

PROPOSED AMENDMENTS/PART 350 INVESTIGATIONS AND REPORTS RULE

Section 350.3 of Part 350 of 9 NYCRR is amended to read as follows:

Section 350.3 Objective.

The objective of the investigation and report is to provide the court with relevant and reliable information, in a succinct, analytical presentation for decision-making. Also, to provide dispositional and regulatory agencies that are entitled to access with information for immediate and future decision-making purposes with respect to placement/incarceration, services and program delivery. These dispositional agencies shall include probation, social services, New York State Office of Children and Family Services (OCFS), [Division of Parole (DOP),] Department of Corrections and Community Supervision [Correctional Services (DOCS)] (DOCCS), and any other public institution or agency.

Subdivision (a) of Section 350.6 of 9 NYCRR is amended to read as follows:

- (a) Order for Investigation and Report. The court order for investigation and report shall include, at a minimum, the same information and attachments, as applicable [, and as provided for in form DPCA-2.2 Court Order For Investigation And Report]. The receipt of a court order for an investigation and report shall be entered in either a paper or electronic departmental case record management system which shall include but not be limited to the date received, the name of the person subject to the investigation, the date of birth, the final conviction charge/finding, disposition/sentencing date, and the name of the person assigned to conduct the investigation and prepare the report. In the case of fingerprintable offenses (juvenile and adult), the Criminal Justice Tracking Number (CJTN) and NYSID shall also be recorded to positively identify the subject of the investigation and obtain a complete criminal history.

The introductory paragraph of subdivision (b) of Section 350.6 of 9 NYCRR is amended to read as

follows:

(b) Scope of Investigation Process. The investigation process shall consist of the gathering of all information required for inclusion in the [provided for in form DPCA-221] pre-dispositional/pre-plea/pre-sentence investigation report [worksheet] and as deemed relevant by the probation department conducting the investigation that may have a bearing upon the recommendation or court disposition/sentencing, as well as any additional information directed by the court.

Subparagraph (6) of paragraph (3) of subdivision (b) of Section 350.6 of 9 NYCRR is amended to read as follows:

6. any reimbursement received or anticipated by the victim(s), whether from the [Crime Victims' Board] Office of Victims Services, or the victim(s)' insurance;

Subparagraph (b) of paragraph (1) of subdivision (c) of Section 350.6 of 9 NYCRR is amended to read as follows:

b. Probation and Parole History: relevant legal history information related to prior contact(s) with the courts, probation and parole, detention, pretrial release, and supervision concerning the respondent's/defendant's previous and present compliance with diversion/supervision plans and conditions, and participation in voluntary assessment and case planning services.

Paragraph (2) of subdivision (c) of Section 350.6 of 9 NYCRR is amended to read as follows:

(2) Interviews [With] with Respondent/Defendant, or Subject(s) of the Court Order for Investigation.

Following the receipt of a court order, an in-person interview shall be held with the respondent/defendant, or subject(s) of the court order for investigation. All in-person interviews shall be directed toward obtaining and clarifying relevant information and making observations of the respondent/defendant's behavior, attitudes and character. During or prior to the in-person interview, probation personnel shall obtain the appropriate consent(s) for release of information and shall gather relevant information identified by and available through such consent for release. In cases where the defendant is in the custody of [NYS DOCS] DOCCS and is not accessible for an in-person interview with the probation department, the Institutional Probation Investigation Interview and Protocols executed by the Division of [Probation and Correctional Alternatives] Criminal Justice Services and [the Division of Parole] DOCCS shall be followed. On a case-by-case basis, where the respondent/defendant resides in a distant jurisdiction and exigent circumstances exist, as determined by the probation director, an interview may be substituted for an in-person interview.

Subdivision (a) of Section 350.7 of 9 NYCRR is amended to read as follows:

- (a) Format and Scope of Report. The report shall be typed and all required identifying personal and legal information shall be set forth on the face sheet. For pre-dispositional/pre-plea/pre-sentence reports, the face sheet shall include, at a minimum, information as set forth in [form DPCA-220] the DCJS probation Pre-dispositional/pre-plea/presentence Investigation Report Face sheet standardized template. The report may not necessarily include all information obtained through the investigation process as specified in Section 350.6. However, the report shall contain relevant and reliable information that may have a bearing upon the recommendation or court

disposition/sentence as well as any information directed by the court.

New subparagraphs (iii)-(v) are added to paragraph (1) of subdivision (b) of Section 350.7 of 9 NYCRR to read as follows:

- (iii) Family Court pre-dispositional supervision compliance in present case.
- (iv) Criminal court pretrial service(s) compliance in present offense.
- (v) Voluntary assessment and case planning services: where a youth has engaged in such services, probation shall provide a summary of these efforts to the court within the pre-sentence investigation, as follows:
 - (a) Summary of any assessment findings;
 - (b) Referrals and progress with respect to mitigating risk;
 - (c) Addressing any identified criminogenic needs; and
 - (d) Progress of the youth with respect to achieving case plan goals.

Subparagraphs (vii) –(viii) of paragraph (4) of subdivision (b) of Section 350.7 of 9 NYCRR are renumbered subparagraphs (viii)-(ix), respectively, and a new subparagraph (vii) is added to read as follows:

- (vii) analysis of any current or prior participation in services to address criminogenic needs;

The last paragraph of subparagraph (i) of paragraph (5) of subdivision (b) of Section 350.7 of 9 NYCRR is amended to read as follows:

DNA sample collection shall be recommended as a special condition for all designated offenders. Further, DNA sample collection shall be considered for all non-designated offenders, except where the defendant, pursuant to a plea agreement has already signed a waiver authorizing DNA collection, or where youthful offender status is mandatory [or likely to be granted].

Subparagraph (iii) of paragraph (5) of subdivision (b) of Section 350.7 of 9 NYCRR is renumbered subparagraph (iv) and is amended to read as follows:

(iv) Restitution: shall be recommended as part of any disposition/sentence where it is sought, up to maximum amounts permitted by law: for PINS--\$1000; JD--\$1,500; family offense--\$10,000; and in all criminal cases as permitted under Penal Law Section 60.27. At a minimum, monetary conditions for restitution specified shall include the specific amount of restitution sought.

- Community-Based Disposition/Sentence: where a community-based disposition/sentence is recommended, including a split sentence of jail and probation, or will likely be imposed, a special condition shall include the rate of payment and a date prior to expiration of the term of sentence that restitution must be satisfied.
- Jail-Bound Disposition/Sentence: where jail is recommended or will likely be imposed, restitution shall be recommended.
- Prison-Bound Disposition/Sentence: where prison is recommended or will likely be imposed, a rate of payment shall not be specified; the start date for payments shall not be recommended for deferral; and the recommendation to the court shall recognize that [DOCS] DOCCS may collect

restitution from income received during the period of incarceration.

New subparagraph (iii) to paragraph (5) of subdivision (b) of Section 350.7 of 9 NYCRR is added to read as follows:

(iii) Flexible term of probation supervision: where a variable term of probation supervision may be ordered, the department may make a recommendation regarding the length of the term of probation supervision.

Paragraph (8) of subdivision (b) of Section 350.7 of 9 NYCRR is amended to read as follows:

(8) HIV-Related Information. Where there is HIV-related information, this must be submitted in accordance with [DPCA's] DCJS AIDS/Confidentiality and Access to HIV-Related Information Rule, specifically Section 367.6.

Subparagraph (i) of paragraph (10) of subdivision (b) of Section 350.7 of 9 NYCRR is amended to read as follows:

- i.
- i. Intrastate Transfer: where the respondent/defendant is living in another jurisdiction in New York State at the time of preparation of the report, the probation officer shall secure all required information to complete the transfer packet, pursuant to [DPCA's] DCJS's Interstate and Intrastate Transfer of Probation Supervision For Adults And Juveniles Rule, Part 349, and provide form [DPCA] DCJS OPCA 16 or [DPCA] DCJS OPCA 16A, whichever is applicable,

to the court for consideration and signature.

Subdivision (b) of Section 350.8 of 9 NYCRR is amended to read as follows:

(b) **Scope of Investigation and Report.** The investigation and report shall conform to requirements specified in the court order/request. In the absence of any such specification, the investigation and report shall consist of the gathering of information with respect to the applicant's legal history, the applicant's current social circumstances, including current employment and economic status. It shall also include the nature of the relief requested as it relates to employment, rehabilitation, and public interest/safety. It shall include a recommendation as to the granting of the state of New York certificate of relief from disabilities ([DPCA] DCJS OPCA-53) and the relief to be granted.

Subdivision (a) of Section 350.9 of 9 NYCRR is amended to read as follows:

(a) **Order and Authorization to Conduct Investigation.** The probation department shall conduct a pre-plea investigation only upon a court order and written authorization by the defendant, defendant's attorney, and the prosecuting attorney. Such written authorization and waiver for Pre-Plea Probation and Investigation and report (such as [DPCA] DCJS OPCA-2.2A) shall include statements that no probation department personnel will be called to testify regarding information acquired by the probation department, that information obtained by the probation department may not be used in a subsequent trial, and that this exemption does not apply to defense or prosecutorial investigation material which may be included in the report.

Paragraph (iv) of subdivision (a) of Section 350.10 of 9 NYCRR is amended to read as follows:

(iv) Where probation supervision is recommended the probation department may transmit the recommended conditions of probation supervision, [in an order such as form DPCA 10-A order and conditions of adult probation, DPCA 10-C orders and conditions of probation pins/juvenile, and DPCA-IPS order and conditions of ips.]

Subdivisions (b) and (c) of Section 350.10 of 9 NYCRR are amended to read as follows:

(b) Transmittal of Pre-sentence Reports to Professional Licensing Agencies. Probation departments shall accumulate and transmit, at a minimum, once every three months, a copy of all pre-sentence reports prepared in the case of defendants who are known to be licensed pursuant to Title 8 of the Education Law to the State Department of Health if the licensee is a physician, a specialist's assistant, or a physician's assistant, and to the State Education Department with respect to all other such licenses. Such reports may be submitted in hard copy or electronically, and shall contain such other information as required by Criminal Procedure Law 390.50(6).

(c) Confidentiality. Accessibility of probation reports is limited to those authorized by law or court order, and as specified in Part 348, [DPCA] DCJS's Case Record Management Rule.