

PART 363
CONDITIONAL RELEASE SUPPLEMENTAL INVESTIGATIONS

(Statutory authority Executive Law, §§243, 257-b; Correction Law, §273)

- Sec. 363.1 Objective
363.2 Applicability
363.3 Rules for investigation

Historical Note

Part (§§363.1-363.5) added by renum. Part 18, Title 7, filed Aug. 31, 1971;
repealed, filed March 31, 1975; new filed: May 9, 1989 as emergency measure;
July 25, 1989 as emergency measure; Aug. 25, 1989 eff. Sept. 13, 1989.

§363.1 Objective.

To provide the Conditional Release Commission with accurate and reliable information to determine the appropriateness of the conditional release decision and any special conditions for the release supervision period.

Historical Note

Sec. added by renum. 18.1, Title 7, filed Aug. 31, 1971; repealed, filed March 31, 1975;
new filed: May 9, 1989 as emergency measure;
July 25, 1989 as emergency measure; Aug. 25, 1989 eff. Sept. 13, 1989.

§363.2 Applicability.

(a) these procedures shall govern local probation departments' responses to requests to conduct investigations for local Conditional Release Commissions.

(b) Wherever the local Conditional Release Commission determines that the local probation department shall conduct a supplemental investigation of an inmate applying for conditional release, the request shall be in writing.

Historical Note

Sec. added by renum. 18.2, Title 7, filed Aug. 31, 1971; repealed, filed March 31, 1975;
new filed: May 9, 1989 as emergency measure; July 25, 1989 as emergency measure;
Aug. 25, 1989 eff. Sept. 13, 1989.

§363.3 Rules for investigation.

(a) *Receipt of request.* The receipt of such request shall be entered in a departmental log that includes at least the date received, the name of the person subject to the investigation, final conviction charge/finding, anticipated release decision date and the name of the investigating officer assigned to do the investigation and prepare the report. The probation department shall make arrangements with the Conditional Release Commission regarding timely submission of the supplemental report.

(b) **Scope.** The results of such investigation together with all other information compiled by the local correctional facility and the complete legal history of such inmate shall be readily available when the conditional release of such inmate is being considered. Such information shall include a complete statement of the crime for which the inmate has been sentenced, the circumstances of such crime, all presentence memoranda, the nature of the sentence, the court in which such inmate was sentenced, the name of the judge and district attorney and copies of such probation reports as may have been made as well as any reports as to the inmate's social, physical, mental and psychiatric condition and history.

(c) **Conducting the investigation.** Following the receipt of a Conditional Release Commission request, the probation officer shall:

- (1) Gather and review all previously prepared investigation reports.
- (2) Supplement previously prepared reports with verified material in order to ensure that all required information, as stated below (see: Content of the Report) is made available to the Conditional Release Commission for release decision making.
- (3) Wherever a local probation director determines it is feasible, an in-person interview with the inmate should be conducted.
 - (i) Any interviews shall be directed toward obtaining and clarifying relevant information and making observations of the inmate's current behavior, attitudes, character and reasons for conditional release.
 - (ii) During any interview, the inmate shall be given a release of information form to sign in accordance with local policies and procedures, and consistent with any applicable law.

If an in-person interview is not conducted, the assigned probation officer should attempt to clarify any relevant information and obtain information as to the inmate's current behavior, attitudes, character and reasons for conditional release either through telephone or written communication.

(4) Contact the sentencing court and prosecuting attorney for recommendations of the conditional release decision.

(5) Consider available community resources and their applicability to the inmate in arriving at any recommendations.

(6) Verification.

- (i) Material information shall be verified whenever feasible and appropriate to the release decision. Auxiliary personnel may be utilized to conduct the verification process, except where the professional skill or judgement of the probation officer is required.

(ii) All verified information in the supplemental report shall be documented, including method, source, by whom obtained, and date.

(iii) The following information shall be verified:

(a) planned living arrangements; specifically, where and with whom the inmate will reside upon release;

(b) anticipated employment, including name of employer and position to be held upon release;

(c) treatment providers pertaining to conditions of release;

(d) any other factor deemed relevant by the investigating probation officer; and

(e) and any matter which the Conditional Release Commission directs to be included.

(iv) Where such information has not been previously verified during the preparation of presentence or pre-plea reports, every effort shall be made to verify the following:

(a) date of birth of eligible inmate;

(b) legal history;

(c) instant offense;

(d) the existence of any undischarged restitution orders or surcharges, including the amount ordered, the manner of payment, and outstanding balance;

(e) the existence of any outstanding warrants or indictments and their current status;

(f) mental and physical health; and

(g) current educational level and status.

(d) ***Content of the report.*** The supplemental report shall include, at a minimum, the following:

(1) Personal identification information: This information shall be on the face sheet.

(2) Instant offense: Reference PSI or pre-plea reports, but if this material is incomplete, list date, place, time of day, description of victim, injuries sustained, value of drug or theft sale, use of weapon, culpability, date of arrest, significant aggravating or mitigating circumstance.

Also describe community adjustment if the instant offense involved bail or release on recognizance. Confirm existence of any victim impact statement, if relevant, and summarize.

(3) Legal history: Reference PSI or pre-plea reports, but if this material is incomplete, list all arrest dates, charges, places and dispositions in chronological order. Indicate all institutionalizations, applications for conditional release and results, if known.

(4) Social history: Reference PSI or pre-plea reports, but if this material is incomplete, list an update.

(5) Mental and physical health: Reference any material information and specifically analyze alcohol and/or drug use, if any.

(6) Outstanding Warrants or Indictments, Undischarged Restitution Orders, or Surcharges and Orders of Protection: List source of issuance, place of issuance. Indicate contacts, dates and nature of response(s). List "none" if no appropriate entries.

(7) Previous Probation/Parole Supervision Adjustment: Indicate if person was on probation or parole at the time of the instant offense and results of any previous periods of probation supervision or parole.

(8) Institutional adjustment: Briefly explain the facts and seriousness of any known incidents or disciplinary actions occurring during this current period of incarceration. Summarize adjustment to any institutional programs, including special treatment programs, work and vocational or academic education if relevant to release determination.

(9) Inmate statement: Provide a statement of inmate's agreement or disagreement with the summary of the official records, including possible continued allegations of innocence. Also include any information regarding appeals of the instant offense.

(10) Sentencing Judge and/or Prosecutor's Recommendation: Provide a reference to the request for recommendation regarding the inmate's release including date of request, name, position and addresses of individual(s) solicited and indicate whether a response was received and if so, any recommendation(s) or comment(s).

(11) Planned Living Arrangements, including the address of anticipated residence and the name and relationship(s) with whom the person will reside.

(12) Any Anticipated Employment, including the name and address of employer and position anticipated to be held.

(13) Evaluative analysis: This section of the report shall succinctly present an analysis and evaluation relevant to the relationships between the inmate's past and present behavior and his capacity to live in the community in a legally acceptable manner.

(14) Recommendation: The report shall specify whether or not release is recommended.

When conditional release is recommended, special conditions may be specified and shall flow logically from the evaluative analysis or case factors noted in the report as follows:

(i) Behavioral conditions specified shall relate to the required control of the inmate in the community or his/her needs.

(ii) Monetary conditions for undischarged or previously ordered restitution specified shall at minimum include the specific amount of restitution and manner of payment.

A copy of the latest pre-sentence investigation report shall, if available, be attached to the supplemental investigation report.

Historical Note

Sec. added by renum. 18.3, Title 7, filed Aug. 31, 1971; repealed, filed March 31, 1975;
new filed: May 9, 1989 as emergency measure; July 25, 1989 as emergency measure;
Aug. 29, 1989 eff. Sept. 13, 1989.

Historical Note

Secs. added by renum. 18.4-18.5, Title 7, filed Aug. 31, 1971;
repealed, filed March 31, 1975 eff. March 28, 1975.