

PROBATION DEPARTMENT DIRECTIVE

No.:	1404
Issued:	11-07-17
Post Until:	12-07-17

SUBJECT: TOLLING OF TIME, SUMMARILY REVOKED PROBATION, AND THE BENCH WARRANT PICK-UP REPORT

(This Directive supersedes Directive No. 958, Issued on 11/04/03 & Directive No. 667, Issued on 4/27/97)

The purpose of this Directive is to clarify the findings in *People v. Leiva* (2013) which concluded that “summary revocation of probation preserves the trial court’s authority to adjudicate a claim that the defendant violated conditions of probation during the probationary period.”

The *Leiva* case confirmed the following to be consistent with *People v. Tapia* (2001):

- The court retains the authority to decide whether there has been a violation during the period of probation and, if so, whether to reinstate or terminate probation.
- The trial court can find a violation of probation and then reinstate and extend the terms of probation, “if, and only if, probation is reinstated based upon a violation that occurred during the unextended period of probation.”
- Should a formal violation hearing be held after probation normally would have expired, and it is proven that the defendant did violate probation before the expiration of the probation period, a new term of probation may be imposed by Section 1203.2, subdivision (e), and section 1203.3.

In such instances where the court finds the probationer in violation of probation and subsequently reinstates probation, the Probation Department will no longer “Toll Time.” Only in matters when the court order clearly states that there is a new expiration date will the Probation Department make the necessary change to the expiration date in the Adult Probation System (APS).

Changes to Bench Warrant Pick-up Reports

The Bench Warrant Pick-Up (BWPU) Report will no longer include a section for “Tolling Time” unless the Court makes the request to “Toll Time” in the referring Court Order. The BWPU Report will then include a “Tolling Time” section with the appropriate information.

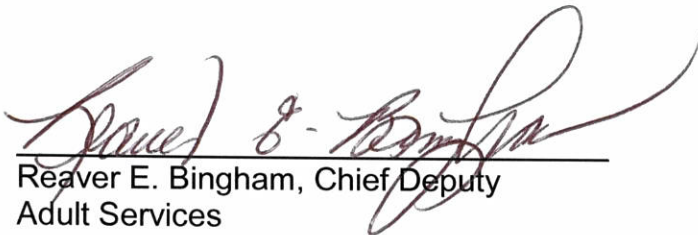
Additionally, in instances where the Investigation DPO determines that an extension is warranted upon the court finding of a Violation of Probation, the BWPU Report may include a recommendation that probation be extended.

**PROBATION DIRECTIVE
TOLLING OF TIME
PAGE 2 OF 2**

The following recommendations for extending Probation on the BWPU Report shall be utilized:

- *"It is recommended that the defendant be found in violation of probation; that the order revoking probation be vacated and set aside; that the defendant be restored to probation on the original terms and conditions; that probation is extended to the date of (new expiration date)."*
- *"It is recommended that the defendant be found in violation of probation; that the order revoking probation be vacated and set aside; that the defendant be restored to probation on the original terms and conditions except with the modification(s) of (specify) and that probation be extended to the date of (new expiration date)."*

Questions or concerns regarding this Directive shall be directed to the Adult Consultant at (562) 940-2525.



Reaver E. Bingham, Chief Deputy
Adult Services