

Violating Probation in Florida - Need to Know

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/EINPresswire.com/ -- Anyone convicted of a crime in the state of Florida could face a variety of punishments. Depending on the crime, some criminal offenders are condemned to imprisonment while others are given probation instead. Probation is seen as a viable alternative to incarceration. It allows the offender to serve his or her sentence in the community instead of jail or prison.



Violating Probation in Florida

If sentenced to probation, consult with a [criminal defense lawyer](#) to understand Florida [Criminal Law](#) as it relates to rights and obligations as a probationer. Understanding what happens if one does not follow through on their legal obligations as a probationer is also critical.

Violating probation in Florida occurs when a person willfully violates the terms of a probationary sentence. Due to a lower bar of proof and the lack of certain procedural and constitutional protections, probation proceedings differ dramatically from typical criminal prosecutions. Read on to learn everything one needs to know about probation and the consequences of violating it.

What Is Probation?

As defined by Chapter 948 of the Florida Statutes, Probation is a type of community supervision that requires an offender to follow court-ordered terms and conditions in place of a prison sentence. According to the Supreme Court, probation in Florida is regarded as a privilege, not a right, and does not constitute a punitive sentence. It can be viewed as a “state grace” imposed in lieu of a sentence, with its primary function being defendant rehabilitation and societal protection.

Probation Violations

When a defendant willfully and significantly fails to comply with the terms and conditions of their

probationary sentence, it is considered a violation of probation. In other words, they may be charged with a violation of probation, or VOP, if accused of breaking the terms and conditions of their probation.

Therefore, it is important to understand the terms and conditions that must be followed to prevent significant legal consequences. Typically, the probation officer reports the probation violation. If a probation officer detects a violation, an Affidavit of Violation must be prepared and submitted to the court. The alleged violation and the evidence the probation officer has must be clearly stated in this legal document. A court will examine this legal document carefully to determine whether or not additional action is necessary. If the judge suspects that a violation has occurred, they may issue a warrant for arrest.

Proof Standards

There is an arraignment, and a VOP hearing will be scheduled if arrested for violating probation in Florida. A hearing under the VOP is not the same as a trial. It is not conducted in front of a jury, and the state is not required to establish guilt beyond a reasonable doubt. Instead, a judge will decide destiny, and the state would only be required to show guilt by a preponderance of the evidence, a considerably lower legal standard.

The prosecution must prove that a defendant committed a purposeful and serious violation at a hearing by the “greater weight of the evidence.” To achieve this threshold, the state must show “competent evidence” adequate to sustain a finding of guilt. A trial court cannot revoke probation if the state fails to achieve these requirements.

However, during a VOP hearing, all sides are given the opportunity to submit their case to the court, similar to a trial. The judge will need to assess the information given after hearing from both parties to determine whether or not a violation occurred. If the judge feels a probation violation occurred, they must evaluate whether the probationer did so knowingly. The judge next decides what punishments the offender will face.

Substantial & Willful Violation Is Required

When a person breaches probation “in a material respect,” Florida law calls for it to be revoked. Probation may be revoked only upon proof that the probationer consciously and willfully violated one or more requirements of probation.

A trial judge has broad authority to evaluate whether there has been a purposeful and substantial breach of a probation term and whether such a violation has been proved by the greater weight of the evidence. Whether a violation is deliberate and significant must be determined on a case-by-case basis.

Several Florida appellate court rulings show how the “substantial and willful” test is applied in

probation cases. A violation cannot be declared “willful” if a defendant reasonably complies with a probation requirement.

Consider *Jacobsen v. State* case, where the defendant’s failure to leave the county by a specified time was not a justification for revocation because he made practical efforts to comply. Another example would be the *Gardner v. State* case, where no willful violation of the condition that the defendant leaves Florida was proven because his car broke down.

Common Types of Violations

The majority of probation violations in Florida are the result of a few frequent factual events. Some common examples of these circumstances include the following.

New Offenses or Violations of the Law

The state must produce direct, non-hearsay evidence tying the defendant to the commission of the offense at issue if it wants to revoke probation for committing a new offense. An arrest alone is not sufficient evidence of a probation breach.

Furthermore, no violation may be discovered where the alleged offense happened before the offender was placed on probation as a result of the verdict and sentence.

Missed Reports or Appointments

A single missing probation officer appointment with a valid excuse is inadequate to establish deliberate and serious noncompliance with probation.

Similarly, failing to file a monthly report despite having filed reports previous to and after that date does not amount to a willful and substantial violation of the appellant’s probation requirements. However, the finding of violation will be upheld if the state can show that the failure was willful by significant competent evidence.

Failure to Clear a Drug Test

The state bears the burden of showing that an unlawful drug was present in a defendant’s body through significant, competent evidence in violation proceedings involving positive drug tests. Prosecutors frequently underestimate this burden.

The proof of contraband identification does not require scientific studies, but it must be trustworthy and based on the observations of an experienced and trained witness. This means that the prosecution cannot rely on the testimony of a probation officer who lacks scientific or specialist knowledge to prove a positive drug test. A violation cannot also be founded entirely on the testimony of a probation officer regarding laboratory results.

Several Florida Appellate rulings show the technical criteria for showing a positive drug result in a probation revocation proceeding. One example is *Weaver v. State* (Fla. 3d DCA 1989): Reversing a probation revocation where the prosecution's only non-hearsay evidence for proving a drug was heroin was the testimony of the field test agent. The agent could not recall the name of the field test, say whether the test was accurate, or say whether the drug was heroin without the test.

However, this does not mean that officers cannot testify. When a probation officer is certified by the state to administer such tests, a trial may revoke probation simply on the basis of his or her testimony about a positive drug result. Consider the example of *Terry v. State* (Fla. 5th DCA 2001): Affirming a revocation of probation where the officer testified as to the nature of the field test, how it was performed, his frequent administrations of the test, and the fact that he was certified by the state to administer the test.

Failure to Complete Drug Treatment Program

If the failure to finish a substance abuse program can be proven to be the fault of the accused, it is considered a willful violation. However, if probation is sought to be revoked due to the failure to successfully complete a designated rehabilitation program, some evidence must be submitted to show that the defendant was responsible for such failure.

Furthermore, when the probation order does not specify a time range for entry or completion, a defendant's failure to enter and finish a drug treatment program cannot be used as grounds for revocation. Therefore, if there is enough time left in the probationary period to complete the program, a finding of violation will be overturned.

Breach of Financial Obligations

Another typical reason for violation of probation in Florida is failure to pay court charges, restitution, supervision costs, fines, drug testing costs, and other fees. This, of course, raises the question of the defendant's ability to pay. Once non-payment has been proved, the probationer must prove his incapacity to pay by clear and persuasive evidence, according to Florida Statutes Section 948.06(5).

This provision, however, does not free the trial court of its responsibility to determine whether the probationer has the financial means to pay. Before a person on probation can be imprisoned for failing to make restitution, a determination must be made that the person could have made the payments but refused to do so.

Reversal is required when probation is revoked for failure to pay expenses without a finding that the probationer had the financial means to pay.

Actions Caused By Mental Illness

When a probation breach is caused by a defendant's mental illness, a finding of "willfulness" for the purpose of revoking probation will not be supported. For example, in the *Copeland v. State* (Fla. 1st DCA 2004) case, the court was mistaken in finding the violation deliberate when the doctor testifying at a defendant's violation of probation hearing said the defendant was a paranoid schizophrenic and that the violation was caused by delusions.

Actions Caused By Negligence or Ineptitude

Inept or negligent behavior on the part of a defendant cannot sustain the "willfulness" component required for a finding of probation violation. For instance, the defendant was expected to be home from work by the specified time or call his community control officer to explain his absence in *McCray v. State* (Fla. 3d DCA 2000) case.

However, the court found the defendant's failure to keep sufficient funds on hand to make an emergency phone call or his failure to have the foresight to contact his community control officer through a family member was inept conduct or negligence. It was deemed insufficient to demonstrate a willful violation.

What are the Penalties for Violating Probation in Florida?

The court may impose any penalty that it may have imposed on the defendant at sentencing if probation or community control is revoked in Florida. As a result, the defendant may face a sentence that is up to, but not more than, the statutory maximum penalty for the initial violation.

Proceedings Violations

When a defendant is found to have broken his or her probation, his or her supervising officer will file an Affidavit of Violation with the court and a Department of Corrections Violation Report in criminal instances. The affidavit is a sworn declaration in which the officer explains why he has reasonable grounds to think the defendant committed the offense. The presiding court will assess the charges, determine whether reasonable reasons exist, and issue a warrant for the defendant's arrest after receiving the affidavit.

In the absence of an intervening motion, the defendant is frequently placed on a "no bond" status, which requires him or her to remain in jail until a bond can be obtained. The offender will subsequently be charged on the violation charge and scheduled for an evidentiary hearing, during which the prosecution must prove a willful and substantial violation of supervision through competent evidence.

Defendant's Testimony

Even if such testimony might incriminate the defendant on the violation, a defendant on probation can be compelled to testify at his or her own revocation hearing about probation matters. Although the Fifth Amendment protects a defendant from being forced to testify in most criminal cases, Florida appellate courts have repeatedly concluded that a probationer's commitment to accept the requirements of probation waives the right in probation matters. However, the privilege against self-incrimination still applies to conduct and circumstances relating to a distinct criminal violation.

Hearsay Admissibility

Hearsay is often admissible in violation of probation procedures, unlike criminal prosecutions. However, hearsay alone may not be sufficient to establish a probation violation. Only admissible evidence establishing the infraction can be combined with hearsay testimony.

Probationary Period Tolling

A term of probation that expires during the course of a probation revocation hearing is subject to retention of jurisdiction under Florida Statutes, Section 948.06(1). The law stipulates that the period is excised until the court enters a ruling on the violation when an affidavit alleging a violation of probation or community control is filed and a warrant is issued under s. 901.02.

This implies that once a legally viable violation proceeding is started, the defendant's probation term is "frozen" or "tolled," and the court retains jurisdiction long after the initial probation term envisioned by the sentence has passed.

In terms of the timeliness of allegations filed in amended affidavits, allegations of a violation are timely if the amended affidavit is filed before the probationary period ends or if the allegations in an affidavit filed after the probationary period ends were also alleged in an earlier affidavit timely filed before the probationary period ended.

Seek Advice from a [Florida Law Firm](#)

If accused of breaching probation or community control, seek legal defense from a reputable Florida Law firm to possibly help dismiss the case or reduce the severity of the consequences.

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