

Supplement to Directive #09-19 – Updated Form – Pretrial Intervention Order of Termination

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.

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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 a defendant at a summary PTI termination hearing. This form will appear on the Criminal Forms page on the Judiciary site.

Top

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

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Document Date: Jan. 27, 2023

Publish Date: Feb. 15, 2023

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