

Order to Show Cause

Utah Code 77-18-1, outlines the procedure for termination, revocation, modification, or extension of probation and the hearings for the procedure.

Hearings

Pursuant to 77-18-1(12) "Probation may not be modified or extended except upon waiver of a hearing by the probationer or upon a hearing and a finding in court that the probationer has violated the conditions of probation." 77-18-1(12)(a)(i)

"Probation may not be revoked except upon a hearing in court and a finding that the conditions of probation have been violated." 77-18-1(12)(a)(ii)

City Generated OSC

"Upon the filing of an affidavit alleging with particularity facts asserted to constitute violation of the conditions of probation, the court that authorized probation shall determine if the affidavit establishes probable cause to believe that revocation, modification, or extension of probation is justified"

IF

"the court determines there is probable cause, it shall cause to be served on the defendant a warrant for the defendant's arrest or a copy of the affidavit and an order to show cause why the defendant's probation should not be revoked, modified, or extended." 77-18-1(12)(b)

Content of the Order to Show Cause

The order shall include:

1. A time and place for the hearing
2. Served on the defendant at least five days prior to the hearing.
3. Inform the defendant of a right to be represented by counsel at the hearing and to have counsel appointed if the defendant is indigent.
4. Inform the defendant of a right to present evidence.

77-18-1(12)(c)

Order to Show Cause Hearing

At the hearing "the defendant shall admit or deny the allegations of the affidavit." If the defendant denies the allegations, "the prosecuting attorney shall present evidence on the allegations. 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. The defendant may call witnesses, appear and speak in the defendant's own behalf, and present evidence." 77-18-1(d).

The standard of proof to be used in proving a violation of condition of probation is a preponderance of the evidence. State v. Hodges, 798 P.2d 270 (Utah Ct. App. 1990).

Outcomes of an Order to Show Cause Hearing

"After the hearing the court shall make findings of fact. Upon a finding that the defendant violated the conditions of probation, the court may order the probation revoked, modified, continued, or that the entire probation term commence anew. if probation is revoked, the defendant shall be sentenced or the sentence previously imposed shall be executed." 77-18-1(12)(e)