

Probation Violations
and
HYTA Changes

Probation
Violations

The Hardest \$75 You'll Ever Earn

Topics We Will Cover

- Statutory Basis for Probationary Sentences
- Length of Probation
- Terms and Conditions
- Probation Violation Warrants
- Probation Violation Hearings
- Violation Sentencing
- Checklist for Handling

Statutory Basis

- MCL 771.1 Requires Judge to make a determination that Defendant is not likely to engage in criminal activity.
- Probation is a matter of “grace”, not of right – see MCL 771.4
- Available for all but the most serious crimes
- Not Available for murder, treason, criminal sexual conduct in the first or third degree, armed robbery, or major controlled substance offenses.
MCL 771.1

Length of Probation

- Misdemeanors – 2 year maximum except for non-aggravated stalking and child abuse which can be no longer than 5 years. (MCL 771.2)
- Felonies – 5 year maximum except for Aggravated Stalking [MCL 771.2a(2)], all “listed offenses” under the Sex Offenders Registration Act (SORA) [MCL 771.2a(6)]. See MCL 28.722 for complete list of offenses under SORA.

Terms and Conditions

- Judge has great latitude in imposing conditions.
- All terms and conditions must be in writing and supplied to the Defendant. See SCAO standard orders for examples of terms and conditions.
- Always remember the axiom “A Court speaks through its written orders”. If it is not in the order it is not a condition.
- Probation can be revoked by the Court for violation or *attempted* violation of any condition OR for “antisocial conduct”. MCL 771.4
- See MCL 771.3 for list of mandatory and discretionary terms and conditions.

Probation Violation Warrants

- Requirements
 - Must specifically state the basis of the violation(s)
 - Must be signed by the Judge
 - Must be served upon the Defendant
 - Follow procedures under MCR 6.445
 - PROBATION DEPARTMENT MUST SHOW DUE DILIGENCE IN EXECUTING THE WARRANT – People v. Ortman, 209 Mich. App. 251 (1995)
 - Warrant must be signed BEFORE the expiration of the term of probation OR the statutory maximum term. People v. Glass, 288 Mich. App. 399 (2010)

People v. Ortman

- Defendant placed on probation for Attempt U & P, terms included drug treatment and testing.
- Defendant dropped a dirty urine.
- Judge signed and Probation Officer mailed warrant to Defendant
- Defendant acknowledged and ignored the warrant and stopped reporting.
- Probation Department makes no further attempt to execute warrant.
- 2 years later Defendant arrested on child support charge.
- Defendant was living at the same address as at the time of sentencing and had made no efforts to conceal his identity or whereabouts.
- Court of Appeals ordered the violation quashed for lack of due diligence in executing warrant.

People v. Glass

- Defendant pleaded guilty to Larceny from a Motor Vehicle – a felony.
- Defendant sentenced to 2 years probation in 2004.
- In 2008 Court found Defendant guilty of violating probation and sentenced him to a prison term.
- Court of Appeals vacated sentence and discharged sentence.
- “The Michigan statutory scheme governing probation and Michigan case law recognize that a probation revocation must occur, or must at least be commenced, during the probation period” *Glass* at 403.

Probation Violation Hearings

- Governed by procedures located at MCL 771.4 and MCR 6.445.
- If Defendant is in custody hearing must be conducted within 14 days of arraignment. MCR 6.445
- Informal Proceedings and Summary in Nature.
- Rules of Evidence do not apply.
- Judge may only consider evidence relevant to the allegations.
- Hearsay is not only admissible, in practice it makes up a majority of the proofs.
- Probation Department must prove by preponderance of evidence. MCR 6.445

Violation Sentencing

- Probation can be continued.
- Probation can be revoked.
- Guidelines are still applicable but beware of the “Lockridge Effect”.

Lockridge and PV Sentencing

- Lockridge “Booker-ized” Sentencing – Guidelines are advisory.
- Sentences must be “Reasonable”
- There is NOT a presumption that a guideline sentence is reasonable. Two Edge Sword
- If the Judge orders a new presentence investigation report for an MDOC commitment you should review all the guidelines.
- Lockridge closely follows Booker and its progeny – Look to Federal Case Law as Lockridge leaves little guidance as to reasonability of sentences. *Peugh v United States*, 569 US ____ (2013)

Checklist for Probation Violation

- Read the original order.
- Check the date of the warrant and determine if the Court still has jurisdiction. See People v. Glass.
- Determine if the Probation Department has done its due diligence in executing the warrant. See People v. Ortman
- Read the specific allegations of the violation and determine if the condition is part of the order of probation.
- If there are multiple allegations remember any one of them can constitute a violation. If you are going to plea, only admit to the allegations that are true and accurate.
- If the only allegation is non-payment of costs and fines, indigency is a defense. Non-payment must be willful. Although keep in mind that the term of probation may be extended to the maximum statutory limit.
- Since the Rules of Evidence do not apply to Violation Hearings, use hearsay to your advantage.
- Ensure that the original guidelines are correct, the Probation Department is not the only party that can demand a rescoring of the guidelines!!

HYTA Changes

- MCL 762.11, MCL 762.12 and MCL 762.13
- Youthful Trainee status is extended up to 24th birthday.
- If after 21st birthday, prosecutor must consent.
- If a Youthful Trainee is convicted of certain offenses which include GBH, Robbery Unarmed and CCW the Court “shall” revoke HYTA status. Read MCL 762.12 for complete list.
- Practice Note – Even if the status on the old case was revoked, if the new charge is eligible under MCL 762.11, there is nothing to prevent the Court from sentencing the Defendant to HYTA under the new case. This assumes the other factors for eligibility are present and prosecutor consent is not needed.
- Practice Note – When negotiating pleas for Defendants who are on HYTA status keep in mind the list contained in MCL 762.12 and try to negotiate pleas that are not included on the list of automatic loss of HYTA.

HYTA Changes

- The Court **shall not** commit an individual to the department of corrections for the following offense:
 - B & E Building (750.110)
 - Home Invasion (750.110a)
 - Theft/use of FTD (750.157n through 157w)
 - CCW (750.257)
 - Larceny (750.356)
 - Larceny From a Person (750.357)
 - UDAA (750.413)
 - Unarmed Robbery (750.530)
 - RCSP (750.535)
 - Possession of Controlled Substances (MCL 333.7101 through 333.7545)