

PART 349 INTERSTATE, INTRASTATE, CONFLICT OF INTEREST TRANSFER AND TEMPORARY PROBATION SUPERVISION FOR ADULTS AND JUVENILES

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§349.1 Definitions.

(a) The term "interstate compact for adult offender supervision" and the "interstate compact for juveniles" means legally binding agreements and administrative arrangements under which the states in an interstate transfer serve as each other's agents in the supervision of certain parolees, probationers, juvenile delinquents, persons in need of supervision, and youthful offenders.

(b) The term "interstate transfer" means a process by which the supervision of probationers is transferred to and from jurisdictions outside the State of New York.

(c) The term "intrastate transfer" means a process by which supervision and jurisdiction of a probationer is transferred within the State of New York and includes inter-county probation pursuant to section 176 of the family court act.

(d) The term "temporary supervision" means the process by which the time-limited supervision of a probationer who resides or desires to reside temporarily within in the jurisdiction of another local probation department within New York State and for the reasons authorized in this regulation, is assumed by such department while legal jurisdiction remains in the sending county.

(e) The term "interim probation supervision transfer" means the process by which the supervision of an individual placed on interim probation who resides or desires to reside within the county of another local probation department, is transferred while jurisdiction remains in the sending county.

§349.2 Objective.

To provide procedures which will ensure the expeditious processing of interstate and intrastate transfer of supervision cases, the temporary supervision of cases, as well as supervision in conflict-of-interest

cases. Additionally, to provide a mechanism to promptly resolve differences between probation departments as to intrastate and temporary supervision of cases in the interest of community and victim safety.

§349.3 General requirements for the transfer of supervision of all probationers.

(a) All interstate transfers of probation supervision shall be in accordance with the provisions of the interstate compact for adult offender supervision, the interstate compact for juveniles, any other governing compact, and applicable rules, regulation and procedures as adopted by the State compact administrator for such compacts with reference to the transfers of probation supervision.

Any sending probation department shall take all necessary steps to ensure the following are completed prior to transfer:

(1) fingerprinting of any convicted probationer, youthful offender, and juvenile delinquent adjudicated of a finger printable offense;

(2) DNA testing, where applicable; and

(3) Sex Offender Registration, where applicable.

A sending department shall indicate what actions it has taken with regard to these aforementioned requirements.

(b) All intrastate transfers of probation supervision shall be in accordance with the applicable provisions of the Family Court Act or Criminal Procedure Law.

(c) All intrastate and interstate transfers of probation supervision, as well as temporary supervision of cases, and supervision in conflict-of-interest cases shall comply with relevant provisions of this rule.

(d) Each probation director shall designate an experienced officer or officers to be responsible for transfers of probation supervision. Any such officer shall act as a liaison to the New York State Division of Criminal Justice Services office of probation and correctional alternatives. The name and title of such designee shall be filed with the director of the office of probation and correctional alternatives.

§349.4 Requirements for intrastate transfers, the temporary supervision of cases and conflict of interest cases.

(a) Any intrastate transfer, interim supervision transfer, or conflict of interest case must be made pursuant to a designation and order of the court. An intrastate transfer probationer must agree in writing to comply with any and all conditions set forth by the receiving court and be subject to any other fees and/or surcharges authorized by law. Transfers are prohibited whenever there exists pending criminal charge(s) in the sending jurisdiction, unless the individual is a resident of the receiving jurisdiction at the time of the commission of the offense or at sentencing/disposition or the receiving probation department expresses in writing its willingness to accept transfer.

(b) Prior to a transfer, the sending probation department shall provide the court with information relevant to a probationer's prospective plan of transfer, including residence, in the jurisdiction to which supervision is to be transferred.

(c) (1) Immediately upon knowledge that a person being considered for probation or on probation resides or desires to reside in another jurisdiction, the sending probation department may request the receiving probation department to verify the subject's residence or prospective residence except those cases enumerated in paragraph (2) of subdivision (c).

(2) Prior to a transfer involving any person convicted or adjudicated of an offense defined in Articles 130, 235, 263 of the Penal Law or Section 255.25 of such law, or of an offense between spouses, parent and child, or between members of the same family or household, or any other crime where an order of protection exists, and where a probationer is not a resident of the receiving jurisdiction at the time of sentencing or disposition, the sending probation department shall afford the receiving probation department the opportunity to investigate the prospective transfer and verify actual residence prior to his/her movement and transfer of supervision to a receiving jurisdiction. For purposes of this section, offense shall include the criminal offense or matter for which convicted or adjudicated, as well as any other criminal offense or matter that is part of the same criminal transaction or underlying behavior or that is contained in any other accusatory instrument or petition disposed of by a plea of guilty or finding of fact or admission of guilt in satisfaction.

(d) The sending probation department should take all necessary steps to complete fingerprinting, DNA testing, and Sex Offender Registration, where applicable, are completed prior to transfer and shall indicate what actions it has taken with regard to these requirements. The sending probation department within 10 business days of receipt of a court order of transfer shall transmit to the receiving probation department designee the following information:

(1); Fully executed Order of Intrastate Transfer Form;

(2) Order and conditions of probation imposed/modified by the sentencing court including the maximum expiration of sentence with due consideration of applicable case law.

(3) the pre-sentence or pre-disposition investigation report where available or in lieu of the report, a completed pre-sentence or pre-disposition report facesheet, the accusatory instrument or the petition, whichever is applicable, and police report(s) where available;

(4) a supervision summary if probationer has been under supervision for more than 30 calendar days at the time the transfer has been submitted;

(5) any mental health/substance abuse evaluation and/or treatment summary;

(6) any records regarding outstanding financial obligations;

(7) a photograph if available;

(8) a copy of any existing or recent orders of protection and/or victim information, including name and address;

(9) whether the probationer is subject to sex offender registration and where applicable all documents relating to sex offender registration, including photograph;

(10) any other information authorized by law;

(11) if applicable, information required by either the court ordering the transfer or the court to which supervision is transferred; and

(12) name, address, phone number of probationer's prospective or existing employer, residential treatment provider, and/or educational institution.

(13) proposed residence [as verified through collateral means], phone number, [email address if available] and information pertaining to others living in the household; and

(14) whether the individual is subject to fingerprinting and/or DNA testing; and

(15) where applicable, the name of the qualified manufacturer of ignition interlock device, date of installation, removal and order to de-install

Where any convicted probationer, youthful offender, or juvenile delinquent adjudicated of a fingerprintable offense, is under probation supervision, the sending probation department shall ensure that such case is duly entered into the integrated state probation registrant system.

The sending probation department shall supervise the probationer and the sending court shall retain legal jurisdiction over the case until such time the case is accepted by the receiving probation department which is effective on the date the transfer designee in the receiving county signs the applicable DCJS-16 Form.

After the receiving probation department receives the transfer application, and makes initial contact with the individual, the receiving probation department shall promptly notify the sending probation department of the receipt of the application and the initial contact.

Upon being notified by the receiving probation department, where the individual is residing, that it has received the application for transfer and has made initial contact with the individual, the sending probation department shall designate the case as Administrative in the Integrated Probation Registrant System.

(e) Upon receipt of the appropriate Intrastate Transfer Form, the receiving probation department shall supervise the probationer consistent with his/her risk classification or weekly until an assessment is conducted and the supervision level is established. The receiving probation department shall use reasonable efforts to verify residency in a prompt manner. Where the subject of the proposed transfer has not provided adequate verification of his or her address, the receiving department shall conduct at a minimum, two written or electronic communications to the subject of the transfer at the address provided by the sending department. Where no response has been obtained from these written communications, a home contact to the proposed address shall be conducted. If it is determined that the individual resides at the specified address in the order of transfer; has absconded; does not reside; or will not be residing at the specified address in the order of transfer; the receiving probation department shall immediately upon knowledge, but no later than 45 calendar days after the date the initial court transfer order is received, notify the sending probation department of its finding with respect to residency or non-residency. If the address in the order of transfer is inaccurate, the correct address shall be provided. Any verbal notification shall be immediately confirmed in writing. -If no notification by the receiving department of residency or non-residency occurs within 45 calendar days of the date the court transfer order is received, the transfer shall be effective and the receiving court shall

assume those powers and duties as otherwise specified in the court order and the receiving probation department shall assume the duty of supervision. Upon knowledge of residency or non-residency, the receiving probation department shall complete the acknowledgment section contained in the appropriate DCJS transfer form and return two duly executed copies to the sending probation department. Upon acceptance, the receiving probation department shall electronically transmit updated information to DCJS, utilizing the State's integrated probation registrant system. After 45 calendar days of the court order being received, if the receiving department has not already done so, the sending department shall electronically transmit to DCJS updated transfer information with respect to completion of transfer, utilizing the State's integrated probation registrant system. Where non-residency is determined, the receiving probation department shall return all appropriate transfer material to the sending probation department within 10 calendar days of such a determination.

(f) Where the receiving probation department recommends additional conditions, it shall seek to calendar the case with the receiving court for modification of conditions within 20 business days of acceptance of transfer. Nothing shall preclude the ability of the receiving probation department to request modification of conditions and/or a court to modify conditions during the term of supervision.

(g) A subsequent intrastate transfer of the supervision of a probationer shall originate from the appropriate court which possesses the jurisdiction to re-transfer.

§349.5 Requirements for Temporary Supervision

A probation department may request another probation department within the state to temporarily provide supervision services to a probationer. Prior to such request, the sending probation department shall notify the court with legal jurisdiction of its intention to do so. The request for temporary supervision shall be sent to the receiving probation department by the sending department immediately upon learning that the probationer resides or desires to reside in the receiving jurisdiction within the state.

(a) The temporary supervision of a probationer may be requested by a sending probation department when a probationer resides or desires to reside in another county and:

- (1) he/she has temporarily relocated to a residence in that county; or
- (2) he/she has been placed on a term of interim probation; or
- (3) he/she is a resident of that county at time of sentencing but has a pending violation of probation in the sending jurisdiction; or
- (4) there is a dispute between counties involving the validity of the probation sentence.

(b) Temporary Supervision shall be requested by the sending probation department when any of the following conditions exist:

- (1) Temporary relocation of residence. A probationer's request to temporarily reside in another jurisdiction for a period of 30 consecutive calendar days and not to exceed 10 months for purposes of education, employment, or residential treatment. For periods of temporary supervision exceeding 10 months, the probation department must make a new application in accordance with the terms of this section.

(2) Interim Probation. Upon learning that a probationer has been placed on interim supervision and resides or desires to reside in another county/city.

(3) Validity of probation sentence is questioned. Upon learning of a dispute concerning the validity of a sentence, the county/city probation department where the probationer currently resides shall temporarily supervise the probationer consistent with his/her assigned supervision level until such time the matter is resolved, or a decision is imposed pursuant to §349.7 of this Part.

(4) Pending violation of probation in the sending jurisdiction. Where there is a pending violation of probation in the sending jurisdiction and the probationer is a resident of another county, the probation department in that county shall temporarily supervise the probationer consistent with his/her assigned supervision level. The receiving probation department shall temporarily supervise the probationer for a period not to exceed 60 calendar days. If the violation of probation has not been disposed of by the court within the 60 calendar days, the sending department must make a new application in accordance with the terms of this section.

§349.6 Probation supervision in conflict of interest cases

(a). When a probation director determines that a conflict of interest exists in providing supervision to an individual sentenced to probation in his/her county/city, the probation director shall secure the agreement of a probation director in a contiguous county/city to provide supervision services, provided the approval of the court with legal jurisdiction is secured. The appropriate form shall be executed between both probation departments and shall include the approval of the court with legal jurisdiction.

(b). In cases where such conflict has been determined and agreement is secured by all parties, legal jurisdiction shall remain with county/city of residence. The probation department that agrees to provide supervision services shall fulfill all statutory and regulatory requirements.

(c) The probation department where the probationer resides and the court with legal jurisdiction shall handle any subsequent interstate or intrastate transfers

§349.7 Administrative Appeal.

(a) Whenever there is a dispute between probation departments as to the acceptance of an intrastate transfer or a matter pertaining to temporary transfer supervision. The probation directors in each county shall be informed by their respective transfer designees no later than one business day from the occurrence of the dispute between the probation departments. The probation directors shall timely commence communication to resolve the pending dispute. If the dispute is not promptly resolved either of the probation directors shall promptly appeal to the director of the office of probation and correctional alternatives for resolution of the matter.

(b) The departments shall provide the office of probation and correctional alternatives with information as to their respective position and specific details as to the nature of the dispute and such other information as may be requested by the director. The office shall attempt to mediate the matter and if necessary, the commissioner of the division of criminal justice services, upon consultation with the

director of the office of probation and correctional alternatives, shall promptly render a final determination binding upon both departments.

§349.8 Restitution and other financial obligation. The receiving probation department shall be responsible for the collection of any restitution payment and designated surcharge imposed as a condition of a probation sentence or disposition and disbursement to the proper beneficiary. The receiving department shall be entitled to receive and keep any designated surcharge imposed. However, in no event shall the receiving probation department be responsible for the collection and disbursement of restitution and/or any other financial obligations which it does not routinely collect.