

Northeastern University School of Law

Priced Out of Freedom: Fees, Fines, and Representation in Parole & Probation Revocation

Law Office Four:

Carlisle Cooper	Nicholas Duffy
Nastasia Cvijic	Tess Dufour
Eleanor Dash	Hallie Dyer
Alessandra DelPrete	Lindsay Eggert
Darlene Dickinson	Ivy Ezuma-Ngwu
Maggie DiPierdomenico	Kaiya Vicisoso
Eric Doty	Ben Wallace

Legal Skills in Social Context Program

In Partnership with a National Coalition for a Civil Right to Counsel (NCCRC)

Spring 2025

Fall/Spring Lawyering Fellow: Nifemi Awosika

LSSC Professor: Carol Mallory

I. Executive Summary.....	4
II. Introduction.....	6
A. The Problem.....	6
B. Impact on Communities.....	7
C. Project Overview.....	8
III. Legal Financial Obligations (LFOs).....	9
A. General Explanation.....	9
B. Fines & Fees.....	10
IV. Probation & Parole.....	12
A. Overview.....	12
B. Reform & Modern Alternatives.....	14
V. Constitutional Protections for Individuals Facing Revocation of Probation or Parole....	15
A. Protections for Indigent Individuals on Probation.....	16
B. Due Process Protections and the Right to Appointed Counsel in Revocation Proceedings.....	18
VI. Categories & Complications.....	22
VII. State Write-ups Introduction.....	26
A. In-Depth State Review.....	27
California.....	29
Florida.....	39
Hawaii.....	44
Idaho.....	48
Indiana.....	50
Massachusetts.....	53
Nevada.....	55
New Hampshire.....	58
New Mexico.....	60
New York.....	63
Ohio.....	65
B. Brief Statutory Analysis.....	69
Alabama.....	71
Alaska.....	72
Arizona.....	73
Arkansas.....	74
Colorado.....	75
Connecticut.....	76
Delaware.....	77
District of Columbia.....	78
Georgia.....	80
Illinois.....	81

Kansas.....	82
Kentucky.....	83
Iowa.....	84
Louisiana.....	85
Maine.....	86
Maryland.....	87
Minnesota.....	88
Michigan.....	89
Mississippi.....	90
Missouri.....	91
Montana.....	93
Nebraska.....	94
New Jersey.....	95
North Carolina.....	96
North Dakota.....	97
Oklahoma.....	98
Oregon.....	99
Pennsylvania.....	100
Rhode Island.....	101
South Carolina.....	102
South Dakota.....	103
Tennessee.....	104
Texas.....	105
Utah.....	106
Vermont.....	107
Virginia.....	108
Washington.....	109
West Virginia.....	110
Wisconsin.....	111
Wyoming.....	112
VIII. Conclusion.....	113
IX. Appendices.....	114
Appendix A: Interview of Nadia Iqbal, San Francisco Deputy Public Defender.....	114
Appendix B: Interview of Ryan Yoo, Fresno County Deputy Public Defender.....	117

I. Executive Summary

Legal financial obligations (LFOs), such as fines, fees, and restitution, contribute to deepening economic and racial disparities within the U.S. criminal legal system. These financial burdens disproportionately impact marginalized communities, particularly people of color and individuals living in poverty. For those on probation or parole, failure to meet these obligations can result in severe consequences, including sentence revocation, which may ultimately lead to incarceration.

LFOs are often imposed as part of sentencing, functioning as both a punitive measure and a means of generating revenue for state and local governments. While fines serve as monetary sanctions intended to deter criminal behavior, fees are typically administrative costs associated with court operations, supervision, and incarceration. The discretionary nature of these financial penalties means that judges in many jurisdictions have broad authority to impose them, often without meaningful consideration of an individual's financial circumstances. Given that many individuals under supervision already face economic hardship, these requirements create substantial barriers to successful reintegration into society and contribute to what has been termed “the criminalization of poverty.”

Despite the severe consequences of incarceration associated with nonpayment, individuals facing probation or parole revocation for unpaid LFOs do not receive the same level of constitutional protections afforded in criminal proceedings—most notably, the guaranteed right to appointed counsel for all indigent individuals. The right to appointed counsel differs from the general right to counsel, as it specifically refers to legal representation provided by the state. The Supreme Court has recognized some due process rights in revocation hearings, as established in cases such as *Bearden v. Georgia*, *Morrissey v. Brewer*, and *Gagnon v. Scarpelli*.

However, these protections remain inconsistently applied across jurisdictions, creating profound obstacles to equitable legal outcomes.

States grant due process rights to individuals deemed indigent by the courts under *Bearden v. Georgia*, but the criteria for determining indigency vary from state to state. Black's Law Dictionary defines an individual as indigent who lacks sufficient property to sustain themselves and has no one legally obligated to provide their support. The criteria utilized by courts in making determinations of indigence are inconsistent across jurisdictions, with some states establishing clear standards and others leaving this determination entirely up to judicial discretion. Consequently, many economically disadvantaged individuals who fall outside of their jurisdiction's qualifications for indigence are forced to navigate these complex proceedings without legal representation.

The National Coalition for a Civil Right to Counsel (NCCRC) categorizes the right to representation in probation and parole revocation proceedings into three groups: Categorical (where indigent individuals have a right to appointed counsel without qualification), Discretionary (where courts may appoint counsel for indigent individuals but are not required to do so), and Qualified (where the right to appointed counsel for indigent individuals is limited based on specific conditions). This fragmented approach across states results in significant inconsistencies in legal protections, leaving many individuals vulnerable, facing the possibility of incarceration based solely on their inability to pay.

The lack of uniform standards and protections in LFO enforcement highlights the need for systemic reforms. Ensuring equitable access to legal representation, eliminating punitive financial penalties that disproportionately impact marginalized individuals, and developing alternatives to incarceration for nonpayment are critical steps in addressing these injustices. This

memorandum seeks to analyze the existing legal framework, identify disparities in state policies, and advocate for meaningful reforms to ensure more equitable access to justice.

II. Introduction

A. The Problem

LFOs—including fees, fines, and costs imposed on individuals accused of crimes—have profound social and racial implications, perpetuating systemic injustice and exacerbating economic inequalities. In 2021 alone, these financial penalties totaled over \$27.6 billion, disproportionately affecting historically marginalized communities, particularly individuals of color and those from economically disadvantaged backgrounds.¹ For individuals accused of crimes, many of whom live in poverty or face economic instability, the imposition of steep fees and fines often results in defaulting on these obligations, creating a direct link between criminalization and financial hardship.² The repercussions of these unpaid obligations are severe and perpetuate the poverty-to-prison-to-parole cycle.³

Historically marginalized groups are disproportionately burdened by LFOs, creating a widening racial and economic divide. People of color, particularly Black Americans, are already overrepresented in the criminal legal system and face disproportionate financial penalties.⁴ White, non-Hispanic households have ten times the wealth of Black households, which are also more likely to carry unsecured debt.⁵ LFOs place burdens on already impoverished individuals, exacerbating wealth disparities and further entrenching racial wealth gaps while doing little to deter crime or improve public safety.⁶ Additionally, studies have shown that only 20% of

¹ Robert F. Kane et al., *Punished for Poverty: How Fees and Fines Trap the Poor in Perpetual Debt*, 49, VT. L. REV., 88, 93-97, (2024).

² *Criminalizing Poverty: The Consequences of Court Fees in a Randomized Experiment*, SAGE JOURNALS (Feb. 20, 2022), 8, <https://journals.sagepub.com/doi/10.1177/00031224221075783>.

³ Brittany L. Deitch, *Rehabilitation or Revolving Door: How Parole is a Trap for Those in Poverty*, 111, GEO. L.J.O.N., 46, 52, (2022).

⁴ Ann Cammett, *Shadow Citizens: Felony Disenfranchisement and the Criminalization of Debt*, 117, PENN. ST. L. REV., 349, 369, (2012).

⁵ UNITED STATES CENSUS BUREAU, <https://www.census.gov/> (last visited Mar. 25, 2025).

⁶ Robert F. Kane et al., *Punished for Poverty: How Fees and Fines Trap the Poor in Perpetual Debt*, 49, VT. L. REV., 88, 97, (2024).

formerly incarcerated individuals earn more than \$15,000 in their first year post-release.⁷ Many find themselves in a financial struggle where even basic needs—like housing or utilities—become a choice between survival or compliance with the legal system’s demands.⁸ Moreover, nearly 25% of all admissions to state prisons are due to technical violations of probation or parole—violations that often stem from an inability to meet the financial obligations imposed by the court.⁹ Re-incarceration of this nature comes at an annual cost of \$2.8 billion yet fails to address the underlying economic issues that perpetuate criminal system involvement.¹⁰

B. Impact on Communities

The economic burden of LFOs extends far beyond the individual. For example, a national survey of formerly incarcerated people found that families of incarcerated individuals—many already living at or below the poverty line—frequently bear the burden of paying criminal fees, which are often a significant portion of their income.¹¹ In Florida, New Mexico, and Texas alone, collected LFOs amounted to approximately \$1.9 billion between 2012 and 2018.¹² However, the costs of collecting these debts often exceed the revenue generated.¹³ Government agencies struggling to recover funds frequently turn to private collection agencies, which further exacerbate the financial burden on individuals by adding surcharges and penalties for missed payments.¹⁴

The consequences of failure to pay these fees are severe and disproportionately affect people of color. LFOs have a particularly onerous effect on African Americans, who make up

⁷ Brittany L. Deitch, *Rehabilitation or Revolving Door: How Parole is a Trap for Those in Poverty*, 111, GEO. L.J.O.N., 46, 51, (2022).

⁸ *Id.* at 70.

⁹ *Id.* at 56-57.

¹⁰ *Id.* at 48.

¹¹ *Id.* at 69-70; Adam Looney, Nicholas Turner, *Work and opportunity before and after incarceration* (Mar. 2018), 11-14, https://www.brookings.edu/wp-content/uploads/2018/03/es_20180314_looneyincarceration_final.pdf;

<https://static.prisonpolicy.org/scans/who-pays%20Ella%20Baker%20report.pdf> (p.7).

¹² Robert F. Kane et al., *Punished for Poverty: How Fees and Fines Trap the Poor in Perpetual Debt*, 49, VT. L. REV., 88, 97 (2024).

¹³ *Id.*

¹⁴ *Id.*

approximately 13 percent of the population but comprise 40 percent of the prison population.¹⁵ As writer, attorney, and civil rights activist Michelle Alexander wrote in 2010, “[m]ore African Americans are under correctional control today—in prisons or jail, on probation or parole—than were enslaved in 1850.”¹⁶ Not enough has improved in terms of the racial disproportionality of America’s prison population since.¹⁷ Nazgol Ghandnoosh, *One in Five: Ending Racial Inequality in Incarceration*, The Sentencing Project, 3-4 (Oct. 2023). Charging LFOs contributes to what has been termed the “criminalization of poverty,” where the financial burden of the criminal legal system perpetuates the very conditions that lead to criminal behavior in the first place.¹⁸ Issues surrounding LFOs and their disproportionate impact on marginalized groups—particularly on communities of color and those living in poverty—are deep-seated and perpetuate cycles of racial and wealth inequality in the United States. By examining the systemic failures in the application of LFOs, this work aims to call attention to an overlooked area of injustice and provide a basis for meaningful reform.

C. Project Overview

In order to help address the systemic failures surrounding the enforcement and application of LFOs, this work aims to provide a comprehensive analysis of the mechanisms that can lead to the incarceration of individuals for their inability to pay. The civil legal system frequently denies individuals facing severe consequences, such as the loss of housing, employment, basic human needs, and access to legal representation.¹⁹ The National Coalition for a Civil Right to Counsel (NCCRC) works to bring attention to the significant gaps in legal protections, particularly for individuals from historically marginalized communities, who are

¹⁵Ann Cammett, *Shadow Citizens: Felony Disenfranchisement and the Criminalization of Debt*, 117, PENN. ST. L. REV., 349, 365 (2012).

¹⁶*Id.* at 366.

¹⁷Nazgol Ghandnoosh, *One in Five: Ending Racial Inequality in Incarceration*, THE SENTENCING PROJECT, 3-4 (Oct. 2023).

¹⁸Brittany L. Deitch, *Rehabilitation or Revolving Door: How Parole is a Trap for Those in Poverty*, 111, GEO. L.J.O.N., 46, 51 (2022).

¹⁹*Civil RTC Concept and History*, NATIONAL COALITION FOR A CIVIL RIGHT TO COUNSEL, <https://civilrighttocounsel.org/about-civil-rtc/history-of-the-civil-right-to-counsel> (last visited February 27, 2025).

disproportionately affected by these failures.²⁰ Working with NCCRC, this project seeks to bridge critical gaps in existing research and create a clearer understanding of how the application of LFOs reinforces deeply rooted inequalities. The project objective is to expose these overlooked injustices, drive meaningful reform, and push for the expansion of legal protections.

This memorandum examines the shortcomings of the civil legal system in handling revocation hearings for failure to pay LFOs, with a particular focus on the right to counsel in probation and parole revocation proceedings. It begins by presenting essential background information on LFOs and the profound social ramifications of their enforcement within the legal system.

The research then examines state-specific policies on probation and parole revocation hearings, highlighting key findings on incarceration for failure to pay LFOs, sanction procedures, and the right to appointed counsel in revocation proceedings. Each jurisdiction is evaluated based on its legal framework, culminating in a classification that reflects the state's policies on the right to appointed counsel.

Subsequently, the memorandum presents preliminary research on all remaining states not covered in the prior section. This section is an initial evaluation of probation and parole revocation policies for nonpayment in these states, serving as a foundational guide for future research and analysis.

III. Legal Financial Obligations (LFOs)

A. General Explanation

Upon entering the U.S. criminal legal system, individuals are immediately burdened with court-imposed financial requirements.²¹ These monetary demands, collectively known as LFOs,

²⁰ *Id.*

²¹ *Assessing Fines and Fees in the Criminal Justice System*, NATIONAL CONFERENCE OF STATE LEGISLATURES, (January 20, 2020), <https://www.ncsl.org/civil-and-criminal-justice/assessing-fines-and-fees-in-the-criminal-justice-system#:~:text=Fines%20are%20monetary%20punishments%20for,legal%20financial%20obligations%E2%80%9D%20or%20LFOs>

encompass fines, fees, costs, and restitution.²² Judges have the authority to mandate legal financial payments to the court, municipalities, and even to victims through restitution as part of sentencing or other legal proceedings.²³ LFOs often operate as revenue for state and local governments.²⁴ A large portion of these monetary requirements are intended to fund the judiciary or law enforcement.²⁵ The LFOs that will center the focus of this research are fines, fees, and restitution.

B. Fines & Fees

Fines can be characterized as a form of financial penalty, sanctioning individuals monetarily.²⁶ The idea behind imposing fines, from the perspective of the legal system, is to punish individuals accused of crimes for their infractions and deter similar offenses.²⁷ Fines can be imposed for any level of offense, and judicial discretion for them varies jurisdictionally.

Fees, on the other hand, are imposed on defendants to compensate for general court costs.²⁸ Some specific examples of fees include bond fees, clerk filing fees, jury fees, and diversion program fees.²⁹ They are intended to be contributions to cover operational costs of the criminal legal system, such as court activities, supervision, and incarceration.³⁰ However, research reveals three significant problems with looking at fees as contributions toward parole or

²²*Questions and Answers about Legal Financial Obligations (LFOs)*, ACLU WASHINGTON, <https://www.aclu-wa.org/questions-and-answers-about-legal-financial-obligations-lfos#:~:text=Legal%20financial%20obligations%2C%20or%20LFOs,top%20of%20a%20criminal%20sentence> (last visited Feb. 22, 2025).

²³ Legal financial obligation (LFO), Northwest Justice Project, <https://www.washingtonlawhelp.org/issues/criminal/legal-financial-obligations-restitution-reduc-1> (last visited Feb. 22, 2025).

²⁴ Matthew Menendez et al., *The Steep Costs of Criminal Justice Fees and Fines*, BRENNAN CENTER FOR JUSTICE (Nov. 21, 2019), <https://www.brennancenter.org/our-work/research-reports/steep-costs-criminal-justice-fees-and-fines#:~:text=If%20courts%20find%20that%20a,t%20make%20these%20financial%20determinations>.

²⁵*Id.*

²⁶ Monetary Sanctions: Legal Financial Obligations in US Systems of Justice, NATIONAL LIBRARY OF MEDICINE (Apr. 21, 2021), <https://pmc.ncbi.nlm.nih.gov/articles/PMC8059707/>.

²⁷ Assessing Fines and Fees in the Criminal Justice System, NATIONAL CONFERENCE OF STATE LEGISLATURES (January 20, 2020), <https://www.ncsl.org/civil-and-criminal-justice/assessing-fines-and-fees-in-the-criminal-justice-system#:~:text=Fines%20are%20monetary%20punishments%20for,legal%20financial%20obligations%E2%80%9D%20or%20LFOs>.

²⁸ *Monetary Sanctions: Legal Financial Obligations in US Systems of Justice*, NATIONAL LIBRARY OF MEDICINE (Apr. 21, 2021), <https://pmc.ncbi.nlm.nih.gov/articles/PMC8059707/>.

²⁹ Assessing Fines and Fees in the Criminal Justice System, NATIONAL CONFERENCE OF STATE LEGISLATURES (January 20, 2020), <https://www.ncsl.org/civil-and-criminal-justice/assessing-fines-and-fees-in-the-criminal-justice-system#:~:text=Fines%20are%20monetary%20punishments%20for,legal%20financial%20obligations%E2%80%9D%20or%20LFOs>.

³⁰*Id.*

probation sentencing: (1) relying on steady crime rates to fund basic government operations means that municipalities will turn to over-policing whenever budget shortfalls come up³¹; (2) for the most part, jurisdictions do not know how much it costs them to collect fees and fines so they may be creating a self-perpetuating problem.³² ; and (3) monetary sanctions can actually contribute to recidivism growth.³³

As fees are purportedly utilized to cover the cost of court proceedings and associated costs of general functioning, they tend to be more fixed and consistent than fines.³⁴ With that being said, there are no clear federal guidelines for court fees, and states vary on how concrete their policies are.³⁵ Recent legislation in California and Massachusetts has taken steps toward reforming the fee system for those on probation to help alleviate the financial burden.³⁶ In the preamble of California’s criminal fines and fees reform bill, they directly address the economic difficulties fees can create:

“Criminal justice fees have no formal punitive or public safety function. Instead, they undermine public safety because the debt they cause can limit access to employment, housing, education, and public benefits, which creates additional barriers to successful reentry. Research also shows that criminal justice fees can push individuals into underground economies and can result in individuals turning to criminal activity or predatory lending to pay their debts.” A.B. 1869, 2019-2020 Reg. Sess. § 1 (Cal. 2020).

Individuals on probation and parole are subject to a specific set of LFOs. Most states require individuals on probation and parole to pay supervision fees, which can range from

³¹ *Policing and Profit*, HARV. L. REV, 1723, 1724-33 (2015).

³² Matthew Menendez et al., *The Steep Costs of Criminal Justice Fees and Fines*, BRENNAN CENTER FOR JUSTICE, (Nov. 21, 2019), <https://www.brennancenter.org/our-work/research-reports/steep-costs-criminal-justice-fees-and-fines#:~:text=If%20courts%20find%20that%20a,t%20make%20these%20financial%20determinations.>

³³ Alabama Appleseed Center for Law & Justice, et al., *Under Pressure: How fines and fees hurt people, undermine public safety, and drive Alabama’s racial wealth divide* 3-5 (2018).

³⁴ *Monetary Sanctions: Legal Financial Obligations in US Systems of Justice*, NATIONAL LIBRARY OF MEDICINE (Apr. 21, 2021), <https://pmc.ncbi.nlm.nih.gov/articles/PMC8059707/>.

³⁵ *Id.*

³⁶ MASS. PROBATION SERVICE, (Sep. 21, 2022),

<https://www.mass.gov/news/massachusetts-is-one-of-three-states-in-the-country-to-eliminate-probation-fees#:~:text=Massachusetts%20is%20one%20of%20three,eliminate%20Probation%20fees%20%7C%20Mass.gov>

hundreds to thousands of dollars.³⁷ The purpose behind these fees is to cover the costs incurred by probation agencies for supervision.³⁸ In some jurisdictions, these fees help cover reimbursements, important services, and rehabilitative programs for individuals on probation and parole.³⁹ Supervision fees often follow the format of a monthly payment owed by individuals on probation and parole; however, this is jurisdiction-dependent.⁴⁰ Individuals accused of crimes while on probation or parole are subject to additional types of fines and fees that vary across jurisdictions, including mandatory mental health counseling, electronic monitoring, and drug testing.⁴¹ Furthermore, if a judge orders an individual on probation or parole to pay restitution, it is automatically established as a condition of their probation.⁴²

The method by which fines and fees are set is dependent on jurisdiction. At the federal level, there is no set of statutes, policies, or principles governing court fines and fees.⁴³ The lack of federal instruction on how to set fines and fees gives states, and even municipalities within those states, full discretion to make this determination.⁴⁴ There are states that have specific guidelines explicitly stated in rules or statutes regarding the imposition of LFOs.⁴⁵ However, in other states, judges are given a high level of discretion to impose these obligations.⁴⁶

³⁷Karin Martin et al., *Monetary Sanctions: Legal Financial Obligations in US Systems of Justice*, FINES AND FEES JUSTICE CENTER (January 2, 2020), <https://finesandfeesjusticecenter.org/articles/monetary-obligations-in-us/>.

³⁸ MODEL PENAL CODE: Sentencing Section 6.10 “Reporters’ Notes” (a).

³⁹*Id.*

⁴⁰Karin Martin et al., *Monetary Sanctions: Legal Financial Obligations in US Systems of Justice*, FINES AND FEES JUSTICE CENTER (January 2, 2020), 473, <https://finesandfeesjusticecenter.org/articles/monetary-obligations-in-us/>.

⁴¹*Id.* at 479.

⁴²*Restitution Process*, U.S. DEPARTMENT OF JUSTICE CRIMINAL DIVISION (Oct. 10, 2023), www.justice.gov/criminal/criminal-vns/restitution-process#:~:text=Compliance%20with%20the%20Order%20of,the%20Inmate%20Financial%20Responsibility%20Program.

⁴³Karin Martin et al., *Monetary Sanctions: Legal Financial Obligations in US Systems of Justice*, FINES AND FEES JUSTICE CENTER (Jan. 2, 2020), 473, <https://finesandfeesjusticecenter.org/articles/monetary-obligations-in-us/>.

⁴⁴ Policing and Profit, *Harv. L. Rev.* 1723, 1727-28 (2015).

⁴⁵Karin Martin et al., *Monetary Sanctions: Legal Financial Obligations in US Systems of Justice*, FINES AND FEES JUSTICE CENTER (Jan. 2, 2020), 471, <https://finesandfeesjusticecenter.org/articles/monetary-obligations-in-us/>.

⁴⁶*Id.* at 473.

IV. Probation & Parole

A. Overview

When an individual is placed on probation or parole, they may face the imposition of monetary sanctions, or LFOs, the non-payment of which could result in a revocation of their probation or parole. In practice, parole and probation are fundamentally different concepts, each regulated by distinct legal processes.⁴⁷ Parole may be granted when an individual engages in “good conduct” while incarcerated, while probation functions as an alternative form of sentencing to incarceration.⁴⁸ Parole is conditional release *from* incarceration, whereas probation is a conditional sentence *instead of* incarceration.⁴⁹ Granting probation is traditionally a task for the trial judge, while granting parole is traditionally within the discretion of the executive branch.⁵⁰

Individuals on parole remain under supervision by public authority (authorized executive or administrative bodies) for the remainder of their original sentence and may be reincarcerated if they violate the conditions of their release.⁵¹ On the other hand, probation is an element of the sentencing function of the judiciary and is seen as an alternative to prison.⁵² In sum, the basic difference between probation and parole is that probation involves judicial action before incarceration, while parole involves administrative or executive action after a sentence has been served.⁵³ Both, however, follow conviction and sentencing unless otherwise authorized by statute.⁵⁴

⁴⁷ 59 Am. Jur. 2d *Pardon and Parole* § 8 (2025).

⁴⁸ *Id.*

⁴⁹ Nancy J. King, *Constitutional Limits on the Imposition and Revocation of Probation, Parole, and Supervised Release After Haymond*, 76, Vand. L. Rev., 83, 90 (2023).

⁵⁰ 59 Am. Jur. 2d *Pardon and Parole* § 8 (2025).

⁵¹ Annotation, *Pardon and Parole*, A.L.R.D.G. 284K41 (2024).

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

Probation	Parole
<ul style="list-style-type: none"> - An individual is placed on (or, similarly, has their probation revoked by) a court. - Typically follows conviction and sentencing unless otherwise explicitly authorized by statute. - A determination that an individual should be placed on probation may also suspend the imposition of a sentence. - Probation is utilized as an alternative to incarceration, and individuals are subject to regulations and conditions imposed by the court, which could result in being sentenced to a term of incarceration if violated. 	<ul style="list-style-type: none"> - Granted or revoked by an authorized administrative or executive body. - Follows conviction and sentencing unless otherwise explicitly authorized by statute. - Conditional release of an individual who is incarcerated before the expiration of their sentence. - While on parole, individuals are subject to supervision by a designated body and could face reincarceration if a condition of their parole is violated.

B. Reform & Modern Alternatives

During waves of sentencing reform in the 1970s, reformers targeted the seemingly unpredictable, inconsistent, and arbitrary system of probation and parole based on the discretionary decisions of parole boards and judges.⁵⁵ To increase transparency and consistency,

⁵⁵Nancy J. King, *Constitutional Limits on the Imposition and Revocation of Probation, Parole, and Supervised Release After Haymond*, 76, VAND. L. REV., 83, 91(2023).

some jurisdictions eliminated discretionary parole and replaced it with clear, judicially imposed terms for post-confinement supervision at the time of sentencing.⁵⁶ Judges were either permitted or mandated to impose these terms alongside a sentence of immediate confinement.⁵⁷ A study released in 2022 estimated that sixteen states, the District of Columbia, and the federal government now use some version of supervised release, instead of traditional discretionary parole, for the majority of individuals who have been incarcerated.⁵⁸

In recent years, motivated in part by the innumerable social and economic costs of high incarceration rates, a second wave of reform is targeting confinement and traditional models of probation and parole.⁵⁹ At least six states have adopted presumptive probation, which requires judges to impose a sentence of probation instead of incarceration for some crimes when there is no proof of aggravating facts at sentencing.⁶⁰ This approach utilizes a term of probation as a “more lenient punishment than incarceration,” in addition to regulating terms of probation separately from terms of incarceration.⁶¹ Additionally, new restrictions on the length of probation terms are also growing in use and popularity.⁶² Several jurisdictions utilize various synonymous terms and systems in place of or in conjunction with traditional probation and parole. These include community supervision, community control, post-release supervision, supervised release, conditional release, conditional discharge, and court ordered supervision. Conditional discharge, for example, is similar to probation, with the trial court setting the terms and conditions of release at the time of sentencing.⁶³ However, unlike probation, traditional conditional discharge

⁵⁶*Id.*

⁵⁷*Id.*

⁵⁸*Id.* at 91-92.

⁵⁹*Id.* at 93.

⁶⁰*Id.*

⁶¹*Id.*

⁶²*Id.* at 94.

⁶³59 Am. Jur. 2d *Pardon and Parole* § 8 (2025).

is unsupervised, and the statutory scheme for conditional discharge may be more akin to parole or an extension of parole.⁶⁴

V. Constitutional Protections for Individuals Facing Revocation of Probation or Parole

Individuals on probation or parole constantly have the possibility of incarceration hanging over their head.⁶⁵ Conditions they must follow to avoid said incarceration normally include regularly submitting to drug testing, completion of community service work, maintaining employment or schooling, bans on associating with your regular social network, abstaining from possessing or even being near any weapons (including knives), and the payment of fines, fees, and restitution.⁶⁶ Conditions can often vary depending on the jurisdiction, the nature of the offense, and *particularly* on the assigned probation or parole officer, as they are given wide discretion in their ability to impose additional case-specific conditions.⁶⁷ Failure to comply with any condition of probation or parole may result in arrest, modification of the conditions, revocation, or incarceration.⁶⁸

Despite also having their liberty at risk, individuals facing revocation of parole or probation for civil infractions related to their release conditions, such as nonpayment of LFOs, have fewer constitutional protections than those facing criminal charges.⁶⁹ The Supreme Court has required specific procedural protections in revocation proceedings.⁷⁰ However, they fall short of the protections expected in criminal proceedings.⁷¹ As a result, individuals facing revocation may not have certain protections relating to what can be brought as evidence and the right to appointed counsel.⁷² Although some Supreme Court decisions have addressed the lack of

⁶⁴*Id.*

⁶⁵Riccola Voigt, *Probation and Parole: Conditions and Consequences of Violation* (Feb. 13, 2025), <https://legal-info.lawyers.com/criminal/criminal-law-basics/probation-and-parole.html>.

⁶⁶*Id.*

⁶⁷*Id.*

⁶⁸*Id.*

⁶⁹*Morrissey v. Brewer*, 408 U.S. 471, 480 (1972).

⁷⁰*Id.* at 489.

⁷¹*Id.* at 480.

⁷² 2 Criminal Defense Techniques § 47.05 (2025).

protection for individuals facing incarceration in revocation proceedings, their holdings are applied inconsistently and incompletely across the states.⁷³ In sum, the strength of one's right to the due process of law relies on something as arbitrary as state borders.⁷⁴

A. Protections for Indigent Individuals on Probation

Another point of inconsistency in affording the right to appointed counsel in probation and parole revocation proceedings is how courts determine an individual's indigent status. Some states have hardline numerical standards, while others leave this determination entirely up to judicial discretion. Consequently, the many economically disadvantaged individuals who fall outside their jurisdiction's qualifications for indigency are forced to navigate these complex proceedings without legal representation.

In *Bearden v. Georgia*, The Supreme Court addressed whether a state could revoke probation solely because a defendant failed to pay a fine or restitution due to financial hardship.⁷⁵ (Bearden). Danny Bearden, who had been placed on probation after pleading guilty to burglary and theft, was ordered to pay a fine and restitution.⁷⁶ When he lost his job and could no longer make the payments, the court revoked his probation and sentenced him to prison without determining whether his failure to pay was willful.⁷⁷

The Supreme Court ruled that revoking probation solely due to an inability to pay violates the Fourteenth Amendment's Equal Protection and Due Process Clauses.⁷⁸ The Court held that before revoking probation for nonpayment, courts must inquire into whether the individual on probation made a genuine effort to pay and whether alternative sanctions could be imposed.⁷⁹ If the failure to pay is not willful, but due to indigency, the court must consider other

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Bearden v. Georgia*, 461 U.S. 660, 661 (1983)

⁷⁶ *Id.* at 662.

⁷⁷ *Id.* at 663.

⁷⁸ *Id.* at 672-73.

⁷⁹ *Id.* at 672.

measures, such as extending the payment period or imposing community service, instead of resorting to automatic incarceration.⁸⁰ However, if the state or the judge determines that the defendant has the ability to pay but fails to do so, the failure is considered willful, and incarceration is permissible.⁸¹

In the years following *Bearden*, some state courts, as this research will demonstrate, have blurred the distinction between willful and non-willful nonpayment, often attempting to carve out exceptions.⁸² The Supreme Court's landmark decision did not establish a clear standard for determining what constitutes "willful" nonpayment, instead leaving this determination to the states—resulting in inconsistent interpretations and varied applications.⁸³ Some states argue that when an individual on probation agrees to payment as part of a plea bargain, they voluntarily accept the obligation, regardless of later financial hardship.⁸⁴ This leads to inconsistent rulings and frequent incarceration for failure to pay court-imposed debts.⁸⁵

B. Due Process Protections and the Right to Appointed Counsel in Revocation Proceedings

In addition to the protections for indigent individuals on probation, the Supreme Court has issued two other crucial decisions that shape the due process protections for individuals accused of violating a condition of their probation or parole. In *Morrissey v. Brewer*, the Supreme Court held that the Due Process Clause of the Fourteenth Amendment applies to parole revocation hearings because there is sufficient deprivation of liberty.⁸⁶ The Supreme Court, therefore, has mandated certain procedures under the Fourteenth Amendment for individuals on

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² Ann K. Wagner, *The Conflict over Bearden v Georgia in State Courts: Plea-Bargaining Probation Terms and the Specter of Debtors' Prison*, Vol. 2010, U. CHI. L. F., 383, 386 (2010).

⁸³ *Id.*

⁸⁴ See *State v. Nordahl*, 680 NW2d 247, 251-52 (ND 2004).

⁸⁵ Ann K. Wagner, *The Conflict over Bearden v Georgia in State Courts: Plea-Bargaining Probation Terms and the Specter of Debtors' Prison*, Vol. 2010, U. CHI. L. F., 383, 386 (2010).

⁸⁶ *Morrissey v. Brewer*, 408 U.S. 471, 485 (1972).

parole who are facing parole revocation.⁸⁷ Namely, the court mandated that an individual is entitled to (i) a written notice of the alleged parole violation, (ii) written notice of the incriminating evidence against them, (iii) the opportunity to speak and present witnesses and evidence for their case, (iv) the opportunity to question adverse witnesses, (v) a hearing before a “neutral and detached” hearing body, and (vi) a written statement of facts outlining the rationale behind the parole board’s decision.⁸⁸ Additionally, the Court required a preliminary hearing be held reasonably near the place of the alleged violation, conducted promptly after arrest, and while “information is fresh and sources are available.”⁸⁹ The preliminary hearing must establish probable cause for the alleged violation and ensure due process before the revocation hearing takes place.⁹⁰ Although these procedures provide some due process protections, the Court emphasized that parole revocation hearings are not part of the criminal process, meaning individuals do not receive the full range of rights granted in criminal proceedings.⁹¹

In *Gagnon v. Scarpelli*, the Court expanded the ruling in *Morrissey* to also apply to probation revocation hearings.⁹² However, individuals facing revocation of their probation, similar to parole, still do not receive all the protections granted in criminal trials.⁹³

An area of significant consequence of distinguishing probation and parole revocation hearings from criminal trials is the right to counsel. The right to counsel, granted by the Sixth Amendment, applies to criminal cases but does not automatically extend to probation or parole revocation hearings.⁹⁴ The Supreme Court ruled in *Gideon v. Wainwright*, that states must provide counsel to indigent defendants in criminal cases.⁹⁵ Later, in *Argersinger v. Hamlin*, the

⁸⁷ *Id.* at 489.

⁸⁸ *Id.*

⁸⁹ *Id.* at 484-485.

⁹⁰ *Id.* at 480.

⁹¹ *Id.*

⁹² *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973).

⁹³ 2 Criminal Defense Techniques § 47.05 (2025).

⁹⁴ *Right to Counsel*, CORNELL L. SCH., LEGAL. INFO. INST., https://www.law.cornell.edu/wex/right_to_counsel (last visited February 27, 2025).

⁹⁵ *Gideon v. Wainwright*, 372 U.S. 335, 344-45 (1963).

Supreme Court expanded this right to misdemeanor cases where imprisonment is a possibility.⁹⁶ However, because revocation proceedings are not classified as criminal trials, there is no uniform right to counsel.⁹⁷ States vary in their approach to a civil right to appointed counsel, affording the right in a way that can only be described as arbitrary and non-principled. For example, some states extend the right to counsel in cases involving the termination of parental rights or civil contempt but exclude it in probation and parole revocation cases for nonpayment of fines and fees.⁹⁸

Still, an individual facing criminal charges only has a constitutional right to appointed counsel when they are deemed indigent by the court.⁹⁹ Indigency is a vaguely defined status. Different states define it according to different standards, such as: a focus on no income and no property, a focus on a dependency on others, or simply a focus on an inability to afford their own attorney.¹⁰⁰ The definition employed by the American Bar Association is that an individual does not qualify as indigent unless their annual income is less than 125% of the federal poverty level.¹⁰¹ However, the reasoning behind providing an indigent individual with appointed counsel in criminal cases always comes back to the Court's recognition that a lack of financial resources hinders one's ability to hire a competent attorney.¹⁰²

The right to appointed counsel is one of the core tenets of due process in criminal proceedings that does not extend to probation and parole revocation. In *Gagnon*, the Supreme Court declined to require states to provide counsel to indigent individuals in all revocation

⁹⁶ *Argersinger v. Hamlin*, 407 U.S. 25, 37-38 (1972).

⁹⁷ *Civil RTC Concept and History*, NATIONAL COALITION FOR A CIVIL RIGHT TO COUNSEL <https://civilrighttocounsel.org/about-civil-rtc/history-of-the-civil-right-to-counsel> (last visited February 27, 2025).

⁹⁸ *Id.*

⁹⁹ Caroline Wolf Harlow, *Defense Counsel in Criminal Cases* (2000).

¹⁰⁰ Charles E. Evans, *The Definition of Indigency: A Modern-Day Legal Jabberwocky*, 4 ST. MARY'S L.J., 34, 42 (1972) (discussing the definition of indigency).

¹⁰¹ Frequently Asked Questions, AMERICAN BAR ASSOCIATION, https://www.americanbar.org/groups/legal_services/flh-home/flh-faq/#:~:text=The%20Constitution%20guarantees%20free%20legal,appointed%20to%20represent%20the%20person (last visited February 27, 2025). (125% is currently \$19,562.50 for a household of one.

¹⁰² <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>

¹⁰² *Id.*

hearings, reasoning that such a requirement would transform these proceedings from discretionary hearings into trial-like processes, “potentially undermining rehabilitation efforts.”¹⁰³ Instead, courts retain flexibility in determining when counsel is necessary.¹⁰⁴ Additionally, the exclusionary rule does not apply to revocation hearings, meaning illegally obtained evidence is often admissible.¹⁰⁵ The Confrontation Clause, which guarantees the right to face witnesses, is generally not extended to revocation hearings, allowing the use of hearsay evidence if deemed reliable.¹⁰⁶ Some jurisdictions also limit the application of protections against double jeopardy, self-incrimination, and Miranda rights in these proceedings.¹⁰⁷

Although the due process requirements in *Morrissey* and *Gagnon* apply broadly, states vary in their implementation. For example, the *Morrissey* requirement is that a preliminary hearing be held. Preliminary hearings establish due process because they establish that there is probable cause of the alleged violation of probation or parole. Under the Federal Rules of Criminal Procedure, a defendant must receive notice of the hearing, the alleged violation, and whether they have a right to retain or request appointed counsel.¹⁰⁸ However, some federal courts do not require a preliminary hearing if the defendant is out of custody or faces new criminal charges.¹⁰⁹ Some states also do not provide remedies for failing to hold a preliminary hearing unless the defendant can prove prejudice, effectively rendering the right meaningless.¹¹⁰

Another source of arbitrary variance in revocation proceedings across state lines is the relevant standard of proof. In revocation hearings, the prosecution benefits from a lower standard

¹⁰³ 2 Criminal Defense Techniques § 47.05 (2025).

¹⁰⁴ *Id.*

¹⁰⁵ *Pa. Bd. of Prob. & Parole v. Scott*, 524 U.S. 357, 363 (1998); *Gagnon v. Scarpelli*, 411 U.S. 778, 789 (1973).

¹⁰⁶ 2 Criminal Defense Techniques § 47.05 (2025).

¹⁰⁷ See *Morgan v. Wainwright*, 676 F.2d 476, 478-79, 481 (11th Cir. 1982); Cody Warner, *In this Issue: How States Deny Probationers Their Constitutional Right to a Preliminary Hearing*, 8 Crim. L. Brief 13, 14 (2013).

¹⁰⁸ FED. R. CRIM. P. 32.1(b)(1)(B)(i)-(iii).

¹⁰⁹ See *Moody v. Daggett*, 429 U.S. 78, 86 (1976); *United States v. Strada*, 503 F.2d 1081, 1084 (8th Cir. 1974); Cody Warner, *In this Issue: How States Deny Probationers Their Constitutional Right to a Preliminary Hearing*, 8 Crim. L. Brief 13, 17 (2013).

¹¹⁰ Cody Warner, *In this Issue: How States Deny Probationers Their Constitutional Right to a Preliminary Hearing*, 8 Crim. L. Brief 13, 17 (2013); see e.g. *State v. Hunt*, 330 N.E.2d 883, 888 (111. App. Ct. 1975); *Wilson v. State*, 403 N.E.2d 1104, 1105 (Ind. Ct. App. 1980); *Presley v. State*, 48 So. 3d 526, 530 (Miss. 2010); *State v. Delaney*, 465 NE.2d 72, 75 (Ohio 1984); *State v. Holcomb*, 360 S.E.2d 232, 235 (W. Va. 1987).

of proof than those of criminal trials: a preponderance of the evidence. This means the prosecutor only needs to convince the judge that there is more than a 50% chance that their claim is true.¹¹¹ This loose standard gives states immense free rein in determining their own procedures to revoke individuals' suspended sentences.¹¹² This variation leads to increased complexity and lack of transparency, making an already difficult process for individuals and their families hard to navigate—especially for those who cannot afford counsel.¹¹³

VI. Categories & Complications

The National Coalition for a Civil Right to Counsel (NCCRC) classifies states into three distinct categories: Categorical, Discretionary, and Qualified. These categories demonstrate the extent to which states recognize the right to appointed counsel in probation and parole revocation hearings.¹¹⁴ The right to appointed counsel guarantees an individual, who is unable to afford representation, the appointment of counsel by the court or executive body. This is distinct from the right to counsel, which simply guarantees that an individual may bring counsel to represent them in their suit. Classifying states in this way helps illustrate the varying degrees of legal protection across jurisdictions.

In “Categorical” states, the right to appointed counsel in probation and parole revocation hearings is without qualification—meaning all individuals deemed indigent are afforded this right.¹¹⁵ In most jurisdictions, whether an individual is considered to be indigent is crucial in determining if the individual will have the right to appointed counsel. Notably, the following state analyses reveal that judges often have wide discretion in determining the criteria to qualify

¹¹¹ Cody Warner, *In this Issue: How States Deny Probationers Their Constitutional Right to a Preliminary Hearing*, 8 *Crim. L. Brief* 13, 14 (2013); https://www.law.cornell.edu/wex/preponderance_of_the_evidence

¹¹² Cody Warner, *In this Issue: How States Deny Probationers Their Constitutional Right to a Preliminary Hearing*, 8 *Crim. L. Brief* 13, 14 (2013)

¹¹³ *Id.*

¹¹⁴ *Civil RTC Concept and History*, NATIONAL COALITION FOR A CIVIL RIGHT TO COUNSEL, <https://civilrighttocounsel.org/about-civil-rtc/history-of-the-civil-right-to-counsel/> (last visited February 27, 2025)

¹¹⁵ *Id.*

an individual as indigent. Thus, while a jurisdiction classified as “Categorical” guarantees the right to appointed counsel for individuals deemed indigent, in reality, many who are unable to afford counsel may not be appointed representation due to the arbitrary standards that determine indigency status. This discretion within the legal system obscures the limited reach of due process protections in probation and parole revocation hearings.¹¹⁶ To better understand the right to appointed counsel in “Categorical” states, further research is needed to identify how different jurisdictions determine whether an individual is “indigent” and thus may be appointed counsel.

The second category established by the NCCRC is the “Discretionary” right to the appointment of counsel.¹¹⁷ In these jurisdictions, courts have the authority, but are not obligated, to appoint counsel to indigent individuals.¹¹⁸ In some cases, individuals must formally request legal representation before the court considers appointing counsel.¹¹⁹ This discretionary approach breeds inconsistency in access to legal representation for those facing probation or parole revocation hearings across the country.¹²⁰ Without a universal right to appointed representation, outcomes for individuals with similar charges will vary across jurisdictions. This variance in outcomes is contrary to the contemporary notions of justice and fairness. Thus, creating a legal system that is absent the due process protections expected for individuals facing the possibility of incarceration.¹²¹

The NCCRC’s third classification is the “Qualified” right to appointed counsel.¹²² The right to appointment of counsel is deemed “Qualified” when it is limited in some way.¹²³ There are a number of ways a state may be classified as “Qualified.” A jurisdiction will be categorized

¹¹⁶Matt Watkins, *The Cost of Being Poor? The Fight Against Fines and Fees*, CENTER FOR JUSTICE INNOVATION, (last visited Feb. 22, 2025), <https://www.innovatingjustice.org/publications/fines-fees-podcast>.

¹¹⁷ *Civil RTC Concept and History*, NATIONAL COALITION FOR A CIVIL RIGHT TO COUNSEL, <https://civilrighttocounsel.org/about-civil-rtc/history-of-the-civil-right-to-counsel/> (last visited February 27, 2025).

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

as “Qualified” if they allow a lower court or a city official to determine whether an individual is appointed counsel.¹²⁴ In contrast, states outside of the “Qualified” category may encapsulate the right to appointed counsel through the legislature or through the highest court.¹²⁵ Additionally, a jurisdiction is considered “Qualified” if the prior legal authority or controlling statutory language is ambiguous as to whether a right to appointed counsel exists.¹²⁶ Lastly, a “Qualified” state can be one that grants the right to appointed counsel only to some individuals or only within some proceedings of a certain kind of case.¹²⁷

The right to appointed counsel in probation and parole hearings today is more nuanced and convoluted than it may initially appear. Extensive research into the problem has highlighted the inconsistent and obscure nature of the limited legal protections for individuals facing probation or parole revocation for nonpayment of LFOs. In some cases, hours of legal research and communication with experts within the jurisdiction is required in order to determine if a state truly grants the right to appointed counsel to individuals deemed indigent. Poorly worded statutes leave the door open for poor interpretation. The plethora of arbitrary variance in a process where an individual's liberty is at risk has significant negative impacts on individuals who are navigating the legal system. This project aims to serve as a foundation for those researching the impact of the limited due process protections in probation and parole revocation proceedings on individuals facing the possibility of incarceration.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

VII. State Write-ups Introduction

Due to the failures of *Morrissey* and *Gagnon* in expanding the right to appointed counsel to *any* time one's liberty is at risk, all U.S. states and territories need their own analysis. Each state independently determines how this right is incorporated, resulting in a lack of transparency and uniformity. This veil of decentralization makes possible the incarceration of low-income individuals solely for debt, without basic legal protections and public awareness.¹²⁸ More specifically, different vocabulary is used in each state to describe the same systems and processes. In addition, the bodies of law are vague on the right to appointed counsel. This ambiguity enables state legal actors to exercise broad discretion in deciding whether an individual is entitled to appointed counsel in revocation hearings for the non-payment of LFOs, leading to uneven enforcement of this right. This report visualizes this broad exercise of discretion by fitting states into strategic categories that represent their level of affordance of the right to counsel for revocation hearings.

Why does inconsistency matter in a country that prides itself on the separation between the state and central governments? When each state establishes its own criteria for the right to appointed counsel in revocation hearings, the absence of a standardized application creates disparities in access to legal representation for individuals facing the consequences of failure to pay LFOs.¹²⁹ Communities of color and low-income neighborhoods are overpoliced, and more likely to be subject to supervision.¹³⁰ Without the right to appointed counsel, the risk of harsher penalties, like reincarceration, is exacerbated. It follows that these communities are thus

¹²⁸ Matt Watkins, *The Cost of Being Poor? The Fight Against Fines and Fees*, CENTER FOR JUSTICE INNOVATION, <https://www.innovatingjustice.org/publications/fines-fees-podcast> (last visited Feb. 22, 2025).

¹²⁹ *Civil RTC Concept and History*, NATIONAL COALITION FOR A CIVIL RIGHT TO COUNSEL <https://civilrighttocounsel.org/about-civil-rtc/history-of-the-civil-right-to-counsel> (last visited February 27, 2025).

¹³⁰ Nazgol Ghandnoosh, *One in Five: Disparities in Crime and Policing*, THE SENTENCING PROJECT, (Nov. 2, 2023), <https://www.sentencingproject.org/app/uploads/2023/11/One-in-Five-Disparities-in-Crime-and-Policing.pdf>; Nazgol Ghandnoosh, *One in Five: Ending Racial Inequality in Incarceration*, THE SENTENCING PROJECT, (Oct. 11, 2023), <https://www.sentencingproject.org/app/uploads/2024/02/One-in-Five-Ending-Racial-Inequity-in-Incarceration.pdf>.

inherently disproportionately affected by these inconsistencies. Therefore, the right to counsel in probation and parole revocation hearings is yet another corner of the criminal legal system that perpetuates the cycles of systemic injustice.

Initially, the objective of this memo was an in-depth 50-state survey. However, the inconsistent nature of state-level policies discussed above posed significant challenges. Several factors contributed to research challenges including: locating the state authorities (e.g., statutes, court rules, agency administration rules, etc.) that actually outlined the right to counsel in revocation hearings, constructing a complete understanding of what this right detailed as no single authority within each state fully explained the right, and understanding the state authorities' vague and mismatching vocabulary to describe this right. Therefore, to ensure only accurate research is added to the existing body of scholarly work on the right to counsel in parole and probation revocation hearings for the non-payment of LFOs, this analysis presents an in-depth survey on eleven-states, and only preliminary findings for the additional thirty-nine states.

A. In-Depth State Review

The following analysis examines eleven states: California, Florida, Hawaii, Idaho, Indiana, Massachusetts, Nevada, New Hampshire, New Mexico, New York, and Ohio. These states have been comprehensively researched and categorized to show the array of discretionary treatment this issue is given across the United States. Each state review begins by placing the jurisdictions within the following categories regarding the right to appointed counsel: Categorical, Qualified, or Discretionary. Our research indicates that all eleven states fall into the "Categorical" category for probation. For parole revocation, six states fall into the "Discretionary" category: Florida, Idaho, Indiana, Nevada, New Mexico, and Ohio. The five

remaining states fall into the ‘Categorical’ category: California, Hawaii, Massachusetts, New Hampshire, and New York. However, Massachusetts is only Categorical for the final revocation hearing and not preliminary hearings. The state reviews then examine the specific LFOs, sanctions, and procedures an individual will face when accused of nonpayment of an LFO as a condition of their probation or parole. Although all eleven states fall into the same category for probation and are classified as either “Discretionary” or “Categorical” for parole, significant variations exist in how these categories are applied across states. This inconsistency underscores the arbitrariness of the right to counsel in parole or probation revocation hearings for nonpayment of LFOs.

Right to appointed counsel in

California

General Takeaway

In probation revocation hearings, there is a categorical right to counsel.

California law establishes a categorical right to appointed counsel for all individuals facing probation revocation proceedings who are not financially able to employ their own counsel.

In parole revocation hearings, there is a categorical right to counsel.

The Criminal Justice Realignment Act of 2011 established a categorical right to appointed counsel for all individuals facing parole revocation proceedings in California who are not financially able to employ their own counsel. The statutory language is indirect but enforceable.

Probation

Incarceration for failure to pay LFOs

Incarceration for failure to pay LFOs associated with probation is possible in California if a court determines the nonpayment was willful and the individual had the ability to pay.¹³¹ California has recently implemented reforms preventing probation revocation solely due to nonpayment of fees.¹³² However, revocation of probation is still possible if the individual has fines associated with their sentence.¹³³

Informal probation¹³⁴, formal probation¹³⁵, mandatory supervision, and post-release community supervision (PRCS) are all types of community supervision that fall under the responsibility of California's county probation departments.¹³⁶ Unlike state parole offices, which are all operated by the California Department of Corrections and Rehabilitation (CDCR) and the Division of Adult Parole Operations (DAPO), county probation departments in California have a lot more independence.¹³⁷ According to legal experts, this decentralized model can create a patchwork structure with a lack of unified standards.¹³⁸

Fees: Revocation Not Possible

Despite decentralization, recent sweeping reform bills at the state level—spearheaded by community organization coalition Debt Free Justice California—have repealed the authority of counties to charge

¹³¹ CAL. PENAL CODE § 1214.2 (West), CAL. PENAL CODE § 1215 (West)

¹³² Stephanie Campos-Bui and Maiya Zwerling, *Ending Unjust and Ineffective Criminal Fees in California*, UC BERKELEY LAW (last visited Dec. 31, 2024), <https://www.law.berkeley.edu/experiential/clinics/policy-advocacy-clinic/adult-fees/ending-criminal-adult-fees-in-california>.

¹³³ CAL. PENAL CODE § 1203.2(a) (West)

¹³⁴ Informal probation is a type of supervision for some misdemeanor convictions in which you are supervised by the court, not by a probation officer. Informal probation is also called “court,” “summary,” and “misdemeanor” probation. CAL. PENAL CODE § 1203(d) (West)

¹³⁵ Formal probation is a type of supervision for felony and some misdemeanor convictions in which you are supervised by a probation office, sometimes referred to as “felony” probation. CAL. PENAL CODE § 1203(b–d)

¹³⁶ *Mandatory Supervision: The Benefits of Evidence-Based Supervision under Public Safety Realignment*, CHIEF PROB. OFFICERS OF CAL., (2012), <https://www.cpoc.org/sites/main/files/file-attachments/issuebrief2.pdf>.

¹³⁷ *Parole Conditions*, CALIFORNIA DEP'T OF CORR. AND REHAB. <https://www.cdcr.ca.gov/parole/parole-conditions> (last visited Feb. 25, 2025).

¹³⁸ Jessica Feinstein, *Reforming Adult Felony Probation to Ease Prison Overcrowding: An Overview of California S.B. 678*, STANFORD L. SCH. (Jan. 2011), [https://www.law.stanford.edu/index.php?webauth-document=child-page/266901/doc/slpublic/Feinstein%20SB%20678%20review%20fulltext\(3\).pdf](https://www.law.stanford.edu/index.php?webauth-document=child-page/266901/doc/slpublic/Feinstein%20SB%20678%20review%20fulltext(3).pdf).

over half of the state’s 90 criminal fees.¹³⁹ A.B. 1869, a California Bill, eliminated, among others, fees associated with probation supervision and mandatory supervision.¹⁴⁰ A 2024 study conducted by the Berkeley Law Policy Advocacy Clinic found that 57 out of 58 counties are in compliance with A.B. 1869 and have eliminated their probation supervision fees.¹⁴¹ However, Tuolumne County, with a population of 54,204 and a poverty rate of 10.5%, still lists a wide range of supervision fees for individuals on probation within its County Ordinance Code.¹⁴² A small amount of probation programming fees remains within the state statutory scheme (See Table A). California case law prohibits such fees from being made a condition of probation and considers them collateral costs.¹⁴³ Thus, an individual cannot have their probation revoked for nonpayment of any remaining programming fees.¹⁴⁴

Table A: Remaining Probation & Parole Programming Fees in California

Cal. Penal Code § 1202.42	Income deduction for restitution administration
Cal. Penal Code § 1203.066	Defendant counseling program
Cal. Penal Code § 1203.067	Sex offender management program
Cal. Penal Code § 1203.097	Probation fee for DV, Counseling program fees, Payment to shelter/court for DV Victim, Batterer’s program
Cal. Penal Code § 1203.1a	Preparing for return to community of individual who is confined or committed as a condition of probation
Cal. Penal Code § 1203.1i	Supervision of person convicted of building standard offense while on house arrest
Cal. Penal Code § 1209	Confinement for short term
Cal. Penal Code § 1210.1	Drug treatment program
Cal. Penal Code § 1211	Drug diversion program
Cal. Penal Code § 3000.07	Parole supervision/GPS
Cal. Veh. Code § 42003	Probation supervision, investigation report, etc.

Fines: Revocation Possible, but Unlikely

On top of any remaining supervision and programming fees, individuals facing probation in California are almost always subject to restitution fines.¹⁴⁵ The California Penal Code also mandates that payment of restitution fines and orders be a condition of probation.¹⁴⁶ Public defense attorneys from both the City and County of San Francisco and Fresno County reported an understanding of the statutory scheme that bans

¹³⁹ Stephanie Campos-Bui and Maiya Zwerling, *Ending Unjust and Ineffective Criminal Fees in California*, UC BERKELEY LAW (last visited Dec. 31, 2024), <https://www.law.berkeley.edu/experiential/clinics/policy-advocacy-clinic/adult-fees/ending-criminal-adult-fees-in-california>.

¹⁴⁰ CAL. PENAL CODE § 1203.1b (West)

¹⁴¹ *Id.*

¹⁴² Stephanie Campos-Bui and Maiya Zwerling, *Ending Unjust and Ineffective Criminal Fees in California*, UC BERKELEY LAW (last visited Dec. 31, 2024), <https://www.law.berkeley.edu/experiential/clinics/policy-advocacy-clinic/adult-fees/ending-criminal-adult-fees-in-california>; *QuickFacts Tuolumne County, California*, U.S. CENSUS BUREAU, (Jul. 1, 2023), <https://www.census.gov/quickfacts/fact/table/tuolumnecountycalifornia/PST04522>.

¹⁴³ *People v. Soto*, 200 Cal. Rptr. 3d 247, 261(Cal. Ct. App. 2016); *In re David C.*, 261 Cal. Rptr. 3d 144, 158 (Cal. Ct. App. 2020)

¹⁴⁴ *Soto*, 200 Cal. Rptr. 3d at 261; *In re David C.*, 261 Cal. Rptr. 3d at 158

¹⁴⁵ CAL. PENAL CODE § 1202.4(c) (West)

¹⁴⁶ *Id.* at (l)

revocation for nonpayment of restitution.¹⁴⁷ This conception was likely drawn from Cal Penal Code § 1205, effective January 1, 2022, which allows for the imprisonment of an individual for nonpayment of a court-ordered criminal fine but clarifies that “[t]his section shall not apply to restitution fines and restitution orders.”¹⁴⁸

However, further research revealed that a loophole remains in Cal. Penal Code § 1203.2(a), which provides that a failure to pay restitution can serve as the basis for probation revocation if the court determines the individual had the ability to pay and willfully failed to pay the restitution.¹⁴⁹ Throughout existing California case law, nonpayment of restitution is frequently cited as a consideration in revoking probation.¹⁵⁰ Still, this may not be the general practice of the courts presently since the recent legislative reforms mentioned above.¹⁵¹

California state law requires judges to order restitution in every criminal case and allows for the stacking of two different types: restitution fines and direct orders.¹⁵² Judges decide how much an individual will pay within the following statutory limits: \$300 minimum and \$10,000 maximum for felonies; \$150 minimum and \$1,000 maximum for misdemeanors.¹⁵³ An individual’s ability to pay is not a consideration of the court when assigning restitution, as statutory law mandates the imposition of restitution unless a “compelling and extraordinary reason for not doing so [is found],” clarifying that an individual’s inability to pay cannot be considered such.¹⁵⁴ However, inability to pay may be considered in increasing the amount of the restitution fine over the minimum (\$300 for felonies and \$150 for misdemeanors).¹⁵⁵ Still, two factors limit this protection: (1) an individual facing restitution fines bears the burden of demonstrating an inability to pay; (2) it competes with other considerations, such as the judge’s opinion on the seriousness of the offense at hand.¹⁵⁶

Courts are also mandated to impose an additional probation revocation restitution fine in the same amount as the original fine, to be suspended until the individual’s probation is revoked.¹⁵⁷ For example, the court may order an individual to pay a \$10,000 restitution fine upon sentencing to probation, and if they have their probation revoked, they would then owe \$20,000.¹⁵⁸

A study by Berkeley Law’s Policy Advocacy Clinic found that the average restitution amount owed by individuals across the state’s criminal legal system is about \$10,000.¹⁵⁹ The average restitution amount owed is almost half of the median annual pre-incarceration income for men and 72% of that for women.¹⁶⁰

¹⁴⁷ Telephone Interview with Nadia Iqbal, Deputy Public Defender, San Francisco Public Defender’s Office, (Feb. 13, 2025); Telephone Interview with Ryan Yoo, Deputy Public Defender, Fresno County Public Defender’s Office, (Mar. 14, 2025).

¹⁴⁸ CAL. PENAL CODE § 1205(e) (West)

¹⁴⁹ CAL. PENAL CODE § 1203.2(a) (West)

¹⁵⁰ *People v. Gomez*, 104 Cal. Rptr. 3d 683, 690 (Cal. Ct. App. 2010)

¹⁵¹ Telephone Interview with Nadia Iqbal, Deputy Public Defender, San Francisco Public Defender’s Office, (Feb. 13, 2025); Telephone Interview with Ryan Yoo, Deputy Public Defender, Fresno County Public Defender’s Office, (Mar. 14, 2025).

¹⁵² CAL. PENAL CODE § 1202.4(p) (West)

¹⁵³ *Id.* at (b)(1)

¹⁵⁴ *Id.* at (c)

¹⁵⁵ *Id.* at (d)

¹⁵⁶ *Id.*

¹⁵⁷ CAL. PENAL CODE § 1202.45(b) (West)

¹⁵⁸ *Id.*

¹⁵⁹ Sarah Weld, *Restitution Relief: Policy Advocacy Clinic Spearheads Reform Efforts to Lift a Lifelong Burden*, UC BERKELEY L. (Aug. 24, 2022), <https://www.law.berkeley.edu/article/restitution-relief-policy-advocacy-clinic-spearheads-reform-efforts-to-lift-lifelong-burden>.

¹⁶⁰ Bernadette Rabuy and Daniel Kopf, *Prisons of Poverty: Uncovering the pre-incarceration incomes of the imprisoned*, PRISON POL’Y INITIATIVE (Jul. 9, 2015), <https://www.prisonpolicy.org/reports/income.html>.

While California has succeeded in eliminating many specialized fees, the state still allows for the imposition of a penalty fee on every fine imposed in the criminal courts.¹⁶¹ Such fees are called civil assessments.¹⁶² They are currently capped at \$100 and may be imposed whenever an individual fails—after notice and without good cause—to pay all or any portion of a fine ordered by the court.¹⁶³

Sanction procedures

The California Penal Code allows for the enforcement of an order to pay a fine as a condition of probation in the same manner as any other violation of probation, such as failing a court-ordered drug test.¹⁶⁴ Probation programs are run by counties in California, not the state.¹⁶⁵ Having probation programs differ from county to county allows for variance in sanction procedure across county lines, with adherence to certain standards statewide.

Statewide Standards

The California Penal Code mandates that before any sentence or term or condition of probation or condition of mandatory supervision is modified, a hearing shall be held in open court before the judge.¹⁶⁶ In cases where bail is imposed upon an individual because their alleged violation of their probation conditions involves a criminal charge, separate hearings on bail motions may occur.¹⁶⁷

Burden of proof: The burden of proof in a probation revocation hearing is a preponderance of the evidence.¹⁶⁸

A lower standard of due process than criminal proceedings: California case law imparts the same minimum due process requirements in parole revocation hearings set by *Morissey* onto probation revocation hearings: written notice of claimed violation, disclosure of adverse evidence, the right to confront and cross-examine witnesses, neutral and detached hearing board, and written statement by fact finders as to evidence relied on and reasons for revocation.¹⁶⁹ California case law currently allows for the admission of hearsay against a defendant in a probation revocation hearing as long as it “bears a substantial degree of trustworthiness.”¹⁷⁰

Willful requirement: Violation of probation terms and conditions must be willful in order for the court to revoke probation.¹⁷¹ In terms of nonpayment of LFOs, this basically means that an individual cannot withhold payment when they have the ability to pay.¹⁷²

¹⁶¹ CAL. PENAL CODE § 1214.1(a) (West)

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ CAL. PENAL CODE § 1203.2(a) (West)

¹⁶⁵ *Mandatory Supervision: The Benefits of Evidence-Based Supervision under Public Safety Realignment*, CHIEF PROB. OFFICERS OF CAL., (2012), <https://www.cpoc.org/sites/main/files/file-attachments/issuebrief2.pdf>.

¹⁶⁶ CAL. PENAL CODE § 1203.3(b)(1) (West)

¹⁶⁷ See *Telephone Interview with Nadia Iqbal, Deputy Public Defender, San Francisco Public Defender's Office, (Feb. 13, 2025)*; *Telephone Interview with Ryan Yoo, Deputy Public Defender, Fresno County Public Defender's Office, (Mar. 14, 2025)*. See also CAL. PENAL CODE § 1203.25(c) (West); CAL. PENAL CODE § 1270.2 (West)

¹⁶⁸ *People v. Kelly*, 66 Cal. Rptr. 3d 104, 107 (Cal. Ct. App. 2007); *People v. Kurey*, 106 Cal. Rptr. 2d 150, 157 (Cal. Ct. App. 2001)

¹⁶⁹ *People v. Rodriguez*, 795 P.2d 783, 786 (Cal. 1990)

¹⁷⁰ *People v. O'Connell*, 132 Cal. Rptr. 2d 665, 668 (Cal. Ct. App. 2003); *People v. Cordova*, 203 Cal. Rptr. 3d 700, 739 (Cal. Ct. App. 2016)

¹⁷¹ *People v. Galvan*, 66 Cal. Rptr. 3d 426, 428-29 (Cal. Ct. App. 2007); *People v. Zaring*, 10 Cal. Rptr. 2d 263, 271 (Cal. Ct. App. 1992) (finding that a mother who is 22 minutes late to her court appearance because she lost childcare last minute and needed to take her children to school cannot have her probation revoked because this is not a willful violation)

¹⁷² *People v. Freidt*, 165 Cal. Rptr. 3d 538, 541 (Cal. Ct. App. 2013)

Notice requirement: The following notices must be given to a supervised individual in writing at their first court appearance in a revocation proceeding: (1) the court’s motion to revoke probation, and (2) the probation or parole officer or the district attorney’s petition to revoke probation.¹⁷³

County Standards

Counties can conduct preliminary (also referred to as initial or probable cause) hearings prior to formal probation violation hearings, but they are not mandatory.¹⁷⁴

Ability to pay: Judgments on an individual’s ability to pay are not subject to a codified standard in California. Cal. Rules of Court 4.335. California Court Rule 4.335 establishes the following: (1) Courts must inform defendants of their right to request an ability-to-pay determination and provide instructions or other resources to facilitate the request.¹⁷⁵ (2) Courts, on request of a defendant, must consider the defendant’s ability to pay.¹⁷⁶ The request must include any information or documentation the defendant wishes the court to consider in connection with the determination.¹⁷⁷ The judicial officer has the discretion to conduct the review of the written record or to order a hearing.¹⁷⁸

Where the California Rules of Court fails to provide some guidance on the factors to be considered when determining an individual’s ability to pay, the Advisory Committee Comment to Rule 4.335 fills in the gaps laying out what should be considered, such as monthly income, enrollment in California Food Assistance Program, and General Relief.¹⁷⁹

The total fine must be set in a reasonable manner that aligns with the defendant’s financial capacity. The court retains discretion in adjusting fines, even if the defendant has not proven an inability to pay. In exercising this discretion, the court may consider factors such as the severity of the offense.¹⁸⁰ While the base fine may be partially or fully suspended, this provision does not impact the imposition of mandatory fees.¹⁸¹

California’s Judicial Council has also created an online tool for individuals facing the court system to determine their ability to pay various costs.¹⁸² However, it is unclear how many counties actually utilize it in probation revocation proceedings. For example, Nadia Iqbal, San Francisco Deputy Public Defender, reports she has never seen a client asked to use this tool.¹⁸³ Additionally, Ryan Yoo, Fresno County Deputy Public Defender, reported judges at the Superior Court of Fresno generally just ask for verbal confirmation from an individual that they cannot pay.¹⁸⁴ Coupled with the fact that Rule 4.335 does not

¹⁷³ CAL. PENAL CODE § 1203.2(b)(1) (West)

¹⁷⁴ See CAL. PENAL CODE § 1203.25(a) (West)

¹⁷⁵ CAL. RULES OF CT. 4.335(b) (West)

¹⁷⁶ *Id.* at (c)(1)

¹⁷⁷ *Id.* at (c)(3)

¹⁷⁸ *Id.*

¹⁷⁹ “In determining the defendant’s ability to pay, the court should take into account factors including: (1) receipt of public benefits under Supplemental Security Income, State Supplementary Payment, California Work Opportunity and Responsibility to Kids, Federal Tribal Temporary Assistance for Needy Families, Supplemental Nutrition Assistance Program, California Food Assistance Program, County Relief, General Relief, General Assistance, Cash Assistance Program for Aged, Blind, and Disabled Legal Immigrants, In Home Supportive Services, or Medi-Cal; and (2) a monthly income of 125 percent or less of the current poverty guidelines, updated periodically in the Federal Register by the U.S. Department of Health and Human Services under 42 U.S.C. § 9902(2). CAL. RULES OF CT. 4.335

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² CAL. GOV’T CODE § 68645 (West)

¹⁸³ Telephone Interview with Nadia Iqbal, Deputy Public Defender, San Francisco Public Defender’s Office, (Feb. 13, 2025).

¹⁸⁴ *Id.*

mandate any measurable factors courts must consider when making ability-to-pay determinations, it likely means that determinations about an individual's ability to pay are left to the trial judge's discretion and existing county custom.

Right to appointed counsel

Individuals subject to probation revocation proceedings in California have had a right to appointed counsel since 1972 as long as they meet the State's "indigent" standard.¹⁸⁵ While unchallenged case law in California states that "indigence...is necessarily flexible and [the] question of indigency must be approached and solved realistically," the California Business & Professional Code more formally defines "Indigent person" as "a person whose income is (1) 200 percent or less of the current poverty threshold established by the United States Office of Management and Budget or (2) who is eligible for Supplemental Security Income or free services under the Older Americans Act or Developmentally Disabled Assistance Act," in its Article dedicated to funds for the provision of legal services to indigent persons.¹⁸⁶

The right to appointed counsel exists at all stages of proceedings throughout the probation revocation process besides summary proceedings when the individual on probation has absconded.¹⁸⁷ The statute provides that an individual must be informed of their right to consult with counsel and, if deemed indigent, the right to secure court-appointed counsel at their first court appearance in the proceeding.¹⁸⁸

While it is possible some parties will choose to waive their right to counsel, a knowing and intelligent *written* waiver of the right to counsel is required before they may represent themselves.¹⁸⁹ The court is responsible for informing the individual of the dangers of representing themselves.¹⁹⁰ If the court orders revocation absent such a waiver, reversal is required.¹⁹¹

Through A.B. 1869, California has stopped charging individuals any fees associated with receiving appointed counsel.¹⁹²

Parole

Incarceration for failure to pay LFOS

Incarceration for failure to pay LFOs associated with parole is possible in California if a court determines the nonpayment was willful and the individual had the ability to pay.¹⁹³

The parole system in California has two levels. The first level is the state system, run by CDCR and DAPO and used for individuals whose original convictions involve more serious offenses.¹⁹⁴ The second level is PRCS, which involves a lower level of supervision overseen by counties' probation departments

¹⁸⁵ *People v. Vickers*, 503 P.2d 1313, 1320 (Cal. 1972)

¹⁸⁶ *People v. Ferry*, 47 Cal. Rptr. 324, 330 (Cal. Ct. App. 1965); CAL. BUS. & PROF. CODE § 6213 (West)

¹⁸⁷ *Vickers*, 503 P.2d at 1320; *People v. Hall*, 267 Cal. Rptr. 494, 498 (Cal. Ct. App. 1990); *People v. Bauer*, 150 Cal. Rptr. 3d 804, 807-08 (Cal. Ct. App. 2012)

¹⁸⁸ CAL. PENAL CODE § 1203.2(b)(2) (2022)

¹⁸⁹ *Hall*, 267 Cal. Rptr. at 496

¹⁹⁰ *Faretta v. California*, 422 U.S. 806, 835 (1975); *Hall*, 267 Cal. Rptr. at 496

¹⁹¹ *Hall*, 267 Cal. Rptr. at 499

¹⁹² Assem. B. 1869, 2019-2020 Reg. Sess. (Cal. 2020)

¹⁹³ CAL. PENAL CODE § 1205(a) (West), CAL. PENAL CODE § 1214.2(a)-(b)(1) (West), CAL. PENAL CODE § 1215 (West)

¹⁹⁴ CAL. PENAL CODE § 3000.08(a) (West); *Regional Units and Headquarters Offices*, CALIFORNIA DEP'T OF CORR. AND REHAB. <https://www.cdcr.ca.gov/parole/public-officers-and-regional-offices> (last visited Feb. 26, 2025).

(sometimes called adult supervision departments).¹⁹⁵ Revocation decisions for both levels are made by the county superior court where the individual on parole is released, resides, or in which an alleged violation of supervision has occurred.¹⁹⁶ Alternatively, individuals subject to PRCS with a violation petition against them may opt to participate in their county’s “parole reentry court” rather than be subject to the traditional court system.¹⁹⁷ Parole reentry courts are separate and apart from a county’s main court system.¹⁹⁸ Counties also tend to collaborate with CDCR and DAPO through specialized divisions or positions within their District Attorney and Public Defenders Offices. (SF Addendum).

Fees: Revocation Not Possible

California has effectively abolished all parole supervision fees, with only some parole programming fees remaining A.B. 1869, 2019-2020 Reg. Sess. (Cal. 2020); (See Table A). The one county that has failed to align its criminal fee system with A.B. 1869, Tuolumne County, does not have its own parole program.¹⁹⁹

Fines: Revocation Possible

Individuals on parole are still almost always subject to restitution fines, as any fines assigned at the time of their original sentence normally will not go away until they are paid.²⁰⁰ Similarly to individuals on probation, California law requires the court to order an additional parole revocation fine in the same amount as the original fine.²⁰¹ This additional parole revocation fine is suspended until you violate parole.²⁰² For example, the court may order you to pay a \$10,000 restitution fine, and if you violate your conditions of parole you would owe \$20,000. The statutory scheme allows for the reinstatement of this additional fine without the need for any further court proceedings.²⁰³

Sanction procedures

While parole in California is slightly more centralized than probation, the existence of PRCS and county parole reentry courts still creates variance in procedure across counties. The variance in revocation procedure means that there is also potential for arbitrary variance in revocation outcomes across counties.

Statewide Standards

CA Penal Codes 1203.2 and 3000.08 establish a statutory framework for parole revocation.²⁰⁴ The following graphic depicts what the road looks like leading up to a court invoking parole revocation proceedings and possible alternatives along the way.²⁰⁵

¹⁹⁵ CAL. PENAL CODE § 3451(a)-(c)(1) (West)

¹⁹⁶ CAL. PENAL CODE § 3000.08(a), CAL. PENAL CODE § 3455(a) (West)

¹⁹⁷ *Back In Stride Participant Handbook Guidelines and Program Information*, JUD. BRANCH OF CAL., 4, (Apr. 1, 2011), https://courts.ca.gov/sites/default/files/courts/default/2024-12/sfprc_handbook_final.pdf

¹⁹⁸ *Id.*; CAL. PENAL CODE § 3015(d)(2) (West)

¹⁹⁹ *Government*, TUOLUMNE COUNTY CALIFORNIA, <https://www.tuolumnecounty.ca.gov/27/Government> (last visited Mar. 20, 2025).

²⁰⁰ CAL. PENAL CODE § 1202.4(c) (West)

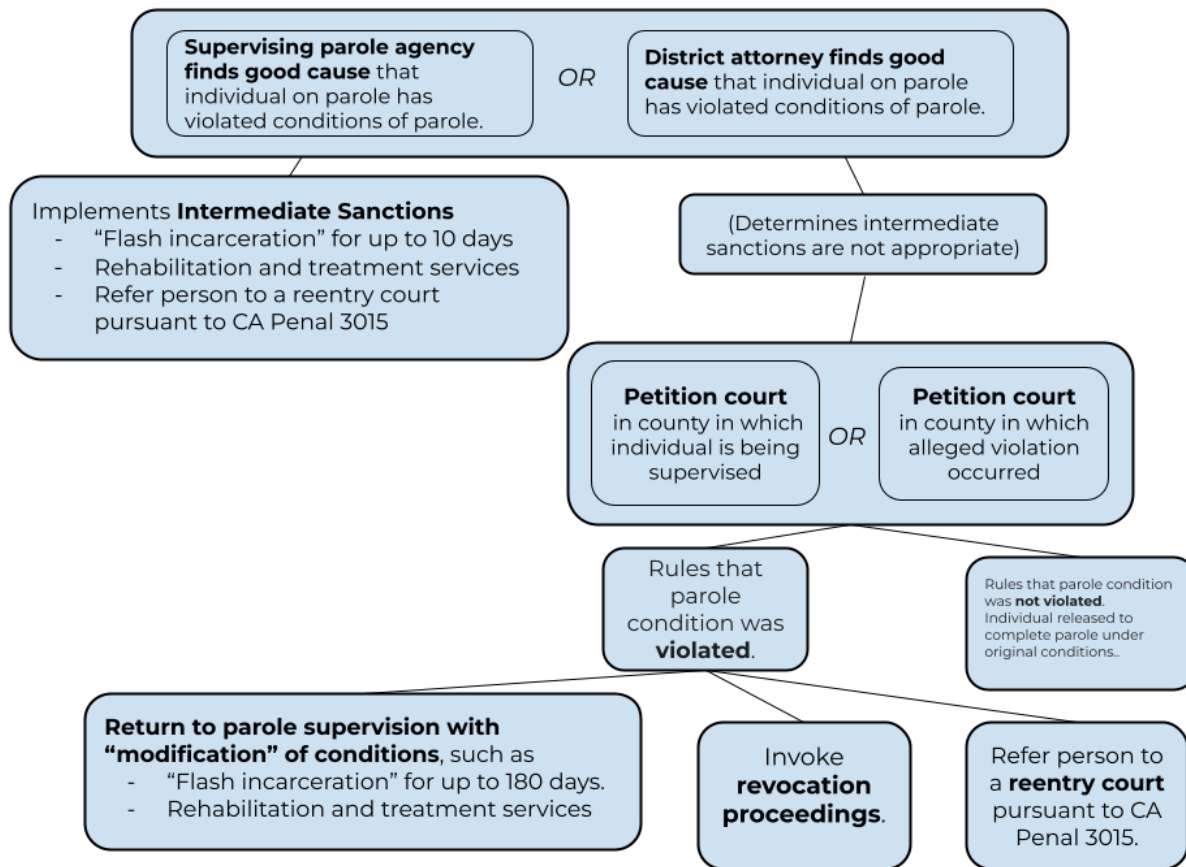
²⁰¹ CAL. PENAL CODE § 1202.45 (West)

²⁰² *Id.* at (c)

²⁰³ CAL. PENAL CODE § 3060.1 (West)

²⁰⁴ *People v. DeLeon*, 399 P.3d 13, 18 (Cal. 2017)

²⁰⁵ CAL. PENAL CODE § 1203.2 (West); CAL. PENAL CODE § 3000.08 (West)



Petitions for revocation: If a supervising parole agency is petitioning a county court to revoke parole, the petition must include a written report that lists the reasons for that agency's determination that intermediate sanctions without court intervention are inappropriate responses to the alleged violations.²⁰⁶ The parole agency's explanation of why intermediate sanctions for a parole violation are inappropriate must be individualized, as opposed to a generic statement.²⁰⁷ Conversely, petitions to revoke parole filed by district attorneys are *not* statutorily required to be accompanied by a written report and do not need to provide reasoning for surpassing intermediate sanctions.²⁰⁸ Both entities have equal authority to file revocation petitions, so it is not uncommon for duplicate petitions for the same alleged violation to be filed.²⁰⁹

Civil, not criminal: As with probation, California does not consider parole revocation a part of criminal prosecution, and thus, the full panoply of rights due in a criminal trial does not apply to parole revocation hearings.²¹⁰

²⁰⁶ CAL. RULES OF CT. 4.541(e) (West)

²⁰⁷ *People v. Williams*, 286 Cal. Rptr. 3d 804, 810 (Cal. Ct. App. 2021)

²⁰⁸ *Id.*; *People v. Castel*, 219 Cal. Rptr. 3d 829, 834 (Cal. Ct. App. 2017)

²⁰⁹ Telephone Interview with Nadia Iqbal, Deputy Public Defender, San Francisco Public Defender's Office, (Feb. 13, 2025); Telephone Interview with Ryan Yoo, Deputy Public Defender, Fresno County Public Defender's Office, (Mar. 14, 2025).

²¹⁰ *People v. Gray*, 533 P.3d 519, 524 (Cal. 2023)

Timeline: Despite facing a lower standard of due process than criminal proceedings, individuals facing revocation of their parole status in California are owed a minimum of two steps: (1) a preliminary or probable cause hearing: an initial determination that there exist or do not exist grounds which may support revocation thus justifying a temporary detention pending formal revocation proceedings; and (2) the final revocation hearing: a more formal proceedings requiring factual determinations and dispositions based thereon.²¹¹ In cases where bail is imposed because the alleged violation of parole conditions involves a criminal charge, separate hearings on bail motions may occur.²¹²

A lower standard of due process than criminal proceedings: Minimum due process requirements for parole revocation hearings in California have not risen past the constitutional floor set by the United States Supreme Court over 50 years ago in *Morrissey*: written notice of claimed violation, disclosure of adverse evidence, right to confront and cross-examine witnesses, neutral and detached hearing board, and written statement by fact finders as to evidence relied on and reasons for revocation.²¹³

Standard of proof: Just like in probation revocation matters, the requirements of due process at a parole revocation hearing do not include a heightened standard of proof. All that is required for the revocation of parole is enough evidence to satisfy the fact finder that the conduct of the petitioner has not met the conditions of parole.²¹⁴

Willful requirement: Section 1203.2 of the California Penal Code provides that parole “shall not be revoked solely for failure of a person to make restitution, or to pay fines, fees, or assessments, imposed as a condition of supervision unless the court determines that the defendant has willfully failed to pay and has the ability to pay.”²¹⁵

Notice requirement: The following notices must be given to a supervised person in writing at their first court appearance in a revocation proceeding: (1) the court’s motion to revoke probation, and (2) the probation or parole officer or the district attorney’s petition to revoke probation.²¹⁶

County Standards

Timeline: Pre-hearing conferences are also common within county parole systems.²¹⁷

Ability to pay: An individual on parole’s ability to pay is assessed using the same standards outlined in the “county standards” for determining a probationer’s ability to pay

Availability of alternatives: California’s Penal Code allows for—rather than mandates—counties to establish parole reentry courts as a tool to fight recidivism.²¹⁸ The goal of this program is to reduce

²¹¹ *Morrissey v. Brewer*, 408 U.S. 471, 475 (1972); *DeLeon*, 399 P.3d at 18

²¹² See Telephone Interview with Nadia Iqbal, Deputy Public Defender, San Francisco Public Defender’s Office, (Feb. 13, 2025); Telephone Interview with Ryan Yoo, Deputy Public Defender, Fresno County Public Defender’s Office, (Mar. 14, 2025); CAL. PENAL CODE § 1270.2 (West)

²¹³ *Morrissey*, 408 U.S. at 487-88; *Rodriguez*, 795 P.2d at 785

²¹⁴ *Rodriguez*, 795 P.2d at 784-45

²¹⁵ CAL. PENAL CODE § 1203.2(a) (West)

²¹⁶ *Id.* at (b)(2)

²¹⁷ Telephone Interview with Nadia Iqbal, Deputy Public Defender, San Francisco Public Defender’s Office, (Feb. 13, 2025); Telephone Interview with Ryan Yoo, Deputy Public Defender, Fresno County Public Defender’s Office, (Mar. 14, 2025).

²¹⁸ CAL. PENAL CODE § 3015 (West); Telephone Interview with Nadia Iqbal, Deputy Public Defender, San Francisco Public Defender’s Office, (Feb. 13, 2025); Telephone Interview with Ryan Yoo, Deputy Public Defender, Fresno County Public Defender’s Office, (Mar. 14, 2025).

recidivism.²¹⁹ To accomplish this goal, the statutory scheme adopts the highly structured model of drug and collaborative courts, including “close supervision and monitoring, dedicated calendars, non adversarial proceedings, frequent drug and alcohol testing, and close collaboration between the respective entities involved to improve the participant's likelihood of success on parole.”²²⁰

Right to appointed counsel

California’s Criminal Justice Realignment Act of 2011 was passed with the intent to "provide for a uniform supervision revocation process for petitions to revoke probation, mandatory supervision, postrelease community supervision, and parole.”²²¹ It represents “one of the most significant changes in criminal justice policy since statehood.”²²² The act resulted in the consolidation of probation and parole revocation proceedings and the subsequent incorporation of the right to appointed counsel into parole revocation proceedings.²²³ California Penal Code Section 1203.2 controls both procedures and references the right of appointed counsel for an individual subject to revocation proceedings of both parole and probation.²²⁴

However, an exception to this recent expansion of due process protections for individuals on parole in California is the statutory allowance and encouragement of “flash incarceration” periods.²²⁵ Through intermediate sanctions for alleged parole violations, the supervising parole agency or district attorney’s office can imprison someone for violating parole in the county jail for up to 10 days without any involvement by the court or another third party in approving their finding that a condition of parole was violated.²²⁶ The San Francisco Public Defender's Office reports that their clients who have been subject to flash incarceration are often held the full 10 days before even being allowed to contact their office.²²⁷

²¹⁹ CAL. PENAL CODE § 3015(a) (West)

²²⁰ *Id.* at (e)(1)

²²¹ *DeLeon*, 399 P.3d at 17

²²² *Criminal Justice Realignment*, JUD. BRANCH OF CAL., <https://courts.ca.gov/partners/criminal-justice-realignment> (last visited Feb. 27, 2025).

²²³ *DeLeon*, 399 P.3d at 25

²²⁴ CAL. PENAL CODE § 1203.2(b)(2) (West). *See also* CAL. PENAL CODE § 3000.08(f)

²²⁵ CAL. PENAL CODE § 3000.08(d) (West)

²²⁶ *Id.* at (d)-(e)

²²⁷ Telephone Interview with Nadia Iqbal, Deputy Public Defender, San Francisco Public Defender’s Office, (Feb. 13, 2025).

Florida

General Takeaway

In probation revocation hearings, there is a categorical right to counsel.

The right to appointed counsel is provided for in all probation and community control revocation cases to ensure a more uniform and easily understandable rule. Counsel must be provided before the individual facing revocation may be required to respond to the charges against them.

In parole revocation hearings, there is a discretionary right to counsel.

The right to appointed counsel is determined on a case-by-case basis.

Probation and Community Control

Incarceration for failure to pay LFOs

When a person is placed on probation or community control, as a term or condition of their probation or community control, they may have to pay restitution or reparations to the aggrieved party in an amount determined by the court.²²⁸ They may also be responsible for attorney's fees and costs associated with using a public defender.²²⁹ Additionally, they may be required to pay an application fee of \$50 to be considered indigent when applying for the appointment of a public defender.²³⁰ Anybody placed on probation or community control must pay supervision costs.²³¹ For those convicted of misdemeanors, such supervision costs are at least \$40 per month.²³² Individuals convicted of felonies and placed on probation or community control must pay a \$2-per-month surcharge in addition to their supervision costs, which are determined by the supervising agency.²³³

A failure to pay any contribution as required under Florida Statute §948.09(3) “may constitute a ground for the revocation of supervision.” A person may be exempt from these costs if they have made diligent efforts but failed to earn sufficient income to pay them, are in school or training designed to prepare them for gainful employment, have an employment handicap, or “are responsible for the support of dependents” and payment would “constitute an undue hardship.”²³⁴

If the individual accused of willful nonpayment asserts their inability to pay restitution or the cost of supervision, they must prove by clear and convincing evidence that they do not have “the present resources available to pay restitution or the cost of supervision despite sufficient bona fide efforts legally to acquire the resources to do so.”²³⁵ If the accused has made genuine efforts but is unable to pay

²²⁸ FLA. STAT. § 948.03(1)(a)(f)

²²⁹ FLA. STAT. § 938.29(1)(a)

²³⁰ FLA. STAT. § 27.52(1)(b)

²³¹ FLA. STAT. § 948.09(1)(a)(1)

²³² *Id* at (1)(a)(2)(b)

²³³ *Id* at (1)(a)(2)

²³⁴ *Id* at (3)(a); *Id* at (3)(b)

²³⁵ FLA. STAT. § 948.06(5)

restitution or supervision costs, the court must consider alternative punishments instead of imprisonment.²³⁶ The court can imprison an individual on probation or under community control even if they have made genuine efforts to pay restitution or supervision costs, but only if alternative measures are insufficient to serve the state's interests in punishment and deterrence.²³⁷

Sanction procedures

Failure to pay LFOs is a “low-risk” violation, as are positive drug or alcohol tests and failures to report to the probation office.²³⁸ After the first or second low-risk violation, the probation officer in charge may offer the individual on probation or community control an alternative sanction.²³⁹ These include, but are not limited to, up to five days in county jail, counseling, drug testing, and curfew for up to 30 days.²⁴⁰ Participating in this alternative sanction program is not an adjudication of guilt.²⁴¹ After three low-risk violations, the individual on parole is seen as having committed a “moderate-risk” violation.²⁴² Alternative sanctions for a first moderate-risk violation include but are not limited to: 21 days in county jail, house arrest for 90 days, and electronic monitoring for 90 days.²⁴³ After either one moderate-risk violation or three low-risk violations, the individual faced with revocation of probation or community control is no longer eligible for alternative sanctions.²⁴⁴ If the individual who is accused of nonpayment is no longer eligible for the alternative sanction program or rejects the offer from the probation officer, then their probation or community control may be revoked, and a warrant may be issued by the court for their arrest.²⁴⁵

Outside of the alternative sanctioning system, the next procedural steps look at whether the person accused of nonpayment admits to violating the terms of their probation or community control.²⁴⁶ After being arrested and brought before the court, the individual must be advised of their charge.²⁴⁷ If the individual admits to the charge, their probation or community control may be revoked, modified, or continued.²⁴⁸ If revoked, the judge shall examine the underlying charge for which the individual was originally convicted or admitted and may impose any sentence that initially could have been imposed before probation or community control.²⁴⁹ If the accused individual denies violating the terms of their probation or community control, the judge may either detain them, release them with or without bail pending a further hearing, or dismiss the violation charge.²⁵⁰ If the charge is not dismissed, then the individual must be allowed to be fully heard in person, either on their own behalf or represented by counsel.²⁵¹ After such a hearing, the court may revoke, modify, or continue the probation or community control.²⁵² If such probation or community control is revoked, the court shall adjudge the individual guilty

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ FLA. STAT. § 948.06(9)(b)

²³⁹ *Id.* at (9)(e)

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² *Id.* at (9)(c)

²⁴³ *Id.* at (9)(d)

²⁴⁴ *Id.*

²⁴⁵ *Id.* at (9)(h)(1)(a)

²⁴⁶ *Id.* at (4)

²⁴⁷ *Id.*

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ *Id.*

²⁵¹ *Id.*

²⁵² *Id.*

of the offense charged and impose any sentence that it might have originally imposed before placing the individual on probation or into community control.²⁵³

Right to appointed counsel

A person facing probation revocation has an absolute right to counsel in such a proceeding.²⁵⁴ Unless there has been an informed waiver of that right, such a person is entitled to counsel and it must be afforded to them before they are “required to respond in any manner to the revocation charges.”²⁵⁵ *Hicks* determined that this rule is straightforward to implement and comprehend while also ensuring minimal strain on the resources of the public defender system.²⁵⁶ This right to appointed counsel also extends to individuals facing revocation of community control.²⁵⁷

Parole

Incarceration for failure to pay LFOs

The parole commission is usually required to impose, as a condition of parole, the payment of fines, fees, restitution, or other court-ordered costs unless the commission finds reasons to the contrary.²⁵⁸ If the individual on parole fails to make these required payments, it is considered by the commission to be a violation of parole and may be cause for revocation of parole.²⁵⁹ When deciding whether to revoke parole, the commission shall take into account the individual's employment status, earning capacity, financial resources, the willfulness of their nonpayment, and any other relevant “special” circumstances affecting their ability to pay.²⁶⁰ “A violation of the terms of parole may render [the individual] liable to arrest and a return to prison to serve out the term for which the parolee was sentenced.”²⁶¹

Sanction procedures

Any member of the Florida Commission on Offender Review or Control Release Authority (FCOR) with “reasonable grounds to believe” that an individual on parole has violated the terms and conditions of their parole may issue a warrant for their arrest.²⁶² After their arrest, the individual may be kept in jail or released to wait for further proceedings.²⁶³ Also, any parole or probation officer with “reasonable grounds to believe” that an individual violated the terms or conditions of their parole has the right to arrest the individual without a warrant and bring them in front of the FCOR, at which point the individual may similarly be kept in jail or released to await further proceedings.²⁶⁴ Additionally, if a law enforcement officer has probable cause to believe that an individual on parole has violated the terms of their parole, the officer can arrest and detain them without a warrant.²⁶⁵

²⁵³ *Id.*

²⁵⁴ *State v. Hicks*, 478 So.2d 22, 23 (Fla. 1985)

²⁵⁵ *Id.*

²⁵⁶ *Id.*

²⁵⁷ *Torres v. State*, 517 So. 2d 796, 797 (Fla. Dist. Ct. App. 1988)

²⁵⁸ FLA. STAT. § 947.181(1)

²⁵⁹ *Id.* at (2)

²⁶⁰ *Id.* at (4)

²⁶¹ FLA. STAT. § 947.21(1)

²⁶² FLA. STAT. § 947.22(1)

²⁶³ *Id.*

²⁶⁴ *Id.* at (2)

²⁶⁵ *Id.* at (3)

A person arrested for violating the terms of their parole must be granted a prompt preliminary hearing within thirty days of their arrest.²⁶⁶ The purpose of this hearing is to determine if there is probable cause or reasonable grounds to believe that the individual has committed a violation of the terms or conditions of their parole.²⁶⁷ The preliminary hearing may be waived.²⁶⁸ If the preliminary hearing results in a finding of probable cause or reasonable grounds to believe that a violation of the terms or conditions of parole has occurred, then a final revocation hearing on the alleged violation is required.²⁶⁹ The individual must appear in person and may introduce evidence necessary to the charge of the violation.²⁷⁰ The final revocation hearing may also be waived.²⁷¹ If the FCOR determines that revocation of parole is proper, then they shall revoke the parole and return the individual to prison to serve the sentence originally imposed upon them.²⁷² Alternatively, the FCOR may reinstate the original order of parole, order the placement of the individual into a community control program, or enter such other order as is proper.²⁷³ If their parole is revoked, the individual may, at the discretion of the FCOR, be credited with any portion of the time they had satisfactorily served on parole.²⁷⁴

Right to appointed counsel

At both the preliminary and final revocation hearings, the individual on parole has a right to be represented by counsel and must be informed of that right both orally and in writing.²⁷⁵ However, this right does not provide for automatic appointed counsel.²⁷⁶ Rather, the determination of whether an individual facing parole revocation is done on a case-by-case basis.²⁷⁷ In *Mattern v. Fla. Parole Com'n*, the court reasoned that there are significant differences between probation and parole that warrant a difference in the due process protections of individuals facing revocation of probation and parole.²⁷⁸ For example, it highlighted that probation is under the jurisdiction of the courts while parole is under the jurisdiction of the FCOR.²⁷⁹ Additionally, it noted that parole revocation hearings are conducted by nonlawyers, and requiring appointed counsel in all such hearings would result in the State also needing to use counsel in this manner.²⁸⁰ In sum, the *Floyd* court was persuaded by the State's belief that requiring appointed counsel would lead to vastly prolonged proceedings and immense costs to them, and ruled that the appointment of counsel in parole revocation proceedings shall be done on a case-by-case basis.

²⁶⁶ FLA. STAT. § 947.23(1)

²⁶⁷ *Id.*

²⁶⁸ *Id.*

²⁶⁹ *Id.* at (2)

²⁷⁰ *Id.*

²⁷¹ *Id.*

²⁷² *Id.* at (6)(a)

²⁷³ *Id.* at (6)(b)

²⁷⁴ FLA. STAT. § 947.21(2)

²⁷⁵ FLA. STAT. § 947.23(4)(b)

²⁷⁶ *Mattern v. Fla. Parole Comm'n*, 707 So .2d 806, 808 (Fla. Dist. Ct. App. 1998)

²⁷⁷ *Id.*

²⁷⁸ *Floyd v. Parole and Prob. Comm'n*, 509 So . 2d 919, 920 (Fla., 1987)

²⁷⁹ *Id.*

²⁸⁰ *Id.*

Hawaii

General Takeaway

In probation revocation hearings, there is a categorical right to counsel.

Individuals on probation who are facing revocation hearings have a right to appointed counsel if they are deemed indigent, but they must request representation to be afforded this right. However, the court can revoke this right if it determines the individual is able to afford their own counsel at any point of the proceedings.

In parole revocation hearings, there is a categorical right to counsel.

Individuals on parole who are facing revocation hearings have a right to appointed counsel if they are deemed indigent and request to be afforded representation. However, this right exists only at the final revocation hearing, and not at the preliminary hearing. This right may be revoked at any stage in the proceedings if the court determines that the individual is financially capable of paying.

Probation

Incarceration for failure to pay LFOs

When an individual is sentenced to probation and required to pay a fee or fine as a condition, failure to make the payment may result in incarceration.²⁸¹ When the court revokes probation, it may impose any sentence that might have been imposed originally for the crime of which the individual on probation was convicted.²⁸² The court may require the individual on probation to show why their default was not purposeful or willful.²⁸³ If the court finds that there was no good faith effort to obtain the required funds for payment, the court may order the individual to be committed until the fee or fine is paid.²⁸⁴

If the court decides that the default in payment is purposeful or willful, they will set the amount for imprisonment based on how much the individual on probation owes.²⁸⁵ For every \$250 owed, the individual can be jailed for a day and no longer.²⁸⁶ If the fee or fine is from a conviction of a violation or a petty misdemeanor, the individual cannot be imprisoned for more than 30 days.²⁸⁷ If the original conviction is anything other than a violation or a petty misdemeanor, then the individual cannot be imprisoned for more than one year for nonpayment.²⁸⁸ For each day the individual is in jail, they will receive credit toward their debt at a rate of \$250 per day.²⁸⁹

Sanctions procedures

²⁸¹ HAW. REV. STAT. § 706-644(1).

²⁸² HAW. REV. STAT. § 706-625(5).

²⁸³ HAW. REV. STAT. § 706-644(1).

²⁸⁴ *Id.*

²⁸⁵ *Id.* at (3).

²⁸⁶ *Id.*

²⁸⁷ *Id.*

²⁸⁸ *Id.*

²⁸⁹ *Id.*

When there is a default in payment of probation fees or fines, the court may require that the individual on probation show why their default should not be considered willfully disobedient.²⁹⁰ If the court chooses this path, it may issue a summons or a warrant for the arrest of the individual on probation.²⁹¹

If it appears that the individual on probation's default in the payment of a LFO is not willful, the court may grant the individual additional time for payment, reduce the amount of each installment, or waive the LFO in whole or in part.²⁹² The court could also convert the unpaid portion of the LFO to community service.²⁹³

The court can only revoke probation after a hearing is held.²⁹⁴ Motions to revoke probation are for matters where the individual on probation has inexcusably failed to comply with a substantial requirement as a condition of the order.²⁹⁵ The prosecuting attorney, probation officer, and individual on probation will all be notified by the movant in writing of the time, place, and date of any such hearing and the grounds the action is proposed.²⁹⁶ All parties have the right to appear at the hearing in support or opposition to the application and may present evidence for the court's consideration.²⁹⁷ The court could decide not to revoke probation but rather modify the requirements if that is determined to better assist an individual on probation in a law-abiding life.²⁹⁸

Right to appointed counsel

An individual on probation has the right to counsel during revocation or modification of probation conditions.²⁹⁹ If someone cannot afford a lawyer and is arrested, charged, or convicted of an offense that could lead to jail or prison time—including probation revocation, which may result in incarceration—they have the right to be represented by a public defender.³⁰⁰

However, at any time after counsel is appointed, if the court decides that the individual with appointed counsel is now able to pay completely or make a partial payment for the representation, it can terminate the appointment of counsel (unless the person being represented agrees to pay from there onward).³⁰¹

Parole

Incarceration for failure to pay LFOs

The Hawaii Paroling Authority can order that an individual pay a fee or fine as a condition of parole.³⁰² While parole supervision fees do not apply, individuals convicted of certain drug offenses may be required to cover the costs of drug testing or assessments.³⁰³ An individual may also be ordered to pay a

²⁹⁰ HAW. REV. STAT. § 706-644(1).

²⁹¹ *Id.*

²⁹² *Id.* at (4).

²⁹³ *Id.*

²⁹⁴ HAW. REV. STAT. § 706-625(1).

²⁹⁵ *Id.* at (3).

²⁹⁶ *Id.*

²⁹⁷ *Id.*

²⁹⁸ HAW. REV. STAT. § 706-625(4).

²⁹⁹ *Id.* at (2).

³⁰⁰ HAW. REV. STAT. § 802-1.

³⁰¹ HAW. REV. STAT. § 802-6.

³⁰² HAW. REV. STAT. § 706-670(2); HAW. REV. STAT. § 706-605(6); HAW. REV. STAT. § 706-624(3).

³⁰³ HAW. REV. STAT. § 353G-7(6).

crime victim compensation fee that ranges from \$30 to \$505, depending on the severity of their offense.³⁰⁴ If an individual is unable to pay the imposed compensation fee, the court may waive it.³⁰⁵

Parole cannot be revoked without a determination that a violation of parole has occurred.³⁰⁶ The standard of proof applied in determining a violation of parole has occurred is a preponderance of the evidence.³⁰⁷ If an individual is ordered to participate in a treatment program as a condition of their parole, a supervising agency is allowed to *modify* their sentence if they fail to pay any drug testing and assessment fees—but they are not specifically allowed to revoke or reincarcerate.³⁰⁸

Sanction procedures

The Administrative Secretary has the authority to arrest or temporarily detain an individual on parole at any time to determine whether sufficient grounds exist for reimprisonment, parole revocation, or other disciplinary action in response to a violation.³⁰⁹ The Hawaii Paroling Authority is also authorized to revoke an individual's parole.³¹⁰

An individual suspected of violating a term and condition of their parole will have a preliminary hearing prior to their revocation hearing unless it is waived.³¹¹ The purpose of the preliminary hearing is to determine if there is probable cause to find that the terms and conditions of parole were violated.³¹² The preliminary hearing must take place within five business days of the arrest.³¹³ However, a preliminary hearing is *not* held if the individual accused of violating their parole was not arrested and detained; in this case, the statute only mandates a single, final parole revocation hearing (referred to in the statute only as “parole revocation hearing”).³¹⁴

Prior to the preliminary hearing, an individual on parole is provided with written notice that includes the purpose of the hearing, the allegations of parole violation(s), their right to waive the hearing and remain in custody until the revocation hearing, and other rights granted to those on parole.³¹⁵ The preliminary hearing officer can be “a parole officer or an employee of the Authority who is not[:] the issuer of the warrant, directly assigned to the case, the reporter of the parole violation, or recommending revocation.”³¹⁶ At the preliminary hearing, the individual on parole has the right to appear and present evidence that is relevant to the alleged violation of parole terms and conditions.³¹⁷

At the end of the preliminary hearing, if the hearing officer finds probable cause to believe the individual violated the terms of their parole, a revocation hearing will occur within sixty calendar days of the arrest.³¹⁸ Prior to the hearing, an individual on parole will be provided with written notice at least seven

³⁰⁴ HAW. REV. STAT. § 351-62.6(a); HAW. REV. STAT. § 351-62.6(c).

³⁰⁵ HAW. REV. STAT. § 351-62.6(a).

³⁰⁶ HAW. REV. STAT. § 353-66(b).

³⁰⁷ HAW. CODE R. § 23-700-44(h) (LexisNexis).

³⁰⁸ HAW. REV. STAT. § 353G-7(b).

³⁰⁹ HAW. REV. STAT. § 353-65.

³¹⁰ HAW. REV. STAT. § 23-700-41(a) (LexisNexis).

³¹¹ *Id.* at (c).

³¹² *Id.*

³¹³ *Id.* at (a).

³¹⁴ *Id.* at (c).

³¹⁵ HAW. CODE R. § 23-700-42(c) (LexisNexis).

³¹⁶ *Id.* at (b).

³¹⁷ HAW. CODE R. § 23-700-43(a) (LexisNexis).

³¹⁸ *Id.* at (c), (f).

days in advance from the Authority.³¹⁹ The notice includes the purpose of the hearing, the alleged violation(s) of the terms and conditions of parole, their rights, and the consequences of parole revocation.³²⁰ If the Authority determines that a parole violation has occurred, it may choose to revoke parole, defer the revocation, or allow the individual to remain on parole.³²¹

After a final revocation hearing, an individual whose parole is revoked must serve up to six months or the remainder of their original sentence—whichever is shorter.³²² The minimum term of imprisonment is set by either the court or the paroling authority.³²³ If an individual on parole was arrested and confined awaiting their parole revocation hearing, they will receive credit for time served for the six-month revocation period.³²⁴

Right to appointed counsel

There is no codified right to appointed counsel at a preliminary hearing; the relevant statute states only that an individual has the right to be represented by legal counsel at the final parole revocation hearing.³²⁵ If the individual facing revocation requests counsel but cannot afford one, legal representation shall be appointed for them.³²⁶ A public defender determines indigency subject to the court's review, unless otherwise ordered by the court.³²⁷ If an individual refuses to provide any information necessary for determining indigency, they effectively waive their right to appointed counsel.³²⁸ The court may revoke the appointment of counsel at any time if it determines that an individual has gained the financial ability to retain their legal counsel (unless the individual chooses to continue paying for appointed representation).³²⁹

³¹⁹ HAW. CODE R. § 23-700-44(a) (LexisNexis).

³²⁰ *Id.*

³²¹ *Id.* at (h).

³²² HAW. REV. STAT. § 353-66(e).

³²³ *Id.*

³²⁴ *Id.*

³²⁵ HAW. CODE R. § 23-700-44(c) (LexisNexis).

³²⁶ *Id.*

³²⁷ HAW. REV. STAT. § 802-4.

³²⁸ *Id.*

³²⁹ HAW. REV. STAT. § 802-6.

Idaho

General Takeaway

In probation revocation hearings, there is a categorical right to counsel.

If an individual on probation is found to be indigent, they have a statutory right to appointed counsel for all probation revocation hearings at the state’s expense.

In parole revocation hearings, there is a discretionary right to counsel.

The right to appointed counsel in parole revocation hearings is not automatic; it is discretionary and determined on a case-by-case basis.

Probation

Incarceration for failure to pay LFOs

In Idaho, individuals on state probation or parole are required to pay up to \$75 per month to the Department of Correction, as set by the Idaho Board of Correction.³³⁰ The purpose of these costs is to cover the costs the Department of Correction accrues through supervising individuals on probation and parole.³³¹ Idaho refers to this cost as a “contribution”, but it is a required court-imposed fee associated with a condition of probation or parole.³³² Any failure to pay these “contributions” may serve as grounds for the court to revoke probation.³³³ However, the division responsible for probation and parole within the Department of Correction may exempt an individual from paying supervision costs if they have “diligently attempted but been unable to obtain employment.”³³⁴ Other exemptions may apply to individuals with a physical or mental disability that prevents them from obtaining employment.³³⁵

Sanctions procedures

At any point during probation, the court may issue a warrant for a violation of the conditions and order an individual’s arrest.³³⁶ The court cannot revoke probation without first holding a hearing at which the individual is present and informed of the grounds for revocation.³³⁷ Probation may only be revoked if one of two conditions is met: (1) the court finds that the individual willfully violated a condition of probation, or (2) the individual admits to willfully violating a condition of probation.³³⁸ If the court finds that the individual has violated their probation terms, it may enforce the original judgment if sentencing was withheld or revoke probation if sentencing was previously imposed but suspended.³³⁹

³³⁰ IDAHO CODE § 20-225.

³³¹ *Id.*

³³² *Id.*

³³³ *Id.*

³³⁴ *Id.* at (1).

³³⁵ *Id.* at (2).

³³⁶ IDAHO CODE § 20-222(2).

³³⁷ I.C.R. 33(f).

³³⁸ *Id.*

³³⁹ IDAHO CODE § 19-2603.

Right to appointed counsel

Under Idaho law, individuals found to be indigent are entitled to appointed counsel at every stage of criminal and civil commitment proceedings.³⁴⁰ In determining indigency, the court looks at several different factors in determining who qualifies as indigent.^{341 342}

Parole

Incarceration for failure to pay LFOS

In Idaho, the statutes governing incarceration for nonpayment of LFOs during probation also apply to parole.³⁴³ Therefore, payment of LFOs is a condition of parole, and failure to pay may result in revocation of parole.³⁴⁴

Sanction procedures

When an individual on parole is accused of violating a condition of their release, they are entitled to a fair and impartial hearing on the alleged violation.³⁴⁵ The hearing must be held within thirty days after an individual is served with the violation charges and has been arrested and detained in connection with the alleged parole violation.³⁴⁶ The hearing is held before one or more commissioners or before a hearing officer selected by the executive director.³⁴⁷ Such hearings happen at a location within the state that is reasonably close to where the alleged parole violation occurred.³⁴⁸

Right to appointed counsel

Idaho provides individuals facing parole revocation with certain constitutionally guaranteed rights, including the right to testify, present documents and witnesses, and cross-examine adverse witnesses.³⁴⁹ However, there is no categorical right to appointed counsel at parole revocation hearings, as the court generally views counsel as unnecessary in most cases.³⁵⁰ Instead, the decision to appoint counsel is made on a case-by-case basis, depending on the circumstances.³⁵¹

³⁴⁰ IDAHO CODE § 19-6009(1)(b).

³⁴¹ IDAHO CODE § 19-6011(2-3).

³⁴² The court presumes certain individuals to be indigent unless there is evidence to the contrary. These include: (a) individuals whose monthly income does not exceed 187% of the federal poverty level, (b) those who receive public assistance benefits, and (c) individuals who are currently serving a sentence in a correctional or mental health facility. IDAHO CODE § 19-6011(2)(a-c). This list is not exhaustive, and the court may consider other relevant factors at its discretion. *Id.*

³⁴³ IDAHO CODE § 20-225.

³⁴⁴ *Id.*

³⁴⁵ IDAHO CODE § 20-1008(1).

³⁴⁶ *Id.*

³⁴⁷ *Id.*

³⁴⁸ *Id.*

³⁴⁹ IDAHO CODE § 20-1008(1).

³⁵⁰ *Id.*

³⁵¹ *Id.*

Right to appointed counsel in

Indiana

General Takeaway

In probation revocation hearings, there is a categorical right to counsel.

If indigent, an individual on probation has a statutory right to the assistance of counsel at all probation revocation hearings.

In parole revocation hearings, there is a discretionary right to counsel.

The right to appointed counsel for individuals on parole is not automatically granted and is instead determined on a case-by-case basis.

Probation

Incarceration for failure to pay LFOs

Individuals on probation in Indiana are sometimes able to be incarcerated for failing to pay the fees associated with the terms of their supervision³⁵². When an individual violates terms of their probation, such as for nonpayment of a required fee, the court may revoke probation.³⁵³ However, nonpayment alone cannot serve as the sole basis for incarceration—particularly when the unpaid amounts involve fines, costs, or court-appointed counsel fees.³⁵⁴ Additionally, probation may only be revoked when nonpayment of a financial obligation is due to intentional or reckless noncompliance.³⁵⁵ The Indiana Supreme Court has held that if an individual cannot pay a fine or restitution despite making bona fide efforts, the court must consider alternative sanctions rather than imprisonment.³⁵⁶

Sanction procedures

To begin the revocation process, the court receives a petition by the probation authority alerting them to a probation violation, at which point the court will either order the individual to appear before the court or issue a warrant for their arrest.³⁵⁷ The court then holds a probation violation hearing, where they determine whether there was a violation and what sanctions the court will take in response.³⁵⁸

³⁵² In Indiana, people who are on probation are subject to a required fee of at least \$25 as an initial fee, and at least \$15 per month while on probation. IND. CODE § 35-38-2-1 (West 2015). Additionally, they may have fees for lab testing, programs, and administrative fees. *Id.* The amount of the fees can vary based on whether the person was convicted of a misdemeanor or a felony, or whether it is their first time on probation. *Id.*

³⁵³ IND. CODE § 35-38-2-3.

³⁵⁴ *Id.*

³⁵⁵ *Id.*

³⁵⁶ See *Runyon v. State*, 939 N.E.2d 613, 616 (Ind. 2010).

³⁵⁷ IND. CODE § 35-38-2-3.

³⁵⁸ *Id.*

There is a separate hearing procedure for determining indigency.³⁵⁹ Any time the court imposes an LFO they are required to conduct a hearing to determine the person's indigency.³⁶⁰ If the person is determined to be unable to pay, they may not be incarcerated as a result of defaulting on an LFO.³⁶¹

Right to appointed counsel

An individual on probation has a right to counsel in all probation revocation proceedings.³⁶² This includes the right of an indigent individual to have counsel appointed by the court.³⁶³ Upon an individual's request for the appointment of counsel, the trial court is required to conduct a hearing to determine indigency.³⁶⁴ In exercising discretion over indigency determinations, the trial judge must make a factual finding regarding the individual's ability to retain counsel.^{365 366} A right to be represented or assisted by counsel in a revocation of probation processing may also be waived.³⁶⁷

Parole

Incarceration for failure to pay LFOS

An individual on parole may be required by the parole board to pay for controlled substance testing or reasonable expenses associated with state-approved treatment programs; however, parole may not be revoked solely due to the individual's inability to pay for these specific services.³⁶⁸

Sanction procedures

If an individual is believed to have violated parole, the parole board may require them to appear for a review of their parole obligations and may modify the terms of supervision.³⁶⁹ The Chairman of the Parole Board may order the individual on parole to appear for a preliminary or final parole revocation hearing.³⁷⁰

The purpose of the preliminary hearing is to determine whether probable cause exists to believe that a parole violation has occurred.³⁷¹ This hearing must be held within 10 days of the individual's arrest, unless there is good cause for delay.³⁷² If the alleged violation also constitutes a criminal offense, the preliminary hearing may be waived.³⁷³ During the hearing, the individual on parole has the right to appear and speak, call witnesses, present evidence, and cross-examine certain witnesses.³⁷⁴ If no probable cause is found, the

³⁵⁹ IND. CODE § 35-38-1-18(b).

³⁶⁰ IND. CODE § 35-38-1-18; IND. CODE § 33-37-2-3.

³⁶¹ IND. CODE § 35-38-1-18; IND. CODE § 33-37-2-3.

³⁶² IND. CODE § 35-38-2-3(f).

³⁶³ IND. CODE § 35-33-7-6.

³⁶⁴ IND. CODE § 35-33-7-6.5.

³⁶⁵ *Reese v. State*, 953 N.E.2d 1207, 1210 (Ind. Ct. App. 2011).

³⁶⁶ The court looks at the individual's total financial picture, but they do not have to be "totally without means" in order to be entitled to the appointment of counsel. *Id.* It is based on if the individual "legitimately lacks the financial resources to employ an attorney, without imposing substantial hardship on himself or his family." *Lamonte v. State*, 839 N.E.2d 172, 176 (Ind. Ct. App. 2005).

³⁶⁷ *Cooper v. State*, 900 N.E.2d 64, 66 (Ind. Ct. App. 2009).

³⁶⁸ IND. CODE § 11-13-3-4.

³⁶⁹ IND. CODE § 11-13-3-8.

³⁷⁰ *Id.*

³⁷¹ IND. CODE § 11-13-3-9(a).

³⁷² *Id.* at (e).

³⁷³ *Id.* at (d).

³⁷⁴ *Id.* at (a)(1-3).

alleged violation is dismissed.³⁷⁵ If probable cause is established, the individual may be detained pending the final revocation hearing.³⁷⁶

Parole revocation hearings must be held within 60 days of the individual's confinement for the alleged violation.³⁷⁷ If the individual on parole is not confined pending the revocation hearing, then the hearing may occur up to 180 days after their summons or arrest for parole violation, whichever is earlier.³⁷⁸ Parole revocation charges will be dismissed if the revocation hearing does not occur within these times and there was no good cause for delay.³⁷⁹ If the parole board representative finds that a parole violation occurred, then parole could be modified or revoked.³⁸⁰

Right to appointed counsel

There is no statutory right to counsel in parole revocation hearings.³⁸¹ Instead, the right to counsel is determined on a case-by-case basis, and parole boards are not obligated to appoint counsel in every case.³⁸² In *Hawkins v. Jenkins*, the Court held that appointed counsel should be provided when an individual makes a timely and colorable request based on either: (1) a claim that they did not commit the alleged parole violation, or (2) that there are substantial reasons justifying or mitigating the violation.³⁸³

³⁷⁵ IND. CODE § 11-13-3-9(b).

³⁷⁶ *Id.* at (c).

³⁷⁷ IND. CODE § 11-13-3-10(a)(1).

³⁷⁸ *Id.* at (a)(2).

³⁷⁹ *Id.* at (e).

³⁸⁰ *Id.* at (c).

³⁸¹ IND. CODE § 11-13-3-9.

³⁸² *Hawkins v. Jenkins*, 374 N.E.2d 496, 501 (Ind. 1978).

³⁸³ *Id.*

Right to appointed counsel in

Massachusetts

General Takeaway

In probation and parole revocation hearings, there is a categorical right to counsel.

In Massachusetts, individuals on probation or parole cannot be incarcerated solely for failure to pay LFOs if they are indigent.

Probation

Incarceration for failure to pay LFOs

In Massachusetts, fines can be imposed as part of probation sentences.³⁸⁴ However, individuals on probation cannot be found in violation of probation or incarcerated for failing to pay their LFOs if they cannot reasonably afford to pay.³⁸⁵

Sanctions procedures

As listed in the Superior Court Guidelines for Probation Violation Proceedings, an individual on probation will receive a Notice of Alleged Probation Violation and Hearing that provides the date and time of the initial violation hearing.³⁸⁶ An initial violation hearing will be held to schedule a final violation hearing, to determine whether to release or detain the individual on probation pending the final hearing, and appoint counsel to the individual if they are indigent.³⁸⁷ This hearing occurs 14 days after service of the Notice of Alleged Probation Violation and Hearing.³⁸⁸

A final violation hearing must be held no earlier than 7 days after the initial violation hearing, and within a reasonable time (presumably within 30 days) after the initial violation hearing to determine whether there was a violation of probation.³⁸⁹ An individual on probation can also agree to an earlier date.³⁹⁰

Right to appointed counsel

An individual on probation who is determined to be indigent is entitled to appointed counsel at probation violation hearings.³⁹¹

Parole

Incarceration for failure to pay LFOS

³⁸⁴ MASS. GEN. LAWS ch. 279, § 1.

³⁸⁵ See *Commonwealth v. Brown*, 201 N.E.3d 1281, 1284 (Mass. App. Ct. 2023); Mass. R. Super. Ct. Probation (West), Commentary to Section (b)(i)(citing *Commonwealth v. Henry*, 55 N.E.3d 943, 949 (Mass. 2016)).

³⁸⁶ Mass. R. Super. Ct. Probation (4)(a).

³⁸⁷ *Id.*

³⁸⁸ *Id.* at (4)(a).

³⁸⁹ *Id.* at (4)(c).

³⁹⁰ *Id.*

³⁹¹ Mass. R. Super. Ct. Probation (4)(b).

In Massachusetts, an individual on parole may not be incarcerated solely for nonpayment if they demonstrate that payment would impose a substantial financial hardship on themselves or their immediate family or dependents.³⁹² The determination of this inability to pay is made during a court hearing.³⁹³ If the court finds that paying a fine would cause significant financial hardship, it may impose an alternative penalty, such as community service, instead of a fine or incarceration.³⁹⁴ However, if an individual is incarcerated for failure to pay a fine, they are given a credit of \$90 on the fine for each day incarcerated.³⁹⁵ Once the fine has been paid off then the person incarcerated will be released.³⁹⁶

Sanction procedures

If a single parole board member has reasonable belief that one or more conditions of parole were violated, they may issue a parole violation warrant.³⁹⁷ Within 15 days of being served with a warrant of custody, the Parole Board will hold a preliminary revocation hearing at the location of incarceration, unless there are sufficient facts to enter a guilty verdict.³⁹⁸ A final revocation hearing, conducted by a panel of the Parole Board, determines whether parole will be formally revoked.³⁹⁹ At all revocation hearings, the Board is encouraged to consider less severe sanctions and alternatives to confinement when appropriate.⁴⁰⁰

Right to appointed counsel

In Massachusetts, an individual on parole may not be incarcerated for non-payment unless they are represented by counsel at the commitment proceeding or have waived that right.⁴⁰¹ Individuals deemed indigent are entitled to appointed counsel at no cost.⁴⁰²

³⁹² MASS. GEN. LAWS ch. 127, § 145(a).

³⁹³ *Id.*

³⁹⁴ MASS. GEN. LAWS ch. 127, § 145(d).

³⁹⁵ MASS. GEN. LAWS ch. 127, § 144.

³⁹⁶ *Id.*

³⁹⁷ 120 MASS. CODE REGS. 303.09.

³⁹⁸ 120 MASS. CODE REGS. 303.05.

³⁹⁹ 120 MASS. CODE REGS. 303.16.

⁴⁰⁰ 120 MASS. CODE REGS. 303.01(2).

⁴⁰¹ MASS. GEN. LAWS ch. 127, § 145(b).

⁴⁰² *Id.*

Nevada

General Takeaway

In probation revocation hearings, there is a categorical right to counsel.

An individual on probation who cannot afford counsel is entitled to appointed counsel at every stage of the probation revocation process, as it is considered part of the criminal process.

In parole revocation hearings, there is a discretionary right to counsel.

An individual on parole may be appointed counsel if they are deemed financially unable to retain counsel; however, the decision is made by the hearing officer on a case-by-case basis.

Probation

Incarceration for failure to pay LFOs

An individual on probation failing to pay any required fine or fees, standing alone, cannot be used as the only basis for the revocation of probation.⁴⁰³ However, if the court determines that an individual has the ability to pay the amount due and is willfully avoiding payment, the court may order confinement in the appropriate prison, jail, or detention facility.⁴⁰⁴ This constitutes a technical violation of probation.⁴⁰⁵ When responding to a technical violation, probation officers must consider a person’s ability to successfully complete said conditions, the severity of the violation, previous criminal record, and the number and severity of previous violations.⁴⁰⁶

Sanction procedures

An individual on probation may be arrested and detained for committing a technical violation.⁴⁰⁷ They must then be brought before the court no later than 15 calendar days from the arrest, or else they must be released.⁴⁰⁸ At that time, the court will hold a hearing to determine whether the individual committed a technical violation.⁴⁰⁹ An individual on probation detained for committing a technical violation must receive credit for any time served while waiting for the hearing.⁴¹⁰ If the court determines that the individual on probation committed a technical violation at said hearing, then the “Division” may impose up to 10 days of confinement in a jail or detention facility.^{411 412} The total number of days of confinement imposed must not exceed 30 days.⁴¹³

⁴⁰³ NEV. REV. STAT. § 176A.630(6)(e).

⁴⁰⁴ NEV. REV. STAT. § 176.064(3)(b).

⁴⁰⁵ NEV. REV. STAT. § 176A.510(1)(a).

⁴⁰⁶ *Id.* at (1)(b).

⁴⁰⁷ NEV. REV. STAT. § 176A.630(3).

⁴⁰⁸ *Id.*

⁴⁰⁹ *Id.*

⁴¹⁰ *Id.*

⁴¹¹ *Id.* at (3)(a).

⁴¹² The “Division” refers to the Division of Parole and Probation within the Department of Public Safety, which has the authority to supervise individuals on probation, enforce compliance with court-ordered conditions, and impose sanctions for violations. NEV. REV. STAT. § 176A.040; NEV. REV. STAT. § 176A.400(4); NEV. REV. STAT. § 176A.630(1-2).

⁴¹³ NEV. REV. STAT. § 176A.510(3)(a).

If the court determines that an individual on probation has committed a non-technical violation of a probation condition, it may impose a range of consequences, including modifying the terms of probation or revoking probation altogether.⁴¹⁴

Right to appointed counsel

Every individual facing a misdemeanor hearing where jail time may be imposed and who is financially unable to obtain counsel is entitled to assigned counsel at all stages of the proceedings, from the initial appearance through appeal.⁴¹⁵ The Nevada State Supreme Court has held that state courts should follow the law binding the Ninth Circuit, which states that an indigent criminal defendant is afforded assistance of counsel at a probation revocation hearing.⁴¹⁶ The Ninth Circuit also affirmed that an indigent person on probation is entitled to the appointment of counsel in a probation revocation procedure, as the procedure could result in an extended period of actual or constructive custody.⁴¹⁷ The Ninth Circuit considers this a critical stage of the criminal process, thereby entitling the individual to appointed counsel.⁴¹⁸

Parole

Incarceration for failure to pay LFOS

Individuals on parole must pay a \$30 monthly supervision fee to the Division of Parole and Probation of the Department of Public Safety, unless they are granted a waiver by the Chief Parole Officer.⁴¹⁹

Individuals on parole in Nevada are subject to monthly supervision fees that may be waived to defray the cost of supervision, in whole or in part, if the Chief of the Division of Parole and Probation determines that payment of the fee would create an economic hardship on the individual.⁴²⁰ Willful failure to pay non-waived fees is a technical parole violation.⁴²¹ Willfulness to pay and indigency must be determined by a hearing before a defendant may be imprisoned for non-payment, and if the individual on parole is deemed indigent then they must be allowed reduction or discharge of the fine through installment payments.⁴²²

If the Division of Parole and Probation determines that an individual's failure to pay fees was willful, then there are graduated sanctions considered based on the severity of the current violation, the person's previous criminal record, and the extent to which graduated sanctions were imposed for previous violations.⁴²³ Among these punishments are confining the individual on parole for no more than 10 days at a time and for no more than 30 days in total.⁴²⁴ The entire menu of sanctions must be exhausted before the Division can consider temporary or permanent parole revocation as punishment.⁴²⁵ The first temporary

⁴¹⁴ NEV. REV. STAT. § 176A.660; NEV. REV. STAT. § 176A.780; NEV. REV. STAT. § 176A.630(1)(a-e).

⁴¹⁵ NEV. REV. STAT. § 178.397.

⁴¹⁶ *Rahn v. Warden, Nev. State Prison*, 498 P.2d 1344, 1346 (Nev. 1972).

⁴¹⁷ *Flint v. Hocker*, 462 F.2d 590, 592 (9th Cir. 1972).

⁴¹⁸ *Id.*

⁴¹⁹ NEV. REV. STAT. § 213.1071; NEV. ADMIN. CODE § 213.230.

⁴²⁰ NEV. REV. STAT. § 213.1076(2).

⁴²¹ *Id.* at (3); NEV. REV. STAT. § 213.1519; NEV. REV. STAT. § 213.15101(1)(a).

⁴²² *Gilbert v. State*, 669 P.2d 699, 700 (Nev. 1983).

⁴²³ NEV. REV. STAT. § 213.15101(1)(b).

⁴²⁴ *Id.* at (3)(a).

⁴²⁵ *Id.*

parole revocation cannot exceed 90 days, and the second temporary parole revocation cannot exceed 180 days.⁴²⁶ Additional violations of parole may result in full parole revocation.⁴²⁷

Sanction procedures

The State Board of Pardons Commissioners must hold an inquiry to determine probable cause to believe the violation occurred, where the individual on parole is allowed to speak on their behalf, obtain counsel, present evidence, and question witnesses.⁴²⁸ If the inquiring officer determines there is probable cause, then the individual on parole can be held in prison pending the next hearing for parole revocation.⁴²⁹ Parole revocation hearings must be held within 60 days after determining probable cause exists.⁴³⁰ If parole is revoked for a technical violation, the individual on parole is entitled to credit for time served while waiting for hearing.⁴³¹

Right to appointed counsel

The Nevada courts have held that counsel should be provided at parole revocation hearings if the individual requests it based on a colorable claim that: (i) they did not commit the alleged violation of the conditions of their release; or (ii) even if the violation is a matter of public record or uncontested, there are substantial reasons that justify or mitigate the violation, making revocation inappropriate, and these reasons are too complex or difficult to explain without legal assistance.⁴³² In *Ellison*, the court denied an individual on parole the right to counsel at parole revocation hearings for failing to meet these standards.⁴³³

⁴²⁶ NEV. REV. STAT. § 213.1519(4)(b).

⁴²⁷ *Id.*

⁴²⁸ NEV. REV. STAT. § 213.1513.

⁴²⁹ NEV. REV. STAT. § 213.1515(2).

⁴³⁰ NEV. REV. STAT. § 213.1517.

⁴³¹ NEV. REV. STAT. § 213.1519.

⁴³² *Ellison v. Armstrong*, 651 P.2d 99, 100 (Nev. 1982).

⁴³³ *See Ellison v. Armstrong*, 651 P.2d 99, 100 (Nev. 1982).

Right to appointed counsel in

New Hampshire

General Takeaway

In probation and parole revocation hearings, there is a categorical right to counsel.

If an individual on probation or parole is found to be indigent, they are entitled to appointed counsel and cannot be incarcerated unless that right is granted.

Probation

Incarceration for failure to pay LFOs

In New Hampshire, court-imposed fees on individuals on probation are treated as conditions of release.⁴³⁴ Failure to pay may trigger a probation violation hearing, unless the individual is found to be indigent and therefore unable to afford the assessment.⁴³⁵ However, incarceration may only occur if, after conducting an ability-to-pay hearing to inquire into the individual's financial circumstances and reasons for nonpayment, the court determines that the individual willfully failed to comply.⁴³⁷

Sanctions procedures

When a probation violation is alleged due to failure to pay court-ordered fees and fines, the violation must be formally filed against the individual with a supporting statement of facts.⁴³⁸ An individual is entitled to counsel at all stages of the proceeding, including the appointment of counsel if deemed indigent.⁴³⁹ If they are incarcerated based on a warrant issued by the court, a bail hearing must be held within “72 hours from the time of arrest, excluding weekends and holidays”.⁴⁴⁰

A final public violation hearing before a judge must be held “without unreasonable delay,” during which an individual must be afforded due process, including “prior written notice of the conduct that triggers the filing of the violation,” prior disclosure of the evidence against them, the opportunity to present witnesses and evidence, and the right to cross-examine witnesses.⁴⁴¹ The burden of proof rests with the state, which must establish the violation “by a preponderance of the evidence”.⁴⁴² At sentencing, an individual retains the right to present evidence and testify regarding the sentence to be imposed.⁴⁴³ The court has the discretion to impose any sentence that could have been originally imposed for the underlying offense.⁴⁴⁴

⁴³⁴ N.H. REV. STAT. ANN. § 504-A:13.

⁴³⁵ In New Hampshire, the court can require that an individual on probation pay a monthly supervision fee. N.H. REV. STAT. ANN. § 504-A:13. The required fee is at least \$40, unless the court grants a full or partial waiver. *Id.* The court also has discretion to set a higher amount that they deem necessary. *Id.*

⁴³⁶ N.H. REV. STAT. ANN. § 504-A:13.

⁴³⁷ N.H. REV. STAT. ANN. § 604-A:2-f(1).

⁴³⁸ N.H. R. Crim. Proc. 30(a).

⁴³⁹ *Id.*

⁴⁴⁰ *Id.* at (b)(1).

⁴⁴¹ *Id.* at (c).

⁴⁴² *Id.* at (d).

⁴⁴³ *Id.* at (f).

⁴⁴⁴ *Id.*

Right to appointed counsel

Individuals who face potential incarceration for failure to pay assessments are entitled to legal counsel if they are deemed indigent.⁴⁴⁵

Parole

Incarceration for failure to pay LFOS

An individual on parole in New Hampshire is required to pay all court ordered or supervision fees as a condition of their parole.^{446 447} The parole board may consider any violations of the conditions of parole as grounds for revocation.⁴⁴⁸ While an individual on parole can be incarcerated for willful failure to pay a financial obligation, a person deemed indigent can only be incarcerated when counsel has been appointed to them.⁴⁴⁹

Sanction procedures

All parole revocation hearings in New Hampshire are conducted by a member of the parole board.⁴⁵⁰ If an individual on parole is arrested or detained, sanction proceedings must begin within 45 days, starting with a preliminary hearing to determine whether there is probable cause of a parole violation.⁴⁵¹ If there is probable cause of a violation, a final parole revocation hearing is held.⁴⁵² If a parole violation is established by a preponderance of the evidence, the court may revoke parole.⁴⁵³

Right to appointed counsel

An individual on parole has the right to appointed counsel at a final parole revocation hearing if they are unable to retain counsel.⁴⁵⁴

⁴⁴⁵ N.H. REV. STAT. ANN. § 604-A:2-f(1).

⁴⁴⁶ N.H. CODE ADMIN. R. ANN. PAR 401.02(b)(2).

⁴⁴⁷ Various financial obligations are assessed to people on parole, including at least \$40 per month for supervision. N.H. REV. STAT. ANN. § 504-A:13.

⁴⁴⁸ N.H. CODE ADMIN. R. ANN. PAR 501.01(a).

⁴⁴⁹ N.H. REV. STAT. ANN. § 604-A:2-f.

⁴⁵⁰ N.H. CODE ADMIN. R. ANN. PAR 204.01(a).

⁴⁵¹ N.H. REV. STAT. ANN. § 504-A:6; N.H. REV. STAT. ANN. § 651-A:17; N.H. CODE ADMIN. R. ANN. PAR 501.04; N.H. CODE ADMIN. R. ANN. PAR 501.03.

⁴⁵² N.H. CODE ADMIN. R. ANN. PAR 501.04.

⁴⁵³ N.H. CODE ADMIN. R. ANN. PAR 501.05.

⁴⁵⁴ N.H. CODE ADMIN. R. ANN. PAR 501.04(b)(5).

Right to appointed counsel in New Mexico

General Takeaway

In probation and parole revocation hearings, there is a discretionary right to counsel.

The right to appointed counsel is not automatically guaranteed for individuals deemed indigent but instead is subject to the court's discretion on a case-by-case basis.

Probation

Incarceration for failure to pay LFOs

In New Mexico people on probation can be incarcerated for failing to pay any fees or costs imposed as a condition of their probation.⁴⁵⁵ ⁴⁵⁶ However, they have a valid defense if they did not willfully refuse to pay or made a genuine effort to secure the necessary funds.⁴⁵⁷ Confinement may only be imposed for an individual on probation who is determined to be indigent if no alternative options adequately serve the state's interests.⁴⁵⁸

If the court finds that an individual on probation willfully refused to pay, the court may order them to be incarcerated until they fulfill all or part of the fees or costs.⁴⁵⁹ While incarcerated, they will receive credit toward the fees or costs at a rate of twenty-four times the state minimum wage for each full or partial day of incarceration.⁴⁶⁰ The court also has discretion in determining the maximum length of time the individual on probation can be imprisoned for willful nonpayment.⁴⁶¹

Sanction procedures

At any time during probation, if the individual on probation appears to have violated the conditions of their supervision, such as nonpayment of fees or costs, the court may issue an arrest warrant pending a revocation hearing.⁴⁶² After the individual is arrested for suspected violation, a hearing is held within fourteen days to determine if there is probable cause that a probation violation has occurred.⁴⁶³ If an arrest warrant is not issued, the court or probation officer may issue a notice to appear before the court at an initial hearing on a motion to revoke probation.⁴⁶⁴ An initial hearing on a motion to revoke probation occurs within thirty days of it being filed with the court.⁴⁶⁵ Since individuals on probation are subject to

⁴⁵⁵ N.M. STAT. ANN. § 31-12-3(D) (2023); NMRA, Rule 5-805.

⁴⁵⁶ In New Mexico, as a condition of probation, the court can require that an individual on probation pay supervision fees not exceeding \$1,800 annually, which is based upon their financial circumstances. N.M. STAT. ANN. § 31-20-6; N.M. STAT. ANN. § 31-21-10. These supervision fees can be waived if the parole and probation board conducts an evidentiary hearing and determines that the individual on probation lacks the financial ability to pay. *Id.*

⁴⁵⁷ N.M. STAT. ANN. § 31-12-3(D); NMRA, Rule 5-805.

⁴⁵⁸ N.M. STAT. ANN. § 31-21-15; *State v. Jimenez*, 810 P.2d 801, 806 (N.M. 1991).

⁴⁵⁹ N.M. STAT. ANN. § 33-3-11(A).

⁴⁶⁰ *Id.*

⁴⁶¹ N.M. STAT. ANN. § 31-21-21.

⁴⁶² NMRA, Rule 5-805(A).

⁴⁶³ N.M. Dep't of Corr., CD-052800, Probation/Parole Violations and Absconders, Preliminary Revocation Hearings, Arrest of Offenders and Arrest Orders, 3 (May 22, 2023), <https://www.cd.nm.gov/wp-content/uploads/2024/07/CD-052800.pdf>.

⁴⁶⁴ NMRA, Rule 5-805(A).

⁴⁶⁵ *Id.* at (G).

the supervision of the parole board and the court, this initial hearing can be conducted by either a judge or an impartial probation staff member.^{466 467}

If, after the initial hearing, the decision maker determines that there is probable cause, a final revocation hearing will be held.⁴⁶⁸ At this hearing, the court evaluates whether a probation violation has occurred and, if so, imposes an appropriate sanction.⁴⁶⁹ An individual on probation is afforded the opportunity to present their case and demonstrate either that no violation of the suspended sentence occurred or, if a violation is established, that mitigating circumstances weigh against revocation.⁴⁷⁰

Right to appointed counsel

In New Mexico, the court has ruled that the same procedural safeguards that apply to criminal proceedings do not always extend to revocation hearings, despite the fact that such hearings can result in a loss of liberty.⁴⁷¹ Consequently, individuals facing revocation are not entitled to protections under the Sixth Amendment but are instead afforded the more general right to due process under the Fourteenth Amendment.⁴⁷² Neither due process nor the applicable statutes require that an individual on probation be provided with appointed counsel or represented by retained counsel when appearing before the probation and parole board in a revocation hearing.⁴⁷³ The probation and parole board has discretion in determining the need for appointed counsel on a case-by-case basis.⁴⁷⁴ To determine if an individual is indigent, the court considers various factors, including their income, assets, financial obligations, and the number and ages of any dependents.⁴⁷⁵

Parole

Incarceration for failure to pay LFOs

In New Mexico, individuals on parole are subject to incarceration for nonpayment of their LFOs or any other fine, unless they show that the nonpayment was not a willful refusal to pay.^{476 477} They are credited the state minimum wage in reduction from their owed financial obligation for the time that they are incarcerated for nonpayment.⁴⁷⁸ If an individual lacks the necessary funds to satisfy the costs imposed, they may only be incarcerated for a maximum of fifteen days, regardless of whether the total amount owed exceeds what their credited time would amount to.⁴⁷⁹

⁴⁶⁶ N.M. STAT. ANN. § 31-21-21.

⁴⁶⁷ The Parole Board has the powers and duties of the former state board of probation and parole. N.M. STAT. ANN. § 31-21-25.

⁴⁶⁸ N.M. CODE R. § 22.510.15.8 (LexisNexis).

⁴⁶⁹ *Id.* at (L); N.M. Dep't of Corr., CD-052800, at 3.

⁴⁷⁰ N.M. CODE R. § 22.510.15.8 (LexisNexis); 4-APPFS-2B-08 & 4-APPFS-2B-10.

⁴⁷¹ *State v. Triggs* 281 P.3d 1256, 1260 (N.M. Ct. App. 2012); *State v. Mendoza*, 579 P.2d 1255, 1257 (N.M. 1978).

⁴⁷² *Triggs*, 579 P.3d 1260; *State v. Mendoza*, 579 P.2d 1255, 1257 (N.M. 1978).

⁴⁷³ N.M. STAT. ANN. § 31-21-25.

⁴⁷⁴ *Barnett v. Malley*, 567 P.2d 482, 483-84 (N.M. 1977).

⁴⁷⁵ N.M. STAT. ANN. § 31-16-5.

⁴⁷⁶ N.M. STAT. ANN. § 31-12-3(D).

⁴⁷⁷ In New Mexico, people on parole are subject to various costs associated with their supervision, including the costs of their supervision up to \$1,800 annually, which are paid to the parole division. N.M. STAT. ANN. § 31-21-10; N.M. STAT. ANN. § 31-20-6. Unless these costs are waived based on an evidentiary hearing to determine their ability to pay based on their financial circumstances, these LFOs are considered a condition of parole. N.M. STAT. ANN. § 31-20-6; N.M. STAT. ANN. § 31-18-15.

⁴⁷⁸ N.M. STAT. ANN. § 33-3-11(A).

⁴⁷⁹ *Id.* at (B).

Sanction procedures

When an individual on parole is charged with violating a condition of their parole, such as through nonpayment of financial obligations, they may be subject to arrest and detention prior to any revocation hearing.⁴⁸⁰ A preliminary probable cause hearing will be held within fourteen days of an arrest, and the purpose of this hearing is to determine whether there is probable cause that a parole violation has occurred.⁴⁸¹ This type of preliminary hearing is not necessarily conducted by a judge but can also be conducted by an impartial parole staff member.⁴⁸²

If probable cause has been found, the individual on parole will then be subject to a final parole revocation hearing.⁴⁸³ This final hearing serves to determine whether a parole violation has occurred, and what, if any, sanctions will result from the hearing.⁴⁸⁴

Right to appointed counsel

In New Mexico, there is no right to appointed counsel at a preliminary probable cause hearing for parole revocation even if they have been deemed to be indigent. During the preliminary hearing process, an indigent individual on parole may request appointed counsel; however, the decision to appoint counsel lies within the discretion of the parole board or hearing officer.⁴⁸⁵ However, once they have been determined to need counsel and have been appointed counsel, they are entitled to appointed counsel at any subsequent rehearings.⁴⁸⁶

Generally, there is no guaranteed right to appointed counsel at final parole revocation hearings, as such appointments are discretionary and assessed on a case-by-case basis.⁴⁸⁷ An indigent individual on parole may request appointed counsel; however, the parole board has the ultimate determination of whether counsel is necessary.⁴⁸⁸ The parole board may take into consideration case-specific factors, such as the complexity of the issues at hand, or whether an individual on parole is determined to be capable of advocating for themselves effectively.⁴⁸⁹ If the parole board determines that counsel is necessary, the public defender's office is contacted to represent the individual.⁴⁹⁰

⁴⁸⁰ N.M. STAT. ANN. § 31-21-14 (A)-(B); N.M. CODE R. § 22.510.15.8 (LexisNexis).

⁴⁸¹ N.M. Dep't of Corr., CD-052800, at 15.

⁴⁸² N.M. Dep't of Corr., CD-052800, at 16.

⁴⁸³ N.M. CODE R. § 22.510.15.8 (LexisNexis).

⁴⁸⁴ *Id.*

⁴⁸⁵ N.M. Dep't of Corr., CD-052800, at 16(b).

⁴⁸⁶ *Malley*, 90 N.M. 633, 634-35.

⁴⁸⁷ *Robinson v. Cox*, 419 P.2d 253, 256 (N.M. 1966); *State v. Chavez*, 607 P.2d 640, 646 (N.M. 1979).

⁴⁸⁸ N.M. CODE R. § 22.510.15.8(G) (LexisNexis).

⁴⁸⁹ *Id.*

⁴⁹⁰ N.M. CODE R. § 22.510.15.8(I) (LexisNexis).

Right to appointed counsel in

New York

General Takeaway

In a probation revocation hearing, there is a categorical right to counsel.

If financially unable to obtain counsel, an individual on probation has a right to be assigned counsel by the court during a probation violation hearing.

In a parole revocation hearing, there is a categorical right to counsel.

An individual on parole may not be incarcerated for failing to pay fees.

Probation

Incarceration for failure to pay LFOs

Not all probation fines may lead to incarceration if there is a failure to pay them.⁴⁹¹ The imposition of fines with a provision for imprisonment upon nonpayment is within the discretion of the court.⁴⁹² Even if an initial sentence does not include a provision for imprisonment upon failure to pay fines, such a provision may be added at any time while the fine remains outstanding.⁴⁹³ However, when the court determines that an individual has made a good faith effort to pay a fine or restitution, it is required to consider alternative sanctions before imposing imprisonment.⁴⁹⁴

Sanction procedures

In any instance where an individual on probation fails to pay a fine, the court may issue a warrant authorizing a peace or police officer to take the individual into custody and bring them before the court.⁴⁹⁵ When the court orders imprisonment until a fine is satisfied, it must specify a maximum term of incarceration based on the underlying offense's severity.⁴⁹⁶ In any case where an individual is unable to pay a court-imposed fine, restitution, or reparation, they may apply to the court at any time for resentencing.⁴⁹⁷ The court may modify the conditions of probation at any time prior to the termination of the sentence.⁴⁹⁸ An individual on probation is not required to be present when a modification solely eliminates or relaxes conditions; however, the court must provide written notice within 20 days detailing the nature of the modification.⁴⁹⁹ More extensive modification may not occur unless the individual on probation is personally present.⁵⁰⁰ An individual's probation cannot be revoked or extended without a

⁴⁹¹ N.Y. CRIM. PROC. LAW § 420.10.

⁴⁹² *Id.* at (3).

⁴⁹³ *Id.*

⁴⁹⁴ *People v. Amorosi*, 750 N.E.2d 41, 41 (N.Y. 2001).

⁴⁹⁵ N.Y. CRIM. PROC. LAW § 420.10(3).

⁴⁹⁶ N.Y. CRIM. PROC. LAW § 420.10(4).

⁴⁹⁷ *Id.* at (5).

⁴⁹⁸ N.Y. CRIM. PROC. LAW § 410.20.

⁴⁹⁹ *Id.*

⁵⁰⁰ *Id.*

determination that a probation condition was violated and a hearing in which the individual is given an opportunity to be heard.⁵⁰¹

Right to appointed counsel

An individual on probation is entitled to counsel at all stages of a criminal proceeding and the court must advise them of such rights at the outset of the proceeding.⁵⁰² Specifically, they have the right to be advised of their right to assisted counsel at a probation violation hearing.⁵⁰³ If an individual on probation appears at any subsequent proceedings without counsel, they have the right to court appointed counsel if they are financially unable to obtain one.⁵⁰⁴

Parole

Incarceration for failure to pay LFOS

In New York, an individual on parole may not be incarcerated for failing to pay fees.⁵⁰⁵

Sanction procedures

An individual on parole who fails to pay court-ordered fees may not be reincarcerated solely for nonpayment.⁵⁰⁶

Right to appointed Counsel

An individual on parole has the right to counsel at both preliminary and final parole violation hearings.⁵⁰⁷ Moreover, if they are financially unable to afford counsel, the court is required to assign counsel.⁵⁰⁸

⁵⁰¹ N.Y. CRIM. PROC. LAW § 410.70.

⁵⁰² N.Y. CRIM. PROC. LAW § 410.70.

⁵⁰³ *People ex rel. Decker v. Martin*, 291 N.Y.S.2d 408, 410 (N.Y. App. Div. 1968); *People v. Hamilton*, 271 N.Y.S.2d 694, 697 (N.Y. App. Div. 1966) (holding that an individual on probation accused of probation violation had a right to counsel at an entitled probation violation hearing and should have been fully and correctly advised of such right).

⁵⁰⁴ N.Y. CRIM. PROC. LAW § 170.10(3).

⁵⁰⁵ N.Y. COMP. CODES R. & REGS. tit. 9, § 8004.6(a)(5).

⁵⁰⁶ *Id.*

⁵⁰⁷ N.Y. EXEC. LAW § 259-i(3)(B)(x).

⁵⁰⁸ *Id.*

Ohio

General Takeaway

In probation revocation hearings, there is a categorical right to counsel.

If determined to be indigent, then an individual on probation has a right to appointed counsel. The appointment of counsel to those who violate parole and are not found to be indigent is up to the judge's discretion. In Ohio, community service is typically appointed instead of or in lieu of financial sanctions.

In parole revocation hearings, there is a discretionary right to counsel.

The right to appointed counsel is determined on a case-by-case basis and only permitted if the charges and or the evidence is deemed to be complex or otherwise difficult for the individual on parole to present.

Probation

Under Ohio law, the term “probation” is often used interchangeably with “community control”.

Incarceration for failure to pay LFOs

Ohio has divided its LFOs into two main categories: court costs and financial sanctions.⁵⁰⁹ Under Ohio Rev. Code § 2947.23, courts are required to impose prosecution costs at the time of sentencing but retain the authority to modify, suspend, or waive those costs.⁵¹⁰ Court costs are not intended to serve a punitive, retributive, or rehabilitative purpose like fines.⁵¹¹ Therefore, failure to pay them cannot result in incarceration, as they constitute a civil rather than criminal obligation.⁵¹² If there is a failure to pay court costs, the court may order the defendant to do community service to pay them off in full or until the court is satisfied that they are in compliance with a payment schedule.⁵¹³

In addition to court costs, courts can impose financial sanctions on those on probation.⁵¹⁴ In Ohio, probation may be revoked for willfully failing to pay financial sanctions, provided the nonpayment is not due to an inability to pay despite genuine efforts.⁵¹⁵ If an individual is unable to pay despite making bona fide efforts, the court must consider alternative sanctions but may still impose imprisonment if those alternatives fail to adequately serve the State's interests in punishment and deterrence.⁵¹⁶ Courts may also

⁵⁰⁹ OHIO REV. CODE ANN. § 2947.23(A)(1)(a) (West); OHIO REV. CODE ANN. § 2929.28 (West).

⁵¹⁰ *Id.* at (c).

⁵¹¹ *Strattman v. Studt*, 253 N.E.2d 749, 754 (Ohio 1969).

⁵¹² *Id.*; see also *Strongsville v. Waiwood*, 577 N.E.2d 63, 66 (Ohio Ct. App. 1989).

⁵¹³ OHIO REV. CODE ANN. § 2947.23(A)(1)(a) (West).

⁵¹⁴ “Community control sanctions: Includes but is not limited to day reporting, electronic monitored house arrest, electronic monitoring without house arrest, house arrest without electronic monitoring, jail case management, community service, drug treatment programs, intensive supervision, basic supervision, monitored time, drug and alcohol use monitoring, curfew term, victim offender mediation, and placement in a halfway house, community-based correctional facility or the county jail or workhouse and other appropriate programs.” Ohio Admin. Code 5120:1-5-01(E); OHIO REV. CODE ANN. § 2929.28 (West).

⁵¹⁵ OHIO REV. CODE ANN. § 2947.23(A)(1)(a) (West)

⁵¹⁶ *State v. Harrington*, Nos. 14-03-34, 14-03-35, 2004 WL 417219, at *10 (Ohio Ct. App. Mar. 8, 2004); *State v. Walden*, 561 N.E.2d 995, 998 (Ohio Ct. App. 1988).

impose community service in lieu of all or part of a fine.⁵¹⁷ If the court determines that the individual's failure to pay the sanctions is due to indigency, it may impose community service instead of or in addition to the already imposed court costs.⁵¹⁸ When an individual is imprisoned for failure to pay, court costs and fines must be treated separately, as a person cannot be imprisoned for failing to satisfy court costs.⁵¹⁹

Sanction procedures

Under O.R.C. § 2947.14, whenever a fine is imposed as part of a sentence and the individual fails to pay, the court may hold a hearing pursuant to § 2947.14(A) and (B). At this hearing, the individual has the right to be represented by counsel, testify, and present evidence as to their ability to pay the fine.⁵²⁰ If the court determines that a hearing is necessary, it will assess whether the individual can pay the fines imposed as part of community control or additional court costs, or whether they will be able to do so in the future.⁵²¹ During the hearing, the court will assess the individual's ability to pay, and if it determines that the individual can pay the fine, a warrant may be issued for their arrest.⁵²² At this hearing the court may determine that the individual in violation qualifies as indigent and have them perform community service in lieu of payment.⁵²³ Those held in custody for failure to pay a fine are entitled to a hearing on the next regularly scheduled court day after their arrest to update the court on any changes affecting their ability to pay the fine.⁵²⁴ If the court finds that the individual is able to pay but continues to refuse to do so, they may be incarcerated.⁵²⁵ If the court chooses to incarcerate, it must grant the individual credit against the fine at a rate of \$50 per day.⁵²⁶

Right to appointed counsel

Under Ohio Crim. R. 32.3, an individual in violation of their probation has the right to be represented by counsel and must be advised of that right. If they are convicted of a serious offense and are unable to obtain counsel, then counsel will be assigned to them.⁵²⁷ Consistent with the holdings in *Gideon* and *Mempa*, there is a right to appointed counsel in probation revocation hearings if the individual on probation is deemed indigent.⁵²⁸ However, they may be expected to contribute to the costs of the services rendered by the appointed counsel.⁵²⁹ There is only a statutory right to appointed counsel at the final hearing, where the decision to revoke probation occurs.⁵³⁰ However, the appointment of counsel at a preliminary hearing is within the discretion of the trial judge.⁵³¹

Parole

⁵¹⁷ OHIO REV. CODE ANN. § 2929.27 (West).

⁵¹⁸ OHIO REV. CODE ANN. § 2929.28(B) (West).

⁵¹⁹ *State v. Swift*, No. 20543, 2005 WL 742496, at *4 (Ohio App. 2d Dist. Apr. 1, 2005).

⁵²⁰ OHIO REV. CODE ANN. § 2947.14(B) (West).

⁵²¹ OHIO REV. CODE ANN. § 2929.28(B) (West).

⁵²² OHIO REV. CODE ANN. § 2947.14(C) (West).

⁵²³ OHIO REV. CODE ANN. § 2929.28(B) (West).

⁵²⁴ OHIO REV. CODE ANN. § 2947.14(C) (West).

⁵²⁵ OHIO REV. CODE ANN. § 2947.14(A) (West).

⁵²⁶ If the unpaid portion of the fine is less than \$50, the person shall be imprisoned for one day to satisfy the payment of the fine. O.R.C. § 2947.14(D). If, at any point, a person in violation is arrested with a warrant for nonpayment of a fine and placed in jail, any time served counts toward eliminating the fine. *Id.*; *State v. Swift*, No. 20543, 2005 WL 742496, at *4 (Ohio App. 2d Dist. Apr. 1, 2005).

⁵²⁷ Ohio Crim. R. 32.3(B).

⁵²⁸ *State v. Smith*, 281 N.E.2d 17, 19 (Ohio Ct. App. 1972).

⁵²⁹ OHIO REV. CODE ANN. § 2941.51(D) (West).

⁵³⁰ *State v. McKnight*, 462 N.E.2d 441, 443-44 (Ohio Ct. App. 1983).

⁵³¹ *Id.*

Incarceration for failure to pay LFOs

The parole board or court may impose financial sanctions as a condition of parole.⁵³² Financial sanctions are imposed as part of a sentence.⁵³³ In imposing a financial sanction, the court need only consider whether the defendant has the ability to pay, rather than affirmatively finding that they can.⁵³⁴

The Ohio Adult Parole Authority is authorized to revoke parole when an individual has violated the terms and conditions of their parole.⁵³⁵ However, the revocation must comply with due process requirements, including a hearing to determine whether the violation was willful and whether any mitigating circumstances make revocation inappropriate.⁵³⁶ A parole board member or hearing officer has discretion in deciding the appropriate sanction.⁵³⁷

There is no clear answer for treatment of those deemed indigent for non-payment of financial sanctions in parole.

Sanction procedures

A parole officer may arrest, or order the arrest of, a supervised individual without a warrant if there is reasonable cause to believe they have violated their release conditions.⁵³⁸ The arrested individual will be held in jail until their release status is determined.⁵³⁹ The arresting officer must promptly notify the parole supervision superintendent in writing and submit a report explaining the arrest.⁵⁴⁰

Before revoking a person's parole, the Adult Parole Authority must provide a hearing.⁵⁴¹ However, a hearing is not required if the individual is convicted of or pleads guilty to a new offense committed while on release, which serves as the basis for the revocation.⁵⁴² Revocation hearings are conducted before a parole board member or hearing officer at the county jail, the facility where the individual is in custody, or another location designated by the unit supervisor.⁵⁴³ The hearing determines, based on a preponderance of the evidence, whether the individual violated a condition of release or post-release control sanction.⁵⁴⁴

Right to appointed counsel

The right to appointed counsel in parole revocation hearings is not automatic and depends on the circumstances.⁵⁴⁵ There is also no general categorical right to counsel in all parole revocation hearings.⁵⁴⁶ However, a right to counsel exists if the parole board member or hearing officer determines that the charges or evidence are complex or difficult for the individual on parole to present alone.⁵⁴⁷ If the

⁵³² OHIO REV. CODE ANN. § 2967.28(D)(1)(West).

⁵³³ OHIO REV. CODE ANN. § 2929.18 (West).

⁵³⁴ *State v. Johnson*, 92 N.E.3d 1256, 1268 (Ohio Ct. App. 2017).

⁵³⁵ OHIO REV. CODE ANN. § 2967.15 (West); *State v. Fears*, 110 N.E.3d 951, 959-60 (Ohio Ct. App. 2018); see also *State ex rel. Nedeja v. Capots*, 531 N.E.2d 707, 707-08 (1988).

⁵³⁶ OHIO ADMIN. CODE 5120:1-1-18(A)(3).

⁵³⁷ *Id.*

⁵³⁸ OHIO REV. CODE ANN. § 2967.15(A) (West).

⁵³⁹ *Id.*

⁵⁴⁰ *Id.*

⁵⁴¹ OHIO REV. CODE ANN. § 2967.15(B) (West).

⁵⁴² *Id.*

⁵⁴³ OHIO ADMIN. CODE 5120:1-1-18(A)(1)–(2).

⁵⁴⁴ OHIO ADMIN. CODE 5120:1-1-18(A)(3).

⁵⁴⁵ See *State ex rel. Marsh v. Tibbals*, 77 N.E.3d 909, 914 (Ohio 2017).

⁵⁴⁶ *Id.*

⁵⁴⁷ OHIO ADMIN. CODE 5120:1-1-18(A)(5)(e).

individual cannot afford counsel, a public defender will be appointed to them upon request.⁵⁴⁸ Despite the appointment of counsel, because there is no Sixth Amendment right to counsel in parole revocation hearings, it remains unclear whether the individual in violation of parole has a right to effective counsel.⁵⁴⁹

⁵⁴⁸ *Id.*

⁵⁴⁹ *State ex rel. Mango v. Ohio Dep't of Rehab. & Corr.*, 201 N.E.3d 846, 852 (Ohio 2022).

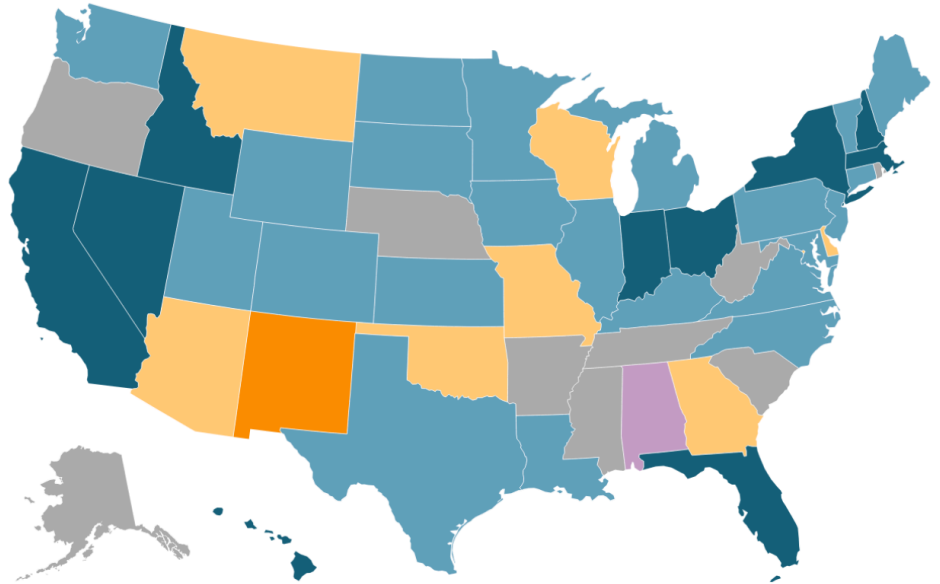
B. Brief Statutory Analysis

The following thirty-nine states and the District of Columbia were statutorily examined to determine whether there exists a right to appointed counsel for individuals facing probation or parole revocation proceedings for non-payment of LFOs. These states were not categorized due to the potential complexities that may exist in the statutes, regulations, and case law that are only briefly examined here. This section serves to provide a general overview of how these states address the issue of the right to appointed counsel in probation and parole revocation hearings due to non-payment of LFOs. As a result, it is suggested that this information be used as a guide to supplement further research.

* Disclaimer: This Map includes categorizations based on preliminary research. States for which only preliminary research has been conducted are categorized as -Categorical, -Discretionary, -Qualified, or Unclear.

50-State Map Key—Probation:

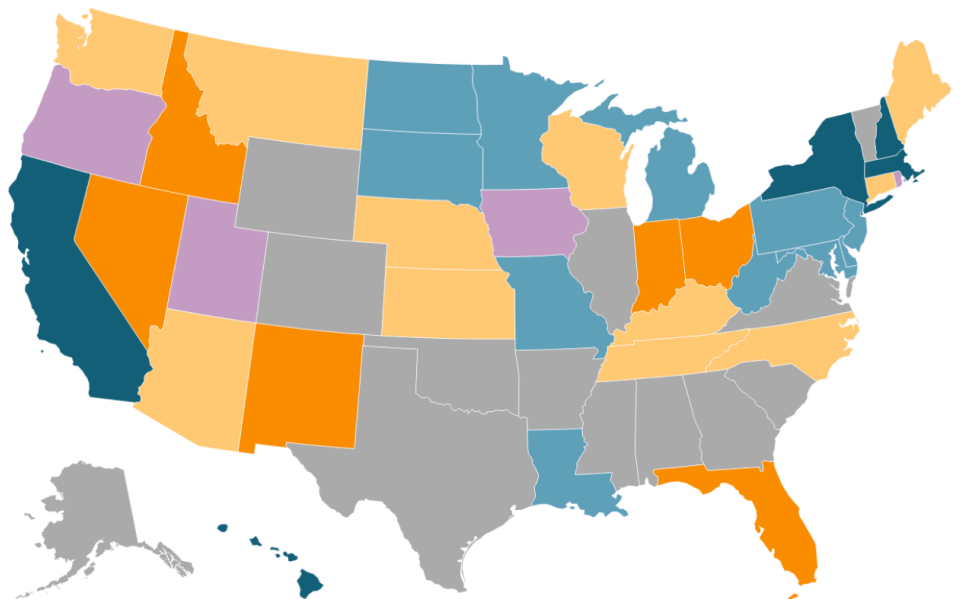
- Categorical:** All indigent individuals in this type of case have a right to counsel without qualification at the hearing where a final decision on probation revocation is made, although the individual may be required to request counsel.
- Categorical:** Only preliminary research has been conducted for this state, but research indicates that RTC in this state is likely Categorical.
- Discretionary:** Courts are permitted but not required to appoint counsel for any indigent individual in this type of case. A request may be required.
- Discretionary:** Only preliminary research has been conducted for this state, but research indicates that RTC in this state is likely Discretionary.
- Qualified:** The established right to counsel or discretionary appointment of counsel is limited in some way, including—(1) the only authority comes from a lower/intermediate court decision or a city government, not a high court/state legislature; (2) a case has cast doubt on prior authority; (3) a statute is ambiguous; or the right or discretionary appointment is not for all individuals or proceedings within that type of case.
- Qualified:** Only preliminary research has been conducted for this state, but research indicates that RTC in this state is likely Qualified.
- Unclear:** Not enough research has been completed to make a determination on the RTC in this state, or the research that has been conducted presents unclear or conflicting information.



* Disclaimer: This Map includes categorizations based on preliminary research. States for which only preliminary research has been conducted are categorized as -Categorical, -Discretionary, -Qualified, or Unclear.

50-State Map Key—Parole:

- Categorical:** All indigent individuals in this type of case have a right to counsel without qualification at the hearing where a final decision on parole revocation is made, although the individual may be required to request counsel.
- Categorical:** Only preliminary research has been conducted for this state, but research indicates that RTC in this state is likely Categorical.
- Discretionary:** Courts are permitted but not required to appoint counsel for any indigent individual in this type of case. A request may be required.
- Discretionary:** Only preliminary research has been conducted for this state, but research indicates that RTC in this state is likely Discretionary.
- Qualified:** The established right to counsel or discretionary appointment of counsel is limited in some way, including—(1) the only authority comes from a lower/intermediate court decision or a city government, not a high court/state legislature; (2) a case has cast doubt on prior authority; (3) a statute is ambiguous; or the right or discretionary appointment is not for all individuals or proceedings within that type of case.
- Qualified:** Only preliminary research has been conducted for this state, but research indicates that RTC in this state is likely Qualified.
- Unclear:** Not enough research has been completed to make a determination on the RTC in this state, or the research that has been conducted presents unclear or conflicting information.



Alabama

Probation

In Alabama, an individual on probation who is deemed indigent cannot be incarcerated solely for failure to pay fines, court costs, or restitution.⁵⁵⁰ Counsel is appointed to individuals who are indigent at probation revocation hearings if they make a colorable claim that they have not committed the violation of probation or if there are substantial reasons that justify or mitigate the violation and make revocation inappropriate.⁵⁵¹

Parole

In Alabama, an individual who is deemed indigent cannot be incarcerated solely for failure to pay a fine, court costs, or restitution.⁵⁵² In Alabama there is an explicit “right to retain and have to counsel” at parole revocation proceedings.⁵⁵³

⁵⁵⁰ Ala. R. Crim. P. 26.11(i)(2).

⁵⁵¹ Ala. R. Crim. P. 27.6(b)(1-2).

⁵⁵² Ala. R. Crim. P. 26.11(i)(2).

⁵⁵³ ALA. CODE § 15-22-32(f)(1)(c).

Alaska

Probation

In Alaska, an individual on probation may not be imprisoned solely because of their inability to pay fines or installments of restitution, where the court finds they made good faith efforts to make payments.⁵⁵⁴ Individuals on probation have a right to be represented by counsel at all proceedings for the revocation of probation.⁵⁵⁵

Parole

After preliminary analysis, it appears that there are no longer statutory parole protections for individuals deemed indigent for failing to pay their parole fees. A required finding of one's inability to pay was removed in 2019.⁵⁵⁶ An individual on parole has an explicit right to an attorney only at preliminary parole revocation hearings.⁵⁵⁷ Additionally, an individual on parole requesting counsel must be given a reasonable period of time to seek and obtain an attorney.⁵⁵⁸ If the individual is found to be ineligible for the services of the Public Defender Agency or alternate public counsel, they have the sole responsibility for arranging and financing their legal aid.⁵⁵⁹

⁵⁵⁴ ALASKA STAT. ANN. § 12.55.051(a) (West).

⁵⁵⁵ ALASKA STAT. ANN. § 12.55.110(a) (West).

⁵⁵⁶ ALASKA STAT. ANN. § 33.16.215(d) (West).

⁵⁵⁷ ALASKA ADMIN. CODE tit. 22, § 20.435 (a).

⁵⁵⁸ *Id.* at (b).

⁵⁵⁹ ALASKA ADMIN. CODE tit. 22, § 20.220 (c)(10).

Arizona

Probation

The Arizona Revised Statutes asserts that willful failure to pay probation fines, surcharges, fees, assessments, restitution, or incarceration costs may be grounds for probation revocation; however, incarceration for failure to pay due to indigency is not explicitly mentioned.⁵⁶⁰ In Arizona, courts have further clarified that financial capabilities must first be assessed before imposing restitution payments onto individuals on probation, and if they are not, then the record must demonstrate that the amount of restitution is “proper discretionary choice.”⁵⁶¹ The presiding judge of each county must establish a procedure for the superior court and limited jurisdiction courts to appoint counsel for individuals deemed indigent and on probation.⁵⁶² Additionally, there is also a right to court-appointed attorneys for individuals deemed indigent in any criminal proceeding if required by the interests of justice.⁵⁶³

Parole

The Arizona Revised Statutes assert that willful failure to pay parole fines, surcharges, fees, assessments, restitution, or incarceration costs may be grounds for probation revocation.⁵⁶⁴ However, if the court finds that the failure to pay was not willful, the court may modify the manner in which costs are paid.⁵⁶⁵ In Arizona, the presiding judge of each county must establish a procedure for the superior court and limited jurisdiction courts to appoint counsel for indigent people on parole.⁵⁶⁶ There is also a right to court-appointed attorneys for individuals deemed indigent in any criminal proceeding if required by the interests of justice.⁵⁶⁷

⁵⁶⁰ ARIZ. REV. STAT. ANN. § 13-915.

⁵⁶¹ *State v. Hawkins*, 656 P.2d 1264, 1267 (Ariz. Ct. App. 1982).

⁵⁶² Ariz. R. Crim. P. 6.2(a).

⁵⁶³ Ariz. R. Crim. P. 6.1(b)(2).

⁵⁶⁴ ARIZ. REV. STAT. ANN. § 31-404.

⁵⁶⁵ ARIZ. REV. STAT. ANN. § 13-810(F)(1).

⁵⁶⁶ Ariz. R. Crim. P. 6.2(a).

⁵⁶⁷ Ariz. R. Crim. P. 6.1(b)(2).

Arkansas

Probation

When an individual on probation does not pay their supervision fees, the court may require them to show that they were financially unable to pay in writing, under oath, or before the court.⁵⁶⁸ If the court finds that it was a refusal to pay, or if there was not a good faith effort to obtain the funds required for payment, the court can order the individual on probation to be imprisoned until the payments are made.⁵⁶⁹ It is unclear from the preliminary statutory analysis whether this state confers a right to appointed counsel.

Parole

An individual on parole can not be imprisoned for nonpayment of costs, that are a condition of their parole, if they are found to be financially unable to make the payments.⁵⁷⁰ An individual on parole has the right to hear and controvert evidence against them, to offer evidence in their own defense, and to be represented by counsel in both the preliminary and revocation hearing.⁵⁷¹ It is unclear from the preliminary statutory analysis whether this state confers a right to appointed counsel.

⁵⁶⁸ ARK. CODE ANN. § 16-93-104(b)(2) (West).

⁵⁶⁹ ARK. CODE ANN. § 16-93-104(b)(3) (West).

⁵⁷⁰ ARK. CODE ANN. § 16-93-104(c)(2) (West).

⁵⁷¹ ARK. CODE ANN. § 16-93-705(b)(4) (West).

Colorado

Probation

An individual on probation, in Colorado, may be required to pay fines and fees as a condition of their supervision.⁵⁷² If the individual is found to not have the ability to pay a financial obligation, the court shall not jail them for non-payment.⁵⁷³ If probation revocation and incarceration are a possible punishment for non-payment, an individual who is indigent shall be appointed counsel, otherwise they cannot be incarcerated.⁵⁷⁴

Parole

When a parole officer has probable cause of a parole violation, they may arrest an individual on parole and bring them to a parole revocation hearing.⁵⁷⁵ The Parole Board must prove the violation beyond a reasonable doubt, and if the alleged violation of parole is for failure to pay a financial obligation, the evidence of failure to pay is sufficient evidence of a violation.⁵⁷⁶ During this revocation proceeding, the individual on parole only has a right to bring their own counsel.⁵⁷⁷

⁵⁷² COLO. REV. STAT. ANN. § 18-1.3-204(2)(a)(V) (West); COLO. REV. STAT. ANN. § 18-1.3-702(1)(a) (West).

⁵⁷³ COLO. REV. STAT. ANN. § 18-1.3-702(3)(a-c) (West).

⁵⁷⁴ COLO. REV. STAT. ANN. § 18-1.3-702(3)(b) (West); Colo. R. Crim. P. 107(d)(1).

⁵⁷⁵ COLO. REV. STAT. ANN. § 17-2-103(1)(f) (West).

⁵⁷⁶ *Id.* at (9)(a).

⁵⁷⁷ *Id.* at (8).

Connecticut

Probation

Financial obligations can be a condition of probation in Connecticut.⁵⁷⁸ When a probation officer has probable cause of a probation violation, they may arrest the individual and subsequently bring them for a hearing.⁵⁷⁹ If an individual is determined to be indigent at this hearing, they are entitled to the services of the public defender.⁵⁸⁰ If a violation is found, probation may be revoked.⁵⁸¹

Parole

Individuals on parole, in Connecticut, may have fines as a condition of their release, and they may be incarcerated for failure to pay them.⁵⁸² Parole revocation hearings are conducted by employees of the Board of Pardons and Paroles.⁵⁸³ When there is a potential violation of parole conditions, the individual is subject to a preliminary hearing to determine whether there is probable cause of a violation and whether it is serious enough for revocation.⁵⁸⁴ If there is probable cause for violation that is serious enough for revocation, a final revocation hearing is held to examine the evidence and to determine whether parole should be revoked.⁵⁸⁵ Individuals who are facing revocation proceedings may be appointed counsel by the Chairperson of the Board of Pardons and Parole, who takes into consideration a statement of indigency among other factors like the complexity of the case.⁵⁸⁶

⁵⁷⁸ CONN. GEN. STAT. ANN. § 53a-30(a)(4), (e) (West).

⁵⁷⁹ CONN. GEN. STAT. ANN. § 53a-32(a)(c) (West).

⁵⁸⁰ *Id.* at (c).

⁵⁸¹ *Id.* at (d)(4).

⁵⁸² CONN. GEN. STAT. ANN. § 18-63 (West).

⁵⁸³ CONN. GEN. STAT. ANN. § 54-127(a) (West).

⁵⁸⁴ Conn. Agencies Regs. 54-124a(j)(1)-5 (e)(1-2).

⁵⁸⁵ *Id.* at (g); CONN. AGENCIES REGS. § 54-124a(j)(1)-9(b).

⁵⁸⁶ CONN. AGENCIES REGS. § 54-124a(j)(1)-12 (b)(1).

Delaware

Probation

Individuals on probation, in Delaware, may be required to pay a monthly fee as a condition of their supervision.⁵⁸⁷ The court may order the arrest of anyone on probation for any violation of the conditions of their probation.⁵⁸⁸ If there is a violation found after a hearing, probation may be revoked.⁵⁸⁹ An individual's ability or inability to pay a fine, fee, or cost may not influence a court's decision to impose a custodial sentence.⁵⁹⁰ The court may treat failure to pay these financial obligations either as civil contempt, or as if probation has been violated.⁵⁹¹ However, no individual who is required to pay a financial obligation by the court shall be incarcerated for defaulting on their payment.⁵⁹² An individual who is facing probation revocation is not entitled to appointed counsel in all instances, even when they are indigent.⁵⁹³

Parole

Individuals on parole are required to pay monthly fees as a requirement for their parole.⁵⁹⁴ If a parole officer finds that there was a violation of a condition of parole, the individual may be arrested and shall remain incarcerated pending a hearing.⁵⁹⁵ If a violation of the conditions of parole are established at the hearing, the Parole Board may revoke parole at a final hearing.⁵⁹⁶ An individual's ability or inability to pay a fine, fee, or cost may not influence a court's decision to impose a custodial sentence.⁵⁹⁷ However, no individual who is required to pay a financial obligation by the court shall be incarcerated for defaulting on their payment.⁵⁹⁸ At a final parole revocation hearing, the individual on parole has the right to bring their own counsel or to have counsel appointed to them.⁵⁹⁹

⁵⁸⁷ DEL. CODE ANN. tit. 11, § 4332(b) (West).

⁵⁸⁸ *Id.* at (a).

⁵⁸⁹ DEL. CODE ANN. tit. 11, § 4334(a), (c) (West).

⁵⁹⁰ DEL. CODE ANN. tit. 11, § 4104(b)(1) (West).

⁵⁹¹ DEL. CODE ANN. tit. 11, § 4105(e) (West).

⁵⁹² *Id.* at (a).

⁵⁹³ *Jones v. State*, 560 A.2d 1056, 1056 (Del. 1989).

⁵⁹⁴ DEL. CODE ANN. tit. 11, § 4347(j)(1) (West).

⁵⁹⁵ DEL. CODE ANN. tit. 11, § 4352(a)(b) (West).

⁵⁹⁶ *Id.* at (d).

⁵⁹⁷ DEL. CODE ANN. tit. 11, § 4104(b)(1) (West).

⁵⁹⁸ DEL. CODE ANN. tit. 11, § 4105(a) (West).

⁵⁹⁹ DEL. CODE REGS. PAR 19 (a)(3).

District of Columbia⁶⁰⁰

Probation

The D.C. statutory scheme allows for judges to stack various fines and fees on top of a single suspended sentence at once.⁶⁰¹ The main categories are assessment fines, fines for criminal offenses, and restitution or reparation.⁶⁰² Even if an individual is determined indigent at the time of sentencing, the ruling statute does not provide for an alternative (e.g., community service) besides suspending payment until the individual becomes employed.⁶⁰³

D.C. residents can be incarcerated for up to a year for unpaid LFOs.⁶⁰⁴ Additionally, payment of LFOs is a condition of an individual's probation.⁶⁰⁵ Thus, nonpayment can lead to revocation of probation.⁶⁰⁶ D.C. probation revocation proceedings are outlined in DC Superior Court Rule of Criminal Procedure 32.1.

The Federal Rules of Criminal Procedure provide for an individual's right to *retain* counsel, or to *request* appointed counsel if they cannot afford one, but not for a categorical right to appointed counsel.⁶⁰⁷ D.C. Superior Court Rules of Criminal Procedure provide for a right to appointed counsel from initial appearance through appeal.⁶⁰⁸ However, they contain no language that suggests that this right is available through sentencing, which would include the probationary period.⁶⁰⁹

Parole

After the D.C. Board of Parole was abolished in 1997, the United States Parole Commission assumed responsibility for the parole system of D.C. Code offenders, in addition to its federal docket.⁶¹⁰ Assessment fines, fines for criminal offenses, and restitution or reparation assigned at the time of sentencing also follow an individual after their release on parole when they go unpaid.⁶¹¹ While courts are not mandated to order such unpaid LFOs be made conditions of an individual's supervised release, they are expressly granted permission to do so.⁶¹² Thus, revocation of parole for nonpayment of LFOs is possible in DC since the controlling statute allows for revocation of the basis of violation of *any* condition of supervised release.⁶¹³ "In determining what action to take, the court shall consider the defendant's employment status, earning ability, financial resources, the willfulness in failing to comply with the fine

⁶⁰⁰ "Because Congress continues to deny DC statehood, much of the District's criminal legal system is under federal authority. DC's unique criminal legal system makes it difficult to understand the full scope of fines and fees and conceals the full scale of the harm to residents. And, people who are involved in DC's criminal legal system cycle between local and federal agencies, which often have different fines and fees policies."

Michael Johnson Jr., *Hidden Price of Justice: Fines and Fees in DC's Criminal Legal System*, D.C. Fiscal Policy Institute (June 25, 2024), https://www.dcfpi.org/all/hidden-price-of-justice-fines-and-fees-in-dcs-criminal-legal-system/#_edn55.

⁶⁰¹ D.C. CODE ANN. § 4-516, 16-711(a), 22-3571.01 (West).

⁶⁰² D.C. CODE ANN. § 4-516, 16-711(a), 22-3571.01 (West).

⁶⁰³ D.C. CODE ANN. § 4-516(3) (West).

⁶⁰⁴ D.C. CODE ANN. § 16-706 (West).

⁶⁰⁵ 18 U.S.C.A. § 3563(a)(6)(B)-(9) (West).

⁶⁰⁶ 18 U.S.C.A. § 3565(a)(2) (West).

⁶⁰⁷ Fed. R. Crim. P. 32.1(a)(3)(B).

⁶⁰⁸ Super. Ct. Crim. R. 44(a).

⁶⁰⁹ *Id.*

⁶¹⁰ *United States Parole Commission (USPC) Docket*, DC.gov, <https://cic.dc.gov/page/united-states-parole-commission-uspc-docket>.

⁶¹¹ D.C. CODE ANN. § 4-516, 16-711(a), 22-3571.01 (West); 18 U.S.C.A. § 3551(b) (West).

⁶¹² 18 U.S.C.A. § 3583(d) (West). *See* 18 U.S.C.A. § 3563(b)(2), (20) (West).

⁶¹³ 18 U.S.C.A. § 3583(e)(3) (West).

or restitution order, and any other circumstances that may have a bearing on the defendant's ability or failure to comply with the order of a fine or restitution.”⁶¹⁴

The District Court of D.C. ruled that the Constitutional right to counsel applies only to trials in court, and not to parole hearings, and thus individuals are not entitled to appointed counsel in parole revocation hearings.⁶¹⁵

⁶¹⁴ 18 U.S.C.A. § 3613A (West).

⁶¹⁵ *Martin v. U. S. Bd. of Parole*, 199 F. Supp. 542, 543 (D.D.C 1961).

Georgia

Probation

In every case of probation, the court must impose a probation fee as a condition.⁶¹⁶ However, the fee (and any other fines relating to probation) will be waived or modified if the individual has significant financial hardship.⁶¹⁷ If there is a failure to pay fees or fines, a hearing must be held to assess why the individual on probation failed to pay, and probation cannot be revoked unless the individual did not make a sufficient effort to pay.⁶¹⁸ It is unclear from the preliminary statutory analysis whether this state confers a right to appointed counsel.

Parole

People on parole in Georgia are required to pay either a \$30 supervision fee or a \$30 victim compensation fee each month, but not both.⁶¹⁹ It is unclear whether failure to pay fees or fines can result in parole revocation, or if there is a right to appointed counsel at parole revocation hearings.

⁶¹⁶ GA. CODE ANN. § 42-8-34(d)(1).

⁶¹⁷ GA. CODE ANN. § 42-8-34(e)(3)(B)).

⁶¹⁸ GA. CODE ANN. § 42-8-102(f)(2)(A).

⁶¹⁹ State Bd. of Pardons & Paroles, Supervision & Victim Fees, GA. GOV, <https://pap.georgia.gov/parole-population-georgia/parole-conditions/supervision-victim-fees> (last visited Feb. 28, 2025).

Illinois

Probation

A court may impose supervision fees as a condition of probation.⁶²⁰ Probation cannot be revoked for failure to comply with conditions of a sentence or supervision that impose financial obligations on the individual on probation, unless such failure is due to their willful refusal to pay.⁶²¹ The individual on probation has the right to a hearing with defense counsel present, and the right to appointed counsel if the defendant is indigent and the underlying offense is punishable by imprisonment.⁶²²

Parole

In Illinois, fees and fines are not a condition of parole or Mandatory Supervised Release.⁶²³

⁶²⁰ 730 ILL. COMP. STAT. 5/5-6-3(i).

⁶²¹ 730 ILL. COMP. STAT. 5/5-6-4(d).

⁶²² Ill. Sup. Ct. R. 402A(a)(2).

⁶²³ 730 ILL. COMP. STAT. 5/3-3-7 (2024).

Iowa

Probation

An individual on probation, in Iowa, is presumed to be able to pay a fine unless they prove “to the satisfaction of the court” that they can not pay.⁶²⁴ If they are found unable to pay, the individual will not be sentenced to confinement for the failure to do so.⁶²⁵ Iowa courts can require restitution payments as a condition of an individual's probation.⁶²⁶ If an individual fails to comply with the restitution plan, payment schedule, or community service (if required), it is considered a violation of probation.⁶²⁷ As a result, they could be held in contempt of court, have their probation revoked, or have the probation period extended.⁶²⁸ The restitution payment plan must be based on the individual's ability to pay with the first monthly payment due within 30 days of the court approving the plan.⁶²⁹ Iowa also has probation enrollment fees of \$300 “to offset the cost of supervision.”⁶³⁰ In line with *Bearden*, probation can only be revoked if the individual willfully fails to make the payments, but is financially able to do so.⁶³¹ Individuals deemed indigent by the court are entitled to appointed counsel at every stage of probation proceedings.⁶³²

Parole

Similar to probation, an individual may also be required to pay fines, fees, and restitution as a condition of their probation.⁶³³ Failure to pay or complete community service in lieu of restitution constitutes a violation of parole.⁶³⁴ Similarly to probation, parole also has enrollment fees.⁶³⁵ While individuals deemed indigent by the court are entitled to appointed counsel at every stage of parole proceedings, in parole revocation hearings the appointed counsel is harder to obtain.⁶³⁶ In parole revocation hearings, counsel may be appointed only if the accused individual requests an attorney, is found to be indigent, and the appointing authority determines that the case is complex.⁶³⁷ In addition, the individual must have a valid claim that the violation did not occur or substantial reasons that justify or mitigate the violation, making revocation inappropriate.⁶³⁸

⁶²⁴ IOWA CODE ANN. § 909.7(1) (West).

⁶²⁵ *Id.*

⁶²⁶ IOWA CODE ANN. § 910.4(1) (West).

⁶²⁷ IOWA CODE ANN. § 910.4(1)(a) (West).

⁶²⁸ IOWA CODE ANN. § 910.4(1)(b) (West).

⁶²⁹ IOWA CODE ANN. § 910.4(4) (West).

⁶³⁰ IOWA CODE ANN. § 904.912(1) (West).

⁶³¹ *State v. Rogers*, 251 N.W.2d 239, 245 (Iowa 1977).

⁶³² Iowa R. Civ. P. 2.28(1).

⁶³³ IOWA CODE ANN. § 910.5(4) (West).

⁶³⁴ IOWA CODE ANN. § 910.5(4)(a)(2) (West).

⁶³⁵ IOWA CODE ANN. § 904.912(1) (West).

⁶³⁶ Iowa R. Civ. P. 2.28(1); IOWA ADMIN. CODE r. 205-11.7(908)(1)(c)(2).

⁶³⁷ IOWA CODE ANN. § 908.2A(1) (West).

⁶³⁸ *Id.*

Kansas

Probation

When an individual fails to pay a court imposed cost or fine they can be jailed until the fine or costs are paid or entered into a payment plan.⁶³⁹ Any individual confined in the county jail for failure to pay a fine or costs may be released by the court which imposed the sentence upon satisfactory proof that such individual is unable to pay such fine and costs.⁶⁴⁰ There is a categorical right to appointed counsel at probation revocation hearings.⁶⁴¹ Unless the hearing is waived by the individual being charged with a violation of their probation, the judge at the hearing shall inform the individual that they have a right to counsel and that counsel will be appointed if they cannot financially afford their own counsel.⁶⁴²

Parole

There is no categorical right to the appointment of counsel in parole revocation hearings.⁶⁴³ There is a right to counsel at these hearings at the expense of the individual facing revocation of their parole.⁶⁴⁴ Legal counsel may be appointed by the board upon the request of the inmate or on the board's own motion.⁶⁴⁵ The appointment of legal counsel shall be based upon either a claim that the offender has not committed the alleged violations or on a claim that there are substantial reasons that justify or mitigate the violation and make revocation inappropriate.⁶⁴⁶

⁶³⁹ KAN. STAT. ANN. § 22-3425(1).

⁶⁴⁰ KAN. STAT. ANN. § 22-3425(2).

⁶⁴¹ KAN. STAT. ANN. § 22-3716(b)(2).

⁶⁴² *Id.*

⁶⁴³ KAN. ADMIN. REGS. § 44-9-502(f).

⁶⁴⁴ *Id.*

⁶⁴⁵ KAN. ADMIN. REGS. § 44-9-502(f)(1).

⁶⁴⁶ KAN. ADMIN. REGS. § 44-9-502(f)(1)(A-B).

Kentucky

Probation

An individual placed on probation in Kentucky must pay a supervision fee as a condition of their probation.⁶⁴⁷ If one fails to pay their supervision fees, a hearing must be held in order to determine why the fee was not paid.⁶⁴⁸ Failure without good cause to pay the supervision fee constitutes grounds for probation revocation.⁶⁴⁹ For a court to revoke probation, the individual must have a hearing at which they are represented by counsel.⁶⁵⁰ However, an individual who has violated the terms and conditions of their probation may still be incarcerated for no more than ten days consecutively and no more than sixty days in a calendar year.⁶⁵¹

Parole

An individual placed on parole in Kentucky must pay a supervision fee as a condition of their parole.⁶⁵² Like in probation, if one fails to pay their supervision fees, a hearing must be held in order to determine why the fee was not paid.⁶⁵³ Failure without good cause to pay the supervision fee constitutes grounds for parole revocation.⁶⁵⁴ The individual whose parole is revoked may be returned to prison.⁶⁵⁵ The individual whose parole may be revoked is entitled to representation by counsel, but must request it prior to the revocation hearing.⁶⁵⁶ Determinations as to whether counsel may be present at the revocation hearing is made on a case-by-case basis.⁶⁵⁷

⁶⁴⁷ KY. REV. STAT. ANN. § 439.315 (1) (West).

⁶⁴⁸ KY. REV. STAT. ANN. § 439.315 (4) (West).

⁶⁴⁹ *Id.*

⁶⁵⁰ KY. REV. STAT. ANN. § 533.050 (2) (West).

⁶⁵¹ KY. REV. STAT. ANN. § 439.3108 (West).

⁶⁵² KY. REV. STAT. ANN. § 439.315 (1) (West).

⁶⁵³ KY. REV. STAT. ANN. § 439.315 (4) (West).

⁶⁵⁴ *Id.*

⁶⁵⁵ KY. REV. STAT. ANN. § 439.430 (1) (West).

⁶⁵⁶ 501 KY. ADMIN. REGS. 1:040 §10(2)(c).

⁶⁵⁷ 501 KY. ADMIN. REGS. 1:040 §11(3)(a).

Louisiana

Probation

An individual on probation in Louisiana shall be required to pay a fee as a condition of their supervision.⁶⁵⁸ If a probation officer has probable cause of a violation, the individual on probation may be subject to a formal hearing, where probation can be revoked if the court finds that a condition of probation was violated.⁶⁵⁹ However, an individual on probation shall not have their probation revoked based solely on an inability to pay a fine or a fee required of them.⁶⁶⁰ Louisiana gives individuals who are determined to be indigent a right to an assignment of counsel if they may be punished by imprisonment for their offense.⁶⁶¹

Parole

Individuals on parole in Louisiana may be required to pay a fee as a condition of their parole.⁶⁶² If there is a belief of a violation, the Office of Corrective Services will hold a hearing to determine whether the violation has been committed and whether parole should be revoked.⁶⁶³ If the individual on parole is indigent, the Department of Public Safety and Corrections shall provide legal counsel at a parole revocation or pre-revocation hearing upon the request of the individual on parole.⁶⁶⁴

⁶⁵⁸ LA. CODE CRIM. PROC. ANN. art. 895 (7); LA. CODE CRIM. PROC. ANN. art. 895.1 (2)(a).

⁶⁵⁹ LA. CODE CRIM. PROC. ANN. art. 899 (B), (E); LA. CODE CRIM. PROC. ANN. art. 900 (A)(5).

⁶⁶⁰ LA. CODE CRIM. PROC. ANN. art. 894.4.

⁶⁶¹ LA. CODE CRIM. PROC. ANN. art. 513.

⁶⁶² LA. STAT. ANN. § 15:574.4.2 (A)(2)(e).

⁶⁶³ LA. STAT. ANN. § 15:574.9 (A).

⁶⁶⁴ LA. STAT. ANN. § 15:179 (A).

Maine

Probation

Individuals on probation in Maine may be required to pay fines as a condition of their supervision.⁶⁶⁵ If the individual fails to pay their legally required fine, they are considered in default by the court.⁶⁶⁶ A court may not impose imprisonment on the individual for the sole reason that they are unable to pay the fine, but the individual claiming inability to pay has the burden of proving this in court.⁶⁶⁷ However, if the individual cannot afford counsel at the hearing, the court shall appoint counsel for them.⁶⁶⁸

Parole

Individuals who are sentenced for offenses committed after May 1, 1976 in the State of Maine “are not subject to parole release.”⁶⁶⁹ Conditions of parole may be made on a case-by-case basis, and there are no prohibitions for making a financial obligation a condition of parole.⁶⁷⁰ Parole revocation in Maine follows a two hearing process: an initial hearing to determine whether there is probable cause of a parole violation, and a revocation hearing to determine whether the parole conditions were violated and whether it warrants parole revocation.⁶⁷¹ At these hearings the Parole Board may appoint counsel at its discretion, but only when it is requested.⁶⁷²

Maine also has alternative sentencing, called administrative release.⁶⁷³ Administrative release has requirements to pay financial obligations as a condition of release.⁶⁷⁴

⁶⁶⁵ ME. REV. STAT. ANN. tit. 17-A, § 1807 (6) (West).

⁶⁶⁶ ME. REV. STAT. ANN. tit. 17-A, § 1711 (1) (West).

⁶⁶⁷ ME. REV. STAT. ANN. tit. 17-A, § 1607 (West); ME. REV. STAT. ANN. tit. 17-A, § 1702 (2) (West).

⁶⁶⁸ ME. REV. STAT. ANN. tit. 17-A, § 1812 (2) (West).

⁶⁶⁹ ME. CODE R. 03-208 Ch. 1., § I.

⁶⁷⁰ ME. CODE R. tit. 03-208 Ch. 1., § III.

⁶⁷¹ ME. CODE R. tit. 03-208 Ch. 1., § IV.

⁶⁷² *Id.*

⁶⁷³ ME. REV. STAT. ANN. tit. 17-A, § 1854 (1) (West).

⁶⁷⁴ *Id.*

Maryland

Probation

An individual on probation supervision in Maryland may be required to pay monthly fees as a condition of their supervision; however, the court may take into consideration extenuating circumstances in order to exempt someone from the requirement.⁶⁷⁵ The court may revoke probation when the individual fails to pay a required fee, after a hearing to determine if there is grounds for a violation.⁶⁷⁶ Individuals who are indigent are entitled to representation by the public defender during proceedings where confinement is a possible outcome.⁶⁷⁷

Parole

An individual on parole supervision in Maryland may be required to pay a monthly fee as a condition of their supervision, however the court may consider the individual's extenuating circumstances when imposing the requirement.⁶⁷⁸ If there is an alleged violation of parole conditions, the individual on parole will need to go to a parole revocation hearing where they are entitled to be represented by counsel from the public defender, if they are eligible.⁶⁷⁹ While individuals on parole are allowed to be represented by counsel at a parole revocation hearing, if they are indigent the Maryland Parole Commission will only make an effort to obtain free counsel for them.⁶⁸⁰ However, indigent people are entitled to representation by the public defender in proceedings where confinement in an institution may result as an outcome of the proceeding.⁶⁸¹

⁶⁷⁵ MD. CODE ANN., CRIM. PROC. § 6-226 (b), (d)(5) (LexisNexis).

⁶⁷⁶ *Id.* at (f)(1), (3).

⁶⁷⁷ MD. CODE ANN., CRIM. PROC. § 16-204(b)(iv) (LexisNexis).

⁶⁷⁸ MD. CODE ANN., CRIM. PROC. § 6-226(b), (d)(5) (LexisNexis).

⁶⁷⁹ MD. CODE ANN., CORR. SERVS. § 7-401(a), (b)(1) (LexisNexis).

⁶⁸⁰ MD. CODE REGS. 12.08.01.08 (B).

⁶⁸¹ MD. CODE ANN., CRIM. PROC. § 16-204(b)(iv) (LexisNexis).

Michigan

Probation

An individual may be ordered to pay supervision fees (that are calculated based on income) as part of their probation sentencing, and a court may waive the fee if the individual on probation is determined to be indigent.⁶⁸² If the supervision fee is a condition of the probation, and if the court finds that the individual on probation “has not made a good-faith effort to comply with the order,” the court may sanction them to jail or revoke probation completely.⁶⁸³ If the individual on probation has failed to pay their supervision fees, the court must issue a summons (they cannot issue an arrest warrant for this type of violation).⁶⁸⁴ The individual on probation “is entitled to a lawyer's assistance at the hearing and at all court proceedings,” and “a lawyer will be appointed at public expense if the probationer wants one” and cannot afford one.⁶⁸⁵

Parole

An individual on parole must pay a supervision fee.⁶⁸⁶ If there is a parole violation, the individual on parole is entitled to a fact-finding hearing before a member of the parole board or an attorney hearing officer designated by the chairperson of the parole board.⁶⁸⁷ If the accused individual on parole alleges that they are indigent and requests that an attorney be appointed to represent them, the parole board member or attorney hearings officer who will conduct the hearing shall determine whether the accused individual on parole is indigent.⁶⁸⁸ “If the person on parole is determined to be indigent,” an attorney must be appointed to them.⁶⁸⁹

⁶⁸² MICH. COMP. LAWS § 771.1.

⁶⁸³ MICH. COMP. LAWS § 771.3(8).

⁶⁸⁴ MICH. CT. R. 6.445(A).

⁶⁸⁵ MICH. CT. R. 6.445(B)(3)(b).

⁶⁸⁶ MICH. COMP. LAWS § 791.236(6).

⁶⁸⁷ MICH. COMP. LAWS § 791.240a(3).

⁶⁸⁸ MICH. COMP. LAWS § 791.240a(4).

⁶⁸⁹ *Id.*

Minnesota

Probation

In Minnesota if an individual on probation is found to have violated any of the set conditions, intermediate sanctions, or engaged in misconduct warranting adjudication of guilt or sentencing, “the court may revoke the stay and order the defendant into immediate custody without notice.”⁶⁹⁰ However, revocation is used only “when rehabilitation efforts have failed.”⁶⁹¹ The court may revoke an individual's probation for failure to pay fees and fines but the sentencing court must look into the reasons for non-payment and, in line with *Bearden*, may only revoke probation for willful failure to pay.⁶⁹² As a part of probation, Minnesota can require that an individual pay restitution.⁶⁹³ If the individual on probation fails to pay the restitution the prosecutor or probation officer may request a hearing to determine whether probation conditions should be modified or revoked.⁶⁹⁴ After being properly notified of their potential probation revocation, a summary hearing will be held in which the individual on probation is “entitled to be heard and to be represented by counsel.”⁶⁹⁵ During a revocation hearing the individual on trial must be informed of their right to counsel and if they cannot afford counsel it will be appointed to them.⁶⁹⁶

Parole

Individuals on parole may have to pay fees for a number of services including supervision, restitution, and court ordered investigations as a part of their sentence.⁶⁹⁷ Under Minn. Stat. § 609.101, subd. 2, when an individual is convicted of certain crimes, the court must impose a fine of not less than 30% of the maximum fine authorized by law. The court cannot waive the minimum fine but may reduce it to no less than \$50 if the individual qualifies for a public defender or is deemed indigent or faces undue hardship.⁶⁹⁸ The court may also allow community service instead of a fine.⁶⁹⁹ If an individual on parole fails to pay, their parole can be revoked and they can be imprisoned, but it is considered a technical violation.⁷⁰⁰ For a technical violation the commissioner must consider alternative interventions if the individual poses no public risk and can continue community supervision.⁷⁰¹ After being properly notified of their potential parole revocation a summary hearing will be held in which the individual on probation is “entitled to be heard and to be represented by counsel.”⁷⁰²

⁶⁹⁰ MINN. STAT. ANN. § 609.14 subd. 1(West).

⁶⁹¹ *Id.*

⁶⁹² *State v. Morrow*, 492 N.W.2d 539, 544 (Minn. Ct. App. 1992).

⁶⁹³ MINN. STAT. ANN. § 609.135 subd. 1(a)(West).

⁶⁹⁴ *Id.*

⁶⁹⁵ MINN. STAT. ANN. § 609.14 subd. 2(West).

⁶⁹⁶ MINN. R. CRIM. P. 27.04 subd. 2(1)(c)(a); MINN. R. CRIM. P. 5.04 subd. (1).

⁶⁹⁷ MINN. STAT. ANN. § 244.18 subd. 1(b)(2)(West).

⁶⁹⁸ MINN. STAT. ANN. § 609.101, subd. 5(West).

⁶⁹⁹ *Id.*

⁷⁰⁰ MINN. STAT. ANN. § 244.05, subd. 3 (2)(b)(West).

⁷⁰¹ *Id.* (2)(b)(1)(2).

⁷⁰² MINN. STAT. ANN. § 609.14 subd. 2(West).

Mississippi

Probation

An individual on probation in Mississippi may be required to pay fees as a condition of their probation.⁷⁰³ If that individual is arrested for a violation of probation, the Department of Corrections will first hold a preliminary hearing to determine whether there is reasonable cause of a violation before moving onto a final revocation hearing to determine if probation should be revoked.⁷⁰⁴ The possibility of incarceration for nonpayment of LFOs hinges on whether the court finds that the individual is financially unable to pay or not.⁷⁰⁵ There is a lack of information in preliminary research regarding the right to appointed counsel in probation hearings.

Parole

An individual on parole in Mississippi is required to pay a monthly fee as a condition of their parole.⁷⁰⁶ If there is a probable violation of parole, the individual on parole may be arrested, and have a preliminary hearing to determine whether there is reasonable cause of a violation.⁷⁰⁷ If there is reasonable cause, there will be a final hearing to decide if parole should be revoked.⁷⁰⁸ The possibility of incarceration for nonpayment of LFOs hinges on whether the court finds that the individual is financially unable to pay or not.⁷⁰⁹ It is unclear whether Mississippi gives individuals on parole a right to appointed counsel in these proceedings.

⁷⁰³ MISS. CODE ANN. § 47-7-35(1)(h); MISS. CODE ANN. § 47-7-49(1).

⁷⁰⁴ MISS. CODE ANN. § 47-7-37(3)-(5); MISS. CODE ANN. § 47-7-37.

⁷⁰⁵ MISS. CODE ANN. § 47-7-49(2).

⁷⁰⁶ MISS. CODE ANN. § 47-7-49(1); 29-201 MISS. CODE R., § 3.5(L).

⁷⁰⁷ MISS. CODE ANN. § 47-7-27(1),(4).

⁷⁰⁸ *Id.* at (6)(a).

⁷⁰⁹ MISS. CODE ANN. § 47-7-49(2).

Missouri

Probation

The Division of Probation and Parole of the Missouri Department of Corrections has discretionary authority to assign up to \$60 a month in “intervention fees” to any individual placed on probation under their supervision (additional fees may be assigned for electronic monitoring and drug programming).⁷¹⁰ It also has discretionary authority to sanction any individual for willful nonpayment of these fees and fines.⁷¹¹ Restitution fines may be assigned as conditions of probation, and judges have wide discretion in deciding how much.⁷¹² Revocation is possible solely for nonpayment of restitution fines if the court holds an evidentiary hearing and finds that the individual “either willfully refused to make the payment or that the defendant willfully, intentionally, and purposefully failed to make sufficient bona fide efforts to acquire the resources to pay.”⁷¹³

There is no categorical right to appointed counsel. The court decides if there is a need for counsel on a case-by-case basis.⁷¹⁴ Notably, the Missouri Practice Series reports that “as a practical matter, counsel is almost always provided.”⁷¹⁵

Parole

The laws governing fees, fines, and the revocation of parole are comparable to those of probation. The Division of Probation and Parole of the Missouri Department of Corrections has discretionary authority to assign up to \$60 a month in “intervention fees” to any individual placed on parole under their supervision (additional fees may be assigned for electronic monitoring and drug programming).⁷¹⁶ The Division also has discretionary authority to sanction any individual for willful nonpayment of these fees and fines.⁷¹⁷ Still, revocation is possible for nonpayment of restitution fines.⁷¹⁸ Missouri’s statutory scheme requires that when an individual assigned restitution fines is released on parole, they make payments to those fines as a condition of their parole.⁷¹⁹ Missouri Supreme Court Rules allow for incarceration for nonpayment of such fines when the court holds an evidentiary hearing and finds that the nonpayment was either willful or “alternatives to incarceration are not adequate in the circumstances of the case to meet the municipality's or county's interest in punishment and deterrence.”⁷²⁰

⁷¹⁰ MO. REV. STAT. § 217.690(3); MO. CODE REGS. ANN. tit. 14, § 80-5.020(1)(a).

⁷¹¹ MO. REV. STAT. § 217.690 (3).

⁷¹² MO. REV. STAT. § 559.021 2(1) (West).

⁷¹³ *Ibid* at 6.

⁷¹⁴ MO. REV. STAT. § 559.036 6 (West).

⁷¹⁵ 19 Mo. Prac., Criminal Practice & Procedure § 26:5 (3d ed.).

⁷¹⁶ MO. REV. STAT. § 217.690 (3); MO. CODE REGS. ANN. tit. 14, § 80-5.020 (1)(a).

⁷¹⁷ MO. REV. STAT. § 217.690 (3).

⁷¹⁸ MO. REV. STAT. § 559.100 2 (West).

⁷¹⁹ MO. REV. STAT. § 559.105 3 (West).

⁷²⁰ Mo. R. Ord. Viol. & Viol. Burea. 37.65

In 2020, a class action lawsuit resulted in a federal court ordering Missouri to align its parole revocation proceedings with the right to counsel standards put forth in *Gagnon v. Scarpelli*.⁷²¹ As a result, Missouri became the third state in the country to establish a parole revocation-specific defense team in 2022.⁷²² Additionally, any individual who is charged with contempt—which includes court orders for issuing fees or fines—must be appointed counsel before any critical stage of the contempt proceeding if they are found to be indigent.⁷²³

⁷²¹ Rebecca Rivas, Missouri's parole revocation defense team among first in the country, *Missouri Independent*, <https://missouriindependent.com/2022/06/28/missouris-parole-revocation-defense-team-among-first-in-country/> (Mar. 20, 2025, 7:00 AM).

⁷²² *Id.*

⁷²³ *Hunt v. Moreland*, 697 S.W.2d 326, 329-30 (Mo. Ct. App. 1985).

Montana

Probation

An individual placed on probation in Montana is required to pay fees to cover the costs of their probation supervision.⁷²⁴ If the individual can show they are unable to pay these costs, then they may be waived.⁷²⁵ Payment of fees may be a condition of probation.⁷²⁶ Probation cannot be revoked for nonpayment if “the default is not attributable to an intentional refusal” to pay the fees or costs.⁷²⁷ A hearing must be held prior to revocation of probation.⁷²⁸ At such a hearing, an individual who cannot afford private counsel *may* be assigned a public defender.⁷²⁹

Parole

An individual placed on parole in Montana is required to pay supervisory fees.⁷³⁰ This fee may be reduced or suspended by a hearing panel if it would cause financial hardship.⁷³¹ Violation of parole conditions may result in incarceration pending a hearing.⁷³² At such a hearing, the individual has a right to be represented by counsel.⁷³³ If they cannot afford private counsel, a public defender may be assigned.⁷³⁴

⁷²⁴ MONT. CODE ANN. § 46-23-1005(4).

⁷²⁵ *Id.*

⁷²⁶ MONT. CODE ANN. § 46-18-233(1).

⁷²⁷ MONT. CODE ANN. § 46-18-233(2).

⁷²⁸ MONT. CODE ANN. § 46-18-203(5).

⁷²⁹ MONT. CODE ANN. § 46-18-203(4)(a); MONT. CODE ANN. § 46-8-101(2).

⁷³⁰ MONT. ADMIN. R. 20.25.702(2).

⁷³¹ *Id.*

⁷³² MONT. CODE ANN. § 46-23-1023(3).

⁷³³ MONT. CODE ANN. § 46-18-203(4)(d); MONT. CODE ANN. § 46-8-101(2).

⁷³⁴ MONT. CODE ANN. § 46-8-101(2).

Nebraska

Probation

The failure to pay fines, court costs, restitution, or any fees imposed is seen as a violation of an original condition of probation.⁷³⁵ However, in order to hold an individual on probation accountable for violations of conditions on probation, the court can impose administrative sanctions, which include restructuring court imposed financial obligations to mitigate their effect on the individual.⁷³⁶ The court shall waive payment of the monthly probation programming fees (in whole or in part) if, after a hearing, a determination is made that such payment would constitute an undue hardship due to limited income, employment or school status, or physical or mental handicap.⁷³⁷ If an individual on probation defaults in the payment of monthly probation programming fees, the court may revoke their probation for nonpayment.⁷³⁸ However, a hearing on the individual's ability to pay must be held prior to revocation.⁷³⁹

An individual on probation has a right to be represented by counsel at a revocation hearing.⁷⁴⁰ However, the statutory scheme does not explicitly state a right to appointed counsel.⁷⁴¹

Parole

When an individual is on parole, the Board of Parole board shall require an individual on parole to pay a monthly parole programming fee.⁷⁴² The Board of Parole must waive payment of the monthly parole programming fee (in whole or in part) if, after a hearing, it is determined that such payment would constitute an undue hardship on the individual due to limited income, employment or school status, or physical or mental handicap.⁷⁴³

Whenever an individual on parole is charged with a violation of parole, they shall be informed of their right to request counsel at such hearing.⁷⁴⁴ The Board of Parole, in the exercise of sound discretion, may provide the individual facing revocation proceedings with counsel.⁷⁴⁵ If the individual's request for counsel is refused, the grounds for refusal must be stated in the record.⁷⁴⁶

⁷³⁵ NEB. REV. STAT. § 29-2266(4)(a)(viii).

⁷³⁶ NEB. REV. STAT. § 29-2266(2)(g).

⁷³⁷ NEB. REV. STAT. § 29-2262.06(4).

⁷³⁸ NEB. REV. STAT. § 29-2262.06(5).

⁷³⁹ *Id.*

⁷⁴⁰ NEB. REV. STAT. § 29-2267(2).

⁷⁴¹ *Id.* The statute on point is silent on the right to *appointed* counsel in cases where individuals cannot afford their own private counsel.

⁷⁴² NEB. REV. STAT. § 83-1,107.01(1).

⁷⁴³ NEB. REV. STAT. § 83-1,107.01(3).

⁷⁴⁴ NEB. REV. STAT. § 83-1,120.

⁷⁴⁵ *Id.*

⁷⁴⁶ *Id.*

New Jersey

Probation

When an individual fails to pay, or “defaults,” on a monthly probation fee or court ordered fine, the court shall recall the defendant, or issue a summons or a warrant of arrest for the defendant's appearance.⁷⁴⁷ The court shall afford the person notice and an opportunity to be heard on the issue of default.⁷⁴⁸ The burden of proof is placed onto the defaulting individual to show good cause for their nonpayment.⁷⁴⁹ If the court finds the person defaulted without any good cause, the court may take any other actions authorized by law.⁷⁵⁰ The court cannot revoke or suspend probation for failure to pay a fine, unless the failure was willful.⁷⁵¹

The court cannot revoke a suspension of sentence or probation or delete, add or modify conditions of probation except after a hearing.⁷⁵² The defendant shall have the right to be represented by counsel, but not necessarily to appointed counsel.⁷⁵³

Parole

Parole may be revoked if the individual on parole refuses or fails to make a good faith effort of the specified payment the Parole Board imposed upon the individual after they had been released from prison and parole was granted.⁷⁵⁴ While there is no explicit language among statutes or court rules in New Jersey that states a right to appointed counsel for an individual on parole, an individual charged with a non indictable or indictable offense has a right to retain counsel.⁷⁵⁵ If that individual is found indigent, they are entitled by law to the appointment of counsel.⁷⁵⁶

⁷⁴⁷ N.J. STAT. ANN. § 2C:46-2(a) (West).

⁷⁴⁸ *Id.*

⁷⁴⁹ *Id.*

⁷⁵⁰ N.J. STAT. ANN. § 2C:46-2(1)(c) (West) .

⁷⁵¹ N.J. STAT. ANN. § 2C:45-3(a)(4) (West).

⁷⁵² N.J. STAT. ANN. § 2C:45-4 (West).

⁷⁵³ *Id.* The statute on point is silent on the right to *appointed* counsel in cases where individuals cannot afford their own private counsel.

⁷⁵⁴ N.J. STAT. ANN. § 30:4-123.59(g) (West).

⁷⁵⁵ N.J. CT. R. 3:4-2(d)(3), (e)(3).

⁷⁵⁶ N.J. CT. R. 3:4-2(e)(3).

North Carolina

Probation

As a condition of probation, an individual must pay a supervision fee of forty dollars per month, unless exempted by the court for “good cause.”⁷⁵⁷ (It is unclear what exactly constitutes “good cause.”) If an individual defaults on payment, the court may require them to appear and justify why their probation should not be revoked and imprisonment imposed.⁷⁵⁸ During the hearing, an individual on probation has the right to present evidence, confront adverse witnesses, and speak on their own behalf.⁷⁵⁹ Furthermore, they are entitled to be represented by counsel at the hearing and, if indigent, to have counsel appointed in accordance with rules adopted by the Office of Indigent Defense Services.⁷⁶⁰

Parole

As a condition of parole, an individual must pay a supervision fee of forty dollars per month, unless deemed to be an undue economic burden.⁷⁶¹ An individual on parole may be arrested for violating parole conditions only upon the issuance of an order by the Post-Release Supervision and Parole Commission.⁷⁶² A preliminary hearing must be held within seven working days to determine whether there is probable cause to believe that they violated a condition of parole.⁷⁶³ If probable cause is found, a revocation hearing must occur within 45 days to decide whether to revoke parole.⁷⁶⁴ The right to appointed counsel in parole revocation hearings is determined on a case-by-case basis by the Post-Release Supervision and Parole Commission (the Commission) to ensure “fundamental fairness.”⁷⁶⁵ If the Commission finds that the individual is indigent and entitled to appointed counsel, counsel must be appointed in accordance with the rules adopted by the Office of Indigent Defense Services.⁷⁶⁶

⁷⁵⁷ N.C. GEN. STAT. § 15A-1343(c1).

⁷⁵⁸ N.C. GEN. STAT. § 15A-1364(a).

⁷⁵⁹ N.C. GEN. STAT. § 15A-1345(e).

⁷⁶⁰ *Id.*

⁷⁶¹ N.C. GEN. STAT. § 15A-1374(c).

⁷⁶² N.C. GEN. STAT. § 15A-1376(a).

⁷⁶³ *Id.* at (b).

⁷⁶⁴ *Id.* at (e).

⁷⁶⁵ N.C. GEN. STAT. § 148-62.1(c).

⁷⁶⁶ *Id.*

North Dakota

Probation

In North Dakota, when determining the propriety of imposing a fine, the court must consider the defendant's ability to pay, any financial gain from the offense, the impact on restitution, and whether the fine serves a rehabilitative purpose.⁷⁶⁷ If a defendant fails to pay a fine, the court may order them to show cause for nonpayment.⁷⁶⁸ If the default is inexcusable, the court may impose up to 30 days of imprisonment for a misdemeanor or up to six months for a felony.⁷⁶⁹ The court may revoke an individual's probation for failure to pay fees and fines.⁷⁷⁰ However, the sentencing court must look into the reasons for non-payment and, in line with *Bearden*, may only revoke probation for *willful* failure to pay.⁷⁷¹ North Dakota has a right to representation by retained or appointed counsel unless waived.⁷⁷² However, this right is not absolute and can be waived if the individual on probation does not qualify for indigent legal services or fails to provide proof of indigency.⁷⁷³

Parole

N.D. Cent. Code § 12.1-32-05, discussed above, applies to the imposition of fines for all types of sentencing. An individual on parole is entitled to a preliminary hearing to determine probable cause for the alleged violation, followed by a final revocation hearing where the individual can present evidence and confront witnesses.⁷⁷⁴ Individuals charged with infractions don't have the right to a public defender or a jury trial, unless the law says they could face jail time for that infraction.⁷⁷⁵ Indigent defendants in felony and non-felony cases are entitled to court-appointed counsel at public expense from initial appearance through appeal unless waived.⁷⁷⁶ In non-felony cases, this right applies *unless* the magistrate determines that imprisonment will not be imposed.⁷⁷⁷ Non-indigent defendants may have counsel appointed at their own expense if they cannot obtain representation.⁷⁷⁸

⁷⁶⁷ N.D. CENT. CODE § 12.1-32-05(1).

⁷⁶⁸ N.D. CENT. CODE § 12.1-32-07(3); N.D. CENT. CODE § 12.1-32-05(3).

⁷⁶⁹ N.D. CENT. CODE § 12.1-32-05(3).

⁷⁷⁰ *State v. Jacobsen*, 746 N.W.2d 405, 409-410 (N.D., 2008).

⁷⁷¹ *Id.*

⁷⁷² N.D. R. Crim. P. 32(f)(3)(A)(iii).

⁷⁷³ *State v. Jensen*, 777 N.W.2d 847, 851 (N.D., 2010); N.D. CENT. CODE § 29-07-01.1(2)(c).

⁷⁷⁴ N.D. CENT. CODE § 12-59-15.

⁷⁷⁵ N.D. CENT. CODE § 12.1-32-03.1(1); N.D. CENT. CODE § 12.1-32-01(7).

⁷⁷⁶ N.D.R. Crim. P. Rule 44(a)(3).

⁷⁷⁷ N.D.R. Crim. P. Rule 44(a)(2).

⁷⁷⁸ N.D.R. Crim. P. Rule 44(a)(1).

Oklahoma

Probation

Individuals on probation in Oklahoma are required to pay a supervision fee of \$40 per month as a condition of their probation (plus a “reasonable user fee” for electronic collection), unless the court finds the fee would impose an unnecessary hardship on the person.⁷⁷⁹ The court may also assign costs to an individual on probation by ordering restitution.⁷⁸⁰ Revocation for nonpayment of fines and fees is possible.⁷⁸¹ While Oklahoma requires courts to conduct a hearing before ordering incarceration for failure to pay, the Court of Criminal Appeals has held that the State must only prove that the person failed to pay—not necessarily that it was intentional or willful.⁷⁸² The burden then shifts to the individual to prove that their non-payment was *not* willful.⁷⁸³

Okla. Ct. Crim. App. 8.1-8.8 codifies court procedures when a person fails to pay, including when a judge may order incarceration.⁷⁸⁴ It is silent, however, with regard to a right to counsel. There is a right to be represented by counsel at parole revocation hearings, but not to appointed counsel.⁷⁸⁵ Meaning, an individual can provide themselves with an attorney if they are able to, but the state is not responsible for doing so.⁷⁸⁶ There is no categorical right to appointed counsel for probation revocation proceedings.⁷⁸⁷ Rather, the court decides if there is a need for counsel on a case-by-case basis.⁷⁸⁸

Parole

Paying a supervision fee in an amount determined by the State’s Pardon and Parole Board is a condition of parole in Oklahoma.⁷⁸⁹ This is in addition to any restitution fines the individual on parole may have been ordered to pay when sentenced for the original alleged offense.⁷⁹⁰ Revocation is possible because fees are made a condition of the individual’s sentence.⁷⁹¹ The same burden-shifting to the defendant in proving “non-willfulness” of nonpayment applies to parole revocation hearings as it does to probation revocation hearings.⁷⁹² The statutory scheme on the right to counsel in Oklahoma probation revocation hearings also applies to that of parole revocation hearings. The Oklahoma Pardon and Parole Board’s external communications on parole revocation are also silent on the right to appointed counsel.⁷⁹³

⁷⁷⁹ OKLA. STAT. tit. 22, § 991d.A.

⁷⁸⁰ OKLA. STAT. tit. 22, §§ 991a A.1.a, 991d A.3 (West).

⁷⁸¹ OKLA. STAT. tit. 22, § 991b.C.3 (West); OKLA. STAT. tit. 57, § 517.B (West).

⁷⁸² See OKLA. STAT. tit. 22 § 983(J). *But see Conroy-Perez v. State*, 440 P.3d. 64, 67 (Okla. Crim. App. 2019).

⁷⁸³ *Id.*

⁷⁸⁴ Okla. Ct. Crim. App. 8.1-8.8; OK R 1 DIST CT Rule 46(a).

⁷⁸⁵ OKLA. STAT. tit. 22, § 991b (West).

⁷⁸⁶ *Id.*

⁷⁸⁷ *Painter v. State*, 762 P.2d 990, 992 (Okla. Crim. App., 1988).

⁷⁸⁸ *Id.*

⁷⁸⁹ OKLA. STAT. tit. 22, § 991d.B (West).

⁷⁹⁰ OKLA. STAT. tit. 22, § 991f.B (West)

⁷⁹¹ OKLA. STAT. tit. 22, § 991b.C.3 (West).

⁷⁹² See OKLA. STAT. tit. 22 § 983(J). *But see Conroy-Perez v. State*, 440 P.3d. 64, 67 (Okla. Crim. App., 2019).

⁷⁹³ Oklahoma Pardon and Parole Board, *Paroles & Revocations*, Oklahoma.gov (Apr. 2, 2025, 11:53 PM) <https://oklahoma.gov/ppb/paroles-revocations/revocations.html>

Oregon

Probation

Fines and fees can be a requirement of probation in Oregon.⁷⁹⁴ However, revocation of probation due to non-payment of a required fine is not allowed unless the court determines, from the totality of the circumstances, that the purposes of the probation are not being served.⁷⁹⁵ Otherwise, the court can revoke probation after a summary hearing.⁷⁹⁶

Parole

People on parole in Oregon can be required to pay financial obligations as a condition of their parole.⁷⁹⁷ When the Board of Parole has reasonable grounds that there has been a violation of parole conditions, a preliminary hearing will be held to determine whether there is probable cause.⁷⁹⁸ If there is probable cause, the Board may revoke parole.⁷⁹⁹ A person who is found to be indigent may be appointed counsel, but only upon request and when one of the following circumstances is met: the Board determines that there is a colorable claim that the individual did not commit the alleged violation, the person appears incapable of speaking effectively on their own behalf, there are substantial reasons that would make incarceration inappropriate, or it is a complex case.⁸⁰⁰

⁷⁹⁴ OR. REV. STAT. § 137.540(1)(a).

⁷⁹⁵ *Id.* at (10).

⁷⁹⁶ OR. REV. STAT. § 137.545(5).

⁷⁹⁷ OR. REV. STAT. § 144.275.

⁷⁹⁸ OR. REV. STAT. § 144.343(1).

⁷⁹⁹ *Id.* at (2)(b).

⁸⁰⁰ *Id.* at (4)(d).

Pennsylvania

Probation

Fines may be ordered as a condition of probation, but it is up to the discretion of the court to do so.⁸⁰¹ The court may not revoke an order of probation solely due to the nonpayment of fines or costs, *unless* the court finds that the individual on probation was financially able to pay but willfully refused to do so.⁸⁰² That must be determined at a hearing.⁸⁰³ Probation may be revoked after a third violation of a probation condition.⁸⁰⁴ Probation cannot be revoked unless the defendant is advised that they have the right to counsel to represent them, and if they are indigent, they have the right to be assigned counsel.⁸⁰⁵

Parole

If you are on parole in Pennsylvania, you are required to pay a monthly supervision fee.⁸⁰⁶ The willful refusal to pay a fine may be considered a technical parole violation for which an individual on parole may be re-incarcerated.⁸⁰⁷ Parole cannot be revoked unless the defendant is advised that they have the right to counsel to represent them, and if they are indigent, they have the right to be assigned counsel.⁸⁰⁸

⁸⁰¹ 42 PA. CONS. STAT. § 9763(b)(13).

⁸⁰² 42 PA. CONS. STAT. § 9771(b.1).

⁸⁰³ 42 PA. CONS. STAT. § 9771(d).

⁸⁰⁴ 42 PA. CONS. STAT. § 9771.1(i).

⁸⁰⁵ 234 PA. CODE § 708.

⁸⁰⁶ Pennsylvania Department of Corrections, *Pay Parole Supervision Fees*, Pennsylvania.gov, (last visited Feb. 26, 2025) <https://www.pa.gov/services/cor/pay-parole-supervision-fees.html>.

⁸⁰⁷ *See, Comm. ex rel. Parrish v. Cliff*, 451 Pa. 427, 304 A.2d 158 (Pa., 1973).

⁸⁰⁸ 234 PA. CODE 708(D)(3)(b).

Rhode Island

Probation

An individual on probation in Rhode Island may be required to pay financial obligations as a condition of their supervision, depending on their ability to pay.⁸⁰⁹ Failure to meet a condition of probation is considered a violation.⁸¹⁰ However, if the court determines that the person is indigent, they may cancel the requirement to pay any financial obligations.⁸¹¹ If the probation authority believes that the individual violated a term of their probation, they will hold a hearing to determine whether there was a violation or not.⁸¹² If the court determines that there was a violation, they may revoke probation.⁸¹³ It is unclear whether individuals facing probation revocation have a right to appointed counsel if they are indigent; however, they do have the right to “effective assistance of counsel” at these hearings.⁸¹⁴

Parole

People on parole may be required to pay a supervision fee as a condition of their parole.⁸¹⁵ If the Parole Board believes that there has been a violation of any term of parole after a preliminary hearing, it may revoke parole.⁸¹⁶ At this hearing, the individual on parole has a qualified right to be appointed counsel that applies only in special circumstances.⁸¹⁷

⁸⁰⁹ 12 R.I. GEN. LAWS. § 12-19-8.1(a)(8); 240-50 R.I. CODE R. § 50-00-1.1.

⁸¹⁰ *Id.* at (d).

⁸¹¹ 12 R.I. GEN. LAWS. § 12-20-10(a).

⁸¹² 12 R.I. GEN. LAWS. § 12-19-9(a)-(b).

⁸¹³ *Id.* at (b)(1).

⁸¹⁴ *Hampton v. State*, 786 A.2d 375, 380 (R.I., 2001); *State v. Chabot*, 682 A.2d 1377, 1379 (R.I., 1996).

⁸¹⁵ 240-50 R.I. CODE R. § 50-00-1.1.

⁸¹⁶ 13 R.I. GEN. LAWS. § 13-8-18.

⁸¹⁷ 13 R.I. GEN. LAWS. § 13-8-18.1(b)(4).

South Carolina

Probation

As a condition of probation, an individual may be required to pay supervision fees.⁸¹⁸ The Department of Probation, Parole, and Pardon Services must determine the amount of this fee based on the individual's financial ability to pay.⁸¹⁹ Failure to make payments for two months or more can be considered a violation of probation and could result in revocation.⁸²⁰ Additionally, there is no statutory provision addressing the right to appointed counsel in probation revocation hearings.

Parole

As a condition of parole, an individual may be required to pay supervision fees.⁸²¹ Parole revocation may occur if an individual fails to make the required supervision fee payments as outlined in the conditions of their parole.⁸²² Parole revocation proceedings are initiated pursuant to a warrant or a citation describing the individual's alleged violation(s) of their parole conditions and are overseen by a hearing officer employed by the Department of Probation, Parole, and Pardon Services.⁸²³ At the conclusion of a parole revocation hearing, the hearing officer may decide to continue parole, either due to insufficient evidence of a violation or because mitigating factors justify its continuation despite the violation.⁸²⁴ Alternatively, the hearing officer may revoke parole and order the individual's return to the Department of Corrections to serve the rest of their sentence.⁸²⁵ This decision is final and cannot be appealed.⁸²⁶ Additionally, there is no statutory provision addressing the right to appointed counsel in parole revocation hearings.

⁸¹⁸ S.C. CODE ANN. § 24-21-80; S.C. CODE ANN. § 24-21-85.

⁸¹⁹ S.C. CODE ANN. § 24-21-80.

⁸²⁰ *Id.*

⁸²¹ S.C. CODE ANN. § 24-21-80; S.C. CODE ANN. § 24-21-85; S.C. CODE ANN. REGS. 130-40(b).

⁸²² S.C. CODE ANN. § 24-21-680; S.C. CODE ANN. REGS. 130-40(c).

⁸²³ S.C. CODE ANN. REGS. 130-40(c); S.C. CODE ANN. § 24-21-32(D).

⁸²⁴ *Id.*

⁸²⁵ *Id.*

⁸²⁶ *Id.*

South Dakota

Probation

No one can be imprisoned for failing to pay their fees, fines or restitution without a hearing first.⁸²⁷ At this hearing, the individual facing revocation holds the burden of proof to show they did not willfully fail to pay or that they did make a bona fide effort to pay.⁸²⁸ Failure to make such a showing is grounds for being imprisoned or jailed.⁸²⁹ If the sentence provided is for nonpayment of fines or costs only, the term of jail or imprisonment may be no longer than “the number of days equal to the total amount of the fine or costs imposed divided by sixty.”⁸³⁰ No one can be imprisoned for a non-willful failure to pay.⁸³¹ In South Dakota there is a right to appointed counsel in probation revocation hearings when the individual facing the revocation of their probation does not have sufficient money to employ their own counsel.⁸³² In order to request the appointment of counsel, the person who is unable to afford their own attorney shall certify in writing or by other record such material factors relating to his inability to pay as the court prescribes.⁸³³

Parole

An individual on parole cannot be imprisoned for nonpayment of fees, fines or restitution when that payment was non-willful.⁸³⁴ Furthermore there is a categorical right to appointed counsel in parole revocation hearings when the individual is determined to be indigent and requests counsel.⁸³⁵ The same statutes govern both probation and parole revocation procedures when it comes to the right to appointed counsel.⁸³⁶

⁸²⁷ S.D. CODIFIED LAWS § 23A-27-25.5.

⁸²⁸ *Id.*

⁸²⁹ *Id.*

⁸³⁰ *Id.*

⁸³¹ *Id.*

⁸³² S.D. CODIFIED LAWS § 23A-40-6.

⁸³³ *Id.*

⁸³⁴ S.D. CODIFIED LAWS § 23A-27-25.5.

⁸³⁵ S.D. CODIFIED LAWS § 23A-40-6.

⁸³⁶ *Id.*

Tennessee

Probation

As a condition of probation, an individual can be required to pay a monthly supervision fee(s).⁸³⁷ These fees may be waived due to financial hardship.⁸³⁸ The Department of Correction determines the amount of this fee based on the individual's ability to pay, with a standard amount of \$15 per month.⁸³⁹ Failure to make payments may be considered a violation of probation and grounds for possible revocation.⁸⁴⁰ Individuals facing probation revocation have a statutory right to counsel.⁸⁴¹ However, the statute does not explicitly state whether an individual is entitled to appointed counsel if they cannot afford representation or if they are indigent.⁸⁴²

Parole

As a condition of parole, an individual may be subject to financial obligations.⁸⁴³ When a parole officer or the Director of Probation and Parole believes that an individual on parole has violated their release conditions, a parole violation warrant may be issued.⁸⁴⁴ After receiving proper notice, an individual on parole is entitled to a timely revocation hearing.⁸⁴⁵ At both preliminary and final parole revocation hearings, an individual has the right to appear and provide an explanation regarding the alleged violation.⁸⁴⁶ Parole revocation may occur if an individual willfully fails to make the required supervision fee payments and the Tennessee Board of Parole determines there are no adequate alternatives to incarceration.⁸⁴⁷ For violations of parole that do not involve new crimes or other serious breaches, the Board may impose short periods of incarceration based on the number of prior revocations instead of revoking parole entirely.⁸⁴⁸ At all proceedings, the Board has the authority to appoint counsel for any individual deemed indigent.⁸⁴⁹ However, this “authority of the Board” does not equate to a right to which the individual is entitled.⁸⁵⁰

⁸³⁷ TENN. CODE ANN. § 40-28-201.

⁸³⁸ *Id.*

⁸³⁹ *Id.*

⁸⁴⁰ TENN. CODE ANN. § 40-35-311.

⁸⁴¹ TENN. CODE ANN. § 40-35-311 (b).

⁸⁴² *Id.*

⁸⁴³ TENN. CODE ANN. § 40-28-201.

⁸⁴⁴ TENN. CODE ANN. § 40-28-122 (a).

⁸⁴⁵ *Id.*

⁸⁴⁶ *Id.*

⁸⁴⁷ *Id.* at (c).

⁸⁴⁸ *Id.* at (c)(1)(A).

⁸⁴⁹ *Id.* at (d)(1).

⁸⁵⁰ *Id.*; The statute on point does not outline an individual's *right* to appointed counsel, only that the Board may appoint counsel if it so chooses.

Texas

Probation

In Texas, “probation” and “community supervision” are synonymous and used interchangeably.⁸⁵¹ At any time during the period of community supervision, the judge may issue a warrant for a violation of any condition of community supervision and cause the defendant to be arrested.⁸⁵² Also, any supervision officer, police officer, or other officer with the power of arrest may arrest the defendant with or without a warrant on the order of the judge to be noted on the docket of the court.⁸⁵³ If an individual on probation willfully refuses to pay probation fees despite having the means to do so, the court may revoke probation and impose imprisonment.⁸⁵⁴ The court must appoint counsel for an indigent individual in probation revocation proceedings.⁸⁵⁵

Parole

Individuals on parole who are assigned fees may claim inability to pay the amount “as ordered” as an affirmative defense to nonpayment of fees in parole revocation hearings.⁸⁵⁶ There must be a preliminary hearing held to determine if reasonable grounds exist to believe that the individual on parole has committed an act that would violate a condition of parole.⁸⁵⁷ It is unclear from the preliminary statutory analysis whether this state confers a right to appointed counsel.

⁸⁵¹ TEX. CODE CRIM. PROC. ANN. art. 42A.001 (West).

⁸⁵² TEX. CODE CRIM. PROC. ANN. art. 42A.751(b) (West).

⁸⁵³ *Id.*

⁸⁵⁴ *Rusk v. State*, 440 S.W.3d 694, 706 (Tex. Crim. App., 2013); TEX. CODE CRIM. PROC. ANN. art. 42A.751 (West).

⁸⁵⁵ TEX. CODE CRIM. PROC. ANN. art. 42A.751(k) (West).

⁸⁵⁶ TEX. GOV'T CODE ANN. § 508.182(f) (West).

⁸⁵⁷ TEX. GOV'T CODE ANN. § 508.2811(West).

Utah

Probation

Individuals on probation are required to pay a \$30 supervision fee unless the court finds that doing so would cause substantial hardship or if they owe restitution to a victim.⁸⁵⁸ While it is unclear whether probation can be revoked for failure to pay fines and fees, there is an explicit right to appointed counsel in probation revocation hearings if the individual is deemed indigent.⁸⁵⁹

Parole

Similar to probation, any individual on parole is required to pay a \$30 supervision fee unless the court finds that it would cause substantial hardship or if they owe restitution to a victim.⁸⁶⁰ Monthly supervision fees are considered a condition of parole.⁸⁶¹ The board has the authority to revoke an individual's parole if they are found to have violated any of its conditions.⁸⁶²

Generally, an individual on parole does not have the right to appointed counsel, but they are entitled to consult with anyone of their choice prior to the hearing.⁸⁶³ A right to appointed counsel exists only if, in the board's discretion, the individual is unable to meaningfully participate in the hearing due to physical, mental, or other circumstances.⁸⁶⁴

⁸⁵⁸ UTAH CODE ANN. § 64-13-21(6)(a)(ii) (LexisNexis).

⁸⁵⁹ UTAH CODE ANN. § 77-18-108(3)(b)(ii)(C) (LexisNexis).

⁸⁶⁰ UTAH CODE ANN. § 64-13-21(6)(a)(ii) (LexisNexis).

⁸⁶¹ UTAH CODE ANN. § 77-27-10(5) (LexisNexis).

⁸⁶² UTAH CODE ANN. § 77-27-11(1) (LexisNexis).

⁸⁶³ UTAH CODE ANN. § 77-27-29(1)(b) (LexisNexis).

⁸⁶⁴ UTAH CODE ANN. § 77-27-7.1(1) (LexisNexis).

Vermont

Probation

An individual on probation in Vermont may be required to pay fines as a condition of their probation.⁸⁶⁵ Probation can be revoked for a violation of any condition of probation.⁸⁶⁶ Individuals facing probation revocation have the right to assigned legal counsel upon request, “in the same manner as criminal proceedings.”⁸⁶⁷

Parole

Individuals on parole in Vermont may be required to pay costs deemed appropriate by the Parole Board Commissioner as a condition of their supervision.⁸⁶⁸ If a parole violation is alleged, a hearing is held by the Parole Board.⁸⁶⁹ If there is substantial evidence of a violation of parole conditions, parole may be revoked.⁸⁷⁰ It is unclear, based on preliminary research, whether Vermont provides the right to appointed counsel in these proceedings

⁸⁶⁵ V.T. STAT. ANN. tit. 28, § 252(7).

⁸⁶⁶ V.T. STAT. ANN. tit. 28, § 303(a).

⁸⁶⁷ V.T. STAT. ANN. tit. 28, § 302(a)(3).

⁸⁶⁸ V.T. STAT. ANN. tit. 28, § 502b(c).

⁸⁶⁹ V.T. STAT. ANN. tit. 28, § 552(b).

⁸⁷⁰ V.T. STAT. ANN. tit. 28, § 552(b)(2).

Virginia

Probation

Individuals on probation may be required to pay a fine, costs, or both, in one or more installments, as a condition of their sentence, and failure to pay by the specified time(s) may be considered a violation of probation.⁸⁷¹ For probation to be revoked, the violation must be willful, so there must be an “inability to pay” rather than an unwillingness to do so.⁸⁷² During the hearing, an individual deemed indigent has the right to appointed counsel.⁸⁷³

Parole

Any individual who is granted parole is required to pay a fee of fifty dollars as a condition of parole.⁸⁷⁴ If there is probable cause that a condition of parole has been violated, the Virginia Parole Board can determine first whether there has been a violation, and if yes, if parole should be revoked.⁸⁷⁵ The hearing officer may request an attorney be appointed to the individual facing revocation of their parole.⁸⁷⁶ The statute is unclear under what conditions a hearing officer would do so.

⁸⁷¹ VA. CODE ANN. § 19.2-305(A).

⁸⁷² *Keselica v. Comm.*, 537 S.E.2d 611, 612 (Va. Ct. App., 2000).

⁸⁷³ VA. CODE ANN. § 19.2-157; VA. CODE ANN. § 19.2-159(A).

⁸⁷⁴ VA. CODE ANN. § 53.1-150(B)(i).

⁸⁷⁵ VA. CODE ANN. § 53.1-175.

⁸⁷⁶ VA. CODE ANN. § 53.1-165(A).

Washington

Probation

A court may impose fines and fees as a condition of probation.⁸⁷⁷ However, the court may not sanction an individual for failure to pay LFOs unless it finds, after a hearing and on the record, that the failure to pay is willful.⁸⁷⁸ The individual is entitled to be represented by counsel during a probation revocation hearing, and a lawyer shall be appointed for an individual who is financially unable to obtain one.⁸⁷⁹

Parole

An individual on parole may be required to pay a fine or restitution as a condition of parole.⁸⁸⁰ Parole may be suspended or revoked for failure to comply with any term and condition of parole.⁸⁸¹ If an individual on parole can show evidence of indigency and requests appointed counsel during a parole revocation hearing, the indeterminate sentencing review board may appoint counsel to them.⁸⁸²

⁸⁷⁷ WASH. REV. CODE § 9.95.210(2).

⁸⁷⁸ WASH. REV. CODE § 9.94B.040.

⁸⁷⁹ WASH. SUP. CT. CRIM. R. 7.6(b).

⁸⁸⁰ WASH. ADMIN. CODE 381-40-110(2).

⁸⁸¹ WASH. ADMIN. CODE 381-40-110(3).

⁸⁸² WASH. ADMIN. CODE 381-70-160(2).

West Virginia

Probation

An individual on probation may be required to pay a fee for the cost of supervision.⁸⁸³ The court must hold a hearing to consider the individual’s ability to pay to determine if they will be able to pay the fee without undue hardship.⁸⁸⁴ If at any time there is any violation of probation conditions, including for failure to pay, the individual on probation can be arrested and be brought before the court for a prompt hearing.⁸⁸⁵ The judge may impose a period of confinement up to sixty days for the first violation, and for the second violation, a period of confinement up to one hundred twenty days.⁸⁸⁶ For the third violation, the judge may revoke probation completely.⁸⁸⁷ It is up to the judge to decide if confinement is the best option “in the interest of justice.”⁸⁸⁸ There is no explicit right to appointed counsel. Footnote: The relevant statute is silent on the right to appointed counsel.⁸⁸⁹

Parole

Parole shares similar laws to probation where, if an individual has unpaid fines or fees, a parole officer may arrest them without an order or warrant.⁸⁹⁰ After a hearing, they face the same sentencing scheme based on their number of prior violations as individuals on probation.⁸⁹¹ However, if parole is to be revoked, there is a right to appointed counsel.⁸⁹²

⁸⁸³ W. VA. CODE § 62-12-9A (5).

⁸⁸⁴ W. VA. CODE § 62-12-9A (6); It is unclear whether there is a right to counsel in this hearing.

⁸⁸⁵ W. VA. CODE § 62-12-10(a).

⁸⁸⁶ W. VA. CODE § 62-12-10(a)(2).

⁸⁸⁷ *Id.*

⁸⁸⁸ W. VA. CODE § 62-12-10(c).

⁸⁸⁹ W. VA. CODE § 62-12-10

⁸⁹⁰ W. VA. CODE § 62-12-19.

⁸⁹¹ *Id.*

⁸⁹² West Virginia Parole Board, *Revocation Hearings*, ParoleBoard.wv.gov, (Apr. 3, 2025, 12:12 AM)

<https://paroleboard.wv.gov/hearings/Pages/RevocationHearings.aspx#:~:text=The%20Parolee%20is%20entitled%20to,him/her%20at%20no%20cost.>

Wisconsin

Probation

If individuals on probation do not complete the fines, costs, fees, and surcharges as required by their sentence, they can be committed to county jail for a period not to exceed 6 months.⁸⁹³ At a revocation hearing, the individual being charged with a violation of probation has the right to the assistance of counsel.⁸⁹⁴ Those determined to be indigent have a right to appointed counsel at all proceedings where a person is entitled to counsel regardless of ability to pay under the constitution or laws of the United States or this state.⁸⁹⁵ The state's public defender can only provide services as appointed counsel to a person at a probation revocation hearing if the revocation of the probation is actually being contested and the Department of Corrections seeks to have the individual on probation imprisoned upon the revocation of probation.⁸⁹⁶ The appointment of counsel to indigent individuals facing probation revocation is determined by the state public defender on a case-by-case basis.⁸⁹⁷

Parole

Similar to probation, counsel may be appointed for parole revocation hearings only so long as the individual on parole is contesting the revocation of parole and that the revocation would result in the imprisonment of the person.⁸⁹⁸

⁸⁹³ WIS. STAT. § 973.07.

⁸⁹⁴ WIS. ADMIN. CODE H.A. § 2.05(3)(f).

⁸⁹⁵ WIS. STAT. § 967.06(1).

⁸⁹⁶ WIS. STAT. § 977.05(6)(i).

⁸⁹⁷ WIS. STAT. § 977.05(4).

⁸⁹⁸ WIS. STAT. § 977.05(6)(h).

Wyoming

Probation

In Wyoming, an individual placed on probation may be required to pay certain fines.⁸⁹⁹ Violation of such a term or condition of probation may result in revocation in probation, at which point the court may proceed as if no suspended sentence has ever occurred.⁹⁰⁰ For probation to be revoked, one must be given a preliminary hearing at which to admit or deny the allegations against them.⁹⁰¹ If the person denies the allegations against them, a final hearing must occur.⁹⁰² If the person admits to the allegations, then the case may immediately proceed to disposition.⁹⁰³ At such a hearing, the person is entitled to representation by counsel which may be appointed under certain circumstances.⁹⁰⁴ If the individual is unable to afford adequate representation by counsel and if they request representation at their revocation hearing, then counsel shall be appointed for them.⁹⁰⁵

Parole

An individual placed on parole in Wyoming may be responsible for paying restitution.⁹⁰⁶ The parole board may take into consideration the particular individual's ability to pay the restitution.⁹⁰⁷ Failure to pay restitution may result in revocation of parole.⁹⁰⁸ People placed on parole may also be required to pay supervision fees.⁹⁰⁹ A hearing is required in order for parole to be revoked, but an individual on parole may waive this hearing.⁹¹⁰ Wyoming law does not explicitly state that there is a right to counsel in parole revocation proceedings, but does allow someone facing a revocation hearing to "consult with any persons whose assistance [they] reasonably desire...prior to the hearing."⁹¹¹

⁸⁹⁹ WYO. STAT. ANN. § 6-10-102.

⁹⁰⁰ WYO. STAT. ANN. § 7-13-305(c).

⁹⁰¹ WYO. R. PRAC & P. 39(a)(4).

⁹⁰² *Id.*

⁹⁰³ *Id.*

⁹⁰⁴ WYO. R. PRAC & P. 39(a)(3)(A).

⁹⁰⁵ WYO. R. PRAC & P. 44(a)(2).

⁹⁰⁶ WYO. STAT. ANN. § 7-13-421(b).

⁹⁰⁷ *Id.*

⁹⁰⁸ WYO. STAT. ANN. § 7-13-421(c)(iii).

⁹⁰⁹ WYO. STAT. ANN. § 7-13-1102(b)(iii).

⁹¹⁰ WYO. STAT. ANN. § 7-13-408(a).

⁹¹¹ WYO. STAT. ANN. § 7-13-408(c)(ii).

VIII. Conclusion

Through examining the fifty states, it is clear that the right to appointed counsel in probation and parole revocation proceedings is not universal. Despite the potential of incarceration, there are no guarantees that an individual who cannot afford counsel will be appointed one. The use of LFOs as a condition of probation or parole is particularly harmful to low-income individuals, who are most likely to be facing incarceration for nonpayment. The state research further illustrates the variations and complexities across and within jurisdictions that make it increasingly difficult for individuals to obtain counsel. The categorization of probation and parole revocation hearings as civil suits—or “quasi-criminal” suits—rather than criminal suits, which bring all Constitutional protections, creates the opportunity for injustice and unfairness. Although some states do afford individuals considered indigent with appointed counsel, there are some that do not. Even within the states that give a right to appointed counsel, that right is dependent on how that state determines whether an individual is indigent.

The current procedures are layered with many decisions and processes that are often discretionary. Moving through such a system, potentially without counsel, places an extreme burden on individuals facing probation and parole revocation proceedings. In an effort to acknowledge this issue, this paper serves as a first step to understand the current landscape of the right of appointed counsel in probation and parole revocation hearings. In the future, further research may be conducted on alternatives to incarceration, the benefits of counsel in preliminary and revocation hearings, and the benefits of removing LFOs as a condition of parole or probation. In the interest of justice, it is crucial, no matter the jurisdiction, that individuals facing the potential of incarceration have a right to appointed counsel.

IX. Appendix

Appendix A: Interview of Nadia Iqbal, San Francisco Deputy Public Defender

Nadia has worked for the San Francisco Public Defender's Office since 2021, and has been the sole attorney handling the parole revocation cases they receive for about a year at the time of this conversation, February 13, 2025. This interview has been edited for length and clarity.

How are you assigned cases? Do you handle only county jail cases or are you also assigned cases from state prison?

To start from the beginning, parole revocation cases get sent to us when either the supervising agency, the San Francisco Adult Probation Department, or the district attorney file reports to the court to start the revocation process based on a violation. Sometimes both the supervising agency and the district attorney's office actually end up each filing duplicate petitions for the same violation, so that is an inefficiency I have come across in how cases get assigned out. The State has a separate parole court for individuals on state parole who have violated their parole which the San Francisco County Public Defender's Office does not take cases from. Individuals on parole in San Francisco only have their cases remanded back to the California Department of Corrections for revocation if they were sentenced to parole for life, and typically these people are those who were originally charged with a more serious or violent offense. My cases come from post-release community supervision (PCRS), a lower level of supervision than state parole. The separation was a result of the Public Safety Realignment Act of 2011, which addressed the high prison population in California. The individuals in PRCS are actually supervised by the city's Adult Probation Department, the same agency that supervises those on probation.

What sort of fees and fines are still being charged to individuals on parole since the recent legislation removing language authorizing criminal fees? (AB 1869 and AB 177) I've seen that most or all parole supervision fees are repealed, but what about programming fees? Are the remaining fees state authorized or county authorized?

In the year I have worked handling parole revocation cases in San Francisco, I have never seen supervision or programming fees charged to a client, and I have never seen parole revoked solely because of unpaid fees. As for unpaid restitution fines, I typically see these charges reserved (not dismissed by the court) to allow a victim to come forward and ask for a hearing regarding the nonpayment if they desire. However, I haven't seen a lot of people come back and exercise that right. Restitution doesn't come up super often in parole court. If fines exist from a client's original offense, I don't see it because I am only handling their revocation case.

Can you walk us through all the steps of the revocation process? Is there anything besides a preliminary hearing and final revocation hearing, such as a hearing to determine ability to pay?

The preliminary hearing and the final revocation hearing are the two mandatory steps, yes, but it also depends on what route the client wants to take. For example, there is normally a pre-hearing conference

prior to the preliminary hearing to see if the case can be resolved, but if not, then the preliminary hearing occurs. This is also referred to as a probable cause hearing. Sometimes, my cases also involve bail motions, so then there will be a hearing on that motion. The final revocation hearing only occurs if the case was not resolved at the pre-hearing conference or preliminary hearing. I handle my cases all the way through this entire process.

Those sent to San Francisco's Parole Reentry Court go a different route. The existence of this court is optional; California statute allows for counties to establish one, but it is not mandatory. This is a collaborative court, so if the individual admits to the violation, they go through special programming for about six months. If they are successful in treatment, the petition can be thrown out like it never happened. This is really good for absconded folks.

Are ability-to-pay determinations always done with the Judicial Council online tool? Are you a fan of that feature? If some actual hearings still occur, what do they look like?

The San Francisco courts that handle parole revocation cases do not require the use of the online tool or documentation of indigency. Judges normally just ask me if my client can afford court costs. I say no, and then the judge stays any fees and fines, and we move on. I have never seen a client have to use the online tool, and I have never really been asked to provide documentation of my client's financial status.

How expansive is the right to counsel throughout the revocation process in your opinion? Do you stay in contact with a client from start to finish of their involvement with the parole system?

It stays with them from start to finish of violation proceedings, but not after or from their original offense. So I did not work with the clients I was sent prior to their violation case, unless this is not their first time being charged with violating their supervised sentence.

How often do you see your clients charged with the \$100 civil assessment from Cal. Penal Code § 1214.1(a), for not showing up to a hearing or paying restitution on time?

This fee is not imposed by San Francisco parole judges. A lot of the typical fines and fees that get imposed are stayed when a person can't afford them.

Have you ever represented a client in a good cause hearing regarding failure to appear or failure to pay? What does that process look like?

Our District Attorney Office would be in charge of filing a petition for that, but they usually just discharge it once they get ahold of the person.

Even if a defendant is not called into a hearing specifically because of nonpayment fees & fines, do you ever see judges consider nonpayment in their decision to revoke or not?

No. Legislation might have been passed around recently banning that as well.

What about nonpayment of restitution?

I am not involved with restitution orders for my clients' original offenses.

How are defendants typically informed of their right to counsel/due process? Do they need to request your services?

Normally, I am just at the arraignments of the day already, and I show up and introduce myself on the spot. Some clients call me in advance if I represented them in a prior violation case. However, because the statutory scheme allows for a ten-day "parole holding period," a lot of the time, these clients have already been in custody for ten days before they are allowed to speak to the Public Defender's Office. This used to be called "flash incarceration," and it is used by the agencies to determine if they are going to actually start a violation case and submit a petition to the court or just "flash" the individual (as in, release them after the ten days are up).

Appendix B: Interview of Ryan Yoo, Fresno County Deputy Public Defender

Ryan has worked for the Fresno County Public Defender's Office since March 2019. This interview was conducted on March 14, 2025, and has been edited for length and clarity.

How are you assigned cases? Do you handle only county jail cases or are you also assigned cases from state prison?

The way Fresno handles it is that anyone that's in criminal court has a right to counsel, including the Post-Release Community Supervision (PRCS) cases. There are five general felony courtrooms, with a separate court for parole revocation cases. In addition, there are also three Domestic Violence courtrooms that can handle adult supervision violations as part of their calendar as well. These courts hear all the criminal cases from Fresno County, including parole and probation revocation cases. One attorney from the Fresno County Public Defender's Office is assigned to each courtroom on a given day, on a rotating schedule. Fresno County treats probation cases as if they are an extension of the underlying case, or to put it another way, that the case is still open. This is because when probation is granted, imposition of judgment is suspended for the period of probation. So, individuals on probation keep the same representation for any violation as they had in their original case. While often times it is the same lawyer, its not exactly something that can be controlled. Assignments change, people leave, and others get hired; many times if someone violates probation, their previous counsel is no longer available to handle the violation. They do, however, keep the public defender's office as their appointed counsel. As for PRCS, as a general practice, the court appoints a public defense attorney to every case.

What sort of fees and fines are still being charged to individuals on parole since recent legislation, such as AB 1869 of the 2019-2020 legislative session and AB 177 of the 2021-2022 legislative session, were enacted removing language authorizing criminal fees? I've seen that most or all parole supervision fees are repealed, but what about programming fees? Are the remaining fees state-authorized or county-authorized?

I have never seen any sentencing-related fees or fines charged to individuals going through probation or parole revocation proceedings besides any that were assigned prior, at the time of sentencing, and stayed for the possibility of revocation.

Can you walk us through all the steps of the revocation process? Is there anything besides a preliminary hearing and final revocation hearing, such as a hearing to determine the ability to pay?

So there are different ways that probation violations come before the court for if the client is already in custody versus out of custody when the court receives a petition regarding a probation or parole violation, and thus different procedures leading up to the preliminary hearing. However, they always start with a petition to revoke probation. Sometimes they are arrested on a violation of their supervision, and in that case a petition to revoke must be filed with the court within 10 days.

Other times, the client is already in custody on a new law violation, which needs to be filed within 48 hours of arrest). In that case, the violation has more time to be alleged. Sometimes the probation officer files a special report to summarily revoke probation, and the individual is cited to appear to court.

Sometimes the probation officer files a special report to summarily revoke probation, and the court issues a warrant for their arrest (e.g., if they have been out of contact).

Then comes the preliminary hearings, which we call “contested hearings.” The individual’s first court date in the process is always their violation arraignment, and that would be when counsel is appointed if they don’t already have one. After we are appointed as the attorney and have a brief discussion with the client is normally when the court asks if the individual is contesting the violation or not.

Does that feel like a rushed process, getting assigned a case on the spot and having to decide the strategy the same day?

Normally, individuals being arraigned for probation or mandatory supervision already have an attorney at this point because their original case was never considered closed, so only individuals on parole or PRCS would be getting an attorney right on the spot. They do not actually have to make a decision to contest or not on the spot. As the attorney, we get a packet of information on the case earlier that day, and there is no set deadline the client needs to make a decision by. Day, week, month—whatever the client wants, as long as it isn’t a ridiculous request. We can always ask to have their case set over to the next day if they need more time to think about their decision. Sometimes cases also get resolved during the arraignment period, such as when the violation is only a missed appointment. Really, there are many reasons why violations get resolved at arraignment. Oftentimes there is a resolution that the defendants want to accept. Normally it is less time in custody and dismissing other pending charges in light of the admission.

When an individual denies a violation, that is when they exercise their right to a contested hearing. First, though, we will have a status hearing with the prosecutor to try to reach a solution before getting further into proceedings. If they decide to admit their violation, they will be advised by the court and counsel of their right to a contested hearing, their right to cross examine witnesses, procure witnesses on their behalf at no expense, and present evidence in their defense. The individual must give up that right to such a hearing on the record.

And yes, after the status hearing and the contested hearing, there is normally a final revocation hearing, if the case goes that far without getting resolved otherwise. It's optional, but the courts do use it as a matter of course. It’s often used for potential resolution, further negotiation, exchanging discovery, or to see if the violation is something the district attorney can even prove. This final hearing is usually wrapped up right after the contested hearing.

Are ability-to-pay determinations always done with the Judicial Council online tool? Are you a fan of that feature? If some actual hearings still occur, what do they look like?

The probation office does that initial assessment of an individual’s financial situation. A lot of it is up to what the client says. The court pretty much just appoints them an attorney as a general practice. Sometimes, the arraigned individuals are asked about their financial situation first (i.e., if they can afford an attorney), and sometimes the judge just appoints them an attorney without asking. (However, some individuals do refuse counsel.) It depends on the judge.

How often do you see your clients charged with the \$100 civil assessment from Cal. Penal Code § 1214.1(a), for not showing up to a hearing or paying restitution on time?

No.

Even if a defendant is not called into a hearing specifically because of nonpayment fees & fines, do you ever see judges consider nonpayment in their decision to revoke or not?

I have never seen nonpayment of fees or fines as a reason for revoking. I have also never seen a court try to claim nonpayment was willful. Court fines and fees are always stated as a separate term from probation or parole in Fresno County, but restitution is generally listed as a condition of the sentence.

However, I still haven't seen fines and fees be a basis for violation since I've been here. I sometimes see old probation violations (like from 2012) where the sole basis of violation is a failure to pay, but in my experience they have always been withdrawn. The Court generally sends outstanding fines and fees to collections.

What about nonpayment of restitution?

Still never. I think legislation recently passed against that.*

How are defendants typically informed of their right to counsel/due process? Do they need to request your services?

I have never seen it not stated clearly. The Court doesn't like people representing themselves because it tends to slow things down and opens the door up for an appeal.

Technically, they are supposed to request our services. But as a practice I ask everyone in court not represented by counsel to if they would like a public defender appointed.

They do have a right to represent themselves, and they can invoke that right via a Faretta waiver. In this process, the court questions their education and their experience in the law, and reiterates their right to counsel as well as some of the drawbacks of representing one's self.

**Ryan Yoo communicated via email on March 24, 2025: "I was incorrect about recent legislation banning revocation based on nonpayment of restitution. But I still have never seen a formal violation filed where the sole basis is nonpayment of restitution."*