



## MINNESOTA JUDICIAL TRAINING UPDATE



### PROBATION REVOCATIONS: THE “*AUSTIN*” FINDINGS - CLARIFICATION

#### QUESTION #1: REVOKE PROBATION AND EXECUTE SENTENCE:

Following A Probation Violation Hearing (Misd, Gross Misd Or Felony), If The Court Determines There Is Clear And Convincing Evidence That A Condition Of Probation Has Been Violated (Or If The Probationer Admits The Violation), What 3 Specific Findings MUST The Court Make Before Defendant’s Probation Can Be Revoked And The Sentence Executed?

**ANSWER:** Before The District Court Can REVOKE A Defendant’s Probation And EXECUTE The Sentence, The Judge Must Make 3 Specific “*AUSTIN*” Findings (*State v. Austin, 295 N.W. 2d 246 (Minn. 1980)*):

- 1) **DESIGNATE THE SPECIFIC CONDITION(S) THAT WERE VIOLATED;**
  - a) **Note:** the condition alleged to have been violated must have been a condition actually imposed by the court. *State v. Ornelas, 675 N.W.2d 74 Minn. 2004*).
- 2) **THE VIOLATION WAS INTENTIONAL OR INEXCUSABLE;**
- 3) **THE NEED FOR CONFINEMENT OUTWEIGHS THE POLICIES FAVORING PROBATION: You satisfy this condition by finding one of the following:**
  - a) **CONFINEMENT IS NECESSARY TO PROTECT THE PUBLIC FROM FURTHER CRIMINAL ACTIVITY BY THE OFFENDER; OR**
  - b) **THE OFFENDER IS IN NEED OF CORRECTIONAL TREATMENT WHICH CAN MOST EFFECTIVELY BE PROVIDED IF HE IS CONFINED; OR**
  - c) **IT WOULD UNDULY DEPRECIATE THE SERIOUSNESS OF THE VIOLATION IF PROBATION WERE NOT REVOKED.**

**Note:** When making the above findings the court must seek to convey the substantive reasons for revocation and the evidence relied upon. *State v. Modtland, 695 N.W.2d 602 (Minn. 2005)*.

**NOTE: FAILURE TO MAKE ADEQUATE FINDINGS IS REVERSIBLE ERROR!**

**QUESTION #2: PROBATION WITH INTERMEDIATE SANCTIONS**

What If The Court Decides NOT To Revoke Probation And NOT Execute The Sentence? Instead, The Court Decides To Reinstate Or Maintain Defendant On Probation With “Intermediate Sanctions” (e.g. Additional Jail, Treatment, etc). In That Case, Must The Court Still Make The Three “**AUSTIN**” Findings?

**Note:** “**Intermediate Sanctions**” include all typical conditions of probation (including jail) intended to punish or assist in defendant’s rehabilitation. *M.S. 609.135, subd. 1(b) (2006)*.

**ANSWER: NO – THE “AUSTIN” FINDINGS ARE NOT REQUIRED!**

The Three “**AUSTIN**” Findings Are NOT Required When The Court Reinstates or Maintains Defendant On Probation With “Intermediate Sanctions”, Such As Local Incarceration, etc. The “**AUSTIN**” Findings Are Only Required When The Court REVOKES Probation And EXECUTES The Underlying Sentence.

**EXPLANATION:** Although the intermediate sanction can serve as punishment for the probation violation, it is also used as a means of advancing the defendant's rehabilitation. For example, even when the violation is unintentional, an “intermediate sanction” (including jail) may provide a necessary incentive or “wake-up call” to comply with probation and resume court-ordered conditions.

**Note:** The court has broad discretion in determining “intermediate sanctions” (including jail). However, this discretion is not unlimited and should be based on “*Conscientious Judgment, Not Arbitrary Action*”. The standard of review on appeal is “*Abuse of Judicial Discretion*”.

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**SUPREME COURT CAUTION ON REVOKING PROBATION:** The decision to REVOKE probation should not be ‘a reflexive reaction to an accumulation of technical violations’ but requires a showing that the ‘offender's behavior demonstrates that he or she cannot be counted on to avoid antisocial activity.’

**REMEMBER** Rules of Evidence do not apply in Probation Revocation Hearings. *Rule 1101*

**SOURCE:** STATE v. COTTEW, 746 N.W.2d 632 (Minn. 2008); Minn. R. Crim. Pro. 27.04.