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**STATE DIRECTOR'S MEMORANDUM # 2011-18**

**TO: All Probation Directors/Commissioners**

**FROM: Robert M. Maccarone, Deputy Commissioner and *R.M.M.*  
Director, Office of Probation and Correctional Alternatives**

**DATE: September 16, 2011**

**RE: New 2011 Law Governing Family Court Intrastate Probation Transfers &  
Emergency and Proposed Regulatory Amendments to 9 NYCRR Part 349**

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Governor Andrew M. Cuomo recently signed into law S.5856 which included various mandate relief initiatives. Among these were statutory changes governing family court intrastate transfer of probation. Specifically, Section 4 of Subpart C of Chapter 97 of the Laws of 2011 amended Family Court Act (FCA) Section 176, **effective June 24, 2011**, to ensure that there is a complete transfer of probation supervision and jurisdiction in appropriate cases.

New FCA §176 addresses problems associated with family court intrastate transfer of probationers by establishing that when a person on probation resides in another jurisdiction within the state at the time of the order of disposition, there is a complete transfer of probation in all respects of powers and responsibilities to that receiving jurisdiction. By pairing authority with responsibility, this new law will ensure that the receiving court has complete jurisdiction over the supervision of the case and that probation officers will be able to respond swiftly and certainly to the violation of probation conditions by bringing these matters to the immediate attention of the receiving court. Additionally, this new law eliminates some costly and labor intensive practices such as retaking of probation violators, the seeking of warrants from sending jurisdictions, and the sending of officers to testify on violations to the originating jurisdictions.

As you know, holding probationers accountable to pay required restitution is an important service to victims. This new law will assist probation officers in that endeavor by providing clear and consistent authority within their own jurisdiction to address non-payment of restitution, regardless of where the victim resides. Requiring the sending court to relinquish jurisdiction of all intrastate probation transfer cases will clarify and strengthen the authority of the receiving jurisdiction, reduce recidivism, and increase public safety.

While a copy of this new law is attached, the following is a brief summary of its provisions:

- Family Court Act (FCA) §176(1) is amended by requiring the transfer of probation supervision to the appropriate probation department whenever a family court probationer resides in another jurisdiction of New York State at the time of the order of disposition. Where any family court probationer subsequently seeks to change residency and relocate to another county within New York State, the transfer of probation supervision is discretionary. All such probation transfer must be in accordance with the rules adopted by the Commission of the Division of Criminal Justice Services (DCJS).
- FCA§176(2) is amended by requiring that upon completion of transfer, the family court within the jurisdiction of the receiving probation department shall assume all powers and duties over the case and that the sending court shall immediately forward its entire case record to the receiving court.
- FCA§176(3) is amended by requiring that upon completion of transfer, the receiving probation department shall assume all powers and duties over the case.

It should be noted that these statutory changes do **not** provide for retroactive application to cases transferred prior to June 24, 2011. However, intrastate transfers on or after the effective date, will be governed by this new law. Further, as a reminder this new law applies not only the FCA Article 3 (Juvenile Delinquency) and Article 7 (Persons In Need of Supervision) probation cases, but also to Article 4 (Support), Article 8 (Family Offense), and Article 10 (Child Protective) probation cases that may arise.

Due to the aforementioned statutory changes, attached is a copy of the emergency and proposed regulatory amendments to 9 NYCRR Part 349, DCJS's rule governing Interstate and Intrastate Transfer of Probation Supervision for Adult and Juveniles, and a revised Part 349 text which incorporates these regulatory amendments. These emergency regulatory amendments, effective today, update the rule to reflect other statutory changes with respect to former DPCA merging with DCJS, interstate transfer of both adult and juveniles, and complete transfer with respect to criminal court probation cases. Specific regulatory changes, which provide an additional two extra workdays to transmit requisite case record information to the receiving probation department and ensures that a receiving probation department is not responsible for collection and disbursement of restitution payments which it does not routinely collect in its jurisdiction, affords mandate relief and is consistent with prior probation field recommendations communicated when undertaking past agency rule review.

Please be advised that the Division of Criminal Justice Services (DCJS) submitted Emergency and Proposed Rule Making with respect to Part 349 to the Department of State for publication in the New York State Register. There will be a 45-day public comment period from the date of official publication in the New York State Register with respect to proposed rulemaking. Accordingly, please submit any comments that you may have **by close of business Monday, November 21, 2011** to the attention of DCJS Assistant Counsel, Linda J. Valenti at Four Tower Place, Albany, NY 12203-3764 or to her email address, [linda.valenti@dcjs.state.ny.us](mailto:linda.valenti@dcjs.state.ny.us). Her office phone number is (518) 457-8413.

Additionally, attached is a new DCJS-16-A (9/11) Intrastate Transfer of Probation Supervision Form for your immediate use. This form will be made available through the *eJustice*. Caseload Explorer counties may create a template using this form.

Should you have any questions regarding this new intrastate process or the emergency regulatory amendments to Part 349, please contact Patricia Donohue, DCJS Community Corrections Representative II, at [patricia.donohue@dcjs.state.ny.us](mailto:patricia.donohue@dcjs.state.ny.us) or by phone at (518) 485-5168 for family court transfers or Gary Govel, DCJS Community Corrections Representative II, at [gary.govel@dcjs.state.ny.us](mailto:gary.govel@dcjs.state.ny.us) or by phone at (518) 485-4336 for criminal court transfer, or DCJS Assistant Counsel Linda Valenti at [linda.valenti@dcjs.state.ny.us](mailto:linda.valenti@dcjs.state.ny.us) or by phone at (518) 457-8413.

#### Attachments

- 1) FCA Section 176
- 2) DCJS Emergency and Proposed Regulatory Amendments to 9 NYCRR Part 349
- 3) Complete New Text of 9 NYCRR Part 349
- 4) DCJS 16-A Form

cc: Administrative and Supervising Family Court Judges