

NOTICE OF ADOPTION Effective April 17, 2024

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

Part 356 Probation Services for Article 3 Juvenile Delinquency

Section 356.1 - Definitions

Section 356.2 - Objective

Section 356.3 - Applicability

Section 356.4 - Jurisdiction

Section 356.5 - General Requirements for Juvenile Delinquency Preliminary Procedure

Section 356.6 - Probation Intake

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Section 356.1 Definitions.

- (a) The term accountability measure refers to consequences and policies designed for youth to take responsibility for their actions and make amends by repairing the harm done to the victim and/or community. Such measures may include, but are not limited to accountability boards, apology letters, behavioral contracts, community service, mediation, restitution, restorative justice programs or projects and youth court.
- (b) The term actuarial risk refers to the relative risk of the youth continuing the behaviors related to the presenting problem. Actuarial risk calls for the administration and delivery of more intensive services and supervision to higher-risk youth, while lower risk cases may receive minimal intervention services. This requires a system of screening for risk and assessing for criminogenic needs in a reliable and valid manner to measure for static risks (that cannot be changed), and dynamic risks (that can be changed). Actuarial risk assessments are used to develop youth profiles of needs to be addressed to reduce the risk of recidivism.
- (c) The term adjustment period means the time during which probation intake is authorized to complete a preliminary probation procedure in a case pursuant to starting and duration dates specified in the Family Court Act (FCA) and Uniform Rules for the Family Court (URFC).
- (d) The term adjustment process means an attempt to successfully resolve a complaint by probation arranging certain activities or acts to be performed by a potential respondent, parent or other person legally responsible for his/her care, the victim or their representative, or any other relevant interested person, with their respective concurrence, in order to achieve the voluntary resolution of a matter.

- (e) The term adjustment services means services provided by probation pursuant to FCA §308.1 for the purpose of avoiding the need to file a petition or direct the detention of the youth. The objective of adjustment services is to provide prompt attention to: victim reparation, public safety, and the reduction of future risk of recidivism. Such services shall include efforts to adjust cases before a petition is filed, or by order of the court, after the petition is filed but before fact-finding is commenced.
- (f) The term alternative to detention refers to interventions and strategies that may be offered and/or imposed on youth being processed through the juvenile justice system, that do not involve the youth being held in custody in either a secure or non-secure detention facility. Alternatives to detention (ATD's) may be applied at any point in juvenile justice processing, from arrest to disposition, or at the post-dispositional stage when there is consideration for the youth to be held in custody. The purpose of an ATD program is to safely reduce unnecessary reliance on detention through the application of community-based supervision and services. Such supervision strategies may include, but are not limited to electronic technologies, intensive case management, and respite.
- (g) The term case plan means the individual plan developed to provide adjustment services, and shall be based on the actuarial risk and needs assessment. The plan shall be developed by probation and shall include the participation of the youth, parent(s)/or other person(s) legally responsible for his/her care; and input from the complainant and service providers, as appropriate. The plan shall be developed to remediate the behavior which gave rise to the complaint. It shall incorporate protective factors and strengths, and shall address the identified risks and needs.

- (h) The term client engagement refers to the effective delivery of probation services to medium and higher risk youth by identifying which stage of change the youth is in and determining his/her motivation to change. The probation officer successfully engages the youth through the use of various tools including, but not limited to, motivational interviewing, role play, and skill building in order to help the youth better understand the relationship between criminal thinking and criminal behavior. Client engagement is a probation officer skill-based approach to building understanding and trust with the youth in a culturally competent and trauma informed way with the goal of empowering the youth to make sustainable changes in behavior and avoid recidivism.
- (i) The term commissioner shall mean the Commissioner of the division of criminal justice services.
- (j) The term complaint means a written statement of essential facts constituting the alleged act of juvenile delinquency.
- (k) The term conference means the process of meeting with the parties in real time, either in-person, by telephone, through videoconference, or other electronic media.
- (l) The term contact means a communication with or concerning the youth, in person, by telephone, by mail, or by electronic means. Specific types of contacts are as follows:
 - (1) The term collateral contact means a contact to objectively verify information regarding the youth with someone or some source other than the youth, including his/her compliance and progress toward achieving the case plan goals. Such contacts can be in person, by mail, by telephone, or by electronic means.

- (2) The term in-person contact means a real-time meeting between a probation officer and youth where both parties are in the same place at the same time.
- (3) The term positive home contact means an in-person meeting with a youth in his or her home.
- (m) The term control measure refers to practice designed to limit youth opportunity to engage in behaviors underlying the presenting problem(s). Such practice may include graduated responses, including curfews, probation monitoring, and by court order, electronic monitoring.
- (n) The term detention risk assessment means a validated protocol approved by New York State to assess the youth's risk for (1) substantial probability that he/she (the youth) will not appear in court on the return date, and (2) serious risk that he/she may, before the return date, commit an act which if committed by an adult would constitute a crime.
- (o) The term detention means the temporary care and maintenance, away from their homes, of youth held pursuant to FCA article 3.
- (p) The term division means the division of criminal justice services.
- (q) The term eligibility refers to the status of a juvenile delinquency matter being statutorily qualified to be considered for adjustment.
- (r) The term evidence-based practice means a practice that is demonstrated through data-supported research and evaluation to be effective in producing the desired outcome.

- (s) The term exclusionary criteria refers to offenses and situations, as specified in FCA article 3, which prohibit adjustment or require the written approval of the court, or the court and the presentment agency, in order to proceed with an adjustment attempt.
- (t) The term family court appearance ticket is a written notice issued and subscribed by a peace officer or police officer, a probation director or his/her designee or the administrator responsible for operating a detention facility or his/her designee, directing a youth and his/her parent or other person legally responsible for his/her care to appear, without security, at a designated probation department on a specific return date in connection with the child's alleged commission of the crime or crimes specified on such appearance ticket. The form of a family court appearance ticket shall be prescribed by rules of the chief administrator of the courts.
- (u) The term Graduated Responses means a system of incentives, sanctions, and/or referral to evidence-based services. The use of incentives/rewards should include, but not be limited to encouragement by the probation officer, verbal praise, letter of recognition, easing of restrictions, granting travel requests, and decreased reporting requirements. The use of sanctions should include, but not be limited to the imposition of progressively more severe or restrictive actions for continued non-compliance such as increased interventions and appearance at a departmental administrative hearing or court for judicial admonishment.
- (v) The term Initial Conference refers to the meeting at which Probation staff convene the potential respondent, parent or other person legally responsible for his/her care, and possibly the complainant or victim, legal counsel, and other permissible parties, to determine suitability for adjustment services. The Initial Conference may be a single

meeting. It may also be conducted in two parts; as an Initial Intake Conference for the purpose of pre-screen assessment by approved probation staff, followed by the Initial Conference with the Probation Officer assigned to the adjustment case.

- (w) The term interested person(s) shall include the complainant or victim or their representative.
- (x) The term intervention service refers to a service delivered by the probation department or through a community-based service provider which targets dynamic risk factors related to the presenting complaint, such as cognitive-behavioral interventions, interactive journaling, skill-building, family-focused treatment, mental health and substance abuse treatment, school-based interventions, educational/vocational services, and other evidence based programs and practices.
- (y) The term juvenile delinquent means (a)(i) a person at least twelve and less than eighteen years of age, having committed an act that would constitute a crime if committed by an adult; or (ii) a person over sixteen and less than seventeen years of age or, a person over sixteen and less than eighteen years of age commencing October first, two thousand nineteen, having committed an act that would constitute a violation as defined by subdivision three of section 10.00 of the penal law if committed by an adult, where such violation is alleged to have occurred in the same transaction or occurrence of the alleged criminal act; or (iii) a person over the age of seven and less than twelve years of age having committed an act that would constitute one of the following crimes, if committed by an adult: (A) aggravated criminally negligent homicide as defined in section 125.11 of the penal law; (B) vehicular manslaughter in the second degree as defined in section 125.12 of the penal law; (C) vehicular manslaughter in the first degree

as defined in section 125.13 of the penal law; (D) aggravated vehicular homicide as defined in section 125.14 of the penal law; (E) manslaughter in the second degree as defined in section 125.15 of the penal law; (F) manslaughter in the first degree as defined in section 125.20 of the penal law; (G) aggravated manslaughter in the second degree as defined in section 125.21 of the penal law; (H) aggravated manslaughter in the first degree as defined in section 125.22 of the penal law; (I) murder in the second degree as defined in section 125.25 of the penal law; (J) aggravated murder as defined in section 125.26 of the penal law; and (K) murder in the first degree as defined in section 125.27 of the penal law; and (b) who is: i) not criminally responsible for such conduct by reason of infancy; or (ii) the defendant in an action ordered removed from a criminal court to the family court pursuant to article seven hundred twenty-five of the criminal procedure law.

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

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

(bb) The term potential respondent means a youth who is the subject of a juvenile delinquency complaint, and whose behavior meets the definition of juvenile delinquent pursuant to FCA §301.2 and as defined in this section.

(cc) The term preliminary procedure means all efforts prior to the filing of a petition including conferring with the complainant, potential respondent, parent/guardian or any other

relevant interested person(s) whose participation in adjustment services would be, in the opinion of the probation officer, beneficial to the potential respondent for the purpose of assessing the need to file a petition or directing the detention of the youth. Preliminary procedure includes probation intake and adjustment services.

- (dd) The term presentment agency means the agency or authority which pursuant to FCA §§254, 254-a, and 310.1 is responsible for presenting a juvenile delinquency petition.
- (ee) The term probation intake means the initial process of conferring with the complainant, potential respondent, the parent(s) with whom the potential respondent is living, or other person legally responsible for his/her care, and any other interested person whose participation in adjustment services would be, in the opinion of the probation officer, beneficial to the potential respondent for the purpose of avoiding the need to file a petition or directing the detention of the youth.
- (ff) The term protective factor means certain strengths or assets that have been shown to reduce risk of negative outcomes including recidivism.
- (gg) The term reasonable efforts means sufficient attempts by probation to promptly engage the youth and family in the constructive resolution of the complaint and address the underlying issues related to the complaint. Reasonable efforts shall consider the time allowable under the law and available community resources.
- (hh) The term referred (or referral) for petition means the advisement by probation to the presentment agency that a petition may be filed.
- (ii) The term responsivity means applying interventions that are tailored to the unique characteristics of an individual youth. Intervention services are maximized when

treatment and control measures consider the youth's personal characteristics such as age, sex, gender expression, mental health needs, cognitive skill, literacy, primary language, and stabilization needs, and when services are provided in a culturally competent and trauma informed way.

- (jj) The term risk and needs assessment means a validated protocol approved by the Commissioner to assess the youth's risk of re-arrest/recidivism and identify criminogenic needs.
- (kk) 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.
- (ll) The term successful adjustment means a determination by probation that the risks and needs related to the presenting problem have been satisfactorily addressed and the complaint has been adjusted.
- (mm) The term suitability means the process of determining whether the matter is appropriate for the opportunity for adjustment in accordance with URFC.
- (nn) The term victim means a person who has suffered direct physical, emotional, sexual or financial harm as a result of an act, which if committed by an adult would constitute a crime, including:

- (1) in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, one of the following: a spouse, a parent or other person legally responsible for his/her care, a child, a sibling, another family member, or another person designated by the court; and
- (2) in the case of a victim that is an institutional entity, an authorized representative of the entity.

Section 356.2 Objective.

The objective of Probation Services for Article 3 Juvenile Delinquency matters is to provide effective screening, assessment, case planning, client engagement, and where appropriate, evidence-based services to youth, for the non-judicial resolution of suitable complaints. The goal of these services is to address the needs of youth, reduce unnecessary reliance on detention and reduce future re-arrest/recidivism.

Section 356.3 Applicability.

This Part contains all requirements for the provision of adjustment services by probation in matters pertaining to Juvenile Delinquency, pursuant to FCA Article 3 and URFC. This Part also contains requirements for the probation department to perform pre-dispositional supervision of a youth alleged to be a juvenile delinquent with a case pending in Family Court, in accordance with FCA and URFC.

Section 356.4 Jurisdiction.

Juvenile Delinquency matters shall originate in the county in which they occurred.

Where the youth resides in one county but the act(s) giving rise to the presenting problem occur in another county, the complaint shall be made in the county where the act(s) occurred.

Adjustment matters may be transferred to the county of residence. Where transferred, the receiving probation department shall accept the case for consideration of adjustment services.

Where adjustment services are unsuccessful, the matter shall be returned to the originating county for referral for petition.

A court order for the pre-dispositional supervision of youth is received by the probation department in the jurisdiction where the act(s) occurred. If the youth resides in another jurisdiction, the probation department in the jurisdiction of residence shall perform pre-dispositional supervision.

Section 356.5 General Requirements for Juvenile Delinquency Preliminary Procedure.

- (a) Each probation director shall establish and maintain preliminary procedure services for juvenile delinquency matters in accordance with the provisions of the Criminal Procedure Law, Executive Law, the Family Court Act, Uniform Rules for the Family Court, court order, 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 preliminary procedure services for juvenile delinquency matters. The policies and procedures shall address, at a minimum:

- (1) Role of the probation officer in engaging youth and effecting behavioral change;
 - (2) Referral of appropriate cases to community resources;
 - (3) Use of graduated responses consistent with Part 352 titled GRADUATED RESPONSES;
 - (4) Where another court proceeding or other preliminary probation matter is pending;
and
 - (5) Where the potential respondent is a probationer or under the supervision of another agency.
- (c) Probation shall review complaints to determine eligibility and suitability for adjustment services. Where a case is deemed eligible and suitable for adjustment, probation shall make reasonable efforts at provision of intake and adjustment services, including screening and assessment. Such reasonable efforts shall:
- (1) Be clearly documented in the case record;
 - (2) Attempt to prevent eligible and suitable youth from being the subject of a petition in family court;
 - (3) Include the sharing of resources, wherever appropriate and feasible, with other agencies and service providers to effectively and efficiently implement preliminary procedure.
- (d) As part of initial conferencing with the potential respondent, parent or other person legally responsible for his/her care or any other interested person(s), the probation service shall inform such persons regarding the petition and Family Court processes as set forth

in the URFC and explain the benefits of the youth engaging in and successfully completing adjustment services where the youth is eligible and suitable.

- (e) The appearance ticket date at probation must be within fourteen (14) calendar days of issuance of the appearance ticket, except in cases involving a designated felony, in which case the return date shall be within 72 hours excluding Saturdays, Sundays, and public holidays. For youth removed from the Youth Part to Family Court for intake/adjustment services under Article 3 of the Family Court Act, the probation department shall conduct the initial conference within eight (8) business days of notification/receipt of the complaint.
- (f) If the youth fails to appear at probation on the return date, probation may refer the matter directly to the presentment agency, or, in its discretion, may attempt to secure the attendance of the youth through written notification or telephone communication to the youth and parent/guardian, in accordance with FCA §307.2(1).
- (g) If the complainant does not appear on the return date, probation may, in its discretion, attempt to secure voluntary attendance, in accordance with FCA §307.2(2). Probation efforts to communicate with the complainant, whether by phone, in writing, or in person shall provide the complainant an opportunity to:
 - (1) Provide his/her version of the alleged juvenile delinquent act, provide any context for what may have led up to it, and describe the impact upon the complainant;
 - (2) Learn of possible case options and outcomes, and services available to complainant.

- (h) Efforts to secure the attendance of the youth or voluntary attendance of the complainant shall not extend beyond seven days subsequent to the appearance ticket return date, and the probation service shall refer the matter to the appropriate presentment agency within such period, in accordance with FCA §§307.2(1) and 307.2(2).
- (i) All youth who are deemed eligible and suitable for adjustment services shall be screened to determine the future risk of recidivism.
- (j) Probation may conduct detention screening of appropriate cases to determine the risk of flight and the risk of committing a new offense pending disposition of the current matter.
- (k) Probation may conduct relevant criminal history checks, as needed and appropriate, according to the policy of the division.
- (l) Screening and assessment conducted by probation for diversion, investigation, or supervision purposes shall be done using state-approved risk and need assessment instruments.

Section 356.6 Probation Intake.

- (a) Prior to commencing eligibility and suitability determination, probation shall review the complaint to determine whether it is within the scope of FCA article 3.
- (b) Eligibility Criteria: Cases within the scope of FCA article 3 shall be considered eligible for adjustment services, except when one or more of the below-listed exclusionary criteria are present:

- (1) the potential respondent insists upon accessing the presentment agency for the purposes of having a petition filed, or declines, or is unavailable to participate in the adjustment process;
 - (2) the presentment agency and the family court have not given written approval for adjustment, where such approval is required by the FCA §308.1 (4);
 - (3) the family court has not given written approval where the alleged conduct of the potential respondent would constitute a designated felony act as defined by FCA §301.2(8), as required by FCA §308.1(3); and
 - (4) the family court has not given written approval for adjustment where the alleged conduct of the potential respondent, if committed by an adult, would constitute a class A or B felony which is not a designated felony act.
- (c) Suitability Criteria: In order to determine whether the case is suitable for the adjustment process, the probation service shall:
- (1) consider the views of the complainant and the impact of the alleged act or acts of juvenile delinquency upon the complainant and upon the community; and
 - (2) consider the provisions of the URFC §205.22(c).
- (d) Detention Cases:
- (1) Coordinate local efforts for the screening of appropriate cases for release, identifying alternative to detention programs and services, and communication with law enforcement and the detention agency. When a youth is detained and the facility is located outside of the county of jurisdiction, the probation department

in the jurisdiction where the youth is detained may assist in screening the youth for consideration for release;

- (i) Determine eligibility for probation intake and adjustment services in accordance with FCA provisions;
 - (ii) Make a determination as to whether alternatives to detention are appropriate to avoid remand of a youth;
 - (iii) Determine suitability for probation intake and adjustment services in accordance with URFC provisions;
 - (iv) Consider the results of a completed state-approved detention risk assessment instrument on the instant offense;
- (2) The fact that a youth is detained prior to the filing of a petition shall not, where authorized, preclude the probation department from adjusting a case. Where feasible, the probation department shall coordinate with the detention administrator to have the youth released on an appearance ticket when screened and determined to be eligible and suitable for adjustment services under Article 3 of the Family Court Act unless the youth is remanded on a Family Court order;
- (3) When a youth is released from detention before filing of a petition, and probation operates the detention facility, the agency responsible for operating a detention facility shall issue a Family Court Appearance Ticket to the youth and the person legally responsible for the youth's care, in accordance with FCA §§307.1 and 307.3(3). Such Family Court Appearance Tickets shall be issued unless special circumstances exist which require the detention of the youth, including:

- (i) there is a substantial probability that the youth will not appear or be produced at the appropriate probation department at a specified time and place; or
 - (ii) there is a serious risk that, before the petition is filed, the youth may commit an act which, if committed by an adult, would constitute a crime.
- (4) When a youth is being considered for release from detention before filing of a petition, and probation does not operate the detention facility, Probation shall:
 - (i) Seek the release of detained youth eligible and suitable for Probation intake and adjustment services;
 - (ii) Seek the issuance of a Family Court Appearance Ticket from the agency responsible for operating a detention facility in accordance with FCA §§307.1 and 307.3(3). A Family Court Appearance Ticket shall be issued unless special circumstances exist which require the detention of the youth, including:
 - (a) there is a substantial probability that the youth will not appear or be produced at the appropriate probation department at a specified time and place; or
 - (b) there is a serious risk that, before the petition is filed, the youth may commit an act which, if committed by an adult, would constitute a crime.
- (5) If a youth is detained or about to be detained, and the Probation Department's initial review reveals the case may be appropriate for release or alternative to detention, the Probation Department shall conduct a

screening interview with the youth alleged to be a juvenile delinquent to determine eligibility and suitability for adjustment services.

- (a) Screening and interviewing to determine suitability for intake and adjustment services shall take place at the earliest possible time after arrest.
 - (b) Probation shall deploy staff and services in a manner consistent with achieving the earliest possible intervention and release.
 - (c) The interview should take place as soon as possible to affect the earliest possible release decision. For youth detained after regular business hours, such interviews shall take place within two (2) business days of detention.
- (e) Where it is determined that the complaint is within the scope of FCA article 3, and both eligible and suitable for adjustment services probation shall conduct an initial conference and provide such services in accordance with URFC. This shall include:
- (1) Making reasonable efforts to confer with any persons seeking to have a juvenile delinquency petition filed, the potential respondent and other interested persons including the victim or complainant, on the same day that such persons appear at the probation department concerning the advisability of requesting that a juvenile delinquency petition be filed and in order to gather information needed for a determination of the suitability of the case for adjustment;
 - (2) Permitting any youth who is represented by an attorney to be accompanied by the attorney at any preliminary conference;

- (3) Ascertaining from the complainant pursuant to URFC, a brief statement of the underlying events and a brief statement of factors, if known to that person that would assist the court in determining whether the potential respondent should be detained or released in the event that a petition is filed;
- (4) Promptly informing the complainant, the potential respondent, parent or other person legally responsible for his/her care, or any other interested person(s) at the first conference regarding the petition and Family Court processes as set forth in the URFC and explain the benefits of probation intake and adjustment and the services that may be made available to address the needs of the youth, as compared to proceeding directly to petition; and
- (5) For youth determined to be eligible and suitable for adjustment services, the probation department may conduct a pre-screen assessment at the Initial Intake Conference using a state approved, risk and need assessment instrument that measures the risk of recidivism. This assessment may be completed by a Probation Assistant, Probation Officer, or an employee of the Probation department specially trained and approved by the Probation Director, and under the direct oversight and review by a Probation Supervisor.
- (6) Informing the complainant where it appears to probation that the court would not have jurisdiction over the case, and such case is thereby excluded from any opportunity for adjustment. In such instances, the juvenile delinquency complaint filed may be referred to a presentment agency for the purpose of requesting that a petition be filed with the court. The reason for excluding the complaint for consideration for adjustment shall be documented in the case record. The record

shall contain all required documentation, including a statement of the grounds for not commencing adjustment, and a copy of the written notification to the complainant, pursuant to URFC.

Section 356.7 Adjustment Services.

- (a) In providing adjustment services, probation shall:
- (1) Document the case opening date as the date the youth and the parent or other person legally responsible for his/her care appear for the Initial Conference with the probation officer assigned to oversee adjustment services. For youth receiving an Initial Intake Conference with a probation assistant, the assigned probation officer shall meet with the youth within five (5) business days of that Initial Intake Conference;
 - (2) Conduct a mental health screen at the initial conference, for youth cases opened for adjustment services. Such screening instrument shall be approved by the state and administered by staff approved to do so by the Probation Director/designee.
 - (3) Assess for the sexual exploitation of youth using a state-approved instrument and ensure that youth identified as sexually exploited are referred to available and appropriate services including but not limited to safe house services in accordance with the Safe Harbour Act.
 - (4) Provide written notice to the complainant that the case has been opened for adjustment services;

- (5) Make reasonable attempts to provide adjustment services in accordance with the general requirements of this Part;
- (6) Screen the youth using a state-approved risk screening instrument to identify the level of risk for the youth continuing in his/her behaviors underlying the presenting problem;
- (7) Attempt to adjust low risk youth with minimal intervention services;
- (8) Not permit the inability of the youth or the youth's family to make restitution as a factor in deciding to adjust a case or in making a recommendation to the presentment agency, in accordance with FCA §308.1(2);
- (9) Provide, at the first contact or as early as practicable, 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;
- (10) Target the underlying risk factors related to the presenting problem behavior(s) which gave rise to each complaint;
- (11) 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;
- (12) Make referrals for service as needed, based on the results of state-approved risk and needs assessment;
- (13) Prioritize resources to higher risk youth and target interventions to reduce dynamic risk factors; and

- (14) Be knowledgeable of, cooperate with, and utilize available community resources, wherever appropriate, as part of the adjustment process.
 - (15) For youth removed from the Youth Part of Superior Court to the Family Court to receive intake and adjustment services under Article 3, the probation department may consider and credit the youth's participation in Voluntary Assessment and Case Planning services while in the Youth Part, which may reduce the time needed for adjustment services depending upon the youth's progress in addressing criminogenic needs.
- (b) In addition to providing community-based intervention services that target specific dynamic risk factors, probation should work to effectively engage the youth and family in appropriate services leading to successful adjustment.
 - (c) Electronic monitoring may only be used with probation director consent and upon specific court order.

Section 356.8 Assessment, Case Planning, and Client Engagement.

- (a) As part of adjustment services, probation shall conduct risk and need assessments and utilize case planning tools and protocols, as approved by the Commissioner, to:
 - (1) Identify youth who are at medium or high risk for continuing in the behaviors underlying the presenting problem to address the priority areas for intervention;

- (2) Complete a full risk and needs assessment at case opening and case closure for all medium and high risk youth to ensure effective case planning and to measure change in dynamic risk and protective factors;
 - (3) Develop case plans based on assessment results that focus on the priority areas for intervention to remediate the presenting problem;
 - (4) Engage youth by providing evidence-based services through probation department and/or community-based service providers; and
 - (5) Advocate for the youth's timely commencement of services and work closely through on-going communication with the service providers to monitor a youth's participation and progress in completing the services that address the criminogenic needs identified in the case plan. Document the case file of the youth's progress in the services.
- (b) As part of assessment, case planning, and reassessment, probation shall use effective client engagement skills such as motivational interviewing with the youth, and where practicable, their families:
- (1) In developing an initial case plan within 10 business days of the initial conference with the youth and parent(s) or other person(s) legally responsible for his/her care that addresses:
 - (i) priority risk and need areas for intervention;
 - (ii) objectives that build on existing protective factors;

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

- (4) In reviewing and updating the case plan on an ongoing basis to document any changes in priority areas, goals, action steps, roles and responsibilities, and status (progress toward completion).
 - (5) For purposes of reassessment at Extension of Adjustment period; and
 - (6) For purposes of reassessment at case closing.
- (c) Probation will work to address the criminogenic needs identified in the assessment and case plan. The probation officer shall use effective client engagement skills such as motivational interviewing and other engagement tools to assist the youth in identifying the criminogenic risks and understanding how criminal thinking/attitudes, criminal associates and peers, chemical dependency, and other factors influence behavior.
- (d) Probation will work to effectively engage youth to ensure that higher risk youth receive more intervention, contact, and evidence-based service. The period of intake and adjustment is time limited and so front-loading probation and community service interventions is essential to achieving positive outcomes for youth. The probation officer shall use graduated responses to encourage and/or support pro-social behavior.
- (1) For High Risk youth, the probation department shall conduct a minimum of one in-person youth contact per week, two collateral contacts per month, and one positive home contact per month. A positive home contact constitutes an in-person contact.
 - (2) For Medium Risk youth, the probation department shall conduct a minimum of two youth contacts per month (including one in-person contact each month), and two collateral contacts in a three-month period. One positive home contact

is required in the first forty-five (45) days of the adjustment period, and as needed thereafter. A positive home contact constitutes an in-person contact.

- (3) For Low Risk youth, the probation department shall conduct a minimum of one youth contact per month. Collateral contacts and home contacts will be conducted as needed.

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

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

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

Section 356.9 Referral to Presentment Agency.

- (a) Where probation refers a complaint to the presentment agency, probation shall:
 - (1) Document the reason for referral to the presentment agency, and shall include a statement as to the feasibility and appropriateness for referral back to probation for adjustment services. If the victim insists that the matter be sent to petition for the purpose of obtaining an Order of Protection, and the youth is otherwise suitable and eligible for intake and adjustment services, the probation department shall advise the presentment agency of the same and recommend that the court return the youth for adjustment services upon the Court’s consideration for issuance of the Order of Protection;
 - (2) Indicate the reason for the referral and notify the presentment agency within 48 hours or the next court day, whichever occurs later, where the adjustment process

was commenced, but terminated without adjustment, and the case referred to the presentment agency in accordance with FCA § 308.1(10);

(3) Not transmit or otherwise communicate to the presentment agency any statement made by the child to the probation officer; and

(4) Not transmit any statement made to probation prior to the filing of a petition, fact-finding hearing, or if transferred to criminal court, at any time prior to conviction, in accordance with FCA §308.1(7).

(b) Probation may make a recommendation regarding adjustment and provide such information, including any arresting officer's report and the youth's record of previous adjustments and arrests as probation deems relevant, in accordance with FCA §308.1(6).

Section 356.10 Return from Court.

(a) Where the family court orders the Juvenile Delinquency matter be returned for adjustment services, probation shall thereafter notify the court whether the case has been successfully Adjusted or Terminated without Adjustment/Referred to Court.

(b) If the petition alleged the commission of a designated felony act or the commission of a crime pursuant to FCA §308.1(4), probation shall make a recommendation to the court regarding the suitability of adjusting the case (FCA §320.6).

- (c) Upon receipt of the court order, probation shall take reasonable and prompt action to hold a conference with the youth and the parent or other person legally responsible for his/her care.
- (d) Probation shall document the case opening date as the date the youth and the parent or other person legally responsible for his/her care, appear for the initial conference with the Probation Officer assigned to oversee adjustment services.

Section 356.11 Removal from Youth Part of the Superior Court to Family Court for Probation Intake

- (a) Where the Youth Part of the Superior Court has removed a case to Family Court for Probation Intake, probation shall thereafter notify the Family Court and/or presentment agency whether the case has been Referred for Petition Immediately, Successfully Adjusted or Terminated without Adjustment/Referred to Court, as follows;

Notification/Youth Part Case Removed to Family Court for Probation Intake:	
Probation Intake Closing type:	Probation Department responsible to notify:
Referred for Petition Immediately	Family Court and Presentment Agency
Terminated without Adjustment; Referred for Petition	Family Court and Presentment Agency
Adjusted	Family Court

- (b) If the petition alleged the commission of a designated felony act or the commission of a crime pursuant to FCA §308.1(4), probation shall make a recommendation to the court regarding the suitability of adjusting the case (FCA §320.6).

- (c) Upon receipt of the Juvenile Delinquency accusatory instrument and supporting documents, probation shall take prompt action to conduct an initial conference with the youth and the parent/guardian per section 356.5(e) of this part.
- (d) Upon the youth and parent or other person legally responsible for his/her care agreeing to participate in adjustment services, Probation shall document the case opening date as the date of the Initial Conference with the Probation Officer assigned to oversee adjustment services.

Section 356.12 Case Closing Requirements.

- (a) There are three (3) case closing options:
 - (1) Referred for Petition Immediately: the adjustment process was not commenced due to exclusionary or suitability criteria and referred to the presentment agency.
 - (2) Adjusted: the resolution of the complaint was achieved without court intervention or after the court ordered return of the matter as the result of preliminary procedure. This shall include cases that are resolved at the Initial Conference or after a period of adjustment services.
 - (i) A determination by probation that a case has been adjusted shall constitute presumptive evidence that the complaint has been addressed and cannot be used in any subsequent petition.
 - (ii) Cases shall be considered adjusted where:

- (a) The potential respondent sufficiently participated in the adjustment process to resolve the complaint;
 - (b) The goals of the case plan have been addressed; and
 - (c) The case is closed administratively, in the interests of justice.
- (3) Terminated Without Adjustment and Referred for Petition: the resolution of the complaint did not occur after commencement of the adjustment process.
 - (i) In accordance with URFC, probation may discontinue the adjustment process at any time if:
 - (a) the potential respondent requests that it do so; or
 - (b) the potential respondent refuses to cooperate with the probation service or any agency to which the youth or a member of the youth's family has been referred.
 - (ii) Additional considerations for discontinuance of adjustment efforts may include:
 - (a) the complainant insists on securing an order of protection including a temporary order of protection; or
 - (b) the potential respondent has harassed or menaced any party to the case, or is likely to continue to harass or menace any party to the case where such harassing or menacing is the subject of the complaint; or

- (c) the potential respondent may endanger or is endangering his/her or another person's physical or emotional health; or
- (d) it appears to probation intake that the potential respondent requires extended supervision, treatment or confinement.

Section 356.13 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) Where preliminary procedure was commenced, probation case records shall include the following, where applicable:
 - (1) Documents:
 - (i) A copy of the complaint and date the complaint was received by probation;
 - (ii) A copy of the family court appearance ticket;
 - (iii) A copy of the letter to complainant advising of the initiation of adjustment services;
 - (iv) All assessment and reassessments;
 - (v) The initial case plan, and case plan updates that flow from the reassessments;

- (vi) Where the adjustment period extends beyond the authorized initial period of time to adjust, a copy of the judge's authorization for the requested extension;
- (vii) A brief closing summary indicating date of case closure and progress toward achieving case plan goals;
- (viii) Copies of written notices to the complainant regarding the case closing and whether the complaint has been successfully resolved. Where the case was closed as terminated without adjustment and referred to the presentment agency, this notice shall include a statement that the complaint was forwarded to the presentment agency;
- (ix) Copy of notification to the parent(s) of the potential respondent or other person(s) legally responsible for his/her care regarding the case closing and whether the complaint has been successfully resolved or referred to the presentment agency;
- (x) Copy of notification to the presentment agency in all cases where the matter was terminated without adjustment and referred for petition;
- (xi) Copy of the certification of adjustment required by the FCA to be sent to the division and to the appropriate law enforcement agency (FCA§308.1) for cases where the potential respondent's fingerprints were taken and the case was adjusted; and

- (xii) Copy of notification to the Family Court of the final case closing designation for cases referred back to probation by the family court after a petition was filed (FCA §320.6).
- (2) Other Required Case Record Information:
- (i) Where approval or consent to an adjustment is required by the FCA, URFC, this Part, or local criteria, documentation as to the basis for the request for approval and a written copy of such approval, consent, or denial thereof, if any;
 - (ii) Date(s) of conference(s) with the youth, parent(s) or other person legally responsible for his/her care, police and interested persons;
 - (iii) Documentation of efforts made to secure the attendance of the potential respondent or the complainant upon the issuance of a family court appearance ticket;
 - (iv) Documentation that the complainant, youth, and parent(s) or other person(s) legally responsible for his/her care were advised of their rights related to the adjustment process, including the fact that the process is voluntary;
 - (v) Documentation of parent and youth acknowledgement of participation in adjustment services;
 - (vi) Summary of the reasons for any delay in developing an initial case plan;

- (vii) Date(s) of any referral(s) for specialized assessment and treatment (i.e., educational, mental health, substance abuse, victimization, or sexual offending behaviors);
 - (viii) Documentation of services provided in accordance with the assessment and reassessment, including progress made toward youth risk factor reduction and/or increased protective factors; and
 - (ix) Dates and types of probation contacts, collateral contacts, and positive home visits, and any significant information, events, or actions taken;
- (c) Excluded cases: A record shall be maintained on all cases which have been excluded from any opportunity for adjustment and referred to the presentment agency immediately. The record shall document the exclusionary criteria utilized, the date the case was closed, and a statement that the case was referred for petition immediately. In all cases, the record shall include a description of the complaint. In appropriate juvenile delinquency cases, the record shall also include any recommendation regarding the suitability of adjusting the case.
- (d) Sealed cases: Records of juvenile delinquency cases which are considered terminated in favor of the respondent pursuant to Family Court Act §375.1 (2) include but are not limited to petitions withdrawn; petitions dismissed for matters where the presentment agency has chosen not to proceed to petition; and complaints closed by probation preliminary procedure as adjusted. When probation has received official notification from the Family Court that a juvenile delinquency matter has been terminated in favor of the respondent, case records shall be sealed pursuant to the provisions of the FCA and not be

made available to any agency public or private. However, such records shall be made available to the respondent or his/her designated agent and the division, and the probation records shall be made available to any probation department for the purpose of complying with FCA §308.1(4). Whenever a case is adjusted, probation shall provide certification of such disposition to the appropriate law enforcement agency.

Section 356.14 Pre-Dispositional Supervision in Family Court

A. General requirements

1. Each probation director shall establish and maintain written policies and procedures for the uniform provision of pre-dispositional supervision for Juvenile Delinquency matters, under the jurisdiction of the Family Court, in accordance with the provisions of the FCA, URFC, court order, and all other applicable laws, rules and regulations. The policies and procedures shall address, at a minimum:
 - a. procedures to monitor, investigate and report to the Family Court regarding the compliance of respondents under pre-dispositional supervision as ordered by the court.
 - b. timely notification to the Court when a youth under pre-dispositional supervision has been determined to be non-compliant with the terms and conditions of release as set forth by the Court including orders of protection.

B. Performing Pre-Dispositional Supervision Services in Family Court

1. Upon notification to Probation from the Court that a youth has been placed under pre-dispositional supervision with certain terms and conditions of the Court, and Probation has been directed to monitor such conditions, pursuant to FCA and URFC;
 - a. Probation shall coordinate with the court to receive a written copy of the terms and conditions as issued by the Court;
 - b. consistent with court order, Probation shall refer the youth and family to available Alternative to Detention services/programs;
2. Probation shall provide to all youth placed under pre-dispositional supervision and parents or other persons legally responsible for his/her care, information and reminders for court appearance(s).
3. Monitoring
 - a. Absent directive from the court, Probation shall maintain regular contact with youth placed under pre-dispositional supervision, and conduct appropriate collateral contacts, as determined by the Probation Director/designee to ensure appearance in court and reduce likelihood to commit another offense.
 - b. Probation shall monitor court appearances of such youth.
 - c. Probation shall assist such youth with complying with pre-dispositional supervision conditions, including orders of protection.

4. Non-compliance with Pre-Dispositional Supervision conditions

- a. Probation shall attempt to contact youth placed under pre-dispositional supervision, 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.

5. 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. the compliance by the youth and parent(s) or other person(s) legally responsible for his/her care with the ordered or referred programming or services.
- c. the 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.

6. Case Closure

- a. Probation performing pre-dispositional supervision for the Family Court shall cease when a disposition on the originating case is ordered, or Court notifies the department of such.
- b. Probation shall indicate whether closure was successful as measured by substantial compliance with conditions.

C. Pre-Dispositional Supervision Case Record Keeping Requirements

- 1. Minimum requirements of record retention.

- a. All pre-dispositional supervision case records shall be kept in either paper or electronic format, or a combination of both.
- b. Case records shall include the following, where applicable:
 - (1) Documents:
 - i. Terms and conditions of the pre-dispositional release;
 - ii. Any risk/need assessment, and/or behavioral health screening results;
 - iii. Release of information forms;
 - iv. Referrals to and/or summaries from any Court ordered or otherwise appropriate programming/services, or other relevant collateral documents or information;
 - (2) 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 youth contacts related to the case;
 - iii. A summary of pre-dispositional supervision services provided may be
 - a) incorporated into the pre-dispositional investigation, or;
 - b) a separate summary included in the case file.