

# Probation Overview

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## **Probation Overview**

### **1-01 INTRODUCTION**

#### **A. Authority and Responsibility**

The Michigan Constitution of 1963 provides for a uniform state court system headed by the Michigan Supreme Court. The Constitution provides for the following levels of courts: Michigan Supreme Court, Michigan Court of Appeals, circuit courts, district courts, municipal courts, and probate courts. MCR 8.110 and MCL 600.8271 authorize the chief judge of the court to hire, supervise, and discharge employees of the court.

The district court has exclusive jurisdiction over all civil litigation up to \$25,000.00. It also handles garnishment and eviction proceedings. In the criminal area, the district court has jurisdiction over all misdemeanors where punishment does not exceed one year, and arraignment and preliminary examination in felony cases. The district court also sets and accepts bail on felony cases.

#### **B. Probation Department Established**

In each district of the district court, the judge or judges of the district may establish a probation department within a district control unit. The necessary and reasonable expense of a probation department shall be borne by the district control unit. (MCL 600.8314)

#### **C. Function of Probation Department**

##### **1. Purpose of Probation**

Probation, which is granted by the judge, is a sentence that allows the offender to live in the community under the supervision of a probation officer. Theoretically, this decision is made after careful study of the offender's background, behavior, and potential for success. It is based on the philosophy that the rehabilitation of some offenders might be hampered by incarceration and will be supported and encouraged by supervised freedom.

Probation is a desirable disposition in appropriate cases because it maximizes the liberty of the offender while vindicating the authority of the law and protecting the public from further violations. Probation can positively advance the rehabilitation of the offender by continuing normal community contacts such as employment, education, counseling, etc. It can minimize the impact of conviction upon innocent dependents of the offender. Probation avoids the negative effects of incarceration which can severely complicate the offender's reintegration into the community.

## **2. Supervision**

One of the primary functions of the probation department is to supervise probationers to ensure that they comply with the terms and conditions of the court's order. The type and degree of supervision will vary from court to court. In some probation departments it is the probation officer's responsibility to counsel probationers and to act as treatment agents. In other departments the probation officer is only expected to supervise the probationer and the supervision may be extremely limited, such as nonreporting, telephone, or mail report status. The supervision model chosen may depend on the availability of resources, the caseload of the probation officers, the professional training, and the needs of the probationers.

## **3. Case Management**

Some courts view probation officers as case managers. In this function, the probation officer refers the probationer to qualified treatment personnel in the community and introduces the probationer to vocational, educational, and other resources. In the past, the probation officer was depicted as the sole provider of services. However, this philosophy is steadily changing due to a characterization of the probation officer as a community resource manager with extensive knowledge of community agencies and resources.

## **4. Screening and Assessment**

### **a. Authority**

Before imposing sentence for a violation of MCL 257.625(1), (3), (4), (5), (6), (7), or (8) or a local ordinance substantially corresponding to MCL 257.625(1), (3), (6), or (8), the court shall order the person to undergo screening and assessment by the court (in-house assessment) or the Michigan Department of Community Health (out-of-house assessment) to determine whether the person is likely to benefit from rehabilitative services, including alcohol or drug education and alcohol or drug treatment programs. The person shall pay for the costs of the screening, assessment, and rehabilitative services. See also Section 5-02.

### **b. Purpose**

Screening and assessment determines whether the offender will benefit from rehabilitation services, including alcohol or drug treatment programs, for the purpose of assisting judges in determining the most appropriate sentence. As the number of drunk and impaired driving arrests increases, probation departments are conducting more screening and assessments each year. This increase has a definite impact

on the type and degree of supervision that each probation department maintains.

**c. Fees**

Courts, probation departments, and substance abuse agencies are authorized to collect a screening and assessment fee. (MCL 257.625b[5]) Fees will vary among courts and agencies. See Section 5 for details.

**D. Desired Educational Requirements**

Most courts require probation officers to have graduated from college with a bachelor's degree in one of the following areas: criminal justice, sociology, psychology, social work, counseling, or a related field.

If the court is a designated screening and assessment agency, probation officers are required to meet the qualifications and assessment procedures established by the Michigan Department of Community Health. See Section 5 for details.

**E. Surety Bond Requirements**

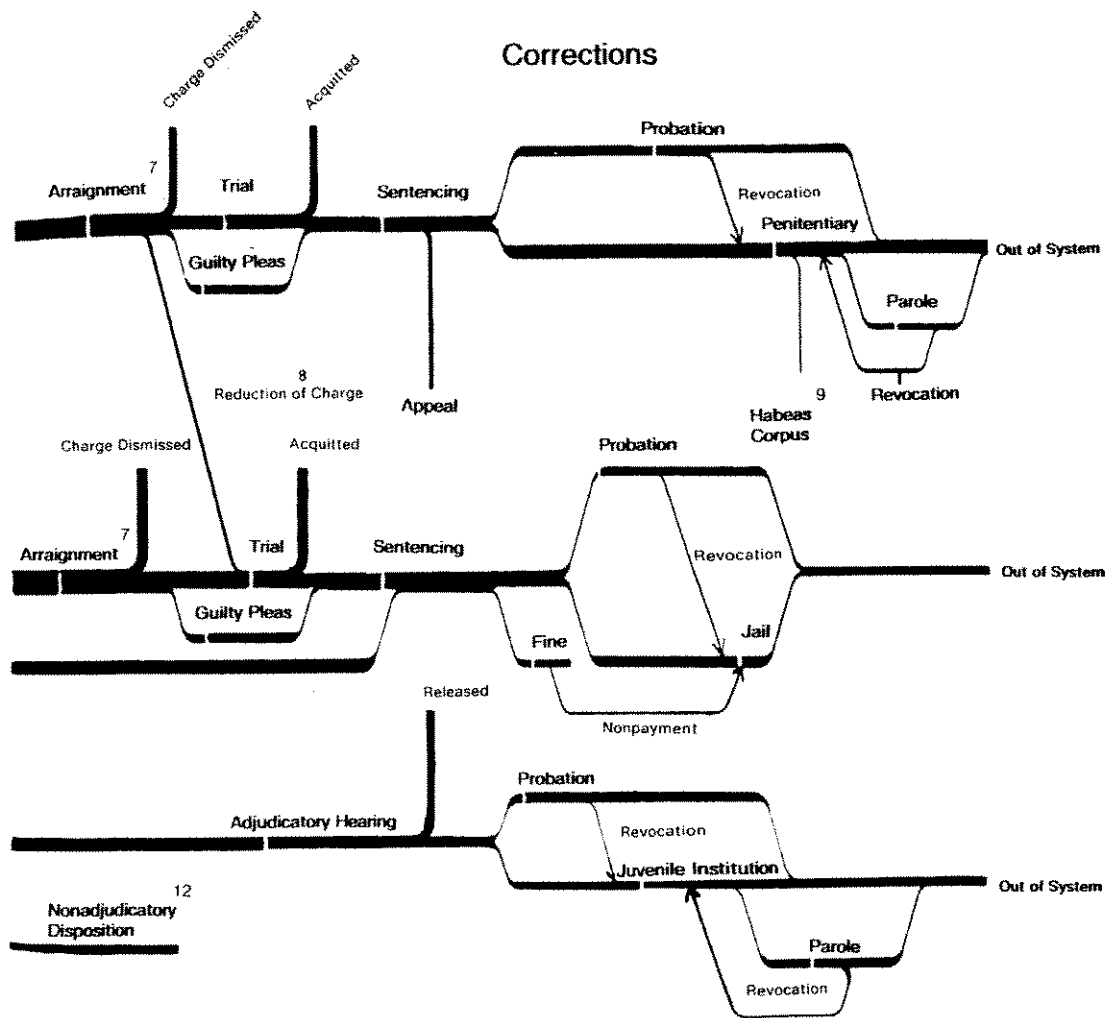
Probation officers are not required to be bonded.

**F. Other Requirements**

If probation officers will be using the Law Enforcement Information Network (LEIN) to run criminal history or driving records, the Criminal Justice Information Systems (CJIS) Policy Council requires that persons hired after July 1, 1996, must have a background screening using fingerprint identification.

If probation officers will be preparing notices or performing other deputy clerk functions, they must be sworn in as deputy court clerks.





7 Appearance for plea; defendant elects trial by judge or jury (if available); counsel for indigent usually appointed here in felonies. Often not at all in other cases.

8 Charge may be reduced at any time prior to trial in return for plea of guilty or for other reasons.

9 Challenge on constitutional grounds to legality of detention. May be sought at any point in process.

10 Police often hold informal hearings, dismiss, or adjust many cases without further processing.

11 Probation officer decides desirability of further court action.

12 Welfare agency, social services, counselling, medical care, etc., for cases where adjudicatory handling not needed.

## **1-02 ROLE OF PROBATION OFFICER**

### **A. Statutory Authority**

In all prosecutions for felonies or misdemeanors other than murder, treason, criminal sexual conduct in the first or third degree, armed robbery, and major controlled substance offenses, if the defendant has been found guilty upon verdict or plea and the court determines the defendant is unlikely to again engage in an offensive or criminal course of conduct and the public good does not require that the defendant shall suffer the penalty imposed by law, the court may place the defendant on probation under the charge and supervision of a probation officer. (MCL 771.1[1])

### **B. Duties**

#### **1. General**

A district court probation officer, under the general direction of the chief judge, judge, or court administrator, conducts investigations and prepares information to assist the district court judge in determining appropriate sentences of individuals brought before the court. The district court probation officer shall supervise the probationer during the term of probation and may recommend relevant programs for rehabilitation.

#### **2. Specific**

##### **a. Screening and Assessment**

Many probation officers conduct screening and assessments of individuals convicted of driving while intoxicated or driving while impaired. In providing the court with information identifying an individual's involvement with alcohol or drugs, the probation officer must take into consideration any risks involved when recommending treatment versus incarceration. See Section 5 for details.

##### **b. Presentence Investigation**

One of the principal responsibilities of a probation officer is investigating the background of individuals awaiting sentencing for criminal convictions. Presentence investigations involve reviewing the offender's arrest report, driving record, criminal history, employment record, and other pertinent information. In addition, the probation officer will interview the offender and, possibly, the offender's family, employer, and school authorities. The police, complainant/victim, and others may also be interviewed, if necessary. See Section 4 for details.

**c. Sentencing Recommendation**

After the presentence investigation has been conducted, the probation officer must analyze the gathered information. The probation officer assesses the offender's background and character and makes a judgment regarding the probability of future criminal behavior and how to prevent further illegal activities. The probation officer then prepares a report recommending the most appropriate court action.

**d. Supervision**

The probation officer supervises offenders placed on probation by the district court to ensure compliance with the order of the court. See Section 7 for details. (MCL 771.1[1])

**e. Charging Probation Violation**

The probation officer is responsible for bringing charges of probation violation against probationers. A "preponderance of the evidence" is the standard of proof for probation violation hearings in Michigan. See Section 7 for details.

**f. Bond Investigation**

If probation officers are responsible for bond investigations, the information considered relevant in establishing bond and conditions of bond is listed in MCR 6.106(F)(1). See Section 2 for details.

**g. Other**

- 1) The probation officer may be required to provide probationers with guidance on personal, financial, and related problems. Probation officers generally refer probationers to outside agencies for counseling.
- 2) The probation officer may be required to assist the probationer in securing employment or entering school, or will refer the probationer to training to improve his or her work skills.
- 3) The probation officer refers probationers to rehabilitation programs and monitors their progress. The probation officer also arranges community service work programs for the probationer.

## **C. Liability**

### **1. Statutory Authority**

Statute indicates that all governmental agencies shall be immune from tort liability in all cases wherein the governmental agency is engaged in the exercise or discharge of a governmental function. (MCL 691.1407) For more details on liability protection for the judiciary, see Section 13 of the *Michigan Court Administration Reference Guide* at [http://courts.michigan.gov/scao/resources/publications/manuals/carg/rg\\_sec13.pdf](http://courts.michigan.gov/scao/resources/publications/manuals/carg/rg_sec13.pdf).

### **2. Conditions**

Each officer and employee of a governmental agency and each volunteer acting on behalf of a governmental agency shall be immune from tort liability for injuries to persons or damage to property caused by the officer or employee while in the course of employment or service or by a volunteer while acting on behalf of a governmental agency if the following specific conditions are met. (MCL 691.1407[2])

#### **a. Acting Within Scope of Authority**

The officer, employee, member, or volunteer must be acting or reasonably believe he or she is acting within the scope of his or her authority.

#### **b. Legitimate Governmental Function**

The governmental agency must be engaged in the exercise or discharge of a governmental function.

#### **c. No Gross Negligence**

The conduct of the officer, employee, member, or volunteer must not amount to gross negligence that is the proximate cause of the injury or damage. "Gross negligence" means conduct so reckless that it demonstrates a substantial lack of concern for whether an injury results.

## **D. Ethical Considerations**

Ethics are the principles of conduct governing an individual or group, especially a professional group. Ethical principles help people make appropriate decisions and respond properly in difficult situations. Following the ethical principles of a profession reduces the risk of job loss, criminal charges, and liability for unsuitable behavior. There are a series of judicial ethics opinions published by the Subcommittee on Judicial Ethics Opinions in the *Michigan Ethics Opinion Manual*. See the Section 1 Appendix for more information. In addition, there is a Model Code of Conduct for Court Employees, which can be found at

<http://courts.michigan.gov/mji/resources/ModelCodeOfConduct.pdf>. See also the Michigan Association of District Court Probation Officers Code of Ethics below.

**Michigan Association of District Court  
Probation Officers Code of Ethics**

As a member of the Michigan Association of District Court Probation Officers:

I shall be dedicated to provide my professional service to the District Court, to the community in which I reside, and to the offender over whom I have a supervisory responsibility.

I shall uphold the laws of the State of Michigan and of the locale in which I hold office, with dignity, and with awareness of the prestige and stature of the judicial system of which I am an integral part.

I shall strive to be objective in the performance of my duties, respect the inalienable rights of all persons, appreciate the inherent worth of any individual, and hold sacred individual confidences which are disclosed to me without jeopardizing the personal safety of others.

I recognize my office as a symbol of public faith and I accept it as a public trust.

I shall continually attempt to improve my professional standards, by seeking further knowledge and understanding.

I shall cooperate with my peers, as well as with other related agencies.

I shall conduct my personal life with propriety in all phases, will neither accept nor grant favors in connection with my office as a Probation Officer, and will place loyalty to principles above personal gain.

I shall continually strive to achieve these objectives and ideals, dedicating myself to my chosen profession as a Probation Officer.

I recognize that my professional membership in the Michigan Association of District Court Probation Officers may be held as long as I am true to this Code of Ethics.

*Adopted May 26, 1989*

## **E. Arrest Powers**

### **1. Peace Officer**

A peace officer has specific statutory authority to arrest a person on reasonable cause to believe a condition of probation has been violated. However, a probation officer who is not also a sworn member of a law enforcement agency is not a peace officer. Thus, for purposes of arrest, a probation officer who is not a peace officer is a private person. The authority of a private person to arrest is set forth in MCL 764.16. This statute authorizes a private person to make an arrest when a felony has been committed in his or her presence or when the person to be arrested is known to have committed a felony.

A probation officer who wishes to have the power of arrest over probationers should be deputized by a local law enforcement agency.

### **2. Arrest of Parole Violator**

According to MCL 791.239, a Department of Corrections probation officer has statutory authority to arrest a parole violator. However, this authority does not extend to a district court probation officer.

### **3. Conditions in Probation Order; General Rule**

According to MCL 771.4, 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 in its probation order or by general rule. This may imply that a probation officer has the authority to arrest a probationer if the court includes in its probation order the specific provisions to do so. However, Michigan Court Rule sets forth (by general rule rather than probation order) the procedure by which the court may make these provisions. In MCR 6.445(A), on finding probable cause to believe that a probationer has violated a condition of probation, the court may issue a summons or issue a warrant for the arrest of the probationer. The finding of probable cause is based on a motion brought by the probation officer in compliance with MCR 3.606, which states that a contempt committed outside the immediate view and presence of the court will be acted upon by show-cause order or bench warrant only upon a proper showing on ex parte motion supported by affidavits. Therefore, the court may not include in its probation order (as the statute suggests) the specific provisions for apprehending and detaining a probationer. According to MCR 1.104, rules of practice set forth in statute, if not in conflict with any court rule, are effective until superseded by rule adopted by the Supreme Court. See also Section 7-05.

## 1-03 RULES OF CONFIDENTIALITY

### A. Access to Records

All records and reports of investigations made by a probation officer and all case histories of probationers shall be privileged or confidential communications not open to public inspection. Judges and probation officers shall have access to records, reports, and case histories. The probation officer, the assistant director of probation, or the assistant director's representative shall permit the attorney general, the auditor general, and law enforcement agencies to have access to the reports, records, and case histories. The confidence between the probation officer and the probationer or defendant under investigation shall not be violated. The probation officer must not provide access to other agency's reports that are logged in probation files. (MCL 791.229, MCR 6.425) See also *Howe v Detroit Free Press*, 440 Mich 203; 487 NW2d 374 (1992).

The only communications of the defendant which are privileged are those made to the probation officer within the scope of his or her statutory responsibility. (*People v Burton*, 74 Mich App 215; 253 NW2d 710 [1977])

The statutory privilege pursuant to MCL 791.229 precluding discovery of a probation report may be waived. (*Howe v Detroit Free Press*, 440 Mich 203; 487 NW2d 374 [1992]) See also Section 8, page 8-02-02.

### B. Releasing Information

The rules of confidentiality require a release of information signed by the probationer or defendant when a probation officer is conferring with other professionals about the individual. Confidentiality limits what can be said when consulting the individual's significant others. It also limits what can be revealed to a witness in the probationer's or defendant's case. Discussing probationers or defendants within earshot of others violates the rules of confidentiality.

See also Section 4-05 and Section 8.

## 1-04 DEFINITIONS AND TERMS

**Adjournment** - The postponing of a case or session of court until another time.

**Affidavit** - A written statement of fact that is verified by oath or affirmation.

**Amendments to Probation Order** - Probation officer petitions the court for changes to the probation order.

**Appeal** - The Michigan Supreme Court, in *People v Pickett*, 391 Mich 305; 215 NW2d 695 (1974), established that a probationer has a right to appeal either an order of probation or a probation revocation.

**Arraignment** - A hearing by the court in which the defendant is informed of the charges against him or her, is appointed counsel if necessary, and is permitted to plead to the charges. The arraignment portion of the probation revocation process is necessary to assure the probationer due process with regard to the charges of probation violation.

**Bail Bond** - A financial obligation signed by the defendant and those who serve as sureties to guarantee the defendant's future appearance in court.

**Bench Warrant** - An order issued by the court (from the bench) for the arrest of a person for violating a court order.

**Bind Over** - To hold for trial; a finding at a preliminary examination that sufficient evidence exists to require a trial on the charges against the defendant.

**Bond Investigations** - The bond ensures that the defendant appears in court. The bond investigation gives the judge, who sets the bond, all the available information about the defendant to help determine the type and the money value of the bond needed to ensure the defendant's court appearance.

**CCH** - Computerized Criminal History. Maintained by the Michigan State Police and accessible by criminal justice agencies via the Law Enforcement Information Network (LEIN) and by the public via the Internet connection I-CHAT.

**CTN** - Criminal Tracking Number assigned by the prosecuting attorney.

**Circuit Court Misdemeanor** - Includes any offense the statute designates as a misdemeanor which is punishable by more than one year imprisonment. It is processed in circuit court like a felony. Also referred to as a "high court" misdemeanor.

**Citation** - The court copy (original) of the ticket; also serves as the original complaint in the case.

**Civil Infraction** - An act or omission prohibited by law which is not a crime, for which civil sanctions may be ordered. Many traffic violations are classified as civil infractions.

**Client Information Release Authorization** - A waiver form for the defendant/probationer to authorize a counselor, social worker, etc., to release information contained in the client's records to the probation officer. The specific type of information must be disclosed in addition to the purpose and the need for the disclosure.

**Cobbs Plea** – A defendant who pleads guilty in reliance upon a judge's preliminary evaluation regarding sentence has an absolute right to withdraw the plea if the judge later determines the sentence must exceed the preliminary evaluation. (*People v Cobbs*, 443 Mich 276; 505 NW2d 208 [1993])

**Complainant** - One who makes a complaint; often interchanged with plaintiff and victim.

**Confidentiality** - Probation records and reports are privileged and confidential according to Michigan statute and case law. (MCL 791.229) (*Howe v Detroit Free Press*, 440 Mich 203; 487 NW2d 374 [1992]) Access is authorized only for judges, probation officers, the attorney general, auditor general, and law enforcement agencies.

**Contempt of Court** - An act which hinders or obstructs a court in the administration of justice or lessens its authority or dignity.

**Controlled Substances Act** - See MCL 333.7401 *et seq.*

**Convict** - To find or adjudge guilty of a criminal offense.

**Crime Victim's Rights Act** - An act to establish the rights of victims of crime and juvenile offenses; to provide for certain procedures; to establish certain immunities and duties; to limit convicted criminals from deriving profit under certain circumstances; to prohibit certain conduct of employers or employers' agents toward victims; and to provide for penalties and remedies. (MCL 780.751 *et seq.*)

**Defendant** - The person against whom a crime is charged.

**Deferred Judgment of Guilt** – A judge may defer proceedings and impose probation with terms and conditions without entering a judgment of guilt for certain statutory offenses.

**Delayed Sentencing Act** - A judge may delay imposition of sentence for up to one year "for the purpose of giving the defendant an opportunity to prove to the court his eligibility for probation or such other leniency as may be compatible with the ends of justice and the rehabilitation of the defendant." (MCL 771.1)

**Destruction of Records** - The act of physically destroying information (including criminal records) in files, computers, or other depositories. Probation files should be destroyed pursuant to the *Records Retention and Disposal Schedule for Michigan Trial Courts, Schedule 16*.

**Disposition** - Determination of a case, whether by dismissal, plea and sentence, settlement and dismissal, verdict and judgment.

**District Court** - All criminal cases are commenced in district court. Felony cases may be bound over to circuit court after preliminary examination or waiver. Misdemeanors are tried in district court. Civil cases under \$25,000.00 and summary proceedings for possession of real estate constitute most of the civil caseload.

**District Court Magistrate** - In Michigan, a district court magistrate is a quasi-judicial official given the power to set bail, accept bond, accept guilty pleas, and sentence for traffic and other violations, and to conduct informal hearings on civil infractions.

**Docket** - See Register of Actions.

**Expunge** - To destroy; blot out; obliterate; erase. See Destruction of Records.

**FAC** - Failure to answer citation. When a person fails to answer a traffic citation (ticket), the court notifies the Department of State, which enters this information into its computer system. The defendant's license is suspended until the FAC is set aside after the case is disposed of and a fee is paid.

**FCJ** - Failure to comply with judgment imposed for violations of civil infractions that are issued on traffic violations; follows the same procedure as FAC.

**Felony** - A crime punishable by more than one year in the state prison, unless it is specifically stated to be a misdemeanor. Felonies are tried in the circuit court.

**Holmes Youthful Trainee Act** - A defendant, between the ages of 17 and 20 years, alleged to have committed a criminal offense may be assigned to youthful trainee status. This assignment may be made by the court of record having jurisdiction over the criminal offense, only with consent of the defendant or the guardian. Youthful trainee status is not a conviction and no civil disabilities may attach to this status. (MCL 762.11-.16)

**Inactive Case** - A pending case over which the court has no effective control; a case that is filed in court, but for some reason cannot be processed by the court, such as defendant absconded or was never arraigned.

**Incarceration** - Commitment to jail or prison.

**Interim Bond** - Refers to a bond that is set by a police officer when a person is arrested for a misdemeanor minor offense without a warrant. Any misdemeanor warrant may also have an interim bond endorsed on it by the issuing judge or district court magistrate. Interim bond allows the individual to be released, but be available for an arraignment.

**Jury** - A body of men and/or women sworn to consider the evidence presented and to deliver a true verdict or decision in a judicial proceeding. There are six jurors for district court in civil and criminal matters. In circuit court there are six jurors for civil matters and twelve for criminal matters.

**Killebrew Agreement** - In *People v Killebrew*, 416 Mich 189 (1982), the court ruled that the role of the trial court in plea negotiations is limited to consideration of bargains between defendants and prosecutors. The trial court may not participate in negotiations, and where it chooses not to accept a proffered bargain or follow the prosecutor's recommendation, the defendant must be given the opportunity to affirm or withdraw a plea of guilty offered as part of the agreement. See also *People v Garvin*, 416 Mich 189 (1982).

**LEIN** - Law Enforcement Information Network. A communications and integrated system providing access to a variety of databases, including wanted persons, criminal history records, driver records, and vehicle records.

**Magistrate** - Unless prefaced by the words "district court," the term magistrate used in the Michigan Code of Criminal Procedure refers to a judge of a court with jurisdiction over the matter discussed.

**MADCPO** - Michigan Association of District Court Probation Officers.

**MCL** - An acronym for "Michigan Compiled Laws," a series of law books.

**MCR** - An acronym for "Michigan Court Rules."

**Minor** - A person under the age of 18 years by civil law; a person under the age of 17 years by criminal and juvenile law.

**Minor Offense** - A misdemeanor or ordinance violation for which the permissible imprisonment does not exceed 92 days and the maximum permissible fine does not exceed \$500.00.

**Misdemeanor** - A violation of a penal law of the State of Michigan which is not a felony, or a violation of an order, rule, or regulation of a state agency that is punishable by imprisonment or by a fine that is not a civil fine.

**MJI** – Michigan Judicial Institute; the training department of the State Court Administrative Office.

**Motion** - An application to the court for the purpose of obtaining a certain order or decision in favor of the applicant.

**Municipal Court** - A court in which the authority is confined to the city or community where it is established. Municipal court civil jurisdiction is limited to \$1,500.00. Civil jurisdiction is increased to \$3,000.00 under certain circumstances. A few cities chose to retain this court rather than change to the district court system.

**Nolle Prosequi** – Latin for “to be unwilling to pursue.” A formal entry made on the court record by which the prosecutor declares he or she will not further prosecute the case, usually based on some form of agreement. The prosecutor reserves the right to initiate the case again.

**Nolo Contendere/No Contest** - Latin for "I will not contest it." It is a plea treated as a guilty plea except that it is not an admission of guilt, but an indication of readiness to accept conviction and sentence rather than go to trial. By pleading nolo contendere, the defendant is not required to tell the court what he or she did. This allows the defendant to avoid incriminating testimony in a pending civil action or one that may later be filed against the defendant.

**Notice of Hearing** - Document notifying the scheduling of matters in court. Pursuant to MCR 2.119, notice of hearing must be served at least nine days before the time set for hearing, if served by mail, or at least seven days before the time set for the hearing, if served by delivery pursuant to MCR 2.107(C)(1) or (2).

**Offense** - A crime or ordinance violation.

**Order** - A direction of a court made or entered in writing; one which terminates the action itself, or decides some matter litigated by the parties.

**Ordinance** - A local law or regulation enacted by a municipal government. It has no effect outside that city or village.

**ORI** - Originating agency number. See the *Law Enforcement Information Network Manual*.

**PACC Charge Code** - A code used by the county prosecutor or attorney general to identify the

crimes charged. PACC codes are not assigned to ordinance violations. The number is related to the MCL cite.

**Parole** - Conditional release from prison before the end of sentence; if the parolee observes the conditions, he or she need not serve the balance of the term.

**Peace Officer** - Any public officer or official having authority to arrest to enforce the law and preserve peace; generally includes any sheriff, deputy sheriff, any state or municipal officer, and any state conservation officer.

**Personal Recognizance** - The release that is gained in a criminal case without having to post money or have a surety sign a bond with the court. The court takes the defendant's word that he or she will appear for a scheduled matter or when advised to appear.

**Petition** - An application made in writing to the court.

**Plaintiff** - In criminal cases, the state or municipality is the plaintiff and is represented by the prosecuting official.

**Plea** - The defendant's response to a criminal charge, such as not guilty, guilty, or nolo contendere.

**Plea Bargaining** - An arrangement between the prosecutor and defense counsel where the defendant agrees to plead guilty to a particular offense in return for the prosecuting attorney's agreement to allow such a plea (usually to a reduced charge) or a promise to dismiss some other offense pending against the defendant.

**Plead** - To answer the indictment, information, complaint and warrant, citation, appearance ticket, etc.; to answer an allegation.

**Preliminary Examination** - A hearing in a felony case before a district court judge at which the prosecution presents evidence (the defendant and his or her counsel being present) from which the district judge decides whether there is probable cause to believe that a crime has been committed and that the defendant committed the crime and to "bind over" or refer the defendant to the circuit court for trial.

**Presentence Investigation** - Investigation of the relevant background of a convicted offender. Usually conducted by a probation officer employed by a court and designated to act as a sentencing guide for the sentencing judge.

**Presentence Report** - Written report prepared by the probation department containing the family and personal history of the accused, evaluation of the crime and its ramifications, and recommendations as to sentencing. Required in all felony cases. Presented to the judge as a guide in determining sentence.

**Presiding Judge** - The judge conducting a hearing or trial. The judge in charge of a case.

**Pretrial Conference** - Hearing in a criminal or civil case between the judge and the attorneys to discuss any matters that can be resolved prior to trial, to assist in expediting or simplifying the trial. Such hearings are usually informal and without clients participating.

**Probation** - Allowing a person convicted of an offense to remain in the community instead of going to jail or prison as long as the offender fulfills the conditions of the probation. The offender's probation is usually supervised by a probation officer. If a person violates probation, the probation can be revoked and the defendant resentenced.

**Pro Per or Pro Se** - A person who represents himself or herself in court without an attorney.

**Prosecuting Attorney** - A public officer whose duty is to institute and conduct criminal proceedings on behalf of the people.

**PSI** - Presentence investigation.

**Public Defender** - An attorney paid by the county to defend a person who is indigent.

**Quash** - To nullify a conviction or order.

**Record** - The word for word (verbatim) account by the official court reporter/recorder of all proceedings at the trial.

**Register of Actions** - A written list of all important acts performed in court in an individual case from beginning to end. The register of actions (for acts done), the case file (for documents filed), and any transcript of proceedings together form the "record."

**Remand** - To send a case back to the court from which it came for further proceedings. To send a case back to the lower court from which it was appealed, with instructions as to what further proceedings should take place.

**Restraining Order** - An order of the court which is intended to restrain a person's action and preserve the status quo until a hearing can be held to determine if a temporary injunction should be issued.

**SCAO** - State Court Administrative Office.

**Screening and Assessment** - A procedural method in which the sentencing judge shall order and receive the facts pertaining to the defendant's alcohol/drug-related history, prior offenses, and driving record; blood-alcohol concentration results; screening and assessment testing procedures and results; current alcohol/drug dependency; prior alcohol/drug education or treatment; and any assessment recommendations for proposed rehabilitation services.

**Sentence** - Punishment imposed upon a defendant following conviction in a criminal proceeding.

**Show-Cause Order** - An order to appear as directed and present to the court reasons and considerations why certain circumstances should be continued, permitted, or prohibited.

**SID** - State Identification number. A number provided by the Department of State Police based on positive fingerprint identification. It is generated when the law enforcement agency reports an arrest through the prosecutor to the Department of State Police.

**State Case** - Refers to a violation of state law. The term is most often used in district courts and municipal courts to distinguish between local ordinance violations and violations of state statute.

**Statutes** - Laws in the State of Michigan enacted by the state Legislature.

**Stay** - The suspension of a judicial proceeding by court order.

**Subpoena** - A writ or order to compel attendance in a court with a penalty for failure to do so.

**Verdict** - The jury's decision or finding on the issues submitted to it for determination.

**Warrant Recall** - A procedure for removing outstanding warrants from LEIN in order to avoid repeated or mistaken arrests.

**With Prejudice** - A claim dismissed "with prejudice" means the prosecution in a criminal case is forever barred from bringing criminal proceedings on the same claim.

**Without Prejudice** - A claim dismissed "without prejudice" may be the subject of a new criminal proceeding.

**Writ** - A court order giving the authority to require the performance of a specific act.

## **1-05 MICHIGAN ASSOCIATION OF DISTRICT COURT PROBATION OFFICERS**

### **A. History**

The Michigan Association of District Court Probation Officers (MADCPO) was originally founded as the Michigan Association of Probation Services, Inc. (MAPS) in 1970. Prior to 1970, district court probation officers were members of the Michigan Correctional Association. Annual conferences were held for parole, probation, and correctional officers, but conference programming centered around issues applicable to corrections and parole, with little attention given to the specific needs of district court probation.

In late 1969, a group of district court probation officers met to establish their own organization. In 1970, MAPS, Inc. was founded. An annual conference was established to focus on the education and information needs and issues of district court probation. In 1989, the name of the organization was changed to the Michigan Association of District Court Probation Officers.

### **B. Purpose**

The basic mission of the association has greatly expanded over the years in order to conform and adapt to the changing needs of the membership. The association, by way of its members, fosters the notion that probation officers are a viable and integral part of the Michigan judicial system. The association is concerned with enhancing the individual professional status of its members. In addition, members seek involvement in the legislative process in an effort to influence legislation which directly affects the function of the probation officer.

The association participates in a wide variety of functions and decision-making processes that affect the work of probation officers. Members have served in various capacities with the Michigan Court Forms Committee, the Chief Judge/Court Administrators Manual Committee, and the District Court Judges Association, and continue to remain involved in committees. In addition, the association works closely with the Michigan Judicial Institute (MJI) in providing educational programs to probation officers.

The association continues to expand the scope of its influence through increased membership in other related organizations and groups.

### **C. Membership**

Information about membership can be obtained by contacting the regional representative or any association officer, by referring to the association newsletter, by contacting a probation officer who is a member, or by visiting the association's website at [www.madcpo.org](http://www.madcpo.org).

**D. Directory of Probation Departments**

The first Directory of District Court Probation was compiled and distributed in 1984 in order to provide an accurate and useful tool for probation departments and service providers. An abridged directory update of additions and changes was provided in 1985. New directories are now compiled every two years. The directory contains phone numbers, e-mail addresses, contact persons for community service programs, victim impact panels, and fax numbers. It also contains an alphabetical listing of probation officers in the state and regional reference numbers. The directory is available through the association's current newsletter/directory coeditors.

**E. Newsletter**

The association publishes newsletters in the fall, winter, and spring of each year and mails them to all probation officers and service providers who request a copy. To receive a copy, contact the current newsletter/directory coeditors.

**F. Annual Conference**

An annual conference is held in May of each year. Locations vary and are selected by the executive board. In addition to the educational benefits, the conference provides probation officers the opportunity to meet and exchange ideas with their colleagues. An annual general membership meeting is also conducted at the conference, at which time the election of officers, regional representatives, and alternates is held.

APPENDIX 1

[Michigan Ethics Opinion JI-48](#)

[Michigan Ethics Opinion JI-55](#)

[Michigan Ethics Opinion JI-64](#)

## Michigan Ethics Opinions

JI-48, March 19, 1992

A judge of a multiple judge district court gave offenders the option of either performing a designated number of hours of community service work, or making a cash contribution to a charity, designated by the judge. Each participating judge randomly selected charities to be included in the program. There was no written policy identifying criteria for charities to become eligible to receive funds.

The sum of money paid by the offender, in lieu of performing community service work, was set by the sentencing judge. Donations were paid to the court clerk's office and deposited into a county "restitution" account. Disbursements were made randomly each calendar quarter to the charities selected by the sentencing judges.

The issue presented was whether or not the sentencing practice utilized by the district court judges violated ethics rules.

MCJC 5B (2) states:

"(2) A judge should not individually solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of his office for that purpose,...."

If judges are forbidden to solicit for charity, clearly judges cannot direct contributions by requesting or requiring offenders to donate contributions in lieu of fines, jail time, or community service, to charities designated by the judge. The judicial imposition of dollars for hours also discriminates in favor of those more affluent offenders, who have the means to buy out of community service work.

Furthermore, MCJC 3A (1) provides a judge should be faithful to the law in performing adjudicative responsibilities, and that MCJC 3A (9) urges judges to "avoid the imposition of humiliating acts or discipline, not authorized by law in sentencing ...."

JI-55, June 22, 1992

In sentencing defendants in criminal cases involving controlled substances or a minor in possession of alcohol, judges of a district court order the defendant to make a financial contribution to the local school district's substance abuse education program. The payments were part of the original sentence. Payments were payable to the school district or to the probation department.

Although the facts presented in J-55 are distinguishable from J-48, the underlying reasoning of that opinion largely applies. Unless a sentencing practice has been authorized by law, a judge's imposition of that sentence is unethical.

JI-64, December 21, 1992

A number of inquiries were received from judges seeking guidance regarding the propriety of certain sentencing proposals. These proposals are distinct from those outlined in statutes.

1. May a judge assign probationers/defendants to perform maintenance work in the municipality, in which the court is located? The assignment may be mandatory or an option to incarceration or other community service activities.
2. To what extent may a court contract with an outside organization to create and administer educational or rehabilitative programs which a judge may require a defendant to attend and/or to which a judge may require a defendant to make a financial contribution?
3. If a judge sentences a defendant to participate in an educational or rehabilitative program operated by an outside organization, may the sentence also require payment to the court of the fee charged by the outside organization, which fees are then turned over to the organization by court staff; may the organization operate the program on court premises?
4. If an outside organization which offers educational or rehabilitative programs also has a political agenda, which may or may not be incorporated into the program, may a judge nevertheless sentence defendants to attend the program? Does it matter whether the program charges a fee?

Answers

1. In this instance, the sentencing does not involve money, and the beneficiary is the public municipality.
2. There is nothing in the ethics rules which prohibits a court from contracting for services with an outside organization, whether the organization is charitable/civic or some other type.

As long as the judge does not personally benefit from referrals to a particular agency, there is nothing which would ethically prevent the judge from making sentencing referrals to an organization of which the judge is a member.

When the program is provided by an independent, outside organization, there is always danger that mandating participation in the particular program will be perceived as a judicial endorsement, or using the prestige of office for the interest of the outside entity. This perception can be minimized by offering the defendant participation alternatives, rather than the judge designating the program which the defendant must attend.

The ethics code does not appear to proscribe a judge from referring a defendant to a program for education or rehabilitation and to require the defendant to pay whatever the program costs directly to the program, but the judge should not make payment of program fees part of the sentence. No defendant should be turned away from a program for inability to pay the entire fee. An organization may establish a sliding fee based upon ability to pay and may, in calculating the fee to be charged, include a reasonable estimate of the amount needed to offset the number of individuals likely to be unable to pay the full fee. Any contract with an outside organization should explicitly address fees charged to sentencing referrals.

When contracting for services, a court should institute a fair selection procedure which would allow other interested organizations the opportunity to obtain the contract and should not grant exclusive rights to referrals to a particular outside organization.

3. A judge does not violate ethics rules merely by sentencing a defendant to attend a program which the judge knows charges a fee, as long as the selection was reached objectively, based upon the quality of the program and the particular needs of the defendant, and other available alternative programs have been given equal consideration. The judge and the judge's court and staff may not participate in the collection of monies from sentenced individuals to attend such programs.

Ethics rules do not prohibit a judge or court from allowing an organization to hold its educational or rehabilitative program on court premises.

4. Inquiry provides several examples of organizations that might have such "political agendas," i.e., M.A.D.D., the Salvation Army, Alcoholics Anonymous, and Catholic Social Services. A definition of "political agenda" has not been provided to enable the committee to hypothesize generic examples.

The ethical principles which must be observed are: (1) the danger of the sentence being perceived as lending the prestige of the judicial office to the private interests of the organization MCJC 2C; (2) the danger that the sentence will be perceived as the judge's endorsement of a particular ideology or set of views which unfairly "slants" the judge's judicial actions, MCJC 1; and (3) a judge should remain "unswayed by partisan interests, public clamor, or fear of criticism," MCJC 3A (1).