

**PROBATION DEPARTMENT
ADULT MANUAL**

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**Notes and
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VIOLATION PROCEDURES

I. General

A. The Probation Officer’s authority is derived as follows:

1. “...should the probationer violate any terms or conditions imposed by the court in the matter, it shall have authority to modify and change any and all the terms and conditions and to re-imprison the probationer in the county jail within the limitations of the penalty of the public offense involved.”
2. “At any time during the period of supervision of a person (1) released on probation under the care of a probation officer pursuant to this chapter, (2) released on conditional sentence or summary probation not under the care of a probation officer, (3) placed on mandatory supervision pursuant to subparagraph (B) of paragraph (5) of subdivision (h) of Section 1170, (4) subject to revocation of postrelease community supervision pursuant to Section 3455, or (5) subject to revocation of parole supervision pursuant to Section 3000.08, if any probation officer, parole officer, or peace officer has probable cause to believe that the supervised person is violating any term or condition of his or her supervision, the officer may without warrant...re-arrest the supervised person and bring him or her before the court...”. Further, “...the court may revoke and terminate the supervision of the person if the interests of justice so require and the court...has reason to believe...that the person has violated any of the conditions of his or her supervision, has become abandoned to improper associates or a vicious life, or has subsequently committed other offenses, regardless whether he or she has been prosecuted for such offenses.”
3. “The probation officer shall furnish to each person who has been released on probation... a written statement of the terms and conditions of his probation...and shall report to the court...any violation or breach of the terms and conditions imposed by such court...”

1203.1(j) PC

1203.2(a) PC

1203.12 PC

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4. A 1972 California Supreme Court decision (People v. Vickers) held that court proceedings related to alleged violations of probation, in most respects, must conform to the same minimum requirements of due process as in other accusatory type proceedings which may result in the loss of liberty of a person. In 1990, in the case of People v. Rodriguez, the high court declared that probation revocations require but a simple “preponderance of evidence” rather than the same standards of proof needed for other criminal procedures.
 5. When the Court revokes probation, the offender’s terms and conditions remain in full force and effect. Terms and conditions of probation (such as search and seizure) remain in effect even during summary revocation, and remain in effect after a finding that the offender is in violation of probation, until probation is terminated or the offender is discharged from probation.

People v. Pipitone
(1984) 152 Cal.
App.3rd 30, 33

People v. Barkins
(1978) 81
Cal.App.3d 30, 33
 6. Once the court-imposed period of probation is expired, the terms and conditions of probation are no longer in effect, even if the offender is pending a violation hearing, or is pending sentencing after a probation violation is admitted or found true.

People v. Lewis
(1992) 7
Cal.App.4th 1949
- B. Policy
1. Based on the legal guidelines presented above, and in line with departmental service objectives, the policy of the Probation Department is as described herein.

People v. Leiva
(2013) 56 Cal.4th
498, 509-510
 2. “Violation of probation” is defined as the following acts or omissions on the part of the offender.
 - a. Technical Violations
Non-compliance with the conditions of probation or instructions of the supervision officer.

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b. Law Violations

If the offender is arrested, indicted, or is cited for a criminal offense, the alleged offense should be reported to the Court by the Deputy Probation Officer (DPO) as an alleged violation of probation. Lack of prosecution of the new offense, the dismissal of the case, and for that matter, even the acquittal of the person may still provide the basis for a violation.

II. Alleged violations should be reviewed for their severity and potential for risk to the community, when contrasted with the client's risk level, to determine whether informal sanctions would be appropriate or formal notification to the Court is required. All relevant considerations should be evaluated by weighing the various factors, by appraisal of the danger the offender represents to others and to him/herself, the likelihood of modifying his/her behavior in the future, by what method, etc. The Evidence Based Response to Violations of Probation model will be used for new law violations and technical violations of conditions of probation. The Violation Response Decision Matrix outlines steps in the DPO's decision-making process for selecting appropriate behavioral responses. The Violation Database in IMPACT (Violations DB) is to be completed and submitted for review and approval with the violation report. If the offender is to remain on probation, a specific plan needs to be offered. The Violation Response Decision Matrix provides for various outcomes ranging from informal sanctions to a prison recommendation.

A. Abeyance

While in many cases informal sanctions, such as increased level of treatment or drug testing, discussions and admonishments, community service, curfews, may be utilized in lieu of an abeyance, examples of violations that may be held in abeyance with the approval of the supervisor are:

1. Leaving the county without permission.
2. Change of address without advising the supervision officer.
3. Failure to report as required.

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4. Failure to submit to urine testing.
 5. Minor law violations unrelated to the probationary grant offense.
 6. Positive drug tests.
- B. Alleged violations of probation which should be reported to the court forthwith (no abeyance) are:
1. Arrests related to the protection of the community (assaults, altercations, sex offenses, offenses involving weapons, sales of controlled substances, etc.).
 2. Non-compliance with conditions of probation which may lead directly to new criminal activities (such as conditions regarding possession of weapons, bank accounts, associations with children, etc.)
 3. Activities of the offender specifically ordered by the court to be reported without delay.
- C. Offenses that occurred prior to sentencing on a particular grant of probation cannot be alleged as violations even if the conviction date on the new case occurs after probation is granted. Caution must be exercised when considering new convictions as violations of probation to ensure this does not occur. The new offense must have occurred after the sentencing date of the active probation grant in order to qualify as a violation of probation.
- III. Reporting Alleged Violations of Probation to the Court
- A. Responsibilities of the SPO
1. The SPO or Senior (Sr. DPO), will staff proposed violations and recommendations with the assigned DPO prior to the preparation and filing of the report in order to maintain consistency between officers. They will then review the rough draft of the particular violation report and corresponding Violation Database entry, and

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approve or refer back to the supervision officer for revision. The SPO or Sr. DPO will sign the final draft of the violation report in IMPACT.

B. Responsibilities of the assigned DPO

1. A case conference (“staffing a case”) with the SPO or Sr. DPO may be requested to determine the scope of the possible violation, including all conditions of probation involved, and the conduct on probation up to that point. DPOs are encouraged to staff violation of probation matters routinely.

C. Holding court action in abeyance

After completion of the steps discussed above in III-A and III-B, the DPO and the SPO or the Sr. DPO may agree if the offender concurs, the matter will be held in abeyance. Once the agreement is reached, the case is handled as follows:

1. The offender is interviewed and informed that he/she has the right to a reasonably prompt disposition of the issue of the alleged violation of probation. He/she will be given an opportunity to improve his/her record on probation under an agreed-upon remedial plan. Should the offender fail to follow the terms of the abeyance or commit a new violation, the facts surrounding the lack of follow through or subsequent violation should be examined and the matter should be considered for a court hearing. The type of crime, mental health mitigators, risk level, and nature of behavior that led to the violation should all be considered when deciding whether to move forward with the filing of a probation violation with the Court.

The DPO shall not persuade the offender to agree to an abeyance action. The offender will be allowed, as in any other situation, to seek legal counsel on this issue.

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2. If the offender decides to request the alleged violation be held in abeyance, the supervision officer completes the “Request for Holding Alleged Violation in Abeyance” form. The offender signs the waiver portion and the request is submitted to the SPO or Sr. DPO.
 - a. When completing the form, indicate the nature of the alleged violation.
 - b. Include a summary of a specific plan which will focus on the alleged violation, eliminate the objectionable situation, reduce the likelihood of repetition, and reiterate the importance of following the terms and conditions of probation. An expiration date, typically no longer than six months from the date the abeyance is signed, shall also be included.
3. The abeyance request is submitted to the SPO or Sr. DPO for approval and signature.
4. Upon approval of the request, all documentation will be retained in the IMPACT file. If at a later time a court report is submitted which includes the alleged violation held in abeyance, the original Pro-361 will be attached to the court report.
5. A signed copy of the abeyance agreement will be given to the offender.
6. The Violation Database will be completed indicating the sanction for the alleged violation was an abeyance.

D Preparing a violation report

1. The DPO must clearly state the nature of the alleged violation in the body of the court report.

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2. When possible, the offender should be interviewed and given an opportunity to make a verbal statement or to submit a written statement, both of which will become a part of the court report. If the basis of the violation is a new law violation, the offender will be advised of his/her Miranda rights prior to the interview.
 3. The DPO will attach to the violation report all appropriate documentation supporting the alleged violation excluding any law enforcement reports from agencies within Santa Barbara County. Any relevant collateral information should be addressed in the “Additional Information” section of the report.
 4. Relevant police reports may be obtained and attached to the violation report if from another county. The facts of the alleged offense will be presented, including all surrounding facts that might indicate possible violations of conditions of probation. Where required, the information concerning the case, such as , courts involved, dates of hearings and dispositions will be presented to the Court.
 5. The DPO shall obtain a recent CLETS to review for new arrests for violation or supplemental reports stemming from a bench warrant or when there has been a period of time in which the offender was not supervised.
 6. The DPO will consider and discuss how the offender is complying with other conditions, i.e., payment patterns of financial obligations and ability to pay, reporting, narcotic testing, program status or completion, etc.
- E. Types of violation reports
- In order to track violations generated by offenders, use of the proper document is essential.
1. A standard probation violation report format shall be used in the case of technical violations of probation which require detailed information or a prison recommendation is made.

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2. New law violations shall be alleged on the new offense templates. Technical violations in addition to the new arrest may be added to this report.
3. Brief violation reports may be submitted in certain common types of probation violations, such as positive drug tests, failure to report as directed, failure to enter program, etc. in which a standard, non-prison recommendation is made. Cases which require more detailed discussion are not appropriate for a brief violation report.
4. Brief violation reports for new law violations shall be used when a new felony or misdemeanor arrest is an element of the probation violation. Technical violations in addition to the new arrest may be added to this report.
5. Consolidated violation reports shall be used when multiple cases are violated.

F. The use of probation client as informants

If a notification or request is received from a law enforcement agency concerning the use of a probation client as an informant, notification should be made to the DCPO through the chain of command.

IV. Determining Sanctions

A. Use of Violation Response Decision Matrix

1. The Violation Response Decision Matrix will be used to determine the appropriate sanction based on the offender's level of violation (Major or Minor) and the Response Level (Levels 1-4). This should be implemented in case staffing prior to arrest or detainment if at all possible. .

Pro-159 C

Pro-159 A
Brief

Pro-159 C

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2. DPOs will utilize the Violation Response Decision Matrix to complete the Violation Database (Violations DB in IMPACT), which will be submitted to their Supervising Probation Officer (SPO) or Sr. DPO for approval.
 3. The basic circumstances of the violation and a remedial plan will be included in the Violation Database. These could include treatment options, GPS, or custody time.
- B. When making a recommendation for a modification of probation and determining the remedial plan as a result of a probation violation, the DPO should consider appropriate treatment program options. Programs should be focused on the needs of the offender focusing on Evidence Based Programs. Utilization of Evidence Based Programs is the goal of the Probation Department.. Some alternative options are listed below.
1. PRRC programs, such as WAGES\$, Reasoning and Rehabilitation, ROSC groups.
 2. Community Work Service
 3. Secure Continuous Remote Alcohol Monitor (SCRAM)
 4. Global Positioning System (GPS)
 5. Referrals to community programs, such as anger management, AA/NA, and drug/alcohol treatment programs
 6. Sober Living Environment (SLE)
- C. Custody alternatives
- The DPO may have some concerns relative to deny or support a offender's application to work furlough, SWAP, or electronic monitoring. These alternatives are available to the offender and are usually discussed with their attorney. In the absence of a serious concern presented by the DPO, the Court may not restrict access to these programs. Any concern relative to alternative sentencing should be included in the violation report.

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V. Informal Handling of Alleged Violations

- A. No action is required on minor traffic violations and other infractions except in cases where driving privileges have been suspended/revoked or the offender is on probation for a similar type offense.
- B. A case note should be made if a police contact is for interrogation only and the offender is not otherwise in apparent violation of probation.

VI. Narcotics/controlled substance cases – testing violations

- A. General policies and procedures discussed in this chapter are applicable to alleged violations in drug abuse cases that are receiving standard supervision (non-specialty courts). In addition, in cases involving narcotic/controlled substance detection tests, the following are considered evidence of violation of probation or, as appropriate, may be held in abeyance.
 - 1. Positive test
 - 2. Statement of Admission of illegal use
 - 3. Puncture-type marks identified by a qualified (specially trained) person
 - 4. Failure to appear for testing without a verified and valid excuse
 - 5. Failure to produce a urine specimen as required
 - 6. Other evidence of illegal use

VII. New Law Violations

A new felony law violation by the offender may result in a court report being prepared by the Court Services Unit of the department, and such report may include a recommendation concerning the probation violation matter. However, this is rarely the case and the DPO is responsible for assuring that a violation report is filed or that the violation is addressed in Court.

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VIII. Arrest of Offenders for Violation of Probation

- A. Some violations of probation warrant immediate action. The circumstances, immediacy of risk to self or others, prior violations, likely recommendation, etc. should all be considered prior to an arrest decision as well as the use of the Violation Response Decision Matrix. Potential arrests should be staffed with a SPO or Sr. DPO, unless the decision is being made in the field and it would be unsafe to do so. In these instances, the DPO is to notify the SPO or Sr. DPO of the arrest as soon as the situation is safe.
- B. When an arrest is necessary, it should be carefully considered in light of the capabilities of the DPO to control the situation, as well as the availability of other staff and/or other law enforcement personnel to assist. A DPO shall not attempt to arrest an offender unless he/she believes it can be performed safely.
- C. Whenever the DPO becomes aware of a new law violation which may be attributable to the offender, the appropriate law enforcement agency should be contacted to complete the investigation of the matter.
- D. Following the offender's arrest for violation of probation, the DPO should make every effort to effect the offender's appearance before the court within two judicial days of the arrest or sooner in misdemeanor cases and three judicial days in felony cases.

After the offender is booked into the county jail for violation of probation, the matter is set on calendar forthwith by the submission of the DPO's written report, and by calendaring the matter with the court clerk, if necessary. The Request to Calendar form is mandatory for all Santa Barbara Court Cases where the report is not filed a minimum of two days in advance of the hearing date.

SC 3012

IX. Placing a hold (detainer) for violation of probation

- A. When an offender is taken into custody in the County of Santa Barbara, the DPO may place a hold on the offender in order to:
 - 1. Ensure protection of the community or offender.

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2. Ensure offender's appearance in court.
 3. Ensure availability of offender for personal interview by the supervision officer.
 4. The DPO may place a hold on either a felony or misdemeanor arrest per Section 1203.2 PC. This hold is good from the time of its authorized until the offender appears before the court, at which time it becomes the court's responsibility to determine custody status. An offender held on a misdemeanor probation grant may post bail according to established bail schedules.
- B. Bail amounts on probation holds pursuant to 1203.2 PC are pre-determined by the courts.
- Probation detainers on felony cases are no bail holds.
- Bail will be set for \$15,000.00 if offense is for violating the terms of misdemeanor probation.
- Probation holds are not placed on Prop 36 cases unless the offender is an immediate danger to self or others
- C. Offenders Arrested In County
- The DPO places a hold by submitting a completed detainer form to the Custody Records clerk of the Santa Barbara County Jail or to the requesting law enforcement agency. If the DPO is transporting the offender, the booking sheet should be filled out, along with the detainer, in advance to arrival at the jail. The detainer should be scanned into Impact.

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1. Detainers on Mental Health Clients

If the DPO knows the offender has mental health history **and** the events leading to the arrest have a mental health related connection **or** are suspected to contain mental health related elements, the DPO is to request the arresting law enforcement agency have a mental health clearance for booking completed prior to our placing a Probation detainer. The DPO is to inform the arresting officer that no detainer will be authorized until this step is completed.

Once the DPO is verbally informed by the arresting officer the mental health clearance has been completed, a detainer may then be authorized and the DPO shall document the name of the officer who provided this verbal confirmation in IMPACT Events.

When a DPO arrests an offender on a probation violation, prior to booking they shall assess the offender's mental health state to determine if the individual is presently displaying signs of a mental health crisis beyond their usual state (if known). Should it be determined the offender is suffering an active mental health episode, a mental health clearance for booking must be completed prior to transport to the jail.

- a. To request a mental health clearance, the arresting officer should request this specific type of clearance from a medical professional if also conducting a medical clearance at a hospital or contact the CARES Access Line, 888-868-1649.
- b. If there is a question regarding the need for a mental health clearance in a particular instance, or unusual circumstances exist, DPOs are to staff the situation with their assigned SPOs.

- C. If additional information received after placing the hold indicates continued custody of the offender is not imperative, the hold may be released, with the approval of the SPO. The release is accomplished by completing the release portion of the detainer which authorized the hold and faxing or emailing it

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to the Custody Records clerk of the Santa Barbara County Jail. A telephone call to make sure the release is received shall follow if confirmation of receipt from the jail is not otherwise received via email.

D. Offenders Arrested Out of County

If the offender is held in another county's jail within the state of California, the DPO shall consult with a SPO regarding the desirability of placing a hold in the other jurisdiction by use of a warrant.

1. If it is determined that such action should be taken, the DPO shall submit to the court an ex-parte report requesting a warrant. It is important to obtain a judge's signature as soon as possible to expedite the issuance of the warrant. The DPO shall personally contact and ascertain that the Santa Barbara Sheriff's Office Warrants Bureau receives the warrant information and serves it in a timely manner to prevent the release of the offender. The DPO must maintain contact with the jail in which the offender is housed so they are aware the DPO is seeking a warrant that can be served on the offender.

X. Violations for Absconding from Supervision/Failure to Report

A. Whenever an offender on high risk probation supervision fails to report as directed, the assigned DPO is required to make appropriate attempts to locate the offender. The attempts are made prior to the warrant being completed and requested, or after a bench warrant is issued by the Court.

1. Field visits should be conducted on all high risk offenders. These attempts shall include a minimum of two field visits, with one conducted after regular working hours. For cases where no contact information is available, these requirements do not apply.
2. Attempts to locate a non-high risk typically are accomplished by mail or phone. A field visit of a non-high-risk offender may be conducted only with approval of the supervisor.

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3. All attempts to locate an offender on any level of supervision shall be noted in IMPACT Events. No prior field attempts are necessary when an offender absconds from GPS supervision. The warrant may be requested immediately.
 4. When the attempts are noted in IMPACT and WANDA (Warrants Automated Network Directly Accessed) verifies the warrant(s) as active, the DPO will complete the “Warrant Active” chrono and give the file to the SPO or DPO Sr. for transfer.
 5. Upon issuance of a warrant of a high-risk offender, a BOL should be completed and forwarded to the appropriate law enforcement agencies.
- B. The Violation of Probation report shall incorporate the following:
1. A brief paragraph explaining the DPO’s efforts to locate the offender (e.g., home visits, telephone and mailing efforts, checks of jail records, etc.)
 2. CII and other record bureau checks.
 3. Information about how offender was required to report (e.g., in person, by mail, Interstate Compact, etc).
 4. DPOs may consider a suggested recommendation in the report for the Court to consider upon the offender’s return on a warrant, absent new charges, or additional violations. This may allow the Court to settle a matter without additional input from the DPO.
- XI. Assignment of “Warrant Return” cases
- A. Definition
- Upon the offender’s apprehension on the authority of a bench warrant the Court may order the DPO to submit either a written supplemental report or an oral update, to be supplied by the Court Hearing Officer. These are

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generally referred to as “Warrant Return” cases, and they are to be handled by the area office and supervision caseload from which they had been carried at the time the warrant was issued. However, if the return on bench warrant occurs more than one year after the issuance of the warrant, the case is to be handled by the court services unit in the area in which the offender was sentenced. In all circumstances, to determine a recommendation for these cases, the use of the Violation Response Decision Matrix shall be used, and a CSR completed if necessary.

- B. Cases which have been returned on warrant but have not yet been reinstated on probation are assigned to the “Warrant Return” caseload and the file given to the appropriate probation officer by using the “Case Assignment” feature in IMPACT. The case is to remain in the “Warrant Return” caseload until probation is reinstated or terminated.
- C. After a “Warrant Return” case is reinstated on probation, the expiration date of probation will be verified by court dockets/orders and Odyssey and changed in IMPACT if appropriate. The “Case Assignment” will be terminated and the “Contact” shall be changed to the assigned probation officer
 - 1. In many cases where probation is reinstated, it is important that the offender be re-instructed regarding any modified terms of probation and informed if there is a new expiration date specifically ordered by the Court. In those cases where an offender is serving further time in custody, the offender should be re-instructed prior to release.
 - 2. If the Court orders any modifications of probation, the DPO will ensure the new order is scanned into IMPACT. Additional new conditions will also be entered into the “Conditions” section of IMPACT.

XII. When Fine and/or Restitution Payments are Ordered

Detailed instructions regarding the determination and collection of restitution and fines can be found in Chapter 3208.

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XIII. When the Probation Period is About to Expire

- A. Cases are to be placed on calendar not less than 60 days before probation period is about to expire if the offender has been arrested and/or charged with a new offense, has not completed financial payments, or otherwise appears to be in violation of probation.
- B. Such violation reports will be filed with the court so that probation may be revoked and a warrant of arrest issued, if necessary, to ensure that jurisdiction is retained by the court. The violation report should recommend revocation, issuance of warrant, or continuance, etc., as may be appropriate to the case and retention of jurisdiction by the court.

XIV. Court Appearance of Offenders Already in Custody

- A. Offenders awaiting or serving a sentence in the county jail can be ordered to court on a probation matter.

The calendaring of a matter results in court staff notifying the jail to bring the prisoner before the court. In north county courts, the DPO is to submit an "Order to Produce" if the offender does not already have a hearing calendared.

Pro-694

XV. Court Appearance and Electronic Communication with Judicial Officer

- A. When an officer has been asked to or is planning to appear in Court on a specific case, whether in response to a subpoena or not, an advance notification and discussion with the Supervisor or another Supervisor or Manager in the absence of the officers direct Supervisor is required.
- B. Following an officer's court appearance a debrief should occur with a Supervisor or Manager.
- C. Regular appearances in a Collaborative Court are excluded from A and B above.

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- D. A Supervisor must be copied (cc'd) in any electronic communication with a judicial officer.

XVI. Inspection of Probation Files

- A. Counsel for defendants having cases with pending probation violation proceedings shall be permitted to inspect and copy all files of the Santa Barbara County Probation Department related to the defendant, except confidential information contained in the file including electronically stored data. As to that information, the Probation Department shall notify counsel and the Court of the nature and existence of that information. Procedures to comply with this order are as follows:
 - 1. Relevant chronological notes are to be attached to the Violation of Probation Reports to support the allegations.
 - 2. Upon request from the Defense Counsel to inspect the file, the Probation Officer is to redact any confidential information, note the concerns in the chronological notes and forward a copy of those materials to the Court to determine if the items should be released.
 - a. Notify defense counsel that the records are available for inspection.
 - b. In the presence of a Probation Assistant (PA) or a Deputy Probation Officer (DPO), the attorney may inspect the file and paper clip the items to be copied.
 - c. When less than five (5) pages are identified, the PA or DPO will immediately make copies.
 - d. Should the request be for more than five (5) pages of documents, the attorney will provide their resources to make the copies, i.e. one of their Office Assistants would need to come to the Probation Department to make copies.

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XVII. Identification Bureau Clearance

- A. Prior to all expirations, early terminations, and dispositions on return of warrant cases, the supervision officer will initiate a “CLETS Request” in IMPACT (a request for an automated criminal record).
- B. In the event of an unregistered case or when the supervision officer has reason to believe that the offender may have been the subject of an arrest that CII failed to report, the supervision officer should request a record check (by phone, fax, mail, or in person) from police agencies most likely to have had contact with the offender.

XVIII. Traffic Record Clearance

Clearance of the California Department of Motor Vehicles, supplementing other checks, shall be made on all cases where the grant of probation involved various vehicle code violations, or the offender otherwise has a record of, or is suspected of, serious traffic violations prior to violation, expiration, modification, dismissal, etc.

XIX. Failure of Offender to Register Pursuant to 11590 H&S/290 PC/457.1 PC/
186.30 PC

- A. Whenever the supervision officer becomes aware that an offender has failed to register, he/she notifies the offender that action will be taken unless registration is immediately completed.
- B. Continued failure to register will result in a return of the offender to court for a violation hearing.