

Chief Judge, Twelfth Judicial District
**AUTHORIZING THE TEMPORARY
WAIVER OF CERTAIN FY20
PROBATION STANDARDS DUE TO
PUBLIC HEALTH CONCERNS
RELATED TO COVID-19 (the “NOVEL
CORONAVIRUS”)**



**CHIEF JUDGE
ADMINISTRATIVE ORDER
2020-05
Amended 5-13-2020**

The purpose of this order is to provide guidance and authority to the 12th Judicial District Probation Department regarding operations based on public health concerns related to the novel coronavirus (“COVID-19”). On April 9, 2020, Colorado Supreme Court Chief Justice Nathan Coats issued Order Regarding COVID-19 and Operation of Colorado State Probation Departments, providing Chief Judges with the authority to temporarily waive certain FY20 Probation Standards through May 15, 2020. A copy of Chief Justice Coats’ order is attached to this administrative order.

This order is issued due to the public health risk posed by COVID-19. It is imperative that active steps be taken to slow the spread of COVID-19 and reasonable precautions be followed to reduce exposure to COVID-19, as this pandemic continues to threaten the health and well-being of the community. Equally important to the public’s COVID-19 health concerns is the responsibility of the probation department to provide an appropriate level of supervision and services for all individuals sentenced to supervision, based on the individual probationer’s risk of recidivism and public safety considerations.

Probation Standard 2.01 provides that “[a]dherence to the probation standards described herein is contingent upon the availability of adequate funding resources and adequate staffing levels.” The 12th Judicial District courts and probation have employed several precautionary measures designed to reduce the spread of COVID-19, which includes a reduction of the number of employees working at the courts and probation offices at a given time to maintain the recommended six feet of social distancing between employees. Many probation employees are working remotely, which makes it difficult to adhere to certain standards. In addition, many outside entities or persons providing services to the probation department have taken measures to reduce the spread of COVID-19 by limiting services and/or reducing staff, which has a direct impact on the probation department’s ability to apply and adhere to certain Standards.

On May 12, 2020, Chief Justice Coates extended his previous order of April 9, 2020 and made it effective until further directive of the Chief Justice.

IT IS HEREBY ORDERED:

A. Pursuant to Chief Justice Coats' April 9, 2020 order and the authority provided to Chief Judges through that order, the following Probation Standards may be waived if applying these Standards cannot be accomplished without jeopardizing the health of anyone involved as related to COVID-19, or there are any restrictions in place due to COVID-19 that prevent compliance with these Standards; there are no other reasonable alternatives available to apply or adhere to these Standards, as implemented by Chief Probation Officer Bill Gurule and approved by either the Chief Judge or the State Court Administrator; or the provider of services necessary to meet these standards are unable to provide such services:

1. FY20 Probation Standards 3.02, 4.35, 4.36, 4.41, 4.47, 4.54, 4.56, 5.04, and 5.11. A copy of these standards is attached to this order.
2. Probation Standard 4:07, but only as to the ASUDS and ASUS-R and only in the manner approved by the State Court Administrator.
3. Probation Standards that mandate assessments, but to the extent possible such assessments shall be conducted by telephone or other available methods approved by the State Court Administrator.
4. Probation Standards that mandate screenings whose completion is dependent upon assessments that cannot be completed.
5. Probation Standards that require in-person or face-to-face contact, signatures, initialing, or the provision of written documentation to or receipt from the individual being supervised, but to the extent reasonably possible, alternatives such as e-mail and telephone contact shall be utilized and documented. The Chief Judge authorizes Bill Gurule, 12th Judicial District Chief Probation Officer, to determine whether there are other means reasonably available to facilitate the obtaining of signatures or initials, providing documents to clients, or receiving documents from clients, such as utilizing a reception office that is separated by a glass partition from the lobby of the probation office, provided that social distancing of at least six feet can be maintained by persons in each location from others in the same area at all times.
6. Probation Standards that mandate training if such training is not available.
7. Probation Standards that require the development and/or review of a case plan.
8. Probation Standards that require treatment, evaluation, drug or alcohol testing, or DNA testing where such services are not fully available.
9. Probation Standards that require consultation with other persons or entities who are not reasonably available.

B. In determining whether any of the Standards listed in Section A of this order cannot be applied or adhered to due to COVID-19 concerns, Chief Probation

Officer Bill Gurule shall consider whether public safety would be compromised if a waiver occurs.

C. 12th Judicial District Probation Officers and Supervisors shall first confer with Chief Probation Officer Bill Gurule, before taking any actions that involve the waiver of any of the Standards listed in Section A of this order.

D. This order does not waive Probation Standards 4.20, 4.31, 4.32, 4.33, and 4.34, and a copy of these Standards is attached to this order.

The provisions of this order shall continue until further directive of the Chief Judge.

Dated this 13th day of May 2020.

BY THE COURT:

A handwritten signature in black ink, appearing to be 'M. Gonzales', written over a horizontal line.

Michael A. Gonzales
Chief Judge, Twelfth Judicial District

Supreme Court of Colorado

2 East 14th Avenue
Denver, CO 80203
(720) 626-5460

NATHAN B. COATS
CHIEF JUSTICE

SUPREME COURT OF COLORADO

OFFICE OF THE CHIEF JUSTICE

Order Regarding COVID-19 and Operation of Colorado State Probation Departments

In light of the COVID-19 (coronavirus) pandemic and the continued spread of the virus throughout communities in Colorado, and in consideration of the obligation for probation department personnel to supervise individuals who have been sentenced to such supervision by the courts, the probation departments of this state can no longer continue normal operations and must, like our courts, operate on a temporary emergency basis.

Probation Standard 2.01 provides that “[a]dherence to the probation standards described herein is contingent upon the availability of adequate funding resources and adequate staffing levels.” Although this provides a measure of flexibility, the granting of broader discretion is necessary under the current circumstances. Therefore, effective immediately I hereby order that the chief judges of the 22 Colorado judicial districts are delegated temporary authority to waive the following FY20 Probation Standards and categories of Probation Standards as deemed necessary in order to reduce the spread of the coronavirus, while ensuring individuals sentenced to supervision continue to be supervised by the probation departments:

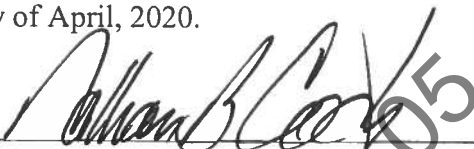
1. Probation Standards 3.02, 4.35, 4.36, 4.41, 4.47, 4.54, 4.56, 5.04, and 5.11
2. Probation Standard 4.07, but only as to the ASUDS and ASUS-R and only in the manner approved by the State Court Administrator
3. Probation Standards that mandate assessments, but to the extent reasonably possible such assessments shall be conducted via telephone or other available methods approved by the State Court Administrator
4. Probation Standards that mandate screenings whose completion is dependent upon assessments that cannot be completed
5. Probation Standards that require in-person or face-to-face contact, signatures, initialing, or the provision of written documentation to or receipt from the individual being supervised, but to the extent reasonably possible, alternatives such as email and telephone contact shall be utilized and documented
6. Probation Standards that mandate training if such training is unavailable
7. Probation Standards that require the development and/or review of a case plan
8. Probation Standards that require treatment, evaluation, drug or alcohol testing, or DNA testing where such services are not fully available

9. Probation Standards that require consultation with other persons or entities who are not reasonably available

Under no circumstances may a chief judge waive Probation Standards 4.20, 4.31, 4.32, 4.33 or 4.34. This Order shall continue through May 15, 2020. At that time, I will reassess the continued need for waiving Probation Standards.

In implementing this Order, it is my expectation that the chief judges of the 22 judicial districts will make every effort to avoid compromising community safety and ensure their probation departments provide an appropriate level of supervision for all individuals sentenced to supervision, as well as provide modified services to those individuals receiving presentence investigation services, if needed.

Done at Denver, Colorado this 9th day of April, 2020.



Nathan B. Coats
Chief Justice, Colorado Supreme Court

Attachment CJA0 2020-05

PROBATION STANDARDS THAT CAN BE WAIVED

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4.07

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5.04

5.11

Attachment CJAO 2020-05

C. All staff, to include part-time and contract Judicial Department employees, shall be encouraged to participate in training that promotes professional growth in preparation for career advancement and expertise and competency in their assigned duties.

3.01 **Training Catalog:** The Division of Probation Services (DPS) shall produce the Colorado Probation University (CPU) training catalog annually. The CPU catalog, at a minimum, shall contain a listing of available training sessions, identification of essential training, requirements for district-based trainer certifications, pre-requisite requirements, course application processes, and any other processes and procedures necessary for the efficient delivery of training.

3.02 **Employee Orientation-Local:** The chief probation officer, or designee, designate individuals to provide district orientation for new staff members within the first 60 days after staff members assume their primary job responsibilities. Employment forms and information can be found here:
<https://www.courts.state.co.us/judicialnet/hr/forms/>

3.03 **Training-Academy:** Probation officers shall complete the Level 100 Probation Academy, delivered by the Division of Probation Services (DPS), within their first year of employment. A waiver of the Level 100 Probation Academy attendance

- 4.05 **Assessment-Reassessment for Max/Med:** All probationers supervised as maximum and medium level shall be reassessed by the probation officer at least every six months or upon revocation or conviction for a new offense or when significant changes in circumstances warrant. The reassessment shall be completed using the primary general risk assessment instrument (LSI for adults and the CJRA for juveniles). Sex offenders shall be reassessed using both the primary general risk assessment instrument and the sex offender risk instrument (SOTIPS for adults and JSOAPII for juveniles).
- 4.06 **Assessment-DUI/DWAI/UDD:** Pre- and post-sentencing alcohol evaluations must be completed by a probation officer trained to perform the ADDS evaluation and make a treatment recommendation.
- 4.07 **Assessments-Copyrights:** Blank assessment instruments, with a copyright, shall not be distributed outside of the probation department for completion, unless the instrument is in the possession of a probation employee. For example, copyrighted instruments cannot be part of an intake packet that is allowed to be taken home with the defendant or sent to a detention facility for completion.
- 4.08 **Assessment-Data Entry:** The probation officer shall enter all required scores into the ICON/Eclipse assessment module within three business days of administering the assessment. This standard applies to the following assessments: SSI-R, LSI, ASUS-R, ASUDS, VASOR-2, SOTIPS, CJRA, JSOAPII.

Assessment-Intent: The use of reliable and valid assessments is a widely accepted and evidence-based practice in corrections. The use of assessments, in concert with professional discretion, can result in effectively matching supervision and treatment to an individual's risk level and criminogenic needs. Accurately matching can lead to improved outcomes, reduced recidivism, and increased public safety. Assessment is an ongoing function that should be repeated throughout supervision to ensure that services are well-matched, emerging issues are addressed, and progress is relayed back to the probationer.²

The following table lists the approved screens/assessments for adults and juveniles (JD cases). See age guidelines below.

Follow district policy

Electronic Monitoring-Intent: Electronic monitoring should be used in conjunction with other supervision activities. Electronic monitoring alone has little long-term effect on behavior; however, it can be effective when used with appropriate interventions. Additionally, the use of electronic monitoring should be limited. Extended placement on a monitor is not recommended.⁶

4.35 DNA Sample Collection: Probationers who are required to provide a genetic marker sample and who have not provided a genetic marker sample shall be directed by the probation officer to submit to and pay for genetic marker testing pursuant to statute.

- Reference: §§16-11-102.4 and 19-2-925.6, C.R.S.

4.36 Reinforcements and Sanctions: The probation officer shall use individualized reinforcements and sanctions to encourage behavior change. The probation officer's response to positive and violation behavior shall be swift, certain, proportional, consistent, and tailored to the probationer's risk, needs, and the significance of the behavior and documented in case narratives. In districts where

staff have been trained, the SBC module shall be used to document reinforcements and sanctions.

- 4.37 **Response to Violations:** The probation officer shall respond to all violations of the conditions of probation, in some way, and document the violation and response in case narratives.

Reinforcements/Sanctions-Intent: Research has shown that the use of reinforcements and sanctions is effective for long-term behavior change. The officer should use more reinforcements than sanctions to maximize the effect, aiming for a goal of 4:1 over the period of supervision. It is imperative that the reinforcement and sanctions chosen have meaning for the probationer.⁷

- 4.38 **Warrant Status-Duration:** The AWO code shall be entered into ICON/Eclipse 90 days after the issuance of a warrant. This 90-day limit may be extended, per district policy, up to a maximum of an additional 90 days. No case shall remain in WARR status after 180 days from the date of the issuance of the warrant.

4.40 **Restitution-Payments:** The probation officer shall consider full payment of restitution orders an essential element when determining a probationer's termination status. "Restitution" includes the amount of restitution ordered and the interest. Any case, other than a deferred, in which restitution has not been fully paid, and the termination is not classified as negative, shall be closed by the probation officer using the "discharged unsatisfactorily" (DUNS) code.

4.41 **Substance Testing:** When considering the frequency and length of time testing is required, the probation officer shall take into account the results of previous testing, any history of treatment, any history of drug-related criminal conduct, and the results of the assessment process. All drug and alcohol testing results shall be maintained in the drug events section of the ICON/Eclipse system.

ADULT SPECIFIC

4.42 **Intensive Programs Screening:** All adult cases shall be screened for LSIP (Limit Setter-Intensive Program) and CCIP (Casework Control-Intensive Program) eligibility by the probation officer at the time of assessment or reassessment. Eligibility scores are calculated in ICON/Eclipse and appear in the Assessment tab.

and procedure with regard to the recommendation for assignment, revocation, and request for waiver, when supervision fees have been ordered in multiple cases.

4.46 **Probation Supervision Fee:** The probation supervision fee shall only be assessed for the period of active supervision of the offender.

4.47 **Courtesy Supervision:** For the transfer of adult cases within the State, the probation officer shall follow processes outlined in the Chief Probation Officer Council Courtesy Supervision Agreement. This includes probationers who have been accepted to Colorado through the Interstate Compact and want to transfer to a different district.

- Reference: Courtesy Transfer Agreement

4.48 **Restitution-Deferred Sentence:** Before terminating a deferred sentence in which the probationer has complied with all court orders but has not paid restitution in full, due to an inability to pay and has shown a future ability to pay, the probation officer may seek an extension of up to 182 days for the sole purpose of paying restitution. If the probationer or the District Attorney does not agree with the extension or the probationer cannot pay after the granting of an extension, the probation officer shall file a complaint to revoke the deferred prior to the expiration of the deferred or within 35 days after the expiration date on an adult case and allow the court to determine whether to revoke the deferred. If the deferred

Colorado Juvenile Risk Assessment (CJRA) to the treatment provider at the time of referral and completion of a Release of Information for the provider.

- 4.53 **Juvenile Interstate Transfer:** Juvenile interstate transfer practices shall be in accordance with the Rules of the Interstate Commission for Juveniles.
- 4.54 **Terms and Conditions:** In all JD cases, when the probationer is under 18 years of age, the probation staff shall review the terms and conditions with the probationer and, if available, the respondent parent(s)/guardian(s) and have the probationer and respondent parent(s)/guardian(s) sign the document to acknowledge such. If the respondent parent(s)/guardian(s) are not available, the probation staff shall engage in this process with the available parent(s)/guardian(s). In the event no parent(s)/guardian(s) are available (e.g. the juvenile is in detention), probation staff shall make arrangements to review the terms and conditions with the parent(s)/guardian(s), as soon as possible.
- 4.55 **Juvenile Expungement-Report to Court:** If the court makes a finding that a juvenile is eligible for expungement at sentencing, at the conclusion of the juvenile's supervision, probation shall prepare a report and summary of supervision outlining the performance of the juvenile while under supervision. Probation shall provide the report to the court and provide a copy of the report to the prosecuting attorney, the juvenile, and the juvenile's attorney of record no

- Reference: §19-1-306(5)(c),(6)(b), C.R.S.

4.56 **Juvenile Expungement–Advisement:** Upon termination of a juvenile's supervision, the probation staff shall provide the juvenile with a written advisement (JDF 316) to the right to expungement and the time period and process for expunging his/her record.

- Reference: §19-1-306(1)(b), C.R.S.

Attachment C JAO 2020-05

5.02 **Report Completion:** The probation officer's initiation and completion of presentence investigation reports shall be governed by each district's policies and procedures.

5.03 **PSIR-Confidentiality:** The presentence report and its attachments are confidential information and not available for release by probation to the public, in the absence of a court order.

- Reference: Chief Justice Directive 05-01: Access to Court Records

5.04 **PSIR Content:** The probation officer shall include all statutorily required information in the report, as outlined in §16-11-102, C.R.S.

5.05 **Intensive Programs Screening:** All adult cases shall be screened for LSIP (Limit Setter-Intensive Program) and CCIP (Casework Control-Intensive Program) eligibility by the probation officer at the time of the presentence investigation. Eligibility scores are calculated in ICON/Eclipse and appear in the Assessment tab.

5.06 **PSIR-Verification of Information:** Information contained in the presentence report shall be verified by the probation officer consistent with policy, procedure, and statute.

- Reference: §§16-11-102 and 19-2-905, C.R.S.

sentencing or revocation, to the Department of Corrections' Denver Reception and Diagnostic Center and juvenile presentence investigation reports to the Division of Youth Services. The designated staff member shall attach the presentence report to an email, encrypt the email, and transmit it to the email address designated by the respective agency. If attachments are included with the presentence investigation report, DOC/DYS should be listed on a Release of Information form.

- Reference: §§16-11-102 (1)(a)(V), 19-2-309.5(2)(d), and 19-1-303, C.R.S.

5.11 Presence of Attorney: Upon request, a defense attorney shall be permitted to attend the interview conducted for the purpose of preparing a presentence investigation report unless the attorney's presence is disruptive or accommodating the attorney's schedule will interfere with the timely completion of the report.

PROBATION STANDARDS THAT CANNOT BE WAIVED:

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Attachment CJAO 2020-05

4.20 HIV Response: A probation officer who is aware of a probationer's HIV infection, HIV-related illness, or AIDS diagnosis shall not warn any specific third party regarding the potential risk of HIV exposure. The probation officer shall encourage the probationer to inform those persons who may be or have been at risk for exposure to the HIV virus whether through sexual contact, shared intravenous needles, or any other potential method of transmission.

If the probation officer has reasonable grounds to believe that the probationer is engaging in high-risk behavior related to the probationer's HIV/AIDS status, the probation officer shall contact the Client Based Prevention Program of the Colorado Department of Public Health and Environment (CDPHE) and provide the name of the probationer. If known, the probation officer shall also provide information regarding persons who may be or may have been at risk of HIV exposure from the probationer. The probation officer may, but is not required to, provide CDPHE with the officer's name. For additional guidance regarding this issue, probation officers should consult district policy and procedures.

4.31 Electronic Monitoring-Placement and Removal: A probation officer shall not place a probationer on electronic home monitoring (EHM), global positioning satellite monitoring (GPS), or transdermal alcohol/drug monitoring that includes EHM without a court order. Transdermal alcohol/drug monitoring *without* EHM does not require a court order. If the court's order requires GPS/EHM monitoring for a specific period of time, monitoring shall terminate at the conclusion of that period unless the court issues an order extending the period. If the court's order requires monitoring for an indefinite period of time or for the entire term of probation supervision, the probation officer shall not terminate the monitoring prior to the expiration of the term of probation supervision without a court order.

4.32 Electronic Monitoring: Requests to the court for use of EHM, GPS, or transdermal alcohol/drug monitoring that includes EHM shall be made by the probation officer via a special report and order that identifies the reason for the request and the projected length of time the monitoring will be required.

4.33 Electronic Monitoring-Training: Probation officers shall complete training on the capabilities, probation officer user enrollment, probationer enrollment and disenrollment, installation, and de-installation (in districts responsible for their own installs/de-installs) of electronic home monitoring, GPS and transdermal alcohol/drug monitoring prior to use of the equipment.

4.34 Electronic Monitoring-Violation Response: Following notification and confirmation of a violation and/or consultation with the monitoring company to ensure the accuracy of the violation alert, the probation officer, or designee, shall respond to the alert as soon as possible but no later than the close of the next

business day after the probation officer (or designee) receives notification. The response shall include a minimum of one of the following actions, as well as documentation in case narratives:

- Make contact with the probationer to determine extent of violation and/or issue a verbal warning; or
- Staff the case with a supervisor or designee for appropriate immediate sanctions; or
- Request police assistance to contact the probationer; or
- Request a warrant; or
- Follow district policy

Electronic Monitoring-Intent: Electronic monitoring should be used in conjunction with other supervision activities. Electronic monitoring alone has little long-term effect on behavior; however, it can be effective when used with appropriate interventions. Additionally, the use of electronic monitoring should be limited. Extended placement on a be waimonitor is not recommended.6

Attachment CJAO 2020 05