

PART 354 – Effective September 1, 2011
INTAKE

(Statutory authority: Executive Law, §243, 255(2), 256(6)(a);
The Family Court Act. §424, 452, 734, 823, 922) Sec.

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§354.1 Definitions.

- (a) The term *probation intake* means a generic term used to describe a function of probation which provides for the rendering by probation personnel to members of the community of certain preadjudicatory services in family court matters and/or certain referral services, or a unit of a probation department performing such function.
- (b) The term *intake services* means those services rendered by a probation department which include a case review and an evaluation thereof, and which in certain cases include the effecting of an adjustment without the necessity of intervention by the Family Court through conciliation, counseling and other means, and/or referring certain cases to court, or referring individuals to other agencies or persons where appropriate. Intake services include preliminary probation procedures, child-support and paternity referral services, and services rendered by court order.
- (c) The term *preliminary probation procedure* means those intake services defined by The Family Court Act and Uniform Family Court rules which authorize probation intake to:
1. confer with potential petitioners, potential respondents and other interested persons about the advisability of filing a petition including the modification or enforcement of a court order; and
 2. attempt to aid in the adjustment of complaints in suitable cases, without the necessity of court intervention but with the voluntary concurrence of the potential petitioner, and the potential respondent in the case.
- (d) The term *child-support and paternity referral services* means those intake services specified in section 256(6)(a) of the Executive Law which require that the petitioner in certain cases arising under articles 4, 5, and 5-A of The Family Court Act involving child

support and/or the establishment of paternity be referred to the child-support enforcement unit of a local department of social services.

- (e) The term *adjustment process* means the process by which an adjustment is effected in a preliminary probation procedure case through the arranging by probation intake of certain activities or acts to be performed by a potential respondent or a potential petitioner and with their respective concurrence, in order to achieve the voluntary resolution of a matter.
- (f) The term *Adjustment period* means the time period 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 and uniform Family Court rules.
- (g) The term *potential petitioner* means the person in a case who would sign and file a petition with the court in order to commence a proceeding, including the modification or enforcement of a court order.
- (h) The term *potential respondent* means the person against whom such a proceeding would be commenced by the filing of a petition and who, in such proceeding, would respond to and answer the allegations of the petition, including the modification or enforcement of a court order.
- (i) The term *referred for petition* means the advisement by probation intake to the potential petitioner that a petition may be filed, whether or not a petition is actually filed.
- (j) The term *suitable cases* means cases appropriate for adjustment which have not been excluded from an opportunity for adjustment by The Family Court Act, the Uniform Family Court rules, court order, this Part, or other laws, rules and regulations.

§354.2 Objective.

- (a) To regulate the provision of intake services in order that suitable cases are resolved non-judicially and all others are either immediately referred for petition for court intervention, or referred to other agencies where appropriate.

§354.3 Applicability and rationale.

- (a) This Part is applicable to all intake services rendered by probation departments in matters of the Family Court, regardless of nomenclature assigned by a probation department to such services.
- (b) The rationale for this Part is as follows:
 1. Intake services are rendered in Family Court support proceedings, family offense and marital conciliation matters pursuant to statute. In addition, the Family Court, by court order, has required the rendering of intake services in other matters

which are not otherwise statutorily mandated.

2. Specifying criteria for intake decision making serves to facilitate uniformity in decision making.
3. Specifying procedures for intake decision making serves to expedite decisions made and, therefore, the processing of cases.

§354.4 General requirements for intake.

(a) ***General requirements for all intake services.***

1. Probation intake shall be established and maintained by a probation director in each probation department pursuant to the provisions of the Executive Law, The Family Court Act, Uniform Family Court rules, court order, rules and regulations herein, and other laws, rules and regulations.
2. The probation director shall provide for, adopt and disseminate to probation intake, written procedures for the rendering of all intake services, shall review such procedures at least annually to ensure that they are current with existing law and local probation practice, and shall conform such procedures thereto as may be required from time to time.
3. The probation director shall ensure that all such procedures so adopted for probation intake comply with all applicable laws, rules, regulations and court orders.

(b) ***General requirements for intake services in preliminary probation procedure cases.***

1. Intake services rendered by probation intake shall at least, and in addition to all other requirements of law, rule, regulation or court order, include the conferring with all persons referred to probation for the rendering of preliminary probation procedures, relative to the advisability of filing a petition, including the modification and enforcement of a court order, and providing such persons with an opportunity to adjust suitable cases.
2. Intake services shall also include the prompt advisement of potential petitioners and respondents that they may not be prevented from either filing a petition or having access to the court for such purposes, that they may not be compelled to appear or participate in any conference scheduled by probation intake or produce any papers, and that they may have their lawyer present.
3. The probation director shall provide, adopt and disseminate, to his probation intake, additional written criteria and procedures when necessitated by court order or local circumstances.

4. Any such criteria adopted by a probation director shall be consistent with and shall not supersede The Family Court Act, uniform Family Court rules, court order, this Part, or other laws, rules or regulations.
5. Probation intake shall be knowledgeable of, cooperate with, and utilize community resources, wherever appropriate, as part of the adjustment process. The probation director shall provide for, adopt and disseminate, to his probation intake, written policies and procedures for referring appropriate cases to community resources.

§354.5 Preliminary probation procedures at intake.

(a) Criterion for determining a suitable case.

1. A suitable case shall meet all the following conditions:
 - i. probation intake determines that the case is in the apparent jurisdiction of the Family Court;
 - ii. probation intake advises the persons seeking to originate the court proceeding that a petition may be filed any time prior to or during the Adjustment period;
 - iii. the potential petitioner, the potential respondent and other interested persons, including the victim or injured person, if made a part of the adjustment process, all understand that such process and any agreement derived therein is entirely voluntary and such persons agree to proceed with the adjustment process;
 - iv. it appears to probation intake that the case can be adjusted within the time periods required by The Family Court Act and the uniform Family Court rules;
 - v. all circumstances in determining whether or not the case is suitable for adjustment under the provisions of The Family Court Act and the uniform Family Court rules have been considered; and
 - vi. The Family Court Act, the Uniform Family Court rules, a court order, or this Part do not exclude the case from an adjustment.

(b) Excluding non-suitable cases from adjustment based upon lack of jurisdiction and designation as information only:

1. Cases shall be excluded from any opportunity for adjustment where the subject of the case is outside the scope of The Family Court Act or where the court otherwise does not appear to have jurisdiction over the case. All other cases which are not preliminary probation procedure cases shall be excluded from any opportunity for adjustment where probation intake does not render intake services although such case is within the jurisdiction of the Family Court;

2. Where it appears to probation intake that the court would not have jurisdiction over the case, and such case is thereby excluded from any opportunity for adjustment, the potential petitioner shall be informed by probation intake that it is declining to adjust the case for that reason and that a petition may be filed with the court in order to test the question of jurisdiction. All excluded cases shall be designated as information-only cases and do not necessitate the opening of a case file; however, a numerical count shall, at the minimum, be maintained. (Information given over the telephone about a matter within the scope of the act, where an official case file is not opened, shall be recorded as information only.)

(c) Excluding suitable cases from adjustment based upon exclusionary criteria:

1. Except as provided in the previous subdivision, all other cases shall be excluded from any opportunity for adjustment only whenever one or more of the below-listed exclusionary criteria are present. When a case is so excluded from any opportunity for adjustment, the potential petitioner shall be advised that a petition may be filed with the court. A record shall be maintained whenever a case is excluded from any opportunity for adjustment.
2. The exclusionary criteria are as follows:
 - a. the person seeking to have a juvenile delinquency petition filed insists upon access to the presentment agency or declines to participate in the adjustment process;
 - b. the potential respondent insists upon access to the presentment agency, declines or is unavailable to participate in the adjustment process;
 - c. a judge of the court has not given written approval for adjustment, where such approval is required by the Family Court Act;
 - d. the presentment agency and the court have not given written approval for adjustment, where such approval is required by the Family Court Act;
 - e. the probation director, or a person authorized to act on his behalf, has not given prior written approval where the alleged conduct of the potential respondent, regardless of the age of this person at the time of the commission of the conduct, would constitute a designated felony act if committed by an older juvenile;
 - f. the probation director, or a person authorized to act on his behalf, has not given prior written approval for adjustment where the alleged conduct of the potential respondent, if committed by an adult, would constitute an A or B felony which is not a designated felony act;
 - g. the probation director, or a person authorized to act on his behalf, has not given prior written approval for adjustment where a potential respondent has previously been adjudicated a juvenile delinquent or juvenile offender;
 - h. it appears to probation intake that during the adjustment process the potential respondent may commit an act, which if done by an adult, would constitute a crime or endanger either his or another person's physical or

emotional health, or continue to harass or menace any party to the complaint, or fail to cooperate;

- i. it appears to probation intake that the potential respondent requires medical, psychological, psychiatric or other types of treatment, evaluation or observation, which can be obtained only through court intervention; and
- j. additional written criteria provided by the probation director requires an immediate referral for petition.

(i) Cases arising under article 4 of the Family Court Act:

- k. the potential petitioner insists upon access to the court and declines to participate in the adjustment process;
- l. the potential petitioner has secured or insists on securing an order of protection including a temporary order of protection;
- m. the potential respondent insists upon access to the court, declines or is unavailable to participate in the adjustment process;
- n. it appears to the probation service that a voluntary agreement will not result during the adjustment process; and
- o. additional written criteria provided by the probation director requires an immediate referral for petition.

(ii) Cases arising under article 8 of the Family Court Act:

- p. the potential petitioner insists upon access to the court and declines to participate in the adjustment process;
- q. the potential petitioner has secured or wishes to secure an order of protection including a temporary order of protection;
- r. the potential respondent insists upon access to the court, declines or is unavailable to participate in the adjustment process;
- s. the person seeking relief wishes to commence a criminal proceeding. (A person wishing to commence a criminal proceeding would not file a petition, but would be referred to the proper official for the filing of an accusatory instrument);
- t. it appears to probation intake that the potential respondent may inflict or threaten to inflict serious physical injury to the person seeking relief or any other member of the same family or household if the filing of a petition is delayed;
- u. it appears to probation intake that the conduct which is the basis for a family offense complaint will not cease as a result of any attempt to adjust the complaint; and
- v. additional written criteria provided by a probation director requires an immediate referral for petition.

(d) Criteria for determining when a suitable case is adjusted.

1. Cases shall be considered adjusted based upon the below-listed criteria:
 - i. where the potential petitioner and the potential respondent reach a voluntary agreement that is filed with the court in a case arising under article 4 of The Family Court Act, or achieve a resolution of the complaint or issues raised in the complaint;
 - ii. where probation intake in a case arising under article 8 of The Family Court Act has received no other family offense complaints against the potential respondent during the adjustment process, and either a voluntary written agreement between the person seeking relief and the potential respondent to cease the offensive conduct has been filed with the court, or the person seeking relief and the potential respondent have resolved the complaint through conciliation; and
 - iii. where the spouses in a matter arising under article 9 of The Family Court Act have agreed to consult with a community agency or have agreed that further court intervention, or counseling, is not necessary to alleviate their marital difficulties.

(e) Termination of adjustment process and criteria.

1. Where the adjustment process is terminated, based upon the below-listed criteria, the potential petitioner shall be notified that a petition may be filed.
2. Criteria for termination of the adjustment process are as follows:
 - i. the potential petitioner insists upon access to the court;
 - ii. the potential petitioner has secured or insists on securing an order of protection including a temporary order of protection;
 - iii. the potential respondent fails to cooperate, or fulfill any voluntary agreement;
 - iv. it appears to probation intake that in a case arising under article 4 of the Family Court Act there is no reasonable likelihood that a voluntary agreement shall be derived;
 - v. it appears to probation intake that the conduct forming the basis of a family offense complaint will not cease, or the potential respondent may inflict or threaten to inflict serious physical injury upon the person seeking relief in the family offense case or upon any other member of the same family or household, or the potential respondent in the family offense case may threaten to inflict physical injury on the person seeking relief or any other member of the same family or household;
 - vi. those acts or activities agreed upon in the adjustment process have not been completed, are incomplete in their performance, or have been completed unsuccessfully; and

- vii. additional written criteria provided by a probation director require an immediate referral for petition.

§354.6 Case closing requirements and criteria.

- (a) Cases referred to probation intake for preliminary probation procedures shall be closed in accordance with the below-listed criteria:
 - 1. A case where the adjustment process was not commenced and which was excluded from any opportunity for adjustment and referred for petition, shall be closed with the designation "referred for petition immediately".
 - 2. A case in which a potential petitioner failed to pursue the complaint or withdrew the complaint, for any reason, either before the commencement of the adjustment process or during such process, shall be closed with the designation "terminated matter not pursued and not referred for petition". A case in this category includes, but is not limited to, situations where a potential respondent is either unavailable or declines to participate in the adjustment process and the potential petitioner's determination to withdraw the complaint or not pursue it is based upon such availability or declining to participate.
 - 3. A case in which the satisfactory resolution of the complaint was derived without court intervention shall be closed with the designation "adjusted".
 - 4. A case in which the resolution of the complaint did not occur because, after the commencement of the adjustment process, the potential petitioner filed a petition, or the adjustment process was incomplete or unsuccessful and the potential petitioner was notified that a petition may be filed, shall be closed with the designation "terminated without adjustment and referred for petition".
 - 5. A case in which a potential petitioner seeking relief in a family offense proceeding wishes to commence a criminal proceeding and that person is referred to the proper official for the filing of an accusatory instrument shall be closed with the designation "referred to criminal court".

§354.7 Case record keeping requirements.

- (a) In addition to complying with Part 348 of this Chapter, case records shall comply with the below-listed requirements:
 - 1. A record shall be maintained on all suitable cases which have been excluded from any opportunity for adjustment and referred for petition immediately. In all cases, the record shall include the article of the Family Court Act under which the case arises, the exclusionary criteria utilized and rationale for exclusion, the date the case was closed, and a statement that the case was referred for petition immediately. In cases where the basis for the referral for petition immediately was

not an insistence upon access to the court, the record shall also include a description of the complaint in the case.

2. The records of cases, terminated matter not pursued, and Family Court article 8 cases referred to Criminal Court shall, at least, include a statement as to the circumstances which precluded the commencement or continuation of the adjustment process.
3. The records of cases which are not referred for petition immediately or are not terminated matter not pursued shall include the below-listed information:
 - i. a description of the complaint in the case and the article of The Family Court Act under which a petition may be filed;
 - ii. information to the effect that the potential petitioner and the potential respondent were advised of their rights and of the limits of the adjustment process as specified in the Family Court Act, the Uniform Family Court Rules and this Part;
 - iii. information to the effect that the participation in the adjustment process by the potential petitioner and the potential respondent, as well as any other person made a part of the adjustment process, is voluntary;
 - iv. a summary of key decisions, actions and services taken by those made a part of the adjustment process and probation intake; and
 - v. a closing summary which shall include as a minimum the date the Adjustment period commenced and the date the case was closed, together with a statement that the case was closed as adjusted or closed as terminated without adjustment and referred for petition. It shall also include the rationale for the final action in the case.

(b) Case records shall include the following information:

1. Where approval or consent to an adjustment is required by The Family Court Act, the Uniform Family Court Rules, this Part or local criteria, information as to the basis for the request for approval and/or consent and a written copy of such approval, consent, or denial thereof, if any.
2. 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.
3. Where community resources are used, a summary of their use and of the monitoring activities of probation intake.
4. For cases closed as adjusted, the factors which prompted the adjustment.
5. For cases that were terminated because the adjustment process is incomplete or unsuccessful, or when the potential respondent does not choose to commence the adjustment process, an indication that the potential petitioner was notified that a

petition may be filed.

6. For cases where the adjustment process was terminated prior to the satisfactory resolution of the complaint, the criteria and rationale therefor of the termination.
7. For cases in which the adjustment process requires more than two contacts between probation intake and the potential respondent, the behavior or activities that the potential respondent must accomplish in order to successfully complete the adjustment process.
8. For cases resolved by the filing of a voluntary agreement with the court, a copy of such agreement.
9. For cases referred back to probation by the court after a petition was filed, an indication that the court was notified of the subsequent final case action.

§354.8 Procedures for child support and paternity referral services at intake.

- (a) Probation intake shall provide for and render child support and establishment of paternity referral services pursuant to section 256(6)(a) of the Executive Law and, except as provided in subdivision (d) of this section, shall make an immediate referral of a potential petitioner to the child support enforcement unit of a local department of social services where:
 1. such potential petitioner is applying for or receiving aid to dependent children assistance, as defined by the State Department of Social Services, where the eligibility for such assistance is in question; or
 2. where such potential petitioner is not eligible for such assistance but does appear to be eligible for services rendered by such child support enforcement unit and wishes to utilize such services.
- (b) Upon a determination that a referral should be made, probation intake shall make all such referrals in accordance with referral guidelines that may be adopted by the State Director of Probation and Correctional Alternatives from time to time.
- (c) A record of each case in which a potential petitioner is rendered child support or paternity referral services shall, at the minimum, be maintained in a referral log.
- (d) Notwithstanding the previous subdivisions, the case shall be referred for petition immediately whenever the potential petitioner insists upon access to the court.

§354.9 Waivers.

- (a) Any and all requests for waivers, which term shall include variances, of this Part or any subdivision herein shall be made in writing, specifying with particularity those

provision(s) for which a waiver is sought together with the need and justification therefor. All such requests shall be filed with the State Director of Probation and Correctional Alternatives. The State Director of Probation and Correctional Alternatives may, in his discretion, upon good cause shown therefor as determined by him, permit a waiver and attach any conditions thereto as he may deem appropriate.