Probation Violations in Delinquency Cases

Chapter 14

Summary of Contents

14.1 Scope Note 1
14.2 Supplemental Petition Alleging a Violation of Probation 1
14.3 Issuance of Summons or Order to Apprehend Juvenile 2
14.4 Prehearing Detention for Alleged Probation Violations 2
14.5 Preliminary Appearance.....3
14.6 Time Requirements for Probation Violation Hearings.....3
14.7 Right to Counsel 4
14.8 Factfinder at Probation Violation Hearings.....5
14.9 Procedures at Probation Violation Hearings.....6
14.10 Dispositions Following a Finding of Probation Violation.....6
14.11 Violation Hearings for Juveniles on Conditional Release From a Public Institution 6

14.1 Scope Note

The rules in this chapter govern probation violations in delinquency cases and in designated cases in which the court has imposed a juvenile disposition following conviction. The rules in this chapter do not govern probation violations in designated cases in which the court has delayed imposition of an adult sentence (see Chapter 21) or probation violations in "automatic" waiver cases (see Section 23.21).

14.2 Supplemental Petition Alleging a Violation of Probation

When it is alleged that a juvenile has violated a condition of probation, the court may:

- **F** authorize preparation and filing of a supplemental petition,* *and*
- **F** direct that the juvenile be notified pursuant to MCR 5.920 to appear for a hearing on the alleged violation,* *or*
- **F** order that the juvenile be apprehended and brought to the court for a preliminary hearing as provided in MCR 5.935, which governs detention decisions.*

*See Form JC 04.

*See Section 8.5 and Form JC 45.

*See Section 14.4, below.

MCR 5.944(A)(1)(a)–(b).

14.3 Issuance of Summons or Order to Apprehend Juvenile

*See Section 8.4 for a detailed discussion of the use of summonses.

MCR 5.920(B)(1) states that a summons may be issued and served on a party (petitioner, juvenile, and parent) before any delinquency proceeding in the Family Division. Thus, a summons may be used to direct the juvenile to appear for a hearing on the alleged probation violation.*

*See Form JC 05.

In addition, the court may issue an order* authorizing a peace officer or other person designated by the court to apprehend a juvenile who has violated probation. MCL 712A.2c; MSA 27.3178(598.2c). The order shall set forth specifically the identity of the juvenile sought and the house, building, or other location or place where there is probable cause to believe the juvenile is to be found. A person who interferes with the lawful attempt to execute an order issued under this section is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $100.00, or both. *Id*.

*See also Section 7.15 for a more detailed discussion of the rules governing detention decisions.

14.4 Prehearing Detention for Alleged Probation Violations*

If a petition for revocation of probation has been filed, the court may detain the child in a facility the court shall designate or release the child in the custody of the child's parent, guardian, or custodian pending a hearing. MCL 712A.14(3); MSA 27.3178(598.14)(3), and MCL 712A.15(1); MSA 27.3178(598.15)(1).

Pretrial detention may not be ordered unless there is probable cause to believe that the juvenile committed an offense, MCR 5.935(D)(1), and one or more of the following circumstances are present:

(a) the offense alleged to have been committed by the juvenile is so serious that release would endanger the public safety;

(b) the juvenile charged with a major offense (a felony) will likely commit another offense pending trial if released, and

(i) another petition is pending against the juvenile, or

(ii) the juvenile is on probation, or

(iii) the juvenile has a prior adjudication but is not under the court's jurisdiction at the time of apprehension;

(c) there is a substantial likelihood that if the juvenile is released to the parent, with or without conditions, the juvenile will fail to appear at the next court proceeding; or

(d) pretrial detention is otherwise specifically authorized by law.

MCR 5.935(D)(2)(a)–(d).

MCL 712A.15(2)(a)–(e); MSA 27.3178(598.15)(2)(a)–(e), provide some other circumstances that allow for pretrial detention. The statute states that detention pending a preliminary hearing is limited to the following juveniles:

(a) those whose home conditions make immediate removal necessary;

(b) those who have a record of unexcused failures to appear at juvenile court proceedings;

(c) those who have run away from home;

(d) those who have failed to remain in a detention or a nonsecure facility or placement in violation of a court order; and

(e) those whose offenses are so serious that release would endanger public safety.

Note that MCR 5.935(D)(2)(a) is identical to MCL 712A.15(2)(e); MSA 27.3178(598.15)(2)(e).

14.5 Preliminary Appearance

At a preliminary appearance on the alleged violation or in the notice to appear for the probation violation hearing, the juvenile shall be provided a copy of the supplemental petition and advised of the right:

(a) to have witnesses against the juvenile appear at a hearing and to question the witnesses;

(b) to have the court order any witnesses for the juvenile's defense to appear at the hearing;

(c) to remain silent and not have the juvenile's silence used against the juvenile; and

(d) to an attorney as provided in MCR 5.915.

MCR 5.944(A)(2)(a)–(d).

The juvenile may admit the violation at his or her preliminary appearance. MCR 5.944(A)(3).

14.6 Time Requirements for Probation Violation Hearings

If the juvenile denies the allegations, the court shall *schedule* a probation violation hearing within 42 days after the filing of the supplemental petition. MCR 5.944(A)(4).

See *In re Madison,* 142 Mich App 216, 222 (1985), citing *In re Scruggs,* 134 Mich App 617, 621 (1984) (requirement that adjudicative phase be docketed *and heard* within 42 days after conclusion of preliminary hearing does not apply to probation violation hearings, as jurisdiction has already been determined).

14.7 Right to Counsel

A juvenile has the right to an attorney at a probation violation hearing as provided in MCR 5.915. MCR 5.944(A)(2)(d).

If the juvenile in a delinquency case is not represented by an attorney, the court must advise the juvenile of the right to the assistance of counsel at each stage of the proceedings on the formal calendar. MCR 5.915(A)(1).

A. Appointment of Counsel

*See Form JC 03.

MCR 5.915(A)(2)(a)–(e) requires the court to appoint an attorney* to represent the juvenile if any of the following applies:

(a) the parent refuses or fails to appear and participate in the proceedings;

(b) the parent is the complainant or victim;

(c) the juvenile and those responsible for the support of the juvenile are found financially unable to retain an attorney and the juvenile does not waive the right to an attorney;

(d) those responsible for the support of the juvenile refuse or neglect to retain an attorney and the juvenile does not waive the right to an attorney; or

(e) the court determines that the best interests of the juvenile or the public require appointment.

An attorney appointed by the court shall serve until discharged by the court. MCR 5.915(E).

B. Waiver of Right to Counsel

*See Form JC 06.

MCR 5.915(A)(3) provides that the juvenile may waive the right to the assistance of counsel except where a parent or guardian ad litem objects or where the court determines that the best interests of the juvenile or the public require appointment of counsel. The waiver must be made in open court to a judge or referee, who must find and place on the record that the waiver was voluntarily and understandingly made.* See, generally, *In re Gault*, 387 US 1, 42; 87 S Ct 1428; 18 L Ed 2d 527 (1967).

C. Costs

*See Section 12.16.

MCR 5.915(D) states that if an attorney is appointed for a party in delinquency proceedings, the court may enter an order assessing attorney costs against the party or a person responsible for the support of that party. See also MCL 712A.18(5); MSA 27.3178(598.18)(5) (assessment of costs in order of disposition).*

An order assessing attorney costs may be enforced through contempt proceedings. MCR 5.915(D).*

*See Forms MC 230 and JC 38 and 39.

14.8 Factfinder at Probation Violation Hearings

A. No Right to Jury Trial

There is no right to a jury at a probation violation hearing. MCR 5.944(A)(5).

B. Judge

MCR 5.912(A) states that parties have a right to a judge at any hearing on the formal calendar. MCR 5.903(A)(6) defines formal calendar as all judicial phases other than a delinquency proceeding on the consent calendar, and a preliminary inquiry or preliminary hearing of a delinquency proceeding. Thus, a probation violation hearing falls within the definition of a hearing on the formal calendar.

C. Referee

MCR 5.913(A)(1) states that, subject to the limitations in subsection 5.913(A)(2), the court may assign a referee to preside at a hearing other than:

- a jury trial,
- a waiver proceeding, or
- a preliminary examination, trial, or sentencing of a designated case,

and to make recommended findings and conclusions. Thus, a referee may conduct a probation violation hearing and make recommended findings and conclusions.*

*See Chapter 13 (review of referee's findings and conclusions).

MCR 5.913(A)(2) and MCL 712A.10; MSA 27.3178(598.10), specify the requisite qualifications of a referee. If the juvenile is charged with a criminal offense, only referees who are licensed attorneys may conduct delinquency proceedings other than preliminary inquiries or preliminary hearings. The sole exception is for probation officers or county agents who were designated to act as referees by a probate judge prior to January 1, 1988.

*See also Section 12.6(A) for a discussion of reports at dispositional hearings. Similar reports may be prepared for a probation violation hearing.

14.9 Procedures at Probation Violation Hearings*

At a probation violation hearing:

- the juvenile shall have the right to appear, present evidence, and cross-examine witnesses at the hearing;
- the standard of proof for establishing a violation of probation is a preponderance of the evidence; and
- the rules of evidence, other than those with respect to privileges, do not apply at a probation violation hearing.

MCR 5.944(A)(5). See, generally, *In re Belcher*, 143 Mich App 68 (1985).

14.10 Dispositions Following a Finding of Probation Violation

*See Form JC 25 and Chapter 12, Part II (dispositional options).

If the court finds that a violation has occurred, the court may make a supplemental disposition, including revoking probation and committing the juvenile. MCR 5.944(A)(6).*

14.11 Violation Hearings for Juveniles on Conditional Release From a Public Institution

MCR 5.944(B) states that the procedures set forth in MCR 5.944(A) for probation violation hearings apply to juveniles committed under MCL 712A.18; MSA 27.3178(598.18), who have allegedly violated a condition of release after being returned to the community on release from a public institution. MCR 5.944(B) provides further that the court need not conduct such a hearing when there will be an administrative hearing by the agency to which the juvenile is committed, provided that the court has not retained jurisdiction.