

# Probation Violation Sentencing Checklist

- Even if the probationer charged with a probation violation has waived the assistance of a lawyer, comply with the advice and waiver procedure in [MCR 6.005\(E\)](#). [MCR 6.445\(D\)](#).
  - If a defendant has waived the assistance of a lawyer, the record of each subsequent proceeding must show that the defendant was advised of the continuing right to a lawyer's assistance (at public expense if the defendant is indigent), and that the defendant waived that right. [MCR 6.005\(E\)](#).
  - Before beginning the proceeding:
    - the defendant must reaffirm that a lawyer's assistance is not wanted; or
    - if the defendant requests a lawyer and is financially unable to retain one, refer the defendant to the local indigent criminal defense system's appointing authority; or
    - if the defendant wants to retain a lawyer and has the financial ability to do so, allow the defendant a reasonable opportunity to retain one. [MCR 6.005\(E\)](#).
- If an adjournment would significantly prejudice the prosecution, and the defendant has not been reasonably diligent in seeking counsel, it is permissible to refuse to adjourn a proceeding for the appointment of counsel or to allow a defendant to retain counsel. [MCR 6.005\(E\)](#).
- If it is determined that the probationer has violated a condition of probation, or if the probationer pleaded guilty to a probation violation, select one of the following options:
  - 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 violations, new criminal behavior, as otherwise allowed in [MCL 771.4b](#), or if requested by the probationer. [MCL 771.4\(2\)](#).
  - The court must revoke probation if probationer “willfully” violates the Sex Offenders Registration Act. [MCL 771.4a](#).
- If the probationer acknowledged a technical probation violation under [MCR 6.450](#), select one of the following options:
  - continue probation;
  - modify the conditions of probation; or
  - extend the probation period. [MCR 6.450\(B\)](#).
    - The court may **not** impose a sentence of incarceration or revoke probation, but it may count the acknowledgment for the purpose of identifying the number of technical probation violations under [MCL 771.4b](#). [MCR 6.450\(B\)](#).
- If a probation order is revoked, it is permissible to sentence the probationer in the same manner and to the same penalty as might have been imposed if the probation order had never been made. [MCL 771.4\(5\)](#). If the probationer committed a technical probation violation, the court may impose a sentence of temporary incarceration as set out in [MCL 771.4b](#).
  - Probation cannot be revoked on the basis of a technical probation violation unless the probationer has already been sanctioned for 3 or more technical violations or if the probationer is on probation for a violation of [MCL 750.81](#), [MCL 750.81a](#), an offense involving domestic violence as defined by [MCL 400.1501](#), [MCL 750.411h](#), or [MCL 750.411i](#). [MCL 771.4b\(4\)](#); [MCL 771.4b\(6\)](#).
- Do not sentence the probationer to prison without considering a current presentence report. [MCR 6.445\(G\)](#).
- 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\(B\)](#) and [MCR 6.425\(D\)](#).  
[MCR 6.445\(G\)](#).

- Provide copies of the presentence report<sup>1</sup> to the prosecutor, and the defendant's lawyer, or the defendant if not represented by a lawyer, at a reasonable time, but not less than two business days, before the day of sentencing. [MCR 6.425\(B\)](#).
- If the presentence report is not made available to the prosecutor and the defendant's lawyer, or the defendant if not represented by a lawyer, at least two business days before sentencing, the prosecutor and the defendant's lawyer, or the defendant if not represented by a lawyer, are entitled, on oral motion, to an adjournment of the day of sentencing to enable the moving party to review the presentence report and to prepare any necessary corrections, additions, or deletions to present to the court. [MCR 6.425\(B\)](#).
- It is permissible to exempt from disclosure information or diagnostic opinion that might seriously disrupt a program of rehabilitation and sources of information that have been obtained on a promise of confidentiality. [MCR 6.425\(B\)](#).
- When part of the report is not disclosed, inform the parties that information has not been disclosed and state on the record the reasons for nondisclosure. [MCR 6.425\(B\)](#).
- To the extent it can do so without defeating the purpose of nondisclosure, provide the parties with a written or oral summary of the nondisclosed information and given them an opportunity to comment on it. [MCR 6.425\(B\)](#).
- Have the information exempted from disclosure specifically noted in the report. [MCR 6.425\(B\)](#).
  - **Note:** The decision to exempt part of the report from disclosure is subject to appellate review. [MCR 6.425\(B\)](#).
- Sentence the defendant within a reasonably prompt time after the plea or verdict unless sentencing is delayed as provided by law. [MCR 6.425\(D\)\(1\)](#).
- At sentencing, on the record:

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<sup>1</sup>The prosecutor and the defendant's lawyer, or the defendant if not represented by a lawyer, may retain a copy of the report or an amended report. [MCR 6.425\(B\)](#).

- determine that the defendant, the defendant's lawyer, and the prosecutor have had an opportunity to read and discuss the presentence report. [MCR 6.425\(D\)\(1\)\(a\)](#).
- give each party an opportunity to explain, or challenge the accuracy or relevancy of, any information in the presentence report, and resolve any challenges in accordance with the procedure set out in [MCR 6.425\(D\)\(2\)](#). [MCR 6.425\(D\)\(1\)\(b\)](#).
- address the defendant personally in order to permit the defendant to speak or present any information to mitigate the sentence. [MCR 6.425\(D\)\(1\)\(c\)\(ii\)](#).
- provide the defendant's attorney an opportunity to speak on the defendant's behalf. [MCR 6.425\(D\)\(1\)\(c\)\(i\)](#).
- provide the prosecutor an opportunity to speak equivalent to that of the defendant's attorney. [MCR 6.425\(D\)\(1\)\(c\)\(iii\)](#).
- address any victim of the crime who is present at sentencing or any person the victim has designated to speak on the victim's behalf and permit the victim or the victim's designee to make an impact statement. [MCR 6.425\(D\)\(1\)\(c\)\(iv\)](#).
- state the sentence being imposed, including the minimum and maximum sentence if applicable, together with any credit for time served to which the defendant is entitled. [MCR 6.425\(D\)\(1\)\(d\)](#). See also *People v Hawkins*, 500 Mich 987 (2017).
- if the sentence imposed is not within the guidelines range, explain why the particular sentence imposed is more proportionate to the offense and the offender than a sentence within the guidelines range would have been. *People v Dixon-Bey*, 321 Mich App 490, 525, 529 (2017).
- order the dollar amount of restitution that the defendant must pay to make full restitution as required by law to any victim of the defendant's course of conduct that gives rise to the conviction, or to that victim's estate. [MCR 6.425\(D\)\(1\)\(f\)](#).
- If any information in the presentence report is challenged, allow the parties to be heard regarding the challenge, and make a finding with respect to the challenge or determine that a finding is unnecessary because the challenged

information will not be taken into account in sentencing. [MCR 6.425\(D\)\(2\)\(a\)](#).

- If there is merit in the challenge or the challenged information will not be taken into account in sentencing, direct the probation officer to
  - correct the report. [MCR 6.425\(D\)\(2\)\(a\)](#).
  - provide defendant's lawyer with an opportunity to review the corrected report before it is sent to the Department of Corrections. [MCR 6.425\(D\)\(2\)\(a\)](#).
  - certify that the report has been corrected, and ensure that no prior version of the report is used for classification, programming, or parole purposes. [MCR 6.425\(D\)\(2\)\(a\)](#).
- If the proper amount or type of restitution is disputed, the court must resolve it by a preponderance of the evidence; the prosecuting attorney bears the burden of proving the amount of the loss. [MCR 6.425\(D\)\(2\)\(b\)](#).
- Do not sentence a defendant to a term of incarceration or revoke probation for failure to comply with an order to pay money unless it is determined, on the record, that the defendant is able to comply with the order without manifest hardship and that the defendant has not made a good-faith effort to comply with the order. [MCR 6.425\(D\)\(3\)\(a\)](#).
- If it is determined that the defendant is unable to comply with an order to pay money without manifest hardship, it is permissible to impose a payment alternative, such as a payment plan, modification of any existing payment plan, or waiver of part or all of the amount of money owed to the extent permitted by law. [MCR 6.425\(D\)\(3\)\(b\)](#).
- In determining manifest hardship, consider the following criteria:
  - defendant's employment status and history. [MCR 6.425\(D\)\(3\)\(c\)\(i\)](#).
  - defendant's employability and earning ability. [MCR 6.425\(D\)\(3\)\(c\)\(ii\)](#).
  - the willfulness of the defendant's failure to pay. [MCR 6.425\(D\)\(3\)\(c\)\(iii\)](#).
  - defendant's financial resources. [MCR 6.425\(D\)\(3\)\(c\)\(iv\)](#).

- defendant's basic living expenses including but not limited to food, shelter, clothing, necessary medical expenses, or child support. [MCR 6.425\(D\)\(3\)\(c\)\(v\)](#).
- any other special circumstances that may have bearing on the defendant's ability to pay. [MCR 6.425\(D\)\(3\)\(c\)\(vi\)](#).
- In a case involving a sentence of incarceration under [MCR 6.445\(G\)](#), 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 a trial. [MCR 6.445\(H\)\(1\)\(a\)](#); OR
  - he/she is entitled to file an application for leave to appeal, if the underlying conviction was the result of a plea of guilty or nolo contendere. [MCR 6.445\(H\)\(1\)\(b\)](#).
- In a case that involves a sentence other than incarceration under [MCR 6.445\(G\)](#), 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\(H\)\(2\)](#).