



Proposed amendments to Title 9 New York Codes, Rules and Regulations Part 349:

Interstate and Intrastate Transfer of Probation Supervision for Adults and Juveniles

1. Subdivision (d) is amended and subdivision (e) is added to Section 349.1 of Part 349 of 9 NYCRR to read as follows:

(d) The term "temporary [transfer] supervision" means the intrastate process by which the time-limited supervision of [a probationer] an individual who resides or desires to reside [temporarily within] in the jurisdiction of another local probation department [for purposes of education, employment, or residential treatment is transferred to such department for a period between one and ten months] within New York State and for the reasons authorized in this regulation, is assumed by such department while jurisdiction remains with the probation department of the sending county/city.

(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/city of another local probation department, is transferred while jurisdiction remains with the probation department of the sending county/city.

2. Section 349.2 of Part 349 of 9 NYCRR is amended to read as follows:

§349.2 Objective.

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

3. Subdivision (c) of Section 349.3 of 9 NYCRR is amended to read as follows:

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

4. Section 349.4 of Part 349 of 9 NYCRR is amended to read as follows:

349.4 Requirements for the intrastate transfers of supervision.

(a) Any individual seeking intrastate transfer, interim supervision transfer, or conflict of interest case must be pursuant to a designation and order of the court. [A probationer] An individual seeking intrastate transfer 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. [No intrastate transfer shall be initiated by a sending probation department when there exists a pending violation of probation in its jurisdiction unless the receiving probation department expresses in writing willingness to accept transfer. No transfer of interim probation cases shall be initiated unless statutorily authorized.] Transfers are prohibited whenever there

exists pending criminal charge(s) in the sending jurisdiction, unless the [probationer] individual is a resident of the receiving jurisdiction at time of commission of the offense or at sentencing/disposition or [has family residing in the receiving jurisdiction with whom [he/she] they will reside, the transfer enhances public safety, and] when the receiving probation department expresses in writing 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 this subdivision. [All efforts shall be made to afford the receiving department adequate time so as not to delay disposition of the case. Factors that may be considered when determining suitability to transfer to another probation department are the individual's address for mailing and/or tax purposes, where he/she lives the majority of time, votes, and where his/her vehicle is registered.]

(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 move-
ment 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 instruct-
ment or petition disposed of by a plea of guilty or finding of fact or admission of guilt in satisfaction.

[(3) The sending probation department shall provide the receiving department at a minimum the following information:

- (i) subject's current address and prospective address, if different;
- (ii) subject's current home and business telephone number;
- (iii) the order and conditions of probation;
- (iv) a copy of any existing order of protection;
- (v) a brief description of the underlying offense or act;
- (vi) where applicable, subject's current employer and prospective employer if different; and
- (vii) where applicable, the name, address, and telephone number of the subject's residential treatment provider or educational institution.

(4) 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 such efforts shall include, at a minimum, two written 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, it is recommended that a home visit be conducted.

(5) Upon verification of residency by receiving department all Information shall be promptly provided to the sending department by the receiving probation department upon request.

(6) The receiving probation department shall, upon verification of residency within its jurisdiction, complete the acknowledgement section contained in the applicable form and promptly return, by fax if available, two duly executed copies to the sending probation department. Upon a finding of no residency, the receiving department shall complete the acknowledgement section contained in the form and promptly return two duly executed copies and all transfer materials to the sending department.]

(d) [When a probationer is granted transfer, a sending probation department shall immediately provide the designee in the receiving department in the most expeditious manner available with the orders and conditions of probation and preliminary information about the probationer, including at a minimum, the name, address and telephone number of the probationer, date of leaving, date of arrival, underlying offense which resulted in probation supervision, sentencing court, and type of transfer. The sending department shall receive instructions from the receiving department as to where the probationer shall report. The sending department shall direct the probationer in writing to report to a specific location in the receiving department within ten business days of arrival.

(e) The sending probation department [shall] should take all necessary steps to [ensure] 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) A completed form DCJS-16, DCJS-16a or DCJS-16b, whichever is applicable or such other form and/or manner as may be prescribed by DCJS;

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

[(3) periodic supervision reports] (4) supervision summary if the individual has been under supervision for more than 30 calendar days at the time the transfer has been submitted;

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

[(5)] (6) any records regarding outstanding financial obligations;
[(6)] (7) a photograph if available;
[(7)] (8) a copy of any existing or recent orders of protection and/or
victim information, including name and address;
[(8)] (9) whether the probationer is subject to sex offender registration
and where applicable all documents relating to sex offender registration
including photograph;
[(9)] (10) any other information authorized by law;
[(10)] (11) if applicable, information required by either the court ordering the transfer or
the court to which supervision is transferred;
[(11)] (12) name, address, phone number of probationer's prospective or
existing employer, residential treatment provider, and/or educational
institution;
[(12)] (13) proposed residence, phone number, and information pertaining to
others living in the household; [and]
[(13)] (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.

The sending probation department shall supervise the individual and the sending court shall retain 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 probation department 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.

[Where any convicted individual, youthful offender, or juvenile delinquent adjudicated of a fingerprintable offense, is under probation supervision, the sending probation department shall electronically transmit, utilizing the State's integrated probation registrant system, the ORI number and the probationer's registration number associated with the underlying offense for which such person is under supervision]

[(f)] (e) Upon receipt of the appropriate Intrastate Transfer Form, the receiving probation department shall supervise the individual consistent with his/her risk classification or have the individual report weekly until an assessment is conducted and the supervision level is established. The receiving probation department shall use reasonable efforts to promptly verify residency. Where the subject of the proposed transfer has not provided adequate verification of his or her proposed address he or she specified on the application, the receiving department shall conduct a minimum of 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 probationer: 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 [60] 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. [The sending probation department shall notify the sending court of the finding. The sending probation department shall retain the duty of supervision for the probationer and the sending court shall retain jurisdiction over the case prior to verification of residence or upon notification of probationer non-residence within the time period.] If no notification of residency or non-residency occurs within [60] 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 acknowledgement 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 transfer information to DCJS, utilizing the State's integrated probation registrant system. After [60] 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 and upon receipt, the sending probation department shall change the supervision classification from administrative to active.

[(g)] (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 twenty 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.

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

5. Section 349.5 of Part 349 of 9 NYCRR is REPEALED and a new section 349.5 is added to 9 NYCRR to read as follows:

§349.5 Requirements for Temporary Supervision.

A probation department may request another probation department within the state to temporarily provide supervision services to an individual. Prior to such request, the sending probation department shall notify the court with 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 being informed that the individual resides or desires to reside in the receiving jurisdiction within the state.

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

- (1) they have temporarily relocated to a residence in that county/city; or
- (2) in accordance with Criminal Procedure Law 390.30, they have been placed on a term of interim probation; or
- (3) they are a resident of that county/city at time of sentencing but has a pending violation of probation in the sending jurisdiction; or
- (4) there is a temporary 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. An individual'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 an individual has been placed on interim probation and resides or desires to reside in another county/city.

(3) Validity of probation sentence is questioned. Upon being notified of a dispute concerning the validity of a sentence, the probation department where the individual currently resides shall temporarily supervise such individual 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 individual is a resident of another county, the probation department in that county/city shall temporarily supervise such individual consistent with his/her assigned supervision level. The receiving probation department shall temporarily supervise the individual 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 probation department must make a new application in accordance with the terms of this section.

6. Sections 349.6 and 349.7 of Part 349 of 9 NYCRR are renumbered sections 349.7 and 349.8, respectively and amended, and new section 349.6 is added, to read as follows:

§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 individual resides and the court with legal jurisdiction shall handle any subsequent interstate or intrastate transfers, and any related statutory responsibilities.

349.[6]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 case between local probation departments] supervision, the probation directors in each county/city 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 [or both departments may] of the probation directors shall promptly appeal to the director of the office of probation and correctional alternatives for resolution of the mater.

(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.[7] (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.