

TITLE 6: CRIMES AND CRIMINAL PROCEDURE
DIVISION 4: DISPOSITION OF OFFENDERS

§ 4105. Alternative Sentence: Probation and Suspension of Execution of Sentence.

(a) Except as restricted by a specific provision of a section of this title or by 6 CMC § 4102, the court may suspend or modify all or part of a sentence and order probation or other sentencing where that action is deemed to be in the best interests of justice, and may reimpose all or part of the suspended sentence upon violation of the terms of the suspension. Probation may be limited to one or more counts, but in the absence of express limitation, shall extend to the entire sentence or judgment.

(b) The court may impose any period of probation, not to exceed:

(1) Three years from the date the probationer is sentenced, or released from any period of incarceration, whichever is greater, upon conviction for any misdemeanor; and

(2) Ten years from the date the probationer is sentenced, or released from any period of incarceration, whichever is greater, upon conviction for any felony.

(c) Upon the filing of a petition to revoke probation, or an affidavit, or the presentation of sworn testimony from a Probation Officer or a representative of the Attorney General's Office setting forth probable cause to believe the probationer has violated any term of his probation, the court shall issue a summons for the probationer to appear before the court, or a warrant for the arrest of the probationer if the court finds a summons may be ineffective in securing the appearance of the probationer or that the probationer may pose a danger to the public.

(d) Upon the filing of a petition to revoke probation, an affidavit or the presentation of sworn testimony setting forth probable cause to establish a violation of any term of probation, the period of probation shall be tolled until final disposition of the alleged violation. If a probationer is found to have violated his or her probation, the court shall extend probation for the period of time from the filing of the petition to revoke until the final disposition on the petition, up to the maximum period allowable by law under subsection (b) of this section for the crime for which the probationer was sentenced. Probation revocation proceedings are civil in nature, not criminal.

(e) A probationer accused of violating any term of probation shall be entitled to reasonable notice of the alleged violation, and the right to be represented by counsel. No portion of a suspended sentence may be revoked, except for good cause shown.

(f) At the probationer's initial appearance after the commencement of probation revocation proceedings described in subsection (c), the probationer shall be advised of his rights by the court, including the right to court-appointed counsel if he is indigent. If the probationer asks for court-appointed counsel, the court shall examine the probationer as to his financial resources in order to determine if

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he is an indigent person, and if the court finds the probationer to be indigent, shall appoint counsel for the probationer.

(g) The court shall call upon the probationer to enter either a denial or an admission to the alleged violation. If the probationer admits the violation, the court shall find the probationer has violated his probation, and may immediately revoke all or part of any suspended portion of the probationer's sentence. In lieu of immediate revocation, the court may schedule a separate disposition hearing, in order to allow evidence to be presented by either party in support of a recommended disposition. If the probationer denies the violation, the court shall schedule an adjudication hearing before any judge, regardless of who imposed the condition of probation. The probationer is entitled to reasonable bail pending adjudication of the petition to the same extent as a criminal defendant under Title 6, Chapter 4 of the criminal code.

(h) At the adjudication hearing, the government must prove the alleged violation by a preponderance of the evidence, and the probationer may be heard. The Rules of Evidence do not apply to probation revocation proceedings. If the court finds the probationer has violated any term or condition of probation, the court may proceed to disposition, or the court may schedule a separate disposition hearing.

(i) A judgment of conviction on a new criminal charge based on conduct which occurred during the period of probation shall be conclusive proof that a violation of the probation has occurred. Some portion of a suspended sentence revoked for a violation of law occurring during the period of probation shall be consecutive to any sentence imposed for the violation of law. The sentencing court shall clearly state what portion of the revoked time is consecutive, and what portion is concurrent, if any, to time imposed for a subsequent violation of law.

(j) If the court finds a violation of probation based on the probationer's failure to perform any special condition of probation, pay restitution, fees or fines, participate in counseling, or perform community work service, the court may immediately revoke all or part of any suspended portion of the probationer's sentence, and may, in addition, extend the period of probation up to the maximum period allowable by law under subsection (b) of this section for the crime for which the probationer was sentenced, in order to ensure compliance with the conditions originally imposed. Before finding a violation of probation based on the failure to pay restitution, fees, or fines, the Court must find by a preponderance of the evidence that the probationer has made no efforts to pay and has the ability to do so.

(k) [Repealed.]

Source: PL 3-71, § 1 (§ 1205); amended by PL 15-46, § 5, modified; (k) repealed by PL 16-42 § 3.

Commission Comment: PL 15-46 was enacted on January 29, 2007, and contained, among other enactments (1 CMC § 2204, 6 CMC §§ 4104, 4109, 4113, 9101(a), and 4291-4298 [Adult Diversion Program]), a short title, find-

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ings and purpose, severability, and savings clause provisions. The Commission deleted figures that were mere repetitions of written words in the above section pursuant to its authority under 1 CMC § 3806(e). See the comment to 6 CMC § 4104 regarding PL 15-46.

See the comment to 6 CMC § 4104 for information regarding PL 16-42, which was enacted on July 13, 2009.