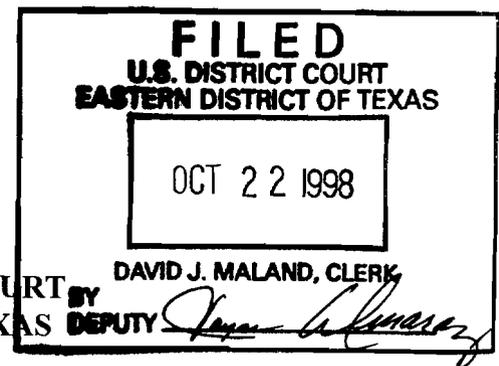


*Supervised 95-11*

General Order 98-15



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS

**GENERAL ORDER REGARDING REVOCATION OF PROBATION  
AND REVOCATION OF SUPERVISED RELEASE**

The following procedures will be used by the United States Probation Office in bringing a revocation of probation or supervised release to the attention of the Court. Such proceedings will be conducted pursuant to Rules 32.1 and 46(c) of the Rules of Criminal Procedure and 18 U.S.C. §3401(i).

**I. PROBATION CASES:**

**A. FELONY CASES:**

1. For an arrest warrant:

The probation officer shall contact the U.S. magistrate judge on criminal duty to present the application for a warrant for arrest. Upon arrest of the probationer, he or she will be taken before the magistrate judge on criminal duty for an initial appearance.

The magistrate judge who conducts the initial appearance will likewise conduct the preliminary hearing, if required.<sup>1</sup> The district judge who originally sentenced the probationer will conduct the final revocation hearing.

2. For a summons:

The probation officer shall contact the U.S. magistrate judge on criminal duty for a date and time of the initial appearance. The clerk will thereafter file Probation Form 12 and issue the summons. The probation officer is authorized to serve the summons pursuant to Rule 4(d)(3) of the Federal Rules of Criminal Procedure.

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<sup>1</sup>Fed.R.Crim.P. 32.1(a)(1) requires a preliminary hearing if the defendant is held in custody on the ground that he or she has violated a condition of probation or supervised release. The preliminary hearing shall be held promptly.

The magistrate judge who set the summons date will conduct the initial appearance and advise the probationer of the revocation procedures and date of the hearing. The district judge who originally sentenced the probationer will conduct the final revocation hearing.

## B. MISDEMEANOR CASES:

### 1. For an arrest warrant:

The probation officer shall contact the U.S. magistrate judge on criminal duty to present the application for a warrant of arrest. Upon arrest of the probationer, he or she will be taken before the magistrate judge on criminal duty for an initial appearance.

The magistrate judge who conducts the initial appearance will likewise conduct the preliminary hearing, if any.<sup>2</sup> The district judge or magistrate judge who originally sentenced the probationer will conduct the final revocation hearing.

### 2. For a summons:

The probation officer shall contact the magistrate judge who originally sentenced the probationer, or the duty magistrate judge if the probationer was sentenced by a district judge, for a date and time of the initial appearance. The clerk will thereafter file Probation Form 12 and issue the summons which may be served by the probation officer.

At the initial appearance, the magistrate judge will advise the probationer of the revocation hearing procedures and date of the hearing. The revocation hearing will be conducted by the sentencing district or magistrate judge on the scheduled date.

## **II. SUPERVISED RELEASE CASES:**

### A. FELONY CASES:

#### 1. For an arrest warrant:

The probation officer shall contact the U.S. magistrate judge on criminal duty to present the application for a warrant of arrest. Upon arrest, the releasee will be taken before the magistrate judge on criminal duty for an initial appearance.

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<sup>2</sup>See footnote 1.

The magistrate judge who conducts the initial appearance will likewise conduct the preliminary hearing, if any,<sup>3</sup> as well as the revocation hearing. Thereafter, a report and recommendation will be filed to which the defendant or the Government may file objections. The sentencing district judge will thereafter enter the final order in the case.

2. For a summons:

The probation officer shall contact the magistrate judge on criminal duty for a date and time of the initial appearance. The clerk will thereafter file Probation Form 12 and issue the summons which the probation officer is authorized to serve.

The magistrate judge who set the summons date will conduct the initial appearance as well as the revocation hearing. After the revocation hearing, the magistrate judge will file a report and recommendation to which objections may be filed. The sentencing district judge will thereafter enter the final order in the case.

B. MISDEMEANOR CASES:

1. For an arrest warrant:

The probation officer shall contact the magistrate judge on criminal duty to present the application for an arrest warrant. Upon arrest, the releasee will be taken before the magistrate judge on criminal duty for an initial appearance and consideration of conditions of release or a detention hearing.

The magistrate judge who conducts the initial appearance will likewise conduct the preliminary hearing, if any,<sup>4</sup> and the revocation hearing if the releasee was sentenced by a district judge. If the releasee was sentenced by a magistrate judge, the magistrate judge who originally sentenced the releasee will conduct the final revocation hearing.

2. For a summons:

The probation officer shall contact the magistrate judge who originally sentenced the releasee, or the duty magistrate judge if the releasee was sentenced by a district judge, for a date and time of the initial appearance. The clerk will thereafter file Probation Form 12 and issue the summons which may be served by the probation officer.

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<sup>3</sup>See footnote 1.

<sup>4</sup>See footnote 1.

At the initial appearance, the magistrate judge will advise the release of the revocation hearing procedures and date of the hearing. The revocation hearing will be conducted by that same magistrate judge.

**III. PROBATION/SUPERVISED RELEASE REPORTS:**

Prior to any revocation hearing, the probation officer shall prepare a written report on the case which sets forth a description of the original offense and the grounds for revocation. The report will also set forth the sentencing guideline provisions that apply to the case. This report will be served on the U.S. Attorney and the defense attorney within five days of the revocation hearing. The report should contain the sentence recommended by the probation officer. The probation officer will also prepare a separate sentencing justification which will be for the Court's use only.

**IV. PRIOR GENERAL ORDERS:**

This general order supersedes General Order 95-11 entered on June 7, 1995.

Signed this 20<sup>th</sup> day of October, 1998.

**FOR THE COURT:**



RICHARD A. SCHELL  
Chief Judge