

**THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LASSEN**

**GENERAL ORDER
2017-07**

FILED
Clerk of the Superior Court
County of Lassen
DEC 14 2017
By *Paula Tisdale Little*
DEPUTY CLERK

VIOLATION OF PROBATION

At the time of filing a new criminal case, the prosecuting agency shall place the Court on notice of any formal probation and/or summary probation the Defendant is currently serving in a proceeding before the Lassen County Superior Court.

If the Defendant is currently serving probation in Lassen County and the prosecuting agency has not filed a violation of probation summarily revoking the probationer's probation in any matter(s) based upon the new case filing, the prosecuting agency shall provide notice to the Court as to whether or not the prosecuting agency will be filing a violation of probation based upon the new filing.

Probation revocation proceedings may be initiated at any time during the probationary period by any probation officer, parole officer, or peace officer having probable cause to believe that the supervised person is violating any term or condition of his or her probation. The officer may, without warrant or other process and at any time until the final disposition of the case, re-arrest the supervised person and bring him or her before the Court. The Court may, in its discretion, issue a warrant for the supervised person's re-arrest. (Penal Code § 1203.2.) Revocation orders must be made within the probationary period.

Upon the filing and arraignment of a violation of probation, if the probationer denies the allegation(s), a hearing shall be set as provided below:

1. All violations of probation hearings for failure to obey all laws based upon a new felony complaint shall be held concurrently with the probationer's preliminary hearing, absent a good cause showing.
2. All other violations of probation hearings in felony matters that do not pertain to failure to obey all laws based upon a new felony complaint shall be held at the earliest available court date, within reason, absent a good cause showing.
3. All violations of probation hearings in misdemeanor matters shall be held at the earliest available court date, within reason, absent a good cause showing.
4. If good cause is shown in a misdemeanor matter to continue a violation of probation hearing based upon a new misdemeanor complaint set for trial, the violation of probation hearing shall be held concurrently with the probationer's trial on the new misdemeanor complaint, absent a good cause showing.
5. If a probationer has filed a Penal Code § 1538.5 Motion to Suppress Evidence in a pending criminal case on which a revocation of probation is based, the revocation hearing shall be held after the Suppression Hearing has been concluded. Evidence previously suppressed under Penal Code § 1538.5 may not be admitted at a probation revocation hearing.

A summary revocation tolls the running of the probationary period and prevents the period from expiring by its own terms before the probationer is arrested and brought before the Court. (Penal Code § 1203.2(a).) All conditions of probation shall remain in effect after summary revocation until the Court formally revokes or reinstates probation.

If the Court finds that a violation of probation has occurred, it may: (1) formally revoke probation and impose sentence; (2) continue probation on the same or modified terms; or (3) if probation was summarily revoked prior to hearing, set aside the revocation order and reinstate probation on the same or modified terms. (Penal Code §§ 1203.1, 1203.2(b), (e).)

Probation may be revoked or terminated if the interests of justice require it and the court has reason to believe that the probationer has (1) violated any of the conditions of probation, (2) become abandoned to improper associates or a vicious life, or (3) subsequently committed other offenses, regardless of whether the probationer has been prosecuted for the offenses. Pen C §1203.2(a). In exercising its discretion to revoke probation, the court is not strictly limited to the specific grounds set out in Pen C §1203.2(a). *People v Pinon* (1973) 35 CA3d 120, 124, 110 CR 406. Probation may be revoked if the probationer's conduct demonstrates that the probationer is unfit to remain at large and that his or her continued liberty represents a threat to the health and safety of others. *People v Delles* (1968) 69 C2d 906, 911 n2, 73 CR 389; *People v Breaux* (1980) 101 CA3d 468, 473, 161 CR 653.

Because a revocation of probation tolls the running of the probation period, a reinstatement of probation on the same terms and conditions shall extend the original term of probation by the period of revocation. (Penal Code § 1203.2(a).) If the Court intends to cancel the tolling effect of the revocation, the Court must state so expressly on the record. (*People v. DePaul* (1982) 137 Cal. App. 3d 409, 415.)

If the court has reason to believe that the probationer has committed a public offense, the court may revoke probation even when the state does not prosecute the probationer, the charges are dismissed, or the probationer is acquitted of the offense following a trial on the merits. Pen C §1203.2(a); *In re Coughlin* (1976) 16 C3d 52, 57, 127 CR 337 (acquittal); *People v Ortiviz* (1977) 74 CA3d 537, 540, 141 CR 483 (dismissal at preliminary hearing)

No violation of probation shall be stricken/dismissed absent a good cause showing that the striking/dismissal would be in the furtherance of justice pursuant to Penal Code § 1385.

Dated: December 14, 2017



Tony Mallery
Presiding Judge of the
Lassen County Superior Court