

PART 348

CASE RECORD MANAGEMENT

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§348.1 Definitions.

(a) Case record management is the systematic control over the establishment, accessibility, utilization, content, security, privacy, preservation and timely destruction of case records.

(b) Cumulative case record is a single case file containing all information with respect to a case from its inception through its conclusion. All records developed and/or received by the probation department which are related to the carrying out of authorized probation functions and services are considered probation records for the purpose of retention and destruction. The records may be written or electronic. Reports and other records material developed by the probation department and transmitted to the courts or other agencies become the responsibility of the court or other agencies as records.

(c) Probation services include intake/diversion, investigation, supervision, support/collection, and any other special or related service delivery programs.

§348.2 Rules

(a) The case record shall include information on all probation services rendered.

(b) The contents of the case record shall be as follows:

(1) Intake/diversion.

(2) Legal documents.

(3) Pre-sentence investigation report materials.

(c) The cumulative case record shall include reasons for the client's entry into the probation system, reflect actions taken by the client and probation officer at critical points, and the rationale for all significant decisions made from entry until termination of probation services.

(d) Case records shall be maintained or destroyed in accordance with the Records Retention and Disposition Schedules promulgated by the State Education Department. Prior to destruction those court records which have been filed in the probation department shall be returned to the court.

(e) Each probation department shall establish an index filing system for all cases. The minimum data in any active file shall be:

- (1) Client's name and date of birth.
- (2) Identifying case numbers:
 - (i) Probation
 - (ii) Court Control.
 - (iii) NYSID.
 - (iv) Social Security
- (3) Type of complaint or conviction.
- (4) Court's disposition and date.
- (5) Probation discharge date.
- (f) The security of case records shall be maintained.

§348.3 Supervision recordkeeping requirements.

- (a) Periodic supervision reports.
 - (1) Periodic supervision reports shall include the following:
 - (i) For Level I, II and III cases:
 - (a) all home visits and dates, personal contacts and dates, collateral contacts and dates, failure to report dates and follow-up actions and outcomes;
 - (b) violation of probation synopses, rearrest, and reconviction information, and actions and outcome;
 - (c) recurring assessment of needs and objectives to be accomplished;
 - (d) summary analysis of probationer's progress and updates of the supervision plan; and
 - (e) objectives outstanding.
 - (ii) For Level IV cases:

- (a) name and NYSID number, where applicable;
 - (b) date entered into level IV;
 - (c) appropriate designation--e.g., Absconder, jurisdiction-retained case, etc.;
 - (d) current status; and
 - (e) a listing of all contacts and dates
- (2) The frequency of periodic supervision reports, based upon the date the probationer/ respondent is placed in such level supervision, shall be as follows:
- (i) For Level I, II, and III cases, these reports shall be completed at six month intervals;
 - (ii) For Level IV cases, these reports shall be completed at twelve month intervals and may be represented in a case folder, general departmental computer printout or manual log.

§348.4 Accessibility of Case Records.

(a) General. Case records shall be accessible, in whole or in part, only by those authorized by law, court order and/or the Division of Probation and Correctional Alternatives (DPCA). DPCA has access to all case records and probation departments shall provide copies of any case records to DPCA upon request.

(b) Mandatory Sharing of Case Record Information.

(1) A probation director, or his/her designee, must make available a copy of its pre-plea/pre-sentence report and any medical, psychiatric or social agency report submitted in connection with its pre-sentence investigation or its supervision of a defendant, to any court or to the probation department of any court within the state, that subsequently has jurisdiction over such defendant for the purpose of pronouncing or reviewing sentence and to any state agency to which the defendant is subsequently committed or certified or under whose care and custody or jurisdiction the defendant subsequently is placed upon the official written request of the court or agency. In any such case, the court or agency receiving such material must retain it under the same conditions of confidentiality as apply to the probation department that made it available.

(2) A probation director, or his/her designee, must provide a copy of a pre-plea/pre-sentence report prepared in the case of an individual, other than a youthful offender, who is known to be licensed pursuant to title 8 of the education law to the state department of health if the licensee is a physician, a specialist's assistant or a physician assistant and to the state education department with respect to all such other licensees. Such reports must be in writing and shall be accumulated and forwarded every 3 months. They shall contain the following information:

- (i) the name of the licensee and the profession in which the license is held,

(ii) the date of the conviction and the nature thereof,

(iii) the index or other identifying file number.

In any such case, the state department receiving such material must retain it under the same conditions of confidentiality as apply to the probation department that made it available.

(3) Upon a determination by a probation director, or his/her designee, that probation records regarding an individual presently under the supervision of the department are relevant to an investigation of child abuse or maltreatment conducted by a child protective service pursuant to title 6 of article 6 of the social services law, he/she shall provide the records, or portions thereof, determined to be relevant to the child protective service conducting the investigation. Each probation director, or his/her designee, shall make provisions for the transmission of those required records.

(4) A probation director, or his/her designee, must provide all requisite case record information with respect to interstate or intrastate transfer of any probationer or former conditional releasee and, upon official written request, forward any additional case record information to the agency to which supervision has been transferred. In any such case, the court or agency receiving such material must retain it under the same conditions of confidentiality as apply to the probation department that made it available.

(c) Discretionary Sharing of Case Record Information.

(1) Public agencies outside this state. A probation director, or his/her designee, may disclose any information in its file as to an adult probationer, including youthful offender information, to any probation, parole, or public institutional agency outside this state, upon official written request. Any release of information shall be conditioned upon the agreement of the receiving agency to retain it under the same conditions of confidentiality as apply to the probation department that made it available. "Public institutional agency" shall mean any governmental entity which has the legal authority to detain and/or obtain custody over an individual charged or previously convicted of a criminal offense or adjudicated a youthful offender, or which has the responsibility to make a legal determination with respect to sex offender registration and/or DNA compliance.

(2) A probation director, or his/her designee, may disclose relevant case record information, other than the pre-plea/ pre-sentence/pre-dispositional report, not otherwise sealed or specifically restricted in terms of access by state or federal law, from its files concerning any adult offender (other than a youthful offender) or fingerprintable juvenile delinquent currently or previously under probation supervision or formerly under local conditional release supervision, to appropriate law enforcement authorities, school authorities, child protective services, public and/or treatment agencies, the judiciary, and victim(s)/victim(s) family member(s), for public safety and/or case management purposes, including, but not limited to the following:

(i) national and homeland security;

- (ii) criminal investigations and/or execution of warrants;
- (iii) sex offender registration and/or DNA compliance;
- (iv) victim safety, including matters pertaining to domestic violence, child protection, and sexual offense;
- (v) national instant criminal background check system (NICS)/weapons permits;
- (vi) military eligibility;
- (vii) professional licensing/certification;
- (viii) monitoring of conditions of probation or conditional release;
- (ix) risks and needs assessment;
- (x) treatment or counseling services to a licensed or certified provider; and
- (xi) probation or conditional release investigations;

In all such instances, those to whom access has been granted shall not secondarily redisclose such information without the express written permission of the probation director, or his/her designee, who authorized access.

(3) Potential or Existing Employee/Volunteer. A probation director or his/her designee may disclose to an existing or potential employer that an individual who is or may become an employee or a volunteer has been convicted of a crime or adjudicated a juvenile delinquent for a fingerprintable offense, the nature thereof, the terms and conditions of his/her release, and compliance under supervision, unless the records are otherwise sealed or restricted by federal or state law. In all such instances, those to whom access has been granted shall not secondarily redisclose such information without the express written permission of the probation director or his/her designee who authorized access.

(4) Public Information. A probation director, or his/her designee, may disclose relevant case record information (not including the Division of Criminal Justice Services criminal history record or any portion thereof) relative to an adult probationer (other than a youthful offender) or former conditional releasee, not otherwise sealed or restricted by state or federal law, for the purpose of apprehending a wanted person in connection with a crime, a violation of probation or conditional release, a probation or conditional release warrant, a violation of an order of protection, or in response to an incident wherein the department's, or any individual under probation supervision actions, are the subject of a media or news story. A probation director or his/her designee may disclose the name, gender, race, date of birth/age, height, weight, eye color, hair color, conviction offense, probation term, warrant/absconder status, and photograph of an adult probationer (other than a youthful offender).

(5) Research. Case records may be accessible, in whole or in part, for bona fide research conducted by a governmental entity or educational institution, where the probation director, or his/her designee, has made a bona fide research determination and approved of the research project. In such instance, the probation director, or his/her designee, shall enter into a written agreement as to terms and conditions of the research, and keep a log of any research project, its purpose, and dates of research conducted and/or completed. The following confidentiality safeguards shall be observed:

(i) coding is required to ensure that any youth or adult receiving, or previously having received, probation services are not identified by name;

(ii) access is restricted to only those involved in the research whose responsibilities cannot be accomplished without such access and to secure written confidentiality agreements from any research project staff to adhere to all terms and conditions of the research, including confidentiality provisions herein stated;

(iii) researchers are not permitted to copy any case records in any manner with identifying information and each probation director shall take such precautionary departmental security measures to guarantee compliance;

(iv) that any project records copied shall be maintained in secure locked files;

(v) to retain any data received or copied only so long as necessary to effectuate the purposes of the research project and to return or destroy the data in such a way as to prevent their unauthorized use;

(vi) to guarantee that research performed or information accessed will not result in adverse action against the subject of the research;

(vii) the probation department has advance access to any preliminary findings and/or draft report prior to finalization, publication, or distribution and to furnish the probation director with any final project report or findings in a timely manner; and

(viii) no assignment of research shall occur without the written consent of the probation director or his/her designee.

The probation director, or his/her designee, shall promptly provide the State Director of Probation and Correctional Alternatives with a copy of the final project report from any bona fide research project for which a written agreement is entered into.

(6) Data sharing. A probation director, or his/her designee, may voluntarily submit data in its files to the Division of Criminal Justice Services (DCJS).

(7) Freedom of Information Law. A probation director, or his/her designee, may deny access to case records or portions thereof sought pursuant to article 6 of the public officers law (the

freedom of information law) which meet the enumerated criteria established by subdivision two of section 87 of the public officers law. Criteria includes

- (a) records or portions that are specifically exempted by state or federal statute,
- (b) if disclosed would constitute an unwarranted invasion of personal privacy,
- (c) are compiled for law enforcement purposes and which if disclosed would
 - (i) interfere with law enforcement investigations or judicial proceedings,
 - (ii) deprive a person of a right to a fair trial or impartial adjudication,
 - (iii) identify a confidential source or disclose confidential information relating to a criminal investigation, or
 - (iv) reveal criminal investigative techniques or procedures,
- (d) are inter-agency or intra-agency materials
 - (i) which are not statistical or factual tabulations or data,
 - (ii) instructions to staff that affect the public, or
 - (iii) final agency policy or determinations. Case records or portions thereof which are exempt from disclosure and not accessible include, but are not limited to pre-plea/pre-sentence/pre-dispositional reports, medical records, confidential HIV-related information, victim's name and address, youthful offender records, juvenile delinquency adjustment records, sex offender registration information, and DCJS criminal history records.
- (e) Policies and Procedures. A local probation director shall establish written policies and procedures governing release of case records consistent with laws governing access and confidentiality and disseminate such policies and procedures to their agency staff.