

PREPARING PROBATION VIOLATION AND WARRANT PETITIONS - ADULT (ALLEGATIONS)

- AUTHORITY:** Administrative Directive
1203.2 Penal Code
- RESCINDS:** Procedure Manual Item 2-3-019, dated 6/20/16
- FORMS:** Petition for Arraignment on Probation Violation (F057-2001.2AF/WT)
Petition for Warrant of Arrest (**Long Warrant**) (F057-2003(A)AF/WT)
Petition for Warrant of Arrest (Short Warrant) (F057-2002.2(A)AF/WT)
Instructions to Adult Individual on supervision (F057-117.2(A)AF/WT)
- PURPOSE:** Guide to preparing clear, accurate, uniform, and sufficient violation petitions with advice and consent of the Supervising Probation Officer.

I. GENERAL INFORMATION

- A. This manual item is based on ongoing interaction with the Courts and the District Attorney's Office and is to assist adult supervision staff in preparing probation violation and warrant petitions.
- B. Use the suggested language and format of the following examples as a guideline. Direct specific questions to your immediate supervisor.
- C. Whenever new law violations overlap court orders, list both as "specific conditions" in the petition.

II. PROCEDURE

Categories of commonly used Probation Violations and suggested wording for Probation Violations and Warrant Petitions.

A. REPORTING

Court Order: Obey all laws, orders, rules, and regulations of the Court, Jail, and Probation.

Instructions to Adult **Individuals on Supervision**: Report as required by the Probation Officer.

EXAMPLES:

Specific Condition: "Obey all laws, orders, rules, and regulations of the Court, Jail, and Probation".

The **individual on supervision** failed to report on (dates) as directed by the probation officer.

B. RESIDENCE

Court Order: Seek training, schooling and employment and maintain residence as approved by Probation Department.

Instructions to Adult **Individuals on Supervision**: Residence and employment to be approved by your probation officer. Notify your probation officer at least 72 hours prior to any change.

EXAMPLES:

Specific Condition: "Seek training, schooling, or employment and maintain residences as approved by Probation Department".

The **individual on supervision** failed to notify the probation officer of a change in residence and moved on or about (date).

OR

The **individual on supervision** failed to maintain a residence as approved by the probation officer. He/She does not reside at the address he/she provided, and his/her whereabouts has been unknown since (date).

OR

The **individual on supervision** failed to notify the probation officer at least 72 hours prior to moving to his/her new address.

EXAMPLE:

Specific Condition: "Seek and maintain employment as directed by the probation officer."

The defendant failed to seek employment as directed by the probation officer by (describe action or inaction).

C. ASSOCIATION RESTRICTIONS

Court Order: Do not associate with anyone disapproved of by your Probation Officer, **or Persons known to you to be parolees, on post release community supervision, convicted felons, users or sellers of illegal drugs, or otherwise disapproved of by probation or mandatory supervision officer.**

Instructions to Adult **Individual on supervision**: Do not associate with anyone disapproved by **your** Probation Officer.

EXAMPLES

Specific Condition: "Do not associate with anyone disapproved of by your Probation Officer **or Persons known to you to be parolees, on post release community supervision, convicted felons, users or sellers of illegal drugs, or otherwise disapproved of by probation or mandatory supervision officer**"

On ____ (date) ____, the **individual on supervision** associated with ____ (name) a person known to be a gang member.

OR

On ____ (date) ____, the **individual on supervision** associated with ____ (name) , a person specifically disapproved by the probation officer.

OR (if covered by specific court order)

On ____ (date) ____, the **individual on supervision** associated with ____ (name) ____, a child under the age of 18, not in the presence of a responsible adult over 21 years of age and without the approval of the probation officer, as witnessed by (name) .

OR (if covered by specific court order)

Specific Condition: "Not to annoy, molest, or contact ____ (name) ____."

On (date) , the defendant (describe behavior) as observed by (witness).

D. LEAVING THE STATE

Instructions to Adult **Individual on supervision**: Do not leave State without permission of probation officer.

EXAMPLE:

Specific Condition: "Do not leave State without permission of the Probation Officer."

On (date) , the **individual on supervision** left the state by going to (city and state) without the permission of the probation officer.

E. MANDATORY REGISTRATION OF ADDRESS

Court Order: Register pursuant to **Penal Code 290**.

Instructions to Adult **Individual on supervision**: Registration: You are required by law to register pursuant to Penal Code 290 within 5 days.

EXAMPLE:

Specific Condition: Register pursuant to 290 P.C.

The **individual on supervision** was instructed to register his/her address with the (agency) pursuant to 290 PC) by the probation officer on (dates). As of (date) , he/she failed to do so.

F. LAW VIOLATIONS

Court Order: Violate no law.

EXAMPLES:

Specific Condition: "Violate no law."

On (date), the **individual on supervision** (describe unlawful behavior) in violation of Section (number and code). **Individual on supervision** arrested by (agency name), DR# . (List new court case number if known).

OR

On (date), the **individual on supervision** (describe unlawful behavior) in violation of Section (number and code) . (Matter filed as probation violation only; no new complaint filed with Court).

OR

According to the records of (Agency name, DR#) on (Date), the individual on supervision was arrested for (Violations/Offense Codes. List new court case number if known.

G. FIREARMS/ WEAPONS

Court Order: Do not own, use, or possess any type of dangerous or deadly weapon, **or have under your custody and control any type of dangerous or deadly weapon, firearm, ammunition, and ammunition feeding devices included but not limited to magazines, including any forearm or ammunition.**

Instructions to Adult **Individual on supervision**: You are not to have any firearms of any description in your possession during the period of probation.

EXAMPLE:

Specific Condition: "Do not own, use, or possess any type of dangerous or deadly weapon".

According to records of (agency/DR#) , on (date) , the **individual on supervision** possessed a (describe weapon) (if firearm, specify make, model and serial #).

OR

On (date) , the **individual on supervision** possessed a (describe weapon and location found).

H. FINE/RESTITUTION (Failure to pay)

Court Order: Pay restitution in the amount as determined and directed by Probation Officer.

The probation officer needs to include in the memo supporting the petition that the probation officer has determined the **individual on supervision** has the ability to pay.

1. If the **individual on supervision** is indigent, he cannot be violated for failing to pay. DPO may seek a voluntary (or involuntary) extension if

expiration is approaching and monies remain unpaid. **Staff case with immediate supervisor to determine if an extension is warranted.**

2. If the Court has imposed a specific due date by which time a fine has to be paid, don't ignore the court order. Either seek and extension if justified or proceed with the PV
3. The specific wording on any restitution or fine "failure to pay" allegation must include the date the DPO last checked with Accounting regarding the most recently credited payment. Establishing a clear "cut-off" date avoids the possibility of the allegation being invalidated if a payment were received after the submission of the petition.

EXAMPLES:

Specific Condition: Pay \$200.00 Restitution Fine pursuant to Penal Code 1202.4 or Penal Code 1202.4(b).

Fine/restitution was set/ordered at (sum) with payments of (sum) per month to begin (date). As of (date), the **individual on supervision** has paid (sum) with last payment received (date); arrearage (sum), outstanding balance (sum).

OR

Specific Condition: "Pay (sum) restitution at (sum) per month beginning (date)."

As of (date), the **individual on supervision** has paid (sum) with last payment of (sum) received (date); arrearage (sum), outstanding balance (sum)

OR

As of (date), the **individual on supervision** has not made any payments, original balance of (sum) remains with no payments having been received, arrearage (sum).

OR

Specific Condition: "Pay restitution."

Restitution was set at (sum), plus (sum) administrative fee, for a total of (sum), with payments of (sum) to begin (date). As of (date), the **individual on supervision** has paid (sum) with last payment received (date); arrearage (sum), outstanding balance (sum).

I. TESTING (Positive drug tests/Failures to test)

Court Order: Use no unauthorized drugs, narcotics, or controlled substances. Submit to drug or narcotic testing as directed by **any Deputy Probation Officer or any Peace Officer.**

EXAMPLES:

Specific condition: "Use no unauthorized drugs, narcotics, or controlled substances."

On (dates), the **individual on supervision** submitted urine samples **or oral fluid saliva samples**, which tested positive for (substance).

OR

Specific condition: "Submit to drug or narcotic testing as directed by Probation Officer or Police Officer."

On (dates), the **individual on supervision** failed to submit to testing as directed.

J. CHECKS/CHECKING ACCOUNTS/CREDIT CARDS

Court Order: Possess no blank checks, nor write any portion of any checks, nor have checking account, nor use or possess credit cards or open credit accounts unless approved by Probation.

EXAMPLES:

Specific condition: "Possess no blank checks, nor write any portion of any checks, nor have checking account, nor use or possess credit cards or open credit accounts unless approved by Probation."

On (date), the **individual on supervision** was in possession of (describe checks) as discovered at his/her residence by the probation officer.

K. ALCOHOL

Court Order: Consume no alcohol.

EXAMPLES:

Specific condition: "Consume no alcohol."

On (date), the **individual on supervision** used alcohol as evidenced by his/her arrest by (agency and DR#) for driving while intoxicated (BA ___%).

OR

Specific Condition: "Consume no alcoholic beverages and do not be present in any establishment where the primary items for sale are alcoholic beverages."

On (date), the **individual on supervision** was inside (establishment) when arrested by the (agency/ officer) for (offense).

L. COUNSELING

Court Order: Cooperate with Probation Officer in any plan for psychiatric, psychological, alcohol and/or drug treatment, or counseling.

EXAMPLES:

Specific condition: "Cooperate with Probation Officer in any plan for psychiatric, psychological, alcohol and/or drug treatment, or counseling."

The **individual on supervision** failed to seek (specific type of treatment) as directed.

OR

On (date) the **individual on supervision** was terminated from (name of program) for excessive absences.

REFERENCES:

Procedures:	2-3-002	Probation Violations - Adult
	2-3-016	Warrants of Arrest for Adults
Policies:	A-1	Policy, Procedure, and the Law
	A-2	Departmental and Personal Philosophies

R. Martinez

APPROVED BY: