

DRAFT

Original - Court
Copy - Defendant

STATE OF MICHIGAN
JUDICIAL CIRCUIT
COUNTY

ADVICE OF RIGHTS
(FELONY PROBATION VIOLATION PLEA)

CASE NO.

Court address

Telephone no.

You have offered to plead guilty or no contest in this **matter**. Before accepting your plea, the court must be convinced that you understand the following:

1. **By pleading guilty**, you will not have a hearing of any kind and you will be giving up the rights you would have at a contested **hearing**.
2. You have the right to counsel, and that if you are financially unable to obtain an attorney but want an attorney, the court will appoint one at public **expense**.
3. If you choose to proceed without an attorney, by pleading guilty you are giving up the right to counsel.
4. You agree that you have received written notice of alleged violation(s) and that you have been given sufficient notice prepare for this hearing.
5. You have been advised of the maximum possible jail or prison sentence for the offense that led to **probation**.
6. **Your plea is understandingly, voluntarily, and knowingly made**.

You will be required to state, orally on the record, that you have understood all the above and that you agree to waive all of the above rights.

Date

Defendant/Probationer signature

Defendant /Probationer name (print)

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Comment [SM1]: "The probationer may, at the arraignment or afterward, plead guilty to the violation." MCR 6.445 (F)

Comment [SM2]: Before accepting a guilty plea, the court, speaking directly to the probationer and receiving the probationer's response, must... " *Id.*

Comment [SM3]: "(1) advise the probationer that by pleading guilty the probationer is giving up the right to a contested hearing and, if the probationer is proceeding without legal representation, the right to a lawyer's assistance as set forth in subrule (B)(2)(b)..." *Id.*

Deleted: If your plea is accepted

Comment [SM4]: "Due process of law requires that the court advise an alleged probation violator of the right to be represented by an attorney, and of the right to appointment of counsel if the probationer is indigent and the violation proceedings include sentencing. *Mempa v Rhay*, 389 US 128, 136 (1967), and *People v Brown*, 17 Mich App 396, 397 (1969). MCR 6.445(B)(2)(b) states that the court must instruct defendant at arraignment that:

'[T]he probationer is entitled to a lawyer's assistance at the hearing and at all subsequent court proceedings, and that the court will appoint a lawyer at public expense if the probationer wants one and is unable to retain one..

MCR 6.445(B)(3) adds that the court should appoint a lawyer for the defendant at the arraignment "if requested and appropriate." *Criminal Procedure Monograph 7: Probation Revocation—Third Edition*, at 14.

MCR 6.445(d) states that even "though a probationer charged with probation violation has waived the assistance of a lawyer, at each subsequent proceeding the court must comply with the advice and waiver procedure in MCR 6.005(E)." *Id.*

The court must strictly comply with MCR 6.005(E). *People v McKinnie*, 197 Mich App 458, 460 - 461 (1992), see *Criminal Procedure Monograph 7 ... [1]*

Comment [SM5]: "(2) advise the probationer of the maximum possible jail or prison sentence for the offense..." MCR 6.445 (F)

Comment [SM6]: "(3) ascertain that the plea is understandingly, voluntarily, and accurately made..." *Id.*

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Deleted: <#>You understand that in a case involving a sentence of incarceration that you have a right to appeal, if the underlying conviction occurred as a result of a trial; or, that you are entitled to file an application for leave to appeal, if the under... [2]

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“Due process of law requires that the court advise an alleged probation violator of the right to be represented by an attorney, and of the right to appointment of counsel if the probationer is indigent and the violation proceedings include sentencing. *Mempa v Rhay*, 389 US 128, 136 (1967), and *People v Brown*, 17 Mich App 396, 397 (1969). MCR 6.445(B)(2)(b) states that the court must instruct defendant at arraignment that:

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The court must strictly comply with MCR 6.005(E). *People v McKinnie*, 197 Mich App 458, 460 - 461 (1992), see *Criminal Procedure Monograph 7: Probation Revocation—Third Edition*, at 16.

You understand that in a case involving a sentence of incarceration that you have a right to appeal, if the underlying conviction occurred as a result of a trial; or, that you are entitled to file an application for leave to appeal, if the underlying conviction was the result of a plea of guilty or no contest.

You understand that in a case that involves a sentence other than incarceration that you are entitled to file an application for leave to appeal.

Your plea is understandingly, voluntarily, and knowingly made.