

## **Effective September 16, 2011**

### **PART 349**

## **INTERSTATE AND INTRASTATE TRANSFER OF PROBATION SUPERVISION FOR ADULTS AND JUVENILES**

- Sec. [349.1](#) Definitions
- Sec. [349.2](#) Objectives
- Sec. [349.3](#) General requirements for the transfer of supervision of all probationers
- Sec. [349.4](#) Requirements for the intrastate transfers of supervision
- Sec. [349.5](#) Requirements for the Temporary Transfer of Supervision of Probationers
- Sec. [349.6](#) Administrative Appeal
- Sec. [349.7](#) Restitution and other financial obligation

### **§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 transfer" means the intrastate process by which supervision of a probationer who desires to reside temporarily within the jurisdiction of another local probation department for purposes of education, employment, or residential treatment is transferred to such department for a period between 1 and 10 months.

### **§349.2 Objective.**

To provide procedures which will ensure the expeditious processing of interstate, intrastate and temporary transfer of supervision cases and the appropriate supervision of such cases. Additionally, to provide a mechanism to resolve differences between probation departments as to intrastate and temporary transfer cases.

### **§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 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 shall be in accordance with the applicable provisions of the Family Court Act or Criminal Procedure Law.

(c) All temporary, intrastate, and interstate transfers of probation supervision 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 the intrastate transfers of supervision.**

(a) Any intrastate transfer must be pursuant to a designation and order of the court. A 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. 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 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 will reside, the transfer enhances public safety, and 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 subdivision (c). 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 Article 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.

(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 nonresidency, 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 10 business days of arrival.

(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 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 as may be prescribed by DCJS;

(2) 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;

(3) periodic supervision reports;

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

(5) any records regarding outstanding financial obligations;

(6) a photograph if available;

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

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

(9) any other information authorized by law;

(10) information required by either the court ordering the transfer or the court to which supervision is transferred; and

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

(12) proposed residence, phone number, and information pertaining to others living in the household; and

(13) whether the individual is subject to fingerprinting and/or DNA testing.

Where any convicted probationer, 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 system, the ORI number and the probationer's registration number associated with the underlying offense for which such person is under supervision.

(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 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 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 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.

(g) 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.

(h) 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 the Temporary Transfer of Supervision of Probationers.**

(a) Temporary transfer of a probationer may be approved by a sending probation department upon verification of temporary residency by the receiving probation department.

(b) Upon knowledge of a probationer's desire to temporarily reside in a place other than within the jurisdiction where the sending probation department is located for purposes of education, employment, or residential treatment, for a period of 30 consecutive calendar days or more not to exceed 10 months, the sending probation department may request the appropriate probation department within the state to temporarily assume Courtesy supervision. Prior to a transfer of Courtesy supervision, the sending department shall notify the court with jurisdiction of the transfer. Where residency can be verified, the receiving department shall accept supervision, absent special circumstances.

(c) The request by the sending probation department to the receiving department shall occur immediately upon knowledge of a probationer's desire to reside in another jurisdiction of the state. The sending department shall provide the receiving department at a minimum with the following:

- (1) name of individual subject of transfer;
- (2) subject's current and prospective street/apartment address;
- (3) subject's current home and business telephone number;
- (4) underlying offense or act;
- (5) name of subject's current and prospective employer if different; and
- (6) name, address, and telephone number of residential treatment provider or educational institution, where applicable.

(d) All information shall be promptly provided to the sending probation department by the receiving probation department upon request.

(e) Where the subject of the transfer has not provided adequate verification of his or her temporary address to the receiving department, the receiving probation department shall use reasonable efforts to verify temporary residency. Such efforts shall include at a minimum two written communications to the individual at the specified address provided by the sending department and a written or verbal communication with his or her employer, residential

treatment provider, or educational institution, as applicable and it is recommended that a home visit be conducted.

(f) The receiving probation department shall, upon verification of temporary residency within its jurisdiction, provide written notification to the sending department as to their determination and complete the acknowledgment section contained in the applicable form and promptly return two duly executed copies to the sending probation department. Upon a finding of nonresidency, the receiving department shall complete the acknowledgment section contained in the form and promptly return two duly executed copies and all transfer material to the sending department.

(g) Where a probation is transferred, a sending probation department shall immediately provide the designee in the receiving department with the orders and conditions of probation and preliminary information about the probationer, including at a minimum the following:

- (1) the name, address, and telephone number of the probationer and type of transfer;
- (2) the probationer's date of leaving and date of arrival, if different;
- (3) underlying offense which resulted in probation supervision and sentencing court; and if different
- (4) the name, address, telephone number of probationer's current or prospective employer, residential treatment provider, and/or educational institution, whichever is applicable.

The sending department shall receive instruction from the receiving department as to where the probationer shall report. The sending department shall direct in writing the probationer that he or she shall report to a specific location in the receiving department within 10 business days of arrival.

(h) The sending department, upon approving the transfer, shall further transmit to the receiving department the following information:

- (1) a completed form DCJS-16b, or such other form and/or manner as may be prescribed by DCJS;
- (2) 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;
- (3) periodic supervision reports;
- (4) any mental health/substance abuse evaluation and/or treatment summary;
- (5) any records regarding outstanding financial obligations;
- (6) a photograph if available;

(7) a copy of any existing or recent orders of protection;

(8) all documents relating to sex offender registration, including photograph; and

(9) any other information authorized by law.

(i) Upon temporary transfer being authorized, the receiving department shall exercise supervision duties and forward to the sending department copies of periodic supervision reports and provide notification and documentation of any violation of terms and conditions of probation. Such duties shall continue until such time as completion or discharge from schooling, treatment, or cessation of employment in the receiving jurisdiction or 10 months, whichever occurs first.

(j) Any temporary transfer case shall be supervised at a level consistent with public safety and the needs of the probationer in accordance with Part 351.

(k) Reapplication in temporary transfer cases shall occur in accordance with this rule section.

#### **§349.6 Administrative Appeal.**

(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 director of the office of probation and correctional alternatives.

(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 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.