

Rule 3.790. Probation and Community Control

(a) Suspension of the Pronouncement and Imposition of Sentence; Probation or Community Control. Pronouncement and imposition of sentence of imprisonment shall not be made on a defendant who is to be placed on probation, regardless of whether the defendant has been adjudicated guilty. An order of the court placing a person on probation or community control shall place the probationer under the authority of the Department of Corrections to be supervised as provided by law. The court shall specify the length of time during which the defendant is to be supervised.

(b) Revocation of Probation or Community Control; Judgment; Sentence.

(1) Generally. Except as otherwise provided in subdivisions (b)(2) and (b)(3) below, when a probationer or a community controllee is brought before a court of competent jurisdiction charged with a violation of probation or community control, the court shall advise the person of the charge and, if the charge is admitted to be true, may immediately enter an order revoking, modifying, or continuing the probation or community control. If the violation of probation or community control is not admitted by the probationer or community controllee, the court may commit the person or release the person with or without bail to await further hearing or it may dismiss the charge of violation of probation or community control. If the charge is not admitted by the probationer or community controllee and if it is not dismissed, the court, as soon as practicable, shall give the probationer or community controllee an opportunity to be fully heard in person, by counsel, or both. After the hearing, the court may enter an order revoking, modifying, or continuing the probation or community control. Following a revocation of probation or community control, the trial court shall adjudicate the defendant guilty of the crime forming the basis of the probation or community control if no such adjudication has been made previously. Pronouncement and imposition of sentence then shall be made on the defendant.

(2) Lunsford Act Proceedings. When a probationer or community controllee is arrested for violating his or her probation or community control in a material respect and is under supervision for any criminal offense proscribed in chapter 794, Florida Statutes, section 800.04(4), Florida Statutes, section 800.04(5), Florida Statutes, section 800.04(6), Florida Statutes, section 827.071, Florida Statutes, or section 847.0145, Florida Statutes, or is a registered sexual predator or a registered sexual offender, or is under supervision for a criminal offense for which, but for the effective date, he or she would meet the registration criteria of section 775.21, Florida Statutes, section 943.0435, Florida Statutes, or section 944.607, Florida

Statutes, the court must make a finding that the probationer or community controllee is not a danger to the public prior to release with or without bail.

(A) The hearing to determine whether the defendant is a danger to the public shall be conducted by a court of competent jurisdiction no sooner than 24 hours after arrest. The time for conducting the hearing may be extended at the request of the accused, or at the request of the state upon a showing of good cause.

(B) At the hearing, the defendant shall have the right to be heard in person or through counsel, to present witnesses and evidence, and to cross-examine witnesses.

(C) In determining the danger posed by the defendant's release, the court may consider:

- (i) the nature and circumstances of the violation and any new offenses charged;
- (ii) the defendant's past and present conduct, including convictions of crimes;
- (iii) any record of arrests without conviction for crimes involving violence or sexual crimes;
- (iv) any other evidence of allegations of unlawful sexual conduct or the use of violence by the defendant;
- (v) the defendant's family ties, length of residence in the community, employment history, and mental condition;
- (vi) the defendant's history and conduct during the probation or community control supervision from which the violation arises and any other previous supervisions, including disciplinary records of previous incarcerations;
- (vii) the likelihood that the defendant will engage again in a criminal course of conduct;
- (viii) the weight of the evidence against the defendant; and
- (ix) any other facts the court considers relevant.

(3) Anti-Murder Act Proceedings. The provisions of this subdivision shall control over any conflicting provisions in subdivision (b)(2). When a probationer or community controllee is arrested for violating his or her probation or community control in a material respect and meets the criteria for a violent felony offender of special concern, or for certain other related categories of offender, as set forth in section 948.06(8), Florida Statutes, the defendant shall be brought before the court that granted the probation or community control and, except when the alleged violation is based solely on the defendant's failure to pay costs, fines, or restitution, shall not be granted bail or any other form of pretrial release prior to the resolution of the probation or community control violation hearing.

(A) The court shall not dismiss the probation or community control violation warrant pending against the defendant without holding a recorded violation hearing at which both the state and the accused are represented.

(B) If, after conducting the hearing, the court determines that the defendant has committed a violation of probation or community control other than a failure to pay costs, fines, or restitution, the court shall make written findings as to whether the defendant poses a danger to the community. In determining the danger to the community posed by the defendant's release, the court shall base its findings on one or more of the following:

(i) The nature and circumstances of the violation and any new offenses charged;

(ii) The defendant's present conduct, including criminal convictions;

(iii) The defendant's amenability to nonincarcerative sanctions based on his or her history and conduct during the probation or community control supervision from which the violation hearing arises and any other previous supervisions, including disciplinary records of previous incarcerations;

(iv) The weight of the evidence against the defendant; and

(v) Any other facts the court considers relevant.

(C) If the court finds that the defendant poses a danger to the community, the court shall revoke probation or community control and sentence the defendant up to the statutory maximum, or longer if permitted by law.

(D) If the court finds that the defendant does not pose a danger to the community, the court may revoke, modify, or continue the probation or community control or may place the probationer into community control as provided in section 948.06, Florida Statutes.