

Part 350 Investigations and Reports

(Statutory authority: Executive Law, Section 243(1) and Section 252-a of the Family Court Act).

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Section 350.1 Definitions.

- (a) The term interview means the process of interviewing an individual directly, whether through in-person interview, or another form of telecommunication, such as telephone or e-mail.
- (b) The term in-person interview means a face-to-face interview with the respondent/defendant and/or other persons conducted in real-time in either direct physical proximity or remotely by video conference.

- (c) The term investigation means the process by which probation officers investigate and produce a report pursuant to an order or request from family, criminal, civil, supreme or surrogate court.
- (d) The term legal history means the formal record concerning the respondent's/defendant's involvement in the legal system.
- (e) The term offense means an offense as defined in PL Section 60.27(4) (a).
- (f) The term public institution or agency means any governmental entity which has the legal authority to detain and/or obtain custody over an individual pursuant to court order.
- (g) The term social circumstances means relevant information regarding the current and past family situation, economic status, education and employment, physical and mental health; attitudes and cognitive-behavioral skills; criminogenic risk and needs, identified protective factors; and any significant patterns of which the court should be aware.
- (h) The term verification means the process of confirming or substantiating the accuracy or truth of information obtained via interview(s) or correspondence through the use of reliable, objective, independent documentation, observation or other sources.
- (i) The term victim means victim as defined in Penal Law (PL) Section 60.27 and victim as indicated in provisions of Articles 3, 7, and 8 of the Family Court Act (FCA).
- (j) The term victim impact statement means a written document prepared by the victim(s), victim(s)'s family, or significant other(s); or, subsequent to making contact with the victim or victim's representative, by the investigating probation officer. It shall include: the victim/family/significant other's version of the offense/act; the extent of injury or economic loss, including physical, psychological or economic injury or impact, damages, or losses; actual out of pocket loss to the victim; and the view of the victim/victim's representative relative to disposition/treatment.

Section 350.2 Types of Investigations.

(a) Family Court, Supreme Court, and Surrogate Court Investigations:

- i. Adoption/Custody/Guardianship/Neglect/Visitation and All Other Family Court Cases: conducted to provide home and background information related to such matters affecting the child(ren) at issue. Local policy determines if these investigations are conducted by the probation department.
- ii. Pre-Dispositional: conducted after fact-finding, but prior to disposition for both Person In Need of Supervision (PINS) and Juvenile Delinquency (JD) matters.
- iii. Supplemental: conducted pursuant to order and direction of the court to update a previously submitted report on the same matter.

(b) Criminal Court Investigations:

- i. Certificate of Relief from Disabilities: conducted to determine eligibility and to make a recommendation for suitability as to relief from disabilities or forfeitures or bars to employment automatically imposed by law at conviction.
- ii. Pre-Plea: conducted prior to a finding of guilt. This investigation requires signed consent of all parties.
- iii. Pre-Sentence: conducted post-conviction, but prior to sentence.
- iv. Youthful Offender: conducted to determine eligibility and to make a recommendation as to suitability for youthful offender treatment.

Section 350.3 Objective.

The objective of the investigation and report is to provide the court with relevant and reliable

information, in a succinct, analytical presentation for decision-making. Also, to provide dispositional and regulatory agencies that are entitled to access with information for immediate and future decision-making purposes with respect to placement/incarceration, services and program delivery. These dispositional agencies shall include probation, social services, New York State Office of Children and Family Services (OCFS), Department of Corrections and Community Supervision (DOCCS), and any other public institution or agency.

Section 350.4 Applicability.

This Part is applicable to all JD, PINS, family offense, custody, adoption, guardianship and neglect/abuse pre-dispositional investigations and pre-plea reports for the family courts and supreme or surrogate court where applicable and to all adult/youthful offender pre-plea, pre-sentence and any certificates of relief from disabilities investigations and reports for the criminal courts.

Section 350.5 Investigations and Reports, Generally.

The probation investigative and reporting processes shall be impartial, fair, factual, analytical, pertinent, and relevant to the objective of the report. The investigating probation officer shall distinguish between fact and professional assessment, and between their own observations and those from other sources. The source of all relevant information shall be reported.

Section 350.6 Investigation Process for Criminal, Juvenile Delinquency, Persons In Need of Supervision, and Family Offense Proceedings.

(a) Order for Investigation and Report. The court order for investigation and report shall include, at a minimum, the same information and attachments, as applicable. The receipt of a court order for an investigation and report shall be entered in either a paper or electronic departmental case record management system which shall include but not be limited to the date received, the name of the person subject to the

investigation, the date of birth, the final conviction charge/finding, disposition/sentencing date, and the name of the person assigned to conduct the investigation and prepare the report. In the case of fingerprintable offenses (juvenile and adult), the Criminal Justice Tracking Number (CJTN) and NYSID shall also be recorded to positively identify the subject of the investigation and obtain a complete criminal history.

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

(1) **Legal History:** the investigation shall consist of the gathering of available, relevant and reliable information from New York and multi-state criminal history records and other official records relative to: arrests; previous conduct and complaints; convictions; adjudications; youthful offender eligibility; prior designated felony act offenses; predicate felony status; persistent felony offender; DNA and/or Sex Offender Registration eligibility; dispositions; sentences; any period of time respondent/defendant served in a placement/correctional facility; information relevant to probation, parole, violation of probation or parole proceedings; warrants; orders(s) of protection; and any prior deportation(s). For all investigations, the officer shall not gather information as to matters which have been terminated in favor of the respondent/defendant pursuant to CPL Section 160.50 and FCA Section 375.1. When conducting an investigation upon an adult after conviction, JD and PINS intake diversion records may be gathered unless such records have been sealed pursuant to FCA Section 375.1. The officer may, however, gather independent legal information voluntarily received from other sources (such as the respondent/defendant, family members, victims, schools or police) as to past behavior.

(2) **Social Circumstances:** the investigation shall consist of the gathering of available, relevant and reliable information regarding past and present social circumstances, including:

1. any systems involvement with the respondent/defendant's family that may be relevant (i.e., local department of social services, police, probation, federal immigration);
2. the family and home situation;
3. citizenship and, if applicable, alien status;
4. financial and family support obligations, including history of meeting those obligations;
5. community and neighborhood environment;
6. peer/associate relationships, including any gang involvement;
7. educational status and vocational skills;
8. employment and military experience;
9. any violent behavior in the home or community;
10. access to weapons, ownership, and any licenses related to such weapons;
11. all other social circumstances that constitute criminogenic risk, needs, and protective factors; and
12. all significant patterns of which the court should be aware, such as assaultive behavior, chemical dependency, domestic violence, driving offenses, endangering or other reckless behavior, mental health concerns or sexual offending.
 - i. For juvenile cases the investigation shall also include the gathering of available, relevant and reliable information regarding any:
 1. history of running away;
 2. child neglect/abuse;
 3. appropriate use of parental authority and attitudes toward the child and their behavior;
 4. consistency and appropriateness of caring, rewards, discipline, and supervision in the home;

5. positive adult relationships and social support networks;
6. significant family conflict, or safety concerns affecting either the respondent or other persons in the home (i.e., violence or abuse);
7. school adjustment, academic performance and conduct/special needs;
8. previous social assistance provided by voluntary or public agencies and the response of the youth to such assistance;
9. any detention or other residential placement history, and the youth's adjustment to such placement.

ii. Where an out-of-home placement of a juvenile is being considered, the probation department shall consult with social services, as appropriate, and where feasible shall address:

1. whether continuation in the respondent's home is contrary to the best interest of the respondent;
2. whether efforts were made prior to the date of the dispositional hearing to prevent or eliminate the need for removal of the respondent from his or her home; and
3. whether there is a placement offer within proximity to the respondent's family, school, and community.

(3) Victim Information: the investigation shall consist of the gathering of relevant and reliable information related to the victim(s) of the offense/act as such terms are defined in Section 350.1. Where available, victim information shall address:

1. each victim's age at the time of the offense, gender, any special needs or disabling conditions, and relationship to the offender;

2. all pertinent information relative to each victim's version of the offense/act; the victim impact statement(s), including physical, psychological, or economic injuries, damages, and out-of-pocket losses sustained;
3. any violence or threatening behavior, or other safety concerns related to the victim(s) or the victim(s)' family;
4. any order of protection that has been issued against the respondent/defendant;
5. any restitution or reparation sought;
6. any reimbursement received or anticipated by the victim(s), whether from the Office of Victims Services, or the victim(s)' insurance;
7. the victim's view toward disposition/sentence;
8. and all other relevant and reliable information of which the court should be aware, and may include, where appropriate, information as to other individuals who may have been victimized by the respondent/defendant.

(c) Conducting the Investigation.

(1) Obtaining Basic Legal Information.

The following basic legal information and documents shall be obtained, where available, as part of the investigation. Where the respondent/defendant has been fingerprinted, a multi-state criminal history search shall be conducted. Whenever possible, any such documents shall be obtained prior to the interview with the respondent/defendant.

- a. Legal History: respondent/defendant's legal history as indicated in Section 350.6(b) (1) shall be included when relevant to the recommendation or court disposition/sentence.
- b. Probation and Parole History: relevant legal history information related to prior contact(s) with the courts, probation and parole, detention, pretrial release, and supervision concerning the

respondent's/defendant's previous and present compliance with diversion/supervision plans and conditions, and participation in voluntary assessment and case planning services.

- c. Placement and Institutional History: information from institutional officials concerning the respondent's/defendant's previous and present adjustment in residential/incarceration settings.
- d. Current Offense/Act: Information: the original charge/petition allegation, plea and conviction/adjudication; any current orders of protection; the date and nature of the offense; the arresting officer and any petitioner's statement; victim statement(s), including Domestic Incident Reports (DIRs); any witness statements; the respondent's/defendant's written statement at the time of arrest; and the status of co-respondent/co-defendant cases and all other pertinent information.

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

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

(3) Other Interviews/Contacts

(i) Where the subject of the investigation is a juvenile, the probation officer shall conduct an interview with the parent(s)/guardian(s). Where appropriate for criminal court cases involving an individual younger than 19 years of age at the time of the offense, the probation officer shall attempt to contact and interview the parent(s)/guardian(s)/custodial authority. The purpose of this interview is to gather information from the parent(s)/ guardian(s)/custodial authority regarding their perspective of the following:

1. child and family background, important life events, and hardships;
2. medical and psychological concerns or disabilities, including any trauma, treatment, counseling, and suicidal history;
3. school history, including achievements or problems;
4. home environment, including family relationships and any conflicts, behavior and discipline issues, and positive or negative neighborhood influences;
5. their ability and willingness to provide appropriate supervision, including any problems that the parent is experiencing;
6. identification of other supportive adults who are available to assist;
7. the most appropriate disposition and the impacts of such disposition on the child and family;
8. any other relevant information that may impact the court's decision-making; and
9. where probation supervision is being considered, how they will assist in meeting the identified goals of the supervision plan.

(ii) Except as provided for under (i), above, interviews with the complainant, arresting police officer, family members and/or other persons or agencies shall be made when deemed necessary for

obtaining additional and clarifying information, which is likely to influence the recommendation or court disposition/treatment.

(iii) Where the offense/act includes one or more victims, as such terms are defined in Section 350.1, probation personnel shall communicate with each victim, and inform the victim(s) of their right to seek restitution or reparation, and attempt to secure the victim impact statement(s). The probation department may seek to communicate with a victim's advocate or victim service provider to gather additional victim information. In cases 1) where a victim is a minor or is otherwise unable to assist, or 2) resulting in death or serious injury, the investigation shall include gathering of information from family member(s), guardian(s), or significant other(s).

(iv) Where a source requests "confidentiality", the probation officer shall explain that a request can be made to the court to except information from disclosure, but that the court may disclose any or all parts of the report.

(4) Types of Assessment.

(i) Risk and Needs Assessment. 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.

(ii) Financial Assessment. Where restitution is sought and probation or conditional discharge is being considered, the investigating officer shall assess the respondent's/defendant's ability to pay restitution. The financial assessment shall also consider any other financial obligation as that term is defined under Section 353.1(a). This assessment may include gathering information regarding personal expenses, lifestyle, and discretionary spending. It may specify assets and liabilities, such as: income from employment, other income (e.g. veteran's benefits, interest/dividends,

Supplemental Security Insurance, rentals, pension, alimony, etc), residence (mortgage amount, rent amount, owned outright), vehicles owned (year, model, value), other assets (description, value) (e.g. bank accounts, stocks, bonds, real estate), major credit cards (maximum credit, unused credit), debts (e.g. credit card balances, judgments, loans, etc).

- (iii) Community and Institutional Resource Assessment. The investigating probation officer shall consider the availability of appropriate community and institutional supervision and treatment resources to address the specific risks and needs that must be targeted to reduce the risk of re-offending.

(5) Verification.

- (i) Every reasonable effort shall be made to verify the following:
 - (i) date of birth;
 - (ii) place of birth;
 - (iii) citizenship;
 - (iv) alien status of respondent/defendant (if foreign-born); where verification of alien status has not been achieved, the steps taken to verify shall be noted in the narrative section of the report;
 - (v) current address, and where applicable in the case of current detention, homelessness, or residence change, the intended address;
 - (vi) legal history;
 - (vii) present offense; and
 - (viii) any victim's damages/out of pocket financial loss/injuries sustained;
 - (ix) any matter which the court directs to be included.

- (ii) In addition to the above, the following shall also be verified when likely to have a bearing on the recommendation or court disposition/treatment:
 - (i) living arrangements, including the names of members of the household, and their relationship to the respondent/defendant.
 - (ii) mental and physical health;
 - (iii) treatment providers;
 - (iv) military service
 - (v) current educational level and status;
 - (vi) current employment and salary; and
 - (vii) any other factor deemed relevant by the investigating probation officer.
- (d) Preservation of Investigation Materials. The investigating probation officer shall document the method(s), source(s), and date(s) of receipt of information. Information obtained, including copies of verification documents shall be retained in the official case record.

Section 350.7 Preparation of Reports for Criminal, Juvenile Delinquency, Persons In Need Of Supervision, and Family Offense Proceedings.

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

the court.

(b) Content of Report.

(1) Legal History. The legal history shall consist of all relevant and reliable information as set forth in Section 350.6(b) (1). A summary analysis of the legal history shall be prepared in paragraph form. It shall contain the following information:

- i. Family Court History: dates of petitions/offenses/complaints; courts; fact findings and dates; adjudications/dispositions and dates. The legal history shall include, as permissible, prior and pending intake-diversion matters and petitions, family offense history, and the custody status of the respondent. The existence of current and/or prior orders of protection shall be detailed.
- ii. Criminal court history: dates of arrests/offenses/charges; courts; pleas/convictions and dates; adjudications/dispositions and dates. This information shall include pending charges and youthful offender adjudications. The existence of current and/or prior orders of protection shall be detailed.
- iii. Family Court pre-dispositional supervision compliance in present case.
- iv. Criminal court pretrial service(s) compliance in present offense.
- v. Voluntary assessment and case planning services: where a youth has engaged in such services, probation shall provide a summary of these efforts to the court within the pre-sentence investigation, as follows:
 - (a) Summary of any assessment findings;
 - (b) Referral and progress with respect to mitigating risk;
 - (c) Addressing any identified criminogenic needs; and

(d) Progress of the youth with respect to achieving case plan goals.

(2) Current Offense/Act. The report shall synthesize information obtained from court documents, law enforcement agencies, the respondent/defendant and any other relevant and reliable sources utilized during the investigation, as set forth in Section 350.6(c)(1)(d). It shall specify the custody status of the respondent/defendant. When the information is available, this section shall include:

- i. Description of the Offense/Act: the date, time, place, description of offense/act; use of force/forcible compulsion; weapons/dangerous instruments; injuries to victim(s); damage to or loss of property; whether respondent/defendant was under the influence of alcohol and/or drugs; the name(s), age(s), and address(es) of accomplices/co-respondents/co-defendants, and their role(s) in the offense/act. For sex offense cases, victim's age at time of the offense/act, nature and length of offense conduct; type of sexual contact, and whether it occurred over or under clothing.
- ii. Arresting Officer Statement: the respondent's/defendant's behavior at time of taking into custody (for example, resistance, escape, denial), and whether respondent/defendant was under the influence of alcohol and/or drugs.
- iii. Respondent/Defendant Statement: include the respondent/ defendant's description of the offense/act and events leading to commission of the offense/act; their acceptance of responsibility and perception of the impact/consequences of this offense/behavior for the victim(s), community, themselves, and others; and any statement related to the reasons for committing such offense(s) and their expressed future behavior, including willingness to seek treatment. Where the respondent/defendant declines to discuss the current offense/act,

whether on the advice of counsel or on their own volition, this shall be noted in the report.

- iv. **Victim Information:** The report shall contain all of the relevant and reliable information obtained during the investigation, as set forth in Section 350.6(b) (3), including where available, the victim(s)'s personal statement and the victim impact statement. It shall also contain an analysis of the victim information developed as a result of the investigation. Victim information is relevant to the recommendation or court disposition/sentencing and shall be contained in a report whenever there is available information pertaining to a victim. If this information is not available, the reason(s) shall be stated in this section of the report. The report shall not include the address or the phone number of any victim or victim family member.
 - v. **Parent/Guardian information:** Where the subject of the report is a juvenile, or where appropriate for a criminal court case involving an individual younger than 19 years of age at the time of the offense, the report shall contain the relevant and reliable information obtained from the parent/guardian during the investigation, as it relates to the current matter.
- (3) **Social Circumstances.** The report shall contain all relevant information related to the respondent's/defendant's social situation as set forth in Section 350.6(b)(2) and (c)(3), and a concise description of current aspects of respondent's/defendant's personal and community relationships that are of significance to the respondent's/defendant's present or future functioning in the community and ability to lead a law-abiding life.
 - (4) **Evaluative Analysis.** The evaluative analysis is not a restatement of the facts but a synthesis of the significant information reported previously in the document. No new information is to be introduced in this section. The evaluative analysis section shall contain a brief opening statement of the matter before the court and any specific legal considerations for disposition/

sentencing. This section of the report shall provide a succinct analysis, relevant to decision-making, of the probation officer's assessment and conclusions from the information gathered throughout the interview and the investigation process. The evaluative analysis shall include the following elements:

- (i) analysis of legal history, including the present offense/act;
 - (ii) impact of the present offense/act on the victim(s) and community;
 - (iii) analysis of past and present behavior patterns as they contribute to current legal situation;
 - (iv) analysis of current social circumstances and triggers as they contribute to current legal situation;
 - (v) analysis of risk factors and potential for future recidivism;
 - (vi) analysis of criminogenic need areas;
 - (vii) analysis of any current or prior participation in services to address criminogenic needs;
 - (viii) availability of community, family, and individual protective factors and treatment resources to address the criminogenic risk and needs; and
 - (ix) assessment of potential for lawful behavior.
- (5) Recommendation. This section of the report shall contain a statement concerning the type of court disposition/sentence recommended, which shall be consistent with law, and shall flow logically from the evaluative analysis.
- (i) Special Conditions: when a period of probation supervision, interim probation supervision, or conditional discharge is recommended, any recommended or required

special conditions shall flow from the evaluative analysis and, in accordance with law, support reparation, public safety and offender accountability. Special conditions shall be specific to the offense/act and the offender, and shall focus on:

- criminogenic risk reduction;
- offender compliance with state and federal laws;
- measures to ameliorate the conduct which gave rise to the offense/petition, or prevent incarceration or placement;
- addressing social, educational, vocational, and treatment needs;
- incorporating special offender population requirements, where applicable, such as Sex Offender Registry, Ignition Interlock, and Electronic Monitoring.

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

- (ii) Incarceration: a recommendation for a specific length of incarceration may only be made as part of a split sentence of imprisonment and probation supervision. The maximum term of imprisonment for such a combined sentence cannot exceed sixty (60) days for a misdemeanor; six (6) months for a felony, and four (4) months for intermittent incarceration.
- (iii) Flexible term of probation supervision: where a variable term of probation supervision may be ordered, the department may make a recommendation regarding the length of the

term of probation supervision.

- (iv) Restitution: shall be recommended as part of any disposition/sentence where it is sought, up to maximum amounts permitted by law: for PINS--\$1000; JD--\$1,500; family offense--\$10,000; and in all criminal cases as permitted under Penal Law Section 60.27. At a minimum, monetary conditions for restitution specified shall include the specific amount of restitution sought.
- Community-Based Disposition/Sentence: where a community-based disposition/sentence is recommended, including a split sentence of jail and probation, or will likely be imposed, a special condition shall include the rate of payment and a date prior to expiration of the term of sentence that restitution must be satisfied.
 - Jail-Bound Disposition/Sentence: where jail is recommended or will likely be imposed, restitution shall be recommended.
 - Prison-Bound Disposition/Sentence: where prison is recommended or will likely be imposed, a rate of payment shall not be specified; the start date for payments shall not be recommended for deferral; and the recommendation to the court shall recognize that DOCCS may collect restitution from income received during the period of incarceration.
- (6) Certificate of Relief From Disabilities. Where the law provides and it is considered appropriate, the report shall specify reasons consistent with law as to the granting of a certificate of relief from disabilities at the time of sentencing in accordance with the requirements of Section 350.10.
- (7) Request to Except Portions of Report From Disclosure. The report shall specify any portions of the report for which an exception from disclosure is requested and the probation officer's rationale for

the exception. The identified portions shall be submitted in a separate section of the report in a manner independent of the body of the report, but made a part thereof. Such exceptions shall be requested where: a source has requested confidentiality; disclosure would endanger the safety of any person; disclosure of portions of the report would not be relevant to a proper disposition; a diagnostic opinion might seriously disrupt a program of rehabilitation; or disclosure would not be in the interest of justice.

- (8) HIV-Related Information. Where there is HIV-related information, this must be submitted in accordance with DCJS AIDS/Confidentiality and Access to HIV-Related Information Rule, specifically Section 367.6.
- (9) Signing of the Report. The report shall be signed and dated by the preparing probation officer and the reviewing probation officer when designated. The use of an unalterable electronic signature and date-stamping process is permissible where it positively identifies the probation officer preparing the report and the person(s) reviewing the report, as well as the actual signature date(s).
- (10) Anticipated Transfers of Supervision. Where it appears a disposition/sentence of probation supervision will be recommended or likely be imposed, and it is anticipated that the respondent/defendant will request a transfer of probation supervision to another jurisdiction at disposition/sentencing, the investigating probation department shall conduct the following:
 - i. Intrastate Transfer: where the respondent/defendant is living in another jurisdiction in New York State at the time of preparation of the report, the probation officer shall secure all required information to complete the transfer packet, pursuant to DCJS's Interstate and Intrastate Transfer of Probation Supervision For Adults And Juveniles Rule, Part 349, and provide the applicable DCJS OPCA 16 or DCJS OPCA 16A, whichever is applicable, to the court for consideration and signature.

- ii. Interstate Transfer: where the respondent/defendant is living in another state at the time of preparation of the report, the probation officer shall assess whether the offender meets criteria for transfer and provide the court with information as to likelihood of acceptance by the other state. Coordination with the probation department's interstate designee(s) is recommended. Further, the probation officer shall secure all required information to complete the transfer packet of materials, pursuant to the appropriate Interstate Compact.

Section 350.8 Certificate of Relief From Disabilities Investigation and Report.

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

Section 350.9 Special Requirements for Pre-plea Investigation and Report.

- (a) Order and Authorization to Conduct Investigation. The probation department shall conduct a pre-plea investigation only upon a court order and written authorization by the defendant, defendant's attorney, and the prosecuting attorney. Such written authorization and waiver for Pre-Plea Probation and Investigation and report (such as DCJS OPCA-2.2A) shall include statements that no probation

department personnel will be called to testify regarding information acquired by the probation department, that information obtained by the probation department may not be used in a subsequent trial, and that this exemption does not apply to defense or prosecutorial investigation material which may be included in the report.

(b) **Scope of Investigation and Report.** Generally, the investigation and body of the report shall conform to Section 350.6 and Section 350.7. The recommendation shall take into account that at the time of report preparation there is no conviction. Where the defendant declines to discuss the current offense, whether on the advice of counsel or of their own volition, this shall be noted in the report.

(c) **Relationship to Pre-sentence Investigation and Report.** Upon a conviction by plea, in all cases where a pre-sentence investigation is required by statute and whenever sentencing does not occur at the time of such conviction by plea, the pre-plea investigation and report may be utilized as a pre-sentence report unless the court orders that the report be updated, or, the probation department has learned of other relevant information. In such cases, an addendum may be attached to the pre-plea report.

Section 350.10 Submission, Transmittal, and Confidentiality of Probation Reports.

- (a) **Submission of Probation Reports:** the probation director shall establish written policy and procedure to ensure that the court has sufficient time to read the report prior to court disposition/sentence and to make appropriate exceptions for disclosure purposes as follows:
- (i) For all criminal cases the probation report shall be submitted to the court not less than one court day prior to sentencing except if waived by the parties.
 - (ii) For all JD and PINS cases, the probation report shall be submitted to the court at least five court days prior to commencement of the dispositional hearing.
 - (iii) Investigations and reports ordered by the court in designated felony act cases under FCA

Section 351.1(1) shall have priority over other cases arising under FCA Articles 3 and 7.

- (iv) Where probation supervision is recommended the probation department may transmit the recommended conditions of probation supervision.
- (b) **Transmittal of Pre-sentence Reports to Professional Licensing Agencies.** Probation departments shall accumulate and transmit, at a minimum, once every three months, a copy of all pre-sentence reports prepared in the case of defendants who are known to be licensed pursuant to Title 8 of the Education Law to the State Department of Health if the licensee is a physician, a specialist's assistant, or a physician's assistant, and to the State Education Department with respect to all other such licenses. Such reports may be submitted in hard copy or electronically, and shall contain such other information as required by Criminal Procedure Law 390.50(6).
- (c) **Confidentiality.** Accessibility of probation reports is limited to those authorized by law or court order, and as specified in Part 348, DCJS's Case Record Management Rule.

Section 350.11 Pre-disposition Investigations and Reports in all Other Family Related Matters.

Upon receipt of a court order and in the absence of court direction, the scope of the investigation, type of report, format and content for all other family related matters shall be in accordance with local probation policies and procedures. In custody, adoption, visitation, and guardianship investigations, the parties of the investigation are subject to fingerprinting in order for probation to obtain complete access to any criminal history information. Therefore, the scope of these investigations shall include a multi-state criminal history search, and the probation officer shall include any such criminal history information in the report.

Section 350.12 Guidelines for Schedule of Payments.

Where a county or the City of New York has adopted a local law authorizing its probation department to receive an investigation fee for conducting an investigation pursuant to FCA Section 653, the schedule of payment(s) of any such fee should be imposed by the court at the time the investigation is ordered. Pursuant to FCA Section 252-a, all fees shall be paid directly to the local probation department. To facilitate the effective administration of fee collection, it is recommended that the court require completion of the schedule of payment(s) on or before the next court date. In the event payment is not completed by such time, it is recommended that the balance be paid before completion of the hearing or submission of the final order and that any schedule of remaining payment(s) provide for a designated amount to be paid at specified intervals.