

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

***** 771.2.amended THIS AMENDED SECTION IS EFFECTIVE APRIL 1, 2021 *****

771.2.amended Probation period; extension; eligibility and requirements for early discharge; hearing; reduced probation; registration pursuant to sex offenders registration act; subsection (1) inapplicable to certain juveniles.

Sec. 2. (1) Except as provided in section 2a of this chapter and section 36 of chapter VIII, if the defendant is convicted of an offense that is not a felony, the probation period must not exceed 2 years. Except as provided in section 2a of this chapter and section 36 of chapter VIII, if the defendant is convicted of a felony, the probation period must not exceed 3 years. However, the probation term for a felony under this subsection may be extended not more than 2 times for not more than 1 additional year for each extension if the court finds that there is a specific rehabilitation goal that has not yet been achieved, or a specific, articulable, and ongoing risk of harm to a victim that can be mitigated only with continued probation supervision.

(2) Except as provided in subsection (10), section 2a of this chapter, and section 36 of chapter VIII, after the defendant has completed 1/2 of the original felony or misdemeanor probation period, he or she may be eligible for early discharge as provided in this section. The defendant must be notified at sentencing of his or her eligibility and the requirements for early discharge from probation, and the procedure provided under subsection (3) to notify the court of his or her eligibility.

(3) If a probationer has completed all required programming, the probation department may notify the sentencing court that the probationer may be eligible for early discharge from probation. If the probation department does not notify the sentencing court as required under this subsection and the probationer has not violated probation in the immediately preceding 3 months, the probationer may notify the court that he or she may be eligible for early discharge from probation on a form provided by the state court administrative office. This subsection does not prohibit the court from considering a probationer for early discharge from probation at the court's discretion.

(4) A probationer must not be considered ineligible for early discharge because of an inability to pay for the conditions of his or her probation, or for outstanding court-ordered fines, fees, or costs, so long as the probationer has made good-faith efforts to make payments. However, nothing in this subsection relieves a probationer from his or her court-ordered financial obligations after discharge from probation.

(5) Upon notification as provided under subsection (3), the sentencing court may review the case and the probationer's conduct while on probation to determine whether the probationer's behavior warrants an early discharge. Except as provided in subsection (7), if the court determines that the probationer's behavior warrants a reduction in the probationary term, the court may grant an early discharge from probation without holding a hearing. Before granting early discharge to a probationer who owes outstanding restitution, the court must consider the impact of early discharge on the victim and the payment of outstanding restitution. If a probationer has made a good-faith effort to pay restitution and is otherwise eligible for early discharge, the court may grant early discharge or retain the probationer on probation up to the maximum allowable probation term for the offense, with the sole condition of continuing restitution payments.

(6) If after reviewing the case under subsection (5), the court determines that the probationer's behavior does not warrant an early discharge, the court must conduct a hearing to allow the probationer to present his or her case for an early discharge and find on the record any specific rehabilitation goal that has not yet been achieved or a specific, articulable, and ongoing risk of harm to a victim that can only be mitigated with continued probation supervision.

(7) The sentencing court shall hold a hearing before granting early discharge to a probationer serving a term of probation for a felony offense eligible for early discharge that involves a victim who has requested to receive notice under section 18b, 19, 19a, 20, or 20a of the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.768b, 780.769, 780.769a, 780.770, and 780.770a, or for a misdemeanor violation of section 81, 81a, or 136b of the Michigan penal code, 1931 PA 328, MCL 750.81, 750.81a, and 750.136b, that is eligible for early discharge. If a probationer owes outstanding restitution, the court must consider the impact of early discharge on the payment of outstanding restitution and may grant early discharge or retain the probationer on probation up to the maximum allowable probation term for the offense, with the sole condition of continuing restitution payments.

(8) If a hearing is to be held under subsection (7), the prosecutor shall notify the victim of the date and time of the hearing and the victim must be given an opportunity to be heard.

(9) The department of corrections shall report, no later than December 31 of each year, to the committees of the senate and house of representatives concerning the judiciary or criminal justice the number of felony

probationers who were released early from probation under this section and any available recidivism data.

(10) A defendant who was convicted of 1 or more of the following crimes is not eligible for reduced probation under this section:

(a) A domestic violence related violation of section 81 or 81a of the Michigan penal code, 1931 PA 328, MCL 750.81 and 750.81a, or an offense involving domestic violence as that term is defined in section 1 of 1978 PA 389, MCL 400.1501.

(b) A violation of section 84 of the Michigan penal code, 1931 PA 328, MCL 750.84.

(c) A violation of section 411h of the Michigan penal code, 1931 PA 328, MCL 750.411h.

(d) A violation of section 411i of the Michigan penal code, 1931 PA 328, MCL 750.411i.

(e) A violation of section 520c of the Michigan penal code, 1931 PA 328, MCL 750.520c.

(f) A violation of section 520e of the Michigan penal code, 1931 PA 328, MCL 750.520e.

(g) A listed offense.

(h) An offense for which a defense was asserted under section 36 of chapter VIII.

(i) A violation of chapter LXVIIA of the Michigan penal code, 1931 PA 328, MCL 750.462a to 750.462h, or former section 462i or 462j of that act.

(11) The court shall, by order to be entered in the case as the court directs by general rule or in each case, fix and determine the period, conditions, and rehabilitation goals of probation. The order is part of the record in the case. The court may amend the order in form or substance at any time. If the court reduces a defendant's probationary term under this section, the period by which that term was reduced must be reported to the department of corrections.

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

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

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

(15) As used in this section, "listed offense" means that term as defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17372;—CL 1948, 771.2;—Am. 1978, Act 77, Eff. Sept. 1, 1978;—Am. 1988, Act 78, Eff. Oct. 1, 1988;—Am. 1992, Act 251, Eff. Jan. 1, 1993;—Am. 1993, Act 185, Eff. Oct. 1, 1993;—Am. 1994, Act 286, Eff. Oct. 1, 1995;—Am. 1998, Act 520, Imd. Eff. Jan. 12, 1999;—Am. 2002, Act 666, Eff. Mar. 1, 2003;—Am. 2010, Act 351, Imd. Eff. Dec. 22, 2010;—Am. 2017, Act 10, Eff. June 29, 2017;—Am. 2020, Act 397, Eff. Apr. 1, 2021.

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

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