

Questions or comments may be directed to (609) 984-8241.

**Supplement to
Directive #4-04**

MEMORANDUM TO: Municipal Court Judges

FROM: Richard J. Williams, J.A.D.

SUBJECT: **Protocol to Implement L. 2003, c. 301 in the Municipal Courts -- Referrals to DYFS in Cases Involving Persons Convicted of Certain Enumerated Offenses Where Victim was Under the Age of Eighteen**

DATE: May 21, 2004

Directive #4-04 (dated April 13, 2004) set out a protocol for implementation of L. 2003, c. 301 in the Criminal Division. That legislation, signed into law on January 14, 2004 and effective as of April 13, 2004, (a) establishes requirements for the collection of information regarding the care of minor children when the sole caretaker is being incarcerated and for referrals to DYFS in certain such situations; and (b) provides for referrals to DYFS in certain instances where an individual is convicted of one or more specifically enumerated offenses, the victim was under age eighteen at the time of the offense, and the defendant lives in a household with minor children or is the parent of a minor child. The legislation is codified at N.J.S.A. 2C:44-6.2 through -6.4 and N.J.S.A. 9:6-8.10c and -8.10d. This supplemental memo sets out the protocol for implementation of that legislation in the municipal courts.

Section 3 of L. 2003, c. 301 requires municipal courts to make a referral to DYFS where a defendant is convicted of one of the enumerated offenses, the victim is a minor, and the defendant resides in a household with other minor children or is a parent of minor children.

Under the Act, where the defendant has been convicted of one of the enumerated offenses, the court must take certain steps. The enumerated offenses that are characterized as crimes by this statute are: (1) simple assault pursuant to N.J.S.A. 2C:12-1(a), (2) false imprisonment pursuant to N.J.S.A. 2C:13-3, (3) lewdness pursuant to N.J.S.A. 2C:14-4(a), (4) an act of domestic violence predicated on any of the disorderly or petty disorderly persons offenses listed in N.J.S.A. 2C:25-19(a), and (5) endangering the welfare of an incompetent person pursuant to N.J.S.A. 2C:24-7.

When the municipal court finds a defendant guilty of any of the enumerated offenses, it should:

- Determine whether the victim was under 18 years old at the time of the offense;
- If so, the court should then determine whether the defendant resides in a household with any minor children or is the parent of a minor child;
- Should the defendant meet these criteria, the court must inquire as to the names and addresses of the children and must refer the matter to DYFS by completing the attached letter and “DYFS Referral” form.

You will notice from the attached detailed instructions that in order to complete the DYFS referral, court staff will need to do a search on the Promis-Gavel system. We recognize that at the present time some municipal court staff may not have had training on this aspect of the Promis-Gavel system. If your court staff needs assistance or has questions regarding a Promis-Gavel search, please contact the Help Desk at **1-800-343-7002** during regular business hours. Our customer support staff will assist you in obtaining the required information from the Promis-Gavel system and can also at that time arrange for training.

Section 1 of the law (codified at N.J.S.A. 2C:44-6.2) is applicable only to Superior Court. It provides that when the sole caretaker of a minor child is incarcerated, the Superior Court must provide certain information to DYFS. With regard to the procedure in municipal courts in a case where a minor child’s caretaker is incarcerated, the municipal courts should continue to follow the procedures established in 1995 in Directive #8-95, “Judiciary Guidelines – Alternate Care for the Dependents of Persons Detained as Part of the Judicial Process.” If you require a copy of Directive #8-95, you should contact your Municipal Division Manager to have a copy forwarded to your office.

Please advise appropriate staff of this new law. If you have any questions concerning this law, please contact Robert Smith, Assistant Director, AOC Municipal Court Services Division, at (609) 984-8241.

R. J. W.

Attachments

cc: Deborah T. Poritz, Chief Justice
Philip S. Carchman, J.A.D.
Assignment Judges
Presiding Judges-Municipal Courts
Theodore J. Fetter, Deputy Administrative Director
Trial Court Administrators
Municipal Division Managers
Municipal Court Administrators and Directors
John P. McCarthy, Jr., Director, Trial Court Services
Robert W. Smith, Assistant Director, Municipal Court Services Division
Steven D. Bonville, Special Assistant to the Director

Frank W. Hoeber, Special Assistant to the Director

CHAPTER 301

AN ACT concerning criminal defendants and supplementing Title 2A of the New Jersey Statutes and Title 9 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.2C:44-6.2 Person sentenced to incarceration, care and custody of minor child.

1. a. In any case in which a person has been convicted of a crime for which the person will be incarcerated, the court shall order, as part of the presentence investigation required pursuant to N.J.S.2C:44-6, that a determination be made as to whether the person is the sole caretaker of a minor child and, if so, who will assume responsibility for the child's care and custody during the period the person is incarcerated.

b. If the determination is made that the person is the sole caretaker of the child, the presentence investigation shall also include:

(1) verification that the person who will be responsible for the child's care and custody during the period of incarceration has agreed to assume responsibility for the child's care and custody;

(2) an inquiry as to the willingness of the person to assume responsibility for the child's care and custody during the period of incarceration; and

(3) a PROMIS/GAVEL network check, juvenile central registry check and domestic violence central registry check on the person who will be responsible for the child's care and custody during the period of incarceration and on any adult and juvenile over 12 years of age in the person's household.

c. The court shall provide the information compiled pursuant to subsection b. of this section, from the presentence investigation, to the Division of Youth and Family Services in the Department of Human Services.

C.9:6-8.10c Child abuse record information check on designated caretaker.

2. a. Upon receiving the presentencing investigation information from the court pursuant to section 1 of P.L.2003, c.301 (C.2C:44-6.2) concerning a sole caretaker of a child who will be incarcerated and the person who will assume care and custody of the child during the period of incarceration, the Division of Youth and Family Services in the Department of Human Services shall conduct a child abuse record information check of its child abuse records to determine if an incident of child abuse or neglect has been substantiated against the person who will be responsible for the child's care and custody or any adult and juvenile over 12 years of age in the person's household.

b. If, based on the information provided by the court and the check of its child abuse records, the division determines that the incarcerated person's minor child may be at risk for abuse or neglect or the child's emotional, physical, health care and educational needs will not be met during the period of incarceration, the division shall take appropriate action to ensure the safety of the child.

C.2C:44-6.3 Report of persons convicted of certain crimes residing with minor children.

3. a. In any case in which a person has been convicted of a crime enumerated in subsection b. of this section and:

(1) the victim of the crime was a person under the age of 18 at the time of the commission of the crime; and

(2) the person convicted of the crime resides in a household with other minor children or is a parent of a minor child,
the court, based on an interview with the defendant, shall make a referral to the Division of Youth and Family Services in the Department of Human Services and provide the division with the name and address of the person convicted of the crime, information on the person's criminal history and the name and address of each child referred to in paragraph (2) of this subsection.

b. For purposes of this section, "crime" includes any of the following:

- (1) murder pursuant to N.J.S.2C:11-3 or manslaughter pursuant to N.J.S.2C:11-4;
- (2) simple assault or aggravated assault pursuant to N.J.S.2C:12-1;
- (3) stalking pursuant to P.L.1992, c.209 (C.2C:12-10);
- (4) terrorist threats pursuant to N.J.S.2C:12-3;
- (5) kidnaping and related offenses including criminal restraint; false imprisonment; interference with custody; criminal coercion; or enticing a child into a motor vehicle, structure, or isolated area pursuant to N.J.S.2C:13-1 through 2C:13-6;
- (6) sexual assault, criminal sexual contact or lewdness pursuant to N.J.S.2C:14-2 through N.J.S.2C:14-4;
- (7) arson pursuant to N.J.S.2C:17-1, or causing or risking widespread injury or damage which would constitute a crime of the second degree pursuant to N.J.S.2C:17-2;
- (8) a crime against a child, including endangering the welfare of a child and child pornography pursuant to N.J.S.2C:24-4; or child abuse, neglect, or abandonment pursuant to R.S.9:6-3;
- (9) endangering the welfare of an incompetent person pursuant to N.J.S.2C:24-7 or endangering the welfare of an elderly or disabled person pursuant to N.J.S.2C:24-8;
- (10) domestic violence pursuant to P.L.1991, c.261 (C.2C:25-17 et seq.); or
- (11) an attempt or conspiracy to commit an offense listed in paragraphs (1) through (10) of this subsection.

C.9:6-8.10d Regulations.

4. The Commissioner of Human Services shall adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to carry out the purposes of sections 2 and 3 of this act.

C.2C:44-6.4 Rules of Court.

5. The Supreme Court of the State of New Jersey may adopt Rules of Court appropriate or necessary to effectuate the purposes of sections 1 and 3 of this act.

6. This act shall take effect on the 90th day after enactment

Approved January 14, 2004.

(Place on Court's letterhead)

MEMORANDUM TO: DYFS Office of Child Abuse Control
FROM:
SUBJECT: Referral in Accordance with N.J.S.A. 2C:44-6.3
DATE:

Defendant: _____

Offense: _____

On _____, the above-captioned defendant was convicted of an offense enumerated in N.J.S.A. 2C:44-6.3 and the victim of the offense was under the age of 18 at the time of its commission. The defendant also resides in a household with other minor children or is the parent of a minor child.

The attached "DYFS Referral" and information on the defendant's criminal history is for DYFS review.

Court Administrator or other court staff

Municipal Court

County

Phone Number

cc: Defendant's file

INSTRUCTIONS FOR COMPLETING DYFS REFERRAL FORM

The DYFS Referral form should be completed when a defendant is (1) convicted of one or more of the offenses listed in Section II of the DYFS Referral form, **and** (2) the victim of the offense was under the age of 18 at the time of the commission of the offense, **and** (3) the defendant resides in a household with other minor children or is the parent of a minor child.

In order to gather information on the defendant's criminal history, the court shall request that law enforcement provide the defendant's State Bureau of Investigation Number (SBI #). If an SBI # is not available, the court shall request that the defendant be fingerprinted in order to obtain information on the defendant's criminal history.

The court staff shall then use the following steps to complete the DYFS Referral form. In Step 4, use one of the three options listed depending on whether the SBI # is available at the time of the referral.

- Step 1:** Answer all questions in Section I.
- Step 2:** Complete Section II by checking the appropriate box(es).
- Step 3:** Complete Section III (attach additional pages if necessary).
- Step 4:** Gather information on criminal court history using one of the following three options:

Option One: Promis/Gavel Inquiry by SBI #:

- In Section IV, insert defendant's SBI # in the space provided and check the box "Promis-Gavel Inquiry by SBI # (*attached*)."
- Complete a Promis-Gavel inquiry using the Statewide SBI # Inquiry Search (*see attached sample*). Screen print the "Statewide Defn/Case List" (*see sample*). Note: please include screen print of this page even if no records are found.
- Immediately fax the referral and the Promis-Gavel "Statewide Defn/Case List" to DYFS using the procedure described in Steps 5 and 6 below.

Option Two: SBI # Not Immediately Available -- Awaiting Fingerprints

- Check box “SBI # Not Immediately Available – Awaiting Fingerprints.”
- Immediately fax referral to DYFS using the procedure described in Steps 5 and 6 below, without attaching the Promis-Gavel “Statewide Defn/Case List.”
- When court staff receives the SBI # from law enforcement, complete a Promis-Gavel inquiry using the Statewide SBI # Inquiry Search (*see attached sample*). Screen print the “Statewide Defn/Case List” (*see sample*). Note: please include screen print of this page even if no records are found.
- Immediately fax the Promis-Gavel “Statewide Defn/Case List” to DYFS under separate cover.

Option Three: SBI #/Fingerprints Not Provided by Law Enforcement:

- In Section III, check box “SBI #/Fingerprints not Provided by Law Enforcement” and immediately fax referral to DYFS without the Promis-Gavel “Statewide Defn/Case List” using the procedure described in Steps 5 and 6 below.

Step 5: Call the Division of Youth and Family Services Office of Child Abuse Control at **1-800-792-8610** and advise them that a referral will be faxed to them upon completion of the phone call; and

Step 6: Fax the referral, the Promis-Gavel “Statewide Defn/Case List” (if available) and the list of names and addresses of minor children to the Division of Youth and Family Services Office of Child Abuse Control at **Fax # 609-588-2997 or 609-588-2998.**

DYFS REFERRAL

Pursuant to N.J.S.A. 2C:44-6.3

The defendant identified in Section I below was convicted for the crime(s) identified in Section II below. The victim of the crime(s) was under the age of 18 at the time of the commission of the offense and the defendant resides in a household with other minor children or is the parent of a minor child identified in Section III.

Section I

A. Defendant:

Name: _____ Sex: _____

DOB: _____ Social Security #: _____

Address: _____

Telephone #: _____

Complaint #: _____

Section II

A. The defendant was found guilty of the offense(s) identified below:

(check all that apply)

- simple assault, N.J.S.A. 2C:12-1(a),
- false imprisonment, N.J.S.A. 2C:13-3,
- lewdness, N.J.S.A. 2C:14-4(a),
- endangering the welfare of an incompetent person, N.J.S.A. 2C:24-7, or
- an act of domestic violence predicated on any of the disorderly or petty disorderly persons offenses listed in N.J.S.A. 2C:25-19(a).

Section III

The defendant resides with minor children or is the parent of a minor child or children identified below:

Name: _____ Sex: _____ Age: _____

Address: _____

Relationship to defendant: _____

Name: _____ Sex: _____ Age: _____

Address: _____

Relationship to defendant: _____

Name: _____ Sex: _____ Age: _____

Address: _____

Relationship to defendant: _____

Name: _____ Sex: _____ Age: _____

Address: _____

Relationship to defendant: _____

Section IV

Information on Criminal History:

Defendant's SBI # provided by law enforcement: _____

(check one)

- Promis-Gavel Inquiry by SBI #** (attached)
- SBI # Not Immediately Available - Awaiting Fingerprints**
(Promis-Gavel information will be provided when SBI # becomes available)
- SBI #/Fingerprints Not Provided by Law Enforcement**

PROMIS/GAVEL INQUIRY PROCEDURES

Completing A Statewide SBI Number Inquiry Search:

1. From the Promis/Gavel Main Menu, Press F1 (Inquiry Menu).
2. From the Inquiry Menu, Press F6 (Statewide Inquiries).
3. Enter the SBI Number and Press F2 (Defn Case by SBI).

This will display the first page of the "Statewide Defn/Case List." Press F8 to scroll through any additional pages. (Please include a copy of all screens with the referral)

Note: If there are no cases related to the SBI # that is searched, the message, "*Defendant Has No Related Cases*" will be displayed. (Please include a copy of this screen with the referral)

Reminder: If you need security access to the Promis/Gavel Statewide Inquiry Search Menu, please call the problem reporting desk at 1-800-343-7002 or 1-609-633-2275.

SAMPLE

CCM0999
JUXXX

VENUE: MONMOUTH

***** NEW JERSEY PROMIS/GAVEL *****

==>

PF1 - INQUIRY MENU

PF2 - DATA ENTRY MENU

PF4 - CHANGE VENUE

PF6 - SYSTEM MENU

SAMPLE

CCMAIN
JUXXX

NEW JERSEY PROMIS GAVEL SYSTEM
INQUIRY MENU

05/24/2004
11:21

VENUE TO INQUIRE: MON

PF1 - CASE RELATED INQUIRY (MENU L)

PF2 - SEARCH INQUIRY (MENU X)

PF4 - REPORT MENU

PF5 - ONLINE REPORTS

PF6 - STATEWIDE INQUIRIES

PF11 - CHANGE VENUE

PF12 - CHANGE REMOTE RMTXXXX

SAMPLE

CCM0789
JUXXX

NEW JERSEY PROMIS/GAVEL
STATEWIDE INQUIRIES

05/24/2004
11:22

NAME :
SBI # : 999999A
IND/ACC # : 000000000I VENUE :
CDR # : 0000
ACS CDR # : 0000 000000 0000
WRIT DATE : 00 00 0000

PG902884 ENTER DATA AND USE PF KEY TO PROCESS FUNCTION
PF1-DEFN NAME LIST **PF2-DEFN CASE BY SBI** PF3-CDR INQUIRY PF4-INDICTMENT PF5-DOC
PF9-WRIT LIST

SAMPLE

CCM0786 NEW JERSEY PROMIS/GAVEL 05/24/2004
PAGE : 0001 STATEWIDE DEFN/CASE LIST 11:25
JUXXX

BIRTH NAME : JONES TEST
SPN NO : 021174 SBI NO : 999999A D-O-B : 10 01 1964 RACE : SEX:
COUNTY CASE NO : 90003899 FP IND : CASE STATUS : ACTIVE
UNN CASE INIT DATE : 10 27 1990 CRIME TYPE : THEFT BY UNLAW TAK
DEFN NO : 002 DEFN'S CASE NAME : JONES TEST
DEFN STAT : ACTIVE/NON-FUGI CHANGE DATE : 02 20 1991 CHARG DOC : IN
INDIC/ACC NO: 91-02-00286-I DISP DATE : 09 20 1991 ACTION : DM
REASON : DISMISSED MOT PROS SENTENCE DATE: 09 20 1991
JUDGE : TEST DATA PROSECUTOR : HS ATTORNEY : TEST DATA

BIRTH NAME : JONES TEST
SPN NO : 014960 SBI NO : 999999A D-O-B : 05 31 1962 RACE : B SEX: M
COUNTY CASE NO : 95008262 FP IND : Y CASE STATUS : COMPLETE
ESX CASE INIT DATE : 09 30 1995 CRIME TYPE : ROBBERY
DEFN NO : 002 DEFN'S CASE NAME : JONES TEST
DEFN STAT : ACTIVE/NON-FUGI CHANGE DATE : 09 30 1995 CHARG DOC : CO
INDIC/ACC NO: 00-00-00000-0 DISP DATE : 04 25 1996 ACTION : NB
REASON : NO BILL COMPL SENTENCE DATE: 00 00 0000
JUDGE : TEST DATA PROSECUTOR : HS ATTORNEY : TEST DATA

PF1-DEFN/DETL PF2-SP FINGERPRINT PF6-NEXT 6 PAGES PF7-PRIOR PF8-NEXT

SAMPLE

CCM0789

NEW JERSEY PROMIS/GAVEL
STATEWIDE INQUIRIES

05/24/2004
11:30

NAME :
SBI # : 999999A
IND/ACC # : 000000000I VENUE :
CDR # : 0000
ACS CDR # : 0000 000000 0000
WRIT DATE : 00 00 0000

PG903559 DEFENDANT HAS NO RELATED CASES

PF1-DEFN NAME LIST PF2-DEFN CASE BY SBI PF3-CDR INQUIRY PF4-INDICTMENT PF5-DOC
PF9-WRIT LIST