

Probation Violation Contested Hearing 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\(E\)](#).
- Ensure that the evidence against the probationer is disclosed to the probationer. [MCR 6.445\(E\)\(1\)](#).
- Ensure that the probationer is afforded the right to be present at the hearing, to present evidence, and to examine and cross-examine witnesses. [MCR 6.445\(E\)\(1\)](#).

- Consider only evidence that is relevant to the probation violation alleged. [MCR 6.445\(E\)\(1\)](#).
 - Note:** The rules of evidence except those pertaining to privileges need not be applied. [MCR 6.445\(E\)\(1\)](#); [MCL 771.4\(2\)](#).
- Determine whether the state met its burden of proving a probation violation by a preponderance of the evidence. [MCR 6.445\(E\)\(1\)](#).
- At the conclusion of the hearing, make findings in accordance with [MCR 6.403](#) and, if the violation is proven, whether the violation is a technical or non-technical violation of probation. [MCR 6.445\(E\)\(2\)](#).
 - Find the facts specially, state separately conclusions of law, and direct entry of the appropriate judgment. [MCR 6.403](#).
 - State findings and conclusions on the record or in a written opinion made a part of the record. [MCR 6.403](#). See *Order Following Probation Violation Hearing*, MC 433.

If it is determined that the probationer has violated a condition of probation, proceed to the Michigan Judicial Institute's *Probation Violation Sentencing Checklist*.