

Emergency and Proposed Rulemaking

Part 349 of Title 9 N.Y.C.R.R. is amended to read as follows:

The Statutory authority for Part 349 is amended to read as follows:

(Statutory authority: Executive Law, §§ 243(1), [259-m(2)], 259-mm; Family Court Act §176; Criminal Procedure Law, § 410.80(1); [L. 1955, ch. 155]L. 2007, ch. 191; L. 2010, ch. 56 and L. 2011, ch. 29)

Subdivisions (a), (b), and (c) of Section 349.1 shall read as follows:

- (a) The term "interstate compact for [parole and probation] 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 [adult and child] probationers is transferred to and from jurisdictions outside the State of New York.
- (c) The term "intrastate transfer" means a process by which[, in the case of an adult probationer, a sentencing court or a court by virtue of a previous transfer has assumed the powers and duties of the sentencing court and has sole jurisdiction in the case, or in the case of a child probationer, a family court designates any other probation department within the State to perform the duties of probation] supervision [of the probationer] 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.

Subdivisions (a) and (b) of Section 349.3 shall read as follows:

- (a) All interstate transfers of probation supervision shall be in accordance with the provisions of the interstate compact for [the supervision of parolees and probationers] adult offender supervision, the interstate [juvenile] compact for juveniles, any other governing compact, and applicable rules, regulations 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 [adult] probationer, youthful offender, [juvenile offender/youthful offender,] and juvenile delinquent adjudicated of a fingerprintable 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 [of child probationers] shall be in accordance with the applicable provisions of the Family Court Act or Criminal Procedure Law.

Subdivision (c) of section 349.3 is repealed and subdivisions (d) and (e) are renumbered (c) and (d).

Subdivision (d) of section 349.3 shall read as follows:

- (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 [State Division] New York State Division of Criminal Justice Services office of [Probation and Correctional Alternatives] probation and correctional alternatives. The name and title of such designee shall be filed with the [State Director] director of the office of [Probation and Correctional Alternatives] probation and correctional alternatives.

The opening paragraph of subdivision (e) of section 349.4 shall read as follows:

- (e) The sending probation department shall take all necessary steps to ensure 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 [calendar] business days of receipt of a court order of transfer, shall transmit to the receiving probation department designee the following information:

Paragraph (1) of subdivision (e) of section 349.4 shall read as follows:

(1) A completed form [DPCA] DCJS 16, [DPCA] DCJS-16a or [DPCA]DCJS-16b, whichever is applicable or such other form and/or manner as may be prescribed by DCJS;

The closing paragraph of subdivision (e) of section 349.4 shall read as follows:

Where any convicted [adult] individual, youthful offender, [juvenile offender/youthful offender,] or juvenile delinquent adjudicated of a fingerprintable offense, is under probation supervision [a copy of the DPCA -200 or through an equivalent process which indicates] the sending probation [department's] 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 [individual] person is under supervision [shall be transferred to the DPCA via DCJS with a copy to the receiving probation department].

Subdivision (f) of section 349.4 shall read as follows:

(f) 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 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 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 [DPCA] DCJS transfer form and return two duly executed copies to the sending probation department. Upon acceptance, the receiving probation department shall electronically transmit [to DPCA via DCJS a DPCA-200 or through an equivalent process which updates] updated transfer information to DCJS, utilizing the State's integrated probation registrant system [and shall provide a copy to the sending probation department]. After 60 calendar days of the court order being received, if the receiving department has not already done so, the sending department shall electronically transmit to [DPCA via] DCJS [a DPCA-200 or an equivalent electronic process which updates information and provide a copy or notification to the receiving department of its action] 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.

Subdivision (h) of section 349.4 shall read as follows:

A subsequent intrastate transfer of the supervision of a probationer shall originate from [a] the appropriate court which possesses the jurisdiction to re-transfer. [If the court transferring supervision retained jurisdiction, copies of all reports and records shall be sent to the probation department which originated the first transfer in order that a second transfer may be made by such court and the probation department servicing such court shall comply with the previous provisions of this Part. If the court transferring supervision did not retain jurisdiction, a second transfer shall be made by the court to which supervision was transferred and the probation department serving such court shall comply.]

The section heading and subdivision (a) of section 349.5 shall read as follows:

349.5 Requirements for the Temporary Transfer of Supervision of [Adult and Child] Probationers. (a) Temporary transfer of [an adult or child] a probationer may be approved by a sending probation department upon verification of temporary residency by the receiving probation department.

Paragraph (1) of subdivision (h) of section 349.5 shall read as follows:

(1) A completed form [DPCA]DCJS-16b, or such other form and/or manner as may be prescribed by DCJS;

Section 349.6 shall read as follows:

- (a) Whenever there is a dispute as to acceptance of an intrastate or temporary transfer case between local probation departments, either or both departments may appeal to the [State Director of Probation and Correctional Alternatives] director of the office of probation and correctional alternatives.
- (b) The departments shall provide the [Division of Probation and Correctional Alternatives] 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 [State] director. The [division] office shall attempt to mediate the matter and if necessary, the [State director] 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.

Section 349.7 shall read as follows:

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. [In]However, in no event shall the receiving probation department be responsible for the collection and disbursement of any restitution and/or other financial obligations which it does not routinely collect.