

STATE OF TENNESSEE
OFFICE OF THE
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February 17, 2012

Opinion No. 12-16

Right to Appointed Counsel for Probation Revocation

QUESTION

Does an indigent defendant have a right to appointed counsel during a proceeding for revocation of his probation?

OPINION

Yes. Tenn. Code Ann. § 40-35-311(b) provides that a defendant is entitled to be represented by counsel at a hearing on a revocation of his probation. If that defendant is indigent, Tennessee Supreme Court Rule 13, Section 1(d)(1)(C), requires the court to appoint counsel to the defendant.

ANALYSIS

In Tennessee, probationers have a right, conferred by law, to counsel in revocation proceedings.¹ Tenn. Code Ann. § 40-35-311 provides:

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

Tenn. Code Ann. § 40-35-311(b).

Tennessee Supreme Court Rule 13 requires the court to appoint counsel if the defendant is indigent, stating in relevant part:

¹ In *Gagnon v. Scarpelli*, 411 U.S. 778, 789-90 (1967), the United States Supreme Court held that probationers do not have a constitutional right to counsel in revocation proceedings. In Tennessee, therefore, the right to be represented in such matters is conferred by statute and rule.

(d)(1) In the following cases, and in all other cases required by law, the court or appointing authority shall advise any party without counsel of the right to be represented throughout the case by counsel and that counsel will be appointed if the party is indigent and requests appointment of counsel:

(C) Proceedings initiated by a petition for *habeas corpus*, early release from incarceration, suspended sentence, or *probation revocation*;

Tenn. Sup. Ct. R. 13, Section 1(d)(1)(C) (emphasis added).² Tennessee case law has also affirmed a probationer's right to counsel in revocation hearings. *See State v. Merriweather*, 34 S.W.3d 881, 884-85 (Tenn. Crim. App. 2000).

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² The entitlement to counsel at a probation revocation hearing is also required by Tenn. Code Ann. § 8-14-206, which states:

No person in this state shall be allowed to enter a plea in any criminal prosecution or other proceeding involving a possible deprivation of liberty when not represented by counsel, unless such person has in writing waived the right to the assistance of counsel.