

1. The Title of Part 356 of Title 9 NYCRR is amended to read as follows:

Part 356 Probation Services for Article 3 Juvenile Delinquency [(JD)]

2. Section 356.1 of Title 9 NYCRR is amended to read as follows:

Section 356.1 Definitions.

- (a) The term accountability measure refers to consequences and policies designed for youth to take responsibility for their actions and make amends by repairing the harm done to the victim and/or community. Such measures may include, but are not limited to accountability boards, apology letters, behavioral contracts, community service, mediation, restitution, restorative justice programs or projects 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 youth, while lower risk cases may receive minimal intervention services. This requires a system of screening for risk and assessing for criminogenic needs 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 recidivism.
- (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 or other person legally responsible for his/her care, 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 the reduction of future risk of recidivism. 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 alternative to detention refers to interventions and strategies that may be offered and/or imposed on youth being processed through the juvenile justice system, that do not involve the youth being held in custody in either a secure or non-secure detention facility. Alternatives to detention (ATD's) may be applied at any point in juvenile justice processing, from arrest to disposition, or at the post-dispositional stage when there is consideration for the youth to be held in custody. The purpose of an ATD program is to safely reduce unnecessary reliance on detention through the application of community-based supervision and services. Such supervision strategies may include, but are not limited to electronic technologies, intensive case management, and

respite.

- (g) The term case plan means the individual plan developed to provide adjustment services, and shall be based on the actuarial risk and needs assessment. The plan shall be developed by probation and shall include the participation of the youth, parent(s)/or other person(s) legally responsible for his/her care; and input from the complainant and 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.
- (h) The term client engagement refers to the effective delivery of probation services to medium and higher risk youth by identifying which stage of change the youth is in, and determining his/her motivation to change. The probation officer successfully engages the youth through the use of various tools including, but not limited to, motivational interviewing, role play, and skill building in order to help the youth better understand the relationship between criminal thinking and criminal behavior. Client engagement is a probation officer skill-based approach to building understanding and trust with the youth in a culturally competent and trauma informed way with the goal of empowering the youth to make sustainable changes in behavior and avoid recidivism.
- (i) The term commissioner shall mean the Commissioner of the division of criminal justice services.
- (j) The term complaint means a written statement of essential facts constituting the alleged [JD] act of juvenile delinquency.

- (k) 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.
- (l) The term contact means a communication with or concerning the youth, in person, by telephone, by mail, or by electronic means. Specific types of contacts are as follows:
 - (1) The term collateral contact means a contact to objectively verify information regarding the youth with someone or some source other than the youth, including his/her compliance and progress toward achieving the case plan goals. Such contacts can be in person, by mail, by telephone, or by electronic means.
 - (2) The term in-person contact means a real-time meeting between a probation officer and youth where both parties are in the same place at the same time.
 - (3) The term positive home contact means an in-person meeting with a youth in his or her home.
- (m) 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 responses, including curfews, probation monitoring, and by court order, electronic monitoring.
- (n) The term detention risk assessment means a validated protocol approved by New York State to assess the youth's risk for (1) substantial probability that

he/she (the youth) will not appear in court on the return date, and (2) serious risk that he/she may, before the return date, commit an act which if committed by an adult would constitute a crime.

(o) The term detention means the temporary care and maintenance, away from their homes, of youth held pursuant to FCA article 3.

(p) The term division means the division of criminal justice services.

[(q)] The term dosage refers to the type and amount of intervention a youth would benefit from in order to maximize the potential for behavior change.]

[(r)](q) The term eligibility refers to the status of a juvenile delinquency matter being statutorily qualified to be considered for adjustment.

[(s)](r) 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.

[(t)](s) 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.

[(u)](t) 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 youth 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.

[(v)](u) The term Graduated Responses means a system of incentives, sanctions, and/or referral to evidence-based services. The use of incentives/rewards should include, but not be limited to encouragement by the probation officer, verbal praise, letter of recognition, easing of restrictions, granting travel requests, and decreased reporting requirements. The use of sanctions should include, but not be limited to the imposition of progressively more severe or restrictive actions for continued non-compliance such as increased interventions and appearance at a departmental administrative hearing or court for judicial admonishment.

[(w)](v) The term Initial Conference refers to the meeting at which Probation staff convene the potential respondent, parent or other person legally responsible for his/her care, and possibly the complainant or victim, legal counsel, and other permissible parties, to determine suitability for adjustment services. The Initial Conference may be a single meeting. It may also be conducted in two parts; as an Initial Intake Conference for the purpose of pre-screen assessment by approved probation staff, followed by the Initial Conference with the Probation Officer assigned to the adjustment case.

~~[(x)]~~[(w)] The term interested person(s) shall include the complainant or victim or their representative.

~~[(y)]~~[(x)] The term intervention service refers to a service delivered by the probation department or through a community-based service provider which targets dynamic risk factors related to the presenting complaint, such as cognitive-behavioral interventions, interactive journaling, skill-building, family-focused treatment, mental health and substance abuse treatment, school-based interventions, educational/vocational services, and other evidence based programs and practices.

[(z)] The term juvenile delinquent or JD means a person over seven and less than seventeen years of age commencing on October 1, 2018, and less than eighteen years of age commencing on October 1, 2019, who, having committed an act that would constitute a crime_or a violation, where such violation is alleged to have occurred in the same transaction or occurrence of the alleged criminal act,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 (CPL) article 725.]

[(y)] The term juvenile delinquent means (1)(i) a person at least twelve and less than eighteen years of age, having committed an act that would constitute a crime if committed by an adult; or (ii) a person over sixteen and less than seventeen years of age or, a person over sixteen and less than eighteen years of age commencing October first, two thousand nineteen, having committed an act that would constitute a

violation as defined by subdivision three of section 10.00 of the Penal Law if committed by an adult, where such violation is alleged to have occurred in the same transaction or occurrence of the alleged criminal act; or (iii) a person over the age of seven and less than twelve years of age having committed an act that would constitute one of the following crimes, if committed by an adult: (a) aggravated criminally negligent homicide as defined in section 125.11 of the Penal Law; (b) vehicular manslaughter in the second degree as defined in section 125.12 of the Penal Law; (c) vehicular manslaughter in the first degree as defined in section 125.13 of the Penal Law; (d) aggravated vehicular homicide as defined in section 125.14 of the Penal Law; (e) manslaughter in the second degree as defined in section 125.15 of the Penal Law; (f) manslaughter in the first degree as defined in section 125.20 of the Penal Law; (g) aggravated manslaughter in the second degree as defined in section 125.21 of the Penal Law; (h) aggravated manslaughter in the first degree as defined in section 125.22 of the Penal Law; (i) murder in the second degree as defined in section 125.25 of the Penal Law; (j) aggravated murder as defined in section 125.26 of the Penal Law; and (k) murder in the first degree as defined in section 125.27 of the Penal Law; and (2) who is: i) not criminally responsible for such conduct by reason of infancy; or (ii) the defendant in an action ordered removed from a criminal court to the family court pursuant to article seven hundred twenty-five of the Criminal Procedure Law.

[(aa)](z)The term juvenile detention facility means a facility, certified by the Office of Children and Family Services, for the care of youth detained in accordance with FCA and CPL provisions.

[(bb)](aa)The term petition shall mean a written accusation by an authorized presentment agency originating a [JD]juvenile delinquency proceeding which satisfies requirements set forth in FCA §§311.1 and 311.2.

[(cc)](ab)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.

[(dd)](ac)The term preliminary procedure means all efforts prior to the filing of a petition including 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.

[(ee)](ad)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.

[(ff)](ae)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, or other person legally responsible for his/her care, 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.

[(gg)](af)The term protective factor means certain strengths or assets that have been shown to reduce risk of negative outcomes including recidivism.

[(hh)](ag)The term reasonable efforts means sufficient attempts by probation to promptly engage the youth and family in the constructive resolution of the complaint and address the underlying issues related to the complaint.

Reasonable efforts shall consider the time allowable under the law and available community resources.

[(ii)](ah)The term referred (or referral) for petition means the advisement by probation to the presentment agency that a petition may be filed.

[(jj)](ai) The term responsivity means applying interventions that are tailored to the unique characteristics of an individual youth. Intervention services are maximized when treatment and control measures consider the youth's personal characteristics such as age, sex, gender expression, mental health needs, cognitive skill, literacy, primary language, and stabilization needs, and when services are provided in a culturally competent and trauma informed way.

[(kk)](aj)The term risk and needs assessment means a validated protocol approved by the Commissioner to assess the youth's risk of re-arrest/recidivism and identify criminogenic needs.

[(ll)](ak)The term risk factor means a specific area of influence that increases the 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.

[(mm)](al)The term successful adjustment 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.

[(nn)](am)The term suitability means the process of determining whether the matter is appropriate for the opportunity for adjustment in accordance with URFC.

[(oo)](an)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 parent or other person legally responsible for his/her care, 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.

3. The opening paragraph of subdivision (b) of Part 356.5 of Title 9 NYCRR is amended to read as follows:

The probation director shall develop, adopt, and disseminate to departmental staff written policies and procedures for the uniform provision of preliminary procedure services for [JD]juvenile delinquency matters. The policies and procedures shall address, at a minimum:

4. Subdivisions (b) and (c), (d), and (e) of section 356.6 of Title 9 NYCRR are amended to read as follows:

(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)](1) the potential respondent insists upon accessing the presentment agency for the purposes of having a petition filed, or declines, or is unavailable to participate in the adjustment process;

[(3)](2) 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)](3) 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)](4) 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:

(1) consider the views of the complainant and the impact of the alleged act or acts of juvenile delinquency upon the complainant and upon the community; and

(2) consider the provisions of the URFC §205.22(c).

(d) Detention Cases.

* * *

(5) If a youth is detained or about to be detained, and the Probation Department's initial review reveals the case may be appropriate for release or alternative to detention, the Probation Department shall conduct a screening interview with the [alleged JD] youth alleged to be a juvenile delinquent to determine eligibility and suitability for adjustment services.

i. Screening and interviewing to determine suitability for intake and adjustment services shall take place at the earliest

possible time after arrest.

- ii. Probation shall deploy staff and services in a manner consistent with achieving the earliest possible intervention and release.
 - iii. The interview should take place as soon as possible to affect the earliest possible release decision. For youth detained after regular business hours, such interviews shall take place within two (2) business days of detention.
- (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 conduct an initial conference and provide such services in accordance with URFC. This shall include:
- (1) Making reasonable efforts to confer with any persons seeking to have a [JD] juvenile delinquency petition filed, the potential respondent and other interested persons including the victim or complainant, on the same day that such persons appear at the probation department concerning the advisability of requesting that a [JD] juvenile delinquency petition be filed and in order to gather information needed for a determination of the suitability of the case for adjustment;
- * * *
-
- (6) 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] juvenile delinquency 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.

5. Paragraphs (3), through (14) of subdivision (a) of section 356.7 of 9 NYCRR are relettered paragraphs (4) through(15), respectively, and a new paragraph (3) is added to read as follows:

(3) Assess for the sexual exploitation of youth using a state-approved instrument and ensure that youth identified as sexually exploited are referred to available and appropriate services including but not limited to safe house services in accordance with the Safe Harbour Act.

6. Section 356.8 of the Title 9 of NYCRR is amended to read as follows:

Section 356.8 Assessment, Case Planning, and Client Engagement.

(a) As part of adjustment services, probation shall conduct risk and need assessments and utilize case planning tools and protocols, as approved by the Commissioner, to:

- (1) Identify youth who are at [moderate]medium or high risk for continuing in the behaviors underlying the presenting problem to address the priority areas for intervention;
- (2) Complete a full risk and needs assessment at case opening and case closure for all medium and high risk youth to ensure effective case planning and to measure change in dynamic risk and protective factors;
- (3) Develop case plans based on assessment results that focus on the priority areas for intervention to remediate the presenting problem;
- (4) Engage youth by providing evidence-based services through probation department and/or community-based service providers; and
- (5) Advocate for the youth's timely commencement of services and work closely through on-going communication with the service providers to monitor a youth's participation and progress in completing the services that address the criminogenic needs identified in the case plan.
Document the case file of the youth's progress in the services.

(b) As part of assessment, case planning, and reassessment, probation shall use effective client engagement skills such as motivational interviewing with the youth, and where practicable, their families:

- (1) In developing an initial case plan within 10 business days of the initial conference with the youth and parent(s) or other person(s) legally responsible for his/her care that addresses:

- (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) or other person(s) legally responsible for his/her care, probation officer, and other service providers;
 - (iv) intended outcomes for successful case closure;
 - (v) input from parent(s) or other person(s) legally responsible for his/her care and youth to identify any barriers to meeting case plan goals;
 - (vi) engaging medium and higher risk youth in cognitive-behavioral programming, where appropriate, with services provided either through the probation department or a community based agency;
 - (vii) refer youth to effective, community-based services that reduce recidivism, where available;
 - (viii) referring to family-focused services, where appropriate;
 - (ix) the appropriate dosage based upon the youth's risk and needs; and
 - (x) responsivity considerations.
- (2) By including the participation and/or services of community-based providers as appropriate.

- (i) The assessment and approved case plan may be shared and reviewed with the active service providers.
- (3) By including participation of youth, and the family, where practicable, in review of the assessment results and all case plans.
- (4) 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).

(5) For purposes of reassessment at Extension of Adjustment period.

[(5)](6) For purposes of reassessment at case closing.

- (c) Probation will work to address the criminogenic needs identified in the assessment and case plan. The probation officer shall use effective client engagement skills such as motivational interviewing and other engagement tools to assist the youth in identifying the criminogenic risks and understanding how criminal thinking/attitudes, criminal associates and peers, chemical dependency, and other factors influence behavior.
- (d) Probation will work to effectively engage youth to ensure that higher risk youth receive more intervention, contact, and evidence-based service [(dosage)]. The period of intake and adjustment is time limited and so front-loading probation and community service interventions is essential to achieving positive outcomes for youth. The probation officer shall use graduated responses to encourage and/or support pro-social behavior.

- (1) For High Risk youth, the probation department shall conduct a minimum of one in-person youth contact per week, two collateral contacts per month, and one positive home contact per month. A positive home contact constitutes an in-person contact.
- (2) For [~~Moderate~~Medium] Risk youth, the probation department shall conduct a minimum of two youth contacts per month (including one in-person contact each month), and two collateral contacts in a three-month period. One positive home contact is required in the first forty-five (45) days of the adjustment period, and as needed thereafter. A positive home contact constitutes an in-person contact.
- (3) For Low Risk youth, the probation department shall conduct a minimum of one youth contact per month. Collateral contacts and home contacts will be conducted as needed.

(e) Contact Substitution: Contact substitutions are specifically for those youth who are participating in a community-based treatment or therapeutic program which is evidence-based.

During program participation, in-person contacts and positive home contacts with outside agency program staff may be substituted for probation department required contacts; up to 50 % of the required probationer contacts per month or quarter, as determined by their risk level, may be substituted. During the time of program participation and where substitutions are applied, a probation officer must conduct one of the collateral contacts as required with the agency/program, and document the probationer progress in the case record.

Classification	Minimum Youth Contacts	Minimum Collateral Contacts	Minimum Home Contacts
High Risk	A minimum of 1 in-person contact per week.	2 per month, including contacts related to the criminogenic needs identified in the case plan.	One positive home contact is required in the first month. Thereafter, 1 home contact is required per month during the adjustment period. Half of home contacts in the adjustment period must be positive. A positive home contact constitutes an in-person
[Moderate]Medium Risk	2 youth contacts per month. The youth contacts shall include a minimum of 1 in-person contact during each month.	2 contacts in a 3-month period including contacts related to the criminogenic needs identified in the case plan.	One positive home contact is required in the first 45 days of the adjustment period and as needed thereafter. A positive home contact constitutes an in-person contact.
Low Risk	1 contact per month.	As needed.	As needed.

7. Subdivision (a) of section 356.10 of Title 9 NYCRR is amended to read as follows:

- (a) Where the family court orders the [JD] Juvenile Delinquency 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.

8. Subparagraph (i) of paragraph 3 of subdivision (a) of section 356.12 of Title 9 NYCRR is

amended to read as follows:

- (i) In accordance with URFC, 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.

9. Subdivisions (c) and (d) and of section 356.13 of Title 9 NYCRR is amended to read as follows:

- (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] juvenile delinquency cases, the record shall also include any recommendation regarding the suitability of adjusting the case.
- (d) Sealed cases: Records of [JD]juvenile delinquency 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]juvenile delinquency 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.