

NOTICE OF ADOPTION – effective March 27, 2019

A new Part 359 is added to 9 NYCRR to read as follows:

Part 359 - Role of Probation in Youth Part of the Superior Court

Section 359.1 - Definitions

Section 359.2 - Objective

Section 359.3 - Applicability

Section 359.4 – Jurisdiction

Section 359.5 - General Requirements for Probation Voluntary Assessment and Case Planning services
in Youth Part

Section 359.6 – Probation Voluntary Assessment and Case Planning Services

Section 359.7- Probation Voluntary Assessment and Case Planning Services: Summary and Reports

Section 359.8- Removal to Family Court

Section 359.9– Pretrial Release Services in Youth Part

Section 359.10 - Case Record Keeping Requirements

Section 359.1 Definitions.

- (a) The term Adolescent Offender means a person charged with a felony committed on or after October first, two thousand eighteen, when he or she was sixteen years of age or on or after October first, two thousand nineteen, when he or she was seventeen years of age.
- (b) The term Alternative to Detention means a court-ordered, community-based service in lieu of detention including but not limited to electronic monitoring, intensive case management, respite, and release under supervision.
- (c) The term commissioner shall mean the Commissioner of the Division of Criminal Justice Services.
- (d) The term evidence-based services mean an intervention that has been shown in research to be associated with positive outcomes.
- (e) The term Initial Interview refers to the meeting within which Probation staff convenes the youth, parent or other person legally responsible for his/her care if available, legal counsel, and other permissible parties, for the purposes of commencing Voluntary Assessment and Case Planning services.
- (f) The term Juvenile Offender means a person thirteen, fourteen or fifteen years of age criminally responsible for certain acts-as defined in section 1.20(42) of the penal law.
- (g) The term Notice of Agreement for Voluntary Assessment and Case Planning Services refers to the document signed by a defendant/youth consenting to the commencement of services and interventions as identified in the case plan, while a criminal case is pending in Youth Part.
- (h) The term protective factor means certain strengths or assets that have been demonstrated by research to reduce risk of negative outcomes.
- (i) The term risk factor means a specific area of influence that increases the likelihood that a youth will engage in delinquent behavior. Risk factors may be static (cannot be changed) or dynamic (can be changed). The major risk factors are personal attitudes/values/beliefs supportive of crime,

pro-delinquent associates and isolation from pro-social associates, temperament and personality factors, history of antisocial behavior from a young age, dynamic family factors, and low levels of personal educational, vocational or financial achievement.

- (j) The term risk and needs assessment means a validated protocol approved by the Commissioner to assess the youth's risk of re-arrest/recidivism and identify needs.
- (k) The term Youth Part File refers to the records held by the Court specific to the alleged offense(s) committed by the youth with such criminal matter(s) pending in Youth Part. This file is provided to probation for purposes of initiating Voluntary Assessment and Case Planning Services including, but not limited to all accusatory documents, Superior Court Information, Orders of Protection, and victim statements.

Section 359.2 Objective.

The objective of this part is to define probation's role in offering Voluntary Assessment and Case Planning services, and when probation departments deliver pretrial release services, to the Adolescent Offender and Juvenile Offender charged with a crime in the Youth Part of Superior Court.

Section 359.3 Applicability.

This Part contains all requirements for the provision by probation of Voluntary Assessment and Case Planning services in the Youth Part, for Adolescent Offenders and Juvenile Offenders, including pretrial release services where probation departments provide such services.

Section 359.4 Jurisdiction.

The Probation department serving a jurisdiction where an offense occurred has responsibility for

providing Voluntary Assessment and Case Planning services for those youths with matters pending in the Youth Part.

Where the youth resides in one jurisdiction but the present criminal offense occurred in another jurisdiction, the probation department in the jurisdiction where the crime occurred, the sending probation department, shall coordinate with the receiving probation department where the youth resides, for the purposes of providing Voluntary Assessment and Case Planning services. The receiving probation department shall accept the case for the provision of Voluntary Assessment and Case Planning services. Where the provision of these services is unsuccessful, the receiving probation department shall advise the sending probation department. When the case is closed by the receiving probation department, the department shall provide a summary to the sending Probation department of any assessment findings, referrals and progress with respect to mitigating risk and addressing any identified needs.

Section 359.5 General Requirements for Probation Voluntary Assessment and Case Planning Services in

Youth Part.

- A. Each probation director shall establish and maintain Probation Voluntary Assessment and Case Planning services for matters in the Youth Part of Superior Court in accordance with the provisions of the Executive Law, the Criminal Procedure Law, and all other applicable laws, rules and regulations.
- B. The probation director shall develop, adopt, and disseminate to departmental staff written policies and procedures for the uniform provision of Probation Voluntary Assessment and Case Planning services in the Youth Part. The policies and procedures shall require a probation presence at the initial appearance of the regularly scheduled Youth Part, upon notification from the court. The Probation department shall offer Voluntary Assessment and Case Planning Services to an Adolescent Offender

or Juvenile Offender at the earliest possible opportunity. The probation department shall advise the presiding Judge of alternatives to detention, where available.

C. The policies and procedures shall address, at a minimum:

- (1) Notification to Adolescent Offenders and Juvenile Offenders of the availability and provision of Probation Voluntary Assessment and Case Plan services in the Youth Part;
- (2) Ensuring the youth is notified of the voluntary nature of the assessment, case planning and service referral process;
- (3) Ensuring that the youth is notified that they may be accompanied by their legal counsel during their voluntary assessment;
- (4) Scheduling an Initial Interview to occur within 8 business days of the receipt of the accusatory instrument(s) or indictment and supporting documents from the Youth Part;
- (5) Conducting a risk and needs assessment, using a state-approved risk assessment tool;
- (6) Completing a case plan addressing the identified needs based upon the nature of the behaviors contributing to the present offense;
- (7) Providing suitable and individualized programming referrals;
- (8) Ensuring that the probation department shall not transmit, nor otherwise communicate to the district attorney or the Youth Part any statement made by the Adolescent Offender or Juvenile Offender to a probation department. However, the probation department may make a recommendation regarding the completion of his or her case plan to the Youth Part and provide such information as it shall deem relevant, and
- (9) Providing a summary in the presentence investigation, summarizing assessment findings, referrals, and progress with respect to mitigating risk and addressing any identified needs.

- D. As part of the initial interview meeting, for Voluntary Assessment and Case Planning services with the youth, the probation department shall;
- (1) Advise the youth of the voluntary nature of the assessment, case planning and service referral process and obtain a signed Notice of Agreement for Voluntary Assessment and Case Planning Services from the youth indicating his/her willingness to participate in the assessment, case planning and services processes.
 - (2) Advise the youth that the probation department shall not transmit nor otherwise communicate to the district attorney or the Youth Part any statement made by the Adolescent Offender or Juvenile Offender to the probation department. However, the probation department may make a recommendation regarding the completion of his/her Voluntary Case Plan to the Youth Part and provide such information it shall deem relevant.
 - (3) If the youth accepts Voluntary Assessment and Case Planning Services, complete a state approved, validated risk and need assessment instrument.
 - (4) For youth who are under the age of 18, secure from the parent(s) or other person(s) legally responsible for his/her care all necessary consents for release of information regarding the youth. For youth who are 18 years or older, obtain consents for release of information from the youth.
 - (5) Notify the Court of commencement of Voluntary Assessment and Case Planning Services with a signed Notice of Agreement.
- E. If the youth fails to appear at probation for the initial interview, the probation department shall advise the Court within 3 business days, if the appointment is not rescheduled.
- F. To the extent practicable, such services shall continue through the pendency of the action and shall further continue where such action is removed to the Family Court in accordance with Article 722 of

the Criminal Procedure Law.

- G. If Probation determines the youth has ceased voluntary participation or alternatively achieves maximum benefit in Voluntary Assessment and Case Planning services, or the case is disposed of, upon request of the court, the Probation department shall notify the Court of the reason for such closure.

Section 359.6 Voluntary Assessment and Case Planning Services.

For those youths who consent to participate in Voluntary Assessment and Case Planning services, the probation department shall:

- A. Complete a full assessment using a state approved, risk and need assessment instrument for Adolescent Offender or Juvenile Offender youth.
- B. Complete an initial case plan within 10 business days of the date when the Notice of Agreement is signed by the youth, as long as the matter is pending in Youth Part. The case plan shall:
- (1) Prioritize need areas for intervention, based upon the results of the risk and needs assessment; and
 - (2) Include objectives that build on existing protective factors; and
 - (3) Make referrals to available and appropriate services, based upon the results of the risk and needs assessment; and
 - (4) Include input from parent(s) or other person(s) legally responsible for his/her care and youth to identify any barriers and strengths toward meeting case plan goals; and
 - (5) Delineate the roles and responsibilities of the youth, parent(s) or other person(s) legally responsible for his/her care, probation officer, and other individuals who may positively influence the youth's behaviors; and
 - (6) Document intended action steps, short term and long term goals for successful case progress

and/or closure; and

(7) Include consideration for issues of responsivity (primary language, sex, gender expression, mental health, etc) that may obstruct the youth's progress toward goals.

C. Conduct re-assessments every 90 days while the youth is engaged in voluntary assessment and case planning services.

Section 359.7 Voluntary Assessment and Case Plan Services: Summary and Reports.

A. The probation department shall not transmit to the district attorney or the Youth Part judge any statement made by the youth to probation during the provision of Voluntary Assessment and Case Planning services. The probation department shall not transmit any results of the assessment related to risk, in any communication to the Youth Part prior to the ordering of a pre-sentence investigation report. Assessment findings reported at this time shall be limited to the need(s) of the youth. No statement made to the probation department may be admitted into evidence at a fact-finding hearing at any time prior to a conviction. However, probation may make a recommendation regarding completion of the case plan to Youth Part and provide such information as it shall deem relevant.

B. Where probation has engaged a youth in Voluntary Assessment and Case Planning services, probation shall provide a summary of these efforts to the court within the pre-sentence investigation, as follows:

(1) Assessment findings; and

(2) Referrals and progress with respect to mitigating risk and addressing any identified needs.

Section 359.8 Removal to Family Court.

- A. Where the Youth Part removes the matter to Family Court jurisdiction and the youth has received Voluntary Assessment and Case Planning services from the probation department, to the extent practicable, these services shall continue once the matter is removed to Family Court to facilitate delivery of consistent evidence based services.
- B. For youth removed from the Youth Part to the Family Court jurisdiction to receive intake and adjustment services under Article 3, the probation department may consider the youth’s voluntary participation in assessment and case planning services while having been in the Youth Part. Participation and progress in such services while in Youth Part may reduce the time needed for adjustment services, depending upon the youth’s progress in addressing case plan goals.

Section 359.9 –Pretrial Release Services in Youth Part of Superior Court

- A. Where pretrial services are operated by the probation department, each probation director shall establish and maintain pretrial services for Youth Part matters, in accordance with the provisions of the Executive Law, the Criminal Procedure Law, and all other applicable laws, rules, and regulations.
- B. Where pretrial services are provided by the probation department, each probation director shall develop, adopt, and disseminate written policies and procedures for the uniform provision of such pretrial services in the Youth Part. The policies and procedures shall ensure:
 - 1. Screening of youth at the earliest possible time after arrest. This may include while the youth is in custody, pre-arraignment, or at the initial session of the regularly scheduled Youth Part, upon notification from the court;

2. A standardized interview of eligible youth, related to the program's criteria for release;
3. Where available, use of a state-approved assessment tool that measures a youth's Failure to Appear in court;
4. Advising the Court of any available alternatives to detention that may be appropriate.
5. Procedures to monitor, investigate, and report to the Court regarding the compliance of youth released under supervision, as ordered by the court; and
6. Timely notification to the Court when a released youth has been determined to be non-compliant with the terms and conditions of release as set forth by the Court, including orders of protection.

C. Release under supervision services in Youth Part

1. Upon notification to Probation by the Court, that a youth has been released under supervision with certain terms and conditions of the Court, and Probation has been directed to monitor such conditions, pursuant to applicable laws, and rules, Probation shall;
 - a. Coordinate with the court to receive a written copy of the terms and conditions of release as issued by the Court;
 - b. Refer the youth and family to available alternative to detention services/programs, consistent with the court order; and
 - c. Provide to all youth and parent(s) or other person(s) legally responsible for his/her care, information and reminders for court appearance(s).

2. Monitoring

- a. Absent directive from the court, Probation shall maintain regular contact with youth, and conduct additional contacts, as determined by the Probation Director or his/her designee;
 - b. Probation shall monitor court appearances of these youth; and
 - c. Probation shall assist youth with complying with release under supervision conditions, including orders of protection.
3. Non-compliance with release under supervision terms and conditions
 - a. Probation shall attempt to contact youths under release, who fail to appear in court, or who are not complying with court-ordered conditions in order to encourage voluntary return or compliance before the court is notified.
4. Reporting to Court shall include a verbal or written summary of:
 - a. Referrals made to ordered, appropriate and/or accessible alternative to detention programming;
 - b. Compliance by the youth and parent(s) or other person(s) legally responsible for his/her care with the ordered or referred programming and/or services; and
 - c. Compliance by the youth and parent(s) or other person(s) legally responsible for his/her care with the terms and conditions imposed by the Court.
5. Case Closure of pretrial release service in Youth Part
 - a. Probation performing Pretrial services for the Court shall cease when:
 - i. The criminal case before the Youth Part is removed to Family Court
 - ii. A sentence is imposed on the originating case, the case is dismissed or otherwise

disposed,

iii. Court notifies the department of such.

b. Probation shall indicate whether closure was successful as measured by regular appearance before the court.

Section 359.10 Case Record Keeping Requirements in Youth Part

A. All probation case plan records shall be kept in either paper or electronic format or a combination of both;

B. Where pretrial release services commenced, probation records shall include the following, where applicable:

(1) Terms and conditions of the pretrial release service ordered;

(2) Results of any risk assessment that measures Failure to Appear;

(3) Release of information forms;

(4) Referrals to and/or summaries from any Court ordered or otherwise appropriate programming/services, or other relevant collateral documents or information;

(5) Other required case record information:

i. Date(s) of referrals to any Court-ordered, or otherwise appropriate program/service and any available outcome information;

ii. Dates and types of contacts related to the case;

iii. Summary of pretrial release services provided may be included in the case file.

(6) Any correspondence to the court related to the case.

C. Where Voluntary Assessment and Case Planning services commenced, probation records shall include the following, where applicable:

- (1) A copy of the Youth Part File and the date the packet was received by probation;
- (2) Documented date the youth was advised of the availability of Youth Part Voluntary Assessment and Case Planning Services.
- (3) Documented date of the initial interview appointment;
- (4) Date the Notice of Agreement is signed;
- (5) Signed agreement consenting to participate in Probation voluntary assessment and case planning services;
- (6) All assessments and reassessments;
- (7) Documentation of all service referrals including:
 - (i) Name of Service Provider;
 - (ii) Primary and/or Secondary Reasons for the Referral;
 - (iii) Date of Referral and Outcome of the Referral;
 - (iv) Date Services Commenced;
 - (v) Date Services Ended and Outcome of the Service; and
 - (vi) A brief summary of the service intervention efforts within the case plan.
- (8) The initial case plan and any case plan updates that flow from reassessments;
- (9) A brief closing summary regarding the provision of voluntary case planning and indicating the following:
 - (i) Date of closure;
 - (ii) Assessment findings;
 - (iii) Referrals and progress while engaged in the service/ intervention;

- (iv) Addressing any identified needs; and
 - (v) Whether the youth was successful or unsuccessful with voluntary probation case planning services;
- (10) Any correspondence related to the case.

D. Each probation department shall adhere to other applicable provisions of Part 348 governing Case Record Management.