

INDIGENCY AND REVOCATIONS

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CUPCAKE QUESTIONS

True or False: At a revocation hearing, probationers are entitled to the same rights as a defendant at a trial.

False.

“Revocation of parole is not part of a criminal prosecution and thus the full panoply of rights are not due a defendant in such a proceeding.

State v. Miller, 20 Kan. App. 2d 378 (1995), quoting Morrissey v. Brewer, 408 U.S. 471 (1972).

Probation or parole may be extended by the court:

a) Up to 2 years.

b) Up to the same length of time as the initial probation or parole.

c) Up to 1 year.

d) Up to 6 months.

c) Up to 2 years.

K.S.A. 12-4511 allows for extensions of up to two (2) years if the court finds that the defendant has not yet successfully completed the conditions of probation or parole within the original term.

True or False: A defendant may be sentenced to serve the entire jail sentence if they are indigent.

True.

A defendant's poverty does not immunize them from punishment. *Bearden v. Georgia*, 461 U.S. 660 (1983). However, a defendant may not be sentenced to serve the jail sentence solely because they are indigent. *Tate v. Short*, 401 U.S. 395 (1971).

Affidavits may be introduced at a revocation hearing if:

- a) The affidavit is signed in front of a notary and it is found to be reliable.**
- b) Never. The defendant has a right of confrontation.**
- c) The court makes a specific finding of good cause shown to allow the affidavit.**
- d) The court makes a general finding of good cause shown to allow the affidavit.**

c) The court makes a specific finding of good cause shown to allow the affidavit.

The court must make a *specific* finding of good cause that the benefits of allowing the affidavit outweigh the defendant's right to confrontation.

Morrissey v. Brewer, 408 U.S. 471 (1972), State v. Yura, 250 Kan. 198 (1992); State v. Miller, 20 Kan.App.2d 378 (1995).

Imprisoning a defendant solely because of his or her indigency is invidious discrimination.

Invidious discrimination is treating a class of persons unequally in a manner that is malicious, hostile, or damaging.

If a defendant's probation is revoked in municipal court, an appearance bond for appeal purposes should be set:

- a) In the amount owed by the defendant.**
- b) Not set at all.**
- c) In an amount sufficient to guarantee defendant's appearance.**
- d) As an own recognizance bond.**

b) Not set at all.

There is no right to appeal an order of revocation from municipal court.

City of Wichita v. Patterson, 22 Kan. App. 2d 557 (1996).

In a revocation hearing, the prosecution is required to prove a violation of the defendant's probation or parole by:

- a) A preponderance of the evidence**
- b) Beyond a reasonable doubt.**
- c) Probable cause.**
- d) Clear and convincing evidence.**

a) A preponderance of the evidence.

State v. Rasler, 216 Kan. 292 (1975).

Incarcerating defendants solely on a basis of their inability to pay violates the:

- a) Eighth Amendment**
- b) Fourteenth Amendment**
- c) Fourth Amendment**
- d) Geneva Convention**

b) Fourteenth Amendment

The Equal Protection Clause of the Fourteenth Amendment is violated when a defendant is imprisoned because of the defendant's inability to pay. *Williams v. Illinois, 399 U.S. 235 (1970).*

After the prosecution has proved that the defendant has failed to make payments as ordered by the court, it is the burden of the _____ to show poverty.

- a) Defendant.
- b) Prosecutor.
- c) Probation Officer.
- d) Judge.

a) Defendant

After the prosecution establishes a failure to pay, the burden is on the defendant to raise the defense of poverty, introduce evidence showing poverty and a good-faith effort to meet the terms of probation.

State v. Duke, 10 Kan. App. 2d 392 (1985).

Name three alternatives to revoking and incarcerating an indigent defendant.

- **Reduction, waiver or suspension of the fine imposed.**
- **Extension of time to pay.**
- **Modification of payment plan.**
- **Community service.**
- **Credit for completion of court-ordered program.**

Some suggested alternatives to imprisonment are set out in *State v. Duke*, 10 Kan. App. 2d 392 (1985).

True or False: If a probationer is indigent and unable to pay despite making good-faith efforts to acquire the resources to pay, the probationer cannot be revoked and imprisoned.

False.

If the court determines that none of the alternatives are adequate to meet the State's interests in punishment and deterrence, the court may revoke and imprison the probationer. *Bearden v. Georgia*, 461 U.S. 660 (1983).

A waiver of counsel must be signed if a defendant proceeds without counsel on a motion to:

- a) Revoke probation.**
- b) Extend probation.**
- c) Extend community service.**
- d) All of the above.**

a) Revoke probation.

In revocation hearings a waiver must be signed and the defendant must possess the capacity to understand the waiver. *State v. Miller, 44 Kan. App. 2d 438 (2010).*

- Probationers are not entitled to counsel at hearings to extend probation. *State v. McDonald*, 272 Kan. 222 (2001)
- Probationers are not entitled to counsel at hearings to extend community service. *State v. Sanders*, 2000 Kan. App. Unpub. Lexis 165.

True or False: A probationer's violation of any terms of his or her probation may only result in a revocation and imprisonment if the violation was willful.

False.

Willfulness is not required for violations other than non-payment.

State v. Naughton, 2015 Kan. App. Unpub. LEXIS 799.

In 1970 defendants in Kansas could be committed to the county jail until the fine was paid by crediting the defendant \$2.00 per day for each day served in the county jail.

- a) \$5.00
- b) \$0.50
- c) \$10.00
- d) \$2.00

The different rates of credit for different states were addressed in *Williams v. Illinois, 399 U.S. 235 (1970)*.

A person who has been revoked and believes that they have been wrongly imprisoned by a municipal court may petition for a writ of habeas corpus.

- a) Mandamus
- b) Certiorari
- c) Habeas Corpus
- d) Execution

Probationers who are revoked and incarcerated are limited to the remedy of habeas corpus. *In re Koenig*, 708 P.2d 986, 1985 Kan. LEXIS 479 (1985).

Can an indigent person with mental or physical disabilities be revoked for failure to complete community service?

a)No.

b) No, unless the prosecutor proves a willful failure to complete.

c)Yes, if the defendant fails to prove that the failure to complete was not willful.

d)Yes, if the court does not abuse its discretion in finding a violation and revoking probation.

d) Yes, if the court does not abuse its discretion in finding a violation and revoking probation.

The *Bearden v. Georgia* analysis is unique to failure to pay fines and costs and does not apply to failure to complete community service. Willfulness is not required for a violation. State v. Golston, 2007 Kan. App. Unpub. LEXIS 78, 166 P.3d 450.

The landmark United States Supreme Court case that determined that probationers could not be revoked and incarcerated because of an inability to pay was:

a) *Bearden v. Georgia*, 461 U.S. 660 (1983)

b) *Tate v. Short*, 401 U.S. 395 (1971)

c) *Morrissey v. Brewer*, 408 U.S. 471 (1972)

d) *Williams v. Illinois*, 399 U.S. 235 (1970)

a) *Bearden v. Georgia* 461 U.S. 660 (1983)

True or False: A probationer, who is required not to violate the law, can be revoked based upon a conviction even if that conviction is currently being appealed.

True.

State v. Woods, 215 Kan. 295 (1974)