

Probation Violation Flowchart

Arrestment MCR 6.445(B)

1. Ensure probationer receives written notice of alleged violation(s) and state whether the alleged violation is charged as a technical or non-technical violation, and the maximum jail or prison sentence.
2. Advise probationer that he/she has a right to contest the charge at a hearing and that he/she is entitled to a lawyer's assistance at the hearing and at all court proceedings, including the arraignment on the violation/bond hearing, and that a lawyer will be appointed at public expense if he/she wants one and is financially unable to retain one.
3. If requested and appropriate, refer to the local indigent criminal defense system's appointing authority.
4. Determine what form of release, if any, is appropriate.
5. For a technical probation violation, the court may allow acknowledgment without a hearing. [MCR 6.450](#).
6. Set a reasonably prompt hearing date or postpone the hearing (the hearing of a probationer being held in custody for an alleged probation violation must be held within the jail sentence for the violation but no longer than 14 days after the arrest or the court must order the probationer released pending the hearing; if the alleged violation is based on an offense being separately prosecuted, court may postpone hearing for the outcome of that prosecution). [MCR 6.445\(C\)](#).
7. If probationer pleads guilty or nolo contendere, proceed to take plea. See [MCR 6.445\(F\)](#).
8. If probationer pleads not guilty or stands mute, proceed to contested hearing. See [MCR 6.445\(E\)](#).
9. If the court allows a probationer to acknowledge a technical probation violation without a hearing instead of proceeding under [MCR 6.445](#), proceed to advise as required. See [MCR 6.450\(A\)](#).

Guilty or Nolo Contendere Plea MCR 6.445(F)

1. If probationer is unrepresented, readvise probationer of the right to counsel. Appoint counsel if probationer is indigent, or obtain a waiver. [MCR 6.445\(D\)](#).
2. Advise probationer that by pleading guilty or nolo contendere, he/she is giving up the right to a contested hearing and, if he/she is proceeding without legal representation, the right to a lawyer's assistance.
3. Advise probationer of the maximum possible jail or prison sentence for the offense.
4. Ascertain that the plea is understandingly, voluntarily, and accurately made.
5. Establish factual support for a finding that the probationer is guilty of the alleged violation and whether the violation is technical or non-technical.
6. If a prison sentence is possible, refer to probation department for updated PSIR. See [MCR 6.425\(B\)](#).
7. Proceed to sentencing box on page 2.

Contested Hearing MCR 6.445(E)

1. If probationer is unrepresented, readvise probationer of the right to counsel. Appoint counsel if probationer is indigent, or obtain a waiver. See [MCR 6.445\(D\)](#).
2. Hear evidence and determine whether state has met its burden of proving a violation by a preponderance of the evidence.
3. Make judicial findings in accordance with [MCR 6.403](#) and whether a proven violation is a technical or non-technical violation.
4. If probationer is found guilty and a prison sentence is possible, refer to probation department for an updated PSIR. See [MCR 6.425\(B\)](#).
5. Proceed to sentencing box on page 2.

Advice Required When Acknowledging a Technical Probation Violation MCR 6.450(A)(1)-(5)

- The acknowledgment must be in writing and advise the probationer of the following:
1. their right to contest the alleged technical probation violation at a formal hearing;
 2. their entitlement to a lawyer's assistance, and that a lawyer will be appointed if financially necessary;
 3. that the court will not revoke probation or impose a sentence of incarceration as a result of the acknowledgment, but it may continue probation, modify conditions, or extend probation;
 4. that the acknowledgment can be considered a prior conviction for purposes of determining the maximum sentence and probation revocation if the probationer violates probation again; and
 5. that acknowledging a technical violation may delay eligibility for an early discharge from probation.

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Sentencing on next page
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Sentencing

MCR 6.445(G); MCR 6.425(B); MCR 6.425(D); MCR 6.445(H); MCL 771.4; MCL 771.4a; MCL 771.4b

1. If unrepresented, readvise of right to counsel; if indigent, appoint counsel or obtain waiver. See [MCR 6.445\(D\)](#).
2. If the court finds that the probationer has violated a condition of probation, or if the probationer pleads guilty to a violation, determine whether to continue probation, modify the conditions of probation, extend the probation period, or revoke probation and impose a sentence of incarceration. [MCR 6.445\(G\)](#).
 - Subject to [MCL 771.4b](#), revocation and subsequent incarceration should only be imposed for repeated technical probation violations, new criminal behavior, as otherwise allowed in [MCL 771.4b](#), or if the probationer requests it. [MCL 771.4\(2\)](#).
 - Probation must be revoked if probationer “willfully” violates the Sex Offenders Registration Act. [MCL 771.4a](#).
 - If the probationer committed a technical probation violation the court may impose a sentence of temporary incarceration under [MCL 771.4b](#). Probation cannot be revoked for a technical violation unless the probationer has already been sanctioned for 3+ technical violations and commits a new technical probation violation, or is on probation for an offense specified in [MCL 771.4b\(6\)](#). [MCL 771.4b\(4\)](#). A probationer who acknowledges a technical violation under [MCR 6.450](#) cannot be sentenced to incarceration or have their probation revoked. [MCR 6.450\(B\)](#).
3. Do not sentence the probationer to prison without having considered a current presentence report and do not sentence the probationer to prison or jail (including for failing to pay fines, costs, restitution, and other financial obligations imposed by the court) without having complied with the provisions set out in [MCR 6.425\(B\)](#) (presentence report; disclosure before sentencing) and [MCR 6.425\(D\)](#) (sentencing procedure).
4. In a case involving a sentence of incarceration, advise the probationer on the record, immediately after imposing sentence, that he/she has a right to appeal, if the underlying conviction occurred as a result of trial, OR he/she is entitled to file an application for leave to appeal, if the underlying conviction was the result of a plea. [MCR 6.445\(H\)](#).
5. In a case that involves a sentence other than incarceration, advise the probationer on the record, immediately after imposing sentence, that he/she is entitled to file an application for leave to appeal. [MCR 6.445\(H\)](#).