

ADMINISTRATIVE OFFICE OF THE COURTS
STATE OF NEW JERSEY

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[Questions or comments may be
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**TO: Assignment Judges
Trial Court Administrators**

FROM: Philip S. Carchman, P.J.A.D.

**SUBJECT: Probation – Adult Violation of Probation (VOP) Guidelines and
Procedures**

DATE: April 7, 2008

This Directive promulgates for immediate use revised *Adult Violation of Probation Guidelines and Procedures*, as approved by Judicial Council on February 27, 2008. These revised guidelines and procedures, which supersede the 1999 Violation of Probation and Revocation Process policy, were necessitated by a number of statutory and policy changes as detailed below.

These revised VOP Guidelines and Procedures contain the following significant changes from the 1999 policy:

1. Addition of language describing the circumstances under which a VOP should be filed when a probationer has been charged with a 3rd or 4th degree crime (page 4, Guideline #1B);
2. Clarification regarding the response to a positive drug test, specifically, to indicate that there must be a response, while at the same time recognizing that there must be flexibility to account for the probationer's particular circumstances (page 8, Condition #8);
3. Clarification that failure to surrender either a permit to purchase a handgun or a firearms purchaser identification card constitutes a violation of probation (page 9, Condition #11);
4. New guidelines for refusal to submit to DNA testing, a statutory condition of probation that was not in effect at the time the 1999 VOP policy was adopted (page 10, Condition #13);
5. Addition of language to address the Supreme Court's determination in State v. Nellom, 178 N.J. 192 (2003) of what constitutes

commencement of a VOP for purposes of tolling a probation term (pages 13, Procedure #7);

6. Stating clearly that it is the prosecutor's obligation to prosecute VOP matters, as described in Directive #04-06, and that appropriate notifications now include a new standard memorandum to the prosecutor (pages 13, Procedure #7);
7. Addition of procedure and form to reflect that probationers are subject to the Interstate Compact for Adult Offender Supervision (page 15-16, Procedure #15);
8. Addition of language regarding "prior service credit" added to the jail credit guidelines (page 18);
9. Addition of guidelines, along with a form, regarding the probationer's obligation to inform the court about the need for alternative care for any dependents if the probationer is to be incarcerated (page 20).

The revised Adult Violation of Probation Guidelines and Procedures will be posted on the Infonet and will be incorporated into the Probation Supervision Manual as Section 5300. The forms appended to the guidelines also will be available through the Judiciary InfoNet's Forms ClearingHouse and Repository.

Questions regarding this Directive and the underlying policy may be directed to Robert Sebastian, Assistant Director, Probation Services Division, at 609-292-1589.

P.S.C.

Encl.

cc: Chief Justice Stuart Rabner
Criminal Presiding Judges
AOC Directors and Assistant Directors
Vicinity Chief Probation Officers
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Adult Violation of Probation Guidelines and Procedures

Directive # 7-08
(Issued April 7, 2008)

As Approved by the Judicial Council

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FORMS:

Violation of Probation – Statement of Charges	(CN 10076)
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Violation of Probation – Hearing Summons	(CN 10075)
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ICAOS Offender Violation Report	(CN 11206)

I. INTRODUCTION

Purpose

Supervision strategies should be consistent with the purposes of the New Jersey Statute as articulated in N.J.S.A. 2C:45-1 (a), which states:

When the court suspends the imposition of sentence on a person who has been convicted of an offense or sentences him to be placed on probation, it shall attach such reasonable conditions, authorized by this section, as it deems necessary to insure that he will lead a law-abiding life or is likely to assist him to do so. These conditions may be set forth in a set of standardized conditions promulgated by the county probation department and approved by the court.

The following guidelines and procedures for filing violations of probation (VOPs) reflect current practices and supersede the prior standards approved by Judicial Council on September 30, 1999. These guidelines and procedures standardize adult supervision practices and ensure that conditions of probation are enforced fairly and consistently throughout the state. Ensuring compliance with the court order is the core function of Probation, and the activities of Probation – monitoring, enforcing and intervening – are designed to meet that mandate.

Progressive Sanction Strategy

Probation officers utilize various intervention strategies to deal effectively with probationer non-compliance. Intervention strategies should be progressive, beginning with the least restrictive measure deemed appropriate, followed by more consequential measures if non-compliance continues. In determining the appropriate intervention sanction, an objective appraisal must be made of each probationer's background, risk, and needs, the circumstances of the non-compliant behavior and the probationer's adjustment while on probation.

Filing a VOP Upon Continued Non-Compliance

If the probationer fails to comply with the terms of the sentence or the standard or special conditions of probation despite the probation officer's efforts to secure compliance through progressive intervention strategies, the matter must be placed before the court for judicial determination. A violation of probation (VOP) is the vehicle by which the probation officer brings the probationer before the

court for non-compliance. The commencement of a VOP puts both the court and the probationer on notice that the probationer is on track for revocation.

In the VOP Statement of Charges and the VOP Summary the probation officer documents the probationer's response to supervision, describing the probationer's overall adjustment, documenting those conditions which the probationer is alleged to have violated and new arrests if they have occurred. Prosecutors are responsible for the prosecution of defendants charged with violating terms of their probation. The probation officer serves as a witness presenting documentation of the violation(s), describing efforts made to assist the probationer in complying with the terms and conditions of probation, and making recommendations regarding revocation and resentencing.

To ensure a consistent approach throughout the state toward non-complaint behavior, the guidelines and procedures outlined here must be followed except for exceptional circumstances. The probation supervisor must be consulted regarding all non-compliant probationer behavior. Any deviation from policy in not bringing VOP charges will require an approval by the supervisor, documented by a chronological entry describing the reasons for the exception. Timeliness of response is an essential element of good probation practice. The time frame of non-compliant behavior is to be included in the decision making process for the probation officer and supervisor.

Timeliness Essential

All probationer non-compliant behavior should be addressed, investigated and resolved no later than thirty days after detection. Non-compliance of a severe nature should be acted upon no later than ten working days after detection.

II. GUIDELINES FOR FILING VIOLATIONS OF STANDARD AND SPECIAL CONDITIONS OF ADULT PROBATION

*The goal of probation supervision is to selectively and actively intervene with probationers so as to reduce the likelihood of future criminal activity and promote compliance with the supervision strategy. This policy is designed to provide timely, consistent and equitable responses to probationer non-compliance with the court's order. It establishes uniform statewide guidelines and procedures to file violations of probation (VOP). It is **not**, however, intended to limit the discretion of the probation officer to file a violation of probation at any time in the supervision process.*

The statement in bold at the beginning of each numbered paragraph below sets forth one of the Standard Conditions of Adult Probation approved by the Supreme Court. The statement is followed by factors to be considered in responding to a violation of each condition.

1. **“You shall obey all federal, state and municipal laws and ordinances. You shall notify your probation officer if you are arrested or issued a summons in any jurisdiction.”**

A new arrest may constitute or may reveal conduct that constitutes a violation of probation (VOP). Pursuant to State v. Wilkins 230 N.J. Super. 261 (App. Div.1989), a person can be found to have violated probation by engaging in a new offense before, or even in the absence of, a conviction for the new crime. For this to occur, it would be necessary for the probation officer to demonstrate at the VOP hearing that there is evidence of criminal conduct by the probationer.

When a probation officer becomes aware that a probationer has been arrested or that a summons has been issued to the probationer, the officer must take action with the supervisor's approval. The response should be timely and proportionate to the severity of the violation and to the probationer's risk to the community. Consideration should also be given to the probationer's responsiveness to supervision.

- A. Arrest for violent crime or other first or second degree crime in New Jersey or equivalent charge from another state:

The probation officer must prepare and file a VOP (see Section III. Procedures for Filing Adult Violations of Probation) as soon as possible, but in any event no later than five working days after the officer is advised of a first or second degree crime in New Jersey or equivalent charge from another state. Documentation of the new charge should be attached to the VOP.

B. Arrest for a third or fourth degree crime:

In most cases, the probation officer should prepare and file a VOP if a probationer is arrested for a third or fourth degree crime. There may, however, be exceptions to this general rule. If, for example, the probationer has progressed well and the arrest is for an unrelated offense, the need to file a VOP is less than if the crime constitutes a repetition of the original offense. If the new arrest appears to be related to the offender's drug addiction, a VOP may be filed and the probation officer may include in the "Recommendations" section of the VOP Summary (Form: CN 10077) a recommendation that the court consider resentencing the probationer to Drug Court.

If the probationer is complying with his/her case plan, it may be appropriate to allow the new offense to be remedied through the new criminal proceeding rather than through further efforts by probation based on the original offense. Thus, the probation officer must consider the nature and circumstances of the new offense in the context of the probationer's case plan and its impact on the possibility of the probationer's rehabilitation. Any instructions that a judge has given with respect to violations of probation when imposing sentence in a particular case must, of course, be taken into account.

The probation officer must always file a VOP when the probationer is arrested for a third or fourth degree crime within 90 days prior to the expiration of the term of supervision. Filing the VOP tolls the probation term, and ensures that appropriate action can be taken before the probation term expires.

C. Arrest for disorderly persons (DP) offense, petty disorderly persons offense, a motor vehicle violation or municipal ordinance violation:

The probation officer may prepare and file a VOP if a probationer is arrested for a DP offense, petty disorderly persons offense, a motor vehicle violation or municipal ordinance violation, depending on the circumstances. The probation officer must consider the nature of the violation, especially DWI or driving without a license or insurance, as well as the probationer's history and responsiveness to supervision. The probation officer should not send a notice of the new arrest of a probationer on a DP or lesser offense as a routine practice. However, the new arrest reports may be submitted to the court depending on the instructions of the sentencing judge in the specific case. The probation officer should consult with the supervisor before filing a VOP.

- D. If a determination is made to file a VOP because of a new arrest, the probation officer shall request the Superior Court to issue a warrant or a summons to appear before prior to the expiration of the term of supervision. All VOPs require that a probationer be provided with notice by the issuance of a summons or warrant or an arrest in order to suspend or “toll” the term of probation until disposition of the VOP (*see Section III. Procedures for Filing Adult Violations of Probations, #7 - Filing of the VOP for a discussion of tolling.*). A warrant can be issued on a VOP when a probationer has been arrested for and charged with a new offense, but has not yet been convicted. If after consultation with the supervisor, it is determined to be necessary to place the probationer in custody prior to the VOP hearing, the judge may issue a bench warrant or the Chief Probation Officer may sign an Authorization to Arrest and Detain. (*see Section IV. below, Guidelines for the Authorization to Arrest and Detain.*)
- E. The probation officer must prepare and file a VOP Statement of Charges, (Form: CN 10076) within 24 hours on persons who are placed in custody as the result of a bench warrant or an Authorization to Arrest and Detain (Form: CN 11200). When a bail investigation is conducted on the new charge, the probation officer will provide information regarding the VOP to the Criminal Division upon request. The court will determine if it wishes to proceed with the VOP or await adjudication of the new charge.

2. “You shall report to your probation officer as directed.”

The probation officer shall prepare and file a VOP when, without good and sufficient reason, a probationer misses three consecutive reports or establishes a pattern of failure to report for more than 60 days. The probation officer must consider the totality of the compliance and consult with the supervisor to assess the reasons for the failure to report before filing the VOP.

Probationers are required to report to their probation officer based upon contact standards as defined in the *Probation Supervision Manual*. (*Section 2100, Intake D 20, and Section 2400, Case Supervision G.4*) Failure to report has been upheld in case law as a violation of probation.

The probation officer should make progressive and diligent efforts to establish contact with the probationer whenever possible in order to bring the probationer into compliance. The probation officer should make a home contact as defined in Directive #14-06, Probation Field Supervision and Safety Standards, send a letter, and phone a responsible person for information before resorting to a VOP.

3. “You shall answer truthfully all inquiries made by your probation officer.”

The probation officer may prepare and file a VOP when the probation officer discovers that the probationer is not being truthful. This condition underlies good probationer performance. The probation officer must consider the context in which the failure to answer truthfully was discovered. The probation officer must adequately describe in the case file by chronological entries the behavior and all salient aspects of managing the behavior and be prepared to present that information to the court.

Failing to tell the truth may constitute relatively minor non-compliant behavior which is atypical or incidental. This violation is most often incorporated with other violation charges and is usually considered in that context. Failing to tell the truth may rise to the level of a VOP when failure to answer truthfully is used to conceal other violations of the conditions of probation.

4. “You shall permit your probation officer to visit your residence or any other suitable place.”

The probation officer shall prepare and file a VOP if the probationer is present and directly denies the probation officer access to his/her own residence, or other suitable place.

5. “You shall submit at any time to a search conducted by a probation officer, without a warrant, of your person, place of residence, vehicle or other personal property.”

The probation officer may prepare and file a VOP if a probationer refuses to submit to a duly authorized search by a probation officer conducted in accordance with the requirements of Directive #14-06, Probation Field Supervision and Safety Standards. The probation officer should advise the probationer that a VOP will be filed and the case returned to court, if the probationer fails to cooperate. If the probationer still fails to submit to the search, the probation officer shall prepare and file a VOP.

6. “You shall promptly report any change of address or residence to your probation officer. You must obtain permission from your probation officer if you wish to move outside the county or state. You may not leave the state of New Jersey for more than 24 hours without permission from your probation officer.”

Knowing where the probationer lives is critical to supervision activities, e.g., monitoring, sending notices, etc. Failure to report a change of address or residence should be considered as a VOP, particularly if a failure to report is involved.

In order to bring the probationer into compliance, the probation officer should make a home contact, send a letter and phone a responsible person for information, as appropriate. In addition, postal traces may be utilized if there is reason to believe that the probationer is not residing at the address of record. The goal is to locate the probationer and secure compliance with the conditions of probation. The probation officer should consult with the supervisor to consider the background and overall adjustment of the probationer as well as the circumstances of the change of address.

The probation officer shall file a VOP if these efforts produce no response and there appears to be an intentional action to avoid supervision.

The probation officer must file a VOP within a week of knowing that a probationer has left the State of New Jersey without permission and fails to return.

The probation officer may prepare and file a VOP if a probationer leaves New Jersey without the permission of the probation officer, and fails to return to New Jersey after 24 hours.

The probation officer may revoke permission to live outside New Jersey. If the probationer continues to reside in another state after permission is withdrawn, the probation officer shall file a VOP within one week.

7. “You shall cooperate in any medical and/or psychological examinations, tests and/or counseling your probation officer recommends.”

The probation officer may prepare and file a VOP if a probationer fails to enroll or cooperate with a recommended program of treatment. The probation officer should be able to demonstrate that any examination, test and/or counseling is justifiable based on the standard that it is “reasonably related” to the probationer’s rehabilitation or that it is needed because the probationer poses a danger to him self or herself or to the community. If the probation officer believes that an examination or evaluation is needed to determine if treatment or counseling is appropriate, the probation officer should direct the probationer to a provider. If a course of treatment or counseling is recommended, the probation officer should make the appropriate referral and direct the probationer to follow through within a reasonable timeframe.

As set forth in the *Model for Enhancing Probation Supervision: Outcome-Based Supervision Standards (2000)*, Standard 23, once an appropriate treatment program or service is identified, the probationer is expected to enroll and cooperate fully. The probation officer should maintain regular contact with the treatment provider to monitor the probationer's status. Failure to enroll or failure to cooperate with the program of treatment should be the basis for a VOP. The probation officer should consult with the supervisor before filing a VOP.

8. "You shall submit to drug or alcohol testing at any time, as directed by your probation officer."

Many probationers are addicts when sentenced, and recovery from addiction is often characterized by alternating success and failure. The probation officer shall respond to any positive drug test. While any positive drug test may result in a VOP, this determination must be made on a case by case basis, preserving for both the probation officer and the judge the right to file or require a VOP at any instance of a failed drug test. Because addiction is a complex problem, however, the response to a positive drug test must be based on an assessment of each case on its own merits, with all options considered. Responses to a positive drug test, short of filing a VOP, may include a broad variety of sanctions including increased reporting, increased frequency of substance abuse testing, loss of a privilege, referral for a substance abuse evaluation, a behavioral contract, an adjustment conference or any of the other graduated sanctions that are among the strategies probation uses to assist probationers in achieving rehabilitation. If a VOP is filed, the probation officer may include in the "Recommendation" section of the VOP Summary (Form: CN 10077) a recommendation that the court consider resentencing the probationer to Drug Court. The probation officer should consult with the supervisor in determining when to file a VOP rather than resorting to a lesser alternative.

If a probationer refuses to submit a sample or submit to a drug test, this is tantamount to an admission of drug use and is to be addressed in the same manner as a positive drug test.

A probation officer should prepare and file a VOP if a probationer submits as a true specimen a substance that attempts to defraud the administration of a drug test. If defrauding is involved, the prosecutor's office will determine if criminal charges should be filed under the law as described in N.J.S.A. 2C: 36-10(a),(d),(e).

9. “You shall support your dependents and meet your family responsibilities.”

The probation officer may prepare and file a VOP where the probationer fails to make child support payments (Child Support Enforcement Unit can be contacted for arrearage amount), fails to keep school age children in school, fails to provide food and shelter, abandons, abuses or neglects children, or engages in other conduct the probation officer deems inappropriate. The probation officer should consult with the supervisor in determining when to file a VOP.

10. “You should seek and maintain gainful employment and promptly notify your officer when you change your place of employment or find yourself out of work.”

The probation officer may prepare and file a VOP if the probationer willfully fails to seek, obtain and maintain employment. The probation officer should assist the probationer in taking all steps possible to seek, obtain and maintain employment. The probation officer should consult with the supervisor in determining whether to file a VOP.

11. “You shall not have in your possession any firearm or other dangerous weapon as defined in N.J.S.A. 2C: 39 et seq. If you possess a permit to purchase a handgun or a firearms purchaser identification card, you must surrender these documents promptly to your probation officer. In addition, if you presently own any weapons, they must be surrendered either to your local police department or to any other criminal justice agency designated by your probation officer.”

The probation officer shall prepare and file a VOP if a probationer fails to surrender any firearm, dangerous weapon, permit to purchase a handgun, or firearms purchaser identification card after being notified to do so. Probationers must not have dangerous weapons in their possession throughout the probation term. Probationers are required to surrender weapons legally or illegally possessed and may not acquire other weapons while on probation.

12. “You shall make payments on any fine, penalty assessment, restitution or other financial obligation as provided by Court order. Failure to comply may result in further Court action, pursuant to N.J.S.A. 2C: 46-2b including attachment of your wages, filing of a civil judgment, and/or extension of your probation term.”

The probation officer may prepare and file a VOP if a probationer fails to make payments on financial obligations as provided by court order. If this is the only

condition being violated, the probation officer should consider sending the case to the Comprehensive Enforcement Program (CEP) for enforcement instead of filing a VOP. The probation officer should consult with the supervisor in determining whether to file a VOP.

- 13. “You shall provide a DNA sample as a condition of the sentence imposed, pursuant to DNA Database and Databank Act of 1994, N.J.S.A. 53:1-20.17, *et seq.* (see L. 1994, c. 136, *as amended by*, L. 2000, c. 118, *as amended by* L. 2003, c. 183 effective Sept.22, 2003) unless you are convicted of a disorderly persons offense or a petty disorderly persons offense.”**

A probation officer shall prepare and file a VOP as soon as the probation officer becomes aware that the probationer has willfully refused to submit a DNA sample. Generally, Criminal Division staff directs the probationer to report for DNA sample collection, usually by the Sheriff, immediately following sentencing. If a county is unable to collect the DNA sample immediately, Criminal Division staff provides the probationer with a date, time and site to report for DNA sample collection.

14. Special Conditions

The court has the authority to impose other conditions at the time of sentencing. The Code of Criminal Justice provides that in addition to the standard conditions, the court may require the probationer “to satisfy any other conditions reasonably related to the rehabilitation of the defendant and not unduly restrictive of his liberty or incompatible with his freedom of conscience.” See N.J.S.A. 2C:45-1(b)(12). Any court-ordered special condition is to be enforced on the same basis as a Standard Condition of Probation.

III. PROCEDURES FOR FILING ADULT VIOLATIONS OF PROBATION

NOTE: These procedures are tailored to Superior Court cases, but may be adapted for VOPs arising out of Municipal Court sentences.

1. **Response to probationer non-compliance**

Probation supervision offers probationers the “conditioned liberty” opportunity to remain in the community subject to compliance with the rules and conditions imposed by the sentencing judge. Standard and special conditions impose obligations and restrictions on the probationer.

Non-compliance with standard and special conditions of probation requires a response by the probation officer. The following steps should be followed when a probation officer believes the probationer’s non-compliance is of such a nature that a VOP should be filed.

2. **Consultation with the Supervisor**

The probation officer must consult with the supervisor to review the case and validate that the guidelines for VOPs are being applied fairly and equally, there is appropriate use of professional discretion, and justification to file a VOP.

3. **Preparation of Violation of Probation documents**

N.J.S.A. 2C:45-4 requires that prior to revocation of suspension of sentence or probation, the defendant must be provided with written notice of the grounds for the proposed action. Further, the defendant must be afforded a hearing at which he has the right to hear and controvert the evidence against him, to offer evidence in his defense and to be represented by counsel. These requirements are consistent with the minimum safeguards required as a matter of due process as set forth by the U.S. Supreme Court in Gagnon v. Scarpelli, 411 U.S. 778 (1973).

Consistent with the probationer’s due process rights the probation officer must prepare the VOP Statement of Charges (Form: CN 10076) which is a detailed description of the alleged violations (sample charging language is on the back of the form); the VOP Summary (Form: CN 10077) which provides information documenting the probation officer’s efforts to secure the probationer’s compliance with the court order and/or serves as a summary for sentencing purposes; possibly the VOP Addendum (Form: CN 10214) if an update to the VOP Summary is needed; and the VOP Hearing Summons (Form: CN 10075)

which informs the probationer of the date, time and place of the hearing, advising of the opportunity to be heard as to the allegations and that a warrant may be issued for failure to appear. The right to be represented by counsel is also indicated.

When a probationer is authorized to move, supervision is transferred to the county of residence. When the probationer violates the conditions of probation after such an intercounty transfer occurs, the supervising county prepares the VOP documents (Forms: CN 10076, 10077, 10214, 10075) and forwards these to the sentencing county. The sentencing county will schedule the VOP hearing and send out the notices (Forms: CN 10076, 10075) to the defendant and advise the probation officer in the supervising county of the date and time of the hearing. (see *Probation Supervision Manual*, Inter-county Transfer Procedures, section 2200, J. 1-9)

4. **Supervisor reviews and signs VOP documents**

The VOP Statement of Charges, Summary and Addendum (Forms: CN 10076, 10077, and 10214) each contain lines for the supervisor's signature which ensures that the VOP report has been reviewed and is accurate.

5. **The Chief Probation Officer or designee reviews and signs VOP Hearing Summons**

The VOP Hearing Summons (Form: CN 10075) contains a line for the signature of the Chief Probation officer, indicating that the Chief Probation Officer has approved the action.

6. **Scheduling of the VOP hearing date**

Generally, one of three methods is used to select a hearing date:

- Probation officer contacts Criminal Division Management Office for a date; or
- Probation Division schedules within its own time block allotted to it on a continuing basis; or
- Criminal Division Management Office places the VOP on the calendar.

There may be other methods as well, since the scheduling of the VOP hearing is determined by local calendaring procedures. The summons notice (Form: CN 10075) must contain the date, time and place of the VOP hearing.

7. **Filing of the VOP -- copies sent to:**

- Judge hearing the VOP;
- Prosecutor;
- Criminal Division Management Office;
- Defense Counsel.

R. 1:5-6 (a),(b)(2) requires that filings in criminal actions are to be filed with the Criminal Division Manager in the county of venue; i.e, where the defendant was sentenced. The VOP must be filed prior to the expiration of the term of supervision.

The filing of the VOP document with Criminal Division and commencement of a probation revocation proceeding tolls the probationary period until termination of such proceedings. Tolling refers to a suspension or temporary stopping of the running of the time of the term. In December 2003, the New Jersey Supreme Court determined that these "...three statutorily authorized initiatives – issuance of an arrest warrant, summoning a defendant to appear and actual arrest – constitute commencement for tolling." State v. Nellom, 178 N.J. 192, 202 (2003). Thus, in addition to the filing of the VOP, a warrant or a summons to appear must be issued or an arrest made prior to the expiration of the term of supervision in order to toll the term.

In addition to prosecuting any new arrest, the Prosecutor is responsible for prosecuting the VOP. (see Directive #4-06, Prosecutor's Role in Violation of Probation (VOP) Proceedings). A VOP is an adversarial process in which the probation officer is the witness and the Prosecutor represents the State's interests. The Prosecutor should be sent a copy of the VOP materials accompanied by a standard notice, the Memorandum to the Prosecutor (Form: CN 11201). If no concerns are expressed to the court or Probation within ten calendar days from the date of the memorandum, the matter will proceed as scheduled.

8. **Notice Given to the Defendant**

Notice shall be provided to the defendant by either the Probation Division or the Criminal Division. Pursuant to R. 1:5-2, personal service is the preferred method of service. This may be done by the probation officer. The defendant may also be noticed by certified mail, return receipt requested. At times, persons will not sign for certified so regular mail can also be sent.

There are some instances where it may be necessary to detain the probationer prior to the VOP proceedings. (see *Sections II.1. D., E. above*)

9. **PO and Probation Court Liaison Notification**

Once the date of the hearing has been established, the probation officer and the probation court liaison must also be notified as to the date of the hearing. Notification should be made by the Probation or Criminal Division (as noted above).

There may be some differences from vicinage to vicinage as to how the probation officer and probation liaison receive notice of the VOP hearing but it is the responsibility of Probation Division to ensure that local practice includes a reliable method of noticing both the probation officer and the liaison.

10. **Defendant Notified Regarding Public Defender Representation and Application as Appropriate**

The defendant has the due process right to be represented by counsel. If a person under supervision is indigent and unable to afford the services of an attorney, he or she has the right to appointed counsel on a case-by-case basis.

11. **Prosecutor Presents the Case at the hearing**

County Prosecutors are responsible for the prosecution of defendants. The probation officer or a probation court liaison serves as a witness at the VOP proceeding. If there is a plea of guilty or reasonable grounds are found to exist to believe that the alleged violations have been committed and there is a “not guilty” plea, the court may dispose of the matter immediately or schedule a further hearing.

12. **The VOP Hearing Summons**

The date, time and place of the hearing must be provided to the defendant using a VOP Hearing Summons (Form: CN 10075). If the probationer fails to respond to a summons to appear for the VOP, the court issues a bench warrant.

13. **Hearing and Disposition**

In a VOP proceeding, two factors are of particular importance in determining whether the sentence of probation should be revoked and the defendant resentenced: first, the nature of the non-compliant behavior that led to the revocation hearing and, second the nature of the offense for which the probationer was originally sentenced. The first is relevant in determining whether

probation should be revoked. The second is relevant to the sentence to be imposed if probation is revoked. The prosecutor and defense attorney should have the file information made available in accordance with the Rules of Discovery. R.3:13-3(c), (d), (e).

When the court resentences a defendant because the defendant has violated the terms of probation, the court may, in most circumstances, impose any sentence that could have been imposed originally for the offense on which the probationer was convicted. See N.J.S.A. 2C:45-3b. An exception is a sentence in which the prosecutor, pursuant to N.J.S.A. 2C: 35-12, waives the mandatory minimum term in a school zone case or other case with a required minimum term under Chapter 35 and consents to probation. In *State v. Vasquez*, 129 N.J. 189 (1992), the New Jersey Supreme Court ruled that the court may not impose such previously waived mandatory minimum term on a violation of probation sentence. The court may, however, after weighing the aggravating and mitigating factors pursuant to N.J.S.A. 2C:44-1, impose a term of imprisonment and, if the court determines that the aggravating factors substantially outweigh the mitigating factors, may set a parole ineligibility term of up to one-half of the sentence. See N.J.S.A. 2C:43-6b. Such minimum term would result from the weighing of the aggravating and mitigating factors and not from the originally waived minimum term.

The sentences with original waivers of mandatory minimum terms under N.J.S.A. 2C:35-12 must be distinguished from sentences of defendants admitted to the Drug Court under N.J.S.A. 2C:35-14. This statute allows the court, on a violation of probation, to impose any sentence which could have been originally imposed, including the mandatory minimum term. Most defendants admitted to Drug Court under this statute, which is referred to as Track One, agree at the time of the plea to an alternate sentence, including a mandatory minimum term, which would be imposed if the defendant is terminated from the Drug Court.

14. **Final disposition is recorded**

The court clerk records the resentence disposition and enters it into PROMIS/GAVEL. When the Judgment of Conviction is produced, the Criminal Division forwards a copy to the Probation Division.

15. **Probationers and Others Subject to the Interstate Compact**

The same supervision requirements and VOP standards apply to those sentenced in other states and transferred to New Jersey through the Interstate Compact for Adult Offender Supervision (ICAOS). According to ICAOS Rule 4.101, of the Interstate Commission for Adult Offender Supervision Rules

(available on the Judiciary Infonet), an offender shall be supervised “consistent with the supervision of other similar offenders sentenced in the receiving state.” As with probationers/offenders sentenced in New Jersey, the ICAOS requires the probation officer in the receiving state to take action on behavior that does not comply with the standard or special conditions of probation.

ICAOS Rule 4.109 further requires New Jersey to notify a sending state of significant violations of conditions of supervision *within 30 calendar days* of discovery of the violation. The probation officer must complete the ICAOS Offender Violation Report (Form: CN 11206) and submit it to the Administrative Office of the Courts Interstate Compact Unit for forwarding to the sending state.

On cases where New Jersey is the sending state, ICAOS Rule 4.109 requires the probation officer to respond to an Offender Violation Report submitted by the receiving state *no later than ten business days* following receipt by the sending state. The response shall include action to be taken by New Jersey and the date by which that action will begin and its estimated completion date.

For further guidance on when “retaking” is required by the sending state, see Chapter 5 of the ICAOS Rules, effective January 1, 2005, available on the Judiciary Infonet.

IV. GUIDELINES FOR THE AUTHORIZATION TO ARREST AND DETAIN A PROBATIONER FOR A VIOLATION OF PROBATION

Pursuant to N.J.S.A. 2C:45-3(a)(2) a Chief Probation Officer has statutory authority to request that a probation officer or a peace officer arrest a probationer without a warrant. Probation officer arrest activities must comply with the provisions set forth in Directive #14-06, Probation Field Supervision and Safety Standards. The statute provides that:

At any time before the discharge of the defendant or the termination of the period of suspension or probation...

[a] probation officer or peace officer, upon request of the Chief Probation Officer or otherwise having probable cause to believe that the defendant has failed to comply with a requirement imposed as a condition of the order or that he has committed another offense, may arrest him without a warrant.

Guidelines for Detention Warrants

If there is reason to issue an Authorization to Arrest and Detain a probationer for a VOP, the probation officer should confer with the supervisor. There must be adequate evidence to indicate serious or repeated patterns of violations of conditions and a compelling need for detention pending the court's decisions.

Examples of factors to be considered are:

1. If the probationer is a danger to the persons or property of others.
2. If the probationer is a danger to himself or herself.
3. If there is a risk of flight.
4. If the probation officer believes the probationer has committed or is committing a serious or persistent violation of probation condition(s).
5. Other reasons deemed appropriate by the court, chief probation officer or designee.

When the Chief Probation Officer asks another agency (e.g., the county sheriff) to execute the Authorization to Arrest and Detain, the Probation Division should follow up on the status, utilizing a central log indicating the date issued, date of the arrest, and if and when the Authorization was returned.

The Authorization to Arrest or Detain is a two-sided document that can be folded into three sections (Form: CN 11200). The right side of the Authorization itself is a receipt for the arrest and detention of the probationer. Upon execution of the Authorization, this section is to be signed by the arresting agency and returned to the Probation Division for record keeping. At that time the probationer will be scheduled for a hearing. (*see Section II.1.E. above*)

V. JAIL CREDIT GUIDELINES

When completing the VOP Statement of Charges (Form: CN 10076), it is the obligation of the probation officer to advise the court of the number of jail days to be credited, noting beginning and end date(s) for each type of credit on the Statement of Charges. Credit is the total of the time served prior to sentencing that appears on the Judgment of Conviction, plus any days served in custody and under parole supervision, in circumstances set forth in State v. Rosado, 131 N.J. 423 (1993).

A probationer is entitled to credit for any time served in custody between arrest and resentencing. (See State v. Reyes, 207 N.J. Super 126 (App Div 1986) and R. 3:21-8.)

Where a term of imprisonment is a condition of probation and the probationer is thereafter sentenced to imprisonment upon revocation of probation, the prior term of imprisonment is to be credited toward the subsequent term. See N.J.S.A. 2C:45-1e.

Prior Service Credit

The VOP Statement of Charges should distinguish which portion of the prior incarceration represents prior service of the sentence and which portion represents presentencing jail credits. Since commutation credits are awarded against prior service time but not against regular jail credit, the Statement of Charges must distinguish between the two. Thus, jail credit includes time in custody prior to the sentencing date, and prior service credit includes time spent in service of the sentence after the sentencing date.

“Rosado Credits”

Certain credits are granted only on a VOP. The Supreme Court has held that a defendant is entitled to jail credits for time spent under county parole supervision in certain circumstances. State v. Rosado, supra. If a person is given up to a 364 day sentence as a condition of probation, that probationer is entitled to jail credits from the date of the incarceration until the date he or she is discharged from county parole supervision, if subsequently committed for a violation of probation. Rosado allows for credits from the date of parole release until the date that parole authorities discharge the defendant from supervision relating to that 364 day term.

In Rosado, the Court’s decision was based largely on the fact that the defendant’s status during the 364 day term was that of a parolee and, as parole is a continuation of custody, calculation of the defendant’s maximum term must

include time served on parole. The Court held that R. 3:21-8 did not apply because it is limited to cases in which time was served prior to the imposition of sentence.

Information relating to this discharge date must be obtained by contacting the local Parole Office to ascertain when the defendant was released from county parole supervision.

VI. GUIDELINES ON PROVIDING INFORMATION TO THE COURT ON ALTERNATE CARE NEEDS

Legislation signed into law on January 14, 2004 and effective April 13, 2004, establishes requirements to collect information regarding the care of minor children when the sole caretaker is being incarcerated and to refer the child(ren) to the Department of Youth and Family Services (DYFS) in certain situations. See N.J.S.A. 2C:44-6.2. If, in the course of preparing a VOP, the probation officer determines that the violation may result in the probationer's incarceration, information as to whether the probationer is the sole caregiver must be noted on the bottom of the VOP Summary if it is known.

This following section is included in the VOP Summary form to provide this information to the court. The probation officer should complete this section with information available at the time the VOP Summary is completed.

Inquiry about Dependent Children/Disabled Adults if Incarceration is Recommended

Does the Probationer have primary care of children or other dependents?

- YES, see attached **ALTERNATE CARE ADDENDUM**
- NO
- NOT KNOWN
- LAST KNOWN, see narrative below

If the probation officer has no information to suggest that a probationer is the sole caregiver for a minor child or disabled adult, it is important to advise the court that no information is known. In that case, the "NOT KNOWN" box should be checked.

If the probation officer has reason to believe that in the past the probationer was the sole caregiver of a minor child or disabled adult but is not aware of current arrangements, the "LAST KNOWN" box should be checked and that information should be noted in a brief narrative.

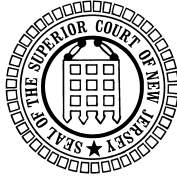
If the probation officer has information relevant to current alternate care needs, "YES" should be checked and that information should be entered on the Alternate Care Addendum (Form: CN 11203). The Alternate Care Addendum should be submitted to the court together with the VOP Summary. This will provide the court with information to make further inquiries regarding the care of the minor children or disabled adults and to make the necessary referral to DYFS if indicated.

SUPERIOR COURT OF NEW JERSEY

TcaName
TRIAL COURT ADMINISTRATOR

VcpoName
VICINAGE CHIEF PROBATION OFFICER

SupName
SUPTITLE



VICINAGE VICNUM
COUNTYNAME COUNTY

UnitName
UnitAddress

VIOLATION OF PROBATION – STATEMENT OF CHARGES

State of New Jersey

Vs.

Ind./Acc/Complt. #:

PROMIS #:

CAPS ID #:

Custody Status:

Jail Credit:

Rosado Time:

Gap Time:

Prior Service:

On _____ the above named appeared in the Superior Court of New Jersey, _____ County and
was sentenced to probation by Judge _____ on the charges of:

Original Charge(s):

Disposition(s):

The defendant is charged with violating the conditions of probation as follows:

Probation Officer

Date

Supervisor

Date

**VIOLATION OF PROBATION
CONDITIONS OF PROBATION
“CHARGING LANGUAGE”**

1.
 - A. While under the active probation supervision, the probationer has been arrested and convicted of a new offense. Specifically: (Date), (location), (charge) (or date of hearing sentence)
 - B. While under supervision, the probationer has been charged with a new offense. Specifically: (date, (location), (charge)
2. The probationer has failed to report to the Probation Officer as directed. Specifically, the probationer failed to report on the following dates:
3. The probationer has failed to truthfully answer inquiries made by the Probation Officer, specifically: (date), (location), (details of event)
4. The probationer has failed to permit the Probation Officer to visit residence/other suitable place, specifically: (date), (location), (details of event)
5. The probationer has failed to submit to a search by the Probation Officer, specifically: (date), (location), (details of event)
6.
 - A. The probationer has failed to keep the Probation Officer advised of a change of address, specifically: (date), (location), (details of event)
 - B. The probationer failed to obtain permission from the Probation Officer to move outside the county or state, specifically: (date), (location), (details of event)
 - C. The probationer left the state of New Jersey for more than 24 hours without permission from the Probation Officer, specifically: (date), (location), (details of event)
 - D. The probationer has failed to return to the state of New Jersey as directed by the Probation Officer, specifically: (date), (location), (details of event)
7. The probationer failed to cooperate in examination/tests/counseling treatment as directed by the Probation Officer, specifically: (date), (agency), (name of agency representative who provided documentation), (details of event)
8.
 - A. The probationer failed to submit to drug/alcohol testing as directed by the Probation Officer, specifically: (date), (agency), (name of agency representative who provided documentation), (details of event)
 - B. The probationer submitted urine specimens which tested positive for drug/alcohol use, specifically: (date), (test results)
 - C. The probationer submitted an adulterated sample, specifically: (dates), (test results)

9. The probationer failed to support dependant and meet family obligations, specifically: (date), (name/source of information/documentation), (details of event/financial institution)
10.
 - A. The probationer failed to seek/maintain gainful employment, specifically: (date), (name/source of information/documentation), (details of event)
 - B. The probationer failed to promptly notify the Probation Officer of employment status, specifically: (date), (name for information documentation), (employer), (details of event)
11.
 - A. The probationer possessed a firearm/other dangerous weapon as defined in *N.J.S.A 2C:39 et.seq.*, specifically: (date), (location), (name of person/agency to provided documentation), (details of event)
 - B. The probationer possessed and failed to promptly surrender a firearms purchase permit to the Probation Officer, specifically: (date), (location), (name of person/agency to provide documentation), (details of event)
 - C. The probationer failed to surrender a weapon to the local police department/any other criminal justice agency designated by the Probation Officer, specifically: (date), (location), (name of person/agency to provide documentation), (details of event)
12. The probationer failed to pay Court imposed financial obligations, specifically: as of (date financial information is calculated and current), total amount of financial obligation ordered \$, total amount paid \$, total amount outstanding \$. The date of last payment being:
13. The probationer has willfully refused to submit a DNA sample, specifically: (date), (location), (name of person/agency to provide documentation), (details of event)
14. The probationer has failed to cooperate in the performance of Community Service, specifically: as of (date Community Service information is calculated), the probationer was ordered to perform Hours, has performed Hours, has Hours remaining. The last date Community Service was performed was .
15. The probationer has failed to meet the special Conditions of Probation imposed by the court, specifically:

SUPERIOR COURT OF NEW JERSEY

TcaName
TRIAL COURT ADMINISTRATOR

VcpoName
VICINAGE CHIEF PROBATION OFFICER

SupName
SUPTITLE



VICINAGE VICNUM
COUNTYNAME COUNTY

UnitName
UnitAddress

Honorable

VIOLATION OF PROBATION SUMMARY

Probationer Name:
Address:

Ind./Acc./Complt. #:
PROMIS #:
CAPS ID #:
SBI/FBI #:

OPENING STATEMENT

EFFORTS TO GAIN COMPLIANCE

PROBATION ADJUSTMENT

RECOMMENDATION

Inquiry about Dependent Children/Disabled Adults if Incarceration is Recommended

Does the Probationer have primary care of children or other dependents?

- YES, see attached **ALTERNATE CARE ADDENDUM**
- NO
- NOT KNOWN
- LAST KNOWN, see narrative below

Probation Officer

Date

Supervisor

Date

SUPERIOR COURT OF NEW JERSEY

TcaName
TRIAL COURT ADMINISTRATOR

VICINAGE VICNUM
COUNTYNAME COUNTY

VcpoName
VICINAGE CHIEF PROBATION OFFICER

UnitName
UnitAddress

SupName
SUPTITLE



VIOLATION OF PROBATION - ADDENDUM

State of New Jersey

Vs.

Ind./Acc/Complt. #:

PROMIS #:

CAPS ID #:

Custody Status:

Jail Credit:

Rosado Time:

Gap Time:

Prior Service:

Probation Officer

Date

Supervisor

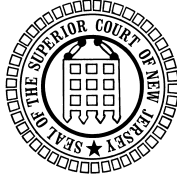
Date

SUPERIOR COURT OF NEW JERSEY

TcaName
TRIAL COURT ADMINISTRATOR

VcpoName
VICINAGE CHIEF PROBATION OFFICER

SupName
SUPTITLE



VICINAGE VICNUM
COUNTYNAME COUNTY

UnitName
UnitAddress

VIOLATION OF PROBATION HEARING SUMMONS

To:

RE: Ind./Acc./Complt.

PROMIS #:

CAPS ID #:

In accordance with *N.J.S.A. 2C:45-3*, you are hereby notified that you are to appear before Judge
of the Court located at on .

Notice of the Violation of Probation is attached. You will be given the opportunity to be heard
as to these allegations.

Your have the right to be represented by an attorney. If you are unable to afford the services of
an attorney, you may apply for representation by the Office of the Public Defender by
contacting:

Failure to appear at this hearing will result in the issuance of a warrant for your arrest.

Date of Issuance

Vicinage Chief Probation Officer or Designee

Probation Officer

Telephone Number

SUPERIOR COURT OF NEW JERSEY

TcaName
TRIAL COURT ADMINISTRATOR

VcpoName
VICINAGE CHIEF PROBATION OFFICER

SupName
SUPTITLE



VICINAGE VICNUM
COUNTYNAME COUNTY

UnitName
UnitAddress

MEMORANDUM

To: _____ County Prosecutor

From: _____ Probation Division

Re: **VIOLATION OF PROBATION**

NAME _____

IND/ACC/Complaint # _____

PROMIS # _____

CAPS ID # _____

Date: _____

Attached is the documentation which the Probation Division has prepared in order to process the above named individual for a violation of probation. Please advise the Probation Officer named below of any procedural concerns that might interfere with prosecuting the VOP.

Thank you for your continued cooperation.

Probation Officer

Phone Number

Vicinage Chief Probation Officer/Designee

Phone Number

PROBATIONER IDENTIFIER

Warrant No. _____

Name: _____

AKAs: _____

Age: _____ Sex: _____ Race: _____

Eye Color: _____ Hair Color: _____

Height: _____ Weight: _____

Special Marks (Scars/Tattoos, etc.)

Date of Birth: _____

Place of Birth: _____

Social Security #: _____

SBI #: _____ FBI #: _____

Driver=s License #: _____
State: _____

Last Known Address:

Last Known Employer:

MAIL TO:

Probation Officer

Address

Address

City State Zip Code

Telephone Number

The State of New Jersey

vs.

Warrant

**Authorization to Arrest and Detain a
Probationer for Violation of Probation**

Vicinage Chief Probation Officer

The State of New Jersey

Warrant Number:

vs.

Warrant

**AUTHORIZATION TO ARREST AND DETAIN A
PROBATIONER FOR VIOLATION OF PROBATION**

Probation #: _____
Court: _____
Judge: _____
Indictment/Acc./Comp#: _____
Promis/Gavel #: _____

THIS IS TO CERTIFY that _____, a person
convicted of an offense and placed on probation and in my care for a charge of _____
_____, has, in my judgment, violated probation, in that:

THIS IS THEREFORE your authorization for the arrest and detention of the said
individual in the _____
of _____ until this person can be brought before the Court as required by
N.J.S.A. 2C:45-3.

Dated: _____

Vicinage Chief Probation Officer

RECEIPT FOR WARRANT AUTHORIZING ARREST AND DETENTION OF PROBATION VIOLATOR
To be returned to the office of the Vicinage Chief Probation Officer

Probationer: _____ **NUMBER:** _____
Address: _____
Probation Number: _____ **Court:** _____
Probation Officer: _____
Date of Expiration of Probation Term: _____
Date of Issuance of Warrant: _____
Warrant Sent to: _____

SIGNATURE of person completing this form _____ TITLE _____ PHONE

SUPERIOR COURT OF NEW JERSEY

TcaName
TRIAL COURT ADMINISTRATOR

VICINAGE VICNUM
COUNTYNAME COUNTY

VcpoName
VICINAGE CHIEF PROBATION OFFICER

UnitName
UnitAddress

SupName
SUPTITLE



CONFIDENTIAL ~ NOT TO BE RELEASED
ALTERNATE CARE ADDENDUM

Probationer's Name:

Ind./Acc/Complt. #:

Address:

PROMIS #:

CAPS ID #:

Custody Status:

SBI/FBI#:

Social Security #:

DEPENDENTS Needing Alternate Care

Has the Probationer made Alternate Care Arrangements? YES NO

Names and Relationships of Dependent Children/Disabled Adults in Probationer's primary care:

1. Name	Relationship	Age	Gender
2. Name	Relationship	Age	Gender
3. Name	Relationship	Age	Gender

Are any of the dependents disabled? YES NO
If yes, indicate which: 1 2 3

ALTERNATE PROVIDER INFORMATION

Name
Address
Telephone
DOB AGE Gender SSN
Relationship

Does Probationer indicate that the provider is willing to assume responsibility?
 YES NO NOT KNOWN

Probation Officer Date Supervisor Date



Interstate Commission for Adult Offender Supervision

(Revised 2/4/08)

OFFENDER VIOLATION REPORT

To:	Date:	Type of supervision: <input type="checkbox"/> Parole <input type="checkbox"/> Probation <input type="checkbox"/> Other:	Is this case: <input type="checkbox"/> Registered Sex Offender <input type="checkbox"/> Victim sensitive
From:	Phone #:	Fax #:	

OFFENDER INFORMATION

Offender's full name (last, first, MI):	Offender number:	Sending state#: Receiving state#:		
AKA:				
SS#: (if available)	FBI#: (if available)	Sex:	Race:	DOB:

TYPE OF REPORT *(check all that apply)*

- Violation(s) without arrest
- Arrest
- Absconder
- Conviction

RECOMMENDATION

- Remain under supervision
- Order offender to return to sending state
- Warrant requested

OFFENDER CUSTODY STATUS & LOCATION

- In custody, current location:
- On bond, amount: \$
- ROR

CURRENT RESIDENCE

Offender resides with – name, relationship:		Phone #:		
Address:	City:	State:	Zip:	

EMPLOYMENT STATUS

- Employed full time
- Unemployed/reason:

Offender's employment:				
Employer's street address:	City:	State:	Zip:	Telephone #:
Offender's employment supervisor:		Offender's job title:		

NEW ARREST INFORMATION

Date:	City:	County:	Arresting Agency:	
		Case #:	Case #:	
Offense description (attach offense report, if available):				

CURRENT SPECIFIC VIOLATIONS

(Specify violation and provide all details to support the violation below, including evidence, witnesses' names, and witnesses' contact information)*

Violation	Date occurred
1	
2	
3	
4	
5	

*Details of current violation(s):

Previous Violation	Date of Report	Date of Response
1		
2		
3		
4		
5		

Offender's compliance to prior sanctions following violation:

ABSCONDING INFORMATION

Last known address:

Last known employment information:

Date of last face-to-face contact with offender:

Details of how offender was determined to be an absconder:

NEW CONVICTION INFORMATION

Date of sentence: _____ Offense(s): Felony Misdemeanor Other

Disposition: Guilty Not guilty No contest Charges withdrawn

Name and location of court: _____ Case #: _____

Sentence: _____

If incarcerated, name and address of holding agency: _____

ATTACHMENTS

Check all information that is attached to this form:

- Police report
- Toxicology report
- Preliminary findings report
- Other documentation regarding violation

Supervising Officer/Location:	Date:	Compact Administrator/Designee:	Date:
-------------------------------	-------	---------------------------------	-------