

# 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 <sup>1</sup>
<b>Plea of Guilt or Finding of Guilt</b>	Accepted and judgment of guilt entered.	Accepted but judgment of guilt not entered.
<b>Referral</b>	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.
<b>Monetary Assessments</b>	May assess a fine, costs, <sup>A</sup> 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. <sup>2</sup>	May assess a fine, costs, <sup>A</sup> 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. <sup>2</sup>
<b>Caseload Reporting</b>	Report as Guilty Plea, Bench Verdict, or Jury Verdict.	Report as Guilty Plea.
<b>MSP Criminal History Reporting</b>	Report conviction, including monetary assessments. Refer to MCL 771.1 in free-text area of the disposition report.	Report deferred judgment of guilt.
<b>SOS Abstract Reporting</b>	Abstract reportable offenses pursuant to MCL 257.732.	Report deferred if Minor in Possession; otherwise no reporting required.
<b>Court Record Status</b>	Public.	Public, except Minor in Possession and HYTA are nonpublic at time of deferral/assignment.
<b>Supervision or Probation Successful</b>	Conviction remains. Court enters sentence for sanctions previously imposed.	Discharge from probation and dismiss.
<b>MSP Criminal History Reporting</b>	Report conviction only if not previously reported at time of plea.	Report successful completion of probation and dismissal.
<b>SOS Abstract Reporting</b>	Abstract changes to reportable offenses pursuant to MCL 257.732.	Report dismissal if Minor in Possession; otherwise no reporting required.
<b>Court Record Status</b>	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
<b>Supervision or Probation Unsuccessful</b>	Proceed to sentencing.	Enter conviction. Discharge probation as unsuccessful.
<b>MSP Criminal History Reporting</b>	Report any amended sentence, including jail time imposed when applicable.	Report date conviction entered and sentence.
<b>SOS Abstract Reporting</b>	Abstract changes to reportable offenses pursuant to MCL 257.732.	Report date conviction entered if a reportable offense.
<b>Court Record Status</b>	Public.	Public.

Numbered items appear as footnotes on the applicable page.

Lettered items appear as endnotes on page 3.

<sup>1</sup> 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.

<sup>2</sup> MCL 769.1k, MCR 6.106(I).

Action	Drug Court 2004 PA 224 MCL 600.1060 – 600.1082 Effective January 1, 2005	
	Defer/Delay <sup>3</sup>	Traditional Processing: Not eligible for Defer/Delay <sup>4</sup>
<b>Plea of Guilt or Finding of Guilt</b>	Accepted but judgment of guilt not entered.	Accepted and judgment of guilt entered.
<b>Monetary Assessments</b>	May assess a fine, costs, <sup>A</sup> 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. <sup>2</sup>	May assess a fine and costs, <sup>A</sup> 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. <sup>2</sup>
<b>Referral</b>	Defer further proceedings and place on probation in drug treatment court.	Proceed to sentencing, place on probation in drug treatment court.
<b>Caseload Reporting</b>	Report as Guilty Plea.	Report as Guilty Plea.
<b>MSP Criminal History Reporting</b>	Report deferred judgment of guilt if underlying crime is reportable. <sup>5</sup>	Report conviction.
<b>SOS Abstract Reporting</b>	None.	Report conviction and sentencing if a reportable offense pursuant to MCL 257.732.
<b>Court Record Status</b>	File public, but record of participation in drug court is nonpublic.	File public, but record of participation in drug court is nonpublic.
<b>Supervision or Probation Successful</b>	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.
<b>MSP Criminal History Reporting</b>	Report successful completion of probation and dismissal, and participation in drug court. <sup>5</sup>	Report successful completion of probation and participation in drug court. <sup>5</sup>
<b>SOS Abstract Reporting</b>	None.	None.
<b>Court Record Status</b>	Drug Court participation and treatment information becomes a nonpublic record <i>after the order of discharge and dismissal is entered</i> . <sup>6</sup> 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.
<b>Supervision or Probation Unsuccessful</b>	Enter conviction. Discharge probation as unsuccessful.	Discharge probation as unsuccessful.
<b>MSP Criminal History Reporting</b>	Report date conviction entered and sentenced, and unsuccessful participation in drug court. <sup>5</sup>	Report unsuccessful participation in drug court and sentence. <sup>5</sup>
<b>SOS Abstract Reporting</b>	Report date conviction entered and sentenced on drug offenses.	None.
<b>Court Record Status</b>	File public, but record of participation in drug court nonpublic.	File public, but record of participation in drug court nonpublic.

<sup>3</sup> 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.

<sup>4</sup> 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.

<sup>5</sup> 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.

<sup>6</sup> 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.

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## ENDNOTES:

<sup>A</sup> 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).

<sup>B</sup> 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).

<sup>C</sup> 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.