


---

**GLENN A. GRANT, J.A.D.**  
Acting Administrative Director of the Courts

---

www.njcourts.com • Phone: 609-984-0275 • Fax: 609-984-6968

**To: Assignment Judges Trial Court Administrators** **Directive #05-16**

**From: Glenn A. Grant, J.A.D.** 

**Subj: Criminal Justice Reform – Prosecutor’s Role in Pretrial Monitoring Violations Proceedings**

**Date: December 30, 2016**

This directive outlines the procedure for the prosecution of violations of conditions of pretrial release as referenced in R. 3:26-2, which establishes, among other things, two types of proceedings for violations of conditions of pretrial release: (1) violations filed by the State seeking revocation of pretrial release, and (2) violations filed by the State or the court on its own motion seeking modification of conditions of release.

Although violations of conditions of pretrial release are new proceedings under Criminal Justice Reform, the role of the prosecutor in similar types of proceedings has previously been considered. Specifically, on July 11, 1966, then Administrative Director Edward B. McConnell issued Directive #34A-65, which established that Prosecutors, not Probation Officers, are responsible for the prosecution of defendants charged with violating the terms of their probation. Thereafter, in 2006, the issue was once again revisited due to considerable variation in vicinage practice with respect to the prosecution of violations of probation (VOPs). In some counties, the Prosecutor was involved in VOP proceedings, while in others Probation staff was handling all aspects of the VOP process. As a result, the Conferences of Criminal Presiding Judges and Vicinage Chief Probation Officers reviewed the practice at that time and concluded that the policy contained in the 1966 Directive should be reaffirmed. The Criminal Presiding Judges reasoned that because a VOP involves a violation of court ordered conditions, it is akin to contempt for violating a court order, and since the Prosecutor represents the State’s interest at contempt proceedings, the same should hold true for VOP proceedings. The Presiding Criminal Judges also reasoned that the Prosecutor has a fundamental role at VOP proceedings to represent the interests of the State and the victim(s), and that the Probation Officer ought not to act as both witness and prosecutor. At the direction of the Supreme Court, then Acting Administrative Director Philip S. Carchman on April 7, 2006 issued Directive #04-06 restating the substance of the earlier directive.

The same reasoning holds true for violations of conditions of pretrial release. Conditions of pretrial release are set via court order; therefore, violations of these conditions are likewise

akin to contempt proceedings. Since the prosecutor represents the State's interest at both contempt and VOP proceedings, the same should hold true for violations of conditions of pretrial release filed pursuant to R. 3:26-2. During the pretrial phase of a criminal proceeding, the prosecutor plays a vital role in representing the interest of the State and victims during the pretrial process. Further, as in the case of VOP proceedings, Pretrial Services Officers should not be required to act as both the witness and the prosecutor during violations of conditions of pretrial release proceedings. Therefore, to ensure statewide consistency, it must follow that County Prosecutors, and not Pretrial Services Officers, are responsible for the prosecution of violations of conditions of pretrial release filed pursuant to R. 3:26-2.

Questions regarding this directive or the procedure for violations of conditions of pretrial release may be directed to Sue Callaghan, Assistant Director for Criminal Practice, by email at [Sue.Callaghan@njcourts.gov](mailto:Sue.Callaghan@njcourts.gov) or by phone at (609) 292-4638.

G.A.G.

cc: Chief Justice Stuart Rabner  
Criminal Presiding Judges  
Family Presiding Judges  
Municipal Presiding Judges  
Steven D. Bonville, Chief of Staff  
AOC Directors and Assistant Directors  
Clerks of Court  
Melaney Payne, Special Assistant  
Ann Marie Fleury, Special Assistant  
Criminal Division Managers  
Family Division Managers  
Municipal Division Managers  
Assistant Criminal Division Managers-Pretrial Services