

CPL ARTICLE 410: PROBATION.

Copyright 2007, Yosef Seigel. MAY BE FREELY DISTRIBUTED.

Court must specify conditions when sentencing Defendant to Probation or Conditional Discharge. Where Probation, defendant gets written copy of conditions at time of sentence, and the Court need not state such orally on record. Regardless of whether such be a specific condition, future conviction of any offense NOT a traffic infraction shall be grounds for revocation of sentence.

If the defendant must report to the Crime Victims Board pursuant to Executive Law, any Court sentencing such defendant to Probation/Conditional Discharge shall provide written notice of such requirement, as well as the procedures and penalties relating thereto.

Court can modify or enlarge conditions at any time prior to expiration of sentence, but defendant **MUST** be present! Defendant must also be present when Court extends Conditional Discharge for an additional period based upon non-payment of penalty. However: when the Court only *relaxes* or eliminates a provision, defendant need not be present, but must be noticed in writing not more than 20 days after.

At any time before expiration of sentence when Court has reason to believe that the defendant is in violation of conditions, can make a written "declaration" that defendant is "delinquent"; defendant shall then be brought before Court to make a final determination thereupon.

Court can also at any time send a written appearance notice to defendant, either by mail or personal service, specifying the time/date to return. Failure to appear as directed constitutes a violation, regardless whether compliance was a specific condition.

Upon reason to believe that a defendant is in violation, Court may issue a warrant to police/peace officer. If the issuing court not be in session when warrant executed, and defendant is arrested by police **or Probation!** Peace officer: Superior Court warrants shall provide for the defendant to be held in the corrections department of court county, until next business day when such court back in session; Local Criminal Court warrants are in such instances returnable before an alternate local court, and the warrant shall have a summary of proceedings attached for such court to consider in these situations.

A Probationer is under the legal custody of the sentencing court, but under the supervision of the Department of Probation. Upon reason to believe that defendant is in violation, Court can issue order for Probation officer to search defendant's: person; residential premises; real/personal property (owned or possessed). Probation Officer which has own reason to believe defendant's violation has authority to "take custody" and search without order. In either case, Probation can be assisted by police.

If a defendant is detained by warrant and brought before sentencing court, may

then be committed to sheriff, or bailed out, or released on recognizance. However defendant must be released if Court has no reason to believe a violation occurred.

Violation hearing: the Court shall file with the clerk - or cause to be filed - a Statement, listing the conditions allegedly violated, and the time/place/manner of such infraction. Defendant must appear, be given copy of statement, and has right of adjournment to prepare. Defendant can make a statement, and the court may base decision thereupon. Court shall hold a hearing if it does not accept defendant's statement, or when defendant remains mute. When a defendant be committed, or on bail, **or** when declared "delinquent": defendant entitled to prompt hearing.

Probation violation hearing is summary in nature; no jury; any evidence not legally privileged is admissible; defendant can cross-examine witnesses, and present own evidence; finding by preponderance. Defendant must be allowed opportunity to be heard before Court can revoke sentence. Defendant must also have been advised of right to counsel.

Disposition of hearing = revocation/continuation/modification of sentence. If Court continues or modifies probation, must vacate declaration of delinquency and release defendant. Term of probation may be extended by an amount of time equal to the period from when declaration issued until vacatur; however any day which the defendant was in detention shall not be so calculated.

Upon revocation of probation/conditional discharge: Court can issue new sentence of any option which was originally available following conviction.

Generally a Court can terminate probation/C.D. at any time; **EXCEPT:** "lifetime" probation can only be terminated after continuing unrevoked for 5 years. Criteria where Court shall terminate: 1) probation supervision no longer needed (not apply to conditional discharge sentence); 2) defendant has been in compliance with all conditions; 3) termination not adverse to public protection. Where a condition of restitution/reparation remains unsatisfied, and defendant is financially able to pay, court shall NOT terminate unless defendant has made a good faith effort to comply with order.

PAROLE SUPERVISION: a 2nd Felony Offender, where newly convicted of : Criminal Mischief in the second or third degree; Grand Larceny 3/4 (except as to firearm); Unauthorized Vehicle Use 2; Criminal Possession of Stolen Property 3/4 (if not firearm); Forgery/Forged Instrument 2; Criminal Use of "Slugs" 1, **or** any Attempt of above charges where such reduced weight would still be felony class; **or** Class D/E felony of Controlled Substance/Marihuana (P.L. 220/221); **AND** if present conviction includes no other felonies, **AND** where prior conviction was not to any Class A, B, or violent felony = eligible for Parole Supervision.

Parole Supervision is appropriate for defendant: 1) with substance abuse history contributing to criminal proclivity; 2) where criminal tendency will be addressed by such supervision; and 3) when public safety/confidence in judicial system will not be

negatively affected.

Where any eligible defendant as determined above can be imprisoned for indeterminate sentence: Court *may* sentence defendant to indeterminate (specifying minimum/maximum times) sentence of Parole Supervision. However, if conviction was to Class D felony, People's consent shall be required. Consent/objection of People either at time of defendant's guilty plea; or upon trial conviction, at least 10 days before sentencing. If people refuse to consent, must either state reasons orally on record, or in writing.

When placed on Parole Supervision: defendant remanded not more than 10 days for delivery to Corrections reception center; after intake, defendant immediately on parole supervision; defendant given copy of terms, acknowledges receipt in writing; terms must include an initial 90-day stay in a drug treatment campus. Upon release from campus, defendant shall be provided money, clothing, and transportation to county of supervision. Thereafter, parole supervision must address defendant's special needs, require urinalysis, and allow for community-based substance abuse treatment provider unless inappropriate.

Any violations or warrants for parole supervised defendant shall be governed by Executive Law. However: any warrant upon violation occurring at drug treatment campus shall provide for immediate detention of defendant in correction facility proximate to the location of violation pending further proceedings.

Detainer Warrant Pilot Program: State Division of Probation and Correctional Alternatives shall designate 4 distinct *non*-NYC counties. If a defendant on probation following conviction for sex offense is taken into custody by a Probation Officer of designated county **AND** cannot be brought before any appropriate or alternate court despite diligent efforts to locate one is session: if Director or Deputy of local probation agency determines defendant to be a public safety risk, can issue own warrant directing temporary detention of defendant. Defendant so detained **must** then be brought before sentencing court within 48 hours, regardless of whether the court be is session.

When such Court considers whether to further detain defendant, shall NOT rely on the Probation Department's determination.

The State Probation Division shall provide a standard reporting form for local agencies to compile the usage an impact of this pilot program, including: number of warrants requested/issued; title of issuer; summary of violation(s); efforts to find local judge; court's later actions; crime defendant convicted for; and **race/ethnicity**.

Statistics shall be submitted to: Governor, Temporary President of Senate; Assembly Speaker = by May 1st following effective date of law, and annually thereafter.