

City of New York
Administration for Children's Services

Subject: Destitute Child Policy

APPROVED BY: Gilbert Taylor,
Executive Deputy Commissioner,
Division of Child Protection;
Alan Sputz, Deputy Commissioner,
Division of Family Court Legal Services

PAGES: 4

IMPLEMENTATION RESPONSIBILITY:
Division of Child Protection (DCP), Family
Court Legal Services (FCLS)

DATE: December 17, 2012

PURPOSE: The New York State Legislature has enacted a new Article 10-C of the Family Court Act (FCA) and amended the Social Services Law (SSL) to provide definitions and procedures for social services districts, including the Administration for Children's Services (ACS), to use in cases involving destitute children. This policy is intended to guide Child Protective staff on the factors that must be considered and the course of action that should be taken when identifying a child that is destitute.

SCOPE: This policy applies to the Divisions of Child Protection (DCP) and Family Court Legal Services (FCLS).

POLICY: When ACS encounters a child with unmet needs, ACS is responsible for determining if the parent or caretaker is unavailable or unable to sufficiently care for the child. If DCP determines that the child is destitute, staff will locate appropriate placement through the Office of Placement Administration (OPA) and shall seek to file a destitute child petition with Family Court Legal Services (FCLS) within 14 days of assuming physical custody of the child.

PROTOCOL:

Is the Child Destitute?

DCP staff should use the following criteria to determine if a child is "destitute":

1. Child is under the age of 18 and is lacking sufficient food, clothing, shelter or medical provisions; **and**
2. Child is NOT an "abused child" or a "neglected child" (as defined in FCA §1012); **and**
3. Child is without any parent or caretaker to adequately care for him or her due to:
 - a. The death of a parent or caretaker; **or**
 - b. The incapacity or debilitation of a parent or caretaker where such incapacity or debilitation would prevent the parent or caretaker from being able to knowingly and voluntarily enter into a written agreement to transfer the care and custody of said child to ACS; **or**
 - c. The inability to locate any parent or caretaker after making reasonable efforts to do so; **or**

- d. A parent or caretaker is physically located outside of the state of New York, and efforts to reunite the child with the parent or caretaker have been unsuccessful although reasonable efforts were made to do so.

Note: A “caretaker,” for purposes of the above, is an individual who has temporary or permanent legal custody or guardianship.

Reasonable Efforts:

Reasonable Efforts by ACS to locate and contact the parent or caretaker are required by the new law. Examples of appropriate courses of action to establish reasonable efforts are:

- Interviewing all identified family members, the source, and collateral contacts for pertinent information regarding the identity, contact information, and location of the parent or caretaker.
- Utilization of Investigative Consultants to obtain locating information for parent or caretaker.
- Conducting clearances using the Health and Human Services (HHS) database.
- Conferring with other city agencies such as Department of Homeless Services (DHS), Health and Hospitals Corporation (HHC), etc.
- Outreach to the consul’s office from the child’s country of origin, in the event that the child is present in the United States and has a parent or caretaker in another country. This could be due to the fact that the child’s parent or caretaker was deported or the child was sent to the United States on their own. (**Note: The level of discretion needed for consular contact requires that managerial staff or above facilitate discussions with consulates**)

Note: This is NOT an exhaustive list. Any and all appropriate efforts to locate and contact a child’s parent or caretaker should be taken even if not listed above.

Legal Consults:

A legal consult may be sought at any time prior to filing when there are questions pertaining to whether or not a child can be classified as a “destitute child” or whether reasonable efforts to locate a parent or caretaker have been demonstrated.

Placement of a Destitute Child:

- When a child is identified as destitute and in need of placement, a Child Safety Conference (CSC) is NOT required prior to placing the child. However, a CSC should be convened if the parent or caretaker is subsequently found and the child no longer meets the criteria for a “destitute child.”
- Section A of the Child Placement Referral is to be completed by the Child Protective Specialist (CPS) and “Destitute” is to be selected when choosing the child’s legal status. The completed Section A is to be placed in the “CES Ready Folder” corresponding to the borough of the referring office, which can be found in the shared “S” drive located in the My Documents folder of the computer.

- Section B is to be completed by the Child and Family Specialist (CFS) of the referring borough office and placed in the “OPA Ready Folder” corresponding to the borough of the referring office, which can be found in the shared “S” drive located in the My Documents folder of the computer.
- Child is to be transported to the Children’s Center for medical clearance and placement.
- A Family Services Stage (FSS) is to be opened in CNNX since it has been determined that the child is in need of foster care services.
- The LE-2921 form is also to be completed and submitted **by the next business day** after the FSS stage has been opened in order for the Child’s Identification Number (CIN) to be generated and for the Point of Service (POS) line to be opened in the Welfare Management System (WMS). Expeditious completion of this task is crucial in order to ensure that provider agencies are paid accurately and timely for services rendered. The LE-2921 form can be accessed via the ACS Intranet by clicking on the “Tools” section.
- The Initial Family Assessment and Service Plan (FASP) in the FSS stage is to be launched and completed within 7 days of case determination or 30 days of the child’s placement (whichever occurs first).
- DCP staff are required to hold the transitional meeting with the planning agency within 48 hours of placement in order to discuss service needs for the child and other matters pertaining to placement.
- The provider agency is to be assigned a Case Worker (CW) role in the FSS stage as soon as a child is placed with their agency. A Case Planner (CP) role is to be assigned to the agency once the Initial FASP has been launched and approved by the ACS borough office.

Filing a Destitute Child Petition:

- FCLS will support the implementation of the above protocol such that all legal advice to DCP staff and its practices in Family Court are consistent with these policies.
- The new law requires that a destitute child petition be filed in Family Court within 14 calendar days of ACS taking physical custody of the child. DCP staff are to adhere to this strict timeframe by immediately notifying FCLS of the need to file the destitute child petition. FCLS and DCP will then work together to file the destitute child petition in a timely manner so as to maintain compliance with the Social Services Law and the Family Court Act and ensure the possibility of federal reimbursement under Title IV-E.
- All destitute child petitions and proceedings will be filed in and take place in Manhattan Family Court. The assigned Child Protective Manager (CPM) will notify the Manhattan FCLS Supervising Attorney of the need to file a destitute child petition immediately after DCP takes physical custody of the child, and the Manhattan FCLS Supervising Attorney will advise the CPM of the filing process, which the CPM will share with the assigned CPS and supervisors.
- As stated above under “Placement,” a CSC is NOT required to file a destitute child petition. However, an 865D is required and must be provided to FCLS when filing a destitute child petition.

Post Filing Responsibilities:

- Once the investigation is completed, the Case Management (CM) role in the FSS/CWS stage in CNNX is to be transferred for continued monitoring.
- The assigned CPS will retain a CPS Worker/Monitor role in the FSS/CWS stage in order to document the outcome of court hearings.
- The assigned CPS is responsible for attending all court proceedings until the dispositional phase has been completed. In addition, CPS will be required to complete status reports if requested to do so by the court.
- Similar to Abuse and Neglect proceedings, the CPS may be called to testify regarding the contents of the petition and/or other issues that may need further probing.

THIS POLICY IS EFFECTIVE IMMEDIATELY