New Jersey Courts
Independence • Integrity • Fairness • Quality Service

Administrative Office of the Courts

GLENN A. GRANT, J.A.D.
Acting Administrative Director of the Courts

Richard J. Hughes Justice Complex • P.O. Box 037 • Trenton, NJ 08625-0037 njcourts.gov • Tel: 609-376-3000 • Fax: 609-376-3002

Directive #13-20

[Questions or comments may be directed to Trial Court Services at 609-815-2900 ext. 55202]

TO: **Assignment Judges**
Criminal Division Judges
Family Division Judges
Municipal Court Judges

FROM: **Glenn A. Grant, J.A.D.**

SUBJ: **Sentencing Guidance During the COVID-19 Pandemic**

DATE: **April 30, 2020**

In response to the ongoing COVID-19 public health emergency, the New Jersey Judiciary is implementing all possible measures to apply social distancing in current court operations, consistent with the recommendations of the New Jersey Department of Health and the Centers for Disease Control.

By Order dated April 20, 2020, the Supreme Court established parameters for sentencing, as follows: (1) sentencing hearings may proceed using remote options (phone or video) only with the consent of all parties; and (2) courts have the authority to stay the commencement of the custodial term for certain sentences in Criminal, Family, and Municipal matters. This directive implements those provisions of the Court's April 20, 2020 Order.

The attached guidance sets forth options judges should consider on a case-by-case basis for sentencing proceedings, including sentences to state prison, probation, county jail and juvenile facilities.

Sentences in which a state prison term will be imposed can proceed (with the consent of all parties) or be adjourned at the judge's discretion. Options for sentences other than state prison include, (1) adjourning the sentence, (2) ordering that the custodial portion of a county jail sentence or a juvenile disposition to secure placement be served immediately, or (3) ordering that the commencement of the custodial portion of a county jail sentence or a juvenile disposition to secure placement be stayed or delayed based on a weighing of factors listed in the April 20, 2020 Order, including risks attendant to the COVID-19 public health emergency.

Interpreter
ADA Americans with Disabilities Act
ENSURING AN OPEN DOOR TO JUSTICE

The court shall state the reasons on the record for immediately commencing or staying commencement of the county jail custodial term or commencing or deferring juvenile dispositions to a secure placement. To determine whether to stay the commencement of a custodial term during the ongoing COVID-19 pandemic, judges should consider whether a stay would pose a risk to the safety of the public or the defendant or the juvenile. In that regard, judges must consider and make findings on the risk of danger to the public, the risk of flight, and the seriousness of the offense, among other factors relevant to public safety. Judges should also consider the positions of the defendant, defense counsel, juvenile, the prosecution, and any victims. In juvenile delinquency matters, the preferences expressed by the juvenile's parent(s) or guardian(s) also should be considered.

Unless the court orders otherwise, or as otherwise provided by law, certain other conditions of the sentence will commence upon sentencing or disposition regardless of any stay of the custodial term. These include, but are not limited to, any monetary or court-ordered financial obligations, restitution, no-contact orders, Megan's Law registration obligations, and driver's license suspensions.

The guidance also includes instructions for probation officers to participate in sentencing hearings, and to capture the defendant's or juvenile's contact information (address, phone, and email address, if applicable) for purposes of ensuring that probation supervision begins promptly, including if the commencement of the custodial sentence or disposition is stayed. Municipal courts likewise must provide the defendant's contact information to the Probation department.

This directive provides guidance for: (1) the Superior Court Criminal Division; (2) the Superior Court Family Part, Juvenile Delinquency (FJ Docket) and Quasi-Criminal (FO Docket); and (3) Municipal Court cases. Questions regarding this COVID-19 sentencing guidance should be directed as follows: to Assistant Director for Criminal Practice Sue Callaghan at sue.callaghan@njcourts.gov or by telephone at (609) 815-2900 ext. 55300; Assistant Director for Family Practice Joanne Dietrich at joanne.dietrich@njcourts.gov or by telephone at (609) 815-2900 ext. 55350; Assistant Director for Municipal Court Services Steven Somogyi at steven.somogyi@njcourts.gov or by telephone at (609) 815-2900 ext. 54850.

Attachments

cc: Chief Justice Stuart Rabner
Steven D. Bonville, Chief of Staff
AOC Directors and Assistant Directors
Clerks of Court
Trial Court Administrators
Special Assistants to the Admin. Director
Criminal Division Managers
Family Division Managers
Municipal Division Managers
Probation Division Managers

Julie Higgs, Chief
Maria Pogue, Chief
David Tang, Chief
Amelia Wachter-Smith, Chief
Donna Westhoven, Statewide Drug Court Manager

Sentencing Guidance for Superior Court Criminal Division Judges in Response to COVID-19

Sentencing Guidance for Criminal Part Judges
in Response to COVID-19

In response to the growing public health crisis worldwide and in this state involving the COVID-19 coronavirus, the New Jersey Judiciary is implementing all possible measures to apply social distancing in current court operations consistent with the recommendations of the New Jersey Department of Health ("NJ DOH") and the Centers for Disease Control ("CDC").

Pursuant to the April 20, 2020 Supreme Court Order, sentencing can be conducted remotely using video and/or phone options only with the consent of all parties. Accordingly, judges should consider the following when sentencing defendants remotely during this public health emergency. The guidance only applies to defendants who are awaiting sentencing following a guilty plea or jury verdict. It does not apply to defendants for whom the court has already imposed a sentence.

Practical Considerations for Sentences in the Criminal Division

(1) The Presentence Investigation Report (PSI) must be completed and available for the parties in the eCourts case jacket prior to the scheduled sentencing date. Defense counsel should make arrangements to remotely review the PSI with the defendant prior to sentencing. If defense counsel did not review the PSI with the defendant prior to sentencing, defense counsel shall acknowledge that on the record. The proceeding should be interrupted, and defense counsel should be given time to privately review the PSI with the defendant. Thereafter, the sentence may proceed. Defense counsel must provide to the court the defendant's telephone numbers and address, and email address, if applicable so that Probation will be able to communicate with the defendant and arrange for phone or video reporting.

(2) Pursuant to the April 20, 2020 Order, victims shall have an opportunity to participate in the sentencing hearing or to object to the scheduling or method of proceeding. In that regard, County Prosecutors and other law enforcement agencies shall, to the extent applicable, provide notice to victims of the scheduling of the sentencing hearing, including how the hearing is proposed to be conducted and whether the court will consider staying the commencement of the custodial portion. If a victim or family member of the defendant, or other appropriate person wishes to participate/ address the court, such arrangements should be made by the prosecutor or defense counsel. The court must be advised of these arrangements in advance of the sentencing.

(3) Defense attorneys, prior to sentencing, should review with the defendant the Notice of Appeal Rights and Time to File Post-Conviction Relief form. At sentencing, defense

counsel shall represent that they have reviewed the form with the defendant, that all questions, if any, have been addressed with the defendant, and advise if the defendant has signed the form. The judge will advise the defendant of the appellate and PCR rights. See R. 3:21-4(h). If defense counsel has not been previously able to have the defendant sign the form, defense counsel on the record should elicit permission from the defendant to print the defendant's name in the defendant's signature line on the form. Defense counsel should then submit the form as soon as reasonably practical.

Sentences in the Criminal Division

(1) State Prison Sentences

For sentences in which a state prison term will be imposed, those sentences can proceed or be adjourned at the judge's discretion. Any action by the Department of Corrections (DOC) to delay transport and commitment of prisoners to DOC facilities should not delay the sentence.

(2) Probation Sentences

If a probationary sentence is anticipated to be imposed and to commence immediately, Probation must be advised prior to the sentencing date. Arrangements should be made for Probation staff to be included remotely by video or conference call at the sentencing.[1]

At sentencing, defendants must be asked whether they have provided their telephone numbers and their address, and email address, if applicable, to their attorneys. After the judge has imposed the sentence, Probation staff should advise the defendant of the reporting conditions on the record. If the defendant is seeking to leave the State, Probation staff should advise the defendant on the record, that the documents to transfer supervision under the Interstate Compact for Adult Offender Supervision (ICAOS) must be signed and provide instructions as to how this will be done. If the defendant is in the county jail, the documents to transfer supervision under the ICAOS must be signed prior to defendant's discharge from the jail.

[1] As noted, this Guidance applies only to defendants who are awaiting sentencing following a guilty plea or jury verdict (it does not apply to defendants for whom the court has already imposed a sentence). In all cases, however, including those in which a sentence already was imposed, every effort should be made to ensure that Probation has the defendant's telephone numbers, address, and email address. The Criminal Division should provide this information to Probation for prior cases and going forward for any case in which Probation staff are not included at the sentencing.

(3) Probation and County Jail Sentences

(a) Sentences that include only a probationary term, including sentences for defendants seeking to leave the state that require transfer of supervision under the ICAOS may proceed or be adjourned at the judge's discretion.

(b) For sentences imposed that include a county jail term of 364 days or less, as a condition of probation, judges should consider whether the commencement of the custodial portion of the sentence will be stayed. If the custodial portion is stayed, the defendant shall report to Probation as directed in the interim.

(c) For sentences imposed of 364 days or less in a county jail, with no probation component, judges should consider whether the sentence can be adjourned to a later date. If the custodial sentence is imposed, judges should consider whether to stay the commencement of the custodial term until a later date.

(4) Staying the Commencement of the Custodial Sentence to County Jail

The court may stay the commencement of the custodial portion of a sentence to county jail because of risks attendant to the COVID-19 public health emergency.

The court shall state the reasons on the record for immediately commencing or staying the start of a custodial term. In that regard, the court must consider and make findings on the risk of danger to the public, the risk of flight, and the seriousness of the offense, as well as other factors relevant to public safety. The court should also consider the positions of the defendant, the prosecution, and any victims.

(5) Other Sentencing Provisions

Unless the court orders otherwise, or as otherwise provided by law, certain other conditions of the sentence, including but not limited to any monetary or court-ordered financial obligations, restitution, no-contact orders, Megan's Law registration obligations, and driver's license suspensions will commence upon sentencing regardless of whether a stay of the custodial term is ordered.

Sentencing Guidelines/Protocol (FO and FJ Dockets) for Family Part Judges in Response to COVID-19

Sentencing Guidelines/Protocol (FO and FJ Dockets) for Family Part Judges in Response to COVID-19

In response to the growing public health crisis worldwide and in this state involving the COVID-19 coronavirus, the New Jersey Judiciary is implementing all possible measures to apply social distancing in current court operations consistent with the recommendations of the New Jersey Department of Health ("NJ DOH") and the Centers for Disease Control ("CDC").

Pursuant to the April 20, 2020 Supreme Court Order, sentencing can be conducted remotely using video and/or phone options only with the consent of all parties. Accordingly, judges should consider the following when sentencing defendants remotely during this public health emergency. The guidance only applies to defendants or juveniles who are awaiting sentencing following a guilty plea, judicial finding of guilt, or adjudication of delinquency. It does not apply to defendants or juveniles for whom the court has already imposed a sentence.

I. Practical Considerations for Sentences in the Family Division - Quasi-Criminal Matters (FO Docket)

(1) Pursuant to the April 20, 2020 Order, victims shall have an opportunity to participate in the sentencing hearing or to object to the scheduling or method of proceeding. In that regard, County Prosecutors and other law enforcement agencies shall, to the extent applicable, provide notice to victims of the scheduling of the sentencing hearing, including how the hearing is proposed to be conducted and whether the court will consider staying the commencement of the custodial portion. If a victim or family member of the defendant, or other appropriate person wishes to participate/address the court at sentence, such arrangements should be made by the prosecutor or defense counsel. The court must be advised of these arrangements in advance of the sentencing.

(2) Defense attorneys, prior to sentencing, should review with the defendant the Notice of Appeal Rights form. At sentencing, defense counsel shall represent that they have reviewed the form with the defendant, that all questions, if any, have been addressed with the defendant, and advise if the defendant has signed the form. The judge will advise the defendant of their appellate rights. If defense counsel has not been previously able to have the defendant sign the form, defense counsel on the record should elicit permission from the defendant to print the defendant's name on the form where the signature would ordinarily be. Defense counsel should then submit the signed form as soon as reasonably practical.

Sentences in the Family Division - FO Docket

(1) Probation Sentences

(a) Sentences that include only a probationary term, including sentences for defendants seeking to leave the state that require transfer of supervision under the ICAOS may proceed or be adjourned at the judge's discretion.

(b) If a probationary sentence is anticipated to be imposed and to commence immediately, Probation must be advised prior to the sentencing date.[1] Arrangements should be made for Probation staff to be included remotely by video or conference call at the sentencing.

(c) At sentencing, defendants must be asked to provide the court with their telephone numbers and their address, and email address if applicable. After the judge has imposed the sentence, probation staff should advise the defendant of the reporting conditions on the record. If the defendant is seeking to leave the state, Probation should advise the defendant on the record, that the documents to transfer supervision under the ICAOS must be signed and provide instructions as to how this will be done. If the defendant is in the county jail, the documents to transfer supervision under the ICAOS must be signed prior to defendant's discharge from the jail.

(2) Probation and County Jail Sentences

For sentences imposed that include a county jail term of 180 days or less, with a condition of probation, judges should consider whether the commencement of the custodial portion of the sentence will be stayed. If the commencement of the custodial portion is stayed, the defendant shall report to Probation as directed in the interim.

(3) County Jail Sentences

For sentences imposed of 180 days or less in a county jail, with no probation component, judges should consider whether the sentence can be adjourned to a later

[1] As noted, this Guidance applies only to defendants who are awaiting sentencing following a guilty plea or jury verdict (it does not apply to defendants for whom the court has already imposed a sentence). In all cases, however, including those in which a sentence already was imposed, every effort should be made to ensure that Probation has the defendant's telephone numbers, address, and email address. The Family Division should provide this information to Probation for prior cases and going forward for any case in which Probation staff are not included at the sentencing.

date. If the custodial sentence is imposed, judges should consider whether to stay the commencement of the custodial term until a later date.

(4) Staying the Commencement of the Sentence - FO Docket

The court may stay the commencement of the custodial portion of a sentence to county jail because of risks attendant to the COVID-19 public health emergency.

The court shall state the reasons on the record for immediately commencing or staying the start of a custodial term. In that regard, the court must consider and findings on the risk of danger to the public, the risk of flight, and the seriousness of the offense, as well as other factors relevant to public safety. In FO matters, the court should explicitly address victim safety in deciding whether to stay the commencement of a custodial term. The court should also consider the positions of the defendant, the prosecution, and any victims.

(5) Other Sentencing Provisions - FO Docket

Unless the court orders otherwise, or as otherwise provided by law, certain other conditions of the sentence, including but not limited to any monetary or court-ordered financial obligations, restitution, and no-contact orders, will commence upon sentencing regardless of whether a stay of the custodial term is ordered.

II. Practical Considerations for Dispositions in the Family Division - Juvenile Delinquency Matters (FJ Docket)

(1) If ordered by the court, the Predisposition Report (PDR) or its functional equivalent must be completed and available to the parties prior to the scheduled disposition date. Defense counsel should make arrangements to remotely review the PDR with the juvenile prior to disposition. If defense counsel did not review the PDR with the juvenile prior to disposition, defense counsel shall acknowledge that on the record. The proceeding should be interrupted, and defense counsel should be given time to privately review the PDR with the juvenile. Thereafter, the disposition may proceed. At disposition, juveniles must be asked to provide the court with their telephone numbers and their address, and email address if applicable. Parents/guardians also must provide their contact information to the court, including telephone numbers, addresses, and email addresses if applicable. This information will be necessary for

Probation to be able to communicate with the juvenile, and to arrange for phone or video reporting.[2]

(2) Pursuant to the April 20, 2020 Order, victims shall have an opportunity to participate in the disposition hearing or to object to the scheduling or method of proceeding. If a victim or family member of the juvenile, or other appropriate person wishes to participate/address the court at disposition, such arrangements should be made by the prosecutor or defense counsel. The court must be advised of these arrangements in advance of the disposition date.

(3) Defense attorneys, prior to disposition, should review with the juvenile the Notice of Appeal Rights form. At adjudication, defense counsel shall represent that they have reviewed the form with the juvenile, that all questions, if any, have been addressed with the juvenile, and advise if the juvenile has signed the form. The judge will advise the juvenile of: (a) the appellate rights pursuant to Administrative Directive #01-09; (b) the court's authority to retain jurisdiction pursuant to R. 5:24-5; and (c) the court's authority to modify an order of disposition or entertain a post-disposition relief application pursuant to R. 5:24-6. If defense counsel has not been previously able to have juvenile sign the form, defense counsel on the record should elicit permission from the juvenile to print the juvenile's name on the form where the signature would ordinarily be. Defense counsel should then submit the signed form as soon as reasonably practical.

Dispositions in the Family Division - FJ Docket

(1) Juvenile Justice Commission Commitments

For dispositions in which a Juvenile Justice Commission (JJC) commitment term will be imposed, those dispositions can proceed or be adjourned at the judge's discretion. Any action by the JJC to delay transport and commitment of juveniles to JJC facilities should not delay the disposition.

[2] As noted, this Guidance applies only to juveniles who are awaiting disposition to a secure facility. In all cases, however, including those in which a disposition already was imposed, every effort should be made to ensure that Probation has the juvenile's telephone numbers, address, and email address. The Family Division should provide this information to Probation for prior cases and going forward for any case in which Probation staff are not included at the sentencing.

(2) Probation Dispositions

(a) Dispositions that include only a probationary term or dispositions for juveniles seeking to leave the state that require transfer of supervision under the Interstate Compact on Juveniles (ICJ) may proceed or be adjourned at the judge's discretion.

(b) If a probationary disposition is anticipated to be imposed and to commence immediately, Probation must be advised prior to the disposition date. Arrangements should be made for Probation staff to be included remotely by video or conference call at the disposition.

(c) At disposition, juveniles must be asked whether they have provided their telephone numbers and their address, and email address, if applicable, to their attorneys. Parents/guardians also must provide their contact information to the court, including telephone numbers, addresses, and email addresses if applicable. After disposition, Probation staff should advise the juvenile of the reporting conditions on the record. If the juvenile is seeking to leave the state, Probation should advise the juvenile on the record, that the documents to transfer supervision under the ICJ must be signed and provide instructions as to how this will be done. If the juvenile is in a secure facility, the documents to transfer supervision under the ICJ must be signed prior to the juvenile's release from the secure facility.

(3) Probation and Secure Facility Dispositions

For dispositions imposed that include a secured placement term of 60 days or less, with a condition of probation, judges should consider whether the commencement of the custodial portion of the disposition will be deferred. If the commencement of the custodial portion is deferred, the juvenile shall report to probation as directed in the interim.

(4) Secure Facility Dispositions

For dispositions imposed that include a secured placement term of 60 days or less, with no probation component, judges should consider whether the disposition can be adjourned to a later date. If the custodial disposition is imposed, judges should consider whether to stay the commencement of the custodial term until a later date.

(5) Pending Placement Dispositions

For dispositions imposed that include non-secure placement, judges should consider any other alternatives until non-secure placement is available. If there is a probation component, the juvenile shall report as directed to probation in the interim.

(6) Deferring Disposition - FJ Docket

The court may defer the commencement of the custodial portion of a sentence to a secure placement because of risks attendant to the COVID-19 public health emergency.

The court shall state the reasons on the record for immediately commencing or deferring the start of a custodial term. In that regard, the court must consider and make findings on the risk of danger to the public, the risk of flight, the seriousness of the offense, and other factors relevant to public safety. The court should also consider the positions of the juvenile, the juvenile's parent(s)/guardian(s), the prosecution, and any victims.

(7) Other Disposition Provisions - FJ Docket

Unless the court orders otherwise, or as otherwise provided by law, certain other conditions of the sentence, including but not limited to any monetary or court-ordered financial obligations, restitution, no-contact orders, Megan's Law registration obligations, and driver's license suspensions will commence upon sentencing regardless of whether a deferral of the custodial term is ordered.

Sentencing Guidelines for Municipal Court Judges in Response to COVID-19

Sentencing Guidelines for Municipal Court Judges in Response to COVID-19

In response to the growing public health crisis worldwide and in this state involving the COVID-19 coronavirus, the New Jersey Judiciary is implementing all possible measures to apply social distancing in current court operations consistent with the recommendations of the New Jersey Department of Health and the Centers for Disease Control.

Accordingly, judges should consider the following when sentencing defendants during this public health emergency. Please note that pursuant to the April 20, 2020 Supreme Court Order, sentencing can be conducted remotely using video and/or phone options only with the consent of all parties. The guidance set forth below only applies to defendants who are awaiting sentencing following a guilty plea or finding of guilt by a judge. It does not apply to defendants for whom the court has already imposed a sentence.

Sentences in the Municipal Courts

(1) Victim Notification Regarding Sentencing

Pursuant to the April 20, 2020 Order, victims shall have an opportunity to participate in the sentencing aspect of the municipal court proceeding or to object to the scheduling or method of the sentencing proceeding. In that regard, Municipal Prosecutors and other law enforcement agencies shall, to the extent applicable, provide notice to victims of the scheduling of the sentencing aspect of the municipal proceeding, including how the sentencing is proposed to be conducted and whether the court will consider staying the commencement of the custodial portion. If a victim or family member of the defendant, or other appropriate person wishes to participate/address the court, such arrangements should be made by the prosecutor or defense counsel. The court must be advised of these arrangements in advance of the sentencing.

(2) Discretionary Sentences to County Jail

For municipal charges where incarceration is discretionary – judges should consider whether other appropriate and legally authorized penalties other than incarceration may be imposed.

(3) Probation Sentences

(a) Sentences that involve only a probationary term may be stayed at the judge's discretion.

(b) On a practical basis, in matters in which probation is imposed, the municipal court must ensure that:

i. The defendant receives the sentencing order.

ii. The municipal court staff collects the defendant's contact information (address, phone, email) and provides it to the Probation Division.

iii. The defendant is advised by the municipal court to update Probation when there is any change to defendant's contact information.

iv. If for any reason a defendant's contact information (address, phone, email) is not collected at the sentencing hearing and the defendant was on pretrial monitoring, the Pretrial Services Unit will share the defendant's contact information with the probation officer.

(4) <u>County Jail Sentences</u>

For sentences that include a term of incarceration, judges should consider whether to stay commencement of the custodial portion of a sentence term until a later date.

(5) <u>Staying the Custodial Sentence to County Jail</u>

The court may stay the commencement of a custodial portion of a sentence based on risks attendant to the COVID-19 public health emergency.

To determine whether to stay the commencement of a custodial term because of the ongoing public health emergency, judges should consider whether a stay would pose a risk to the safety of the public or the defendant. In that regard, judges must consider and make findings on the risk of danger to the public, the risk of flight and the seriousness of the offense, among other factors relevant to public safety. Judges should also consider the positions of the defendant, the prosecution, and any victims. The court shall state the reasons on the record for immediately commencing the custodial term or for staying commencement of the custodial term.[1]

---

[1] It is longstanding policy that a municipal court judge must set forth in the record the reason for any stay in the commencement of a term of incarceration when sentencing a defendant convicted of a third time Driving While Intoxicated (DWI) charge (N.J.S.A. 39:4-50(a)(3)). See October 25, 2006 Memorandum from Judge Philip Carchman, "Sentencing of Third or Subsequent DWI Offenders – State v. Luthe and 'Michael's Law.'" , p. 1 (The Legislature's stated purpose in enacting 'Michael's Law' was to "keep third-time DWI

(6) Sentencing Provisions

Unless the court orders otherwise, or as otherwise provided by law, certain other conditions of the sentence, including but not limited to any monetary or court-ordered financial obligations, restitution, no-contact orders, and driver's license suspensions will commence upon sentencing regardless of whether a stay of the custodial term is ordered.

---

offenders off the streets, even if they won't keep themselves off the streets." State v. Luthe, 383 N.J. Super. 512, 514 (App. Div. 2006) (quoting the Governor's official news release). In order to effectuate this purpose, such a defendant should go directly from the municipal court to the jail, minimizing his or her opportunity to drive. **If the judge has compelling reasons not to begin the custodial sentence immediately, those reasons must be placed on the record.**") (emphasis added).