

EMERGENCY AND PROPOSED REGULATION/PROBATION STATE AID BLOCK GRANT

RULE TEXT

Part 345 of 9 NYCRR is REPEALED and a new Part 345 is added to read as follows:

(Statutory authority Chapters 53 and 57 of the Laws of 2011, Executive Law Sections 243 and 246)

Part 345 - Probation State Aid Block Grant

Section 345.1 - Objective.

Section 345.2 – Definitions.

Section 345.3 - State Aid Plan Application Submission and Eligibility for State Aid.

Section 345.4 - Plan approval, funding, and reporting.

Section 345.1 Objective.

To provide for the distribution of State aid to county probation services and to the probation services of New York City and to provide State financial assistance to local governments for regular and/or specialized probation programming to promote offender accountability, rehabilitation, and enhance public safety.

Section 345.2 Definitions.

When used in this Part:

- (a) “Division” shall mean the Division of Criminal Justice Services.
- (b) “Commissioner” shall mean the Commissioner of the Division of Criminal Justice Services.
- (c) “Office” shall mean the Office of Probation and Correctional Alternatives located within the Division of Criminal Justice Services.
- (d) “Director” shall mean the Director of the Office of Probation and Correctional Alternatives within the Division.
- (e) “Department” shall mean a county probation department or the City of New York probation department.

Section 345.3 State Aid Plan Application Submission and Eligibility for State Aid.

Every county outside of the City of New York and the City of New York shall annually file a probation state aid plan application with the Office pursuant to the format, timeframe and schedule prescribed by the Commissioner in consultation with the Director.

- (a) Applications shall include a detailed plan with cost estimates covering probation services for the fiscal year or portion thereof for which aid is requested. Included in such estimates shall be clerical costs, maintenance and operation costs, salaries of probation personnel and other pertinent information including an overview of probation program services relating to staff training, investigation, supervision, and intake.
- (b) An approved plan and compliance with standards relating to the administration of probation services, promulgated by the Commissioner in consultation with the Director, shall be a prerequisite to eligibility for State Aid.
- (c) A county outside of the City of New York and the City of New York may apply for additional state aid as part of a block grant award for enhanced program services with respect to specific populations, including aid for the Intensive Supervision Program (ISP), Enhanced Specialized Services for Sex Offenders (ESSO), Juvenile Risk Intervention Coordination Services (J-RISC) or any other specific population determined by the Commissioner.
- (d) The Commissioner shall allocate block grant monies based upon a review of all approved plans and their respective budgets and pursuant to a plan prepared by the Commissioner and approved by the Director of the Division of the Budget. All state aid shall be granted by the Commissioner after consultation with the State Probation Commission and the Director.
- (e) State aid monies received by the Division during 2011 shall be, to the greatest extent possible, distributed in a manner consistent with the prior year distribution amounts and thereafter as authorized by law.

Section 345.4 Plan approval, funding, and reporting.

- (a) State aid grants shall not be used for expenditures for capital additions or improvements, or for debt service costs for capital improvements.
- (b) Each plan shall:
 - (1) ensure adherence to all applicable laws and rules and regulations governing probation services;
 - (2) ensure that the Integrated Probation Registrant System will be maintained by the Department in a timely and accurate manner and that the proportion of active but closable adult supervision cases will be maintained at less than five percent of the total active Department caseload and whenever in excess, immediate steps will be undertaken to reduce percentage to less than five percent;
 - (3) ensure that the Department will timely collect DNA from individuals under their supervision who have not yet submitted DNA as agreed upon pursuant to a plea, as required by law, or as otherwise ordered by the court and routinely review the “DNA Owed” report on the Division’s Probation Services Suite for such purposes;
 - (4) ensure that the Department will facilitate timely Sex Offender Registration Act (SORA) compliance (registration, submission of photographs, completion of annual address verification form, change of address forms, and 48-hour forms) by the Department and by any registered sex offender subject to supervision by the Department and conduct quarterly address checks of registerable sex offenders under probation supervision as requested by the Division to verify compliance;
 - (5) ensure that probation officers have access to the Division’s eJusticeNY;
 - (6) ensure that the Department uses a Division approved fully validated Risk/Need Assessment instrument for juvenile and adult offender populations;
 - (7) if application is made for ISP service funding, make the following assurances:

- (i) defendants will be screened at the earliest/appropriate stage in the dispositional process for program participation using Division eligibility criteria, and any additional criteria developed by the Department;
 - (ii) the Department will maintain and update, when applicable, local eligibility criteria that will further limit the unnecessary incarceration of certain high risk offenders. These criteria shall be in accordance with Division rules and regulations and such criteria and any update shall be forwarded to the Division;
 - (iii) the Department will use an approved Division assessment process or instrument to identify and target those with greatest risk and needs for program participation;
 - (iv) the Department will reduce the number of defendants who may be unnecessarily incarcerated by diverting them into the program by facilitating a probation sentence with the condition of program participation for suitable high risk defendants who would otherwise have been incarcerated and probationers who violate the original order and conditions of probation who will be continued under probation supervision with the condition of program participation, as an alternative to incarceration;
 - (v) the Department will complete a full assessment of all probationer program participants' criminogenic risks and needs, using a Division approved instrument and establish a supervision plan in a timely manner;
 - (vi) the Department will refer all such probationers to appropriate service providers based on the case planning assessment in the supervision plan; and
 - (vii) the Department will ensure that all such probationer's participate and engage in all service programs, and monitor their progress.
- (8) if application is made for ESSO funding, make the following assurances:

- (i) the Department will ensure that all SORA Level 2 or 3 registered sex offenders under probation supervision are subject, where applicable, to the mandatory sex offender condition(s) set forth in Penal Law §65.10(4-a), and court-ordered or interstate authorized specialized sex offender conditions which may include, but are not limited to, the internet restriction condition under Penal Law §65.10 (5-a);
- (ii) the Department will ensure that all such sex offenders are assigned to the caseload of an experienced probation officer/ probation unit who either solely or primarily supervises sex offenders, or has a significant concentration of sex offenders on the caseload, and who has received specialized training on sex offender management;
- (iii) the Department will perform enhanced field work (i.e. surveillance, collateral contacts, employment visits, as well as use of electronic monitoring, global positioning systems, computer scanning, internet usage monitoring, and other enforcement initiatives) in supervising such sex offenders;
- (iv) the Department will conduct at least one visit to a SORA Level 2 or 3 sex offender's home each quarter during which, at a minimum, a plain view search for prohibited items and/or substances is completed;
- (v) the Department will ensure that all such sex offenders are assessed by a probation officer or treatment provider using a sex-offender specific assessment instrument approved by the Division;
- (vi) the Department will ensure that all such sex offenders are referred to, participate in, or successfully complete Association for the Treatment of Sexual Abusers (ATSA)-compliant clinical evaluation and/or treatment where available;
- (vii) the Department will maintain and implement a policy which provides for collaboration with other law enforcement and service agencies on: warrant execution sweeps, home

visits, surveillance, searches, treatment planning, housing, and other activities related to general sex offender management;

(viii) the Department will maintain and implement a policy which provides for officers to independently or in concert with law enforcement execute warrants on Sex Offenders, including apprehending absconders who are found, pursue extradition where appropriate, and secure warrants and retake interstate sex offenders where required and/or necessitated; and

(ix) the Department will utilize polygraph examinations for the management of certain sex offenders consistent with the goals of community safety where available.

(9) If application is made for J-RISC funding, make the following assurances:

(i) the Department will use an approved Division risk and needs assessment process or instrument, refer alleged and/or adjudicated Persons In Need of Supervision(PINS) and Juvenile Delinquent (JD) youth who are determined to be high risk and appropriate for program services and conduct reassessments as necessary; and

(ii) the Department will assign juvenile probation officers trained in family intervention and cognitive behavioral techniques, youth supervision and delinquency prevention to perform program services and/or work collaboratively with evidence-based intervention provider(s) to achieve reductions in dynamic risk for J-RISC youth and to achieve successful program completion.

(10) Ensure adherence to other program goals, objectives, and performance target requirements set forth by the Division for additional state aid with respect to special/specific populations other than the populations specified in paragraphs seven, eight and nine of this subdivision.

(c) The Commissioner may require modification of the plan in order to obtain approval. Any modification of a plan requires Commissioner approval.

- (d) Vouchers and program reports shall be in a format established by the Division and shall be submitted on a schedule established by the Division.
- (e) Division or other governmental findings by audit or program analysis and review which show that the Department has not adhered to the approved plan of operation and/or standards governing probation practice, may be the basis for withholding the payment of State aid or recouping monies. A county or the City of New York may request reconsideration of the decision to withhold payment or recoup monies to the Office and shall submit information as to their respective position and specific details in support of its position and such other information as may be requested by the Director. After consultation with the Director, the Commissioner will render a final determination which may include the steps that are necessary to obtain funding.