

## PROBATION VIOLATIONS – ADULT

- AUTHORITY:** Sections 1203.1, 1203.2, 1203.2a, and 1203.3 of the Penal Code
- RESCINDS:** Procedure Manual Item 2-3-002, dated 6/20/16
- FORMS:**
- |   |                    |
|---|--------------------|
| Arrestment Petition Probation Violation     | (F057-2001.2AF)    |
| Short Warrant Felony/Misd Petition          | (F057-2002.2(A)AF) |
| Short Warrant Declaration Felony <b>ICE</b> | (F057-2020.1(A)AF) |
| Long Warrant Petition – Felony/Misd         | (F057-2003(A)AF)   |
| Modification Petition Nonappearance Memo    | (F057-2078.1AF)    |
- PURPOSE:** To dispose of violations of probation, to apprise the Court of violations, to recommend appropriate court action, and to implement the Court's orders.

### I. GENERAL INFORMATION

#### A. Types of Violations

##### 1. Specific Court Order

- a. Failure to pay restitution, fines, etc.
- b. Positive tests for drug usage.
- c. Failure to participate in drug and/or alcohol counseling, etc.
- d. Failure to report, failure to test, etc.

##### 2. New Law Violations

- a. **New law violations should have a crime report attached; however, the new case may not always be filed with the District Attorney's Office when we arrest on a probation violation.**
- b. Minor Misdemeanor traffic violations can be handled informally **via a modification petition** if deemed appropriate, at the discretion of the Probation Officer.
- c. Documentation of new law violation is to be made in the Integrated Case Management System (ICMS).

##### 3. Instructions to Adult Probationer

- a. Violations should be initiated when an Instruction overlaps a court order, i.e., Continued refusal to report to the probation officer or failure to inform the probation officer of a change of address (absconding) are valid reasons for court action.

- b. Generally, violations of the Instructions to Adult Probationer are not used as the sole reason to initiate court action. However, they should be included when initiating a PV for new crimes and/or specific court orders.

B. Methods of Processing Violations

1. Informal

- a. Violations of terms and conditions (Instructions) of probation require no notice to Court to handle informally.
- b. Violations of the law or non-compliance with court orders normally require consent of the Court for informal processing.
- c. Permission from the Court to handle a violation informally is obtained by submission of a Modification Petition-Word Template F057-2078.1AF.

2. Formal

- a. New law violations, violations of specific court orders and serious/repeat technical violations normally warrant court action.
- b. Violations of Instructions to Adult Probationer may be handled formally. Staff with supervisor if in question.
- c. An alleged violation has occurred, technical or otherwise, and the Court has denied our request for informal handling.

3. Chrono Entries

- a. Chronological entries are required relative to violations of probation.
- b. Refer to Procedure Manual Item 2-1-104, Chronological History Sheet – Adult.

C. Responsibility for Violation Petitions on Warrant Cases

Warrants

- 1. Field Supervision DPO will prepare the report.
- 2. If the DPO who requested the warrant has been transferred, his/her replacement or the last officer number **or designee** prepares the report.

II. PROCEDURE

A. Confer with Unit Supervisor

- 1. Discuss facts of alleged violation.
- 2. Review probationer's progress on probation.

3. Determine whether the violation is to be handled formally or informally.

B. Informal Violation

1. Staff case with unit supervisor.
2. Request permission from the Court to handle the matter informally by submission of a Modification Petition. (Refer to Procedure Manual Item 2-3-004, Adult Modification Petition.)

C. Formal Violation

1. Staff case with unit supervisor.
2. Probationer is generally taken into custody and scheduled for an arraignment hearing in the appropriate court within 48 hours by either:
  - a. Arrest probationer and transport to Orange County Jail to be booked pursuant to 1203.2PC.
  - b. If the probationer is already in custody at OCJ on a new law violation or warrant, place a Teletype hold on the probationer.
  - c. If probationer is already in custody on a new law violation in another county/state, complete a **Long** Warrant Petition – PMI 2-3-016 (Warrants of Arrest for Adults).
  - d. E-Probation-Probation Violation Petitions (Please refer to e-Probation Probation Violation Quick Reference Guide located on PROB-NET).
3. Documents to be prepared:
  - a. Petition for Arraignment – Word template F057-2001.2AF (R03/2006)
  - b. Examples of Wording for the Petition can be found in Procedure Manual Item 2-3-019 (Adult Probation Violation and Warrant Petition Allegations).
4. Processing the Probation Violation Petition (Refer to Automated PV User Manual in Prob-Net)
  - a. DPO – Completes **Template** (F057-2001.2AF) and forwards to Unit Clerk or  
  
DPO – Creates e-probation violation petition in ICMS.
  - b. Unit Clerk – Types/Proofs PV on the Digital Signature Template– then forwards back to DPO by e-mail via the AS DOCS folder.
  - c. DPO – Proofs/Corrects/Changes PV. (may need to send back to Unit Clerk if major changes are made that alters the format/paging).

DPO places Digital Signature on PV then forwards to SPO (or acting SPO) via the AS DOCS folder.

- d. SPO – Proofs PV. If no changes to petition are made, the SPO places Digital Signature stamp on PV and forwards to clerk via AS DOCS folder.
- e. Unit Clerk – Receives final, signed version of PV, sends to appropriate court mailbox. Unit Clerk uploads PV on ICMS.

#### D. Probation Violation Petition

The Petition for Arraignment on Probation Violation, while one document, has two main components: the Petition and the Court Memo.

##### 1. Petition Format

The probation violation petition has two basic sections, the Mandated Fields, and Specific Conditions.

###### a. Petition Mandated Fields

- (1) Complete all sections.
- (2) Verify significant information, including: court case number, A number, name (as it appears on the Court Order for that case), birth date etc. and include all known aka's to name and date of birth.
- (3) In “Custody Time Served” give breakdown of total jail time ordered at time of original sentence and at all prior PV hearings on the case. For example: 120 + 90 = 210 days total (This translates to 120 days served on the original sentence, plus 90 days served on the first PV).

###### b. Specific Conditions

List all known violations chronologically **and by order of severity**. Include details such as date of offense, a description of the unlawful behavior, police department and report number, and the Code Section and number violated (PC, H&S, CVC, etc). Include new court case number and disposition if known. Follow with all known technical violations. (See PMI 2-3-019 for examples).

##### 2. Court Memo Format

The probation violation court memo has six potential sections. Four are mandatory and two are optional as needed to accommodate needs for additional information

- Circumstances of the Original Offense \*optional as needed
- Circumstances of the Violation

- Collateral Information \*optional as needed
- Progress on Probation
- Evaluation
- Recommendation

a. Circumstances of the Original Offense

This section is optional and may be used as needed to remind the court of the seriousness of the original offense, or to show a pattern of similar or escalating behavior.

(1) Briefly summarize the elements and the facts of the crime for which the probationer has been arrested and convicted; including:

(a) Date

(b) Time

(c) Location

**(d) Specific Offense Sections**

(2) Identify the extent of physical injury, **victimization**, property damage and monetary loss when applicable.

(3) Identify the source of the information (i.e., police department and DR number).

(4) It is not necessary or appropriate to quote large sections of narrative from police reports

b. Circumstances of the Violation

Describe the actions of the probationer, which constitute the violation of probation.

(1) Provide all the necessary information including:

(a) Who

(b) What

(c) When

(d) Where

(2) Identify the extent of physical injury, **victimization**, property damage and monetary loss when applicable.

- (3) Identify the source of the information (i.e., police department and DR number).
- (4) Include information on each Count alleged in the Violation Petition.
- (5) It is not necessary or appropriate to quote large sections of narrative from police reports.

c. Collateral Information

This section is optional and may be used to include information concerning any other related offenses that are pending or were not prosecuted due to prosecution for the offense for which the probationer had been convicted.

- (1) Information should include the court, court case number, and dates of hearings.
- (2) Current probation or parole status, "holds" from other jurisdictions, or any other pending cases should be reported.

d. Progress on Probation

Summarize the probationers overall compliance with terms and conditions of probation including:

- (1) Reporting pattern
- (2) Payment pattern
- (3) Cooperation with deputy probation officer
- (4) Attitude
- (5) Work, school or trade
- (6) Residence
- (7) Associates
- (8) Counseling, **Treatment, Programming, etc.**

e. Evaluation

Analyze the information in the allegations in terms of community safety, **level of criminal sophistication**, continuing criminal behavior, utilization of available resources, response to probation supervision and any potential for successful completion of probation.

Generally, no new information should be introduced in this section. However, other information such as prior record and past history on probation/parole can be included when appropriate and necessary.

The Evaluation should support the Recommendation made in each petition.

f. Recommendation

In Felony cases, the recommendation will range from local jail time to State Prison. If the case had an "Execution of Sentence Suspended" at the time of sentencing or the probationer has already served a year of jail on the case, the recommendation should be for "revoke and impose". Exceptions to this rule need to be justified in the evaluation section.

In Misdemeanor cases, the recommendation can only be for local jail time. The maximum time that can be served is dependent on the original charges that put him/her on probation. We cannot recommend time in excess of the total combined time attached to each count (Refer to Tahl form for sentencing limits set at time of plea).

In both Felony and Misdemeanor cases, recommendations can also include added terms of probation deemed necessary for continued supervision, i.e., drug testing, no alcohol, completion of a residential treatment program, etc.

III. RE-CALCULATION OF PROBATION EXPIRATION DATE

Anytime probation is revoked and later reinstated on a subsequent date, the probation expiration date must be re-calculated. When recalculation is completed, the unit clerk will send the new expiration date letter to the probation officer via email.

There are **five** exceptions to this rule. No re-calculation of the expiration date is done when:

1. A warrant is withdrawn or quashed.
2. A warrant is recalled by Probation via Modification Petition.
3. The Court finds the probationer "Not in Violation".
4. A Probation Violation is dismissed.
5. **If the Court does not extend probation, the case shall be brought to the attention of a supervisor, wherein communication with the Court shall occur in an attempt to receive an order to have probation expressly extended.**

**REFERENCES:**

Procedures:	2-1-104	Chronological History Sheet-Adult
	2-2-001	Pre-Plea and Sentencing Reports
	2-3-003	Sentencing in Absentia (Superior Court)
	2-3-004	Adult Modification Petition
	2-3-016	Warrants of Arrest for Adults
	2-3-019	Preparing Probation Violation and Warrant Petitions- Adult (Allegations)
Policies:	D-5	Arrests/Temporary Detentions
	E-3	Disclosure of Court Recommendations

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**APPROVED BY:**