

## NOTICE TO THE BAR

Directive # 4-04

To: Assignment Judges

From: Richard J. Williams

Subject: Protocol to Implement L. 2003, c. 301 - Referrals to DYFS (a) In Cases Involving the Care of Minor Children of Persons Being Incarcerated; (b) In Cases Involving Persons Convicted of Certain Enumerated Offenses Where Victim Was Under Age 18

Date: April 13, 2004

This Directive promulgates the [two-part protocol](#) developed by the Conferences of Criminal Presiding Judges and Criminal Division Managers in conjunction with the Division of Youth and Family Services (DYFS) in the Department of Human Services to implement [L. 2003, c. 301](#). 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.

### (a) Where Person Being Incarcerated Is Sole Caretaker of a Minor

The new law provides that for any person convicted of a crime for which he or she will be incarcerated, the court must order that, as part of the presentence investigation, a determination must be made as to whether the person being incarcerated is the sole caretaker of any minor child and, if so, who will assume responsibility for the child's care and custody during the period the person is incarcerated. The law also provides that in those situations the presentence investigation must include: (1) an inquiry and verification that the person who will be responsible for the child's care and custody during the period of the sole caretaker's incarceration has agreed to assume responsibility for the child's care and custody; and (b) 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 the sole caretaker's incarceration as well as any other adult or juvenile over twelve years of age who is a member of that person's household.

The law further provides that the court shall provide DYFS with the information resulting from these inquiries. Upon receiving this information collected by the court, DYFS must conduct a child abuse record information check to ascertain whether there have been any substantiated incidents of child abuse or neglect against the person who will be responsible for the child's care and custody or any adult or juvenile over twelve years of age who is a member of that person's household. If, based on the information provided by the court and the check of its child abuse records, DYFS determines that the incarcerated person's minor child may be at risk of abuse or neglect or that the child's emotional, physical, health care, and educational needs will not be met during the period of the sole caretaker's incarceration, DYFS must take appropriate action to ensure the safety of the child.

### (b) Conviction of Enumerated Offense Where Victim Was Under Age 18

L. 2003, c. 301 also addresses the separate situation where an individual has been convicted of any of a list of specifically enumerated offenses and the victim of the offense was under the age of 18 at the time. If in such situations, the person convicted of the crime is the parent of a minor child or resides in a household where there are other minor children, the court must make a referral to DYFS. The court must provide DYFS 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 minor child of the defendant and/or any minor child who resides in defendant's household.

As noted above, this two-part detailed protocol was developed by the Conference of Criminal Presiding Judges and Conference of Criminal Division Managers in consultation with representatives of the Division of Youth and Family Services.

R.J.W.

Attachments