



Committee for Public Counsel Services Youth Advocacy Division

Courtroom Practice Guide to Juvenile Probation Violations

The Preliminary and Final Hearing - *Juvenile Court Standing Order 1-17*

<https://www.mass.gov/juvenile-court-rules/juvenile-court-standing-order-1-17-violation-of-probation-proceedings>

This guide summarizes the procedures for probation violations on delinquency and youthful offender cases in juvenile court and is intended to be used as a quick reference guide¹.

A juvenile **cannot be held on bail** on a probation violation. At the juvenile's first appearance, probation may seek to have the juvenile:

- Held in custody pending the final hearing,
- Released with terms or conditions (with the juvenile's consent), or
- Released with a notice to appear for the final hearing.

A preliminary hearing must be held if probation requests that your client be detained or released with conditions. The hearing will occur on your client's first court appearance on the probation violation. A preliminary hearing is not required if probation does not seek to have your client held or released from court with no conditions. *Standing Order V.*

The juvenile is entitled to counsel, and appointment of counsel if indigent. See *Standing Order III(c), IV(c)(d)*. Counsel should be given adequate time to prepare for the hearing.

Commencement of Proceedings

Violation for New Charge: Probation "shall commence violation proceedings" if there is an allegation that your client committed a new offense while on probation. *Standing Order III (b)(i)*

Violation for Non-Criminal Conduct: The "probation officer shall decide whether to commence probation violation proceedings" based on probation rules and regulations of the Office of the Commissioner of Probation. *Standing Order IV (b)*.

- Probation has discretion in commencing a violation hearing for non-criminal violations, however a judge can order commencement of a violation hearing and when placing a juvenile on probation the sentencing judge can order that a violation will be commenced upon an alleged violation of one or more conditions. *Standing Order IV(b)*.
- A court may issue an **arrest warrant**, for a non-criminal violation, if deemed appropriate, because of the seriousness of the alleged violation or for other good reason. *Standing Order IV(b)*

A judge, on their own, can order probation to go forward on the violation. *Standing Order IV (b)*

¹ Section III of the Standing Order addresses violations for charged criminal conduct and Section IV addresses violations for conditions.

Notice Standing Order III(b), IV(c)

Contents

Notice shall include the purpose of the hearing, date, place and time of the hearing, and:

- alleged criminal conduct indicated on the complaint or indictment, and
- specific conditions that the juvenile allegedly violated,
- “With a description of each such alleged violation.”

Notice should be served in-hand, or by first-class mail, unless the court orders otherwise. Service of the notice must be recorded on the case docket. Out of court notice, other than first-class mail, “shall require a written return of service.” *Standing Order III(b),IV(b).*

The District Attorney shall receive notice of all probation violations in juvenile court. *Standing Order IV(b).*

Timing of Notice

Same Court Division: If the alleged violation is for a **new offense**, and the probation hearing will be heard in the **same court division**, notice should be given before or at the arraignment on the new offense, or as soon thereafter as possible. *Standing Order III(b)(i).*

Different Court Division: If the alleged violation is for a **new offense**, and the probation hearing will be heard in a different court division of the juvenile court, probation in the court of the new offense “shall” issue the Notice at or before the arraignment on the new offense, or as soon thereafter as possible. Probation can serve a notice later, as well. *Standing Order III(c)(i).*

Probation in Multiple Courts Within the Juvenile Court: If the alleged violation is for a **new offense**, and the probationer is on probation in multiple court divisions, the court shall select one of the latter divisions to be the probation court and shall issue a notice for that division. The other probation courts (that are not selected) shall be responsible for the issuance and service on the probationer and for securing their presence. *Standing Order III(c)(vii).*

Different Courts Departments: If the alleged violation is for a **new offense (criminal complaint)** in a **different court department** (i.e. district or superior court), the court shall proceed in accordance with *Trial Court Standing Order 2-16. Uniform Interdepartmental Procedures for Probation Violations Proceedings; Standing Order III(d).*

If the probation department alleges additional violations, it shall prepare and serve on the probationer a new notice setting forth all alleged violations. The notice shall include the date, time, and place of the hearing and the District Attorney shall also get a copy of the notice. *Standing Order III(c)(vi).*

Notice (con't)

Transmission of Notice and Transport to Probation Court *Standing Order III(c)(iii), III(c)(iv), III(c)(v).*

If the violation involves a **new offense** in a **different court**, probation must send notice, by electronic transmission, to the probation department that issued the probation order, along with a copy of the complaint and the police report, and a request for the following information:

- Whether the probation court recommends that the probationer be transported in custody, and
- If not, the date and time for the non-custodial appearance at the probation court.

Probation must respond, no later than one hour from receiving notice as to whether the probationer should be transported to the probation court.

The judge in the “criminal court”² shall decide whether the probationer is to be transported to the probation court and the judge must provide the probationer with an opportunity to be heard. The judge shall wait at least one hour for a recommendation from the probation court before making a decision regarding transport.

If the criminal court orders custodial transport, the probationer shall be transported promptly to the probation court. The criminal court shall issue an arrest warrant (probation warrant) on behalf of the probation court and the probationer will be transported in accordance with the probation warrant.

At the probation court, counsel shall be appointed and the probation violation hearing will be scheduled in no less than seven days unless the probationer waives, and no later than 15 days after the appearance in the probation court, if the probationer is held under *Section V* and no later than 30 days from this initial appearance. If there are new violations the probationer will receive a new notice. *Standing Order III(c)(vi)*

If the probationer is detained on the new offense, the probation warrant shall be lodged so that the probationer will be detained and transported to the probation court. Notice shall be sent to probation at the probation court.

If the criminal court does not order custodial transport, the appearance date in the probation court shall be provided in the Notice of Violation. A probationer can be held for “good cause” in the criminal court pending the decision on whether to transport to the probation court.

Termination of the Proceedings

At any time during violation proceedings, the court, upon review of the Notice and as a matter of its discretion, may order termination of the proceedings. *Standing Order III(b)(i), III(c)(vi), IV(b).*

A Notice of Probation Violation may be withdrawn only with the permission of the court and such withdrawal and permission shall be entered in the case docket. *Standing Order III(b)(i) III(c)(vi), IV(b).*

² “Criminal Court” refers to the court that has jurisdiction over the alleged criminal conduct. “Probation Court” is the court that placed the juvenile on probation.

The Probation Detention³ Hearing *Standing Order V*

The Hearing

At the probation detention hearing the court must find:

- Whether probable cause exists to believe that the probationer violated the terms of probation, and if so,
- Whether the probationer should be held in custody pending the final hearing or released on terms.

Standing Order V(a)(c)

A clerk-magistrate can conduct the hearing if a judge is not available; if the juvenile is held in custody, the custody order shall not extend beyond the date on which a judge will be available. At that date, if there is a further request for custody, the judge must conduct a probation detention hearing. *Standing Order V(c)*.

All testimony, including that of the probation officer, must be under oath and on the record. The juvenile is entitled to counsel⁴, and one shall be appointed if necessary, with reasonable time to prepare.

- The scope of the inquiry shall be limited to whether there is probable cause that the juvenile violated the terms of probation.
- The court shall admit such evidence it deems relevant and appropriate and the scope of inquiry is limited to the issue of whether there is probable cause to believe a violation occurred.
- The juvenile is entitled to be heard.
- The probation officer is required to present evidence and the District Attorney may assist the probation officer in presenting its case.

Standing Order V(c)

If the court finds **no probable cause** at the preliminary hearing, the probationer **cannot** be held in custody and no terms of release may be ordered. The final hearing *may* still be scheduled and notice given to the probationer. *Standing Order, V(c)*.

If **probable cause is found**, the Court **may** hold the probationer in custody or released with terms pending the final hearing. *Standing Order, V(c)*.

In determining **whether to hold the probationer in custody**, the judge may consider:

- The probationer's criminal or juvenile record.
- The nature of the offense for which the probationer is on probation.
- The nature of the offense for which the probationer is newly charged, if any.
- The nature of any other probation violations.
- The likelihood of the probationer's appearance.
- The likelihood of incarceration or commitment if a violation is found following the final probation surrender hearing.

³The term "Probation Detention Hearing" replaces what used to be termed "Preliminary Probation Hearing."

⁴Any waiver of counsel must be knowing and voluntary, *Standing Order V(c), G.L. c. 119 §55A*.

The Probation Detention Hearing (*con't*)

If **released**, the court may order **terms** it deems necessary and appropriate to insure the safety of an individual or the community. The court may impose terms that balance the issue of public safety and the best interests of the juvenile. The terms may include, but are not limited to:

- An earlier curfew.
- Restrictions on the juvenile's activities.
- Terms that permit a juvenile to attend school and/or receive services available only in the community.
- These terms of release must be in writing and served in hand on the probationer.

These terms are not conditions of probation. A violation of a term of release may not be the basis of a finding of a violation of probation, although they may be considered in determining disposition of a violation of probation. *Standing Order, V(c)*.

The commentary in Section V states that authorizing the court to impose terms of release is consistent with the Juvenile Court's mission to further the best interests of children by offering a course of rehabilitation rather than punishment, consistent with c. 119, § 53. If the juvenile does not comply with the terms of release they may be subject to arrest and their custody status can be reviewed. Jake J. v. Commonwealth, 433 Mass. 70 (2000).

Scheduling of the Final Hearing *Standing Order III, IV*

At the initial appearance, the final hearing⁵ must be scheduled for a "date certain." *Standing Order, III(b)(iii), IV(d)*.

The final hearing should be scheduled not less than seven days after service, unless your clients waives. *Standing Order III(b)(iii), IV(d)*.

If your client is **held** after the detention hearing, the final hearing should not be more than fifteen days, unless your client consents to a longer date. *Standing Order III(b)(iii), IV(d)*.

Whether your client is held or not, the final hearing should not be later than 30 days from the initial appearance unless "extraordinary circumstances" exist. *Standing Order III(b)(iii) IV(d)*.

If the violation is for a **new offense**, when scheduling the pre-trial conference on the new offense with the violation hearing, "the court shall give primary consideration to the need for promptness in conducting the probation violation hearing." *Standing Order III (b)(iii)*.

Continuances

Probation violation hearings may only be continued by a judge and only for good cause. If the alleged violation is for a **new offense**, the court can continue the final hearing, arguably to track the new offense, if the judge "determines the interests of justice require it." The reason for the continuance shall be stated by the judge and entered on the case docket. *Standing Order VI (e)*.

⁵Under this new Standing Order the term "probation violation hearing" is used; in the prior Standing Order the term "final hearing" was used.

The Violation Hearing *Standing Order VI*

There are two separate parts to the violation hearing:

- A factual determination as to whether there is a violation of the terms of probation, and if so,
- A determination of the disposition of the violation. *Standing Order, VI(b).*

For good cause, the probationer may be taken into custody pending the commencement and completion of the final hearing. *Standing Order, VI(h).*

Probation violation hearings must be heard by a judge. All testimony at the hearing, including that of the probation officer, must be under oath and on the record. The juvenile has the right to counsel.⁶ *Standing Order, VI(a).*

The hearing commences with the probation officer describing the violations, and then presenting evidence that supports the allegations. The juvenile is entitled to present evidence relevant to the issue of the alleged violation, and both parties have a right to cross-examine the witnesses. Both parties can make a closing statement. *Standing Order, VI (c).*

The standard of proof is the civil standard - **preponderance of the evidence.** *Standing Order, VI(c).*

Hearsay is admissible. The court may rely on hearsay as evidence if it finds, in writing, that the hearsay is **substantially reliable.**⁷ To determine whether hearsay is substantially reliable, the Court may consider whether the evidence

- Is based on personal knowledge and/or direct observation, rather than on hearsay;
- Involved observations recorded close in time to the events in question;
- Is factually detailed, rather than generalized and conclusory;
- Is internally consistent;
- Is corroborated by any evidence provided by the probationer;
- Was provided by a disinterested witness; or
- Was provided under circumstances that support the veracity of the source (i.e., under oath or to the police).

Standing Order VII(a)(b):

Participation of the District Attorney: The district attorney is allowed to participate in the hearing in all cases. The district attorney can “confer” with probation in coordinating their involvement in the hearing. The district attorney can call witnesses and cross-examine witness, and is responsible for summoning their own witnesses. After the presentation of evidence, the district attorney may be heard on the strength of the evidence supporting a violation, and if the juvenile is found in violation, may be heard, orally or in writing, regarding disposition. *Standing Order VI(f).* The district attorney cannot fundamentally interfere with probation, as doing so would raise concerns about constitutional separation of powers. *Standing Order VI commentary.*

⁶Waiver of counsel at the violation hearing must be knowing and voluntary. *Standing Order VI (a), G.L. c. 119 §55A.*

⁷Note that this standard is higher than that required by the case law, which requires hearsay to be reliable. Case law requires hearsay to be substantially reliable when it is the only evidence in the hearing. For further explanation, refer to the *Youth Advocacy Division’s Overview of the Law: Probation Violations.*

The Violation Hearing (*con't*)

Finding of Violation

After evidence has been presented and closing arguments made, the court shall make written findings of fact to support the finding of violation and state the evidence on which the court relied. The court shall decide the matter promptly and shall not continue the matter generally. The findings must be entered on the court docket. *Standing Order, VIII(a),(c)*.

Written findings are also required if your client admits or stipulates to the violation and these must also be entered on the court docket. VIII(c).

If there is a finding of **no violation**, the finding shall be entered in the case docket. VIII(b).

Admission and waiver of right to hearing: The court may accept an admission to an alleged probation violation and a waiver of the right to a violation hearing only upon a determination that the admission and waiver have been made knowingly and voluntarily. The acceptance of the waiver and admission cannot be subject to a proposed disposition, and the probationer is not entitled to withdraw the admission after it has been accepted by the court. *Standing Order VI(g)*.

Disposition *Standing Order VIII*

If the court finds a violation, disposition shall occur promptly. General continuances are prohibited. The court shall give such weight as it may deem appropriate to the recommendation of the Probation Department, as well as the probationer and the district attorney. Additionally, the court may consider such factors such as “public safety, the seriousness of the offense, the nature of the violation, any previous probation violations, the impact on any person or community, and any mitigating factors.” *Standing Order, VIII(d)*.

Disposition Options (The court can order any of the following) *Standing Order VIII(d)*:

- Continue Probation - this is **not** a modification or revocation of probation, but more like an admonishment.
- Termination – the court can terminate the probation order.
- Modification – the court may modify conditions, including the addition of reasonable conditions or extending the duration of the probation order.
- Revocation - if probation is revoked the reasons must be in writing.

Consequences of Revocation of Probation: If your client was on a suspended sentence, including a suspended DYS commitment and the Court **revokes probation**, the suspended sentence must be imposed. The court has the discretion to stay the commitment pending appeal or for your client to attend to personal matters prior to the commitment. *Standing Order, VIII(e)*.

Disposition (*con't*)

If the original disposition was not a sentence or commitment, the court “shall impose a sentence or commitment as provided by law.” *Standing order VIII(f)*. *Note: under Massachusetts law straight probation is not a sentence. Commonwealth v. Bruzzese, 437 Mass. 606 (2002).*

Violation of a Continuance Without a Finding (*Standing Order IX*): All the procedures in the Standing Order apply to alleged violations of CWOFS. The five dispositional options are:

- Termination of probation: The court may terminate probation and dismiss the underlying case.
- Continuance of the CWOFS with no probation modification: The court may continue the CWOFS without any modifications.
- Continuance of the CWOFS with modification of probation: The court may continue the CWOFS and modify conditions, including the duration of the probation.
- Termination of the CWOFS and no revocation of probation: The court may terminate the CWOFS and enter a finding of delinquent, YO, or guilty without revoking probation. “The order of probation, with or without modifications may thereupon constitute the disposition on the finding if the probationer consents.”
- Termination of CWOFS and Revocation of Probation: The court may terminate probation, enter a finding, and impose a sentence, commitment or other disposition as provided by law. If the court orders revocation the evidence relied upon must be in writing.

The guide should be used in conjunction with the Youth Advocacy Division’s Overview of the Law: Probation Violations.

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