to determine that county's need.

- 3) Do the same confidentiality requirements apply where a runaway program is providing respite? Will the runaway program be required to provide reports to the lead agency?

Respite involves different confidentiality requirements than those followed by runaway programs and the runaway program will be expected to follow the applicable confidentiality procedures for youth in both populations, if they determine to and are approved to provide respite services. Respite programs are expected to report to the lead agency on the success or failure of diversion efforts.

- 4) Where a transitional independent living support program (TILSP) provides respite – do the other criteria for TILSP apply – i.e. the youth must be over age 16 and homeless?

A TILSP is not required to offer these services. However, if a TILSP opts to provide respite services to youth in need of crisis intervention or respite services that are under the age of 18, a TILSP may screen respite candidates in accordance with TILSP criteria in order to maximize the services they offer and the program's expertise with that age group.

- 5) Will the runaway and homeless youth services coordinator now be expected to provide information about both runaway services and respite?

The county's Annual Plan Update should include whether the runaway and homeless youth service coordinator will perform this function.

- 6) Runaway shelters have limited bed space, sometimes 8 or less. How would these shelters be able to accommodate a PINS youth or several PINS youth without dislocating the runaway youth already there?

The authorization for a runaway shelter to provide respite to potential PINS youth is an opportunity, not a mandate. A runaway shelter may not exceed its licensed capacity in order to accept respite youth. If there is limited bed space that is usually at capacity, the shelter should probably not consider providing respite.

- 7) Will there be any financial reimbursement for TILSP programs to extend the stay from 12 to 18 months?

Payments to TILSP are not made on a per diem basis. A program would not incur additional operational costs by permitting an appropriate homeless youth to remain in the program for 18 instead of 12 months. However, by conforming with federal provisions that permit a maximum length of stay of up to 18 months, the turnover of TILSP program beds may be reduced and the number of youth served may be reduced.

- 8) How will the changes affect treatment of youth who are runaways, where the need for services arises initially because the youth is away from home without permission?

If the youth enters a RHYA shelter as a runaway, there is no change in the treatment of runaways under the new law. Just as with runaways, the primary objective of PINS diversion cases where respite is being provided is to resolve family differences so that the youth can return home without the need for court involvement. The primary difference is that for respite to be provided to a youth, both the parent and youth must consent to the youth being in respite before the youth goes into respite, whereas a runaway youth may be accepted into a runaway program without parental consent.

- 9) Who is responsible for transportation to school district of origin? When youth goes to shelter RHYA part for respite the school DSS probation or shelter under McKinney Vento?

It is expected that respite will be provided in the youth's own community to enable the youth, whenever possible, to attend his or her own school. If appropriate and necessary, the parent, respite provider, lead agency or school district could provide transportation. The procedures should be a local, collaborative determination. This is a different service, so McKinney Vento does not apply to this population.

- 10) Can a Voluntary Interim Family (VIF) Home funded by a youth bureau be used for respite?

Yes. VIF Homes are approved runaway programs and are eligible for respite placements under the new PINS Law.

In practice most, if not all, VIF Homes require youth to keep the location and name of the host home provider confidential. Because of the confidentiality issues, VIF Home agencies may choose not to participate in providing respite services. If agencies do choose to participate, collaborative local protocols and agreements between agencies and VIF home providers regarding the confidential nature of host homes should be established on a local level, prior to any respite placements.

- 11) Can counties use available beds at runaway shelters as respite?

Under the new law, duly certified and approved RHYA shelters may provide respite. However, a RHYA program must be approved as a residential respite provider by the Idss.

I. DETENTION ADMISSIONS

- 1) Under what circumstances would a youth who is a runaway or a potential PINS be admitted to non-secure detention?

Non-secure detention may still accept a youth on a PINS remand or a youth apprehended on a PINS warrant issued by the court.

- 2) What if there is a warrant?

The PINS law does not eliminate the possibility of an admission to non-secure detention based on a warrant.

- 3) Are there any circumstances where detention can be provided pre-petition?

Detention should not be used pre-petition in most scenarios. However, as respite is intended as a community-based option, it may not be appropriate for a runaway youth who is picked up by the police on a warrant far from his or her home, such as a runaway youth from Buffalo picked up in New York City. If arrangements cannot be immediately made to return a youth home and a bed in a runaway shelter cannot be used, non-secure detention may be used, but only while immediate attempts are made to return the youth home.

J. DETENTION AFTER A PINS DISPOSITION AND AWAITING PLACEMENT

- 1) Who and how will OCFS determine whether to approve an extension of detention beyond 15- day limit?

The Idss must provide documentation to the appropriate OCFS regional office that the youth is in need of specialized treatment or placement and that diligent efforts are being made to locate an appropriate placement.

- 2) Does the 15-day limit apply to a situation where a PINS is in a residential placement, but ends up back in detention for a change in placement, for example?

The 15 day limit applies where an adjudicated PINS is remanded post-disposition to detention pending transfer to a residential placement pursuant to Family Court Act §756. It does not apply where a youth has already been in a residential placement and must be admitted to detention awaiting transfer to another setting.

- 3) What happens if after the initial 15 days and the 15 day extension, an appropriate residential placement has not been found and more time is needed to locate such a residential facility? What will happen if there are no residential beds available?

It is the responsibility of the Idss to make whatever efforts are necessary to locate appropriate placements. Where the Idss is having great difficulty in locating an appropriate placement, the Idss may contact the appropriate OCFS Regional Office for assistance in determining what placements are available.

- 4) What happens after the 15 day extension period if there is still no placement available for the youth?

If a youth remains in detention for more than 30 days post disposition awaiting placement, there will be no state reimbursement for that portion of the detention stay that is over 30 days.

K. FUNDING

- 1) What funding is available to support diversion services, including crisis intervention, respite and dispute resolution?

LDSS's may purchase or provide diversion services with the specially earmarked Prevention of Detention Placement and PINS Services funding; available federal funding for preventive services including the Flexible Fund for Family Services (FFFS) either directly or through a Transfer to Title XX (Title XX Below 200% funding), regular Title XX

funding, and Title IV-B, Subpart 1 or 2 funds. In addition, LDSS's may use 65% State/35% Local Child Welfare Services funding subject the child welfare threshold and non-supplantation requirements set forth in the State 2005-06 Budget. Other funding sources that have been previously available to support local efforts to address this population may continue to be used. It is also expected that local savings from reductions in detention use will be available to be reinvested in these services.

- 2) How is respite paid for? Will foster care block grants be adjusted?

PINS respite services are not considered to be foster care costs. Therefore, they are not eligible for reimbursement under the foster care block. Therefore, the foster care block grant has not been adjusted. Instead, LDSS's may purchase respite services with the specially earmarked Prevention of Detention Placement and PINS Services funding; available federal funding for preventive services including the Flexible Fund for Family Services (FFFS) either directly or through a Transfer to Title XX (Title XX Below 200% funding), regular Title XX funding, and Title IV-B, Subpart 1 or 2 funds. In addition, LDSS's may use 65% State/35% Local Child Welfare Services funding subject the child welfare threshold and non-supplantation requirements set forth in the State 2005-06 Budget. Also, other funding sources that have been previously available to support local efforts to address this population may be used.

- 3) If probation becomes the lead agency for PINS Diversion Services, how can it manage detention and respite services when the funding/budgeting for such has typically been a DSS function? Would probation have to enter into an agreement with DSS to fund these services? If so, would probation be obligated to manage DSS preventive services as well?

The lead agency is not required to provide all the services required by the new law. The lead agency may utilize existing services or enter into agreements for the provision of services. Based on the funding source, applicable documentation and claiming requirements must be met. If probation becomes the lead agency, it is not obligated by this new law to manage any LDSS preventive services that are used by the county for diversion. The local collaborative planning process should be used to determine roles and responsibilities for provision of diversion services.

- 4) Does the money allocated for PINS diversion in the 2005-2006 Budget include additional staff for specified services?

The funds are not designated for staffing, per se. It is up to each jurisdiction to determine how the funds will be spent. However, the funds may not be used to supplant funding for already existing staff.

- 5) Will any financial reimbursement be available for a runaway program to provide respite for the lead agency?

If the county plan involves the use of respite provided by a runaway program, the program must be approved by the Idss to become eligible for financial reimbursement.

- 6) Can a school district access the \$3.8 million for its own initiatives working directly with probation to develop preventive programs at the school district level? What additional funding will be available to schools to provide the necessary services and supports to divert a PINS petition?

The Idss must submit the application or plan for the county's allocation of the \$3.8 million. It is recommended that the stakeholders in the community determine collaboratively how the funds will be spent. Schools currently provide various services and supports to students. The new PINS law requires that the school districts document their efforts using those services and supports and existing community programs with whom they partner. Through the planning process to address the population, local decisions may choose to direct available funds to school districts.

- 7) If a county is rural with no existing runaway/homeless youth program or TILSP program will they be given priority for any of the resources being made available?

Respite programs are not required to be provided through a runaway/homeless youth program or TILSP program. However, respite must be available in the jurisdiction. Please see the Respite FAQ's for further clarification.

L. SCHOOLS

- 1) Since it will be more difficult to file a PINS petition for truancy, can school districts instead call in educational neglect reports to the SCR?

The changes to the PINS law regarding school districts should increase the opportunities for schools to work collaboratively with other community stakeholders to prevent filing of a PINS petition and placement of PINS youth in foster care. School districts should make and document their efforts to improve the attendance of the subject youth, and to work further with the youth and his or her family. However, in some cases, a report of educational neglect may be appropriate. The basic requirements for a report of educational neglect to be accepted by the SCR are: (1) illegal absenteeism by the youth; (2) reasonable cause to suspect that the parents knew or should have known of the illegal absenteeism; (3) reasonable cause to suspect that the parents failed to take minimal steps to address the problem; and (4) reasonable cause to suspect that the youth's educational progress has been impaired or is in imminent danger of being impaired. Where a school calls the SCR and alleges information that meets those criteria, a report will be accepted.

- 2) Are there standards/criteria for the schools in terms of acceptable efforts to improve a youth's attendance and/or conduct in class?

No. It is expected that each locality will work with its local school district or local educational agency to determine acceptable efforts, taking into account the available resources and the needs of the youth.

- 3) What kind of documentation will schools have to provide to show that they have exhausted in-school remedies? Who will regulate this? Will school districts be allowed to develop their own criteria for this or will a state standard be set?

Schools should document the actions taken, the services provided, and the results of such actions and services. Where these actions and services fail to resolve the problems and a PINS petition is attempted to be filed, the lead agency should attempt to work with the school district to engage the youth, family and school district in other services. If the PINS petition is ultimately filed in court, the court will review the diversion efforts that were made

in order to determine whether to order additional efforts. School districts should work with the lead agency and other local stakeholders to develop criteria that will work at the local level.

- 4) Regarding the school's diligent efforts to avoid the filing of a PINS petition, can those efforts be interpreted to include the imposition of sanctions such as detentions, in-school and out-of-school suspensions, warnings, etc.?

The new law very specifically requires that the school district/local educational agency must take appropriate, documented, diligent steps to improve the youth's attendance and conduct in school. These are some examples of efforts to sanction, control, or otherwise discourage the negative behavior to the extent allowable by federal and State law. The lead agency is responsible to review the documents and attempt to engage the school district/educational agency in further attempts if it appears it may improve the youth's attendance and conduct in school.

- 5) Are there any additional requirements related to youth with special needs (Committee on Special Education)?

The new PINS law does not create any new requirements regarding an alleged PINS youth with special needs. However, there are significant federal and state statutory requirements that require specific steps be taken for youth with special needs before actions such as filing a PINS petition can be taken.

- 6) What about confidentiality issues on the part of the school with regard to disclosing the school district's efforts to avoid court intervention?

Prior to 4-1-05, schools have routinely disclosed confidential student records when filing a PINS petition. The new law does not create any new confidentiality issues with regard to education records. Schools may disclose information concerning students who are at risk of becoming PINS to lead agencies and to courts.

- 7) Can schools (where documentation provided has shown that their attempts at adjustment have been unsuccessful) request that the lead agency forward the petitions directly to court or do additional attempts at adjustment have to be made by the lead agency?

The lead agency is required to review the steps taken by the school district to improve a youth's attendance and/or conduct in school, and attempt to engage the school district in further diversion attempts if it appears that additional diversion services may benefit the youth. This review would preclude direct forwarding of petitions to court.

- 8) Must the school provide documentation regarding efforts prior to filing the complaint or just at the time of filing the petition?

The school district must document their efforts to improve a youth's attendance and/or conduct in school as part of the petition process. There is also the opportunity for schools to collaborate regarding diversion services to be provided to the youth.

- 9) Do the parents also need to provide documentation about the efforts the school has made to address truancy if the parent's complaint contains truancy as an allegation?

The new law requires that a petition, including a petition filed by a parent, with an allegation of habitual truancy must contain documentation regarding the efforts the school has made to improve a youth's attendance and/or conduct in school.

- 10) What should be the procedure when a PINS referral is made by a school district located in county-A, but the potential respondent resides in a neighboring county-B?

FCA §717 requires that the PINS petition must be filed where the acts occurred, which would require filing in the county where the school district is located. The new law provides an opportunity to develop inter-county agreements or relationships to best provide diversion services where school districts cross county lines.

- 11) What is a simple definition of sufficient steps taken by a complainant school district to demonstrate their attempts to improve attendance/conduct? Are warning letters home to the parent sufficient? Is the school's escalating use of in-school and out-of-school suspensions a demonstration of sufficient effort? Can the "Lead Agency" dictate to the complainant school district what additional services it must enact; such as individual classroom escorts at the school's expense, before sufficient effort has been demonstrated?

The services provided to improve a youth's attendance and/or conduct in school should be individualized to pertain to the issues presented by the youth. It is expected that each locality will work with its local school district or local educational agency to determine acceptable efforts, taking into account the available resources, other State requirements and the needs of the youth.

- 12) Is a referral for assessment and committee on special education (CSE) review necessary for all youth alleged to be a PINS?

The new PINS law does not require a CSE for every youth who is alleged to be a PINS. However, if the lead agency or the court review indicates, on a cases by case basis, that there may be a need, a referral is appropriate.

- 13) When a lead agency reviews a school's efforts to improve a youth's attendance and/or conduct, is documentation required for a PINS petition or is that effort also required to access diversion services?

The intent of the new law requires documentation regarding the efforts the school has made to improve a youth's attendance and/or conduct in school to access diversion services so that appropriate additional services may be provided to the youth and his or her family.

- 14) Does the new PINS law require all students must first be referred to the committee on special education for evaluation prior to filing a PINS petition? Recently, a court referred a student back to the school district for referral to CSE even through school staff did not feel this was appropriate.

Under state and federal law, a court may make such a referral regarding a youth for whom the court determines the referral is appropriate.

- 15) In the school district, who has legal authority to file a PINS petition regarding a student?

A school district may designate who has the authority to file a PINS petition.

- 16) What are the school enrollment requirements for youth placed in respite? These homes may not be in the youth's home district.

It is expected that respite will be geographically accessible and provided in the youth's own community to, whenever possible, enable the youth to attend his or her own school. If appropriate and necessary, the parent, respite provider, lead agency or school district could provide transportation. The procedures should be a local, collaborative determination.

- 17) If schools are required to provide documentation of diversion efforts, will there be a new PINS petition form to include this information?

OCA has promulgated a PINS petition form. This and other OCA forms developed in response to the new law are available on their website at <http://www.nycourts.gov/forms/familycourt/index.shtml>.

M. PETITION FILING

- 1) Can the lead agency prohibit the filing of a PINS petition based on the determination that the petitioner demonstrated insufficient effort or further efforts would be beneficial to the youth?

Parents/guardians may be precluded from filing a PINS petition where the lead agency determines that the parent has not consented or actively participated in diversion services. The court clerk may only accept a petition for filing where the lead agency has indicated that there is no bar to filing due to parental lack of cooperation/participation, and that there is no substantial likelihood that the youth will benefit from further services, and the case has not been successfully diverted. FCA §735 (g). However, the lead agency may file a PINS petition with documentation that the parent refused to cooperate with diversion services.

Although there is no identical provision for schools to be barred from filing a PINS petition, the documentation of the steps taken by the school district to improve school attendance and/or conduct provided by the school district must be reviewed by the lead agency and further diversion attempted if determined beneficial for the youth.

- 2) Does the new law permit the lead agency to file a PINS petition directly, without first attempting diversion?

No. The lead agency must adhere to the requirements of FCA §735, which include a mandatory attempt at diversion services.

- 3) Can a youth at risk of becoming the subject of a PINS petition request access to the court to deny allegations set forth by a petitioner prior to diversion efforts?

A youth is only at risk of having a petition filed when a matter is first referred for diversion to the lead agency. Until diversion is attempted and a determination is made that there is

no substantial likelihood that the youth and his or her family will continue to benefit from diversion services, the youth is not a respondent in a PINS petition. At the time, the petition is filed, the youth may deny the allegations of the petition.

- 4) Is an immediate PINS petition ever justifiable? For example, in the case of a runaway, or previous attempts at diversion?

If the youth is not available to participate in diversion because he or she has run away, the parent may file a petition seeking a warrant. The lead agency would document that there is no substantial likelihood that the youth will benefit from diversion services because the youth is not available to participate. Once the youth is returned on the warrant, the court should refer the case back for diversion.

Although there may have been previous attempts at diversion, there may be different issues presenting and different services may be appropriate and available to work with the youth and his or her family in the community. For each PINS case, an assessment and determination must be made that there is no substantial likelihood that the youth and his or her family will benefit from diversion services before a petition may be filed.

- 5) If we only take a PINS petition when services are exhausted and the respondent/family can no longer benefit from diversion services, what would be an example of the lead agency taking a petition so that the respondent/family would continue to benefit from further attempts to prevent placement? In other words, what would be the advantage for the court to adjudicate a youth as a PINS and place that youth on probation, when by law, everything humanly possible should have been done for that youth prior to that point?

The intent of the new PINS law is to avert as many potential PINS cases from court as possible through the use of mandatory, targeted diversion services. Although in the scenario presented, services have been provided, court-ordered probation may allow closer supervision of the youth, which may be effective in some cases in conjunction with continuing appropriate services.

- 6) If a PINS is substituted for a JD proceeding in Family Court, is the matter then referred back to the lead agency for diversion services or does the matter proceed to disposition in family court as a PINS?

If the PINS petition is pending in family court, the court should refer the matter for diversion, before proceeding to disposition.

- 7) What if a parent does not want to share information or sign releases? Could a petition be filed to get the parent to sign releases?

Yes, that would be permissible.

- 8) If a youth has run away from home and is unavailable for diversion services, can the lead agency authorize that a PINS petition be filed?

If the youth is not available to participate in diversion because he or she has run away, the parent may file a petition seeking a warrant. The lead agency would document that there is no substantial likelihood that the youth will benefit from diversion services because the

youth is not available to participate. Once the youth is returned on the warrant, the case should be referred back for diversion by the court.

- 9) Is there a specific section of law that gives the lead agency authority to file a PINS petition?

The new law requires that either a probation department or the Idss be designated the lead agency. Under FCA §733 (a), a peace officer from a probation department may file a PINS petition. Under FCA §733 (d), the recognized agents of any duly authorized agency, which would include a Idss, may file a petition.

- 10) Is there a standard format for the “notice from designated diversion agency” as referenced in the Chief Administrative Judge’s memo to the courts?

Yes. OCA has promulgated a PINS petition form. This and other OCA forms developed in response to the new law are available on their website at <http://www.nycourts.gov/forms/familycourt/index.shtml>.

N. DPCA

- 1) What will DPCA require probation departments to report as to the PINS population?

DPCA still requires certain reporting regarding PINS youth (i.e., DP-30’s, YASI data drops, etc), and the new law does not affect this. However, there will no longer be quarterly reports due related to Enhanced PINS Adjustment Services.

- 2) Will OCFS or DPCA issue new regulations or revise current regulations to reflect the changes made by Chapter 57?

OCFS and DPCA are assessing the need for any regulatory changes as the two agencies work through implementation of the new law.

- 5) What is the status of various agency rules and regulations relating to PINS?

The new law supersedes any portion/provision of agency rules and regulations that are in conflict with the new statutory provisions.

O. STATEMENTS

- 1) New FCA §735(h) provides that no statement made by a PINS youth during diversion attempts or services, even after a petition has been filed, to the designated lead agency or to any agency or organization providing services may be admitted into evidence at a fact-finding hearing or, if the proceeding is transferred to a criminal court, at any time prior to a conviction. Does this prohibition include any service provider, no matter how minimal the involvement, such as mental health, youth bureau, school, law enforcement, CCSI, etc.?

Yes.

- 2) Can statements by a youth be used in future PINS? Does the prohibition only extend to potential JD petition based on new statements?

Statements made by the youth may not be used as the basis for a new PINS, JD or criminal proceeding. Any statements may only be used at the dispositional stage.

- 3) The law states that the respondent's admissions cannot be used at fact finding. What about admissions of unsafe, illegal behavior (i.e., drug use)?

To the extent that the youth's statements, such as drug use, indicate the need for additional services, the services should be provided as appropriate.

P. MISCELLANEOUS

- 1) When assessment determines that the youth is at high risk of recidivism, what liabilities may be potentially incurred by denying initial access to family court?

Assuming that recidivism in this context means a high risk of repeating alleged PINS behavior, the new law requires that the lead agency make diligent attempts to prevent the filing of a petition by providing appropriate services to the youth and his or her family.

- 2) Is electronic monitoring authorized for PINS cases?

There is no current statutory authority for the use of electronic monitoring in PINS cases.

- 3) With parental consent, and when arranging a respite bed, at/from probation intake, with a resistive PINS youth, in lieu of a petition and remand to non-secure detention, what control/safety methods may be employed (i.e. handcuffs) during transportation?

Respite is available pre-petition when a youth at risk of becoming the subject of a PINS petition and his or her parent consent, so it is unclear why efforts would be needed to restrain the youth. Additionally, the federal Office of Juvenile Justice and Delinquency Prevention prohibits the use of handcuffs for PINS youth.

- 4) Will the state monitor the number of JDs if it increases and what about the current practice in many counties of pleading down JD petitions to PINS?

Unless a youth has committed what would be a crime if he or she was over the age of 16, a JD petition cannot be substituted for a PINS petition. Therefore, no increase in JDs is expected as a result of the new law. Local county planning could track trends identified in the county.

- 5) What information/training will be provided to other involved agencies (i.e., schools, courts, and police), many of which have had no formal notice of these changes from their oversight agencies?

Notice of the May teleconference was given to local probation, social services, school district, court, and youth bureau personnel, and other stakeholders, many of whom participated. The Office of Court Administration has forwarded the summary of the law and the law itself to all family courts in the State. Notice of the new law was also provided

to detention providers, the State Police, and the State Education Department, among others.

- 6) How does this law apply to youth already in foster care? Do foster parents participate? Are they entitled to access respite for their foster youth?

The law could potentially apply to a foster child who was engaging in behaviors that might place such child at risk of being the subject of a PINS petition. If diversion services are being provided, it may, under certain circumstance, be appropriate for the foster parent to participate in the diversion services. Considerations for involving the foster parent might include the type of behaviors placing the child at risk of becoming a PINS, the role of the local social services district (the child's custodian), the extent to which the birth parent(s) is a resource, and the likelihood of the foster child remaining with the foster parent while in foster care. If it appears that the child's best interests is to remain with the foster parent and that the respite is necessary to sustain the foster care placement, it may be possible to provide the foster parent with respite care, subject to the criteria in OCFS regulations (18 NYCRR Part 435).

- 8) What are the implications of the new law on drug court?

Since the main thrust of the new law is pre-petition diversion, there is no anticipated effect on juvenile drug court. However, once a PINS petition is filed, juvenile drug court is an excellent alternative for a PINS youth.