

**Probation Violations
and
HYTA Changes**

THE CODE OF CRIMINAL PROCEDURE (EXCERPT)
Act 175 of 1927

771.1 Requirements for probation; delayed sentence; fee; applicability of section to certain juveniles.

Sec. 1. (1) In all prosecutions for felonies, misdemeanors, or ordinance violations other than murder, treason, criminal sexual conduct in the first or third degree, armed robbery, or major controlled substance offenses, if the defendant has been found guilty upon verdict or plea and the court determines that the defendant is not likely again to engage in an offensive or criminal course of conduct and that the public good does not require that the defendant suffer the penalty imposed by law, the court may place the defendant on probation under the charge and supervision of a probation officer.

(2) In an action in which the court may place the defendant on probation, the court may delay sentencing the defendant for not more than 1 year to give the defendant an opportunity to prove to the court his or her eligibility for probation or other leniency compatible with the ends of justice and the defendant's rehabilitation, such as participation in a drug treatment court under chapter 10A of the revised judiciary act of 1961, 1961 PA 236, MCL 600.1060 to 600.1082. When sentencing is delayed, the court shall enter an order stating the reason for the delay upon the court's records. The delay in passing sentence does not deprive the court of jurisdiction to sentence the defendant at any time during the period of delay.

(3) If a defendant is before the circuit court and the court delays imposing sentence under subsection (2), the court shall include in the delayed sentence order that the department of corrections shall collect a supervision fee of not more than \$135.00 multiplied by the number of months of delay ordered, but not more than 12 months. The fee is payable when the delayed sentence order is entered, but the fee may be paid in monthly installments if the court approves installment payments for that defendant. In determining the amount of the fee, the court shall consider the defendant's projected income and financial resources. The court shall use the following table of projected monthly income in determining the amount of the fee to be ordered:

<u>Projected Monthly Income</u>	<u>Amount of Fee</u>
\$ 0-249.99	\$ 0.00
\$ 250.00-499.99	\$10.00
\$ 500.00-749.99	\$25.00
\$ 750.00-999.99	\$40.00
\$1,000.00 or more	5% of projected monthly income, but not more than \$135.00

The court may order a higher amount than indicated by the table, up to the maximum of \$135.00 multiplied by the number of months of delay ordered but not more than 12 months, if the court determines that the defendant has sufficient assets or other financial resources to warrant the higher amount. If the court orders a higher amount, the amount and the reasons for ordering that amount shall be stated in the court order. The fee shall be collected as provided in section 25a of the corrections code of 1953, 1953 PA 232, MCL 791.225a. A person shall not be subject to more than 1 supervision fee at the same time. If a supervision fee is ordered for a person for any month or months during which that person already is subject to a supervision fee, the court shall waive the fee having the shorter remaining duration.

(4) This section does not apply to a juvenile placed on probation and committed under section 1(3) or (4) of chapter IX to an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17371;—Am. 1931, Act 308, Eff. Sept. 18, 1931;—Am. 1945, Act 5, Eff. Sept. 6, 1945;—CL 1948, 771.1;—Am. 1961, Act 185, Eff. Sept. 8, 1961;—Am. 1978, Act 77, Eff. Sept. 1, 1978;—Am. 1982, Act 470, Eff. Mar. 30, 1983;—Am. 1988, Act 78, Eff. Oct. 1, 1988;—Am. 1988, Act 90, Imd. Eff. Mar. 30, 1988;—Am. 1993, Act 185, Eff. Oct. 1, 1993;—Am. 1998, Act 520, Imd. Eff. Jan. 12, 1999;—Am. 2002, Act 483, Eff. Oct. 1, 2002;—Am. 2002, Act 666, Eff. Mar. 1, 2003;—Am. 2004, Act 219, Eff. Jan. 1, 2005;—Am. 2006, Act 631, Imd. Eff. Jan. 3, 2007.

Former law: See section 1 of Act 105 of 1913, being CL 1915, § 2029.

THE CODE OF CRIMINAL PROCEDURE (EXCERPT)

Act 175 of 1927

771.4 Legislative intent; revocation of probation; procedure; sentence; section inapplicable to certain juveniles.

Sec. 4. It is the intent of the legislature that the granting of probation is a matter of grace conferring no vested right to its continuance. If during the probation period the sentencing court determines that the probationer is likely again to engage in an offensive or criminal course of conduct or that the public good requires revocation of probation, the court may revoke probation. All probation orders are revocable in any manner the court that imposed probation considers applicable either for a violation or attempted violation of a probation condition or for any other type of antisocial conduct or action on the probationer's part for which the court determines that revocation is proper in the public interest. Hearings on the revocation shall be summary and informal and not subject to the rules of evidence or of pleadings applicable in criminal trials. In its probation order or by general rule, the court may provide for the apprehension, detention, and confinement of a probationer accused of violating a probation condition or conduct inconsistent with the public good. The method of hearing and presentation of charges are within the court's discretion, except that the probationer is entitled to a written copy of the charges constituting the claim that he or she violated probation and to a probation revocation hearing. The court may investigate and enter a disposition of the probationer as the court determines best serves the public interest. If a probation order is revoked, the court may sentence the probationer in the same manner and to the same penalty as the court might have done if the probation order had never been made. This section does not apply to a juvenile placed on probation and committed under section 1(3) or (4) of chapter IX to an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17374;—Am. 1947, Act 246, Imd. Eff. June 20, 1947;—CL 1948, 771.4;—Am. 1988, Act 78, Eff. Oct. 1, 1988;—Am. 1998, Act 520, Imd. Eff. Jan. 12, 1999.

Compiler's note: Section 3 of Act 78 of 1988 provides: "This amendatory act shall take effect June 1, 1988." This section was amended by Act 181 of 1988 to read as follows: "This amendatory act shall take effect October 1, 1988."

Former law: See section 4 of Act 105 of 1913, being CL 1915, § 2032; and Act 203 of 1925.

THE CODE OF CRIMINAL PROCEDURE (EXCERPT)
Act 175 of 1927

771.2 Probation period; order fixing period and conditions of probation; registration pursuant to sex offenders registration act; reduction in probation period; subsection (1) inapplicable to certain juveniles.

Sec. 2. (1) Except as provided in section 2a of this chapter, if the defendant is convicted for an offense that is not a felony, the probation period shall not exceed 2 years. Except as provided in section 2a of this chapter, if the defendant is convicted of a felony, the probation period shall not exceed 5 years.

(2) The court shall by order, to be filed or entered in the cause as the court may direct by general rule or in each case, fix and determine the period and conditions of probation. The order is part of the record in the cause. The court may amend the order in form or substance at any time.

(3) A defendant who was placed on probation under section 1(4) of this chapter as it existed before March 1, 2003 for an offense committed before March 1, 2003 is subject to the conditions of probation specified in section 3 of this chapter, including payment of a probation supervision fee as prescribed in section 3c of this chapter, and to revocation for violation of these conditions, but the probation period shall not be reduced other than by a revocation that results in imprisonment or as otherwise provided by law.

(4) If an individual is placed on probation for a listed offense enumerated in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722, the individual's probation officer shall register the individual or accept the individual's registration as provided in that act.

(5) Subsection (1) does not apply to a juvenile placed on probation and committed under section 1(3) or (4) of chapter IX to an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17372;—CL 1948, 771.2;—Am. 1978, Act 77, Eff. Sept. 1, 1978;—Am. 1988, Act 78, Eff. Oct. 1, 1988;—Am. 1992, Act 251, Eff. Jan. 1, 1993;—Am. 1993, Act 185, Eff. Oct. 1, 1993;—Am. 1994, Act 286, Eff. Oct. 1, 1995;—Am. 1998, Act 520, Imd. Eff. Jan. 12, 1999;—Am. 2002, Act 666, Eff. Mar. 1, 2003;—Am. 2010, Act 351, Imd. Eff. Dec. 22, 2010.

Compiler's note: Section 3 of Act 78 of 1988 provides: "This amendatory act shall take effect June 1, 1988." This section was amended by Act 181 of 1988 to read as follows: "This amendatory act shall take effect October 1, 1988."

Former law: See section 2 of Act 105 of 1913, being CL 1915, § 2030; and Act 203 of 1925.

THE CODE OF CRIMINAL PROCEDURE (EXCERPT)
Act 175 of 1927

771.2a Probation for not more than 5 years; probation for term of years; order fixing period and conditions of probation; applicability of section to certain juveniles; probation for not less than 5 years; conditions; residing or working within school safety zone; exemption; definitions.

Sec. 2a. (1) The court may place an individual convicted of violating section 411h of the Michigan penal code, 1931 PA 328, MCL 750.411h, on probation for not more than 5 years. The sentence is subject to the conditions of probation set forth in section 411h(3) of the Michigan penal code, 1931 PA 328, MCL 750.411h, and section 3 of this chapter. The probation is subject to revocation for any violation of a condition of that probation.

(2) The court may place an individual convicted of violating section 411i of the Michigan penal code, 1931 PA 328, MCL 750.411i, on probation for any term of years, but not less than 5 years. The sentence is subject to the conditions of probation set forth in section 411i(4) of the Michigan penal code, 1931 PA 328, MCL 750.411i, and section 3 of this chapter. The probation is subject to revocation for any violation of a condition of that probation.

(3) The court may place an individual convicted of a violation of section 136b of the Michigan penal code, 1931 PA 328, MCL 750.136b, that is designated as a misdemeanor on probation for not more than 5 years.

(4) The court shall by order, to be filed or entered in the cause as the court directs by general rule or in each case, fix and determine the period and conditions of probation. The order is part of the record in the cause. The court may amend the order in form or substance at any time.

(5) Subsections (1), (2), (3), and (4) do not apply to a juvenile placed on probation and committed under section 1(3) or (4) of chapter IX to an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309.

(6) Except as otherwise provided by law, the court may place an individual convicted of a listed offense on probation subject to the requirements of this subsection and subsections (7) through (12) for any term of years but not less than 5 years.

(7) Except as otherwise provided in subsections (8) to (12), if an individual is placed on probation under subsection (6), the court shall order the individual not to do any of the following:

- (a) Reside within a student safety zone.
- (b) Work within a student safety zone.
- (c) Loiter within a student safety zone.

(8) The court shall not impose a condition of probation described in subsection (7)(a) if any of the following apply:

(a) The individual is not more than 19 years of age and attends secondary school or postsecondary school, and resides with his or her parent or guardian. However, an individual described in this subdivision shall be ordered not to initiate or maintain contact with a minor within that student safety zone. The individual shall be permitted to initiate or maintain contact with a minor with whom he or she attends secondary school or postsecondary school in conjunction with that school attendance.

(b) The individual is not more than 26 years of age, attends a special education program, and resides with his or her parent or guardian or in a group home or assisted living facility. However, an individual described in this subdivision shall be ordered not to initiate or maintain contact with a minor within that student safety zone. The individual shall be permitted to initiate or maintain contact with a minor with whom he or she attends a special education program in conjunction with that attendance.

(c) The individual was residing within that student safety zone at the time the amendatory act that added this subdivision was enacted into law. However, if the individual was residing within the student safety zone at the time the amendatory act that added this subdivision was enacted into law, the court shall order the individual not to initiate or maintain contact with any minors within that student safety zone. This subdivision does not prohibit the court from allowing contact with any minors named in the probation order for good cause shown and as specified in the probation order.

(9) An order issued under subsection (7)(a) shall not prohibit an individual from being a patient in a hospital or hospice that is located within a student safety zone. However, this exception does not apply to an individual who initiates or maintains contact with a minor within that student safety zone.

(10) The court shall not impose a condition of probation described in subsection (7)(b) if the individual was working within the student safety zone at the time the amendatory act that added this subsection was enacted into law. However, if the individual was working within the student safety zone at the time the amendatory act that added this subsection was enacted into law, the court shall order the individual not to

initiate or maintain contact with any minors in the course of his or her employment within that student safety zone. This subsection does not prohibit the court from allowing contact with any minors named in the probation order for good cause shown and as specified in the probation order.

(11) The court shall not impose a condition of probation described in subsection (7)(b) if the individual only intermittently or sporadically enters a student safety zone for purposes of work. If the individual intermittently or sporadically works within a student safety zone, the court shall order the individual not to initiate or maintain contact with any minors in the course of his or her employment within that safety zone. This subsection does not prohibit the court from allowing contact with any minors named in the probation order for good cause shown and as specified in the probation order.

(12) The court may exempt an individual from probation under subsection (6) if any of the following apply:

(a) The individual has successfully completed his or her probationary period under sections 11 to 15 of chapter II for committing a listed offense and has been discharged from youthful trainee status.

(b) The individual was convicted of committing or attempting to commit a violation solely described in section 520e(1)(a) of the Michigan penal code, 1931 PA 328, MCL 750.520e, and at the time of the violation was 17 years of age or older but less than 21 years of age and is not more than 5 years older than the victim.

(13) As used in this section:

(a) "Listed offense" means that term as defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722.

(b) "Loiter" means to remain for a period of time and under circumstances that a reasonable person would determine is for the primary purpose of observing or contacting minors.

(c) "Minor" means an individual less than 18 years of age.

(d) "School" means a public, private, denominational, or parochial school offering developmental kindergarten, kindergarten, or any grade from 1 through 12. School does not include a home school.

(e) "School property" means a building, facility, structure, or real property owned, leased, or otherwise controlled by a school, other than a building, facility, structure, or real property that is no longer in use on a permanent or continuous basis, to which either of the following applies:

(i) It is used to impart educational instruction.

(ii) It is for use by students not more than 19 years of age for sports or other recreational activities.

(f) "Student safety zone" means the area that lies 1,000 feet or less from school property.

History: Add. 1992, Act 251, Eff. Jan. 1, 1993;—Am. 1998, Act 520, Imd. Eff. Jan. 12, 1999;—Am. 2005, Act 126, Eff. Jan. 1, 2006;—Am. 2006, Act 507, Imd. Eff. Dec. 29, 2006.

STATE OF MICHIGAN JUDICIAL CIRCUIT COUNTY	ORDER OF PROBATION	CASE NO.
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ORI MI- Police Report No.	Court address	Court telephone no.
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THE PEOPLE OF The State of Michigan

v

Defendant's name, address, and telephone no.		
CTN/TCN	SID	DOB

Probation officer	Offense and PACC	Term
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Judgment of guilt is deferred under:

<input type="checkbox"/> MCL 333.7411, Controlled Substance Act	<input type="checkbox"/> MCL 750.350a, Parental Kidnapping Act	<input type="checkbox"/> MCL 762.14, Youthful Trainee Status
<input type="checkbox"/> MCL 600.1070, Drug Treatment Court	<input type="checkbox"/> MCL 600.1095, Mental Health Court	<input type="checkbox"/> MCL 600.1206, Veterans Court

Pursuant to 18 USC 922(g)(8), the court found, at a hearing, that the defendant represents a credible threat to the physical safety of one or more persons as defined in 18 USC 922(g)(8) and 18 USC 921(a)(32) and named in item 9. ****Needed for NCIC entry.**

IT IS ORDERED that the defendant be placed on probation under the supervision of the probation officer named above for the term indicated, and the defendant shall:

1. Not violate any criminal law of any unit of government.
2. Not leave the state without the consent of this court.
3. Make a truthful report to the probation officer monthly, or as often as the probation officer may require, either in person or in writing, as required by the probation officer.
4. Notify the probation officer immediately of any change of address or employment status.
5. Not purchase or possess a firearm. (Needed for NCIC entry.)
6. Pay the following to the court:

Crime Victim Assessment ... \$ _____	Fine \$ _____	
Restitution \$ _____	Costs \$ _____	
State minimum costs \$ _____	Other (including any DNA assessment) \$ _____	
	Total \$ _____	

- a. The due date for payment is _____.
- b. The total amount due shall be paid in installments of \$ _____ per _____ starting on _____ and paid in full by the due date stated in the judgment of sentence or by _____ Date

Fines, costs, and fees not paid within 56 days of the date owed or of any installment payment date are subject to a 20% late penalty on the amount owed.

7. Pay a supervision fee to the Department of Corrections in the amount of \$ _____. The fee is payable immediately.
 - The total amount due may be paid in installments of \$ _____ per _____ starting on _____ payable to the State of Michigan. Date
8. Comply with the attached wage assignment order.
9. Other: (Use this space for conditions for the protection of one or more named persons - also complete the LEIN order on Part 2 of this form. See back of form for required language when conditions are ordered pursuant to 18 USC 922[g][8].)

Failure to comply with this order may result in a revocation of probation and incarceration.

Date	Judge	Bar no.
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I have read or heard the above order of probation and have received a copy. I understand and agree to comply with this order. I also understand that federal and/or state law may prohibit me from possessing or purchasing ammunition or a firearm (including a rifle, pistol, or revolver) if the court found I represent a credible threat to the physical safety of a named person and/or explicitly prohibited (in item 9) the use, attempted use, or threatened use of physical force that would reasonably be expected to cause bodily injury to that named person.

Date	Defendant signature
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If the judgment of guilt is deferred as stated above, the clerk of the court shall advise the Michigan State Police Criminal Justice Information Center of the disposition as required under MCL 769.16a. A case in which judgment of guilt is deferred shall be maintained as a nonpublic record.
 MCL 600.4803, MCL 769.1a, MCL 771.1 et seq., MCL 775.22, MCL 780.826.

STATE OF MICHIGAN JUDICIAL DISTRICT	ORDER OF PROBATION (Misdemeanor)	CASE NO.
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ORI MI- Police Report No.	Court address	Court telephone no.
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THE PEOPLE OF <input type="checkbox"/> The State of Michigan <input type="checkbox"/> _____ _____	v	Defendant's name, address, and telephone no. _____ _____ _____
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CTN/TCN	SID	DOB
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Probation officer	Offense	Term
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Judgment of guilt is deferred under:

<input type="checkbox"/> MCL 333.7411, Controlled Substance Act	<input type="checkbox"/> MCL 769.4a, Spouse Abuse Act	<input type="checkbox"/> MCL 600.1095, Mental Health Court
<input type="checkbox"/> MCL 750.451c, Human Trafficking Victim	<input type="checkbox"/> MCL 762.14, Youthful Trainee Status	<input type="checkbox"/> MCL 600.1206, Veterans Court
<input type="checkbox"/> MCL 750.430, Practicing under the Influence	<input type="checkbox"/> MCL 600.1076, Drug Treatment Court	<input type="checkbox"/> MCL 436.1703, Minor in Possession

Pursuant to 18 USC 922(g)(8), the court found, at a hearing, that the defendant represents a credible threat to the physical safety of one or more persons as defined in 18 USC 922(g)(8) and 18 USC 921(a)(32) and named in item 8. ****Needed for NCIC entry.**

IT IS ORDERED that the defendant be placed on probation under the supervision of the probation officer named above for the term indicated, and the defendant shall:

1. Not violate any criminal law of any unit of government.
2. Not leave the state without the consent of this court.
3. Make a truthful report to the probation officer monthly, or as often as the probation officer may require, either in person or in writing, as required by the probation officer.
4. Notify the probation officer immediately of any change of address or employment status.
5. Not purchase or possess a firearm. (Needed for NCIC entry.)
6. Pay the following to the court:

Crime Victim Assessment ... \$ _____	Costs \$ _____
Restitution \$ _____	Supervision \$ _____
State Minimum Costs \$ _____	Other (including any DNA assessment) . \$ _____
Fine \$ _____	Total \$ _____

 - a. The due date for payment is _____.
 - b. The total amount due shall be paid in installments of \$ _____ per _____ starting on _____ and paid in full by the due date stated in the judgment of sentence or by _____ Date

Fines, costs, and fees not paid within 56 days of the date owed or of any installment payment date are subject to a 20% late penalty on the amount owed.
7. Comply with the attached wage assignment order.
8. Other: (Use this space for conditions for the protection of one or more named persons - also complete the LEIN order on Part 2 of this form. See back of form for required language when conditions are ordered pursuant to 18 USC 922(g)[8].)

Failure to comply with this order may result in a revocation of probation and incarceration.

Date	Judge/Magistrate	Bar no.
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I have read or heard the above order of probation and have received a copy. I understand and agree to comply with this order. I also understand that federal and/or state law may prohibit me from possessing or purchasing ammunition or a firearm (including a rifle, pistol, or revolver) if the court found I represent a credible threat to the physical safety of a named person and/or explicitly prohibited (in item 8) the use, attempted use, or threatened use of physical force that would reasonably be expected to cause bodily injury to that named person.

Date	Defendant signature
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If the judgment of guilt is deferred as stated above, the clerk of the court shall advise the Michigan State Police Criminal Justice Information Center of the disposition, **except for Minor in Possession**, as required under MCL 769.16a. A case in which judgment of guilt is deferred shall be maintained as a nonpublic record.

THE CODE OF CRIMINAL PROCEDURE (EXCERPT)
Act 175 of 1927

771.3 Probation; conditions; entry of order into LEIN; costs as part of sentence of probation; compliance as condition of probation; revocation of probation; fees in delayed or deferred entry of judgment or sentencing.

Sec. 3. (1) The sentence of probation shall include all of the following conditions:

(a) During the term of his or her probation, the probationer shall not violate any criminal law of this state, the United States, or another state or any ordinance of any municipality in this state or another state.

(b) During the term of his or her probation, the probationer shall not leave the state without the consent of the court granting his or her application for probation.

(c) The probationer shall report to the probation officer, either in person or in writing, monthly or as often as the probation officer requires. This subdivision does not apply to a juvenile placed on probation and committed under section 1(3) or (4) of chapter IX to an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309.

(d) If sentenced in circuit court, the probationer shall pay a probation supervision fee as prescribed in section 3c of this chapter.

(e) The probationer shall pay restitution to the victim of the defendant's course of conduct giving rise to the conviction or to the victim's estate as provided in chapter IX. An order for payment of restitution may be modified and shall be enforced as provided in chapter IX.

(f) The probationer shall pay an assessment ordered under section 5 of 1989 PA 196, MCL 780.905.

(g) The probationer shall pay the minimum state cost prescribed by section 1j of chapter IX.

(h) If the probationer is required to be registered under the sex offenders registration act, 1994 PA 295, MCL 28.721 to 28.736, the probationer shall comply with that act.

(2) As a condition of probation, the court may require the probationer to do 1 or more of the following:

(a) Be imprisoned in the county jail for not more than 12 months at the time or intervals that may be consecutive or nonconsecutive, within the probation as the court determines. However, the period of confinement shall not exceed the maximum period of imprisonment provided for the offense charged if the maximum period is less than 12 months. The court may permit day parole as authorized under 1962 PA 60, MCL 801.251 to 801.258. The court may, subject to sections 3d and 3e of this chapter, permit the individual to be released from jail to work at his or her existing job or to attend a school in which he or she is enrolled as a student. This subdivision does not apply to a juvenile placed on probation and committed under section 1(3) or (4) of chapter IX to an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309.

(b) Pay immediately or within the period of his or her probation a fine imposed when placed on probation.

(c) Pay costs pursuant to subsection (5).

(d) Pay any assessment ordered by the court other than an assessment described in subsection (1)(f).

(e) Engage in community service.

(f) Agree to pay by wage assignment any restitution, assessment, fine, or cost imposed by the court.

(g) Participate in inpatient or outpatient drug treatment or, beginning January 1, 2005, participate in a drug treatment court under chapter 10A of the revised judicature act of 1961, 1961 PA 236, MCL 600.1060 to 600.1084.

(h) Participate in mental health treatment.

(i) Participate in mental health or substance abuse counseling.

(j) Participate in a community corrections program.

(k) Be under house arrest.

(l) Be subject to electronic monitoring.

(m) Participate in a residential probation program.

(n) Satisfactorily complete a program of incarceration in a special alternative incarceration unit as provided in section 3b of this chapter.

(o) Be subject to conditions reasonably necessary for the protection of 1 or more named persons.

(p) Reimburse the county for expenses incurred by the county in connection with the conviction for which probation was ordered as provided in the prisoner reimbursement to the county act, 1984 PA 118, MCL 801.81 to 801.93.

(q) Complete his or her high school education or obtain the equivalency of a high school education in the form of a general education development (GED) certificate.

(3) The court may impose other lawful conditions of probation as the circumstances of the case require or warrant or as in its judgment are proper.

(4) If an order or amended order of probation contains a condition for the protection of 1 or more named persons as provided in subsection (2)(o), the court or a law enforcement agency within the court's jurisdiction shall enter the order or amended order into the law enforcement information network. If the court rescinds the order or amended order or the condition, the court shall remove the order or amended order or the condition from the law enforcement information network or notify that law enforcement agency and the law enforcement agency shall remove the order or amended order or the condition from the law enforcement information network.

(5) If the court requires the probationer to pay costs under subsection (2), the costs shall be limited to expenses specifically incurred in prosecuting the defendant or providing legal assistance to the defendant and supervision of the probationer.

(6) If the court imposes costs under subsection (2) as part of a sentence of probation, all of the following apply:

(a) The court shall not require a probationer to pay costs under subsection (2) unless the probationer is or will be able to pay them during the term of probation. In determining the amount and method of payment of costs under subsection (2), the court shall take into account the probationer's financial resources and the nature of the burden that payment of costs will impose, with due regard to his or her other obligations.

(b) A probationer who is required to pay costs under subsection (1)(g) or (2)(c) and who is not in willful default of the payment of the costs may petition the sentencing judge or his or her successor at any time for a remission of the payment of any unpaid portion of those costs. If the court determines that payment of the amount due will impose a manifest hardship on the probationer or his or her immediate family, the court may remit all or part of the amount due in costs or modify the method of payment.

(7) If a probationer is required to pay costs as part of a sentence of probation, the court may require payment to be made immediately or the court may provide for payment to be made within a specified period of time or in specified installments.

(8) If a probationer is ordered to pay costs as part of a sentence of probation, compliance with that order shall be a condition of probation. The court may revoke probation if the probationer fails to comply with the order and if the probationer has not made a good faith effort to comply with the order. In determining whether to revoke probation, the court shall consider the probationer's employment status, earning ability, and financial resources, the willfulness of the probationer's failure to pay, and any other special circumstances that may have a bearing on the probationer's ability to pay. The proceedings provided for in this subsection are in addition to those provided in section 4 of this chapter.

(9) If entry of judgment is deferred in the circuit court, the court shall require the individual to pay a supervision fee in the same manner as is prescribed for a delayed sentence under section 1(3) of this chapter, shall require the individual to pay the minimum state costs prescribed by section 1j of chapter IX, and may impose, as applicable, the conditions of probation described in subsections (1), (2), and (3).

(10) If sentencing is delayed or entry of judgment is deferred in the district court or in a municipal court, the court shall require the individual to pay the minimum state costs prescribed by section 1j of chapter IX and may impose, as applicable, the conditions of probation described in subsections (1), (2), and (3).

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17373;—Am. 1931, Act 308, Eff. Sept. 18, 1931;—CL 1948, 7713;—Am. 1957, Act 72, Eff. Sept. 27, 1957;—Am. 1978, Act 77, Eff. Sept. 1, 1978;—Am. 1980, Act 514, Eff. Mar. 31, 1981;—Am. 1982, Act 137, Imd. Eff. Apr. 27, 1982;—Am. 1985, Act 89, Imd. Eff. July 10, 1985;—Am. 1988, Act 78, Eff. Oct. 1, 1988;—Am. 1989, Act 184, Eff. Oct. 1, 1989;—Am. 1993, Act 185, Eff. Oct. 1, 1993;—Am. 1993, Act 343, Eff. May 1, 1994;—Am. 1994, Act 286, Eff. Oct. 1, 1995;—Am. 1994, Act 445, Eff. Feb. 1, 1995;—Am. 1998, Act 449, Eff. Aug. 1, 1999;—Am. 1998, Act 520, Imd. Eff. Jan. 12, 1999;—Am. 2003, Act 101, Eff. Oct. 1, 2003;—Am. 2004, Act 116, Imd. Eff. May 26, 2004;—Am. 2004, Act 219, Eff. Jan. 1, 2005;—Am. 2004, Act 330, Imd. Eff. Sept. 23, 2004;—Am. 2006, Act 655, Imd. Eff. Jan. 9, 2007;—Am. 2012, Act 612, Eff. Mar. 1, 2013.

Compiler's note: Section 3 of Act 78 of 1988 provides: "This amendatory act shall take effect June 1, 1988." This section was amended by Act 181 of 1988 to read as follows: "This amendatory act shall take effect October 1, 1988."

Former law: See section 3 of Act 105 of 1913, being CL 1915, § 2031; and Act 203 of 1925.

Rule 5.440 Disability of Judge

(A) During Jury Trial. If, by reason of death, sickness, or other disability, the judge before whom a jury trial has commenced is unable to continue with the trial, another judge regularly sitting in or assigned to the court, on certification of having become familiar with the record of the trial, may proceed with and complete the trial.

(B) During Bench Trial. If a judge becomes disabled during a trial without a jury, another judge may be substituted for the disabled judge, but only if

- (1) both parties consent in writing to the substitution, and
- (2) the judge certifies having become familiar with the record of the trial, including the testimony previously given.

(C) After Verdict. If, after a verdict is returned or findings of fact and conclusions of law are filed, the trial judge because of disability becomes unable to perform the remaining duties the court must perform, another judge regularly sitting in or assigned to the court may perform those duties; but if that judge is not satisfied of an ability to perform those duties because of not having presided at the trial or determines that it is appropriate for any other reason, the judge may grant the defendant a new trial.

Rule 6.445 Probation Revocation

(A) Issuance of Summons; Warrant. On finding probable cause to believe that a probationer has violated a condition of probation, the court may

- (1) issue a summons in accordance with MCR 6.103(B) and (C) for the probationer to appear for arraignment on the alleged violation, or
- (2) issue a warrant for the arrest of the probationer.

An arrested probationer must promptly be brought before the court for arraignment on the alleged violation.

(B) Arraignment on the Charge. At the arraignment on the alleged probation violation, the court must

- (1) ensure that the probationer receives written notice of the alleged violation,
- (2) advise the probationer that
 - (a) the probationer has a right to contest the charge at a hearing, and
 - (b) the probationer is entitled to a lawyer's assistance at the hearing and at all subsequent court proceedings, and that the court will appoint a lawyer at public expense if the probationer wants one and is financially unable to retain one,
- (3) if requested and appropriate, appoint a lawyer,
- (4) determine what form of release, if any, is appropriate, and
- (5) subject to subrule (C), set a reasonably prompt hearing date or postpone the hearing.

(C) Scheduling or Postponement of Hearing. The hearing of a probationer being held in custody for an alleged probation violation must be held within 14 days after the arraignment or the court must order the probationer released from that custody pending the hearing. If the alleged violation is based on a criminal offense that is a basis for a separate criminal prosecution, the court may postpone the hearing for the outcome of that prosecution.

(D) Continuing Duty to Advise of Right to Assistance of Lawyer. Even though a probationer charged with probation violation has waived the assistance of a lawyer, at each subsequent proceeding the court must comply with the advice and waiver procedure in MCR 6.005(E).

(E) The Violation Hearing.

(1) Conduct of the Hearing. The evidence against the probationer must be disclosed to the probationer. The probationer has the right to be present at the hearing, to present evidence, and to examine and cross-examine witnesses. The court may consider only evidence that is relevant to the violation alleged, but it need not apply the rules of evidence except those pertaining to privileges. The state has the burden of proving a violation by a preponderance of the evidence.

(2) Judicial Findings. At the conclusion of the hearing, the court must make findings in accordance with MCR 6.403.

(F) Pleas of Guilty. The probationer may, at the arraignment or afterward, plead guilty to the violation. Before accepting a guilty plea, the court, speaking directly to the probationer and receiving the probationer's response, must

(1) advise the probationer that by pleading guilty the probationer is giving up the right to a contested hearing and, if the probationer is proceeding without legal representation, the right to a lawyer's assistance as set forth in subrule (B)(2)(b),

(2) advise the probationer of the maximum possible jail or prison sentence for the offense,

(3) ascertain that the plea is understandingly, voluntarily, and accurately made, and

(4) establish factual support for a finding that the probationer is guilty of the alleged violation.

(G) Sentencing. If the court finds that the probationer has violated a condition of probation, or if the probationer pleads guilty to a violation, the court may continue probation, modify the conditions of probation, extend the probation period, or revoke probation and impose a sentence of incarceration. The court may not sentence the probationer to prison without having considered a current presentence report and having complied with the provisions set forth in MCR 6.425(B) and (E).

(H) Review.

(1) In a case involving a sentence of incarceration under subrule (G), the court must advise the probationer on the record, immediately after imposing sentence, that

- (a) the probationer has a right to appeal, if the underlying conviction occurred as a result of a trial, or
 - (b) the probationer is entitled to file an application for leave to appeal, if the underlying conviction was the result of a plea of guilty or nolo contendere.
- (2) In a case that involves a sentence other than incarceration under subrule (G), the court must advise the probationer on the record, immediately after imposing sentence, that the probationer is entitled to file an application for leave to appeal.