§ 351.1. Probation, investigation and diagnostic assessment. 1. Following a determination that a respondent has committed a designated felony act and prior to the dispositional hearing, the judge shall order a probation investigation and a diagnostic assessment. For the purposes of this article, the probation investigation shall include, but not be limited to, the history of the juvenile including previous conduct, the family situation, any previous psychological and psychiatric reports, school adjustment, previous social assistance provided by voluntary or public agencies and the response of the juvenile to such assistance. For the purposes of this article, the diagnostic assessment shall include, but not be limited to, psychological tests and psychiatric interviews to determine mental capacity and achievement, emotional stability and mental disabilities. It shall include a clinical assessment of the situational factors that may have contributed to the act or acts. When feasible, expert opinion shall be rendered as to the risk presented by the juvenile to others or himself, with a recommendation as to the need for a restrictive placement.

2. Following a determination that a respondent committed a crime and prior to the dispositional hearing, the court shall order a probation investigation and may order a diagnostic assessment.

* 2-a. (a) In a social services district operating an approved juvenile justice services close to home initiative pursuant to section four hundred four of the social services law, the local probation department shall develop and submit to the office of children and family services for prior approval a validated pre-dispositional risk assessment instrument and any risk assessment process. The office shall share a copy of any such instrument and process with the office of probation and correctional alternatives and any expert consulting with the office pursuant to this section. Such department shall periodically revalidate any approved pre-dispositional risk assessment instrument. The department shall conspicuously post information about the instrument on its website, including but not limited to, the name of the instrument; the name and contact information of the person, institution or company that developed such instrument; what the instrument is intended to measure; the types of factors and information the instrument takes into consideration; the process by which the instrument is used in

both the pre-disposition investigation and dispositional phase of a hearing; the purpose for the instrument and how the instrument informs the recommendation in the pre-dispositional investigation report; links to independent research and studies about the instrument as well as its own validation analysis relating to the instrument, when available; the most recent date the instrument was validated and the date the next re-validation process is anticipated to begin. The department shall confer with appropriate stakeholders, including but not limited to, attorneys for children, presentment agencies and the family court, prior to revising any validated pre-dispositional risk assessment instrument or process. Such department shall provide any approved pre-dispositional risk assessment instrument and process to the temporary president of the senate and the speaker of the assembly. Any revised pre-dispositional risk assessment instrument shall be subject to periodic empirical validation and to the approval of the office of children and family services. The office of children and family services shall consult with individuals with professional research experience and expertise in criminal justice; social work; juvenile justice; and applied mathematics, psychometrics and/or statistics to assist the office in determining the methods it will use to: approve the department's validated and revalidated pre-dispositional risk assessment instrument and process; and analyze the effectiveness of the use of such instrument and process in accomplishing their intended goals; and analyze, to the greatest extent possible, any disparate impact on dispositional outcomes for juveniles based on race, sex, national origin, economic status, and any other constitutionally protected class, regarding the use of such instrument. The office shall consult with such individuals regarding whether it is appropriate to attempt to analyze whether there is any such disparate impact based on sexual orientation and, if so, the best methods to conduct such analysis. The office shall take into consideration any recommendations given by such individuals involving improvements that could be made to such instrument and process. The department shall provide training on the approved instrument and any approved process to the applicable family courts, presentment agency, and court appointed attorneys for respondents.

(b) Once an initial validated risk assessment instrument and any risk assessment process have been approved by the office of children and

family services in consultation with the office of probation and correctional alternatives, the local probation department shall provide the applicable supervising family court judge with a copy of the validated risk assessment instrument and any such process along with the letter from the office of children and family services approving the instrument and process, if applicable, and indicating the date the instrument and any such process shall be effective, provided that such effective date shall be at least thirty days after such notification.

(c) Commencing on the effective date of a validated pre-dispositional risk assessment instrument and any approved process and thereafter, each probation investigation ordered under subdivision two of this section shall include the results of the validated risk assessment of the respondent and process, if any; and a respondent shall not be placed in accordance with section 353.3 or 353.5 of this part unless the court has received and given due consideration to the results of such validated risk assessment and any approved process and made the findings required pursuant to paragraph (f) of subdivision two of section 352.2 of this part.

(d) Notwithstanding any other provision of law to the contrary, data necessary for completion of a pre-dispositional risk assessment instrument may be shared among law enforcement, probation, courts, detention administrations, detention providers, presentment agencies, and the attorney for the child upon retention or appointment solely for the purpose of accurate completion of such risk assessment instrument. A copy of the completed pre-dispositional risk assessment instrument shall be made available to the attorney for the respondent and the applicable court.

(e) The local probation department shall provide the office of probation and correctional alternatives with information regarding the use of the pre-dispositional risk assessment instrument and any risk assessment process in the time and manner required by the office. The office may require that such data be submitted to the office electronically. The office shall not commingle any such information with any criminal history database. The office shall share such information with the office of children and family services. The office of children and family services shall use and share such information only for the purposes of this section and in accordance with this section. Such

information shall be shared and received in a manner that protects the confidentiality of such information. The sharing, use, disclosure and redisclosure of such information to any person, office, or other entity not specifically authorized to receive it pursuant to this section or any other law is prohibited.

(f) The family courts shall provide the office of children and family services with such information, in the time and manner required by the office, as is necessary for the office to determine the validity and efficacy of any pre-dispositional risk assessment instrument and process submitted to the office for approval under this subdivision and to analyze any disparate impact on dispositional outcomes for juveniles in accordance with paragraph (a) of this subdivision. The office shall use and share such information only for the purposes of this section and in accordance with this section. Such information shall be shared and received in a manner that protects the confidentiality of such information. The sharing, use, disclosure and redisclosure of such information to any person, office, or other entity not specifically authorized to receive it pursuant to this section or any other law is prohibited.

(g) The office of probation and correctional alternatives shall promulgate regulations, in consultation with the office of children and family services, regarding the role of local probation departments in the completion and use of the pre-dispositional risk assessment instrument and in the risk assessment process.

* NB Repealed March 31, 2028

* 2-b. The office of children and family services shall develop a validated pre-dispositional risk assessment instrument and any risk assessment process for juvenile delinquents. The office shall periodically revalidate any approved pre-dispositional risk assessment instrument. The office shall conspicuously post any approved pre-dispositional risk assessment instrument and any risk assessment process on its website and shall confer with appropriate stakeholders, including but not limited to, attorneys for children, presentment agencies and the family court, prior to revising any validated pre-dispositional risk assessment instrument or process. Any such revised pre-dispositional risk assessment instrument shall be subject to periodic empirical validation. The office of children and family

services shall consult with individuals with professional research experience and expertise in criminal justice; social work; juvenile justice; and applied mathematics, psychometrics and/or statistics to assist the office in determining the method it will use to: develop, validate and revalidate such pre-dispositional risk assessment instrument; develop the risk assessment process; and analyze the effectiveness of the use of such pre-dispositional risk assessment instrument and process in accomplishing their intended goals; and analyze, to the greatest extent possible, any disparate impact on dispositional outcomes for juveniles based on race, sex, national origin, economic status, and any other constitutionally protected class, regarding the use of such instrument. The office shall consult with such individuals regarding whether it is appropriate to attempt to analyze whether there is any such disparate impact based on sexual orientation and, if so, the best methods to conduct such analysis. The office shall take into consideration any recommendations given by such individuals involving improvements that could be made to such instrument and process. The office also shall consult with local probation departments in the development of the validated pre-dispositional risk assessment instrument and the revalidation of such instrument. The office of children and family services shall provide training on the instrument and any process to the family courts, local probation departments, presentment agencies and court appointed attorneys for respondents. The office may determine that a pre-dispositional risk assessment instrument and any process in use pursuant to subdivision two-a of section 351.1 of this part may continue to be used pursuant to such subdivision instead of requiring the use of any instrument or process developed pursuant to this subdivision.

(a) Once an initial validated risk assessment instrument and risk assessment process have been developed, the office of children and family services shall provide the supervising family court judges and local probation departments with copies of the validated risk assessment instrument and process and notify them of the effective date of the instrument and process, which shall be at least six months after such notification.

(b) Commencing on the effective date of a validated risk assessment instrument and any risk assessment process and thereafter, each

probation investigation ordered under subdivision two of this section shall include the results of the validated risk assessment of the respondent and process, if any; and a respondent shall not be placed in accordance with section 353.3 or 353.5 of this part unless the court has received and given due consideration to the results of such validated risk assessment and any process and made the findings required pursuant to paragraph (g) of subdivision two of section 352.2 of this part.

(c) Notwithstanding any other provision of law to the contrary, data necessary for completion of a pre-dispositional risk assessment instrument may be shared among law enforcement, probation, courts, detention administrations, detention providers, presentment agencies and the attorney for the child upon retention or appointment solely for the purpose of accurate completion of such risk assessment instrument, and a copy of the completed pre-dispositional risk assessment instrument shall be made available to the attorney for the respondent and applicable court.

(d) Local probation departments shall provide the office of probation and correctional alternatives with information regarding use of the pre-dispositional risk assessment instrument and any risk assessment process in the time and manner required by the office. The office may require that such data be submitted to the office electronically. The office shall not commingle any such information with any criminal history database. The office shall share such information with the office of children and family services. The office of children and family services shall use and share such information only for the purposes of this section and in accordance with this section. Such information shall be shared and received in a manner that protects the confidentiality of such information. The sharing, use, disclosure and redisclosure of such information to any person, office, or other entity not specifically authorized to receive it pursuant to this section or any other law is prohibited.

(e) Law enforcement and the family courts shall provide the office of children and family services with such information, in the time and manner required by the office, as is necessary for the office to develop, validate and revalidate any such pre-dispositional risk assessment instrument and process and to analyze any disparate impact on dispositional outcomes for juveniles in accordance with this section.

The office shall use and share such information only for the purposes of this section and share it in accordance with this section. Such information shall be shared and received in a manner that protects the confidentiality of such information. The sharing, use, disclosure and redisclosure of such information to any person, office, or other entity not specifically authorized to receive it pursuant to this section or any other law is prohibited.

(f) The office of probation and correctional alternatives shall promulgate regulations, in consultation with the office of children and family services, regarding the role of local probation departments in the completion and use of the pre-dispositional risk assessment instrument and in the risk assessment process.

* NB Repealed March 31, 2028

3. A child shall not be placed in accord with section 353.3 unless the court has ordered a probation investigation prior to the dispositional hearing; a child shall not be placed in accord with section 353.4 unless the court has ordered a diagnostic assessment prior to such hearing.

4. Each investigation report prepared pursuant to this section shall afford the victim the right to make a statement. Such victim impact statement shall include an analysis of the victim's version of the offense, the extent of injury or economic loss and the actual out-of-pocket loss or damage to the victim, including the amount of unreimbursed medical expenses, if any, and the views of the victim relating to disposition including the amount of restitution sought by the victim, subject to availability of such information. In the case where the victim is unable to assist in the preparation of the victim impact statement, the information may be acquired from the victim's family. Nothing contained in this section shall be interpreted to require that a victim or his or her family supply information for the preparation of an investigation report or that the dispositional hearing should be delayed in order to obtain such information.

5. (a) All diagnostic assessments and probation investigation reports shall be submitted to the court and made available by the court for inspection and copying by the presentment agency and the respondent at

least five court days prior to the commencement of the dispositional hearing. All such reports shall be made available by the court for inspection and copying by the presentment agency and the respondent in connection with any appeal in the case.

(b) The victim impact statement shall be made available to the victim or the victim's family by the presentment agency prior to sentencing.

6. All reports or memoranda prepared or obtained by the probation service for the purpose of a dispositional hearing shall be deemed confidential information furnished to the court and shall be subject to disclosure solely in accordance with this section or as otherwise provided for by law. Except as provided under section 320.5 such reports or memoranda shall not be furnished to the court prior to the entry of an order pursuant to section 345.1.

7. The probation services which prepare the investigation reports shall be responsible for the collection and transmission to the office of probation and correctional alternatives, of data on the number of victim impact statements prepared. Such information shall be transmitted annually to the office of victim services and included in the office's biennial report pursuant to subdivision twenty-one of section six hundred twenty-three of the executive law.