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Administrative Directive

Transmittal:	13-OCFS-ADM-03
To:	Commissioners of Social Services Directors of Juvenile Detention Programs
Issuing Division/Office:	Strategic Planning and Policy Development
Date:	February 27, 2013
Subject:	Implementation of the Detention Risk Assessment Instrument (DRAI)
Suggested Distribution:	Directors of Social Services Child Welfare Supervisors Staff Development Coordinators
Contact Person(s):	Daniel Hulihan, NYS Juvenile Detention Assessment Instrument (JDAI) Statewide Coordinator, (518) 473-4511, ocfs.sm.stsjp@ocfs.ny.gov .
Attachments:	Attachment A: Methodology for Developing the Statewide DRAI Attachment B: OCFS Juvenile Detention Risk Assessment Instrument (DRAI) Attachment C: NYS DRAI Implementation Work Group Attachment D: DRAI Implementation Plan template Attachment E: Instructions/Information for the DRAI Implementation Plan
Attachment Available Online:	All attachments, including the template and instructions for the DRAI Implementation Plan, are on the OCFS DRAI home page: http://www.ocfs.state.ny.us/main/rehab/drai/default.asp

Filing References

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
			Family Court Act §320.5(3) Executive Law §530(2) and (7)		

I. Purpose

The purpose of this Administrative Directive (ADM) is to provide New York State counties outside of New York City with an approved, validated Detention Risk Assessment Instrument (DRAI) and with guidelines for implementing the use of the DRAI. The ADM presents background information regarding the purpose of DRAIs and the development of the approved, validated OCFS-developed DRAI, and also provides instructions for developing and submitting site-specific DRAI implementation plans to the Office of Children and Family Services (OCFS), a requirement for all counties and New York City.

Please note that the OCFS-developed DRAI included in this ADM as Attachment B (hereinafter referred to as the OCFS DRAI) will be approved for use by all counties outside of New York City. OCFS will approve a separate instrument (hereinafter referred to as the NYC DRAI) for use in the City of New York.

II. Background

Juvenile Detention in New York State

In 2011, New York State enacted legislation as part of its budget for State Fiscal Year 2011-2012* that marked the launch of a statewide comprehensive juvenile detention reform agenda through the inclusion of two provisions designed to serve as a foundation for widespread juvenile detention reform over the long term:

1. The creation of the Supervision and Treatment Services for Juveniles Program (STSJP), a fiscal incentives program that reimburses counties for alternative-to-detention programming (Executive Law §529-B); and
2. A requirement that all counties use - and implement in a manner approved by OCFS - an empirically validated detention risk assessment instrument, approved by OCFS, to inform detention decisions in juvenile delinquency (JD) cases (Executive Law §530).[†]

Section 320.5(3) of New York State's Family Court Act provides that courts can order the use of detention in juvenile delinquency cases *only* in response to two types of risk:

- (i) there is a substantial probability that he or she (the youth) will not appear in court on the return date; *or*
- (ii) there is a serious risk that he or she may before the return date commit an act which if committed by an adult would constitute a crime.

Historically, local governments and family courts in the state have grappled with applying these criteria whenever a juvenile is arrested, with mixed and uneven results.

** Subpart B of Part Q of Chapter 58 of the Laws of 2011

† Additional legislation regarding the DRAI was enacted as part of the budget for State Fiscal Year 2012-2013; this legislation is contained in Part M of Chapter 57 of the Laws of 2012.

Detention Risk Assessment Instruments

Many jurisdictions across the country have sought to limit detention to these same statutorily prescribed circumstances by developing objective risk assessment instruments that help shape decision makers' choices about whom to detain. These instruments typically take the form of additive scales, wherein relevant factors are assigned point values that, when combined, result in a final score associated with a risk level and a related detention recommendation. High-risk cases may be appropriate for detention; low-risk cases may be more appropriate for release to the community with no formal court supervision; and mid-risk cases may be referred to an alternative-to-detention program, which generally provides graduated levels of supervision increase the likelihood that youth appear at court hearings and refrain from reoffending.

Detention risk assessment instruments, when used consistently and effectively, reduce unnecessary and/or inappropriate use of detention in a number of ways:

1. They provide juvenile justice stakeholders with an objective and standard way of measuring a youth's risk of reoffending or failing to appear in court before the next court hearing;
2. They promote consistency and transparency in decision-making—i.e., similar outcomes for similarly situated cases—by applying legally relevant criteria in a uniform manner;
3. Through this objectivity and transparency, the use of these tools can help address racial, ethnic, and gender disparities that may exist in detention decisions; and
4. Using a risk assessment instrument can help a jurisdiction allocate limited system resources more efficiently, by directing the most intensive interventions to those youth at highest risk, while using less costly and less restrictive alternatives for lower-risk cases.

The value of using a validated risk assessment instrument to inform detention placement decisions is reflected in Section 320.5(3)(b) of the NYS Family Court Act, which states, “Any finding directing detention...made by the court shall state the facts, the level of risk the youth was assessed pursuant to a detention risk assessment instrument approved by the office of children and family services, and the reasons for such finding including, if a determination is made to place a youth in detention who was assessed at a low or medium risk on such an instrument, the particular reasons why detention was determined to be necessary.”

Of course, while the use of risk assessment instruments is one of the most critical components of detention reform, these tools are not a panacea for such reform—to be effective they must be embedded in a comprehensive detention reform effort that includes the development of an alternative-to-detention continuum, as localities are encouraged to do through STSJP.

Development of the OCFS Validated Detention Risk Assessment Instrument

To assist counties in meeting the new legal requirement of using a validated DRAI to inform detention decisions in delinquency cases, OCFS designed and validated a statewide tool, the OCFS DRAI, in compliance with Section 530(2) of the Executive Law, for use in counties outside of New York City[‡]. In layman's terms, a *validated* instrument is one that has been

[‡] New York City previously developed and has been using its own validated DRAI, which it will continue to use. OCFS will formally approve this DRAI for use within New York City once OCFS has approved New York City's DRAI Implementation Plan and the required processes for DRAI implementation are in place.

shown to measure what it purports to measure, in this case the likelihood of whether or not an alleged juvenile delinquent will appear in court at the appointed time and the likelihood of whether or not such youth will be re-arrested before his or her next court date. More specifically, agency researchers designed the OCFS DRAI based on an *empirical analysis*, or study, of factors that were statistically correlated with the risk of re-arrest or failure to appear in court pending a court disposition.

Empirically developed instruments are advantageous because they include *only* items that research shows are predictive of these risks (as opposed to items that are thought to be predictive based on the experiences of juvenile justice stakeholders). This allows detention decision-makers to know that the tool classifies youth into low-, mid-, and high-risk categories based on proven risk factors.

As part of its work in developing a validated DRAI, OCFS staff, in compliance with Section 530 of the Executive Law, consulted with four nationally recognized experts with research experience and expertise in the fields of criminal justice, social work, juvenile justice, and in applied mathematics, psychometrics, and/or statistics. These experts concurred with the methodology and analysis used by OCFS to develop the OCFS DRAI. Of course, conversations with stakeholders about the risk factors on the tool were also a critical part of the development process, as these stakeholders will be responsible for using the instrument and, therefore, their acceptance is necessary for successful implementation. **Attachment A** contains a summary of the **DRAI development methodology** used by OCFS researchers. **Attachment B** provides a copy of the validated **OCFS DRAI** that must be used by counties outside of New York City once it is formally approved by OCFS (target date of July 1, 2013).

Planning for DRAI Implementation

To prepare for statewide implementation of the DRAI, OCFS convened a DRAI Implementation Work Group, comprised of experts and stakeholders from state, local, and private agencies, and charged its members with developing implementation guidelines - or minimum implementation requirements - for all counties (including New York City) that would be grounded in national best practice and comply with the statutory provisions. The work group also contributed to the development of the DRAI (see section above). Representatives from OCFS and the NYS Division of Criminal Justice Services (DCJS) Office of Probation and Correctional Alternatives (OPCA) co-chaired the work group, and the Annie E. Casey Foundation and Vera Institute of Justice provided support and technical assistance throughout the process. **Attachment C** provides a complete list of **DRAI Implementation Work Group** members.

Consistent with the statutory requirements and the intent of the enacted detention reform legislation, the DRAI Work Group identified three broad guidelines that counties and New York City will be required to follow:

1. They must use the DRAI at key points of the juvenile justice system when detention (either secure or non-secure) is being considered;
2. They must complete the DRAI in a consistent and accurate manner; and
3. They must report relevant DRAI and detention data to the state.

Each of these requirements is described in detail in Section IV., Required Actions.

As part of the statewide efforts to support the implementation of the DRAI, staff from OCFS, DCJS/OPCA and the Vera Institute of Justice also conducted a series of forums throughout the state in the last two years addressing the subjects of detention reform and implementation of the DRAI.

III. Program Implications

New York City and counties outside of New York City are required to develop and submit detailed, site-specific implementation plans that describe how they will meet and operationalize the guidelines specified in this administrative directive. OCFS has provided a **DRAI Implementation Plan template (Attachment D)** with this administrative directive, which must be used for this purpose. Counties that started writing their plans using an earlier version of this plan template may submit their plans using that template. OCFS anticipates that, in future years, a DRAI Implementation Plan template will be incorporated into the Child and Family Services Plan (CFSR), and counties / NYC will be able to provide any updates they make as part of their annual updates to the CFSR. Requirements for the initial county DRAI implementation plans are addressed in the next section of this document.

IV. Required Actions

IMPLEMENTATION GUIDELINES FOR USING THE OCFS and NYC DRAI'S

Counties / NYC must adhere to the three implementation guidelines described below, which were developed by the DRAI Work Group to comply with statutory requirements and reflect best practices.

A. Counties / NYC must use an OCFS-approved validated DRAI (either the OCFS DRAI for counties outside of NYC or the NYC DRAI for NYC) when detention (either secure or non-secure) is being considered at key points of the juvenile justice system.

During the processing of a youth's case, counties are required to use a DRAI at:

1. The *initial point of entry* into the system, when detention is being considered for the first time prior to adjudication (the equivalent of a conviction in the criminal justice system); and
2. Any *later and additional court hearings* where an explicit request for detention is made by a party to the case.

Please note that at each of these points, detention is defined to include both **secure and non-secure detention** (i.e., the DRAI must be used to inform decisions related to both types of referrals).

Initial Point of Entry

In New York State, the earliest possible point of entry into detention in a delinquency case can occur in one of three circumstances, prior to adjudication:

1. When a youth is arrested after court hours and law enforcement requests that the youth be brought directly to a secure or non-secure detention center; or
2. When a youth is arrested and brought directly to court *during court hours* with a request for detention through a pre-petition hearing.
3. At a youth's initial appearance in court following petition.

For each youth, all jurisdictions will be required to complete (i.e., fill out) a DRAI at the earliest of these circumstances - in other words, the very first time detention is considered. They will then be required to actively use the completed instrument to inform decision-making at that earliest point as well as any of the above points that follow. It should be noted that detention decision-makers are not required to follow the DRAI recommendation. For example, it is not mandated that a youth who scores high risk on the instrument be detained, especially in cases where there are appropriate and safe alternative options. Similarly, a decision-maker may decide to detain a youth who does not score high risk on the DRAI if he/she feels strongly that the youth is at risk of re-offending or missing a court appearance. However, if at any point a youth who scores low- or mid-risk is detained, the decision-maker will be required to document and report to the state the reason for doing so.

To illustrate how this guideline will be applied in different circumstances, following are a few example scenarios of using the DRAI at the initial point of entry:

Example #1: If John is arrested after court hours and brought directly to (or otherwise referred to) a detention facility by the arresting officer, the county / NYC will need to - at that point - complete a DRAI and use the instrument's score to help inform and guide whether the detention facility admits the youth. If John scores high risk, detention is immediately an option. If, on the other hand, he scores mid-risk, and there are no extenuating circumstances that would lead to an override of the DRAI recommendation, it is advised that the county / NYC do all that is possible to increase the likelihood that he is released to a parent or guardian, with admission into an alternative-to-detention program, and given a family court appearance ticket (FCAT) or a date and time to appear for an intake interview with the local probation department. If John is later petitioned and brought before the court for an initial appearance, the same completed DRAI should be presented in court to inform the judicial decision about whether or not to detain.

Example #2: If John is arrested during court hours and the arresting officer requests detention (via a pre-petition hearing), the county / NYC will need to - at that point - complete a DRAI and use the instrument's score to help inform and guide whether he is remanded (sent) to detention pending a petition and initial appearance. If John is later petitioned and brought before the court for an initial appearance, as outlined above, the same completed DRAI should be used to inform the judicial detention decision.

Example #3: If John is arrested, and the arresting officer releases him to a parent or guardian with an FCAT, the county / NYC only needs to administer and use a DRAI if and when the case is petitioned and John appears for the initial court appearance. In other words, if John is diverted from court involvement through the probation adjustment process, no DRAI is needed. In fact, it is recommended that counties / NYC not administer the DRAI on probation intake cases prior to a decision to refer the case to the prosecuting agency since detention is not yet being considered.

Counties / NYC will not be required to fill out a DRAI multiple times if a youth is considered for detention at more than one of the above three points. Instead, they should administer the DRAI at the earliest point of entry and use the same completed instrument to inform decision-making at the subsequent points, if applicable.

Subsequent Court Hearings

In addition to using it at the point of entry, family courts must use the DRAI in detention decisions made at subsequent court hearings, following the initial appearance. However, there is no requirement to present the completed instrument at every hearing for every youth. Instead, at every court appearance following the initial appearance, counties / NYC should only present the DRAI to the court when a party requests detention or in instances where the court has indicated that detention is being considered.

In addition, counties / NYC are not required to complete a new DRAI at these later hearings - they are only required to refer to the DRAI that was completed earlier in the youth's case. The only exceptions to this are when:

1. There is a new petition for the youth, in which case the county/ NYC must complete a new DRAI; or
2. There is a known change in the legal status of the youth (other than a new petition), in which case the county / NYC is strongly urged to update the original DRAI; or
3. The court directs a new DRAI to be completed based on new information that has become available to the court.

As with the initial point of entry, if detention is ordered at later court hearings in cases where the DRAI does not indicate high risk, the law requires the court to state in the written order the particular reasons why detention was determined to be necessary.

B. Counties / NYC must complete the DRAI in a consistent and accurate manner.

To maintain consistency in how risk factors are being defined and measured and in how youth are being categorized in terms of level of risk, counties must complete the OCFS DRAI in a way that is consistent with the definitions and data sources outlined by OCFS – see the final section of **Attachment B, the DRAI**.

C. Counties / NYC must report relevant DRAI and detention data to the state

Executive Law §530(7) requires that the agency administering detention for each jurisdiction provide OCFS with annual data on the risk level of all detained youth, the offenses with which those youth are charged, and, if applicable, the reasons why a low- or moderate-risk youth was detained. As required by law, OCFS will use this data to periodically revalidate the DRAI and to examine whether there is a disparate application of detention. Evaluation of this data may help OCFS determine in the future whether there is a need to revise the OCFS DRAI and, if it proves necessary to do so, how to revise it.

To assist counties in meeting this statutory reporting requirement, OCFS is currently modifying the data fields in the Juvenile Detention Automated System (JDAS) to enable detention providers to enter this information for all new detention admissions. OCFS anticipates that these changes will be completed prior to the expected formal approval of the DRAI (target date of July 1, 2013).

In addition, state partners are working together to develop a web-based data system that will enable counties to complete and track the DRAI scores of all youth screened at each required entry point. Once implemented, this system will facilitate completion of the OCFS DRAI by providing authorized system users with the capacity to access information from the Office of Court Administration (OCA) needed to accurately complete that DRAI. Current development plans also call for the inclusion of predefined reporting capacities that will allow authorized county-level users to generate reports pertaining to their DRAI process. NYC will continue to use its existing data systems to track NYC DRAI usage, and will provide OCFS with information on all youth administered a DRAI in electronic format upon OCFS' request.

DEVELOPMENT AND SUBMISSION OF DRAI IMPLEMENTATION PLANS

The implementation guidelines outlined above are intended to serve only as minimum requirements for using a DRAI locally. It is recognized that effective implementation of such a far-reaching policy and practice change will be contingent upon counties / NYC developing procedures and practices within these guidelines that are tailored to local needs, resources, and infrastructures. To maintain consistency between local practices and state guidelines, and to encourage collaborative, thoughtful, and deliberate local planning efforts, all counties / NYC are required to use the DRAI Plan template developed by OCFS (see **Attachment D**) to submit a county-specific implementation plan that describes how they will administer, use, and report on their DRAI. Counties / NYC will be asked to answer the following questions as part of their plan:

1. What will be the composition and structure of the group charged with planning and monitoring local DRAI implementation?
2. How will the county / NYC - across the applicable agencies and stakeholders - differentiate as to whether a youth who has been determined to be appropriate for

detention will be placed in secure or non-secure detention? What is the limited purpose and scope of each type of detention, within the broad statutorily mandated purpose of preventing youth from being rearrested or failing to appear in court during case pendency?

3. What is the planned policy and practice for how the county / NYC will administer and use the DRAI at the initial point of entry, when detention is first considered, as well as at later court hearings? *(This will include such details as: who will complete the instrument at each point, how they will access the needed information, how they will share the instrument's score/recommendation with the party responsible for making the detention decision, and how and when information in the instrument will be updated.)*
4. Which programs will serve as alternatives-to-detention, and how and when will alternative-to-detention programs be accessed?

Counties / NYC must complete and submit their plans to OCFS by **April 30, 2013**. OCFS staff will review the plans within 45 days. Other members of the DRAI Implementation Work Group may also participate in the review. The goals of the review process will be to:

- ascertain that all counties have completed the plan according to instructions;
- determine that what counties have proposed is feasible and appropriate, in terms of both best practice and the state guidelines;
- build a statewide picture of detention practices that are occurring on the ground; and
- gather information that is needed in order to know how best to support counties / NYC as they move ahead with implementation efforts.

Given the operational complexities involved in implementing a DRAI, we expect that, in some cases, minor plan revisions may be needed. Changes will only be required, however, when either a DRAI plan does not comport with the broad implementation guidelines outlined in this document, or there is a serious concern about the practicality and/or legality of any component of the plan. The state is committed to working with counties / NYC so that all plans get approved and implemented as quickly as possible following the initial review. OCFS has developed a **DRAI Plan template (Attachment D)** and companion **Instructions/Information for completing the plan template (Attachment E)**, to be used for developing and submitting plans. For a plan to be approved, the county must complete **all sections** of the DRAI Plan according to the instructions provided.

V. Systems Implications

The Juvenile Detention Automated System (JDAS) will have new data entry fields added to accommodate the legislatively mandated DRAI reporting requirements. Commencing at the DRAI start date:

- The user must enter a DRAI score and offense charges for all admitted youth.
- If a youth is detained who scores low- or moderate-risk on the DRAI, the court order must include the reasons for the decision to detain; there will be an open-ended data field

in JDAS in which the user must enter the narrative contained in the court order describing the reason for detention.

Detailed information about the new JDAS fields will be provided before the DRAI start date.

VI. Additional Information

Completed plans must be submitted by **April 30, 2013**. When completing the plan, please type directly into the DRAI Plan template so that all required information is provided. If additional space is needed, simply continue to type in the box to expand the provided space.

Email completed plans to: Daniel Hulihan, NYS JDAI Statewide Coordinator, at:
ocfs.sm.stsjp@ocfs.ny.gov

VII. Effective Date

The policy is in effect immediately upon issuance.

OCFS has set a target date of July 1, 2013, for approval of the OCFS and NYC DRAI's. These respective DRAI's may be approved at different times. OCFS will notify counties / NYC at least 30 days before it approves each DRAI; approval will trigger the requirement to use the DRAI, according to the guidelines stipulated in this policy and each county's or New York City's respective DRAI plan.

/s/ Nancy W. Martinez

Issued By:

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Title: Director

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