

Criminal Procedure Monograph 7: Probation Revocation—Third Edition

May-August 2009 Updates

Updates have been issued for Criminal Procedure Monograph 7. A summary of each update appears below. The updates have been integrated into the website version of the monograph; consequently, some of the page numbers may have changed. Clicking on the links below will take you to the page(s) in the monograph where the updates appear. The text added or changed in each update is underlined.

7.20 Presentation of Evidence at Contested Hearings

A probationer's right to cross-examine witnesses is found in MCR 6.445(E)(1). *People v Breeding*, 284 Mich App 471, 483 (2009). Additionally, a probationer has a due process right to confront witnesses against him or her, unless the hearing officer finds good cause for not allowing confrontation. *Breeding, supra* at 484-485. However, the constitutional right to confrontation detailed in *Crawford v Washington*, 541 US 36 (2004) (Sixth Amendment generally forbids the introduction of out-of-court testimonial statements in a criminal prosecution unless the defendant has had an opportunity to cross-examine the declarant), does not apply to probation revocation proceedings because probation revocation proceedings are not part of a criminal prosecution. *Breeding, supra* at 482.

- 1) The evidence against the probationer must be disclosed to him or her.
- 2) The probationer has the right to be present at the hearing.
- 3) The probationer has the right to present evidence.
- 4) The probationer has the right to examine and cross-examine witnesses.
- 5) The court may consider only evidence that is relevant to the violation alleged, but it need not apply the rules of evidence except those pertaining to privileges.

A probationer has the right to insist that any witness who testifies against him or her take an oath or affirm to tell the truth. *People v Knox*, 115 Mich App 508, 514 (1982) (applying MCL 600.1432 and 600.1434 to probation revocation proceedings).

1. Probationer's Right to Confront and Cross-Examine Witnesses

~~As stated in MCR 6.445(E)(1), the probationer has the right to cross-examine witnesses. A probationer also has a due process right to confront the witnesses against him or her unless the hearing officer finds good cause for not allowing confrontation. *Gagnon v Scarpelli*, 411 US 778, 786 (1973). Where the judge has no personal knowledge of the facts constituting the alleged violation but merely questions the probationer, the judge denies the probationer his or her rights to confront and cross-examine witnesses at a revocation hearing. *People v Smith*, 66 Mich App 639, 641 (1976).~~

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If the only charge against the probationer is failure to report, the probation agent to whom the defendant was supposed to report must testify. *People v Taylor*, 104 Mich App 514, 517 (1981), and *People v Givens*, 82 Mich App 336, 340 (1978).

