

Alabama Rules of Criminal Procedure

Rule 27. Probation and probation revocation.

Rule 27.4. Initiation of revocation proceedings; securing the probationer's presence; arrest.

(a) INITIATION OF REVOCATION PROCEEDINGS.

(1) *Petition by prosecutor or probation officer.* If either the prosecutor or the probation officer responsible for supervision of the probationer has reasonable cause to believe that probationer has violated a condition or a regulation of probation or has acted contrary to the instructions issued by the probation officer, the prosecutor or the probation officer may petition the sentencing court to revoke probation.

(2) *Initiation by the court.* The sentencing court, on its own motion, may initiate proceedings to revoke probation by an order to show cause specifying the alleged violation of conditions, regulations, or instructions.

(b) SECURING THE PROBATIONER'S PRESENCE. Pursuant to a petition to revoke or an order to show cause, the sentencing court may issue a warrant for the probationer's arrest, or the court may issue a summons under the conditions provided in Rule 3.1(b), directing the probationer to appear on a specified date for a revocation hearing.

(c) ARREST BY THE PROBATION OFFICER. The probationer may be arrested without a warrant by the probation officer responsible for his supervision for violation of a condition of probation or regulation imposed or instructions issued, if such arrest is reasonably necessary to prevent the probationer from hiding or fleeing from the jurisdiction of the court or to prevent commission by the probationer of a crime or a further violation of conditions of probation or regulations imposed or instructions issued.

Committee Comments

Ala.Code 1975, § 15-22-54, provides that any probation officer, police officer, or other officer with the power of arrest may arrest the probationer without a warrant, if such arresting officer has been provided with a written statement that probationer has violated the conditions of probation. The same Code section provides not only that the probationer must be arrested, either on a warrant or a probation officer's written statement, but also that a report of such arrest must be made to the court and a hearing must be held in the court. The hearing prior to revocation is a mandatory procedure. *McCain v. Sheppard*, 33 Ala.App. 431, 34 So.2d 225 (1948).

When a probation officer files the report of a violation, the initial burden of persuasion has been met, and the offender who wishes to avoid probation revocation must counter the report. *Martin v. State*, 46 Ala.App. 310, 241 So.2d 339 (1970).

Rule 27.4 provides a mechanism for probation revocation which permits initiation of the proceeding by the court or by the probation officer or by the prosecutor. The court may issue an arrest warrant or a summons to compel the probationer's appearance or, if necessary, the probation officer may take the probationer into custody.

See *Gagnon v. Scarpelli*, 411 U.S. 778, 93 S.Ct. 1756, 36 L.Ed.2d 656 (1973); *Armstrong v. State*, 294 Ala. 100, 312 So.2d 620 (1975).