

A new Part 356 is added to 9 NYCRR to read as follows:

Part 356 Preliminary Procedure for Article 3 Juvenile Delinquency (JD) Intake

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Section 356.1 Definitions.

- (a) The term accountability measure refers to consequences and policies designed for youth to take responsibility for their actions. Such measures may include accountability boards, apology letters, behavioral contracts, community service, mediation, restitution, and youth court.
- (b) The term actuarial risk refers to the relative risk of the youth continuing the behaviors related to the presenting problem. Actuarial risk calls for the administration and delivery of more intensive services and supervision to higher-risk offenders, while lower risk cases may receive minimal intervention services. This requires a system of risk screening and needs assessment that assesses youth in a reliable and valid manner to measure for static risks (that cannot be changed), and dynamic risks (that can be

changed). Actuarial risk assessments are used to develop youth profiles of needs to be addressed to reduce the risk of re-offending.

- (c) The term adjustment period means the time period during which probation intake is authorized to complete a preliminary probation procedure in a case pursuant to starting and duration dates specified in the Family Court Act (FCA) and Uniform Rules for the Family Court (URFC).
- (d) The term adjustment process means an attempt to successfully resolve a complaint by probation arranging certain activities or acts to be performed by a potential respondent, parent/guardian, the victim or their representative, or any other relevant interested person, with their respective concurrence, in order to achieve the voluntary resolution of a matter.
- (e) The term adjustment services means services provided by probation pursuant to FCA §308.1 for the purpose of avoiding the need to file a petition or direct the detention of the youth. The objective of adjustment services is to provide prompt attention to: victim reparation, public safety, and reducing future risk of delinquency. Such services shall include efforts to adjust cases before a petition is filed, or by order of the court, after the petition is filed but before fact-finding is commenced.
- (f) The term case plan means the individual plan developed to provide adjustment services, and shall be based on the actuarial risk assessment. The plan shall be developed by probation directly or through an assessment service, and shall include: participation of the youth, parent(s)/guardian(s); and input from the complainant and other service providers, as appropriate. The plan shall be developed to remediate the behavior which gave rise to the complaint. It shall incorporate protective factors and strengths, and shall address the identified risks and needs.
- (g) The term commissioner shall mean the commissioner of the division of criminal justice services.
- (h) The term complaint means a written statement of essential facts constituting the alleged JD act.
- (i) The term conference means the process of meeting with the parties in real time, either in-person, by

telephone, through videoconference, or other electronic media.

- (j) The term control measure refers to practice designed to limit youth opportunity to engage in behaviors underlying the presenting problem(s). Such practice may include graduated sanctions, including curfews, probation monitoring, and by court order, electronic monitoring.
- (k) The term division means the division of criminal justice services.
- (l) The term eligibility refers to the status of a juvenile delinquency matter being statutorily qualified to be considered suitable for adjustment.
- (m) The term evidence-based practice means a practice that is demonstrated through data-supported research and evaluation to be effective in producing the desired outcome.
- (n) The term exclusionary criteria refers to offenses and situations, as specified in FCA article 3, which prohibit adjustment or require the written approval of the court, or the court and the presentment agency, in order to proceed with an adjustment attempt.
- (o) The term family court appearance ticket is a written notice issued and subscribed by a peace officer or police officer, a probation director or his/her designee or the administrator responsible for operating a detention facility or his/her designee, directing a child and his/her parent or other person legally responsible for his/her care to appear, without security, at a designated probation department on a specific return date in connection with the child's alleged commission of the crime or crimes specified on such appearance ticket. The form of a family court appearance ticket shall be prescribed by rules of the chief administrator of the courts.
- (p) The term interested person(s) shall include the complainant or victim or their representative.
- (q) The term intervention service refers to a community-based service targeted to reduce dynamic risk factors related to the presenting complaint, such as cognitive-behavioral skill-building, family-focused treatment, mental health and substance abuse treatment, school-based interventions, and other evidence-

based programs and practices.

- (r) The term juvenile delinquent means a person over seven and less than sixteen years of age, who, having committed an act that would constitute a crime if committed by an adult, (a) is not criminally responsible for such conduct by reason of infancy, or (b) is the defendant in an action ordered removed from a criminal court to the family court pursuant to Criminal Procedure Law article 725.
- (s) The term petition shall mean a written accusation by an authorized presentment agency originating a JD proceeding which satisfies requirements set forth in FCA §§311.1 and 311.2.
- (t) The term potential respondent means a youth who is the subject of a juvenile delinquency complaint, and whose behavior meets the definition of juvenile delinquent pursuant to FCA §301.2 and as defined in this section.
- (u) The term preliminary procedure means all efforts prior to the filing of a petition of conferring with the complainant, potential respondent, parent/guardian or any other relevant interested person(s) whose participation in adjustment services would be, in the opinion of the probation officer, beneficial to the potential respondent for the purpose of assessing the need to file a petition or directing the detention of the youth. Preliminary procedure includes probation intake and adjustment services.
- (v) The term presentment agency means the agency or authority which pursuant to FCA §§254, 254-a, and 310.1 is responsible for presenting a juvenile delinquency petition.
- (w) The term probation intake means the initial process of conferring with the complainant, potential respondent, the parent(s) with whom the potential respondent is living, the legal guardian or custodian of the potential respondent, and any other interested person whose participation in adjustment services would be, in the opinion of the probation officer, beneficial to the potential respondent for the purpose of avoiding the need to file a petition or directing the detention of the youth.
- (x) The term protective factor means certain strengths or assets that have been demonstrated by research to

reduce risk of negative outcomes.

- (y) The term reasonable efforts means the sufficient attempts by probation to promptly engage the youth and family in the constructive resolution of the complaint, and efforts to address the underlying issues related to the complaint. Reasonable efforts shall take into account the time allowable under the law and available community resources.
- (z) The term referred (or referral) for petition means the advisement by probation to the presentment agency that a petition may be filed.
- (aa) The term risk assessment means a validated protocol approved by the Commissioner to screen and assess the youth's risk for continuing in the presenting delinquent behavior.
- (bb) The term risk factor means a specific area of influence that is actuarially predictive of the increased likelihood that a youth will engage in delinquent behavior. Risk factors may be static (cannot be changed) or dynamic (can be changed). The major risk factors are personal attitudes/values/beliefs supportive of crime, pro-delinquent associates and isolation from pro-social associates, temperament and personality factors, history of antisocial behavior from a young age, dynamic family factors, and low levels of personal educational, vocational or financial achievement.
- (cc) The term successfully adjusted means a determination by probation that the risks and needs related to the presenting problem have been satisfactorily addressed and the complaint has been adjusted.
- (dd) The term suitability means the process of determining whether the matter is appropriate for the opportunity for adjustment in accordance with URFC §205.22.
- (ee) The term victim means a person who has suffered direct physical, emotional, sexual or financial harm as a result of an act, which if committed by an adult would constitute a crime, including:
  - (1) in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, one of the following: a spouse, a legal guardian, a parent, a child, a sibling, another family member,

or another person designated by the court; and

- (2) in the case of a victim that is an institutional entity, an authorized representative of the entity.

#### Section 356.2 Objective.

The objective of the JD preliminary procedure is to provide opportunity for assessment, case planning, and effective community-based services for non-judicial resolution of suitable complaints.

#### Section 356.3 Applicability.

This Part contains all requirements for the provision of adjustment services by probation in matters pertaining to Juvenile Delinquency, pursuant to FCA§308.1 and URFC §205.22.

#### Section 356.4 Jurisdiction.

Where the youth resides in one county but the act(s) giving rise to the presenting problem occur in another county, the complaint shall be made in the county where the act(s) occurred. The matter may be transferred to the county of residence. Where transferred, the receiving county shall accept the case for consideration of adjustment services. Where adjustment services are unsuccessful, the matter shall be returned to the originating county for referral for petition.

#### Section 356.5 General Requirements for JD Preliminary Procedure.

- (a) Each probation director shall establish and maintain preliminary procedure services for juvenile delinquency matters in accordance with the provisions of the Executive Law, the FCA, URFC, court order, and all other applicable laws, rules and regulations.
- (b) The probation director shall develop, adopt, and disseminate written policies and procedures for the uniform provision of preliminary procedure services for JD matters. The policies and procedures shall address, at a minimum:
  - (1) Referral of appropriate cases to community resources;
  - (2) Utilization of accountability measures such as community accountability boards and youth court;

- (3) Where another court proceeding or other preliminary probation matter is pending; and
  - (4) Where the potential respondent is a probationer or under the supervision of another agency.
- (c) Probation shall review complaints to determine eligibility and suitability for adjustment services. Where a case is deemed eligible and suitable for adjustment, probation shall make reasonable efforts at provision of intake and adjustment services, including screening and assessment. Such reasonable efforts shall:
- (1) Be clearly documented in the case record;
  - (2) Attempt to prevent eligible and suitable youth from being the subject of a petition in family court;
  - (3) Include the sharing of resources, wherever appropriate and feasible, with other agencies and service providers to effectively and efficiently implement preliminary procedure.
- (d) As part of initial conferencing with the potential respondent, parent/guardian or any other interested person(s), the probation service shall inform such persons regarding the function and limitations of, and the alternatives to, the adjustment process, in accordance with URFC §205.22.
- (e) The appearance ticket date at probation must be within fourteen calendar days of issuance of the appearance ticket, except in cases involving a designated felony, in which case the return date shall be within 72 hours excluding Saturdays, Sundays, and public holidays.
- (f) If the youth fails to appear at probation on the return date, probation may refer the matter directly to the presentment agency, or, in its discretion, may attempt to secure the attendance of the youth through written notification or telephone communication to the youth and parent/guardian, in accordance with FCA §307.2(1).

- (g) If the complainant does not appear on the return date, probation may, in its discretion, attempt to secure voluntary attendance, in accordance with FCA §307.2(2). Probation efforts to communicate with the complainant, whether by phone, in writing, or in person shall provide the complainant an opportunity to:
  - (1) Provide his/her version of the alleged juvenile delinquent act, provide any context for what may have led up to it, and describe the impact upon the complainant;
  - (2) Learn of possible case options and outcomes, and services available to complainant.
- (h) Efforts to secure the attendance of the youth or voluntary attendance of the complainant shall not extend beyond seven days subsequent to the appearance ticket return date, and the probation service shall refer the matter to the appropriate presentment agency within such period, in accordance with FCA §§ 307.2(1) and 307.2(2).
- (i) All youth who are deemed eligible and suitable for adjustment services shall be screened to determine the future risk of recidivism.
- (j) Probation may conduct detention screening of appropriate cases to determine the risk of flight and the risk of committing a new offense pending disposition of the current matter.
- (k) Probation may conduct relevant criminal history checks, as needed and appropriate, according to the policy of the division.
- (l) All risk screening and assessment conducted by probation for diversion, investigation, or supervision purposes shall be done using valid, actuarial screening tools, as approved by the Commissioner.  
Section 356.6 Probation Intake.
- (a) Prior to commencing eligibility and suitability determination, probation shall review the complaint to determine whether it is within the scope of FCA article 3.
- (b) Eligibility Criteria: Cases within the scope of FCA article 3 shall be considered eligible for adjustment services, except when one or more of the below-listed exclusionary criteria are present:

- (1) the complainant seeks access to the presentment agency for the purpose of having a petition filed (FCA §308.1);
  - (2) the potential respondent insists upon accessing the presentment agency for the purpose of having a petition filed, or declines, or is unavailable to participate in the adjustment process;
  - (3) the presentment agency and the family court have not given written approval for adjustment, where such approval is required by the FCA §308.1 (4);
  - (4) the family court has not given written approval where the alleged conduct of the potential respondent would constitute a designated felony act as defined by FCA §301.2(8), as required by FCA §308.1(3); and
  - (5) the family court has not given written approval for adjustment where the alleged conduct of the potential respondent, if committed by an adult, would constitute a class A or B felony which is not a designated felony act.
- (c) Suitability Criteria: In order to determine whether the case is suitable for the adjustment process, the probation service shall consider the provisions of the URFC §205.22(c).
- (d) Detention Cases:
- (1) The fact that a youth is detained prior to the filing of a petition shall not, where authorized, preclude the probation department from adjusting a case;
  - (2) When a youth is released from detention before filing of a petition, and probation operates the detention facility, the agency responsible for operating a detention facility shall issue a Family Court Appearance Ticket to the youth and the person legally responsible for the youth's care, in accordance with FCA §§307.1 and 307.3(3). Such Family Court Appearance Tickets shall be issued unless special circumstances exist which require the detention of the youth, including:
    - (i) there is a substantial probability that the youth will not appear or be produced at the

appropriate probation department at a specified time and place; or

- (ii) there is a serious risk that, before the petition is filed, the youth may commit an act which, if committed by an adult, would constitute a crime.

(e) Where it is determined that the complaint is within the scope of FCA article 3, and both eligible and suitable for adjustment services, and the complainant seeks preliminary procedure services, probation shall provide such services in accordance with URFC §205.22. This shall include:

- (1) Making reasonable efforts to confer with any persons seeking to have a JD petition filed, the potential respondent and other interested persons, on the same day that such persons appear at the probation department concerning the advisability of requesting that a JD petition be filed and in order to gather information needed for a determination of the suitability of the case for adjustment;
- (2) Permitting any youth who is represented by an attorney to be accompanied by the attorney at any preliminary conference;
- (3) Ascertaining from the complainant pursuant to URFC §205.22(b), a brief statement of the underlying events and a brief statement of factors if known to that person that would assist the court in determining whether the potential respondent should be detained or released in the event that a petition is filed;
- (4) Promptly informing the complainant, the potential respondent, parent/guardian or any other interested person(s) at the first conference regarding the function and limitations of, and the alternatives to, the adjustment process, and other advisements as set forth in URFC §205.22 (d); and
- (5) Informing the complainant where it appears to probation that the court would not have jurisdiction over the case, and such case is thereby excluded from any opportunity for

adjustment. In such instances, the JD complaint filed may be referred to a presentment agency for the purpose of requesting that a petition be filed with the court. The reason for excluding the complaint for consideration for adjustment shall be documented in the case record. The record shall contain all required documentation, including a statement of the grounds for not commencing adjustment, and a copy of the written notification to the complainant, pursuant to URFC §205.22(e).

Section 356.7 Adjustment Services.

- (a) In the provision of adjustment services, probation shall:
- (1) Document the case opening date as the date the youth and the parent/guardian appear for the initial conference;
  - (2) Provide written notice to the complainant that the case has been opened for adjustment services;
  - (3) Make reasonable attempts to provide adjustment services in accordance with the general requirements of this Part;
  - (4) Use an actuarial risk screening instrument to identify the level of youth risk for continuing in the behaviors underlying the presenting problem;
  - (5) Attempt to adjust with minimal intervention services those cases of low risk youth;
  - (6) Not consider the inability of the youth or the youth's family to make restitution as a factor in deciding to adjust a case or in making a recommendation to the presentment agency, in accordance with FCA §308.1(2);
  - (7) Provide, at the first contact or as early as practicable, information on the availability of or referral to services in the geographic area where the youth and family are located to reduce the risk of recidivism and prevent the filing of a petition;
  - (8) Target the underlying risk factors related to the presenting problem behavior(s) which gave rise to each complaint;
  - (9) Secure from the parent(s)/guardian(s) all necessary consents for release of information regarding the youth;
  - (10) Make referrals for service as needed, based on the results of actuarial risk and needs assessment;
  - (11) Prioritize resources to higher risk youth and target interventions to reduce dynamic risk factors;
- and

- (12) Be knowledgeable of, cooperate with, and utilize available community resources, wherever appropriate, as part of the adjustment process.
- (b) In addition to providing community-based intervention services that target specific dynamic risk factors, probation may engage youth and family in appropriate accountability or control measures.
- (c) Electronic monitoring may only be used with probation director consent and upon specific court order.

Section 356.8 Assessment, Case Planning, and Reassessment.

- (a) As part of adjustment services, probation shall conduct actuarial assessments and utilize case planning tools and protocols, as approved by the Commissioner, to:
  - (1) Identify youth who are at moderate or high risk for continuing in the behaviors underlying the presenting problem to address the priority areas for intervention; and
  - (2) Develop case plans based on assessment results that focus on the priority areas for intervention to remediate the presenting problem.
- (b) As part of assessment, case planning, and reassessment, probation shall engage youth and families where practicable:
  - (1) In developing a case plan within 30 calendar days of the initial conference with the youth and parent(s)/guardian(s) that focuses on:
    - (i) priority risk and need areas for intervention;
    - (ii) objectives that build on existing protective factors;
    - (iii) roles and responsibilities of the youth, parent(s)/guardian(s), probation officer, and other service providers;
    - (iv) intended outcomes for successful case closure; and
    - (v) input from parent(s)/guardian(s) and youth to identify any barriers to meeting case plan goals.

- (2) By including the participation and/or services of community-based providers as appropriate.
- (3) In reviewing and updating the case plan on an ongoing basis to document any changes in priority areas, goals, action steps, roles and responsibilities, and status (progress toward completion); and
- (4) For purposes of reassessment at case closing.

#### Section 356.9 Referral to Presentment Agency.

- (a) Where probation refers a complaint to the presentment agency, probation shall:
  - (1) Document the reason for referral to the presentment agency, and shall include a statement as to the feasibility and appropriateness for referral back to probation for adjustment services;
  - (2) Indicate the reason for the referral and notify the presentment agency within 48 hours or the next court day, whichever occurs later, where the adjustment process was commenced but terminated without adjustment, and the case referred to the presentment agency in accordance with FCA § 308.1(10);
  - (3) Not transmit or otherwise communicate to the presentment agency any statement made by the child to the probation officer; and
  - (4) Not transmit any statement made to probation prior to the filing of a petition, fact-finding hearing, or if transferred to criminal court, at any time prior to conviction, in accordance with FCA §308.1(7).
- (b) Probation may make a recommendation regarding adjustment and provide such information, including any arresting officer's report and the youth's record of previous adjustments and arrests as probation deems relevant, in accordance with FCA §308.1(6).

#### Section 356.10 Return from Court.

- (1) Where the court orders the matter be returned for adjustment services, probation shall thereafter notify the court whether the case has been successfully adjusted or Terminated without

Adjustment/Referred to Court.

- (2) If the petition alleged the commission of a designated felony act or the commission of a crime pursuant to FCA §308.1(4), probation shall make a recommendation to the court regarding the suitability of adjusting the case (FCA §320.6[1]).
- (3) Upon receipt of the court order, probation shall take reasonable and prompt action to hold a conference with the youth and the parent/guardian.
- (4) Probation shall document the case opening date as the date the youth and the parent/guardian sign an agreement to participate in adjustment services.

#### Section 356.11 Case Closing Requirements.

- (a) There are three (3) case closing options:
  - (1) Referred for Petition Immediately: the adjustment process was not commenced due to exclusionary or suitability criteria and referred to the presentment agency.
  - (2) Adjusted: the resolution of the complaint was achieved without court intervention or after the court ordered return of the matter as the result of preliminary procedure. This shall include cases that are resolved at the initial conference or after a period of adjustment services.
    - (i) A determination by probation that a case has been adjusted shall constitute presumptive evidence that the complaint has been addressed and cannot be used in any subsequent petition.
    - (ii) Cases shall be considered adjusted where:
      - (a) The potential respondent sufficiently participated in the adjustment process to resolve the complaint;
      - (b) The goals of the case plan have been addressed; and
      - (c) The case is closed administratively, in the interests of justice.

- (3) Terminated Without Adjustment and Referred for Petition: the resolution of the complaint did not occur after commencement of the adjustment process.
- (i) In accordance with URFC §205.23(c), probation may discontinue the adjustment process at any time if:
    - (a) the potential respondent or the complainant requests that it do so; or
    - (b) the potential respondent refuses to cooperate with the probation service or any agency to which the youth or a member of the youth's family has been referred.
  - (ii) Additional considerations for discontinuance of adjustment efforts may include:
    - (a) the complainant insists on securing an order of protection including a temporary order of protection; or
    - (b) the potential respondent has harassed or menaced any party to the case, or is likely to continue to harass or menace any party to the case where such harassing or menacing is the subject of the complaint; or
    - (c) the potential respondent may endanger or is endangering his/her or another person's physical or emotional health; or
    - (d) it appears to probation intake that the potential respondent requires extended supervision, treatment or confinement.

#### Section 356.12 Case Record Keeping Requirements.

- (a) All preliminary procedure case records shall be kept in either paper or electronic format, or a combination of both.
- (b) Where preliminary procedure was commenced, probation case records shall include the following, where applicable:

- (1) Documents:
- (i) A copy of the complaint and date the complaint was received by probation;
  - (ii) A copy of the family court appearance ticket;
  - (iii) A copy of the letter to complainant advising of the initiation of adjustment services;
  - (iv) All assessment and reassessments;
  - (v) The initial case plan, and case plan updates that flow from the reassessments;
  - (vi) Where the adjustment period extends beyond the authorized initial period of time to adjust, a copy of the judge's authorization for the requested extension;
  - (vii) A brief closing summary indicating date of case closure and progress toward achieving case plan goals;
  - (vii) Copies of written notices to the complainant regarding the case closing and whether the complaint has been successfully resolved. Where the case was closed as terminated without adjustment and referred to the presentment agency, this notice shall include a statement that the complaint was forwarded to the presentment agency;
  - (ix) Copy of notification to the parent(s)/guardian(s) of the potential respondent regarding the case closing and whether the complaint has been successfully resolved or referred to the presentment agency;
  - (x) Copy of notification to the presentment agency in all cases where the matter was terminated without adjustment and referred for petition;
  - (xi) Copy of the certification of adjustment required by the FCA to be sent to the division and to the appropriate law enforcement agency (FCA§308.1 [12]) for cases where the potential respondent's fingerprints were taken and the case was adjusted; and
  - (xii) Copy of notification to the Family Court of the final case closing designation for cases

referred back to probation by the family court after a petition was filed (FCA §320.6 [3]).

(2) Other Required Case Record Information:

- (i) Where approval or consent to an adjustment is required by the FCA, URFC, this Part, or local criteria, documentation as to the basis for the request for approval and a written copy of such approval, consent, or denial thereof, if any;
- (ii) Date(s) of conference(s) with the youth, parent(s)/guardian(s), police and interested persons;
- (iii) Documentation of efforts made to secure the attendance of the potential respondent or the complainant upon the issuance of a family court appearance ticket;
- (iv) Documentation that the complainant, youth, and parent(s)/guardian(s) were advised of their rights related to the adjustment process, including the fact that the process is voluntary;
- (v) Documentation of parent and youth acknowledgement of participation in adjustment services;
- (vi) Summary of the reasons for any delay in developing an initial case plan;
- (vii) Date(s) of any referral(s) for specialized assessment and treatment (i.e., educational, mental health, substance abuse, victimization, or sexual offending behaviors);
- (viii) Documentation of services provided in accordance with the assessment and reassessment, including progress made toward youth risk factor reduction and/or increased protective factors; and
- (ix) Dates and types of contacts and any significant information, events, or actions taken;

(c) Excluded cases: A record shall be maintained on all cases which have been excluded from any opportunity for adjustment and referred to the presentment agency immediately. The record shall

document the exclusionary criteria utilized, the date the case was closed, and a statement that the case was referred for petition immediately. In all cases, the record shall include a description of the complaint. In appropriate JD cases, the record shall also include any recommendation regarding the suitability of adjusting the case.

- (d) Sealed cases: Records of JD cases which are considered terminated in favor of the respondent pursuant to Family Court Act §375.1 (2) include but are not limited to petitions withdrawn; petitions dismissed for matters where the presentment agency has chosen not to proceed to petition; and complaints closed by probation preliminary procedure as adjusted. When probation has received official notification from the Family Court that a JD matter has been terminated in favor of the respondent, case records shall be sealed pursuant to the provisions of the FCA and not be made available to any agency public or private. However, such records shall be made available to the respondent or his/her designated agent and the division, and the probation records shall be made available to any probation department for the purpose of complying with FCA §308.1(4). Whenever a case is adjusted, probation shall provide certification of such disposition to the appropriate law enforcement agency.