



Division of Criminal Justice Services

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Executive Deputy Commissioner

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Deputy Commissioner and Director

STATE DIRECTOR'S MEMORANDUM #2020-3

TO: All Probation Directors

FROM: Robert M. MacCarone, Deputy Commissioner and Director *RMM*
Office of Probation and Correctional Alternatives

DATE: March 16, 2020

RE: Emergency Probation Procedures—Coronavirus of 2019 (COVID-19)
Effective March 16, 2020

Given the outbreak of the Coronavirus (COVID-19) and its potential impact, these emergency probation procedures are being provided to Probation Directors. DCJS is also cognizant of the need for flexibility and fluidity. As this is an evolving public health concern, it is recommended that the probation department coordinate with the local public health department. The public health department will have the latest information regarding the virus and effective practices that will minimize exposure to the virus to ensure the safety of probation staff and the public.

In terms of contact with probation clients, if the probation department in consultation with the public health department and the County Executive or equivalent determines that it needs to temporarily suspend in-person contacts and/or home contacts specifically due to the Coronavirus (COVID-19) outbreak, DCJS will support this local decision and assures probation departments that no adverse actions will be taken against the department for doing so.

These emergency procedures are effective immediately and will continue until further advised by DCJS. But their actual implementation in probation departments *will be enacted by local Probation Directors*. NYS Executive Law § 257(4) requires at least monthly “contact” with all probationers. DCJS would support the probation department’s use of electronic means which would include using Real Time Video Reporting, telephonic reporting, and the use of email, text messaging and all available means of communicating electronically with probationers at a level consistent with their risk and supervision level. As in-person contacts are suspended, increased electronic probationer contacts with higher risk probationers may be utilized to compensate, when possible, given local resources and operations. Collateral contacts should be maintained wherever possible. Again, electronic means of communication should be utilized to minimize social contact. Please refer to Appendices A, which is suggested guidance to Probation Directors.

The decision to invoke the emergency procedures will be that of the Probation Director, in consultation with local chief elected official and local health professionals. DCJS recognizes that Probation Directors are in the best position to determine the wisest course of action in the interest of probation staff and the community in their respective jurisdictions. *Please advise DCJS in writing when the probation department has suspended either in-person contacts and/or home*

contacts with respect to the specific probation population affected, and again when these contacts have been restored. Please have probation officers note in their case notes when in-person and/or home contacts were suspended and when they were restored as part of the official case record.

Probation Investigations and Reports may be conducted without meeting face to face with the individual pre-plea or pre-sentence. Wherever possible, the juvenile or adult should be interviewed using telephonic means. Probation Reports may be delivered or mailed to the Court. Departments are reminded that reports submitted through Caseload Explorer to the NYS Pre-Sentence Repository may be accessed by the Judiciary with the proper access approved by DCJS. Some Judges are doing this currently.

If you are unable to collect DNA as required due to the suspension of in-person meetings, please do so at the very next available in-person meeting. If the probationer subject to DNA collection is reporting in-person, please use the appropriate protective measures to protect the staff person collecting the DNA sample. If a health concern arises, DNA collection for the individual on probation supervision can be delayed as there will be ample opportunity for collection at a subsequent time. Where probation departments may be the designated collector of DNA in the case of conditional discharge, the opportunity to collect is more time sensitive.

After consultation with the public health department, the County Attorney/Corporate Counsel, the County Executive or equivalent, if the probation department is unable to perform any of its statutory functions as established in the NYS Penal Law, NYS Criminal Procedure Law, or NYS Family Court Act due to the Coronavirus (COVID-19) outbreak, the probation director should advise in writing both DCJS and the affected local courts or any other impacted government agencies. For example, some probation departments provide assistance to the Family Court in providing general intake services, as well as assisting victims of intimate partner violence prepare Orders of Protection. Similarly, probation intake services for FCA Article 3 and 7 cases, may need to be delayed or achieved through interviews using electronic means. These actions must be communicated to the appropriate Court Officials.

If probation clients, specifically due to the Coronavirus (COVID-19) outbreak, are unable to attend treatment and/or participate in any court-ordered community-based requirements such as community service, or are otherwise unable to comply with any of their conditions of probation such as unable to pay restitution due to quarantine/loss of work, the probation department must advise the sentencing court of these circumstances. If any probation client displays flu-like symptoms (fever, cough, and shortness of breath), they should be encouraged to visit their health care provider. Also, probation departments are reminded to take the proper sanitary precautions in the collection and handling of cash for restitution purposes.

For issues related to adult interstate transfer, travel updates and restrictions can be found at ICAOS Website at the following address (<https://www.interstatecompact.org>). If there are any restrictions a banner will appear on the top. For juvenile updates, please visit ICJ Website at the following address (<https://www.juvenilecompact.org>). Additionally, Transfer Designees can always contact the DCJS' Office of Probation and Correctional Alternatives Interstate Compact Unit at 518-708-5338 with any questions or concerns. DCJS Interstate Staff, ICAOS and ICJ, will be working remotely for the next two weeks, but may be contacted through their regular work emails.

For probation staff health concerns, the department should consult with the County Executive or equivalent and the local Department of Health.

Please feel free to contact Gary.Govel@dcjs.ny.gov, Teresa Scanu-Hansen at Teresa.ScanuHansen@dcjs.ny.gov, or John Adams at John.Adams@dcjs.ny.gov with any questions you may have concerning juvenile or adult probation matters.

In closing, let me thank Probation Directors and Officers for their continued hard work, and coping with the health situation at hand.

Appendix A (Suggested Guidance for Part 351- Probation Supervision)

<u>Greatest Risk</u>	<u>High Risk</u>	<u>Medium Risk</u>	<u>Low Risk</u>
<p><u>Current:</u></p> <p>6 probationer contacts per month, with a minimum of one in-person contact per week and two probationer contacts per month.</p>	<p><u>Current</u></p> <p>4 in-person contacts per month, with a minimum of one in-person contact per week.</p>	<p><u>Current:</u></p> <p>2 probationer contact per month, with a minimum of one in-person contact per month.</p>	<p><u>Current:</u></p> <p>1 contact per month Electronic or alternative means permitted</p>
<p><u>Adjusted:</u></p> <p><u>6-12 contacts a month, with a minimum of 1-2 contacts per week. Preferred contact would be through real-time audio/visual means but alternate means of electronic communication is permitted.</u></p>	<p><u>Adjusted:</u></p> <p><u>4-8 contacts a month, with a minimum of 1-2 contacts per week. Preferred contact would be through real-time audio/visual means but alternative means of electronic communication is permitted..</u></p>	<p><u>Adjusted:</u></p> <p><u>2-4 contacts a month, Electronic means of communicated permitted.</u></p>	<p><u>Adjusted:</u></p> <p><u>No Change</u></p>
<p>6 collateral contacts per month</p> <p><u>No Change</u> <u>Electronic means permitted</u></p>	<p>6 collateral contacts per quarter</p> <p><u>No Change</u> <u>Electronic means permitted</u></p>	<p>2 collateral contacts per quarter</p> <p><u>No Change</u> <u>Electronic means permitted</u></p>	<p>Collateral contacts as needed</p> <p><u>No Change</u> <u>Electronic means permitted</u></p>
<p>1 positive home contact each month from case assignment</p> <p><u>No Change – Unless suspended as indicated. Probation Officer may be permitted to conduct the home visit and not enter the residence.</u></p>	<p>1 positive home contact is required after the first month of assignment. Thereafter, three home contacts per quarter – one per month – and two of the three must be positive home contacts</p> <p><u>No Change – Unless suspended as indicated. Probation Officer may be permitted to conduct the home visit and not enter the residence.</u></p>	<p>1 positive home contact during the first 45 calendar days from case assignment then as needed thereafter</p> <p><u>No Change – Unless suspended as indicated. Probation Officer may be permitted to conduct the home visit and not enter the residence.</u></p>	<p>Home contacts as needed</p> <p><u>No Change</u></p>

Appendix B (Part 356- Probation Services for Article 3 Juvenile Delinquency)

<u>High Risk</u>	<u>Medium Risk</u>	<u>Low Risk</u>
<p><u>Current</u></p> <p>4 in-person contacts per month, with a minimum of one in-person contact per week.</p>	<p><u>Current:</u></p> <p>2 contacts per month, with a minimum of one in-person contact per month.</p>	<p><u>Current:</u></p> <p>1 contact per month Electronic means permitted</p>
<p><u>Adjusted:</u></p> <p><u>4-8 contacts a month, with a minimum of 1-2 contacts per week. Preferred contact would be through real-time audio/visual means but electronic means permitted</u></p>	<p><u>Adjusted:</u></p> <p><u>2-4 contacts a month with a minimum of 1 contact every other week. Electronic means of contact permitted.</u></p>	<p><u>Adjusted:</u></p> <p><u>No Change Electronic means permitted.</u></p>
<p>2 collateral contacts per month</p> <p><u>No Change. Electronic means permitted</u></p>	<p>2 collateral contacts in a three-month period</p> <p><u>No Change. Electronic means permitted</u></p>	<p>Collateral contacts as needed</p> <p><u>No Change. Electronic means permitted.</u></p>
<p>1 home contact each month from case assignment. Half of contacts must be positive during the adjustment period.</p> <p><u>No Change – Unless suspended as indicated. Probation Officer may conduct home visit and not enter the residence.</u></p>	<p>1 positive home contact during the first 45 days of the adjustment period and as needed.</p> <p><u>No Change – Unless suspended as indicated. Probation Officer may visit the home and not enter the residence.</u></p>	<p>Home contacts as needed</p> <p><u>No Change. Probation Officer may visit the home and not enter the residence.</u></p>