

Effective October 1, 2008

Part 357 Intake for Article 7 –

Part 357 of 9 NYCRR is repealed and a new Part 357 is added to read as follows:

(Statutory authority: Executive Law, Sections 243, 255(2), 256(1) and (6)(a); and Sections 735 and 742 of the Family Court Act)

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Section 357.1 Definitions.

- (a) The term accountability measure refers to consequences designed for youth to take responsibility for their actions. Such measures may include apology letters, behavioral contracts, community service, and school attendance tracking.
- (b) The term actuarial risk refers to the relative risk of the youth continuing the behaviors related to the presenting problem. Actuarial risk calls for the administration and delivery of more intensive services

and supervision to higher-risk offenders, while lower risk cases may receive minimal probation intervention services. This requires a system of risk screening and needs assessment that assesses youth in a reliable and valid manner to measure for static risks (that cannot be changed), and dynamic risks (that can be changed). Actuarial risk assessments are used to develop youth profiles of needs to be addressed to reduce the risk of re-offending.

- (c) The term case plan means the individual plan developed to provide diversion services, and shall be based on the actuarial risk assessment. The plan shall be developed by probation directly or through an assessment service, and shall include: participation of the youth, parent(s)/guardian(s); and with input from the complainant and other service providers, as appropriate. The plan shall be developed to remediate the behavior which gave rise to the complaint. It shall address the identified risks and needs, and shall incorporate protective factors.
- (d) The term complainant means the person or agency who seeks to file a petition, as described under Family Court Act (FCA) Section 733, including: a peace officer, acting pursuant to his special duties, or a police officer; the parent(s)/guardian(s); any person who has suffered injury as a result of the alleged activity of a person alleged to be in need of supervision, or a witness to such activity; the recognized agents of any duly authorized agency, association, society or institution; or the presentment agency.
- (e) The term complaint means a written statement of essential facts constituting the alleged PINS behavior.
- (f) The term conference means the process of meeting with the parties in real time, either in-person, by telephone, or through videoconference.
- (g) The term control measure refers to practice designed to limit youth opportunity to engage in behaviors underlying the presenting problem(s), and to provide supports which will assist parents and schools to stabilize the situation. Such practice may include graduated sanctions, including curfews, probation monitoring, and by court order electronic monitoring.

- (h) The term diligent efforts means the sufficient attempts to engage the youth and family in the constructive resolution of the complaint through the provision of services that target the specific identified risks and behaviors which gave rise to the complaint. These efforts shall take into account available school, community, and cross-systems resources. The use of accountability measures, control measures and disciplinary actions without the attempt of intervention services alone shall not suffice in meeting the diligent efforts standard.
- (i) The term diversion services means services provided to children and families pursuant to FCA Section 735 for the purpose of avoiding the need to file a petition or direct the detention of the child. Diversion services shall include: efforts to adjust cases before a petition is filed, or by order of the court, after the petition is filed but before fact-finding is commenced; and preventive services provided in accordance with Section 409-a of Social Services Law to avert the placement of the child into foster care, including crisis intervention and respite services.
- (j) The term evidence-based practice means practice that is demonstrated through data-supported research and evaluation to be effective in producing the desired outcome.
- (k) The term intervention service refers to a community-based service targeted to reduce dynamic risk factors related to the presenting problem, such as family-focused treatment, school-based interventions, cognitive-behavioral skill-building, mental health and substance abuse, and other evidence-based practices.
- (l) The term Manifestation Determination refers to a New York State Education Department (SED) mandated procedure. It is a review by the Committee on Special Education (CSE) to establish the relationship between the student's disability and the behavior subject to disciplinary action (which includes a PINS referral), and to determine whether the behavior is a manifestation of the disability.
- (m) The term no substantial likelihood means the probability that further or additional services will not

resolve the underlying issues because either: all appropriate services have been exhausted, the youth was not available to participate in such services; or the youth or parent(s)/guardian(s) did not engage in such services.

- (n) The term petition report means a written report, prepared by probation pursuant to the requirements of Section 357.9 of this Part.
- (o) The term Person In Need of Supervision (PINS) means a person less than 18 years of age who does not attend school in accordance with Article 65 of the Education Law or who is incorrigible, ungovernable, or habitually disobedient, and is beyond the lawful control of the parent(s)/guardian(s), or other lawful authority, or who violates the provisions of Penal Law Section 221.05. A pattern of behavior must be documented for complaints involving PINS behavior other than running away or marijuana possession.
- (p) The term potential respondent means a youth who is the subject of a PINS complaint, and who meets the definition of PINS pursuant to FCA Section 712 and as defined in this Section.
- (q) The term pre-diversion services means services to youth whose behavior meets the criteria for FCA Article 7 cases, where the potential complainant, youth and family are engaged in an attempt to address the presenting problem as an alternative to proceeding with a complaint at probation intake.
- (r) The term preliminary procedure means all efforts prior to the filing of a petition, including: providing an immediate response to families in crisis; identifying and utilizing appropriate alternatives to detention; and other services to divert youth from being the subject of a petition in Family Court. Preliminary procedure includes probation intake and diversion services.
- (s) The term probation intake means the initial process of conferring with the complainant, potential respondent, the parent(s) with whom the potential respondent is living, the legal guardian or custodian of the potential respondent, and any other interested person whose participation in diversion services would be, in the opinion of the probation officer, beneficial to the potential respondent for the purpose of

of avoiding the need to file a petition or directing the detention of the youth.

- (t) The term protective factor means certain strengths or assets that have been demonstrated by research to reduce risk of negative outcomes.
- (u) The term referred for petition means the advisement by probation to the complainant that a petition may be filed, whether or not a petition is actually filed.
- (v) The term risk assessment means a validated protocol approved by the State Director of Probation and Correctional Alternatives to screen and assess the youth's risk for continuing in the presenting PINS behavior.
- (w) The term runaway means a youth who has left home without parental/guardian permission and has indicated to that parent/guardian or another person that they have no intention to return or whose whereabouts are unknown to the parent/guardian.
- (x) The term successfully diverted means a determination by probation that the risks and needs related to the presenting problem have been satisfactorily addressed and the complaint has been adjusted.

#### Section 357.2 Objective.

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

#### Section 357.3 Applicability.

This Part contains all requirements for the provision of diversion services in matters pertaining to PINS, pursuant to FCA Section 735. These requirements apply to probation departments that have been designated as the lead agency by their jurisdiction to conduct preliminary procedure. Where probation has responsibility to provide a portion of preliminary procedure, the relevant section(s) of this Part shall apply.

#### Section 357.4 Jurisdiction.

Where the youth resides in one county but the acts giving rise to the presenting problem occur in another

county, the complaint shall be made in the county where the acts occurred. The matter may be transferred directly to the county of residence. Where transferred, the receiving county shall accept the case for consideration of diversion services. Where diversion services are unsuccessful, the matter shall be returned to the originating county for referral to petition.

#### Section 357.5 General Requirements for PINS Preliminary Procedure.

- (a) Each probation director shall establish and maintain written policies and procedures regarding preliminary procedure services pursuant to their responsibilities as designated by the county, in accordance with the provisions of the Executive Law, the Family Court Act, court order, and all other applicable laws, rules and regulations. These policies and procedures shall include:
  - (1) Reasonable timeframes for the initiation of preliminary procedure;
  - (2) Criteria for determining standards of “diligent efforts” and “no substantial likelihood that the youth and family will benefit from continued services”; and
  - (3) Sharing resources wherever appropriate and feasible with other agencies and service providers, to effectively and efficiently implement preliminary procedure.
- (b) Probation shall provide intake and diversion services, which shall include diligent attempts to engage the youth and family in appropriately targeted community-based services. Such diligent attempts shall:
  - (1) Be clearly documented in the case record;
  - (2) Be designed to provide an immediate response to families in crisis;
  - (3) Identify and utilize appropriate alternatives to detention; and
  - (4) Attempt to divert youth from being the subject of a petition in family court.
- (c) Where the youth is not attending school and is beyond the compulsory education age as determined by the school district, a parental complaint may be made based on incorrigibility/ungovernability behavior.
- (d) Where the matter involves truancy and or incorrigibility/ungovernability behavior in school and the

youth is a special education student, probation shall gather information from the Committee on Special Education regarding the youth's behaviors and any relationship to the youth's disability. Probation may require a Manifestation Determination before accepting a school-filed complaint.

- (e) For all school-based referrals, the probation director shall develop a procedure by which:
  - (1) Schools shall report the steps taken to improve the youth's attendance and/or conduct in school, and
  - (2) Before accepting a school referral, the probation department shall determine that acceptable efforts have been made, taking into account the available school and community resources and the needs of the youth. Disciplinary actions alone shall not suffice as acceptable efforts.

#### Section 357.6 Probation Intake.

Prior to commencing diversion services, probation shall review the complaint to determine whether it is within the scope of FCA Article 7.

- (a) Where the behavior meets the criteria set forth in FCA Article 7, pre-diversion services may be provided as an alternative to probation intake;
- (b) Where it is determined that the complaint is within the scope of FCA Article 7 and the complainant seeks preliminary procedure services, probation shall confer with any person seeking to file a petition, the potential respondent, family, and other interested persons concerning the provision of diversion services before any petition may be filed. This shall include:
  - (1) Making a determination as to whether alternatives to detention are appropriate to avoid remand of the youth to detention; and
  - (2) Scheduling and holding at least one conference with the youth and his or her family and the person or representatives of the entity seeking to file a petition under this article concerning alternatives to filing a petition and services that are available. Where feasible, such conference

shall be held jointly with all parties present; and

- (3) Identifying the level of youth risk for continuing in the behaviors underlying the presenting problem using an actuarial risk screening instrument; a youth presenting as low risk shall be considered for prompt termination of diversion efforts with minimal probation intervention services; and
  - (4) Providing, at the first contact, information on the availability of or referral to services in the geographic area where the youth and family are located to reduce the risk of recidivism and prevent the filing of a petition under this article; including:
    - (i) Residential Respite: availability of a residential respite program, for up to 21 calendar days, if the youth and parent(s)/guardian(s) agree; and
    - (ii) Crisis Intervention: availability of other non-residential crisis intervention programs such as family crisis counseling or alternative dispute resolution programs.
  - (5) Advising the youth and parent(s)/guardian(s) of their rights and responsibilities, including the fact that parent(s)/guardian(s) may be barred from filing a petition where diversion services have been terminated because of parental/guardian's failure to consent to or participate in diversion services.
- (c) Where the complainant is a school district or local educational agency, probation shall review the steps taken by the school district or local educational agency to improve the youth's attendance and/or conduct in school and attempt to engage the school district or local educational agency in further diversion attempts, if it appears that such attempts will be beneficial to the youth.
  - (d) Where the complainant states that the youth has run away, the probation department:
    - (1) Shall gather information from the parent(s)/guardian(s) regarding possible contact information, and what efforts have been made to locate the youth; and

- (2) May attempt to contact a runaway youth for the purpose of engaging the youth and family in diversion services; and
  - (3) Shall inform the parent(s)/guardian(s) that they must file a missing person report with police where it is determined that the youth's whereabouts are unknown; and
  - (4) May refer the matter for petition as necessary for the purpose of seeking a warrant where efforts to secure and engage the youth are unsuccessful.
- (e) Probation shall attempt to secure from the parent(s)/guardian(s) all necessary consents for release of information regarding the youth, and shall further request from the school certain information deemed pertinent to the presenting behaviors. For school-based complaints, where parents refuse such consent, probation may refer the matter for petition for the purpose of requesting a court order to direct either the parent/guardian to sign a release of information for school records or for the court on its own volition, to direct the release of information from school authorities. Where appropriate, probation may recommend that the school pursue an educational neglect report.

#### Section 357.7 Diversion Services.

- (a) In the provision of diversion services, probation shall:
- (1) Provide written notice to the complainant that the case has been opened for diversion services; and
  - (2) Diligently attempt to provide diversion services in accordance with the general requirements of this Part; and
  - (3) Target the underlying risk factors related to the presenting problem behavior(s) which gave rise to each complaint;
  - (4) Make referrals for service as needed, based on the results of actuarial risk and needs assessment;
  - (5) Prioritize resources to higher risk youth and target interventions to reduce dynamic risk factors.

- (b) In addition to providing community-based intervention services that target specific dynamic risk factors, probation may engage youth and family in appropriate accountability or control measures.
- (c) Electronic monitoring may only be used with probation director consent and upon specific court order.
- (d) Probation may continue diversion efforts:
  - (1) Until the complaint is successfully resolved or the lead agency determines that there is no substantial likelihood that the youth and family will benefit from further services;
  - (2) After filing of a petition where the designated lead agency determines that the youth and family will benefit from further attempts to prevent the youth from entering foster care.

Section 357.8 Assessment, Case Planning, and Reassessment.

- (a) As part of diversion services, probation shall conduct actuarial assessments and utilize case planning tools and protocols, as approved by the State Director of Probation and Correctional Alternatives, to:
  - (1) Identify youth to address the priority areas for intervention who are at moderate or high risk for continuing in the behaviors underlying the presenting problem; and
  - (2) Develop case plans based on assessment results that focus on the priority areas for intervention to resolve the presenting problem.
- (b) As part of assessment, case planning, and reassessment probation shall:
  - (1) Engage youth and parent(s)/guardian(s) in each of these processes; seek input from parent(s)/guardian(s) and youth to identify any barriers to meeting case plan goals; and
  - (2) Develop a case plan within 30 calendar days of the initial conference with the youth and parent(s)/guardian(s) that focuses on:
    - (i) priority risk and need areas for intervention;
    - (ii) objectives that build on existing protective factors;
    - (iii) roles and responsibilities of the youth, parent(s)/guardian(s), probation officer, and other

service providers; and

- (iv) intended outcomes for successful case closure.
- (3) On an ongoing basis, review and update the case plan to document any changes in priority areas, goals, action steps, roles and responsibilities, and status (progress toward completion); and
- (4) Reassess all youth with open diversion cases within 60 calendar days of the initial case plan, and every 90 calendar days thereafter, to measure progress toward intended outcomes; and update the case plan in accordance with the results of reassessment; and
- (5) Seek the participation of community-based service providers as appropriate.

#### Section 357.9 Petition To Court

- (a) A complaint may be referred for petition only after determining that there is no substantial likelihood that the youth and family will benefit from further attempts to remediate the behavior which gave rise to the complaint;
- (b) No petition may be filed by the parent(s)/guardian(s) where diversion services have been terminated because of the failure of the parent(s)/guardian(s) to consent to or participate in diversion services;
- (c) Where a parent refuses to cooperate with services in a school-referred PINS matter, an educational neglect report may be made regarding the parent where there has been a pattern of illegal absences;
- (d) Where the matter involves truancy and or incorrigible/ungovernable behavior at school and the youth is a special education student, probation shall not refer the matter for petition unless a Manifestation Determination hearing has been held by the Committee on Special Education (CSE) and the school has provided such documentation to the probation department and the court that the student's behaviors are not related to the student's disability, thereby warranting court action;
- (e) Once a petition is filed, diversion efforts may continue pending court action in accordance with 357.7(d)(2) of this Part;

- (f) Where probation refers a matter for petition, it shall prepare a petition report to the court. The petition report shall be approved and signed by a supervisor or their designee. The report shall address all of the required elements for filing, including:
- (1) Whether probation has diligently attempted to prevent the filing of a PINS petition; and
  - (2) Whether probation has assessed if the youth would benefit from residential respite services; and
  - (3) Whether probation has considered if alternatives to detention are appropriate to avoid remand of the youth to detention; and
  - (4) Whether the potential petitioner has complied with the requirements of preliminary procedure as set forth in FCA Section 735; and
  - (5) That probation has terminated diversion services because it has determined that there is no substantial likelihood that the youth and family will benefit from further attempts; and
  - (6) That the underlying issues of the complaint have not been resolved after attempting to engage the youth and/or family in services or been unable to engage the youth in services where such youth is a runaway; and
  - (7) Where probation has determined that the youth is a runaway whose current whereabouts are unknown, that the appropriate police agency has been notified, and the parent(s)/guardian(s) are seeking a warrant from the court; and
  - (8) Where the potential petitioner is the parent/guardian, that there is no bar to the filing of the petition as the potential petitioner consented to and participated in diversion services; and
  - (9) Any previous actions probation has taken with respect to the case, and the documentation of diligent attempts to provide appropriate services; and
  - (10) Specific information regarding the unresolved issues related to the complaint; and
  - (11) A recommendation as to the feasibility of returning the case to probation diversion so that

diversion attempts may be undertaken; and

(12) Attachment of any additional written records that support the complaint.

(g) Pursuant to Section 735(h) of the Family Court Act, no statement made by the potential respondent to the lead agency, or to any agency or organization to which the potential respondent has been referred, may be admitted into evidence at a fact-finding hearing, or, if the proceeding is transferred to a criminal court, at any time prior to a conviction. This shall apply when such statements were made to the designated lead agency or to any agency or organization:

(1) Prior to the filing of the petition; or

(2) Prior to the time the respondent has been notified that attempts at diversion will not be made or have been terminated; or

(3) Prior to the commencement of a fact-finding hearing if attempts at diversion have not terminated previously.

#### Section 357.10 Return From Court.

(a) Where pursuant to FCA Section 742(b) the court orders the youth and/or the parent(s)/guardian(s) to participate in diversion services, probation shall thereafter notify the court when it either determines the case has been successfully resolved, or that there is not a substantial likelihood that the youth and/or the youth's family will benefit from continued diversion services.

#### Section 357.11 Pre-Diversion Case Designation Requirements and Criteria.

(a) Pre-Diversion Services: this case designation shall apply where:

(1) the youth has demonstrated a pattern of behavior that meets the definition of PINS; and

(2) the potential complainant does not file a complaint; and

(3) the potential complainant, youth and family were engaged in an alternative resolution of the presenting problem.

Section 357.12 Case Closing Requirements.

- (a) Cases where the goals of the case plan have been met shall be considered for successful case closure.
- (b) Progress made toward youth risk reduction shall be documented through reassessment prior to closing the case.
- (c) Probation shall promptly give written notice of case closure to the potential petitioner and the parent(s)/guardian(s) of the potential respondent.
- (d) A finding by the designated lead agency that a case has been successfully diverted shall constitute presumptive evidence that the factual allegations have been successfully resolved and cannot be used in any subsequent petition.
- (e) All cases opened for diversion services shall be closed in accordance with one of the following case closing designations:
  - (1) **Successfully Diverted:** where satisfactory resolution of the complaint was achieved as the result of preliminary procedure. This shall include cases that were diverted either at the initial conference, or after a period of diversion services.
  - (2) **Withdrawn:** where the potential petitioner withdrew the complaint, for any reason, either before or during the provision of diversion services, the complainant shall be advised that the factual allegations may be used in making a future complaint.
  - (3) **Terminated with No Bar To Petition:** where the case has not been successfully diverted and the lead agency determines that diversion efforts have been exhausted and that there is no substantial likelihood that the youth and family would benefit from continued services. For parent/guardian filed complaints, such closing designation shall also require documentation of consent and active participation of the parent(s)/guardian in diversion services;
  - (4) **Terminated With Bar To Petition:** such case closing shall be used for parent/guardian initiated

complaints that have not been successfully diverted because the parent(s)/guardian(s) did not consent to, ~~or~~ actively participate in, or pursue diversion services.

#### Section 357.13 Case Record Keeping Requirements.

- (a) All preliminary procedure case records shall be kept in either paper or electronic format, or a combination of both.
- (b) Pre-Diversion Services: where pre-diversion services are provided in lieu of initiating preliminary procedure, it is not necessary to open an individual case file. However, at minimum a record of the following information shall be maintained:
  - (1) Youth name and date of birth;
  - (2) Date(s) of receipt of the complaint(s);
  - (3) Description of the pre-diversion services either referred to or directly provided, and any information regarding outcome(s).
- (c) Preliminary Procedure: where preliminary procedure was commenced, probation case records shall include the following, where applicable:
  - (1) Documents:
    - (i) Copy of the complaint;
    - (ii) Copy of letter to complainant advising of the initiation of diversion services;
    - (iii) All assessment and reassessments;
    - (iv) The initial case plan, and case plan updates that flow from the reassessments;
    - (v) A brief closing summary of progress toward achieving case plan goals;
    - (vi) Copy of written notices to the complainant regarding the case closing and whether the complaint has been successfully resolved;
    - (vii) Documentation of notification to the parent(s)/guardian(s) of the potential respondent

regarding: the case closing; whether the complaint has been successfully resolved; and if there is any bar to petition by the parent(s)/guardian(s); and

(viii) Copy of the petition report in all cases where a petition is filed with the court.

(2) Other Required Case Record Information:

(i) Date(s) of receipt of the complaint(s);

(ii) Date(s) of conference(s) with the youth, parent(s)/guardian(s) and complainant;

(iii) Documentation that the youth and parent(s)/guardian(s) were advised of their rights related to the diversion process;

(iv) Parent and youth acknowledgement of participation in diversion services;

(v) Summary of the reasons for any delay in developing an initial case plan;

(vi) Date(s) of any referral(s) for specialized assessment and treatment (i.e., educational, mental health, substance abuse, sexual victimization, or sexualized acting out behaviors);

(vii) Documentation of services provided in accordance with the assessment and reassessment;

(viii) Dates and types of contacts and any significant information, events, or actions taken;

(ix) Date of case closing.