

Philadelphia DAO Additional Policies To End Mass Supervision*



Effective Date: 1/17/2022

These policies are presumptive, not mandatory requirements. Where extraordinary circumstances suggest that an exception is appropriate, specific supervisory approval must be obtained. 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 Attorneys. 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.

These policies do not apply to defendants for whom an intelligence assessment is provided in the file, Homicide or FVSA matters, Mental Health cases, or as otherwise excluded by law.

* (THESE POLICES AMPLIFY AND MODIFY SOME OF THE POLICIES PREVIOUSLY ANNOUNCED MARCH 21, 2019.)

For additional information and citations regarding mass supervision, please see ADDENDUM.

I. **Negotiating or Recommending Conditions of Probation or Parole** - When negotiating pleas or recommending sentence after trial, to aid courts in exercising their authority in setting only those probation or parole conditions that are necessary:

A. ADAs should **negotiate conditions of probation with defense or recommend the fewest conditions necessary for public safety.**

B. **Consider non-reporting probation or parole as the starting point for all cases.**

C. **If recommending reporting probation**, reporting to the probation department and the “general condition” to obey all criminal laws are the two standard conditions to be recommended.

D. **Telephone or Zoom reporting is preferred** - Telephone or Zoom reporting is preferred for reporting probation, with a requirement of in-person reporting only when necessary for public safety; additional conditions may be added if they are demonstrably related to public safety or to make restitution.

E. **Put the conditions on the record** - ADAs must ask the court to put the conditions on the record and to notify AAPD that only the judge-ordered conditions imposed at sentencing apply.

F. **Travel** - ADAs must recommend that the Court waive APPD travel notification requirements and recommend granting permission to travel without notifying probation officers for *work-related reasons and bona fide child-care-related reasons*, even if the probation supervision terms include other travel restrictions.

G. **Special conditions** - Before recommending special conditions beyond reporting and obeying laws, ADAs must contact a supervisor to obtain approval.

H. **Early Termination of Probation or Parole** –

1. During plea negotiation or at sentencing, ADAs should inform the defense that, if certain criteria are met, the Commonwealth will consider stipulating to early termination of parole.

2. Furthermore, if possible, the terms under which the Commonwealth has agreed to consider early termination of probation or parole should be placed on the record as part of the sentencing order, and, if possible, the Defendant should be given a short certificate containing the terms.

a) Instead of a short certificate, a “good time contract” may be signed by the ADA and the Defendant and a copy kept in the DAO files.

II. **Responding to Defense Petitions for Early Termination of Probation or Parole** – To expand the use of early terminations of probation or parole, ADAs will support petitions for early termination when appropriate, as well as when the defendant meets the criteria below.

A. Specifically, ADAs shall join in motions to terminate when the Defendant:

1. is not charged with a new offense or found in violation of his/her parole or probation for the first half of his/her supervision term, and

2. has served a minimum of 6 months of total supervision (parole plus probation), for misdemeanors or 18 months of total supervision for felonies.

B. Additionally, if the defendant served time in jail or prison for the matter and, while in custody, completed educational or vocational certifications, prison maintenance and other work programs, community service programs, or substance use and other therapeutic programs, the defendant may be entitled to an additional one month per program completed towards early probation termination at the discretion of the ADA.

III. **VOP Hearings following Acquittal or Dismissal (Daisy Kates)** - If a probationer's or parolee's new charge has been dismissed or they have been acquitted, ADAs may not pursue the violation hearing without supervisory approval.

IV. Technical Violations

A. ADAs may not recommend prison or jail time for technical violations arising from missed appointments, failed drug tests, or drug or alcohol use while in treatment. ADAs must recommend continued probation with access to services for all technical violations that do not pose an immediate threat to public safety.

B. ADAs must inquire about the reasons for the defendant's technical violation(s).

C. ADAs must, whenever possible, recommend services and supports to reduce infractions.

D. **Violations of Reporting Requirements** - Where the violation arises from responsibilities for a job, child-care, elder-care, or lack of funds for transportation, ADAs should recommend a change in the reporting requirements, to include telephone or zoom reporting, and less frequent reporting.

V. **Data Collection** - All employees of the DAO shall assist in data collection related to this policy to ensure that it is implemented and is effective, and to help assess its impact on mass supervision and racial disparities to the extent practicable. Units shall work with IT to create mechanisms to track this policy to the extent practicable. The DATA Lab shall use the data compiled to report on the policy's fidelity, efficacy, and impact on a regular basis.

ADDENDUM

Parole and Probation supervision is a major driver of mass incarceration. While the stated goal of more intense supervision for long periods is to increase safety, unnecessarily lengthy supervision routinely increases technical violations without producing meaningful public safety benefits. The impact of long periods of supervision and the attendant increased violations is particularly dire for black men in the criminal justice system. This is felt acutely in Philadelphia, which has the highest rate of supervision among large cities in the United States. In contrast, shorter, tailored supervision sentences with opportunities for early termination mitigate system-wide costs and harm while advancing the benefits of supervision. These policies are Part III of the DAO's continued effort to end mass supervision, reduce discrimination and bring balance back to sentencing.

Current Probation Conditions:

42 Pa.C.S. § 9763

(b) Conditions generally:

The court may attach any of the following conditions upon the defendant as it deems necessary:

(1) [Deleted by 2019 Amendment.]

(2) To be devoted to a specific occupation, employment or education initiative

(3) To participate in a public or nonprofit community service program.

(4) To undergo individual or family counseling.

(5) To undergo available medical or psychiatric treatment or to enter and remain in a specified institution, when required for that purpose.

(6) To attend educational or vocational training programs.

(7) To attend or reside in a rehabilitative facility or other intermediate punishment program.

(8) [Deleted by 2019 Amendment.]

(9) To not possess a firearm or other dangerous weapon unless granted written permission.

(10) To make restitution of the fruits of the crime or to make reparations, in an affordable amount and on a schedule that the defendant can afford to pay, for the loss or damage caused by the crime.

(11) To be subject to intensive supervision while remaining within the jurisdiction of the court and to notify the court or designated person of any change in address or employment.

(12) To report as directed to the court or the designated person and to permit the designated person to visit the defendant's home.

(13) To pay a fine.

(14) To participate in drug or alcohol screening and treatment programs, including outpatient programs.

(15) To do other things reasonably related to rehabilitation.

(16) [Deleted by 2019 Amendment.]

(17) [Deleted by 2019 Amendment.]

(c) Restrictive DUI probation conditions.—

(1) Any person receiving a penalty imposed pursuant to 75 Pa.C.S. § 1543(b) (relating

to driving while operating privilege is suspended or revoked), former 75 Pa.C.S. § 3731 (relating to driving under influence of alcohol or controlled substance) or 75 Pa.C.S. § 3804 (relating to penalties) for a first, second or third offense under 75 Pa.C.S. Ch. 38 (relating to driving after imbibing alcohol or utilizing drugs) may only have probation imposed after undergoing an assessment under 75 Pa.C.S. § 3814 (relating to drug and alcohol assessments).

(2) If the defendant is determined to be in need of drug and alcohol treatment, the defendant may only have probation that includes participation in drug and alcohol treatment under 75 Pa.C.S. § 3815(c) (relating to mandatory sentencing). The defendant shall have restrictive DUI probation conditions of: (i) a residential inpatient program or a residential rehabilitative center; (ii) house arrest with electronic surveillance; (iii) a partial confinement program such as work release, work camp and halfway facility; or (iv) any combination of the programs set forth in this paragraph.

(3) If the defendant is determined not to be in need of drug and alcohol treatment, the defendant shall have restrictive DUI probation conditions of:

(i) house arrest with electronic surveillance;

(ii) partial confinement programs such as work release, work camps and halfway facilities; or (iii) any combination of the programs set forth in this paragraph.

(4) If the defendant is determined to be in need of additional treatment under 75 Pa.C.S. § 3814(2), the judge shall impose a minimum sentence as provided by law and a maximum sentence equal to the statutorily available maximum.

(d) Restrictive conditions of probation.—

Probation may include restrictive conditions that:

(1) house the person full time or part time, including inpatient treatment; or

(2) significantly restrict the person's movement and monitor the person's compliance with the program, including electronic monitoring or home confinement.

SOURCES

1. Ewing, Maura. 2017, June 9. "How Minor Probation Violations Can Lead to Major Jail Time." The Atlantic at www.theatlantic.com/politics/archive/2017/06/philadelphia-detainer-holds/529758/.
2. Hyatt, Jordan M., and Geoffrey C. Barnes. "An Experimental Evaluation of the Impact of Intensive Supervision on the Recidivism of High-Risk Probationers." *Crime & Delinquency* 63, no. 1 (January 2017): 3–38; and [://www.brookings.edu/blog/up-front/2018/07/02/study-after-study-shows-ex-prisoners-would-be-better-off-without-intense-supervision/](http://www.brookings.edu/blog/up-front/2018/07/02/study-after-study-shows-ex-prisoners-would-be-better-off-without-intense-supervision/).
3. Kurlychek MC, Johnson BD. 2019. Cumulative disadvantage in the American criminal justice system. *Annual Rev. Criminal.* 2:291–319.
4. <https://www.hrw.org/report/2020/07/31/revoked/how-probation-and-parole-feed-mass-incarceration-united-states>.
5. <https://www.pewtrusts.org/en/research-and-analysis/reports/2020/12/states-can-shorten-probation-and-protect-public-safety>.
6. Gelb, Adam, and Connie Utada. 2017. *For Better Results, Cut Correctional Populations*. Washington, DC: The Pew Charitable Trusts. Available: www.pewtrusts.org/en/research-and-analysis/analysis/2017/08/25/forbetter-results-cut-correctional-populations
7. <https://www.americancityandcounty.com/2014/06/04/could-less-be-more-when-it-comes-to-probation-supervision>; see also Kaeble, D., L.M. Maruschak, and T.P. Bonczar (2015). *Probation and parole in the United States, 2014*. Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, at <http://www.bjs.gov/content/pub/pdf/ppus14.pdf>.
8. Council of State Governments Justice Center. 2017. *Justice Reinvestment in Pennsylvania: Policy Framework*. New York, NY: At: csgjusticecenter.org/wpcontent/uploads/2017/06/6.26.17_JR-in-Pennsylvania.pdf. See generally <https://csgjusticecenter.org/wp-content/uploads/2020/01/confined-and-costly.pdf>.