

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

771.4b Technical probation violation; rebuttable presumption; summons or show cause order; definitions.

Sec. 4b.

(1) Except as otherwise provided in this section, a probationer who commits a technical probation violation and is sentenced to temporary incarceration may be incarcerated for each technical violation as follows:

(a) For a technical violation committed by an individual who is on probation because he or she was convicted of or pleaded guilty to a misdemeanor:

(i) For a first violation, jail incarceration for not more than 5 days.

(ii) For a second violation, jail incarceration for not more than 10 days.

(iii) For a third violation, jail incarceration for not more than 15 days.

(iv) For a fourth or subsequent violation, jail incarceration for any number of days, but not exceeding the total of the remaining eligible jail sentence.

(b) For a technical violation committed by an individual who is on probation because he or she was convicted of or pleaded guilty to a felony:

(i) For a first violation, jail incarceration for not more than 15 days.

(ii) For a second violation, jail incarceration for not more than 30 days.

(iii) For a third violation, jail incarceration for not more than 45 days.

(iv) For a fourth or subsequent violation, jail or prison incarceration for any number of days, but not exceeding the total of the remaining eligible jail or prison sentence.

(2) A probationer may acknowledge a technical probation violation in writing without a hearing before the court being required.

(3) A jail sanction under subsection (1)(a) or (b) may be extended to not more than 45 days if the probationer is awaiting placement in a treatment facility and does not have a safe alternative location to await treatment.

(4) Subject to the exception in subsection (6), the court shall not revoke probation on the basis of a technical probation violation unless a probationer has already been sanctioned for 3 or more technical probation violations and commits a new technical probation violation.

(5) If more than 1 technical probation violation arises out of the same transaction, the court shall treat the technical probation violations as a single technical probation violation for purposes of this section.

(6) Subsection (1) does not apply to a probationer who is on probation for a domestic violence violation of section 81 or 81a, an offense involving domestic violence as that term is defined in section 1 of 1978 PA 389, MCL 400.1501, or a violation of section 411h or 411i of the Michigan penal code, 1931 PA 328, MCL 750.81, 750.81a, 750.411h, and 750.411i.

(7) Except as otherwise provided in this subsection, there is a rebuttable presumption that the court shall not issue a warrant for arrest for a technical probation violation and shall issue a summons or order to show cause to the probationer instead. The court may overcome the presumption and issue a warrant if it states on the record a specific reason to suspect that 1 or more of the following apply:

(a) The probationer presents an immediate danger to himself or herself, another person, or the public.

(b) The probationer has left court-ordered inpatient treatment without the court's or the treatment facility's permission.

(c) A summons or order to show cause has already been issued for the technical probation violation and the probationer failed to appear as ordered.

(8) A probationer who is arrested and detained for a technical probation violation must be brought to a hearing on the technical probation violation as soon as is possible. If the hearing is not held within the applicable and permissible jail sanction, as determined under subsection (1)(a) or (b), the probationer must be returned to community supervision.

(9) As used in this section:

(a) "Absconding" means the intentional failure of a probationer to report to his or her supervising agent or to advise his or her supervising agent of his or her whereabouts for a continuous period of not less than 60 days.

(b) "Technical probation violation" means a violation of the terms of a probationer's probation order that is not listed below, including missing or failing a drug test, subparagraph (ii) notwithstanding. Technical probation violations do not include the following:

(i) A violation of an order of the court requiring that the probationer have no contact with a named individual.

(ii) A violation of a law of this state, a political subdivision of this state, another state, or the United States or of tribal law, whether or not a new criminal offense is charged.

(iii) The consumption of alcohol by a probationer who is on probation for a felony violation of section 625 of the Michigan vehicle code, 1949 PA 300, MCL 257.625.

(iv) Absconding.

History: Add. 2017, Act 9, Eff. June 29, 2017 ;-- Am. 2020, Act 397, Eff. Apr. 1, 2021