

1 **FOR PUBLICATION**

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5 **IN THE SUPERIOR COURT**  
6 **OF THE**  
7 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

8 IN RE THE MATTER OF P.H. ) **JUVENILE CASE NO: 02-0019**  
9 )  
10 ) **ORDER**  
11 )  
12 \_\_\_\_\_ )

13 **I. INTRODUCTION**

14 **JUVENILE P. H.** (“P.H.”) is currently on probation as a delinquent child after having been  
15 adjudged guilty in Juvenile Cases 02-0019, 02-0030, 02-0042, 02-0043, 02-0044, and 02-0090.  
16 Now, the Office of the Attorney General (“AG”) seeks revocation of his probation on grounds that  
17 P.H. has failed to comply with the terms and conditions of his probation. However, before the  
18 revocation hearing is held, the Office of the Public Defender (“PD”) seeks a ruling on two issues that  
19 may affect the Juvenile’s rights at the hearing. Specifically, the PD would like the Court to  
20 determine:

- 21 1. What standard of proof is required in a revocation hearing?  
22 2. When revocation is predicated on the possible commission of another crime, which  
23 in turn violates the terms of the probation prompting revocation, may the revocation  
24 hearing be postponed until after adjudication of the underlying alleged crime?

25 **II. ANALYSIS**

26 The AG accuses P.H. of violating the terms and conditions of his probation in a number of  
27 ways. Specifically, the AG alleges that P.H. has: 1) failed to perform any of the community service  
28 required by the terms of his probation; 2) accumulated 10 separate unexcused absences from school;

1 3) violated his curfew on three separate occasions; 4) committed an alleged assault and battery on  
2 4/15/03, with the charge still pending; and 5) slapped a fellow student on 1/31/02, with the charge  
3 still pending.

4 Each of these individual charges is a *potential* violation of the terms and conditions of P.H.'s  
5 probation. However, while counts one and two are violations of the terms and conditions of P.H.'s  
6 parole, they are not, of themselves, punishable offenses. Violation of curfew (count three) is a crime  
7 (violation of the Saipan Curfew Hours for Minors Act of 1992, 10 CMC §§ 3311, *et seq.*). Although  
8 it does not appear that the AG has filed charges for this alleged act, the act still violates the terms  
9 and conditions of P.H.'s probation. Similarly, if proven, counts four and five would constitute  
10 criminal acts, as well as violations of the terms and conditions of the juvenile's probation.  
11 Apparently the AG is seeking to prosecute these two alleged acts, in addition to using them as  
12 grounds for revocation of probation. For reasons discussed *infra*, to obtain a conviction on either  
13 count four or five, the AG bears the burden of establishing guilt beyond a reasonable doubt for these  
14 alleged crimes in a proceeding separate from the probation revocation hearing.

15 **A. Standard of Proof**

16 Generally, different standards of proof are required in different proceedings. For example,  
17 while evidence “beyond a reasonable doubt” is required to convict a criminal, only “a preponderance  
18 of the evidence” is required for a favorable judgment in a civil proceeding. The question posed by  
19 the PD is, what standard is required in a revocation of probation hearing?

20 The Commonwealth Code is the first place to look to see if the standard of proof for a  
21 revocation hearing has been established statutorily. The Code provides that:

22 Upon violation of any of the terms and conditions of probation at any time during the  
23 probationary period, the court may issue a warrant for the rearrest of the person on  
24 probation and, after giving the person an opportunity to be heard and rebut any  
evidence presented against the person, may revoke and terminate the probation.

25 6 CMC § 4113(b). Further, “[t]he court may at any time during the period of probation modify its  
26 order of suspension of imposition of sentence.” 6 CMC § 4113(d). Unfortunately, the Code is silent  
27 on the issue of which standard of proof to apply in a revocation of probation hearing. However, this  
28 is common. Other jurisdictions have also addressed this exact issue at length, and therefore the

1 Court will turn to their precedent, as well as our own, in determining the standard of proof  
2 appropriate for the CNMI.

3 The CNMI Supreme Court has already stated that the standard of proof for probation  
4 revocation is less than that for a criminal trial. *Commonwealth v. Santos*, 4 N.M.I. 348, 350 (1996).  
5 Unfortunately, in *Santos*, the CNMI Supreme Court did not need to address exactly what the  
6 standard of proof should be, as it was not specifically at issue. Therefore, the Court turns to the  
7 analyses of other courts for further guidance.

8 Constitutional provisions permit the revocation of probation when the facts supporting the  
9 revocation are established by a preponderance of the evidence. *California v. Rodriguez*, 795 P.2d  
10 783, 785 (Cal. 1990). While no constitutional provision establishes a standard of proof in revocation  
11 hearings, the U.S. Supreme Court has indicated that due process requires no stricter standard than  
12 a preponderance of the evidence. *Id.* As revocation of parole<sup>1</sup> is not part of a criminal prosecution,  
13 the full panoply of rights due a defendant in such a proceeding does not apply to parole revocations.  
14 *Morrissey v. Brewer*, 408 U.S. 471, 480, 92 S. Ct. 2593, 2600, 33 L. Ed. 2d 484, 494 (1972).<sup>2</sup>  
15 However, a parole revocation hearing must meet certain minimum requirements of due process,  
16 including: 1) written notice of the claimed violations; 2) disclosure of adverse evidence; 3) the right  
17 to confront and cross-examine witnesses; 4) a neutral and detached hearing board; and 5) a written  
18 statement by the fact finders as to the evidence relied on and the reason for the revocation. *Id.* 408  
19 U.S. at 489, 92 S. Ct. at 2604, 33 L. Ed. 2d at 499.

20 “[T]here is no interest on the part of the State in revoking parole [or probation] without any  
21 procedural guarantees at all.” *Id.* 408 U.S. at 484, 92 S. Ct. at 2602, 33 L. Ed. 2d at 496. That “clear  
22 and convincing” evidence is not constitutionally required in probation revocation cases is also  
23 shown by the decisions of the United States Courts of Appeals, as referenced in *Rodriguez*, 795 P.2d  
24 at 786. “All that is required for the revocation of probation is enough evidence to satisfy the district  
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26 <sup>1</sup> Parole and probation revocation hearings are equivalent in terms of the requirements of due process. *Gagnon*  
27 *v. Scarpelli*, 411 U.S. 778, 782, 93 S. Ct. 1756, 1759, 36 L. Ed. 2d 656, 661 (1973).

28 <sup>2</sup> It should be noted that while *Morrissey v. Brewer*, 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972)  
has been cited as authority over 7,000 times, most of which has been favorable, the negative criticism it has received has  
not been directed at the proposition the Court relies upon here.

1 judge that the conduct of the petitioner has not met the conditions of probation.” *Id.* (citing *United*  
2 *States v. Turner*, 741 F.2d 696, 698 (5th Cir. 1984) and *United States v. Guadarrama*, 742 F.2d 487,  
3 489 (9th Cir. 1984)). In a probation revocation hearing, “[t]he constitutionality of proof by a  
4 preponderance of the evidence<sup>3</sup> . . . derives from the fact that revocation deprives an individual, not  
5 the absolute liberty to which every citizen is entitled, but only of conditional liberty properly  
6 dependent on observance of special restrictions.” *Rodriguez*, 795 P.2d at 786 (internal quotations  
7 and citation omitted).

8 The Court is satisfied that the preponderance of the evidence standard is not only  
9 constitutionally permissible, but is supported by the jurisprudence of the United States Supreme  
10 Court, the United States Courts of Appeals, and other jurisdictions including California. Further,  
11 when a court places an individual on probation, the court takes the risk that the individual may  
12 commit additional antisocial acts. *Id.* at 788. “When probation fails as a rehabilitative device, . .  
13 . the state has a great interest in being able to imprison the probationer without the burden of a new  
14 adversarial criminal trial.” *Id.* The Court finds that the interests of justice and protection of the  
15 populace at large warrant no more than a preponderance of the evidence standard in revocation of  
16 probation hearings.

17 **B. Adjudication of the Underlying Crime–Timing**

18 A probation revocation hearing arises as a continuing consequence of the probationer’s  
19 original conviction—not from the substance of new criminal allegations. *Lucido v. Superior Court*  
20 *of Mendocino County*, 795 P.2d 1223, 1230 (Cal. 1990). The hearing assesses whether conditions  
21 relating to punishment for a prior crime have been violated so that probation should be modified or  
22 revoked. *Id.* The fundamental purpose of the revocation hearing is not to determine whether the  
23 probationer is innocent or guilty of a crime, but whether probation should be revoked. *Id.*

24 Preemption of trial of a new charge [on the grounds of collateral estoppel] by a  
25 revocation decision designed to perform a wholly independent social and legal task  
26 would undermine the function of the criminal trial process as the intended forum for  
ultimate determinations as to guilt or innocence of newly alleged crimes.

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27 <sup>3</sup> It should be noted that the court in *California v. Rodriguez*, 795 P.2d 783 (Cal. 1990), suggests a lesser  
28 evidentiary standard *may* even be acceptable. However, here the Court is satisfied that the preponderance of the  
evidence standard is appropriate.

1 *Id.* at 349.

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3 Based upon the discussion *supra* of the standard of proof and due process requirements, and  
4 the fundamental purpose of probation revocation hearings, it is clear that courts do not adjudicate  
5 the underlying crime contemporaneously with the revocation hearing. Therefore, it is merely a  
6 question of whether one proceeding *must* occur before the other. The Court concludes that either  
7 proceeding can occur first, although in practice it is likely that revocation hearings will be held long  
8 before new charges are actually brought to trial. If the probation revocation hearing occurs *before*  
9 adjudication of an underlying crime, the findings of the court in the revocation hearing will not be  
10 binding in the subsequent adjudication of the new charge. The lesser standard of proof, different  
11 evidentiary procedures, etc., will dictate that the revocation hearing cannot serve as grounds for a  
12 criminal conviction.

13 If a criminal trial should occur prior to a probation revocation hearing, a conviction would  
14 be strong evidence in favor of revocation. However, even if the criminal trial should result in  
15 acquittal, it may not save the probationer from a finding by the court of violation of the terms and  
16 conditions of his release *if* the government can meet the preponderance of the evidence burden.  
17 Conceivably, there may be insufficient evidence to obtain a conviction under the “beyond a  
18 reasonable doubt” standard, while still meeting the “preponderance” standard. In any case, the  
19 Court finds that it is not necessary to postpone the revocation hearing until after adjudicating the  
20 underlying offense.

### 21 **III. CONCLUSION**

22 It must be remembered that a revocation of probation hearing is not a determination of guilt  
23 for the new charge(s). Here, the issue is not whether the juvenile actually committed the new crimes  
24 or acts he is now accused of, but rather whether by a preponderance of the evidence the government  
25 has shown that he has violated the terms and conditions of his probation. It is likely that most  
26 revocation hearings will be held prior to trials for any subsequent charges, but it is not required.

27 **SO ORDERED this 20th day of July 2004.**

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/s/  
ROBERT C. NARAJA,  
Presiding Judge