

**NEW PHILADELPHIA D.A.O POLICIES**  
**ANNOUNCED MARCH 21, 2019 TO END MASS SUPERVISION**  
(THESE POLICIES AMPLIFY AND MODIFY SOME OF THE POLICIES  
PREVIOUSLY ANNOUNCED FEBRUARY 15, 2018)

These new policies are a further effort to end mass supervision (which is a major driver of mass incarceration) and bring balance back to sentencing. All policies are presumptive, not mandatory requirements. Where extraordinary circumstances suggest that an exception is appropriate, specific supervisory approval must be obtained. Wherever the term “supervisory approval” is used, it means that:

- (1) An Assistant District Attorney must obtain approval of the unit’s supervisor and the unit’s supervisor must then obtain approval from the District Attorney, or in his absence, the approval of one First Assistant District Attorneys.
- (2) If an Assistant District Attorney’s request is disapproved by the unit’s supervisor, the Assistant District Attorney may, but is not required to request re-consideration of that decision by the District Attorney, or in his absence, one of the First District Attorneys. Any re-consideration shall be a discussion between the ADA, unit supervisor, and the District Attorney or in his absence one First Assistant District Attorney. Freedom of thought is encouraged in the Philadelphia DAO. No adverse consequence to the ADA will result from requesting reconsideration.
- (3) Bona fide verbal approvals and disapprovals are sufficient and must be noted in the case file, including all relevant dates and identities of all personnel involved.

**REQUEST SHORTER PERIODS OF TOTAL SUPERVISION  
(ON PROBATION AND PAROLE)**

Mass supervision is a major driver of mass incarceration. Supervision comes in the form of parole (supervision after release from a sentence of incarceration), probation (supervision without a sentence of incarceration). Frequently in Pennsylvania a period of parole is followed by a consecutive period of probation (commonly known as a “probationary tail” or “tail”). Parole alone, probation alone, and parole plus a consecutive probation tail all result in a period of total supervision in the community.

Excessive supervision reduces public safety because it fails to prevent crime and arguably causes crime. While the first year of supervision shows real benefits in many cases, the second and third years show diminishing benefits. Some criminological studies have established that supervision for more than thirteen months is problematic. Another 2018 study by the Columbia University Justice Lab establishes that supervision for more than three years is not just

ineffective. It's harmful. It causes people under supervision to fail---to violate parole or probation, and often to return to jail.

In addition, mass supervision drives overwhelming caseloads for dedicated parole and probation officers, thereby diminishing their effectiveness in ways that reduce public safety. Excessive caseloads impede more focused efforts to supervise and rehabilitate those who are most in need of supervision.

Philadelphia's rate of supervision is truly extreme. While New York City (all 5 boroughs) currently has about 12,700 people under supervision on probation and parole, Philadelphia has nearly 40,000 people under supervision despite the fact that Philadelphia is about 1/5 or 1/6 the size of New York, essentially the size of just one of New York's boroughs.

Pennsylvania's mass supervision is no less extreme. Pennsylvania is the worst state in the United States for excessive periods of parole. It is the second worst state in the United States for excessive total supervision (the combination of parole and probation). This is due in part to Pennsylvania's statutory requirements on minimum and maximum sentencing, which are very different from many other states. In Pennsylvania, state law requires a sentence of incarceration that is followed by at least as much time on parole and permits far more time on total supervision. Pennsylvania's quirky sentencing law and the criminal justice culture that has adapted to it have made Pennsylvania an outlier, where supervision is routinely longer---often much longer---than any time served in jail. Most states allow sentences that require far less supervision after incarceration. Nearly all states supervise far less than Pennsylvania. Many states require no supervision at all after a sentence of incarceration.

Therefore, the following policies apply to all Assistant District Attorneys and staff:

- 1) In all cases, the appropriateness of a sentence of incarceration (if any) and how much incarceration is appropriate are to be determined first, consistent with all the DAO's policies, including those to end mass incarceration. Once that is determined, the following policies shall be used to determine supervisory aspects of the sentence.
- 2) In a **felony** matter, all negotiated guilty plea offers and sentencing recommendations shall do **individual justice to each case, but shall be aimed at an office-wide average period of total supervision among cases of around 18 months or less of total supervision, with a ceiling of 3 years of total supervision or less on each case**, except where total supervision is required to be longer by law. This means that for any felony sentence of 3 – 6 years or more, there will be no tail.
- 3) In a **misdemeanor** matter, all negotiated guilty plea offers and sentencing recommendations shall do **individual justice to each case, but shall be aimed at an office-wide average period of total supervision among cases of 6 months or less of total supervision, with a ceiling of 1 year of total supervision or less on each case**,

except where required to be longer by law. This means that for a misdemeanor sentence of 1-2 years or more, there will be no tail.

- 4) Negotiated plea offers and sentencing recommendations shall be for **concurrent sentences within a case and among consolidated cases**. Obviously, the plea offer and sentencing recommendation on a group of cases will reflect all consolidated cases.
- 5) Negotiated plea offers and sentencing recommendations in all cases that involve incarceration shall be for **a period of parole that is no longer than the period of incarceration**.
- 6) These policies apply to all forms of plea and to all recommendations at sentencing (e.g. negotiated and open pleas of guilty, nolo contendere, etc.), including post-trial sentencings and sentencings after open guilty pleas.
- 7) ADA's are to make recommendations in all VOP hearings on whether or not the court should find the defendant to be in violation and, if so, the consequence. For technical violations, do not recommend more than 30 – 60 days in custody; in most instances of technical violations, recommend no custody. For direct violations, do not seek more than 1-2 years in custody that are additional to the sentence for the new conviction that is the direct violation. Sentencings for the new crime that is the direct violation should reflect the fact that the new offense occurred while the defendant was under supervision and reflect this policy.

NOTE: Below are a few examples of felony and misdemeanor sentences that are in compliance and out of compliance with these policies:

A) FELONY SENTENCES

2-4 years incarceration plus 6 months probation tail.	COMPLIANT
2-4 years incarceration plus 2 years probation tail.	NON-COMPLIANT
1-3 years incarceration plus 1 year probation tail.	NON-COMPLIANT
5-10 years incarceration.	COMPLIANT
3 years probation.	COMPLIANT

B) MISDEMEANOR SENTENCES

2 years probation.	NON-COMPLIANT
11 ½ - 23 months incarceration plus 6 months probation.	NON-COMPLIANT
11 ½ - 23 months incarceration.	COMPLIANT
6 - 23 months' incarceration.	NON-COMPLIANT
6 - 12 months' incarceration plus 6 months probation.	COMPLIANT