§ 390.50 Confidentiality of pre-sentence reports and memoranda.

1. In general. Any pre-sentence report or memorandum submitted to the court pursuant to this article and any medical, psychiatric or social agency report or other information gathered for the court by a probation department, or submitted directly to the court, in connection with the question of sentence is confidential and may not be made available to any person or public or private agency except where specifically required or permitted by statute or upon specific authorization of the court. For purposes of this section, any report, memorandum or other information forwarded to a probation department within this state from a probation agency outside this state is governed by the same rules of confidentiality. Any person, public or private agency receiving such material must retain it under the same conditions of confidentiality as apply to the probation department that made it available.

2. Pre-sentence report; disclosure, victim access to impact statements; general principles. (a) Not less than one court day prior to sentencing, unless such time requirement is waived by the parties, the pre-sentence report or memorandum shall be made available by the court for examination and for copying by the defendant's attorney, the defendant himself, if he has no attorney, and the prosecutor. In its discretion, the court may except from disclosure a part or parts of the report or memoranda which are not relevant to a proper sentence, or a diagnostic opinion which might seriously disrupt a program of rehabilitation, or sources of information which have been obtained on a promise of confidentiality, or any other portion thereof, disclosure of which would not be in the interest of justice. In all cases where a part or parts of the report or memoranda are not disclosed, the court shall state for the record that a part or parts of the report or memoranda have been excepted and the reasons for its action. The action of the court excepting information from disclosure shall be subject to appellate review. The pre-sentence report shall be made available by the court for examination and copying in connection with any appeal in the case, including an appeal under this subdivision. Upon written request, the court shall make a copy of the presentence report, other than a part or parts of the report redacted by the court pursuant to this paragraph,

available to the defendant for use before the parole board for release consideration or an appeal of a parole board determination or an application for resentencing pursuant to section 440.46 or 440.47 of this chapter. In his or her written request to the court the defendant shall affirm that he or she anticipates an appearance before the parole board or intends to file an administrative appeal of a parole board determination or meets the eligibility criteria for and intends to file a motion for resentencing pursuant to 440.46 of this chapter or has received notification from the court which received his or her request to apply for resentencing pursuant to section 440.47 of this chapter confirming that he or she is eligible to submit an application for resentencing pursuant to section 440.47 of this chapter. The court shall respond to the defendant's written request within twenty days from receipt of the defendant's written request.

(b) The victim impact statement prepared pursuant to subdivision three of section 390.30 of this article shall be made available by the prosecutor prior to sentencing to the victim or victim's family in accordance with his responsibilities under subdivision one of section 60.27 of the penal law and sections six hundred forty-one and six hundred forty-two of the executive law. The district attorney shall also give at least twenty-one days notice to the victim or victim's family of the date of sentencing and of the rights of the victim pursuant to subdivision two of section 380.50 of this chapter, including the victim or victim's family's obligation to inform the court of its intention, at least ten days prior to the sentencing date, to make a statement at sentencing. If the victim has not received timely notice pursuant to this paragraph, the court may proceed with sentencing if it determines that the victim and the defendant have received reasonable notice or may adjourn sentencing for no more than seven days in order to afford such reasonable notice. Failure to give notice shall not affect the validity of any sentence imposed.

3. Public agencies within this state. A probation department must make available a copy of its pre-sentence report and any medical, psychiatric or social agency report submitted to it in connection with its pre-sentence investigation or its supervision of a defendant, to any court, or to the probation department of any court, within this state

that subsequently has jurisdiction over such defendant for the purpose of pronouncing or reviewing sentence and to any state agency to which the defendant is subsequently committed or certified or under whose care and custody or jurisdiction the defendant subsequently is placed upon the official request of such court or agency therefor. In any such case, the court or agency receiving such material must retain it under the same conditions of confidentiality as apply to the probation department that made it available, except that an agency with jurisdiction as that term is defined in subdivision (a) of section 10.03 of the mental hygiene law shall make such material available to the commissioner of mental health, attorney general, case review panel, or psychiatric examiners described in article ten of the mental hygiene law when such persons or entities request such material in the exercise of their statutory functions, powers, and duties under article ten of the mental hygiene law.

4. Public agencies outside this state. Upon official request of any probation, parole or public institutional agency outside this state, a probation department may make any information in its files available to such agency. Any such release of information shall be conditioned upon the agreement of the receiving agency to retain it under the same conditions of confidentiality as apply to the probation department that made it available.

5. Division of criminal justice services. Nothing contained in this section may be construed to prevent the voluntary submission by a probation department of data in its files to the division of criminal justice services.

6. Professional licensing agencies. Probation departments shall provide a copy of presentence reports prepared in the case of individuals who are known to be licensed pursuant to title eight of the education law to the state department of health if the licensee is a physician, a specialist's assistant or a physician's assistant, and to the state education department with respect to all other such licensees. Such reports shall be accumulated and forwarded every three months, shall be in writing, may be submitted in a hard copy or electronically,

and shall contain the following information:

(a) the name of the licensee and the profession in which licensure is held,

(b) the date of the conviction and the nature thereof,

(c) the index or other identifying file number.

In any such case, the state department receiving such material must retain it under the same conditions of confidentiality as apply to the probation department that made it available.