**Commonwealth of** **Virginia**

**Virginia Department of Criminal Justice Services**

Community Corrections and Pretrial Services

**REQUEST FOR A VARIANCE**

**I. PURPOSE**

The purpose of this policy is to provide a process for requesting, approving, and monitoring variance requests from local agencies related to compliance with the Virginia Department of Criminal Justice Services (DCJS) *Local Community Based Probation* *Minimum Standards*, *Minimum Standards for Pretrial Services*, and other DCJS requirements.

**II. APPLICABILITY**

This policy applies to all local community-based probation and pretrial services agencies required to comply with the Virginia Department of Criminal Justice Services (DCJS) *Local Community Based Probation Minimum Standards, Minimum Standards for Pretrial Services*,and other DCJS requirements.

**III. DEFINITIONS**

**Variance** is an approval by DCJS that permits an agency to deviate from the requirements of the established minimum standards or other DCJS requirements under specific conditions and for a specified period of time, in response to a specific written request by the local agency director with the input from the Community Criminal Justice Board and the written approval of the administrative and fiscal agent (City Manager or County Administrator).

**Local Community Based Probation Minimum Standards** facilitate the safe, secure, legal, and effective operation of Virginia’s local community-based probation agencies in accordance with applicable federal and state laws and established DCJS policy.

**Minimum Standards for Pretrial Services** facilitate the safe, secure, legal, and effective operation of Virginia’s pretrial services agencies in accordance with applicable federal and state laws and established DCJS policy.

**IV. POLICY**

Approval of variances are at the discretion of DCJS. Variances are not a means of circumventing existing standards or a permanent exemption from minimum standards or requirements.

Agency directors may request a variance when an agency is unable to immediately comply with standards or policies and the variance will not jeopardize the safety and well-being of staff, individuals on supervision, defendants, the community, or the public.

Variances shall be:

1. for a specific standard, policy, or requirement:
2. for a specific timeframe; and
3. temporary.

**V. PROCEDURE**

**A. Submitting a Request for a Variance**

Prior to submitting a request for a variance, the local agency director shall consult with DCJS to determine the need for a variance. Once the local agency director confirms the agency is eligible to request a variance, the following must occur:

1. The Community Criminal Justice Board shall be notified and provided an opportunity to advise on whether or not a variance request shall be submitted to DCJS;
2. Once the Community Criminal Justice Board has reviewed the variance request and no objections exist, the administrative and fiscal agent must approve it.

To request a variance, the local agency director shall submit the completed DCJS Variance Request form *(on page 3)* in the Online Grant Management System (OGMS) as a Contract Amendment – Other.

**B. DCJS Review and Approval Process**

Upon receiving a variance request, DCJS shall review the request and provide a response on the *DCJS Request for a Variance* form to the local agency director and administrative and fiscal agent within 30 calendar days. DCJS will contact the local agency director if additional information is needed before a decision can be made.

If the variance is approved, the response shall include:

1. Any conditions or requirements placed on approving the variance, and
2. The effective date and length of the variance.

If the variance request is denied, the response shall include:

1. Reason(s) for the denial, and
2. Suggestions on ways to comply with the minimum standard or requirement in more conventional ways, if possible and appropriate.

**C. Continuation of Variances**

Variances may be continued as deemed appropriate by DCJS. All requests for a continuation of a variance shall be submitted to DCJS no later than 30 calendar days after the expiration of the existing variance. To request a continuation, the local agency director, with the concurrent approval of the administrative and fiscal agent, shall submit a new DCJS Variance Request form and the previously approved DCJS Variance Request form to DCJS.

Requests for continuation of a variance will be reviewed in the same manner as an original request for a variance, as provided above. Continuation requests should clearly demonstrate:

1. A good faith effort has been made to comply with the minimum standard or requirement within the previously prescribed timeframe, and
2. Any conditions or requirements set by DCJS on the existing variance have been met.

**D. Monitoring of Variances**

It is the responsibility of the local agency director to report the status of the variance activities to DCJS using the correspondence function of OGMS. Agencies with variances must report the status of variance conditions and plans of action in their Quarterly Status Reports in OGMS. The report shall describe any activities conducted by the agency to achieve compliance with the minimum standard or requirement.

**E. Termination of a Variance**

Upon receipt of written notification from the agency director or following a review by DCJS, a variance may be terminated by DCJS. Conditions under which a variance may be terminated include:

1. The minimum standard or requirement has been met.
2. The minimum standard or requirement has changed and the variance is no longer applicable or required.
3. Any plan proposed or requirements or conditions imposed upon which the continuing variance was approved have not been fulfilled, maintained or met.

Whenever a variance is terminated by DCJS, the agency shall be notified in writing at least 30 days prior to termination of the following:

1. The effective date of the termination.
2. The reason for the termination.
3. The recommended action(s) to be taken by the agency, if applicable.

DCJS Community Corrections and Pretrial Services

**REQUEST FOR A VARIANCE FORM**

**Complete this form to request a variance to a DCJS minimum standard or requirement.
Once completed, please submit it in** [**OGMS**](https://ogms.dcjs.virginia.gov/)(<https://ogms.dcjs.virginia.gov/>) **as a *Contract Amendment – Other*.**

|  |  |
| --- | --- |
| **Agency Name:** |       |
| **Date of Request:** |       |
| **Name of Standard or Requirement:** |       |
| **Issue or Effective Date:** |       |
| **Agency Director** |
| Name: |       |
| Title: |       |
| Contact Email Address: |       |
| **Community Criminal Justice Board Chair** |
| Name: |       |
| Title: |       |
| Contact Email Address: |       |
| **City Manager/County Administrator** |
| Name: |       |
| Title: |       |
| Contact Email Address: |       |
| **Check the type of variance requested:**[ ]  **First request for a variance** *(submit required documentation)*[ ]  **Continuation of previously approved request for a variance** *(submit previously approved variance request and documentation of activities as noted below)*1. The degree of compliance achieved to date, and the agency’s efforts to mitigate any possible danger or hardships attributable to the lack of compliance; and
2. A description of the specific plans for achieving and the expected date of compliance with the minimum standard or requirement.
 |
| **Reasons for a variance:** *State the specific facts or reasons compliance is unattainable and include any documentation of relevant material, options identified and considered, and explanations applicable to the evaluation of this request.*  |
|       |
| **Summarize efforts taken by the agency to comply:** |
|       |
| **Proposed plan and time frame for achieving compliance:** *I request that for purposes of operations our agency should be granted a variance from this standard or requirement and that, to the best of my knowledge and belief, this variance* will not jeopardize the safety and well-being of staff, individuals on supervision, defendants, the community, or the public. |
| Agency Director Signature: |       |  | Date: |       |
| CCJB Chair Signature:  |       |  | Date: |       |
| City Manager/County Administrator Signature: |       |  | Date: |       |

**— DCJS ONLY —**

|  |  |
| --- | --- |
| **Date:** |       |
| Upon review of this request, this variance is: |
| [ ]  Approved without any conditions or requirements |
| [ ]  Approved with the following conditions or requirements: |
|       |
| [ ]  Denied due to the following reason(s): |
|  | [ ]  Reason:  |       |
|  | [ ]  Reason:  |       |
|  | [ ]  Reason:  |       |
| [ ]  Denied with suggestions for compliance: |       |
| [ ]  Continued with the following conditions or requirements: |       |
| [ ]  Other: |       |
| This variance expires on: |       [date] |
| This variance is terminated effective: |       [date] |
| DCJS Adult Justice Programs Manager Signature: |       |  | Date:  |       |
| DCJS Programs and Services Division Director: |       |  | Date:  |       |
| DCJS Director: |       |  | Date:  |       |