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Directive # 29-17**[Supersedes Directive #08-95]**

[Questions or comments may be directed to
(609)815-2900 ext. 55350]

To: Assignment Judges
Trial Court Administrators

From: Glenn A. Grant, J.A.D. 

Re: Alternate Care for the Dependents of Persons Detained as Part of the Judicial Process

Date: November 1, 2017

Background

This reissued Directive, which supersedes Directive #08-95, provides guidelines for the Dependents of Persons Detained as Part of the Judicial Process (Guidelines). The Guidelines, approved by the Chief Justice pursuant to N.J.S.A. 2A:12-13, were developed to assist Superior and Municipal Court judges in determining or confirming, through appropriate inquiry, that persons being detained or incarcerated are able to meet their primary responsibility for ensuring the alternate care needs of their dependents. The guidelines include requirements to record instances where the Guidelines are used.

The Guidelines as originally issued were the product of the efforts of the Attorney General's Office, the Governor's Task Force on Child Abuse and Neglect (including its Protection Subcommittee), members of the bench, and Judiciary staff.

Reporting Requirements

The following summary report template allows each vicinage to record and report the total number of referrals for each referral category on an annual basis. The Trial Court Administrators (TCAs) should maintain these reports within each vicinage and have the ability to provide the information when needed. It will be the determination of each TCA as to what reporting format is used within each vicinage.

SUMMARY REPORT

DIVISION: _____	COUNTY: _____
REPORTING TIMEFRAME: [Date] to [Date]	
<u>DEPENDENT REFERRAL CATEGORY</u>	<u># of Referrals</u>
1. Infant/Child/Juvenile (including physically or mentally disabled)	_____
2. Physically Disabled Person (not a child)	_____
3. Mentally Disabled Person (not a child)	_____
4. Persons Requiring Geriatric Care	_____
TOTAL # OF REFERRALS: _____	

EDITOR'S NOTE

2017 Update -- This Directive was amended to: require the vicinages to retain records relating to this Directive; include adjudicated incapacitated adult dependents in the guidelines; and include updated contact information for the agencies.

March 21, 2003 -- This Directive was amended in 2003 to update the 1995 Referral Agency List and Attachments that were included with the original Directive. The original text was amended to delete references identifying the Attorney General's Model Policy, dated December 20, 1993, as an attachment to the Directive. The Model Policy may be obtained directly from the Office of Attorney General.

December 13, 2000 -- This Directive was amended in 2000 to require each Trial Court Administrator to submit the summary report to the Municipal Court Services Division on a yearly basis.

1997 amendment -- The "CN" in the address of the Administrative Office of Courts was changed to "P.O. Box."

April 17, 1995 -- Originally issued by Robert D. Lipscher, Administrative Directive

Attachment: Judiciary Guidelines - Alternate Care for the Dependents of Persons Detained as Part of the Judicial Process

cc: Presiding Judges

(Superior and Municipal Court)

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JUDICIARY GUIDELINES
ALTERNATE CARE FOR THE DEPENDENTS OF PERSONS DETAINED
AS A PART OF THE JUDICIAL PROCESS

I. INTRODUCTION

1.0 BACKGROUND

The Administrative Office of the Courts worked with the Office of the Attorney General, the Governor's Task Force on Child Abuse and Neglect and the Task Force's Protection Subcommittee to address the need for the "provision of care to dependent persons whose care-givers are either being held in police custody, awaiting initial judicial review for the issuance of arrest warrants or are about to be sentenced to a period of incarceration." The impetus for this initiative was the tragic death of an infant who died as a result of incompetent care by a family member while the child's mother was serving a short mandatory jail term for shoplifting.

On June 25, 1993, the Protection Subcommittee issued a report recommending, in part, that the Judiciary and law enforcement agencies develop guidelines to more readily identify and ensure appropriate arrangements are made for dependent persons whose care-givers are taken into custody or face incarceration. Among the measures recommended by the Subcommittee are "complementary training programs, including the development of the type of inquiry for use by law enforcement personnel, prosecutors, judicial staff and judges, at appropriate stages in the custodial process." The Administrative Office of the Courts has been working with the Attorney General's Office to develop plans to implement those recommendations. Among the follow-up steps will be the development of complementary training programs and joint county-by-county resource directories of alternate care providers for reference by judges, court staff, police officers, and detainees. The directories can be used by detainees and public officials seeking care for dependents for whom the detainee is unable to identify a suitable care-giver.

In furtherance of those recommendations, the Attorney General developed a model policy in December, 1993, and requested law enforcement agencies to review and update their existing policies in this area as needed. The Administrative Director of the Courts also issued complementary draft guidelines on August 31, 1994 and solicited comments within the Judiciary. On October 12, 1994 S-469 (P.L. 1994, c.113) was enacted and required the development of guidelines for Judges of the Superior and Municipal Courts "to follow in order to insure that appropriate arrangements are made for the care of an incarcerated person's child by a responsible adult." Pursuant to that legislation the Administrative Director of the Courts, in consultation with the Governor's Task Force on Child Abuse and Neglect, was to present the guidelines to the Chief Justice by February 9, 1995. The Governor's Task Force on Child Abuse and Neglect, at its January 20, 1995 meeting, endorsed final revisions to draft guidelines in response to comments received from the Judiciary and the Task Force's Protection Subcommittee. The Task Force's report was forwarded to the Administrative Director on January 25, 1995 and his final recommendations were presented to the Chief Justice on February 7, 1995. The Chief Justice approved of the guidelines on April 6, 1995 to be effective May 1, 1995.

2.0 PRINCIPLES

These guidelines are intended to reflect the following principles:

1. A person who may be detained or incarcerated (detainee) has the primary responsibility for ensuring that the needs of his/her dependents are met. This means the detainee is expected to identify child or adult dependents needing alternative care, to arrange for a responsible adult to meet the needs of the dependents

during the detainee's absence, and to request assistance from appropriate public or private agencies if the detainee is unable to identify a responsible adult willing and able to provide appropriate care for the dependents.

2. While law enforcement agencies have initial responsibility, upon the detention or arrest of a person, the court is also responsible for determining or confirming by appropriate inquiry, pursuant to Subsections 5.3 A, B and C of these Guidelines, that a detainee has been given the opportunity to identify dependents needing alternative care and to identify an adult who can care for the dependents during the detainee's absence, for determining whether the detainee believes the designated adult is suitable to provide appropriate care for the dependent, and for permitting the detainee the opportunity to contact an adult or agency to make arrangements for the care of his/her dependents. If the detainee identifies an adult that he/she believes is suitable to provide appropriate care for his/her dependents, the court is not required to assess the ability of that adult to meet this responsibility. However, if based upon information shared by the detainee or otherwise made known to the court in the proceedings, the court reasonably believes the dependent would be at risk of harm if placed in the care of the adult designated by the detainee or if the detainee is unable to identify an adult that he/she believes is suitable to care for his/her dependents, the court will recommend to the detainee that he/she request assistance from a public or private agency to make alternate care arrangements for the dependent. If the detainee refuses to request such assistance, the court will contact an appropriate agency, on behalf of the detainee, to request assistance in arranging alternative care for the detainee's dependents. If the court initiates such contact with an agency, the detainee is responsible for making alternative care arrangements with the agency representative and for the costs of services provided by the agency.

3. While it is important that detainees have a reasonable opportunity to meet their responsibility for making appropriate plans for the alternative care of their dependents, it is imperative that judicial proceedings not be inappropriately delayed by the need to make such plans. The court should specifically advise detainees that the existence of dependents and the need for the detainee to make arrangements to provide for their care will not delay or otherwise influence the detention, disposition, or sentencing and that, if the detainee is unable to make those arrangements within a reasonable period of time, the court will initiate contact with an appropriate agency, on behalf of the detainee, to request assistance in arranging alternative care for the detainee's dependents.

These guidelines, for use within the Judiciary, are designed to both complement the Attorney General's model policy, as indicated, and to implement the provisions of N.J.S.A. 2A:12-13.

II. GUIDELINES

1.0 PURPOSE

Pursuant to N.J.S.A. 2A:12-13, the purpose of these guidelines is to alert Superior and Municipal Court judges of the need to identify and help detainees meet their responsibility to make alternate care arrangements for children, the elderly, or other persons who are dependent upon the detainee for their care. They are also designed to complement the Attorney General's model policy, as indicated. Although individuals adjudicated incapacitated are not necessarily dependents as that term is utilized herein, the procedures have been updated to require that a detainee inform the court if he or she is currently a guardian or co-guardian for an incapacitated person.

These guidelines also offer both procedures to assist detainees to inform the court of the needs of a dependent and to help the court identify dependent persons who may need care prior to the detention or sentencing of a caretaker.

2.0 DEFINITIONS

2.1 Detainee: For the purposes of these guidelines a detainee is a person who is either being detained or held in police custody; is awaiting initial judicial review for the issuance of an arrest warrant; or is about to be sentenced by a court to a period of incarceration.

2.2 Dependent: For the purposes of these guidelines a dependent is a person who resides with and/or is subject to the primary care of the detainee because of age, gender, physical condition or special need.

3.0 POLICY

The detainee has the primary responsibility for ensuring that the needs of his/her dependents are met. The detainee is expected to identify child or adult dependents needing alternative care, to arrange for a responsible adult to meet the needs of the dependents during the detainee's absence, and to request assistance from appropriate public or private agencies if the detainee is unable to identify a responsible adult willing and able to provide appropriate care for the dependents. At any point in the judicial process when a person is likely to be detained, the court is responsible: (1) for ensuring that the detainee has the opportunity to identify dependents needing alternative care; (2) to identify an adult who can care for the dependents during the detainee's absence; (3) for determining whether the detainee believes the designated adult is suitable to provide appropriate care for the dependent; and (4) for permitting the detainee the opportunity to contact an adult or agency to make arrangements for the care of his/her dependents. The court is also responsible for inquiring of the detainee whether he or she is currently serving as a guardian or co-guardian for an adjudicated incapacitated person. If the detainee identifies an adult that he/she believes is suitable to provide appropriate care for his/her dependents, the court is not required to assess the ability of that adult to meet this responsibility. However, if based upon information shared by the detainee or otherwise made known to the court in the proceedings, the court reasonably believes the dependent would be at risk of harm if

placed in the care of the adult designated by the detainee, or if the detainee is unable to identify

an adult that he/she believes is suitable to care for his/her dependents, the court will recommend to the detainee that he/she request assistance from a public or private agency to make alternate care arrangements for the dependent. If the detainee refuses to request such assistance, the court will contact an appropriate agency on behalf of the detainee.

When the detainee is unable to arrange for the care of a dependent person by a responsible adult or through a public or private agency, the judge or other court official at the direction of the judge will refer to resource directories, training materials or other sources of information to identify and alert an appropriate public or private agency of the need for alternate care for the detainee's dependent.

While it is important that detainees have a reasonable opportunity to meet their responsibility for making appropriate arrangements for the alternative care of their dependents, it is imperative that judicial proceedings not be inappropriately delayed by the need to make such arrangements.

4.0 PROCEDURES

4.1 Whenever a detainee is brought before the court, the judge will advise the detainee of his/her responsibility to identify and make arrangements for children or adults dependent upon the detainee for their care. The judge will also ask the detainee whether he or she is currently a guardian or co-guardian for an adjudicated incapacitated person. The judge will also specifically advise the detainee that the existence of dependents and the need to make arrangements for their care will not control the detention, disposition or sentencing and that, if the detainee is unable to make alternative care arrangements within a reasonable period of time, the court will initiate contact with an appropriate agency to arrange alternative care for the detainee's dependents.

4.2 Whenever a law enforcement officer, shift supervisor, arresting officer or other authorized official notifies the court, pursuant to subparagraphs 3.1.6 and 3.2.4 of the Attorney General's model policy, that the detainee has a dependent in need of care, the judge or other court official at the direction of the judge shall confirm with the detainee the alternate care arrangements that have been made for each dependent.

4.3 Whenever a person is detained, a judge or other court official at the direction of the judge shall make the following inquiries to ensure the identification of persons dependent upon the detainee for their care and to ensure the detainee has the opportunity to designate a responsible adult to provide alternative care for the dependents during the detainee's absence. These inquiries shall be supplemented by any additional questions deemed necessary by the judge or court official to ascertain the particulars of the situation. The responses to these inquiries and any additional questions should be on the record. If they cannot be made on the record, a written notation shall be made and placed in the case file.

A) Do you have any parents, children under age 18, or anyone in your household or otherwise, dependent on you for care?

- If the answer is yes, the inquirer will ask the detainee to provide for each dependent person, the dependent's name, address, telephone number, sex, age, relationship to the detainee, and type of alternate care required.

- B) Is there any responsible adult or social service agency able to provide care for that person?
- If the answer is yes, the inquirer will ask the detainee to provide the following information concerning the proposed alternate care provider: (if a person): name, address, telephone number, sex, age, and relationship to detainee and/or dependent, and statement of whether the detainee feels this person is suitable and qualified to provide care for his/her dependents during the detainee's absence; (if an agency): name, address, telephone number, agency representative, and affiliation.
 - If the adult designated by the detainee is present in court with the detainee, the inquirer will confirm that this adult is aware of the type of alternative care identified by the detainee and is willing to provide care for the dependent during the detainee's absence.
 - If the answer is no, the inquirer will recommend to the detainee that he/she contact an appropriate agency to request assistance in meeting his/her responsibility for making alternative care arrangements for his/her dependents.
- C) Are you currently the guardian or co-guardian of an incapacitated adult?
- If the answer is yes, the inquirer will ask only what court established the guardianship and what Surrogate issued letters of guardianship. The inquirer will not ask the detainee to state the name of the incapacitated person in open court but may require that such information be provided.
- D) Any other inquiry that the inquirer considers reasonably necessary in light of existing circumstances.

4.4 All detainees shall be provided with a reasonable opportunity to make arrangements by telephone for alternate care for their dependents.

4.5 If the detainee is unable to arrange for the alternate care of his/her dependents, the court will contact an appropriate public or private agency, on behalf of the detainee, for assistance in providing appropriate care for the detainee's dependents. The court will advise the detainee that he/she is completely responsible for working with the agency representative to provide for any necessary care of the dependent including associated costs of any services provided by the agency. See the referral agency list appended to these guidelines.

4.6 When a detainee has a dependent requiring care, a written notation is to be made and placed in the case file indicating the arrangements that were made either by the detainee or through referral by the court for the care of each dependent. The notation shall identify the person or agency taking charge of the dependent, the name of the agency's representative, a contact telephone number, and any additional information the judge deems pertinent to the case.

5.0 EFFECTIVE DATE AND SUGGESTIONS FOR IMPROVEMENT

5.1 These guidelines have been approved by the Chief Justice to be effective May 1, 1995.

5.2 Pursuant to N.J.S.A. 2A:12-13, these guidelines are to be periodically reviewed by the Administrative Director of the Courts, in consultation with the Governor's Task Force on Child Abuse and Neglect, with a view to recommending such revisions as are deemed necessary. Therefore, those who have comments or suggestions to improve the effectiveness of these guidelines are encouraged to submit them, in writing, to the Administrative Director of the Courts, PO Box 037, R.J. Hughes Justice Complex, Trenton, NJ 08625. The assistance and cooperation of all Judiciary personnel and others in implementing these guidelines are greatly appreciated.

REFERRAL AGENCY LIST

1. DEPARTMENT OF CHILDREN AND FAMILIES (DCF)

- a. Division of Child Protection and Permanency (DCP&P)
A list of DCP&P local offices may be found at:
<http://nj.gov/dcf/contact/dcpplocal/index.html>
- b. Child Abuse/Neglect Hotline – State Central Registry
In New Jersey, any person having reasonable cause to believe that a child has been subjected to abuse or acts of abuse should immediately report this information to the State Central Registry (SCR). If the child is in immediate danger, call 911 as well as 1-877 NJ ABUSE (1-877-652-2873). A concerned caller does not need proof to report an allegation of child abuse and can make the report anonymously. The hotline is available 24 hours a day, 7 days a week.

2. ADULT PROTECTIVE SERVICES PROVIDERS LISTING

A list of New Jersey Adult Protective Service Providers may be found at:
<http://www.state.nj.us/humanservices/doas/home/adultpsp.html>

3. MISCELLANEOUS AGENCIES

- a. **OFFICE OF THE PUBLIC GUARDIAN - 609-588-6500**
- b. **OFFICE OF THE OMBUDSMAN FOR THE
INSTITUTIONALIZED ELDERLY - 609-826-5090 or 1-877-582-6995**