

PART 351
SUPERVISION OF PERSONS SENTENCED TO OR PLACED ON PROBATION

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§351.1 Definitions.

- (a) The term **[Absconder](#)** means a probationer who has failed to make his or her whereabouts known for a period of 30 calendar days by failure to report or who has left the jurisdiction of the court without permission of the court or probation officer.
- (b) The term **AS** means alternatively sentenced, and refers to the most intensive level of supervision exercised under ISP requirements.
- (c) The term **auxiliary personnel** means a qualified probation department employee, other than a probation officer, designated by the local director of probation to act for the Probation Department and who is monitored by a probation officer or supervisor.
- (d) The term **classification** means the specification of the type and frequency of contact between probation officer and probationer in accordance with particular criteria and procedures which will determine the required level of supervision.
- (e) The term **conditions of probation** means specific supervision requirements prescribed by the court as part of the probation disposition to assist the probationer in leading a law-abiding life.
- (f) The term **differential supervision** means a system whereby probationers are classified pursuant to specific criteria and assigned to either ISP or one of four levels of supervision: level I [intensive]; level II; level III; and level IV.

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- (g) The term **disposition** means the formal resolution of a case by a court.

- (h) The term **dual supervision** means either the status resulting from concurrent probation sentences where the duty of supervision may be carried out by more than one agency, or the establishment of custodial responsibility by another governmental or private social agency in concert with a probation disposition, or concurrent supervision by a parole agency.
- (i) The term **ISP** means the Intensive Supervision Program. ISP is an alternative to incarceration administered by the Division of Probation and Correctional Alternatives which primarily serves felony offenders identified as likely to be incarcerated but for the availability of ISP as a sentencing or violation of probation sentencing option. Assignment to ISP is based upon risk of incarceration rather than risk of future supervision failure.
- (j) The term **needs assessment** means standardized procedures which identify the probationer's needs or aspects of the probationer's behavior or life situation which, if not addressed, could impede rehabilitation or promote continued illegal behavior. The probationer shall be encouraged to participate in the needs assessment process.
- (k) The term **placed on probation** means a disposition imposed by a family court which permits the respondent to remain in the community under conditions specified by such court and to be supervised by a probation officer and may include supervision pursuant to an adjournment in contemplation of dismissal.
- (l) The term **probation sentence** means a sentence imposed by a criminal court which permits the convicted/adjudicated offender to remain in the community under conditions specified by such court and to be supervised by a probation officer, or a disposition imposed by a criminal court in adjournment in contemplation of dismissal cases involving marijuana.

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- (m) The term **supervision** means the sum of the activities of a probation officer, or probation officers or other authorized personnel acting as a team, which includes the review of the conditions of probation with each probationer, offering instruction with regard thereto, keeping informed of the probationer's compliance with the terms and conditions of probation; monitoring and holding a probationer accountable for his or her conduct, habits, associates, employment, recreation, and whereabouts; aiding a probationer in securing employment; and aiding and encouraging a probationer by individual or group counseling, guidance and admonition and by such other measures as may seem most suitable to bring about improvement in probationer conduct, condition, and general attitude toward society; and identifying and utilizing resources appropriate to the needs of the probationer. Supervision is in part accomplished by contacts.
- (n) The term **contact** means a communication with or concerning the probationer, in person, by telephone, by mail, by electronic medium or any other means approved by the State Director of Probation and Correctional Alternatives.
 - (1) The term **personal contact** means a face-to-face contact with the probationer by the assigned probation officer or officers, or other authorized personnel operating as a probation team.

- (2) The term **home visit** means a visit to the probationer's home to verify residence, to assess living conditions, monitor probationer compliance with the conditions of probation, and/or address service needs.
- (3) The term **collateral contact** means a communication, other than a normal supervisory interaction, between a probation department and a person other than the probationer concerning the probationer's behavior or status, either in person, by telephone, by mail, by electronic medium, or any other means approved by the State Director of Probation and Correctional Alternatives. For non-ISP cases, a review of a probationer's paystub containing identifying information may constitute a collateral contact.
- (4) The term **substitute personal contact** means a communication between a probation department and a service provider of residential care that gives sufficient information about the probationer as to stand in the stead of a face-to-face contact.

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- (o) The term **supervision period** means a time period determined by the classification level and calculated from the date a probationer is sentenced to or placed on probation, or from the date of completion of a condition of imprisonment imposed by a criminal court and periodically thereafter.
- (p) The term **termination** means the discharge of a sentence to or placement on probation by the court.
- (q) The term **probation team** means a group of probation officers or other probation personnel authorized by the local director of probation to perform supervision functions, who are designated to share the responsibility for case management and/or service delivery for either the full term of supervision or a limited period of time. A probation team may perform a specific supervision task or a variety of duties, in accordance with procedures established by the local director of probation. Any duty or task that this Part indicates may be performed by a probation officer may also be performed by a probation team, except as otherwise provided. All duties performed by auxiliary personnel as team members shall be monitored by a probation officer or supervisor.
- (r) The term **service provider** means any agency, organization or individual licensed, certified, or regulated by law that provides services to the probationer in accordance with the probationer's needs.
- (s) The term **technology-assisted reporting system** means an automated device or system, authorized for use in a department by the State Director of Probation and Correctional Alternatives, which has the capability of recording specific information, verifying probationer identity, and/or notifying assigned probation personnel of compliance with the order and conditions of probation.

- (t) The term ***transition case*** means a case ready for movement from supervision in ISP, based upon time under supervision and assessment of the case's compliance with AS supervision requirements; this is equivalent to non - ISP level I contact requirements as specified herein.

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§351.2 Initial Interview and Assignment of Cases.

- (a) Each probation director, or designee, shall assign a probation officer to the case within three business days from the Probation Department's notification by the court of the disposition.
- (b) Except in ISP cases, all persons placed on or sentenced to probation shall be seen by the probation director or by a designee for an initial interview within seven business days following the Probation Department's knowledge of the disposition, or probationer's release from imprisonment, or the department's actual assumption of supervision responsibility over a transfer case.
- (c) Except in ISP cases, the initial interview may be conducted by the assigned probation officer, another probation officer, or auxiliary probation personnel. When the initial interview is conducted by auxiliary probation personnel, it shall consist only of imparting to the probationer necessary preliminary information and instructions relating to the probation disposition and when, where, and to whom to report.
- (d) In ISP cases, the assigned officer shall conduct the initial interview, which shall take place no later than five business days after sentencing or prior to release for local conditional release. At the interview, in addition to the other requirements of this section, the ISP officer shall establish a reporting schedule and advise the person under supervision that daily contact with the probation department must be maintained if the probationer is not working, attending school, or otherwise fully occupied.

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§351.3 Classification of Probationers.

- (a) Each probation director shall use a selection or classification process in conformity with local practice approved by the State Director of Probation and Correctional Alternatives. Some cases may require placement in a supervision level different from that indicated by the classification process. In those instances, the reason for placement in a classification level higher or lower than that indicated by the classification process shall be documented in the case record, and conform to criteria approved by the local director of probation.
- (b) An assigned probation officer shall complete the following activities within 30 business days of the first meeting with the probationer:
- (1) the classification of the probationer's level of supervision;

- (2) the needs assessment process; and
 - (3) an initial plan of supervision with the probationer, based upon the needs assessment.
- (c) In ISP cases, in addition to the above requirements, within 30 calendar days from the date of sentence or local conditional release, the assigned ISP officer or team shall:
- (1) complete a needs assessment on cases where none has been completed or where the case comes into ISP as a local conditional release or violation of probation case; or
 - (2) obtain, review, and make any necessary modifications to a plan developed by another correctional alternative program, and conduct this process with the person under supervision.

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§351.4 Differential Supervision.

- (a) Differential supervision for non-ISP probationers supervised in criminal courts, and probationers/respondents supervised in Family Court.
- (1) Each probation department shall classify its non-ISP supervision caseload into four categories based upon a probationer's/respondent's likelihood of successful completion of probation and/or risk to the community. The reason for such classification shall be recorded in the official case record. The classification categories of supervision will be: level I; level II; level III, and level IV as follows:
 - (i) Level I.
 - (a) Required contacts.
 - (1) A probation officer shall make four or more personal contacts per month, at least one of which must be a home visit. Two personal contacts per month may be completed by a substitute personal contact where case circumstances permit.
 - (2) In all Level I non-ISP supervision cases, a probation officer shall make 6 or more collateral contacts per quarter. In juvenile delinquency and persons in need of supervision cases, quarterly contact with the probationer/respondent's parent or guardian and school or education program, when school is in session, shall be maintained. However, where there is ample justification, and with the approval of the immediate supervisor, a probation officer may reduce the number of collateral contacts to no fewer than three per quarter. Justification for and approval of any reduction shall be recorded in the official case record.

(ii) Level II.

(a) Required contacts.

- (1) A probation officer shall make two or more personal contacts per month, one or more of which may take place during a home visit. One personal contact per month may be completed by a substitute personal contact where case circumstances permit.
- (2) A probation officer shall make two or more collateral contacts per quarter and in juvenile delinquency and persons in need of supervision cases, quarterly contact with the probationer's/respondent's parent or guardian and school or educational program, when school is in session, shall be maintained.

(iii) Level III

(a) Cases may be assigned to this level of supervision in accordance with the classification or selection process.

(b) Cases may also be assigned to this level of supervision as a result of their specific technical or dispositional status as follows:

- (1) cases involving dual supervision; or
- (2) cases in which the current probation sentence or disposition has not been revoked and the probationer will be incarcerated or detained for a period in excess of 30 calendar days; or
- (3) cases in which individuals whose current probation sentences have not been revoked and who have been incarcerated for a period in excess of 30 days.

(c) Required contacts.

- (1) Required contacts in this category may be fulfilled through the use of technology-assisted reporting systems, subject to approval by the State Director of Probation and Correctional Alternatives. A probation officer or auxiliary personnel shall make one or more contacts per month with the probationer/respondent.
- (2) The probation officer or auxiliary personnel shall make at least one collateral contact per quarter. In juvenile delinquency and persons in need of supervision cases, these contacts shall be with the probationer/respondent's parent or guardian.
- (3) In dual supervision cases, the probation department shall review the case status via written progress and collateral contacts.

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(iv) Level IV.

- (a) Cases may be assigned to this category as a result of their specific technical status as follows:
 - (1) cases which have achieved satisfactory compliance and progress in Level III for at least a six month [one supervision] period and have been recommended for early discharge;
 - (2) [Absconders](#);
 - (3) intrastate transfer cases in which the duty of supervision is being carried out by another local probation department and jurisdiction is retained by the transferring court;
 - (4) interstate cases that involve the following:
 - (i) where transfer processing has not been completed; or
 - (ii) where a New York State court permits a probationer to continue to reside in a state which has refused to accept supervision subsequent to the Court's authorization of transfer to that state; or
 - (iii) where the statutory period of supervision in New York State has been completed for a probationer transferred from another state where that statutory period of supervision would continue;

- (5) cases in which the primary consideration is an outstanding financial obligation (e.g., restitution, fines, surcharges, fees, etc.) and these obligations have been consistently met during the course of supervision;
- (6) cases in which a probationer/respondent has been diagnosed with an infectious, contagious or terminal medical condition and more frequent reporting may compromise the well being of the individual probationer/respondent or his or her probation officer.
- (7) cases in which there would be no appreciable benefit by closer supervision, upon approval by the State Director of Probation and Correctional Alternatives.

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(b) Contact requirements

- (1) All Level IV contacts may be carried out by auxiliary personnel. Except for [Absconders](#) and retained jurisdiction intrastate transfer cases, the probation department shall make:
 - (i) one or more contacts per month with the probationer/respondent via mail, telephone, or technology-assisted reporting system; and
 - (ii) make one or more collateral contacts per quarter. [Absconder](#) case contacts shall be fulfilled in accordance with the requirements of Part 352. For intrastate transfer cases where jurisdiction has been retained by the sending court, the sending jurisdiction shall make contacts on a case appropriate basis.
- (2) The level of supervision for any previously-classified case shall be evaluated for revision at supervision appropriate time frames based upon any reclassification process approved by the State Director of Probation and Correctional Alternatives. [Absconder](#) cases, intrastate, interstate, dual supervision and incarceration cases may be reclassified without the utilization of the reclassification process. Classification of each probationer/respondent shall be reviewed and documented in the case record at the conclusion of each supervision report period by a probation officer or supervisor.

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(b) Differential Supervision for Probationers Supervised in ISP.

- (1) Each probation department participating in ISP shall classify its ISP supervision caseload into two categories, based upon a probationer's length of time under supervision and assessment of the case's compliance with AS supervision requirements. ISP cases are categorized as either AS or as Transition Cases, as follows:

(i) AS -- Alternatively Sentenced

(a) Felony cases shall be assigned to this level of supervision as a result of:

- (1) sentencing by a superior court to ISP with appropriate reference in the order and conditions of probation;
- (2) sentencing by a superior court to an alternative sentencing plan specifying ISP, or sentencing by a superior court to a correctional alternative program specifying ISP;
- (3) Restoration to probation supervision following commencement of violation of probation proceedings, with additional court-imposed ISP conditions included as part of an alternative sentencing plan;
- (4) Restoration to probation supervision following proceedings to modify or revoke the sentence of probation, based upon advocacy by or participation in a correctional alternative program, with ISP included in the modified order and conditions of probation; or
- (5) status as a local conditional releasee convicted of a felony who has been assigned to ISP.

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(b) Misdemeanor offenders may be assigned to AS under the following conditions:

- (1) the individual has a prior felony conviction which could precipitate a second felony offender determination; and
- (2) the individual has been originally charged with a felony in the current case; and
- (3) the current case has been, or will be disposed of in a county or supreme court, as a result of a grand jury indictment or superior court information.

(c) All cases supervised in ISP shall be supervised at the AS level for at least the first six months of supervision.

(d) Required contacts for AS cases.

- (1) The ISP officer shall make eight or more personal contacts per month, on a twice-a-week schedule, and two or more home visits per month. The ISP officer shall maintain daily contact with those persons under supervision who are not working, attending school or otherwise fully occupied.
- (2) The ISP officer shall make four or more collateral contacts per month, including discussions with the primary contact person. The primary contact person is the individual whom the person under supervision identifies as most important to successful completion of the supervision period.

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(ii) Transition Cases

(a) Transition Cases

- (1) where a case has been under AS supervision for at least six months and an assessment of compliance with supervision requirements indicates that the case is suitable for movement to a non-ISP caseload, the case shall be maintained in ISP transition status an additional three months. At the end of three months of successful transition level supervision, the case may be transferred to a non-ISP level of supervision.
- (2) Where a case has been under AS supervision for nine months, it shall be transferred from AS to transition status. At the end of three months of transition status, the case shall be transferred to a non-ISP caseload.
- (3) No case shall remain under ISP supervision, including transition status, for longer than twelve months unless one or more of the following three reasons apply and are documented in the case record:
 - (i) the probationer is in the process of receiving ancillary treatment services which would be adversely affected by transfer out of ISP; or
 - (ii) employment and restitution needs require continuing the case in ISP beyond twelve months; or
 - (iii) an administrative or judicial reprimand in response to non-compliant behavior while under ISP supervision requires maintaining the case in ISP beyond the twelve-month period.

- (b) Required contacts for transition cases. The ISP officer shall complete all non-ISP level I contact requirements, as specified in this Chapter, for all probationers assigned to transition level.

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(iii) Required contacts for split-sentence ISP cases.

- (a) Notwithstanding the requirements pertaining to AS or transition cases, in cases in which a probationer has been sentenced to incarceration as a condition of probation pursuant to section 60.01(2)(d) of the Penal Law followed by participation in the intensive supervision program, the ISP officer shall initiate the following activities:
 - (1) where geographically feasible, conduct an initial interview in accordance with this rule while the probationer is still detained;
 - (2) provide the probationer with the location of the reporting station and the ISP officer's phone number;
 - (3) attempt to confirm the expected date of release from confinement;
 - (4) complete a minimum of one additional personal contact during the time the probationer remains in confinement;
 - (5) complete two collateral contacts per month while the probationer is confined. These contacts may include clarification of legal status and pending cases, verification of potential residence and employment, identification of a primary contact person and/or appropriate service providers; and
 - (6) complete the initial post-release contact within seventy-two hours of release.
- (b) For the purpose of determining appropriate dates for ISP procedures and documentation, the date of release from confinement shall be considered to be the first day of supervision.

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(iv) Required contacts for Jailed or Detained ISP cases

- (a) Notwithstanding the requirements pertaining to AS or transition cases, in any case in which an ISP probationer is confined to a local facility as a result of a new arrest or sentence of incarceration for a period of ninety days or less, and the probation sentence has not been revoked, the ISP officer shall:
- (1) complete a minimum of one personal contact per month during confinement, for up to three months of confinement. No additional personal contacts are required if confinement extends beyond three months;
 - (2) maintain contact with the jail officials to ensure ISP awareness of release date;
 - (3) upon probationer's release from confinement, complete a personal contact within seventy-two hours and resume ISP supervision;
 - (4) where geographic distance makes personal contact impractical, collateral contact must be maintained in accordance with ISP requirements. The ISP officer shall maintain monthly contact with the detaining authorities and shall ascertain the expected date of release. An explanation for these collateral contacts must be entered into the case record.
 - (5) Collateral Follow-up for All Cases Involving Non-Probation Service Providers. Whenever a probation officer has referred a probationer to a non-probation service provider, it is the responsibility of such officer or a designated member of the probation team to:
 - (i) attempt to secure the probationer's consent for the release of information from the service provider;
 - (ii) verify the results of the referral with the service provider;
 - (iii) establish a periodic schedule of future communications with the service provider, unless the service is to be carried out in a single interaction with the service provider; and
 - (iv) communicate with the service provider at appropriate intervals, including at least once during the first quarter after the referral, unless the service is to be carried out in a single interaction with the service provider.

§351.5 Modification of terms and conditions of probation/early termination of probation dispositions.

- (a) In the absence of court direction, requests for modification of terms and conditions of probation shall be pursuant to the following procedures:
 - (1) A probation officer shall draft suggested revisions to the order and conditions of probation specifically stating what terms are to be modified or enlarged, from the original terms and conditions.
 - (2) A probation officer shall submit the proposed revision to the court with a covering memorandum indicating specific rationale for the modification or enlargement and request, if necessary, a court appearance for the probationer to effect these changes.
 - (3) If the modification of the conditions consists solely of the elimination or relaxation of one or more conditions, the probationer shall not be required to appear in court and shall be so advised unless the court directs otherwise. If the modification of the conditions consists of an enlargement of the conditions, the probationer shall be required to appear in court.
 - (4) Upon a probation officer's notification of the court's approval of the modification or enlargement of the terms and conditions of probation, the probation officer shall review all of the terms and conditions, formerly and newly imposed, with the probationer.
- (b) Early termination of a probation sentence or disposition may be recommended at any time where appropriate consistent with public safety and upon satisfactory compliance with the order and conditions of probation.

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§351.6 Reporting Requirements.

Each probation director shall report to the State Director of Probation and Correctional Alternatives in the form and manner prescribed, including any and all such information requested pertaining to each person sentenced to probation by a criminal court and each juvenile delinquent adjudicated of a fingerprintable offense and under the supervision of the probation director's department in accordance with timeframes established by the division.

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§351.7 Supervisory Directives/Instructions

351.7 Courts are required to impose specific conditions relating to supervision and other conditions required by law, and may impose other conditions of probation relative to conduct, rehabilitation, movement, and controls, so as to ensure that the individual being supervised will lead a law abiding life or assist him/her in doing so, or to ameliorate the conduct which gave rise to the offense/petition or prevent incarceration/placement. Every probation director may establish written policies providing that additional supervisory directives and/or instructions are required for the individual to follow as part of his/her respective supervision plan. Any directives and/or instructions shall be reviewed and approved by a supervisor within the department. Such directives or instructions shall relate to and clarify any general or specific conditions of probation imposed by the court relative to conduct, rehabilitation, movement, controls, assessment, needs, or classification relevant to the supervision plan of the individual. He/she shall be given written documentation of any such directives or instructions and the probation officer shall review its content with the individual being supervised to ensure that he/she is aware of and understands these supervisory requirements. The individual being supervised shall sign an acknowledgement that it has been provided and explained.