

 <p style="text-align: center;">STATE OF NEW YORK DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION</p> <p style="text-align: center;">DIRECTIVE</p>	<p>TITLE</p> <p>Offender Requests for Copies of Presentence Reports</p>		<p>NO. 8370</p>
			<p>DATE 10/04/2013</p>
<p>SUPERSEDES</p> <p>NYS Division of Parole P&P 8370.00</p>	<p>DISTRIBUTION</p> <p>A B</p>	<p>PAGES</p> <p>PAGE 1 OF 5</p>	<p>DATE LAST REVISED</p>
<p>REFERENCES (Include but are not limited to)</p> <p>Criminal Procedure Law §390.50(2)(a), Chapter 56 Laws of 2010, 9NYCRR Part 8006, Criminal Procedure Law §390.30</p>	<p>APPROVING AUTHORITY</p> <p><i>Jeff McFarley</i> <i>Angela B. Jimenez</i></p>		

- I. DESCRIPTION:** To establish a uniform process for the procurement of a presentence report as an offender prepares for a discretionary release appearance before the Board of Parole or when an offender has filed, or intends to file, an administrative appeal following a denial of parole release.
- II. POLICY:** The 2010 amendment to Criminal Procedure Law (CPL) §390.50(2)(a) now allows an offender to apply to the sentencing Court for a copy of the presentence report(s) for use in preparation for an appearance before the Board of Parole, or in association with the filing of an administrative appeal or intention to file an administrative appeal pursuant to 9NYCRR Part 8006. The 2010 amendment reads as follows:

“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. In his or her written request to the court the defendant shall affirm that he or she anticipates an appearance before the board of parole or intends to file an administrative appeal of a parole determination. The court shall respond to the defendant’s written request within twenty days from receipt of the defendant’s written request.”

In an effort to implement this provision of the law, the Department of Corrections and Community Supervision (DOCCS), the Office of Probation and Correctional Alternatives (OPCA), and the Office of Court Administration (OCA), have collaborated in the development of a uniform process for offenders to follow. A two-part special DOCCS form, [Form #8370CS](#) (Part 1, “Request for County Presentence Report,” and Part 2, “Order Granting the Disclosure of a Presentence Report,”), has been developed to be used exclusively for the purpose of requesting a copy of the presentence report from the Court. It is the policy of the Department to provide assistance to offenders under DOCCS, New York State Office of Children and Family Services (OCFS), and New York State Office of Mental Health (OMH) custody.

The request form will be completed under the supervision of an Offender Rehabilitation Coordinator (ORC) or a Supervising Offender Rehabilitation Coordinator (SORC) at the facility of confinement, and facility staff will be responsible for mailing the form to the sentencing Court. The request form will be maintained in the Community Supervision case folder and is to be completed by Department personnel only. Where so ordered by the sentencing Court, facility staff will be responsible for providing the offender with a copy of the presentence report.

The rules governing an offender’s request for access to documents under the NYS Freedom of Information Law (FOIL) do not apply to this provision and therefore offenders are not required to pay a fee for a copy of either the presentence report or a copy of the order granting the disclosure of the presentence report.

III. DEFINITIONS

- A. Amendment to Criminal Procedure Law §390.50(2)(a) Summary: Upon written request, the Court shall make a copy of the presentence report available to an offender for use before his or her appearance before the Parole Board for release consideration or when an offender has filed, or intends to file, an administrative appeal of the Parole Board determination. In the written request, the offender must affirm that he or she anticipates an appearance before the Parole Board, or intends to file an administrative appeal of a Parole Board decision. The Court must respond within twenty (20) days from receipt of the written request.

- B. Form #8370CS, Part 1, "Request for County Presentence Report," and Part 2, "Order Granting the Disclosure of a Presentence Report": The DOCCS approved form that is to be submitted to the appropriate Court of jurisdiction. This document contains the name of the sentencing judge, address of the Court, county of conviction, offender's name, DIN number, NYSID number, facility name, indictment number(s), crime(s) of conviction, date of sentence, signature of the offender, and date of signature. This form also includes the Order and specific instructions of the Court, date of Order, and signature of the judge. The Order of the Court is to be returned to the attention of the Director of Internal Operations, Community Supervision Operations, New York State Department of Corrections and Community Supervision, Harriman State Campus, Building 2, 1220 Washington Avenue, Albany, NY 12226-2050.
- C. Presentence Investigation and Report (CPL §390.30): The pre-sentence investigation consists of the gathering of information with respect to the circumstances attending the commission of the offense, the defendant's history of delinquency or criminality, and the defendant's social history, employment history, family situation, economic status, education, and personal habits. Such investigation may also include any other matter which the agency conducting the investigation deems relevant to the question of sentence, and must include any matter the Court directs to be included. Whenever information is available with respect to the defendant's physical and mental condition, the presentence investigation must include the gathering of such information. The presentence report shall also contain a victim impact statement, unless it appears that such information would be of no relevance to the recommendation or Court disposition. The report 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 to the victim, and the views of the victim relating to disposition, including the amount of restitution and reparation sought by the victim after the victim has been informed of the right to seek restitution and reparation, subject to the availability of such information. In the case of a homicide or 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. The victim impact statement shall be made available to the victim by the prosecutor pursuant to Subdivision two of Section §390.50 of the CPL. Nothing contained in Section §390.30 of the CPL shall be interpreted as a requirement that a victim supply information during the course of the presentence investigation or preparation of the presentence report.

IV. PROCEDURE

- A. Offender Request for Assistance, Eligibility, and "Request for County Presentence Report"
1. Offender Request for Assistance and Eligibility Determination
 - a. Upon receipt of an offender's written request for assistance, the ORC will review the case record and make a determination regarding eligibility under CPL §390.50(2)(a). To be eligible, the offender must meet one of the following criteria:
 - (1) The offender must have a Parole Board release interview scheduled to occur within the next six (6) months; or
 - (2) The offender has filed or intends to file an administrative appeal of the most recent denial of parole.
 - b. If an offender does not meet either of the above referenced criteria, the ORC will notify the offender in writing and enter the case action in the Case Management System (CMS) record of the offender.
 2. "Request for County Presentence Report"
 - a. If an offender meets either of the above referenced criteria referenced above, the ORC will meet with the offender and complete Form #8370CS, "Request for County Presentence Report," and "Order Granting the Disclosure of a Presentence Report." The form must include the following information:
 - (1) The name and address of the sentencing judge;
 - (2) Date of the request;
 - (3) Offender name and identification number;

- (4) County of conviction (or adjudication);
- (5) Indictment number(s) or SCI number(s);
- (6) Crime(s) of conviction;
- (7) Name of the judge;
- (8) NYSID identification number;
- (9) Date of the sentence; and
- (10) Offender signature and date of signature.

Note: If an offender is serving an indeterminate sentence and a determinate sentence where a parole eligibility date has been established, staff must send the request for the county presentence report to the Court that imposed the indeterminate sentence and to the Court that imposed the determinate sentence.

Under CPL §390.50(2)(a), the Department will only provide assistance to offenders eligible for either Parole Board discretionary release consideration or in connection with an administrative appeal following a denial of discretionary release by a panel of the Parole Board. ORCs are not required to provide assistance, under this provision, to offenders serving only determinate sentences where there is no opportunity for Parole Board discretionary release consideration.

- b. The ORC will interview the eligible offender and complete Form #8370CS. **Under no circumstances** is an offender to be provided with a blank copy of this form. The request forms will be maintained by facility staff and they will only be made available to eligible offenders via the interview process.
- c. Following the interview with the offender, staff will mail the original request forms to the attention of the sentencing judge. The Court is required to respond to the written request within twenty (20) days from receipt of the request, and therefore it is extremely important that facility staff submit the request forms to the appropriate Court in a timely manner. In addition to the mailing address for the Court, facility staff must ensure that the front of the mailing envelope includes the reference, "Presentence Report Application." The request forms must include the return mail address of New York State Department of Corrections and Community Supervision, Community Supervision Operations, Harriman State Campus, Building 2, 1220 Washington Avenue, Albany, NY 12226-2050. This address should also be noted on the envelope as the return mailing address.

Note: If it is determined that the sentencing judge has retired, is deceased, or no longer serves as judge for the particular jurisdiction, facility staff will direct the request forms to the attention of the Administrative Judge of the Court where the offender was originally sentenced.

- d. Facility staff will place a copy of the request form in the offender's Community Supervision file.
- e. Facility staff will confirm submission of the request forms to the Court via case entry in the CMS record of the offender. Staff must ensure that the case record entry identifies the date that the request form was sent to the Court.

B. "Order Granting the Disclosure of the Presentence Report"

1. Return of Form #8370CS, "Order Granting the Disclosure of the Presentence Report" to Community Supervision Operations (Central Office) staff.
 - a. Part 2 of Form #8370CS will be returned by the Court to the attention of Community Supervision Operations in Central Office.
 - b. Upon receipt of the Order, Community Supervision Operations staff will make the appropriate case entry in the offender's CMS record.

- c. The Sentencing Court (Judge) will direct that DOCCS do one of the following:
 - (1) Order DOCCS to provide the offender with a copy of the presentence report from the Community Supervision file. However, if Community Supervision Operations staff discerns that the presentence report contains information that was obtained upon a promise of confidentiality; a copy will not be provided to the offender until such time as the Court decides whether or not information contained in the report should be redacted. Community Supervision Operations staff will be responsible for sending the presentence report to the Court (to the attention of the Judge); or
 - (2) Order DOCCS Community Supervision Operations staff to provide the Court with a copy of the presentence report from the Community Supervision file. The Court will review the presentence report and decide if any of the information needs to be redacted.
 - d. It will be the responsibility of Community Supervision Operations staff to review and inspect the Order from the Court, and to examine the presentence report to determine if any redactions are necessary regarding the personal information involving crime victims and their families.
 - e. If Community Supervision Operations staff make a determination that the presentence report contains information that was obtained upon a promise of confidentiality, the presentence report and a copy of the Order will be sent to the Court no later than five (5) business days following receipt of the original Order from the Court. Community Supervision Operations staff will make the appropriate case entry in the offender's CMS record identifying the date the documents were sent to the Court.
2. Release of the Presentence Report by Community Supervision Operations Staff
- a. After the Sentencing Court (Judge) renders the appropriate Order, the completed Form #8370CS (Part 1 and Part 2) will be returned by mail to Central Office Community Supervision Operations.
 - b. It is the responsibility of Community Supervision Operations staff to implement the Order, to notify the SORC (or designee), and to provide appropriate instructions to facility staff.
 - c. Within five (5) business days of receipt of the Order of the Court to grant the release of the presentence report, Community Supervision Operations staff will instruct facility staff to provide the offender either with:
 - (1) A copy of the presentence report without any redactions; or
 - (2) A copy of the presentence report with appropriate redactions as directed by the Court.

Note: Central Office Community Supervision Operations staff will provide facility staff with the copy of the redacted version of the presentence report.
 - d. Community Supervision Operations staff will make the appropriate case entry in the offender's CMS record identifying the date the documents were sent to the owning facility staff.
 - e. A copy of the presentence report, a copy of the Order to grant release of the presentence report, a copy of the redacted version of the presentence report, and accompanying Court Order shall be placed in the Community Supervision Central File.
3. Interview with the Offender
- a. The offender will be interviewed by the ORC and provided with either a copy of the presentence report without any redactions or a copy of the report with the appropriate redactions. The offender will also be provided with a copy of the accompanying "Order Granting Disclosure of the Presentence Report."
 - b. The ORC will make the appropriate case entry in the offender's CMS record to include the date of service and the identification of the documents provided to the offender.

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- c. A copy of the presentence report, a copy of the Order to grant release of the presentence report, a copy of the redacted version of the presentence report, and the accompanying Court Order shall be placed in the offender's Community Supervision file.
- C. CMS Case Entry Requirements
1. The following CMS contact/activity codes shall be utilized to record the required case actions in accord with this directive:
- a. Code - PR1 - P'SENTENCE REQ'ST SENT/CT - Owing facility staff shall confirm submission of the request form(s) to the Court via case entry in the CMS record of the offender.
 - b. Code - PR2 - P'SENTENCE RPT REC'V/CT - Community Supervision Operations staff shall confirm receipt of the Order from the Court via entry in the CMS record of the offender.
 - c. Code - PR3 - P'SENTENCE RPT SENT/COURT - Community Supervision Operations staff make a determination that the presentence report contains information that was obtained upon a promise of confidentiality. Staff shall document in the CMS record of the offender that the presentence report and a copy of the Order were sent to the Court no later than five (5) business days following the original receipt of the Order from the Court.
 - d. Code - PR4 - P'SENTENCE RPT SENT/FAC - Community Supervision Operations staff shall, within five (5) business days of receipt of the Order from the Court, instruct owing facility staff to provide the offender with either a copy of the presentence report without any redactions or a copy of the presentence report with appropriate redactions as directed by the Court. Community Supervision Operations staff shall make the appropriate entry in the CMS record of the offender and note the date the documents were sent to owing facility staff.
 - e. Code - PR5 - P'SENTENCE RPT TO OFFENDER - Owing facility staff shall make the appropriate entry in the CMS record of the offender, noting the date of service and the identification of the documents provided to the offender. Staff shall provide a copy of the Order and the presentence report via an interview with the offender.