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Administrative Director of the Courts

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TO: Assignment Judges
Trial Court Administrators**Supplement to Directive #09-19****FROM:** Glenn A. Grant, Administrative Director
Questions or comments may be
directed to the Criminal Practice
Division at 609-815-2900 x55300**SUBJ:** **Criminal – Updated Pretrial Intervention (PTI)
Order of Termination****DATE:** January 27, 2023

This supplement to [Directive #09-19](#) (“Criminal – Updated Pretrial Intervention (PTI) Forms”) promulgates an updated procedure for handling PTI termination hearings and provides an updated standard form for recording the termination event. The form replaces attachment 5 of Directive #09-19.

A defendant enrolled in PTI is entitled to a summary PTI termination hearing; however, the defendant’s presence is not required to proceed with the termination. See State v. A.S.-M., 444 N.J. Super. 334 (App. Div. 2016); N.J.S.A. 2C:43-13(e). A review of statewide practices revealed lack of consistency in the approach to the PTI termination process when a defendant failed to appear for such a summary proceeding. In some cases, the court would issue a bench warrant but not proceed with the summary hearing, which resulted in the defendant tolling their PTI period while being a fugitive from the program.

A defendant who is terminated from the PTI program may petition for reinstatement. Ibid. Time not in the program after a termination and prior to reinstatement is not counted against the defendant’s statutory 3-year maximum term. However, it is unclear whether the period a defendant is an active fugitive from the program may be used to toll the program length beyond 3 years. See State v. Fenton, 221 N.J. Super. 16 (Law Div. 1987).

To address these issues in a consistent manner, vicinages should use the following procedure when a defendant fails to appear at a PTI termination hearing:

1. Before termination from PTI and before a recommendation to terminate PTI is submitted to the court, the vicinage Probation Division Manager or the prosecutor shall provide the defendant and their attorney with a copy of the written recommendation, and the defendant shall be advised of the opportunity to be heard, as required by R. 3:28-7(b)(3).
2. If the defendant fails to appear at the summary hearing, the court shall conduct the hearing in the defendant's absence, on the record. If the court is satisfied that the defendant should be terminated from PTI, the court shall articulate reasons to substantiate the defendant's termination from the program. The court shall also record the reasons on the form of order authorized by the Administrative Director.
3. The court may in its discretion issue a bench warrant for the defendant's arrest. When the defendant is apprehended, the prosecution of the defendant shall proceed in the ordinary course. Ibid.

To align with the above procedure, the Pretrial Intervention Order of Termination (attachment 5 to Directive #09-19) was modified to include a space to record the court's reasons for terminating the defendant at a summary PTI termination hearing. This form will appear on the Criminal Forms page on the Judiciary site.

This supplement does not affect the defendant's ability to petition for reinstatement or to appeal a PTI termination.

Attachments:

CN 10302 (Pretrial Intervention Order of Termination)

c: Chief Justice Stuart Rabner
Attorney General Matthew J. Platkin
Public Defender Joseph E. Krakora
Criminal Division Judges
Pearl Minato, Director Division of Criminal Justice
County Prosecutors
Steven D. Bonville, Chief of Staff
AOC Directors and Assistant Directors
Criminal Division Managers and Assistants
Justin M. Patterson Moles, Chief Criminal Court Services

Superior Court of New Jersey
Law Division - Criminal Part
_____ County

_____ Municipality
Complaint/Indictment/Accusation Number(s):

State of New Jersey

vs.

Defendant

PROMIS Number: _____
CAPS ID Number: _____
Probation Officer: _____

Pretrial Intervention Order of Termination

Upon application of the Vicinage Chief Probation Officer for an Order terminating the defendant from participation in said program, and the defendant:

- ☐ having been notified to appear before this Court for a termination hearing and having not appeared,
- ☐ having appeared to contest such recommendation,
- ☐ and the court having conducted a - Select Hearing Type - and for the following reasons placed on the record:

- ☐ having waived the opportunity to a termination hearing and the court having accepted the waiver.
- ☐ having consented to termination from the Pretrial Intervention Program.

It is on this _____ day of _____, 20____,

Ordered that the defendant is hereby terminated from participation in the Pretrial Intervention Program and the charges against the participant are reactivated and returned to the ordinary course of prosecution, and;

It Is Further Ordered that all records relating to the defendant's application to and participation in said program, shall be considered confidential in accordance with R. 1:38-3(c)(5), and;

It Is Further Ordered that the defendant be placed on the active court calendar, and is scheduled before Judge _____, in Courtroom _____, on _____ at _____ ☐ a.m. ☐ p.m.

Date

s/ _____
Judge of the Superior Court

Distribution:

Criminal Division
Probation Division

Prosecutor
Defense Attorney

Defendant