

Sentencing

TABLE OF CONTENTS

6-01	Determining Sentence	
	A. Proper Considerations	6-01-01
	B. Improper Considerations	6-01-01
	C. Additional Considerations	6-01-02
6-02	Delayed Sentence	6-02-01
6-03	Holmes Youthful Trainee Act	
	A. Authority and Definition	6-03-01
	B. Conditions	6-03-01
	C. SCAO-Approved Forms	6-03-02
6-04	Deferred Judgment of Guilt	
	A. Controlled Substances, Public Health Code	6-04-01
	B. Spouse Abuse Act	6-04-02
	C. Health-Care Professionals	6-04-03
	D. Liquor Control Code	6-04-04
	E. SCAO-Approved Forms	6-04-05
6-05	Drug Treatment Court	
	A. Authority and Definition	6-05-01
	B. Conditions	6-05-01
	C. SCAO-Approved Forms	6-05-01

TABLE OF CONTENTS (continued)

6-06	Conditional Sentence	
	A. Authority and Definition	6-06-01
	B. Conditions	6-06-01
	C. SCAO-Approved Forms	6-06-02
6-07	Other Alternatives	
	A. Community Service Work	6-07-01
	B. Intensive Probation	6-07-02
	C. Victim Impact Panel	6-07-02
	D. Tether/Electronic Monitoring and Detention	6-07-03
6-08	Under Advisement	
	A. Definition and Authority	6-08-01
6-09	Probationary Sentences	
	A. Authority and Definition	6-09-01
	B. Conditions	6-09-01
	C. Types	6-09-02
6-10	Financial Penalties	
	A. Authority and Definition in General	6-10-01
	B. Fine and Costs	6-10-02
	C. Restitution	6-10-03
	D. Other Assessments	6-10-04

TABLE OF CONTENTS (continued)

6-11	Habitual Offender	6-11-01
6-12	Sentencing Hearing	
	A. Right to Counsel	6-12-01
	B. Who Should be Present	6-12-01
	C. Disclosure of Presentence Report	6-12-01
	D. Probation Officer Responsibility	6-12-02
6-13	Crime Victim's Rights Fund	
	A. Authority	6-13-01
	B. Responsibilities of the Court	6-13-01
	C. Report of Nonpayment of Restitution	6-13-01

Appendix

Sentencing

6-01 DETERMINING SENTENCE

A. Proper Considerations

As a general rule, the sentencing judge has certain basic considerations, which include:

1. the possibility of reforming the individual,
2. the protection of society,
3. the disciplining of the offender, and
4. the likelihood of deterring others from committing like offenses.

Each sentence should be individualized, but should also reflect sentences for similar crimes. (*People v Coles*, 417 Mich 523; 339 NW2d 440 [1983]) See also Section 4-04.

B. Improper Considerations

As a general rule, the judge may not:

1. penalize the defendant for refusing to plead guilty.
(*People v Hogan*, 105 Mich App 473; 307 NW2d 72 [1981])
2. consider the defendant's refusal to admit guilt.
(*People v Yennior*, 399 Mich 892; 282 NW2d 920 [1977])
3. penalize the defendant for exercising the right to a trial.
(*People v Courts*, 401 Mich 57; 257 NW2d 101 [1977])
4. penalize the defendant for demanding a jury trial.
(*People v Earegood*, 383 Mich 82; 173 NW2d 205 [1970])
5. penalize the defendant for exercising the right against self-incrimination.
(*People v Anderson*, 391 Mich 419; 216 NW2d 780 [1974])
6. ask the defendant to take a polygraph, or to consider the results of a polygraph, unless the defendant freely consents. (*People v Allen*, 49 Mich App 148; 211 NW2d 533 [1973])
7. augment a sentence on the basis of a belief that the defendant lied under oath.
(*People v Anderson*, supra)

8. consider a prior felony or misdemeanor conviction if the conviction was obtained without the benefit of counsel or a valid waiver of counsel.
(*People v Moore*, 391 Mich 426; 216 NW2d 770 [1974])
9. consider prior convictions obtained in violation of the defendant's constitutional right to counsel. (*People v Moore*, supra)
10. consider prior guilty plea convictions obtained in violation of *Boykin v Alabama*, 395 US 238; 89 SCt 1709; 23 LEd2d 274 (1969), or *People v Jaworski*, 387 Mich 21; 194 NW2d 868 (1972).
11. impose a sentence that is premised on the basis of race, religion, or national origin.
(*People v Gjidodo*, 140 Mich App 294; 364 NW2d 698 [1985])
12. set a sentence in accord with any local sentencing policy, because a sentence must be individualized.
(*People v Chapa*, 407 Mich 309; 284 NW2d 340 [1979])
13. use speculative legislatively-authorized early release provisions, such as the Emergency Power Act, to justify augmenting a sentence.
(*People v Humble*, 146 Mich App 198; 379 NW2d 422 [1985])
14. consider the effect of disciplinary credits, which the defendant may or may not receive.
(*People v Stack*, 156 Mich App 564; 402 NW2d 7 [1986])
15. sentence in violation of public policy. In *People v Baum*, the court held that it violated public policy to require the defendant to remain out of state during the period of probation.
(*People v Baum*, 251 Mich 187; 231 NW 95 [1930])

C. Additional Considerations

1. Drunk-Driving Law

See the Criminal Sentencing/Administrative Consequences Chart in the Section 6 Appendix.

a. Trial Procedures

1) Time Lines for Case Processing of Misdemeanor

- a) Except as otherwise stated in MCL 257.625b, the defendant must be arraigned within 14 days of arrest. (MCL 257.625b[1])

- b) A pretrial must be held within 35 days, or 42 days in multi-county districts where there is only one judge. (MCL 257.625b[2]) Either side may have one 14-day adjournment. The defendant must attend the pretrial.
- c) The case must be disposed of within 77 days of the date the issued or reissued arrest warrant is served, whichever is later. (MCL 257.625b[3]) "Final disposition" refers to a plea or finding of guilt, not sentencing. Statutory exceptions for not meeting the disposition time frame include: (1) the unavailability of the defendant, material evidence, or witnesses; (2) interlocutory appeals; or (3) other exceptional circumstances. Docket congestion cannot be an excuse. The court shall not dismiss a case or impose any other sanction for failing to comply with any of these time limits.

2) Plea Taking

The court need only advise the defendant that licensing sanctions will be determined based upon the master driving record maintained by the Michigan Secretary of State. (MCL 257.625b[4])

3) Second and Third Offenses

- a) Prior statutory references are defined in MCL 257.625(11)(c).
- b) If the prosecuting attorney intends to seek an enhanced sentence, second- or third-offense status must be charged in the complaint or information. (MCL 257.625[15])

Prior convictions are established at sentencing by one or more of the following: (1) a copy of a judgment of conviction, (2) an abstract of conviction, (3) a transcript of a prior trial or a plea taking or sentencing proceeding, (4) a copy of a court register of actions, (5) a copy of the defendant's driving record, (6) information contained in a presentence report, or (7) an admission by the defendant. (MCL 257.625[17])

b. Sentencing

1) Conviction

A person convicted of attempted OWI, OWVI, or OWPD shall be punished as if the offense has been completed. (MCL 257.204b)

2) License Sanctions

License sanctions are based on the master driving record maintained by the Secretary of State and are imposed administratively by the Secretary of State as indicated by statute. The court does not order licensing sanctions. (MCL 257.319, MCL 257.320a, MCL 257.625b[4])

3) Vehicle Immobilization

Vehicle immobilization is based upon the master driving record kept by the Secretary of State and is imposed by the court. Immobilization may not begin until after a jail sentence is served. Minimum and maximum days of immobilization are based on the number of prior convictions. (MCL 257.625[11][e], MCL 257.904d)

4) Criminal penalties (MCL 257.625)

The court shall impose a criminal penalty for a conviction of an attempted violation of the Michigan Vehicle Code or a local ordinance substantially corresponding to a provision of the Michigan Vehicle Code as if the offense had been completed. (MCL 257.204b) See the Criminal Sentencing/Administrative Consequences Chart in the Section 6 Appendix. A prior conviction means any conviction pursuant to MCL 257.625 and MCL 257.625m.

c. Conviction Occurring During a Period of Suspension, Revocation, or Denial**1) License Sanctions**

A person convicted of or receiving a civil infraction determination for the unlawful operation of a motor vehicle or a moving violation reportable pursuant to MCL 257.732 that occurred during a period of suspension, revocation, or denial receives license sanctions based on the master driving record maintained by the Secretary of State and imposed by the Secretary of State as indicated by statute. The court does not order licensing sanctions. (MCL 257.904[10], [11], [12], [13])

2) Vehicle Immobilization

Vehicle immobilization is based upon the master driving record kept by the Secretary of State and is imposed by the court. Immobilization may not begin until after a jail sentence is served. Minimum and maximum days of immobilization are based on the number of prior convictions. (MCL 257.625[11][e], MCL 257.904d)

2. Testing for HIV, Hepatitis B Infection, and Venereal Disease

a. Authority

The authority for testing for disease/infection is MCL 333.5129. A model protocol and forms for this procedure were developed by the Michigan Department of Public Health. See copies of the forms in the Section 6 Appendix. See also SCAO-Approved form MC 234, Order for Counseling and Testing for Disease/Infection, in the Section 6 Appendix.

b. Definition

Cases involving an individual arrested and charged with violating MCL 750.145a, 750.338, 750.338a, 750.338b, 750.448, 750.449, 750.449a, 750.450, 750.452, 750.455, 750.520b, 750.520c, 750.520d, 750.520e, 750.520g, 333.7404, or a local ordinance prohibiting prostitution, solicitation, gross indecency, or the intravenous use of a controlled substance. Specific titles are as follows.

333.7404	Use of controlled substance or controlled substance analogue
750.145a	Accosting, enticing, soliciting child for immoral purposes
750.338	Gross indecency; between male persons
750.338a	Gross indecency; between female persons
750.338b	Gross indecency; between male & female persons
750.448	Soliciting and accosting
750.449	Admitting to place for purpose of prostitution
750.449a	Engaging services for purpose of prostitution, lewdness, or assignation, offer to engage; penalty
750.450	Aiders and abettors
750.452	House of ill-fame, keeping, maintaining
750.455	Pandering
750.520b	First-degree criminal sexual conduct
750.520c	Second-degree criminal sexual conduct
750.520d	Third-degree criminal sexual conduct
750.520e	Fourth-degree criminal sexual conduct
750.520g	Assault with intent to commit criminal sexual conduct

c. Responsibility of the Court

1) At Arraignment (MCL 333.5129[2])

If an individual has been arrested and charged with violating one of the statutes mentioned above, the judge or district court magistrate responsible for setting the individual's conditions of release pending trial shall distribute to the individual the

information on disease/infection required to be distributed by county clerks pursuant to MCL 333.5119(1). The judge or district court magistrate shall recommend that the individual obtain additional information and counseling at a local health department testing and counseling center regarding disease/infection. Counseling under this subsection shall be voluntary on the part of the individual.

2) Upon Bind Over (MCL 333.5129[3])

If a defendant is bound over to the circuit court and the district court determines there is reason to believe the offense involved sexual penetration or the exposure to a body fluid of the defendant, the district court shall order that the defendant be examined or tested for disease/infection and receive treatment or, at a minimum, the required information.

3) Upon Conviction (MCL 333.5129[4])

If a defendant is convicted of violating any of the above statutes, the court shall order, at conviction, that the defendant be examined or tested for disease/infection. Also, if a defendant is assigned to youthful trainee status rather than being convicted, the court shall order the defendant be tested.

Upon conviction or assignment to youthful trainee status for any of the above mentioned statutes, the court shall also order the defendant to receive counseling including, at a minimum, information regarding treatment, transmission, and protective measures.

4) Notice to Victims (MCL 333.5129[5])

If the victim (or person with whom the defendant engaged in sexual penetration during the course of the crime) consents, the court shall provide the person or agency administering the test with the name, address, and telephone number of the victim. After the defendant is tested, the persons or agency administering the test shall immediately provide the test results to the victim.

5) Keeping Records Confidential (MCL 333.5129[6])

The test results or any other research information obtained by the testing agency shall be transmitted to the court and, after the defendant is sentenced, made part of the court record. However, the records shall be confidential and shall be disclosed only to the defendant, the local health department, the Department of Community Health, and the victim, except as otherwise provided by law.

If the defendant is placed in the custody of the Department of Corrections, the court shall transmit a copy of the defendant's test results and any other medical information to the Department of Corrections. The statute does not address convictions by the district courts which result in jail terms.

MCL 791.229 makes circuit court probation records nonpublic. In *Howe v Detroit Free Press*, 440 Mich 203 (1992), the Michigan Supreme Court extended this statute to include district courts.

d. SCAO-Approved Forms

The following forms will be used by the district court in conjunction with testing and counseling for disease/infection:

- 1) Order for Counseling and Testing for Disease/Infection (MC 234).
- 2) Assignment to Youthful Trainee Status (MC 242).

The following form may be used depending on the local practice of the court:

- 1) Judgment of Sentence, Commitment to Jail (MC 219).

The following form may be used as determined necessary:

- 1) Order for Vehicle Immobilization (MC 267).

6-02 DELAYED SENTENCE

MCL 771.1(2) allows the sentencing judge to delay sentences for up to one year in cases where probation may be appropriate. The statute provides:

[I]n an action in which the court may place the defendant on probation, the court may delay sentencing of the defendant for not more than one year to give the defendant an opportunity to prove to the court his or her eligibility for probation or other such leniency as may be compatible with the ends of justice and the defendant's rehabilitation. 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. See *People v Monday*, 70 Mich App 518; 245 NW2d 811 (1976), *People v McLott*, 70 Mich App 524; 245 NW2d 814 (1976).

Probation is one of many options available to a judge as part of a sentence. When sentence is delayed, the judge may not place a person on probation and an Order of Probation (SCAO-Approved form DC 243) is inappropriate. The court should enter an Order Delaying Sentence (SCAO-Approved form MC 294) and may order supervision during the period of delay.

MCL 771.1 specifically authorizes a court to place a person on probation for violating a local ordinance. Therefore, the court may delay sentence after conviction for a violation of a local ordinance.

A defendant placed on a delayed sentence may be referred to the drug treatment court program pursuant to MCL 600.1070.

6-03 HOLMES YOUTHFUL TRAINEE ACT

A. Authority and Definition

MCL 762.11 and MCL 762.13 provide the sentencing judge with the means for ordering rehabilitative treatment and/or custodial supervision for up to two years in district court or up to three years in circuit court for:

1. persons charged with offenses other than
 - a. a felony for which the maximum punishment is life imprisonment,
 - b. a major controlled substance offense, or
 - c. a traffic offense, and
2. juveniles over 15 years of age who have been waived from circuit court, without proceeding to an adjudication of guilt and a criminal conviction.

A defendant placed on youthful trainee status may be referred to a drug treatment court program pursuant to MCL 600.1070.

B. Conditions

1. The offense must have been committed on or after the offender's 17th birthday but before his or her 21st birthday.
2. The offender must consent to being placed on youthful trainee status.
3. The offender must plead guilty.
4. Upon violation of any term of probation, the court may terminate the youth's trainee status, enter an adjudication of guilt, and proceed with sentencing as provided by law. Credit must be given against the sentence for time served as a youthful trainee in a county jail. The court, as a condition of a commitment to the county jail or a condition of probation, may authorize work release or release for education purposes. The rights accorded probationers subject to revocation should also be applied to youths under youthful trainee status. See *People v Roberson*, 22 Mich App 664; 177 NW2d 712 (1970).
5. An assignment to the status of youthful trainee shall not be deemed to be a conviction of a crime and such person shall suffer no civil disability, right or privilege following his or her release from such status because of such assignment as a youthful trainee.

6. All proceedings relative to the disposition of the criminal charge and to the assignment as a youthful trainee shall be closed to public inspection, but open to the courts of the state, the Department of Corrections, the Department of Social Services and law enforcement personnel in the performance of their duties. Also, in providing required notice to victims, the probation officer may furnish information or records to victims that would otherwise be closed to public inspection. (MCL 780.752a, MCL 780.781a, MCL 780.811b)

C. SCAO-Approved Forms

The following forms should be used in conjunction with placement on youthful trainee status.

- 1) Assignment to Youthful Trainee Status (MC 242) – A copy of this form must be sent by the clerk of the court to the Michigan State Police Criminal Justice Information Center to create a criminal history record as required by MCL 769.16a.
- 2) Order of Probation, Misdemeanor (DC 243) – As a local option, this form can be modified to show that youthful trainee status has been assigned to an offender.
- 3) Petition and Order for Discharge from Probation (MC 245) – A copy of this form shall be sent by the clerk of the court to the Michigan State Police Criminal Justice Information Center to create a criminal history record as required by MCL 769.16a.

6-04 DEFERRED JUDGMENT OF GUILT

A. Controlled Substances, Public Health Code

1. Authority and Definition

MCL 333.7411 gives the authority to defer proceedings and impose probation with terms and conditions without a judgment of guilt for certain offenders charged with possession or use of certain drugs. A defendant placed on probation under a deferred judgment of guilt may be referred to a drug treatment court program pursuant to MCL 600.1070.

2. Conditions

- a. The defendant must plead guilty or be found guilty of the offense, but no judgment of guilt is entered.
- b. The defendant must consent to this status, but the prosecutor does not.
- c. The only persons eligible are those with no prior drug convictions who are charged with possession of controlled substances pursuant to MCL 333.7403 (2) (a) (iv), (b), (c) or (d) or use of controlled substance pursuant to MCL 333.7404, or those charged either the first or second time with possession of imitation controlled substances pursuant to MCL 333.7341.
- d. The defendant must be placed on probation by the judge.
- e. The judge may require an instruction program on misuse of drugs or a rehabilitation program.
- f. Jail time is allowable.
- g. Discharging the defendant and dismissing charges after successfully completing any conditions of probation is mandatory and without adjudication of guilt.
- h. There may be only one discharge and dismissal afforded to an offender under this status.
- i. Upon fulfillment of the terms and conditions of probation, the Michigan State Police Criminal Justice Information Center shall retain a nonpublic record of an arrest and discharge or dismissal. This record shall be furnished to a court or police agency upon request for the purpose of showing that the defendant in a criminal action involving the possession or use of a controlled substance or an imitation controlled substance has previously used this status. A person subjected to a civil fine for a first violation of

MCL 333.7341(4) is not considered to have previously been convicted of an offense under this status. During the term of probation, the records maintained by the Criminal Justice Information Center and the court are public.

- j. If a term or condition of probation is violated, the court may enter an adjudication of guilt and sentence the defendant.

B. Spouse Abuse Act

1. Authority and Definition

MCL 769.4a gives the authority to defer proceedings and impose probation with terms and conditions without a judgment of guilt for certain offenders charged with assault upon a spouse, former spouse, or household member. A defendant placed on probation under a deferred judgment of guilt may be referred to a drug treatment court program pursuant to MCL 600.1070.

2. Conditions

- a. The defendant must plead guilty or be found guilty of the offense but no judgment of guilt is entered.
- b. The defendant and the prosecuting attorney, in consultation with the victim, must consent to this status.
- c. The only persons eligible are those with no prior convictions for assaultive crimes as defined in MCL 769.4a(7)(a).
- d. The defendant must be placed on probation by the judge.
- e. The judge may require the defendant to participate in and pay for a mandatory counseling program, and/or participate in a drug treatment court program.
- f. The judge may order imprisonment within the period of probation for not more than the maximum penalty authorized for the underlying offense.
- g. Discharging the defendant and dismissing charges after successfully completing any conditions of probation is mandatory and without adjudication of guilt.
- h. If a term or condition of probation is violated, the court may enter an adjudication of guilt.

- i. There may be only one discharge and dismissal afforded to an offender under this status.
- j. Upon fulfillment of the terms and conditions of probation, the Michigan State Police Criminal Justice Information Center shall retain a nonpublic record of an arrest and discharge or dismissal. This record shall be furnished to a court or police agency upon request for the purpose of showing that a defendant in a criminal action pursuant to MCL 750.81 or 750.81a has already once availed himself or herself of this section. In addition, in providing required notice to victims, the probation officer may furnish information or records to victims that would otherwise be closed to public inspection. (MCL 780.752a, 780.781a, 780.811b) During the term of probation, the records maintained by the Criminal Justice Information Center and the court are public.

C. Health-Care Professionals

1. Authority and Definition

MCL 750.430(8) gives the authority to defer proceedings and impose probation with terms and conditions without a judgment of guilt for licensed health-care professionals charged with engaging in the practice of his or her health profession with a bodily alcohol content of .05 or more, or while under the influence of a controlled substance causing a visible impairment to his or her ability to safely and skillfully engage in the practice of his or her health profession. A licensed health-care professional means an individual licensed or registered pursuant to article 15 of the Public Health Code, MCL 333.16101-333.18838. A defendant placed on probation under a deferred judgment of guilt may be referred to the drug treatment court program pursuant to MCL 600.1070.

2. Conditions

- a. The defendant must be convicted pursuant to MCL 750.430.
- b. The defendant and the prosecuting attorney must consent to this status.
- c. The only persons eligible are those with no prior convictions pursuant to MCL 750.430.
- d. The individual's conduct must not have resulted in physical harm or injury to the patient.
- e. The terms and conditions of probation may include participation in a drug treatment court program pursuant to MCL 600.1060-600.1082.
- f. The defendant shall be ordered to participate in the health professional recovery program established in MCL 333.16167.

- g. Discharging the defendant and dismissing charges after successfully completing any conditions of probation is mandatory and without adjudication of guilt.
- h. If a term or a condition of probation is violated, the court may enter an adjudication of guilt.
- i. There may be only one discharge and dismissal afforded to an offender under this status.
- j. Upon fulfillment of the terms and conditions of probation, the Michigan State Police Criminal Justice Information Center shall retain a nonpublic record of an arrest and discharge or dismissal. This record shall be furnished to a court or police agency upon request for the purpose of showing that a defendant in a criminal action pursuant to MCL 750.430 has already once availed himself or herself of this section. During the term of probation, the records maintained by the Criminal Justice Information Center and the court are public.

D. Liquor Control Code

1. Authority and Definition

MCL 436.1703 gives authority to defer proceedings and impose probation with terms and conditions without a judgment of guilt for a person who has not previously been convicted of or received a juvenile adjudication for a violation of that section. A deferred judgment of guilt is discretionary by the court if the defendant meets the statutory requirements.

2. Conditions

- a. The defendant must plead guilty to the offense but no judgment of guilt is entered.
- b. The only persons eligible are those with no prior convictions of this section, being a minor who purchases, consumes or possesses alcoholic liquor or attempts to purchase, consume or possess alcoholic liquor, or have any bodily alcohol content.
- c. The defendant must be placed on probation.
- d. The court may require participation in substance abuse prevention services or substance abuse treatment and rehabilitation services, community service, and to undergo substance abuse screening and assessment at the defendant's expense, payment of costs including minimum state cost and the cost of probation oversight.
- e. In the case of a minor who is under 18 years of age and unemancipated, the parent, guardian, or custodian may request a random or regular preliminary breath test as part of

the probation. (MCL 436.1703[4])

- f. Jail time is not allowable.
- g. Discharging the defendant and dismissing the charges after successfully completing any conditions of probation is mandatory and without adjudication of guilt.
- h. If a term or condition of probation is violated, the court may enter an adjudication of guilt.
- i. There may be only one discharge and dismissal afforded to an offender under this status.
- j. Upon placement on deferred sentence and probation, the court shall notify the Michigan Department of State of the deferred sentence and it shall retain a nonpublic record.
- k. While on deferred sentence and probation, the court shall retain a nonpublic record.
- l. Upon fulfillment of the terms and conditions of probation, the court shall notify the Department of State of the discharge and dismissal. The court and the department shall retain a nonpublic record of the plea and of the discharge or dismissal. This record shall be furnished to a court, prosecutor, or police agency upon request for the purpose of determining if an individual has already utilized this status. The record shall also be available to the Department of Corrections, a prosecutor, or a law enforcement agency upon request if the individual is an employee or applicant for employment of the requesting agency only to determine whether an employee has violated his or her conditions of employment or whether an applicant meets criteria for employment.

3. Ordinance Violations

Deferred proceedings are allowed under this statute only for violations of this statute. Deferred proceedings are not allowed for a violation of a substantially corresponding local ordinance.

E. SCAO-Approved Forms

After determining that probation has been successfully completed, a petition for discharge from probation must be completed and submitted to the sentencing judge for approval and signature. After the sentencing judge signs the petition, the original should be placed in the court file and copies should be given to the probationer and placed in the probation file. An electronic transfer of the information contained in this order, or a photocopy of this order, must also be forwarded

to the Michigan State Police Criminal Justice Information Center. This form is necessary to ensure that official records of the probationer will be classified as a **nonpublic record** by the Criminal Justice Information Center.

The following forms should be used.

- 1) Order of Probation, Misdemeanor (DC 243) – The appropriate box must be checked under "Judgment of guilt is deferred under." Additionally, a photocopy of this order must be sent to the Michigan State Police Criminal Justice Information Center to create a criminal history record as required by MCL 769.16a.
- 2) Petition and Order for Discharge from Probation (MC 245) – The appropriate box must be checked indicating that the defendant is discharged from probation supervision and that the case shall be retained as a **nonpublic record** and a copy sent to the Michigan State Police Criminal Justice Information Center.

6-05 DRUG TREATMENT COURT

A. Authority and Definition

A drug treatment court is a court-supervised treatment program for individuals who abuse or are dependent upon any controlled substance or alcohol. An individual may not be admitted to a drug treatment court if he or she is a violent offender as defined in MCL 600.1060(g).

MCL 600.1070 gives the authority, upon agreement with the individual and the prosecutor, to sentence and impose probation with terms and conditions for a person who has met statutory eligibility requirements for drug court participation but who is not eligible for a deferred judgment of guilt under the drug treatment court statute. The court may also place a person in drug treatment court who is eligible for a deferred judgment of guilt under the Holmes Youthful Trainee Act (MCL 762.11), the Public Health Code (MCL 333.7411), the Spouse Abuse Act (MCL 769.4a), or the Penal Code (health-care professional) (MCL 750.430).

Section 6-04 discusses drug court participation by persons eligible for a deferred judgment of guilt pursuant to the drug treatment court statute.

B. Conditions

1. The defendant must plead guilty to the offense. A judgment of guilt is entered.
2. The defendant must be placed on probation.
3. The court may require participation in treatment and prevention services, education, and mandatory periodic and random testing for the presence of any controlled substance or alcohol in blood, urine, or breath.

C. SCAO-Approved Forms

After determining that probation has been successfully completed, a petition for discharge from probation must be completed and submitted to the sentencing judge for approval and signature. After the sentencing judge signs the petition, the original should be placed in the court file and copies should be supplied to the probationer and probation file. Although MCL 600.1076 requires the transfer of the information contained in this order to the Michigan State Police Criminal Justice Information Center, and the retention of the uniform citation as a nonpublic record, the Michigan statute is in conflict with federal law (42 CFR Part 2). The court must report the final entry of a conviction or dismissal to the Michigan State Police pursuant to MCL 769.16a without reference to drug treatment court.

The following forms should be used.

- 1) Order of Probation, Misdemeanor (DC 243) – The appropriate box must be checked under "Judgment of guilt is deferred under." Additionally, a photocopy of this order must be sent to the Michigan State Police Criminal Justice Information Center to create a criminal history record as required by MCL 769.16a.
- 2) Petition and Order for Discharge from Probation (MC 245) – The appropriate box must be checked indicating that the defendant is discharged from probation supervision and that the case shall be retained as a **nonpublic record** and a copy sent to the Michigan State Police Criminal Justice Information Center.
- 3) Judgment of Sentence/Commitment to Jail (MC 219) – Upon discharge from probation, the court must send a revised judgment to the Michigan State Police Criminal Justice Information Center. In addition to the sentence, the court must indicate whether the probationer successfully or unsuccessfully completed drug treatment court.

6-06 CONDITIONAL SENTENCE

A. Authority and Definition

Conditional sentences may be imposed where a fine or imprisonment is authorized by statute. MCL 769.3 provides if punishment for an offense is either a fine or imprisonment, a judge may sentence conditionally. The judge can order a fine with or without costs within a specified period of time. The defendant may be incarcerated for failure to pay.

B. Conditions

1. First offenders convicted of offenses carrying less than a five-year maximum may, in the alternative, be sentenced to a jail sentence not to exceed six months. (MCL 750.506)
2. Persons convicted for the first time of unauthorized use of a motor vehicle may have their sentences reduced to three months in the county jail or fined not more than \$500.00. (MCL 750.414)
3. The defendant is entitled to a hearing prior to incarceration for his failure to pay a fine and/or costs as part of this type of sentence. (*Reardon v Georgia*, 461 US 660 [1983])
4. If the court imposes a conditional sentence, any restitution ordered shall be a condition of that sentence. (MCL 769.1a) The conditional sentence statute further states that, "if a person is convicted of an offense punishable by a fine or imprisonment or both, the court may impose a conditional sentence and order the person to pay a fine, with or without the costs of prosecution, and restitution as provided in section MCL 769.1a or the crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, within a limited time stated in the sentence and, in default of payment, sentence the person as provided by law. . . . Except for a person who is convicted of criminal sexual conduct in the first or third degree, the court may also place the offender on probation with the condition that the offender pay a fine, costs, damages, restitution, or any combination in installments with any limited time and may, upon default in any of those payments, impose sentence as provided by law." (MCL 769.3)

The court may impose imprisonment under the conditional sentence if the defendant fails to pay restitution. In determining whether to impose imprisonment, the court must take into account the defendant's employment status, earning ability and financial resources, the willfulness of the defendant's failure to pay, and any other special circumstances that may have a bearing on the defendant's ability to pay before incarcerating the defendant. (MCL 780.826[11], MCL 769.1a, MCL 771.3[8])

5. When a person has been convicted of domestic violence, or when a prior conviction of domestic violence is included in a criminal history record which meets the definition of domestic violence in 18 USC 922(g)(9), a condition of probation prohibiting the defendant from possessing, carrying, or purchasing a firearm or ammunition should be included. See also Section 4-03.
6. If the court orders conditions reasonably necessary for the protection of one or more named persons, the court or a law enforcement agency within the court's jurisdiction shall enter the order or amended order of probation into the Law Enforcement Information Network (LEIN). If the order is rescinded or amended, the order in LEIN shall be amended or removed accordingly. (MCL 771.3[2][o], [4]) See also Section 7, page 7-05-03.

C. SCAO-Approved Forms

Conditional sentences must be specified on the Judgment of Sentence (SCAO-Approved form MC 219) and the Order of Probation (SCAO-Approved form DC 243), if applicable.

6-07 OTHER ALTERNATIVES

A. Community Service Work

Community service work is often used as part of a sentence or probation term for various offenses. Community service work may be performed in lieu of payment of fines and costs.

1. Authority

Where probation is an authorized sentence, in most but not all felonies and misdemeanors, the court may require the probationer to engage in community service as a condition of probation. (MCL 771.3[2][e])

As part of the sentence for a violation of operating a vehicle while intoxicated (OWI), operating while visibly impaired (OWVI), operating with presence of drugs (OWPD), minor in possession of alcohol, transporting or possessing open alcohol in a motor vehicle, and minor transporting or possessing alcohol in a motor vehicle, a court may order a person to perform community service as designated by the court without compensation for a specified period (MCL 257.624a[3], MCL 257.624b[1], MCL 257.625, MCL 436.1703[1]):

- a. up to 360 hours for first offenses of OWPD, OWI, and OWVI.
- b. between 30 and 90 days for prior convictions of OWPD, OWI, and OWVI.

A prior conviction means any conviction pursuant to MCL 257.625(1), (3), (4), (5), (6), (7), (8), and (23), and MCL 257.625m.

2. Liability

The Attorney General has issued opinions that persons placed in community service programs are not employees of the governmental unit under the Michigan Workers Compensation Disability Act. It appears that participants injured in community service programs would not be entitled to workers compensation benefits. (OAG, 1983-1984, No. 6158, P. 129 [June 24, 1983], OAG, 1971-1976, No. 5061, P. 522 [June 28, 1976])

Another consideration is governmental liability for injuries or damages to persons performing community service, third parties, or property. There may be governmental immunity if the community service program is a governmental function; that is, an activity which is expressly or impliedly mandated or authorized by constitution, statute, local charter or ordinance, or other law. (MCL 691.1407)

3. Insurance

Since governmental immunity may not provide complete coverage, the possibility of accident and health insurance for the participant and liability insurance for the governmental agency should be explored. Insurance policies can offer coverage for community service programs.

Insurance premiums may also be recovered from probationers. A court may impose, as a cost, expenses incurred in providing oversight to the probationer. (MCL 771.3[5])

In OWI, OWPD, and OWVI cases the statute authorizes reimbursement for the cost of supervision for defendants sentenced to community service. Arguably, the cost of providing insurance for community service programs is such an expense. (MCL 257.625[14])

Any community service program should take into consideration the safety of the participants and the public. Courts should consult with their insurance carrier and should include in their community service programs only those activities that are approved by their carrier.

B. Intensive Probation

1. Authority

Although intensive probation is not specifically mentioned, the authority for it can be found in MCL 771.3, which is the statute for probation conditions. As cited, probationers can be ordered to report "monthly, or as often as the probation officer may require."

2. Highlights

- a. Applicants must first be screened to see if they meet the criteria for eligibility.
- b. Probationers may be subject to close supervision, which may include a variety of conditions, but is not limited to, employment checks, home visits, daily contact with the probation officer, curfews, and submitting to a preliminary breath test (PBT).
- c. Supervision is typically implemented during the first phase of a defendant's probation status and may not necessarily continue throughout the complete term of probation.

C. Victim Impact Panel

1. Authority and Definition

The victim panels are not dictated by statute. Victim panels are held nationwide and are

sponsored by the Mothers Against Drunk Driving (MADD) organization. They consist of a panel of victims and survivors of drunk-driving crashes, who speak briefly about their experience, which may include death of a loved one and/or injury to themselves. Drunk-driving offenders or other persons convicted of alcohol-related crimes can be required to attend as an element of their sentence. There is no interaction between victims and offenders. Any cost to the defendant for attending the program must be limited to the actual cost and cannot include any contribution used for political activity by the sponsor. A procedure must exist to waive the cost of attendance for any indigent defendant whose attendance is ordered by the court.

2. Forms

Forms can be obtained through the local chapter of MADD.

D. Tether/Electronic Monitoring and Detention

1. Authority

There is no statutory authority for this alternative.

2. Definition

A variety of devices may be used as an alternative to incarceration or for an early-release program. The devices include, but are not limited to, wrist bracelet, ankle bracelet, and television monitor with or without a preliminary breath tester attached. The devices may be monitored by telephone or radio frequency. The court has the authority to specify the terms, such as hours and location, for each individual case.

3. Violations

When sentencing a defendant for a probation violation, the defendant is not entitled to credit for time he or she spent on an electronic tether program. (*People v Smith*, 195 Mich App 147; 489 NW2d 135 [1992])

See also Section 7, page 7-03-02.

6-08 UNDER ADVISEMENT

A. Definition and Authority

To take a case under advisement is to take a plea of guilty and place the individual under the supervision of the court, without conviction or sentence, for a specified period of time.

No statutes or court rules have been identified that authorize district courts to take a plea of guilty under advisement.

6-09 PROBATIONARY SENTENCES

A. Authority and Definition

The authority for probationary sentences is found in MCL 771.1(1). Probation may be imposed for all misdemeanors, ordinances and felonies **except** for murder, treason, armed robbery, major controlled substances offenses, and first- and third-degree criminal sexual conduct. An individual guilty of criminal contempt may also be placed on probation. (MCL 600.1715)

B. Conditions

1. The maximum term of probation is five years for felonies and two years for misdemeanors. (MCL 771.2[1])
2. The maximum term of probation is five years for misdemeanor stalking and misdemeanor child abuse. (MCL 750.411h[3], MCL 750. 136b, MCL 771.2a)
3. Life probation is authorized for **some** offenses of the Sex Offenders Registration Act. (MCL 771.1[3])
4. A probation term of five years is required for a person found guilty but mentally ill. (MCL 768.36[4])
5. A term may be reduced at the discretion of the court except for lifetime probation and the five-year mandatory probationary term for guilty but mentally ill defendants. (MCL 771.2[2])
6. The judge must order that the probationer:
 - a. must not leave the state without judicial consent,
 - b. report regularly to a probation officer,
 - c. refrain from violating any criminal law of Michigan, the United States, or another state or any ordinance of any municipality in Michigan or another state,
 - d. shall pay restitution to the victim of the defendant's course of conduct giving rise to the conviction or to the victim's estate,
 - e. shall pay an assessment ordered pursuant to MCL 780.905,
 - f. shall comply with the Sex Offenders Registration Act if required to be registered pursuant to the act, and

- g. shall pay the minimum state cost prescribed by section 1j of chapter IX. (MCL 771.3[1])
- 7. New conditions may also be imposed even though there has been no violation of the original order. (*People v Marks*, 340 Mich 495; 65 NW2d 698 [1954])
- 8. A court may suspend probation and then reinstate it as long as it occurs within the statutory maximum period. Probation must end either by revocation or termination at the end of that maximum. (*People v Sherman*, 38 Mich App 219; 196 NW2d 15 [1972])

C. Types

There are several types of probation: supervised, unsupervised, and nonreporting. See Sections 7-02 and 7-03 for more details.

6-10 FINANCIAL PENALTIES

A. Authority and Definition in General

Sentences in Michigan can only be imposed in accordance with specific statutory authority. A term or condition of a sentence not expressly authorized by statute or a sentence in excess of that provided by a relevant statute is unlawful and must be vacated. (*People v Neil*, 99 Mich App 677; 299 NW2d 23 [1980])

Michigan law provides four categories of financial penalties for criminal offenses: fine, costs, assessments, and restitution. If the court requires the probationer to pay costs, the costs shall be limited to the expenses incurred in prosecuting the defendant or providing legal assistance to the defendant and supervising the probationer. The court must make findings regarding the defendant's ability to pay when ordering costs if the defendant asserts he or she is unable to pay. (MCL 771.3, *People v Music*, 428 Mich 356; 408 NW2d 795 [1987]) Restitution and special assessments should be ordered as required by MCL 771.3(1)(e) and (f). An order of restitution entered pursuant to the Crime Victim's Rights Act remains effective until it is satisfied in full. (MCL 780.826[13])

The probation statute specifically outlines how costs are to be determined and assessed. Minimum state costs shall be ordered as a condition of probation pursuant to MCL 769.1j and MCL 771.3(1)(g). Payment of restitution is regulated by MCL 780.826 and 780.827. MCL 771.3(6) and (7) provide as follows:

- (6) If the court imposes costs as part of a sentence of probation, the following shall apply.
 - (a) The court shall not require a probationer to pay costs 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, 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 and who is not in willful default of the payment of the costs may petition the sentencing judge or his or her successor for a remission 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 be made immediately or the court may provide for payment to be made within a specified period of time with specified installments.

For more information, see also Section 3-04.

B. Fine and Costs

1. Authority

A penal fine and costs may only be imposed when authorized by the specific statute pursuant to which the defendant is convicted. (*People v Neil*, supra) Such statutes include MCL 769.3 for conditional sentences and MCL 771.3 for probation.

2. Credits to Fine

Jail time must be credited against a fine if **only** a fine is imposed. The judge must credit the defendant \$5.00 for each day previously served in jail in lieu of posting bail prior to conviction. (MCL 780.73)

3. Limitations on Costs

Court costs imposed as a condition of probation are limited to expenses specifically incurred in prosecuting the case, providing legal assistance to the defendant, and overseeing probation. (MCL 771.3[5]) Additional court costs incurred in compelling the defendant's appearance are allowed. (MCL 769.1k)

Minimum state costs of \$48.00 for a simple misdemeanor and \$53.00 for specified and serious misdemeanors must be a condition of probation. (MCL 769.1j)

Costs which may not be considered in determining the amount of costs are: (1) juror per diem (*People v Hope*, 297 Mich 115; 297 NW 206 [1941]), (2) medical care for the defendant (*People v Kramer*, 137 Mich App 324; 358 NW2d 10 [1984]), and (3) maintenance of governmental agencies (*People v Teasdale*, 335 Mich 1; 55 NW2d 149 [1952]).

4. Finding of Ability to Pay

A judge must make a finding on the defendant's ability to pay when ordering court costs only when the defendant asserts he or she is unable to pay. The defendant waives the right to challenge an order on appeal if he or she fails to raise the issue in a timely manner. (*People v Music*, 428 Mich 356; 408 NW2d 795 [1987])

5. Restrictions

A defendant cannot be sentenced to imprisonment and to pay court costs or face additional

jail time. A sentence of this nature is outside the statutory provisions. (*People v Tims*, 127 Mich App 564; 339 NW2d 488 [1982], *People v Watts*, 133 Mich App 80; 348 NW2d 39 [1984])

C. Restitution

1. Authority

People v Neil, supra, stated that restitution may only be ordered when authorized by the specific penal statute pursuant to which the defendant is convicted. This case predates the Crime Victim's Rights Act, which was enacted in 1985 and, therefore, is no longer applicable with regard to restitution. MCL 780.826(2) states, "Except as provided in MCL 780.826(8), when sentencing a defendant convicted of a misdemeanor, the court shall order, in addition to or in lieu of any other penalty authorized by law or in addition to any other penalty required by law, that the defendant make full restitution to any victim of the defendant's course of conduct that gives rise to the conviction or to the victim's estate."

Restitution may also be ordered as a condition of probation pursuant to MCL 771.3(1), or pursuant to MCL 769.1a generally. The court may also order restitution pursuant to the Crime Victim's Rights Act. (MCL 780.826)

Pursuant to MCL 780.826(11) and (13) and MCL 769.1(11), if the defendant is placed on probation or the court imposes a conditional sentence as provided in MCL 769.3, any restitution ordered shall be a condition of that probation or sentence. An order of restitution entered pursuant to the Crime Victim's Rights Act remains effective until it is satisfied in full. An order of restitution is a judgment and lien against all property of the defendant for the amount specified in the order of restitution. The lien may be recorded as provided by law. Because restitution remains in effect until satisfied in full, the order of restitution **must** be specified in the judgment of sentence or in a separate order of restitution. If probation is ordered, the order of restitution **must also** be specified in the order of probation.

2. Objections to Restitution

When restitution is imposed as a condition of probation and the defendant objects, the amount of the loss and the defendant's ability to pay must be presented on the record. (*People v Music*, supra) If restitution is imposed pursuant to the Crime Victim's Rights Act, the court, in determining whether to order restitution, may order the probation officer to obtain relevant information. A dispute must be resolved on the record by a preponderance of the evidence.

3. Failure to Pay

If the court determines that a defendant has failed to pay restitution, before incarcerating the

defendant for violating probation, the court must take into account: (1) the defendant's employment status, earning ability, and financial resources, (2) the willfulness of the failure to pay, and (3) any other special circumstances affecting the ability to pay. (MCL 771.3[8], MCL 780.826[11], [14])

4. Other

A judge may order that restitution be paid to an insurance company. (MCL 780.766[8] [felony cases only], *People v Bond*, 99 Mich App 86; 297 NW2d 620 [1980])

5. Wage Assignment

The probationer may be asked to agree to pay by wage assignment any restitution, assessment, fine, or cost imposed by the court. (MCL 771.3[2][f])

D. Other Assessments

In addition to fines, costs, and restitution, conviction for some offenses may require other assessments.

1. Crime Victim Fee

The court shall order each person charged with certain offenses that are resolved by conviction, assignment to youthful trainee status, delayed sentence or deferred entry of guilt, or in another way that is not an acquittal or dismissal, to pay an assessment of \$50.00 for misdemeanors and \$60.00 for felonies, which is transmitted to the Crime Victim's Rights Fund. See a list of the specific offenses in the Section 6 Appendix. (MCL 780.905) The assessment required is in addition to any fine, costs, or other assessments imposed by the court. The assessment shall be ordered upon the record, and shall be listed separately in the judgment of sentence or order of probation.

2. Reimbursement of Emergency Response Costs

If the defendant is placed on probation, any reimbursement ordered shall be a condition of that probation. The court may revoke probation if the defendant fails to comply with the order and has not made a good-faith effort to comply with the order. In determining whether to revoke probation, the court shall consider: (1) the defendant's employment status, earning ability, number of dependents, and financial resources, (2) the willfulness of the defendant's failure to pay, and (3) any other special circumstances that may have a bearing on the defendant's ability to pay. (MCL 769.1f)

3. Drug Court Treatment Program Fee

If a person is placed in the drug treatment court, he or she may be required to pay a reasonable drug court fee that is reasonably related to the cost to the court for administering the drug treatment court program as provided in the memorandum of understanding pursuant to MCL 600.1062. The fee is transferred monthly to the court funding unit.

6-11 HABITUAL OFFENDER

The district court can enhance sentences for the habitual or repeat offender. For the most part, enhanced sentencing occurs for felony offenses. However, the district court can enhance sentences for the following misdemeanors:

1. OWI/OWVI/OWPD upon prior conviction (MCL 257.625[15]).
2. driving on a suspended license upon second offense or more (MCL 257.904).
3. checks without sufficient funds under \$50.00 upon second offense or more (MCL 750.131).
4. prostitution upon second offense or more (MCL 750.451).
5. buying, receiving, possessing, or concealing stolen property under \$100.00 upon third offense or more (MCL 750.535).
6. minor in possession of alcohol (MCL 436.1703).
7. selling or furnishing alcohol to a minor (MCL 436.1701).

NOTE: The defendant may only receive an enhanced sentence if he or she has been specifically charged and convicted as a repeat offender. (*People v Ancksornby*, 231 Mich 271 [1925])

6-12 SENTENCING HEARING

A. Right to Counsel

The presence of counsel is required in district court if the defendant has counsel, unless the defendant does not have an attorney or the presence of counsel is waived. (MCR 6.610[F][1]) An indigent defendant who is without an attorney and who has not waived the right to an attorney may not be sentenced to jail. (MCR 6.610[D][2]) See also Section 3-01.

A sentence may not be influenced by a defendant's past convictions obtained in violation of the right to counsel. (*United States v Tucker*, 404 US 443; 92 SCt 589; 30 LEd2d 592 [1972])

B. Who Should be Present

1. The defendant has the right to be present at sentencing. (*People v Bingaman*, 144 Mich App 152; 375 NW2d 370 [1984])
2. It is not required that the defendant have the right to be present at a presentence conference between the court and defense counsel. (*People v Pulley*, 411 Mich 523; 309 NW2d 170 [1981])
3. The judge's in-chambers conference with the prosecutor, in the absence of the defendant or defense counsel, entitled the defendant to resentencing. (*People v VonEverett*, 110 Mich App 393; 313 NW2d 130 [1981])
4. Where the trial judge held an ex parte conference with the victim prior to sentencing, outside the presence of the defendant and his counsel, after the defendant's plea was accepted but before sentence was imposed, the events were analogous to a presentence investigator's interview with the victim. Resentencing is not required. (*People v Rodriquez*, 124 Mich App 773; 335 NW2d 831 [1989])
5. The victim has the right to be present and make a statement at sentencing. (MCL 780.825)
6. The prosecutor has the right to be present at the sentencing and the right to challenge the accuracy or relevancy of any information contained in the presentence report. (MCL 771.14[5] and [6], MCR 6.425[B])

C. Disclosure of Presentence Report

1. The court is required to allow the defendant and counsel the opportunity to review the presentence report at a reasonable time before the day of sentencing. (MCR 6.425[B], MCR 6.610[F][1][b])

2. Defense counsel has a right to see the presentence report before sentencing in order to make sure the defendant's sentence is based on accurate information. (*People v McFarlin*, 389 Mich 557; 208 NW2d 504 [1973])
3. Any supplements to a presentence report given to the court must also be provided to the defendant or his counsel prior to sentencing the defendant. (*People v Matzat*, 108 Mich App 327; 310 NW2d 231 [1981], *People v Raymond*, 119 Mich App 413; 326 NW2d 526 [1982])
4. The court may exempt from disclosure:
 - a. parts of the report which are not relevant to a proper sentence,
 - b. diagnostic opinions that might seriously disrupt a program of rehabilitation, and
 - c. sources of information that were obtained on a promise of confidentiality.
5. The defendant is entitled to review the presentence investigation report before sentencing but not to receive a copy of the report. (MCL 771.14[4] and [5], MCR 6.425[B])

See also Section 4-03.

D. Probation Officer Responsibility

The probation officer may be called to verify or justify the presentence investigation report at sentencing. Depending on local practice, the probation officer may be called in-chambers to respond (informal) or be challenged on the record (formal). (MCL 771.14[6])

6-13 CRIME VICTIM'S RIGHTS FUND

A. Authority

The Crime Victim's Rights Fund was established by the Criminal Assessment Act of 1989 to compensate victims of certain crimes. District courts are required to order each person charged with certain offenses that are resolved by conviction, assignment to youthful trainee status, delayed sentence or deferred entry of guilt, or in any other way that is not an acquittal or unconditional dismissal, to pay an assessment which is transmitted to the Crime Victim's Rights Fund. (MCL 780.901 *et seq.*) The specific offenses are as follows:

1. any felony offense,
2. a serious misdemeanor, or a substantially corresponding local ordinance, as defined by MCL 780.811 (see a list of offenses in the Section 6 Appendix), and
3. a specified misdemeanor, or a substantially corresponding local ordinance, as defined in MCL 780.901 (see a list of offenses in the Section 6 Appendix).

B. Responsibilities of the Court

The probation officer may be responsible for monitoring the payment of assessments. Persons convicted of a felony will be ordered to pay \$60.00 to be transmitted to the Crime Victim's Rights Fund. Persons convicted of a serious misdemeanor, or a specified misdemeanor, or a substantially corresponding local ordinance, will be ordered to pay \$50.00. If the court allows the payment of fines, costs, restitution, and other fees to be paid in installments, 50 percent of all money collected shall be applied to payment of the Crime Victim's Rights Fund and restitution, and the balance shall be applied to all other assessments in the following priority:

1. payment of costs,
2. payment of fines,
3. payment of probation supervision fees, and
4. payment of assessment and other payments.

(MCL 780.905)

C. Report of Nonpayment of Restitution

In each case where payment of restitution is ordered as a condition of probation, the probation

officer shall review the case not less than twice yearly to ensure that restitution is being paid as ordered. The final review shall be conducted not less than 60 days before the expiration of the probationary period. If it is determined that restitution is not being paid as ordered, the probation officer shall file a written report with the court and the prosecuting attorney using SCAO-Approved form MC 258, Report of Nonpayment of Restitution. (MCL 780.826[15]) See the Section 6 Appendix for a copy of the form.

In consultation with the local prosecuting official, providing a copy of the Motion, Affidavit, and Bench Warrant (MC 229), Motion and Summons Regarding Probation Violation (MC 246), or Petition and Order for Discharge from Probation (MC 245) may meet the notice requirement for unpaid restitution.

APPENDIX 6

Blood Alcohol Chart

Deferred Judgment of Guilt and Delayed Sentence for Adult Offenders,
Comparison of Processing

Criminal Sentencing/Administrative Consequences

Minor in Possession of Alcohol and Intoxicants in a Motor Vehicle

Model Procedure for Court Ordered Counseling and Testing

[Victim Authorization Regarding Notification of Test Results](#) (DCH 1253)

[Verification Regarding Test Results](#) (DCH 1252)

Offenses for Which Crime Victim Assessment and \$48 Minimum State Cost Required Violations
of State Law or Substantially Corresponding Local Ordinance

[Order for Counseling and Testing for Disease/Infection \(MC 234\)](#)

[Judgment of Sentence, Commitment to Department of Corrections \(CC 219b\)](#)

[Judgment of Sentence \(MC 219\)](#)

[Order for Vehicle Immobilization \(MC 267\)](#)

[Assignment to Youthful Trainee Status \(MC 242\)](#)

[Order of Probation \(DC 243\)](#)

[Motion and Order for Discharge from Probation \(MC 245\)](#)

[Report of Nonpayment of Restitution \(MC 258\)](#)

[Financial Statement \(MC 287\)](#)

[Motion, Affidavit, and Bench Warrant \(MC 229\)](#)

[Motion and Summons Regarding Probation Violation \(MC 246\)](#)

DEFERRED JUDGMENT OF GUILT AND DELAYED SENTENCE FOR ADULT OFFENDERS; COMPARISON OF PROCESSING

Revised 7/08

Action	Delayed Sentence MCL 771.1	Deferred Judgment of Guilt and HYTA ¹
Plea of Guilt or Finding of Guilt	Accepted and judgment of guilt entered.	Accepted but judgment of guilt not entered.
Referral	May supervise under delay up to 1 year. The court shall enter an order stating the reason for the delay upon the court's records.	Defer further proceedings and place on probation. May place in drug treatment court if otherwise eligible.
Monetary Assessments	May assess a fine, costs, ^A probation oversight, and restitution. Minimum State Cost required if any combination of fines, costs and other assessments ordered. Crime Victim Assessment required as applicable to violation. Bond shall be applied to monetary sanctions. ²	May assess a fine, costs, ^A probation oversight, and restitution. Minimum State Cost required if any combination of fines, costs and other assessments ordered. Crime Victim Assessment required as applicable to violation. Bond shall be applied to monetary sanctions. ²
Caseload Reporting	Report as Guilty Plea, Bench Verdict, or Jury Verdict.	Report as Guilty Plea.
MSP Criminal History Reporting	Report conviction, including monetary assessments. Refer to MCL 771.1 in free-text area of the disposition report.	Report deferred judgment of guilt.
SOS Abstract Reporting	Abstract reportable offenses pursuant to MCL 257.732.	Report deferred if Minor in Possession; otherwise no reporting required.
Court Record Status	Public.	Public, except Minor in Possession and HYTA are nonpublic at time of deferral/assignment.
Supervision or Probation Successful	Conviction remains. Court enters sentence for sanctions previously imposed.	Discharge from probation and dismiss.
MSP Criminal History Reporting	Report conviction only if not previously reported at time of plea.	Report successful completion of probation and dismissal.
SOS Abstract Reporting	Abstract changes to reportable offenses pursuant to MCL 257.732.	Report dismissal if Minor in Possession; otherwise no reporting required.
Court Record Status	Public.	If MIP or HYTA, the entire file becomes a nonpublic record <i>while proceedings are deferred and the individual is on probation, and after an order of discharge and dismissal is entered</i> . For all other deferred judgment cases, the entire file becomes a nonpublic record <i>after the order of discharge from probation is entered</i> . The entire file includes recordings and transcripts of court proceedings. B C
Supervision or Probation Unsuccessful	Proceed to sentencing.	Enter conviction. Discharge probation as unsuccessful.
MSP Criminal History Reporting	Report any amended sentence, including jail time imposed when applicable.	Report date conviction entered and sentence.
SOS Abstract Reporting	Abstract changes to reportable offenses pursuant to MCL 257.732.	Report date conviction entered if a reportable offense.
Court Record Status	Public.	Public.

Numbered items appear as footnotes on the applicable page.

Lettered items appear as endnotes on page 3.

¹ MCL 762.13, HYTA; MCL 333.7411, Controlled Substance; MCL 769.4a, Domestic Violence; MCL 750.350a, Parental Kidnapping; MCL 750.430, Health Professional Practicing Under Influence; MCL 436.1703, Minor in Possession of Alcohol, MCL 750.430, Licensed Health Care Professional Practicing under the Influence of Drugs or Alcohol.

² MCL 769.1k, MCR 6.106(I).

Action	Drug Court 2004 PA 224 MCL 600.1060 – 600.1082 Effective January 1, 2005	
	Defer/Delay ³	Traditional Processing: Not eligible for Defer/Delay ⁴
Plea of Guilt or Finding of Guilt	Accepted but judgment of guilt not entered.	Accepted and judgment of guilt entered.
Monetary Assessments	May assess a fine, costs, ^A probation oversight, and restitution, cost of treatment and program services, and drug court fee. Minimum State Cost required if any combination of fines, costs and other assessments ordered. Crime Victim Assessment required as applicable to violation. Bond shall be applied to monetary sanctions. ²	May assess a fine and costs, ^A probation oversight, and restitution. Minimum State Cost required if any combination of fines, costs and other assessments ordered. Crime Victim Assessment required as applicable to violation. Bond shall be applied to monetary sanctions. ²
Referral	Defer further proceedings and place on probation in drug treatment court.	Proceed to sentencing, place on probation in drug treatment court.
Caseload Reporting	Report as Guilty Plea.	Report as Guilty Plea.
MSP Criminal History Reporting	Report deferred judgment of guilt if underlying crime is reportable. ⁵	Report conviction.
SOS Abstract Reporting	None.	Report conviction and sentencing if a reportable offense pursuant to MCL 257.732.
Court Record Status	File public, but record of participation in drug court is nonpublic.	File public, but record of participation in drug court is nonpublic.
Supervision or Probation Successful	If on probation, discharge and dismiss deferred proceeding.	Discharge as successful if on probation. If supervision was through entry of an order delaying sentence, court enters sentence for sanctions previously imposed. See footnote 2.
MSP Criminal History Reporting	Report successful completion of probation and dismissal, and participation in drug court. ⁵	Report successful completion of probation and participation in drug court. ⁵
SOS Abstract Reporting	None.	None.
Court Record Status	Drug Court participation and treatment information becomes a nonpublic record <i>after the order of discharge and dismissal is entered</i> . ⁶ The entire file includes recordings of court proceedings and transcripts. Any statement or other information obtained as a result of participating in a preadmission screening and evaluation assessment under subsection MCL 600.1064(3) is confidential and is exempt from disclosure under the Freedom of Information Act and shall not be used in a criminal prosecution unless it reveals criminal acts other than, or inconsistent with, personal drug use. MCL 600.1064(4) MCR 8.119(E)(1)	The file is public, but record of participation in drug court is nonpublic. 42 CFR Part 2.
Supervision or Probation Unsuccessful	Enter conviction. Discharge probation as unsuccessful.	Discharge probation as unsuccessful.
MSP Criminal History Reporting	Report date conviction entered and sentenced, and unsuccessful participation in drug court. ⁵	Report unsuccessful participation in drug court and sentence. ⁵
SOS Abstract Reporting	Report date conviction entered and sentenced on drug offenses.	None.
Court Record Status	File public, but record of participation in drug court nonpublic.	File public, but record of participation in drug court nonpublic.

³ MCL 600.1070(C) uses the word “defer” but references the delayed sentence statute, MCL 771.1. Procedure somewhat follows other deferred judgment statutes. Not eligible if violent offender. (MCL 600.1060[g]) A person with a previous drug court dismissal, or charged with a traffic offense, is not eligible for defer/delay and dismissal in drug court.

⁴ Use when defendant is not eligible for discharge and dismissal, when charge is a traffic offense, or if defendant already received a deferred judgment and dismissal in either drug court or pursuant to relevant section listed in footnote 1.

⁵ Because of a conflict between MCL 600.1076 and federal law, 42 CFR Part 2, the requirement to report a drug court deferral, as well as successful or unsuccessful participation in a drug court, cannot be implemented. Drug courts may access drug court participation information from DCCMIS.

⁶ A conflict exists between MCL 600.1076 and federal law, 42 CFR Part 2. During the time before discharge and dismissal, the court shall maintain the file as a public record according to state law. However, during this time the court must keep any record of participation in drug court nonpublic. The requirement to report a drug-court deferral, as well as reporting the successful or unsuccessful participation in a drug court, cannot be implemented due to this conflict. However, courts must report the final entry of conviction or dismissal to MSP pursuant to MCL 769.16a.

ENDNOTES:

^A Costs on HYTA, Domestic Violence, Controlled Substance, Licensed Health Care Profession Practicing under the Influence, and Parental Kidnapping deferred judgment cases, and delayed sentence cases, are limited to the expenses specifically incurred in prosecuting the defendant or providing legal assistance to the defendant and supervision of the probationer. MCL 771.3(5), (9), (10).

^B General Access information and references applicable to all non-public records:

A defendant shall be allowed access to his or her court file even if it is being maintained as a nonpublic record.

Information regarding the conviction, sentence, imprisonment, and release of a defendant contained in a nonpublic record shall be furnished to the prosecuting official for purposes of providing a victim with conviction, sentence, and release information. Const 1963, art 1, § 24.

The nonpublic record shall also be open for use by the Department of Defense, the Department of State, the Department of Transportation, the Office of Personnel Management, or agencies through which they contract to perform these services, the CIA, and the FBI for the purpose of determining eligibility for: (a) access to classified information, (b) assignment to or retention in sensitive national security duties, (c) acceptance or retention in the armed forces, and (d) appointment, retention, or assignment to a position of public trust or a critical or sensitive position while either employed by the government or performing a government contract. Access for federal agencies through a contractual arrangement is allowed. 5 USCS 9101(a) and (b).

Upon the filing of a Disclosure of Employment or Contract in Michigan School System (MC 292), a Judgment of Sentence, an Assignment to Youthful Trainee Status, or an Order of Probation when defendant has received a deferred judgment of guilt shall be furnished to the public school, school district, intermediate school district, or nonpublic school in which the person is employed, and to the Superintendent of Public Instruction, Michigan Department of Education. A certified copy of a Judgment of Sentence, an Assignment to Youthful Trainee Status, or an Order of Probation when defendant has received a deferred judgment of guilt shall be provided to the Superintendent of Public Instruction, Michigan Department of Education upon request and payment of applicable fees. (MCL 380.1535a[7] and [8], MCL 380.1539b[7] and [8]).

MCR 8.119(E)(1).

^C Choose the applicable deferred judgment statute below for additional access eligibility to non-public records:

MCL 769.4a – Domestic Violence cases and MCL 750.430 License Health Care Professional Practicing Under the Influence: The nonpublic record shall only be furnished to either or both of the following: (a) a court, prosecuting attorney, or police agency for the purpose of showing whether the individual accused has already once utilized this statute; and (b) a court, police agency, or prosecutor for the purpose of determining whether the defendant in a criminal action is eligible for discharge and dismissal of proceedings by a drug treatment court under MCL 600.1076.

MCL 600.1070(b)(i) - Drug Court cases: The nonpublic record shall be open to a court, the Department of Corrections, law enforcement personnel, and prosecutors for use in the performance of their duties, or to determine whether an employee of the court, department, law enforcement agency, or prosecutor's office has violated his or her conditions of employment, or whether an applicant meets criteria for employment with the court, department, law enforcement agency, or prosecutor's office.

MCL 436.1703 - MIP cases: The nonpublic record shall be furnished to any of the following: (a) a court, prosecutor, or police agency upon request for the purpose of determining if an individual has already utilized the subsection; and (b) the Department of Corrections, a prosecutor, or a law enforcement agency upon request subject to the following conditions: (i) at the time of the request, the individual is an employee of the Department of Corrections, the prosecutor, or the law enforcement agency, or an applicant for employment with the Department of Corrections, the prosecutor, or the law enforcement agency; (ii) the record is used by the Department of Corrections, the prosecutor, or the law enforcement agency to determine whether an employee has violated his or her conditions of employment or whether an applicant meets the criteria for employment.

MCL 762.13 - HYTA cases: The nonpublic record shall be open to the courts of this state, the Department of Corrections, the Department of Human Services, law enforcement personnel, and prosecuting attorneys for use in the performance of their duties.

MCL 333.7411 - Controlled Substance cases: The nonpublic record shall be furnished to the state Department of Corrections, a law enforcement agency, a court, or the office of a prosecuting attorney subject to all of the following conditions: (i) at the time of the request, the individual is an employee of the department, law enforcement agency, court, or office of prosecuting attorney or an applicant for employment with the department, law enforcement agency, court, or office of prosecuting attorney; (ii) if the individual is an employee of the department, law enforcement agency, court, or prosecuting attorney, the date on which the court placed the individual on probation occurred after March 25, 2002; and (iii) the record shall be used by the Department of Corrections, law enforcement agency, court, or prosecuting attorney to determine whether an employee has violated his or her conditions of employment or whether an applicant meets criteria for employment.

MCL 750.350a - Parental Kidnapping cases: The nonpublic record shall only be furnished to either or both of the following: (a) a court or police agency for the purpose of showing whether the individual accused of violating this section has already once utilized this statute, and (b) a court, police agency, or prosecutor upon request for the purpose of determining whether the defendant in a criminal action is eligible for discharge and dismissal of proceedings by a drug treatment court under MCL 600.1076.

MINOR IN POSSESSION OF ALCOHOL & INTOXICANTS IN A MOTOR VEHICLE

Revised 5/1/07

F:\Minor In Possession of Alcohol\Chart revised 5-07.doc	Minor Possess Alcohol MCL 436.1703(1)	Transport/Possess Open Alcohol in Motor Vehicle MCL 257.624a	Minor Transport/Possess Alcohol in Motor Vehicle MCL 257.624b
Public Act and Effective Date	Amended: 2006 PA 443 11/27/06	Amended: 1998 PA 349, 10-1-99	Amended: 1998 PA 349, 10-1-99
Original Jurisdiction	District, Municipal, and Family Division/Circuit Courts	District, Municipal, and Family Division/Circuit Courts	District, Municipal, and Family Division/Circuit Courts
Magistrate Authority to Accept Guilty Plea and Sentence	Yes, MCL 600.8511(a)(ix)	Yes, MCL 600.8511(a)(i)	Yes, MCL 600.8511(a)(i)
Case Type Code	District: SM, OM Family: DL	District: ST, OT Family: TL	District: ST, OT Family: TL
Violation Type Jail Penalty	Misdemeanor 2 nd conviction; 30 days ¹ 3 rd or subsequent conviction; 60 days ¹	Misdemeanor 90 Days Maximum	Misdemeanor 90 Days Maximum
Penal Fine	1st: Maximum \$100 2nd: Maximum \$200 3rd: Maximum \$500	Maximum \$100.00	Maximum \$100.00
Eligibility for Deferred Sentence	Yes, if no prior convictions or existing deferred sentence.	No	No
Prior convictions used for:	436.1703(1) (and former 436.33b) or substantially corresponding local ordinance: Fines, Jail, Deferred Sentence eligibility, SOS license action.	257.624a or 624b or substantially corresponding local ordinance: SOS license action.	257.624a or 624b or substantially corresponding local ordinance: SOS license action.
Vehicle Impoundment	No reference	No reference	15-30 days
License Suspension (Including substantially corresponding local ordinances)	Imposed by SOS: 2nd: 90 days 3rd: 1 year	Imposed by SOS: 2nd: 90 days 3rd: 1 year	Imposed by SOS: 2nd: 90 days 3rd: 1 year
License Restriction	2nd: after 30 days	2nd: after 30 days	2nd: after 30 days

¹ Only if minor has been found to have violated an order of probation, failed to successfully complete any treatment, screening, or community service, or failed to pay any fine.

F:\Minor In Possession of Alcohol\Chart revised 5-07.doc	Minor Possess Alcohol MCL 436.1703(1)	Transport/Possess Open Alcohol in Motor Vehicle MCL 257.624a	Minor Transport/Possess Alcohol in Motor Vehicle MCL 257.624b
Abstract	3rd: after 60 days SOS Code: 1360 Deferred: 1360R 0 points	3rd: after 60 days	3rd: after 60 days
Fail to Appear in Court (FAC) Procedure	7-Day Notice.	7-Day Notice.	7-Day Notice.
Fail to Comply with Judgment (FCJ) Procedure	14-Day Notice.	14-Day Notice.	14-Day Notice.
Reinstatement Fee	\$125 at SOS for suspension as a result of conviction. \$45 at Court for FAC/FCJ	\$125 at SOS for suspension as a result of conviction. \$45 at Court for FAC/FCJ	\$125 at SOS for suspension as a result of conviction. \$45 at Court for FAC/FCJ
Alcohol Screening and Assessment	Permitted	Permitted	Permitted
Substance Abuse Treatment	Permitted	No reference	No reference
Community Service	Permitted	Permitted	Permitted
Plea Bargain	No reference	Prohibited from 257.625(6)	No reference
Drunk Driving Caseflow Management Fund Reimbursement	Not Included	Not Included	Not Included
MSP Drunk Driving Audit	Included; report all dispositions. Report deferred dismissals as Merit Dismissal. 436.1703(2) also included	No reference	No reference
Access to Record	Public at Court & SOS if conviction entered. Non-Public in Court & SOS while on probation with deferred judgment and if discharged and dismissed.	Public at all times	Public at all times

MODEL PROCEDURE FOR COURT ORDERED COUNSELING AND TESTING

Step 1

Upon conviction/adjudication and before sentencing/dispositional hearing, the court having jurisdiction over the prosecution shall:

- a. Order defendant/juvenile to be counseled and tested for disease/infection by completing the Order for Counseling and Testing for Disease/Infection (MC 234).
- b. Send two copies of MC 234 to the Prosecuting Attorney/Victim Advocate.

Step 2

After receiving MC 234, the Prosecuting Attorney/Victim Advocate Office shall:

- a. Complete the Victim Authorization form (DCH 1253). The victim's name and address will have been provided to the office as specified in the Crime Victim Right's Act.
- b. Complete Part A of the Verification of Test Results form (DCH 1252).
- c. Transmit forms MC 234 and DCH 1252 to either the County Correctional/Juvenile Facility or the Physician/Testing Agency as ordered in MC 234. Transmit form DCH 1253 according to the instructions on the form.

Step 3

If the defendant/juvenile is incarcerated/placed: OR

After receiving the forms stated in Step 2, the County Correctional/Juvenile Facility shall:

- a. Make arrangements to have the tests conducted by the counseling and testing agency or physician specified in MC 234.
- b. Forward MC 234 and DCH 1252 (and DCH 1253 if provided) to the counseling and testing agency or physician.

If the defendant/juvenile is not incarcerated/placed:

After receiving the forms stated in Step 2, the Physician or Testing Agency shall:

- a. Provide counseling and testing to the defendant/juvenile.
- b. Complete Part B of form DCH 1252 and transmit the test results according to the instructions on the form.
- c. If authorized by form DCH 1253, provide the test results to the victim as indicated and/or refer the victim for counseling and testing.
- d. Return one copy of form DCH 1252 to the victim advocate office. If instructed to do so, attach the test results to the form.
- e. Return one copy of form DCH 1252 and the attached test results to the court that ordered the testing.

Step 3a

After receiving the forms stated in Step 3, the Physician or Testing Agency shall:

- a. Provide counseling and testing to the defendant/juvenile.
- b. Complete Part B of form DCH 1252 and transmit the test results according to the instructions on the form.
- c. If authorized by form DCH 1253, provide the test results to the victim as indicated and/or refer the victim for counseling and testing.
- d. Return one copy of form DCH 1252 to the victim advocate office. If instructed to do so, attach the test results to the form.
- e. Return one copy of form DCH 1252 and the attached test results to the court that ordered the testing.

Step 4

The court shall make the test results part of the court record. The test results shall be kept confidential as specified in statute. Form DCH 1252, Verification Regarding Test Results, need not be kept confidential. The court shall determine that testing has been completed before the sentencing date or the dispositional hearing date. As specified by MCL 333.5129(5), the court shall transmit a copy of the test results and other medical information to the facility where the defendant is sentenced/juvenile is placed. Refer to MCL 333.5129(5) for details.

Step 5 (applies only when victim has authorized the Victim Advocate to receive notification of test results)

If the Victim Advocate Office has not received form DCH 1252 by the sentencing date/dispositional hearing date, the Victim Advocate Office shall follow up on compliance with testing and counseling.

DEPARTMENT OF COMMUNITY HEALTH-PUBLIC HEALTH
VICTIM AUTHORIZATION REGARDING NOTIFICATION OF TEST RESULTS
 (Authority, P.A. 368/1978, June 1994)

CASE NUMBER	DEFENDANT/JUVENILE'S NAME	DEFENDANT/JUVENILE'S DATE OF BIRTH
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VICTIM ADVOCATE'S OFFICE NAME AND ADDRESS
TELEPHONE NUMBER

COUNSELING AND TESTING AGENCY /PHYSICIAN NAME AND ADDRESS
TELEPHONE NUMBER

NAME AND ADDRESS OF VICTIM OR VICTIMS REPRESENTATIVE	
COUNTY	TELEPHONE NUMBER

- The victim is a
- minor
 - developmentally disabled person
 - state ward

TO BE COMPLETED, SIGNED, AND DATED BY THE VICTIM OR VICTIM REPRESENTATIVE

I do I do not want to be notified of the above named defendant's/juvenile's test results

Complete the following information only if you want to be notified.

I ask to be notified of the defendant's/juvenile's test results by the:

- counseling and testing agency/private physician conducting the test.
- counselor of the Victim Advocate office who is certified by the Michigan Department of Community Health.

I understand that all information I have disclosed in this authorization is confidential. I further understand that this authorization will only be provided to the counseling and testing agency or physician if I have requested that they notify me of the defendant's/juvenile's test results. I will keep the Victim Advocate Office notified of any change in my address or telephone number.

DATE	SIGNATURE OF VICTIM OR REPRESENTATIVE
------	---------------------------------------

INSTRUCTIONS TO THE VICTIM ADVOCATE:

This authorization is to be provided to the counseling and testing agency or the private physician conducting the test **only if the victim has asked to be notified of the test results by the counseling and testing agency or the physician.** If the victim has requested the victim advocate notify him/her, only two copies of this authorization need to be completed.

Complete Part A of form DCH-1252 and forward to the counseling and testing agency or physician as ordered. Attach a copy of this authorization as appropriate.

DISTRIBUTION:

- Original - Victim Advocate
- 1st Copy- Physician/Testing Agency (if requested)
- 2nd Copy- Victim or Representative

**INSTRUCTIONS FOR COMPLETING VICTIM AUTHORIZATION REGARDING
TEST RESULTS FORM DCH-1253**

The Victim Advocate Office is required to complete this form in compliance with 1988 PA 471. This form authorizes the release of the defendant's/juvenile's test results to the victim or his/her representative.

Please provide the following information in the space provided:

1. Case number
2. Defendant's/Juvenile's name
3. Defendant's/Juvenile's date of birth
4. Name and address of victim advocate's office
5. Name, address, county, and telephone number of the counseling and testing agency or physician conducting the test
6. Name and address of the victim or his/her representative

Please indicate by marking the appropriate box if the victim is:

- a minor
- developmentally disabled
- a state ward

The victim or his/her representative may request the defendant's/juvenile's test results or waive this right by checking the appropriate box.

If "I do" is checked, the victim or his/her representative may select the method of notification in one of two ways:

1. directly by the counseling and testing agency/physician who administered the test; or
2. through a counselor of the victim advocate's office.

Regardless of the selection, the victim or his/her representative is required to date and sign this form to show they received and understood the information provided to them.

Copies of this document are to be distributed as indicated on the front of this form.

DEPARTMENT OF COMMUNITY HEALTH-PUBLIC HEALTH
VERIFICATION REGARDING TEST RESULTS UNDER MCL 333.5129
 (Issued under P.A. 471 of 1988)

Part A: To be completed by the Victim Advocate Office

CASE NUMBER	Defendant/Juvenile's name	DEFENDANT/JUVENILE'S DATE OF BIRTH
COURT ADDRESS		VICTIM ADVOCATE OFFICE ADDRESS

Part B: TO THE COUNSELING AND TESTING AGENCY/PHYSICIAN

You are being provided with an Order for Counseling and Testing for Disease/Infection (attached) and instructions for transmitting the results below.

- A. The victim has requested that the counseling and testing agency or physician notify him/her of the test results. The victim's authorization form DCH 1253, is attached.
- B. The victim has requested that the counseling and testing agency or physician forward the test results to the victim advocate office.

Part C: TO BE COMPLETED BY COUNSELING AND TESTING AGENCY OR PHYSICIAN.

Instructions: Do not attach the test result to the victim advocate office copy unless box B. above is checked.

As ordered by the court, the defendant/juvenile was tested and counseled for venereal disease, hepatitis B infection, and HIV.

As requested, the test results were provided to the Victim. Victim Advocate Office (test results attached).

I certify that a copy of this verification was forwarded to the Victim Advocate Office at the above address and that the test results were attached only as directed in Part A of this verification.

DATE	SIGNATURE
NAME (Type or Print)	TITLE

I certify that this verification was forwarded to the court at the above address along with the test results.

DATE	SIGNATURE
NAME (Type or Print)	TITLE

DISTRIBUTION:

Original - Physician/Testing Agency
 1st Copy - Court
 2nd Copy - Victim Advocate Office

**INSTRUCTIONS FOR COMPLETING VERIFICATION REGARDING
TEST RESULTS FORM DCH-1252**

Part A:

The Victim Advocate Office is required to complete Part A of this form in compliance with 1988 PA 471. This form, when used in conjunction with the court order for testing for disease/infection, allows for verification and transmittal of a defendant's/juvenile's test results to appropriate authorities.

Please provide the following information in the space provided:

1. Case Number
2. Defendant's/Juvenile's name
3. Defendant's/Juvenile's date of birth
4. Address of court specified in Item 5 of the order for testing (MCH 234)
5. Name and address of victim advocate office

Place an **X** in the A box if the victim request the counseling and testing agency or physician, who administered the defendant's/juvenile's test, to notify him/her of the test results. If the victim has selected this means of notification, form DCH 1253 should be attached.

Place and **X** in the B box if the victim requests that the defendant's/juvenile's HIV test results be forwarded to the Victim Advocate's Office.

After completing Part A, mail this form to the counseling and testing agency or physician who will be conducting the defendant's/juvenile's test.

Part B:

This section of the form is completed by the counseling and testing agency or physician who administered the defendant's/juvenile's test. Test results must be forwarded as indicted in the court order and Part A of this form.

After receiving the defendant's/juvenile's test results, indicate whether:

1. the test results were provided to the victim or his/her representative; or
2. the test results were provided to the victim advocate's office. (*attach a copy of the results to the victim advocate's copy of this form.*)

Transmitting Results for the Court

Attach a copy of the defendant's/juvenile's test results to form DCH 1253, and in a confidential manner, forward to the court designee at the address provided in Part A.

**Offenses for which Crime Victim Assessment and \$48 Minimum State Cost Required
Violations of State Law or Substantially Corresponding Local Ordinance**

Revised April 1, 2009

Serious Misdemeanors [MCL 780.811]

Violations charged as a Felony or Serious Misdemeanor, but subsequently reduced to or pled to as a misdemeanor, are defined as a Serious Misdemeanor and are assessed a Crime Victim Fee. [MCL 780.811(1)(a)(xviii)]

<u>PACC Code</u>	<u>Offense Description</u>
257.601B2	Moving Violation – Causing injury to construction worker
257.617A	Failure to stop at scene of personal injury accident
257.625	(Various PACC Codes) – Operating while intoxicated/impaired/with the presence of a controlled substance – If the violation involves an accident resulting in damage to another individual's property or physical injury
324.801761	Marine Safety – OUIL – If the violation involves an accident resulting in damage to another individual's property or physical injury or death to another individual.
324.801763	Marine Safety – Impaired – If the violation involves an accident resulting in damage to another individual's property or physical injury or death to another individual.
436.1701	(Various PACC Codes) – Selling or furnishing alcohol to minor - If the violation results in physical injury or death to another individual.
750.115-A	Breaking & Entering – Illegal entry (without owner's permission)
750.115-B	Breaking & Entering – Enter public place where strictly denied
750.136B5	Child Abuse – 4 th degree
750.145	Children – Contributing to the delinquency
750.145D2A	Computers – Internet – Communicating with another to commit a crime
750.233	Weapons – Firearms – Aiming without malice
750.234	Weapons – Firearms – Discharge while aimed, without malice & injury
750.235	Weapons – Firearms – Discharge while aimed, without malice but with Injury
750.335A	Indecent exposure
750.411H	Stalking
750.81	Assault or assault and battery
750.81A	Aggravated assault
750.812	Domestic violence
750.813	Domestic violence – 2 nd offense
750.81A2	Aggravated assault – domestic violence

Specified Misdemeanors [MCL 780.901]

257.6251-A ^a	Operating while intoxicated
257.6253-A ^a	Operating impaired
257.6256B ^a	Operating while intoxicated/impaired/with the presence of a controlled substance – 2nd offense notice
257.626	Reckless driving
257.9041B	Operating – License suspended/revoked/denied – Allowing suspended person to operate
257.9041C	Operating – License suspended/revoked/denied OR allowing suspended person to operate – 2 nd or subsequent offense notice
257.9047	Commercial motor vehicles – Operating with suspended/revoked vehicle group designation
259.185	Aircraft – OUIL/Per Se
259.1851	Aircraft – Operation under the influence

Specified Misdemeanors – continued

259.1852	Aircraft – Operating with a BAC of 0.02 grams or more
259.1853	Aircraft – Operation within 8 hours of drinking/drugs
259.1857	Aircraft – OUIL – 2 nd offense notice
324.801761 ^a	Marine Safety – OUIL/Per Se
324.801763 ^a	Marine Safety – OWI
324.801771B ^a	Marine Safety – OUIL/Per Se – 2 nd offense notice
324.80177C-A ^a	Marine Safety – OUIL/Per Se – 3 rd offense notice – misdemeanor
324.801781B ^a	Marine Safety – OWI – 2 nd offense notice
324.801781C ^a	Marine Safety – OWI – 3 rd offense notice
324.81134	ORV – OUIL/Per Se
324.811341	ORV – OUIL
324.811342	ORV – Blood alcohol content 0.10% or more
324.811345	ORV – OUIL – 2 nd offense notice
324.811351	ORV – Impaired
324.811353	ORV – Impaired – 2 nd offense notice
324.821271	Snowmobile – OUIL/Per Se
324.821273	Snowmobile – OWI
324.821281B	Snowmobile – OUIL/Per Se – 2 nd offense notice
324.821281C-A	Snowmobile – OUIL/Per Se – 3 rd offense notice – misdemeanor
324.821291B	Snowmobile – OWI – 2 nd offense notice
324.821291C	Snowmobile – OWI – 3 rd offense notice
333.74032C-A	Controlled Substances – Possession (Schedule 5 & LSD, etc.)
333.74032C-B	Controlled Substances – Possession (substance added to Schedule 5 by rule)
333.74032D	Controlled Substances – Possession of marijuana
333.74032F	Prescription Forms – Possession
333.74042A	Controlled Substances – Use (narcotic or cocaine)
333.74042B	Controlled Substances – Use (Non-narcotic)
333.74042C	Controlled Substances – Use (Schedule 5 or LSD, etc.)
333.74042D	Controlled Substances – Use of marijuana
333.74051E	Controlled Substances – Dispensing prescription from out-of-state prescriber (HCM ^b)
333.7405A	Controlled Substances – Licensee prescription violations (HCM)
333.7405BX	Controlled Substances – Manufacture/distribute outside of license (HCM)
333.7405C	Controlled Substances – Refusing inspection (HCM)
333.7405D	Controlled Substances – Maintaining a drug house (HCM)
333.7407A-B	Controlled Substances – Inducing person to violate (HCM)
333.7407A-C	Controlled Substances – Inducing a person to violate-misdemeanor
333.7407A1-B	Controlled Substances – Attempt (HCM)
333.7407A1-C	Controlled Substances – Attempt – misdemeanor
333.74102	Controlled Substances – Distribution without remuneration (marijuana)
333.74104-C	Controlled Substances – Possession on school property (Schedule 5) (HCM)
333.74104-D	Controlled Substances – Possession marijuana on school property (HCM)
333.7453	Controlled Substances – Sale of paraphernalia
333.7455	Controlled Substances – Sale of paraphernalia to minor
436.1701 ^a	(Various PACC Codes) – Selling or furnishing alcohol to minor
462.353	Operating a Locomotive – OUIL/UBAL
462.3534	Operating a Locomotive – OUIL/UBAL – 2 nd offense notice
750.1742	Embezzlement – Agent or trustee – Less than \$200
750.1743A	Embezzlement – Agent or trustee – \$200-\$1000
750.1743B	Embezzlement – Agent or trustee – Less than \$200 – 2 nd or subsequent offense
750.2182	False Pretenses – Less than \$200
750.2183A	False Pretenses – \$200-\$1000
750.2183B	False Pretenses – Less than \$200 – 2 nd or subsequent offense
750.3564A	Larceny – \$200-\$1000
750.3564B	Larceny – Less than \$200 – 2 nd or subsequent offense

Specified Misdemeanors – continued

750.3565	Larceny – Less than \$200
750.356D	Retail Fraud – 2 nd degree
750.356D4	Retail Fraud – 3 rd degree
750.359	Larceny from vacant building
750.362A4A	Failure to return rented property – \$200 – \$1000
750.362A4B	Failure to return rented property – Less than \$200 – 2 nd or subsequent offense
750.362A5	Failure to return rented property – Less than \$200
750.3624A	Larceny by conversion – \$200 or more but less than \$1000
750.3624B	Larceny by conversion – Less than \$200 – 2 nd or subsequent offense
750.3625	Larceny by conversion – Less than \$200
750.377A1C1	Malicious destruction of personal property – \$200-\$1000
750.377A1C2	Malicious destruction of personal property – Less than \$200 – 2 nd or subsequent offense
750.377A1D	Malicious destruction of personal property – Less than \$200
750.3804A	Malicious destruction of building – \$200-\$1000
750.3804B	Malicious destruction of building – Less than \$200 – 2 nd or subsequent offense
750.3805	Malicious destruction of building – Less than \$200
750.5354A	Stolen property – Receiving and concealing – \$200-\$1000
750.5354B	Stolen property – Receiving and concealing – Less than \$200 – 2 nd or subsequent offense
750.5355	Stolen property – Receiving and concealing – Less than \$200
750.540E	Telecommunication services – Malicious use

Retired PACC Codes

The following PACC Codes should no longer be in use:

257.62510B	Operating – While impaired – 2 nd offense notice
257.62510C	Operating – While impaired – 3 rd offense notice
257.6256D-A	Operating – While intoxicated – 3 rd offense notice – misdemeanor
333.17766A1	Controlled substances – Steroids – Use
333.17766A2	Controlled substances – Steroids – Possession
462.3551	Operating a locomotive – impaired
462.3553	Operating a locomotive – impaired – 2 nd offense notice
750.145A	Children – Accosting for immoral purposes
750.362-B	Larceny by conversion – \$100 or less
750.540E1A	Telephone call – Malicious use to threaten
750.540E1B	Telephone call – False message of death or injury
750.540E1C	Telephone call – Refusing to disengage
750.540E1D	Telephone call – Obscene
750.540E1E	Telephone call – Calling and hanging up
750.540E1F	Telephone call – Unsolicited commercial calls
750.540E1G	Telephone call – Repeatedly interrupting service

^a If the violation involves an accident resulting in damage to another individual’s property or physical injury or death to an individual, the offense is classified as a “Serious” Misdemeanor instead of “Specified” Misdemeanor. MCL 780.811(1)(a)(xiv) and (xvi).

^b HCM = High Court Misdemeanor. Penalty exceeds 1-year jail or imprisonment.