

# **RULE REVIEW**

## **Division of Probation and Correctional Alternatives**

Pursuant to §§202-d and 207 of the State Administrative Procedure Act, notice is hereby given of the following rules which were previously adopted by the Division of Probation and Correctional Alternatives (DPCA) and which need to be reviewed. Public comment on the continuation or modification of these rules is invited. At the present time, DPCA does not anticipate scheduling any hearing with respect to these rules. DPCA has provided probation departments the opportunity to either participate in workgroups and/or otherwise comments on prior adoptions of rule amendments and more recent internal drafts of proposed rule changes in the area of case record management, supervision, and investigations and reports. Such efforts have led to DPCA revising provisions to address and/or clarify issues raised. All of these rules are consistent with the State Director of Probation and Correctional Alternatives' authority in accordance with Executive Law Section 243(1) to "exercise general supervision over the administration of probation services throughout the state" and to "adopt general rules regulating methods and procedures in the administration of probation supervision, including investigations of defendants prior to sentence, and children prior to adjudication, supervision, case work, record keeping, and accounting, program planning and research so as to secure the most effective application of the probation system and the most efficient enforcement of the probation laws throughout the state." Information regarding these rules may be obtained from and comments may be submitted to Linda J. Valenti, Counsel, DPCA, 80 Wolf Road, Suite 501, Albany, New York 12205. Comments will be accepted for 45 days after publication of this notice in the *State Register*.

### **Part 345 State Financial Aid to Local Government Probation Services**

Analysis of the need for the rule: In accordance with Executive Law Section 246, the rule is needed to provide probation departments with parameters as to what are reimbursable and non-reimbursable probation expenses for purposes of state financial aid provided by DPCA. The purpose of this rule was to simplify past reimbursement as well as clarify existing and expand reimbursable expenses to reflect new areas and ensure no claims have been reimbursed by any other state source.

Legal basis for the rule: Executive Law Sections 243(1) and 246.

### **Part 346 Staff Development**

Analysis of the need for the rule: The rule is needed to establish minimum standards governing staff development in probation departments. The purpose of this rule was to clarify content requirements for annual staff development plans, statutory requirements, focus of training, and annual training requirements for supervisory/management and executive personnel, as well as special requirements for training para-professional and secretarial positions.

Legal basis for the rule: Executive Law Section 243(1).

### **Part 348 Case Record Management**

Analysis of the need for the rule: The rule is needed to establish minimum standards governing management of probation case records. The purpose of this rule was to provide minimum uniform standards governing accessibility, utilization, content, and destruction of probation case records. Future changes will further promote public/victim safety, increase offender accountability, facilitate appropriate communication and/or sharing by probation of certain case record information where deemed necessary. As internal review by probation departments of changes to this rule has already occurred with favorable reaction, a notice of proposed rule making is being published in October 2006 to ensure timely review and prompt implementation of regulatory changes.

Legal basis for the rule: Executive Law Section 243(1).

### **Part 350 Investigation and Reports**

Analysis of the need for the rule: The rule is needed to establish minimum standards governing manner of conducting probation investigations ordered by various courts and professional content of such reports. The purpose of this rule is to clarify existing laws governing investigations and reports, establish greater flexibility in the investigation and preparation of probation reports, ensure that the judiciary has relevant and reliable information for informed judicial decision making consistent with good probation practice and to promote public/victim safety and offender accountability. As internal review of probation departments of this rule has been on going in recent months and received favorable support, and prior emergency adoption has been well-received by the majority of probation departments, a notice of proposed rule making will be published in October 2006 to implement regulatory change.

Legal basis for the rule: Executive Law Section 243(1) and Family Court Act Section 252-a.

### **Part 351 Supervision of Persons Sentenced to or Placed on Probation**

Analysis of the need for the rule: The rule is needed to establish minimum standards with respect to supervision of probationers. The purpose of this rule was to provide greater flexibility to probation departments in initial classification and reclassification of probationers and change prior contact requirements to reflect changes in professional practice and new technology. Proposed modification to recognize instructions and/or supervisory directives pertaining to orders and conditions of probation are being considered and has been previously discussed with and been well-received by probation departments. Consequently, a notice of proposed rule making to effectuate this change will be published in October 2006.

Legal basis for the rule: Executive Law Section 243(1).

### **Part 352 Violations of Probation**

Analysis of the need for the rule: The rule is needed to establish minimum state standards governing handling of violations. The purpose of this rule was to set forth basic legal parameters governing violations, reflecting statutory changes, good professional practice, and the principles of a graduated sanctions approach, yet afford probation

departments considerable flexibility in local handling of violations. Proposed modification to expand the existing rule to provide more professional standards with respect to requesting a declaration of delinquency and issuance of a probation warrant are being considered.

Legal basis for the rule: Executive Law Section 243(1).

**Part 353 Financial Obligations**

Analysis of the need for the rule: The rule is needed to establish minimum state standards governing collection and disbursement of financial obligations and ensure probation departments collect and disburse financial obligations in accordance with legal requirements and acceptable accounting procedures. The purpose of this rule was to clarify existing laws governing financial obligations, provide minimum requirements consistent with good probation practice, reflect additional monies collected by probation departments, and promote offender accountability and victim compensation.

Legal basis for the rule: Executive Law Section 243(1).

**Part 355 Probation Officers as Peace Officers**

Analysis of the need for the rule: This rule is needed as probation officers are recognized as peace officers pursuant to Criminal Procedure Law Section 2.10(24) and Executive Law Section 257(1) and exercise peace officer duties routinely in the course of performing core probation functions. Accordingly, it is critical that minimum standards are maintained in this area.

Legal basis for the rule: Executive Law Section 243(1).

**Part 360 Waivers**

Analysis of the need for the rule: This rule establishes parameters by which probation departments may request a waiver of regulatory provisions and criteria which must be satisfied. The purpose of establishing a new rule in this area was to consolidate in one rule waiver language, simplify the process by which a request may be sought, and establish appropriate and uniform waiver criteria.

Legal basis for the rule: Executive Law 243(1).