

40-35-311. Procedure to revoke suspension of sentence of probation – Technical Violations – Use of validated risk and needs assessment.

(a) Whenever it comes to the attention of the trial judge that any defendant who has been released upon suspension of sentence has been guilty of any breach of the laws of this state or has violated the conditions of probation, the trial judge shall have the power to cause to be issued under the trial judge's hand a warrant for the arrest of the defendant as in any other criminal case. Regardless of whether the defendant is on probation for a misdemeanor or felony or whether the warrant is issued by a general sessions court judge or the judge of a court of record, the warrant may be executed by a probation officer or any peace officer of the county in which the probationer is found.

(b) Whenever any person is arrested for the violation of probation and suspension of sentence, the trial judge granting the probation and suspension of sentence, the trial judge's successor, or any judge of equal jurisdiction who is requested by the granting trial judge to do so shall, at the earliest practicable time, inquire into the charges and determine whether or not a violation has occurred and, at the inquiry, the defendant must be present and is entitled to be represented by counsel and has the right to introduce testimony in the defendant's behalf.

(c)

(1) A laboratory report regarding a defendant's drug test may be admissible in probation revocation proceedings, even though the laboratory technician who performed the test is not present to testify, when accompanied by an affidavit containing at least the following information:

(A) The identity of the certifying technician;

(B) A statement of qualifications from the certifying technician;

(C) A specific description of the testing methodology;

(D) A statement that the method of testing was the most accurate test for this particular drug;

(E) A certification that the test results were reliable and accurate;

(F) A declaration that all established procedures and protocols were followed; and

(G) A statement of acknowledgment that submission of false information in the affidavit may subject the affiant to prosecution for the criminal offense of perjury pursuant to § 39-16-702.

(2) Notwithstanding subdivision (c)(1), the judge shall, upon seasonable objection and for good cause shown, require that the laboratory technician appear and testify at the probation revocation hearing.

(3) If the state intends to introduce a laboratory report and affidavit in lieu of the live testimony of the laboratory technician as authorized by this subsection (c), it

shall provide the defendant or the defendant's attorney, if known, with a copy of the report and affidavit at least five (5) days prior to the revocation hearing.

(d)

(1) The trial judge may enter judgment upon the question of the charges as the trial judge may deem right and proper under the evidence adduced before the trial judge.

(2) Notwithstanding subdivision (d)(1), the trial judge shall not revoke probation, whether temporarily under subdivision (e)(1) or otherwise, based upon one (1) instance of technical violation or violations.

(3) As used in this subsection (d), "technical violation" means an act that violates the terms or conditions of probation but does not constitute a new felony, new class A misdemeanor, zero tolerance violation as defined by the department of correction community supervision sanction matrix, or absconding.

(e)

(1) If the trial judge revokes a defendant's probation and suspension of sentence after finding, by a preponderance of the evidence, that the defendant engaged in conduct that is a second or subsequent instance of a technical violation pursuant to subdivision (d)(2), then the trial judge may temporarily revoke the probation and suspension of sentence by an order duly entered upon the minutes of the court, and:

(A) Impose a term of incarceration not to exceed:

(i) Fifteen (15) days for a first revocation;

(ii) Thirty (30) days for a second revocation;

(iii) Ninety (90) days for a third revocation; or

(iv) The remainder of the sentence for a fourth or subsequent revocation; or

(B) Resentence the defendant for the remainder of the unexpired term to a sentence of probation that includes the condition of participating in a community-based alternative to incarceration as provided in § 40-35-104(c)(9); provided, that the violation of probation and suspension is a technical violation and does not involve the commission of a new offense.

(2) If the trial judge revokes a defendant's probation and suspension of sentence after finding, by a preponderance of the evidence, that the defendant has committed a new felony, new Class A misdemeanor, zero tolerance violation as defined by the department of correction community supervision sanction matrix, or absconding, then the trial judge may revoke the probation and suspension of sentence by an order duly entered upon the minutes of the court, and cause the defendant to commence the execution of the judgment as originally entered, which may be reduced by an amount of time not to exceed the amount of time the

defendant has successfully served on probation and suspension of sentence prior to the violation.

(3) If the trial judge revokes a defendant's probation and suspension of sentence, then the **defendant has the right to appeal.**

(4) If a person is serving two (2) or more concurrent probationary sentences and the person's probation is revoked on one (1) probationary sentence, then the person must receive credit for the time served as a result of that probation revocation against any other concurrent probationary sentence that is subsequently revoked in any jurisdiction in this state.

(f) The court **may** consider the results of an offender's **validated risk and needs assessment** in determining the appropriate disposition of the probation violation charge and may request an updated validated risk and needs assessment be performed.