

NEW YORK STATE
PROBATION COMMISSION MEETING

This meeting was conducted virtually via Cisco Webex on May 20, 2021.

Members Present: Robert M. Maccarone, Deputy Commissioner and Director – DCJS - OPCA
Rocco Pozzi, Commissioner Westchester County Department Probation
Linda Shields, Community Member, Retired Probation Director
Anthony Perri, Counsel to Chief Administrative Judge Lawrence Marks, NYS
Office of Court Administration

DCJS Staff Present: Mike Green, Executive Deputy Commissioner - DCJS
Jeffrey Bender, Deputy Commissioner, DCJS-OPDF
Matthew Charton Interstate Compact Unit Manager, DCJS-OPCA
Michele Clarke, VER Unit Manager, DCJS-OPCA
Patricia Clements, Training Unit Director, DCJS-OPCA
Gary Govel, Adult Operations Unit Manager, DCJS-OPCA
Teresa Scanu-Hansen, Juvenile Probation Operations Unit Mgr. DCJS-OPCA
Nicole Aldi, ATI Operations Unit Manager, DCJS-OPCA
Jennifer Cox, Juvenile Probation Operations Unit, DCJS-OPCA
Ian Grugan, Juvenile Probation Operations, Unit, DCJS-OPCA

Welcome and Introductions:

Deputy Commissioner and Director Robert Maccarone, DCJS' Office of Probation and Correctional Alternatives (OPCA), welcomed the members of the NYS Probation Commission, as well as special guests Steve Bayle, President of the NYS Council of Probation Administrators; Joe Wargo of Warren County Probation and immediate Past President of the NYS Probation Officer's Association; and County Probation Directors who were invited to listen-in. Bob also extended well wishes for everyone's family during these difficult times. He then asked members of the Commission to review the minutes of the December 3, 2020 meeting. Linda Shields made a motion to accept the minutes; Commissioner Rocco Pozzi seconded the motion; and the minutes of the December 3, 2020 Probation Commission were approved.

Jeff Bender, Deputy Commissioner, DCJS' Office of Program Funding Development (OPDF) – Funding Update:

Reported that we are much further along on this current date than we were this time last year. Last year we fell behind on authorizations and getting awards out to grantees. OCFS is getting caught up because contracts went out late. Things are getting back to the timetable that we are used to. Article-13A Classification/Alternatives to Incarceration funding and Probation Aid-- Block Grant funding should be back to normal in terms of timing. The funding levels that were included in the budget back in the first week of April are the same as what they were in the last

few years. Probation Aid Block grant is \$44,876,00.00 being distributed to the Probation offices across the State. Article 13-A has also remained flat at the \$5.2 million dollar level that it's been. Jeff also added that the other DCJS programs that Probation office are involved in across the State have been flat during this year, so the amount of funding has not changed. Raise the Age has become an important issue, and the contracts for the period that ended March 31, 2021-- those county plans are just getting approved. Fewer than 10 counties need to be processed and should be going out soon. OCFS has started to move forward with development of the pre-populated plans for Social Service agencies, and we expect to be in a position to do this with all Probation Departments Partners in the coming weeks.

Gary commented that an application was applied for the Leandra Law's Funding to Localities. It was submitted to the Governor's Traffic Safety Committee in May, the fiscal year is October 1, 2021. He is awaiting to hear further on local assistance.

Commissioner Green:

Commissioner Green addressed the members of the Probation Commission. He stated he very much appreciates the work that everyone is doing during these extraordinary circumstances.

Anthony Perri – Office of Court Administration Update:

The court systems continue to align with the metrics of the Governor's Executive orders to expand in-person operations. Although, we are not back in-person full operations, the court system is continuing to expand in some areas of the court. We have been able to keep one grand jury open per county but had some interruptions. Mr. Perry also mentioned that they are partnering with the District Attorney's Offices to expand the grand jury compacity up to pre-pandemic levels where possible, and also coming up with creative solutions and new locations for Grand Jury's so that they may be able to have the compacity to meet their 180.80 obligations. There have also been criminal jury trials across the state; there are multiple trials now slotted for every county level. We would like to see the wheels of the criminal Justice system come back fully together. The courts are still maintaining all the safety protocols, until the CDC gives us different guidance.

Commissioner Pozzi raised a question regarding the opening of courts on May 24. Mr. Perri answered, saying that they will be open, but not to full compacity. They are trying to be as flexible as possible, but there will be an overall production of people coming back into the courthouse on May 24, 2021.

Steve Bayle, NYSCOPA President and Saratoga County Probation Director – Status of Probation Operations:

At the last COPA meeting there was some dialogue about opening up at some point in the future. A survey was sent out to all of the counties, 30 responses have responded so far. The questions were kept short and simple and the responses varied. One question was, please describe how your office is currently handling meeting people in the field and in the office. Home visits and in person visit are mainly outside unless entry into the home is necessary.

Social distancing and plexi glass have been added to most probation offices. All participants are required to wear a mask upon entering the department. Another question that was asked was how you think COVID is affecting staffing issues. Social distance consideration in the office, loss of staff still working at home, alternate work schedules, as well as staggered workday lunch time. Here is a wide variety of concerns regarding the return into the office from the Probation Departments. Director Bayle would like to thank the State Director and Commissioner Green for their continued support.

Joe Wargo, Vice President of NYS Probation Administration

Mr. Wargo commented that he was a Probation Officer since 1998, was promoted to Senior Probation Officer in 2014, and then promoted to Supervisor in February of 2020. Shortly thereafter, everyone went into pandemic mode. He stated that this has been a learning experience for him. Jefferson County was split in half at the height of the pandemic. They had teams one and two, team one worked in the office for an entire week while team two worked remote from home. The next week we would switch, this was done to prevent contamination and exposure. This seemed to work very well. Mr. Wargo also stated that Jefferson County has been 100% working in the office since March of 2021. Mr. Wargo does recognize that Jefferson County is one of the rural counties where the positivity rate for COVID was relatively low to other parts of the State. The Emergency Procedures amending the supervision rule that was sent out were very helpful to their department in providing some relief in terms of meeting the State minimum required client contacts, but despite that their officers continued right through the pandemic, meeting all requirements. Jefferson County did see some modified things such as taking DNA and conducting breathalyzer test due to the risk of contamination. All contacts were often done on front porches or sidewalks of homes. Generally, office visit was restricted to high and greatest risk cases and only as needed after that. Jefferson County relied extensively on phone, electronic and virtual platforms to keep up with client contacts. Staff remained very supportive while adjusting to this new norm. On a positive note, at our local level, our courts are primarily virtual. It seems to have sped up a lot of our core processes, especially at our family court cases. Virtual platforms have streamlined the courts to utilize current technology which has lessened the wait time in some cases.

Commissioner Pozzi commented that the statements that were given has been spot on regarding as to what is happening in Westchester. They continue to process thousands of orders of protection and investigations. Whenever there was a need for us to do anything for the courts, Westchester has never missed a beat. In Westchester County, the Senior staff as well as Supervising Staff are all back full time. We are waiting for directive from the County Executive office as to getting back to 100% compacity.

Linda Shields mentioned that she is impressed with the way that the Counties have adapted given the pandemic.

Anthony Perri shared a comment regarding the on-going virtual appearances in courts. The only reason in the majority of the counties are able to do so is because of the Executive Orders Article 182 that regulates electronic appearances. They have proposed legislation to get rid of

the County by County designation of where electronic appearances are allowed and where they are not. To regulate going forward how they can supplement in person court or streamline appearances.

Cannabis:

Anthony Perri stated that “we are in the process of Cannabis legislations with respects to dealing with Article 222 in general. One of the greatest changes is educating the judges with respect to cannabis for a probationer. If it is currently still part of the written conditions of the probationer’s supervision, Judges should pause before they re-sentence or violate. What we will be instructing our judges on is that this cannot just be a default or presumption any longer that the use of cannabis by a probationer is a violation of their conditions of probation or is necessarily connected to the underlying criminal behavior or future violations by the probationer. We are working on this education component with Judges.

Gary Govel wanted to make the Commission Members aware that there has been discussion with OASAS regarding the substance abuse treatment providers. They indicated that they will be developing guidance on this subject.

Patricia Clements commented on that the Pre-Sentencing Investigation. Through the training the Probation Officers get they are very well versed in noticing patterns of behaviors , identifying internal and external triggers for individual people. It’s all about how to identify the needs and the risk. More now than ever, the PSI/PDI from all the work that the officers do is more critical than ever when we think about the legalization of cannabis and how do we change the way that we look at the topic area.

Deputy Commissioner Maccarone stated that he had received calls from Directors with regards to Probation Officers and Cannabis. He emphasized that while DCJS OPCA regulates the practice of Probation, we do not regulate the conduct of staff who are employed by local Governments.

Stave Bayle asked if Anthony Perri could give guidance on the handling and destruction of records.

Anthony Perry answered, the destruction is separate from the sealing of records. There has been a total of five applications for record destruction since the decriminalization; it seems to be rare. OCA does let people know to speak to a lawyer when it comes to destroying your record.

General Probation Topics

Annual Probation Plan:

The Annual Plan has been streamlined, and the focus is on what is required in the Executive Law and The Block Grant regulation. Certification compliance with regulations, probation budgets and spending, training plan and program services comprise the bulk of the information that OPCA is attempting to collect. The data portion was removed from the Annual Plan in order to enhance the streamlining effort. On the criminal court side, there are a number of reports that are available in the Integrated Justice Portal based on IPRIS information that we will continue to utilize and guide practices. The Annual Plan was reviewed by Commissioner Green and First Deputy Mark White on April 27, 2021 and was sent to Probation Director’s on May 11,

2021. We have a due date of June 9, 2021. We look forward to completing the review of these Annual Plans in a timely manner.

Matthew Charton - Part 349 Probation Regulation Update:

In early 2020, a statewide workgroup was formed to examine the Intrastate provisions of Part 349. This workgroup had representation of up to eight Probation Departments, OPCA and staff from DCJS Office of Legal Services. The workgroup completed in early 2021 and several recommendations were made the regulation. These changes were made in the following five areas:

*The work group felt that the existing regulation was repetitive and confusing. They asked if it could be made simpler text for Counties to follow.

*Reduce the days that receiving Counties are allowed in investigating an Intrastate transfer. Ensuring that Probation Departments are quickly getting out to investigate transfer request. Also, made it more consistent with Interstate requirement of 45-days to investigate a transfer in reply.

*Provided receiving Counties to allow temporary supervision to Probationers who are residing in their county.

*Strengthened the Administrative Appeal section of Pat 349. This require Probation Directors to get directly involved in effort to resolves any on-going disputes between counties and protects the interest of community victim safety.

*Lastly, establishes a protocol that allows supervision to occur in continuous counties and cases, where there is a conflict of interest.

We sent these changes back to the workgroup, and they responded to the draft regulation. These regulations were also sent to COPA PARC and asked if they could comment on the draft regulation. Matt thanks everyone for their feedback on the Part 349 regulation. Right now, they are reviewing COPA's suggestions.

Gary Govel - PSI Repository

When pre-sentence investigation is completed through caseload explorer the copy gets uploaded to the State PSI Repository. A request was put in to DCJS Office of Internal Audit to conduct a review of the PSI Repository, that has been concluded this past January 2021. The audit found that there were adequate controls in place, but no evidence of inappropriate activity. Users provided positive feedback strengthen practices within the PSI Repository.

- TAC--Terminal Agency Coordinator audit function has been introduced and is a requirement for audit.

- An application process has been developed primarily for non-probation users who access the PSI Repository, removing certain users and asking agencies to certify continued access by users.

Moving forward, Probation users submitting tickets, we will have a request process put in place that will come to OPCA and we will introduce that application to our team to grant new probation officer access to the PSI Repository. We are also reviewing and revising the available reasons code, why an agency would be accessing the PSI Repository, aligning it with the different statutory functions for the different agencies. We will also be updating the PSI Repository guidance to reflect all the users that now have access to it.

Patricia Clements – OPCA Training Plan Update:

OPCA conducts Probation Executive Leadership Training on an annual basis. In early 2021, 19 Directors/Deputies participated in the March Class, our first DCJS virtual training for Executive Leadership. Training came up with a great agenda with some welcoming remarks from Deputy Commissioner Maccarone and Commissioner Green talking about the importance of leadership and leading change within your department. We shared a lot of information about statutory and regulatory authority and how you can leverage those to make changes to become a strong leader. Quality assurance has been something that OPCA has been focusing on in the last couple of years. Some conversations were had about evidence-based practices. In terms of utilizing training and developing your own program compacity to support that leadership role and the change one is attempting to make. Probation officers are among the most highly educated individuals in law enforcement. Over the past years training has been focused on putting a lot of boots on the ground with train the trainer models and utilizing trainers that we use out in the fields. We've also relied on Probation Officers more to become the interventionist. We wrapped up a day and half training with information about fiscal reports and budgeting. DC Maccarone is looking into having the Office of the State Comptroller do a more comprehensive training for Directors to be able to talk about audits and fiscal responsibilities as Directors. Lastly, we had our panel discussion which consisted of four Directors, Steve Bayle from Saratoga County Probation, Laura Bauer of Rensselaer County Probation, Ana Bermudez, Commissioner of New York City Probation, and Bob Iusi from Warren County Probation.

Fundamentals, The Commission is aware that we had an in-person class that commenced in March of 2020. It was the first time that we delivered that pilot curriculum that was revised in 2019. Training was halted halfway through the program due to the COVID19 pandemic. Training resumed in the fall of 2020 and the class graduated virtually. Since then, DCJS OPCA has conducted a fully virtual class and graduated 19 participants on May 7th. We were able to utilize a lot of different technology components including doing some pre-recorded modules, allowing students more flexibility to work at their own pace. We will be delivering another class on June 2, 2021 and it will run through July 2, 2021. We hope to be able to offer a third class sometime in the fall.

Michele Clarke-VER Unit

Our second webinar with the SUNY Educational Opportunity Centers and Attain Labs is scheduled for June 24, 2021. This virtual training will be concentrating on the New York, Long

Island and Westchester area. Opening remarks will be brought by Commissioner Ana Bermudez of New York City Probation as well as DC Maccarone. We will be highlighting services that are available to probationers in New York City, Long Island and Westchester Counties. The staff in VER Unity have been working closely with SUNY staff. We have also attended many County Re-Entry Bi-Monthly Meetings over the last year and are working to bring these services to all Probation Departments, Parole offices and partners throughout the State. VER Unit looks forward to delivering this very informative webinar on June 24th and they look forward to all joining.

Nicole Aldi - Pre-Trial Services Update:

OCA and NYAPSA have been very gracious to let us sit in on meetings regarding Pre-Trial Services agencies, speaking on recertification ideas as well as providing court notification to individuals released to pretrial services. OCA reported it was sending out a daily court calendar to the Pre-Trial service agencies regarding who is required to report to court and what is the purpose of their appearance. Through Article 13A-Classification/Alternatives to Incarceration Law, DCJS funds 44 pre-trial services in New York State. The application for funding is due back at DCJS by June 9, 2021. The application is shorter this year than previously because of the budget and the delay. Lastly, Nicole reported that Alden Saddlemire will be retiring on June 30, 2021.

DC Maccarone asked Steve Bayle about Pre-Trial Services in light of Bail Reform?

Steve Bayle mentioned that in his County a lot of the courts are automatically releasing to supervision. Not really any other observations. The numbers definitely do not amount to what we thought they were going to be across the State.

Commissioner Pozzi stated that now that we are getting back to some sense of normalcy, we will begin to see what the real numbers will look like. Unfortunately, due to Covid-19, the Bail Reform was unable to be fully evaluated. Over the next year or two, we should start to see what some of the real numbers are going to be. In Westchester they have been underwhelmed.

Teresa Scanu-Hansen: Juvenile Case Processing Reports & Race/Ethnicity Webinar

With the implementation of Raise the Age in New York State, DCJS implemented CE Sync—and with it the ability to aggregate county case level juvenile data on probation processing. Teresa reported CE Sync is fully operational and DCJS is able to collect data for analysis by the Office of Justice Research and Performance and produce new juvenile case processing reports. DCJS has now released three series of these reports. The Youth Justice processing reports were released in May 2020, October 2020 and the last data reports were released in February 2021. The next release of Youth Justice processing reports will include the first half of 2021, which we expect that to share with Probation Directors at the end of the summer. On March 2, 2021, DCJS provided a webinar to Probation Directors on the topic of Race and Ethnicity breakdowns. These tables will be found on the DCJS public website soon.

Jennifer Cox reported that 50 Raise the Age Plans for year three ending March 31, 2021 have now been approved and letters will soon be sent out to counties.

Ian Grugan reported on the status of the SOGIE Project. Work started with the Sexual Orientation Gender Identity and Expression project to get an understanding on what that population looks like within the criminal justice system on a national scale in 2018. We realized that nationally there is a huge disparity that exists among that population within the system. We decided to start exploring that within New York State and within our localities. We started with three pilot counties in 2018 which were trained and collecting LGBTQ data. The DCJS Offices of Youth Justice and Probation and Correctional Alternatives have been working with Probation Departments, addressing training issues, policy development, and community-based service providers to extend training. DCJS has since commenced training and extended the SOGIE project to New York City, and is now implementing Phase 3, which will include the Western New York Region--Niagara, Erie, Chautauqua, Cattaraugus and Allegany.

The NY Probation Commission meeting was concluded at 12:30 PM. The next Probation Commission meeting is scheduled for Tuesday November 16, 2021 @ 10am.