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TEXAS COMMUNITY SUPERVISION (PROBATION) VIOLATION GENERAL OUTLINE

Thank you for choosing me to assist you with your legal needs. I take the position that you are retaining me to work and worry over your case so that you are less burdened with anxiety and even fear for your future. I will work hard to provide you with aggressive, effective legal representation but I will need your help developing your defense, marshaling your evidence and communicating with your witnesses. Please provide me the name, address, phone number, e-mail address and an outline of the expected testimony of all your potential witnesses (including character witnesses).

I hope the following general outline will assist your understanding of the process involved in your defense. "Probation" is now often called "Community Supervision". "Straight Probations" can be "Revoked." "Deferred Adjudications" can be "Adjudicated" which means you are then found guilty and you lose the benefit of not being a convicted felon, being able to eventually seal your record from public access and avoiding license suspensions as a result of some types of convictions (usually drug cases).

A criminal prosecution for a community supervision (probation) violation begins with a violation report from your assigned probation officer (often called your field officer).

The violation report is initially routed to the court probation officer where your case was heard. The court officer will review the report and determine whether a motion to revoke (or adjudicate) your probation should be filed.

If such a motion is prepared, the presiding Judge on your case can simply issue a non-arrest summons for you to appear at court for discussion and admonishment on the violation

allegation. But, almost always, the Judge will instead issue a warrant for your arrest on the violation.

Bond amounts are often, but not always, preset on misdemeanor probation violations and are very often not preset on felony probation violations. If you are on a felony deferred adjudication probation the Judge will almost always agree to set a bond on the motion to adjudicate. The bond can, however, be so high that you cannot afford to post it. If you are on a regular (not deferred adjudication) probation, the Judge can hold you in jail without bond until the violation is resolved. Resolutions can be by reinstatement of your probation**,** discharge of your probation, reinstatement with modified conditions of supervision**,** revocation (or adjudication) with an extension of the length of supervision**, or** revocation with incarceration or even a combination of the aforementioned.

If your probation is reinstated with amended conditions, that **can include, but is not limited to,** in-patient or out-patient treatment**,** additional community service hours**,** additional rehabilitation classes or counseling**,** incarceration days or months (sometimes derisively called jail therapy to show you who has the power)**, stricter** supervision (including expensive ankle monitoring)**,** house arrest**,** high risk case load supervision**,** and additional fines.

If no bond is set on your violation, your retained attorney can request a bond be set or file a motion to request a hearing on getting a bond set. The bond fee is an additional separate fee from the attorney fee to represent you on the Motion to Revoke (or Adjudicate) your probation. Often, a Judge will not set a bond unless you pay off any delinquent fines, court costs, restitution, probation, urinalysis fees, etc...

Sometimes probation officers will have (or had) you arrested in the lobby when you report(ed) for probation. Field officers who treat you in that manner, often have negative comments in your file and will not assist your completing your probation requirements if you have posted a bond on the violation. Discuss this with me if it occurs.

It is important to continue reporting if you post bond on the violation. You need to aggressively pursue completion of your community service hours, classes, counseling and fee payments while awaiting a hearing on the probation violation.

We need to discuss these issues and develop a strategy to deal with these challenges.

Take full advantage of any delays by completing your fee payments, classes, counseling, community service hours, and getting weekly clean drug screen urinalysis.

The District Attorney's Office will assign a prosecutor to pursue the State's case against you. The next step in the process is for the prosecutor assigned to your case to read through the file, contact witnesses, consult with probation officers and make a plea bargain offer. This is done in every case, and I am required to inform you of every plea bargain offer that is made by

the prosecutor. You are the only person who can accept or reject a plea bargain offer. I cannot accept or reject an offer on your behalf, which is why I will notify you of each plea bargain offer, even if you have advised me that you do not intend to accept any plea bargain. We will not agree to any offer until we are provided review of all of the evidence the law requires them to disclose to us, including but not limited to probation reports, urinalysis results, police reports, forensic reports, videotapes, photographs, witness statements, etc… **The plea bargain negotiation phase can last only a few court settings, or for several months, depending upon the diligence and reasonableness of the individual prosecutor assigned to your case.** There is no way to change prosecutors or courts, so we must do the best we can with whomever the District Attorney's Office has assigned to your case.

At some point, the plea bargain negotiations will come to an end, either because we have reached an agreement, or because the prosecutor has made the best offer we can extract and continued negotiations would be fruitless. At this point, you will be required to make a decision about your case.

The ***first option*** is to **accept the *best* plea offer** that has been made by the prosecutor.

The *second option* is to begin the process of an **open plea of true**, which means that you reject the state's offer for a plea bargain. You admit violation of probation and ask the Judge to decide the punishment.

An open plea of true is done in two parts. The first part is the entering of a plea of true to violation of probation. Once the plea of true is completed, the case is immediately ready for the second part, a punishment hearing before the Judge.

The Judge will consider the proper punishment and you will be given an opportunity to testify if we agree that you should do so. We will go over any questions that I will ask you during this hearing. The State does have an opportunity to cross-examine you during this hearing, and the Judge can also ask questions of you. You can present your evidence and have punishment and character witnesses testify for you and the prosecutor can present their witnesses which may include, but not limited to, victim, law enforcement and probation officer witnesses. After all testimony and evidence has been presented, the Judge will make a decision as to the appropriate punishment for you. There is a very limited right to appeal the Judge's decision from a plea of true, which usually means the decision is final.

The ***third option*** available is to **set the matter for a Judge hearing.** You have no right to have a jury hear a probation violation hearing. The hearing is conducted in two phases. The first phase is referred to as the true/not true phase, which is where the State will call any witnesses they have and offer any additional evidence in an effort to convince the judge of probation violation *by a mere preponderance of evidence*. Evidence can be in the form of physical evidence collected by the police, testimony of witnesses (including police officers), counselors,

expert witness testimony for any forensic evidence collected, and testimony from probation officers and from any other witness that is allowed by the Court. You have a right to present your evidence and testimony too.

At the end of the true/not true phase of the trial, if there is a finding of true, then the second phase will be conducted, which is the punishment phase. This phase of the hearing is similar to the punishment hearing conducted at the end of an open plea of true.

Additional information that you should be aware of while your case is pending is that **criminal cases tend to move slowly.** There are long periods of time where there isn't much happening. These time periods are generally followed by relatively short periods of time where there is flurry of activity. This generally occurs because all scheduling is subject to the Court's Calendar, and we are limited to when we can fit into the court's existing, voluminous docket. This is most noticeable when scheduling a case for a hearing. The Court advises me of the available dates and I must choose one. Sometimes, the first available dates are months away and we have very little input. It is difficult for a hearing to commence on its first contested setting. **Hearing reset dates** are measured in weeks and not days.

I am limited in what I can discuss with your family members, and your family doesn't always understand the need for this, but let me assure you that it is done for your protection. Remember that what you say to me is protected by law under the Attorney/Client privilege. However, what you say to your family, friends, and co-defendants, or fellow inmates is not protected. Jail phone conservations are recorded and fellow inmates can be called to testify to your alleged admissions in the jail. Some prosecutors (or their investigators) actually listen to your non-Attorney/Client recorded phone calls. This is almost unbelievable but is allowed and true.

I advise you not to discuss the facts of the charges against you with anyone but me. There is very little to be gained by discussing your case with others, and a great deal at risk. Avoid discussing facts of your case in letters written to family or friends because these letters can be read by and seized by the jail staff. If you are out on bond, do not discuss the facts of your case in e-mails, text messages, voice mails, letters or social media.

If a police officer, probation officer or prosecutor attempts to discuss anything with you, do not agree to do so unless I have told you it is allowed. Law enforcement personnel, whether police officers, probation officers, investigators, or prosecutors are supposed to advise me first before making an effort to discuss something with you, but they may fail to do so. Unless I direct you otherwise, do not discuss anything with them and tell them that you will not discuss anything with them until you have spoken to me.

A number of judges are strict regarding **courtroom decorum**. You, your family and your witnesses should be attired in a manner respecting the dignity of the court. All persons entering

the courtroom need to be dressed in clean, modest and appropriate attire. Unacceptable attire includes: shorts, cut-offs, sandals, flip-flop style shoes, t-shirts, muscle shirts, tube tops, halter tops, athletic/gymnasium attire, tank tops, open shirts, hats, drooping/saggy pants, clothing indicating illegal drug use, gang affiliation or containing offensive, vulgar, racist, sexist, or obscene language, and shirts that are not tucked in. Food, beverages, water bottles, and chewing gum are not allowed in the courtroom. Cellular telephones, pagers, cameras, laptop computers, i-Pads, recorders, or any other device that may cause a distraction to the court are also not allowed in the courtroom. They are subject to seizure and contempt of court sanctions can be assessed against you.

I hope this general outline is helpful to you. There are exceptions to many of the foregoing general outline statements. I can advise you of these exceptions which specifically apply to you as we move through the stages of your defense.

An important exception that often arises is when an alleged violation of your probation is a new offense arrest and the Court and Prosecutor will agree over your objection that the probation violation be heard by the Judge under a *mere preponderance of evidence* standard of proof instead of permitting you to *first* contest the new charge in front of a Jury which must decide your case *beyond a reasonable doubt*!

Once again, thank you. I appreciate your confidence in me and I look forward to working with you toward the best possible conclusion on this serious undertaking.

Please contact me if any concern or question arises. I am often in court, so it is easier to reach me in late afternoons or early evenings. Please contact me with any specific questions that may arise.

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DAVID R. SCOGGINS

TEXAS AND FEDERAL CRIMINAL DEFENSE

FOR OVER 35 YEARS

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Disclaimer: The legal information presented herein should not be construed to be formal legal advice nor the formation of a lawyer/client relationship. General advice should always be tested by the particular case. Legal advice is almost always case specific. Statues, ordinances, legal procedures, case law and rules of evidence are often revised. If you have a specific question, give me a call.