

Criminal Justice System Responses to COVID 19

March 20, 2020

Amid the global COVID-19 pandemic, Minnesota's systems must respond with flexibility and innovation. Violence Free Minnesota – the statewide coalition to end relationship abuse – and the Minnesota Coalition Against Sexual Assault (MNCASA) are engaged in ongoing conversations with criminal justice and legal system partners to ensure that victim/survivors and advocacy programs are at the forefront of these conversations. Violence Free Minnesota and MNCASA represent our member programs and advocate on their behalf in a rapidly changing landscape of decision making.

That said, state agencies and systems are currently stretched thin. Their ability to respond to quickly emerging concerns is limited and not always possible. As the public health crisis evolves, guidance follows. We – Violence Free Minnesota and MNCASA – ask our membership to bring forward questions and concerns and we will continue to find answers as quickly as possible.

Our aim is to maintain a transparent line of communication and we will be in contact with you as we learn more.

Minnesota Department of Corrections

Offenders who Violate the Terms of Their Release

The Minnesota Department of Corrections has asked MN DOC supervision agents, county corrections agents (CCA), and hearing officers to manage release violators differently during this public health emergency in an effort to prevent/reduce transmission of COVID 19 in jails and prisons across the state.

Under the new guidance, if an offender violates the terms of his/her release, supervision agents and hearing officers are being asked to assess the level of danger posed by the violation before revoking the client's probation/parole and taking the client into custody. Depending on the crime, new misdemeanor or gross misdemeanor charges will be evaluated to determine whether or not they should trigger the issuance of a DOC warrant. **Overall, agents and hearing officers are being asked to be as conservative as possible when it comes to taking violators into custody.**

However, if the violation or new crime provides evidence that the individual poses a credible threat to an individual victim or to the general public, agents can bring someone into custody and/or request a hearing through the Hearings and Release Unit. The agent just needs to be able to articulate the danger of **not** detaining that individual.

In this same guidance, supervising agents are also **strongly encouraged** to connect with local advocacy programs if a client is a) engaging in concerning behavior that does not rise to the level of a crime or a violation, or b) if the crime or violation is not domestic abuse-related/will



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not qualify for detention or revocation under the current policy, but the agent is aware of a relevant domestic abuse history. In these scenarios, agents are being asked to connect with local advocacy to promote safety planning and victim support.

The intention behind connecting with local victim advocacy is **not** to discuss the offender's risk or get input from the domestic violence agency; rather, it is to *ensure that there is good care for the victim*. The agent can let the advocate know that he/she is concerned about the behavior of a particular offender (the agent may be getting this information from the victim her/himself) and express a desire that the domestic violence agency will be able to coordinate and engage in safety planning with the victim.

Victim Notification

Nothing has changed in regards to victim notification; it still depends entirely on whether or not victims have registered for notification in the MN DOC system

(https://mn.gov/doc/assets/VICTIM_NOTIFICATION_REQUEST_FORM_2015_tcm1089-276323.pdf).

It is critical to continue providing victims with information about how notification operates, and that VINE (county jail) registration does not transfer to HAVEN (MN DOC/state prison) registration.

In-Facility Issues

The DOC is attempting to keep existing in-facility processes – including those related to PREA – as consistent as possible. However, some shifts have already occurred.

- 1) Visitors and Volunteers: Visitors and volunteers are currently unable to enter DOC facilities in an effort to reduce/prevent transmission of COVID 19.
- 2) Advocates: Advocates are categorized as “professionals” and are therefore allowed to enter DOC facilities for no-contact visitation. However, working with incarcerated victims through phone or video is preferred.

**If you are attempting to work with a victim in a DOC facility and are denied access, please reach out to Nikki Engel at nengel@vfmn.org or Lindsay J. Brice at lbrice@mncasa.org and we will assist you.

**Question for programs with a DOC facility in your service area: DOC wants to know if any of you are willing to go inside for no-contact visits with victims, or if you would prefer victim contact by phone only. Please drop a note to Nikki or Lindsay (above) with your preference.

Sentence/Incarceration Location Changes



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Possible Incarceration Location Changes: MN DOC is hoping to keep individuals who would be coming into facility for very short sentences (2 weeks to 90 days) out. This may mean keeping them in jails where they were prior to sentencing.

Medically High Risk Incarcerated Individuals:

Much of the work to lower the number of individuals in DOC custody is being done to create capacity in order to care for all inmates, including those at higher risk, in a worst case scenario situation. The DOC indicated they are having specific conversations about how to care for medically high risk individuals. While this work is in progress, they could offer some specifics.

- There are currently six pregnant individuals who are being assessed for “conditional medical release,” most likely to a halfway house.
- The DOC is unlikely to consider early release for other medically high-risk individuals. Due to the current stress on our medical system and the likelihood that that stress will only increase, they do not believe releasing medically high-risk individuals into the community would be beneficial to public health or to the individuals themselves.
- It is possible that medically high-risk individuals may be moved to segregation. However, this would be physical segregation from general population with continued access to television, etc.

*** Please note:** The MN DOC is **not** talking about releasing incarcerated individuals to reduce prison populations at this time; rather, they are focused on **reducing the numbers of individuals coming in for low-level violations and crimes**, and possible early release of some inmates whose release dates are less than 120 days and who have approved release plans in place. (Of the ~130 individuals being considered for this modified work release with increased levels of contact with DOC staff, all are individuals who are considered low-risk based on the DOC’s scoring assessments.)

Additional questions asked that have not yet been answered, but discussion is in process:

- 1) Who is our dedicated point of contact at the DOC?
- 2) How are supervising agents currently assessing the risk/threat of offenders with histories of domestic violence?
- 3) What is the plan for forensic medical exam continuity?

Confidentiality note:

[Changes to confidentiality requirements under HIPAA](#) does **NOT** change Minnesota advocates’ confidentiality obligations. Advocate privilege and confidentiality under Minn. Stat. 595.02 (k), VOCA 28 CFR 22 and 28 CFR 94.115, and VAWA 34 USC § 12291(b)(2) and 29 CFR 90.4 (b), requires information shared between an advocate and victim/survivor to remain private. This information cannot be shared without the written, time-limited and informed consent of the victim/survivor, a court order, or requirement under state statute.



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Resources

The American Probation and Parole Association released a best practices manual for supervision agents who are working with clients who have engaged in, or been victims of, domestic abuse. It can be found here: <https://www.appa-net.org/eweb/docs/APPA/pubs/CCRDV.pdf>

Programs may want to refer to the chapter about working with victims (pages 156-181) to understand and reinforce recommendations in the field.

