



**Division of Criminal
Justice Services**

Office of Probation and Correctional Alternatives

*New York Correctional Offender Management Profiling
for Alternative Sanctions (NYCOMPAS)
Risk and Needs Assessment Instrument*

Practitioner Guidance for Probation and Community Corrections Agencies

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Foreword

What is NYCOMPAS?

New York Correctional Offender Management Profiling for Alternative Sanctions (NYCOMPAS) is a broad-based, gender-neutral, risk and needs assessment instrument which assists probation officers and community corrections professionals in making recommendations to releasing and supervising authorities to assist in their decision-making process regarding suitability of community corrections sentencing and release options, appropriate conditions, and/or program services, intervention measures, and supervision classification of adult offender populations in New York State.

Why use NYCOMPAS?

The use of risk and needs assessment instruments is the foundation of evidence-based practice. These scientific instruments help to uniformly assess both the risk and needs of individuals involved in the criminal justice system. They assist criminal justice professionals, especially community corrections professionals, in determining the risk of recidivism and violence of individuals under supervision, facilitate the classification process so that community resources can be prioritized and allocated to higher risk individuals, and help supervising professionals identify the criminogenic needs of individuals under supervision so that effective case plans and strategies can be developed for effective case management.

By offering the use of NYCOMPAS, DCJS has made available an important tool that will assist in facilitating a system of community corrections decision-making and classification support. This allows probation, and other community corrections practitioners, to target the appropriate community corrections population and identify risk and criminogenic needs areas. NYCOMPAS addresses the social, psychological, and criminogenic factors impacting offender behavior. The full NYCOMPAS has been implemented in New York State and tested for internal reliability and validity with a New York probation population.

DCJS' Probation State Aid Block Grant rule, 9 NYCRR Part 345, requires probation departments to use a DCJS-approved, fully validated, risk and need assessment instrument for juvenile and adult offender populations. Additionally, DCJS' rule governing Probation Supervision, specifically 9 NYCRR Part 351, requires the use of a state-approved, validated actuarial instrument to assist probation departments in determining the supervision levels for all individuals placed on or sentenced to probation supervision. If not already completed at the Investigation stage, such assessment must be completed within 30 business days of the initial interview.

Where applicable, a state-approved, validated, risk and needs assessment such as NYCOMPAS may be used in Alternatives to Incarceration (ATI) Programs to determine program eligibility, identify criminogenic needs, develop case plans and match individuals with services that meet their needs.

It is important to note that NYCOMPAS should not be administered to persons under the age of 18, as it is oriented toward adults. It is recommended that the Youth Assessment Screening Instrument (“YASI,” now referred to as “YASI/CaseWorks”) be used, as it was designed and validated for persons under the age of 18.

What does NYCOMPAS do?

- ✓ NYCOMPAS identifies risk and needs

NYCOMPAS compiles information from multiple indicators such as offense characteristics, criminal history, etc., all of which measure the likelihood of an individual’s risk of recidivism, risk of violent recidivism, and risk of failure to appear. It also assesses and summarizes the individual’s family support network, substance abuse and mental health needs, education and skills development, financial and housing stability. This compilation of information provides a profile that delineates an individual’s risks and needs. Used together with professional judgment, this tool helps to support recommendations for sentencing dispositions, program services, community corrections interventions and supervision classification decisions.

- ✓ NYCOMPAS provides risk and needs scores

NYCOMPAS provides the framework to calculate risk scores and need dimensions for each individual. Each department or agency has flexibility to use the NYCOMPAS Risk Assessment Report (attached as Appendix A) to make a more informed determination regarding classification based on risk and tailor a menu of programs and services which target the criminogenic needs of individuals based on the needs section of the tool.

- ✓ NYCOMPAS as a screening tool

The Division of Criminal Justice Services (DCJS) encourages the use of NYCOMPAS at critical decision-making points and promotes the use of the NYCOMPAS as a valid and objective way to screen individuals for community corrections interventions. A validated risk assessment and screening tool can facilitate eligibility for program services and an appropriate supervision level. Once individuals have been identified as appropriate for a program, NYCOMPAS includes functionality that assists with the development of the case plan to address the prioritized criminogenic need areas.

- ✓ NYCOMPAS provides decision support

It is recommended that NYCOMPAS be used at the earliest appropriate point in the criminal case process to guide decision making. The results can be invaluable in considering release and sentencing options relative to risk, identifying criminogenic needs and determining the most appropriate release and sentencing conditions. Probation departments which use NYCOMPAS, especially in conducting pre-plea investigations or pre-sentence investigations (PPI/PSI), have benefitted from it in that NYCOMPAS provides relevant information as to an individual’s needs, which, in turn, aids the criminal court in making

informed sentencing decisions.

- ✓ NYCOMPAS is a supervision tool

DCJS requires that a risk assessment and classification instrument be used to inform a system of differential supervision of individuals under probation supervision, and increasingly as a requirement of community corrections programs funded through DCJS competitive awards. Differential supervision ensures that low risk offenders are not over-supervised, as this may actually increase future risk and criminality. In addition, differential supervision ensures that limited available resources are allocated to moderate and higher risk individuals.

- ✓ NYCOMPAS produces a document that assists probation departments in managing supervision resources in accordance with DCJS' aforementioned Supervision Rule. It measures the risk of the individual according to a ten point (decile) scale in three areas: violent recidivism, general recidivism and failure to appear. Evaluating the presence of up to 19 criminogenic need areas, NYCOMPAS provides functionality that allows the user to develop a case plan to address greatest risk and need areas. By addressing dynamic criminogenic needs—factors that can be changed or dynamic factors-- risk is reduced. As such, NYCOMPAS provides valuable case management information.

NYCOMPAS also assesses functionality in the areas of employment and education, housing stability, community connectedness and peer relationships. NYCOMPAS provides support and guidance for supervision decisions, such as the level and frequency as well as the intensity of delivery or dosage of services. The Case Review/Reclassification functionality of NYCOMPAS facilitates periodic review of the case, the individual's progress, and potential re-classification of the individual's supervision level.

- ✓ NYCOMPAS Validation Study

In 2012, DCJS conducted a study on the capacity of NYCOMPAS to predict general recidivism. In sum, the study found that the Recidivism Scale worked effectively and achieved satisfactory predictive accuracy. Additional details of the study include:

- Case distribution across the scale's ten decile scores was as expected – each score generally accounted for about 10% of study cases.
- The rates for ANY re-arrest increased with each successive decile score (DS) in a linear manner, climbing gradually from 9.1% for DS1 cases (lower risk) to 64.1% for DS10 cases (higher risk)— a span of 55 percentage points.
- Re-arrest rates increased substantially with each successive risk level: 16.9% for low risk cases; 32.7% for medium risk cases; and 53.8% for high risk cases.
- Actual and expected rates for ANY re-arrest were closely aligned across decile scores.
- The Recidivism Scale achieved an acceptable level of predictive accuracy (0.71 AUC – Area under the Curve value).

In addition, NYCOMPAS effectively evaluated cases and recommended supervision

levels. Notably, rates for any re-arrest increased substantially with the intensity of NYCOMPAS Probation “recommended” supervision levels:

- 17.5% for *minimum* supervision cases;
- 32.3% for *medium* supervision cases;
- 47.0% for *medium* supervision cases *with a possible override to high*; and
- 57.3% for *high* supervision cases.

As expected, re-arrest rates for NYCOMPAS’ 19 base risk/need scales were generally highest for high-risk/need individuals. The five scales most strongly correlated with the likelihood of any re-arrest, beginning with the most strongly correlated scale, included the following: History of Non-Compliance (with conditions of pre-trial release or sentence), Educational/Vocational Problems, Criminal Associates/Peers, Anger and Impulsivity.

The full report of the NYSCOMPAS-Probation Risk and Need Assessment Study may be accessed at:

http://www.criminaljustice.ny.gov/crimnet/ojsa/opca/compas_probation_report_2012.pdf.

What are the benefits of using NYCOMPAS?

- NYCOMPAS can help increase cost effectiveness and efficiencies in departmental or agency operations by assuring that individuals are assigned to the appropriate service and supervision level.
- NYCOMPAS provides a structure that helps to ensure the gathering of specific, relevant, and consistent information for all individuals.
- NYCOMPAS provides a method to assist community corrections professionals in determining the optimal use of state and local funds, while at the same time promoting a system of graduated responses and appropriate provision of services.
- NYCOMPAS provides the rationale for individual classification, and reclassification.
- NYCOMPAS provides a framework for program evaluation by matching an individual's criminogenic needs to specific services, thereby allowing for improved measurement of program impact.

It is important to note that NYCOMPAS does not replace the judgment of a trained and experienced community corrections professional. The results of a NYCOMPAS assessment are based on statistical predictions for a group of New York probationers with relatively the same characteristics. Persons within any group, however, will have individual strengths and needs. The professional must take these differences into account in order to properly assess risk, classify the individual for supervision level, assess needs and direct the provision of services. Accordingly, NYCOMPAS should be used as a decision support tool.

NYCOMPAS does predict general and violent recidivism risk for all criminal justice populations. It is not intended to assess the special risks and needs associated with certain offenses (e.g., domestic violence or sex offenses), or with certain sub-populations (e.g., women and individuals with behavioral health issues, such as substance abuse and/or mental illness). For these offenses and sub-populations, it is recommended that a specialized screening and assessment tool be utilized to supplement NYCOMPAS to provide the most comprehensive, valid and reliable prediction of risk and needs.

Section I. NYCOMPAS

In 1999, the former NYS Division of Probation and Correctional Alternatives (DPCA) issued a Request for Proposals which resulted in the selection of Northpointe, Inc. to provide a risk and needs assessment tool for probation departments in New York State. Toward that end, COMPAS pilot projects were conducted in four counties, and the data collected during this phase of the project was used to empirically validate the assessment instrument in New York State. After completion of the study, certain local probation departments and a few ATI (Alternative to Incarceration) programs began full implementation of COMPAS in 2001.

In 2005, DPCA was advised of probation professionals' concerns that greater emphasis on professional judgment and official record data be incorporated into the COMPAS instrument. In response to these concerns, DPCA convened a statewide workgroup of probation practitioners and Northpointe professionals resulting in a revised instrument—the NYCOMPAS was established. In 2006, the probation departments involved in this revision began piloting use of a revised assessment instrument, and Northpointe, continued to make modifications as requested by the former DPCA based upon user feedback.

As revised, NYCOMPAS is a risk and needs assessment tool which includes a suite of specialized screening tools available for use by community corrections professionals. In addition, NYCOMPAS has a case planning module for addressing individual needs and planning for services for effective case management. Completion of the full NYCOMPAS assessment pre-populates an editable report with narrative for the preparation of probation PPI or PSI investigations.

In 2008, a Case Review/Reclassification Instrument was developed with New York probation professionals and made available to users in the NYCOMPAS suite. In 2010, revisions were made to re-weigh and improve the predictive validity of the NYCOMPAS violence scale.¹ In 2012, a revised Pre-Trial Assessment instrument was added to the NYCOMPAS suite. NYCOMPAS is a tool for community corrections that will continue to evolve as a result of research and emerging practice.

¹ For further information, please refer to State Director's Memorandum #2010-16.

A. Developing a Decision-Support System with NYCOMPAS

The use of NYCOMPAS provides a structured and consistent approach to decision-making. The following examples illustrate how NYCOMPAS may be integrated into the decision-making process: identifying the risk of recidivism, the risk of violent recidivism, and the risk of failure to appear; and assisting with the identification of protective factors and areas of criminogenic need:

<u>Decision Point</u>	<u>Application of NYCOMPAS</u>
Pre-Trial Release:	Assess NYCOMPAS “Failure to Appear” potential [in compliance with New York Criminal Procedure Law § 510.30(2)(a).
Interim Probation Supervision:	NYCOMPAS risk and needs scales provide information for the court and interim supervision case planning.
Deferred Sentencing:	NYCOMPAS’ summary report assists in determining appropriate conditions of supervision or release recommended for use with deferred sentencing cases.
Pre-Plea/Pre-Sentence Recommendations:	NYCOMPAS identifies an individual’s strengths and areas of criminogenic need.
Differential Supervision Classification:	Certain sub-scales of NYCOMPAS assist in level of supervision decision-making.
Periodic Reassessment/Case Review:	<p>NYCOMPAS provides the ability to conduct case supervision reviews using functionality which measures changes (dynamic factors) in the individual since the last assessment and provides a recommendation as to change in classification level.</p> <p>The purpose of the case supervision review during probation supervision is to reassess the probationer’s progress in achieving the goals identified in the case plan and compliance with conditions of probation.</p>

Violation of Probation:

NYCOMPAS Case Review can provide new information on dynamic factors to indicate any changes of the individual's risk level. Violations, whether technical or as a result of a new conviction, can be viewed within the context of measured changes in criminogenic factors. This would allow for a swift, consistent and proportionate response recommendation taking into consideration positive or negative behavior change of the probationer.

Substance Abuse and/or Mental Health Determination:

The mental health (for depression only) and the substance abuse scales indicate the point at which referral for an evaluation may be warranted. Additional screens are available in NYCOMPAS suite for behavioral health to identify if further evaluation is indicated.

B. Description of NYCOMPAS

NYCOMPAS has evolved into a series of assessments. The full NYCOMPAS assessment is composed of 95 questions in two major sections: the screener input has 47 questions and the Offender Questionnaire has 48 questions. Upon completion of this assessment, NYCOMPAS provides a report which depicts scores for the three risk areas (illustrated by red bars) and the nineteen need areas (illustrated by green bars). (See attached Appendix A)

Several smaller scale-sets have been derived from the larger full NYCOMPAS assessment. Each scale set provides scores on different risk and need areas.

Scale Set	Description
Full NYCOMPAS	This represents all of the questions in NYCOMPAS and is the OPCA-recommended scale-set to initially assess probation and community correction cases. It provides for an in-depth assessment, provides complete scale-set scores, and facilitates the creation of a case plan. A full NYCOMPAS assessment must be completed before the NYCOMPAS-assisted pre-sentence investigation functionality can be effectively utilized. This is comprised of 95 questions.
NYCOMPAS Pre-Trial	This is the only scale-set to be used for detained individuals being screened for pre-trial release consideration, as it excludes questions that are inappropriate prior to a finding or conviction. This is comprised of 13 questions.
Violence and Recidivism with Substance Abuse	This is the smallest scale-set to be used for initial supervision classification. It may also be used as a triage or screening instrument, completed during the Pre-Plea Investigation/Pre-Sentence Investigation process, to assist with developing the sentencing recommendation. It may be used in conjunction with a specialized risk assessment. This is comprised of 27 questions.
Screener Input Only	This is most appropriately used when the Offender Questionnaire was <u>not</u> completed. It does not meet regulatory requirements for initial supervision classification decisions because it does not address risk of recidivism. It can be used to guide Pre-Plea Investigation/Pre-Sentence Investigation recommendations. This is comprised of 34 questions.
Screener Input with Recidivism	This may also be used for initial classification decisions. This scale reports on additional need areas and will facilitate more effective case planning than the "Violence and Recidivism with Substance Abuse" scale set. This is comprised of 39 questions.
Cognitive	This is almost entirely based on the Offender Questionnaire and is to be used for reassessment after a Cognitive Behavioral Intervention (CBI) to measure change in the six cognitive need areas. This scale set does not measure risk of violence and recidivism. Therefore, utilization of this scale does not meet DCJS requirements for initial classification or reclassification purposes. This is comprised of 46 questions.

Please refer to Appendix B for NYCOMPAS scale scores obtained from each scale-set.

Section II. OPCA Guidelines for Use of NYCOMPAS Risk and Needs

A. General Guidelines

- NYCOMPAS is designed to provide risk assessment of the likelihood of general recidivism, violent recidivism, and failure to appear. Although OPCA provides general guidance in Appendix C as to the classification of individuals for supervision levels given the risk scores identified, each community corrections agency may wish to consider developing its own guidelines incorporating community safety concerns and available community resources. For example, a pre-trial screening completed by one agency might consider an individual who scores in the ninth percentile for failure to appear as not appropriate for release, while another department may recommend enhanced release conditions such as Electronic Monitoring.²
- NYCOMPAS is not intended to be the sole source of information used for supervision or release recommendations. An assessment using NYCOMPAS is to be interpreted in conjunction with other relevant information obtained and used as a decision-support tool. Professional judgment is important, as well as any applicable statutory or regulatory factors.

Please refer to Appendix C for Preliminary Supervision Classification Cut-Off Points.

- NYCOMPAS risk prediction functions as an estimate of future behavior, based upon the past behavioral indicators of the normed group.
- NYCOMPAS is not to be used as the sole resource in the identification of risk/needs in the area of substance abuse (including alcohol-related offenses), sex offenses, domestic violence, mental illness, or justice involved women. Rather, instruments specific to these factors should be used in conjunction with the NYCOMPAS instrument.
- NYCOMPAS does not contain clinical needs assessment dimensions specifically focusing on mental health or substance abuse. NYCOMPAS behavioral health-related scales and additional assessments serve as

² Please see B(1) of Section II (“Use of the NYCOMPAS in Pre-Trial Programs”) for specific information regarding the factors which may be considered for pre-trial recommendations

screening tools for possible referral for an in-depth evaluation by a licensed professional. Individuals should be referred to appropriate professionals for mental health, substance/alcohol abuse or sex offender evaluation, when appropriate.

- If a probation professional who conducts an assessment using NYCOMPAS suspects or is provided with evidence of domestic violence, please refer to the “Probation Officer Domestic Violence Policy Guidance” available in the Probation Services Suite of the Integrated Justice Portal (IJP), which provides expert guidance for the handling of domestic violence cases.
- It is recommended that each agency consider establishing a policy regarding sharing of NYCOMPAS information with input from their respective legal representative. Such policy should provide limited access to information, (i.e., on a “need to know” basis), and contain appropriate measures to safeguard confidential information. Probation’s policy must be consistent with DCJS’ Case Record Management Rule, 9 NYCRR Part 348.
- NYCOMPAS is a decision-support tool. In general, a NYCOMPAS assessment report should not be shared with untrained individuals outside of the community corrections agency which has conducted the assessment, nor should NYCOMPAS findings be presented as the sole source of information. However, if it becomes necessary to share a NYCOMPAS assessment report with the court, district attorney or the defendant’s attorney, it is advised that representatives of these authorities be provided with an orientation to the use and purpose of NYCOMPAS as an assessment instrument.
- Agencies may choose to develop a statement to introduce NYCOMPAS to the individual, such as, “To assist the releasing or sentencing authority’s decision-making, we are asking you to answer the following questions to the best of your knowledge.”
- NYCOMPAS may be explained to the individual as an inventory of their social history, risks and treatment needs, the purpose of which is to provide assistance in making decisions regarding their case. The individual should be advised that their truthful response to the questionnaire will help to assure that valid and effective case management and treatment decisions are made. The professional completing NYCOMPAS should never guess at an individual’s answers.
- It is highly recommended that individuals complete the Offender Questionnaire in an environment where the professional is available so that the individual’s questions about the questionnaire can be addressed immediately, thereby minimizing the possibility of inaccurate responses.

B. Laws, Regulations and Standards Pertaining to the Use of NYCOMPAS

1. Use of NYCOMPAS in Pre-Trial Release

The DCJS Pre-Trial Release Standards state that:

Article 510 of the Criminal Procedure Law authorizes criminal courts to release defendants on their own recognizance. Article 510 provides the legal parameters which a judge should employ in determining whether to release a defendant on his or her own recognizance or to set bail.

The only NYCOMPAS assessment which should be used with the pre-trial population is the NYCOMPAS Pre-Trial Release Assessment, which contains questions related to criminal history and residential stability. Other NYCOMPAS assessments are not appropriate for this population because they contain questions related to the present offense. Upon completion of the NYCOMPAS Pre-Trial Release Assessment, the professional should consult the COMPAS Pre-Trial Supervision Recommendation Matrix (Attachment 1) for release and supervision recommendations.

[DCJS-OPCA's Pre-Trial Release Services Standards](#) establish that Pre-Trial service programs should conduct universal screening using a standardized interview format and objective approach to determine eligibility for release. These standards include the following important principles for assessing Pre-Trial risk:

- Service to pre-trial detainees should include interviews of all detained defendants using a standardized interview format and an objective approach to determine eligibility for release.
- Criteria for release eligibility shall be based on valid, reliable predictors of the likelihood of the defendant to return to court.
- Pre-trial release programs should consider establishing policies and procedures for cases where an override of the risk assessment instrument is being considered. The reasons for deviating from the risk assessment should be recorded in the case record.

2. Use of NYCOMPAS in Interim Probation Supervision

Criminal Procedure Law §390.30(6) authorizes the use of Interim Probation Supervision (IPS):

In any case where the court determines that a defendant is eligible for a sentence of probation, the court, after consultation with the prosecutor and upon the consent of the defendant, may adjourn the sentencing to a specified date and order the

defendant be placed on interim probation supervision...

Interim Probation Supervision Guidelines, issued by the former DPCA, state as follows:

Interim Probation Supervision (IPS) should provide relevant information to assist courts in making sound sentencing decisions, which will incorporate graduated sanctions and services, in the interests of public safety and offender rehabilitation. A record of compliance with interim conditions and other relevant information is to be included in the pre-sentence report or the pre-sentence supplemental report, for the review and consideration of the court when pronouncing the sentence.

Interim Probation Supervision is an investigative and sentencing tool to assist public officials and the court in determining whether a sentence of probation is consistent with the interests of justice.

Questions in the NYCOMPAS format assist with information gathering. The result is a profile of the individual's criminogenic risks and needs, which can be used to guide the professional making recommendations to the court. Consideration as to IPS eligibility should address, at a minimum, the following areas: the criminal history of the defendant; the current criminal offense; community ties and likelihood of compliance with supervision conditions; assessment of the defendant's risk to the community; and the defendant's need for rehabilitative services. While the law does not require a pre-plea or pre-sentence investigation prior to judicial imposition of IPS, it is preferable that local probation agencies be involved initially and that criminal courts order probation to prepare a report so that relevant information is gathered and assessed prior to the imposition of IPS.

Criminal Procedure Law §390.30 states:

The defendant must receive a written copy of any such conditions at the time he or she is placed on interim probation supervision. The defendant's record of compliance with such conditions, as well as any other relevant information, shall be included in the pre-sentence report, or updated pre-sentence report, prepared pursuant to this section, and the court must consider such record and information when pronouncing sentence.

Therefore, the results of any NYCOMPAS assessments and/or Case Reviews/Reclassifications completed in contemplation of the imposition of IPS, or during the period of IPS, should be reflected in the defendant's pre-sentence investigation or any update of such which will be submitted to the court.

Changes in law regarding IPS now require that defendants who satisfactorily

complete periods of IPS shall receive credit for time served toward any probation sentence that is subsequently imposed in that case. Because the maximum possible period of post-sentence supervision will be commensurately reduced by satisfactory IPS participation, the earliest assessment and case planning possible – during IPS – becomes even more critical.

3. Use of NYCOMPAS in Deferred Sentencing

Deferred sentencing, an Alternative Sentencing program option for certain offenders, is authorized under Criminal Procedure Law §400.10(4), which provides:

After conviction and prior to sentencing the court may adjourn sentencing to a subsequent date and order the defendant to comply with any of the conditions contained in paragraphs (a) through (f) and paragraph (1) of subdivision two of section 65.10 of the penal law. In imposing sentence, the court shall take into consideration the defendant's record of compliance with pre-sentence conditions ordered by the court.

The NYCOMPAS summary report may assist agencies in determining appropriate conditions for participation in deferred sentencing and case planning.

4. Use of NYCOMPAS in the Pre-Plea and Pre-Sentence Investigation

Rules and regulations applicable to Pre-Plea and Pre-Sentence Investigation are codified at 9 NYCRR Part 350 (“Investigations and Reports”).³

§350.3 provides:

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.

§350.6 (c)(2) further provides:

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.

§350.6 (c)(4) provides that:

³ DCJS' rules and regulations are accessible at <http://www.criminaljustice.ny.gov/opca/regs.htm>.

The investigating officer shall assess the respondent's/defendant's risk of recidivism, criminogenic need areas, and protective factors (assets/strengths) related to legal history, family and environment, education and employment, physical and mental health, attitudes, and cognitive skills.

§350.7 (a) provides that:

...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.

Factors such as the defendant's marital status, spouse, parents, living arrangements, current and prior employment, economic status, ability to make restitution, education, training, professional licenses, military status, current and previous physical and mental health, drug, alcohol or gambling history and any previous social assistance or treatment, may be deemed relevant to the pre-plea or pre-sentence investigation.

Much of the information needed for the preparation of a pre-plea or pre-sentence report can be obtained using the NYCOMPAS assessment process. It is recommended that departments complete all of the scales at the time of the pre-plea or pre-sentence interview in order to establish the offender's specific areas of need, which will assist in the determination of appropriate conditions for release and supervision. The probation officer or community corrections professional who ultimately supervises or monitors the individual can then quickly and effectively begin planning as soon as the case is assigned. This is particularly important for the effective supervision of high risk offenders subject to probation supervision.

New York State Penal Law (PL) §65.00, which governs terms of probation, was amended in 2014 to allow judges certain discretion with regard to the length of the term of probation imposed as follows:

- **3, 4, or 5 year terms of probation for felonies** (other than Class A-II felonies defined in PL Article 220, Class B Felony defined in PL §220.48, any other B felonies described in PL §220 committed by a second felony drug offender, or sexual assaults).
- **2 or 3 year terms of probation for misdemeanors** (other than those defined as "sexual assault", and Class B misdemeanors).

Given the range of these statutory parameters, a pre-plea or pre-sentence investigation, which has been informed by the completion of a fully-validated risk and need assessment, will be valuable to the sentencing court in determining the appropriate term of probation for a defendant eligible for and receiving a term of probation.

Further, in October 2009, Article 216 of the Criminal Procedure Law (CPL) was added, which expanded judicial discretion to offer drug court alternatives to certain eligible felony

defendants. Under the law, the Court may require the defendant to serve a term of Interim Probation Supervision (IPS). Upon successful completion of such term of IPS, the court may permit the defendant to withdraw his guilty plea and dismiss the indictment, or to withdraw his plea and instead enter a plea and be sentenced for a misdemeanor offense. Given the impact of judicial diversion, early assessment and case planning are of critical importance.

5. Use of NYCOMPAS in the Supervision of Persons Sentenced to or Placed on Probation

Initial Classification: The determination of risk and the classification of offenders are among the primary purposes of NYCOMPAS in relation to supervision populations. OPCA has approved NYCOMPAS to be used in lieu of any previous needs assessment instrument or scale in New York State.

The risk and need scales displayed in the NYCOMPAS Assessment Report, in conjunction with the Supervision Recommendation Matrix (Appendix C), may be used to assist in deciding the level of supervision most appropriate for each offender.

To determine the recommended supervision level, one should locate the offender's Violence Risk score column along the top of the matrix, and the offender's Recidivism Risk score row along the left side of the matrix. Accordingly, the NYCOMPAS-recommended supervision level is indicated by the color area where the two values meet.

The Supervision Recommendation Matrix should be used to place individuals in the appropriate supervision classifications in accordance with DCJS' Supervision Rule Part 351, as follows:

- Minimum Supervision Recommendation = Low Risk
- Medium Supervision Recommendation = Medium Risk
- Medium Supervision Recommendation (with override consideration to High) = Medium or High Risk
- High Supervision Recommendation = High Risk
- Portion of High Supervision Recommendation should be considered for classification as Greatest Risk cases, consistent with probation department written policy.

Please note that departmental policy and/or procedures may supersede the NYCOMPAS supervision recommendations. For example, a department may place individuals into a higher risk category based on the type of offense the individual committed (e.g. sex offense, domestic violence).

Please refer to Appendix C to translate NYCOMPAS Risk scores to the appropriate New York State Supervision Levels.

Review and Reclassification: The aforementioned Supervision Rule also requires:

For active criminal court and family court adult supervision cases, the periodic case review shall be conducted every six (6) months. For administrative cases, who are probationers otherwise unavailable for active supervision, the periodic case review shall be conducted every twelve (12) months.⁴

The periodic case review shall include a reassessment or case review utilizing a state-approved risk and needs assessment or case review instrument. Probation Departments which use NYCOMPAS are therefore expected to also utilize the NYCOMPAS Case Review/Reclassification instrument for this purpose.

OPCA recommends that ATI/community corrections professionals utilize the NYCOMPAS Case Review/Reclassification instrument on individuals no less than every six months. Reclassification may be dependent upon the delivery of specific ATI program services.

Risk Override:

NYCOMPAS allows for overrides of recommended supervision levels. Reasons for override should be documented consistent with written departmental or agency policy. Overrides should be closely monitored by designated agency personnel to ensure consistency.

6. Confidentiality

The following information is intended as guidance for local probation departments and ATI programs in determining proper dissemination of information obtained during, and produced from, the NYCOMPAS assessment process.

a. Confidentiality in Pre-Trial Services: At the time of the initial interview, a detainee should be advised of the potential uses of the information offered so that he or she may make a voluntary decision whether to participate in the pre-trial release interview. During the pre-trial interview, the detainee should be advised that answering the NYCOMPAS questionnaire is voluntary.

DCJS' Pre-Trial Service Standards: States, as follows, in relevant part:

Information obtained during the course of the pre-trial release services investigation and during post-release supervision shall remain confidential and shall not be disclosed unless authorized by these Standards, New York State/Federal Law (e.g. HIPAA - Health Insurance Portability and Accountability Act) or regulations. Any disclosure of pre-trial release services information shall be limited to the minimum information

⁴ Title 9 NYCRR §351.6(d)(2)(i)

necessary to carry out the purpose of such disclosure.

The information obtained through the use of NYCOMPAS in a pre-trial setting is covered by these standards; therefore, confidentiality of such information is to be maintained in accordance with these standards.

- b. Confidentiality of Pre-Sentence Reports and Memoranda:** Pursuant to Criminal Procedure Law §390.50(1), which governs the confidentiality of pre-sentence reports and memoranda, the information gathered during the NYCOMPAS assessment process and contained in the report is not intended for dissemination beyond the local probation department and the sentencing court, except as specifically required or permitted by statute or specific authorization of the court.

This statutory section states in pertinent part as follows “Any pre-sentence report or memorandum submitted to the court pursuant to this article and any medical, psychiatric or social agency report or other information gathered for the court by a probation department or submitted directly to the court, in connection with the question of sentence is confidential and may not be made available to any person or public or private agency except where specifically required or permitted by statute or upon specific authorization of the court.”

- c. Confidentiality of NYCOMPAS information for those currently under probation supervision:**

- **NYCOMPAS Assessments:** Information gathered during the NYCOMPAS assessment process and contained in the case file is confidential and must be safeguarded to protect against unlawful disclosure. Departments should follow any internal policy or procedure established by the agency to better ensure that recipients of NYCOMPAS information are knowledgeable of, and where feasible trained in understanding the NYCOMPAS protocol. Additionally, any policies or procedures with respect to access must conform to DCJS’ Probation Case Record Management Rule, specifically 9 NYCRR Part 348.
- **Substance Abuse Evaluation and Treatment information regarding those currently under supervision:** NYCOMPAS information is primarily obtained directly from the offender and from official records. A substance abuse scale is included in the needs identification scale-set. While a NYCOMPAS report may suggest the need for further substance abuse evaluation, the NYCOMPAS report should not be shared with a substance abuse treatment provider without appropriate education about the instrument.

At the time of pre-plea or pre-sentence investigation preparation and

classification/reclassification decision-making, probation agencies and ATI programs may have a need to obtain substance abuse evaluation and treatment information directly from the treatment agencies. Participation in court-ordered treatment is a dynamic factor which is measurable during the supervision period.

As a general practice, probation agencies and ATI programs should obtain an individual's consent for release of information from the identified treatment agency to the probation department/ATI agency and the court, either at the time of the pre-plea or pre-sentence investigation or at the time of the imposition of Interim Probation Supervision or Deferred Sentencing, sentence to probation/conditional discharge or entry into program, as applicable. Please refer to the **Consent for Release of Information for Criminal Justice Clients**, included as Attachment 2.

There exists confidentiality safeguards and specific restrictions governing re-disclosure, or the sharing of treatment information once received by the probation department, ATI agency or the court. Please see Attachment 3 for additional information regarding confidentiality and re-disclosure.

Afterword

Consistent with the principles of evidence-based practice, it is important that community corrections professionals utilize actuarial risk and needs assessment tools to uniformly and consistently assess the risk and needs of individuals they are charged to investigate and/or supervise. This will assist in accurately identifying their criminogenic needs so that limited resources may be allocated appropriately, and will also help develop measures to more effectively reduce offender recidivism and future victimization.

For any questions regarding NYCOMPAS, please contact DCJS' Office of Probation and Correctional Alternatives at (518) 485-7692 or visit www.criminaljustice.ny.gov.

Appendices

- A. The NYCOMPAS Probation Risk Assessment Report
- B. The NYCOMPAS Scale Scores Obtained from each Scale Set
- C. The NYCOMPAS-Based Initial Supervision Classification and Preliminary Guidance

Attachments

- 1. Pre-Trial Supervision Matrix
- 2. Consent to Release Criminal Justice
- 3. The Confidentiality of Drug and Alcohol Records

Appendix A: NYCOMPAS Probation Risk Assessment Report

COMPAS Probation Risk Assessment

Offender: **Joe Sample**

DOB: **2/2/1950**

Gender: **Male**

Screening Date: **9/13/2007**

Screener: **Hellem, Dan**

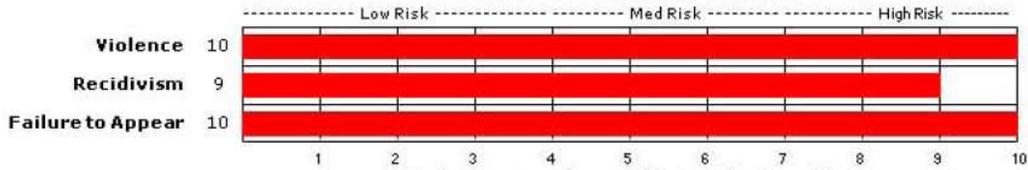
Ethnicity: **Native A**

Scale Set: **DMB-PSI**

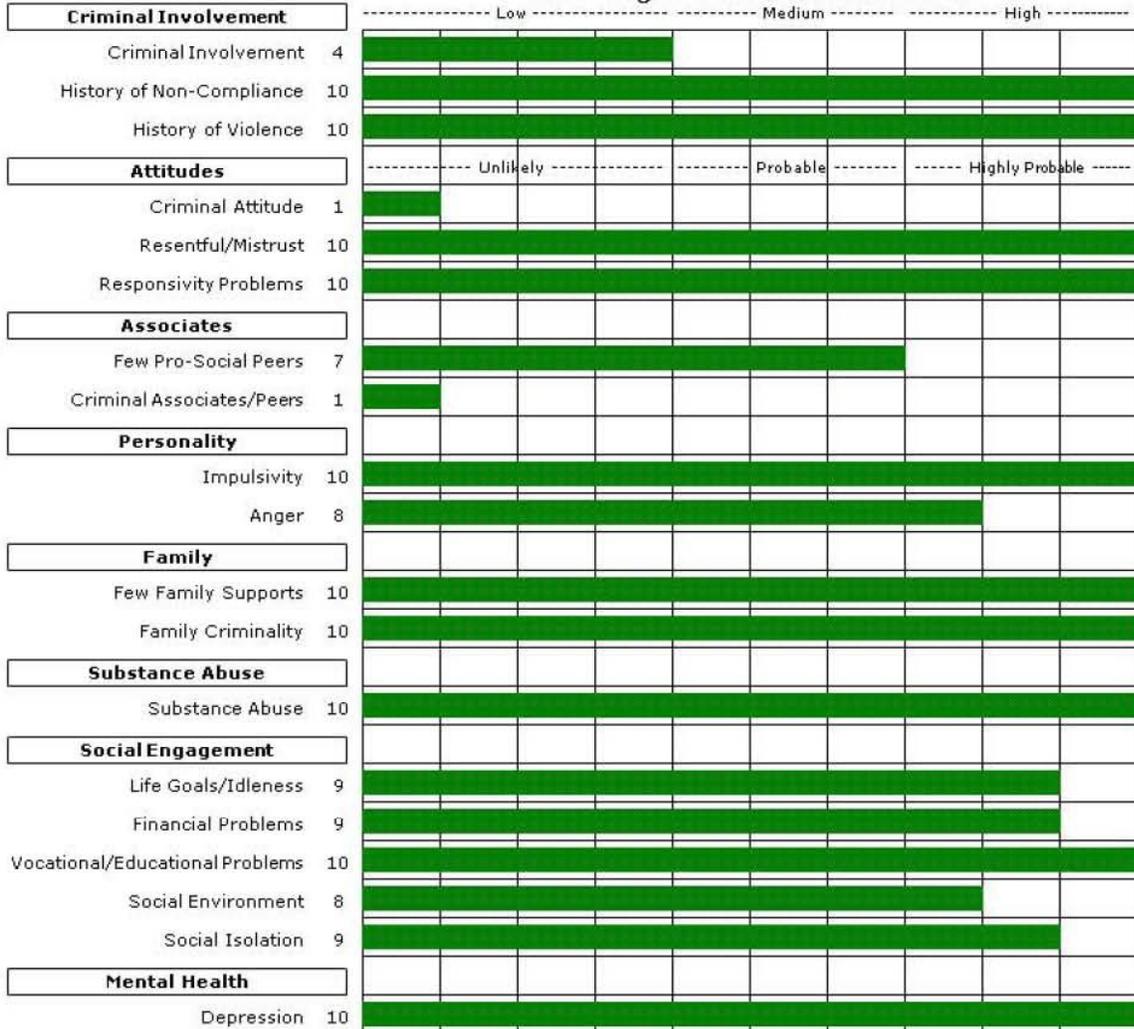
Case: **009943**

Marital Status: **Single**

Overall Risk Potential



Criminogenic and Needs Profile



Appendix B: NYCOMPAS Scale Scores Obtained from each Scale Set

**NYCOMPAS
Scale Scores Obtained from Each Scale Set**

	Risk/Need Scale Reported	Scale Set Name					
		Pre-Trial (13 items)	Violence and Recidivism w/Substance Abuse (27 items)	Screener Input Only (34 items)	Screener Input w/ Recidivism (39 items)	Cognitive (46 items)	Full COMPAS Assess- ment (95 items)
Overall Risk	Failure to Appear	X					X
	Violence		X	X	X		X
	Recidivism		X		X		X
Criminal Involvement	Criminal Involvement		X	X	X		X
	History of Non-Compliance			X	X		X
	History of Violence			X	X		X
Attitudes	Criminal Attitude			X	X	X	X
	Resentful/Mistrust					X	X
	Responsivity Problems			X	X		X
Associates	Few Pro-Social Peers			X	X		X
	Criminal Associates/Peers			X	X		X
Personality	Impulsivity					X	X
	Anger					X	X
Family	Few Family Supports			X	X		X
	Family Criminality			X	X		X
Substance Abuse	Substance Abuse		X	X	X		X
Social Engagement	Life Goals/Idleness					X	X
	Financial Problems						X
	Vocational/Educational Problems		X		X		X
	Social Environment			X	X		X
Mental Health	Social Isolation					X	X
	Depression			X	X		X

PRELIMINARY GUIDANCE AS TO SCALE-SET USAGE

The "Pre-Trial" scale set (with 13 questions) is the only scale set to be used for detained offenders being screened for pre-trial release consideration as it excludes questions that are inappropriate to ask offenders prior to a finding or conviction.

The "Violence and Recidivism w/Substance Abuse" scale set (with 27 questions) is the smallest scale set to be used for initial supervision classification and its use replaces the DPCA-70 and 71. It can be used as a transition assessment for probationers who have been under supervision for a period of time (for example, a third of their sentence) without having had a "Full COMPAS Assessment" (essentially, this would act as a reclassification tool for persons who had previously only been assessed with the DPCA-70 Risk Classification instrument) until the Northpointe Case Review instrument is available. It may also be used as a triage or screening instrument, completed during the PSI process, to assist with developing the PSI recommendation.

The "Screener Input Only" scale set (with 34 questions) is most appropriately used when the Offender Questionnaire was not completed for any reason. It does not meet DPCA's requirements for initial supervision classification decisions because it does not address risk of recidivism. It may, however, be used to guide PSI/PPI recommendations.

The "Screener Input w/Recidivism" scale set (with 39 questions) may also be used for initial classification decisions (replacing the DPCA-70 and 71). Although it will take slightly longer to administer than the base "Violence and Recidivism w/Substance Abuse" scale set, it will report on more need areas and will facilitate broader, more effective case planning.

The "Cognitive" scale set is based almost entirely (42 of the 46 questions) on the Offender Questionnaire, and should be used solely to: 1) establish baseline cognitive need scores (if not determined using the Full COMPAS), and 2) measure change in the six cognitive need areas addressed by comparing with a prior assessment. Because it does not measure risk of violence and recidivism, usage of this scale does not meet DPCA requirements for initial classification or reclassification purposes.

The "Full COMPAS Assessment" scale set (with 95 questions - half of which are addressed by the offender) also replaces the DPCA-70 and 71 and is the DPCA-preferred scale set to initially assess probation supervision cases because it provides for a more in-depth assessment, provides the full range of available scale scores, and facilitates the creation of a more in-depth assessment and holistic case plan. This scale-set must be chosen and the assessment completed before the COMPAS-assisted Pre-Sentence Investigation functionality will be enabled.

Appendix C: The NYCOMPAS-Based Initial Supervision Classification and Preliminary Guidance

NY COMPAS-based Initial Supervision Classification Preliminary Guidance

The Classification discussions that follow appear to emphasize the determination of an initial supervision level based solely on obtained Recidivism and Violence Risk scores. However, importantly, DCJS that over-rides are permissible, in accordance with Title 9 NYCRR Part 351. Specifically, over-rides shall conform to criteria approved by the probation director, consistent with department policy, and be documented in the case record

COMPAS COMPOSITE (DEFAULT) NORM FOR SUPERVISION RECOMMENDATIONS											
Violence Risk Decile Score											
	1	2	3	4	5	6	7	8	9	10	
1	Minimum Supervision Recommendation					Medium Supervision Recommendation		High Supervision Recommendation			
2	Minimum Supervision Recommendation					Medium Supervision Recommendation		High Supervision Recommendation			
3	Minimum Supervision Recommendation					Medium Supervision Recommendation		High Supervision Recommendation			
4	Minimum Supervision Recommendation					Medium Supervision Recommendation		High Supervision Recommendation			
5	Minimum Supervision Recommendation					Medium Supervision Recommendation		High Supervision Recommendation			
6	Minimum Supervision Recommendation					Medium Supervision Recommendation		High Supervision Recommendation			
7	Minimum Supervision Recommendation					Medium Supervision Recommendation		High Supervision Recommendation			
8	Minimum Supervision Recommendation					Medium Supervision Recommendation		High Supervision Recommendation			
9	Minimum Supervision Recommendation					Medium Supervision Recommendation		High Supervision Recommendation			
10	Minimum Supervision Recommendation					Medium Supervision Recommendation		High Supervision Recommendation			

The following summarizes certain provisions of DCJS' Supervision Rule governing classification and contact requirements of those subject to probation supervision:

1) Greatest Risk Population

Contact requirements:

For the Greatest Risk population, the probation department shall conduct a minimum of six probationer contacts, six collateral contacts, and one positive home contact per month. The probationer contacts shall include one in-person contact per week and two probationer contacts per month. One positive home contact is required each month from case assignment. A positive home contact constitutes one of the required in-person contacts.

After the stabilization period of three months for juveniles and three to six months for adults has been completed, and if the probationer has complied with the conditions of probation and the case plan, he/she may be considered for merit credit. Up to one probationer contact per month may be credited.

2) High Risk Population

Contact requirements:

The probation department shall conduct a minimum of one in-person contact per week, six collateral contacts per quarter, and one home contact per month. One positive home contact is required during the first month from case assignment. Thereafter, three home contacts are required each quarter, one completed each month during the quarter, two of which must be positive home contacts. A positive home contact constitutes a required in-person contact.

After the stabilization period of three months for juveniles and three to six months for adults has been completed, and if the probationer has complied with the conditions of probation and the case plan, he/she may be considered for merit credit. Up to one in-person contact per month may be credited.

3) For the Medium Risk Population

Contact requirements:

For the Medium Risk population, the probation department shall conduct a minimum of two probationer contacts per month and two collateral contacts per quarter. The probationer contacts shall include one in-person contact per month. One positive home contact is required during the first forty-five (45) calendar days from case assignment and as needed thereafter. A positive home contact constitutes one of the required in-person contacts. If the probationer has complied with the conditions of probation and the case plan, he/she may be considered for merit credit. Up to one probationer contact per month may be credited.

4) For the Low Risk Population

Contact requirements:

For the Low Risk population, the probation department shall conduct a minimum of one contact per month. Collateral contacts and home contacts will be conducted as needed. Merit credit activities may be used as incentives only.

5) Case Review / Reclassification

DCJS' Probation Supervision rule requires probation to review cases, including consideration for possible reclassification, every six months. Case events may require

reclassification to a different level of supervision at other times during the life of the case, but such reclassifications should be based on the nature of the event (re-arrest, failure to report, etc.), rather than the completion of a new instrument. Local policy may provide for the completion of a new Case Review at any other specific event or lesser time.

Attachment 1: Pre-Trial Supervision Matrix

COMPAS Pretrial Supervision Recommendation Matrix

		Current Offense & Prior Violent Felony Combination			
		Current Non Violent Misdemeanor or Felony & No Violent Felony History	Current Non Violent Misdemeanor or Felony & Violent Felony History	Current Violent Felony & No Violent Felony History	Current Violent Felony & Violent Felony History
Pre-Trial Risk Decile Score	Low (D1 -D3)	Minimum Supervision			
	Medium (D4-D5)		Standard Supervision		
	Medium High (D6-D7)				Intensive Supervision
	High (D8-D10)		High Supervision		

Attachment 2: Consent to Release Criminal Justice

NEW YORK STATE
OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES

**CONSENT TO RELEASE OF INFORMATION
CONCERNING
CHEMICAL DEPENDENCE TREATMENT
FOR CRIMINAL JUSTICE CLIENTS**

Client's New York State Identification Number (NYSID)

□	□	□	□	□	□	□	□	□
---	---	---	---	---	---	---	---	---

Referring Entity Type

- District Attorney
- Court
- Probation

- Parole - General
- Parole - Release Shock
- Parole - Release Willard
- Parole - Release Resentence

Client's Last Name	First	MI
--------------------	-------	----

Referring Entity's Staff Member's Name:

Referring Entity's Name & Address

INSTRUCTIONS:

- 1) SEND A COPY OF THIS COMPLETED FORM TO THE CLIENT'S TREATMENT PROVIDER;
- 2) ADD A COPY OF THIS COMPLETED FORM TO THE CLIENT'S CRIMINAL JUSTICE FILE; AND
- 3) PROVIDE A COPY OF THIS COMPLETED FORM TO THE CLIENT/DEFENDANT

1) I, the undersigned, Client/Defendant, hereby **CONSENT** and authorize communication between the above named Referring Entity, my Chemical Dependence Treatment Provider: _____ and the following: _____

I **CONSENT** to **DISCLOSURE OF INFORMATION** concerning my current and past individual assessment or evaluation, intake summary, diagnosis, treatment recommendation, date of admission, and status as a patient including course and level of treatment (i.e. residential, community based, individual, or group), my progress and compliance including but not limited to: my attendance or lack of attendance at treatment, dates and results of toxicology/urinalysis, cooperation with my treatment program, prognosis, treatment completion or reason(s) for termination, date of discharge, discharge status, and discharge plan.

Such disclosure is for the **PURPOSE** of enabling the entities listed above to communicate as to my treatment needs, activities, history and attitude towards my evaluation and treatment for purposes of monitoring the terms and conditions of treatment, release, case management purposes, and for carrying out other official duties; **AND**

2) I further **CONSENT** and authorize communication between and among the above named Referring Entity and the New York State Office of Alcoholism and Substance Abuse Services (OASAS); and OASAS to **DISCLOSE INFORMATION** to the New York State Division of Criminal Justice Services (DCJS), concerning admission and discharge data for the **PURPOSE** of research and program evaluation activities. I understand that any reports or studies compiled from my records disclosed pursuant to this release will not include personally identifiable information which will remain confidential and protected from further re-disclosure.

I, the undersigned, have read the above and authorize the staff of the above named disclosing entities to disclose, obtain and share such information as herein specified. I understand that, unless otherwise specified, this consent will remain in effect and cannot be revoked by me until there has been a formal and effective termination or revocation of my release from confinement, interim probation supervision, probation, parole, post-release supervision, or local conditional release or other proceeding or determination by a releasing authority under which I was referred to or otherwise agreed to treatment.

I also understand that any disclosure of any identifying information is bound by Title 42 of the Code of Federal Regulations 42 CFR Part 2, governing the confidentiality of alcohol and drug abuse patient records, as well as the Health Insurance Portability and Accountability Act of 1996 (HIPAA) 45 C.F.R. Pts. 160 & 164; and that redisclosure of such information to a party other than those designated above is forbidden without additional written authorization on my part.

NOTE: Any information released through this form MUST be accompanied by the form Prohibition on Redisclosure of Information Concerning Chemical Dependence Treatment Patient (TRS-1)
--

I understand that generally the program may not condition my treatment on whether I sign a consent form, but that in certain limited circumstances I may be denied treatment if I do not sign a consent form. I have received a copy of this form, as recognized by my signature below.

(Print Name of Client)

(Signature of Client)

(Date)

The Confidentiality of Drug and Alcohol Records

Who must comply with the federal confidentiality laws and regulations?

ATI, drug court, probation and other programs that must comply with the federal confidentiality law and regulations that protect the confidentiality of drug and alcohol records (42 U.S.C. § 290dd–2, 42 C.F.R. Part 2, hereafter refer to as “Part 2”) ⁽ⁱ⁾are ones that:

- provide alcohol or drug abuse diagnosis, treatment, or referral for treatment, and
- are “federally assisted” (receive federal funds in any form, even if the funds do not directly pay for the alcohol or drug service. Programs that have tax exempt status are considered federally assisted.)

What information is protected?

Programs that fall under Part 2 are prohibited from disclosing “patient identifying information” – information that identifies a client as an alcohol or drug patient, either directly or indirectly – unless one of a number of exceptions applies. 42 C.F.R. §§ 2.12, 2.13(a). Those exceptions are listed below. This prohibition on unauthorized disclosure applies whether or not the person seeking information already has the information, has other means of obtaining it, enjoys official status, has obtained a subpoena or warrant, or is authorized by state law.

Exceptions

Part 2 sets out a number of circumstances that permit limited disclosures with client consent and a few circumstances in which disclosures may be made whether or not the client consents. Each circumstance permitting disclosure has its own specific requirements and limitations, all of practical significance. In general, the exceptions fall into ten categories:

- written consent
- internal communications
- no patient–identifying information
- medical emergency
- court order
- crime at program/against program personnel
- research
- audit and evaluation
- child abuse
- qualified service organization / business associate agreement

The exceptions most applicable to ATI programs are written consent and court orders. For the purposes of this chapter, these are the only two exceptions that will be discussed.

Consent

Most disclosures are permissible if a client has signed a valid consent form which has not expired or been revoked by the client. 42 C.F.R. § 2.31.

(a) Proper format for consent to release information

In order to satisfy the requirements of 42 C.F.R. Part 2, a proper consent form must be in writing and contain each of the following items:

- (1) the name or general designation of the program(s) making the disclosure;
- (2) the name of the individual or organization that will receive the disclosure;
- (3) the name of the client who is the subject of the disclosure;
- (4) the purpose or need for the disclosure;
- (5) a description of how much and what kind of information will be disclosed;
- (6) the client's right to revoke the consent and the exceptions to the right to revoke;
- (7) the date, event or condition upon which the consent expires if not previously revoked;
- (8) the signature of the client (and/or other authorized person); and
- (9) the date on which the consent is signed.

Programs that receive information pursuant to a client's consent are prohibited from re-disclosing that information unless the client signs a consent form permitting such a re-disclosure. However, special rules apply when an individual is court-ordered into treatment.

(b) Special consent forms when clients are court-ordered into treatment

A special Part 2 rule exists when a client's participation in a treatment program is an official condition of probation or parole, sentence, dismissal of charges, release from imprisonment, or other disposition of any criminal proceeding. While a consent form is still required before any disclosure can be made about a criminal justice system referral, the rules concerning duration and revocability of the consent are different. Frequently court ordered conditions are imposed to require signing the necessary consent form to share treatment records (i.e. new Rockefeller Drug Law reform. Under the special CJS rules of Part 2, consent can be made irrevocable until a certain specified date or condition occurs, and the duration of the consent can be linked to the final disposition of the criminal proceeding (i.e. probation). 42 C.F.R. § 2.35.

NOTE: If a program falls under HIPAA (**45 CFR Parts 160 and 164**) as well as Part 2, these special criminal justice consent forms cannot be used unless a HIPAA court order has also been ordered. This is because HIPAA requires that consent be revocable and does not have an exception like the one in Part 2, which allows an irrevocable consent form to be used when a client is mandated into treatment through the criminal justice system. If a HIPAA court order is issued, then these special consent forms can be used.

Thus, providers who work with the court should begin to routinely ask that a HIPAA court order be issued for every client mandated into their program by the criminal justice system.

Court Orders

(a) HIPAA court orders

These orders are simple to obtain. Unlike Part 2, described below, for a HIPAA order the court needs only to sign an order stating that the program must turn over specified client information to the court.

(b) Part 2 court orders

A state or federal court may issue an order that authorizes a program to make a disclosure of patient-identifying information that would otherwise be prohibited. Part 2 provides that a court may issue an authorizing order only after it follows certain procedures and makes particular determinations specified in 42 C.F.R. §§ 2.63–2.67. Under 42 C.F.R. Part 2, a subpoena, search warrant or arrest warrant, even when it is signed by a judge and labeled a court order, is not sufficient, when standing alone, to require or even permit a program to make a disclosure. 42 C.F.R. § 2.61. A subpoena can be used, however, to compel a program to attend a hearing to see whether a court order should be issued.

Before a court can issue an order under 42 C.F.R. Part 2, the program and any client whose records are sought must be given notice that a party is requesting the order, and some opportunity to make an oral or written statement to the court. However, if the information is being sought to investigate or prosecute a client, only the program need be notified. 42 C.F.R. § 2.65. Part 2 lays out the specific procedures that must be followed before a court order can be issued. If a program that falls under Part 2 is served by a subpoena or a court order, the program should consult with its legal counsel to ensure that the proper procedures are followed and that the information requested can be legally disclosed.

^[1] [1] Some ATI and other programs must also comply with another federal law that protects the confidentiality of health care records, the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Health care providers that transmit health care information electronically in connection with certain transactions, such as processing claims, payment and remittance, and coordination of benefits, must follow HIPAA. Generally, 42 C.F.R. Part 2 provides greater client protections than HIPAA and thus programs should follow the Part 2 rules.