



The Court of Appeals held recently that a trial court issuing a written declaration of delinquency under Criminal Procedure Law § 410.30 prior to the expiration of the term of probation is the only means by which it may revoke a defendant's probation. If the probation term runs out without a declaration of delinquency issued to toll the period of probation, then the courts thereafter lack jurisdiction to revoke the defendant's probation. Let's take a look at that opinion and what else has been going on in the New York appellate courts over the last week.

COURT OF APPEALS

CRIMINAL LAW, DEPRAVED INDIFFERENCE

People v Bender, 2026 NY Slip Op 01444 (Ct App Mar. 17, 2026)

Issue: When does a defendant's conduct demonstrate "depraved indifference" that is legally sufficient to convict him of reckless endangerment in the first degree?

Facts: At trial for reckless endangerment in the first degree, the People put on testimony that defendant was "driving erratically, weaving between lanes in heavy traffic, eyes open, and with a 'look of rage on his face.' Over approximately three-tenths of a mile, defendant struck three vehicles, drove through a parking lot, and ultimately crashed into a house. Defendant began this course of conduct by making a sharp right directly into a tow truck, causing defendant's vehicle to lock onto a car being towed and to hang from the wheel lift of the truck. After defendant's vehicle shook loose from the tow truck, defendant sped up and proceeded to take off and a short time later he crashed into the rear of a van with such force that the driver hit his head on the roof. The driver felt defendant's vehicle pushing him down the road. Other witnesses provided a similar description of defendant, with his hands on the steering wheel, appearing to intentionally hit the van 'again and again and again,' pushing it forward. Defendant next crashed into the back of a third vehicle, then side-swiped the driver's side, causing the vehicle to hit the curb and to flip over on its roof. A fire hydrant pierced the roof of the car one foot from the driver's head. Defendant took off fast from this crash, drove over a sidewalk, through a motel parking lot, and crashed directly into a house, causing it to shake upon impact. Two people were inside the house at the time and heard screeching tires as the car approached. Crash data from the vehicle's air bag control module showed that the brakes were not applied in the eight seconds prior to impact with the house."

A jury in County Court convicted defendant, finding beyond a reasonable doubt that his conduct "evinced a depraved indifference to human life." The Appellate Division, Third Department affirmed.

Holding: The Court of Appeals agreed, holding that a rational jury could have concluded, based on the trial testimony, that "defendant demonstrated depraved indifference to human life." The Court explained, "[d]epraved indifference is a culpable mental state that is best understood as an utter disregard for the value of human life—a willingness to act not because one intends harm, but because one simply doesn't care whether grievous harm results or not. Whether a defendant's conduct demonstrates depraved indifference is a 'highly fact-specific' inquiry, one focused on determining if the defendant consciously disregarded a serious risk of death to others while continuing to engage in reckless conduct with an appreciation of the grave risks involved in that behavior." Notably, the Court held, "there is no checklist of factors for this analysis, and the absence of specific circumstances found in other depraved indifference cases, such as running red lights or driving into oncoming traffic, is not determinative. Where the evidence viewed under the proper standard establishes that the defendant engaged in reckless conduct, appreciated the grave risks involved in that behavior, and yet continued to engage in such behavior with complete disregard for the value of the lives that are thereby endangered, the depraved indifference standard has been met, as it was here."

CRIMINAL LAW, PROBATION, DECLARATION OF DELINQUENCY

People v Curry, 2026 NY Slip Op 01448 (Ct App March 17, 2026)

Issue: Is a declaration of delinquency the exclusive mechanism to toll probation?

Facts: "In April 2016, Mr. Curry pleaded guilty to attempted criminal possession of a weapon in the second degree. On July 5, 2016, Supreme Court sentenced Mr. Curry to five years of probation and four work weekends. Mr. Curry's probation was set to expire on July 5, 2021." In 2018, the probation office filed an Information of Delinquency, alleging that Mr. Curry failed to comply with the conditions of his probation. Mr. Curry appeared before the trial court, but the court did not issue a declaration of delinquency. Rather, it "required

defendant to appear periodically to assess his compliance with probation, permitting him to remain on probation despite periods of noncompliance, inquiring about his outpatient treatment, and hearing from his probation officer.”

At the end of 2018, Mr. Curry was then transferred to drug treatment court, but the court again did not file a declaration of delinquency with the transfer. “Upon transfer, the DTC informed Mr. Curry that if he were ‘successful’ in the program it would count towards his probation sentence, but if he was ‘not successful’ he would receive two to four years of incarceration and three years of post-release supervision. As a condition of being accepted into the DTC, Mr. Curry agreed to waive his right to a hearing on, and plead guilty to, the alleged violation of probation.” For the next three years, Mr. Curry participated in the drug treatment court program, with mixed results, but at no time was a declaration of delinquency ever filed, and Mr. Curry’s period of probation expired on July 5, 2021.

Nonetheless, in December 2021, after yet another failed drug test and missed court dates, the “DTC revoked Mr. Curry’s probation and sentenced him to two years of incarceration and three years of post-release supervision.

Mr. Curry appealed, arguing that because his probationary period had expired on July 5, 2021, the DTC lacked jurisdiction to revoke his probation and incarcerate him. The Appellate Division affirmed the sentence, holding that Mr. Curry’s guilty plea to a violation of probation tolled his probationary period and that the court retained jurisdiction accordingly.”

Holding: The Court of Appeals reversed, holding that because no declaration of delinquency was ever filed, Mr. Curry’s period of probation was never tolled under Penal Law § 65.15 and expired by its terms on July 5, 2021, after which point the probation office and the courts no longer had jurisdiction to declare that he had violated his probation.

The Court explained that under “CPL 410.30, ‘if at any time during the period of a sentence of probation or of conditional discharge the court has reasonable cause to believe that the defendant has violated a condition of the sentence, it may declare the defendant delinquent and file a written declaration of delinquency.’ The court may file a declaration of delinquency either sua sponte or upon receipt of a request for a declaration of delinquency by a probation officer; the court must make a decision on such request within seventy-two hours of its receipt. If the court does, in its discretion, issue a declaration of delinquency, the declaration of delinquency shall interrupt the period of the sentence as of the date of the delinquency . . . until a final determination as to the delinquency has been made by the court.”

Noting that it had never before addressed whether issuance of a declaration of delinquency was the exclusive means by which the courts may revoke a defendant’s probation, the Court held that “[t]he statutes direct that a violation of probation does not necessarily lead to a declaration of delinquency Because a declaration of delinquency is both discretionary, and distinct from a violation of probation, the absence of a declaration of delinquency is consequential. Additionally, the plain text sets out that the statutorily allowed tolling period of a probationary sentence begins with a declaration of delinquency issued at the court’s discretion and ends with a final determination by the court.” Indeed, the Court explained, “nothing in Penal Law § 65.15 (2) or CPL 410.30 evinces that there is another mechanism by which to toll probation. As a result, when no declaration of delinquency is issued, the sentence of probation continues to run.”

Here, the Court held, because Mr. Curry’s probation ran out before the courts revoked it, it lacked jurisdiction to do so, and Mr. Curry should not have been sentenced for the violation of probation.

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