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6 IN THE FACTFINDING PROCEEDINGS
7 PURSUANT TO MEYER-MILIAS BROWN ACT

8 INTERNATIONAL BROTHERHOOD OF
9 TEAMSTERS, LOCAL 856,

10 Union,

11 vs.

12 PROBATION DEPARTMENT, COUNTY OF
13 ALAMEDA,

14 Employer.

PERB Case No. SF-IM-232-M

FACTFINDING REPORT AND
RECOMMENDATION FOR SETTLEMENT
AFTER HEARING

15 Chairperson: Andrea L. Dooley, Arbitrator

16 Employer Panel Member: Jeff Bailey, IEDA

17 Union Panel Member: David Tuttle, Operating Engineers Local 3

18 For the Union: Caren Sencer, Esq.
19 Weinberg, Roger & Rosenfeld

20 For the Employer: Tivonna D. Stern, Esq.
21 Office of County Counsel, County of Alameda

22 Hearing Date: December 2 and 4, 2020

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1 **BACKGROUND**

2 The County of Alameda Probation Department (Department or Employer) and the
3 International Brotherhood of Teamsters, Local 856 (Local 856 or Union) are parties to a
4 Memorandum of Understanding (Agreement or MOU). The term of the Agreement was August
5 30, 2015 through August 24, 2019 which was extended by mutual agreement. Union Exhibit 13.¹
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7 The Employer sunshined an issue about the Caseload Management Standards policy in October
8 2017, and the parties met on multiple occasions in 2017, 2018, 2019, and 2020. The parties were
9 not able to reach a tentative agreement on a new Caseload Management Standard Policy and the
10 issue remains in dispute.
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12 The County declared impasse pursuant to PERB Regulation 32792(a) on September 2,
13 2020. The parties jointly selected Arbitrator Andrea L. Dooley to chair a factfinding panel
14 concerning the dispute. The parties properly selected their panel members. The panel convened
15 factfinding hearings on December 2 and 4, 2020 via video conference.
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17 Both parties presented facts through their presenters (listed above) and additional
18 documents and witness testimony. After submission to the panel and consideration of the
19 arguments, the Chair makes these recommendations for settlement of the remaining issues in
20 dispute.
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26 ¹ Joint Exhibit will be abbreviated JX in this report. Union Exhibit will be abbreviated UX.
Employer Exhibit will be abbreviated EX.

1
2 **FACTFINDING CRITERIA**

3 The panel has considered and been guided by criteria set forth in California Government
4 Code Section 3505.4(d), which states:
5

6 In arriving at their findings and recommendations, the factfinders shall consider, weigh
7 and be guided by all the following criteria:

- 8 1. State and federal laws that are applicable to the Employer.
- 9 2. Local rules, regulations or ordinances.
- 10 3. Stipulations of the parties.
- 11 4. The interests and welfare of the public and the financial ability of the public agency.
- 12 5. Comparison of the wages, hours and conditions of employment of the employees
13 involved in the factfinding proceeding with the wages, hours, and conditions of
14 employment of other employees performing similar services and with other
15 employees generally in public school employment in comparable public agencies.
- 16 6. The Consumer Price Index for goods and services, commonly known as the cost of
17 living.
- 18 7. The overall compensation presently received by the employees, including direct wage
19 compensation, vacations, holidays, and other excused time, insurance and pensions,
20 medical and hospitalization benefits, the continuity and stability of employment, and
21 all other benefits received.
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1 8. Any other factors, not confined to those specified in paragraphs 1 through 7,
2 inclusive, which are normally and traditionally taken into consideration in making
3 such findings and recommendations.
4

5 State and Federal Laws Applicable to the Employer

6 The hearing was conducted in compliance with Government Code Section 3504 et seq.
7 (MMBA) and the time limits were met or waived by the parties.

8 Stipulations of the Parties

9 The parties did not make any stipulations.
10

11 The Interests and Welfare of the Public and the Financial Ability of the Employer

12 The Department introduced substantial evidence in support of their contention that the
13 proposed policy serves the interest and welfare of the general public. Assistant Chief Karen
14 Baker testified the Department is a public agency and has “implemented a whole host of
15 community programs” to which a DPO referral is needed for probationers to access services. In
16 this case, the Department says that minimum contact standards are necessary to ensure that
17 clients are being checked on a regular basis so that DPOs can help clients return successfully to
18 the community. Overall, more frequent client contact will bolster the Department’s goal of
19 supporting a safe community. Chief Probation Officer Wendy Still testified that, “the frequency
20 and type of contacts that clients receive, and the client-officer relationship, is the main
21 determinant of success and reducing recidivism.”
22

23
24 Local 856 agrees that client contacts are important for the probationers and the
25 community at large, but disputes whether this policy is workable under current conditions. In the
26

1 Union’s view, DPO staffing levels and the transience of the probationer population make it
2 difficult to ensure routine contact at the standard proposed by the Department.

3 The Employer did not make an “inability to pay” argument or present evidence about any
4 financial inability to pay employees under any proposal considered.

5
6 Comparability

7 The parties presented evidence about the wages and benefits for deputy probation officers
8 at other agencies and the Caseload Management Standard policies at comparable agencies. The
9 comparable public agencies are other counties in the region, counties of comparable population
10 size and funding elsewhere in California, and the state of California. A discussion of the
11 comparability of the caseload management standard policies of other probation departments is
12 included below in Issues and Recommendations.

13
14 Consumer Price Index

15 Because the issue at factfinding did not relate to wages or benefits, neither party
16 presented evidence about the consumer price index.

17
18 Overall Compensation

19 The Employer provided information about the overall compensation for deputy probation
20 officers at seven public agencies, including the County. EX 10. However, the issue at factfinding
21 was not related to wages or benefits so overall compensation is not a factor in these
22 recommendations.

23
24 Other Factors

25 The panel considered all the facts and arguments presented at the hearing by both parties.
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2 **ISSUES AND RECOMMENDATIONS**

3 After a review of the facts and arguments presented by both parties, the Chair
4 recommends the following terms for settlement of the Agreement. These recommendations have
5 been crafted to maintain parity with other Deputy Probation Officers in comparable public
6 agencies and to achieve a better caseload balance among the DPOs in this department.
7

8 **Recommendations are in bold type.**

9 Caseload Management Standards Policy

10
11 The sole issue in this case arises from the Department's interest in replacing the
12 Department Adult Services Manual Sections 400, 405, 410, and 415 with a comprehensive
13 Caseload Management Standards Policy for Adult Services. EX 1, 3, 4, 5, and 6. The
14 Department's interest in adopting the new policy relates to advances in Evidence Based Practices
15 which are intended to better serve Department clients, also called probationers, to track client
16 progress in probation, and to reduce recidivism. The new policy will focus resources on medium
17 to high-risk probationers and accounts for the variance among low-risk probationers, who tend to
18 self-regulate. The intent of the new policy is to implement comprehensive case management
19 standards that improve client services and comport with the new risk assessment tool adopted by
20 the Department. Testimony of Marcus Dawal.
21

22
23 The Union agrees in principle that Evidence Based Practices are a sound approach to
24 caseload management, but they disagree about the way the County seeks to implement these
25 practices.
26

1 While the parties reached substantial agreement about most of the policy, there are a few
 2 areas which have not been resolved. Specifically, the parties cannot reach agreement on caseload
 3 ratios, which are reflected in two sections, Hierarchy of Supervision and Case Contact
 4 Specifications. EX 1.

5
 6 The Employer has proposed the following sections²:

7 **IV. Procedures**

8 1) Hierarchy of Supervision

	Supervision Classifications	
Supervision (PROPS & General)	Alternative Reporting	PRCS/Mandatory Supervision
High	Low	Any Risk Level
Medium		* Dosage is specific to supervision level

15
 16 It is the department's goal to structure and maintain Adult Field Services' caseloads to as
 17 close to industry standards as possible within existing resources. Industry standards
 18 currently suggest a 50:1 active status ratio for moderate to high -risk caseloads.
 19 Maintaining a manageable caseload requires regular assessment and management of the
 20 entire Probation adult population, to ensure nonviable cases (warrant status and clients
 incarcerated for extended periods of 120 days or more) are not counted as part of the 50:1
 active caseload. Case loads can be run with the exception of warrants but incarcerated for
 120 days is currently manual tracking.

21 When caseloads exceed the targeted 50:1 ratio, US (Unit Supervisors), in consultation
 22 with executive management, shall provide guidance on prioritizing the DPO's caseloads
 23 to include, waiving and/or modifying contact specifications, with the goal of making the
 caseload manageable.

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 26 ² EX 1. This proposal reflects modifications incorporated throughout the meet and confer process
 and reflect the Panel's understanding of the Employer's most recent proposal.

1 EX 1, pp. 8-9; EX 2, p. 1.

2 F. Case Contact Specifications

3 Case contact specifications are standards that are designed to ensure appropriate
4 supervision and follow up based upon a client's risk, need and supervision level. These
5 contact specifications are considered minimum standards that DPOs are expected to
6 adhere to in the supervision of clients on their caseload (see Appendix A).

7 In circumstances where a different DPO has been assigned and completes a required
8 contact for the case carrying DPO who is on leave; such contact shall be considered to
9 meet contact standards criteria.

10 In general, caseload contact specifications will be determined by a COMPAS risk of
11 high, medium, or low. However, modifications to the contact specifications may be made
12 as outlined in Section E, entitled, "COMPAS Risk and Needs Assessments."

13 The basic monthly case contact specifications for the various types of cases are as
14 follows:

- 15 • HIGH Supervision (PRCS, Mandatory and General Supervision) – COMPAS
 - 16 ○ Initial home contact within 30 calendar days
 - 17 ○ Office/field contact once every 30 calendar days
 - 18 ○ Collateral contact once every 90 calendar days (may count as an
19 office/field visit for that month)
 - 20 ○ Drug testing; if imposed

- 21 • MEDIUM Supervision (PRCS, Mandatory and General Supervision) – COMPAS
 - 22 ○ Initial home contact within 30 calendar days
 - 23 ○ Office/field contact once every 30 calendar days
 - 24 ■ Home visit once every 60 calendar days after initial home visit can
25 meet the office/field contact requirement.
 - 26 ○ Collateral contact once every 90 calendar days (may count as an
27 office/field contact for that month)
 - 28 ○ Drug testing, if imposed

- 29 • LOW Supervision (Mandatory and General Supervision) – COMPAS: Transfer to
30 AR (Alternative Reporting) Case Management Standards as appropriate.

31 EX 1, pp. 19-20, EX 2, p. 2.

32 As the American Probation and Parole Association noted in their Caseload Standards for
33 Probation and Parole (2006) article, the issue of caseload standards, "remains a contentious one,
34 difficult to resolve and critically important to the field of community corrections." UX 14, p. 1.

1 “The importance of caseload size to the effectiveness of probation and parole supervision
 2 cannot be overstated. . . Those caseloads must be of a size that provides officers with enough
 3 time to devote to each offender to achieve supervision objectives.” Id., pp. 2-3. At the same time,
 4 evidence shows that “reducing caseloads alone will not produce better results,” where it results
 5 in aggressive and rigid enforcement, and excessive supervision. Id. The APPA proposed
 6 caseload standards “[that] are designed to drive effective practices and guide decision-makers.
 7 To make these standards flexible and useful, they are stated in terms of ratios of cases to officers
 8 and are framed as numbers **not to be exceeded.**” Id., p. 6 (emphasis added).

9 **Adult Caseload Standards (per APPA guidelines, 2006)**

Case Type	Cases to Staff Ratio
Intensive	20:1
Moderate to High Risk	50:1
Low Risk	200:1
Administrative	No limit? 1,000?

10 Id., p. 7.

11 Finally, APPA notes the need to develop “best practices for community corrections,” and
 12 “having done that, [individual agencies and jurisdictions] can conduct the requisite time studies
 13 and develop their own specific staffing patterns.” UX 14, at p. 8.

14 Other jurisdictions in California have grappled with the question of optimal caseloads for
 15 effective supervision of the probationers in their counties. Contra Costa County Probation
 16 Department has three levels of community supervision: Low, Moderate, and High. In addition,
 17 they have separate caseload standards for specialized caseloads, including DUI, Auto Theft,
 18 Domestic Violence, and Sex Offenders. Low level clients are transferred to the Banked
 19 Caseload. Moderate requires one monthly face to face contact (office or field) with probationers
 20 who are not in custody or in a residential treatment program. High requires a minimum of two
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1 face to face contacts per month (office or field) with probationers who are not in custody or in a
2 residential treatment program. UX 4, pp. 5-6. There is no specified caseload ratio for Contra
3 Costa County Deputy Probation Officers.

4 City and County of San Francisco Adult Probation Department Case Load Standards do
5 not set ratios for caseload management except at the Intensive Supervision level. Intensive
6 Supervision has a 20:1 ratio and requires at least one face to face contact per week and one
7 collateral contact per week. High Supervision requires two face to face contacts per month,
8 including at least one home visit every 30 days. Medium supervision requires one face to face
9 contact per month, including one home visit every 60 days. Low supervision clients need to
10 report every 60 calendar days by mail, email or telephone reporting system. UX 5, p. 16.

11 In San Diego County, High Risk requires face to face contact two times per month,
12 including one field and one office contact, and one home visit every other month. Medium risk
13 requires contact once every three months or more often based on the specific case requirements.
14 Low risk clients are referred to the administrative offender program, and there is a separate
15 caseload management standard for sex offenders and ICE holds. UX 7, pp. 8, 24, 35.

16 The Department's proposal would set the High Supervision requirements at one home
17 contact every 30 days, one office/field contact every 30 days, and one collateral contact every 90
18 days, which counts toward the office/field contact requirement. Medium supervision requires one
19 office/field visit every 30 days and one home visit every 60 days. Low supervision will be
20 transferred to Alternative Reporting as appropriate. EX 1.
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The different county standards are summarized below:

County	Low Supervision	Medium Supervision	High Supervision	Other
Alameda (proposed)	Alternative Reporting	1 office/field per 30 days one home per 60 (1/month)	1 office/field per 30 days 1 home per 30 days (2/month)	Separate policy for specialized caseload forthcoming
Contra Costa	Banked Caseload	1 office/field per month	Minimum of 2 per month (2/month)	Specialized caseloads under separate section
San Diego	Administrative Offender Program	1 contact per 3 months	2 contact per month (1 office, 1 field, 1 home every other month)	Separate caseloads for sex offense and ICE holds
San Francisco	Report every 60 days by mail, email, telephone reporting system	1 face to face per month including 1 home visit every 60 days	2 contacts per month, 1 home visit per 30 days (2/month)	Intensive: ratio of 20:1 and at least 1 contact per week and 1 collateral contact per week.

Other California probation departments and California Department of Corrections and Rehabilitation have other caseload management standards and/or practices. Contact standards vary from department to department but there is no evidence that probation departments have adopted caseload ratios in the manner proposed by APPA. In the County of Marin, they have adopted a case range rather than a ratio. For example, the high-risk caseload is a range of 50-60 clients per probation officer.

It is important to note the difference between caseloads and contacts. Caseloads are the number of individuals a DPO is responsible for monitoring and supporting. Contacts are the number of times each individual probationer will meet by their DPO. As noted above, no other jurisdiction has a caseload ratio, although they all have similar contact standards. Based on the

1 evidence provided at the hearing, the proposed Department contact standards are consistent with
2 other similarly sized departments in California.

3 The Union asserts that the number of contacts in the proposal is an unworkable standard.
4 In support of this position, they note that DPOs were required to take 128 hours of training in
5 2017-2018, have twelve (12) county holidays per year, and accrue between two and five weeks
6 of vacation per year. UX 7, 13. This means that, without accounting for other leaves of absence,
7 DPOs are unavailable to supervise probationers between 304 and 424 hours per year, out of a
8 standard work year of 2080 hours. Meanwhile, there are approximately 4800 total supervised
9 cases each year in adult field services. UX 9, p. 13. The Union contends that the Department
10 simply is not staffed to have the requisite number of contacts.
11

12 This highlights the significance of the staffing issue in the Department. The Department's
13 proposed contact standards are reasonable and consistent with comparable counties. However,
14 other counties' staffing levels are unknown. According to Marcus Dawal, Assistant Chief for
15 Adult Field Services, there are approximately 70-80 staff members in the Department with 20
16 vacancies. Fifty staff members have completed arms training. The average caseload is 80 to 100
17 cases for general supervision, with lower caseloads for specialized areas such as domestic
18 violence and sex offenders.
19

20 Several DPOs testified about their caseloads. Jake Glodowski, a DPO III, has a high-risk
21 caseload of 87 clients in the sex offense unit, which includes 10 unhoused individuals. Kevin
22 Bryant, a DPO III, has a caseload of 67 cases in the domestic violence unit. Ed Braun, a DPO II
23 who has a restitution only caseload (low risk) has approximately 80 cases. Clifford Chin, another
24 DPO III in the sex offense unit, has a caseload of approximately 38 cases. The number of cases
25 will frequently vary due to new case assignments, inactive cases, and closed cases. None of the
26

1 DPOs who testified have a “regular” high-risk or medium risk caseload, so it is difficult to
2 discern what the average caseload is. It is safe to conclude, however, that caseloads are higher,
3 on average, than either party would like them to be.

4 In addition, the contact requirements for each caseload will vary. Low-risk cases, such as
5 Officer Braun’s restitution-only clients, will require much less contact than the high-risk sex
6 offenders or domestic violence cases. For safety reasons, most home visits are conducted with
7 another officer, cutting in half the amount of time that can be spent on one’s own cases.
8

9 The Union’s argument that the proposed contact standard will be difficult to meet at
10 current staffing levels has merit. The Union seek assurances that DPOs will not be disciplined for
11 failing to complete the number of contacts required by the policy. The Union proposes to
12 substitute “attempted contacts” as the standard. These are two separate issues.
13

14 First, attempted contacts and completed contacts are not the same and do not have the
15 same impact on the Department’s goals of ensuring that clients are properly monitored, receiving
16 needed support, and promoting community safety. Completed contacts are the goal. As Assistant
17 Chief Dawal stated, “Ongoing interaction with clients is the point.”

18 While it is true that not every attempted contact will result in a completed contact, there
19 are a limited number of attempted contacts a DPO needs to make before that probationer will be
20 re-assessed or subject to reincarceration, thus removing that individual from a DPO’s caseload.
21 In other words, a probationer who cannot be contacted will not be on probation for very long. In
22 addition, inactive cases do not count in the overall case ratio and would not require client
23 contact. **One suggestion for settlement would be to clarify in the policy that probationers
24 who are in residential treatment are exempt from minimum contacts for the duration of
25 their treatment,** like Contra Costa County’s policy. UX 4.
26

1 Second, DPOs should not face discipline for not meeting the contact standard when low
2 staffing and no overtime simply do not permit employees to meet that standard. Individual
3 employees who consistently fail to make a similar number of contacts as their peers, however,
4 should be subject to performance management processes to improve. The problem is that neither
5 the Department nor the Union knows what the typical number of contacts a DPO can make in a
6 month. Right now, it is difficult to know whether an individual DPO is underperforming relative
7 to their peers or relative to the required number of contacts.
8

9 Both sides are attempting to negotiate a policy based on what they think is possible rather
10 than knowing what is actually possible. The Panel believes it is important to get the actual
11 evidence (i.e., the time study) and then use that as the basis for the policy, rather than creating a
12 policy and hoping that employees can meet it. If the Department and the Union had done the
13 time study (of either the existing practices or of the proposed policy), they would have been able
14 to reach agreement and would not have had to go through fact-finding. **Therefore, the Panel**
15 **recommends that the parties agree to complete a time study no later than September 30,**
16 **2021, to determine whether the Department has the right level of staffing and caseload**
17 **assignments to ensure that the minimum contact standards can be met. The time study**
18 **should be based on the proposed contact standard but it should be clear that officers who**
19 **are unable to meet the standard will not be subject to discipline for failing to meet the**
20 **standard during the time study.**
21

22 During bargaining, the Union suggested the 50:1 caseload ratio language that is a now
23 part of proposed policy. The Employer adopted that position. Thereafter, the Union raised the
24 concern that the failure to make the required minimum contacts while carrying a 50-client
25 caseload would result in discipline. Based on Malia Vella's testimony, the Union's intent was
26

1 that the 50:1 ratio would set a maximum number of cases. The Department has not identified
2 specific measures which they would take to maintain that ratio, such as Unit Supervisor
3 guidelines, or making the 50:1 ratio a *staffing* ratio, meaning that they would hire additional
4 officers to maintain the ratio.

5 Instead of specific measures, the Employer added the following language to the policy:
6 “When caseloads exceed the targeted 50:1 ratio, US (Unit Supervisors), in consultation with
7 executive management, shall provide guidance on prioritizing the DPO’s caseloads to include,
8 waiving and/or modifying contact specifications, with the goal of making the caseload
9 manageable.” The Union objects to this language on the basis that it is vague and may lead to
10 disparate outcomes for the Deputy Probation Officers based on the Unit Supervisors’ level of
11 discretion. Disparate outcomes that the Union fears include Unit Supervisors disregarding DPO
12 concerns, implementing discipline, or assisting some DPOs with rebalancing and not assisting
13 other DPOs. All these concerns are legitimate if Guidelines for Unit Supervisors have not been
14 provided.
15

16 The Union has not submitted a counterproposal to clarify this issue, so the Panel is in the
17 position of crafting language which might satisfy the interests of both parties. **Given that other
18 jurisdictions have not adopted a caseload ratio, the Panel recommends removing the 50:1
19 ratio language from the Policy. In addition, the Policy needs to provide greater clarity
20 about the Unit Supervisors’ responsibilities for assisting DPOs with caseload balance and
21 the DPOs’ responsibility for seeking Unit Supervisor or executive management support for
22 managing their caseload. For example, the policy could specify the number of attempted
23 contacts a DPO would need to make before a client is moved out of active status.**
24
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1 The Employer’s witnesses repeatedly testified that they did not intend to impose
2 discipline for failure to meet the new caseload standards but were unwilling to put those
3 assurances in writing in the policy. This makes sense for a couple of reasons: First, this is not the
4 right policy to locate language about discipline. The right place for that language is in the MOU
5 and/or a separate discipline policy or guidelines. Second, setting minimum caseload standards is
6 a performance measure and the failure to meet performance measures should be handled in a
7 performance management policy, not this policy.
8

9 It is probably true that, at this time, the Department does not want to impose discipline
10 for a system which has not been implemented. That does not mean that in the future, employees
11 who consistently fail to meet the performance standards will not be subject to performance
12 management and even discipline. The Department should be explicit about how they intend to
13 handle low performance. There is no reason to wait until after the policy has been implemented
14 to draft and adopt Unit Supervisor Guidelines and Performance Management Guidelines, for
15 example. Firmer guidance on how this policy will be used would provide greater assurance to the
16 Union that the policy is workable and responsive to the workloads of their members.
17

18 Recommendations

19 Rather than trying to address every issue within the policy itself, the Chair recommends
20 that some issues be addressed in the policy and others be addressed in a side letter.
21

22 **Policy Changes:**

- 23 **1. Remove the caseload ratio of 50:1.**
- 24 **2. Add language that probationers who are in residential treatment are exempt from**
25 **minimum contacts if they are in good standing in their treatment program.**
26

1 **3. Specify the contact standards for specialized caseloads within the policy rather than**
2 **in a separate policy and clarify that specialized caseloads are not subject to**
3 **additional standards.**

4 **4. Specify the guidelines that will control Unit Supervisor discretion over caseload**
5 **management and what recourse a DPO has if their Unit Supervisor fails or refuses**
6 **to evaluate the DPO’s caseload. The guidance for unit supervisors should be used**
7 **immediately for consistency and transparency.**

8 **Side Letter:**

9 **1. The parties will initiate a one-year pilot of the policy during which time DPOs will**
10 **not be subject to discipline for failing to meet contact standards. Only after the time**
11 **study has been completed and DPOs have had a year to become accustomed to the**
12 **policy, the Department can begin to use contact standards as a performance**
13 **management tool.**

14 **2. All DPOs will be trained on the new policy and given an opportunity to review their**
15 **current caseloads with their Unit Supervisor to identify barriers to meeting contact**
16 **standards.**

17 **3. The parties will complete a time-study by September 30, 2021 to re-evaluate the**
18 **policy based on the data about contact standards and caseload management. The**
19 **time study will be based on the proposed contact standards.**

20 **4. After completion of the time study, the parties will meet and confer about the**
21 **contact standards and barriers, if any, which the Department and/or DPOs have**
22 **identified to meeting those standards.**

