

**Effective 5/4/2022**

**Superseded 5/3/2023**

**77-18-108 Termination, revocation, modification, or extension of probation -- Violation of probation -- Hearing on violation.**

- (1)
  - (a) The department shall notify the court and the prosecuting attorney, in writing:
    - (i) when the department is requesting termination of supervision for a defendant; or
    - (ii) before a defendant's supervision will be terminated by law.
  - (b) The notification under this Subsection (1) shall include a probation progress report.
  - (c) If a defendant's probation is being terminated, and the defendant's criminal accounts receivable has an unpaid balance or there is any outstanding debt with the department, the department shall notify the Office of State Debt Collection that the defendant's criminal accounts receivable has an unpaid balance or there is an outstanding debt with the department.
- (2)
  - (a) The court may modify the defendant's probation in accordance with the supervision length guidelines and the graduated and evidence-based responses and graduated incentives developed by the Utah Sentencing Commission under Section 63M-7-404.
  - (b) The court may not:
    - (i) extend the length of a defendant's probation, except upon:
      - (A) waiver of a hearing by the defendant; or
      - (B) a hearing and a finding by the court that the defendant has violated the terms of probation;
    - (ii) revoke a defendant's probation, except upon a hearing and a finding by the court that the terms of probation have been violated; or
    - (iii) terminate a defendant's probation before expiration of the probation period until the court enters a finding of whether the defendant owes restitution under Section 77-38b-205.
- (3)
  - (a) Upon the filing of an affidavit, or an unsworn written declaration executed in substantial compliance with Title 78B, Chapter 18a, Uniform Unsworn Declarations Act, alleging with particularity facts asserted to constitute violation of the terms of a defendant's probation, the court shall determine if the affidavit or unsworn written declaration establishes probable cause to believe that revocation, modification, or extension of the defendant's probation is justified.
  - (b)
    - (i) If the court determines there is probable cause, the court shall order that the defendant be served with:
      - (A) a warrant for the defendant's arrest or a copy of the affidavit or unsworn written declaration; and
      - (B) an order to show cause as to why the defendant's probation should not be revoked, modified, or extended.
    - (ii) The order under Subsection (3)(b)(i)(B) shall:
      - (A) be served upon the defendant at least five days before the day on which the hearing is held;
      - (B) specify the time and place of the hearing; and
      - (C) inform the defendant of the right to be represented by counsel at the hearing, the right to have counsel appointed if the defendant is indigent, and the right to present evidence at the hearing.
    - (iii) The defendant shall show good cause for a continuance of the hearing.

- (c) At the hearing, the defendant shall admit or deny the allegations of the affidavit or unsworn written declaration.
- (d)
  - (i) If the defendant denies the allegations of the affidavit or unsworn written declaration, the prosecuting attorney shall present evidence on the allegations.
  - (ii) If the affidavit, or unsworn written declaration, alleges that a defendant is delinquent, or in default, on a criminal accounts receivable, the prosecuting attorney shall present evidence to establish, by a preponderance of the evidence, that the defendant:
    - (A) was aware of the defendant's obligation to pay the balance of the criminal accounts receivable;
    - (B) failed to pay on the balance of the criminal accounts receivable as ordered by the court; and
    - (C) had the ability to make a payment on the balance of the criminal accounts receivable if the defendant opposes an order to show cause, in writing, and presents evidence that the defendant was unable to make a payment on the balance of the criminal accounts receivable.
- (e) The persons who have given adverse information on which the allegations are based shall be presented as witnesses subject to questioning by the defendant, unless the court for good cause otherwise orders.
- (f) At the hearing, the defendant may:
  - (i) call witnesses;
  - (ii) appear and speak in the defendant's own behalf; and
  - (iii) present evidence.
- (g)
  - (i) After the hearing, the court shall make findings of fact.
  - (ii) Upon a finding that the defendant violated the terms of the defendant's probation, the court may order the defendant's probation terminated, revoked, modified, continued, or reinstated for all or a portion of the original term of probation.

(4)

- (a)
  - (i) Except as provided in Subsection 77-18-105(7), the court may not require a defendant to remain on probation for a period of time that exceeds the length of the defendant's maximum sentence.
  - (ii) Except as provided in Subsection 77-18-105(7), if a defendant's probation is revoked and later reinstated, the total time of all periods of probation that the defendant serves, in relation to the same sentence, may not exceed the defendant's maximum sentence.
- (b) If the court orders a sanction for a defendant who violated terms of probation, the court may:
  - (i) order a period of incarceration that is consistent with the guidelines established by the Utah Sentencing Commission in accordance with Subsection 63M-7-404(4);
  - (ii) order a period of incarceration that deviates from the guidelines with an explanation for the deviation on the record;
  - (iii) order treatment services that are immediately available in the community for a defendant that needs substance abuse or mental health treatment, as determined by a screening and assessment;
  - (iv) execute the sentence previously imposed; or
  - (v) order any other appropriate sanction.
- (c) If the defendant had, before the imposition of a term of incarceration or the execution of the previously imposed sentence under this section, served time in jail as a term of probation or

due to a violation of probation, the time that the defendant served in jail constitutes service of time toward the sentence previously imposed.

(5)

- (a) Any time served by a defendant:
  - (i) outside of confinement after having been charged with a probation violation, and before a hearing to revoke probation, does not constitute service of time toward the total probation term, unless the defendant is exonerated at a hearing to revoke the defendant's probation;
  - (ii) in confinement awaiting a hearing or a decision concerning revocation of the defendant's probation does not constitute service of time toward the total probation term, unless the defendant is exonerated at the hearing to revoke probation; or
  - (iii) in confinement awaiting a hearing or a decision concerning revocation of the defendant's probation constitutes service of time toward a term of incarceration imposed as a result of the revocation of probation or a graduated and evidence-based response imposed under the guidelines established by the Utah Sentencing Commission in accordance with Section 63M-7-404.
- (b) The running of the probation period is tolled upon:
  - (i) the filing of a report with the court alleging a violation of the terms of the defendant's probation; or
  - (ii) the issuance of an order or a warrant under Subsection (3).