Please Note: The Michigan Supreme Court and Court of Appeals website is undergoing a website redesign. In anticipation of this redesign, the MJI publications team updated all of the MJI publications with hyperlinks to the new website. Unfortunately, the new website will not be available until October. Thus, some links will be temporarily inaccessible. We apologize for the inconvenience.

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Monograph 8: Felony Sentencing
Updates: May 2, 2012–September 1, 2012

Updates have been issued for *Monograph 8: Felony Sentencing*. A summary of each update appears below. The updates have been integrated into the website version of the benchbook. Clicking on the links below will take you to the page(s) in the benchbook where the updates appear. The text added or changed in each update is underlined.

8.6(B) Scoring an Offender's Offense Variables (OVs)

- "[A] court [must] separate the conduct forming the basis of the sentencing offense from the conduct forming the basis of an offense that was charged and later dismissed or dropped, regardless of the sequence in which the conduct transpired." *People v Gray (Orlando)*, ___ Mich App ___, ___ (2012), citing *People v McGraw*, 484 Mich 120, 122, 130-134 (2009).

8.6(C)(2)(c) Scoring an Offender's Offense Variables (OVs)

- "[W]hile heroin could, under the appropriate fact situation, constitute the aggravated use of a weapon, that it is not the case in an ordinary drug transaction[;] . . . [rather,] to be scorable under OV 1, [heroin] must be used as a weapon." *People v Ball (Amanda)*, ___ Mich App ___, ___ (2012) (holding that, although heroin "is a harmful chemical substance[]" under MCL 777.31(1)(b), 20 points were improperly assessed under OV 1 where, after the defendant delivered heroin to the victim in exchange for a video game, the victim "voluntarily ingested the heroin" and died of an overdose).

8.6(E)(2)(b) Scoring an Offender's Offense Variables (OVs)

- "[A] coperpetrator is properly considered a 'victim' for purposes of OV 3 when he or she is harmed by the criminal actions of the charged party[;]" accordingly, where the

defendant's coperpetrator was fatally shot by the homeowner during the home invasion for which the defendant was convicted, "[t]he trial court properly assessed 100 points for OV 3 because the coperpetrator was harmed by the criminal actions of [the] defendant." *People v Laidler*, 491 Mich 339, 341-342, 353 (2012), reversing in part *People v Laidler*, 291 Mich App 199 (2010).

8.6(H)(2) Scoring an Offender's Offense Variables (OVs)

- The trial court properly scored 50 points under OV 6 for the defendant's conviction of conspiracy to commit assault with intent to murder (AWIM), notwithstanding that conspiracy is a "public safety" offense under MCL 777.18 and that OV 6 is not included under MCL 777.22(5) as an offense variable that must be scored for crimes against public safety. *People v Tarver*, unpublished opinion per curiam of the Court of Appeals, issued August 7, 2012 (Docket No. 300775) (because "MCL 777.22(1) directs a trial court to score OV 6 for . . . '*conspiracy . . . to commit a homicide*,'" and "because[] when [the] defendant conspired to commit AWIM, he necessarily conspired to commit a homicide[,]" the trial court was required to score OV 6).

8.6(K)(2) Scoring an Offender's Offense Variables (OVs)

- The trial court erred in scoring 25 points for OV 9 on the ground that the defendant's vandalism of two schools "'was a crime against a community[;]'" because "[t]here [was] no evidence on the record to establish that 20 or more persons were affected by [the] defendant's vandalism, either directly or indirectly[,] . . . OV 9 should have been scored at zero points." *People v Carrigan*, ___ Mich App ___, ___, ___ (2012).

8.6(L)(2)(f) Scoring an Offender's Offense Variables (OVs)

- "[T]he trial court erroneously assessed 10 points for OV 10[]" where, although the defendant and the victim "remained friends," they "had stopped dating at least two months prior to the assault[,] . . . were dating other people, . . . did not continue to have sex, and . . . did not live together." *People v Brantley*, ___ Mich App ___, ___ (2012).

8.6(O)(2) Scoring an Offender's Offense Variables (OVs)

- "[T]he trial court [properly] considered a 2008 charge of bank robbery, which was dismissed, as the third offense to support [a] 10-point score for OV 13[]" in sentencing the defendant for a

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2010 robbery at the same bank. *People v Earl (Ronald)*, ___ Mich App ___, ___ (2012) ("[a]lthough the 2008 case was dismissed in the district court, there was no indication at sentencing that 'the 2008 allegation was dismissed for want of probable cause[,]'" and "[i]n light of the unchallenged evidence presented at sentencing regarding the 2008 bank robbery offense, there was enough evidence for the trial court to score 10 points for OV 13[]").

8.6(Q)(2) Scoring an Offender's Offense Variables (OVs)

- "OV 15 must be scored [based solely on] the amount of [controlled substance applicable to] . . . the sentencing offense, and cannot be scored on the basis of other drug offenses committed during a similar time period but dismissed as part of [a] plea agreement[;]" accordingly, 50 points were improperly scored under OV 15 based on "amounts of cocaine related to dismissed counts but wholly unrelated to the cocaine possession 'sentencing offense' to which [the] defendant pleaded guilty." *People v Gray (Orlando)*, ___ Mich App ___, ___ (2012).

8.9(C) Felony Offenses Enumerated in MCL 777.18 (Offenses Predicated on an Underlying Felony)

- A mandatory sentence of life imprisonment without the possibility of parole may not, consistently with the Eighth Amendment, be imposed upon an individual who was under the age of 18 at the time of the sentencing offense. *Miller v Alabama*, 567 US ___, ___ (2012) (homicide offender under the age of 18 may not be sentenced to life imprisonment without the possibility of parole unless a judge or jury first has the opportunity to consider mitigating circumstances).

8.9(E) Felony Offenses Enumerated in MCL 777.18 (Offenses Predicated on an Underlying Felony)

- A mandatory sentence of life imprisonment without the possibility of parole may not, consistently with the Eighth Amendment, be imposed upon an individual who was under the age of 18 at the time of the sentencing offense. *Miller v Alabama*, 567 US ___, ___ (2012) (homicide offender under the age of 18 may not be sentenced to life imprisonment without the possibility of parole unless a judge or jury first has the opportunity to consider mitigating circumstances).

8.9(G) Felony Offenses Enumerated in MCL 777.18 (Offenses Predicated on an Underlying Felony)

- In *People v Yanna*, ___ Mich App ___, ___, ___ n 1 (2012), the Michigan Court of Appeals held that the pre-amended version of MCL 750.224a, completely banning the sale or possession of stun guns and similar devices by anyone other than law enforcement officers, was unconstitutional under the Second Amendment; the *Yanna* Court, however, emphasized that its holding was limited to the complete ban under former MCL 750.224a, which was amended, effective August 6, 2012, by 2012 PA 122 to permit the possession and use of electro-muscular disruption devices by licensed individuals under certain circumstances.

8.11(A) Establishing a Defendant's Habitual Offender Status

- "MCR 6.302(B)(2) requires the trial court to apprise a defendant of his or her maximum possible prison sentence as an habitual offender before accepting a guilty plea[,]" and MCR 6.310(C) permits a defendant who is not so apprised to elect either to allow his or her plea and sentence to stand or to withdraw the plea; although "an arguable conflict exists between MCR 6.302(B)(2) and MCL 769.13(3)[, which] . . . permits a prosecuting attorney to file a notice of intent to seek an enhanced sentence under the habitual-offender statute *after* a defendant has entered a plea[,] . . . the remedy provided by MCR 6.310(C) will apply [even] when a defendant is not notified of the enhancement until after pleading guilty." *People v Brown (Shawn)*, ___ Mich ___, ___ (2012) (emphasis supplied).

8.11(C)(1) Establishing a Defendant's Habitual Offender Status

- "[A]n adult conviction resulting in a juvenile sentence can be used as a predicate offense for sentencing as an habitual offender [under] MCL 769.11[.]" *People v Jones (Jeffrey)*, ___ Mich App ___, ___, ___ (2012) (noting that "MCL 769.11(1) focuses only on whether a defendant has been convicted, and does not contain any language regarding a defendant's sentence[]").

8.13 Second Habitual Offender Status (HO2)

- "[A]n adult conviction resulting in a juvenile sentence can be used as a predicate offense for sentencing as an habitual offender [under] MCL 769.11[.]" *People v Jones (Jeffrey)*, ___ Mich App ___, ___, ___ (2012) (noting that "MCL 769.11(1) focuses

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only on whether a defendant has been convicted, and does not contain any language regarding a defendant's sentence[]").

8.14 Third Habitual Offender Status (HO3)

- "[A]n adult conviction resulting in a juvenile sentence can be used as a predicate offense for sentencing as an habitual offender [under] MCL 769.11[.]" *People v Jones (Jeffrey)*, ___ Mich App ___, ___, ___ (2012) (noting that "MCL 769.11(1) focuses only on whether a defendant has been convicted, and does not contain any language regarding a defendant's sentence[]").

8.15 Fourth Habitual Offender Status (HO4)

- "[A]n adult conviction resulting in a juvenile sentence can be used as a predicate offense for sentencing as an habitual offender [under] MCL 769.11[.]" *People v Jones (Jeffrey)*, ___ Mich App ___, ___, ___ (2012) (noting that "MCL 769.11(1) focuses only on whether a defendant has been convicted, and does not contain any language regarding a defendant's sentence[]").

8.16(A) Sentencing an Offender for a Subsequent Major Controlled Substance Offense

- A mandatory sentence of life imprisonment without the possibility of parole may not, consistently with the Eighth Amendment, be imposed upon an individual who was under the age of 18 at the time of the sentencing offense. *Miller v Alabama*, 567 US ___, ___ (2012) (homicide offender under the age of 18 may not be sentenced to life imprisonment without the possibility of parole unless a judge or jury first has the opportunity to consider mitigating circumstances).

8.30(B) Additional Information to Consider Before Imposing Sentence

- A mandatory sentence of life imprisonment without the possibility of parole may not, consistently with the Eighth Amendment, be imposed upon an individual who was under the age of 18 at the time of the sentencing offense. *Miller v Alabama*, 567 US ___, ___ (2012) (homicide offender under the age of 18 may not be sentenced to life imprisonment without the possibility of parole unless a judge or jury first has the opportunity to consider mitigating circumstances).

8.32 Sentence Bargains and Plea Agreements

- Failure to "'provide the defendant the opportunity to affirm or withdraw [a] plea[]'" as required by MCR 6.310(B)(2) constitutes plain error that may require reversal. *People v Franklin (Joseph)*, 491 Mich 916, 916 (2012) (clarifying that "[the] holding in *People v Grove*, 455 Mich 439 (1997), that the trial court could reject the entire plea agreement and subject the defendant to a trial on the original charges over the defendant's objection[] . . . has been superseded by MCR 6.310(B)[,]" and cautioning that "in the future, [failing to comply with MCR 6.310(B)(2)] will be 'plain' [error]").

- "MCR 6.302(B)(2) requires the trial court to apprise a defendant of his or her maximum possible prison sentence as an habitual offender before accepting a guilty plea[,]" and MCR 6.310(C) permits a defendant who is not so apprised to elect either to allow his or her plea and sentence to stand or to withdraw the plea. *People v Brown (Shawn)*, ___ Mich ___, ___ (2012), overruling *People v Boatman*, 273 Mich App 405, 406-410 (2006).

8.34 Costs

- No precise calculation is required when imposing costs under MCL 769.1k(1)(b)(*ii*), as long as the costs imposed are "generally reasonable[.]" *People v Sanders (Robert)*, ___ Mich App ___, ___ (2012) (holding that there is no need to "individually calculat[e] the costs involved in a particular case," but remanding for a hearing "to factually establish the reasonable cost figure for felony cases in [the circuit court], while affording [the] defendant the opportunity to challenge that [generalized] determination[]").

8.36 Crime Victim Assessment

- "[I]mposition of an enhanced . . . crime victim[] assessment fee" against a defendant who committed a felony before the effective date of the statutory amendment effecting a fee increase from $60 to $130, 2010 PA 281, does not violate the Ex Post Facto Clause of either the United States Constitution or the Michigan Constitution, because "an assessment under the [Crime Victim's Rights Act, MCL 780.751 *et seq*.,] is neither restitution nor punishment." *People v Earl (Ronald)*, ___ Mich App ___, ___ (2012).

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8.42(A) Deferred Adjudication of Guilt

- Effective June 1, 2012, 2012 PA 125 amended MCL 436.1703, governing minor in possession offenses, to provide that a violation that is "successfully deferred, discharged, and dismissed under [MCL 436.1703(3) (permitting deferred adjudication of guilt for a first offense)] is considered a prior violation for the purposes of [MCL 436.1703(1)(b) (governing second violations) and MCL 436.1703(1)(c) (governing third or subsequent violations)]." MCL 436.1703(4).

8.46 Mandatory Sentences

- A mandatory sentence of life imprisonment without the possibility of parole may not, consistently with the Eighth Amendment, be imposed upon an individual who was under the age of 18 at the time of the sentencing offense. *Miller v Alabama*, 567 US ___, ___ (2012) (homicide offender under the age of 18 may not be sentenced to life imprisonment without the possibility of parole unless a judge or jury first has the opportunity to consider mitigating circumstances).

8.47 Special Alternative Incarceration (SAI) Units—"Boot Camp"

- Effective July 2, 2012, 2012 PA 259 amended MCL 791.234a, authorizing placement of certain prisoners in "special alternative incarceration [(SAI)] unit[s,]" to eliminate the sunset provision, MCL 791.234a(13), which would have repealed MCL 791.234a effective September 30, 2012.

8.51(A) Exceptions: When a Departure Is Not a Departure

- A mandatory sentence of life imprisonment without the possibility of parole may not, consistently with the Eighth Amendment, be imposed upon an individual who was under the age of 18 at the time of the sentencing offense. *Miller v Alabama*, 567 US ___, ___ (2012) (homicide offender under the age of 18 may not be sentenced to life imprisonment without the possibility of parole unless a judge or jury first has the opportunity to consider mitigating circumstances).

8.51(B) Exceptions: When a Departure Is Not a Departure

- A mandatory sentence of life imprisonment without the possibility of parole may not, consistently with the Eighth Amendment, be imposed upon an individual who was under

the age of 18 at the time of the sentencing offense. *Miller v Alabama*, 567 US ___, ___ (2012) (homicide offender under the age of 18 may not be sentenced to life imprisonment without the possibility of parole unless a judge or jury first has the opportunity to consider mitigating circumstances).

Appendix B: Statutory Offense Enhancement

- Effective June 19, 2012, 2012 PA 172 amended MCL 750.174a, governing embezzlement from a vulnerable adult, to add two new subsections, MCL 750.174a(6) and MCL 750.174a(7), establishing additional enhanced penalties under certain circumstances.

Appendix C: Alphabetical List of Felony Offenses

- Effective July 20, 2012, 2012 PA 104 added MCL 750.479c, establishing the crimes of providing false information to a peace officer conducting a criminal investigation, MCL 750.479c(2)(c), and providing false or misleading information to a peace officer conducting a criminal investigation regarding certain felonies, MCL 750.479c(2)(d). Also effective July 20, 2012, 2012 PA 105 amended the felony sentencing guideline provisions contained in MCL 777.16x to add guidelines for these offenses.

- Effective August 6, 2012, 2012 PA 122 amended MCL 750.224a to permit "[t]he possession and reasonable use" of an electro-muscular disruption device by certain individuals under certain circumstances, MCL 750.224a(2), and to establish a misdemeanor offense, punishable by up to two years' imprisonment, for the improper use of an electro-muscular disruption device, MCL 750.224a(6).[1] Also effective August 6, 2012, 2012 PA 124 amended the felony sentencing guideline provisions contained in MCL 777.16m to include guidelines for this offense.

- Effective August 6, 2012, 2012 PA 123 amended MCL 28.425o, prohibiting licensed individuals or individuals who are exempt from licensure from carrying a concealed pistol on certain premises, to include the carrying of a portable electro-muscular disruption device.[2] MCL 28.425o(2). Also effective August 6, 2012, 2012 PA 124 amended the felony sentencing guideline

[1] Together, 2012 PA 122 and 2012 PA 123, both effective August 6, 2012, amended several statutes governing the sale, purchase, possession, and carrying of firearms to allow the possession and use of electro-muscular disruption devices by certain individuals under certain circumstances, and to include these devices within provisions establishing criminal offenses for violations of those regulations. See MCL 750.224a; MCL 28.425f; MCL 28.425g; MCL 28.425k; MCL 28.425o.

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provisions contained in MCL 777.11b to include carrying a concealed pistol or electro-muscular device in a prohibited place—third or subsequent offense, MCL 28.425o(6)(c).

- Effective August 29, 2012, 2012 PA 146 added MCL 750.411w, making it a felony offense to "knowingly sell, purchase, install, transfer, or possess in this state any automated sales suppression device or zapper or phantom-ware[,]" MCL 750.411w(1)-(2). Also effective August 29, 2012, 2012 PA 147 amended the felony sentencing guideline provisions contained in MCL 777.16t to add guidelines for this offense.

- Effective June 19, 2012, 2012 PA 172 amended MCL 750.174a, governing embezzlement from a vulnerable adult, to add two new subsections, MCL 750.174a(6) and MCL 750.174a(7), establishing additional enhanced penalties under certain circumstances. Also effective June 19, 2012, 2012 PA 168 amended the felony sentencing guideline provisions contained in MCL 777.16i to include corresponding guidelines and to make several additional ministerial changes.[3]

- Effective June 19, 2012, 2012 PA 172 amended MCL 750.273 to enlarge the scope of the offense of obtaining a signature with intent to defraud; MCL 750.273 now provides that "[a] person who fraudulently obtains the signature of any person with the intent to cheat and defraud that person is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than $5,000.00, or both." Also effective June 19, 2012, 2012 PA 169 amended the felony sentencing guideline provisions contained in MCL 777.16o to reflect this change, and to make additional ministerial corrections.[4]

- Effective June 20, 2012, 2012 PA 187 amended the felony sentencing guideline provisions contained in MCL 777.14h to include guidelines for the new offense of purchasing or selling stolen plastic bulk merchandise containers, MCL 445.2081(2); this new felony was established, effective December 18, 2012, by

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[2] Together, 2012 PA 122 and 2012 PA 123, both effective August 6, 2012, amended several statutes governing the sale, purchase, possession, and carrying of firearms to allow the possession and use of electro-muscular disruption devices by certain individuals under certain circumstances, and to include these devices within provisions establishing criminal offenses for violations of those regulations. See MCL 750.224a; MCL 28.425f; MCL 28.425g; MCL 28.425k; MCL 28.425o.

[3] See also 2012 PA 169, purporting to make the same amendments to the sentencing guideline provisions in MCL 777.16i.

[4] 2012 PA 169 additionally purported to make amendments to the sentencing guideline provisions in MCL 777.16i; however, identical amendments to MCL 777.16i were made by 2012 PA 168, which became effective on the same day.

2012 PA 186, which added the plastic bulk merchandise container act, MCL 445.2071 *et seq*.

- Effective July 1, 2012, 2012 PA 194 amended MCL 750.136b(2) to increase the maximum penalty for first-degree child abuse; amended MCL 750.136b(4) to establish separate penalties for a first offense, MCL 750.136b(4)(a), and a second or subsequent offense, MCL 750.136b(4)(b); and added MCL 750.136d, establishing felony offenses for committing child abuse in the presence of another child. Also effective July 1, 2012, 2012 PA 195 amended the felony sentencing guideline provisions contained in MCL 777.16g to reflect these amendments and additions, and to make ministerial changes to several other provisions within the section.

- Effective August 16, 2012, 2012 PA 276 amended several provisions of the Michigan Election Law, MCL 168.1 *et seq*., and added MCL 168.932c, establishing a felony offense for providing compensation to a person for registering individuals to vote, and MCL 168.932e, establishing a felony offense for intentionally misrepresenting oneself to be an election official in a polling place. Effective August 15, 2012, 2012 PA 278 amended the felony sentencing guideline provisions contained in MCL 777.11d to include guidelines for these offenses.

Appendix D: Numerical List of Felony Offenses (in order by MCL #)

- The updates set out for Appendix C, above, have also been added to Appendix D.

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Criminal Procedure Monograph Series 1–9

Monograph 8: Felony Sentencing–Revised Edition

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The research done on this benchbook is current through September 1, 2012. This benchbook is not intended to be an authoritative statement by the Justices of the Michigan Supreme Court regarding any of the substantive issues discussed.

Acknowledgments

Criminal Procedure Monograph 8: Felony Sentencing includes a comprehensive discussion of felony sentencing in Michigan and provides practical instruction on application of the statutory sentencing guidelines to listed felony offenses.

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- The Honorable Michael Beale
- The Honorable George Buth
- The Honorable Joyce Draganchuk
- The Honorable Scott Hill-Kennedy
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Felony Sentencing

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Part A—Introduction

8.1 Scope of This Monograph

The primary objective of this monograph is to present a comprehensive picture of the dynamic landscape of sentencing in Michigan since the legislative sentencing guidelines were adopted in 1998. To that end, the monograph will address various procedural and statutory components of sentencing proceedings, including the respective rights and responsibilities of the court and the defendant. The monograph will further discuss several fundamental characteristics of felony sentences in Michigan, aspects which were established long before the advent of the statutory sentencing guidelines. These fundamental characteristics include proportionality, concurrent and consecutive prison terms, and the requirement that sentences be indeterminate. Also addressed in the monograph are the different types of sentences available and any limitations on a sentencing court's authority to impose certain types of sentences in specific situations.

A comprehensive discussion of the topics contained here as they may (or may not) apply to juveniles is beyond the scope of this monograph. At times, the monograph makes general references to the subject matter being discussed and its applicability to juveniles, but the monograph does not contain an exhaustive treatment of any topic as it relates to juveniles. For a detailed discussion of proceedings involving juveniles, see the Michigan Judicial Institute's *Juvenile Justice Benchbook*.

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With the exception of the following section—where the history of sentencing guidelines in Michigan requires a discussion of the *judicial* sentencing guidelines—all references in this monograph to "the guidelines" are to the legislative or statutory sentencing guidelines enacted by 1998 PA 317. Whenever the author intends reference to the judicial sentencing guidelines, the reference will be clearly specified.

Finally, this monograph is not intended to replace the *Sentencing Guidelines Manual*, a booklet published in various formats by MJI, West Publishing, the Michigan Bar Association, and other organizations.

8.2 History of Sentencing in Michigan

A. Indeterminate Sentencing

Since a 1902 amendment to the state constitution, the Michigan Legislature has been authorized to establish indeterminate sentences as punishment for criminal offenses. *People v Lorentzen*, 387 Mich 167, 179-181 (1972); Const 1850, art 4, § 47; Const 1908, art 5, § 28; Const 1963, art 4, § 45. The sanctioning of indeterminate sentencing represents Michigan's recognition that criminal penalties should reflect the seriousness of the crime and the history of the offender, and where possible, criminal punishment should include some incentive to the convicted offender to change himself or herself. *Lorentzen*, *supra* at 180-181; *In re Manaca*, 146 Mich 697, 701 (1906). The indeterminate sentence act aims to provide greater protection to law-abiding members of society by "'convert[ing] bad citizens into good citizens'" and encouraging imprisoned offenders to reform themselves during incarceration. *Lorentzen*, *supra* at 180, quoting *People v Cook (Fred)*, 147 Mich 127, 132 (1907). The act, in part, provides:

> "When a person is convicted for the first time for committing a felony and the punishment prescribed by law for that offense may be imprisonment in a state prison, the court imposing sentence shall not fix a definite term of imprisonment, but shall fix a minimum term, except as otherwise provided in this chapter. The maximum penalty provided by law shall be the maximum sentence in all cases except as provided in this chapter and shall be stated by the judge in imposing the sentence." MCL 769.8(1).

By adopting the constitutional amendment pertaining to indeterminate sentencing, Michigan citizens intended that the indeterminate sentence act permit trial courts some flexibility in tailoring a sentence to fit the individual offender and the particular

circumstances of his or her offense. *Lorentzen*, 387 Mich at 180; *In re Southard*, 298 Mich 75, 82 (1941). In *Lorentzen*, *supra* at 181, the Michigan Supreme Court vacated a defendant's sentence because imposition of the 20-year sentence prescribed for conviction of a nonviolent offense by a nonviolent offender with no previous criminal record was "so excessive that it shock[ed] the conscience." To determine the effectiveness of indeterminate sentencing requires "consideration of the modern policy factors underlying criminal penalties—rehabilitation of the individual offender, society's need to deter similar proscribed behavior in others, and the need to prevent the individual offender from causing further injury to society." *Id*. at 180.

B. Judicial Discretion and Appellate Review of Indeterminate Sentences

Until 1972, the Michigan Supreme Court generally refused appellate review of a trial court's sentencing decisions wherever the length of the sentence imposed was within the maximum sentence length set by statute. *People v Tanner*, 387 Mich 683, 687 (1972). In *Tanner*, *supra* at 690, the Michigan Supreme Court limited the length of an offender's minimum sentence term to not more than two-thirds of the statutory maximum sentence length for conviction of the offense.[1] This marked a significant decrease in the amount of discretion a sentencing judge could exercise at sentencing proceedings. Before the *Tanner* "two-thirds rule," the only limit placed on a judge's sentencing discretion was the prohibition against exceeding the statutory maximum term of imprisonment designated for a particular felony conviction. *Id*. at 687.

The *Tanner* rule was a response to the "plethora of cases involving sentences with a period of but 30 days between minimum and maximum" and the disregard of those cases for the true intent of the indeterminate sentence act. *Tanner*, 387 Mich at 689 (the trial court sentenced the defendant to a term of imprisonment of 14 years, 11 months to 15 years). According to the Court, a sentence with such a narrow window between the minimum and maximum terms failed to qualify as indeterminate. *Tanner*, *supra* at 690. A difference of only thirty days between an offender's minimum and maximum terms eliminated the corrections department's ability to effectively reward or penalize prisoners for their conduct. *Id*. at 689-690.

The Michigan Supreme Court unequivocally authorized appellate review of a trial court's sentencing discretion in *People v Coles*, 417 Mich 523, 550 (1983), modified by *People v Milbourn*, 435 Mich 630,

[1] The rule in *Tanner* is codified under the statutory sentencing guidelines at MCL 769.34(2)(b). See Section 8.27 for more information.

634-636 (1990). At the time *Coles* was decided in 1983, no sentencing guidelines existed: subject only to the "two-thirds rule" in *Tanner*, 387 Mich at 690, trial courts could sentence an offender to any term within the statutory minimum and maximum set for the sentencing offense. *People v Babcock*, 469 Mich 247, 253 (2003). After *Coles* was decided, an appellate court could review and remedy a defendant's sentence if the trial court's exercise of its sentencing discretion "shocked the conscience" of the reviewing court. *Coles*, *supra* at 550; *Babcock*, *supra* at 253-254.

C. The Judicial Sentencing Guidelines

The first sentencing guidelines were designed by an advisory committee appointed by the Michigan Supreme Court in 1979. The committee produced the first edition of the judicial sentencing guidelines, which was distributed to circuit court and recorder's court judges in 1983.

> "The [judicial sentencing] guidelines were designed to reduce disparity in sentencing from county to county and region to region by mirroring the existing sentencing practices of judges across the state at the time the guidelines were implemented. They were developed using the results of research on sentencing patterns of judges throughout Michigan, and attempt to capture the typical sentence for similar types of offenses and offenders." House Legislative Analysis, SB 826, HB 5419, and HB 5398 (Revised Second Analysis), September 23, 1998, p 2.

Pursuant to Administrative Order No. 1983-3, the judges were "invited, but not required, to use the guidelines for a period of one year, beginning May 1, 1983." 417 Mich cxxi (1983) (rescinded effective February 6, 2007, 477 Mich clxvii). Judges were "urged" to provide feedback to the judicial sentencing committee on their use of the guidelines. The initial guidelines were used by the courts on a voluntary basis until 1984, when the Supreme Court mandated statewide use of the judicial guidelines and began requiring trial courts to submit data to the advisory committee to facilitate review of the guidelines' effectiveness.[2]

Because the judicial guidelines were not backed by legislative action, sentencing courts were not obligated to constrain themselves to the sentence ranges recommended under the judicial guidelines. *Babcock*,

[2] For a period of one year, beginning March 1, 1984, Administrative Order No. 1984-1 mandated use of the judicial guidelines and completion of a sentencing form. 418 Mich lxxx (1984) (rescinded as of October 1, 1988, Administrative Order No. 1988-4, 430 Mich ci (1988)).

469 Mich at 254, citing *People v Hegwood*, 465 Mich 432, 438 (2001). The judicial sentencing guidelines "'were "mandatory" only in the sense that the sentencing court was obliged to follow the procedure of "scoring" a case on the basis of the circumstances of the offense and the offender[.]'" *Babcock, supra* at 254, quoting *Hegwood*, *supra* at 438. Trial courts were also required by Supreme Court administrative order to place on the record any reason for imposing a sentence that departed from the range recommended under the judicial guidelines. *Babcock*, *supra* at 254; Administrative Order No. 1983-3, 417 Mich cxxi (1983). A second edition of the judicial sentencing guidelines was released on October 1, 1988, and this second edition—without further modification—remained in effect until the Legislature enacted the statutory sentencing guidelines in December 1998, effective January 1, 1999. Administrative Order No. 1988-4, 430 Mich ci (1988).

After the statutory guidelines were enacted, the judicial sentencing guidelines were rescinded by Administrative Order No. 1998-4, 459 Mich clxxv (1998). However, the judicial sentencing guidelines remain in effect for offenses committed before January 1, 1999. *Id*.

1. Appellate Review

After the judicial guidelines were promulgated and before the enabling legislation for the statutory sentencing commission was enacted, the "shock the conscience" standard enunciated in *Coles*, 417 Mich at 550, was replaced with the "principle of proportionality" standard adopted by the Michigan Supreme Court in *Milbourn*, 435 Mich at 636. *Babcock*, 469 Mich at 254. The "proportionality" test required that a trial court impose a sentence "proportionate to the seriousness of the circumstances surrounding the offense and the offender." *Milbourn*, *supra* at 636; *Babcock*, *supra* at 254.

"An error in scoring the judicial [sentencing] guidelines does not provide a basis for appellate relief." *People v Walker (Robert)*, 485 Mich 870 (2009), citing *People v Raby*, 456 Mich 487, 496 (1998).

2. Criticism of the Judicial Sentencing Guidelines

Revision of the judicial sentencing guidelines was prompted by criticism that the judicial guidelines were both "excessively lenien[t]" and "undu[ly] harsh[]." House Legislative Analysis, SB 826, HB 5419, and HB 5398 (Revised Second Analysis), September 23, 1998, p 2. Critics of the judicial guidelines pointed out that rather than conducting a *fresh* examination of what a reasonable sentence might be for a particular crime, the judicial guidelines "essentially codified existing practices" without

regard to the reasonableness of the sentence in light of the offense and the offender. *Id*.[3]

Revision of the judicial sentencing guidelines was also prompted by the state's increasing prison census. House Legislative Analysis, SB 826, HB 5419, and HB 5398 (Revised Second Analysis), September 23, 1998, p 2. The judicial guidelines did not consider possible consequences of their implementation on local correctional resources and budgets, and Michigan's prison overcrowding problem had worsened despite an expensive prison construction program. *Id*. Making the best use of Michigan's limited prison and jail space propelled the decision that the Legislature should undertake "a comprehensive review" of the existing guidelines and develop statutory sentencing standards for imposing the penalties outlined in language first defined by the Legislature itself. *Id*.

D. The Statutory Sentencing Guidelines

With the enactment of 1994 PA 445, the Legislature established a nineteen-member Sentencing Guidelines Commission. The Commission began working in May 1995

> "with the goal of developing sentencing guidelines that would provide for the protection of the public, that considered offenses involving violence against a person as more severe than other offenses, and that were proportionate to the seriousness of the offense and the offender's prior criminal record." House Legislative Analysis, SB 826, HB 5419, and HB 5398 (Revised Second Analysis), September 23, 1998, p 2.

The members of the Commission quickly agreed that the system on which the judicial sentencing guidelines was based represented a fundamentally sound approach to the issue and a basis from which the Commission would begin formulating the sentencing guidelines it would recommend to the Legislature. Maloney, *Sentencing law symposium: The Michigan sentencing guidelines*, 16 T M Cooley L Rev 13, 18-19 (1999). The Commission's challenge was to preserve the ideal of individualized sentencing and avoid placing too stringent a constraint on the largely unfettered discretion that then existed in the sentencing courts. Maloney, *supra* at 21. In addition to its objective of reducing disparity among criminal sentences, for the first time in

[3] Regardless of any shortcomings in the judicial sentencing guidelines, the fact that the guidelines codified existing practices was precisely what the guidelines had purported to do; the guidelines were based on data gathered expressly for the purpose of determining the standard sentencing practices then existing in Michigan trial courts.

Michigan's sentencing history, the Commission was further directed to address sentencing guidelines applicable to habitual offenders. *Id*. at 18.

1. Policy Objectives, Organization, and Content

The Commission's sentencing guidelines incorporated the policy initiatives enumerated by the Legislature:

- Violent offenses and violent offenders should be treated more severely than nonviolent offenses and nonviolent offenders.
- Sentences should be proportionate to both the seriousness of the offense and the offender's prior criminal record.
- There should exist a standard governing a trial court's imposition of a sentence that represents a departure from the sentence recommended under the sentencing guidelines (the "substantial and compelling reason" standard articulated in *People v Fields (Warren)*, 448 Mich 58, 76-79 (1995)).
- To alleviate prison overcrowding, there should exist mandatory intermediate sanctions when the recommended guidelines range is less than 18 months. Absent a substantial and compelling reason to depart in those cases, a sentencing judge would be prohibited from sentencing an offender to prison when the recommended range called for intermediate sanctions. Maloney, *supra* at 18-20.

According to the Michigan Supreme Court, the statutory sentencing guidelines represented

> "a comprehensive sentencing reform. The evident purposes included reduction of sentencing disparity, elimination of certain inappropriate sentencing considerations, acceptance of this Court's *Tanner*[4] rule, encouragement of the use of sanctions other than incarceration in the state prison system, and resolution of a potential conflict in the law." *People v Garza*, 469 Mich 431, 434-435 (2003).

The statutory guidelines were enacted by 1998 PA 317 and are contained in chapter XVII of Michigan's Code of Criminal

[4] *Tanner*, 387 Mich at 690.

Procedure, MCL 777.1 *et seq*. The legislative sentencing guidelines divide more than 700 crimes into six "offense categories" or "crime groups" (e.g., crimes against a person, crimes against property, crimes involving a controlled substance, etc.). The crimes are further divided in order of descending severity into "crime classes," which are represented by the letters "A" through "H" and by "M2," a separate crime class designation reserved for second-degree murder.

General provisions applicable to the guidelines are contained in MCL 777.1 to MCL 777.6; these provisions are discussed in Section 8.3. The specific felonies to which the sentencing guidelines apply are enumerated in MCL 777.11a to MCL 777.19, and these offenses are listed both alphabetically and in order of MCL number in Appendix C and Appendix D, respectively. MCL 777.21 and MCL 777.22 contain the general scoring instructions for the statutory sentencing guidelines and are discussed in Section 8.5. Scoring each offense variable is detailed in MCL 777.31 to MCL 777.49a (discussed in Section 8.6), and scoring the prior record variables is found in MCL 777.50 to MCL 777.57 (discussed in Section 8.5). Sentencing grids for each crime class are in MCL 777.61 to MCL 777.69 and may be found in Appendix A.

2. Appellate Review

Because the statutory sentencing guidelines are a product of legislative action, a sentencing court's discretion for departure from the guidelines is limited to the circumstances of departure contained in the statutory language. MCL 769.34(3); *Babcock*, 469 Mich at 255; *Hegwood*, 465 Mich at 439. Appellate review of sentences under the statutory guidelines[5] is governed by a two-part inquiry:

- whether the trial court's sentencing decision is within the appropriate guidelines range (if so, and absent an error in scoring or inaccurate information on which the court relied, the sentence is presumptively proportionate to the offense and the offender); or

- if the trial court's sentencing decision is not within the guidelines range, whether the trial court has articulated a "substantial and compelling reason" for

[5] Appellate review of a sentence imposed under the statutory guidelines is discussed in detail in Section 8.52.

the departure.[6] *Babcock*, 469 Mich at 261-270; MCL 769.34(3), MCL 769.34(10), and MCL 769.34(11).

A "substantial and compelling reason"[7] justifying a trial court's departure from the recommended minimum sentence under the sentencing guidelines must satisfy a four-part test:

- the reason must be based on factors that are objective and verifiable;
- the reason must "keenly" or "irresistibly" grab the reviewing court's attention; and
- the reason must be of "considerable worth" in deciding the length of the defendant's sentence.
- the reason must exist only in "exceptional cases." *Babcock*, 469 Mich at 257-258; *Fields*, 448 Mich at 62, 67-68.

Departures may not be based on a defendant's gender, race, ethnicity, alienage, national origin, legal occupation, lack of employment, representation by appointed or retained counsel, appearance in propria persona, or religion.[8] MCL 769.34(3)(a). In addition, departures may not be based on an offender's conduct or criminal history already taken into account by an offense variable or prior record variable unless the court explains why the variable does not adequately account for the conduct or history. MCL 769.34(3)(b).

Although it is no longer an appellate court's primary consideration, proportionality[9] remains relevant to appellate review of a trial court's sentencing decision. When a trial court departs from the range recommended under the statutory guidelines, the departure must be proportionate to the circumstances of the offense and the offender. *People v Smith (Gary)*, 482 Mich 292, 304 (2008).

The legislative sentencing guidelines apply to offenses committed on or after January 1, 1999. MCL 769.34(2). The judicial guidelines continue to apply to offenses committed before January 1, 1999 (cases involving the judicial guidelines

[6] See Sections 8.48, 8.49, 8.50, and 8.51 for a comprehensive discussion of sentence departures.

[7] See Section 8.48(A).

[8] See Section 8.48(B).

[9] See Section 8.29 for a detailed discussion of proportionality.

now occasionally arise in an appellate context).[10] MCL 769.34(1); *People v Reynolds*, 240 Mich App 250, 254 (2000).

Part B—Scoring the Statutory Sentencing Guidelines

8.3 Offenses to Which the Statutory Guidelines Apply

In general, the statutory sentencing guidelines apply only to felony offenses for which the penalty prescribed is an indeterminate sentence, and the sentencing court retains discretion in imposing an offender's sentence. That is, the guidelines are *not* applicable to offenses for which the applicable statute establishes a mandatory determinate penalty or a mandatory penalty of life imprisonment for conviction of the offense. MCL 769.34(5). Application of the guidelines with regard to habitual offenders, repeat drug offenders, controlled substance convictions before March 1, 2003, and probation violations are discussed in detail in later sections of this monograph.

Specifically, the statutory sentencing guidelines apply to felony offenses listed in MCL 777.11 to MCL 777.19 that were committed on or after January 1, 1999. MCL 769.34(2). The brief descriptions accompanying the statutory sections listing the felony offenses in MCL 777.11 to MCL 777.19 "are for assistance only." MCL 777.6. The language contained in the statute defining the felony offense itself governs application of the sentencing guidelines. MCL 777.6.

Application of the statutory sentencing guidelines is determined by "the date the crime was committed"; application of the guidelines is not affected by the date of conviction or the date of sentencing. See *People v Martin (George H)*, 257 Mich App 457, 459 (2003); *People v Gonzalez (Israel)*, 256 Mich App 212, 227 (2003); *People v Reynolds (Jeffrey)*, 240 Mich App 250, 253-254 (2000). MCL 769.34(2) states, in part:

> "Except as otherwise provided in this subsection or for a departure from the appropriate minimum sentence range provided for under subsection (3), the minimum sentence imposed by a court of this state for a felony enumerated in part 2 of chapter XVII committed on or after January 1, 1999 shall be within the appropriate sentence range under the version of those sentencing guidelines in effect on the date the crime was committed."

[10] Pursuant to Administrative Order No. 1998-4, 459 Mich clxxv (1998).

MCL 769.34(2) clearly anticipates the dynamic quality of the statutory sentencing guidelines by requiring that a court sentence an offender to the minimum sentence range recommended "under the version of th[e] sentencing guidelines in effect on the date the crime was committed."

A. Offense Category (Crime Group)

All felony offenses to which the sentencing guidelines apply fall into one of six offense categories. The offense category, or "crime group," to which an offense belongs determines which offense variables must be scored. The six offense categories are defined in MCL 777.5(a)-(f) as:

- crimes against a person ("person"),
- crimes against property ("property"),
- crimes involving a controlled substance ("CS"),
- crimes against public order ("pub ord"),
- crimes against public trust ("pub trst"), and
- crimes against public safety ("pub saf").

B. Crime Class

Within each "crime group," all offenses to which the guidelines apply are further categorized by the seriousness of the offense. This gradation of offense seriousness is indicated by the offense's "crime class."[11] An offense's crime class is designated by the letters "A" through "H" and "M2." "M2" (second-degree murder) and "A" represent the most serious felony offenses, while the letters "B" through "H" represent the remaining felony offenses in decreasing order of their seriousness.

An offense's crime class roughly corresponds to the maximum term of imprisonment for offenses in the same class:[12]

Class	Sentence
A	Life
B	20 years of imprisonment

[11] An offense's crime class determines which sentence grid applies to the sentencing offense. MCL 777.21(1)(c). Sentence grids are included in Appendix A.

[12] House Legislative Analysis, HB 5419, HB 5398, and SB 826 (Revised Second Analysis), September 23, 1998, 3.

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- C 15 years of imprisonment
- D 10 years of imprisonment
- E 5 years of imprisonment
- F 4 years of imprisonment
- G 2 years of imprisonment
- H Jail or other intermediate sanction

Generally, the actual statutory maximum term of imprisonment for a specific offense is consistent with the "crime class/maximum sentence" chart printed above. However, there are offenses that stray from this standard. Apparently, the statutory maximum term of imprisonment was used to divide the felonies into discrete crime classes so that most felony offenses included in a particular crime class share the same statutory maximum term of imprisonment. There is no legislative authority for the division of felonies into crime classes; therefore, there is no prohibition against assigning a felony to a crime class that is inconsistent with the statutory maximum for that felony offense. Rather, the statutory maximum, as it is stated in the actual language of the statute, governs the upper limit of punishment possible for conviction of a particular offense. See MCL 777.6.

For example, MCL 409.122(3) and MCL 750.145c(3) are both "crimes against a person," and both are designated as class D felonies.[13] MCL 777.14b; MCL 777.16g. According to the "crime class/ maximum sentence" chart above, which corresponds to language found in legislative documents discussing the statutory guidelines,[14] class D felonies are crimes for which a maximum sentence of ten years of imprisonment may be appropriate. However, the maximum term of imprisonment authorized by MCL 750.145c(3) is only seven years (falling in between the maximum terms indicated for class D and class E felonies), while the maximum term authorized by MCL 409.122(3) is 20 years. In neither of the two statutes is the statutory maximum ten years as the designation "class D" suggests. While the crime class designation in most cases will correspond to the maximum sentences listed in the chart above, the two offenses discussed here exemplify the directive of MCL 777.6: the express language of the statute defining the offense itself governs application of the sentencing guidelines.

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[13] In general, MCL 409.122(3) prohibits employing children in a child sexually abusive activity, and MCL 750.145c(3) prohibits distributing, promoting, or financing child sexually abusive activity or materials.

[14] See House Legislative Analysis, HB 5419, HB 5398, and SB 826 (Revised Second Analysis), September 23, 1998, 3.

C. Attempts

The sentencing guidelines apply to attempted crimes if the crime attempted is a felony offense. MCL 777.19(1). The guidelines do not apply to an attempt to commit a class H offense. *Id*.

An attempt to commit an offense falls within the same offense category or crime group as the offense itself. MCL 777.19(2). The crime class for an attempt is determined by the class of the offense attempted:

- if the attempted offense is in class A, B, C, or D, the attempt is a class E offense. MCL 777.19(3)(a).
- if the attempted offense is in class E, F, or G, the attempt is a class H offense. MCL 777.19(3)(b).

8.4 Presentence Investigation Report (PSIR)

A court must use a presentence investigation report (PSIR) when sentencing a defendant for a felony offense. MCL 771.14(1); *People v Hemphill*, 439 Mich 576, 579 (1992). Use of a PSIR in misdemeanor cases is discretionary. MCL 771.14(1).

> "The presentence report, mandatory for felony cases in Michigan since 1931, allows the court to make an informed judgment as to possibilities for rehabilitation, and to effectively utilize sentencing alternatives. The presentence report has been widely regarded as an effective method of supplying information essential to an informed sentencing decision." *People v Lee (Doursey)*, 391 Mich 618, 635 (1974).

The presentence investigation report is a tool by which the sentencing court gathers information important to the court's ability to fashion a sentence appropriate to the criminal and to the circumstances under which the crime was committed. *Morales v Michigan Parole Bd*, 260 Mich App 29, 45-46 (2003). Long before the statutory sentencing guidelines were enacted, the PSIR was intended to ensure that criminal sentences were tailored both to the offense committed and the offender who committed it. *People v Miles (Dwayne)*, 454 Mich 90, 97 (1997).

A copy of the PSIR (and any amended report) must be provided to the prosecutor and defense counsel or the defendant, if he or she is not represented by an attorney. MCL 771.14(7); MCR 6.425(B). The copy of the PSIR must be provided no fewer than two business days before sentencing unless the defendant waives that time period. *Id*. The prosecutor and defense counsel or the defendant, if he or she is not

represented by an attorney, have the right to keep a copy of the report (and any amended report). *Id*.

A. PSIR Content Required for all Felony Offenses

The information that must be included in a PSIR is addressed by both statute and court rule.[15] MCL 771.14(1) indicates that a PSIR is a probation officer's written report of information obtained through the officer's inquiry into the defendant's "antecedents, character, and circumstances[.]" Notwithstanding the specific language found in MCL 771.14(2)(a)-(h) (discussed below), the statute provides little guidance for completing the section of an offender's PSIR in which his or her "antecedents, character, and circumstances" are summarized. But see MCR 6.425(A)(1)(a)-(*l*), which contain very specific guidance about the information required in this section of the PSIR. These provisions are discussed in Section 8.4(C).

Several provisions in the statute and the court rule address the same information to be included in an offender's PSIR. Specifically, MCL 771.14(2)(a)-(d) and equivalent provisions of MCR 6.425(A)(1) detail four items required in a PSIR for ***all*** felony offenses:

- Based on factual information contained in the PSIR, an evaluation of and prognosis for the offender's community adjustment. MCL 771.14(2)(a); MCR 6.425(A)(1)(j).
- A written victim impact statement if requested and provided by a victim. MCL 771.14(2)(b); MCR 6.425(A)(1)(g).
- A written recommendation for a specific disposition. The recommended disposition should be based on "the evaluation and other information as prescribed by the assistant director of the department of corrections in charge of probation." MCL 771.14(2)(c); MCR 6.425(A)(1)(k).
- A statement from the prosecuting attorney regarding whether consecutive sentencing is mandatory or discretionary for the offender's sentencing. MCL 771.14(2)(d); MCR 6.425(A)(1)(i).

A PSIR must *not* include

> "any address or telephone number for the home, workplace, school, or place of worship of any victim or witness, or a family member of any victim or witness,

[15] The Department of Corrections requires that an offender's PSIR comply with its operating procedures and policy directives.

unless an address is used to identify the place of the crime or to impose conditions of release from custody that are necessary for the protection of a named individual. Upon request, any other address or telephone number that would reveal the location of a victim or witness or a family member of a victim or witness shall be exempted from disclosure unless an address is used to identify the place of the crime or to impose conditions of release from custody that are necessary for the protection of a named individual." MCL 771.14(2); MCR 6.425(A)(2).

B. PSIR Content Required for Felony Offenses Under the Sentencing Guidelines

In addition to the information contained in Section 8.2(A), the PSIR of an offender being sentenced for a felony offense under the statutory sentencing guidelines in chapter XVII (MCL 777.11 to MCL 777.19) must include the specific sentence range recommended under the guidelines based on the offender's prior record variable (PRV) and offense variable (OV) scores.[16] MCL 771.14(2)(e)(*v*). After points are assessed for the PRVs and the appropriate OVs, the point totals—the "PRV level" and the "OV level"—determine the offender's placement on the appropriate sentence grid.

In addition to the scoring of an offender's PRVs and OVs, an offender's PSIR must also include:

- The appropriate sentence grid[17] showing the recommended minimum sentence range for each conviction subject to a mandatory or discretionary consecutive sentence. MCL 771.14(2)(e)(*i*).

- Unless a conviction is subject to consecutive sentencing, the sentence grid showing the recommended minimum sentence range for each crime having the highest crime class. MCL 771.14(2)(e)(*ii*).

- Unless a conviction is subject to consecutive sentencing, the computation of OV and PRV scores used to determine the recommended minimum sentence range for the crime having the highest crime class. MCL 771.14(2)(e)(*iii*).

[16] An offender's scores were formerly calculated on a SCAO form known as a "Sentencing Information Report" or "SIR." SCAO's SIR form has been discontinued, and sentencing courts are no longer required to submit scoring information to SCAO. Administrative Order 1988-4, as amended, effective July 13, 2005. 473 Mich xviii (2005).

[17] Sentence grids are found in MCL 777.61 to MCL 777.69. Sentence grids are included in Appendix A.

- A statement regarding the applicability of intermediate sanctions. MCL 771.14(2)(e)(*iv*).

- The recommended sentence. MCL 771.14(2)(e)(*v*).

- A statement as to whether the offender has provided to the Department of Corrections personal identification documents, such as a Social Security card, photographic identity document, or birth certificate, for purposes of obtaining an operator's license or state personal identification card upon release from incarceration. MCL 771.14(2)(h).[18] See MCL 791.234c(1)(b) and MCL 28.291(1).

C. PSIR Content Defined by Court Rule

The court rule governing a probation officer's compilation of an offender's PSIR requires that the probation officer verify material information included in the report. MCR 6.425(A)(1). The statute governing PSIR content states that an offender's PSIR must include a written report of the offender's "antecedents, character, and circumstances[.]" MCL 771.14(1). According to MCR 6.425(A)(1), a PSIR is a succinct and written report of the probation officer's investigation into the defendant's background and character. In addition to any information required as discussed in previous subsections of this monograph and depending on the circumstances of the offense and the offender, a PSIR must include:

> "(a) a description of the defendant's prior criminal convictions and juvenile adjudications,
>
> "(b) a complete description of the offense and the circumstances surrounding it,
>
> "(c) a brief description of the defendant's vocational background and work history, including military record and present employment status,
>
> "(d) a brief social history of the defendant, including marital status, financial status, length of residence in the

[18] Effective February 23, 2012, 2012 PA 27, as part of a package of public acts designed to assist prisoners in obtaining operator's licenses and state personal identification cards upon their release, amended MCL 771.14(9) to require that a person committed to a state correctional facility be provided notification explaining the importance of obtaining an operator's license or a state identification card, listing the personal identification documents that are necessary to do so, and requesting that the person obtain those documents and provide them to the Department of Corrections. MCL 771.14(9)(b). 2012 PA 27 additionally amended MCL 771.14(2) to require that a PSIR include "[a] statement as to whether the person has provided the identification documents referenced in [MCL 771.14(9)(b)]." MCL 771.14(2)(h). Related provisions were amended or added by 2012 PA 24—2012 PA 26, also effective February 23, 2012. See, e.g., MCL 791.234c and MCL 28.291.

community, educational background, and other pertinent data,

"(e) the defendant's medical history, substance abuse history, if any, and, if indicated, a current psychological or psychiatric report,

"(f) information concerning the financial, social, psychological, or physical harm suffered by any victim of the offense, including the restitution needs of the victim,

* * *

"(h) any statement the defendant wishes to make,

* * *

"(*l*) any other information that may aid the court in sentencing." MCR 6.425(A)(1).

D. PSIR Content Required in Limited Situations

Crimes involving alcohol or a controlled substance. "If a person is to be sentenced for a felony or for a misdemeanor involving the illegal delivery, possession, or use of alcohol or a controlled substance," the PSIR must contain a statement, if applicable, indicating whether the person is licensed or registered under the public health code (MCL 333.16101 to MCL 333.18838). MCL 771.14(2)(f). See also MCL 769.1(14).

Diagnostic opinions. Unless a diagnostic opinion is exempt from disclosure under MCL 771.14(3), available diagnostic opinions must be included in an offender's PSIR. MCL 771.14(2)(g).

Juveniles. Before a court imposes an adult sentence on a juvenile, the Department of Human Services[19] or county juvenile agency must submit a report required by MCL 771.14a(1) (a written report about "the juvenile's antecedents, character, and circumstances").[20]

E. PSIR Must Be "Reasonably Updated"

The PSIR on which a sentencing court relies must be "reasonably updated." *People v Triplett*, 407 Mich 510, 515 (1980).

[19] Formerly the Family Independence Agency.

[20] See the Michigan Judicial Institute's *Juvenile Justice Benchbook* for additional information.

A PSIR that is "several years old" is not "reasonably updated." See *Hemphill*, 439 Mich at 580-581. "Without reaching the question of whether a four-month gap between the preparation of the original presentence report and sentencing comports with the reasonableness requirement of *Triplett*, [407 Mich 510,] . . . a defendant is entitled to be sentenced on the basis of a presentence report that is prepared especially for the offense for which he [or she] is being sentenced." *People v Anderson (Kenneth)*, 107 Mich App 62, 66-67 (1981). See also *People v McKeever*, 123 Mich App 533, 540-541 (1983), where the trial court used a five-month-old PSIR prepared for a different offense, and the Court of Appeals held "that a defendant may not be sentenced on the basis of a presentence report prepared for another offense even though the defendant was convicted after a trial. Accordingly, [a] defendant . . . is entitled to resentencing on the basis of a reasonably updated presentence report prepared for the offense for which he [or she] is to be sentenced." The Michigan Supreme Court summarized the issue:

> "Presentence reports that are several years old have been held not to be 'reasonably updated.' Reports that were prepared several months earlier, in connection with unrelated offenses, have also been held not to be adequate. A five-month-old report was found not to have been properly used where there were significant allegations that the defendant's circumstances had changed during the interim. However, the Court of Appeals also has held that a supplemental presentence report can provide the necessary updating." *Hemphill*, 439 Mich at 580-581.

An updated PSIR may not be necessary where the sentencing court has no discretion in the length of the sentence imposed. *Hemphill*, 439 Mich at 581; *People v Foy*, 124 Mich App 107, 111-112 (1983) (trial court directed to impose statutorily mandated two-year term of imprisonment for the defendant's felony-firearm conviction). The requirement that an updated PSIR be utilized at a defendant's sentencing may be satisfied by the submission of a supplementary report. *Hemphill*, *supra* at 581; *People v Hart (Leon)*, 129 Mich App 669, 674 (1983).

A defendant may not waive the requirement that a presentence report be utilized at his or her sentencing hearing. *Hemphill*, 439 Mich at 581. However, a defendant may waive the right to an *updated* PSIR at the defendant's *resentencing* as long as the waiver is made intelligently, understandingly, and voluntarily. *Hemphill*, *supra* at 581-582. The prosecution may also waive completion of an updated PSIR at a *resentencing* hearing. *Id*. Where a sentencing court relies on a defendant's previously prepared PSIR when resentencing

the defendant, the PSIR must be accurate or believed to be accurate by both parties. *Id*. A defendant may not waive preparation of an updated PSIR for resentencing if the information contained in the existing PSIR is "manifestly outdated." *Id*.

8.5 Scoring an Offender's Prior Record Variables (PRVs)

Note: Published appellate opinions discussing issues under the legislative sentencing guidelines remain limited with regard to specific prior record variables. In an effort to provide guidance to users of this monograph, unpublished opinions addressing issues not addressed by published opinions have been included in the monograph's discussion of a particular area. Unpublished opinions appear only to provide a court with information regarding how an appellate court has dealt with an issue not clearly addressed in published case law. Unpublished opinions are not precedentially binding under the rule of stare decisis, MCR 7.215(C)(1), and the first unpublished opinion appearing in a series of unpublished opinions will be footnoted with a reminder of this fact. In addition, published opinions discussing the prior judicial guidelines are included where relevant.

MCL 777.21 provides in detail the method by which an offender's recommended minimum sentence range is determined using the offender's prior record variable (PRV) and offense variable (OV) scores. Each *offense variable* to be scored is determined by the crime group to which the sentencing offense belongs. MCL 777.21(1)(a). But *all prior record variables* are scored for felony offenses to which the guidelines apply, without regard to the sentencing offense's crime group. MCL 777.21(1)(b); *People v Peltola*, 489 Mich 174, 187, 190-191 (2011). The total number of points assessed for the PRVs constitutes the offender's "PRV level," which is represented by the horizontal axis on each sentencing grid.[21]

Each PRV statute contains several statements to which a specific number of points is assigned. The statements appearing in each of the PRV statutes quantify the specific sentencing characteristic addressed by each individual PRV. For example, PRV 1 targets an offender's previous high severity felony convictions and assigns a point value to these prior convictions. The point value increases according to the number of previous qualifying convictions.

[21] Sentencing grids are found in MCL 777.61 to MCL 777.69. Each grid is also included in Appendix A.

For purposes of scoring an offender's PRVs, a "conviction" includes an assignment to youthful trainee status under MCL 762.11 *et seq*. and a conviction set aside under MCL 780.621 to MCL 780.624. MCL 777.50(4)(a).[22] Similarly, a "juvenile adjudication" for purposes of an offender's PRV score includes an adjudication set aside under MCL 712A.18e or expunged. MCL 777.50(4)(c). See *People v Smith (Ricky)*, 437 Mich 293, 302-304 (1991), where the Court explained the propriety of considering an adult defendant's expunged juvenile record at the adult defendant's sentencing hearing. The Court noted that the purpose of automatic expungement was not to protect the adult offender from any criminal consequences of his or her juvenile record, but to eliminate the social or civil stigma of delinquency and the economic disabilities that could accompany a record of juvenile delinquency. *Smith (Ricky)*, *supra* at 302-303. "The law contemplates a differentiation in sentencing between first-time offenders and recidivists, juvenile or adult." *Id*. at 303.

The general rule of MCL 777.21(1)(b), which requires that all PRVs be scored for all offenses enumerated in MCL 777.11–MCL 777.19, applies to offenders falling within the purview of MCL 777.21(4) for violations listed in MCL 777.18 (guidelines offenses based on the commission of an underlying offense), notwithstanding the absence of any reference to PRVs in MCL 777.21(4). *Peltola*, 489 Mich at 188-189.[23]

A. Ten-Year Gap Requirement for Prior Convictions and Adjudications

MCL 777.50 proscribes using a conviction or a juvenile adjudication when scoring PRVs 1 through 5 if discharge from the conviction or adjudication occurred more than ten years before commission of the sentencing offense. Specifically, MCL 777.50(1) states:

> "In scoring prior record variables 1 to 5, do not use any conviction or juvenile adjudication that precedes a period of [ten] or more years between the discharge[24] date from a conviction or juvenile adjudication and the defendant's commission of the next offense resulting in a conviction or juvenile adjudication."

To apply MCL 777.50(1), determine the length of time between the *discharge date* of the conviction or juvenile adjudication immediately preceding the *commission date* of the sentencing offense. If the time span is ten years or more, that conviction or juvenile adjudication—and any convictions or adjudications that occurred earlier—must

[22] Specific offender statuses are discussed in Section 8.5(H).

[23] See Section 8.9.

[24] Discharge from the jurisdiction of the court or the Department of Corrections. MCL 777.50(4)(b).

not be counted when scoring the offender's PRVs. MCL 777.50(2). If the time span between the commission date of the offender's sentencing offense and the discharge date of the offender's most recent conviction or juvenile adjudication is less than ten years, that prior conviction or adjudication must be counted in scoring the offender's PRVs.

If the offender's most recent conviction or adjudication must be counted in scoring his or her PRVs, and if the offender has additional prior convictions or juvenile adjudications, determine the length of time between the *commission date* of the prior conviction or adjudication first scored and the *discharge date* of the next earlier conviction or adjudication. If the time span equals or exceeds ten years, that conviction or adjudication may not be counted. If the time span is less than ten years, that conviction or adjudication may be counted in scoring the offender's PRVs. Use the process described above until a time span equal to or greater than ten years separates the discharge date of an earlier conviction or adjudication from the commission date of the next conviction or adjudication or until no previous convictions or adjudications remain. MCL 777.50(2).

It is important to document both the *commission* date and the *discharge* date of each prior conviction or juvenile adjudication. When working backward from the commission date of the sentencing offense, the discharge date of the most recent conviction or adjudication is required. If the most recent conviction or adjudication qualifies as a previous conviction under MCL 777.50, working backward from that conviction or adjudication requires the scorer to begin with that conviction's *commission* date—not the *discharge* date by which its relationship to the sentencing offense was first measured.

If a discharge date is not available, determine the date by adding the amount of time the defendant was placed on probation or the length of the minimum term of incarceration to the date the defendant was *convicted*—not the date the defendant was *sentenced*—and use that date as the discharge date. MCL 777.50(3).

> **Note:** Frequent challenges to the constitutionality of an offender's prior convictions or adjudications arise at sentencing when a defendant claims that one or more of the prior convictions or adjudications counted in scoring the PRVs was obtained without the defendant having had the benefit of counsel. The constitutional validity of a defendant's prior convictions or adjudications as they relate to the defendant's PRV level is discussed in Section 8.21.

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PRVs 1 through 5 indicate that the convictions and adjudications contemplated for use in scoring these variables must be convictions and adjudications *entered* before the commission date of the sentencing offense. MCL 777.51 to MCL 777.55. Where the commission date of the sentencing offense fell after the commission date of a previous offense but before the date on which the defendant entered a guilty plea to the previous offense, the conviction (plea) entered *after* the commission date of the sentencing offense is not a "prior conviction" for purposes of scoring PRV 5. *People v Hammond*, unpublished opinion per curiam of the Court of Appeals, issued September 18, 2003 (Docket No. 231540).[25]

Despite the range of possible offense dates (March 7, 2001 to June 7, 2001) listed in the complaint against the defendant, the evidence at trial established that the earliest date on which the defendant committed the sentencing offense was March 31, 2001, which was more than ten years after the defendant's discharge from probation for an earlier offense (March 18, 1991). Thus, the earlier offense could not be counted as a prior conviction for purposes of scoring the defendant's PRVs. *People v Ray (John)*, unpublished opinion per curiam of the Court of Appeals, issued September 9, 2003 (Docket No. 240843).

Although misdemeanor traffic offenses are not scorable under PRV 5, MCL 777.55(2), they may be considered when calculating the ten-year period under MCL 777.50(1). *People v Cook (Jason)*, unpublished opinion per curiam of the Court of Appeals, issued July 13, 2010 (Docket No. 291518). In *Cook (Jason)*, *supra*, the defendant committed the sentencing offense at issue in 2007. He was assessed ten points for PRV 5 based on two prior misdemeanor convictions from 1996 and 1997. *Cook (Jason)*, *supra*. The Court concluded that the two prior misdemeanor convictions from 1996 and 1997 were properly counted against the defendant because although the defendant's two prior misdemeanor traffic convictions—committed in 1998 and 2002—were not countable as prior offenses for purposes of PRV 5, the traffic convictions were committed within the ten-year period required by MCL 777.50(1). *Cook (Jason)*, *supra.* Therefore, the trial court was authorized to count the convictions that occurred during the ten-year period preceding the misdemeanor traffic offenses. *Cook (Jason)*, *supra.*

The Court of Appeals explained that "[p]ursuant to [MCL 777.]50, the relevant consideration is not whether ten years had passed between the discharge from the 1996 and 1997 misdemeanor offenses and the instant offense, 'but whether, starting with the present offense, there was ever a gap of [ten] or more years between

[25] Unpublished opinions are not precedentially binding under the rule of stare decisis. MCR 7.215(C)(1).

a discharge date and a subsequent commission date that would cut off the remainder of [the defendant's] prior convictions or juvenile adjudications.'" *Cook (Jason)*, *supra*, quoting *People v Billings*, 283 Mich App 538, 552 (2009). "Given [the] defendant's misdemeanor convictions in 1998 and 2002, there was never a ten-year gap in which [he] remained conviction free so as to cut off the 1996 and 1997 convictions from consideration." *Cook (Jason)*, *supra*. "'[A] conviction for purposes of determining the applicability of the ten-year rule need not be a conviction for an offense which may be scored under the guidelines. Rather, . . . any criminal conviction is sufficient to establish that the defendant did not have a ten-year period free of convictions. . . . [T]he emphasis under the ten-year rule is not on what offense was committed, but whether the defendant was able to be completely conviction-free for a period of at least ten years.'" *Cook (Jason)*, *supra*, quoting *People v Reyna*, 184 Mich App 626, 632 (1990) (addressing the ten-year rule under the judicial sentencing guidelines). See also *People v Floyd*, unpublished opinion per curiam of the Court of Appeals, issued September 20, 2011 (Docket No. 297393) (where the defendant was sentenced to lifetime probation for a prior conviction, "there [was] not a 10[-]year gap between a discharge date and the subsequent commission date because [the] defendant was never discharged from his lifetime probation sentence[]").

B. Assignment to Youthful Trainee Status Under the PRVs

Under the express language of the statutory sentencing guidelines, a defendant's previous assignment to youthful trainee status[26] is a prior conviction for purposes of scoring a defendant's PRVs. MCL 777.50(4)(a)(*i*).[27] However, the statutory sentencing guidelines do not diminish the *civil* protection provided by MCL 762.14(2) or the *conditional* protection provided in MCL 762.14(4), regarding public disclosure of records involving the prior criminal charge.

C. PRV 1—Prior High Severity Felony Convictions

1. Definitions/Scoring

To score PRV 1, first determine if the defendant has any previous convictions that qualify as "prior high severity felony convictions." A prior high severity felony conviction is:

[26] Youthful trainee status is discussed further in Section 8.43.

[27] A defendant's assignment to youthful trainee status could not be counted as a prior conviction under the judicial sentencing guidelines. See *People v Garner (Demetrick)*, 215 Mich App 218, 220 (1996).

- a conviction entered before the commission date of the sentencing offense,[28]
- for a crime listed in class M2, A, B, C, or D, or
- for a felony under federal law or the law of another state that corresponds to a crime listed in class M2, A, B, C, or D, or
- for a felony that is not listed in *any* crime class (M2, A, B, C, D, E, F, G, or H) that is punishable by a maximum term of imprisonment of ten years or more, or
- for a felony under federal law or the law of another state that does not correspond to a crime listed in *any* class (M2, A, B, C, D, E, F, G, or H) that is punishable by a maximum term of imprisonment of ten years or more. MCL 777.51(2).

If the defendant has previous convictions that qualify under PRV 1, next determine which one or more of the statements addressed by the variable apply to the offender's previous high severity felony convictions and assign the point value indicated by the applicable statement with the highest number of points. MCL 777.51(1).

Points	PRV 1—Number of prior high severity convictions
75	The offender has 3 or more prior high severity convictions. MCL 777.51(1)(a).
50	The offender has 2 prior high severity convictions. MCL 777.51(1)(b).
25	The offender has 1 prior high severity conviction. MCL 777.51(1)(c).
0	The offender has no prior high severity convictions. MCL 777.51(1)(d).

2. Case Law Under the Statutory Guidelines

For purposes of scoring an offender's prior record variables, "another state," as contemplated by MCL 777.51(2), does not include foreign states. *People v Price (Tore)*, 477 Mich 1, 5 (2006) (the defendant's previous conviction in Canada was improperly counted for purposes of PRV 1). According to the *Price (Tore)* Court:

[28] A qualifying prior high severity felony conviction must satisfy the ten-year gap requirements of MCL 777.50, as discussed in Section 8.2(A).

> "The common understanding of 'state' in Michigan law is a state of the United States, not a province of Canada and not a foreign state. Obviously, Michigan is one of the states that comprise the United States. Thus, the most obvious meaning of 'another state' in this context is one of the states, other than Michigan, that comprise the United States. A Canadian conviction is not a conviction for 'a felony under a law of the United States or another state[.]'" *Price (Tore), supra* at 4-5.

Where a defendant argued that he should not have been assessed 25 points for PRV 1 when it was unclear whether the defendant's previous conviction in California for second-degree robbery was a "high severity felony" under Michigan law, the Court observed:

> "[O]ur review of the California and Michigan definitions of robbery suggest, without more facts, that [the] defendant's California second-degree robbery conviction is akin to an unarmed robbery[29] conviction in Michigan. Accordingly, in the absence of evidence to the contrary, it appears that the trial court correctly scored PRV 1." *People v Stewart (Cedric)*, unpublished opinion per curiam of the Court of Appeals, issued September 18, 2003 (Docket No. 240376).[30]

3. Relevant Case Law Under the Judicial Guidelines

More than one prior high severity conviction arising from the same judicial proceeding may be counted when scoring PRV 1. *People v Whitney (Albert)*, 205 Mich App 435, 436 (1994). Under the judicial sentencing guidelines, the Court of Appeals affirmed the defendant's score of 50 points for PRV 1 where both qualifying previous convictions resulted from a single judicial proceeding. *Whitney (Albert)*, *supra* at 436. In *Whitney (Albert)*, *supra* at 436, the Court emphasized that the purpose of PRV 1 is to accurately reflect an offender's previous criminal history. According to the Court:

> "We can think of no sensible reason why a person who is convicted of multiple crimes at one judicial

[29]Unarmed robbery under Michigan law, MCL 750.88, is a class C felony, and class C felonies are among the list of offenses under Michigan law, federal law, or *the law of another state* to be counted as a prior high severity felony conviction for purposes of scoring PRV 1. MCL 777.51(2)(b).

[30] Unpublished opinions are not precedentially binding under the rule of stare decisis. MCR 7.215(C)(1).

> proceeding, whether those crimes were committed during a single criminal episode or not, should receive the same score under PRV[]1 as a person who committed only one crime during a single criminal act." *Whitney (Albert)*, 205 Mich App at 436-437.

D. PRV 2—Prior Low Severity Felony Convictions

1. Definitions/Scoring

To score PRV 2, determine whether the offender has any convictions that qualify as "prior low severity felony convictions" under this variable. A prior low severity felony conviction is:

- a conviction entered before the commission date of the sentencing offense,[31]
- for a crime listed in class E, F, G, or H, or
- for a felony under federal law or the law of another state that corresponds to a crime listed in class E, F, G, or H, or
- for a felony that is not listed in *any* crime class (M2, A, B, C, D, E, F, G, or H) that is punishable by a maximum term of imprisonment of less than ten years, or
- for a felony under federal law or the law of another state that does not correspond to a crime listed in *any* class (M2, A, B, C, D, E, F, G, or H) that is punishable by a maximum term of imprisonment of less than ten years. MCL 777.52(2).

If the defendant has previous convictions to which PRV 2 applies, determine which of the statements listed in the variable apply to those prior low severity felony convictions and assign the point value corresponding to the applicable statement having the highest number of points. MCL 777.52(1).

Points	PRV 2—Number of prior low severity convictions
30	The offender has 4 or more prior low severity convictions. MCL 777.52(1)(a).

[31] A qualifying prior low severity felony conviction must satisfy the ten-year gap requirements of MCL 777.50, as discussed inSection 8.5(A).

20	The offender has 3 prior low severity convictions. MCL 777.52(1)(b).
10	The offender has 2 prior low severity convictions. MCL 777.52(1)(c).
5	The offender has 1 prior low severity conviction. MCL 777.52(1)(d).
0	The offender has no prior low severity convictions. MCL 777.52(1)(e).

2. Case Law Under the Statutory Guidelines

For purposes of scoring an offender's prior record variables, "another state" does not include foreign states. *Price (Tore)*, 477 Mich at 5 (the defendant's previous conviction in Canada was improperly counted for purposes of PRV 1). Relevant language used in PRV 2 is the same as the language used in PRV 1—the variable at issue in *Price (Tore)*. MCL 777.52(2) defines a prior low severity felony conviction as a conviction for "[a] crime listed in offense class E, F, G, or H [*or for a*] *felony under a law of the United States or another state* that corresponds to a crime listed in offense class E, F, G, or H." (Emphasis added.) According to the *Price (Tore)* Court:

> "The common understanding of 'state' in Michigan law is a state of the United States, not a province of Canada and not a foreign state. Obviously, Michigan is one of the states that comprise the United States. Thus, the most obvious meaning of 'another state' in this context is one of the states, other than Michigan, that comprise the United States. A Canadian conviction is not a conviction for 'a felony under a law of the United States or another state[.]'" *Price (Tore)*, *supra* at 4-5.

An Indiana felony conviction arising from the defendant's purchase of a stolen firearm constituted a prior low severity felony conviction under the law of another state for purposes of scoring PRV 2, even though the defendant served only one year in jail for the Indiana felony. *People v Meeks*, 293 Mich App 115, 116-119 (2011). The Court, noting that Indiana law did not provide for a misdemeanor-level violation for the defendant's conduct, concluded that "a felony remains a felony even if a jurisdiction's peculiarities of sentencing cause the sentence to mimic one for a misdemeanor." *Meeks*, *supra* at 118. The Court further noted that even though the defendant's conduct of purchasing a stolen firearm for $175 constituted a violation of MCL 750.535(5) under Michigan law (misdemeanor receiving and concealing), the defendant's conduct more specifically fell

under MCL 750.535b, receiving a stolen firearm, which is a class E felony under Michigan law. *Meeks*, *supra* at 118-119.

A felony-firearm conviction constitutes a prior low severity felony conviction that may be assessed points for purposes of PRV 2. *People v Dent*, unpublished opinion per curiam of the Court of Appeals, issued September 21, 2010 (Docket No. 290832)[32] (MCL 777.52(2)(c) "specifically incorporates felonies that are not listed in the offense classes" with maximum terms of imprisonment that are less than ten years; felony-firearm is not listed in the offense classes, and first and second felony-firearm convictions have sentences of two and five years, respectively). See also *People v Williams (Timothy)*, unpublished opinion per curiam of the Court of Appeals, issued November 18, 2010 (Docket No. 288704) (trial court properly assessed five points for PRV 2 for the defendant's felony-firearm conviction, because "felony-firearm fits the plain wording of [MCL 777.52(2)(c)]"—a felony not listed in any offense class that is punishable by a maximum term of imprisonment of less than ten years).

A defendant's previous *misdemeanor* conviction for "joyriding" under MCL 750.414 qualifies as a prior low severity felony conviction for purposes of scoring PRV 2. *People v Wallace (Terrance)*, unpublished opinion per curiam of the Court of Appeals, issued June 5, 2003 (Docket No. 238355). In *Wallace (Terrance)*, the defendant argued that his previous conviction could not be properly counted under PRV 2 because the statute defined the prohibited conduct as a misdemeanor. *Wallace (Terrance)*, *supra*. The Court acknowledged that the statutory language of MCL 750.414 indicated that conduct in violation of the statute was a misdemeanor punishable by no more than two years of imprisonment, but notwithstanding that language, the Court noted that "MCL 777.52 expressly defines 'low severity felony conviction' to include a conviction for a crime listed in offense class 'H.' MCL 777.16u expressly lists a violation of MCL 750.414, i.e., joyriding, in offense class 'H.'" *Wallace (Terrance)*, *supra*. Thus, even though joyriding is identified as a misdemeanor in MCL 750.414, it falls within the plain and unambiguous definition of 'low severity felony conviction' provided by MCL 777.52, which governs the scoring of PRV 2." *Wallace (Terrance)*, *supra*.

3. Relevant Case Law Under the Judicial Guidelines

It is permissible to use the same previous conviction for purposes of scoring PRV 2 and PRV 6.[33] *People v Vonins (After*

[32] Unpublished opinions are not precedentially binding under the rule of stare decisis. MCR 7.215(C)(1).

Remand), 203 Mich App 173, 176 (1993). In *Vonins*, the defendant argued that the trial court's assessment of points under PRV 2 for the defendant's previous controlled substance offense conviction precluded the court from using that same conviction to assess him points under PRV 6. *Vonins*, *supra* at 176. The Court of Appeals explained that PRV 6 was a separate category that addressed a situation different from the situation addressed in PRV 2:

> "PRV 2 provides for the assessment of points for every prior low[]severity felony conviction, with an increase in the number of points in correlation to the number of such convictions. PRV 6 provides for the assessment of points if, at the time of the instant offense, the defendant had a relationship with the criminal justice system . . . . Additional points are to be assessed under PRV 6 when there is a 'post-conviction relationship,' such as being on probation or parole when the instant offense was committed . . . ." *Vonins*, 203 Mich App at 176-177.

E. PRV 3—Prior High Severity Juvenile Adjudications

1. Definitions/Scoring

A "prior high severity juvenile adjudication" is a juvenile adjudication:

- for conduct that would be a crime listed in class M2, A, B, C, or D if committed by an adult, or
- for conduct that would be a felony under federal law or the law of another state that corresponds to a crime listed in class M2, A, B, C, or D if committed by an adult, or
- for conduct that, if committed by an adult, would be a felony that is not listed in *any* crime class (M2, A, B, C, D, E, F, G, or H) that is punishable by a maximum term of imprisonment of ten years or more, or
- for conduct that, if committed by an adult, would be a felony under federal law or the law of another state that does not correspond to a crime listed in *any* class (M2, A, B, C, D, E, F, G, or H) that is punishable by a

[33] PRV 6 deals with an offender's relationship to the criminal justice system at the time the sentencing offense was committed. See Section 8.5(H).

maximum term of imprisonment of ten years or more, and

- for which the order of disposition was entered before the commission date of the sentencing offense.[34] MCL 777.53(2).

If the offender has previous adjudications to which PRV 3 applies, determine which one or more of the statements addressed by PRV 3 apply to the offender and assign the point value indicated for the applicable statement with the highest number of points. MCL 777.53(1).

Points	PRV 3—Number of prior high severity juvenile adjudications
50	The offender has 3 or more prior high severity juvenile adjudications. MCL 777.53(1)(a).
25	The offender has 2 prior high severity juvenile adjudications. MCL 777.53(1)(b).
10	The offender has 1 prior high severity juvenile adjudication. MCL 777.53(1)(c).
0	The offender has no prior high severity juvenile adjudications. MCL 777.53(1)(d).

2. Case Law Under the Statutory Guidelines

For purposes of scoring an offender's prior record variables, "another state" does not include foreign states. *Price (Tore)*, 477 Mich at 5 (the defendant's previous conviction in Canada was improperly counted for purposes of PRV 1). Relevant language used in PRV 3 is the same as the language used in PRV 1—the variable at issue in *Price (Tore)*. MCL 777.53(2) defines a prior high severity juvenile adjudication as "a juvenile adjudication for conduct that would be . . . if committed by an adult . . . [*a*] *felony under a law of the United States or another state* corresponding to a crime listed in offense class M2, A, B, C, or D." (Emphasis added.) According to the *Price (Tore)* Court:

> "The common understanding of 'state' in Michigan law is a state of the United States, not a province of Canada and not a foreign state. Obviously, Michigan is one of the states that comprise the United States. Thus, the most obvious meaning of 'another state' in this context is one of the states, other than Michigan, that comprise the United States. A Canadian conviction is not a conviction

[34] A qualifying prior high severity juvenile adjudication must satisfy the ten-year gap requirements of MCL 777.50, as discussed in Section 8.5(A).

for 'a felony under a law of the United States or another state[.]'" *Price (Tore)*, *supra* at 4-5.

F. PRV 4—Prior Low Severity Juvenile Adjudications

1. Definitions/Scoring

A "prior low severity juvenile adjudication" is an adjudication:

- for conduct that would be a crime listed in class E, F, G, or H if committed by an adult, or
- for conduct that would be a felony under federal law or the law of another state that corresponds to a crime listed in class E, F, G, or H if committed by an adult, or
- for conduct that, if committed by an adult, would be a felony that is not listed in *any* crime class (M2, A, B, C, D, E, F, G, or H) that is punishable by a maximum term of imprisonment of less than ten years, or
- for conduct that, if committed by an adult, would be a felony under federal law or the law of another state that does not correspond to a crime listed in *any* class (M2, A, B, C, D, E, F, G, or H) that is punishable by a maximum term of imprisonment of less than ten years, and
- for which the order of disposition was entered before the commission date of the sentencing offense.[35] MCL 777.54(2).

If the offender has previous adjudications to which PRV 4 applies, determine which one or more of the statements addressed by PRV 4 apply to the offender and assign the point value indicated for the applicable statement with the highest number of points. MCL 777.54(1).

Points	PRV 4—Number of prior low severity juvenile adjudications
20	The offender has 6 or more prior low severity juvenile adjudications. MCL 777.54(1)(a).
15	The offender has 5 prior low severity juvenile adjudications. MCL 777.54(1)(b).

[35] A qualifying prior low severity juvenile adjudication must satisfy the ten-year gap requirements of MCL 777.50, as discussed in Section 8.5(A).

10	The offender has 3 or 4 prior low severity juvenile adjudications. MCL 777.54(1)(c).
5	The offender has 2 prior low severity juvenile adjudications. MCL 777.54(1)(d).
2	The offender has 1 prior low severity juvenile adjudication. MCL 777.54(1)(e).
0	The offender has no prior low severity juvenile adjudications. MCL 777.54(1)(f).

2. Case Law Under the Statutory Guidelines

For purposes of scoring an offender's prior record variables, "another state" does not include foreign states. *Price (Tore)*, 477 Mich at 5 (the defendant's previous conviction in Canada was improperly counted for purposes of PRV 1). Relevant language used in PRV 4 is the same as the language used in PRV 1—the variable at issue in *Price (Tore)*. MCL 777.54(2) defines a prior low severity juvenile adjudication as "a juvenile adjudication for conduct that would be . . . if committed by an adult . . . [*a*] *felony under a law of the United States or another state* corresponding to a crime listed in offense class E, F, G, or H." (Emphasis added.) According to the *Price (Tore)* Court:

> "The common understanding of 'state' in Michigan law is a state of the United States, not a province of Canada and not a foreign state. Obviously, Michigan is one of the states that comprise the United States. Thus, the most obvious meaning of 'another state' in this context is one of the states, other than Michigan, that comprise the United States. A Canadian conviction is not a conviction for 'a felony under a law of the United States or another state[.]'" *Price (Tore)*, *supra* at 4-5.

G. PRV 5—Prior Misdemeanor Convictions or Prior Misdemeanor Juvenile Adjudications

1. Definitions/Scoring

A "prior misdemeanor conviction" is a conviction:

- for a misdemeanor offense under Michigan law or the law of a political subdivision of Michigan, or under the law of another state or a political subdivision of another state, or under federal law,
- if the conviction was entered before the commission date of the sentencing offense.[36] MCL 777.55(3)(a).

A "prior misdemeanor juvenile adjudication" is a juvenile adjudication:

- for conduct that, if committed by an adult, would be a misdemeanor under Michigan law or the law of a political subdivision of Michigan, or under the law of another state or a political subdivision of another state, or under federal law,
- if the order of disposition for the juvenile adjudication was entered before the commission date of the sentencing offense.[37] MCL 777.55(3)(b).

Score PRV 5 by determining which one or more of the statements addressed by the variable apply to the offender and assigning the point value indicated for the applicable statement with the highest number of points. MCL 777.55(1).

Points	PRV 5—Number of prior misdemeanor convictions or prior misdemeanor juvenile adjudications
20	The offender has 7 or more prior misdemeanor convictions or prior misdemeanor juvenile adjudications. MCL 777.55(1)(a).
15	The offender has 5 or 6 prior misdemeanor convictions or prior misdemeanor juvenile adjudications. MCL 777.55(1)(b).
10	The offender has 3 or 4 prior misdemeanor convictions or prior misdemeanor juvenile adjudications. MCL 777.55(1)(c).
5	The offender has 2 prior misdemeanor convictions or prior misdemeanor juvenile adjudications. MCL 777.55(1)(d).
2	The offender has 1 prior misdemeanor conviction or prior misdemeanor juvenile adjudication. MCL 777.55(1)(e).
0	The offender has no prior misdemeanor convictions or prior misdemeanor juvenile adjudications. MCL 777.55(1)(f).

Additional requirements of PRV 5 may eliminate the use of prior convictions or adjudications that would otherwise qualify under this variable:

- A prior conviction used to enhance the sentencing offense to a felony may not be counted under PRV 5. MCL 777.55(2)(a)-(b).

[36] A qualifying prior misdemeanor conviction must satisfy the ten-year gap requirements of MCL 777.50, as discussed in Section 8.5(A).

[37] A qualifying prior misdemeanor juvenile adjudication must satisfy the ten-year gap requirements of MCL 777.50, as discussed in Section 8.5(A).

- Only prior convictions and adjudications for offenses expressly listed in PRV 5 may be counted as prior misdemeanor convictions or prior misdemeanor juvenile adjudications for purposes of scoring PRV 5. These convictions and adjudications are as follows:

  - prior misdemeanor convictions or prior misdemeanor juvenile adjudications that are offenses against a person or property, weapons offenses, or offenses involving controlled substances, and

  - prior misdemeanor convictions and prior misdemeanor juvenile adjudications for the operation or attempted operation of a vehicle, vessel, ORV, snowmobile, aircraft, or locomotive while the offender is under the influence of or impaired by alcohol, a controlled substance, or a combination of alcohol and a controlled substance. MCL 777.55(2)(a)-(b).

2. Case Law Under the Statutory Guidelines

For purposes of scoring an offender's prior record variables, "another state" does not include foreign states. *Price (Tore)*, 477 Mich at 5 (the defendant's previous conviction in Canada was improperly counted for purposes of PRV 1). Relevant language used in PRV 5 is the same as the language used in PRV 1—the variable at issue in *Price (Tore)*. MCL 777.55(3)(a) defines prior misdemeanor conviction as "a conviction for a misdemeanor under a law of this state, a political subdivision of this state, *another state*, a political subdivision of another state, or the United States[.]" (Emphasis added.) MCL 777.55(3)(b) defines prior misdemeanor juvenile adjudication as "a juvenile adjudication for conduct that if committed by an adult would be a misdemeanor under a law of this state, a political subdivision of this state, *another state*, a political subdivision of another state, or the United States[.]" (Emphasis added.) According to the *Price (Tore)* Court:

> "The common understanding of 'state' in Michigan law is a state of the United States, not a province of Canada and not a foreign state. Obviously, Michigan is one of the states that comprise the United States. Thus, the most obvious meaning of 'another state' in this context is one of the states, other than Michigan, that comprise the United States. A Canadian conviction is not a conviction for 'a felony [or misdemeanor] under a law of the

> United States or another state[.]'" *Price (Tore)*, *supra* at 4-5.

A defendant's conviction for being a minor operating a vehicle with any bodily alcohol content—the "zero-tolerance provision," MCL 257.625(6)—constitutes a misdemeanor for operating a vehicle while under the influence of alcohol or impaired by alcohol for purposes of scoring PRV 5. *People v Bulger*, 291 Mich App 1, 6-7 (2010). Although the "prior conviction under the zero-tolerance provision did not require proof that [the defendant] was actually under the influence of alcohol or was impaired by alcohol[,]" "the sentencing [guidelines] statute [should be read] broadly to refer to the drunk-driving statute as a whole, rather than to the specific crimes that require proof of operating a vehicle 'under the influence of or impaired by' alcohol." *Bulger*, *supra* at 6, 7.

A discharge and dismissal following a defendant's successful completion of probation under the deferred adjudication provisions of MCL 333.7411 is not a prior misdemeanor conviction for purposes of scoring PRV 5. *People v James (Derrick)*, 267 Mich App 675, 679-680 (2005). "MCL 333.7411(1) specifically states that the discharge and dismissal procedure that it authorizes is 'without adjudication of guilt' and 'is not a conviction for purposes of . . . disabilities imposed by law upon conviction of a crime . . . .'" *James (Derrick), supra* at 679-680.

Previous non-OUIL alcohol-related convictions are not convictions involving a controlled substance for purposes of scoring PRV 5. *People v Endres*, 269 Mich App 414, 416-417 (2006).

Misdemeanor offenses are not categorized as are felony offenses under the sentencing guidelines. Consequently, a trial court must often determine the nature of a misdemeanor crime for purposes of scoring PRV 5. *People v Cadwell*, unpublished memorandum opinion of the Court of Appeals, issued December 20, 2002 (Docket No. 236381). In *Cadwell*, *supra*, the appellate panel concluded:

> "Unlike felonies, the Legislature did not place misdemeanors into categories. In the absence of more specific legislative guidance, it was for the trial court to determine whether [the] defendant's misdemeanor conviction for disorderly jostling, MCL 750.167(1)(k), was a crime against a person. The court noted that the jostling offense involved unconsented touching of other persons. The trial court did not err in finding that this was an offense

against a person that should be scored under MCL 777.55." *Cadwell, supra.*

H. PRV 6—Relationship to the Criminal Justice System

1. Definitions/Scoring

PRV 6 assesses points based on an offender's relationship to the criminal justice system. MCL 777.56. PRV 6 is scored by determining which of the statements addressed by the variable apply to the offender and assigning the point value indicated by the applicable statement with the highest number of points. MCL 777.56(1). PRV 6 should be assessed against an offender who is involved with the criminal justice system of Michigan, another state, or the federal criminal justice system. MCL 777.56(1)-(2).

Points	PRV 6—Offender's relationship to the criminal justice system
20	The offender is a prisoner of the department of corrections or serving a sentence in jail. MCL 777.56(1)(a). This includes an offender who is an escapee. MCL 777.56(3)(b).
15	The offender is incarcerated in jail awaiting adjudication or sentencing on a conviction or probation violation. MCL 777.56(1)(b).
10	The offender is on parole, probation, or delayed sentence status or on bond awaiting adjudication or sentencing for a felony. MCL 777.56(1)(c).
5	The offender is on probation or delayed sentence status or on bond awaiting adjudication or sentencing for a misdemeanor. MCL 777.56(1)(d).
0	The offender has no relationship to the criminal justice system. MCL 777.56(1)(e).

"Delayed sentence status" includes, but is not limited to, an offender assigned or deferred under:

- MCL 333.7411 (deferral for certain controlled substance offenses),
- MCL 600.1076(4) (deferral involving drug treatment courts),[38]
- MCL 750.350a (deferral under limited circumstances for parental kidnapping),

[38] Effective January 1, 2005. 2004 PA 220.

- MCL 750.430 (deferral for impaired healthcare professionals),[39]
- MCL 762.11 to MCL 762.15 (assignment to youthful trainee status), and
- MCL 769.4a (deferral under limited circumstances for domestic assault). MCL 777.56(3)(a).[40]

2. Case Law Under the Statutory Guidelines

A defendant has a prior "relationship with the criminal justice system" for purposes of scoring PRV 6 when disposition of a misdemeanor crime committed by the defendant is pending at the time the defendant committed the sentencing offense. *Endres*, 269 Mich App at 422-423.

Where a defendant commits the sentencing offense after having been charged with a misdemeanor for which bond was granted but later forfeited, five points are properly assessed under PRV 6 even if the defendant was not technically "on bond" when he committed the sentencing offense. *People v Johnson (Angelo)*, 293 Mich App 79, 84-90 (2011). The Court stated:

> "Admittedly, where an offender commits an offense after his [or her] bond has been forfeited or revoked, he [or she] is not 'on bond,' as PRV 6 states. However, where an offender's bond is revoked, he [or she] is also not free and clear of the criminal justice system. A condition of any pretrial release (bond) is that the defendant will appear in court as required. We note that even if a defendant's bond is forfeited, the condition that the defendant appear in court is still in place and is an inherent condition of any pretrial release. Forfeiting the monetary part of a bond does not relieve the defendant of the obligation to comply with the condition that he [or she] appear as required by the court." *Johnson (Angelo)*, 293 Mich App at 88-89.

Thus, a five-point score for PRV 6 was not improper where the defendant committed a misdemeanor for which bond was granted and subsequently revoked because "the ramifications for that charge remain." *Johnson (Angelo)*, 293 Mich App at 89-90.

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[39] Effective January 1, 2005. 2004 PA 220.

[40] Specific statutes under which an offender's sentence may be delayed are discussed in detail in Sections 8.41, 8.42, and 8.43.

Because the defendant's misdemeanor charge was still pending, the Court could not "classify [him] as having 'no relationship' with the criminal justice system." *Johnson (Angelo)*, *supra* at 90.

Because PRV 6 accounts for an offender's conduct *before* commission of the sentencing offense, an offender's PRV 6 score may not be adjusted to account for an offender's subsequent conduct related to a probation violation. *People v Hendrick*, 261 Mich App 673, 682 (2004), aff'd and rev'd on other grounds 472 Mich 555 (2005). PRV 6 does not apply to conduct arising after the commission of the sentencing offenses. *Hendrick*, *supra* at 682.

A score of ten points is appropriate for PRV 6 where the defendant absconded from probation 20 years before committing the sentencing offense, because "'a defendant's period of probation is tolled when he [or she] absconds from probationary supervision'" and "'[a]n absconding defendant should not be allowed to benefit from his [or her] wrongful noncompliance with the terms of his [or her] probation order.'" *People v Dendel (On Remand)*, unpublished opinion per curiam of the Court of Appeals, issued September 11, 2008 (Docket No. 247391), vacated in part on other grounds 485 Mich 903, quoting *People v Ritter*, 186 Mich App 701, 711 (1991).[41]

The trial court properly assessed 20 points for PRV 6 where the defendant committed the sentencing offense after he escaped from his court-ordered community placement following a juvenile adjudication. *People v Kelly (DeJuan)*, unpublished opinion per curiam of the Court of Appeals, issued April 13, 2010 (Docket No. 289689). The defendant argued that the trial court abused its discretion in scoring PRV 6 because he was a juvenile escapee, as opposed to an adult prisoner. *Kelly (DeJuan)*, *supra*. However, the Court of Appeals held that "[n]othing in PRV 6 indicates that it was not meant to apply to an escapee from juvenile confinement." *Kelly (DeJuan)*, *supra*.

3. Relevant Case Law Under the Judicial Guidelines

Under the judicial sentencing guidelines, the Court of Appeals determined that the trial court properly assessed a defendant

[41] *People v Dendel* has a lengthy history. The Michigan Supreme Court reversed the first Court of Appeals unpublished opinion, issued July 18, 2006, and remanded the case to the Court of Appeals for consideration of remaining appellate issues. *People v Dendel*, 481 Mich 114 (2008). On both parties' motions for rehearing, the Michigan Supreme Court reiterated its reversal of the Court of Appeals opinion and its remand of the case to the Court of Appeals for consideration of appellate issues raised but not yet considered. The case discussed above is the resulting Court of Appeals decision from the remand. Both parties appealed the decision in that case and the outcome of those subsequent appeals and opinions involve issues not related to the Court of Appeals decision regarding the scoring of PRV 6.

five points under PRV 6 where the defendant's bail was revoked when he failed to appear for a hearing following his arrest for an offense committed before the sentencing offense. *People v Lyons (Kenyatta) (After Remand)*, 222 Mich App 319, 322-323 (1997). Applying the rules of statutory interpretation to the judicial sentencing guidelines then in effect, the Court noted that "the guidelines do not state that five points can be assessed *only* in the enumerated circumstances." *Lyons (Kenyatta)*, *supra* at 322. The Court explained that "[i]t would be absurd to suggest that the drafters of the guidelines intended that a defendant would receive more lenient treatment by being, in the words of the trial court, a 'runaway' from the criminal justice system." *Id*.

Five points is appropriately scored under PRV 6 when a defendant is on bond for a previous offense at the time he or she committed the sentencing offense, even when the defendant is ultimately acquitted of the first offense. *People v Jarvi*, 216 Mich App 161, 164-165 (1996). "The obvious intent of awarding five points to an individual who commits a crime while on bond or bail has no nexus to issues of guilt or innocence of the underlying charge. Rather, PRV 6 simply recognizes the more egregious nature of an offense committed while a prior relationship to the criminal justice system exists." *Jarvi*, *supra* at 165.

I. PRV 7—Subsequent or Concurrent Felony Convictions

1. Definitions/Scoring

PRV 7 assesses points against an offender who is convicted of multiple felonies or is convicted of a felony offense after his or her commission of the sentencing offense. MCL 777.57. The statute defining PRV 7 specifically prohibits the use of certain felony convictions for purposes of scoring PRV 7:

- A conviction for felony-firearm may not be counted under PRV 7. MCL 777.57(2)(b).
- A concurrent felony conviction that will result in a mandatory consecutive sentence may not be counted under PRV 7. MCL 777.57(2)(c).
- A concurrent felony conviction that will result in a consecutive sentence under MCL 333.7401(3) may not be counted under PRV 7.[42] MCL 777.57(2)(c).[43]

[42] MCL 333.7401(3) permits a court to order that a sentence imposed for a violation of MCL 333.7401(2)(a) run consecutively to a term of imprisonment imposed for another felony conviction.

Score PRV 7 by determining which of the statements apply to the offender and assigning the point value corresponding to the applicable statement with the highest number of points. MCL 777.57(1).

> **Note:** Only subsequent or concurrent *felony* convictions may be counted under PRV 7. Misdemeanor convictions are not included.

Points	PRV 7—Number of subsequent or concurrent felony convictions
20	The offender has 2 or more subsequent or concurrent felony convictions. MCL 777.57(1)(a).
10	The offender has 1 subsequent or concurrent felony conviction. MCL 777.57(1)(b).
0	The offender has no subsequent or concurrent felony convictions. MCL 777.57(1)(c).

2. Case Law Under the Statutory Guidelines

PRV 7 is an exception to the general rule that prior record variables account only for an offender's prior conduct, because PRV 7 assigns a point value for convictions that occur concurrent to the sentencing offense and convictions that occur *after* the sentencing offense. *Peltola*, 489 Mich at 187 n 29.

See also *People v Rapley*, unpublished opinion per curiam of the Court of Appeals, issued March 18, 2003 (Docket No. 238704) (any "inherent inconsistency" in counting an offender's *concurrent* conviction for purposes of a *prior* record variable does not trump the clear language of MCL 777.57, which states that an offender is to be assessed points under PRV 7 for felony convictions obtained at the same time as the conviction for the sentencing offense and felony convictions obtained after the commission date of the sentencing offense).[44]

For purposes of scoring PRV 7, where a defendant is convicted of multiple offenses, the number of concurrent convictions does not include the sentencing offense. *People v Pickett*, unpublished opinion per curiam of the Court of Appeals, issued May 6, 2004 (Docket No. 246138).

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[43] The prohibition against counting an offense under MCL 333.7401(2)(a) for which a consecutive sentence may be imposed under MCL 333.7401(3) was added by 2002 PA 666, effective March 1, 2003.

[44] Unpublished opinions are not precedentially binding under the rule of stare decisis. MCR 7.215(C)(1).

PRV 7's instruction not to count a concurrent conviction if the conviction will result in the imposition of a mandatory consecutive sentence does not apply to consecutive sentences resulting from an offender's parole violation. *People v Clark (Dale)*, unpublished opinion per curiam of the Court of Appeals, issued October 2, 2003 (Docket No. 240139). The convictions prohibited from inclusion under PRV 7 are those where an offender will be sentenced for at least one concurrent or subsequent conviction at the time of the sentencing offense, and the concurrent or subsequent conviction will result in a mandatory consecutive sentence. *Clark (Joseph)*, *supra*. PRV 7 does not apply to consecutive sentences that may result from a *separate* parole violation hearing, because a separate parole violation hearing is not a concurrent felony conviction for purposes of MCL 777.57(2)(c). *Clark (Joseph)*, *supra*.

8.6 Scoring an Offender's Offense Variables (OVs)

Note: Published appellate opinions discussing issues under the legislative sentencing guidelines remain limited with regard to specific offense variables. In an effort to provide guidance to users of this monograph, unpublished opinions addressing issues not addressed by published opinions have been included in the monograph's discussion of a particular area. Unpublished opinions appear only to provide a court with information regarding how an appellate court has dealt with an issue not clearly addressed in published case law. Unpublished opinions are not precedentially binding under the rule of stare decisis, MCR 7.215(C)(1), and the first unpublished opinion appearing in a series of unpublished opinions will be footnoted with a reminder of this fact. In addition, published opinions discussing the prior judicial guidelines are included where relevant.

The elements of a crime and, as determined by the Legislature, the aggravating or mitigating factors relevant to the commission of an offense constitute the crime's "offense characteristics." MCL 769.31(d). Offense characteristics are measured by scoring the appropriate offense variables (OVs). There are 20 offense variables, some of which have been amended since the guidelines first went into effect.

Each OV consists of several statements to which a specific number of points is assigned. These statements quantify the specific offense characteristic addressed by each individual OV. For example, OV 2 targets the lethal potential of any weapon possessed by the offender when the sentencing offense was committed. MCL 777.32. Under OV 2, a point value is assigned based on the specific type of weapon possessed,

and the point value increases according to the deadly potential of the weapon. Where more than one statement under a specific OV applies to the circumstances of an offense, the applicable statement with the highest number of points is used to assess the points attributable to the offender for that OV.

A. OVs According to Crime Group

MCL 777.21 details the method by which an offender's recommended minimum sentence range is determined using the offender's prior record variable (PRV) and OV scores. The offense category or "crime group" to which the sentencing offense belongs "[is] used to determine which of the OVs to score for [the] crime *and* how those OVs should be scored." *People v Bonilla-Machado*, 489 Mich 412, 422 (2011); see also MCL 777.21(1)(a). The total number of points assessed for all OVs scored for an offense constitutes the offender's "OV level," which is represented by the vertical axis on each sentencing grid.[45] MCL 777.21(1)(a).

"[T]he six named offense category designations used in MCL 777.5 and [MCL] 777.11 through [MCL] 777.19 apply to the scoring of offense variables[;]" therefore, an offense that is statutorily designated as a "crime against public safety" may not also be considered a "crime against a person" for purposes of scoring an offense variable. *Bonilla-Machado*, 489 Mich at 416 (the Court of Appeals wrongly decided that assault of a prison guard, a crime against public safety according to its statutory designation in MCL 777.16j, "is *also* a crime against a person because, obviously, a prison guard is a person"). In *Bonilla-Machado*, *supra* at 426, the Michigan Supreme Court, noting that "MCL 777.21(1)(a) explicitly instructs a court to first '[f]ind the *offense category* for the offense from' MCL 777.11 through [MCL] 777.19 and then 'determine the offense variables to be scored for that *offense category*[,]'" concluded that "[t]he use of the named offense categories throughout the sentencing guidelines chapter indicates legislative intent to have the offense categories applied in a uniform manner, including when they are applied in the offense variable statutes." Accordingly, "a felony statutorily designated as a 'crime against public safety' may not be used to establish a 'pattern of felonious criminal activity involving three or more crimes against a person' for purposes of scoring OV 13." *Bonilla-Machado*, *supra* at 430-431. See also *People v Pearson (Jermaine)*, 490 Mich 984 (2012) (because "conspiracy is classified as a 'crime against public safety[]'" under MCL 777.18, conspiracy to commit armed robbery may not be considered when scoring OV 13, even though armed robbery is classified under MCL

[45] Sentencing grids are found in MCL 777.61 to MCL 777.69. Each grid is also included in Appendix A.

777.16y as a "'crime[] against a person'"; MCL 777.21(4) "does not allow the offense category underlying the conspiracy to dictate the offense category of the conspiracy itself for purposes of scoring OV 13[]").

1. Crimes Against a Person (Person)

"Person" is the designation used to identify crimes against a person in the statutory lists of felonies to which the guidelines apply. MCL 777.5(a).

For all crimes against a person, OVs 1, 2, 3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 19, and 20 are to be scored. MCL 777.22(1).

Score OVs 5 and 6 if the sentencing offense is homicide, attempted homicide, conspiracy or solicitation to commit a homicide, or assault with intent to commit murder. MCL 777.22(1).

Score OV 16 if the sentencing offense is a violation or attempted violation of MCL 750.110a (home invasion). MCL 777.22(1).

Score OVs 17 and 18 if the offense or attempted offense involved the operation of a vehicle, vessel, ORV, snowmobile, aircraft, or locomotive. MCL 777.22(1).

2. Crimes Against Property (Property)

"Property" is the term used to identify crimes against property in the statutory lists of felonies to which the guidelines apply. MCL 777.5(b).

For all crimes against property, OVs 1, 2, 3, 4, 9, 10, 12, 13, 14, 16, 19, and 20 must be scored. MCL 777.22(2).

3. Crimes Involving a Controlled Substance (CS)

"CS" is the designation used to identify crimes involving a controlled substance in the statutory lists of felonies to which the guidelines apply. MCL 777.5(c).

For all crimes involving a controlled substance, OVs 1, 2, 3, 12, 13, 14, 15, 19, and 20 must be scored. MCL 777.22(3).

4. Crimes Against Public Order (Pub Ord) and Crimes Against Public Trust (Pub Trst)

"Pub ord" and "Pub trst" are the abbreviations used to identify crimes against public order and crimes against public trust in the

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statutory lists of felonies to which the guidelines apply. MCL 777.5(d); MCL 777.5(e).

For all crimes against public order and all crimes against public trust, score OVs 1, 3, 4, 9, 10, 12, 13, 14, 16, 19, and 20. MCL 777.22(4).

5. Crimes Against Public Safety (Pub Saf)

"Pub saf" is the designation used to identify crimes against public safety in the statutory lists of felonies to which the guidelines apply. MCL 777.5(f).

Score OVs 1, 3, 4, 9, 10, 12, 13, 14, 16, 19, and 20 for all crimes against public safety.

Score OV 18 if the offense or attempted offense involved the operation of a vehicle, vessel, ORV, snowmobile, aircraft, or locomotive. MCL 777.22(5).

B. OV Scoring In General

"Offense variables must be scored giving consideration to the sentencing offense alone, unless otherwise provided in the particular variable." *People v McGraw*, 484 Mich 120, 133 (2009). See also *People v Gray (Orlando)*, ___ Mich App ___, ___ (2012) (noting that "*McGraw*[, *supra* at 122, 130-134,] . . . requires a court to separate the conduct forming the basis of the sentencing offense from the conduct forming the basis of an offense that was charged and later dismissed or dropped, regardless of the sequence in which the conduct transpired[]").

In addition, unless the sentencing guidelines expressly prohibit it, a trial court may properly consider a factor that is an element of the sentencing offense in scoring a defendant's OVs.[46] *People v Gibson (Terrance)*, 219 Mich App 530, 534 (1996) (the defendant was properly assessed points for OV 2 under the judicial sentencing guidelines—the equivalent of OV 3 under the statutory guidelines—for causing personal injury to the victim even though personal injury was an element of the CSC-I charge against the defendant). But see *People v Glenn (Devon)*, 295 Mich App 529, 535 (2012), lv gtd 491 Mich 934 (2012) (citing *People v Hunt [Christopher]*, 290 Mich App 317, 326 (2010), and holding that "circumstances inherently present

[46] See e.g., OV 3, where the guidelines preclude scoring five points for injury if bodily injury is an element of the sentencing offense, and OV 8, where the guidelines preclude scoring points for asportation when the sentencing offense is kidnapping.

in the [sentencing] crime must be discounted for purposes of scoring an OV[]").

See also *People v Nantelle*, 215 Mich App 77, 84-85 (1996) (the age of the victim and the defendant's position of authority were elements of CSC-II *and* were factors properly considered in scoring OV 7 under the judicial guidelines—OV 10 under the statutory guidelines); *People v Cotton*, 209 Mich App 82, 84 (1995) (it was proper to prosecute the defendant for CSC-I because the victim was younger than 13 years of age *and* to assess points for OV 7—OV 10 under the statutory guidelines—against the defendant for exploiting a victim's vulnerability because the victim was younger than 13 years of age).

C. OV 1—Aggravated Use of a Weapon

1. Definitions/Scoring

OV 1 is scored for all offenses to which the sentencing guidelines apply, i.e., for offenses in every crime group designation. MCL 777.22(1)-(5). Determine which statements addressed by OV 1 apply to the offense and assign the point value indicated by the applicable statement having the highest number of points. MCL 777.31(1).

Points	OV 1—Aggravated use of a weapon
25	A firearm was discharged at or toward a human being or a victim was cut or stabbed with a knife or other cutting or stabbing weapon. MCL 777.31(1)(a).
20	The victim was subjected or exposed to a harmful biological substance, harmful biological device, harmful chemical substance, harmful chemical device, harmful radioactive material, harmful radioactive device, incendiary device, or explosive device. MCL 777.31(1)(b). THIS PROVISION APPLIES ONLY TO OFFENSES OCCURRING ON OR AFTER APRIL 1, 2002. SEE 2002 PA 137.
15	A firearm was pointed at or toward a victim or the victim had a reasonable apprehension of an immediate battery when threatened with a knife or other cutting or stabbing weapon. MCL 777.31(1)(c).
10	The victim was touched by any other type of weapon. MCL 777.31(1)(d).
5	A weapon was displayed or implied. MCL 777.31(1)(e).
0	No aggravated use of a weapon occurred. MCL 777.31(1)(f).

- Each person in danger of injury or loss of life is counted as a victim for purposes of scoring OV 1. MCL 777.31(2)(a).

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- In cases involving multiple offenders, when one offender is assigned points for the use or the presence of a weapon, all offenders must be assigned the same number of points. MCL 777.31(2)(b).

- Score five points if an offender used an object to suggest that he or she had a weapon. MCL 777.31(2)(c).

- Score five points if an offender used a chemical irritant, a chemical irritant or smoke device, or an imitation harmful substance or device. MCL 777.31(2)(d).[47]

- Do not score five points if the sentencing offense is a conviction of MCL 750.82 (felonious assault) or MCL 750.529 (armed robbery). MCL 777.31(2)(e).

- "Chemical irritant," "chemical irritant device," "harmful biological substance," "harmful biological device," "harmful chemical substance," "harmful chemical device," "harmful radioactive material," "harmful radioactive device," and "imitation harmful substance or device" are defined in MCL 750.200h. MCL 777.31(3)(a).

- "'Incendiary device'" includes gasoline or any other flammable substance, a blowtorch, fire bomb, Molotov cocktail, or other similar device." MCL 777.31(3)(b).

2. Case Law Under the Statutory Guidelines

a. Multiple Offender Provision

The instructions for scoring OV 1 include specific directions in cases involving multiple offenders.[48] For OV 1, where multiple offenders are involved and one offender is assessed points under the variable, all offenders must be assessed the same number of points. MCL 777.31(2)(b). However, the multiple offender provision applies only when the offenders are being scored for the same offense. *People v Johnston*, 478 Mich 903, 904 (2007). The multiple offender provision does not require that an offender be assessed the same number of points as other offenders involved in the same criminal

[47] Effective October 23, 2001. 2001 PA 136.

[48] OVs 2 and 3 also have multiple offender provisions.

episode if the offender was the only person convicted of the specific crime being scored. *Johnston*, *supra* at 904.[49] In other words, when more than one offender is involved in the same criminal conduct but only one offender is convicted of a specific crime arising from the conduct, that particular crime does not involve multiple offenders for purposes of scoring OV 1.

"[I]n the absence of any clear argument that the scores assessed [against the first offender] were incorrect," the multiple offender provision in OV 1 and OV 3 requires that other offenders convicted of the same offense must be assessed the same number of points. *People v Morson*, 471 Mich 248, 261-262 (2004) (the defendant and the codefendant robbed a woman at gunpoint and a third party was injured when the codefendant shot him). At issue in *Morson*, *supra* at 258-259, was the fact that the defendant, who was sentenced after the codefendant was sentenced, received higher scores for OV 1 and OV 3 than did the codefendant. The prosecution argued that the statute clearly required that the highest number of points be assessed for each variable, but it did not dispute the codefendant's scores at her sentencing and did not contend on the defendant's appeal that the codefendant's scores were inaccurate or erroneous. *Id*. at 259. Under these circumstances, the *Morson* Court explained:

> "Unless the prosecution can demonstrate that the number of points assessed to the prior offender was erroneous or inaccurate, the sentencing court is required to follow the plain language of the statute, which requires the court to assess the same number of points on OV 1 and OV 3 to multiple offenders." *Morson*, 471 Mich at 262.

b. Inoperable Weapons

The definition of a firearm "does not prescribe a requirement that the weapon be 'operable' or 'reasonably or readily repairable.' . . . [T]he design and construction of the weapon, rather than its state of operability, are relevant in determining whether it is a 'firearm.'" *People v*

[49] *Johnston*, 478 Mich at 904, overruled *People v Villegas*, unpublished opinion per curiam of the Court of Appeals, issued October 27, 2005 (Docket Nos. 253447, 253512, and 254284). In those consolidated cases involving the multiple offenders at issue in the scoring of OV 1, defendant Johnston's codefendants were convicted of felonious assault (assault with a dangerous weapon), but defendant Johnston's convictions did not involve the use of a weapon.

Peals, 476 Mich 636, 638 (2006) (construing the definition of "firearm" for purposes of determining whether the defendant was a felon in possession of a firearm, MCL 750.224f[1]). See also *People v Rueda (On Reconsideration)*, unpublished opinion per curiam of the Court of Appeals, issued March 24, 2011 (Docket No. 291914), citing *Peals, supra* (trial court properly assessed 15 points for OV 1 where the gun used in the scoring offense had missing internal parts rendering it temporarily inoperable).[50]

c. Harmful Substances

"Exposure"

OV 1 was properly scored at 20 points, MCL 777.31(1)(b), where the defendant "exposed" the victim-baby to harmful substances, first by mixing milk with bleach in the baby's bottle, and then by mixing milk with Comet in the baby's bottle. *People v Jones (Shatara)*, unpublished opinion per curiam of the Court of Appeals, issued January 28, 2010 (Docket No. 289612). The defendant argued that a 20-point score was inappropriate because there was no record evidence that the baby was "ever placed in proximity to the poisonous substances, or that [the] defendant tried to bring the hazardous substances to the baby." *Jones (Shatara)*, *supra*. However, the presentence investigation report (PSIR) indicated that the defendant's mother poured out the bleach/milk mixture and confronted the defendant, who then took the bottle and filled it with the Comet/milk mixture. *Jones (Shatara)*, *supra*. Thereafter, the defendant attempted to leave with the baby, and had to be forcibly prevented from doing so. *Jones (Shatara)*, *supra*. Further, the defendant admitted that she had intended to harm herself and the baby. *Jones (Shatara)*, *supra*. The Court adopted the trial court's reasoning that "'the proximity of the child to the substance, i.e., real close to having the child ingest the substance, is close enough to consider that the child was exposed to the harmful . . . substance.'" *Jones (Shatara)*, *supra*.

"Harmful biological substance"

"Harmful biological substance" for purposes of scoring OV 1 includes HIV-infected blood because blood containing HIV is "a substance produced by a human

[50] Unpublished opinions are not precedentially binding under the rule of stare decisis. MCR 7.215(C)(1).

organism that contains a virus that can spread or cause disease in humans" as required by the definition of "harmful biological substance" in MCL 750.200h(g). *People v Odom*, 276 Mich App 407, 413 (2007) (twenty points were properly scored for OV 1 where the defendant, who was HIV positive and whose mouth was bleeding, spit on a corrections officer).

"Harmful biological substance" for purposes of scoring OV 1 includes fecal matter because "human fecal matter contains harmful bacteria that could cause disease in another human being[.]" *People v Huddleston*, unpublished opinion per curiam of the Court of Appeals, issued November 12, 2009 (Docket No. 285961) (twenty points were properly scored for OV 1 where the defendant threw feces into the face and mouth of a jail deputy, and the Court took judicial notice of human fecal matter's potential to cause disease in another human being because of the harmful bacteria contained in it).

"Harmful chemical substance"

"Harmful chemical substance" for purposes of scoring OV 1 does *not* include heated cooking oil because, under MCL 750.200h(i), cooking oil is not a substance that "possess[es] an inherent or intrinsic ability or capacity to cause death, illness, injury or disease" as required by the term "harmful." *People v Blunt*, 282 Mich App 81, 86, 89 (2009) (points were improperly scored for OV 1 where the defendant threw hot oil at the victim's face). Any substance that is innocuous in its unaltered state is not a harmful substance under MCL 777.31(1)(b). *Blunt*, *supra* at 88.

"[W]hile heroin could, under the appropriate fact situation, constitute the aggravated use of a weapon, that it is not the case in an ordinary drug transaction[;] . . . [rather,] to be scorable under OV 1, [heroin] must be used as a weapon." *People v Ball (Amanda)*, ___ Mich App ___, ___, ___ (2012) (although heroin "is capable of causing death[and is t]herefore . . . a harmful chemical substance[]" under MCL 777.31(1)(b), 20 points were improperly assessed under OV 1 where, after the defendant delivered heroin to the victim in exchange for a video game, the victim "voluntarily ingested the heroin" and died of an overdose; because "[t]here [was] no evidence that [the] defendant forced the victim to ingest the heroin against his will[]" or otherwise used it as a weapon, OV 1 should have been scored at zero points).

d. Unconventional Weapons

A brass statue and a shotgun are not "other cutting or stabbing weapon[s]" for purposes of scoring OV 1, even if the items were used in some method that resulted in the victim's bleeding. *People v Wilson (John)*, 252 Mich App 390, 394-395 (2002).[51] According to the Court, "To the extent that either object was used in a manner to cause the primary victim to bleed, it was not because she was cut or stabbed, but because she was hit with a relatively heavy object." *Wilson (John)*, *supra* at 395.

A glass mug may be a "weapon" for purposes of scoring OV 1. Ten points were properly scored against the defendant who caused his wife's injuries and eventual death by striking her with a glass mug. *People v Lange*, 251 Mich App 247, 252-255 (2002). The Court reasoned that the Legislature's use of the word "weapon" was not predicated on an object's ability to reflect an offender's "plan" or "preparation." *Lange*, *supra* at 255. The fact that the defendant did not plan to use the mug as a weapon did not preclude the mug's characterization as a weapon. *Id*. In defining what the Legislature intended by the word "weapon" in OV 1, the Court referred to a previous Michigan Supreme Court decision that defined the term "dangerous weapon":

> "'Some weapons carry their dangerous character because so designed and are, when employed, *per se*, deadly, while other instrumentalities are not dangerous weapons unless turned to such purpose. *The test as to the latter is whether the instrumentality was used as a weapon and, when so employed in an assault, dangerous.* The character of a dangerous weapon attaches by adoption when the instrumentality is applied to use against another in furtherance of an assault. *When the purpose is evidenced by act, and the instrumentality is adapted to accomplishment of the assault and capable of inflicting serious injury, then it is, when so employed, a dangerous*

[51] The defendant's scoring error claims were unpreserved and unreviewable; however, the Court, in the context of the defendant's claim that he was denied the effective assistance of counsel, reviewed the defendant's claim that OV 1 was improperly scored. Because of this, the Court characterized its analysis of the scoring issues as dicta with regard to a properly preserved challenge to the same scoring issues that may occur in subsequent cases. *Wilson (John)*, 252 Mich App at 392-393, 395 n 1.

> *weapon*.'" *Lange*, 251 Mich App at 256, quoting *People v Vaines*, 310 Mich 500, 505-506 (1945).

Where the defendant admitted throwing a stick that struck the victim's leg and knocked the victim down, the evidence established that the "victim was touched [with] any other type of weapon" for the purposes of scoring OV 1. *People v Jones (Kenneth)*, unpublished opinion per curiam of the Court of Appeals, issued July 22, 2003 (Docket No. 238557), vacated on other grounds and remanded for reconsideration 469 Mich 984 (2003).[52]

e. Implied Use or Possession of Weapon

Scoring instructions for OV 1 expressly prohibit scoring five points for possession and display of a weapon when the sentencing offense is armed robbery, MCL 750.529. MCL 777.31(2)(e).

Where the complainant testified that he was under the impression that the defendant was carrying a gun because the defendant kept his hand inside his shirt during the robbery, OV 1 was correctly scored for the defendant's implied use of a weapon. *People v Gholston*, unpublished opinion per curiam of the Court of Appeals, issued September 11, 2003 (Docket No. 240810).

f. Sufficient Evidence to Support OV 1 Score

Although the evidence did not suggest that the defendant intended to *hit* the victim when shooting his gun over the victim's bed and head, it also did not suggest that he intentionally shot *away from* the victim; thus, OV 1 was properly scored at 25 points because the trial court had "a sound evidentiary basis" for determining that the shooter discharged his gun "in the victim's general direction," i.e. *toward* the victim. *People v Greyerbiehl*, unpublished opinion per curiam of the Court of Appeals, issued December 20, 2002 (Docket No. 233472).

g. OV Score Inconsistent with Jury Verdict

OV 1 was properly scored at 15 points under MCL 777.31(1)(c) ("the victim had a reasonable apprehension of

[52] The Michigan Supreme Court remanded the case for the Court of Appeals to reconsider the trial court's sentence in light of *People v Babcock*, 469 Mich 247 (2003). In its opinion on remand, the Court of Appeals "adopt[ed] and reaffirm[ed its] prior opinion regarding all non-departure issues." *People v Jones (Kenneth)*, unpublished opinion per curiam of the Court of Appeals, issued June 10, 2004 (Docket No. 238557).

an immediate battery when threatened with a knife . . . .") where, even though a jury acquitted the defendant of armed robbery and instead found him guilty of unarmed robbery, the victim testified that the defendant had a knife in his hand during the robbery. *People v Agelink*, unpublished opinion per curiam of the Court of Appeals, issued September 14, 2010 (Docket No. 292198).

h. Statutory Interpretation and Intent of OV 1

"[T]he central focus of OV 1 is not the *type* of weapon involved, but rather the *manner* in which the weapon was used." *People v Rutley*, unpublished opinion per curiam of the Court of Appeals, issued November 30, 2010 (Docket No. 291682). Even though "firearm" is not specifically listed in MCL 777.31(1)(d), as it is in MCL 777.31(1)(a) (firearm was discharged at or toward a human being) and MCL 777.31(1)(c) (firearm was pointed at or toward a victim), the phrase used in MCL 777.31(1)(d) (victim was touched by any other type of weapon) must be read to include a firearm. *Rutley, supra*. In *Rutley, supra*, points were properly assessed under MCL 777.31(1)(d) because the victim was clearly "touched by any other type of weapon" when the defendant struck the victim several times with a pistol.

3. Relevant Case Law Under the Judicial Guidelines

The Court of Appeals affirmed the trial court's score of five points for OV 1 against a defendant who appeared to be grasping the handle of a firearm in his pants as he handed a note to a cashier indicating that he had a gun. *People v Elliott*, 215 Mich App 259, 261 (1996). According to the Court, "[T]he guidelines clearly contemplate the implied use of a firearm." *Elliott*, *supra* at 261.

D. OV 2—Lethal Potential of the Weapon Possessed or Used

1. Definitions/Scoring

OV 2 is scored for crimes against a person, crimes against property, and crimes involving a controlled substance. MCL 777.22(1)-(3). Score OV 2 by determining which statements apply to the circumstances of the offense and assigning the point value

indicated by the applicable statement having the highest number of points. MCL 777.32(1).

Points	OV 2—Lethal potential of the weapon possessed or used
15	The offender possessed or used a harmful biological substance, harmful biological device, harmful chemical substance, harmful chemical device, harmful radioactive material, or harmful radioactive device. MCL 777.32(1)(a). THIS PROVISION APPLIES ONLY TO OFFENSES OCCURRING ON OR AFTER OCTOBER 23, 2001. SEE 2001 PA 136.
15	The offender possessed or used an incendiary device, an explosive device, or a fully automatic weapon. MCL 777.32(1)(b).
10	The offender possessed or used a short-barreled rifle or a short-barreled shotgun. MCL 777.32(1)(c).
5	The offender possessed or used a pistol, rifle, shotgun, or knife or other cutting or stabbing weapon. MCL 777.32(1)(d).
1	The offender possessed or used any other potentially lethal weapon. MCL 777.32(1)(e).
0	The offender possessed or used no weapon. MCL 777.32(1)(f).

- In cases involving multiple offenders, if one offender is assessed points for possessing a weapon, all offenders must be assessed the same number of points. MCL 777.32(2).

- "Harmful biological substance," "harmful biological device," "harmful chemical substance," "harmful chemical device," "harmful radioactive material," and "harmful radioactive device" are defined in MCL 750.200h. MCL 777.32(3)(a).

- A "fully automatic weapon" is a firearm that ejects an empty cartridge from a shot and loads a live cartridge from the magazine for the next shot without requiring renewed pressure on the trigger for each successive shot. MCL 777.32(3)(b).

- A "pistol," "rifle," or "shotgun" includes a revolver, semi-automatic pistol, rifle, shotgun, combination rifle and shotgun, or other firearm made in or after 1898 that fires fixed ammunition. A "pistol," "rifle," or "shotgun" does not include a fully automatic weapon or short-barreled shotgun or short-barreled rifle. MCL 777.32(3)(c).

- An "'[i]ncendiary device' includes gasoline or any other flammable substance, a blowtorch, fire bomb,

Molotov cocktail, or other similar device." MCL 777.32(3)(d).

2. Case Law Under the Statutory Guidelines

a. Multiple Offender Provision

The instructions for scoring OV 2 include specific directions in cases involving multiple offenders.[53] For OV 2, where multiple offenders are involved and one offender is assessed points under the variable, all offenders must be assessed the same number of points. MCL 777.32(2). However, the multiple offender provision applies only when the offenders are being scored for the same offense. *Johnston*, 478 Mich at 904. The multiple offender provision does not require that an offender be assessed the same number of points as other offenders involved in the same criminal episode if the offender was the only person convicted of the specific crime being scored. *Johnston*, *supra* at 904.[54] In other words, when more than one offender is involved in the same criminal conduct but only one offender is convicted of a specific crime arising from the conduct, that particular crime does not involve multiple offenders for purposes of scoring OV 2.

b. Inoperable Weapons

The definition of a firearm "does not prescribe a requirement that the weapon be 'operable' or 'reasonably or readily repairable.'. . . [T]he design and construction of the weapon, rather than its state of operability, are relevant in determining whether it is a 'firearm.'" *Peals*, 476 Mich at 638. See also *People v Rueda (On Reconsideration)*, unpublished opinion per curiam of the Court of Appeals, issued March 24, 2011 (Docket No. 291914), citing *Peals, supra* (trial court properly assessed five points for OV 2 where the gun used in the scoring offense had missing internal parts rendering it temporarily inoperable).[55]

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[53] OVs 1 and 3 also have multiple offender provisions.

[54] *Johnston*, 478 Mich at 904, overruled *People v Villegas*, unpublished opinion per curiam of the Court of Appeals, issued October 27, 2005 (Docket Nos. 253447, 253512, and 254284). In those consolidated cases involving the multiple offenders at issue in the scoring of OV 1, defendant Johnston's codefendants were convicted of felonious assault (assault with a dangerous weapon), but defendant Johnston's convictions did not involve the use of a weapon.

[55] Unpublished opinions are not precedentially binding under the rule of stare decisis. MCR 7.215(C)(1).

c. Harmful Substances

"Harmful chemical substance" for purposes of scoring OV 2 does not include heated cooking oil because, under MCL 750.200h(i), cooking oil is not a substance that "possess[es] an inherent or intrinsic ability or capacity to cause death, illness, injury or disease" as required by the term "harmful." *Blunt*, 282 Mich App at 86, 89 (points were improperly scored for OV 2 where the defendant threw hot oil at the victim's face). Any substance that is innocuous in its unaltered state is not a harmful substance under MCL 777.32(1)(a). *Blunt*, *supra* at 88.

d. Unconventional Weapons

"A metal pipe or bat used to strike a person in the head is unquestionably a potentially lethal weapon." *People v McCuller (Raymond)*, unpublished opinion per curiam of the Court of Appeals, issued January 11, 2005 (Docket No. 250000).[56]

e. Sufficient Evidence to Support OV 2 Score

Fifteen points were appropriately scored under OV 2 where, even though the defendant was acquitted of armed robbery, trial testimony and the defendant's PSIR indicated that the defendant brandished a gun during the robbery and pointed it at a victim's face. *People v Halverson*, 291 Mich App 171, 182-183 (2010).

A witness's testimony that the weapon used by the defendant "was shorter than a normal size shotgun" is sufficient to support a score of ten points under OV 2. *People v Brewer (Michael)*, unpublished opinion per curiam of the Court of Appeals, issued February 19, 2004 (Docket No. 242764).

[56]This conclusion was reviewed by the Michigan Supreme Court in *People v McCuller (Raymond)*, 479 Mich 672, 696 (2007). The Court (after remand from the United States Supreme Court on other grounds) stated that "the uncontroverted and overwhelming evidence showed beyond a reasonable doubt that the victim was touched by a weapon[, and i]n regard to OV2, the uncontested and overwhelming evidence regarding the magnitude of the victim's injuries demonstrated that the weapon used to injure him was potentially lethal."

E. OV 3—Physical Injury to a Victim

1. Definitions/Scoring

OV 3 is scored for all felony offenses to which the sentencing guidelines apply. MCL 777.22(1)-(5). To score OV 3, determine which statements addressed by the variable apply to the offense and assign the point value indicated by the applicable statement with the highest number of points. MCL 777.33(1).

Points	OV 3—Degree of physical injury sustained by a victim
100	A victim was killed. MCL 777.33(1)(a).
50	A victim was killed. MCL 777.33(1)(b). (35 points for offenses committed before September 30, 2003. 2003 PA 134.)
25	Life threatening or permanent incapacitating injury occurred to a victim. MCL 777.33(1)(c).
10	Bodily injury requiring medical treatment occurred to a victim. MCL 777.33(1)(d).
5	Bodily injury not requiring medical treatment occurred to a victim. MCL 777.33(1)(e).
0	No physical injury occurred to a victim. MCL 777.33(1)(f).

- In cases involving multiple offenders, if one offender is assessed points for death or physical injury, all offenders must be assessed the same number of points. MCL 777.33(2)(a).

- Score 100 points if death results from the commission of the offense and homicide is not the sentencing offense. MCL 777.33(2)(b). Any crime in which the death of a person is an element of the crime is a "homicide." MCL 777.1(c).

- Score 50 points if death results from an offense or attempted offense that involves the operation of a vehicle, vessel, ORV, snowmobile, aircraft, or locomotive[57] and any of the following apply:

  - the offender was under the influence of or visibly impaired by the use of alcohol, a controlled

[57] See MCL 777.1 for definitions of "aircraft," "ORV," "snowmobile," "vehicle," and "vessel."

substance, or a combination of alcohol and a controlled substance, MCL 777.33(2)(c)(*i*);

- the offender had an alcohol content of 0.08 grams[58] or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, MCL 777.33(2)(c)(*ii*); or

- the offender's body contained any amount of a controlled substance listed in schedule 1 under MCL 333.7212 or a rule promulgated under that section, or a controlled substance described in MCL 333.7214(a)(*iv*), MCL 777.33(2)(c)(*iii*).

- Do not score five points if "bodily injury" is an element of the sentencing offense. MCL 777.33(2)(d).

- "Requiring medical treatment" refers to an injury's need for treatment, not whether a victim was successful in obtaining treatment. MCL 777.33(3).

2. Case Law Under the Statutory Guidelines

a. Sufficient Evidence

Points are appropriately scored for OV 3 only where there is record evidence of a victim's injury; a prosecutor's file notes do not constitute record evidence. *People v Endres*, 269 Mich App 414, 417-418 (2006).

b. Victim

For purposes of scoring OV 3, a "victim" includes any person harmed as a result of the offender's conduct. *People v Albers*, 258 Mich App 578, 593 (2003). In *Albers*, the defendant was convicted of involuntary manslaughter for the death of a child killed in an apartment complex fire caused by the defendant's son. *Albers*, *supra* at 580. The defendant argued that OV 3 was improperly scored for injury to an individual other than the child who died as a result of the fire and for whose death the defendant was convicted. *Id*. at 591.

The Court of Appeals first noted that MCL 777.33 does not contain any language defining the term "victim" for purposes of scoring OV 3. *Albers*, 258 Mich App at 592-593. The defendant asserted that the statute's use of the

[58] Effective October 1, 2013, the alcohol content level increases to 0.10 grams or more.

term "victim" in its singular form indicated a legislative "intent that OV 3 apply only to the victim of the charged offense." *Albers*, *supra* at 592-593. However, rules of statutory construction clearly provide that every reference to the singular may include reference to the plural. MCL 8.3b; *Albers*, *supra* at 593. Finding no authority indicating otherwise, the Court of Appeals concluded that for purposes of scoring OV 3, "the term 'victim' includes any person harmed by the criminal actions of the charged party." *Albers, supra* at 593.

"[A] coperpetrator is properly considered a 'victim' for purposes of OV 3 when he or she is harmed by the criminal actions of the charged party[;]" accordingly, where the defendant's coperpetrator was fatally shot by the homeowner during the home invasion for which the defendant was convicted, "[t]he trial court properly assessed 100 points for OV 3 because the coperpetrator was harmed by the criminal actions of [the] defendant." *People v Laidler*, 491 Mich 339, 341-342 (2012). Noting that "[b]ecause OV 3 is defined as 'physical injury to a victim,' it is manifest that a 'victim' is required in all cases in which OV 3 is scored[,]" but that "MCL 777.33 does not define 'victim,'" the *Laidler* Court concluded that "a 'victim' is any person who is harmed by the defendant's criminal actions[,]" including a coperpetrator whose injury is factually caused by the defendant's criminal actions. *Laidler, supra* at 343, 345-349. "But for [the] defendant's commission of the [home invasion], [his coperpetrator] would not have been killed[;] . . . [b]ecause [the coperpetrator] was killed as a result of the home invasion perpetrated jointly with [the] defendant, he was clearly 'harmed by the criminal actions' of [the] defendant . . . [and, t]herefore, he was a 'victim' for purposes of OV 3." *Id*. at 350.~~The trial court improperly assessed 100 points for OV 3 where the defendant's co-felon was fatally shot by the homeowner during the home invasion for which the defendant was convicted. *People v Laidler*, 291 Mich App 199, 202-204 (2010).~~[59] ~~"For purposes of OV 3, the term 'victim' means 'any person harmed by the criminal actions of the charged party.'" *Laidler, supra* at 202, quoting *Albers*, 258 Mich App at 593. The Court of~~

[59] ~~On April 29, 2011, the Michigan Supreme Court ordered "oral argument [under MCR 7.302(H)(1)] on whether to grant the [prosecution's] application [for leave to appeal] or take other action[,]" directing the parties to submit briefs "address[ing] whether, for purposes of offense variable 3, [the co-felon] was a victim and, even if [he] was not a victim, whether the defendant could appropriately be scored 100 points for offense variable 3 on the theory that 'death result[ed] from the commission of a crime and homicide is not the sentencing offense.'" *People v Laidler*, 489 Mich 903 (2011).~~

~~Appeals held that the defendant's co-felon "simply was not a 'victim' because he was not harmed by [the] defendant's criminal activity, or by the crime that was committed, jointly, by [the] defendant and [his co-felon]." *Laidler, supra* at 203. "Rather, the 'victim' of the crime . . . was the homeowner, and he was not injured." *Id*. Because there was "no 'physical injury to a victim,' . . . OV 3 [wa]s simply inapplicable." *Id*., quoting MCL 777.33(1). The Court further noted that "[e]ven if [the defendant's co-felon] might properly be considered a 'victim,' his death resulted from the actions of the homeowner, not from the commission of a crime." *Laidler, supra* at 203-204 n 2.~~

c. Injury Must Result From Sentencing Offense

Under *McGraw,* 484 Mich at 133,[60] "the '[o]ffense variables must be scored giving consideration to the sentencing offense alone[.]'" *People v Mushatt (Mushatt II)*, 486 Mich 934 (2010), reversing in part *People v Mushatt (Mushatt I)*, unpublished opinion per curiam of the Court of Appeals, issued June 23, 2009 (Docket No. 283954). In *Mushatt II*, *supra* at 934, the trial court improperly assessed five points for OV 3, MCL 777.33(1)(e), where although an individual was bruised after being hit by the defendant's car, the defendant was acquitted of the related felonious assault charge. Accordingly, the individual did not constitute a victim for purposes of scoring OV 3 because "the injured woman was not injured by the criminal actions that were the subject of [the defendant's] convictions (fleeing and eluding and larceny)[.]" *Mushatt II*, *supra* at 934. See also *People v Dolittle*, unpublished opinion per curiam of the Court of Appeals, issued September 22, 2011 (Docket No. 298235)[61] (trial court abused its discretion in scoring 100 points under OV 3 where there was no evidence that a victim was killed during the course of the defendants' arson offense; although the defendants set fire to a dumpster containing a dead body, no factual causation existed to support the score because the decedent had been killed by someone other than the defendants prior to the arson).

[60] "[T]he retroactive effect of [*People v*] *McGraw*[, 484 Mich 120 (2009),] is limited to cases pending on appeal when *McGraw* was decided and in which the scoring issue had been raised and preserved." *People v Mushatt (Mushatt II)*, 486 Mich 934 (2010).

[61] Unpublished opinions are not precedentially binding under the rule of stare decisis. MCR 7.215(C)(1).

d. Multiple Offender Provision

The instructions for scoring OV 3 include specific directions in cases involving multiple offenders.[62] For OV 3, where multiple offenders are involved and one offender is assessed points under the variable, all offenders must be assessed the same number of points. MCL 777.33(2)(b). However, the multiple offender provision applies only when the offenders are being scored for the same offense. *Johnston*, 478 Mich at 904. The multiple offender provision does not require that an offender be assessed the same number of points as other offenders involved in the same criminal episode if the offender was the only person convicted of the specific crime being scored. *Johnston*, *supra* at 904.[63] In other words, when more than one offender is involved in the same criminal conduct but only one offender is convicted of a specific crime arising from the conduct, that particular crime does not involve multiple offenders for purposes of scoring OV 3.

"[I]n the absence of any clear argument that the scores assessed [against the first offender] were incorrect," the multiple offender provision in OV 1 and OV 3 requires that other offenders convicted of the same offense must be assessed the same number of points. *Morson*, 471 Mich at 261-262 (the defendant and the codefendant robbed a woman at gunpoint and a third party was injured when the codefendant shot him). At issue in *Morson*, *supra* at 258-259, was the fact that the defendant, who was sentenced after the codefendant was sentenced, received higher scores for OV 1 and OV 3 than did the codefendant. The prosecution argued that the statute clearly required that the highest number of points be assessed for each variable, but it did not dispute the codefendant's scores at her sentencing and did not contend on the defendant's appeal that the codefendant's scores were inaccurate or erroneous. *Id*. at 259. Under these circumstances, the *Morson* Court explained:

> "Unless the prosecution can demonstrate that the number of points assessed to the prior

[62] OVs 1 and 2 also have multiple offender provisions.

[63] *Johnston*, 478 Mich at 904, overruled *People v Villegas*, unpublished opinion per curiam of the Court of Appeals, issued October 27, 2005 (Docket Nos. 253447, 253512, and 254284). In those consolidated cases involving the multiple offenders at issue in the scoring of OV 1, defendant Johnston's codefendants were convicted of felonious assault (assault with a dangerous weapon), but defendant Johnston's convictions did not involve the use of a weapon.

> offender was erroneous or inaccurate, the sentencing court is required to follow the plain language of the statute, which requires the court to assess the same number of points on OV 1 and OV 3 to multiple offenders." *Morson*, 471 Mich at 262.

e. Bodily Injury

Even where the sentencing offense is homicide, 25 points are properly scored for OV 3 when a defendant causes a physical injury to a victim in the process of killing the victim. *People v Houston (Duane)*, 473 Mich 399, 402 (2005). The Court noted that the guidelines instructed the sentencing court to score the highest number of points applicable, and because 100 points was not an option, the number of points attributable to the next applicable variable statement should be scored. *Houston (Duane)*, *supra* at 405-407. According to the Court, the *Houston* defendant's argument that zero points should be scored wrongly assumed "that only the 'ultimate result' of a defendant's criminal act—here, the death rather than the injury that preceded the death—may be considered in scoring OV 3." *Id*. at 405. The Court explained that while the defendant's gunshot to the victim's head ultimately killed the victim, the defendant's conduct also caused the victim to first suffer a "[l]ife-threatening or permanent incapacitating injury" for which 25 points were appropriately scored. *Id*. at 402.

Pregnancy resulting from sexual assault is "bodily injury" for purposes of scoring OV 3. *People v Cathey*, 261 Mich App 506, 513-514 (2004). The *Cathey* Court approved the resolution of this issue in a case decided under the judicial guidelines—*People v Woods (Joseph)*, 204 Mich App 472, 474-475 (1994) (under the judicial guidelines then in effect, bodily injury was addressed by OV 2). *Cathey*, *supra* at 511-512. The *Woods (Joseph)* Court quoted with approval a California appellate court's decision involving a similar issue:

> "'A pregnancy resulting from a rape (and, in this case, a resulting abortion) are not injuries necessarily incidental to an act of rape. The bodily injury involved in a pregnancy (and, in this case, a resulting abortion) are significant and substantial. Pregnancy cannot be termed a trivial, insignificant matter. It amounts to significant and substantial bodily injury or

> damage. . . . Major physical changes begin to take place at the time of pregnancy. It involves a significant bodily impairment primarily affecting a woman's health and well being. It is all the more devastating when imposed on a woman by forcible rape.'" *Woods (Joseph)*, 204 Mich App at 474-475, quoting *People v Sargent*, 86 Cal App 3d 148, 151-152; 150 Cal Rptr 113 (1978).

Ten points were properly assessed where a rape victim "suffered an infection as a consequence of the rape[, because . . . t]his is sufficient to constitute 'bodily injury requiring medical treatment' within the meaning of OV 3." *People v McDonald (Deandre)*, 293 Mich App 292, 298 (2011). The *McDonald (Deandre)* Court defined "bodily injury" in the context of OV 3 as "encompass[ing] anything that the victim would, under the circumstances, perceive as some unwanted physically damaging consequence." *McDonald (Deandre)*, *supra* at 298.

Five points may be assessed against a defendant for bodily injury not requiring medical treatment where "the victim received a homemade tattoo and sustained a small bruise to her right buttock and irritation and redness to her vaginal opening." *People v Apgar*, 264 Mich App 321, 329 (2004).

Absent any evidence that the victim was actually infected with HIV, life-threatening injury does not occur when a defendant with HIV has unprotected sex with an uninformed person. *People v Clayton*, unpublished opinion per curiam of the Court of Appeals, issued September 13, 2002 (Docket No. 230328). According to the Court, "Although it is clear that [the] defendant engaged in life threatening behavior, . . . there is no evidence that the victim was actually infected with HIV as a result[, and] . . . we decline to speculate regarding whether such an injury will occur in the future." *Clayton*, *supra*.[64]

Merely because a life-threatening injury may respond to medical treatment and ultimately heal does not remove it from the level of injury meriting 25 points under OV 3. *People v Williams (Harold)*, unpublished opinion per curiam of the Court of Appeals, issued May 20, 2003 (Docket No. 230566).

[64] Unpublished opinions are not precedentially binding under the rule of stare decisis. MCR 7.215(C)(1).

Where nothing in the record indicated that the victim's breathing troubles and repeated loss of consciousness following a sexual assault were related to a physical, rather than a psychological, injury resulting from the assault, and where ten points were also scored for OV 4 (psychological injury to a victim), the trial court erred in scoring ten points for OV 3. *People v Taylor (Keondo)*, unpublished opinion per curiam of the Court of Appeals, issued June 28, 2011 (Docket No. 296915).

F. OV 4—Psychological Injury to a Victim

1. Definitions/Scoring

OV 4 is scored for all offenses to which the guidelines apply except crimes involving a controlled substance. MCL 777.22(1), (2), (4), and (5). Score OV 4 by determining which statement applies to the offense and assigning the point value indicated by the applicable statement. MCL 777.34(1).

Points	OV 4—Degree of psychological injury sustained by a victim
10	Serious psychological injury requiring professional treatment occurred to a victim. MCL 777.34(1)(a).
0	No serious psychological injury requiring professional treatment occurred to a victim. MCL 777.34(1)(b).

Ten points should be scored if the victim's serious psychological injury may require professional treatment. Whether the victim has sought treatment for the injury is not conclusive. MCL 777.34(2).

2. Case Law Under the Statutory Guidelines

Points may be assessed under OV 4 only where there exists some evidence that a victim suffered serious psychological harm that required professional treatment. *People v Hicks (Rodney)*, 259 Mich App 518, 535 (2003). Ten points are improper when "the record does not reflect any evidence of serious psychological harm to the victim or give any indication that [the victim] needed psychological treatment." *Hicks (Rodney)*, *supra* at 535.

"The trial court may not simply assume that someone in the victim's position would have suffered psychological harm because MCL 777.34 requires that serious psychological injury '*occurred* to a victim.'" *People v Lockett*, 295 Mich App 165, 182-183 (2012) (because "[t]here was no testimony indicating that [the

victim] suffered a psychological injury, the presentence report contain[ed] no information that would indicate any victims suffered psychological harm, and the record [did] not include a victim-impact statement[,]" the trial court erred in assessing 10 points for OV 4 on the ground that the defendant's conduct "'would cause any normal person of [the victim's] age serious psychological injury[]'").

Evidence supported the trial court's score of ten points under OV 4 where the victim's impact statement indicated that her

> "'life has been terrible since the incidents. She states that she has a lot of nightmares, problems in her marriage, problems at work, and in just about every other facet of her life. She states that this whole situation has been a nightmare . . . She indicates that she has not sought treatment as of this writing date, however, she plans to do so in the future.'" *People v Drohan*, 264 Mich App 77, 90 (2004), aff'd on other grounds 475 Mich 140 (2006).[65]

The Court of Appeals affirmed the trial court's scoring of ten points for OV 4 based primarily on the Court's conclusion that videotaped evidence showed the victims behaving in a manner that indicated both victims had suffered serious psychological injury as a result of the defendant's conduct. *People v Wilkens*, 267 Mich App 728, 740-741 (2005).

The *Wilkens* Court stated:

> "With regard to the male victim, the videotape reveals that his attitude took a disturbing turn during the course of the 41-minute incident. Toward the end, he resorted to making violent threats against the female victim to coerce her into continuing the sex acts. This, in light of the fact that the male victim's demeanor on the stand was rather casual, indicates that the male victim suffered serious psychological injury as a result of this incident such that he was rendered unable to

[65] The Michigan Supreme Court affirmed the decision in *Drohan*, 264 Mich App 77, when it determined that Michigan's indeterminate sentencing scheme did not violate a defendant's right to have a jury decide beyond a reasonable doubt the factors involved in scoring his or her PRVs and OVs. "As long as the defendant receives a sentence within th[e] statutory maximum [prescribed for conviction of an offense], a trial court may utilize judicially ascertained facts to fashion a sentence within the range authorized by the jury's verdict." *Drohan*, 475 Mich at 164.

> comprehend the gravity of his actions. This supports the trial court's scoring of OV 4.
>
> "With regard to the female victim, the trial court relied on statements that she made 'on the videotape and everything else.' Though the female victim did not testify, the videotape shows that the female victim repeatedly indicated that she did not want to continue the sex acts and that the 'motion lotion' was hurting her, yet [the] defendant asserted that the videotape was not worth the money he spent on the female victim's clothes and urged the female victim to continue. Ultimately, the female victim sat up in bed and remained silent while [the] defendant attempted to coax her into continuing. This evidence indicates that [the] defendant's actions caused the female victim anxiety, altered her demeanor, and caused her to withdraw; it supports a finding of serious psychological injury occurring to the female victim." *Wilkens*, 267 Mich App at 740-741.

The Court of Appeals approved a ten-point score for OV 4 based primarily on the sentencing court's inference from the victim's testimony that psychological harm requiring professional treatment occurred. See e.g., *Apgar*, 264 Mich App at 329, where the Court of Appeals found sufficient evidence to support the trial court's OV 4 score "[b]ecause the victim testified that she was fearful during the encounter with [the] defendant."

Evidence substantiating a victim's psychological harm and receipt of professional treatment may be introduced by means other than the victim's testimony. See *People v Brown (Tony)*, unpublished opinion per curiam of the Court of Appeals, issued February 24, 2004 (Docket No. 243961), where OV 4 was properly scored when "the prosecutor informed the court [during sentencing] that the victim's family had informed him of the therapy the victim [wa]s undergoing and w[ould] continue to undergo, including psychological counseling[,]" and "the victim's father gave a victim impact statement during sentencing that [the] defendant's actions had caused the victim a tremendous amount of emotional pain and suffering."

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G. OV 5—Psychological Injury to a Member of a Victim's Family

1. Definitions/Scoring

OV 5 is scored only under very specific circumstances involving a crime against a person: when the sentencing offense is homicide, attempted homicide, conspiracy or solicitation to commit a homicide, or assault with intent to commit murder. MCL 777.22(1). Score OV 5 by assigning the point value indicated by the statement that applies to the sentencing offense. MCL 777.35(1).

Points	OV 5—Psychological injury sustained by a member of a victim's family
15	Serious psychological injury requiring professional treatment occurred to a victim's family member. MCL 777.35(1)(a).
0	No serious psychological injury requiring professional treatment occurred to a victim's family member. MCL 777.35(1)(b).

- Score 15 points if the victim's family member's serious psychological injury may require professional treatment. The fact that treatment has not been sought is not determinative. MCL 777.35(2).
- Any crime in which the death of a person is an element of the crime is a "homicide." MCL 777.1(c).

2. Case Law Under the Statutory Guidelines

At the time this monograph was published, there was no published case law concerning the application of OV 5.

Where the victim's mother reported "that both her and her husband are receiving counseling and continue to feel depressed about the death of their daughter, stating that 'there are no words that can describe it,[]'" the trial court properly scored OV 5 at 15 points. *People v Rice (Ronald)*, unpublished opinion per curiam of the Court of Appeals, issued September 7, 2010 (Docket No. 291711).[66]

There was sufficient evidence to support the trial court's 15-point score for OV 5 where "the victim's brother indicated that the victim's death 'turned his whole family upside down' . . . [and] the victim's mother 'described the incident as tearing her family

[66] Unpublished opinions are not precedentially binding under the rule of stare decisis. MCR 7.215(C)(1).

apart[,]' [and b]oth relatives had sought counseling to deal with their loss." *People v Posey*, unpublished opinion per curiam of the Court of Appeals, issued July 8, 2010 (Docket No. 291075).

Points may be appropriate under OV 5 even when family members have a typical reaction to the death of a family member (trouble sleeping, anxiety affecting physical health, fear, and devastation), and the effect on the family members' lives is not debilitating. *People v Chancy*, unpublished opinion per curiam of the Court of Appeals, issued December 14, 2004 (Docket No. 249893).

The mother of a victim killed in a fire that burned over 45 percent of the victim's body "could have suffered the type of psychological injury that may require professional treatment." *People v Strouse*, unpublished opinion per curiam of the Court of Appeals, issued February 4, 2003 (Docket No. 234034). In such a case, 15 points were appropriately scored when the victim's mother also expressed her intent to seek counseling for the psychological harm caused by her son's murder. *Strouse*, *supra*.

OV 5 was properly scored where the victim was survived by a young child who would grow up without a mother and where the child's "caregivers would have to 'explain to the . . . child why he does not have a mother like all the other children,' and that the child's loss 'imposes . . . incomprehensible . . . additional concerns for the family[,]'" as indicated by statements made by the victim's grandmother, grandfather, and uncle. *People v Laury*, unpublished opinion per curiam of the Court of Appeals, issued September 23, 2003 (Docket No. 238490).

H. OV 6—Intent to Kill or Injure Another Individual

1. Definitions/Scoring

OV 6 is scored only under very specific circumstances involving a crime against a person: when the sentencing offense is homicide, attempted homicide, conspiracy or solicitation to commit a homicide, or assault with intent to commit murder. MCL 777.22(1). Score OV 6 by determining which statements apply to the sentencing offense and assigning the point value

indicated by the applicable statement having the highest number of points. MCL 777.36(1).

Points	OV 6—Intent to kill or injure another individual
50	The offender had premeditated intent to kill or the killing was committed while committing or attempting to commit arson, first-degree criminal sexual conduct third-degree criminal sexual conduct, first-degree child abuse, a major controlled substance offense, robbery, breaking and entering of a dwelling, first-degree home invasion, second-degree home invasion, larceny of any kind, extortion, or kidnapping or the killing was the murder of a peace officer or a corrections officer. MCL 777.36(1)(a).
25	The offender had unpremeditated intent to kill, the intent to do great bodily harm, or created a very high risk of death or great bodily harm knowing that death or great bodily harm was the probable result. MCL 777.36(1)(b).
10	The offender had intent to injure or the killing was committed in an extreme emotional state caused by an adequate provocation and before a reasonable amount of time elapsed for the offender to calm or there was gross negligence amounting to an unreasonable disregard for life. MCL 777.36(1)(c).
0	The offender had no intent to kill or injure. MCL 777.36(1)(d).

- Unless the sentencing court has information that was not presented to the jury, an offender's OV 6 score must be consistent with the jury's verdict.[67] MCL 777.36(2)(a).

- Ten points must be scored if a killing is intentional within the definition of second-degree murder or voluntary manslaughter, but the death took place in a combative situation or in response to the decedent's victimization of the offender. MCL 777.36(2)(b).

- Any crime in which a person's death is an element of the crime is a "homicide." MCL 777.1(c).

2. Case Law Under the Statutory Guidelines

At the time this monograph was published, there was no published case law concerning the application of OV 6.

[67] A trial court may properly consider information not proven beyond a reasonable doubt when scoring a defendant's offense variables. *Drohan*, 475 Mich at 164. In *Drohan*, *supra* at 164, the Court reaffirmed its assertion in *People v Claypool*, 470 Mich 715, 730 n 14 (2004), that Michigan's sentencing scheme does not violate a defendant's Sixth Amendment right to be sentenced on the basis of facts determined by a jury beyond a reasonable doubt. *Blakely v Washington*, 542 US 296 (2004), *United States v Booker*, 543 US 220 (2005), and other post-*Blakely* cases do not apply to Michigan's indeterminate sentencing scheme. *Drohan*, *supra* at 157-161. According to the *Drohan* Court, Michigan's sentencing guidelines are not unconstitutional because trial courts do not use judicially ascertained facts to impose a sentence greater than the term authorized by the jury's verdict—the statutory maximum. *Id*. at 159.

A defendant's uncorroborated self-serving hearsay is not an effective challenge to the defendant's OV 6 score when the record evidence more than adequately supported the trial court's scoring decision, and the score was consistent with the jury's verdict. *People v Jones (Kenneth)*, unpublished opinion per curiam of the Court of Appeals, issued July 22, 2003 (Docket No. 238557), vacated on other grounds and remanded for reconsideration 469 Mich 984 (2003).[68] In *Jones (Kenneth)*, *supra*, the defendant claimed OV 6 should have been scored at ten points rather than 25 because the victim's death occurred "in a combative situation"—according to the defendant, the victim and the defendant fought after the victim attempted to rob the defendant. However, the evidence showed that the victim was fleeing from the defendant when he was first struck and then beaten to death. *Jones (Kenneth)*, *supra*.

Where a defendant is convicted by jury of OUIL causing death ("a crime in which gross negligence is presumed"), a maximum of ten points may be scored against the defendant under the statutory requirements governing OV 6.[69] *People v Stanko*, unpublished opinion per curiam of the Court of Appeals, issued January 27, 2004 (Docket No. 242876). A maximum of ten points was proper in *Stanko* because OV 6 must be scored consistently with the jury's verdict unless the sentencing court has information that was not available to the jury. MCL 777.36(2)(a). Based on the record before the Court on appeal, and without evidence of malice rising to the level of intent required to prove second-degree murder, no more than ten points could be assessed against the defendant for OV 6. *Stanko*, *supra*.

Where the defendant initiated the confrontation that resulted in the shooting death of the decedent, the assessment of 25 points for OV 6 "was consistent with the jury's verdict of second-degree murder, which required proof that the defendant acted with the intent to kill, or the intent to inflict great bodily harm, or with the willful and wanton disregard for whether death would result[;]" to score ten points under MCL 777.36(2)(b) for a death occurring "in a combative situation or in response to victimization of the offender by the decedent" would not have been appropriate because "[t]he confrontation was [the defendant's] own creation." *People v Al-Jamailawi*, unpublished opinion per curiam

[68] The Michigan Supreme Court remanded the case for the Court of Appeals to reconsider the trial court's sentence in light of *People v Babcock*, 469 Mich 247 (2003). In its opinion on remand, the Court of Appeals "adopt[ed] and reaffirm[ed its] prior opinion regarding all non-departure issues." *People v Jones (Kenneth)*, unpublished opinion per curiam of the Court of Appeals, issued June 10, 2004 (Docket No. 238557). **Note:** Unpublished opinions are not precedentially binding under the rule of stare decisis. MCR 7.215(C)(1).

[69] Conduct scored under OV 6 precludes scoring ten points against an offender under OV 17 (degree of negligence exhibited). MCL 777.47(2).

of the Court of Appeals, issued May 24, 2011 (Docket No. 292774).

The trial court properly scored 50 points under OV 6 for the defendant's conviction of conspiracy to commit assault with intent to murder (AWIM), notwithstanding that conspiracy is a "public safety" offense under MCL 777.18 and that OV 6 is not included under MCL 777.22(5) as an offense variable that must be scored for crimes against public safety. *People v Tarver*, unpublished opinion per curiam of the Court of Appeals, issued August 7, 2012 (Docket No. 300775) (because "MCL 777.22(1) directs a trial court to score OV 6 for . . . '*conspiracy . . . to commit a homicide*,'" and "because[] when [the] defendant conspired to commit AWIM, he necessarily conspired to commit a homicide[,]" the trial court was required to score OV 6).

I. OV 7—Aggravated Physical Abuse

1. Definitions/Scoring

OV 7 is scored for crimes against a person only. MCL 777.22(1). Determine which statement applies to the offense and assign the number of points indicated by the applicable statement. MCL 777.37(1).

Points	OV 7—Aggravated Physical Abuse
50	A victim was treated with sadism, torture, or excessive brutality or conduct designed to substantially increase the fear and anxiety a victim suffered during the offense. MCL 777.37(1)(a).
0	No victim was treated with sadism, torture, or excessive brutality or conduct designed to substantially increase the fear and anxiety a victim suffered during the offense. MCL 777.37(1)(b).

- Each person placed in danger of injury or loss of life is a victim for purposes of scoring OV 7. MCL 777.37(2).

- "Sadism" is "conduct that subjects a victim to extreme or prolonged pain or humiliation and is inflicted to produce suffering or for the offender's gratification." MCL 777.37(3).[70]

[70] Effective April 22, 2002, 2002 PA 137 deleted "terrorism" from OV 7's list of behaviors meriting points. Although terrorism was eliminated from consideration under OV 7, the conduct previously defined as terrorism remains in OV 7's statutory language as "conduct designed to substantially increase the fear and anxiety a victim suffered during the offense." MCL 777.37(1)(a). "Terrorism" is now addressed by OV 20, MCL 777.49a. See Section 8.6(U).

2. Case Law Under the Statutory Guidelines

a. Scoring Limited to Actual Participants

"For OV 7, only the defendant's actual participation should be scored." *People v Hunt (Christopher)*, 290 Mich App 317, 326 (2010). In *Hunt (Christopher)*, *supra* at 325-326, the trial court erred in assessing 50 points for OV 7 where, although "[the] defendant was present and armed during the commission of the crimes . . . , he did not himself commit, take part in, or encourage others to commit acts constituting 'sadism, torture, or excessive brutality[.]'"

b. Actual Physical Abuse Not Necessary

Actual physical abuse is not necessary to score a defendant's conduct under OV 7. *People v Mattoon*, 271 Mich App 275, 276, 278 (2006). In *Mattoon*, the defendant was convicted of various crimes related to an episode in which he held his girlfriend at gunpoint for nine hours. No actual physical abuse was involved in the incident. *Mattoon*, *supra* at 276. Because the trial court concluded that actual physical abuse was required to score a defendant's conduct under OV 7, the court scored the offense variable at zero points. *Id*.

The *Mattoon* Court examined the plain language of MCL 777.37 and concluded that the Legislature did not intend that actual physical abuse be required to support an OV 7 score. *Mattoon*, 271 Mich App at 277-279. According to the Court:

> "While the label of OV 7 is 'aggravated physical abuse,' when the section is read as a whole, it is clear that the Legislature does not require actual physical abuse in order for points to be assessed under this variable. Specifically, subsection 3 defines 'sadism' to mean 'conduct' that, among other things, subjects the victim to extreme or prolonged humiliation. While humiliation may have a physical component, there does not have to be physical abuse in order to produce humiliation. Emotional or psychological abuse can certainly have that effect as well. If the Legislature intended to limit the applicability of OV 7 to cases where there is physical abuse, then instead of defining

> 'sadism' to be 'conduct' that produces pain or humiliation, it would have said 'physical abuse' that subjects the victim to pain or humiliation." *Mattoon*, 271 Mich App at 277-278.

c. Consciousness of Victim Not Required

The assessment of points under OV 7 does not depend on whether the victim is alive or conscious of the treatment scored by this variable. *People v Kegler*, 268 Mich App 187, 191-192 (2005). Points are properly scored under OV 7 when a victim is treated with excessive brutality no matter how (or if) the victim subjectively experiences that treatment. *Kegler*, *supra* at 191. Although OV 7 does account for a victim's treatment when the victim is conscious, its application is not limited to those criminal episodes where a victim's consciousness is implicitly required (when points are assessed for conduct intended to increase a victim's fear and anxiety, for example). *Id*. at 192 n 14.

d. Conduct Designed to Increase Victim's Fear and Anxiety

"OV 7 . . . was meant to be scored in particularly egregious cases involving torture, brutality, or similar conduct designed to *substantially* increase the victim's fear, not in every case in which some fear-producing action beyond the bare minimum necessary to commit the crime was undertaken." *People v Glenn (Devon)*, 295 Mich App 529, 536 (2012), lv gtd 491 Mich 934 (2012). In *Glenn (Devon)*, *supra* at 531, 536, 50 points were improperly assessed under OV 7 where the defendant, during an armed robbery, struck two victims in the head with the butt of a gun, but did not cause any serious physical injuries. "[T]he presence of a weapon and the use of a certain amount of force or intimidation must be discounted for purposes of OV 7[]" when the sentencing offense is armed robbery or felonious assault, because "[a]ll such crimes against a person involve the infliction of a certain amount of fear and anxiety." *Id*. at 536. "While [the] defendant may have used more violence than would be strictly necessary to complete an armed robbery, it cannot be said that his conduct was 'designed to substantially increase the fear and anxiety' beyond the fear and anxiety that occurs in most armed robberies." *Id.*

The defendant was properly assessed 50 points for OV 7 where the evidence established that, in robbing a drugstore, he "did more than simply produce a weapon and demand money." *People v Hornsby*, 251 Mich App 462, 469 (2002).[71] In *Hornsby*, *supra* at 468, the shift supervisor testified that the defendant held her at gunpoint behind the closed door of the manager's office as she transferred money from the store's safe to an envelope. Further testimony established that the defendant threatened to kill her and everybody else in the store, and that at one point, the shift supervisor heard the defendant's gun click as if it was being cocked when someone began turning the doorknob to the room she and the defendant occupied. *Id*. at 469. The defendant's repeated threats against the shift supervisor and store customers and his actions in cocking the gun provided sufficient support for the trial court's conclusion that "[the defendant] deliberately engaged in 'conduct designed to substantially increase the fear and anxiety a victim suffers during the offense.'" *Id*.; MCL 777.37(1)(a).

OV 7 was properly scored at 50 points where the defendant "ordered the [rape] victim to keep her eyes closed[, . . .] indicated that he and what he implied were accomplices knew who she was and had been watching her[, . . . and] made threats that he could find her again in the future, thereby suggesting not only that she was suffering a horrific assault but that there might never be any escape, either." *McDonald (Deandre)*, 293 Mich App at 298-299. "[E]ven though the victim eventually concluded that [the] defendant really did not know her identity there was ample evidence that [the] defendant engaged in 'conduct designed to substantially increase [her] fear and anxiety . . . .'" *McDonald (Deandre)*, *supra* at 299.

e. Excessive Brutality

The statutory language governing OV 7 does not define "excessive brutality," but the dictionary definition of the phrase indicates that it contemplates conduct involving an unusual or unnecessary degree of cruelty or savagery.

[71] *Hornsby*, 251 Mich App 462, was issued before OV 20 was enacted to address "terrorism" as the term is more commonly understood (a violent act that is dangerous to human life and is intended to intimidate or influence a civilian population or government operation). See Section 8.6(U). Before the enactment of OV 20, the language in OV 7 included "terrorism" in its list of behaviors meriting points under that variable. Notwithstanding the elimination of the term *terrorism* from the language of OV 7, the variable accounts for the exact same conduct to which the term *terrorism* then referred—*"conduct designed to substantially increase the fear and anxiety a victim suffered during the offense*." MCL 777.37(1)(a) (Emphasis added).

People v Jones (Kenneth), unpublished opinion per curiam of the Court of Appeals, issued July 22, 2003 (Docket No. 238557), citing *Random House Webster's College Dictionary* (1992).[72] According to the *Jones (Kenneth)* Court, OV 7 reflects a clear legislative intent to vest "the trial courts of this state with discretion to assess guidelines points for such deaths along a continuum ranging from one blow resulting in an unanticipated death to the type of savage, relentless beating the evidence in this case established." *Jones (Kenneth)*, *supra*. The Court continued:

> "[W]hether the entire incident was measured in minutes or seconds, the evidence at trial, which showed that [the] defendant pursued the victim over a distance of 300 feet, and administered 'countless' blows to the victim's torso and head until the victim could not move, and ultimately bled to death from internal injuries, clearly supports the trial court's finding of 'excessive brutality.'" *Jones (Kenneth)*, *supra*.

Fifty points were properly scored against a defendant for the excessive brutality exhibited by the defendant during the assault of his wife. *People v Wilson (Willie)*, 265 Mich App 386, 398 (2005). "The victim's testimony detailed a brutal attack, which took place over several hours, involving being attacked by weapons and being kicked, punched, slapped, and choked numerous times, ending in injuries requiring treatment in a hospital." *Wilson (Willie)*, *supra* at 398.

For purposes of OV 7, the defendant's use of "excessive brutality" was established by evidence that he had hidden a baseball bat in his coat, confronted and struck the victim without warning so that the victim had no opportunity to protect himself, and once the victim was down, the defendant continued to kick and strike the victim with the baseball bat four or five more times. *People v Brown (Tony)*, unpublished opinion per curiam of the Court of Appeals, issued February 24, 2004 (Docket No. 243961).

[72] The Michigan Supreme Court remanded the case for the Court of Appeals to reconsider the trial court's sentence in light of *People v Babcock*, 469 Mich 247 (2003). In its opinion on remand, the Court of Appeals "adopt[ed] and reaffirm[ed its] prior opinion regarding all non-departure issues." *People v Jones (Kenneth)*, unpublished opinion per curiam of the Court of Appeals, issued June 10, 2004 (Docket No. 238557).

Fifty points were properly scored for OV 7 where, "during the two to five minutes that the pregnant [victim] was being strangled, she suffered a fractured pharynx and hemorrhaging in her deep neck muscles . . . Such evidence demonstrated excessive brutality in commission of the assault and murder of a six-and-a-half month pregnant woman, which also caused the death of her unborn child." *People v Lario-Munoz*, unpublished opinion per curiam of the Court of Appeals, issued June 30, 2011 (Docket No. 295811).

"[E]xcessive brutality means savagery or cruelty beyond even the 'usual' brutality of a crime." *Glenn (Devon)*, 295 Mich App at 533. The defendant's conduct in striking two victims in the head with the butt of a gun, "while certainly illegal and reprehensible, was not savage or inhuman in comparison with behavior that has occurred during other armed robberies or felonious assaults[;]" therefore, 50 points were improperly assessed under OV 7. *Glenn (Devon)*, *supra* at 531, 533.

f. Sadism

"'[S]adism' denotes conduct that exceeds that which is inherent in the commission of the offense." *People v McReynolds*, unpublished opinion per curiam of the Court of Appeals, issued June 30, 2009 (Docket No. 282582).

Fifty points should be scored for "sadism" when a defendant's conduct subjects the victim to extreme or prolonged pain or humiliation and the *conduct* is inflicted for the defendant's gratification. *People v Taylor (Michael)*, unpublished opinion per curiam of the Court of Appeals, issued February 24, 2004 (Docket No. 240344). The statutory language does not require that the defendant be gratified by the victim's pain or humiliation, only that the defendant's conduct itself be intended to gratify the defendant. *Taylor (Michael)*, *supra*; see also MCL 777.37(1)(a) and MCL 777.37(3). "Because [the] defendant performed the sexual acts for his gratification, and the acts caused the victim severe and prolonged humiliation," OV 7 was properly scored at 50 points. *Taylor (Michael), supra.*

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J. OV 8—Victim Asportation or Captivity

1. Definitions/Scoring

OV 8 is scored for crimes against a person only. MCL 777.22(1). Score OV 8 by determining which statement applies to the sentencing offense and assigning the point value indicated by the applicable statement. MCL 777.38(1).

Points	OV 8—Victim asportation or captivity
15	A victim was asported to another place of greater danger or to a situation of greater danger or was held captive beyond the time necessary to commit the offense. MCL 777.38(1)(a).
0	No victim was asported or held captive. MCL 777.38(1)(b).

- Each person in danger of injury or loss of life is a victim for purposes of scoring OV 8. MCL 777.38(2)(a).
- Zero points must be scored if the sentencing offense is kidnapping. MCL 777.38(2)(b).[73]

2. Case Law Under the Statutory Guidelines

a. Forcible Movement

"Asportation" need not be forcible to merit a score under OV 8. *People v Spanke*, 254 Mich App 642, 647 (2003). In *Spanke*, the Court of Appeals noted that the sentencing guidelines do not define "asportation," but the language of OV 8 clearly intends that points be assessed against an offender if "'[a] victim was asported to another place of greater danger or to a situation of greater danger or was held captive beyond the time necessary to commit the offense.'" *Spanke, supra* at 646-647, quoting MCL 777.38(1)(a). The Court further discussed "asportation" as the term is used in defining the offense of kidnapping and applied it to scoring OV 8. *Spanke, supra* at 647. Under

[73] Zero points must also be scored if the sentencing offense is unlawful imprisonment, MCL 750.349b. *People v Knuckles*, unpublished opinion per curiam of the Court of Appeals, issued December 14, 2010 (Docket No. 289886). The *Knuckles* Court noted that OV 8 does not contain a statutory citation for kidnapping (MCL 750.349) and that the separate crime of unlawful imprisonment did not exist at the time the sentencing guidelines were enacted. *Knuckles*, *supra*. According to *Knuckles*, *supra*, "if the intent of the [L]egislature was to exempt the crime of kidnapping from OV 8, then the crime of unlawful imprisonment, which was previously a part of the crime of kidnapping, should also be exempted." **Note:** Unpublished opinions are not precedentially binding under the rule of stare decisis. MCR 7.215(C)(1).

MCL 750.349, asportation is an element of kidnapping, and the Court explained that "[w]hile asportation is an element of forcible kidnapping, there is no requirement that the movement itself be forcible. Rather, the only requirement for establishing asportation is that the movement not be incidental to committing an underlying offense." *Spanke*, 254 Mich App at 647.[74] In *Spanke*, no force was employed to move the victims to the defendant's home—in fact, there was evidence that the victims may have voluntarily accompanied the defendant to his home. *Spanke*, *supra* at 648. The *Spanke* Court stated that "the crimes could not have occurred as they did without the movement of [the] defendant and the victims to a location where they were secreted from observation by others"; thus, the movement was more than merely incidental to the commission of the crime. *Id*.

Points were appropriately assessed for OV 8 when, although no force was used, "the victim was transported . . . to an unfamiliar house . . . where she was involved in sexual encounters with three men she barely knew." *Apgar*, 264 Mich App at 330. See also *People v Cox (Jeffery)*, 268 Mich App 440, 454-455 (2005) (although the victim had been to the defendant's house on other occasions, the defendant was the individual who transported the victim to the defendant's house at the time the sexual offenses occurred).

b. Places or Situations of Greater Danger

"[P]laces where others [a]re less likely to see [a] defendant commit[] crimes," e.g., a trailer on the defendant's property, a tree stand on the defendant's property, and a dirt bike ridden "far away from the house," constitute places or situations of greater danger under MCL 777.38(1)(a) for which OV 8 is properly scored. *People v Steele (Larry)*, 283 Mich App 472, 490-491 (2009). See also *People v Phillips (Keith)*, 251 Mich App 100, 108 (2002) (the defendant drove the victim to "an isolated area near a river" and parked the car so it faced away from the road); *People v Gholston*, unpublished opinion per curiam of the Court of Appeals, issued September 11, 2003 (Docket No. 240810)[75] ("confined and private environment inside the

[74] The defendant in *Spanke*, 254 Mich App 642, was not convicted of kidnapping so the prohibition against scoring OV 8 did not apply.

[75] Unpublished opinions are not precedentially binding under the rule of stare decisis. MCR 7.215(C)(1).

back room [of a store] was a place of greater danger than the main shopping area of the store").

c. Multiple Offender Cases

Only a defendant's actual participation in the criminal conduct under OV 7 should be scored. *Hunt (Christopher)*, 290 Mich App at 326. In *Hunt*, where the Court of Appeals was ruling on a defendant's challenge to his OV 7 score, it held:

> "For OV 7, only the defendant's actual participation should be scored." In *Hunt (Christopher)*, *supra* at 325-326, the trial court erred in assessing 50 points for OV 7 where, although "[the] defendant was present and armed during the commission of the crimes . . . , he did not himself commit, take part in, or encourage others to commit acts constituting 'sadism, torture, or excessive brutality[.]'"

3. Relevant Case Law Under the Judicial Guidelines

In *People v Hack*, 219 Mich App 299, 313 (1996), the trial court properly assessed points against a defendant under OV 5 (the equivalent of OV 8 under the statutory guidelines) where the evidence established that the defendant moved the child-victims to a different area of the house and away from the mother of one victim. *Hack*, *supra* at 313. The child's mother testified that she could not see into the bedroom where the defendant had taken the victims and did not know what was happening during the time she was separated from the children. *Id*. The Court agreed with the trial court that the children were in greater danger when they were removed from the room occupied by one victim's mother; therefore, points were properly assessed against the defendant for OV 5. *Id*. See also *People v Dilling*, 222 Mich App 44, 54-55 (1997) (same result regarding OV 5 score for codefendant involved in the same offense for which the defendant in *Hack* was convicted).

K. OV 9—Number of Victims

1. Definitions/Scoring

OV 9 is scored for all felony offenses except crimes involving a controlled substance. MCL 777.22(1), (2), (4), and (5). Determine which statements in OV 9 apply to the offense and assign the

point value indicated by the applicable statement having the highest number of points. MCL 777.39(1).

Points	OV 9—Number of victims
100	Multiple deaths occurred. MCL 777.39(1)(a).
25	10 or more victims were placed in danger of physical injury or death. 20 or more victims were placed in danger of property loss. MCL 777.39(1)(b). POINTS FOR VICTIMS PLACED IN DANGER OF PROPERTY LOSS WERE ADDED BY 2006 PA 548, EFFECTIVE MARCH 30, 2007.
10	2 to 9 victims were placed in danger of physical injury or death. 4 to 19 victims were placed in danger of property loss. MCL 777.39(1)(c). POINTS FOR VICTIMS PLACED IN DANGER OF PROPERTY LOSS WERE ADDED BY 2006 PA 548, EFFECTIVE MARCH 30, 2007.
0	Fewer than 2 victims were placed in danger of physical injury or death. Fewer than 4 victims were placed in danger of property loss. MCL 777.39(1)(d). POINTS FOR VICTIMS PLACED IN DANGER OF PROPERTY LOSS WERE ADDED BY 2006 PA 548, EFFECTIVE MARCH 30, 2007.

- Each person placed in danger of physical injury, death, or loss of property is a victim for purposes of scoring OV 9. MCL 777.39(2)(a).[76]

- Score 100 points only in homicide cases. MCL 777.39(2)(b). Any crime in which the death of a person is an element of the crime is a "homicide." MCL 777.1(c).

2. Case Law Under the Statutory Guidelines

When scoring OV 9, only people placed in danger of injury or loss of life or property during conduct "relating to the [sentencing] offense" (or conduct occurring during the same criminal transaction) should be considered. *People v Sargent*, 481 Mich 346, 350 (2008). In *Sargent*, *supra* at 347, the defendant was convicted of sexually abusing a teenager. At trial, evidence was introduced that the defendant also sexually abused the victim's sister on a separate occasion. *Id*. The Supreme Court found that the sentencing court erred in assessing ten points for OV 9 on the basis that there were two victims: the victim and the victim's sister. *Id*. at 347-348, 351. The Court noted that although "the Legislature has explicitly stated that conduct not related to the offense being scored can be considered when scoring some offense variables," OV 9 is not among those variables. *Id*. at 350.

[76] Loss of property was added to the circumstances in OV 9 by 2006 PA 548, effective March 30, 2007.

See also *McGraw*, 484 Mich at 122, 133-135 ("[A] defendant's conduct after an offense is completed does not relate back to the sentencing offense for purposes of scoring offense variables unless a variable specifically instructs otherwise.").[77] Therefore, the *Sargent* Court held that zero points should have been assessed because the defendant was not convicted of sexually abusing the victim's sister, and because the defendant's sexual abuse of the sister did not arise out of the same transaction as the abuse of the victim. *Sargent, supra* at 351. See *People v Phelps*, 288 Mich App 123, 139 (2010), where ten points were improperly scored against the defendant when although two of the complainant's friends were in the room at the time of the sexual assault(s), "[the defendant] did not threaten anyone, and he did not make physical contact with either of the complainant's friends."

OV 9 was properly scored at ten points where the defendant was charged with several sex-related crimes against three separate victims on three separate occasions because more than one potential victim was in the room sleeping while the defendant assaulted another victim. *People v Waclawski*, 286 Mich App 634, 684 (2009). Although the charges against the defendant stemmed from behavior that occurred on three different dates and only one victim was harmed on each of those dates, the evidence presented "support[ed] the conclusion that [the] defendant would choose a victim while the other boys were present." *Waclawski, supra* at 684. Thus, a score of ten points was proper "because the record support[ed] the inference that at least two other victims were placed in danger of physical injury when the sentencing offenses were committed." *Id.*

OV 9 was improperly scored at ten points because, even though the defendant was charged with gross indecency involving the victim, and on a different occasion, two other minors, the instance of CSC-I for which the defendant was being sentenced only involved one of the girls. *People v Gullett*, 277 Mich App 214, 217-218 (2007). According to the *Gullett* Court, where the record revealed that the defendant was convicted and sentenced on only one charge of CSC-I involving a single victim, the sentencing court erred in assessing points for OV 9 based on the number of victims involved in a separate incident. *Gullett*, *supra* at 218.

[77] "[T]he retroactive effect of [*People v*] *McGraw*[, 484 Mich 120 (2009),] is limited to cases pending on appeal when *McGraw* was decided and in which the scoring issue had been raised and preserved." *People v Mushatt*, 486 Mich 934 (2010).

OV 9 was properly scored at ten points where the defendant committed an armed robbery in a store, then stopped a woman driving a car and forced her to drive him to another location. *People v Mann (Brian)*, 287 Mich App 283, 284-285, 288 (2010). The defendant argued that OV 9 should be scored at zero points, because "his armed robbery was completed with there being only one victim . . . before he began the separate crime stemming from his commandeering a car and driver for his getaway." *Mann (Brian)*, *supra* at 286. However, the Court found that the applicable statutes provide that "the course of an armed robbery includes the robber's conduct in fleeing the scene of the crime."[78] *Id*. at 287. In this case, the "defendant's commandeering of a car immediately after taking money from the first victim and forcing the driver of the car to drive him to another community, created a second victim of the armed robbery. In other words, the carjacking incident constituted not only the commission of separate offenses, but was also a continuation of the armed robbery." *Id*.

OV 9 must not be construed so broadly that individuals are counted by the mere possibility that they could appear within the scope of the dangerous circumstances created by a defendant's conduct; "[t]he plain language of MCL 777.39(1) requires that a specific number of persons be placed in danger to warrant the scoring of points for OV 9." *People v Rogers (Jimmie)*, unpublished opinion per curiam of the Court of Appeals, issued November 16, 2010 (Docket No. 293926).[79] In *Rogers (Jimmie)*, *supra*, the trial court erred in assessing 25 points for OV 9 ("10 or more victims . . . were placed in danger of physical injury or death") where the defendant had a blood alcohol level of .27 percent and was driving his truck "all over the roadway." Although "any person in or near [the] defendant's path was likely placed in danger, considering his level of intoxication, erratic swerving in the roadway, and speed."

OV 9 was properly scored at ten points where the defendant shot a bystander who attempted to aid the armed robbery victim because the bystander was also "'placed in danger of injury or loss of life[,]'" MCL 777.39(1)(c). *Morson*, 471 Mich at 261-262. See also *People v Kimble (Richard)*, 252 Mich App 269, 274 (2002), aff'd on other grounds 470 Mich 305 (2004) (decedent, her fiance, and

[78] The defendant in *Mann*, 287 Mich App 283, was convicted of armed robbery under MCL 750.350, which incorporates MCL 750.529 by reference. MCL 750.529 expressly defines "in the course of committing a larceny" as including "acts that occur in an attempt to commit the larceny, or during commission of the larceny, *or in flight or attempted flight after the commission of the larceny*, or in an attempt to retain possession of the property." MCL 750.530(2) (Emphasis added.).

[79] Unpublished opinions are not precedentially binding under the rule of stare decisis. MCR 7.215(C)(1).

her child were with her in the car and were all "in danger of injury or loss of life" when the defendant fatally shot the decedent through the car's windshield); *People v Williams (Harold)*, unpublished opinion per curiam of the Court of Appeals, issued May 20, 2003 (Docket No. 230566) (the number of victims properly included the victim's wife and children who, although they occupied a different room of the house than did the defendant and the victim, were "placed in danger of injury or loss of life" when the defendant fired multiple shots in the victim's home); *People v Arney*, unpublished opinion per curiam of the Court of Appeals, issued March 20, 2003 (Docket No. 236875) (at least two individuals other than the cashier from whom the defendant took money saw the defendant and his gun at the cash register in front of the restaurant; thus they were placed in danger of injury because of their physical proximity to the robbery and the defendant's weapon).

Ten points were appropriate under OV 9 where videotaped evidence showed a female victim and a male victim *actually* being harmed, or being placed in danger of injury, as a result of the defendant's conduct. *Wilkens*, 267 Mich App at 741-742.

The trial court erred in scoring 25 points for OV 9 on the ground that the defendant's vandalism of two schools "'was a crime against a community[;]'" because "[t]here [was] no evidence on the record to establish that 20 or more persons were affected by [the] defendant's vandalism, either directly or indirectly[,] . . . OV 9 should have been scored at zero points." *People v Carrigan*, ___ Mich App ___, ___, ___ (2012).

L. OV 10—Exploitation of a Vulnerable Victim

1. Definitions/Scoring

OV 10 is scored for all felony offenses except crimes involving a controlled substance. MCL 777.22(1), MCL 777.22(2), MCL 777.22(4), and MCL 777.22(5). Score OV 10 by determining which statements apply to the circumstances of the sentencing offense and assigning the point value indicated by the applicable statement having the highest number of points. MCL 777.40(1).

Points	OV 10—Exploitation of a victim's vulnerability
15	Predatory conduct was involved. MCL 777.40(1)(a).
10	The offender exploited a victim's physical disability, mental disability, youth or agedness, or a domestic relationship, or the offender abused his or her authority status. MCL 777.40(1)(b).

5	The offender exploited a victim by his or her difference in size or strength, or both, or exploited a victim who was intoxicated, under the influence of drugs, asleep, or unconscious. MCL 777.40(1)(c).
0	The offender did not exploit a victim's vulnerability. MCL 777.40(1)(d).

- Do not automatically score points for victim vulnerability just because one or more of the factors addressed by OV 10 are present in the circumstances surrounding the sentencing offense. MCL 777.40(2) expressly states that "[t]he mere existence of 1 or more factors described in [MCL 777.40](1) does not automatically equate with victim vulnerability."

- "Predatory conduct" is "preoffense conduct directed at a victim for the primary purpose of victimization." MCL 777.40(3)(a).

- To "exploit" a victim is to "manipulate a victim for selfish or unethical purposes." MCL 777.40(3)(b).

- A victim's "vulnerability" is the victim's "readily apparent susceptibility to injury, physical restraint, persuasion, or temptation." MCL 777.40(3)(c).

- "'Abuse of authority status' means a victim was exploited out of fear or deference to an authority figure, including, but not limited to, a parent, physician, or teacher." MCL 777.40(3)(d).

2. Case Law Under the Statutory Guidelines

a. Overview of OV 10's Purpose

OV 10 is intended to cover a broad range of an offender's conduct and to differentiate between the potential dangers arising from that conduct when an offender directs his or her conduct at a victim under circumstances external to a victim, or when an offender directs his or her conduct at a victim because of the victim's inherent condition or circumstances. The Michigan Supreme Court, in *People v Huston*, 489 Mich 451, 460-461 (2011), summarized the intended application of OV 10's graduated scoring in light of an offender's conduct as it is directed toward a victim with or without inherent vulnerability:

> "The hierarchical range of points that may be assessed under OV 10 extends from zero to 15 points. Zero points are to be assessed when

> '[t]he offender did not exploit a victim's vulnerability.' MCL 777.40(1)(d). Five points are to be assessed when '[t]he offender exploited a victim by his or her difference in size or strength, or both, or exploited a victim who was intoxicated, under the influence of drugs, asleep, or unconscious'—things that are largely within the victim's own control. MCL 777.40(1)(c). Ten points are to be assessed when '[t]he offender exploited a victim's physical disability, mental disability, youth or agedness, or a domestic relationship, or the offender abused his or her authority status'—things that are largely outside of the victim's control. MCL 777.40(1)(b). Finally, 15 points are to be assessed when '[p]redatory conduct was involved'—something that is *always* outside of the victim's control and something that may impact the community as a whole and not only persons with already-existing vulnerabilities. . . . [W]e can only interpret the Legislature's hierarchical approach in OV 10 as indicating its own view that 'predatory conduct' deserves to be treated as the *most serious* of all exploitations of vulnerability because that conduct itself created or enhanced the vulnerability in the first place, and it may have done so with regard to the community as a whole, not merely with regard to persons who were *already* vulnerable for one reason or another. By its essential nature, predatory conduct may render *all* persons uniquely susceptible to criminal exploitation and transform all persons into potentially 'vulnerable' victims. Only in this way can MCL 777.40(1)(a) be understood as connected with MCL 777.40(1)(b) through [MCL 777.40(1)](d)."

b. Victim Vulnerability in General

Exploitation of a vulnerable victim is a prerequisite to assessing points under OV 10. *People v Cannon (Trumon)*, 481 Mich 152, 162 (2008), overruled in part on other grounds in *Huston*, 489 Mich at 458 n 4.[80] "[R]egardless of an offender's subjective intent, if no vulnerable victim was in fact placed in jeopardy or exploited by an offender's actions, OV 10 does not apply." *People v Russell*

(Thomas) (On Remand), 281 Mich App 610, 615 (2008) (police decoy who posed as a 14-year-old victim during internet communications with the defendant was not a vulnerable victim placed in jeopardy or exploited by the defendant's actions).

"[P]oints should be assessed under OV 10 only when it is readily apparent that a victim was 'vulnerable,' i.e., was susceptible to injury, physical restraint, persuasion, or temptation." *Cannon (Trumon)*, 481 Mich at 158. Factors that evidence a victim's vulnerability include:

- physical disability,
- mental disability,
- youth or agedness,
- existence of a domestic relationship between the victim and the offender,
- the offender's abuse of authority status,
- difference in the victim's and the offender's size, strength, or both,
- victim's intoxication or drug use, or
- victim's level of consciousness. *Cannon (Trumon)*, 481 Mich at 158-159.

The Court noted that "[t]he mere existence of one of these factors does not automatically render [a] victim vulnerable." *Cannon (Truman)*, 481 Mich at 159.

c. Defendant's Conduct Need Not Be Directed at a Specific Victim

Fifteen points may be assessed against a defendant for predatory conduct without regard to whether the defendant directed his or her preoffense conduct at a specific victim—all that is required under OV 10 is that the defendant's preoffense conduct was directed at 'a victim.' *Huston*, 489 Mich at 454. Furthermore, "the victim does not have to be inherently vulnerable. Instead, a defendant's 'predatory conduct,' by that conduct alone (*eo*

[80] *Huston*, 489 Mich at 458 n 4, noted that the Court's statement that a defendant's preoffense conduct must be directed at a *specific* victim was dictum. The *Huston* Court clarified that preoffense conduct *need not be directed at a specific victim in order to merit points under OV 10*. *Huston*, *supra* at 454.

ipso), can create or enhance a victim's 'vulnerability.'" *Huston, supra* at 454.

d. Abuse of Authority Status

Where the defendant argued that OV 10 was improperly scored because no evidence was presented "to indicate any manipulation by [the] defendant or any exploitation of his status," ten points were correctly assessed against the 67-year-old defendant, who was in the process of adopting the 14-year-old victim, and who lived at the defendant's home, at the time he sexually assaulted her. *Phillips (Keith)*, 251 Mich App at 109.

OV 10 was properly scored against a defendant who used his status as an authority figure to sexually assault his niece; he constituted an authority figure because he was "playing the uncle role" to his sister's children and was "invested with the authority to enforce [the children's mother's] directives regarding the disciplining of her children." *People v Loney*, unpublished opinion per curiam of the Court of Appeals, issued March 16, 2004 (Docket No. 243416).[81]

e. Exploitation Must Occur to Victim of Crime Scored

Ten points are proper only where the defendant has exploited a *victim's* vulnerability; that is, when the defendant "exploit[s] a victim's physical disability, mental disability, youth or agedness, or a domestic relationship or the offender abused his or her authority status." MCL 777.40(1)(b). Ten points were not proper when the score was based on the fact that the defendant's two children were passengers in the defendant's car when she drove through a flashing red light and killed the driver of another vehicle. *People v Hindman*, 472 Mich 875, 876 (2005), reversing the unpublished opinion per curiam of the Court of Appeals, issued January 22, 2004 (Docket No. 244904). It was error for the trial court to assess points under OV 10, "not on the basis of having exploited the second-degree murder victim, but on the basis of having exploited her own children who were merely passengers in her car and not the victims of the criminal offense being scored." *Hindman*, *supra* at 876.

[81] Unpublished opinions are not precedentially binding under the rule of stare decisis. MCR 7.215(C)(1).

f. Domestic Relationship

"[T]o qualify as a 'domestic relationship' [for purposes of scoring OV 10, MCL 777.40,] there must be a familial or cohabitating relationship." *People v Jamison*, 292 Mich App 440, 447 (2011). In *Jamison*, *supra* at 444, 448, the trial court erred in assessing ten points for OV 10 where the defendant and the victim dated in the past, but did not share a domicile and were not related. Specifically, the Court of Appeals stated that "[it did] not believe that simply *any* type of dating relationship, past or present, meets the requirements of OV 10" and held that the "relationship [in *Jamison*] did not display the characteristics needed to elevate [the] ordinary relationship [between the victim and the defendant] to 'domestic relationship' status." *Jamison*, *supra* at 447-448.

"[T]he trial court erroneously assessed 10 points for OV 10[]" where, although the defendant and the victim "remained friends," they "had stopped dating at least two months prior to the assault[,] . . . were dating other people, . . . did not continue to have sex, and . . . did not live together." *People v Brantley*, ___ Mich App ___, ___ (2012). See also *People v Counts*, unpublished opinion per curiam of the Court of Appeals, issued May 20, 2004 (Docket No. 246717), which held that for purposes of OV 10, a "domestic relationship" is not established by proof that the defendant and the victim shared "any type" of relationship. In the context of scoring OV 10, the defendant and the victim must have a "familial or cohabitating relationship." *Counts*, *supra*. If *any* relationship could qualify under OV 10, the Legislature need not have specified "domestic." *Counts*, *supra*. Further, OV 10 requires not only the existence of the domestic relationship—points are appropriate only when the defendant exploits that relationship. *Counts*, *supra*. "If the relationship [between the defendant and the victim] is over, . . . that relationship can no longer be exploited." *Counts*, *supra*.

g. Vulnerability—Age of the Victim

In the context of the defendant's claim of ineffective assistance of counsel, the Court of Appeals refused to adopt the defendant's argument that OV 10 was improperly scored because "despite the girls' young ages in this case, there was no evidence that they were vulnerable or that he exploited them." *People v Harmon*

(Douglas), 248 Mich App 522, 531 (2001). The defendant relied on the statutory language contained in MCL 777.40(2), which states that "[t]he mere existence of 1 or more factors described in subsection (1) does not automatically equate with victim vulnerability." *Harmon (Douglas)*, *supra* at 531. Contrary to the defendant's argument that the young girls participated in his photography sessions without coercive or exploitive conduct on his part, the evidence established that the defendant manipulated the victims based on their age, their financial need, and their aspiration to become models. *Id*. at 531-532. "By using these two incentives, fame and fortune, [the] defendant manipulated the minors into posing for lewd and lascivious photographs." *Id*. at 532. See also *Wilkens*, 267 Mich App at 742 (The "defendant 'exploited' the victim's youth by manipulating her with clothes and alcohol in exchange for [her participation in] making [a] sexually abusive videotape.").

A five-year age difference between a defendant and a complainant may justify a score of ten points for OV 10. *People v Johnson (William)*, 474 Mich 96, 103 (2006). In *Johnson (William)*, the Michigan Supreme Court stated: "We also agree that the trial court did not err in scoring OV 10 at ten points. . . . As the Court of Appeals explained, '[w]here [the] complainant was fifteen years old and [the] defendant was twenty, the court could determine that [the] defendant exploited the victim's youth in committing the sexual assault.'" *Johnson (William)*, *supra* at 103.

The trial court properly scored ten points for OV 10 where the evidence showed that the 24-year-old defendant exploited the 16-year-old victim's youth and vulnerability within the meaning of MCL 777.40. *People v Phelps*, 288 Mich App 123, 136 (2010). Although the victim's age alone did not support scoring OV 10, "the record supported that [the victim's] age and immaturity made her a vulnerable victim." *Phelps*, *supra* at 136. The Court of Appeals noted that "evidence on the record supported that [the defendant] exploited the [victim] for selfish purposes by manipulating her into engaging in sexual acts with him and allowing him to be in a position in which he could engage in nonconsensual sexual intercourse." *Id*. at 136-137. Further, "the evidence showed that the [victim] was vulnerable because it was

readily apparent that she was susceptible to physical restraint, persuasion, or temptation." *Id*. at 137.

Where the defendant "picked up [the 12-year-old victim of dissemination of sexually explicit matter to a minor] in the middle of the night in his van[,] . . . drove to a liquor store to purchase alcohol[,] . . . [and] then drove the van to a city park and parked it[,]" the trial court's assessment of 15 points for OV 10 was supported by the evidence; "[b]ecause of [the victim's] young age, she was susceptible to injury, physical restraint, or temptation[,]" and "it [was] a reasonable inference that victimization was [the defendant's] primary purpose for engaging in the preoffense conduct." *People v Lockett*, 295 Mich App 165, 184 (2012).

h. Vulnerability Arising Out of a Victim's Relationships or Circumstances

A score of 15 points under OV 10 does not require that a victim be "inherently" vulnerable. *Huston*, 489 Mich at 454. MCL 777.40(3)(c) "contemplat[es] vulnerabilities that may arise not only out of a victim's characteristics, but also out of a victim's relationships or circumstances." *Huston*, *supra* at 464. Furthermore, "[MCL 777.40(3)(c)] does not mandate that [the victim's] 'susceptibility' be *inherent* in the victim. Rather, the statutory language allows for susceptibility arising from external circumstances as well." *Huston*, *supra* at 466. "[A] defendant's 'predatory conduct,' by that conduct alone (*eo ipso*), can create or enhance a victim's 'vulnerability[;]'" accordingly, where "[the] defendant and his cohort[,] [before robbing] the victim, . . . were lying in wait, armed with two BB guns and a knife, and hidden from the victim, who was by herself at night in an otherwise empty parking lot[,]" the victim was properly considered "vulnerable" under MCL 777.40(3)(c) because the victim "would have a 'readily apparent susceptibility . . . to injury [or] physical restraint . . . ." *Huston*, *supra* at 454-455, 467.

i. Predatory Conduct

"MCL 777.40(3)(a) does not define 'predatory conduct' to mean preoffense conduct directed at *the* victim; instead, MCL 777.40(3)(a) defines 'predatory conduct' to mean 'preoffense conduct directed at *a* victim . . . .'" *Huston*, 489 Mich at 458. Thus, MCL 777.40(3)(a) must not be

construed "as requiring that the defendant's preoffense predatory conduct have been directed at one particular or specific victim, but instead as requiring only that the defendant's preoffense predatory conduct have been directed at *a* victim." *Huston*, *supra* at 459. Accordingly, 15 points were properly scored under OV 10 for "[a] defendant who directed his preoffense conduct at the community-at-large by lying in wait, armed, in a parking lot at night, waiting for the first random person to come along so that he or she could be criminally victimized." *Id*. at 459-460.

"'[P]redatory conduct' . . . is behavior that is predatory in nature, 'precedes the offense, [and is] directed at a person for the primary purpose of causing that person to suffer from an injurious action . . . .'" *Huston*, 489 Mich at 463, quoting *Cannon (Trumon)*, 481 Mich at 161, overruled in part on other grounds in *Huston*, *supra* at 458 n 4. Additionally, "['predatory conduct'] does not encompass *any* 'preoffense conduct,' but rather only those forms of 'preoffense conduct' that are commonly understood as being 'predatory' in nature, e.g., lying in wait and stalking, as opposed to purely opportunistic criminal conduct or 'preoffense conduct involving nothing more than run-of-the-mill planning to effect a crime or subsequent escape without detection.'" *Huston*, *supra* at 462, quoting *Cannon (Trumon)*, *supra* at 162. In *Huston*, *supra* at 463-464, the defendant's preoffense conduct of "[lying] in wait while armed and hidden from view for the primary purpose of eventually causing a person to suffer from an injurious action, i.e., an armed robbery . . . constituted 'predatory conduct' both under the statutory definition of this phrase and according to common understanding under which lying in wait constitutes quintessential 'predatory conduct.'"

The trial court properly scored 15 points against the defendant for predatory conduct under OV 10 where the evidence established that the defendant and his accomplices drove around looking for a car from which they could steal a set of expensive wheel rims, spotted the victim's car and its valuable wheel rims, followed the victim's car to the victim's home, watched the victim pull her car into the driveway, shot the victim, and stole her car. *Kimble*, 252 Mich App at 274-275, aff'd on other grounds 470 Mich 305 (2004).

Fifteen points were proper where the trial court found the victim's vulnerability "readily apparent" from observing

the victim's demeanor and where the defendant engaged in predatory conduct. *Drohan*, 264 Mich App at 90-91. Evidence showed that the victim confided in the defendant, and the defendant took advantage of her vulnerability by approaching her on numerous occasions and waiting for her in a parking structure before sexually assaulting her. *Drohan*, *supra* at 90-91.

The timing and location of an offense is evidence that the defendant watched and waited for an opportunity to commit the criminal act, and watching and waiting for an opportunity to commit a crime is "predatory conduct" for which the defendant was appropriately assessed 15 points under OV 10. *People v Witherspoon,* 257 Mich App 329, 336 (2003). In *Witherspoon, supra* at 336, the nine-year-old victim testified that the defendant assaulted her when she was alone in the basement folding clothes. Relying on *Kimble*, 252 Mich App at 274-275, the Court noted that the defendant's timing (when the victim was alone) and his choice of location (an isolated room of the house, the basement) was sufficient to establish predatory conduct similar to the defendant's conduct in *Kimble*. *Witherspoon*, *supra* at 336.

See also *Cox (Jeffery)*, 268 Mich App at 455, where points were properly scored for predatory or preoffense conduct when the defendant engaged in sexual conduct with "a seventeen-year-old mentally incapable victim." In addition to the questions concerning the victim's mental status, evidence established that, before the charged sexual conduct, the defendant visited the victim at his foster home, the victim had been to the defendant's home on several occasions and had viewed pornographic material there, and the "defendant admitted to harboring the victim as a runaway from a foster home." *Cox (Jeffery)*, *supra* at 446-447, 455.

3. Relevant Case Law Under the Judicial Guidelines

OV 7 (OV 10 under the statutory guidelines) differentiates between an offender's exploitation of a victim due to a difference in size or strength and exploitation of a victim based on agedness. *People v Piotrowski*, 211 Mich App 527, 531 (1995). In *Piotrowski*, the defendant argued that her treatment of the victim was not the result of age-based exploitation; instead, according to the defendant, she would have subjected the victim to the same treatment regardless of the victim's age. *Piotrowski*, *supra* at 531. The Court disagreed, emphasizing the different point values

corresponding to an offender's exploitation due to strength or size and an offender's exploitation due to age:[82]

> "We would first note that OV 7 distinguishes between exploitation through a difference in size or strength, which is scored at 5, and exploitation of agedness, which is scored at 15. We take this [point differential] to be an explicit recognition of the distinction between the decline in physical strength characteristic of advanced age, and the less easily articulated decline in aggressiveness in confrontational situations that also often accompanies advancing years. To fail to recognize this distinction would render nugatory OV 7 in the context of elderly victims, since virtually all exploitation of agedness would be ascribed to exploitation of physical infirmity, meaning that those who prey on the aged would receive more lenient sentences than recommended by the guidelines. The guidelines recognize and address exploitation of our senior citizens.
>
> "In the present case, [the] defendant did not shout, 'I am exploiting you because you are a senior citizen.' In our opinion, there was no need for [the] defendant to so state her motivation; her actions clearly manifested such a motivation. Had the victim been twenty-eight rather than seventy-eight, regardless of her physical strength, we find it unlikely that she would have been all but forgotten in a bathroom, fearing for her life the entire fifteen minutes, while her knife-wielding assailant leisurely inventoried her possessions. In other words, had [the] defendant not immediately dismissed the possibility that the elderly victim would offer any resistance, which dismissal can only be attributed to her age, we believe that the victim would have been terrorized for a far shorter period of time." *Piotrowski*, 211 Mich App at 531-532.

[82] The same point values are assigned to OV 10 under the statutory guidelines.

M. OV 11—Criminal Sexual Penetration

1. Definitions/Scoring

OV 11 is scored only for crimes against a person. MCL 777.22(1). Determine which statements addressed by OV 11 apply to the offense and assign the point value indicated by the applicable statement having the highest number of points. MCL 777.41(1).

Points	OV 11—Criminal sexual penetration
50	Two or more criminal sexual penetrations occurred. MCL 777.41(1)(a).
25	One criminal sexual penetration occurred. MCL 777.41(1)(b).
0	No criminal sexual penetration occurred. MCL 777.41(1)(c).

- All sexual penetrations of the victim by the offender arising out of the sentencing offense must be counted in scoring OV 11. MCL 777.41(2)(a).
- Multiple sexual penetrations of the victim by the offender occurring beyond the sentencing offense may be scored in OVs 12 or 13.[83] MCL 777.41(2)(b). However, if any conduct is scored under OV 11, that conduct must not be scored under OV 12 and may only be scored under OV 13 if the conduct is gang-related or related to the offender's membership in an organized criminal group. MCL 777.42(2)(c); MCL 777.43(2)(c).
- The one penetration on which a first- or third-degree criminal sexual conduct offense is based must not be counted for purposes of scoring OV 11. MCL 777.41(2)(c).

2. Case Law Under the Statutory Guidelines

When scoring 50 points under OV 11, there must be sufficient "record evidence to support a finding that any charged or uncharged criminal sexual penetration arose out of the sentencing offense." *People v Goodman*, 480 Mich 1052 (2008); *People v Thompson (Bernard)*, 474 Mich 861 (2005).

[83] OV 12 addresses criminal acts that occur within 24 hours of the sentencing offense and will not result in a separate conviction. OV 13 accounts for an offender's pattern of criminal conduct over a period of five years regardless of outcome.

The sexual penetration that is the basis of the sentencing offense may not be scored under OV 11, but a sexual penetration arising from the sentencing offense and on which a conviction separate from the sentencing offense is based is not precluded from consideration under OV 11. *People v McLaughlin*, 258 Mich App 635, 676 (2003). In *McLaughlin*, the defendant argued he was improperly scored 50 points for two penetrations when those penetrations resulted in separate CSC-I convictions, because the instructions for OV 11 prohibited scoring points for any penetration that formed the basis of a CSC-I or CSC-III conviction. *McLaughlin*, *supra* at 671-672. Because the defendant was convicted of three counts of CSC-I, the defendant argued that each penetration was the basis of its own conviction and could not be used in scoring the other convictions. *Id*.

Notwithstanding the ambiguity of the language used in MCL 777.41(2)(c), the Court concluded:

> "[T]he proper interpretation of OV 11 requires the trial court to exclude the one penetration forming the basis of the offense when the sentencing offense itself is first-degree or third-degree CSC. Under this interpretation, trial courts may assign points under [MCL 777.]41(2)(a) for 'all sexual penetrations of the victim by the offender arising out of the sentencing offense,' while complying with the mandate of [MCL 777.]41(2)(c), by not scoring points for *the one penetration* that forms the basis of a first- or third-degree CSC offense. Accordingly, trial courts are prohibited from assigning points for the one penetration that forms the basis of a first- or third-degree CSC offense that constitutes the sentencing offense, but are directed to score points for penetrations that did not form the basis of the sentencing offense." *McLaughlin*, 258 Mich App at 676.

See also *Cox (Jeffery)*, 268 Mich App at 455-456 (OV 11 was properly scored at 25 points where the defendant was convicted of two counts of CSC-I for penetrations arising from the same incident—the trial court properly scored the one penetration that did not form the basis of the sentencing offense, even though the defendant was separately convicted for both penetrations); *People v Matuszak*, 263 Mich App 42 (2004) (fifty points were appropriate under OV 11 where there was evidence of five penetrations).

In *Johnson (William)*, 474 Mich at 99-103, the Michigan Supreme Court further defined OV 11 as applied to cases in which a

defendant is convicted of more than one count of CSC-III. In *Johnson (William)*, *supra* at 99-100, the trial court scored OV 11 at 25 points because the defendant had twice penetrated the victim. Like the defendant in *Cox (Jeffery)*, *supra*, the defendant in *Johnson (William)* was charged with and convicted of CSC for each penetration. *Johnson (William)*, *supra* at 98. In *Johnson (William)*, however, the penetrations occurred on different dates, and therefore, neither of the penetrations arose from the same sentencing offense. *Johnson (William)*, *supra* at 101-102. In the absence of any evidence that the defendant's conduct on one date arose from his conduct on the other date, the two penetrations did not arise from either of the two CSC-III offenses for which the defendant was sentenced. *Id*. Consequently, because the two penetrations in *Johnson (William)* did not arise from the sentencing offense, the trial court erred in scoring OV 11 at 25 points instead of zero points. *Id*.

OV 11 was properly scored at 25 points in Count 1 (penetration during the commission of a felony) "because [the] defendant was charged with only one penetration, yet he penetrated the female victim more than once during the making of the videotape" (evidence showed that the defendant penetrated the victim with his mouth and with a sex toy). *Wilkens*, 267 Mich App at 742-743. OV 11 was also properly scored at 25 points in Count 2 (aiding and abetting in the production of child sexually abusive material) where the evidence established that the defendant aided and abetted the male victim's penetration of the female victim and that the defendant also penetrated the female victim at least one other time. *Wilkens*, *supra* at 743.

Because "fellatio," for purposes of first-degree criminal sexual conduct, "'requires entry of a penis into another person's mouth[,]'" the trial court erred in scoring 25 points for OV 11 where there was evidence that the five-year-old victim licked the defendant's penis, but no evidence that the defendant's penis entered her mouth. *People v McCloud*, unpublished opinion per curiam of the Court of Appeals, issued September 8, 2011 (Docket No. 298504),[84] quoting *People v Reid*, 233 Mich App 457, 479-480 (1999).

[84] Unpublished opinions are not precedentially binding under the rule of stare decisis. MCR 7.215(C)(1).

N. OV 12—Contemporaneous Felonious Criminal Acts

1. Definitions/Scoring

OV 12 is scored for all felony offenses to which the sentencing guidelines apply. MCL 777.22(1)-(5). Score OV 12 by determining which statements apply to the circumstances of the sentencing offense and assigning the point value indicated by the applicable statement having the highest number of points. MCL 777.42(1).

Points	OV 12—Number of contemporaneous felonious criminal acts
25	Three or more contemporaneous felonious criminal acts involving crimes against a person were committed. MCL 777.42(1)(a).
10	Two contemporaneous felonious criminal acts involving crimes against a person were committed. MCL 777.42(1)(b).
10	Three or more contemporaneous felonious criminal acts involving other crimes were committed. MCL 777.42(1)(c).
5	One contemporaneous felonious criminal act involving a crime against a person was committed. MCL 777.42(1)(d).
5	Two contemporaneous felonious criminal acts involving other crimes were committed. MCL 777.42(1)(e).
1	One contemporaneous felonious criminal act involving any other crime was committed. MCL 777.42(1)(f).
0	No contemporaneous felonious criminal acts were committed. MCL 777.42(1)(g).

- A felonious criminal act is contemporaneous if both of the following circumstances exist:
  - the criminal act occurred within 24 hours of the sentencing offense, MCL 777.42(2)(a)(*i*), and
  - the criminal act has not and will not result in a separate conviction, MCL 777.42(2)(a)(*ii*).
- Violations of MCL 750.227b (felony-firearm) should not be counted when scoring this variable. MCL 777.42(2)(b).
- Conduct scored in OV 11 must not be scored under this variable. MCL 777.42(2)(c).

2. Case Law Under the Statutory Guidelines

The phrase "crime[] against a person" as used in MCL 777.42(1) applies only to offenses falling within that offense category under MCL 777.5 and MCL 777.11–MCL 777.19. See *Bonilla-Machado*, 489 Mich at 422 n 19.[85]

"[W]hen scoring OV 12, a court must look beyond the sentencing offense and consider only those separate acts or behavior that did not establish the sentencing offense." *People v Light*, 290 Mich App 717, 723 (2010). In *Light*, *supra* at 720, the defendant pleaded guilty to unarmed robbery, and the trial court assessed five points for OV 12 (two or more contemporaneous felonious criminal acts): (1) carrying a concealed weapon (which was not in dispute), and (2) either larceny from a person or larceny in a building (the lower court record was unclear as to which form of larceny its ultimate scoring decision was based). The Court of Appeals determined that "for OV 12 scoring purposes, [the defendant's] physical act of wrongfully taking [the victim's] money while inside a grocery store is the same single act for all forms of larceny—robbery, larceny from a person, and larceny in a building. Therefore, even though the trial court sentenced [the defendant] for unarmed robbery, [the defendant's] sentencing offense included all acts 'occur[ring] in an attempt to commit the larceny, or during commission of the larceny, or in flight or attempted flight after the commission of the larceny, or in an attempt to retain possession of the property.'" *Id*. at 725, quoting MCL 750.530(2). The Court held that "[b]ecause [the defendant's] sentencing offense was unarmed robbery, neither form of larceny could be used as the contemporaneous felonious act needed to increase [the defendant's] OV 12 score." *Light*, *supra* at 726. Stated another way, "the language of OV 12 clearly indicates that the Legislature intended for contemporaneous felonious criminal acts to be acts other than the sentencing offense and not just other methods of classifying the sentencing offense." *Id*. "Because both forms of larceny served as the basis of [the defendant's] sentencing offense, the trial court should not have scored five points for [the defendant's] unarmed [] robbery conviction under OV 12." *Id*.

"[A]ll conduct that can be scored under OV 12 must be scored under that OV before proceeding to score OV 13." *People v Bemer*,

[85] However, see *Bonilla-Machado,* 489 Mich at 428-429, where the Court noted that "[t]he plain language of MCL 777.42 indicates the Legislature's express intent to allow sentencing courts to consider crimes within *all* the offense categories" whenever the statutory language does not expressly limit the sentencing court to considering only "crimes against a person." Specifically, the statutory language in MCL 777.42(1)(c), MCL 777.42(1)(e), and MCL 777.42(1)(f) directs the sentencing court to score points under OV 12 for "contemporaneous felonious criminal acts involving *other* crimes" committed by the defendant.

286 Mich App 26, 28 (2009). Conduct that is properly scored under OV 12 may not be omitted from OV 12 simply because scoring the conduct under OV 13 would yield a higher OV total. *Bemer*, *supra* at 28.

In scoring OV 12, a trial court "[is not] free to look at the substance of the crime rather than the offense category designations under the guidelines themselves[.]" *People v Wiggins (Dale)*, 289 Mich App 126, 130 (2010). In *Wiggins (Dale)*, *supra* at 127-128, the defendant was charged with two counts of attempting to arrange for child sexually abusive activity, MCL 750.145c(2) (designated as crimes against a person under MCL 777.16g), and two counts of disseminating sexually explicit matter to a minor, MCL 722.675 (designated as crimes against public order under MCL 777.15g). After the defendant pleaded no contest to one count of attempting to arrange for child sexually abusive activity, the trial court assessed 25 points for OV 12 (three or more contemporaneous felonious criminal acts involving crimes against a person were committed). *Wiggins (Dale)*, *supra* at 127-128; MCL 777.42(1)(a). The Court of Appeals held that OV 12 should have been scored at ten points (three or more contemporaneous felonious criminal acts involving other crimes were committed), because only one of the other three charges was designated as a crime against a person, and the other charges were designated as crimes against public order. *Wiggins (Dale)*, *supra* at 130-131; MCL 777.42(1)(c). The trial court erred in justifying a score of 25 points for OV 12 based on its conclusion that "all three of the additional charges were crimes involving other persons, namely the minor children involved." *Wiggins (Dale)*, *supra* at 127-128, 130-131. The Court of Appeals clarified that "only crimes with the offense category designated as 'person' under MCL 777.11 to MCL 777.18 can be considered 'crimes against a person' for purposes of scoring OV 12[.]" *Wiggins (Dale)*, *supra* at 131.

O. OV 13—Continuing Pattern of Criminal Behavior

1. Definitions/Scoring

OV 13 is scored for all felony offenses subject to the statutory sentencing guidelines. MCL 777.22(1)-(5). Determine which statements addressed by OV 13 apply to the circumstances of the

offense and assign the point value indicated by the applicable statement having the highest number of points. MCL 777.43(1).[86]

Points	OV 13—Continuing pattern of criminal behavior
50	The offense was part of a pattern of felonious criminal activity involving 3 or more sexual penetrations against a person or persons less than 13 years of age. MCL 777.43(1)(a).
25	The offense was part of a pattern of felonious criminal activity directly related to causing, encouraging, recruiting, soliciting, or coercing membership in a gang or communicating a threat with intent to deter, punish, or retaliate against another for withdrawing from a gang. MCL 777.43(1)(b). THIS PROVISION APPLIES ONLY TO OFFENSES OCCURRING ON OR AFTER APRIL 1, 2009. SEE 2008 PA 562.
25	The offense was part of a pattern of felonious criminal activity involving 3 or more crimes against a person. MCL 777.43(1)(c).
10	The offense was part of a pattern of felonious criminal activity involving a combination of 3 or more crimes against a person or property <u>or a violation of MCL 333.7401(2)(a)(*i*)-(*iii*) or MCL 333.7403(2)(a)(*i*)-(*iii*)</u>. MCL 777.43(1)(d). THE UNDERLINED PORTION APPLIES ONLY TO OFFENSES OCCURRING ON OR AFTER MARCH 1, 2003. SEE 2002 PA 666.
10	The offense was part of a pattern of felonious criminal activity directly related to membership in an organized criminal group. Formerly MCL 777.43(1)(d); deleted by 2008 PA 562, effective April 1, 2009. THIS PROVISION APPLIES ONLY TO OFFENSES OCCURRING BEFORE APRIL 1, 2009. SEE 2008 PA 562.
10	The offense was part of a pattern of felonious criminal activity involving a combination of 3 or more violations of MCL 333.7401(2)(a)(*i*)-(*iii*) or 333.7403(2)(a)(*i*)-(*iii*). MCL 777.43(1)(e). THIS PROVISION APPLIES ONLY TO OFFENSES OCCURRING ON OR AFTER MARCH 1, 2003. SEE 2002 PA 666.
5	The offense was part of a pattern of felonious criminal activity involving 3 or more crimes against property. MCL 777.43(1)(f).
0	No pattern of felonious criminal activity existed. MCL 777.43(1)(g).

- To score this variable, all crimes within a period of five years, *including the sentencing offense*, must be

[86] Effective March 1, 2003, 2002 PA 666 amended the instructions for OV 13 to include references to specific controlled substance offenses. Additionally, effective April 1, 2009, 2008 PA 562 amended the instructions for OV 13 to replace the provision allocating ten points for a pattern of activity related to "membership in an organized criminal group" with a provision allocating 25 points for a pattern of activity related to gang membership. Language appearing in the shaded areas of the chart represents the variable as it applies to offenses occurring before or after the effective date(s) of the amendment(s), as indicated within the chart.

counted without regard to whether the offense resulted in a conviction. MCL 777.43(2)(a).

- The existence of an organized criminal group may be reasonably inferred from the facts surrounding the sentencing offense, and the group's existence is more important than the presence or absence of multiple offenders, the age of the offenders, or the degree of sophistication demonstrated by the criminal group. MCL 777.43(2)(b).

- Do not consider conduct scored in OVs 11 or 12 unless the offense was related to membership in an organized criminal group, or unless the offense was gang-related. MCL 777.43(2)(c).[87]

- Score 50 points only if the sentencing offense is first-degree criminal sexual conduct. MCL 777.43(2)(d).

- Only one controlled substance offense arising from the criminal episode for which the offender is being sentenced may be counted when scoring this variable.[88] MCL 777.43(2)(e).

- Only one crime involving the same controlled substance may be counted under this variable.[89] For example, conspiracy and a substantive offense involving the same amount of controlled substances cannot both be counted under OV 13. Similarly, possession and delivery of the same amount of controlled substances may not be counted as two crimes under OV 13. MCL 777.43(2)(f).

2. Case Law Under the Statutory Guidelines

"[A]ll conduct that can be scored under OV 12 must be scored under that OV before proceeding to score OV 13." *Bemer*, 286 Mich App at 28. That is, "when scoring OV 13, the trial court cannot consider any conduct that was or *should have been* scored under [OV 12]." *Bemer*, *supra* at 35.

The five-year period to which OV 13 refers must include the sentencing offense. *People v Francisco*, 474 Mich 82, 86-87 (2006). OV 13 assesses points when a sentencing offense is "part of a pattern of felonious activity." MCL 777.43(1)(a)-(g). According to MCL 777.43(2)(a), a pattern consists of three or more crimes

[87] "Gang-related" conduct was added by 2008 PA 562, effective April 1, 2009.

[88] Effective March 1, 2003. 2002 PA 666.

[89] Effective March 1, 2003. 2002 PA 666.

committed in a five-year period "including the sentencing offense without regard to whether a conviction resulted from the offense." In *Francisco*, *supra* at 88, the trial court scored OV 13 at 25 points for the defendant's three previous felonies that occurred in 1986, even though the offense for which the defendant was being sentenced occurred in 2003.

Based on the plain language of MCL 777.43, the *Francisco* Court explained:

> "[I]n order for the sentencing offense to constitute a part of the pattern, it must be encompassed by the same five-year period as the other crimes constituting the pattern.
>
> * * *
>
> "Because MCL 777.43(2)(a) states that the sentencing offense 'shall' be included in the five-year period, the sentencing offense *must* be included in the five-year period. Therefore, MCL 777.43(2)(a) does preclude consideration of a five-year period that does not include the sentencing offense." *Francisco*, *supra* at 87.

An offense that is statutorily designated as a "crime against public safety" under MCL 777.5 and MCL 777.11–MCL 777.19 may not also be considered a "crime against a person" to establish a continuing pattern of criminal behavior for purposes of scoring OV 13. *Bonilla-Machado*, 489 Mich at 415-416, 422. In *Bonilla-Machado*, *supra* at 424-425, the defendant was convicted of two counts of assaulting a prison employee, an offense that is designated under MCL 777.16j as a crime against public safety. The defendant had two prior convictions for offenses designated as crimes against a person and one prior conviction for an offense designated as a crime against public safety. *Bonilla-Machado*, *supra* at 425 n 20. The trial court assessed ten points for OV 13 under MCL 777.43(1)(d) ("[t]he offense was part of a pattern of felonious criminal activity involving a combination of 3 or more crimes against a person or property . . ."). *Bonilla-Machado*, *supra* at 425. The Court of Appeals increased the defendant's OV 13 score to 25 points under MCL 777.43(1)(c) ("[t]he offense was part of a pattern of felonious criminal activity involving 3 or more crimes against a person"), explaining that "'[a]lthough MCL 777.16j indicates that assault of a prison guard is a crime against public safety, this offense is *also* a crime against a person because, obviously, a prison guard is a person.'" *Bonilla-Machado*, *supra* at 425, quoting *People v Bonilla-Machado*,

unpublished opinion per curiam of the Court of Appeals, issued December 15, 2009 (Docket No. 287605), slip op p 4.

The Michigan Supreme Court, noting that "MCL 777.21(1)(a) explicitly instructs a court to first '[f]ind the *offense category* for the offense from' MCL 777.11 through [MCL] 777.19 and then 'determine the offense variables to be scored for that *offense category*[,]'" concluded that "[t]he use of the named offense categories throughout the sentencing guidelines chapter indicates legislative intent to have the offense categories applied in a uniform manner, including when they are applied in the offense variable statutes." *Bonilla-Machado*, 489 Mich at 426. Accordingly, "a felony designated as a 'crime against public safety' may not be used to establish a 'pattern of felonious criminal activity involving 3 or more crimes against a person,' MCL 777.43(1)(c), for purposes of scoring OV 13." *Bonilla-Machado*, *supra* at 416. Because "the combination of designated crimes needed to assess 5 to 50 points for OV 13 [was] not present, . . . the only allowable score under the categories designated in the statute [was] zero points." *Id*. at 427. See also *People v Pearson (Jermaine)*, 490 Mich 984 (2012) (because "conspiracy is classified as a 'crime against public safety[]'" under MCL 777.18, conspiracy to commit armed robbery may not be considered when scoring OV 13, even though armed robbery is classified under MCL 777.16y as a "'crime[] against a person'"; MCL 777.21(4) "does not allow the offense category underlying the conspiracy to dictate the offense category of the conspiracy itself for purposes of scoring OV 13[]").

Juvenile adjudications may be included when scoring OV 13. *People v Harverson*, 291 Mich App 171, 180 (2010). "[T]he plain language of the statute does not require a criminal conviction to score [ten] points, but only requires 'criminal activity.' A juvenile adjudication clearly constitutes criminal activity because 'it amounts to a violation of a criminal statute, even though that violation is not resolved in a '"criminal proceeding."'" *Harverson, supra* at 180, quoting *People v Luckett*, 485 Mich 1076, 1076-1077 (2010).

OV 13 was properly scored at 25 points where the defendant was convicted of two felony offenses against a person and had two CSC-I charges pending at the time he was sentenced. *Wilkens*, 267 Mich App at 743-744.

An offense for which a defendant is acquitted may still be considered for purposes of scoring OV 13 if it is established by a preponderance of the evidence that the defendant committed the offense. *People v Jenkins (Terrell)*, unpublished opinion per curiam of the Court of Appeals, issued August 5, 2008 (Docket No.

276763).[90] See also *People v Clark (Dale)*, unpublished opinion per curiam of the Court of Appeals, issued October 2, 2003 (Docket No. 240139) (OV 13 was properly scored at 25 points where the evidence established that the defendant was in possession of items taken in three home invasions from which the defendant's sentencing offenses stemmed, even though the defendant was not convicted of home invasion).

"[T]he trial court [properly] considered a 2008 charge of bank robbery, which was dismissed, as the third offense to support [a] 10-point score for OV 13[]" in sentencing the defendant for a 2010 robbery at the same bank. *People v Earl (Ronald)*, ___ Mich App ___, ___ (2012) ("[a]lthough the 2008 case was dismissed in the district court, there was no indication at sentencing that 'the 2008 allegation was dismissed for want of probable cause[,]'" and "[i]n light of the unchallenged evidence presented at sentencing regarding the 2008 bank robbery offense, there was enough evidence for the trial court to score 10 points for OV 13[]").

P. OV 14—Offender's Role

1. Definitions/Scoring

OV 14 is scored for all felony offenses to which the guidelines apply. MCL 777.22(1)-(5). Determine which statement applies to the sentencing offense and assign the point value indicated by the applicable statement. MCL 777.44(1).

Points	OV 14—Offender's role
10	The offender was a leader in a multiple offender situation. MCL 777.44(1)(a).
0	The offender was not a leader in a multiple offender situation. MCL 777.44(1)(b).

[90] A trial court may properly consider information not proven beyond a reasonable doubt when scoring offense variables. *People v Drohan*, 475 Mich 140, 164 (2006). In *Drohan*, *supra* at 164, the Court reaffirmed its assertion in *People v Claypool*, 470 Mich 715, 730 n 14 (2004), that Michigan's sentencing scheme does not violate a defendant's Sixth Amendment right to be sentenced on the basis of facts determined by a jury beyond a reasonable doubt. *Blakely v Washington*, 542 US 296 (2004), *United States v Booker*, 543 US 220 (2005), and other post-*Blakely* cases do not apply to Michigan's indeterminate sentencing scheme. *Drohan*, *supra* at 157-161. According to the *Drohan* Court, Michigan's sentencing guidelines are not unconstitutional because trial courts do not use judicially ascertained facts to impose a sentence greater than the term authorized by the jury's verdict—the statutory maximum. *Id*. at 159. **NOTE:** Unpublished opinions are not precedentially binding under the rule of stare decisis. MCR 7.215(C)(1).

- Consider the entire criminal transaction in which the sentencing offense occurred when determining the offender's role. MCL 777.44(2)(a).

- In cases involving three or more offenders, more than one offender may be considered a leader. MCL 777.44(2)(b).

2. Case Law Under the Statutory Guidelines

Ten points were appropriate under OV 14 where, although the defendant did not drive the automobile in which the offenders rode, the defendant was the oldest among the group of offenders involved in the sexual assault, he was the first to make sexual contact with the victim and had the most sexual contact with her, and his was the only DNA that matched the semen in the victim's vaginal area. *Apgar*, 264 Mich App at 330-331.

Where the defendant's PSIR indicated that his sister was involved in his effort to take his former girlfriend and their children out of state, ten points were properly scored for OV 14; it appeared from the PSIR that the sister aided and abetted the defendant in committing unlawful imprisonment and, therefore, that she could be viewed as an "offender" and the defendant as a "leader" within the meaning of MCL 777.44. *People v Hernandez-Perez*, unpublished opinion per curiam of the Court of Appeals, issued June 16, 2011 (Docket No. 297917), rev'd in part on other grounds 490 Mich 916 (2011).[91]

OV 14 was improperly scored where evidence showed that the defendant was the sole offender involved in the sentencing offense; the fact that the defendant's wife and children lived at the same residence and frequent visits were made by numerous other people is not evidence that a defendant was the leader in a multiple offender situation. *People v Black (Tempy)*, unpublished opinion per curiam of the Court of Appeals, issued October 19, 2004 (Docket No. 248613).

A police informant acting in concert with law enforcement is not "committing a crime" when the informant's conduct is authorized by the police. *People v Rosenberg*, unpublished opinion per curiam of the Court of Appeals, issued January 25, 2005 (Docket No. 251930) (undercover police informant acting as a buyer in purchasing cocaine from the defendant was not an "offender" for purposes of OV 14). Where the defendant was the only other person involved in the controlled buy, the

[91] Unpublished opinions are not precedentially binding under the rule of stare decisis. MCR 7.215(C)(1).

circumstances do not constitute a "multiple offender situation" as intended by OV 14. *Rosenberg*, *supra*.

OV 14 is properly scored at ten points when the defendant is one of two offenders (in a group of three or more offenders) taking an active role in the commission of the crime and neither one of the two primary participants establishes himself or herself as the leader. *People v Brewer (Michael)*, unpublished opinion per curiam of the Court of Appeals, issued February 19, 2004 (Docket No. 242764). In *Brewer (Michael)*, *supra*, ten points were appropriate where the defendant was one of two men with guns who demanded money from the hotel clerk and tied him up in the hotel manager's office, and where testimony indicated that the third participant's purpose in the criminal endeavor was unclear to the victim who suggested that the third person was "maybe a watch out." *Brewer (Michael)*, *supra*.

The defendant was the leader for purposes of OV 14 in a group's attempt to rob the victim where the defendant "took initiative" in the robbery attempt and "was the first person to throw a punch." *People v Scott (Paris)*, unpublished opinion per curiam of the Court of Appeals, issued March 4, 2004 (Docket No. 243418).

Although "there [were] facts that may indicate that [an 18-year-old codefendant] was a leader[]" in disseminating sexually explicit matter to a minor, the trial court did not clearly err in assessing 10 points against the 35-year-old defendant under OV 14; the defendant was "significantly older than [the codefendant]; [the defendant] owned and drove the van in which he picked the girls up and in which the sexual acts occurred; and it [was] reasonable to assume that [the defendant] purchased the alcohol[]" that was procured during the criminal episode. *People v Lockett*, 295 Mich App 165, 184-185 (2012).

Q. OV 15—Aggravated Controlled Substance Offenses[92]

1. Definitions/Scoring

OV 15 is only scored for felony offenses involving a controlled substance. MCL 777.22(3). Score OV 15 by determining which statements apply to the sentencing offense and assigning the point value indicated by the applicable statement having the highest number of points. MCL 777.45(1).[93]

[92] See the Michigan Judicial Institute's *Controlled Substances Benchbook* for detailed information about controlled substance offenses.

Pts	OV 15—Aggravated controlled substance offenses
100	The offense involved the manufacture, creation, delivery, possession, or possession with intent to manufacture, create, or deliver of 1,000 or more grams of any mixture containing a controlled substance classified in schedule 1 or 2 that is a narcotic drug or a drug described in MCL 333.7214(a)(*iv*). MCL 777.45(1)(a).
75	The offense involved the manufacture, creation, delivery, possession, or possession with intent to manufacture, create, or deliver of 450 grams or more but less than 1,000 grams of any mixture containing a controlled substance classified in schedule 1 or 2 that is a narcotic drug or a drug described in MCL 333.7214(a)(*iv*). MCL 777.45(1)(b).
50	The offense involved the manufacture, creation, delivery, possession, or possession with intent to manufacture, create, or deliver of 50 or more grams but less than 450 grams of any mixture containing a controlled substance classified in schedule 1 or 2 that is a narcotic drug or a drug described in MCL 333.7214(a)(*iv*). MCL 777.45(1)(c).
25	The offense involved the sale or delivery of a controlled substance other than marijuana or a mixture containing a controlled substance other than marijuana by the offender who was 18 years of age or older to a minor who was 3 or more years younger than the offender. MCL 777.45(1)(d).
20	The offense involved the sale, delivery, or possession with intent to sell or deliver 225 grams or more of a controlled substance classified in schedule 1 or 2 or a mixture containing a controlled substance classified in schedule 1 or 2. THIS PROVISION APPLIES ONLY TO OFFENSES OCCURRING BEFORE MARCH 1, 2003. 2002 PA 666.
15	The offense involved the sale, delivery, or possession with intent to sell or deliver 50 or more grams but less than 225 grams of a controlled substance classified in schedule 1 or 2 or a mixture containing a controlled substance classified in schedule 1 or 2. THIS PROVISION APPLIES ONLY TO OFFENSES OCCURRING BEFORE MARCH 1, 2003. 2002 PA 666.
10	The offense involved the sale, delivery, or possession with intent to sell or deliver 45 kilograms or more of marijuana or 200 or more of marijuana plants.MCL 777.45(1)(e).
10	The offense is a violation of MCL 333.7401(2)(a)(*i*)-(*iii*) pertaining to a controlled substance classified in schedule 1 or 2 that is a narcotic drug or a drug described in MCL 333.7214(a)(*iv*) and was committed in a minor's abode, settled home, or domicile, regardless of whether the minor was present. MCL 777.45(1)(f).

[93] Effective March 1, 2003, 2002 PA 666 amended the statute governing point allocations for OV 15. Language appearing in the shaded areas of the chart below represents the variable as it applies to offenses that occurred before March 1, 2003. Unshaded areas contain the instructions for scoring OV 15 for offenses occurring on or after March 1, 2003, the amendment's effective date.

5	The offense involved the delivery or possession with the intent to deliver marijuana or any other controlled substance or a counterfeit controlled substance or possession of controlled substances or counterfeit controlled substances having a value or under such circumstances as to indicate trafficking. MCL 777.45(1)(g).
0	The offense was not an offense described in the categories above. MCL 777.45(1)(h).

- "Deliver" is the actual or constructive transfer of a controlled substance from one person to another person without regard to remuneration. MCL 777.45(2)(a).
- A "minor" is an individual 17 years of age or less. MCL 777.45(2)(b).
- "Trafficking" is the sale or delivery of actual or counterfeit controlled substances on a continuing basis to another person or persons for further distribution. MCL 777.45(2)(c).

2. Case Law Under the Statutory Guidelines

Dicta appearing in a case remanded for articulation of a substantial and compelling reason for departure indicates that, for purposes of scoring the guidelines, a person may "deliver" a controlled substance by injecting the substance into another person. *People v Havens*, 268 Mich App 15, 18 (2005). According to the Court:

> "We assume that if injection constitutes delivery for purposes of conviction,[94] the same act constitutes delivery for purposes of scoring offense variable 15 (aggravated controlled substance offenses), MCL 777.45, at 25 points for delivery of a controlled substance other than marijuana to a minor." *Havens*, 268 Mich App at 18.

Five points were properly scored for OV 15 where "[the d]efendant admitted ownership of cocaine and marijuana, and admitted that he sold those substances to others. Packaging materials and a scale of the type used to weigh narcotics were found in [the] defendant's home, and [the] defendant's mother admitted that her son was selling something out of her home."

[94] The *Havens* Court cited *People v Schultz*, 246 Mich App 695, 701-709 (2001), as support for the conclusion that "delivery of a controlled substance may be accomplished by injecting it into another person."

People v Kennedy (Terrell), unpublished opinion per curiam of the Court of Appeals, issued January 29, 2008 (Docket No. 275753).[95]

Five points were proper where the defendant was convicted of possession with intent to deliver less than 50 grams of cocaine. *People v Scott (Willie)*, unpublished opinion per curiam of the Court of Appeals, issued October 26, 2004 (Docket No. 248764). The trial court scored OV 15 at five points because the amount of cocaine and its packaging (pieces of crack cocaine were individually wrapped) indicated that the defendant intended to sell or deliver a controlled substance having value or under circumstances that indicated he was involved in trafficking. *Scott (Willie)*, *supra*; MCL 777.45(1)(g).

"OV 15 must be scored [based solely on] the amount of [controlled substance applicable to] . . . the sentencing offense, and cannot be scored on the basis of other drug offenses committed during a similar time period but dismissed as part of [a] plea agreement[;]" accordingly, 50 points were improperly scored under OV 15 based on "amounts of cocaine related to dismissed counts but wholly unrelated to the cocaine possession 'sentencing offense' to which [the] defendant pleaded guilty." *People v Gray (Orlando)*, ___ Mich App ___, ___ (2012). In *Gray (Orlando)*, *supra* at ___, the defendant pleaded guilty to certain charges, including a charge of possession with intent to deliver less than 50 grams of cocaine that was based on a small amount of cocaine found in his car, in exchange for dismissal of other charges, including two major controlled substance charges that were based on a large amount of cocaine that was discovered in a motel room. The trial court, noting that the defendant possessed both the smaller and larger amounts of cocaine at the same time, assessed 50 points under OV 15, distinguishing *People v McGraw*, 484 Mich 120 (2009), "on the basis that it rejected for scoring consideration events that transpired *after* the sentencing offense was completed[.]" *Gray (Orlando)*, *supra* at ___ (emphasis supplied). The Court of Appeals reversed, holding that because OV 15 does not specifically provide otherwise, it must be scored based solely on the sentencing offense. *Id*. at ___. Noting that "[*McGraw*, *supra* at 122, 130-134,] . . . requires a court to separate the conduct forming the basis of the sentencing offense from the conduct forming the basis of an offense that was charged and later dismissed or dropped, regardless of the sequence in which the conduct transpired[,]" the *Gray (Orlando)* Court concluded that although the greater amount of cocaine could be considered as the basis for a departure from the

[95] Unpublished opinions are not precedentially binding under the rule of stare decisis. MCR 7.215(C)(1),

sentencing guidelines, it could not be considered in scoring OV 15. *Id*. at ___.

R. OV 16—Property Obtained, Damaged, Lost, or Destroyed

1. Definitions/Scoring

OV 16 is scored for all felony offenses under the sentencing guidelines except those involving a controlled substance. MCL 777.22(2), MCL 777.22(4), and MCL 777.22(5). When the offense is a crime against a person, OV 16 is scored only for a violation or attempted violation of MCL 750.110a (home invasion). MCL 777.22(1). Score OV 16 by determining which statements addressed by the variable apply to the sentencing offense and assigning the point value indicated by the applicable statement having the highest number of points. MCL 777.46(1).

Points	OV 16—Degree of property damage
10	Wanton or malicious damage occurred beyond that necessary to commit the crime for which the offender is not charged and will not be charged. MCL 777.46(1)(a).
10	The property had a value of more than $20,000 or had significant historical, social, or sentimental value. MCL 777.46(1)(b).
5	The property had a value of $1,000 or more but not more than $20,000. MCL 777.46(1)(c).
1	The property had a value of $200 or more but not more than $1,000. MCL 777.46(1)(d).
0	No property was obtained, damaged, lost, or destroyed, or the property had a value of less than $200. MCL 777.46(1)(e).

- In cases involving multiple offenders or multiple victims, the appropriate point total may be determined by aggregating the value of property involved in the offense, including property involved in uncharged offenses or property involved in charges dismissed under a plea agreement. MCL 777.46(2)(a).

- Use the value of the property to score this variable in cases where the property was unlawfully obtained, lost to the lawful owner, or destroyed. If the property was damaged, use the amount of money necessary to restore the property to its preoffense condition. MCL 777.46(2)(b).

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- Money or property involved in admitted but uncharged offenses or in charges dismissed under a plea agreement may be considered in scoring this variable. MCL 777.46(2)(c).

2. Case Law Under the Statutory Guidelines

At the time this monograph was published, there was no published case law concerning the application of OV 16.

Where the sentencing offense was armed robbery, MCL 750.529, OV 16 should not have been scored because armed robbery is a crime against a person, and for crimes against a person, OV 16 is scored only when the violation or attempted violation involves MCL 750.110a (home invasion). MCL 777.22(1); *People v Miller (Keothes)*, unpublished opinion per curiam of the Court of Appeals, issued October 28, 2003 (Docket No. 240613).[96]

A family's attachment to the family pet is the sort of intangible value of property contemplated by OV 16's point assignment for damage or destruction to property with "significant sentimental value." *People v Kruithoff*, unpublished opinion per curiam of the Court of Appeals, issued December 16, 2003 (Docket No. 242739).

The monetary amounts reflected in the statutory language governing OV 16 do not require submission of exacting or itemized proof of the property's value. See *People v Rosario*, unpublished opinion per curiam of the Court of Appeals, issued May 20, 2003 (Docket No. 236965) (where testimony established that a door had been broken off its hinges, a mattress was ruined, and a phone line had been pulled off the wall, the Court of Appeals found that there was sufficient evidence showing that the property damage met the minimum amount of $200 for purposes of scoring OV 16).

S. OV 17—Degree of Negligence Exhibited

1. Definitions/Scoring

OV 17 is scored only under very specific circumstances: when the offense is a crime against a person *and* the crime involves the operation of a vehicle, vessel, ORV, snowmobile, aircraft, or locomotive. MCL 777.22(1). Determine which statements apply

[96] Unpublished opinions are not precedentially binding under the rule of stare decisis. MCR 7.215(C)(1).

to the offense and assign the point value indicated by the statement having the highest number of points. MCL 777.47(1).

Points	OV 17—Degree of negligence exhibited
10	The offender showed a wanton or reckless disregard for the life or property of another person. MCL 777.47(1)(a).
5	The offender failed to show the degree of care that a person of ordinary prudence in a similar situation would have shown. MCL 777.47(1)(b).
0	The offender was not negligent. MCL 777.47(1)(c).

- If points are assessed against the offender for OV 6 (intent to kill or injure another individual), ten points may not be scored under this variable. MCL 777.47(2).[97]

- Definitions for "aircraft," "ORV," "snowmobile," "vehicle," and "vessel" are referenced in MCL 777.1.

2. Case Law Under the Statutory Guidelines

At the time this monograph was published, there was no published case law concerning the application of OV 17.

Five points were properly scored for OV 17 where "[t]he evidence revealed that the two vehicles in front of [the] defendant successfully swerved to avoid hitting the victim . . . , while [the] defendant did not." *People v Bartel*, unpublished opinion per curiam of the Court of Appeals, issued June 21, 2011 (Docket No. 296795).[98]

OV 17 was properly scored at ten points where "[the] defendant did not give up possession of the vehicle until after he had led multiple officers on a chase. [The d]efendant was observed driving through an intersection on a red light, driving erratically in an attempt to avoid police officers, and driving on a sidewalk near a pedestrian and her children." *People v Morrison (Brian)*, unpublished opinion per curiam of the Court of Appeals, issued March 25, 2010 (Docket No. 285662).

[97] The language used in the instructions for OV 17 does not appear to preclude assigning an offender *five* points under this variable when the offender received points under OV 6.

[98] Unpublished opinions are not precedentially binding under the rule of stare decisis. MCR 7.215(C)(1).

T. OV 18—Operator Ability Affected by Alcohol or Drugs

1. Definitions/Scoring

OV 18 is only scored under very specific circumstances: when the offense is a crime against a person *and* the crime involves the operation of a vehicle, vessel, ORV, snowmobile, aircraft, or locomotive. MCL 777.22(1). Score OV 18 by determining which of the statements addressed by this variable apply to the offense and assigning the point value indicated by the applicable statement having the highest number of points. MCL 777.48(1).[99]

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Pts	OV 18—Degree to which alcohol or drugs affected the offender
20	The offender operated a vehicle, vessel, ORV, snowmobile, aircraft, or locomotive when his or her bodily alcohol content was 0.20 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine. MCL 777.48(1)(a).
15	The offender operated a vehicle, vessel, ORV, snowmobile, aircraft, or locomotive when his or her bodily alcohol content was 0.15 grams or more but less than 0.20 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine. MCL 777.48(1)(b).
10	The offender operated a vehicle, vessel, ORV, snowmobile, aircraft, or locomotive while the offender was under the influence of alcoholic or intoxicating liquor, a controlled substance, or a combination of alcoholic or intoxicating liquor and a controlled substance; or while the offender's body contained any amount of a controlled substance listed in schedule 1 under MCL 333.7212, or a rule promulgated under that section, or a controlled substance described in MCL 333.7214(a)(*iv*); or while the offender had an alcohol content of 0.08 grams or more but less than 0.15 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine or, beginning October 1, 2013, the offender had an alcohol content of 0.10 grams or more but less than 0.15 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine. MCL 777.48(1)(c).
10	The offender operated a vehicle, vessel, ORV, snowmobile, aircraft, or locomotive when his or her bodily alcohol content was 0.10 grams or more but less than 0.15 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, or while he or she was under the influence of intoxicating liquor or a controlled substance, or a combination of intoxicating liquor and a controlled substance. THIS PROVISION APPLIES ONLY TO OFFENSES OCCURRING BEFORE SEPTEMBER 30, 2003. 2003 PA 134.

[99] Effective September 30, 2003, 2003 PA 134 amended the statute governing point allocations for OV 18. Language appearing in the shaded areas of the chart represents the variable as it applies to offenses that occurred before September 30, 2003. Unshaded areas contain the instructions for scoring OV 18 for offenses occurring on or after September 30, 2003, the amendment's effective date.

5	The offender operated a vehicle, vessel, ORV, snowmobile, aircraft, or locomotive while he or she was visibly impaired by the use of alcoholic or intoxicating liquor or a controlled substance, or a combination of alcoholic or intoxicating liquor and a controlled substance, or was less than 21 years of age and had any bodily alcohol content. MCL 777.48(1)(d).
5	The offender operated a vehicle, vessel, ORV, snowmobile, aircraft, or locomotive when his or her bodily alcohol content was 0.07 grams or more but less than 0.10 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, or while he or she was visibly impaired by the use of intoxicating liquor or a controlled substance, or a combination of intoxicating liquor and a controlled substance, or was less than 21 years of age and had any bodily alcohol content. THIS PROVISION APPLIES ONLY TO OFFENSES OCCURRING BEFORE SEPTEMBER 30, 2003. 2003 PA 134.
0	The offender's ability to operate a vehicle, vessel, ORV, snowmobile, aircraft, or locomotive was not affected by an alcoholic or intoxicating liquor or a controlled substance or a combination of alcoholic or intoxicating liquor and a controlled substance. MCL 777.48(1)(e).

- For purposes of scoring OV 18, "any bodily alcohol content" is either of the following:
  - an alcohol content of 0.02 grams or more but less than 0.08 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine,[100] MCL 777.48(2)(a),[101] or
  - any presence of alcohol within a person's body from the consumption of alcohol except for alcohol consumption as part of a generally recognized religious service or ceremony, MCL 777.48(2)(b).
- Definitions for "aircraft," "ORV," "snowmobile," "vehicle," and "vessel" are referenced in MCL 777.1.

2. Case Law Under the Statutory Guidelines

At the time this monograph was published, there was no published case law concerning the application of OV 18.

"[Where the d]efendant's own testimony at the plea hearing indicated that he 'was on drugs' at the time he took the victim's vehicle[,]" and where "the sentencing report indicate[d] that [the] defendant's description of the offense included an

[100] Beginning October 1, 2013, an alcohol content of 0.02 grams or more but less than 0.10 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

[101] Before September 30, 2003, MCL 777.48(2)(a) stated: "An alcohol content of not less than 0.02 grams or more than 0.07 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine."

admission that he had smoked crack ten minutes before forcibly taking the victim's car[,]" ten points were appropriately scored for OV 18. *People v Morrison (Brian)*, unpublished opinion per curiam of the Court of Appeals, issued March 25, 2010 (Docket No. 285662).[102]

Five points are properly scored under OV 18 when there is evidence that a minor consumed alcohol on the day of the accident giving rise to the offense being scored. *People v Magee*, unpublished opinion per curiam of the Court of Appeals, issued January 13, 2009 (Docket No. 280534). "MCL 777.48(1)(d) allows for the scoring of points if there is any evidence—not just scientific measurement—that alcohol was present in the body of an underage drinker at the time of the accident in issue." *Magee*, *supra*.

U. OV 19—Threat to the Security of a Penal Institution or Court or Interference with the Administration of Justice or the Rendering of Emergency Services

1. Definitions/Scoring

OV 19 is scored for all felony offenses to which the statutory sentencing guidelines apply. MCL 777.22(1)-(5). Determine which statements addressed by OV 19 apply to the sentencing offense and assign the point value indicated by the applicable statement having the highest number of points. MCL 777.49(1).

Points	OV 19—Threat to security or interference with administration of justice
25	The offender by his or her conduct threatened the security of a penal institution or court. MCL 777.49(a).
15	The offender used force or the threat of force against another person or the property of another person to interfere with, attempt to interfere with, or that results in the interference with the administration of justice or the rendering of emergency services. MCL 777.49(b).
10	The offender otherwise interfered with or attempted to interfere with the administration of justice. MCL 777.49(c).
0	The offender did not threaten the security of a penal institution or court or interfere with or attempt to interfere with the administration of justice or the rendering of emergency services by force or the threat of force. MCL 777.49(d).

[102] Unpublished opinions are not precedentially binding under the rule of stare decisis. MCR 7.215(C)(1).

2. Case Law Under the Statutory Guidelines

a. Conduct Before Criminal Charges

A defendant's conduct before criminal charges are filed against him or her may form the basis of interfering or attempting to interfere with the administration of justice as contemplated by OV 19; the conduct constituting interference with the administration of justice under OV 19 includes giving a police officer a false name when asked for identification. *People v Barbee*, 470 Mich 283, 284, 288 (2004) (the defendant gave a false name to a police officer who had pulled over the defendant's car for crossing the fog line).[103]

According to the *Barbee* Court, the phrase 'administration of justice' "encompasses more than just the actual judicial process." *Barbee*, *supra* at 287-288. The Court explained:

> "While 'interfered with or attempted to interfere with the administration of justice' is a broad phrase that *can* include acts that constitute 'obstruction of justice,' it is not limited to *only* those acts that constitute 'obstruction of justice.'
>
> * * *
>
> "The investigation of crime is critical to the administration of justice. Providing a false name to the police constitutes interference with the administration of justice, and OV 19 may be scored, when applicable, for this conduct." *Barbee*, 470 Mich at 286, 288.

b. Conduct After Completion of Offense

"OV 19 may be scored for conduct that occurred after the sentencing offense was completed." *People v Smith (David)*, 488 Mich 193, 202 (2010). "Because the circumstances described in OV 19 expressly include events occurring after a felony has been completed, the offense variable provides for the 'consideration of conduct after completion of the sentencing offense.'"

[103] The *Barbee* decision vacated the Court of Appeals decision in *People v Deline*, 254 Mich App 595, 597 (2002), to the extent that the *Deline* Court equated the conduct required to merit scoring under OV 19 with conduct that constituted the "obstruction of justice." *Barbee*, *supra* at 287.

Smith (David), *supra* at 202, quoting *McGraw*, 484 Mich at 133-134.

In *Smith (David)*, 488 Mich at 197, the defendant was convicted of manslaughter, reckless driving, and witness intimidation. A few days after the car accident in which the victim was killed, the defendant made threatening statements to one of the passengers in the defendant's vehicle at the time of the accident. *Smith (David)*, *supra* at 196. At sentencing, defense counsel argued that the "defendant's witness intimidation conviction precluded the scoring of OV 19 for the manslaughter conviction." *Id*. at 197. The Court of Appeals agreed and held that the defendant should have been scored zero points for OV 19, based on the rule set out in *McGraw*, 484 Mich 120, that "offense variables may not be scored for conduct that occurred after the completion of the sentencing offense unless provided for in the particular variable . . . ." *Smith (David)*, *supra* at 197-198. The Supreme Court reversed, noting that "[t]he aggravating factors considered in OV 19 contemplate events that almost always occur *after* the charged offense has been completed[,]" and that "[t]he express consideration of these events explicitly indicates that postoffense conduct may be considered when scoring OV 19." *Id*. at 200. The Court held that "[u]nder the exception to the general rule set [out] in *McGraw*, OV 19 may be scored for conduct that occurred after the sentencing offense was completed." *Smith (David)*, *supra* at 202.

c. Threatening Conduct/Words

Ten points were properly scored for OV 19 where the defendant told the rape victim that he knew who she was and that "his 'boys' had been watching her[,]" and where the "defendant required the victim to promise not to contact the police *as a condition of releasing her*." *McDonald (Deandre)*, 293 Mich App at 299-300. The Court explained:

> "[T]he specific criminal sexual conduct offense for which [the] defendant was charged and convicted was sexual penetration involving the commission of another felony. MCL 750.520b(1)(c). The underlying felony is therefore part of the criminal sexual conduct offense itself. Armed robbery, MCL 750.529, proscribes conduct that includes an assault and a felonious taking of property from the victim's presence

> or person while the defendant is armed with a weapon, . . . and as such includes flight or attempted flight after the commission of the larceny, or attempts to retain possession of the stolen items, see MCL 750.530(2). Kidnapping is defined as restraining another person, meaning restricting or confining their liberty, and thus necessarily is an ongoing offense until the victim is released. MCL 750.349(2) . . . . In this case, the victim's liberty was not free from restraint until she was not only out of [the] defendant's car, but out of shooting range—after all, the defendant had a gun trained on her even after she exited the car. Therefore, even if [the] defendant had not made the threat to the victim until she was already walking away, none of [the] defendant's charged offenses were complete until it was clear that he could no longer change his mind and order her back into the car and OV 19 should be scored." *McDonald (Deandre)*, 293 Mich App at 300-301.

A defendant's conduct is properly scored under OV 19 where the defendant threatens to kill a victim of the crime committed. *Endres*, 269 Mich App at 420-422. Without regard to a defendant's intention when the threat was issued, fifteen points are appropriate because the "threats resulted in the interference with the administration of justice, either by preventing the victim from coming forward sooner or affecting his testimony against [the] defendant." *Endres*, *supra* at 422. See also *Steele (Larry)*, 283 Mich App at 492-493 (ten points were properly scored for OV 19 where the "[d]efendant's admonitions to his victims [that he would go to jail if they disclosed his acts of sexual assault] were a clear and obvious attempt by him to diminish his victims' willingness and ability to obtain justice").

d. Resisting Apprehension

OV 19 is properly scored at 15 points where the defendant, in the course of robbing a retail store, "vigorously resisted and threatened" the store's loss prevention officer and other store employees. *People v Passage*, 277 Mich App 175, 181 (2007). According to the Court, interference with store employees in their efforts to prevent the defendant from leaving the premises with

unpaid merchandise constituted "interference with the administration of justice" because MCL 764.16(d) authorizes a private citizen to make an arrest if the citizen is an employee of a merchant, and has reasonable cause to believe that the person arrested committed a larceny in that store. *Passage*, *supra* at 180-181. Additionally, the language in MCL 777.49(b) refers only to using force or threatening force against another "person"; the statute does not require that the use or threat of force be directed against police officers. *Passage*, *supra* at 181, citing *Endres*, 269 Mich App at 420-422.

e. Perjury

Absent any statutory language indicating otherwise, OV 19 applies to convictions, such as perjury, that necessarily involve interference with the administration of justice. *People v Underwood*, 278 Mich App 334, 339-340 (2008) (the sentencing offense was perjury committed in a court proceeding). The Legislature did not expressly prohibit scoring OV 19 for the crime of perjury, and because perjury is a public trust offense for which OV 19 must be scored, the trial court erred in refusing to do so. *Underwood*, *supra* at 338.

f. General Denial of Guilt

Ordinarily, "a general denial of accusation by a defendant cannot support the scoring of OV 19[.]" *People v Jackson (Victor)*, unpublished opinion per curiam of the Court of Appeals, issued October 1, 2009 (Docket No. 285285).[104] However, OV 19 is properly scored at ten points where the defendant "actively lie[s] to the police, providing a false version of events designed to avoid arrest and to impugn the conduct and reputation of the victim." *Jackson (Victor)*, *supra*. In *Jackson (Victor)*, *supra*, the Court found that the defendant's "active lies, attempting to portray the victim as the aggressor and designed to thwart prosecution, interfered with the administration of justice."

g. Lying to Police

OV 19 is properly scored at ten points where an offender "goes beyond merely lying to the police about being

[104] Unpublished opinions are not precedentially binding under the rule of stare decisis. MCR 7.215(C)(1).

guilty, but affirmatively interfer[es] with the administration of justice by inventing a crime where none existed, and falsely reporting that non-existent crime to the police." *People v Morgan (William)*, unpublished opinion per curiam of the Court of Appeals, issued October 21, 2003 (Docket No. 242731). In *Morgan (William)*, *supra*, the defendant assaulted and seriously injured his wife. While driving her to the hospital, the defendant told her to claim she had been jumped, beaten, and robbed, and at the hospital, the defendant himself reported the "story" to the investigating police officer. *Morgan (William)*, *supra*.

h. Concealing or Destroying a Weapon

Evidence of an offender's "attempt to hide or dispose of the weapon [he used to stab the victim] in conjunction with his encouragement of others to lie about where he was at the time of the stabbing was a multifaceted attempt to create a false alibi and mislead the police[]" and supported the trial court's assessment of ten points for OV 19. *People v Ericksen*, 288 Mich App 192, 204 (2010); see also *People v Brown (Carlos)*, unpublished opinion per curiam of the Court of Appeals, issued October 20, 2011 (Docket No. 299496) (ten points were properly scored for OV 19 based on *Ericksen*, *supra* at 204, because evidence that the defendant, at the time of his arrest, "questioned how he could be charged with armed robbery when the officers had not found a gun . . . gave rise to an inference that [he] had disposed of the gun he used to rob the complainant[]").

i. Fleeing Jurisdiction

OV 19 was properly scored where the defendant absconded and fled the jurisdiction during his trial. *People v Vallance*, unpublished opinion per curiam of the Court of Appeals, issued October 16, 2003 (Docket No. 242163). According to the *Vallance* Court, the defendant's conduct was "precisely the type of 'evasive and noncooperative behavior' that OV 19 was designed to address." *Vallance*, *supra*, quoting *Deline*, 254 Mich App at 697-698.

The trial court properly assessed ten points for OV 19 where the defendant fled to a different state and changed his name following the commission of the sentencing offense. *People v Waller*, unpublished opinion per curiam of the Court of Appeals, issued June 14, 2011 (Docket No.

297639). The defendant's conduct interfered with the administration of justice by interfering with his capture and arrest. *Waller, supra*. "The fact that the investigation could proceed without [the] defendant's presence in Michigan does not mean that the administration of justice was not hampered." *Waller, supra*.

j. Change in Offender's Appearance

Absent any evidence that the defendant deliberately attempted to prevent his identification by witnesses, a defendant's drastic weight loss and change in head and facial hair styles is not conduct contemplated by OV 19. *People v Arney*, unpublished opinion per curiam of the Court of Appeals, issued March 20, 2003 (Docket No. 236875).

V. OV 20—Terrorism

1. Definitions/Scoring

OV 20 is scored for all felony offenses to which the sentencing guidelines apply. MCL 777.22(1)-(5). Score OV 20 by determining which statements addressed by the variable apply to the sentencing offense and assigning the point value indicated by the applicable statement having the highest number of points. MCL 777.49a(1).

Points	OV 20—Terrorism
100	The offender committed an act of terrorism by using or threatening to use a harmful biological substance, harmful biological device, harmful chemical substance, harmful chemical device, harmful radioactive material, harmful radioactive device, incendiary device, or explosive device. MCL 777.49a(1)(a).
50	The offender committed an act of terrorism without using or threatening to use a harmful biological substance, harmful biological device, harmful chemical substance, harmful chemical device, harmful radioactive material, harmful radioactive device, incendiary device, or explosive device. MCL 777.49a(1)(b).
25	The offender supported an act of terrorism, a terrorist, or a terrorist organization. MCL 777.49a(1)(c).
0	The offender did not commit an act of terrorism or support an act of terrorism, a terrorist, or a terrorist organization. MCL 777.49a(1)(d).

- For purposes of scoring this variable, the terms "act of terrorism" and "terrorist" are defined in MCL 750.543b. MCL 777.49a(2)(a).[105]

- "Harmful biological substance," "harmful biological device," "harmful chemical substance," "harmful chemical device," "harmful radioactive material," and "harmful radioactive device" are defined in MCL 750.200h. MCL 777.49a(2)(b).

- "'Incendiary device' includes gasoline or any other flammable substance, a blowtorch, fire bomb, Molotov cocktail, or other similar device." MCL 777.49a(2)(c).

- For purposes of OV 20, "terrorist organization" is defined in MCL 750.543c. MCL 777.49a(2)(d).

2. Case Law Under the Statutory Guidelines

Scoring 100 points for OV 20 is appropriate only when a defendant's use or threatened use of one of the substances or devices enumerated in MCL 777.49a also constitutes an act of terrorism as defined by MCL 750.543b(a); a score of 100 is inappropriate when a defendant's threats to cause harm using certain substances or devices do not themselves constitute *acts* of terrorism. *People v Osantowski*, 481 Mich 103, 105 (2008). To merit 100 points, the plain language of MCL 777.49a(1)(a) requires "the offender [to] have '*committed an act of terrorism by* using or threatening to use' one of the enumerated substances or devices." *Osantowski*, *supra* at 108-109; MCL 777.49a(1)(a)-(b). In other words, "the use or threatened use must constitute the *means* by which the offender committed an *act* of terrorism." *Osantowski*, *supra* at 109. "To constitute an act of terrorism, a threat must be a violent felony and *also* must itself be 'a willful and deliberate act' that the offender 'knows or has reason to know is dangerous to human life' and 'that is intended to intimidate or coerce a civilian population or influence or affect the conduct of government or a unit of government through intimidation or coercion.'" *Id.*, quoting MCL 750.543b(a). Here, the trial court properly concluded that the defendant did not actually intend to intimidate or coerce a civilian population or influence or affect government conduct when he e-mailed to another teenager his threats to engage in violent conduct. *Osantowski*, *supra* at 112. However, where "[t]he record demonstrate[d] that [the] defendant used a computer . . . to send

[105] An "act of terrorism" is "a willful and deliberate act that . . . would be a violent felony under [Michigan law, no matter where the act was committed, a]n act that the person knows or has reason to know is dangerous to human life[, and a]n act that is intended to intimidate or coerce a civilian population or influence or affect the conduct of government or a unit of government through intimidation or coercion." MCL 750.543b(a)(*i*)-(*iii*). A "terrorist" is "any person who engages or is about to engage in an act of terrorism." MCL 750.543b(g).

> intimidating e-mails that threatened physical force against a particular civilian population[,] . . . the trial court was within its discretion in concluding that [the] defendant supported an act of terrorism and in assessing 25 points under OV 20." *People v Yaryan*, unpublished opinion per curiam of the Court of Appeals, issued December 15, 2011 (Docket No. 300763)[106] (concluding that in *Osantowski*, *supra* at 111, the Michigan Supreme Court "specifically noted that a threat of terrorism may qualify as an act in support of terrorism for purposes of OV 20[]").

Part C—Recommended Minimum Sentences for Offenders Not Sentenced as Habitual Offenders

Part C discusses the standard method of determining the recommended minimum sentence ranges using the statutory sentencing guidelines and grids for offenders *not* being sentenced as habitual offenders. Discussion of the guidelines and grids as they apply to habitual offenders begins in Section 8.12.

Part C does not address factors that may influence a court's discretion in fashioning the actual sentence imposed on an offender under the guidelines. The factors a sentencing court may consider when tailoring an offender's sentence are discussed in Section 8.30. A court's departure from the recommended minimum sentence and the statutory requirements of a valid departure from the guidelines are discussed in Section 8.48.

8.7 Sentencing Grids

Sentencing grids for all felony offenses to which the guidelines apply are located in MCL 777.61 to MCL 777.69. There are nine different grids, one each for crimes in classes A, B, C, D, E, F, G, and H, and one for second-degree murder (M2). Each sentencing grid is divided into "cells" corresponding to the number of offense variable (OV) and prior record variable (PRV) levels applicable to the crime class represented by the grid. A defendant's recommended minimum sentence range is indicated by a numerical range in the cell located at the intersection of the defendant's "OV level" (vertical axis) and "PRV level" (horizontal axis) on the sentencing grid appropriate to the offense of which the defendant was convicted. MCL 777.21(1)(c). The recommended minimum sentence

[106] Unpublished opinions are not precedentially binding under the rule of stare decisis. MCR 7.215(C)(1).

in each cell is expressed by a range of numbers (in months) or life imprisonment ("L"). *Id*.

The nine grids in MCL 777.61 to MCL 777.69 contain only the sentence ranges for offenders *not* being sentenced as habitual offenders; no separate grids for habitual offenders are provided. However, the recommended minimum sentence range for habitual offenders is determined by reference to the ranges reflected in the nine "basic" grids. MCL 777.21(3)(a)–MCL 777.21(3)(c). In previously published sentencing manuals, the sentencing grids for first-time offenders and for habitual offenders were designed separately so that reference to one grid was limited to either first-time offender ranges or habitual offender ranges. The sentencing grids printed in Appendix A, and as shown in the examples below, are comprehensive sentencing grids that combine the minimum sentences recommended under the guidelines for *all* offenders—both first-time *and* habitual.

Specific cells in some sentencing grids are differentiated from other cells by their classification as "prison cells," "straddle cells," and "intermediate sanction cells." With the exception of cells indicating that an intermediate sanction is appropriate, the terms "straddle cell" and "prison cell" are not expressly used in statutes governing application of the sentencing guidelines. See MCL 769.34(4)(a); *People v Stauffer*, 465 Mich 633, 636 n 8 (2002).

A. Prison Cells

"Prison cells" are those cells for which the minimum sentence recommended exceeds one year of incarceration. In the sentencing grids that appear in existing guidelines manuals and in this monograph, *prison cells* are those cells that are unmarked, i.e., not shaded (as are "straddle cells"), and not asterisked (as are "intermediate sanction cells").[107]

B. Straddle Cells

"Straddle cells"[108] are those cells in which the lower limit of the recommended range is one year or less and the upper limit of the recommended range is more than 18 months. MCL 769.34(4)(c); *Stauffer*, 465 Mich at 636 n 8. *Straddle cells* appear shaded in the

[107] An example of a sentencing grid for class F offenses appears before Section 8.7(C).

[108] See Section 8.7(B) for a comprehensive discussion.

sentencing grids published in existing guidelines manuals and in the grids used in this monograph, as shown in the example below.

Sentencing Grid for Class F Offenses—MCL 777.67 Includes Ranges Calculated for Habitual Offenders (MCL 777.21(3)(a)-(c))													
OV Level	PRV Level												OffenderStatus
	A 0 Points		B 1-9 Points		C 10-24 Points		D 25-49 Points		E 50-74 Points		F 75+ Points		
I 0-9 Points	0	3*	0	6*	0	9*	2	17*	5	23	10	23	
		3*		7*		11*		21		28		28	HO2
		4*		9*		13*		25		34		34	HO3
		6*		12*		18*		34		46		46	HO4
II 10-34 Points	0	6*	0	9*	0	17*	5	23	10	23	12	24	
		7*		11*		21		28		28		30	HO2
		9*		13*		25		34		34		36	HO3
		12*		18*		34		46		46		48	HO4
III 35-74 Points	0	9*	0	17*	2	17*	10	23	12	24	14	29	
		11*		21		21		28		30		36	HO2
		13*		25		25		34		36		43	HO3
		18*		34		34		46		48		58	HO4
IV 75+ Points	0	17*	2	17*	5	23	12	24	14	29	17	30	
		21		21		28		30		36		37	HO2
		25		25		34		36		43		45	HO3
		34		34		46		48		58		60	HO4
Intermediate sanction cells are marked with asterisks, straddle cells are shaded, and prison cells are unmarked.													

C. Intermediate Sanction Cells

"Intermediate sanction cells"[109] are those cells in which the upper limit recommended by the guidelines is 18 months or less. MCL 769.34(4)(a). These cells are marked with an asterisk in published

[109] See Section 8.26(A) for a comprehensive discussion.

guidelines manuals and in this monograph, as shown in the example above.

8.8 Felony Offenses Enumerated in MCL 777.11a to MCL 777.17g

The felony offenses enumerated in MCL 777.11a to MCL 777.17g require no special application of the statutory sentencing guidelines. For offenses listed in MCL 777.11a to 777.17g, determine which OVs should be scored by finding the crime group to which the sentencing offense belongs and scoring only the OVs indicated for crimes in that group.[110] MCL 777.21(1)(a). The total number of points scored for all OVs appropriate to the offense is the offender's "OV level." *Id*. Depending on the specific sentencing grid, an offender's OV level will be designated in roman numerals from I to VI. The OV level's numeric designation increases as the offender's OV point total increases so that the severity of the corresponding penalty increases as does the offender's OV level.

All seven PRVs are scored for felony offenses subject to the statutory sentencing guidelines. MCL 777.21(1)(b).[111] The total number of points scored for an offender's seven PRVs is the offender's "PRV level." *Id*. An offender's PRV level is designated by capital letters from A to F according to the offender's PRV point total. PRV level A represents the column with the fewest points and PRV level F represents the column with the most points. As with the OV level values, the severity of penalty increases with an offender's transit from PRV level A up to PRV level F. The point values corresponding with PRV levels A through F are the same for all nine sentencing grids so that an offender's criminal history is equally weighted regardless of the severity of the sentencing offense.

A defendant's recommended minimum sentence is indicated by the range contained in the cell located at the intersection of the defendant's OV level (vertical axis) and PRV level (horizontal axis) on the sentencing grid appropriate to the offense of which the defendant was convicted. MCL 777.21(1)(c). The appropriate sentencing grid is determined by the crime class to which the sentencing offense belongs, and the appropriate minimum sentence range is determined by whether the offender will be sentenced as a habitual offender. MCL 777.21(1)(c); MCL 777.21(3). For first-time offenders, or offenders not otherwise being sentenced as habitual offenders, the appropriate upper limit of a recommended

[110] Section 8.6 details the statutory instructions used to score each OV.

[111] Section 8.5 discusses in detail the statutory instructions pertaining to each PRV.

minimum range is the number corresponding to the empty "offender status" box on the sentencing grid.[112]

OV Level	PRV Level												Offender Status
	A 0 Points		B 1-9 Points		C 10-24 Points		D 25-49 Points		E 50-74 Points		F 75+ Points		
I 0-9 Points	0	3*	0	6*	0	9*	2	17*	5	23	10	23	
		3*		7*		11*		21		28		28	HO2
		4*		9*		13*		25		34		34	HO3
		6*		12*		18*		34		46		46	HO4

For example, in the sentencing grid above, the recommended minimum ranges for an individual being sentenced as a first-time offender are (in months): for level A-I, 0 to 3; for level B-I, 0 to 6; for level C-I, 0 to 9; for level D-I, 2 to 17; for level E-I, 5 to 23; and for level F-I, 10 to 23.

8.9 Felony Offenses Enumerated in MCL 777.18 (Offenses Predicated on an Underlying Felony)

Special scoring instructions apply to offenses listed in MCL 777.18. Offenses in MCL 777.18 are offenses predicated on an offender's commission of an underlying felony. The offenses listed in MCL 777.18 are those felony offenses for which the statutory maximum penalty is "variable." "Variable" indicates that the term of imprisonment for the violations listed there is not limited to a specific number of years (as are the individual violations listed in MCL 777.11a to MCL 777.17g) because the offenses in MCL 777.18 refer to a variety of underlying felonies to which different statutory maximum penalties apply. In addition, some provisions of the felony offenses listed in MCL 777.18 provide for mandatory minimums or double or triple times the maximum terms of imprisonment authorized in the statutory language governing the underlying felonies themselves.

Scoring instructions for the offenses in MCL 777.18 are found in MCL 777.21(4), which states:

> "If the offender is being sentenced for a violation described in [MCL 777.18], both of the following apply:

[112] The "empty box" refers to the top box in each series of boxes down the right side of each grid—or specifically, the box in which HO2, HO3, or HO4 does not appear.

> "(a) Determine the offense variable level by scoring the offense variables for the underlying offense and any additional offense variables for the offense category indicated in [MCL 777.18].
>
> "(b) Determine the offense class based on the underlying offense. If there are multiple underlying felony offenses, the offense class is the same as that of the underlying felony offense with the highest crime class. If there are multiple underlying offenses but only 1 is a felony, the offense class is the same as that of the underlying felony offense. If no underlying offense is a felony, the offense class is G."

MCL 777.21(4)(a) requires that all OVs appropriate to the crime group designated in MCL 777.18 must be scored *as well as* any additional OVs appropriate to the crime group of the underlying offense.

The crime class of the underlying offense determines which sentencing grid must be used to determine the offender's recommended minimum sentence range once the offender's PRV and OV levels have been calculated. MCL 777.21(4)(b) assigns a "default" crime class of G to an MCL 777.18 offense when none of the underlying offenses is a felony, e.g., a violation of MCL 333.7410(4) (possession of certain controlled substances on or within 1,000 feet of school property) based on a violation of MCL 333.7403(2)(d) (misdemeanor possession of marijuana).

The general rule of MCL 777.21(1)(b), requiring the scoring of prior record variables (PRVs) for all offenses enumerated in MCL 777.11–MCL 777.19, applies to "*all* cases . . . unless the language in another subsection of the statute directs otherwise." *People v Peltola*, 489 Mich 174, 182 (2011). Thus, PRVs must be scored against offenders falling within the purview of MCL 777.21(4) for offenses listed in MCL 777.18, notwithstanding the absence of a reference to PRVs in MCL 777.21(4). *Peltola, supra* at 188. In *Peltola*, *supra* at 177, the defendant was convicted of a subsequent controlled substance violation (an MCL 777.18 offense), and his minimum and maximum sentences were doubled as permitted by MCL 333.7413(2). The defendant argued that MCL 777.21(1)(b), which directs the sentencing court to score a defendant's PRVs "[e]xcept as otherwise provided[,]" does not apply to an offender who is being sentenced for a violation described in MCL 777.18 and who is therefore subject to the terms of MCL 777.21(4). *Peltola*, *supra* at 184. The Michigan Supreme Court disagreed, holding that "MCL 777.21(1) sets forth the general rule for determining a defendant's minimum sentence range[]" and that, because MCL 777.21(4) *does not direct otherwise* but instead "is merely intended to provide guidance regarding how to determine the OV level and offense class for offenders falling under MCL 777.18[,]" the rule

requiring the scoring of PRVs remains applicable to those offenders. *Peltola*, *supra* at 176, 191.

There are eight felony offenses included in MCL 777.18 to which the statutory sentencing guidelines apply, and a conviction for any of the eight offenses requires the commission of an offense described in the statutory language of the eight respective felony offenses. Each of the eight offenses is discussed below.

A. Controlled Substance Violations Involving Minors or Near School Property or a Library

MCL 333.7410 addresses several felony violations to which the sentencing guidelines apply.

1. Delivery of Cocaine or a Narcotic Drug Listed in Schedule 1 or 2 to a Minor

MCL 333.7410(1) addresses an offender aged 18 or over who violates MCL 333.7401(2)(a)(*iv*) (less than 50 grams) by delivering or distributing a controlled substance in schedule 1 or 2 that is a narcotic drug or a drug described in MCL 333.7214(a)(*iv*) (cocaine and related substances) to an individual under the age of 18 who is at least three years younger than the deliverer or distributor. For a conviction of MCL 333.7410(1), the trial court may:

- impose the $25,000 fine authorized under MCL 333.7401(2)(a)(*iv*); or
- sentence the offender to a term of imprisonment of not less than one year and not more than twice the 20-year maximum term authorized under MCL 333.7401(2)(a)(*iv*); or
- both.

2. Delivery of Gamma-Butyrolactone (GBL) or a Controlled Substance Listed in Schedules 1 to 5 to a Minor

MCL 333.7410(1) also provides the penalties for a person aged 18 or over who violates MCL 333.7401(2)(b), (c), or (d), or MCL 333.7401b by distributing or delivering any other controlled substance listed in schedules 1 to 5 or GBL to a person under age 18 who is at least three years younger than the distributor or deliverer. An offender convicted of violating this portion of MCL 333.7410(1) is subject to:

- a fine authorized by MCL 333.7401(2)(b), (c), or (d), or MCL 333.7401b;[113] or
- a term of imprisonment not to exceed twice the term authorized under MCL 333.7401(2)(b), (c), or (d), or MCL 333.7401b;[114] or
- both.

3. Delivery of Cocaine or a Narcotic Drug Listed in Schedule 1 or 2 Within 1,000 Feet of School Property or a Library

MCL 333.7410(2) provides the penalty for a person aged 18 years or older who violates MCL 333.7401(2)(a)(*iv*) (less than 50 grams) by delivering or distributing a controlled substance described in schedule 1 or 2 that is a narcotic drug or a drug described in MCL 333.7214(a)(*iv*) (cocaine and related substances) to another person on or within 1,000 feet of school property or a library. Conviction of violating MCL 333.7410(2) subjects an offender to:

- mandatory imprisonment for not less than two years[115] and not more than three times the 20-year maximum term authorized by MCL 333.7401(2)(a)(*iv*); and
- a discretionary fine not to exceed three times the $25,000 fine permitted under MCL 333.7401(2)(a)(*iv*).

4. Possession With Intent to Deliver Cocaine or a Narcotic Drug Listed in Schedule 1 or 2 Within 1,000 Feet of School Property or a Library

MCL 333.7410(3) provides the penalty for a person aged 18 years or older who violates MCL 333.7401(2)(a)(*iv*) (less than 50 grams) by possessing with the intent to deliver a controlled substance described in schedule 1 or 2 that is a narcotic drug or a drug described in MCL 333.7214(a)(*iv*) (cocaine and related substances) on or within 1,000 feet of school property or a library. An offender convicted of violating MCL 333.7410(3) is subject to:

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[113] The fine amounts vary according to the controlled substance involved.

[114] The maximum terms of imprisonment vary according to the controlled substance involved.

[115] The trial court may depart from the mandatory minimum term for substantial and compelling reasons. MCL 333.7410(5).

- mandatory imprisonment for not less than two years[116] and not more than two times the maximum term of 20 years authorized under MCL 333.7401(2)(a)(*iv*); and

- a discretionary fine not to exceed three times the $25,000 fine permitted under MCL 333.7401(2)(a)(*iv*).

5. Possession of GBL or Other Controlled Substance on or Within 1,000 Feet of School Property or a Library

MCL 333.7410(4) provides the penalty for persons aged 18 years or older who violate MCL 333.7401b or 333.7403(2)(a)(*v*), (b), (c), or (d), by possessing GBL or a controlled substance on or within 1,000 feet of school property or a library. An offender convicted of violating MCL 333.7410(4) is subject to:

- mandatory imprisonment, or the imposition of a fine, or both, not to exceed two times the term of imprisonment or twice the amount of fine authorized by MCL 333.7401b or MCL 333.7403(2)(a)(*v*), (b), (c), or (d).[117]

B. Subsequent Controlled Substance Violations

MCL 333.7413(2) provides the penalties possible for a person convicted of a second or subsequent offense under article 7 of the Public Health Code, MCL 333.7101 to MCL 333.7545 (controlled substance offenses). MCL 333.7413(2) applies to "general" controlled substance offenses not otherwise addressed by the specific sentencing provisions of MCL 333.7413(1) and (3). Offenders convicted under MCL 333.7413(2) may be sentenced to a term of imprisonment up to twice the term authorized by the statute governing the specific offense, or may be fined up to two times the amount permitted for a violation of the specific offense, or both. MCL 333.7413(2).

"MCL 333.7413(2), by authorizing a trial court to enhance the sentence of a defendant who is a repeat drug offender to a 'term not more than twice the term otherwise authorized,' allows the trial court to double *both* the defendant's minimum and maximum sentences." *People v Lowe*, 484 Mich 718, 719 (2009), overruled in part on other grounds in *People v Peltola*, 489 Mich 174, 189-190 (2011).[118] "[W]hen

[116] The trial court may depart from the mandatory minimum term for substantial and compelling reasons. MCL 333.7410(5).

[117] The terms of imprisonment and the amounts of the fines vary with the controlled substance involved in each of these statutes.

[118] See note 79.

calculating a defendant's recommended minimum sentence range under the sentencing guidelines when the defendant's minimum and maximum sentences may be enhanced pursuant to MCL 333.7413(2), a trial court should score the PRVs [prior record variables]." *Peltola*, *supra* at 190. In *Peltola*, *supra* at 184, the defendant contended that MCL 777.21(1)(b), requiring the sentencing court to score a defendant's PRVs "[e]xcept as otherwise provided[,]" does not apply to offenders falling within the purview of MCL 777.21(4).[119] The Michigan Supreme Court disagreed, holding that "MCL 777.21(1) sets forth the general rule for determining a defendant's minimum sentence range[]" and that, because MCL 777.21(4) does not direct otherwise but instead "is merely intended to provide guidance regarding how to determine the OV level and offense class for offenders falling under MCL 777.18[,]" the rule requiring the scoring of PRVs remains applicable to those offenders. *Peltola*, *supra* at 176, 191.[120]

MCL 333.7413(3) provides the penalty for a person convicted of a second or subsequent violation of MCL 333.7410(2) or MCL 333.7410(3).[121] All of the following apply to an offender convicted under MCL 333.7413(3):

- The offender must be sentenced to a mandatory minimum term of imprisonment of five years[122] but may not be sentenced to more than two times the term authorized in MCL 333.7410(2) and (3).
- The offender may be fined up to three times the amount authorized by MCL 333.7410(2) and (3).
- The offender is not eligible for probation or suspension of his or her sentence during the term of imprisonment.

MCL 333.7413(5) provides:

> "[A]n offense is considered a second or subsequent offense, if, before conviction of the offense, the offender has at any time been convicted *under this article or under any statute of the United States or of any state* relating to a

[119] MCL 777.21(4) applies to an offender who "is being sentenced for a violation described in [MCL 777.18]," which includes subsequent controlled substance violations under MCL 333.7413(2).

[120] The *Peltola* Court additionally clarified that because its conclusion was contrary to obiter dicta statements made in *Lowe*, 484 Mich at 729-730, that the Legislature apparently intended that PRVs not be scored under MCL 777.21(4), "the holding in [*Lowe*, *supra*] is limited to whether MCL 333.7413(2) permits a trial court to enhance a defendant's minimum and maximum sentence." *Peltola*, 489 Mich at 190.

[121] Discussed in Section 8.9(A).

[122] The trial court may depart from the mandatory minimum for substantial and compelling reasons. MCL 333.7413(4).

> narcotic drug, marihuana, depressant, stimulant, or hallucinogenic drug." (Emphasis added.)

"Another state" for purposes of MCL 777.51(2) (one of the statutory instructions for scoring prior record variable 1 under the sentencing guidelines) does not include foreign states. *People v Price*, 477 Mich 1, 5 (2006) (the defendant's previous conviction in Canada was improperly counted for purposes of PRV 1). The Court's reasoning for its interpretation of "another state" as used in MCL 777.51(2) likely applies to the language used in MCL 333.7413(5) to define second or subsequent offenses. According to the Court, "[t]he common understanding of 'state' in Michigan law is a state of the United States, not a province of Canada and not a foreign state. Obviously, Michigan is one of the states that comprise the United States. Thus, the most obvious meaning of 'another state' in this context is one of the states, other than Michigan, that comprise the United States. A Canadian conviction is not a conviction for 'a felony under a law of the United States or another state[.]'" *Price*, *supra* at 4-5.

> **Note:** The concurrent (or exclusive) application of the general habitual offender statutes and the penalties prescribed by the Public Health Code for subsequent controlled substance offenses are discussed in Section 8.16.

C. Recruiting or Inducing a Minor to Commit a Controlled Substance Felony

MCL 333.7416(1)(a) provides the penalty for a person aged 17 years or older who has recruited, induced, solicited, or coerced a minor less than 17 years of age to commit or attempt to commit a controlled substance offense that would be a felony if committed by an adult. Offenders convicted of violating MCL 333.7416(1) may be fined up to the amount authorized for an adult convicted of the underlying offense. In addition to any fine imposed, offenders convicted under MCL 333.7416(1) *must* be sentenced as follows:[123]

[123] Note, however, that a mandatory sentence of life imprisonment without the possibility of parole may not, consistently with the Eighth Amendment, be imposed upon an individual who was under the age of 18 at the time of the sentencing offense. See *Miller v Alabama*, 567 US ___, ___ (2012) (homicide offender under the age of 18 may not be sentenced to life imprisonment without the possibility of parole unless a judge or jury first has the opportunity to consider mitigating circumstances); *Graham v Florida*, 560 US ___, ___ (2010) (sentence of life imprisonment without the possibility of parole may not be imposed upon a defendant under the age of 18 for a nonhomicide offense). For additional discussion of *Miller*, 567 US ___, and *Graham*, 560 US ___, see the Michigan Judicial Institute's *Juvenile Justice Benchbook*, Chapter 18.

- to a mandatory minimum term[124] not less than one-half the maximum term of imprisonment authorized for an adult convicted of the crime;
- to a maximum term of imprisonment that does not exceed the maximum term authorized by statute for an adult convicted of the crime;
- to imprisonment for life if the act committed or attempted is a violation of MCL 333.7401(2)(a)(*i*);
- an offender sentenced under MCL 333.7416(1) is not eligible for probation and the sentence received must not be delayed or suspended. MCL 333.7416(2).

  Note: MCL 333.7416(1) does not apply to an act that is a violation of MCL 333.7401(2)(d) that involves the manufacture, delivery, possession, etc., of marijuana. MCL 333.7416(4).

D. Conspiracy

MCL 750.157a(a) provides the penalty for a person who conspires with at least one other person to commit an act prohibited by law when commission of the prohibited act is punishable by at least one year of imprisonment. An offender convicted under MCL 750.157a(a) must be sentenced to a term of imprisonment equal to the term authorized for conviction of the offense the offender conspired to commit. In addition to a term of imprisonment, the court may impose a $10,000 fine on an offender convicted of conspiracy.

E. Recruiting or Inducing a Minor to Commit a Felony

MCL 750.157c provides the penalty for a person aged 17 years or older who recruits, induces, solicits, or coerces a minor under the age of 17 years to commit or attempt to commit an act that would be a felony if committed by an adult. Violators of MCL 750.157c are guilty of a felony and must be sentenced to a term not to exceed the maximum term authorized by law for conviction of the act committed or attempted.[125] In addition to the mandatory term of imprisonment, the court may impose a fine on the offender of not more than three times the amount authorized by law for conviction of the act committed or attempted.

[124] The court may depart from the minimum term for substantial and compelling reasons. MCL 333.7416(3).

F. Voluntarily Allowing a Prisoner to Escape

MCL 750.188 provides the penalty for a jailor or other officer who voluntarily allows a prisoner in his or her custody to escape. Under MCL 750.188, an officer convicted of this offense must be sentenced to the same punishment and penalties to which the escaped prisoner was or would have been subject.

G. Felony Offenses Committed in Weapon-Free School Zones

MCL 750.237a describes conduct prohibited in weapon-free school zones and provides the penalties for convictions based on that conduct. MCL 750.237a is a separate felony offense based on an offender's violation of one of the thirteen underlying weapons-related statutes when the violation occurs in a weapon-free school zone. An offender may be charged with and convicted of an offense under MCL 750.237a when he or she is a first-time offender of the following statutes:

- MCL 750.224 (manufacture, sale, or possession of machine gun, silencer, bomb, chemical agents, etc.);
- MCL 750.224a (possession or sale of a device emitting an electrical current or impulse—a "stun gun");[126]
- MCL 750.224b (manufacture, sale, or possession of a short-barreled shotgun or rifle);
- MCL 750.224c (manufacture, distribution, sale, or use of armor-piercing ammunition);
- MCL 750.224e (manufacture, sale, distribution, or possession of device to convert semi-automatic weapons to fully-automatic ones);

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[125] Note, however, that a mandatory sentence of life imprisonment without the possibility of parole may not, consistently with the Eighth Amendment, be imposed upon an individual who was under the age of 18 at the time of the sentencing offense. See *Miller v Alabama*, 567 US ___, ___ (2012) (homicide offender under the age of 18 may not be sentenced to life imprisonment without the possibility of parole unless a judge or jury first has the opportunity to consider mitigating circumstances); *Graham v Florida*, 560 US ___, ___ (2010) (sentence of life imprisonment without the possibility of parole may not be imposed upon a defendant under the age of 18 for a nonhomicide offense). For additional discussion of *Miller*, 567 US ___, and *Graham*, 560 US ___, see the Michigan Judicial Institute's *Juvenile Justice Benchbook*, Chapter 18.

[126] In *People v Yanna*, ___ Mich App ___, ___, ___ n 1 (2012), the Michigan Court of Appeals held that the pre-amended version of MCL 750.224a, completely banning the sale or possession of stun guns and similar devices by anyone other than law enforcement officers, was unconstitutional under the Second Amendment; the *Yanna* Court, however, emphasized that its holding was limited to the complete ban under former MCL 750.224a, which was amended, effective August 6, 2012, by 2012 PA 122 to permit the possession and use of electro-muscular disruption devices by licensed individuals under certain circumstances.

- MCL 750.226 (carrying a firearm or other dangerous weapon with unlawful intent);
- MCL 750.227 (carrying a concealed weapon);
- MCL 750.227a (carrying a licensed firearm outside the scope authorized by the license);
- MCL 750.227f (commission or attempted commission of a violent act while wearing body armor);
- MCL 750.234a (intentional discharge of a firearm from a motor vehicle, snowmobile, or ORV);
- MCL 750.234b (intentional discharge of a firearm toward an occupied dwelling); or
- MCL 750.234c (intentional discharge of a firearm at an emergency or law enforcement vehicle).

An offender may be charged with and convicted of an offense under MCL 750.237a for second or subsequent violations of MCL 750.223(2) (knowingly selling a firearm longer than 30 inches to a person under the age of 18), when the violations occurred in a weapon-free school zone.

Violators of MCL 750.237a are guilty of a felony and subject to one or more of the following:

- imprisonment for not more than the maximum term authorized by the specific statutory section violated, MCL 750.237a(1)(a); or
- not more than 150 hours of community service, MCL 750.237a(1)(b); or
- a fine of not more than three times the fine authorized by the specific statutory section violated, MCL 750.237a(1)(c).

H. Larceny of Rationed Goods

MCL 750.367a provides the penalties for stealing "any goods, wares, or merchandise, the manufacture, distribution, sale or use of which is restricted or rationed by the federal government, or any of its agencies or instrumentalities, during a state of war between the United States and any other country or nation . . . ." An offender convicted of an offense under MCL 750.367a may be sentenced to a term of imprisonment not more than two times the term authorized for conviction of the underlying offense. In addition, an offender convicted under this statute may be ordered to pay a fine of not more

than twice the amount permitted for conviction of the underlying offense.

8.10 Felony Offenses Enumerated in MCL 777.19 (Attempts)

Attempted offenses are subject to the statutory guidelines only if the offense attempted is a felony offense in class A, B, C, D, E, F, or G. MCL 777.19(1). Attempts to commit class H felonies are not scored under the guidelines.[127] MCL 777.19(1).

To determine the OVs appropriate to an attempted felony subject to the sentencing guidelines, use the crime group of the offense attempted. MCL 777.19(2); MCL 777.21(5). For example, if an offender is convicted of attempted armed robbery, OVs designated for scoring are those for the crime group "person" because armed robbery (the offense attempted) is categorized as a crime against a person. MCL 750.89; MCL 777.16d.

Once the offender's OV and PRV levels have been totaled for an attempted offense, the proper sentencing grid on which to find the recommended minimum sentence range is determined by the attempted offense's original crime class designation:

- Attempts to commit offenses in classes A, B, C, or D are classified as class E offenses. MCL 777.19(3)(a).
- Attempts to commit offenses in classes E, F, or G are classified as class H offenses. MCL 777.19(3)(b).

Part D—Habitual Offender Provisions

8.11 Establishing a Defendant's Habitual Offender Status

Michigan's sentencing law is designed so that the punishment possible for conviction of a crime may be increased in proportion to the offender's number of previous felony convictions. The "general" habitual offender statutes are found in MCL 769.10, MCL 769.11, and MCL 769.12, and operate to raise the *maximum* sentence allowed for repeat offenders based on both the number of a defendant's prior felony convictions and the specific maximum penalty authorized for conviction of the sentencing

[127] Intermediate sanctions apply to attempted class H felonies punishable by more than one year of imprisonment. MCL 769.34(4)(b). See Section 8.26(A) for more information.

offense. MCL 777.21 is the statutory provision that allows for an incremental increase in the recommended *minimum* sentence range under the statutory guidelines based on the number of the defendant's previous felony convictions. The trio of "general" habitual offender statutes and MCL 777.21 are discussed in detail in Sections 8.12, 8.13, 8.14, and 8.15.

A. Notice of Intent to Seek Enhancement

In cases where the prosecuting attorney intends to seek enhancement of a defendant's sentence on the basis that the defendant is a habitual offender, the prosecuting attorney must file written notice with the court within 21 days after the defendant's arraignment on the information. MCR 6.112(F); MCL 769.13(1). If arraignment is waived, the notice of enhancement must be filed within 21 days after the information is filed. MCR 6.112(F); MCL 769.13(1).

If a defendant pleads guilty or nolo contendere at arraignment on the information to the offense charged or to a lesser offense, the prosecuting attorney may file the notice of enhancement after the defendant's conviction by plea or within the 21-day period after the arraignment. MCL 769.13(3).[128]

The prosecution may not amend an otherwise timely supplemental information outside the period set out in MCL 769.13(1) to allege additional prior convictions. *People v Ellis*, 224 Mich App 752, 755 (1997). "[T]he supplemental information may be amended outside the statutory period only to the extent that the proposed amendment does not relate to the specific requirements of MCL 769.13[], i.e., the amendment may not relate to additional prior convictions not included in the timely filed supplemental information." *Ellis*, *supra* at 757. However, "*Ellis* does not preclude the amendment of a timely sentence enhancement information to correct a technical defect where the amendment does not otherwise increase the potential sentence consequences." *People v Hornsby*, 251 Mich App 462, 472 (2002).

The unambiguous language in MCL 769.13(1) governing the 21-day period in which the enhancement notice must be filed "does not

[128] "[A]n arguable conflict exists between MCR 6.302(B)(2) [(requiring the trial court, before accepting a plea, to "advise the defendant . . . of . . . the maximum possible prison sentence for the offense")] and MCL 769.13(3)." *People v Brown (Shawn)*, ___ Mich ___, ___ (2012). In *Brown (Shawn)*, *supra* at ___, the Michigan Supreme Court held that "MCR 6.302(B)(2) requires the trial court to apprise a defendant of his or her maximum possible prison sentence as an habitual offender before accepting a guilty plea[,]" and that MCR 6.310(C) permits a defendant who is not so apprised to elect either to allow his or her plea and sentence to stand or to withdraw the plea. Noting that "MCL 769.13(3) . . . permits a prosecuting attorney to file a notice of intent to seek an enhanced sentence under the habitual-offender statute *after* a defendant has entered a plea[,]" the Court concluded that "the remedy provided by MCR 6.310(C) will apply [even] when a defendant is not notified of the enhancement until after pleading guilty." *Brown (Shawn)*, *supra* at ___ (emphasis supplied).

include any exception for undiscovered out-of-state convictions[.]" *People v Morales*, 240 Mich App 571, 576 (2000).

The Michigan Supreme Court requires strict adherence to the 21-day limit set out in MCL 769.13, because allowing the prosecution to amend or file a notice after the 21 days has expired would significantly alter the potential consequences to the defendant, i.e., an enhanced sentence due to habitual offender status. See, e.g., *People v Williams (Mary)*, 462 Mich 882 (2000) (sentence vacated and case remanded for resentencing because the prosecution's notice of sentence enhancement was not timely filed within 21 days after arraignment), and *People v Cobley*, 463 Mich 893 (2000) (sentence vacated and case remanded for resentencing because the prosecutor did not prove that the notice of sentence enhancement was served on the defendant within 21 days after arraignment).

B. List of Prior Convictions on Which Prosecutor Will Rely

The prosecuting attorney must identify the prior convictions on which the offender's status as a habitual offender is based and on which the prosecutor intends to rely in seeking sentence enhancement. MCL 769.13(2). The list of prior convictions on which the prosecutor's enhancement notice is based must be filed with the court and served on the defendant or his or her attorney within 21 days of the defendant's arraignment on the information, or if arraignment is waived, within 21 days after the information is filed. MCL 769.13(2).

C. Establishing the Existence of a Prior Conviction

A defendant charged as a habitual offender may challenge the accuracy or constitutional validity of any of the prior convictions listed in the prosecutor's notice of enhancement. MCL 769.13(4). To challenge a prior conviction, the defendant must file a written motion with the court and serve the prosecutor with a copy of the motion. *Id*. The court must resolve any challenges raised by the defendant to the accuracy or constitutional validity of a prior conviction at sentencing or at a separate hearing held before sentencing.[129] MCL 769.13(6).

The court must determine the existence of any of the prior convictions listed in the prosecutor's notice to seek enhancement at sentencing, or at a separate hearing scheduled before sentencing for that purpose. MCL 769.13(5); *People v Green (David)*, 228 Mich App 684, 699 (1998). Any evidence relevant to establishing the existence of a prior

[129] See Section 8.21 for a detailed discussion of the procedure by which a defendant's collateral attack on the constitutional validity of prior convictions is resolved.

conviction may be used for that purpose, including one or more of the following items listed in MCL 769.13(5):

> "(a) A copy of a judgment of conviction.
>
> "(b) A transcript of a prior trial or a plea-taking or sentencing proceeding.
>
> "(c) A copy of a court register of actions.
>
> "(d) Information contained in a presentence report.
>
> "(e) A statement of the defendant."

A trial court properly identified the defendant at sentencing as a second habitual offender and sentenced him accordingly based on the defendant's presentence report, which contained details of the defendant's prior felony conviction. MCL 769.13(5)(d); *Green (David)*, 228 Mich App at 699, citing MCL 769.13(5)(c) (relettered to MCL 769.13(5)(d) by 2006 PA 655).

MCL 769.13(6) describes the process by which the trial court must resolve a defendant's properly raised challenge to the use of a prior conviction to enhance his or her sentence under the general habitual offender statutes:

> "The court shall resolve any challenges to the accuracy or constitutional validity of a prior conviction or convictions that have been raised in a motion filed under [MCL 769.13](4) at sentencing or at a separate hearing scheduled for that purpose before sentencing. The defendant, or his or her attorney, shall be given an opportunity to deny, explain, or refute any evidence or information pertaining to the defendant's prior conviction or convictions before sentence is imposed, and shall be permitted to present relevant evidence for that purpose. The defendant shall bear the burden of establishing a prima facie showing that an alleged prior conviction is inaccurate or constitutionally invalid. If the defendant establishes a prima facie showing that information or evidence concerning an alleged prior conviction is inaccurate, the prosecuting attorney shall bear the burden of proving, by a preponderance of the evidence, that the information or evidence is accurate. If the defendant establishes a prima facie showing that an alleged prior conviction is constitutionally invalid, the prosecuting attorney shall bear the burden of proving, by a preponderance of the evidence, that the prior conviction is constitutionally valid."

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1. Classification of the Prior Conviction

A "felony" is "a violation of a penal law of this state for which the offender, upon conviction, may be punished by death or by imprisonment for more than 1 year or an offense expressly designated by law to be a felony." MCL 761.1(g). For purposes of the habitual offender statutory provisions, a "prior felony conviction" is a conviction for conduct or attempted conduct that would be a felony if committed in Michigan no matter where the crime was actually committed. MCL 769.10, MCL 769.11, and MCL 769.12. Therefore, whether obtained in Michigan or in another jurisdiction, a defendant's previous convictions for conduct punishable under Michigan law by imprisonment for more than one year or for conduct expressly designated by Michigan law as felonious conduct are "prior felony convictions" for purposes of determining a defendant's habitual offender status.

A prior conviction obtained in another state that, by offense title alone, would qualify only as a misdemeanor offense in Michigan, is not necessarily invalid for purposes of establishing a defendant's habitual offender status. *People v Quintanilla*, 225 Mich App 477, 478-479 (1997). "The [habitual offender statutes] require[] that the offense be a felony in Michigan under Michigan law, irrespective of whether the offense was or was not a felony in the state or country where originally perpetrated. Hence, the facts of the out-of-state crime, rather than the words or title of the out-of-state statute under which the conviction arose, are determinative." *Quintanilla*, *supra* at 479.

See also *People v Southward*, unpublished opinion per curiam of the Court of Appeals, issued December 28, 2004 (Docket No. 249293) (an out-of-state conviction classified as a misdemeanor may constitute a felony under Michigan law depending on the facts of the case and the penalty imposed).[130] In *Southward*, *supra*, the defendant's prior conviction in North Carolina was classified as a misdemeanor, but the defendant was sentenced to two years of imprisonment (suspended) and three years of supervised probation. Under Michigan law, a crime may be labeled a misdemeanor under the Penal Code *and* be punishable by more than one year of imprisonment. *Id*. For purposes of the general habitual offender statutes, any offense punishable by more than one year of imprisonment is a felony. *Id*.

Accord *Burgess v United States*, 553 US 124, 127 (2008) (even if state law classifies the offense as a misdemeanor, a state drug

[130] Unpublished opinions are not precedentially binding under the rule of stare decisis. MCR 7.215(C).

offense punishable by more than one year in prison constitutes a felony drug offense as that term is used in the repeat offender provision of the federal Controlled Substances Act, 21 USC 841(b)(1)(A)).

Prior convictions for offenses that were felonies at the time they were committed but were later reclassified as misdemeanors may be used to establish a defendant's habitual offender status. *People v Odendahl*, 200 Mich App 539, 543-544 (1993), overruled on other grounds by *People v Edgett*, 220 Mich App 686, 691-695 (1996). In support of its conclusion, the *Odendahl* Court cited the Michigan Supreme Court's reasoning in an earlier case:

> "[T]he purpose of the habitual offender statute was punishment for the recidivist, and [] repealing a criminal law did not 'remove from the offender the character of being a violator of the law.'" *Odendahl*, 200 Mich App at 543, quoting *In re Jerry*, 294 Mich 689, 692 (1940).

An adult conviction resulting in a juvenile sentence qualifies as a prior conviction for purposes of sentencing a defendant as a third-time habitual offender under MCL 769.11. *People v Jones (Jeffrey)*, ___ Mich App ___, ___ (2012) (noting that "MCL 769.11(1) focuses only on whether a defendant has been convicted, and does not contain any language regarding a defendant's sentence[]").[131]

2. Double Jeopardy Challenges

The habitual offender statutes expressly prohibit the use of a conviction to enhance a sentence "if that conviction is used to enhance a sentence under a statute that prohibits use of the conviction for further enhancement under [the habitual offender statutes]."[132] MCL 769.10(3), MCL 769.11(3), and MCL 769.12(3).

Use of a defendant's prior felony conviction as the basis for the crime of felon in possession of a firearm and to establish the defendant's status as a habitual offender does not violate the constitutional prohibitions against double jeopardy. *People v Phillips (William)*, 219 Mich App 159, 162-163 (1996). In resolving the defendant's challenge to use of the same prior felony

[131] MCL 769.10, governing second habitual offender status, and MCL 769.12, governing fourth habitual offender status, are textually similar to MCL 769.11, and would therefore presumably be subject to the same construction.

[132] See Section 8.17 for detailed discussion of concurrent/exclusive application of sentencing enhancement schemes contained in the habitual offender statutes and those in other statutory penalty provisions.

conviction for both purposes, the Michigan Court of Appeals stated:

> "Neither the habitual offender statute nor the felon in possession of a firearm statute prohibits the application of the statutory habitual offender sentence enhancement provision for a conviction of felon in possession of a firearm. Nor do these statutes expressly preclude a prior felony conviction that is used to establish the crime of felon in possession of a firearm from also being used as a prior conviction under the habitual offender statutes." *Phillips (William)*, 219 Mich App at 163.

The same prior felonies may be used to establish a defendant's habitual offender status for more than one subsequent felony conviction when the subsequent felonies were committed at different times. *People v Anderson (Scott)*, 210 Mich App 295, 298 (1995). Because the habitual offender sentencing provisions do not create substantive offenses separate from the underlying prior convictions, a defendant's double jeopardy protection is not implicated. *Anderson (Scott)*, *supra* at 298.

3. Multiple Convictions From the Same Judicial Proceeding

When counting prior felonies under Michigan's habitual offender statutes, each felony conviction that preceded the sentencing offense is a separate felony conviction, even if more than one conviction arose from the same criminal transaction. *People v Gardner*, 482 Mich 41, 44 (2008). The Court explained that the plain language of the habitual offender statutes, MCL 769.10, MCL 769.11, and MCL 769.12, "directs courts to count each separate felony conviction that preceded the sentencing offense, not the number of criminal incidents resulting in felony convictions." *Gardner*, *supra* at 44.

4. Convictions Older Than Ten Years

A trial court may consider convictions that are more than ten years old in determining a defendant's habitual offender status. *People v Zinn*, 217 Mich App 340, 349 (1996). This is unlike the "10-year gap" rule that limits the age of previous convictions that may be counted against a defendant for the purposes of scoring his or her prior record variables under the statutory sentencing guidelines. MCL 777.50.[133]

8.12 Determining a Habitual Offender's Recommended Minimum Sentence Range Under the Statutory Sentencing Guidelines

> **Note:** The *general habitual offender* provisions contained in MCL 769.10, MCL 769.11, and MCL 769.12 establish the *maximum* term of imprisonment that may be imposed on a defendant being sentenced as a habitual offender under those statutory provisions. There is a critical distinction between the general habitual offender provisions of MCL 769.10, MCL 769.11, and MCL 769.12 and the sentence enhancements authorized by MCL 777.21. MCL 769.10, MCL 769.11, and MCL 769.12 relate to the maximum penalty authorized by the statute under which the defendant's conduct was prohibited. These habitual offender enhancement provisions permit a sentencing court to impose on a *habitual* offender a sentence greater than the maximum sentence permitted by statute for a *first* conviction of the sentencing offense. The maximum term of imprisonment permitted for a habitual offender's felony conviction (as authorized under MCL 769.10, MCL 769.11, and MCL 769.12) must be determined by reference to the specific criminal statute the defendant's conduct violated. In contrast to the general habitual offender provisions, the enhancements authorized by MCL 777.21 increase the recommended *minimum* sentence ranges calculated under the sentencing guidelines as the ranges apply to habitual offenders.

The nine sentencing grids in MCL 777.61 to MCL 777.69 represent the proper sentence ranges for offenders *not* being sentenced as habitual offenders. Separate grids reflecting the recommended sentence ranges for habitual offenders for the same nine crime classes (A through H, and second-degree murder, M2) do not exist in the statutory provisions governing felony sentencing. However, statutory authority exists for determining the upper limit of a habitual offender's recommended minimum sentence range by adding an incremental percentage of the range calculated for first-time offenders (or offenders who are not otherwise being sentenced as habitual offenders).[134] The statutory method of calculating the minimum range recommended for habitual offenders is found in MCL 777.21(3):

> "If the offender is being sentenced under [MCL 769.10, MCL 769.11, or MCL 769.12],[135] determine the offense category,

[133] See Section 8.5(A).

[134] Numeric values have been rounded down to the nearest whole month. The actual term in months may exceed the value indicated in the cell by a fraction of a month.

> offense class, offense variable level, and prior record variable level based on the underlying offense. To determine the recommended minimum sentence range, increase the upper limit of the recommended minimum sentence range determined under [MCL 777.61-MCL 777.69] for the underlying offense as follows:
>
> > "(a) If the offender is being sentenced for a second felony, 25%.
> >
> > "(b) If the offender is being sentenced for a third felony, 50%.
> >
> > "(c) If the offender is being sentenced for a fourth or subsequent felony, 100%."

MCL 761.1(g) defines a *felony* as "a violation of a penal law of this state for which the offender, upon conviction, may be punished by death or by imprisonment for more than 1 year or an offense expressly designated by law to be a felony." For purposes of the habitual offender statutory provisions, a *prior felony conviction* is a conviction for conduct or attempted conduct that would be a felony if committed in Michigan no matter where the crime was actually committed. MCL 769.10, MCL 769.11, and MCL 769.12. Therefore, whether obtained in Michigan or in another jurisdiction, a defendant's previous convictions for conduct punishable under Michigan law by imprisonment for more than one year or for conduct expressly designated by Michigan law as felonious conduct are *prior felony convictions* for purposes of determining a defendant's habitual offender status.[136]

When sentencing a defendant as a habitual offender, "[a] court shall not fix a maximum sentence that is less than the maximum term for a first conviction." MCL 769.10(2), MCL 769.11(2), and MCL 769.12(2).

"'A trial court, when sentencing a defendant as an habitual offender, must exercise its discretion in setting the maximum sentence, that is, it is not required by law to increase the maximum sentence.'" *People v Bonilla-Machado*, 489 Mich 412, 429 (2011), quoting *People v Turski*, 436 Mich 878 (1990). Therefore, where the trial court erroneously asserted that it lacked discretion in enhancing a maximum sentence under MCL 769.10(1)(a), the case was properly remanded "to allow the trial court to either clarify that it understood it had discretion in imposing the enhanced sentence[] or to redetermine the maximum sentence[] after properly exercising its discretion." *Bonilla-Machado*, *supra* at 430.

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[135] The "general" habitual offender statutory provisions.

[136] See Section 8.11(C) for further discussion of establishing prior felony convictions.

The sentencing grids printed in Appendix A, and as shown in the example in Section 8.13, combine the ranges recommended under the guidelines for *all* offenders—first-time *and* habitual.[137] Locating the appropriate cell for a habitual offender in any of the nine sentencing grids is addressed in the subsections below.

8.13 Second Habitual Offender Status (HO2)

A person who commits a felony in Michigan and who has been previously convicted of a felony or attempted felony (whether or not the previous conviction occurred in Michigan as long as the violation would have been a felony violation if it had been obtained in Michigan) is a second habitual offender subject to the following penalties:

- If the subsequent felony is punishable on first conviction by a term less than life imprisonment, the court may, in its discretion, place the person on probation[138] or sentence the person to imprisonment for a term of not more than 1-1/2 times the maximum term authorized for a first conviction, or for a lesser term. MCL 769.10(1)(a).

- If the subsequent felony is punishable on first conviction by life imprisonment, the court may place the person on probation[139] or sentence the person to imprisonment for life, or for a lesser term. MCL 769.10(1)(b).

- If the subsequent felony is a major controlled substance offense,[140] the court must sentence the person as provided by MCL 333.7401 to MCL 333.7461. MCL 769.10(1)(c).

- The court must not sentence an offender to a maximum term of imprisonment that is less than the maximum term indicated for a first conviction of the sentencing offense. MCL 769.10(2).

In *People v Jones (Jeffrey)*, ___ Mich App ___, ___ (2012), the Michigan Court of Appeals held that because "MCL 769.11(1) focuses only on whether a defendant has been convicted, and does not contain any language regarding a defendant's sentence," an adult conviction resulting in a juvenile sentence qualifies as a prior conviction for

[137] Numeric values have been rounded down to the nearest whole month. The actual term in months may exceed the value indicated in the cell by a fraction of a month.

[138] Subject to the requirements of MCL 771.1.

[139] Subject to the requirements of MCL 771.1.

[140] Sentences for subsequent major controlled substance offenses are discussed in Section 8.16.

purposes of sentencing a defendant as a third-time habitual offender under MCL 769.11.[141]

"'A trial court, when sentencing a defendant as an habitual offender, must exercise its discretion in setting the maximum sentence, that is, it is not required by law to increase the maximum sentence.'" *People v Bonilla-Machado*, 489 Mich 412, 429 (2011), quoting *People v Turski*, 436 Mich 878 (1990). Therefore, where the trial court erroneously asserted that it lacked discretion in enhancing a maximum sentence under MCL 769.10(1)(a), the case was properly remanded "to allow the trial court to either clarify that it understood it had discretion in imposing the enhanced sentence[] or to redetermine the maximum sentence[] after properly exercising its discretion." *Bonilla-Machado*, *supra* at 430.

The recommended minimum sentence range for an offender being sentenced as a second habitual offender is indicated by the numeric values shown in the "HO2" cells of each sentencing grid. The upper limit of a habitual offender's *minimum* range is calculated by reference to the percentage outlined in MCL 777.21(3)(a). As already indicated, the enhancement authorized by the general habitual offender statutes applies *only* to the maximum term of imprisonment. Therefore, the sentence enhancement authorized by MCL 769.10 is not shown in the sentencing grids. In the example below, the minimum ranges recommended for a second habitual offender, as calculated by the percentages outlined in MCL 777.21(3)(a), are (in months): for level A-I, 0 to 3; for level B-I, 0 to 7; for level C-I, 0 to 11; for level D-I, 2 to 21; for level E-I, 5 to 28; and for level F-I, 10 to 28.

OV Level	PRV Level												Offender Status
	A 0 Points		B 1-9 Points		C 10-24 Points		D 25-49 Points		E 50-74 Points		F 75+ Points		
I 0-9 Points	0	3*	0	6*	0	9*	2	17*	5	23	10	23	
		3*		7*		11*		21		28		28	HO2
		4*		9*		13*		25		34		34	HO3
		6*		12*		18*		34		46		46	HO4

MCL 769.10(1)(a) and MCL 769.10(1)(b) specifically designate probation as a possible disposition in cases involving a criminal defendant being sentenced as a second habitual offender. MCL 771.1 authorizes a court in certain circumstances to place a defendant convicted of a felony on

[141] MCL 769.10(1) is textually similar to MCL 769.11(1), and would therefore presumably be subject to the same construction.

probation rather than sentence the defendant to a term of imprisonment. MCL 771.1(1) also applies to defendants being sentenced as habitual offenders under MCL 769.10(1)(a) and MCL 769.10(1)(b) and limits the court's use of probation to specific circumstances:

> "In all prosecutions for felonies, misdemeanors, or ordinance violations other than murder, treason, criminal sexual conduct in the first or third degree, armed robbery, or major controlled substance offenses, if the defendant has been found guilty upon verdict or plea and the court determines that the defendant is not likely again to engage in an offensive or criminal course of conduct and that the public good does not require that the defendant suffer the penalty imposed by law, the court may place the defendant on probation under the charge and supervision of a probation officer."[142]

8.14 Third Habitual Offender Status (HO3)

A person who commits a felony in Michigan and who has been convicted of any combination of two or more felonies or felony attempts (whether or not the two or more previous convictions occurred in Michigan as long as the violations would have been felony violations if the convictions had been obtained in Michigan) is a third habitual offender subject to the following penalties:

- If the subsequent felony is punishable on first conviction by a term of imprisonment less than life, the court may sentence the person to a term of imprisonment of not more than two times the maximum term permitted by law for a first conviction of the offense, or to a lesser term. MCL 769.11(1)(a).

- If the subsequent felony is punishable by life imprisonment on first conviction, the court may sentence the person to life imprisonment, or to a lesser term. MCL 769.11(1)(b).

- If the subsequent felony is a major controlled substance offense,[143] the court must sentence the person as provided by MCL 333.7401 to MCL 333.7461. MCL 769.11(1)(c).

- The court must not sentence an offender to a maximum term of imprisonment that is less than the maximum term

[142] See Section 8.40 for more information about probation.

[143] Sentences for subsequent major controlled substance offenses are discussed in Section 8.16.

indicated for a first conviction of the sentencing offense. MCL 769.11(2).

An adult conviction resulting in a juvenile sentence qualifies as a prior conviction for purposes of sentencing a defendant as a third-time habitual offender under MCL 769.11. *People v Jones (Jeffrey)*, ___ Mich App ___, ___ (2012) (noting that "MCL 769.11(1) focuses only on whether a defendant has been convicted, and does not contain any language regarding a defendant's sentence[]").

The recommended minimum sentence range for an offender being sentenced as a third habitual offender is indicated by the numeric values shown in the "HO3" cells of the respective sentencing grids. The upper limit of a third habitual offender's minimum range is calculated by reference to the percentage outlined in MCL 777.21(3)(b). The sentence enhancement authorized by MCL 769.11 refers to the maximum sentence permitted by law for a specific offense as increased by the applicable habitual offender provision and is not shown in the sentencing grids. In the grid below, the minimum ranges recommended for an individual being sentenced as a third habitual offender are (in months): for level A-I, 0 to 4; for level B-I, 0 to 9; for level C-I, 0 to 13; for level D-I, 2 to 25; for level E-I, 5 to 34; and for level F-I, 10 to 34.

OV Level	PRV Level												Offender Status
	A 0 Points		B 1-9 Points		C 10-24 Points		D 25-49 Points		E 50-74 Points		F 75+ Points		
I 0-9 Points	0	3*	0	6*	0	9*	2	17*	5	23	10	23	
		3*		7*		11*		21		28		28	HO2
		4*		9*		13*		25		34		34	HO3
		6*		12*		18*		34		46		46	HO4

8.15 Fourth Habitual Offender Status (HO4)

A person who commits a felony in Michigan and who has been convicted of any combination of three or more felonies or felony attempts (whether or not the previous felony convictions were obtained in Michigan or in another state as long as the offenses would have been felony offenses if they had occurred in Michigan) is a fourth habitual offender subject to the following penalties:

- If the subsequent felony is punishable on first conviction by a maximum term of imprisonment of five years or more or

for life, the court may sentence the person to life imprisonment, or to a lesser term. MCL 769.12(1)(a).

- If the subsequent felony is punishable on first conviction by a maximum term of imprisonment less than five years, the court may sentence the person to a maximum term of imprisonment of 15 years. MCL 769.12(1)(b).

- If the subsequent felony is a major controlled substance offense,[144] the court must sentence the person as provided by MCL 333.7401 to MCL 333.7461. MCL 769.12(1)(c).

- The court must not sentence an offender to a maximum term of imprisonment that is less than the maximum term indicated for a first conviction of the sentencing offense. MCL 769.12(2).

In *People v Jones (Jeffrey)*, ___ Mich App ___, ___ (2012), the Michigan Court of Appeals held that because "MCL 769.11(1) focuses only on whether a defendant has been convicted, and does not contain any language regarding a defendant's sentence," an adult conviction resulting in a juvenile sentence qualifies as a prior conviction for purposes of sentencing a defendant as a third-time habitual offender under MCL 769.11.[145]

The recommended minimum sentence range for a fourth habitual offender is determined by reference to the numeric values shown in the "HO4" cells of each sentencing grid. The upper limit of a habitual offender's minimum range is calculated by reference to the percentage outlined in MCL 777.21(3)(c). The sentence enhancement authorized by MCL 769.12 refers to the maximum sentence permitted by law for a specific offense as increased by the applicable habitual offender provision and is not shown in the sentencing grids. In the grid appearing below, the minimum ranges recommended for a person being sentenced as a fourth habitual offender are (in months): for level A-I, 0 to 6; for level B-I, 0 to 12; for level C-I, 0 to 18; for level D-I, 2 to 34; for level E-I, 5 to 46; and for level F-I, 10 to 46.

OV Level	PRV Level						Offender Status
	A 0 Points	B 1-9 Points	C 10-24 Points	D 25-49 Points	E 50-74 Points	F 75+ Points	

[144] Sentences for subsequent major controlled substance offenses are discussed in Section 8.16.

[145] MCL 769.12(1) is textually similar to MCL 769.11(1), and would therefore presumably be subject to the same construction.

I 0-9 Points	0	3*	0	6*	0	9*	2	17*	5	23	10	23	
		3*		7*		11*		21		28		28	HO2
		4*		9*		13*		25		34		34	HO3
		6*		12*		18*		34		46		46	HO4

8.16 Sentencing an Offender for a Subsequent Major Controlled Substance Offense

When an offender has a previous felony conviction and is subsequently convicted of a *major controlled substance offense*, MCL 769.10(1)(c), MCL 769.11(1)(c), and MCL 769.12(1)(c) mandate application of the sentencing provisions in part 74 of the Public Health Code (MCL 333.7401-MCL 333.7461). However, as discussed below, the Michigan Court of Appeals and the Michigan Supreme Court have held that if an offender has no prior felony convictions for controlled substance offenses, the sentencing court may enhance an offender's sentence under the general habitual offender statutes.

A *major controlled substance offense* is limited to convictions for the commission of one of nine crimes described in MCL 761.2(a)–MCL 761.2(c):

- a violation of MCL 333.7401(2)(a)(*i*)–MCL 333.7401(2)(a)(*iv*).
- a violation of MCL 333.7403(2)(a)(*i*)–MCL 333.7403(2)(a)(*iv*).
- conspiracy to commit an offense under MCL 333.7401(2)(a)(*i*)–MCL 333.7401(2)(a)(*iv*) or MCL 333.7403(2)(a)(*i*)–MCL 333.7403(2)(a)(*iv*).

The major controlled substance offense described in MCL 333.7401(2)(a) prohibits an individual from manufacturing, creating, delivering, or possessing with the intent to manufacture, create, or deliver a controlled substance listed in the statute, a prescription form, or a counterfeit prescription form. Penalties for violating MCL 333.7401(2)(a) with respect to specific quantities of cocaine or a narcotic drug listed in schedule 1 or 2 are as follows:

- a violation involving 1,000 grams or more of a mixture containing the controlled substance is a felony punishable by life imprisonment or any term of years, a fine of not more than $1,000,000, or both. MCL 333.7401(2)(a)(*i*).

- a violation involving 450 grams or more, but less than 1,000 grams, of a mixture containing the controlled substance is a felony punishable by not more than 30 years in prison, a fine of not more than $500,000, or both. MCL 333.7401(2)(a)(*ii*).

- a violation involving 50 grams or more, but less than 450 grams, of a mixture containing the controlled substance is a felony punishable by not more than 20 years in prison, a fine of not more than $250,000, or both. MCL 333.7401(2)(a)(*iii*).

- a violation involving less than 50 grams of a mixture containing the controlled substance is a felony punishable by not more than 20 years in prison, a fine of not more than $25,000, or both. MCL 333.7401(2)(a)(*iv*).

> **Note:** The ameliorative changes made to sentencing for major controlled substance offenses effective March 1, 2003, are not retroactive. *People v Thomas (Carl)*, 260 Mich App 450, 459 (2004). In *Thomas (Carl)*, *supra* at 458, the defendant was sentenced to 10 to 20 years in prison when MCL 333.7401(2)(a)(*iii*) had a mandatory minimum of ten years. Thereafter, MCL 333.7401(2)(a)(*iii*) was amended to provide for imprisonment for not more than 20 years, or a fine of not more than $250,000, or both. *Thomas (Carl)*, *supra* at 458. The Michigan Court of Appeals held that although the statutory change did not retroactively apply to the defendant, the Legislature "specifically provided relief—in the form of early parole eligibility—for individuals, such as [the] defendant, who were convicted and sentenced before the amendatory act became effective." *Id*. at 459. That is, "the plain language of MCL 791.234 specifically provides that individuals previously convicted under MCL 333.7401(2)(a)(*iii*) may become eligible for parole 'after serving the minimum of each sentence imposed for that violation or 5 years of each sentence imposed for that violation, whichever is less.'" *Thomas (Carl)*, *supra* at 459, quoting MCL 791.234.

The major controlled substance offense described in MCL 333.7403(2)(a) prohibits an individual from knowingly or intentionally possessing a controlled substance, a controlled substance analogue, or a prescription form unless the controlled substance, analogue, or prescription form was obtained directly from, or pursuant to, a valid prescription or order of a practitioner acting in the course of his or her professional practice.

Penalties for violating MCL 333.7403(2)(a) with respect to specific quantities of cocaine or a narcotic drug listed in schedule 1 or 2 are as follows:

- a violation involving 1,000 grams or more of a mixture containing the controlled substance is a felony punishable by life imprisonment or any term of years, a fine of not more than $1,000,000, or both. MCL 333.7403(2)(a)(*i*).

- a violation involving 450 grams or more, but less than 1,000 grams, of a mixture containing the controlled substance is a felony punishable by not more than 30 years in prison, a fine of not more than $500,000, or both. MCL 333.7403(2)(a)(*ii*).

- a violation involving 50 grams or more, but less than 450 grams, of a mixture containing the controlled substance is a felony punishable by not more than 20 years in prison, a fine of not more than $250,000, or both. MCL 333.7403(2)(a)(*iii*).

- a violation involving 25 grams or more, but less than 50 grams, of a mixture containing the controlled substance is a felony punishable by not more than four years in prison, a fine of not more than $25,000, or both. MCL 333.7403(2)(a)(*iv*).

A. Mandatory Sentence Enhancement

MCL 333.7413(1) and MCL 333.7413(3) contain mandatory sentence enhancement provisions for offenders who have multiple convictions of specific controlled substance offenses. Those statutory provisions state:

> "(1) An individual who was convicted previously for a violation of any of the following offenses and is thereafter convicted of a second or subsequent violation of any of the following offenses shall be imprisoned for life and shall not be eligible for probation, suspension of sentence, or parole during that mandatory term:[146]

[146] However, a mandatory sentence of life imprisonment without the possibility of parole may not, consistently with the Eighth Amendment, be imposed upon an individual who was under the age of 18 at the time of the sentencing offense. See *Miller v Alabama*, 567 US ___, ___ (2012) (homicide offender under the age of 18 may not be sentenced to life imprisonment without the possibility of parole unless a judge or jury first has the opportunity to consider mitigating circumstances); *Graham v Florida*, 560 US ___, ___ (2010) (sentence of life imprisonment without the possibility of parole may not be imposed upon a defendant under the age of 18 for a nonhomicide offense). For additional discussion of *Miller*, 567 US ___, and *Graham*, 560 US ___, see the Michigan Judicial Institute's *Juvenile Justice Benchbook*, Chapter 18.

> "(a) A violation of section 7401(2)(a)(*ii*) or (*iii*).
>
> "(b) A violation of section 7403(2)(a)(*ii*) or (*iii*).
>
> "(c) Conspiracy to commit an offense proscribed by section 7401(2)(a)(*ii*) or (*iii*) or section 7403(2)(a)(*ii*) or (*iii*).
>
> * * *
>
> "(3) An individual convicted of a second or subsequent offense under section 7410(2) or (3) shall be punished, subject to subsection (4),[147] by a term of imprisonment of not less than 5 years nor more than twice that authorized under section 7410(2) or (3) and, in addition, may be punished by a fine of not more than 3 times that authorized by section 7410(2) or (3); and shall not be eligible for probation or suspension of sentence during the term of imprisonment."[148]

These mandatory enhancement provisions apply *only* to offenders who have been convicted of two or more of the drug-related offenses specifically enumerated in MCL 333.7413(1) and MCL 333.7413(3). Note that not all of the *major controlled substance offenses*, as defined in MCL 761.2, are included within the mandatory enhancement provisions of sections 7413(1) and (3). In particular, MCL 333.7401(2)(a)(*i*) and MCL 333.7401(2)(a)(*iv*) and MCL 333.7403(2)(a)(*i*) and MCL 333.7403(2)(a)(*iv*) are not included in MCL 333.7413(1).

Where a defendant commits an eligible second offense before he or she is convicted of the first offense, and is subsequently convicted of the second offense, MCL 333.7413(1) must be applied to the offender. The language of MCL 333.7413(1) unambiguously requires that a defendant who has been "convicted previously" of an enumerated offense and is "thereafter convicted" of a second enumerated offense be sentenced according to the provisions of MCL 333.7413(1). *People v Poole (Terry)*, 218 Mich App 702, 710 (1996). There is no requirement under the Public Health Code's enhancement provisions that a conviction for an offender's first offense be obtained before the commission date of the offender's second offense. *Poole (Terry)*, *supra* at 710.

As written, the general habitual offender statutes do not require a sentencing court to follow the Public Health Code's sentencing

[147] Subsection (4) deals with a court's departure from the minimum term of imprisonment.

[148] The offenses addressed by MCL 333.7413(3) are predicated on the offender's violation of MCL 333.7401(2)(a)(*iv*) within 1,000 feet of school property. See Section 8.9(A).

scheme unless the offender's subsequent conviction is for a major controlled substance offense. However, as discussed in Section 8.16(B), it appears that a sentencing court may sentence an offender convicted of a subsequent major controlled substance offense under either of the two sentencing schemes, without regard to the directive found in the general habitual offender statutes for subsequent major controlled substance offenses.

B. Application of the General Habitual Offender Statutes to Cases Involving Controlled Substance Offenses

Michigan's appellate courts have addressed the issue whether the sentencing scheme described in the general habitual offender statutes is to be concurrently applied to criminal offenses contained in part 74 of the Public Health Code or whether the scheme described in the Public Health Code operates to the exclusion of the habitual offender provisions.

Michigan courts have consistently held that a defendant's sentence cannot be "doubly enhanced" by application of the habitual offender statutes *and* any enhancement provisions contained in the statutory language prohibiting the conduct for which the defendant was convicted. *People v Elmore*, 94 Mich App 304, 305-306 (1979); *People v Edmonds*, 93 Mich App 129, 135 (1979). With regard to the enhancement provisions contained in the controlled substances act and those contained in the habitual offender provisions, the Michigan Court of Appeals utilized standard statutory interpretation principles to determine that the more specific sentence enhancements found in the controlled substances act prevailed over general enhancement provisions of the habitual offender statutes:

> "It must be noted that application of the controlled substances act penalty augmentation is proper when the defendant is being sentenced on a drug conviction. If the defendant commits a nondrug felony after one or more drug convictions then the habitual offender act applies upon conviction of that nondrug felony." *Edmonds*, 93 Mich App at 135 n 1.

Where a defendant was convicted of offenses that are not major controlled substance offenses and his sentences were quadrupled when the trial court applied the enhancement provisions of the Public Health Code *and* the habitual offender statutes to the defendant's underlying offenses, the Michigan Court of Appeals held that such "double enhancement" was improper. *People v Fetterley,* 229 Mich App 511, 525, 540-541 (1998).[149]

Where a defendant with no previous drug-related felony convictions was convicted of a major controlled substance offense, the Michigan Court of Appeals concluded that the Public Health Code's enhancement provisions (MCL 333.7413(2) and MCL 333.7413(3)) were "inapplicable by [their] own terms." *People v Franklin (Gwendolyn)*, 102 Mich App 591, 594 (1980). However, "use of the general habitual offender statutes" to impose an enhanced sentence on the defendant based on the defendant's multiple prior felony convictions was permissible. *Franklin (Gwendolyn)*, *supra* at 594.

Sentence enhancement under either the habitual offender sentencing scheme or the Public Health Code's subsequent offender sentencing scheme is permissible where a defendant with prior felony convictions is subsequently convicted of a major controlled substance offense. *People v Wyrick*, 474 Mich 947 (2005). "[T]he prosecutor may seek a greater sentence under the habitual offender statute even when a defendant is sentenced under the Public Health Code." *Wyrick*, *supra* at 947, citing *People v Primer*, 444 Mich 269, 271-272 (1993) (holding that "the legislative purpose [of the provisions of the Code of Criminal Procedure providing that if a subsequent felony is a major controlled substance offense, the person shall be punished as provided in the Public Health Code] was to assure that the mandatory sentences for the commission of a first or subsequent major controlled substance offense would not be ameliorated as the result of the exercise of discretion regarding the length of sentence provided in the habitual offender provisions in the Code of Criminal Procedure, and not to preclude enhancement of a sentence under the habitual offender provisions that might be imposed on a person who has a record of prior felony conviction, albeit not for a major controlled substance offense").

C. Discretionary Sentence Enhancement

Unlike the provisions in MCL 333.7413(1) and MCL 333.7413(3), MCL 333.7413(2) *permits*, but does *not require*, a sentencing court to double the term of imprisonment authorized by the applicable statute for a first conviction of the offense. Where an offender is convicted of a second or subsequent controlled substance offense—"major" *or* "non-major"—MCL 333.7413(2) authorizes a trial court to impose a term of imprisonment not more than twice the term permitted for a first conviction of the offense. MCL 333.7413(2) states:

> "Except as otherwise provided in subsections (1) and (3), an individual convicted of a second or subsequent offense under this article may be imprisoned for a term

[149] *Fetterley*, 229 Mich App 511, provides a detailed overview of case law involving the applicability of multiple enhancement provisions.

> not more than twice the term otherwise authorized or fined an amount not more than twice that otherwise authorized, or both."

The discretionary authority in MCL 333.7413(2) to sentence a repeat offender to not more than twice the term of imprisonment otherwise authorized includes an increase in both the minimum and maximum terms in the minimum range recommended by the statutory sentencing guidelines. *People v Williams (John)*, 268 Mich App 416, 429-431 (2005). In *Williams (John)*, *supra* at 430-431, the trial court properly concluded that MCL 333.7413(2) authorized it to double both values in the range recommended under the guidelines—in that case, from the range of 5 to 23 months "otherwise authorized" for conviction, to a range of 10 to 46 months. The Michigan Court of Appeals held that "the clear and unambiguous language of MCL 333.7413(2) does not differentiate or suggest a distinction, either explicitly or implicitly, between maximum and minimum sentences; therefore, the word 'term' can entail and contemplate both maximum and minimum sentences." *Williams (John)*, *supra* at 427.

See also *People v Lowe*, 484 Mich 718, 724 (2009), overruled in part on other grounds in *People v Peltola*, 489 Mich 174, 189-190 (2011), where the Michigan Supreme Court explained:

> "[U]nder Michigan's scheme of indeterminate sentencing and the courts' implementation of that scheme, the 'term otherwise authorized' is not exclusively the minimum sentence *or* the maximum limits for that sentence. In other words, the 'period of time' that a defendant could potentially spend in prison lies somewhere between the minimum and the maximum allowable sentences, and accordingly those sentences operate in tandem to define the 'term' for which a defendant has been sentenced. In order to double this 'term,' a trial court necessarily has to double both the minimum and maximum sentences because both are required to constitute a particular 'term.'"

"[W]hen calculating a defendant's recommended minimum sentence range under the sentencing guidelines when the defendant's minimum and maximum sentences may be enhanced pursuant to MCL 333.7413(2), a trial court should score the PRVs [prior record variables]." *Peltola*, 489 Mich at 190. In *Peltola*, *supra* at 184, the defendant contended that MCL 777.21(1)(b), requiring the sentencing court to score a defendant's PRVs "[e]xcept as otherwise provided[,]" does not apply to offenders falling within the purview of MCL 777.21(4).[150] The Supreme Court disagreed, holding that "MCL 777.21(1) sets forth the general rule for determining a defendant's minimum sentence range[]" and that, because MCL 777.21(4) does

not direct otherwise but instead "is merely intended to provide guidance regarding how to determine the OV level and offense class for offenders falling under MCL 777.18[,]" the rule requiring the scoring of PRVs remains applicable to those offenders. *Peltola*, *supra* at 176, 191.

MCL 333.7413(5) defines "second or subsequent offense" for the purposes of subsection (2):

> "[A]n offense is considered a second or subsequent offense, if, before conviction of the offense, the offender has at any time been convicted under this article or under any statute of the United States or of any state relating to a narcotic drug, marihuana, depressant, stimulant, or hallucinogenic drug."

Sentence enhancement under MCL 333.7413(2) requires only that an offender's *convictions* must *follow* one another: there is no requirement in the statute regarding the temporal sequence of the *commission dates* of the offenses on which the offender's convictions are based. *People v Roseburgh*, 215 Mich App 237, 239 (1996).

8.17 Application of the Habitual Offender Provisions to Offenses Involving Statutory Escalation Schemes

Whether the habitual offender sentencing provisions may be concurrently applied to specific subsequent felony convictions is dependent on whether the Legislature has already provided a sentencing enhancement scheme for successive felony violations. "Where the legislative scheme pertaining to the underlying offenses elevates the offense, rather than enhances the punishment, on the basis of prior convictions, both the elevation of the offense and the enhancement of the penalty under the habitual offender provisions is permitted." *People v Fetterley*, 229 Mich App 511, 540-541 (1998). However, where the statute under which a defendant was convicted enhances the punishment based on prior convictions of that offense, use of the general habitual offender provisions is improper. See, e.g., *People v Honeycutt*, 163 Mich App 757, 762 (1987) (because MCL 750.227b, the felony-firearm statute, mandates enhanced sentences for subsequent violations of that statute, application of the general habitual offender provisions is improper).

A number of statutes elevate the severity of the offense based on an offender's prior conviction. This section discusses the following offenses:

[150] MCL 777.21(4) applies to an offender who "is being sentenced for a violation described in [MCL 777.18]," which includes subsequent controlled substance violations under MCL 333.7413(2).

- criminal sexual conduct offenses;
- OUIL offenses;
- retail fraud offenses; and
- fleeing and eluding offenses.

In addition, a number of statutes expressly prohibit the use of an offender's previous conviction to enhance a sentence under the general habitual offender statutes if the conviction is used to enhance the offense under an internal statutory escalation scheme. Appendix D contains a table of these offenses.

A. Subsequent Criminal Sexual Conduct (CSC) Convictions

MCL 750.520f provides the penalty for offenders convicted on subsequent occasions of specific criminal sexual conduct (CSC) offenses.[151] That provision requires that a defendant convicted of a second or subsequent violation of MCL 750.520b (CSC-I), MCL 750.520c (CSC-II), or MCL 750.520d (CSC-III) be sentenced to a mandatory minimum term of *at least* five years. MCL 750.520f(1). For purposes of MCL 750.520f, an offense is considered a second or subsequent offense if, before conviction of the second or subsequent offense, the offender has been convicted under MCL 750.520b, MCL 750.520c, MCL 750.520d, or "under any similar statute of the United States or any state for a criminal sexual offense including rape, carnal knowledge, indecent liberties, gross indecency, or an attempt to commit such an offense." MCL 750.520f(2).

Additionally, MCL 750.520b(2)(c) imposes a *mandatory* sentence of imprisonment for life without the possibility of parole for a conviction of CSC-I, if committed against an individual less than 13 years of age by a defendant 17 years of age or older and if the defendant was previously convicted of an enumerated sex crime against an individual less than 13 years of age.[152]

> **Note:** CSC-I, CSC-II, and CSC-III are always considered to be felony convictions. CSC-IV, MCL 750.520e, is not designated as a felony offense by the statutory language defining the crime. However, because CSC-IV is punishable by more than one year of imprisonment,

[151] See the Michigan Judicial Institute's *Sexual Assault Benchbook* for detailed discussion of CSC offenses.

[152] However, imposing this mandatory nonparolable life sentence upon a 17-year-old would violate the Eighth Amendment. See *Graham v Florida*, 560 US ___, ___ (2010) (holding that a sentence of life imprisonment without the possibility of parole may not be imposed upon a nonhomicide offender who was under the age of 18 at the time of the offense). For additional discussion of *Graham*, see the Michigan Judicial Institute's *Juvenile Justice Benchbook*, Chapter 18.

> MCL 750.520e(2), it is a felony for purposes of the Code of Criminal Procedure. MCL 761.1(g). Thus, CSC-IV may be used as a prior felony conviction to enhance an offender's sentence under the general habitual offender provisions.

Because the habitual offender statutes address a defendant's *maximum* possible sentence and the subsequent offense provisions of MCL 750.520f address a defendant's *minimum* possible sentence, concurrent application of the statutes is permitted. *People v VanderMel*, 156 Mich App 231, 234-237 (1986). A defendant's habitual offender status and the applicability of MCL 750.520f to a defendant's conviction may be based on the same previous felony conviction. *People v James (Edwin)*, 191 Mich App 480, 482 (1991). In contrast to the habitual offender statutes, MCL 769.10 *et seq*., no additional notice has to be filed to proceed against defendants charged as subsequent offenders under MCL 750.520f. *People v Eason*, 435 Mich 228, 249 n 35 (1990), citing *People v Bailey*, 103 Mich App 619, 627-628 (1981).

"Although MCL 750.520f(1) authorizes a minimum sentence in excess of 5 years, it does not mandate it." *People v Wilcox (Larry)*, 486 Mich 60, 69 (2010). Therefore, "the 'mandatory minimum' sentence in MCL 750.520f(1) is a flat 5-year term." *Wilcox (Larry)*, *supra* at 62. "[T]he legislative sentencing guidelines apply to minimum sentences in excess of 5 years that are imposed under MCL 750.520f." *Wilcox (Larry)*, *supra* at 73. "Because the trial court imposed a 10-year minimum sentence [under MCL 750.520f's repeat offender provision, and because the 10-year minimum sentence] exceeded both the applicable guidelines range and the 5-year mandatory minimum, defendant's sentence was a departure from the guidelines" and required the trial court to state substantial and compelling reasons to justify the departure. *Wilcox (Larry)*, *supra* at 62-63.

B. Subsequent OUIL-3d Convictions

For offenses occurring after January 3, 2007 (the effective date of amended MCL 257.625), a defendant's third or subsequent operating under the influence of liquor (OUIL) conviction constitutes a felony regardless of the number of years that have elapsed between any prior conviction, i.e., even those convictions that occurred more than ten years before the defendant's third OUIL conviction. MCL 257.625(9)(c); *People v Perkins (James)*, 280 Mich App 244, 245-246 (2008). A defendant's prosecution under MCL 257.625(9)(c), as amended, does not violate the ex post facto clauses of the state or federal constitutions. *Perkins (James)*, *supra* at 251-252. The Michigan Court of Appeals explained that although the amended MCL 257.625(9)(c) "certainly works to [the defendant's] disadvantage, [it] did not attach legal consequences to [his] prior offenses, which

occurred before the amendment's effective date. Rather, the amendment made the consequences of [the defendant's] current offense[], which occurred after January 3, 2007, more severe on the basis of [the defendant's] prior convictions." *Perkins (James)*, *supra* at 251. See also *People v Sadows*, 283 Mich App 65, 66 (2009) (MCL 257.625, as amended, does not violate the prohibition against ex post facto laws and does not deny a defendant his or her federal and state constitutional rights to equal protection and due process).

For purposes of OUIL offenses, a prior conviction may be a misdemeanor conviction. *People v Bewersdorf*, 438 Mich 55, 64 (1991). A defendant's first OUIL-3d conviction is governed by the penalty provisions in the Michigan Vehicle Code. *Bewersdorf*, *supra* at 70. Where a defendant has another felony conviction, that defendant's conviction of OUIL-3d is a felony conviction that may be used to establish the defendant's habitual offender status under the habitual offender sentencing statutes. *Bewersdorf*, supra at 70-71; *People v Stewart (Jerry) (On Remand)*, 219 Mich App 38, 43-44 (1996).

> **Note:** Violations of MCL 257.625(9)(c) are subject to alternate mandatory minimum sentences under MCL 769.34(2), and the trial court may sentence the defendant to either alternative. See *People v Hendrix*, 471 Mich 926 (2004), modifying in part 263 Mich App 18 (2004).

A defendant convicted of OUIL-3d who has a previous OUIL-3d conviction may be sentenced under the habitual offender provisions using the subsequent OUIL-3d; sentencing for a defendant's second OUIL-3d conviction is not limited to the Michigan Vehicle Code provisions. *Bewersdorf*, 438 Mich at 70.

C. Subsequent First-Degree Retail Fraud Convictions

The retail fraud statutes are similar to the OUIL statutes in that both statutory schemes increase the severity of the offense from misdemeanor to felony as a defendant is convicted of successive violations, and each successive violation is subject to a possibly greater sentence. However, the statute governing retail fraud offenses contains an express prohibition against using a defendant's previous felony conviction for enhancement under both the retail fraud statute and the habitual offender statute. MCL 750.356c(6) states:

> "If the sentence for a conviction under this section is enhanced by 1 or more prior convictions, those prior convictions shall not be used to further enhance the sentence for the conviction pursuant to . . . [sections] 769.10, 769.11, and 769.12."

The corresponding language in the habitual offender statutes is included in subparagraph (3) of each habitual offender statute:

> "A conviction shall not be used to enhance a sentence under this section if that conviction is used to enhance a sentence under a statute that prohibits use of the conviction for further enhancement under this section." MCL 769.10(3), MCL 769.11(3), and MCL 769.12(3).

In addition to retail fraud offenses, there are numerous statutory schemes that *expressly prohibit* using an offender's previous conviction for enhancement under the general habitual offender statutes if that conviction was used to enhance the offender's sentence under the statute prohibiting the conduct for which the offender was convicted. The statutory schemes governing these offenses contain a provision identical to the provision found in MCL 750.356c(6) (quoted above) and are listed in a table in Appendix D. Each statutory scheme containing the express prohibition against using an offender's previous conviction to enhance a sentence under the general habitual offender statutes if the conviction is used to enhance the offense under the specific internal escalation scheme also contains a provision requiring the prosecutor to file notice with the court of the intent to seek enhancement under the statute based on an offender's previous convictions. See MCL 750.356c(4), for example.

Similar to the notice requirements of the general habitual offender statutes,[153] where a prosecutor seeks to enhance an offense under an internal escalation scheme, the prosecutor must list the offender's previous convictions on which the enhancement sought will be based. The existence of a prior conviction can be established by any relevant evidence including, but not limited to:

> "(a) A copy of the judgment or conviction.
>
> "(b) A transcript of a prior trial, plea-taking, or sentencing.
>
> "(c) Information contained in a presentence report.
>
> "(d) The defendant's statement." MCL 750.356c(4).

D. Subsequent Fleeing and Eluding Convictions

Both MCL 257.602a and MCL 750.479a prohibit fleeing and eluding a law enforcement officer. Like felony-firearm and criminal sexual conduct convictions, any fleeing and eluding conviction is considered to be a felony offense.[154] The statutory scheme governing fleeing and

[153] See Section 8.11(H).

eluding offenses does not contain a method for imposing determinate sentences that increase or escalate with the number of times a defendant is convicted of the same offense. Consistent with the Michigan Supreme Court's decision in *Bewersdorf*, 438 Mich at 70, the Michigan Court of Appeals concluded that where a defendant had prior felony convictions the general habitual offender statutes may be used to enhance the offender's sentence for a subsequent fleeing and eluding conviction even where the fleeing and eluding statute already provided for a enhanced sentence based on the defendant's subsequent conviction of fleeing and eluding. *People v Lynch*, 199 Mich App 422, 424 (1993).

Part E—The Sentencing Hearing

8.18 Requirements and Rights

A defendant's sentence, based on accurate information prepared in advance of the sentencing hearing for the purpose of fashioning an appropriate sentence, must be imposed "within a reasonably prompt time" after the defendant's conviction by plea or verdict unless the court has delayed the defendant's sentencing in a manner provided by law.[155] MCR 6.425(E)(1).

A sentence based on inaccurate information implicates a defendant's constitutional right to due process. US Const, Am XIV; Const 1963, art 1, § 17; *Townsend v Burke*, 334 US 736, 740-741 (1948); *People v Smith (Timothy)*, 423 Mich 427, 453-454 (1985). Because the sentencing proceeding and the information on which a sentencing court bases its sentencing decision are matters of constitutional magnitude, the Michigan Supreme Court has required strict adherence to the detailed statutory and court rule provisions that govern the sentencing process. At a defendant's sentencing hearing, the court must, on the record, satisfy the requirements listed in MCL 771.14 and MCR 6.425(E)(1)(a)-(f).

With the exception of rules involving privilege, the rules of evidence do not apply to sentencing proceedings. MRE 1101(b)(3); *People v Waclawski*, 286 Mich App 634, 690 (2009). However, a defendant must be given an adequate opportunity to rebut any matter he or she believes is inaccurate. *Waclawski*, *supra* at 690.

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[154] CSC-I, CSC-II, and CSC-III are designated as felonies without regard to possible penalty. CSC-IV is a felony because it is punishable by more than one year of imprisonment. MCL 761.1(g).

[155] See Sections 8.41 and 8.42 for more information on delayed sentences and other alternatives.

The sentencing hearing is a critical stage in the criminal proceedings against a defendant at which the defendant—absent a valid waiver—must be represented by counsel. *Mempa v Rhay*, 389 US 128, 134 (1967); *Smith (Timothy)*, 423 Mich at 452. Even if a defendant has previously waived his or her right to counsel, the trial court is under a continuing duty to inform the defendant of the right to counsel and to obtain the defendant's valid waiver of that right at all subsequent proceedings, including sentencing. MCR 6.005(E). However, a criminal defendant does not have an absolute right to be represented at sentencing by the same attorney who represented him at trial. *People v Davis (Keith)*, 277 Mich App 676, 679-680 (2008), vacated in part on other grounds 482 Mich 978 (2008).

A defendant's right to counsel also extends to certain ex parte presentence conferences:

- A trial court's conference with a probation officer is a critical stage of the proceedings at which the defendant has a right to be represented by counsel. *People v Oliver*, 90 Mich App 144, 149-150 (1979), rev'd on other grounds 407 Mich 857 (1979).

- A defendant has the right to be represented by counsel at a presentence conference between the trial judge and a prosecutor. *People v Von Everett*, 110 Mich App 393, 396-397 (1981).

- A defendant has the right to be represented by counsel at a presentence conference between the trial court and a police officer. *People v Vroman*, 148 Mich App 291, 295-296 (1985), overruled in part on other grounds by *People v Wright (Atlee)*, 431 Mich 282, 298 n 18 (1988).

8.19 Review of the Presentence Investigation Report (PSIR)

At the sentencing hearing, the court must determine that all parties (prosecutor, defendant, and defense attorney) have had an opportunity to read and discuss the presentence investigation report (PSIR).[156] MCR 6.425(E)(1)(a).

MCR 6.425(B) states:

> "The court must provide copies of the presentence report to the prosecutor, and the defendant's lawyer, or the defendant if not represented by a lawyer, at a reasonable time, but not

[156] See Section 8.4 for detailed information about the content required in a PSIR.

> less than two business days, before the day of sentencing. The prosecutor and the defendant's lawyer, or the defendant if not represented by a lawyer, may retain a copy of the report or an amended report. If the presentence report is not made available to the prosecutor and the defendant's lawyer, or the defendant if not represented by a lawyer, at least two business days before the day of sentencing, the prosecutor and the defendant's lawyer, or the defendant if not represented by a lawyer, shall be entitled, on oral motion, to an adjournment of the day of sentencing to enable the moving party to review the presentence report and to prepare any necessary corrections, additions, or deletions to present to the court. The court may exempt from disclosure information or diagnostic opinion that might seriously disrupt a program of rehabilitation and sources of information that have been obtained on a promise of confidentiality. When part of the report is not disclosed, the court must inform the parties that the information has not been disclosed and state on the record the reasons for nondisclosure. To the extent it can do so without defeating the purpose of nondisclosure, the court also must provide the parties with a written or oral summary of the nondisclosed information and give them an opportunity to comment on it. The court must have the information exempted from disclosure specifically noted in the report. The court's decision to exempt part of the report from disclosure is subject to appellate review."

8.20 Objections to Accuracy or Content of the Presentence Investigation Report (PSIR)

Due process requires that a defendant's sentence be based on accurate information and that the defendant be given an opportunity at sentencing to challenge the accuracy of the information on which the trial court bases the defendant's sentence. *People v Eason*, 435 Mich 228, 233 (1990). A sentence is invalid if it is based on inaccurate information. *People v Miles (Dwayne)*, 454 Mich 90, 96 (1997).

Each party must be given an opportunity at the sentencing hearing to explain or challenge the accuracy or relevancy of any information contained in the presentence investigation report (PSIR). MCL 771.14(6); MCR 6.425(E)(1)(b). When a defendant alleges inaccuracies in his or her PSIR, the trial court must respond to those allegations. *People v McAllister*, 241 Mich App 466, 473 (2000). However, unless a defendant effectively challenges the contents of his or her PSIR, the contents are presumed accurate and may be relied on by the sentencing court. *People v Callon*, 256 Mich App 312, 334 (2003).

MCL 771.14(6) and MCR 6.425(E) discuss the procedural requirements for disposing of any contemporaneous objections to the information prepared for use at the sentencing hearing.[157]

Challenges to the accuracy or relevancy of information in the PSIR must be made on the record. MCL 771.14(6); MCR 6.425(E)(1)(b). The court may adjourn the sentencing hearing to permit the parties to prepare a challenge or a response to a challenge. MCL 771.14(6). Having given the parties the opportunity to challenge information in the PSIR, the sentencing court is obligated to respond to all challenges raised using any of the discretionary methods approved under the statute, court rule, and relevant case law. *McAllister*, 241 Mich App at 473; MCL 771.14(6); MCR 6.425(E)(1)(b); MCR 6.425(E)(2)(a)-(b). The court must make a record of its response to the challenges raised, and the presentence report must be amended accordingly. MCL 771.14(6); MCR 6.425(E)(2)(a).

There are additional statutory and court rule provisions governing postjudgment challenges to the content of a defendant's PSIR. See MCL 769.34(10). Postjudgment appeals and issue preservation requirements are discussed in Section 8.52.[158]

8.21 Challenges to the Constitutional Validity of a Prior Conviction or Adjudication

A defendant's prior conviction obtained without counsel or without a proper waiver of counsel must not be considered in sentencing. *United States v Tucker*, 404 US 443, 449 (1972); *People v Carpentier*, 446 Mich 19, 31 n 6 (1994). Constitutionally infirm convictions may not be used to establish a defendant's habitual offender status or to determine a defendant's prior record variable (PRV) level. *People v Daoust*, 228 Mich App 1, 18 (1998), overruled on other grounds by *People v Miller (Michael)*, 482 Mich 540, 561 (2008); *People v Richert (After Remand)*, 216 Mich App 186, 195 (1996). Similarly, a juvenile adjudication obtained in violation of the juvenile's right to counsel is constitutionally infirm and cannot be used to enhance a criminal sentence. *People v Ristich*, 169 Mich App 754, 758 (1988). When a defendant challenges the constitutional validity of a prior conviction used to establish habitual offender status or to score the defendant's PRVs, the trial court is obligated to address and resolve the challenge. MCR 6.425(E)(1)(b).

> **Note:** There are important distinctions between the use of a defendant's prior convictions to establish habitual offender

[157] These provisions are detailed below in Section 8.22.

[158] See the Michigan Judicial Institute's *Criminal Procedure Monograph 9: Postconviction Proceedings* for more information on postjudgment appeals.

status and the use of a defendant's prior convictions or adjudications to determine the defendant's PRV level: (1) prior convictions used to establish a defendant's habitual offender status are limited to prior felony convictions; (2) PRV scoring accounts for all of a defendant's prior convictions, misdemeanor and felony, as well as all of a defendant's prior juvenile adjudications; (3) prior convictions used to establish a defendant's habitual offender status are not subject to the 10-year gap requirement;[159] and (4) prior convictions and juvenile adjudications used in scoring a defendant's PRVs must satisfy the 10-year gap requirement. This section does not discuss the use of a defendant's prior convictions to establish habitual offender status. That issue is discussed fully in Section 8.11.

A. Prima Facie Showing Required

A defendant who raises a challenge to a previous conviction allegedly obtained in violation of his or her Sixth Amendment right to counsel bears the initial burden of establishing that the previous conviction was obtained in violation of *Gideon v Wainwright*, 372 US 335 (1963); that is, the defendant must show that the previous conviction was obtained without counsel or without a proper waiver of counsel. *Carpentier*, 446 Mich at 31. A defendant may satisfy this initial burden in one of two ways:

> "1) by presenting 'prima facie proof that a previous conviction was violative of *Gideon*, such as a docket entry showing the absence of counsel or a transcript evidencing the same,' or
>
> "2) by presenting evidence that the defendant requested such records from the sentencing court and that the court either (a) failed to reply to the request, or (b) refused to furnish copies of the records, within a reasonable time." *Carpentier*, 446 Mich at 31, quoting *People v Moore (Reuben)*, 391 Mich 426, 440-441 (1974).

"Mere silence regarding counsel is not the equivalent of the prima facie proof required by *Moore*[, 391 Mich at 440-441,] and *Carpentier*[, 446 Mich at 31.]" *People v Zinn*, 217 Mich App 340, 344 (1996). Similarly, that a defendant simply "ha[s] not received" the requested records is insufficient to satisfy the defendant's burden of proof. *Carpentier*, *supra* at 32-33.

[159] See Section 8.5(A) for a detailed discussion of this rule.

> "[The requirement of] *Moore* is in part directed at those situations in which a sentencing court affirmatively and intentionally acts to deny a defendant access to requested trial records. For example, where a sentencing court ignores a proper request for records, that court has 'failed to reply' within the meaning of *Moore*. Alternatively, where a court refuses to forward records in its possession or control, that court has 'refused to furnish' under *Moore*. Accordingly, to interpret *Moore* as only requiring a defendant to have requested but not received trial records opens the door to collateral challenges in a variety of situations not intended by the strict and narrow rule of *Moore*." *Carpentier*, 446 Mich at 33.

In *Carpentier*, 446 Mich at 33-35, the defendant's request was met with neither of the two qualifying responses detailed in *Moore*, 391 Mich at 440-441. The sentencing court did not fail to reply to the defendant's request because it sent the defendant a letter explaining that the defendant's records were unavailable. *Carpentier*, *supra* at 34. Further, the sentencing court did not refuse to furnish records in its possession because the court no longer possessed expunged court records. *Id*. The absence or unavailability of a defendant's records does not satisfy the defendant's initial burden. *Id*. at 34 n 9.

A defendant may establish prima facie proof that a prior conviction or juvenile adjudication was obtained without counsel where the presentence report contains a notation to that effect. *People v Alexander (Hamilton) (After Remand)*, 207 Mich App 227, 230 (1994).

B. Burden-Shifting Analysis

If a defendant makes a prima facie showing that a prior conviction or adjudication was obtained without counsel, the court must hold a *Tucker*[160] hearing where the prosecution has the burden of establishing that the prior conviction was constitutionally valid. *Carpentier*, 446 Mich at 31.

Where a defendant's presentence report contains a notation that a prior conviction or juvenile adjudication was obtained without counsel, the burden shifts to the prosecution to establish the constitutional validity of the prior conviction. *Alexander (Hamilton)*, 207 Mich App at 230.

Generally, the prosecution may satisfy this burden in one of three ways:

[160] *Tucker*, 404 US 443.

- producing evidence that the defendant was, in fact, represented by counsel at the prior conviction or adjudication, *Alexander (Hamilton)*, 207 Mich App at 230;

- producing evidence that the defendant effected a valid waiver of the right to counsel at the prior conviction or adjudication, *Moore (Reuben)*, 391 Mich at 441; or

- producing evidence that no right to counsel existed at the prior conviction or adjudication, *Richert*, 216 Mich App at 195 (no right to counsel exists in misdemeanor cases if incarceration is not ultimately imposed).

Absent any other constitutional infirmity (and presumably subject to the 10-year gap requirement for prior record variable (PRV) scoring), a defendant's expunged juvenile records are properly considered when imposing sentence. *People v Smith (Ricky)*, 437 Mich 293, 302-303 (1991).

8.22 Sentencing Court's Duty to Remedy Errors

"If any information in the presentence report is challenged, the court must allow the parties to be heard regarding the challenge, and make a finding with respect to the challenge or determine that a finding is unnecessary because it will not take the challenged information into account in sentencing. If the court finds merit in the challenge or determines that it will not take the challenged information into account, it must direct the probation officer to

> "(a) correct or delete the challenged information in the report, whichever is appropriate, and
>
> "(b) provide defendant's lawyer with an opportunity to review the corrected report before it is sent to the Department of Corrections." MCR 6.425(E)(2).

"[A] sentencing court must respond to challenges to the accuracy of information in a presentence report; however, the court has wide latitude in responding to these challenges." *People v Spanke*, 254 Mich App 642, 648 (2003). "'[T]he duty of the trial judge to respond involves something more than acknowledging that he [or she] has heard the defendant's claims regarding the contents of a presentence report. [The trial court] must indicate, in exercising [its] discretion, whether [it] believes those claims have merit.'" *People v Garvie*, 148 Mich App 444, 455 (1986), quoting *People v Edenburn*, 133 Mich App 255, 258 (1983). "The court may determine the accuracy of the information, accept the defendant's version, or simply disregard the challenged information." *Spanke*, *supra* at 648.

A. Determining the Information's Accuracy or Relevance

"If the court finds the challenged information inaccurate or irrelevant, it must strike that information from the PSIR [(presentence investigation report)] before sending the report to the Department of Corrections." *Spanke*, 254 Mich App at 649; MCL 771.14(6). Remand is necessary to correct factual inaccuracies in a defendant's PSIR. *Spanke*, *supra* at 650. Whenever information is corrected in or deleted from a defendant's PSIR, the defendant's attorney must be given the opportunity to review the amended PSIR before it is forwarded to the Department of Corrections. MCR 6.425(E)(2)(b).

An investigating officer's opinion need not be stricken from a defendant's PSIR when the opinion is not declared to be a statement of fact. *Spanke,* 254 Mich App at 649. Similarly, a trial court need not "resolve a claimed inaccuracy in the presentence report where the defendant's objection 'was not to an alleged factual inaccuracy in the report but to a conclusion drawn from the undisputed facts.'" *People v Wybrecht*, 222 Mich App 160, 173 (1997), quoting *People v Greene*, 116 Mich App 205, 210 (1982), rev'd on other grounds 414 Mich 896 (1982). See also *People v Uphaus (On Remand)*, 278 Mich App 174, 181-182 (2008) (trial court properly declined to strike from the PSIR the investigator's comment suggesting that the defendant was "paranoid," where the term "paranoia" did not represent a clinical evaluation of the defendant's actual mental condition, but rather, it was a colloquial term used to characterize certain noteworthy statements made by the defendant).

B. Ignoring the Disputed Information

If the court decides to disregard the challenged information, "it must clearly indicate that it did not consider the alleged inaccuracy in determining the sentence." *Spanke*, 254 Mich App at 649. Where the sentencing court's response to a defendant's allegation of inaccuracy is ambiguous, remand is necessary. *People v Brooks (Denford)*, 169 Mich App 360, 364-365 (1988).

A trial court's decision that it will not consider information in a defendant's presentence investigation report (PSIR) that the defendant claims is inaccurate does not conclude the trial court's responsibility regarding the challenged information; the trial court must direct the probation officer to strike the information from the PSIR. *People v Britt*, 202 Mich App 714, 718 (1993); MCL 771.14(6); MCR 6.425(E)(2)(a). Additionally, the probation officer is required to provide defense counsel with an opportunity to review the corrected PSIR before it is sent to the Department of Corrections. MCR 6.425(E)(2)(b).

C. Harmless Error

A trial court's failure to respond to a defendant's challenge to information contained in his or her presentence investigation report (PSIR) or introduced at his or her sentencing hearing may be harmless error if the inaccuracies alleged by the defendant would have no effect on the sentence imposed. *People v McAllister*, 241 Mich App 466, 473-474 (2000) (although the defendant was employed part-time, his PSIR indicated that he was unemployed).

Where the defendant failed to preserve the issue for appeal,[161] the Michigan Court of Appeals declined to remand the defendant's PSIR to correct the plain error regarding the crime for which the defendant was convicted. *People v McCrady*, 244 Mich App 27, 32 (2000). In *McCrady*, *supra* at 32, the defendant's PSIR indicated that he was convicted of first-degree premeditated murder when, in fact, the jury had convicted him of first-degree felony murder. The Court of Appeals acknowledged that the PSIR's misstatement constituted plain error, but held that remand for correction of the PSIR was unnecessary because the error did not deprive the defendant of any substantial right. *Id*.

8.23 Allocution

"'Allocution' generally refers to '[a]n unsworn statement from a convicted defendant to the sentencing judge or jury in which the defendant can ask for mercy, explain his or her conduct, apologize for the crime, or say anything else in an effort to lessen the impending sentence.'" *People v Petty*, 469 Mich 108, 119 n 7 (2003), quoting Black's Law Dictionary (7th ed).

The defendant, the defendant's lawyer, the prosecutor, and the victim must be given "an opportunity to advise the court of any circumstances they believe the court should consider in imposing sentence[.]" MCR 6.425(E)(1)(c). MCR 6.425(E)(1)(c) is "straightforward" in its requirement that a defendant must be given an "opportunity" to address the court before sentence is imposed; however, the court rule does not require a sentencing court to make a "personal and direct inquiry" of the defendant to determine whether he or she would like to speak in his or her own behalf. *People v Petit*, 466 Mich 624, 627-629 (2002). In *Petit*, *supra* at 629, 636, the Michigan Supreme Court held that the trial court complied with the mandate of the court rule by "asking generally if there was 'anything further.'" However, the Court noted that "asking generally if there is 'anything further' is certainly not the best way to provide a defendant with an opportunity to allocute. Rather, the best way to

[161] See Section 8.52 for a detailed discussion of appellate review and issue preservation requirements.

provide such an opportunity is to specifically ask the defendant if he [or she] has anything to say." *Id*. at 629 n 3. The Court, in so interpreting MCR 6.425, overruled *People v Berry*, 409 Mich 774, 781 (1980), which indicated that the trial court must "inquire specifically of the defendant separately whether he or she wishes to address the court before the sentence is imposed." *Petit*, *supra* at 631-633 n 11.

See *United States v Haygood*, 549 F3d 1049, 1055 (CA 6, 2008) (in federal court, prejudice is presumed when allocution is overlooked, and a new sentencing hearing must be held when a defendant does not receive the shortest allowable sentence because it is at least possible that the defendant's allocution might have affected the sentence imposed).

Where no record evidence indicated that the trial court had decided on a particular sentence before the defendant's allocution, a defendant's right to allocute at his or her sentencing hearing is not rendered meaningless simply because the sentencing judge has prepared a written statement of reasons for departing from the sentencing guidelines before the sentence is actually imposed. *People v Grady*, 204 Mich App 314, 316 (1994).

"[T]he mandatory nature of a sentence does not ipso facto render the common-law right to allocute inapposite." *Petty*, 469 Mich at 120-121. Even where a defendant's statement will not affect the sentence imposed—as in a mandatory term or the penalty outlined in a sentence agreement—a defendant must be given the opportunity to allocute. *People v Smith (Jerry)*, 96 Mich App 346, 348-349 (1980).

A juvenile's right to allocution. A juvenile defendant who is convicted in a designated case proceeding and who receives an adult sentence must be given an opportunity to allocute at his or her sentencing hearing. *Petty*, 469 Mich at 121. In *Petty*, *supra* at 122-123, the Michigan Supreme Court remanded a juvenile's case to the trial court for resentencing where a juvenile defendant was not permitted to allocute before the court imposed an adult sentence. The Court explained: "To deny a juvenile a meaningful opportunity to allocute at the only discretionary stage of a combined dispositional and sentencing proceeding would seriously affect the fairness and integrity of the judicial proceeding, particularly when the juvenile is subject to an adult criminal proceeding." *Id*. at 121. See MCR 3.955(A)(6) ("The court . . . shall give the juvenile . . . an opportunity to advise the court of any circumstances [he or she] believe[s] the court should consider in deciding whether to enter an order of disposition or to impose or delay imposition of sentence.").

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8.24 Crime Victim's Impact Statement

For purposes of the crime victim's written and oral impact statements, "victim" is broadly defined in the Crime Victim's Rights Act (CVRA) as follows:

- "An individual[162] who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a crime[.]" MCL 780.752(1)(m)(*i*).
- If the victim is deceased, *one* of the following individuals (other than the defendant or the juvenile offender) in descending order of priority:
  - the spouse of the deceased victim, MCL 780.752(1)(m)(*ii*)(A);
  - a child of the deceased victim if the child is age 18 or older, MCL 780.752(1)(m)(*ii*)(B);
  - a parent of the deceased victim, MCL 780.752(1)(m)(*ii*)(C);
  - the guardian or custodian of a child of the deceased victim if the child is younger than age 18, MCL 780.752(1)(m)(*ii*)(D);
  - a sibling of the deceased victim, MCL 780.752(1)(m)(*ii*)(E); or
  - a grandparent of the deceased victim, MCL 780.752(1)(m)(*ii*)(F).
- A parent, guardian, or custodian (if the individual is not the defendant and is not incarcerated) of a victim who is younger than age 18 if the parent, guardian, or custodian so chooses. MCL 780.752(1)(m)(*iii*).
- A parent, guardian, or custodian (if the individual is not the defendant and is not incarcerated) of a victim who is mentally or emotionally unable to participate in the legal process. MCL 780.752(1)(m)(*iv*).

A crime victim has a constitutional right "to make a statement to the court at sentencing." Const 1963, art 1, § 24. The CVRA gives a victim the opportunity to make a statement about the impact of the offense at the defendant's sentencing hearing.[163] MCL 780.765; *People v Cobbs*, 443 Mich

[162] "Person" includes both individuals and business or governmental entities. MCL 780.752(1)(j).

[163] See the Michigan Judicial Institute's *Crime Victim Rights Manual* for more information about a victim's impact statement.

276, 285 (1993); *People v Williams (Anterio)*, 244 Mich App 249, 253-254 (2001). A crime victim who is physically or emotionally unable to make an oral impact statement at the defendant's sentencing hearing may designate any other person (who is at least 18 years of age and who is not the defendant and who is not incarcerated) to make the impact statement on his or her behalf. MCL 780.765.

A crime victim may also make an oral impact statement or submit a written impact statement for consideration in preparing the defendant's presentence investigation report (PSIR). MCL 780.764; *Cobbs*, 443 Mich at 285. The victim must be informed that the PSIR in its entirety will be available to the defendant unless the court exempts certain portions from disclosure. MCL 780.763(1)(e). The court has authority to exempt from disclosure "sources of information obtained on a promise of confidentiality." MCL 771.14(3). See also MCR 6.425(B). When information is exempted from disclosure, the court must state on the record its reasons for the exemption, inform the parties of the nondisclosure, and include a notation in the PSIR indicating the exemption. MCL 771.14(3); MCR 6.425(B). If a crime victim requests that his or her written impact statement be included in the defendant's PSIR, the statement must be included. MCL 771.14(2)(b); MCL 780.764.

The content of a defendant's PSIR (which may include a victim's impact statement) is not limited by statute or court rule. *People v Fleming*, 428 Mich 408, 418 (1987). Therefore, a defendant's PSIR "may include information about a defendant that was not admissible nor admitted at defendant's trial or plea including hearsay, character evidence, prior convictions or alleged criminal activity for which defendant was not charged or convicted, and the victims' version of the offense." *Fleming*, *supra* at 418.

The CVRA requires that a victim be given specific notice that his or her impact statement may include, but is not limited to, the following subject matter:

> "(a) An explanation of the nature and extent of any physical, psychological, or emotional harm or trauma suffered by the victim.
>
> "(b) An explanation of the extent of any economic loss or property damage suffered by the victim.
>
> "(c) An opinion of the need for and extent of restitution and whether the victim has applied for or received compensation for loss or damage.
>
> "(d) The victim's recommendation for an appropriate sentence." MCL 780.763(3)(a)-(d).

Subject to the defendant's objections to the information at sentencing and the sentencing court's duty to resolve disputes, the content of a defendant's PSIR and by extension, the content of any victim impact statements included in the PSIR, are properly considered by the sentencing court in making its sentencing decision. *Fleming*, 428 Mich at 418-419.

For purposes of sentencing, a trial court may also consider statements of persons who are not "victims" as defined by the CVRA, MCL 780.752(1)(*m*), because a sentencing court "is afforded broad discretion in the sources and types of information to be considered when imposing a sentence, including relevant information regarding the defendant's life and characteristics." *People v Albert*, 207 Mich App 73, 74 (1994) (attorney representing one of the victims in a civil case against the defendant was permitted to address the court at sentencing). See also *People v Kisielewicz*, 156 Mich App 724, 728-729 (1986) (letters from persons not considered victims that were attached to the PSIR concerning society's perceived need for protection from the offender were properly considered by the trial court at sentencing).

> **Note:** A trial court may properly consider information not proven beyond a reasonable doubt when scoring offense variables on which a defendant's sentence is based. *People v Drohan*, 475 Mich 140, 164 (2006). In *Drohan*, *supra* at 164, the Michigan Supreme Court reaffirmed its assertion in *People v Claypool*, 470 Mich 715, 730 n 14 (2004), that Michigan's sentencing scheme does not violate a defendant's Sixth Amendment right to be sentenced on the basis of facts determined by a jury beyond a reasonable doubt. The Court's decision expressly states that *Blakely v Washington*, 542 US 296 (2004), and other post-*Blakely* cases do not apply to Michigan's indeterminate sentencing scheme. *Drohan*, *supra* at 157-161. According to the Court, Michigan's sentencing guidelines are not unconstitutional because trial courts do not use judicially ascertained facts to impose a sentence greater than the term authorized by the jury's verdict—the statutory maximum. *Id*. at 159. The Court explained, "a defendant does not have a right to anything less than the maximum sentence authorized by the jury's verdict, and, therefore, judges may make certain factual findings to select a specific minimum sentence from within a defined range." *Id*.

8.25 Additional Information Required at Sentencing

In addition to the content already discussed, the record of a defendant's sentencing hearing must also include the following:

- The court must state the sentence being imposed, the minimum and maximum term of the sentence if applicable, and any credit for time served[164] to which the defendant is entitled. MCR 6.425(E)(1)(d).

- "[I]f the sentence imposed is not within the guidelines range, [the court must] articulate the substantial and compelling reasons[165] justifying that specific departure[.]" MCR 6.425(E)(1)(e).

- The court must "order that the defendant make full restitution[166] as required by law to any victim of the defendant's course of conduct that gives rise to the conviction, or to that victim's estate." MCR 6.425(E)(1)(f).

Part F—Fashioning an Appropriate Sentence

8.26 Scope and Objectives

The trial court's objective in sentencing a defendant is to tailor a penalty that is appropriate to the seriousness of the offense and the criminal history of the offender. *People v Rice (On Remand)*, 235 Mich App 429, 445 (1999). The "framework" of an appropriate sentence consists of four basic considerations:

- the likelihood or potential that the offender could be reformed;

- the need to protect society;

- the penalty or consequence appropriate to the offender's conduct; and

- the goal of deterring others from similar conduct.

Rice, 235 Mich App at 446, citing *People v Snow*, 386 Mich 586, 592 (1972).

> "[A] sentencing judge does not have unfettered discretion. Numerous checks shield the defendant from an arbitrary sentence and help to insure that the objective of personalized disposition is achieved. In addition to the compilation of a presentence report and scoring under the sentencing

[164] See Section 8.31 for discussion of sentence credit.

[165] See Section 8.30for proper and improper considerations.

[166] Restitution is discussed in Section 8.37.

> guidelines, other decisions of th[e Michigan Supreme] Court limit consideration of factors deemed inappropriate in sentencing, helping to insure that the judge enjoys a broad, yet fair, knowledge of the defendant and the circumstances of the crime of which he [or she] is convicted." *People v Adams (Steven)*, 430 Mich 679, 687 (1988).

Court rule and statutory provisions require the court to use the sentencing guidelines as provided by law when determining the length of a defendant's sentence. MCL 769.34(2); MCR 6.425(D). "Proposed scoring of the guidelines shall accompany the presentence report." MCR 6.425(D).

Even when evidence is not admissible at the defendant's trial, a sentencing court may properly consider it in determining an appropriate sentence. *People v Watkins*, 209 Mich App 1, 5-6 (1995).

> **Note:** A trial court may properly consider information not proven beyond a reasonable doubt when scoring offense variables on which a defendant's sentence is based. *People v Drohan*, 475 Mich 140, 164 (2006). In *Drohan*, *supra* at 164, the Michigan Supreme Court reaffirmed its assertion in *People v Claypool*, 470 Mich 715, 730 n 14 (2004), that Michigan's sentencing scheme does not violate a defendant's Sixth Amendment right to be sentenced on the basis of facts determined by a jury beyond a reasonable doubt. The Court's decision expressly states that *Blakely v Washington*, 542 US 296 (2004), and other post-*Blakely* cases do not apply to Michigan's indeterminate sentencing scheme. *Drohan*, *supra* at 157-161. According to the Court, Michigan's sentencing guidelines are not unconstitutional because trial courts do not use judicially ascertained facts to impose a sentence greater than the term authorized by the jury's verdict—the statutory maximum. *Id*. at 159. The Court explained, "a defendant does not have a right to anything less than the maximum sentence authorized by the jury's verdict, and, therefore, judges may make certain factual findings to select a specific minimum sentence from within a defined range." *Id*.

A. Intermediate Sanctions

Fashioning an appropriate sentence under the statutory guidelines requires the court's attention to the offender's prior record variable (PRV) and offense variable (OV) scores and the specific cell in which those scores place the offender in the appropriate sentencing grid.

"Intermediate sanction cells" are those cells in which the upper limit of the minimum range recommended under the guidelines is 18 months or less. MCL 769.34(4)(a). Intermediate sanction cells are marked with an asterisk in the example below, and in the sentencing grids published in this monograph and in the State of Michigan Sentencing Guidelines Manual.

OV Level	PRV Level												Offender Status
	A 0 Points		B 1-9 Points		C 10-24 Points		D 25-49 Points		E 50-74 Points		F 75+ Points		
I 0-9 Points	0	3*	0	6*	0	9*	2	17*	5	23	10	23	
		3*		7*		11*		21		28		28	HO2
		4*		9*		13*		25		34		34	HO3
		6*		12*		18*		34		46		46	HO4

Absent a departure from the guidelines,[167] a trial court must impose an intermediate sanction when the offender's PRV and OV scores place him or her in an intermediate sanction cell. MCL 769.34(4)(a). An intermediate sanction is any sanction other than imprisonment in a state prison or state reformatory that may be lawfully imposed on an offender. MCL 769.31(b). Where a specific cell in a sentencing grid requires a court to impose an intermediate sanction, the court must comply with the mandate or articulate for the record a substantial and compelling reason for departure. MCL 769.34(4)(a); *People v Stauffer*, 465 Mich 633, 635-636 (2002).

A trial court's judicial fact-finding to score an offender's OVs and PRVs does not offend the principles espoused in *Blakely*, 542 US 296, because under Michigan's "true indeterminate sentencing scheme," the guidelines as scored never increase the statutory maximum sentence applicable to the scored offense and to which a defendant is subject when convicted of the scored offense. *People v McCuller*, 479 Mich 672, 676-678 (2007). Because no *Blakely* violation occurs when a court engages in judicial fact-finding to score a defendant's OVs, a minimum range including the possibility of prison based on a defendant's OV and PRV scores is constitutionally and statutorily sound even if the defendant's PRV total alone would place him or her in an intermediate sanction cell. *McCuller*, *supra* at 677.

In *McCuller*, the Michigan Supreme Court further noted that even if the sentence imposed did violate *Blakely*, the error was harmless

[167] Departure from the recommended minimum sentence is discussed in Sections 8.48, 8.49, 8.50, and 8.51.

because "[t]he factors underlying the scoring of the OVs were uncontested and supported by overwhelming evidence[,]" and the Court was "firmly convinced that a jury would have reached precisely the same result." *McCuller*, 479 Mich at 678.

The Michigan Supreme Court further explained:

> "Michigan's unique law requiring the imposition of an intermediate sanction upon fulfillment of the conditions of MCL 769.34(4)(a) does not alter the maximum sentence that is required upon conviction and authorized by either the jury verdict or the guilty plea. Rather, the conditional limit on incarceration contained in MCL 769.34(4)(a) is a matter of legislative leniency, giving a defendant the opportunity to be incarcerated for a period that is *less* than that authorized by the jury verdict or the guilty plea, a circumstance that does not implicate *Blakely*." *People v Harper*, 479 Mich 599, 603-604 (2007).

Sanctions that are considered intermediate sanctions include, but are not limited to, any one or more of the following:

- inpatient or outpatient drug treatment or participation in a drug treatment court (MCL 600.1060 to MCL 600.1082);
- probation[168] with conditions required or authorized by law;
- residential probation;
- probation with jail;
- probation with special alternative incarceration (SAI);[169]
- mental health treatment;
- mental health or substance abuse counseling;
- jail, with or without work or school release;
- jail, with or without day parole authorized under MCL 801.251 to MCL 801.258;
- participation in a community corrections program;
- community service;

[168] See Section 8.40 for a detailed discussion of probation.

[169] See Section 8.47.

- payment of a fine;[170]
- house arrest; and
- electronic monitoring. MCL 769.31(b)(*i*)–(*xv*).

An offender may be incarcerated in a county jail as part of an intermediate sanction as long as the term does not exceed the upper limit indicated in the intermediate sanction cell[171] or 12 months, whichever is less. MCL 769.34(4)(a). In *Stauffer*, 465 Mich at 634, the defendant's PRV and OV levels placed him in a cell with a maximum minimum term of 17 months, and the trial court sentenced the defendant to a prison term of 17 to 24 months.[172] Ordinarily, the defendant's sentence would have been unremarkable because on its face, the sentence was within the guidelines. *Stauffer*, *supra* at 634-635. However, under the plain language of MCL 769.34(4)(a), the trial court was required to impose an intermediate sanction on the defendant because the upper limit of the range in the defendant's cell was less than 18 months. *Stauffer*, *supra* at 635. Because a prison term cannot be an intermediate sanction, the trial court's sentence represented a departure from the directive contained in MCL 769.34(4)(a), even though the actual length of the term imposed fell within the face values indicated by the cell. *Stauffer*, *supra* at 636.

See also *People v Muttscheler*, 481 Mich 372, 373 (2008), in which the Michigan Supreme Court held that absent a substantial and compelling reason to depart from the guidelines, a defendant whose recommended minimum sentence range requires the imposition of an intermediate sanction may not be sentenced to serve time in prison because an intermediate sanction does not include a prison sentence. The Court noted that *Stauffer*, 465 Mich at 636, "implies that when the guidelines require an intermediate sanction, even if the *length* of the sentence does not exceed the statute's 12-month maximum, the sentence is an upward departure if the defendant is required to serve it in prison, rather than in jail." *Muttscheler*, *supra* at 375. See, e.g., *People v Lucey*, 287 Mich App 267, 269-270 (2010), in which the guidelines recommended a minimum term of five to 17 months, and the trial court was required to impose an intermediate sanction unless it provided a substantial and compelling reason to sentence the defendant to prison. Without a substantial and compelling reason, the defendant's sentence of 17 to 30 months in prison—a "location departure"—to run consecutively to the

[170] See Section 8.33.

[171] Unless otherwise specified in the applicable statutory provisions. See MCL 769.34(2)(a).

[172] The minimum term was reduced to 16 months to comply with the two-thirds rule. *Stauffer*, 465 Mich at 634 n 3.

sentence for which he was on parole at the time he committed the offenses in the case at issue, constituted an unsubstantiated guidelines departure. *Lucey, supra* at 269, 274. According to the Court, "[t]he fact that a defendant might have to serve county jail time following additional prison incarceration for a parole violation cannot be a substantial and compelling reason to depart from the sentencing guidelines." *Id*. at 273.

For a defendant sentenced for violating a section of the Michigan Vehicle Code, a trial court's sentence of one year of probation to be served in the county jail was not a departure under MCL 769.34(2)(a) where the maximum minimum term recommended by the guidelines was 11 months. *People v Hendrix*, 263 Mich App 18, 22 (2004), modified in part 471 Mich 926 (2004). *Hendrix*, *supra* at 20, involved MCL 257.625(9)(c),[173] a statute expressly noted in MCL 769.34(2)(a). Violations of MCL 257.625(9)(c) are subject to alternate mandatory minimum sentences under MCL 769.34(2), and the trial court may sentence a defendant to either alternative. *Hendrix*, *supra* at 21-22. In *Hendrix*, *supra* at 21, one sentencing alternative under MCL 257.625(9)(c) authorized the court to sentence a defendant to prison for not less than one year, and this one-year mandatory minimum applied *only if* the defendant was sentenced to prison.

The *Hendrix* case illustrates the operation of MCL 769.34(2)(a):

> "If the Michigan vehicle code . . . mandates a minimum sentence for an individual sentenced to the jurisdiction of the department of corrections [(*if a defendant is sentenced under the option in MCL 257.625(9)(c)(i), a mandatory minimum of one year applies*)] and the Michigan vehicle code . . . authorizes the sentencing judge to impose a sentence that is less than that minimum sentence [(*MCL 257.625(9)(c)(ii) authorizes a court to sentence a defendant to probation and community service with a maximum of one year in a county jail, a lesser sentence than the one-year minimum in prison*)], imposing a sentence that exceeds the recommended sentence range [(*in Hendrix, the range was 0 to 11 months*)] but is less than the mandatory minimum sentence [(*one year in prison if the defendant is sentenced to prison*)] is not a departure under this section." *Hendrix*, 263 Mich App at 19.

In addition to the sentence appropriate for an offender whose guidelines score places him or her in an intermediate sanction cell, intermediate sanctions are authorized and sometimes required under other provisions of the statutory sentencing guidelines. For

[173] MCL 257.625(8)(c) at the time *Hendrix* was decided.

example, when an offender is convicted of attempting to commit a class H felony for which a term of more than one year of imprisonment is authorized, the trial court must impose an intermediate sanction. MCL 769.34(4)(b). In other words, unless the trial court expresses a substantial and compelling reason for departure, the court may not sentence an offender to prison for conviction of a class H felony attempt. *Id*.

For example, furnishing a prisoner with contraband[174] is a class H felony punishable by a maximum of five years of imprisonment. MCL 800.281(1); MCL 800.285(1); MCL 777.17g. Therefore, an offender convicted of attempting to furnish a prisoner with contraband would be convicted of attempting to commit a class H felony punishable by more than one year in prison. According to MCL 769.34(4)(b), the offender must be sentenced to an intermediate sanction—which may include up to one year in county jail—unless a departure is appropriate.

B. Straddle Cells

Generally, "straddle cells" are those cells that "straddle" the division between prison and jail. "Straddle cells" are those cells in which the lower limit of the recommended range is one year or less and the upper limit of the recommended range is more than 18 months. MCL 769.34(4)(c); *Stauffer*, 465 Mich at 636 n 8. "Straddle cells" appear shaded in the sentencing grids published in existing guidelines manuals and in the grids used in this monograph, as shown in the example in Section 8.26(A).

When an offender's prior record variable (PRV) and offense variable (OV) levels result in his or her placement in a "straddle cell," the sentencing court—absent a departure from the guidelines[175]—must sentence the offender in one of two ways described in MCL 769.34(4)(c):

- The court must impose a sentence in which the minimum term of imprisonment is within the range indicated in the "straddle cell"; that is, if the court sentences the offender to prison rather than jail, the minimum term must be within the range of months recommended in that cell, MCL 769.34(4)(c)(*i*); or

- The court must sentence the offender to an intermediate sanction, which may include a term of imprisonment up to

[174] "Contraband" includes alcohol, poison, prescription drugs, and other controlled substances.

[175] Departure from the recommended minimum sentence is discussed in Sections 8.48, 8.49, 8.50, and 8.51.

> 12 months; that is, any term of imprisonment imposed under this option will be served by the offender in the county jail, MCL 769.34(4)(c)(*ii*).

People v Martin (George H), 257 Mich App 457 (2003), provides an example of a case involving a straddle cell, i.e., a cell in which the upper limit of the recommended sentence is more than 18 months and the lower limit is 12 months or less. MCL 769.34(4)(c). According to the guidelines, the defendant's recommended minimum sentence was 5 to 28 months in prison for the offense of larceny from a person, MCL 750.357. *Martin (George H)*, *supra* at 459-460. Pursuant to a *Cobbs*[176] agreement, the defendant pleaded guilty based on the trial court's preliminary sentence evaluation that the court would sentence him to a term in county jail rather than a term of imprisonment in state prison. *Martin (George H)*, *supra* at 458. The defendant was sentenced as a second offense habitual offender, MCL 769.10, to ten months in the county jail, and the prosecution appealed on the grounds that the trial court erred as a matter of law by imposing a determinate sentence on defendant. *Martin (George H)*, *supra* at 458.

Although MCL 769.8 prohibits determinate sentencing[177] where the penalty for a felony offense may be imprisonment in a state prison, the Michigan Court of Appeals concluded that the Legislature intended an exception to MCL 769.8 with the creation of "intermediate sanctions" for offenses "with a relative lack of severity." *Martin (George H)*, 257 Mich App at 461. The Court explained that this legislative intent would be frustrated by application of MCL 769.8 to the situation in *Martin (George H)*: "[O]ur Legislature enacted a statutory sentencing scheme that provides greater uniformity for sentences involving the most serious offenses and offenders, [and] it also provided trial courts with greater discretion regarding sentences for offenses and offenders on the other end of the continuum." *Martin (George H)*, *supra* at 461. The Court noted that MCL 769.31(b)(*viii*) expressly indicates that jail is an appropriate intermediate sanction, and held that the sentence imposed "merely recognized that [the] Legislature created an exception in less serious cases." *Martin (George H)*, *supra* at 462.

8.27 Indeterminate Sentences

A first-time offender convicted of a felony punishable by imprisonment in a state prison may not be sentenced to a definite term of

[176] *People v Cobbs*, 443 Mich 276 (1993); See Section 8.32 for more information.

[177] Determinate and indeterminate sentencing are discussed in detail in Section 8.27.

imprisonment; rather, the court must sentence the defendant to a minimum term and must state the maximum term of imprisonment for the record. MCL 769.8(1). The maximum term of imprisonment is the maximum penalty authorized by law for conviction of the sentencing offense, unless otherwise provided by Chapter 9 of the Code of Criminal Procedure (MCL 769.1–MCL 769.36). MCL 769.8(1).

Indeterminate sentencing does not apply to offenses for which the only punishment prescribed by law is life in prison. MCL 769.9(1).

Where the punishment prescribed by law is life or any number of years, the court may sentence the defendant to life or to a term of years. MCL 769.9(2). If the court sentences the defendant to a term of years, the court must fix a minimum term and maximum term of years or fractions of years. *Id*. The court may not—in the same sentence—set the maximum sentence at life imprisonment and set the minimum sentence at a term of years. *Id*. For example, a sentence of "30 years to life" is invalid.

A. The *Tanner* Rule

The common-law "*Tanner* rule" developed in response to sentencing courts that were imposing "indeterminate" sentences in which the minimum and maximum terms were separated by only insignificant periods of time. *People v Tanner*, 387 Mich 683, 689 (1972). In response, the Michigan Supreme Court ruled that where an indeterminate sentence is imposed, the minimum sentence must not exceed two-thirds of the maximum sentence.[178] *Tanner*, *supra* at 690. In other words, any minimum term of imprisonment that exceeds two-thirds of the maximum term imposed does not constitute an indeterminate sentence. *Id*.

The proper remedy for a violation of the two-thirds rule in MCL 769.34(2)(b) and *Tanner*, 387 Mich at 690, is a reduction in the minimum sentence. *People v Thomas (Gerry)*, 447 Mich 390, 392-394 (1994).

The *Tanner* rule does not apply to convictions for which the penalty is mandatory life in prison or for which a statute provides for the imposition of a mandatory minimum sentence. *Tanner*, 387 Mich at 690.

B. The *Tanner* Rule Extended to Habitual Offenders

Although the indeterminate sentence statute on which the two-thirds rule is based expressly applies to *first-time* offenders, the

[178] The *Tanner* rule was ultimately codified in MCL 769.34(2)(b). *People v Garza*, 469 Mich 431, 435 (2003).

Michigan Supreme Court approved extension of the *Tanner* rule to the interval between minimum and maximum sentences in cases involving habitual offenders. MCL 769.8(1); *People v Wright (Kenneth)*, 432 Mich 84, 93-94 (1989). In *Wright (Kenneth)*, *supra* at 87-88, the trial court sentenced the defendant to a term of 28 to 30 years, and the Michigan Court of Appeals modified the sentence to conform to the two-thirds rule of *Tanner*, resulting in a 20- to 30-year term of imprisonment. The Michigan Supreme Court affirmed the sentence modification and concluded "that the Legislature intended to provide a meaningful interval between minimum and maximum sentences imposed pursuant to [the habitual offender sentencing provisions]." *Wright (Kenneth)*, *supra* at 89. According to the *Wright (Kenneth)* Court:

> "In *People v Tanner*, [387 Mich 683, 688 (1972),] the defendant, who had pleaded guilty to manslaughter, was sentenced to serve fourteen years, eleven months to fifteen years in prison. The Court addressed itself to the purely legal question whether the defendant's sentence was in fact 'indeterminate,' as contemplated by the provisions of the indeterminate sentence act. The [*Tanner*] Court stated:
>
> * * *
>
> > "'Convinced as we are, that a sentence with too short an interval between minimum and maximum is not indeterminate, we hold that any sentence which provides for a minimum exceeding two-thirds of the maximum is improper as failing to comply with the indeterminate sentence act.'" *Wright (Kenneth)*, 432 Mich at 89-90, quoting *Tanner*, 387 Mich at 689-690.

C. The *Tanner* Rule Codified

MCL 769.34(2)(b) codified the common-law *Tanner* rule. MCL 769.34(2)(b) provides that "[t]he court shall not impose a minimum sentence, including a departure, that exceeds 2/3 of the statutory maximum sentence."

However, "MCL 769.34(2)(b) does not apply when a defendant is convicted of a crime punishable with imprisonment for life or any term of years because the minimum will never exceed two-thirds of the statutory maximum of life." *People v Lewis (Curtis)*, 489 Mich 939 (2011), citing *People v Washington (Sylvester)*, 489 Mich 871 (2011); *People v Powe*, 469 Mich 1032 (2004); *People v Drohan*, 475 Mich 140,

162 n 14 (2006); *People v Harper (Bernard)*, 479 Mich 599, 617 n 31 (2007).

8.28 Concurrent and Consecutive Sentences

Sentences run concurrently unless otherwise indicated; consecutive sentences may not be imposed unless expressly authorized by law. *People v Gonzalez (Israel)*, 256 Mich App 212, 229 (2003). Where consecutive sentencing is authorized, the statutory language will indicate whether the consecutive nature of the sentence is mandatory or discretionary. A defendant's presentence investigation report (PSIR) must contain "[a] statement prepared by the prosecuting attorney as to whether consecutive sentencing is required or authorized by law." MCL 771.14(2)(d). Similarly, a defendant's judgment of sentence must specify whether the sentence for which the defendant is committed to the jurisdiction of the Department of Corrections (DOC) "is to run consecutively to or concurrently with any other sentence the defendant is or will be serving[.]" MCL 769.1h(1). The prosecuting attorney or defense counsel, or the defendant, if he or she is not represented by an attorney, may file an objection to the consecutive or concurrent nature of sentences described in the judgment of sentence. MCL 769.1h(3).

MCL 771.14(2)(e)(*i*) states that the sentencing guidelines must be calculated for each conviction for which consecutive sentencing is required or authorized. *People v Mack*, 265 Mich App 122, 126-127 (2005). Where sentences will run concurrently, the sentencing guidelines need only be calculated for the offense with the highest crime class. MCL 771.14(2)(e)(*iii*); *Mack*, *supra* at 127-128.

> **Note:** "[The Court of Appeals noted that] *Mack* was called into question in dicta in *People v Johnigan*, 265 Mich App 463, 470-472 (2005), and that two justices of [the Michigan] Supreme Court have noted that *Johnigan* raises a question regarding whether a trial court is obligated under the statutory sentencing guidelines to score all felonies or only the highest class felony. See *People v Getscher*, 478 Mich 887, 887-888 (2007), and *People v Smith* [*(Rhasiaon)*], 475 Mich [891,] 891-892 (2006). However, under MCR 7.215(J)(1), [the courts are] required to follow *Mack* because that decision has not been reversed or modified by the Supreme Court or a special panel of th[e] Court [of Appeals]." *People v Stevens (Richard),* unpublished opinion per curiam of the Court of Appeals, issued June 23, 2009 (Docket No. 284000).

For purposes of consecutive sentencing, a "term of imprisonment" includes a defendant's jail sentence. *People v Spann*, 250 Mich App 527, 531-533 (2002) *(Spann I)*, aff'd 469 Mich 904 (2003) *(Spann II)*. In affirming

the Michigan Court of Appeals, the Michigan Supreme Court, in *Spann II*, *supra* at 904, noted its disapproval of the Court of Appeals determination that statutory use of the term "imprisonment" was ambiguous; according to the Supreme Court, the Legislature uses the term "imprisonment" to refer to both confinement in prison and confinement in jail. See, e.g., MCL 769.28; MCL 35.403; MCL 66.8; MCL 430.55.

"Although a misdemeanor that may result in two years' imprisonment may be deemed a felony for purposes of the . . . consecutive sentencing provision[] of the Code of Criminal Procedure, MCL 760.1 *et seq*.[], it cannot be deemed a felony for purposes of the Penal Code." *People v Williams (Derrick)*, 243 Mich App 333, 335 (2000). However, for purposes of the Public Health Code, offenses "expressly designate[d]" as misdemeanors retain their character as misdemeanors without regard to the length of incarceration possible for conviction of the offense. *People v Wyrick*, 474 Mich 947 (2005) (misdemeanor possession of marijuana, second offense, does *not* constitute a felony for purposes of the consecutive sentencing provision in MCL 333.7401(3)).[179]

Unless the Legislature clearly manifests a contrary intent, sentencing provisions in effect at the time an offense is *committed* apply to a trial court's imposition of sentence, not the amended sentencing provisions that became effective after the offense was committed but before the defendant was sentenced. *People v Doxey*, 263 Mich App 115, 121-123 (2004)[180]; *People v Dailey*, 469 Mich 1019 (2004).

A. Computation of Sentences

A correctional facility computes the length of an offender's sentence by reference to the offender's judgment of sentence. MCL 791.264(3). Except in cases where the sentencing offense is for one of the five offenses expressly listed in MCL 791.264(4)–MCL 791.264(5), if a judgment of sentence does not specify whether a sentence is to run concurrently or consecutively to an offender's other sentences, the sentence must be computed as if it is to be served concurrently. MCL 791.264(3).

Where the conviction is for a violation of MCL 750.193 (breaking prison), MCL 750.195(2) (breaking jail when jailed for felony), MCL 750.197(2) (breaking jail while awaiting court proceeding), MCL 750.227b (felony firearm), or MCL 750.349a (prison inmate taking a hostage), the sentence must be computed as consecutive to other

[179] Peremptory order vacating the Court of Appeals decision in *People v Wyrick*, 265 Mich App 483 (2005).

[180] *Doxey*, *supra* at 117, 120, specifically dealt with 2002 PA 665, the amendment to the controlled substance sentencing provisions that eliminated the mandatory consecutive nature of sentences under MCL 333.7401(3) and gave the trial court discretion over whether such a sentence was to be concurrent or consecutive to other sentences.

sentences unless the judgment of sentence indicates that the sentence shall run concurrently with an offender's other sentences. MCL 791.264(4).

If an offender's judgment of sentence fails to specify whether the sentence is to be served concurrently with or consecutively to the offender's other sentences, or if the judgment of sentence indicates that the sentence was to be served concurrently with other sentences and the sentencing offense was one of the five mandatory consecutive sentences enumerated in MCL 791.264(4), the Department of Corrections must notify the sentencing judge, the prosecuting attorney, and the affected prisoner not more than seven days after the sentence is computed. MCL 791.264(5).

B. Mandatory Consecutive Sentences

1. Felony or Misdemeanor Offense Punishable by Imprisonment Committed During Offender's Incarceration or Escape

Consecutive sentencing is mandatory when a defendant is convicted of committing a crime punishable by imprisonment when the offense was committed while the defendant was incarcerated in, or had escaped from, a penal institution. MCL 768.7a(1). The unambiguous language of MCL 768.7a(1) indicates that the consecutive sentencing mandated by the statute applies only to offenders who commit a crime while incarcerated in a penal institution *in Michigan*, or while on escape from a penal institution *in Michigan*. *People v Alexander (Ronald)*, 234 Mich App 665, 676-677 (1999) (consecutive sentencing did not apply to the defendant's sentence for commission of a crime in Michigan while on escape from a Louisiana prison). A defendant in the custody of a halfway house is in a penal institution for purposes of the consecutive sentencing mandate. *People v Jennings*, 121 Mich App 318, 319 (1982). Mandatory consecutive sentencing also applies to sentences imposed for crimes committed by an offender during his or her incarceration in a federal penal or reformatory institution *located* in Michigan. *People v Kirkland*, 172 Mich App 735, 737 (1988).

The consecutive sentencing mandate of MCL 768.7a(1) applies when an offender commits a *misdemeanor* offense "punishable by imprisonment" while incarcerated in or on escape from a penal institution in Michigan. *People v Weatherford*, 193 Mich App 115, 119 (1992). Any sentence imposed for the offender's misdemeanor conviction must be served in the custody of the Department of Corrections and consecutively to the term of

imprisonment the offender was serving at the time of the offense. *Weatherford*, *supra* at 119.

The consecutive sentencing mandate may result in "stacked" sentences involving more than one consecutive sentence. *People v Piper*, 181 Mich App 583, 585-586 (1989). In *Piper*, *supra* at 584, the defendant escaped from jail where he was serving a life sentence that was imposed in 1966.[181] The defendant committed several felony offenses while he was on escape in 1984 and 1985. *Id*. The defendant was convicted of the offenses that occurred during his escape and sentences for these convictions were imposed in 1986. *Id*. Pursuant to MCL 768.7a(1), the sentences were made consecutive to the defendant's 1966 life sentence. *Piper*, *supra* at 585. In 1988, the defendant pleaded guilty to second-degree murder, an offense he committed while an escapee, and the murder sentence imposed was made consecutive to the terms of imprisonment already imposed in 1966 and 1986. *Id*. at 584. That the defendant's sentence was made consecutive to a term of imprisonment already consecutive to the defendant's original term of imprisonment did not result in impermissible stacking. *Id*. at 585-586.

However, "MCL 768.7a(1) [may not be used] as a means of imposing consecutive sentences for convictions arising out of contemporaneous offenses that were tried together in one trial." *People v Williams (Robert)*, 294 Mich App 461, 476 (2011). In *Williams (Robert)*, *supra* at 465, the defendant was convicted of two offenses that were committed contemporaneously while he was serving a jail sentence for domestic violence. The Court of Appeals held that although the trial court correctly applied MCL 768.7a(1) in ordering that the sentences for the two subsequent convictions run consecutively to the original domestic violence sentence, the trial court erred in further ordering that the sentences for the two subsequent convictions run consecutively to each other. *Williams (Robert)*, *supra* at 476-477. "[A] defendant 'has become liable to serve' a sentence [under MCL 768.7a(1)] only if that sentence was imposed (or the act underlying the sentence occurred) in the past[;]" accordingly, because "[t]he [defendant's two subsequent] offenses occurred at the same time, the charges were tried together, and the court imposed the sentences at one proceeding[,]" the sentences for those offenses were required to run concurrently with each other. *Williams (Robert)*, *supra* at 476-477.

[181] "Apparently because of overcrowding in the state prison system, defendant had been transferred to the county jail because he had been a model prisoner." *Piper*, 181 Mich App at 584 n 1.

2. Felony Offense Committed During Offender's Parole

A person convicted and sentenced for a felony committed while the person was on parole from a sentence for a previous offense is subject to a mandatory consecutive sentence for the subsequent offense. MCL 768.7a(2). The term of imprisonment for the subsequent offense "shall begin to run at the expiration of the remaining portion of the term of imprisonment imposed for the previous offense." *Id*.

> "[T]he 'remaining portion' clause of [MCL 768.]7a(2) requires the offender to serve at least the combined minimums of his [or her] sentences, plus whatever portion, between the minimum and the maximum, of the earlier sentence that the Parole Board may, because the parolee violated the terms of parole, require him [or her] to serve." *Wayne Co Pros v Dep't of Corrections*, 451 Mich 569, 584 (1996).

3. Major Controlled Substance Offense When a Previous Felony Is Pending Disposition

If a defendant commits a major controlled substance offense while the disposition of another felony offense is pending, consecutive sentencing is mandatory. MCL 768.7b(2)(b). A felony is pending disposition for purposes of consecutive sentencing "if the second offense is committed at a time when a warrant has been issued in the original offense and defendant has notice that the authorities are seeking him [or her] with regard to that specific criminal episode." *People v Waterman*, 140 Mich App 652, 655 (1985) (the defendant left Michigan after he was told that the police were looking for him and a warrant had issued by the time of his arrest in Texas, where he had committed the subsequent offense). See also *People v Henry (William)*, 107 Mich App 632, 637-638 (1981) (a felony charge was not pending where although a warrant had been issued for the defendant's first offense, the defendant was unaware that his conduct was the subject of a criminal prosecution).

"Pending disposition" includes the entire period of time up to the date of sentencing for the pending offense. *People v Morris (Otis)*, 450 Mich 316, 330-331 (1995). A felony charge is no longer pending if probation is imposed following conviction of the charge. *People v Hardy*, 212 Mich App 318, 322 (1995).

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4. Other Statutes That Mandate Consecutive Sentencing

MCL 750.193(1) mandates consecutive sentencing for defendants convicted of escape or attempting to escape confinement. A person who violates the terms of his or her parole is not an escapee for purposes of this statute. MCL 750.193(3).

Consecutive sentencing is mandatory when a felony offender escapes or attempts to escape from jail before or after court proceedings related to a felony charge. MCL 750.197(2). Consecutive sentencing is required when a prisoner takes a hostage. MCL 750.349a. MCL 750.195(2) mandates consecutive sentencing when an offender who is in jail on a felony offense escapes or attempts to escape from jail.

The consecutive sentencing required for felony-firearm offenses, MCL 750.227b, is discussed in Section 8.28(D).

C. Discretionary Consecutive Sentences

1. Controlled Substance Offenses

A sentence imposed for a controlled substance offense under MCL 333.7401(2)(a)[182] may be imposed to run consecutively with any term of imprisonment imposed for the commission of another felony. MCL 333.7401(3).

2. Violations Arising Out of the Same Transaction as the Sentencing Offense

For the following offenses, consecutive sentencing is discretionary for violations *arising out of the same transaction as the sentencing offense*.

- MCL 333.7401c, possession or provision of equipment or buildings for the purpose of manufacturing controlled substances in violation of MCL 333.7401 or counterfeit controlled substances or controlled substance analogues in violation of MCL 333.7402. MCL 333.7401c(5).

- MCL 750.81d, assaulting or obstructing a law enforcement officer, firefighter, conservation officer, federal peace officer, emergency medical personnel, or an individual involved in a search and rescue operation when the offender should know that the

[182]See Section 8.16 for a description of these offenses.

individual is performing his or her duties. MCL 750.81d(6).

- MCL 750.110a(2), first-degree home invasion. MCL 750.110a(8).
- MCL 750.479, assaulting, battering, wounding, obstructing, or endangering authorized process servers or officers enforcing township ordinances. MCL 750.479(7).
- MCL 750.479b, taking a firearm or other weapon from a peace officer or corrections officer. MCL 750.479b(4).
- MCL 750.529a, carjacking. MCL 750.529a(3).
- MCL 769.36, permitting multiple charges against an offender for each death that results from violating MCL 257.602a(5), MCL 257.617(3), MCL 257.625(4), MCL 257.904(4), MCL 750.317, MCL 750.321, MCL 750.479a(5), MCL 324.80176(4), MCL 324.81134(7), MCL 324.82127(4), MCL 259.185(4), or MCL 462.353(6). MCL 769.36(1).
- MCL 750.520b, first-degree criminal sexual conduct. MCL 750.520b(3).[183]
- MCL 750.520n(2), violations involving equipment used for certain offenders subject to lifetime electronic monitoring under MCL 791.285. MCL 750.520n(4).

3. Sentences Imposed for *Any* Other Crime, Including Crimes Arising Out of the Same Transaction as the Sentencing Offense

For the following offenses, a sentence may be consecutive to a sentence imposed for *any* other crime, including crimes *arising out of the same transaction as the sentencing offense*.

- MCL 750.50, various violations involving the proper care and treatment of animals. MCL 750.50(7).

[183] Under MCL 750.520b(3), the trial court may order that a sentence imposed for a conviction of first-degree criminal sexual conduct (CSC-I) be served consecutively to a sentence for a second conviction of CSC-I arising from the same transaction. *People v Ryan (Sean)*, 295 Mich App 388, 404-405 (2012) (rejecting the defendant's assertion that the phrase "any other criminal offense arising from the same transaction[]" in MCL 750.520b(3) permits consecutive sentencing for a CSC-I offense only when the other sentence is for an offense *other* than CSC-I, and concluding that "the phrase 'any other criminal offense' means a different sentencing offense[]").

- MCL 750.119, corruption with the intent to bias the opinion or influence the outcome of any matter pending before the court or other decision-maker. MCL 750.119(3).

- MCL 750.120a(2) and (4), willfully attempting to influence a juror by intimidation, or retaliating or threatening to retaliate against a juror for performing his or her duties. MCL 750.120a(6).

- MCL 750.122, giving or offering anything of value to encourage, discourage, or influence a witness, or retaliating against a person for having been a witness. MCL 750.122(11).

- MCL 750.483a, withholding information ordered by the court or retaliating against an individual for reporting a crime. MCL 750.483a(10).

4. Sentences Imposed for an Underlying Misdemeanor or Felony Offense

An offender's sentence for the following offenses may be made consecutive to a sentence imposed for an underlying misdemeanor or felony offense.

- MCL 750.145d, using the internet or a computer to engage in prohibited conduct. MCL 750.145d(3).

- MCL 750.212a, criminal conduct under the provisions of the Penal Code committed in or directed at a vulnerable target. MCL 750.212a(1).

- MCL 750.227f, committing or attempting to commit a violent act against a person while wearing body armor. MCL 750.227f(1).

- MCL 752.796, using a computer or computer network to commit a crime, to conspire to commit a crime, or to solicit another person to commit a crime. MCL 752.797(4).

5. Pending Felonies

With the exception of major controlled substance offenses, MCL 768.7b(2)(a) authorizes consecutive sentencing for an offense committed pending disposition of a prior felony charge. The discretionary authority to impose consecutive sentences applies only to the "last in time" sentencing court. *People v Chambers*, 430 Mich 217, 231 (1988).

6. Medicaid Fraud

A trial court may impose consecutive sentences for an offender's "conviction of separate offenses under [the Medicaid False Claim Act]." MCL 400.609(2).

7. Identity Theft

A sentence imposed for a violation of MCL 445.65 (identity theft) or MCL 445.67 (identity theft and communication under false pretenses involving a business) may be made to run consecutively to any term of imprisonment imposed for another violation committed during a defendant's violation or attempted violation of MCL 445.65 or MCL 445.67, or for another violation occurring after the initial violation using information obtained as a result of the initial violation. MCL 445.69(4).

8. False Statement in Petition for Postconviction DNA Testing

A sentence imposed for a violation of MCL 750.422a(1) (when, pursuant to MCL 770.16, a defendant intentionally makes a material false statement when petitioning for DNA testing of biological material identified during the investigation leading to the defendant's conviction) may be made consecutive to any term of imprisonment the defendant is serving. MCL 750.422a(2).

9. Gang-Related Crimes

A sentence imposed for a violation of MCL 750.411u(1) (gang member/associate guilty of a felony if he or she commits or attempts to commit a felony and his or her relationship with the gang provides the motive, means, or opportunity to commit the felony) is in addition to, and may be made to run consecutively with, and preceding, any term of imprisonment imposed for the conviction of the underlying felony or attempt to commit the underlying felony. MCL 750.411u(2).

A sentence imposed for a violation of MCL 750.411v (causing, encouraging, recruiting, soliciting, coercing another to join, participate in, or assist a gang in committing a felony) is in addition to a sentence imposed for the conviction of another felony or attempted felony arising out of the same transaction, and may be ordered to be served consecutively with, and preceding, a term of imprisonment imposed for the conviction of that felony or attempted felony. MCL 750.411v(4).

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D. Felony-Firearm Convictions

The sentence imposed for a felony-firearm conviction must be consecutive to the sentence imposed for the felony or attempted felony on which the felony-firearm conviction is based. MCL 750.227b(2). A sentence for felony-firearm is a determinate number of years depending on the number of the defendant's previous felony-firearm convictions. MCL 750.227b(1).

A felony-firearm conviction requires that the defendant "carr[y] or ha[ve] in his or her possession a firearm when he or she commits or attempts to commit a felony[.]" MCL 750.227b(1). This provision lists four weapons offenses on which a felony-firearm conviction *cannot* be based:

- unlicensed sale of firearms and sales to convicted felons and minors, MCL 750.223;
- carrying a concealed weapon (CCW), MCL 750.227;
- carrying a licensed pistol beyond the scope of the license, MCL 750.227a; and
- alteration, removal, or obliteration of a firearm's identification mark, MCL 750.230.

With the exception of the four offenses listed above, a felony-firearm sentence is to be consecutive only to the sentence imposed for the felony on which the felony-firearm conviction is based. MCL 750.227b(2); *People v Clark (Rajahaan)*, 463 Mich 459, 463-464 (2000). If a felony-firearm conviction is based on a qualifying underlying felony (i.e., *not* MCL 750.223, MCL 750.227, MCL 750.227a, or MCL 750.230), the defendant may also be convicted of any of the four offenses exempted from the consecutive sentencing mandate but the sentence imposed for the conviction must be concurrent to the felony-firearm sentence. See, e.g., *People v Cortez*, 206 Mich App 204, 207 (1994) (trial court erred in ordering the defendant's felony-firearm sentence under MCL 750.227b to run consecutively to his sentence for carrying a concealed weapon under MCL 750.227).

The consecutive sentencing requirement applies only when the penalty imposed for the underlying felony is a term of imprisonment. *People v Brown (Darryl)*, 220 Mich App 680, 682 (1996). If the court imposes a sentence of probation for the felony offense underlying an offender's felony-firearm conviction, the mandatory two-year sentence must run concurrently with the term of probation. *Brown (Darryl)*, *supra* at 682-685.

8.29 Principle of Proportionality

"The premise of our system of criminal justice is that, everything else being equal, the more egregious the offense, and the more recidivist the criminal, the greater the punishment." *People v Babcock*, 469 Mich 247, 263 (2003).

A. Judicial Sentencing Guidelines

Under the judicial sentencing guidelines, a defendant's sentence was reviewed for proportionality under *People v Milbourn*, 435 Mich 630 (1990). A sentence is proportionate when it reflects the seriousness of the circumstances surrounding the offense and the offender's criminal history. *Milbourn*, *supra* at 636; *People v Crawford*, 232 Mich App 608, 621 (1998). Sentences imposed within the range recommended by a defendant's properly scored judicial guidelines were presumptively proportionate; that is, a sentence within the guidelines was neither excessively severe nor unfairly lenient. *People v Wybrecht*, 222 Mich App 160, 175 (1997); *People v Kennebrew*, 220 Mich App 601, 609 (1996). A sentence imposed within the range indicated by the judicial guidelines could violate the principle of proportionality only in unusual circumstances. *Milbourn*, *supra* at 661; *People v Hadley*, 199 Mich App 96, 105 (1993).

> **Note:** Although the judicial sentencing guidelines did not apply to habitual offender sentences, those sentences were subject to the principle of proportionality. *People v Coy*, 258 Mich App 1, 23 (2003); *People v McFall*, 224 Mich App 403, 415 (1997).

The proportionality of a defendant's sentence is considered by reference to the sentences in the abstract; that is, where a defendant is sentenced to multiple consecutive terms of imprisonment, the proportionality of the sentence is not determined by the cumulative effect of the defendant's sentences. *People v Miles (Dwayne)*, 454 Mich 90, 94-95 (1997); *Kennebrew*, 220 Mich App at 609.

A trial court is not required to consider a codefendant's sentence when imposing sentence on another codefendant; that is, each individual convicted of a crime, when more than one individual participated in the same crime, is not entitled to receive a sentence similar to the sentences received by other participants. *People v Colon*, 250 Mich App 59, 64 (2002).

B. Statutory Sentencing Guidelines

The concept of proportionality is built into the statutory sentencing guidelines. An offender's offense variable (OV) and prior record

variable (PRV) levels, as determined by reference to the offense and the offender, are intended to place the offender in a cell on the appropriate sentencing grid that recommends a minimum sentence proportionate to that offense and offender.

> "Under the guidelines, offense and prior record variables are scored to determine the appropriate sentence range. Offense variables take into account the severity of the criminal offense, while prior record variables take into account the offender's criminal history. Therefore, the appropriate sentence range is determined by reference to the principle of proportionality; it is a function of the seriousness of the crime and of the defendant's criminal history." *Babcock*, 469 Mich at 263-264.

Unless a trial court relied on inaccurate information or on guidelines that were erroneously scored, a sentence within the appropriate guidelines range is presumptively proportionate and must be affirmed on appeal. *Babcock*, 469 Mich at 261. A sentence imposed under the statutory guidelines is reviewed for its proportionality only if it represents a departure[184] from the range recommended under the guidelines. *Babcock*, *supra* at 261-262. See also *People v Armisted*, 295 Mich App 32, 51 (2011) (rejecting the defendant's contention that his sentence, although within the guidelines range, was nevertheless disproportionate to the "relatively benign nature" of the sentencing offense, and noting that "it does not appear that [the] 'unusual circumstances' rule of *Milbourn*[, 435 Mich at 661,] has survived the Legislature's enactment of the statutory sentencing guidelines[]").

The fact that a sentence is made consecutive to the remaining portion of a parole-related sentence does not overcome the presumptive proportionality of a sentence within the guidelines range. *People v Powell (Kelly)*, 278 Mich App 318, 324 (2008).

8.30 Additional Information to Consider Before Imposing Sentence

Before the statutory sentencing guidelines were established, the Michigan Supreme Court declined to rigidly define or classify the facts and circumstances surrounding the offense and the offender into facts and circumstances either properly or improperly considered in fashioning a defendant's sentence. *People v Adams (Steven)*, 430 Mich 679, 687 (1988) ("It remains the role of the sentencing judge to weigh facts

[184] See Sections 8.48, 8.49, 8.50, and 8.51 for more information on departures.

deemed relevant to the sentencing decision. . . . Our function is to identify those factors which when injected into the sentencing process tread unfairly upon the defendant's rights.").

A. Proper Considerations

Permissible factors that may be considered by the trial court when imposing sentence include:

- the severity and nature of the crime committed;
- the circumstances surrounding the criminal conduct;
- the defendant's attitude toward his or her criminal behavior;
- the defendant's social and personal history; and
- the defendant's criminal history, including subsequent offenses. *People v Oliver*, 242 Mich App 92, 98 (2000).

"A sentencing judge may consider the defendant's false testimony when passing sentence." *Adams (Steven)*, 430 Mich at 688. "[W]hen the record contains a rational basis for the trial court's conclusion that the defendant's testimony amounted to wil[l]ful, material, and flagrant perjury, and that such misstatements have a logical bearing on the question of the defendant's prospects for rehabilitation, the trial court properly may consider this circumstance in imposing sentence." *Adams (Steven)*, *supra* at 693.

A defendant's post-arrest conduct in prison was properly considered by the court when imposing sentence where the judicial guidelines in effect at the time did not account for a defendant's misconduct while in custody. *People v Houston (John)*, 448 Mich 312, 318, 323 (1995). "[J]ust as an exemplary custodial record might be found to be a mitigating circumstance, misconduct in custody may be an aggravating circumstance indicating a disposition to violence or impulsiveness." *Houston (John)*, *supra* at 323.

Evidence of a defendant's lack of remorse may be properly considered in determining his or her potential for rehabilitation. *People v Spanke*, 254 Mich App 642, 650 (2003).

Evidence of the effect a crime has had on a victim is an appropriate consideration in fashioning a defendant's sentence. *People v Compagnari*, 233 Mich App 233, 236 (1998).

A sentencing court may properly consider a defendant's age in light of other permissible and relevant factors—criminal history and admitted drug use, for example—to determine the defendant's

potential for rehabilitation. *People v Randolph*, 242 Mich App 417, 423 (2000), aff'd in part, rev'd in part 466 Mich 532 (2002). However, a sentencing court may not arbitrarily lengthen an offender's prison sentence for the expressed purpose of incarcerating the offender "beyond the age of violence." *People v Fisher (Richard)*, 176 Mich App 316, 318 (1989). It is also inappropriate to consider a defendant's age in assessing the risk of recidivism where no evidence was presented to support the court's opinion of the defendant's probable recidivism. *People v McKernan*, 185 Mich App 780, 781-783 (1990) ("The theory that the advanced age of a defendant increases the probability of recidivism and justifies a longer sentence than would be given to a younger person (even within the [judicial] guidelines) is sufficiently complex and controversial to require scientific justification before it may be relied upon by a court.").

A sentencing court may consider an adult defendant's juvenile records when imposing sentence, even when the juvenile records have been automatically expunged. *People v Smith (Ricky)*, 437 Mich 293, 301-303 (1991).

As long as the defendant has an opportunity to refute it, a court may consider a defendant's alleged criminal conduct even when the conduct does not result in conviction. *People v Wiggins (Warren)*, 151 Mich App 622, 625 (1986). A sentencing court may also consider a defendant's conduct in charges dismissed as a result of a plea agreement:

> "The fact that defendant was properly charged in [the dismissed case], had been brought before the trial court on the matter, had not denied the accuracy of the charges themselves, and would have had to answer for these charges except for the agreement between the parties, provides an accurate and adequate basis upon which the judge could consider evidence of that criminal conduct[.]" *People v Moore (Sloan)*, 70 Mich App 210, 213 (1976).

The statutory sentencing guidelines have quantified many of the historical considerations discussed above. For example, the seven prior record variables (PRVs)[185] account for the extent and severity of a defendant's criminal history by assigning point values to a defendant's previous high and low severity felony convictions (PRVs 1 and 2), a defendant's previous high and low severity juvenile adjudications (PRVs 3 and 4), a defendant's prior misdemeanor convictions or prior misdemeanor juvenile adjudications (PRV 5), a defendant's relationship to the criminal

[185] See Sections 8.5 and 8.6 for detailed information on scoring a defendant's PRVs and OVs.

justice system at the time he or she is sentenced for the scored offense (PRV 6), and the number of concurrent or subsequent felony convictions accumulated by the defendant at the time of sentencing for the scored offense (PRV 7). Similarly, the offense variables (OVs) account for the circumstances surrounding the defendant's commission of the sentencing offense. For example, OVs 1 and 2 assign points for the defendant's use of a weapon during the offense.

B. Improper Considerations

It is improper to consider the following factors when fashioning an offender's sentence:

- A defendant's refusal to provide authorities with information about other criminal conduct. *People v Johnson (James*), 203 Mich App 579, 584 (1994).

- Good-time credits, disciplinary credits, or the effect of prison overcrowding. *People v Fleming*, 428 Mich 408, 428 (1987).

- A defendant's refusal to admit guilt. *People v Dobek*, 274 Mich App 58, 104 (2007).

  - "To determine whether sentencing was improperly influenced by the defendant's failure to admit guilt, th[e appellate] [c]ourt focuses on three factors: '(1) the defendant's maintenance of innocence after conviction; (2) the judge's attempt to get the defendant to admit guilt; and (3) the appearance that had the defendant affirmatively admitted guilt, his sentence would not have been so severe.'" *Dobek*, 274 Mich App at 104, quoting *People v Wesley*, 428 Mich 708, 713 (1987).

  - Resentencing was required when a sentencing court implied that the defendant would be sentenced more leniently for his felony-firearm conviction if he revealed the location of the weapon, thereby effectively admitting his guilt. *People v Conley*, 270 Mich App 301, 313-315 (2006).

- An independent finding of guilt with regard to other offenses with which a defendant is charged. *People v Grimmett*, 388 Mich 590, 608 (1972), overruled on other grounds by *People v White*, 390 Mich 245 (1973). But see *People v Shavers*, 448 Mich 389, 393 (1995) (it is not an independent finding of guilt when a court considers evidence presented at trial as an aggravating factor to determine the appropriate sentence), and *People v*

Granderson, 212 Mich App 673, 679-680 (1995) (a trial court may properly consider facts underlying a defendant's previous acquittal of other charges).

Note: A trial court may properly consider information not proven beyond a reasonable doubt when scoring offense variables on which a defendant's sentence is based. *People v Drohan*, 475 Mich 140, 164 (2006). In *Drohan*, the Michigan Supreme Court reaffirmed its assertion in *People v Claypool*, 470 Mich 715, 730 n 14 (2004), that Michigan's sentencing scheme does not violate a defendant's Sixth Amendment right to be sentenced on the basis of facts determined by a jury beyond a reasonable doubt. *Drohan*, *supra* at 164. The *Drohan* Court's decision expressly states that *Blakely v Washington*, 542 US 296 (2004), and other post-*Blakely* cases do not apply to Michigan's indeterminate sentencing scheme. *Drohan*, *supra* at 157-161. According to the *Drohan* Court, Michigan's sentencing guidelines are not unconstitutional because trial courts do not use judicially ascertained facts to impose a sentence greater than the term authorized by the jury's verdict—the statutory maximum. *Id*. at 159. The Court explained, "a defendant does not have a right to anything less than the maximum sentence authorized by the jury's verdict, and, therefore, judges may make certain factual findings to select a specific minimum sentence from within a defined range." *Id*.

- A defendant's last-minute plea or waiver of the right to a jury trial. *People v Earegood*, 383 Mich 82, 85 (1970).
- A defendant's exercise or waiver of his or her constitutional right to a jury trial. *People v Godbold*, 230 Mich App 508, 517-520 (1998).
- A defendant's polygraph results. *People v Anderson (Jeffry)*, 284 Mich App 11, 16 (2009).
- A defendant's eligibility for parole. *People v Wybrecht*, 222 Mich App 160, 173 (1997).[186]

[186] However, a mandatory sentence of life imprisonment without the possibility of parole may not, consistently with the Eighth Amendment, be imposed upon an individual who was under the age of 18 at the time of the sentencing offense. See *Miller v Alabama*, 567 US ___, ___ (2012) (homicide offender under the age of 18 may not be sentenced to life imprisonment without the possibility of parole unless a judge or jury first has the opportunity to consider mitigating circumstances); *Graham v Florida*, 560 US ___, ___ (2010) (sentence of life imprisonment without the possibility of parole may not be imposed upon a defendant under the age of 18 for a nonhomicide offense). For additional discussion of *Miller*, 567 US ___, and *Graham*, 560 US ___, see the Michigan Judicial Institute's *Juvenile Justice Benchbook*, Chapter 18.

- The possibility that a defendant may be granted early release or community placement. *People v Miller (Bradley)*, 206 Mich App 638, 642 (1994); *People v McCracken*, 172 Mich App 94, 101-103 (1988).

- Local sentencing policy, to the extent that it prevents an individualized sentence tailored to the circumstances of the offense and the offender. *People v Chapa*, 407 Mich 309, 311 (1979); *People v Catanzarite*, 211 Mich App 573, 583-584 (1995).

8.31 Sentence Credit

A defendant is entitled to credit for presentence time served on the offense for which he or she was convicted and is being sentenced if the presentence incarceration was due to the denial of bond or the defendant's inability to furnish bond. MCL 769.11b. Specifically, MCL 769.11b states:

> "Whenever any person is hereafter convicted of any crime within this state and has served any time in jail prior to sentencing because of being denied or unable to furnish bond for the offense of which he [or she] is convicted, the trial court in imposing sentence shall specifically grant credit against the sentence for such time served in jail prior to sentencing."

"A defendant is entitled to credit for time served before sentencing [under MCL 769.11b] even if the defendant is sentenced to serve a mandatory term of life imprisonment without parole." *People v Seals*, 285 Mich App 1, 18-19 (2009).

Presentence incarceration must be for sentencing offense. Credit for time served must be time a defendant spent incarcerated for the sentencing offense against which the credit is awarded; a defendant cannot receive credit for time served for an offense unrelated to the sentencing offense. *People v Prieskorn*, 424 Mich 327, 341 (1985).

When a defendant is serving time on a sentence and a subsequent offense is adjudicated during the incarceration, the defendant is not entitled to credit against the second offense for time served before sentencing because he or she was incarcerated and serving time on an unrelated offense. *People v Givans*, 227 Mich App 113, 125-126 (1997); *People v Alexander (Hamilton) (After Remand)*, 207 Mich App 227, 229 (1994).

A defendant is not entitled to credit for time served against a sentence that must run consecutively to a sentence the defendant was serving at the time of the subsequent offense. *People v Connor*, 209 Mich App 419,

431 (1995). Time spent incarcerated while awaiting disposition of the subsequent offense is "presentence time served that [the defendant] was already obliged to serve under a prior sentence." *Connor*, *supra* at 431.

A defendant is not entitled to credit against a sentence imposed for a crime committed while the defendant was on parole; time served in jail before being sentenced for the subsequent offense is properly credited against the unexpired portion of the sentence for the offense for which the defendant was paroled. MCL 791.238(2); *People v Stewart (Eric)*, 203 Mich App 432, 433 (1994). See also *People v Stead*, 270 Mich App 550, 551-552 (2006) (a defendant who spends time in jail for an offense committed while the defendant was on parole is a parole detainee for whom bond is not considered; a parole detainee is entitled to credit against the sentence from which he or she was paroled for any time spent in jail awaiting disposition of the new offense).

Presentence incarceration must be due to denial or inability to furnish bond. "[T]he primary purpose of the sentencing credit statute is to equalize, as far as possible, the status of the indigent or lower-income accused with the status of the accused who can afford to post bail." *Givans*, 227 Mich App at 125. "Given that the primary purpose of [MCL 769.]11b is to equalize the position of one who cannot post bond with that of a person who is financially able to do so, a showing that presentence confinement was the result of inability to post bond is an essential prerequisite to the award of sentence credit under the statute." *People v Whiteside*, 437 Mich 188, 196 (1991).

A defendant is not entitled to credit for time spent in boot camp when the defendant's participation in the program was not due to his being denied bond or being unable to furnish bond. *People v Wagner*, 193 Mich App 679, 682 (1992) (the defendant was sentenced after he failed to complete a boot camp program originally imposed in lieu of prison; he was not entitled to sentence credit for the time in boot camp because it did not result from a denial or inability to post bond).

A defendant is not entitled to credit for time spent in a tether program when the defendant's participation in the program was not due to his being denied bond or being unable to furnish bond. *People v Reynolds (Michael)*, 195 Mich App 182, 183 (1992).

A defendant is not entitled to credit for time spent in a drug rehabilitation program, even when participation in the program was a condition of probation, unless the defendant's placement in the program was due to his or her inability to furnish bond. *Whiteside*, 437 Mich at 196-197. See also *People v Scott (John)*, 216 Mich App 196, 199-200 (1996) (where a defendant's placement in a treatment or rehabilitation facility is not due to his being denied bond or being unable to furnish bond, MCL 769.11b does not apply).

MCL 769.11b does not require sentence credit "for time spent incarcerated in other jurisdictions, for offenses committed while [a defendant] was free on bond for the offense for which he [or she] seeks such credit, from the time that a detainer or hold either was or could have been entered against him [or her] by authorities in the jurisdiction where the defendant is to be sentenced." *People v Adkins (Kenneth)*, 433 Mich 732, 734 (1989). See also *People v Patton*, 285 Mich App 229, 239 (2009) (the defendant was "not entitled to sentence credit for time served from the date a detainer could have, or was, entered against him[,]" because his incarceration in a federal penitentiary was not the result of his being denied or unable to furnish bond for the Michigan charge at issue).

The jail credit statute does not generally apply to parolees who commit new felonies while on parole. *People v Idziak*, 484 Mich 549, 562 (2009). Specifically, "the jail credit statute does not apply to a parolee who is convicted and sentenced to a new term of imprisonment for a felony committed while on parole because, once arrested in connection with the new felony, the parolee continues to serve out any unexpired portion of his [or her] earlier sentence unless and until discharged by the Parole Board. For that reason, he [or she] remains incarcerated regardless of whether he [or she] would otherwise be eligible for bond before conviction on the new offense." *Idziak*, *supra* at 562. Because the parolee is not being incarcerated due to being denied or unable to furnish bond for the new offense, the jail credit statute, MCL 769.11b, does not apply. *Idziak*, *supra* at 562-563 ("reach[ing] essentially the same conclusion as the Court of Appeals did in [*People v*] *Seiders*[, 262 Mich App 702 (2004),] and [*People v*] *Filip*[, 278 Mich App 635 (2008),] . . . [but] on the basis of a somewhat different analysis"). See also *People v Armisted*, 295 Mich App 32, 42, 49-51 (2011) (MCL 769.11b does not apply when a parolee commits a new felony prior to his or her release from a community residential center).

Refuting the popular argument of recidivist parolees that time spent awaiting sentence on a new conviction is "dead time," the Michigan Court of Appeals explained in *People v Johnson (Robert)*, 283 Mich App 303, 312-313 n 4 (2009), that regardless of whether parole is revoked or not revoked, time served awaiting a subsequent conviction is credited toward the conviction for which the defendant was on parole. "If parole is revoked, the defendant is obligated to serve out the balance of the maximum sentence for the conviction that formed the basis for parole." *Johnson (Robert)*, *supra* at 311, citing MCL 791.238(5) and MCL 791.234. "If parole is not revoked, the defendant continues to accrue time toward his [or her] ultimate discharge for the conviction upon which the defendant enjoys parole." *Johnson (Robert)*, *supra* at 311, citing MCL 791.238(6). "The only time a defendant stops accruing time toward his or her ultimate discharge from the Department of Corrections is when a parolee has a warrant issued for a parole violation and the parolee remains at large. After a warrant is issued, '[t]he time from the date of the declared

violation to the date of the prisoner's availability for return to an institution shall not be counted as time served.'" *Johnson (Robert)*, *supra* at 311, quoting MCL 791.238(2).

Special alternative incarceration units. When a defendant is ordered to participate in a special alternative incarceration (SAI) unit[187] as a condition of probation, double jeopardy considerations demand that the time spent there be credited against the sentence imposed after the defendant's probation violation if placement in the SAI unit is the equivalent of being "in jail." *People v Hite (After Remand)*, 200 Mich App 1, 2-3, 8 (1993) (the boot camp was enclosed by an eighteen-foot high fence topped with barbed wire).

Double jeopardy considerations when presentence time served is the equivalent of being "in jail." "'Sentence credit under the double jeopardy clauses [(US Const, Am V; Const 1963, art 1, § 15)] is only required for confinements amounting to time spent "in jail" as that term is commonly used and understood.'" *Reynolds (Michael)*, 195 Mich App at 183-184 (sentence credit not required for time defendant spent in tether program), quoting *Wagner*, 193 Mich App at 682 (sentence credit not required for time spent in boot camp). See also *Whiteside*, 437 Mich at 202 (sentence credit not required for time defendant spent in private rehabilitation program).

"The Double Jeopardy Clauses of the United States and Michigan Constitutions [(US Const, Am V; Const 1963, art 1, § 15)] require that a probationer be given credit for time served while *incarcerated* as a condition of probation." *Hite*, 200 Mich App at 4. See also *People v Grazhidani*, 277 Mich App 592, 599 (2008) (credit for time served as a condition of probation limited to time actually spent while incarcerated "in jail").

Sheriff's good-time/disciplinary credits. "'Good time' and 'disciplinary credit,' as the terms are used in [MCL 800.33], refer[] to the graduated monthly reduction from sentences being served by prison inmates as set forth in the statute. It is designated to serve as an inducement to good conduct in state penal institutions and may be earned during the time the prisoner is confined in a penal institution and also while on parole." 2 Gillespie, Michigan Criminal Law & Procedure (2d ed), § 22:148. "Although . . . there is a distinction between good-time credits and disciplinary credits, [the Michigan Supreme Court] use[s] the terms interchangeably to refer to sentence reductions based on MCL 800.33." *People v Fleming*, 428 Mich 408, 422 n 16 (1987). Under MCL 51.282(2), prisoners are entitled to good-time credit if their record shows that there are no violations of the rules and regulations.

[187] Sentences involving SAI units are discussed in detail in Section 8.47.

"[A] sentencing court may not revoke good-time credit that a defendant already has earned while serving a jail sentence as a condition of probation." *People v Resler*, 210 Mich App 24, 28 (1995). In *Resler*, *supra* at 25, the defendant was originally sentenced to five years' probation with the first year in jail, and was awarded sixty days of good-time credit under MCL 51.282(2). After release from jail, the defendant was found guilty of violating the terms of his probation and was sentenced to five to ten years in prison. *Resler*, *supra* at 25. The trial court only allowed the defendant credit for the time he actually served in jail on the original charges. *Id*. The Michigan Court of Appeals ruled that the defendant was entitled to good-time credit against his sentence for the probation violation, and ordered that his sentence be amended to reflect the additional credit. *Id*. at 28. The Court explained:

> "[W]e hold that the constitutional guarantee against multiple punishments contemplates protection for good-time credit, but that the ultimate decision of whether such protection applies—that is, whether the good-time credit may be revoked—lies in the discretion of the Legislature. Absent legislative authority, a sentencing court may not revoke good-time credit that a defendant already has earned while serving a jail sentence as a condition of probation." *Resler*, 210 Mich App at 28.

Good-time credit earned during a sentence that is later declared invalid does not transfer to the sentence imposed after the first sentence was declared invalid. *People v Tyrpin*, 268 Mich App 368, 369 (2005). When a defendant is resentenced after a previous sentence is voided, the defendant is entitled only to credit for the number of days he or she actually spent incarcerated pursuant to the invalid sentence. *Tyrpin*, *supra* at 373. Credits earned during the time served on the invalid sentence may not be applied to the defendant's sentence on remand. *Id*. at 373-374.

"[A]lthough there is no constitutional right to good-time credit, once a good-time credit provision is adopted and a prisoner earns that credit, the deprivation of good-time credit constitutes a substantial sanction, and a prisoner may claim that a deprivation of good-time credit is a denial of a protected liberty interest without due process of law." *People v Cannon (Terrence)*, 206 Mich App 653, 656 (1994). Accordingly, a trial court cannot deny a defendant the good-time credit opportunities provided in MCL 51.282(2). *Cannon (Terrence)*, *supra* at 657. That is, in a defendant's probation order, a court cannot impose a specific term of imprisonment and indicate the date on which the defendant is to be released. *Id*.

Sentence reductions due to overcrowding. Where a defendant is sentenced to probation, the terms of which include incarceration in the county jail, and the defendant is later sentenced to prison for a probation violation, he or she is not entitled to credit for any time by which the

original incarceration in the county jail was reduced due to overcrowding. *Grazhidani*, 277 Mich App at 601. The *Grazhidani* Court stated:

> "Obviously the days that defendant did not serve on his sentence because of his early release from the county jail under the jail overcrowding act are not time spent 'in jail.' Because we read *Whiteside*[188] as concluding that the Legislature only intended to grant credit for time actually spent 'in jail,' we conclude that defendant is not entitled to credit for time that he otherwise would have spent in jail except for his early release under the jail-overcrowding act." *Grazhidani*, 277 Mich App at 599.

8.32 Sentence Bargains and Plea Agreements

"Plea agreement" and "sentence bargain" refer generally to an agreement reached by the prosecutor, the defendant's attorney, and the defendant about the offense(s) to which the defendant has agreed to plead guilty or nolo contendere in exchange for an agreed-on sentence or sentence recommendation. Plea agreements and sentence bargains may involve the prosecutor's approval of the defendant's plea to a lesser offense than might be charged under the circumstances and the defendant's decision to accept a specific sentence or recommendation in exchange for his or her plea. The terms used to describe the negotiation process and eventual outcome are frequently used interchangeably; for example, *sentence bargain*, *plea bargain*, *sentence agreement*, and *sentence bargain* may all be used to refer to a defendant's plea in exchange for a specific sentence.

Where a defendant's sentence will result from a plea-based conviction,[189] the trial court must determine whether the parties have made a plea agreement. MCR 6.302(C)(1). "If there is a plea agreement, the court must ask the prosecutor or the defendant's lawyer what the terms of the agreement are and confirm the terms of the agreement with the other lawyer and the defendant." MCR 6.302(C)(2).

Before a trial court may sentence a defendant whose guilty or no contest plea is part of a plea agreement, the court must comply with the procedure in MCR 6.302(C)(3):

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[188] *People v Whiteside*, 437 Mich 188 (1991).

[189] A comprehensive discussion of the requirements of a plea hearing is beyond the scope of this monograph. See the Michigan Judicial Institute's *Criminal Procedure Monograph 3: Misdemeanor Arraignments & Pleas* for information relevant to both felony and misdemeanor plea proceedings.

> "(3) If there is a plea agreement and its terms provide for the defendant's plea to be made in exchange for a specific sentence disposition or a prosecutorial sentence recommendation, the court may
>
> > "(a) reject the agreement; or
> >
> > "(b) accept the agreement after having considered the presentence report, in which event it must sentence the defendant to the sentence agreed to or recommended by the prosecutor; or
> >
> > "(c) accept the agreement without having considered the presentence report; or
> >
> > "(d) take the plea under advisement.
>
> "If the court accepts the agreement without having considered the presentence report or takes the plea agreement under advisement, it must explain to the defendant that the court is not bound to follow the sentence disposition or recommendation agreed to by the prosecutor, and that if the court chooses not to follow it, the defendant will be allowed to withdraw from the plea agreement."

If there is a plea agreement, the court must ask the defendant "whether anyone has promised anything beyond what is in the plea agreement"; "whether anyone has threatened the defendant"; and "whether it is the defendant's own choice to plead guilty." MCR 6.302(C)(4).

Negotiating a plea agreement or sentence bargain. A prosecutor and a defendant may reach a sentence agreement whereby the defendant agrees to plead guilty in exchange for a specific sentence disposition. The extent to which a trial court may involve itself in sentence negotiations has been set out by the Michigan Supreme Court in *People v Killebrew*, 416 Mich 189 (1982), and *People v Cobbs*, 443 Mich 276 (1993). In *Killebrew*, *supra* at 205, the Supreme Court held that a trial court may not initiate or participate in discussions "aimed at reaching a plea agreement." In *Cobbs*, *supra* at 283, the Supreme Court modified *Killebrew* to allow the trial court, at the request of a party, to state on the record the length of the sentence that appears to be appropriate, based on the information available to the trial court at the time. The *Cobbs* Court made clear that the trial court's preliminary evaluation did not bind the court's ultimate sentencing discretion, "since additional facts may emerge during later proceedings, in the presentence report, through the allocution afforded to the prosecutor and the victim, or from other sources." *Cobbs*, *supra* at 283.

Sentence recommendation under *Killebrew*. *Killebrew* limits a trial court's involvement to the approval or disapproval of a nonbinding

prosecutorial sentence recommendation linked to a defendant's guilty plea. *Killebrew*, 416 Mich at 209. Under *Killebrew*, *supra* at 209, a trial court may accept a defendant's guilty plea without being bound by any agreement between the defendant and the prosecution. Where a trial court decides not to adhere to the sentence recommendation accompanying the defendant's plea agreement, the court must explain to the defendant that the recommendation was not accepted, state the sentence that the court finds is the appropriate disposition, and give the defendant the opportunity to affirm or withdraw the guilty plea. *Id*. at 209-210. See *People v Shuler*, 188 Mich App 548, 551 (1991) (the sentencing court expressly informed the defendant that it would exceed the sentence recommended by the prosecutor, named the specific sentence it intended to impose, and permitted the defendant to withdraw or affirm his guilty plea).

▶ **Characteristics of negotiations under *Killebrew***

- a defendant's plea is linked to a nonbinding prosecutorial sentence recommendation.
- the trial court may accept or reject the agreement as it exists.
- if the court rejects the agreement, the court must indicate what sentence it believes is appropriate under the circumstances.
- the defendant may affirm or withdraw his or her plea based on the trial court's expressed disposition.

***Cobbs* plea.** *Cobbs* authorizes the trial court, at the request of a party, to state on the record the sentence that appears appropriate for the charged offense, on the basis of information available to the court at the time. *Cobbs*, 443 Mich at 283. Even when a defendant pleads guilty or nolo contendere to the charged offense in reliance on the court's preliminary determination regarding the defendant's likely sentence, the court retains discretion over the actual sentence imposed should additional information dictate the imposition of a longer sentence. *Cobbs*, *supra* at 283. If the court determines it will exceed its previously stated sentence, the defendant has an absolute right to withdraw the plea. *Id*.

▶ **Characteristics of negotiations under *Cobbs***

- the defendant or the prosecution asks the trial court what sentence appears appropriate under the circumstances if a guilty plea was offered.
- the court's preliminary evaluation is based on the information then available and the court retains discretion

over the actual sentence imposed if additional information warrants a longer sentence.

- if the court decides to impose a sentence longer than the sentence first indicated by the court, the defendant must be given an opportunity to withdraw his or her plea.

- if the court's modified sentence is unacceptable to the prosecution, the prosecutor must be permitted to withdraw from the plea agreement.

Distinction between *Killebrew* and *Cobbs*. In *People v Williams (Avana)*, 464 Mich 174 (2001), the Michigan Supreme Court distinguished between a trial court's role in sentence negotiations occurring under *Killebrew* and those occurring under *Cobbs*. According to the *Williams* (*Avana)* Court, *Cobbs* modified *Killebrew* "to allow somewhat greater participation by the judge." *Williams (Avana)*, *supra* at 177. However, the *Williams* (*Avana)* Court ruled that the requirement of *Killebrew*—that a court must indicate the sentence it considers appropriate if the court decides against accepting the prosecutorial recommendation—does not apply to a *Cobbs* agreement later rejected by the court that made the preliminary evaluation. *Williams (Avana)*, *supra* at 178-179. The Court explained the distinction between *Cobbs* and *Killebrew* as preserving the trial court's impartiality in sentence negotiations by minimizing the potential coercive effect of a court's participation in the process:

> "In cases involving sentence recommendations under *Killebrew*, the neutrality of the judge is maintained because the recommendation is entirely the product of an agreement between the prosecutor and the defendant. The judge's announcement that the recommendation will not be followed, and of the specific sentence that will be imposed if the defendant chooses to let the plea stand, is the first involvement of the court, and does not constitute bargaining with the defendant, since the judge makes that announcement and determination of the sentence on the judge's own initiative after reviewing the presentence report.
>
> "By contrast, the degree of the judge's participation in a *Cobbs* plea is considerably greater, with the judge having made the initial assessment at the request of one of the parties, and with the defendant having made the decision to offer the plea in light of that assessment. In those circumstances, when the judge makes the determination that the sentence will not be in accord with the earlier assessment, to have the judge then specify a new sentence, which the defendant may accept or not, goes too far in involving the judge in the bargaining process. Instead, when the judge determines that sentencing cannot be in accord with the previous assessment, that puts

the previous understanding to an end, and the defendant must choose to allow the plea to stand or not without benefit of any agreement regarding the sentence.

"Thus, we hold that in informing a defendant that the sentence will not be in accordance with the *Cobbs* agreement, the trial judge is not to specify the actual sentence that would be imposed if the plea is allowed to stand." *Williams (Avana)*, 464 Mich at 179-180.

▶ **The impact of *Williams (Avana)* on negotiations**

- the *Williams (Avana)* decision is implicated only when there exists a *Cobbs* agreement (the defendant has agreed to plead guilty based on the trial court's preliminary sentence evaluation), and the trial court determines it will not adhere to the *Cobbs* agreement.

- the defendant must be given an opportunity to withdraw his or her guilty plea after the court informs the defendant it will not abide by the sentence first announced.

- unlike the requirement in *Killebrew* that arises when the court refuses to follow a prosecutorial sentence recommendation, when the trial court decides against imposing the sentence first articulated by the court itself (the *Cobbs* agreement), it may *not* inform the defendant of the sentence the court has since decided is appropriate (because to do so would involve the court in the sentence negotiation process to an extent carefully avoided in *Killebrew* and *Cobbs*).

Failure of a plea agreement. Fundamental fairness requires that promises made during plea negotiations should be respected, provided that the person making the promise was authorized to do so and the defendant relied on the promise to his or her detriment. *People v Ryan (Thomas)*, 451 Mich 30, 41 (1996). A defendant is not constitutionally entitled to specific performance of a properly authorized plea agreement, but due process requires that some remedy be employed to cure a defendant's detrimental reliance on the agreement. *People v Wyngaard*, 462 Mich 659, 666-667 (2000). Such remedies include specific performance of the agreement or withdrawal of the plea. *In re Guilty Plea Cases*, 395 Mich 96, 127 (1975).

Plea agreements involving probation. A trial court may impose additional conditions on a defendant's sentence of probation, even when the sentence is part of the defendant's plea agreement and did not contain the additional conditions.[190] *People v Johnson (Larry)*, 210 Mich App 630, 632-635 (1995). In *Johnson (Larry)*, *supra* at 632, the defendant moved to withdraw his plea or to force specific performance of the sentence

agreement on which he relied when he offered his nolo contendere plea. However, the Michigan Court of Appeals held that "[b]ecause probation is a matter of grace in lieu of a prison sentence aimed, in part, at rehabilitation and is at all times alterable and amendable, we believe that a sentencing court may place conditions on a defendant's probation regardless of whether it was covered in the plea agreement." *Id*. at 634-635.

Withdrawal of plea before acceptance. A defendant has a right to withdraw any plea until the court accepts the plea on the record. MCR 6.310(A).

Withdrawal of plea before sentencing. "There is no absolute right to withdraw a guilty plea once it has been accepted by the trial court." *People v Montrose*, 201 Mich App 378, 380 (1993).

MCR 6.310(B) sets out the requirements for withdrawing a plea after the court accepts it, but before the court imposes sentence. Specifically, MCR 6.310(B) states:

> "After acceptance but before sentence,
>
> > "(1) a plea may be withdrawn on the defendant's motion or with the defendant's consent, only in the interest of justice, and may not be withdrawn if withdrawal of the plea would substantially prejudice the prosecutor because of reliance on the plea. If the defendant's motion is based on an error in the plea proceeding, the court must permit the defendant to withdraw the plea if it would be required by [MCR 6.310](C).
> >
> > "(2) the defendant is entitled to withdraw the plea if
> >
> > > "(a) the plea involves a prosecutorial sentence recommendation or agreement for a specific sentence, and the court states that it is unable to follow the agreement or recommendation; the trial court shall then state the sentence it intends to impose, and provide the defendant the opportunity to affirm or withdraw the plea; or
> > >
> > > "(b) the plea involves a statement by the court that it will sentence to a specified term or within a specified range, and the court states that it is unable to sentence as stated; the trial court shall

[190] See Section 8.40 for more information on probation.

> provide the defendant the opportunity to affirm or withdraw the plea, but shall not state the sentence it intends to impose."

Failure to "'provide the defendant the opportunity to affirm or withdraw [a] plea[]'" as required by MCR 6.310(B)(2) constitutes plain error that may require reversal. *People v Franklin (Joseph)*, 491 Mich 916, 916 (2012). In *Franklin (Joseph), supra* at 916, 916 n 1, the Michigan Supreme Court concluded that the trial court's failure to comply with MCR 6.310(B)(2)(b) could not be considered plain error, "given [the] holding in *People v Grove*, 455 Mich 439 (1997), that the trial court could reject the entire plea agreement and subject the defendant to a trial on the original charges over the defendant's objection[;]" however, the *Franklin (Joseph)* Court clarified that "*Grove* has been superseded by MCR 6.310(B)[,]" and cautioned that "in the future, such an error will be 'plain[.]'" The Court further noted that, even assuming that plain and prejudicial error had occurred in *Franklin, supra*, "[u]nder [the] circumstances, where the defendant did not just fail to object at sentencing, but also failed to object during the subsequent trial and waived his right to a jury trial," the Court "[was] exercising its discretion in favor of not reversing the defendant's convictions." *Franklin (Joseph), supra* at 916, citing *People v Carines*, 460 Mich 750, 763 (1999).

The United States Court of Appeals for the Sixth Circuit has developed the following multi-factor balancing test to guide district courts in deciding whether to grant a motion to withdraw a guilty plea:[191]

> "(1) the amount of time that elapsed between the plea and the motion to withdraw it; (2) the presence (or absence) of a valid reason for the failure to move for withdrawal earlier in the proceedings; (3) whether the defendant has asserted or maintained his [or her] innocence; (4) the circumstances underlying the entry of the guilty plea; (5) the defendant's nature and background; (6) the degree to which the defendant has had prior experience with the criminal justice system; and (7) potential prejudice to the government if the motion to withdraw is granted." *United States v Haygood*, 549 F3d 1049, 1052 (CA 6, 2008).

"The relevance of each factor will vary according to the 'circumstances surrounding the original entrance of the plea as well as the motion to withdraw.'" *Haygood*, 549 F3d at 1052, quoting *United States v Triplett*, 828 F2d 1195, 1197 (CA 6, 1987). A defendant should not generally be allowed to withdraw his or her plea if he or she made a strategic choice to plead guilty, and later determines that it was a poor decision. *Haygood*, *supra* at 1052-1053 (defendant's motion to withdraw his plea was properly denied

[191] Rule 11 of the Federal Rules of Criminal Procedure concerns entry of a defendant's a guilty plea.

because defendant did not move to withdraw his plea until more than four months after he entered it, and he used the motion to withdraw as an inappropriate way to challenge the validity of the search warrant that led to his arrest).

In the absence of a procedural error in receiving a plea, a defendant must establish a fair and just reason for withdrawing it. *People v Harris (Lamar)*, 224 Mich App 130, 131 (1997). Examples of fair and just reasons for withdrawal include: when the plea resulted from fraud, duress, or coercion, *People v Gomer*, 206 Mich App 55, 58 (1994); when the plea involved erroneous legal advice coupled with actual prejudice to legal rights, *People v Jackson (Andrew)*, 417 Mich 243, 246 (1983); or "if the bargain on which the plea was based was illusory, meaning that the defendant received no benefit from the agreement," *Harris (Lamar)*, *supra* at 132. If the facts of the case indicate that the plea was voluntary, the plea will be upheld regardless whether the defendant received consideration in return. *Id*. at 132-133. "[R]equests to withdraw pleas are generally regarded as frivolous where the circumstances indicate that the defendant's true motivation for moving to withdraw is a concern regarding sentencing." *People v Haynes (Kermit)*, 221 Mich App 551, 559 (1997).

A trial court may not sua sponte vacate an accepted plea without the defendant's consent, even if a defendant indicates that he or she is innocent. *People v Strong (Duel)*, 213 Mich App 107, 112 (1995) (after the trial court sua sponte vacated the defendant's plea without the defendant's consent, he was found guilty following a jury trial; the Michigan Court of Appeals reversed the defendant's convictions and remanded the case to permit the defendant to plead guilty in exchange for the terms of the parties' previous plea agreement).

Doubt about the veracity of a defendant's nolo contendere plea, by itself, is not an appropriate reason to permit the defendant to withdraw an accepted plea before sentencing. *People v Patmore*, 264 Mich App 139, 150 (2004). When recanted testimony provides a substantial part of the factual basis underlying a defendant's nolo contendere plea, the defendant must prove by a preponderance of credible evidence that the original testimony was untruthful, in order to constitute a fair and just reason for allowing the defendant to withdraw his or her plea. *Patmore*, *supra* at 152. If the defendant meets the burden, the trial court must then determine whether other evidence is sufficient to support the factual basis of the defendant's plea. *Id*. If the defendant fails to meet the burden, or if other evidence is sufficient to support the plea, then the defendant has failed to present a fair and just reason to warrant withdrawal of his or her plea. *Id*.

If the defendant establishes a fair and just reason for withdrawal of the plea, the burden then shifts to the prosecution to establish that

substantial prejudice would result from allowing the defendant to withdraw the plea. *People v Jackson (Dwayne)*, 203 Mich App 607, 611-612 (1994). To constitute substantial prejudice, the prosecution must demonstrate that its ability to prosecute is impeded by the delay. *People v Spencer*, 192 Mich App 146, 151-152 (1991) (substantial prejudice not established even though trial was set to begin at the time the pleas were entered, and some witnesses were from out of state). In deciding whether a defendant may withdraw a plea, the trial court should bear in mind what is in the interests of justice. *Spencer*, *supra* at 151-152 ("The fact that [the] defendant's pleas may have been induced by inaccurate legal advice combined with his refusal or inability to personally recount a sufficient basis to substantiate the[] charges made it incumbent upon the trial court to allow [the] defendant to withdraw his pleas.").

Withdrawal of plea after sentencing. MCR 6.310(C) governs withdrawal of a plea after sentencing:

> "The defendant may file a motion to withdraw the plea within 6 months after sentence. Thereafter, the defendant may seek relief only in accordance with the procedure set forth in [MCR] 6.500.[192] If the trial court determines that there was an error in the plea proceeding that would entitle the defendant to have the plea set aside, the court must give the advice or make the inquiries necessary to rectify the error and then give the defendant the opportunity to elect to allow the plea and sentence to stand or to withdraw the plea. If the defendant elects to allow the plea and sentence to stand, the additional advice given and inquiries made become part of the plea proceeding for the purposes of further proceedings, including appeals."

"[In general], criminal defendants may not withdraw a guilty plea on the ground that they were unaware of the future collateral or incidental effects of the initial valid plea." *People v Haynes (Joseph)*, 256 Mich App 341, 349 (2003).[193] However, defense counsel is constitutionally required to inform his or her client that a plea "may carry a risk of adverse immigration consequences[,]" e.g., deportation. *Padilla v Kentucky*, 559 US ___, ___ (2010).[194]

"MCR 6.302(B)(2) requires the trial court to apprise a defendant of his or her maximum possible prison sentence as an habitual offender before accepting a guilty plea[,]" and MCR 6.310(C) permits a defendant who is

[192] See the Michigan Judicial Institute's *Criminal Procedure Monograph 9: Postconviction Proceedings* for more information.

[193] For additional discussion of pleas, plea withdrawal, and appeals from pleas and from convictions imposed after rejection or lapse of plea offers, see the Michigan Judicial Institute's *Michigan Circuit Court Benchbook: Criminal Proceedings*, Chapter 4.

not so apprised to elect either to allow his or her plea and sentence to stand or to withdraw the plea. *People v Brown (Shawn)*, ___ Mich ___, ___ (2012). In *Brown (Shawn)*, *supra* at ___, the defendant pleaded guilty, as a second-offense habitual offender under MCL 769.10, to second-degree home invasion. The defendant was advised at his plea hearing that the maximum sentence for second-degree home invasion was 15 years in prison; however, the defendant was subsequently sentenced, as an habitual offender, to a maximum prison term of more than 22 years. *Brown (Shawn)*, *supra* at ___. The Michigan Supreme Court concluded that MCR 6.302(B)(2) requires that "before pleading guilty, a defendant must be notified of the maximum possible prison sentence with habitual-offender enhancement[,] because the enhanced maximum becomes the 'maximum possible prison sentence' for the principal offense." *Brown (Shawn)*, *supra* at ___, overruling *People v Boatman*, 273 Mich App 405, 406-410 (2006). The *Brown (Shawn)* Court additionally held that "MCR 6.310(C) . . . provides the proper remedy for a plea that is defective under MCR 6.302(B)(2), which is to allow the defendant the opportunity to withdraw his or her plea." *Brown (Shawn)*, *supra* at ___.

~~Because "[MCR 6.302] does not encompass a specific requirement to inform an habitual offender regarding the effect this status has on sentencing[,]" the defendant was not entitled to withdraw his plea on the ground that the trial court failed to inform him of the maximum possible sentence he could receive as a fourth-offense habitual offender. *People v Boatman*, 273 Mich App 405, 406-410 (2006). In *Boatman*, *supra* at 406-407, the trial court informed the defendant at his plea proceeding that the maximum penalty for the charged offense was two years in prison; however, the defendant was ultimately sentenced, as a fourth-offense habitual offender under MCL 769.12, to 3 to 15 years in prison. The Court of Appeals held that "[the] defendant was informed of the maximum sentence for the charged 'offense,' because '[t]he habitual-offender statute does not create a substantive offense that is separate from and independent of the principal charge.'" *Boatman*, *supra* at 407, quoting *People v Oswald (After Remand)*, 188 Mich App 1, 12 (1991). The *Boatman* majority nevertheless vacated the defendant's plea, concluding that, under the circumstances of the case, "[the] defendant's plea was not understanding, as required by MCR 6.302[;]" although "[the d]efendant entered his plea on the basis of an understanding that he would be sentenced in conformance with the 'guidelines[,]' . . . throughout the entire discussion between the trial court and counsel [at the plea proceeding], there [was] no indication that the guidelines being~~

[194] "[S]tate courts are bound by the decisions of the United States Supreme Court construing federal law[.]" *Abela v Gen Motors Corp*, 469 Mich 603, 606 (2004). However, "the new rule of criminal procedure announced in *Padilla*[, 559 US at ___,] has prospective application only[]" under both federal and state rules of retroactivity. *People v Gomez*, 295 Mich App 411, 413-414,418-419 (2012) (the defendant, who entered a no-contest plea to a drug-possession charge and was subsequently notified that his conviction rendered him subject to deportation, was not entitled to relief from judgment based on *Padilla*, *supra*, which was decided several years after he completed his sentence).

~~referenced were those applicable to [the] defendant as a fourth-offense habitual offender." *Boatman*, *supra* at 410-413.~~

"[W]hen a sentence is modified to make it consistent with state law and to give the defendant the benefit of his [or her] original plea agreement, the Constitution does not require the withdrawal of a once-illegal plea." *Pickens v Howes*, 549 F3d 377, 381-382 (CA 6, 2008).

Vacation of plea on prosecutor's motion. A plea may be vacated on the prosecution's motion if the defendant has failed to comply with the terms of his or her plea agreement. MCR 6.310(E).

Part G—Fines, Costs, Assessments, and Restitution

MCL 769.34(6) states in part that "[a]s part of the sentence, the court may . . . order the defendant to pay any combination of a fine, costs, or applicable assessments."

MCL 769.1k provides a general statutory basis for a court's authority to impose fines and costs. If a defendant pleads guilty or nolo contendere, or the defendant is found guilty following a trial, the court must impose the minimum state costs as set out in MCL 769.1j[195] at the time the defendant is sentenced, at the time the defendant's sentence is delayed, or at the time entry of judgment is statutorily deferred. MCL 769.1k(1)(a). Under MCL 769.1k(1)(b) and MCL 769.1k(2), the court may also impose:

- any fine;
- any cost in addition to the minimum state cost set out in MCL 769.1j(1);
- the expenses of providing the defendant with legal assistance;
- any assessment authorized by law;
- reimbursement under MCL 769.1f; and
- any additional costs incurred to compel the defendant's appearance.

"The court may require the defendant to pay any fine, cost, or assessment ordered to be paid under [MCL 769.1k] by wage assignment." MCL 769.1k(4). "The court may provide for the amounts imposed under [MCL

[195] See Section 8.35 for discussion of minimum state costs.

769.1k] to be collected at any time." MCL 769.1k(5). "Except as otherwise provided by law, the court may apply payments received on behalf of a defendant that exceed the total of any fine, cost, fee, or other assessment imposed in the case to any fine, cost, fee, or assessment that the same defendant owes in any other case." MCL 769.1k(6).

MCL 769.3(1) states that the court may impose a conditional sentence and order a person convicted of an offense punishable by a fine or imprisonment or both, to pay a fine, with or without the costs of prosecution, within a limited time stated in the sentence. If the person defaults on the payment, the court may sentence him or her as provided by law. *Id*.

Ordinarily, unless a court permits and specifies a different due date, all fines, costs, penalties, and other financial obligations are due at the time the court orders them. MCL 600.4803(1); MCR 1.110. An individual who fails to satisfy in full a penalty, fee, or costs imposed by the court within 56 days after the amount was due is subject to a late penalty equal to 20 percent of the amount that remains unpaid. MCL 600.4803(1). The court must inform an individual that a late penalty will be assessed if payment is not made within 56 days of the order. *Id*.

If the court permits delayed payment of the amount due or permits the individual to pay the amount in installments, the court must inform the individual of the date on which, or time schedule under which, the total or partial amount of the fees, costs, penalties, and other financial obligations is due. MCL 600.4803(1). An individual's late penalty may be waived if requested by the person subject to the penalty. *Id*.

8.33 Fines

Courts have general authority to impose "any fine" on a convicted defendant. MCL 769.1k(1)(b)(*i*). According to MCL 769.1k(1)(b)(*i*), at the time of sentencing or a delay in sentencing or entry of a deferred judgment of guilt, a court may impose any fine on a defendant convicted by plea (guilty or nolo contendere) or found guilty by the court after a hearing or trial. Specific authority to impose a fine, and the maximum amount of that fine, is often included in the language of the applicable penal statute. For example, if an offender is convicted of violating MCL 750.365, larceny from a car or from a person detained or injured because of an accident involving a railroad locomotive, tender, or car, the offender may be assessed a fine of not more than $10,000.[196] If a statute authorizes the imposition of a fine but is silent with regard to the amount, the maximum fine permitted for a felony conviction is $5,000. MCL 750.503.

[196] In addition to any term of imprisonment up to the statutory maximum of 20 years as determined by proper scoring of the sentencing guidelines.

Excessive fines are prohibited by the Michigan Constitution. Const 1963, art 1, § 16.

Whenever an offense is punishable by a fine and imprisonment, the court has discretion to impose a sentence comprised of any combination of those penalties: a fine and no imprisonment, no fine and imprisonment, or both a fine and imprisonment. MCL 769.5. A defendant may be sentenced to imprisonment until he or she satisfies the amount of the fine and costs imposed by the court. *Id*. However, a defendant may not be imprisoned for nonpayment beyond the time indicated in his or her sentence. *Id*. The court may require a defendant to pay by wage assignment any fine imposed under MCL 769.1k, and the court may provide that any fine imposed under MCL 769.1k be collected at any time. MCL 769.1k(4); MCL 769.1k(5).

As a condition of probation. When a fine is imposed on a defendant sentenced to probation, payment of the fine may be made a condition of the defendant's probation. MCL 771.3(2)(b). A sentencing court may order the probationer to pay the fine immediately or the court may permit the probationer to make payment within the time period of his or her probation. *Id*.

The fines authorized by MCL 769.1k(1)(b)(*i*) apply when a defendant is placed on probation, probation is revoked, or a defendant is discharged from probation. MCL 769.1k(3).

8.34 Costs

MCL 769.1k is a procedural statute that provides a court with general authority to impose "[a]ny cost in addition to the minimum state cost" when sentencing a defendant in certain circumstances. MCL 769.1k(1)(b)(*ii*). No precise calculation is required when imposing costs under MCL 769.1k(1)(b)(*ii*), as long as the costs imposed are "generally reasonable[.]" *People v Sanders (Robert)*, ___ Mich App ___, ___ (2012) (holding that there is no need to "individually calculat[e] the costs involved in a particular case," but remanding for a hearing "to factually establish the reasonable cost figure for felony cases in [the circuit court], while affording [the] defendant the opportunity to challenge that [generalized] determination[]").

~~Moreover~~A~~, a~~ defendant may be ordered to pay any additional costs incurred to compel his or her appearance. MCL 769.1k(2). "The plain language of MCL 769.1k does not require the trial court to consider a defendant's ability to pay before imposing discretionary costs and fees . . . ." *People v Wallace (Steven)*, 284 Mich App 467, 470 (2009).

MCL 769.34(6) addresses the sentencing guidelines and the duties of the court when sentencing, and it authorizes the court to order court costs ("As part of the sentence, the court may also order the defendant to pay any combination of a fine, costs, or applicable assessments."). *People v Lloyd*, 284 Mich App 703, 707-708 (2009). Accordingly, the plain language of MCL 769.1k and MCL 769.34(6) "expressly grant[] authority to a sentencing court to order a defendant to pay court costs." *Lloyd*, *supra* at 709. In *Lloyd*, *supra* at 706, 709-710, the Michigan Court of Appeals relied on MCL 769.1k and MCL 769.34(6) to refute the defendant's argument that he could not be ordered to pay court costs because the statute governing the offense of which he was convicted, felony-firearm (MCL 750.227b), did not contain an express provision allowing costs.

MCL 769.3 and MCL 769.1f are procedural statutes in which specific court-ordered costs are expressly authorized. MCL 769.3(1) authorizes conditional sentencing where a court may order a defendant to pay the costs of prosecution in cases where the defendant was convicted of an offense punishable by a fine or imprisonment or both. MCL 769.1f(1) authorizes a sentencing court to order a defendant "to reimburse the state or a local unit of government" for certain expenses incurred when a defendant is convicted of the offenses listed in the statute.[197]

As a condition of probation. A trial court may require a probationer to pay certain costs as a condition of probation. MCL 771.3(2)(c). If the court requires the probationer to pay costs under MCL 771.3(2), "the costs shall be limited to expenses specifically incurred in prosecuting the defendant or providing legal assistance to the defendant and supervision of the probationer." MCL 771.3(5). For example, a trial court may impose costs to reimburse the prosecution for the expense of engaging an expert witness for trial. *People v Brown (Craig)*, 279 Mich App 116, 140 (2008).

Any costs imposed under MCL 771.3(5) "must bear a reasonable relationship to the expenses of prosecution." *People v Blachura*, 81 Mich App 399, 403 (1978), citing *People v Teasdale*, 335 Mich 1, 5 (1952). "Furthermore, those costs may not include 'expenditures in connection with the maintenance and functioning of governmental agencies that must be borne by the public irrespective of specific violations of the law.'" *People v Dilworth*, 291 Mich App 399, 401 (2011), quoting *Teasdale*, *supra* at 6.

If a trial court imposes costs under MCL 771.3(2) as part of a sentence of probation, the court must not require a probationer to pay those costs "unless the probationer is or will be able to pay them during the term of probation." MCL 771.3(6)(a). "In determining the amount and method of payment of costs under [MCL 771.3(2)], the court shall take into account

[197] The offenses for which costs are authorized under MCL 769.1f are discussed in Section 8.34(B).

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." MCL 771.3(6)(a). A trial court may consider a defendant's potential for employment when determining the defendant's ability to pay. *Brown (Craig)*, 279 Mich App at 139-140. Where the defendant opted to attend school full-time instead of working full-time, the trial court concluded that the defendant could pay if he chose to do so and properly imposed costs under MCL 771.3. *Brown (Craig)*, *supra* at 139-140.

"[A] defendant who timely asserts an inability to pay . . . costs must be heard." *People v Music*, 428 Mich 356, 362 (1987). In that instance, a sentencing court must determine whether the costs are within the probationer's means. *Music*, *supra* at 362.

A probationer who is not in willful default of his or her payment of costs under MCL 771.3(1)(g) (minimum state cost) or MCL 771.3(2)(c) (expenses specifically incurred in the case) may petition the court at any time for remission of the unpaid part of the total costs ordered. MCL 771.3(6)(b). The court may modify the method of repayment or remit all or a portion of the amount due if the court finds that payment in full would impose a manifest hardship on the probationer or his or her immediate family. *Id*.

Except for defendants convicted of first- or third-degree criminal sexual conduct, MCL 769.3(2) authorizes a sentencing court to sentence a defendant to probation, conditioned on the probationer's payment of costs, among other things. The court may establish a time within which the defendant must make repayment in installments, and if the probationer defaults on any payment, the court may sentence him or her to the sentence provided by law. *Id*.

The costs authorized by MCL 769.1k(1)(b)(*ii*) and MCL 769.1k(2) also apply when a defendant is placed on probation, probation is revoked, or a defendant is discharged from probation. MCL 769.1k(3).

Probation revocation for failure to comply with conditions. Compliance with a court's order to pay costs must be made a condition of probation. MCL 771.3(8). Revocation of probation[198] is authorized where the probationer fails to comply with the order and has failed to make a good faith effort at compliance. *Id*. To determine whether an individual's probation should be revoked on the basis of unpaid costs, the court must consider the following:

- the probationer's employment status, earning ability, and financial resources;

[198] See Section 8.53 for more information on probation revocation.

- the willfulness of the probationer's failure to pay; and
- any other circumstances that may impact the probationer's ability to pay. MCL 771.3(8).

A. Costs of Prosecution Authorized by Penal Statutes

A few penal statutes specifically authorize a sentencing court to order a defendant to pay the costs of prosecution after the defendant is convicted. These statutes address the costs of prosecution only and do not authorize a court to order other costs that may be permitted pursuant to another statute, e.g., overtime wages for law enforcement personnel, etc.

The following statutes authorize a trial court to order a defendant to pay the costs of prosecution if the defendant is convicted of a felony[199] described in these statutes:

- **MCL 205.28(2),** *unlawful conduct by authorized treasury personnel involving state administration of taxes.* The statutory language states that a violator "is guilty of a felony, punishable by a fine of not more than $5,000.00, or imprisonment for not more than 5 years, or both, together with the costs of prosecution."
- **MCL 257.625k(7),** *providing false information with regard to an ignition interlock device.* The statutory language states that a violator "is guilty of a felony punishable by imprisonment for not less than 5 years or more than 10 years or a fine of not less than $5,000.00 or more than $10,000.00, or both, together with costs of the prosecution."
- **MCL 750.49(5),** *fighting, baiting, or shooting an animal, or breeding an animal for those purposes.* The statutory language states that "[t]he court may order a person convicted of violating [MCL 750.49] to pay the costs of prosecution."
- **MCL 750.50(4),** *failing to adequately care for an animal.* The statutory language states that a violator "may be ordered to pay the costs of prosecution[.]"

B. Costs of Emergency Response and Prosecution Under MCL 769.1f

MCL 769.1f authorizes or requires the court to order the defendant to reimburse federal, state, or local units of government for the costs of emergency response and prosecution related to his or her

[199] Other statutes authorizing these costs for conviction of a *misdemeanor* offense are not discussed.

commission of an offense specifically enumerated in the statute. MCL 769.1f(1); MCL 769.1f(9). Allowable expenses include:

- "[t]he salaries or wages, including overtime pay, of law enforcement personnel for time spent responding to the incident from which the conviction arose, arresting the person convicted, processing the person after the arrest, preparing reports on the incident, investigating the incident, and collecting and analyzing evidence, including, but not limited to, determining bodily alcohol content and determining the presence of and identifying controlled substances in the blood, breath, or urine." MCL 769.1f(2)(a).

- "[t]he salaries, wages, or other compensation, including overtime pay, of fire department and emergency medical service personnel, including volunteer fire fighters or volunteer emergency medical service personnel, for time spent in responding to and providing fire fighting, rescue, and emergency medical services in relation to the incident from which the conviction arose." MCL 769.1f(2)(b).

- "[t]he cost of medical supplies lost or expended by fire department and emergency medical service personnel, including volunteer fire fighters or volunteer emergency medical service personnel, in providing services in relation to the incident from which the conviction arose." MCL 769.1f(2)(c).

- "[t]he salaries, wages, or other compensation, including, but not limited to, overtime pay of prosecution personnel for time spent investigating and prosecuting the crime or crimes resulting in conviction." MCL 769.1f(2)(d).

- "[t]he cost of extraditing a person from another state to this state including, but not limited to, all of the following:

  - "[t]ransportation costs.

  - "[t]he salaries or wages of law enforcement and prosecution personnel, including overtime pay, for processing the extradition and returning the person to this state." MCL 769.1f(2)(e).

Costs ordered under MCL 769.1f must be paid immediately unless the court authorizes the individual to pay the amount ordered within a certain period of time or in specific installments. MCL 769.1f(4). If personnel from more than one unit of government incurred any of the expenses described in MCL 769.1f(2), the court may require the defendant to reimburse each unit of government for its expenses related to the incident. MCL 769.1f(3).

As a condition of probation or parole. If an individual required to pay costs under MCL 769.1f is placed on probation or is paroled, the court-ordered costs must be a condition of that probation or parole. MCL 769.1f(5).

Probation or parole revocation for failure to comply with court-ordered costs. An offender's probation or parole may be revoked for his or her failure to comply with the court-ordered costs if the offender has not made a good faith effort at compliance. MCL 769.1f(5). To determine whether to revoke an offender's probation or parole, the following circumstances must be considered:

- the offender's employment status, earning ability, and financial resources;
- the willfulness of the offender's failure to pay; and
- any other circumstances that may impact the offender's ability to pay. MCL 769.1f(5).

1. Offenses That Allow a Court To Order Reimbursement of Costs

In cases involving a conviction for violating or attempting to violate any of the following statutes, a sentencing court has discretion to order a defendant to pay the expenses listed in MCL 769.1f(2). MCL 769.1f(1)(a)-(i).[200] Costs listed here are *not* mandatory, and unless otherwise noted, the following statutes describe felony offenses to which the statutory sentencing guidelines apply.

- **MCL 257.601d**,[201] moving violation causing the death of another person or serious impairment of body function, or violation of a local ordinance substantially corresponding to this section. MCL 769.1f(1)(a).
- **MCL 257.625(1)**, operating a motor vehicle while under the influence of alcoholic liquor and/or a controlled substance, or violating a local ordinance substantially corresponding to this section. MCL 769.1f(1)(a).

[200] Felonious driving is listed in MCL 769.1f(1)(b) but all statutes governing the offense of felonious driving have been repealed. MCL 752.191 and MCL 752.192 were repealed by 2001 PA 134, effective February 1, 2002. MCL 257.626c was repealed by 2008 PA 463, effective October 31, 2010. Negligent homicide is also listed in MCL 769.1f(1)(b), but MCL 750.324, the statute governing the offense of negligent homicide, was also repealed by 2008 PA 463, effective October 31, 2010.

[201] Misdemeanor offenses to which the guidelines do not apply.

- **MCL 257.625(3)**, operating a motor vehicle while visibly impaired, or violating a local ordinance substantially corresponding to this section. MCL 769.1f(1)(a).

- **MCL 257.625(4)**, operating a motor vehicle in violation of MCL 257.625(1), (3), or (8) (operating a motor vehicle with the presence of any schedule 1 controlled substance or controlled substance described in MCL 333.7214(a)(*iv*)) causing death. MCL 769.1f(1)(a).

- **MCL 257.625(5)**, operating a motor vehicle in violation of MCL 257.625(1), (3), or (8) causing serious impairment of a body function. MCL 769.1f(1)(a).

- **MCL 257.625(6)**, "zero tolerance" violations (a minor operating a motor vehicle with any bodily alcohol content), or violations of a local ordinance substantially corresponding to this section. MCL 769.1f(1)(a).

- **MCL 257.625(7)**, child endangerment (operating a motor vehicle in violation of MCL 257.625(1), (3), (4), (5), or (8) when a passenger under the age of 16 is an occupant of the vehicle). MCL 769.1f(1)(a).

- **MCL 257.625m**, operating a commercial vehicle while intoxicated, or violating a local ordinance substantially corresponding to this section. MCL 769.1f(1)(a).

- **MCL 257.626(3)**, reckless driving on highway, frozen public lake, or parking area causing serious impairment of body function, or violating a local ordinance substantially corresponding to this section. MCL 769.1f(1)(a).

- **MCL 257.626(4)**, reckless driving on highway, frozen public lake, or parking area causing death, or violating a local ordinance substantially corresponding to this section. MCL 769.1f(1)(a).

- **MCL 750.321**, manslaughter or attempted manslaughter (as a result of operating a motor vehicle, snowmobile, ORV, aircraft, vessel, or locomotive while impaired by, or under the influence of, alcohol and/or drugs). MCL 769.1f(1)(b).

- **MCL 750.316**,[202] first-degree murder or attempted first-degree murder (as a result of operating a motor vehicle, snowmobile, ORV, aircraft, vessel, or

locomotive while under the influence of alcohol and/or drugs). MCL 769.1f(1)(b).

- **MCL 750.317**,[203] second-degree murder or attempted second-degree murder (as a result of operating a motor vehicle, snowmobile, ORV, aircraft, vessel, or locomotive while under the influence of alcohol and/or drugs). MCL 769.1f(1)(b).

- **MCL 324.82127(1)**, general prohibition against operating a snowmobile while visibly impaired by, or under the influence of, alcohol and/or drugs (a violator of MCL 324.82127(1) may be found guilty under MCL 324.82127(3)[204]). MCL 769.1f(1)(c).

- **MCL 324.82127(4)**, operating a snowmobile under the influence of alcohol and/or drugs causing death. MCL 769.1f(1)(c).

- **MCL 324.82127(5)**, operating a snowmobile under the influence of alcohol and/or drugs causing serious impairment of a body function. MCL 769.1f(1)(c).

- **MCL 324.81134(6)**,[205] third or subsequent conviction within ten years for operating an ORV while under the influence of alcohol and/or drugs. MCL 769.1f(1)(d).

- **MCL 324.81134(7)**, operating an ORV while under the influence of alcohol and/or drugs causing death. MCL 769.1f(1)(d).

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[202] MCL 769.1f(1)(b) simply refers to "murder" and does not identify any specific statute. MCL 769.1f(1)(b) states only that the murder "result[] from the operation of a motor vehicle, snowmobile, ORV, aircraft, vessel, or locomotive engine while the person was impaired by or under the influence of intoxicating liquor or a controlled substance, as defined in [MCL 333.7104], or a combination of intoxicating liquor and a controlled substance, or had an unlawful blood alcohol content." MCL 750.16 is included because it specifically describes a "murder" offense.

[203] MCL 769.1f(1)(b) simply refers to "murder" and does not identify any specific statute, only that the murder "result[] from the operation of a motor vehicle, snowmobile, ORV, aircraft, vessel, or locomotive engine while the person was impaired by or under the influence of intoxicating liquor or a controlled substance, as defined in [MCL 333.7104], or a combination of intoxicating liquor and a controlled substance, or had an unlawful blood alcohol content." MCL 750.17 is included because it specifically describes a "murder" offense.

[204] MCL 324.82127(3) does not specify whether a violation of MCL 324.82127(1) is a felony or a misdemeanor.

[205] Violations of MCL 324.81134(1), MCL 324.81134(2), and MCL 324.81134(3) are misdemeanor offenses to which the guidelines do not apply. MCL 324.81134(4). Payment of the costs of prosecution for violations of MCL 324.81134(1)-(3) is expressly authorized by MCL 324.81134(4). Payment of the expenses of emergency response is authorized by MCL 769.1f(1)(d). A second conviction within seven years under MCL 324.81134(1)-(2) is a misdemeanor offense not subject to the statutory guidelines. MCL 324.81134(5).

- **MCL 324.81134(8)**, operating an ORV while visibly impaired by, or under the influence of, alcohol and/or drugs causing serious impairment of a body function. MCL 769.1f(1)(d).

- **MCL 324.81135(1)**, operating an ORV while visibly impaired.[206] MCL 769.1f(1)(d).

- **MCL 259.185(4)**,[207] operating or serving as a crewmember of an aircraft while under the influence of alcohol and/or drugs causing death. MCL 769.1f(1)(e).

- **MCL 259.185(5)**, operating or serving as a crewmember of an aircraft while under the influence of alcohol and/or drugs causing serious impairment of a body function. MCL 769.1f(1)(e).

- **MCL 259.185(8)**,[208] third or subsequent conviction within ten years of two or more prior convictions for operating or serving as a crewmember of an aircraft while under the influence of alcohol and/or drugs. MCL 769.1f(1)(e).

- **MCL 324.80176(1)**, general prohibition against operating a vessel while under the influence of alcohol and/or drugs, or while visibly impaired, or violating a local ordinance substantially corresponding to this section (a violator of MCL 324.80176(1) may be found guilty under MCL 324.80176(3)[209]). MCL 769.1f(1)(f).

- **MCL 324.80176(4)**, operating a vessel while under the influence of alcohol and/or drugs causing death. MCL 769.1f(1)(f).

- **MCL 324.80176(5)**, operating a vessel while under the influence of alcohol and/or drugs causing serious impairment of a body function. MCL 769.1f(1)(f).

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[206] Misdemeanor offense to which the statutory guidelines do not apply. MCL 324.81135(2). Payment of the costs of prosecution for violating MCL 324.81135(1) is expressly authorized by MCL 324.81135(2).

[207] Violations of MCL 259.185(6) and MCL 259.185(7) are misdemeanor offenses for which payment of the costs of prosecution is expressly authorized in the statutory language governing the offenses.

[208] Statutory language governing this offense expressly authorizes payment of the costs of prosecution.

[209] MCL 324.80176(3) does not specify whether a violation of MCL 324.80176(1) is a felony or a misdemeanor.

- **MCL 462.353(5)**,[210] third or subsequent conviction within ten years of two or more prior convictions for operating a locomotive while under the influence of alcohol and/or drugs. MCL 769.1f(1)(g).

- **MCL 462.353(6)**, operating a locomotive while under the influence of, or visibly impaired by, alcohol and/or drugs causing death. MCL 769.1f(1)(g).

- **MCL 462.353(7)**, operating a locomotive while under the influence of, or visibly impaired by, alcohol and/or drugs causing serious impairment of a body function. MCL 769.1f(1)(g).

- **MCL 750.411a(2)(a)**, making and communicating to another person a false report about a violation of MCL 750.200 *et seq*. (explosives, bombs, and harmful devices) or about a violation of MCL 750.327 (death due to explosives on a vehicle or vessel), MCL 750.328 (death due to explosives in or near a building), MCL 750.397a (placing harmful object or substance in food), or MCL 750.436 (poisoning food, drink, medicine, or water supply). MCL 769.1f(1)(h).

- **MCL 750.411a(2)(b)**, threatening to violate MCL 750.200 *et seq*. (explosives, bombs, and harmful devices) or MCL 750.327 (death due to explosives on a vehicle or vessel), MCL 750.328 (death due to explosives in or near a building), MCL 750.397a (placing harmful object or substance in food), or MCL 750.436 (poisoning food, drink, medicine, or water supply) and communicating the threat to any other person. MCL 769.1f(1)(h).

- **MCL 600.2950(23)**, criminal contempt involving a personal protection order against certain individuals known personally by the petitioner as specified in the statute.[211] MCL 769.1f(1)(i).

- **MCL 600.2950a(23)**, criminal contempt involving a personal protection order against an individual not specified in MCL 600.2950(1).[212] MCL 769.1f(1)(i).

- **MCL 600.2950i**, criminal contempt involving a valid foreign protection order.[213] MCL 769.1f(1)(i).

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[210] Violations of MCL 462.353(3) and MCL 462.353(4) are misdemeanor offenses for which payment of the costs of prosecution is expressly authorized in the statutory language governing the offenses.

[211] Sentencing guidelines do not apply.

[212] Sentencing guidelines do not apply.

[213] Sentencing guidelines do not apply.

2. Offenses That Require a Court To Order Reimbursement of Costs

Reimbursement for expenses listed in MCL 769.1f(2)-(8) must be ordered against an offender for a conviction arising from any violation or attempted violation of the following statutes. MCL 769.1f(9). Reimbursement for the expenses is *not* discretionary, and unless otherwise noted, the statutes below describe felony offenses to which the statutory sentencing guidelines apply.

- **MCL 750.200**, transporting explosives by common carrier.

- **MCL 750.200i**, manufacturing, delivering, possessing, etc., a harmful substance, material, or device[214] for an unlawful purpose, or manufacturing, delivering, possessing, etc., a harmful, substance, material, or device causing property damage, personal injury, or serious impairment of a body function.

- **MCL 750.200j**, manufacturing, delivering, possessing, etc., a chemical irritant, chemical irritant device, smoke device, or imitation harmful substance or device for an unlawful purpose, or manufacturing, delivering, possessing, etc., a chemical irritant, chemical irritant device, smoke device, or imitation harmful substance or device causing property damage, personal injury, serious impairment of a body function, or death.

- **MCL 750.200*l***, causing another person to falsely believe he or she has been exposed to a harmful substance, material, or device.[215]

- **MCL 750.201**, transporting dynamite, nitroglycerine, fulminate in bulk in dry condition, or any other explosive substance.

- **MCL 750.202**, shipping an explosive or other dangerous articles with false markings.

- **MCL 750.204**, sending an explosive substance or other dangerous thing with the intent to frighten, terrorize, intimidate, threaten, etc., any person, or sending an explosive substance or other dangerous thing causing property damage, physical injury, or serious impairment of a body function.

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[214] Biological, chemical, radioactive, electronic, or electromagnetic.

[215] Biological, chemical, radioactive, electronic, or electromagnetic.

- **MCL 750.204a**, possessing, delivering, sending, transporting, etc., an imitation explosive device with the intent to terrorize, frighten, intimidate, threaten, etc., another person.

- **MCL 750.207**, placing an explosive substance with the intent to frighten, terrorize, intimidate, threaten, etc., any person, or placing an explosive substance causing property damage, physical injury, or serious impairment of a body function.

- **MCL 750.209**, placing an offensive/injurious substance with the intent to injure a person or property, or placing an offensive/injurious substance causing property damage, physical injury, or serious impairment of a body function, or to alarm or annoy.

- **MCL 750.209a**, possessing an explosive substance or device in a public place with the intent to terrorize, frighten, intimidate, etc., any person.

- **MCL 750.210**, possessing/carrying an explosive or combustible substance with the intent to frighten, terrorize, intimidate, threaten, etc., any person, or possessing/carrying an explosive or combustible substance causing property damage, physical injury, or serious impairment of a body function.

- **MCL 750.210a**, sale/possession of valerium.

- **MCL 750.211a**, manufacturing/possessing an explosive or incendiary device with the intent to frighten, terrorize, intimidate, threaten, etc., any person, or manufacturing/possessing an explosive or incendiary device causing property damage, physical injury, or serious impairment of a body function.

- **MCL 750.212a**, explosives violation involving a vulnerable target.

- **MCL 750.327**, order, send, take, or carry explosives on a vehicle or vessel and causing death.

- **MCL 750.327a**, sale of bulk gunpowder, dynamite, blasting caps, or nitroglycerine to a minor without written consent of the minor's parent or guardian.[216]

- **MCL 750.328**, placing in, upon, under, against, or near a building any gunpowder or other explosive

[216] Misdemeanor offense to which the statutory guidelines do not apply.

substance with the intent to destroy or injure any part of the building and causing death.

- **MCL 750.436**, various felony violations involving poisoning food, drink, medicine, or the water supply, or as a result of those felony violations causing property damage, physical injury, or serious impairment of a body function, or falsely reporting that food, drink, medicine, or the water supply was poisoned.
- **MCL 750.543f**, knowingly and with premeditation committing an act of terrorism.
- **MCL 750.543h**, hindering prosecution of terrorism or certain terrorist acts.
- **MCL 750.543k**, knowingly soliciting or providing material support for terrorism or terrorist acts.
- **MCL 750.543m**, threatening to commit or making a false report of an act of terrorism.
- **MCL 750.543p**, use of the Internet/telecommunications device or system to disrupt the functions of the state's public safety, educational, commercial, or government operations with the intent to willfully and deliberately commit a felony or certain terrorist acts.
- **MCL 750.543r**, obtaining or possessing a blueprint, architectural or engineering diagram, security plan, or similar information about a vulnerable target with the intent to commit certain terrorist acts.

C. Costs of a Court-Appointed Attorney

"If a defendant is able to pay part of the cost of a lawyer, the court may require contribution to the cost of providing a lawyer and may establish a plan for collecting the contribution." MCR 6.005(C). MCL 769.1k(1)(b)(*iii*) specifically permits a court to impose on a defendant "[t]he expenses of providing legal assistance to the defendant."

A trial court is not required to analyze a defendant's ability to pay a fee for a court-appointed attorney before imposing the fee; it is only required to do so if the fee is actually enforced. *People v Jackson (Harvey)*, 483 Mich 271, 275 (2009), overruling in part *People v Dunbar*, 264 Mich App 240 (2004). However, "[o]nce an ability-to-pay assessment is triggered, the court must consider whether the defendant remains indigent and whether repayment would cause

manifest hardship." *Jackson (Harvey)*, *supra* at 275. In any event, "remittance orders of prisoner funds, under MCL 769.1*l*, generally obviate the need for an ability-to-pay assessment with relation to defendants sentenced to a term of imprisonment because the statute is structured to only take monies from prisoners who are presumed to be nonindigent." *Jackson (Harvey)*, *supra* at 275.

As a condition of probation. A court may order a probationer to pay the expenses incurred in providing legal assistance to him or her. See MCL 771.3(2)(c) and MCL 771.3(5)–MCL 771.3(8). A probationer who is not in willful default of his or her payment of costs under MCL 771.3(2)(c) (expenses specifically incurred to prosecute the defendant, provide him or her with legal assistance, and supervise his or her probation) may petition the court at any time for remission of the unpaid part of the total costs ordered. MCL 771.3(6)(b). The court may modify the method of repayment or remit all or a portion of the amount due if the court finds that payment in full would impose a manifest hardship on the probationer or his or her family. *Id*.

The general authority to impose the monetary penalties listed in MCL 769.1k(1)(a) and (b) also applies when a defendant is placed on probation, probation is revoked, or a defendant is discharged from probation. MCL 769.1k(3). A defendant may be required to pay by wage assignment the costs of his or her legal representation imposed pursuant to MCL 769.1k(1)(b)(*iii*), MCL 769.1k(4), and the court may provide that those costs be collected at any time, MCL 769.1k(5).

8.35 Minimum State Costs

MCL 769.1k provides a court with general authority to impose several specific monetary penalties at the time a defendant is sentenced, at the time a defendant's sentence is delayed, or at the time entry of an adjudication of guilt is deferred. MCL 769.1k(1)(a) expressly requires a court to "impose the minimum state costs as set forth in [MCL 769.1j]." If a defendant is ordered to pay any combination of a fine, costs, or applicable assessments, the court must order the defendant to pay costs of not less than $68 if convicted of a felony or $50 if convicted of a misdemeanor or ordinance violation. MCL 769.1j(1)(a)-(b).[217]

[217] Effective April 1, 2012, 2011 PA 293 amended MCL 769.1j(1) and MCL 769.1j(7) to eliminate the distinction between "serious" and "specified" misdemeanors, and to provide for a minimum assessment of $50.00 against a defendant who commits *any* misdemeanor or ordinance violation. Related provisions were amended by 2011 PA 294—2011 PA 296, also effective April 1, 2012.

> **Note:** Minimum state costs are to be assessed on each qualifying conviction based upon the offense convicted, so long as "any combination of other assessments is also ordered on that count (e.g. fine + cost, fine + restitution, crime victim assessment + restitution, etc.)." SCAO Crime Victim Assessment and Minimum State Cost Charts, p 2, p 2 n 5 (Revised April 1, 2012).[218]

In addition to the authority to impose minimum state costs, a court may order a defendant to pay any costs incurred to compel his or her appearance. MCL 769.1k(2). MCL 769.1k(4) authorizes a court to order that a defendant pay by wage assignment any of the costs authorized in MCL 769.1k(1) and MCL 769.1k(2). A court may provide for the collection of costs imposed under MCL 769.1k at any time. MCL 769.1k(5). Unless otherwise provided by law, a court may apply any payments made in excess of the total amount owed by a defendant in one case to any amounts owed by the same defendant in any other case. MCL 769.1k(6).

As a condition of probation. Payment of the minimum state cost must be a condition of probation. MCL 769.1j(3); MCL 771.3(1)(g). A probationer who is not in willful default of his or her payment of the minimum state cost may petition the court at any time for remission of the unpaid part of the total costs ordered. MCL 771.3(6)(b). The court may modify the method of repayment or remit all or a portion of the amount due if the court finds that payment in full would impose a manifest hardship on the probationer or his or her family. *Id*.

The requirement under MCL 769.1f(1)(a) to impose the minimum state costs set forth in MCL 769.1j also applies when a defendant is placed on probation, probation is revoked, or a defendant is discharged from probation. MCL 769.1k(3).

8.36 Crime Victim Assessment[219]

The court is required to "order each person charged with an offense that is a felony, misdemeanor, or ordinance violation . . . that is resolved by conviction . . . or in another way that is not an acquittal or unconditional dismissal, to pay an assessment" of $130.00 if the offense is a felony or $75.00 if the offense is a misdemeanor or ordinance violation. MCL 780.905(1)(a)-(b).[220] In contrast to the minimum state cost, which may be ordered for each conviction arising from a single case,[221] only one crime

[218] The Crime Victim Assessment and Minimum State Costs Charts are available at http://courts.mi.gov/Administration/SCAO/Resources/Documents/other/CrimeVictimAssessment.pdf.

[219] See the Michigan Judicial Institute's *Crime Victim Rights Manual* for more information about crime victim assessments.

victim assessment per criminal case may be ordered, even when the case involves multiple offenses. MCL 780.905(2).[222]

MCL 769.1k provides a court with general authority to impose "[a]ny assessment authorized by law" on a defendant at the time a defendant is sentenced, at the time a defendant's sentence is delayed, or at the time entry of an adjudication of guilt is deferred. MCL 769.1k(1)(b)(*iv*). In addition to any assessment imposed, a court may order a defendant to pay any costs incurred to compel his or her appearance. MCL 769.1k(2). MCL 769.1k(4) authorizes a court to order that a defendant pay by wage assignment an assessment imposed pursuant to MCL 769.1k(1)(b)(*iv*). A court may provide for the collection of any assessment imposed under MCL 769.1k(1) at any time. MCL 769.1k(5). Unless otherwise provided by law, a court may apply any payments made in excess of the total amount owed by a defendant in one case to any amounts owed by the same defendant in any other case. MCL 769.1k(6).

As a condition of probation. Payment of the crime victim assessment must be a condition of an offender's probation. MCL 771.3(1)(f).

The general authority to impose the monetary penalties in MCL 769.1k(1)(b) also applies when a defendant is placed on probation, probation is revoked, or a defendant is discharged from probation. MCL 769.1k(3).

8.37 Restitution

Restitution in Michigan is a crime victim's constitutional and statutory right.[223] Const 1963, art 1, § 24; MCL 769.1a(2); MCL 780.766(2). "At sentencing, the court must, on the record[,] order that the defendant make full restitution as required by law to any victim of the defendant's

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[220] Effective April 1, 2012, 2011 PA 294 amended MCL 780.901 and MCL 780.905(1) to provide for a crime victim assessment of $75.00 in cases involving a conviction of *any* misdemeanor or ordinance violation (rather than only a "serious" or "specified" misdemeanor). Related provisions were amended by 2011 PA 293, 2011 PA 295, and 2011 PA 296, also effective April 1, 2012.

"[I]mposition of an enhanced . . . crime victim[] assessment fee" against a defendant who committed a felony before the effective date of the statutory amendment effecting a fee increase from $60 to $130, 2010 PA 281, does not violate the Ex Post Facto Clause of either the United States Constitution or the Michigan Constitution, because "an assessment under the [Crime Victim's Rights Act, MCL 780.751 *et seq*.,] is neither restitution nor punishment." *People v Earl (Ronald)*, ___ Mich App ___, ___ (2012).

[221] Minimum state costs are assessed on each count "if any combination of other assessments is also ordered on that count (e.g. fine + cost, fine + restitution, crime victim assessment + restitution, etc.)." SCAO Crime Victim Assessment and Minimum State Cost Charts, p 2, p 2 n 5 (Revised April 1, 2012).

[222] The crime victim assessment is to be "[b]ased upon the [m]ost [s]erious [o]ffense [c]onvicted" in a case. SCAO Crime Victim Assessment and Minimum State Cost Charts, p 1 (Revised April 1, 2012).

[223] See the Michigan Judicial Institute's *Crime Victim Rights Manual* for a more complete discussion of restitution.

course of conduct that gives rise to the conviction, or to that victim's estate." MCR 6.425(E)(1)(f).

Because restitution is mandatory, defendants are on notice that it will be part of their sentences. *People v Ronowski*, 222 Mich App 58, 61 (1997). "[Restitution] is [not] open to negotiation during the plea-bargaining or sentence-bargaining process[.]" *Ronowski*, *supra* at 61.

Restitution is "specifically designed to allow crime victims to recoup losses suffered as a result of criminal conduct." *People v Grant (Dennis)*, 455 Mich 221, 230 (1997). "In determining the amount of restitution to order under [MCL 780.766], the court shall consider the amount of the loss sustained by any victim as a result of the offense." MCL 780.767(1). These provisions are "'remedial in character and should be liberally construed to effectuate [the] intent [of the Crime Victim's Rights Act, MCL 780.751 *et seq*.].'" *People v Allen (Regina)*, 295 Mich App 277, 282 (2012). "Because [MCL 780.766(2)] plainly requires the trial court to order 'full' restitution, . . . a trial court abuses its discretion when it orders restitution other than full restitution." *Allen (Regina)*, *supra* at 281 n 1.

The amount of restitution ordered must have evidentiary support. *People v Guajardo*, 213 Mich App 198, 200 (1995). Evidence in support of the loss may come from facts found in a defendant's presentence report, from the content of a victim impact statement, or from information adduced at sentencing. *Grant (Dennis)*, 455 Mich at 233-234; *People v Hart*, 211 Mich App 703, 706 (1995).

The court must "consider only the loss sustained by the victims," and must not consider the defendant's ability to pay. *People v Lueth*, 253 Mich App 670, 692 (2002). MCL 780.766(2) "authorizes the sentencing court to order criminal defendants to pay restitution to all victims, even if those specific losses were not the factual predicate for the conviction." *People v Gahan*, 456 Mich 264, 270 (1997).

For the purposes of restitution only, the Code of Criminal Procedure and the Crime Victim's Rights Act (CVRA) define "victim" as "an individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a [crime]." MCL 769.1a(1); MCL 780.766(1).

With a few exceptions,[224] and for purposes of restitution, a victim can be "a sole proprietorship, partnership, corporation, association, governmental entity, or any other legal entity that suffers direct physical or financial harm as a result of a [crime]." MCL 769.1a(1); MCL 780.766(1).

[224] For example, legal entities are not victims for purposes of MCL 780.766(4) (physical or psychological injury to a victim), or MCL 780.766(5) (bodily injury resulting in a victim's death or serious impairment of a victim's body function).

Although MCL 780.766(1) authorizes restitution for financial harm sustained by a governmental entity, restitution is not properly ordered for the routine costs of a criminal investigation when those costs are ordinarily incurred no matter what the outcome of the investigation. *People v Newton*, 257 Mich App 61, 69-70 (2003). However, the loss of "buy money" may be included in an order of restitution because "buy money" does not represent the costs ordinarily incurred in a county's criminal investigation and would not have been subject to loss were it not for the defendant's commission of a crime. *Newton*, *supra* at 69. Where a narcotics enforcement team fails to recover money expended during a criminal investigation, a victim (the enforcement team) has suffered financial harm (loss of the "buy money") as a direct result of the defendant's criminal conduct. *Id*., citing *People v Crigler*, 244 Mich App 420, 427 (2001).

A defendant need not have personally benefited to the extent reflected by the restitution amount; all that is required is that the defendant's criminal conduct caused the amount of loss addressed by the restitution order. *Lueth*, 253 Mich App at 692.

Property that cannot be returned. In situations in which a defendant is ordered to make restitution to a victim for property that is lost, damaged, or destroyed, and the property cannot be returned, MCL 769.1a(3) applies. MCL 769.1a(3) states:

> "If a felony, misdemeanor, or ordinance violation results in damage to or loss or destruction of property of a victim of the felony, misdemeanor, or ordinance violation or results in the seizure or impoundment of property of a victim of the felony, misdemeanor, or ordinance violation, the order of restitution may require that the defendant do 1 or more of the following, as applicable:
>
> > "(a) Return the property to the owner of the property or to a person designated by the owner.
> >
> > "(b) If return of the property under subdivision (a) is impossible, impractical, or inadequate, pay an amount equal to the greater of subparagraph (*i*) or (*ii*), less the value, determined as of the date the property is returned, of that property or any part of the property that is returned:
> >
> > > "(*i*) The fair market value of the property on the date of the damage, loss, or destruction. However, if the fair market value of the property cannot be determined or is impractical to ascertain, then the replacement value of the property shall be utilized in lieu of the fair market value.

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> "(*ii*) The fair market value of the property on the date of sentencing. However, if the fair market value of the property cannot be determined or is impractical to ascertain, then the replacement value of the property shall be utilized in lieu of the fair market value."

Civil damages. The amount of court-ordered restitution may not be reduced by the amount of an unpaid civil judgment obtained by the victim against the defendant. *People v Dimoski*, 286 Mich App 474, 482 (2009). The distinction between restitution and civil damages is reflected in the setoff scheme of MCL 780.766(9), which provides that "[a]ny amount paid to a victim . . . under an order of restitution shall be set off against any amount later recovered as compensatory damages by the victim . . . ." *Dimoski*, *supra* at 478. "Although [a] victim [may] have the benefit of both a civil judgment and a restitution order to obtain monetary relief from [a] defendant, the availability of two methods does not mean that the victim will have a double recovery, but merely increases the probability that the perpetrator of a crime will be forced to pay for the wrongdoing committed." *Id*. at 482.

Civil agreement. A civil agreement between a defendant and a crime victim limiting future claims against the defendant does not negate the statutory requirement that the defendant be ordered to pay restitution to any victim of the defendant's conduct or to an entity from which a victim has received compensation. *People v Bell (Bernice)*, 276 Mich App 342, 343-350 (2007).

Insurance company. "[A]n insurance company may be awarded restitution . . . for money paid to a victim for a defendant's criminal act." *Bell (Bernice)*, 276 Mich App at 346-347. "The amount of restitution to be paid by a defendant must be based on the actual loss suffered by the victim, not the amount paid by an insurer or other entity." *Bell (Bernice)*, *supra* at 347.

The trial court did not clearly err in determining that an insurance company "suffered a direct financial loss as a result of [the defendant's] course of criminal conduct[]" in attempting to purchase a controlled substance from a pharmacy using an insurance contract number that she extracted from a subscriber database during her employment with the company's vendor. *Allen (Regina)*, 295 Mich App at 279, 283 (affirming the trial court's order requiring the defendant to pay restitution to the company in an amount determined by "assigning a value to the hours [the company's employee] spent on the [fraud] investigation[]").

Cost of labor. The amount of restitution ordered may include the cost of labor necessary to determine the value of property lost as a result of a defendant's criminal conduct, as well as the labor costs involved in

replacing the lost property. *People v Gubachy*, 272 Mich App 706, 709, 713-714 (2006) (where the defendant stole three plumbing trucks, the trial court did not abuse its discretion in ordering reimbursement for the value of the plumbing store's labor costs in conducting an inventory and reequipping the trucks).

Lost income. If the evidence demonstrates loss based on the replacement value of stolen items as well as expected profits, the trial court may consider lost profits in assessing restitution. *People v Cross (Clifton)*, 281 Mich App 737, 738-740 (2008) (trial court's order of restitution for income loss was supported by prosecutorial evidence and by "the victim's extensive, essentially expert, testimony").

Restitution hearing. A restitution hearing is not required unless there is an actual dispute as to the amount. *Grant (Dennis)*, 455 Mich at 244. "Any dispute as to the proper amount or type of restitution shall be resolved by the court by a preponderance of the evidence. The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense shall be on the prosecuting attorney." MCL 780.767(4). "'Preponderance of the evidence' means such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth." *Cross (Clifton)*, 281 Mich App at 740. The rules of evidence, with the exception of those relating to privilege, do not apply to restitution (sentencing) hearings. MRE 1101(b)(3).

Incarceration for willful failure to pay restitution. MCL 769.1a(14) "prohibits incarceration as a consequence for failure to pay [restitution] unless the failure was wil[l]ful." *People v Collins (Richard)*, 239 Mich App 125, 136 (1999). This is because "a sentence that exposes an offender to incarceration unless he [or she] pays restitution . . . violates the Equal Protection Clauses of the federal and state constitutions because it results in unequal punishments for offenders who have and do not have sufficient money." *Collins (Richard)*, *supra* at 135-136 (trial court's sentencing order violated Equal Protection principles because it "rewarded restitution payments with a suspension of jail time").

Time limitations on restitution. Generally, restitution must be made immediately. MCL 780.766(10). The Department of Corrections may execute a restitution order by withdrawing funds from a prisoner's account, and there is no legal right "to cessation of [] restitution payments while [a defendant] remains incarcerated." *White-Bey v Dep't of Corrections*, 239 Mich App 221, 222, 225 (2000). However, the court has the discretion to require a defendant to make restitution within a specified period or in installments. MCL 780.766(10).

As a condition of probation. While restitution must be imposed as a condition of probation, MCL 771.3(1)(e) and MCL 780.766(11), the court may not revoke probation on the basis of the defendant's failure to pay

restitution that the defendant cannot afford. MCL 769.1a(14); MCL 780.766(14). The defendant may petition the sentencing judge to modify the method of payment based upon manifest hardship. MCL 769.1a(12); MCL 780.766(12).

Restitution not dischargeable in bankruptcy. Restitution ordered as part of a sentence of imprisonment or imposed as a condition of probation is not dischargeable in bankruptcy. 11 USC 523(a)(13).

Standard of review. "A trial court does not have discretion to order a convicted defendant to pay restitution; it must order the defendant to pay restitution and the amount must fully compensate the defendant's victims." *Allen (Regina)*, 295 Mich App at 281.

> "Whether and to what extent a loss must be compensated is a matter of statutory interpretation; and [the Court of Appeals] reviews de novo the proper interpretation of statutes. . . . However, [the] Court reviews the findings underlying a trial court's restitution order for clear error. . . . A finding is clearly erroneous if [the] Court is left with the definite and firm conviction that a mistake has been made." *Allen (Regina)*, 295 Mich App at 281 (citations omitted).

8.38 Use of Bail Money to Pay Costs, Fines, Restitution, and Other Assessments

When a defendant personally makes the cash deposit required for his or her bond, the defendant must be notified that if he or she is convicted, the cash deposit may be applied to any court-ordered fine, costs, restitution, assessment, or other payment. MCL 765.6c. If a defendant's bond or bail is discharged and the defendant himself or herself personally supplied cash for the bond or bail, the balance of the cash may be used toward payment of any court-ordered fine, costs, restitution, assessment, or other payment. MCL 765.15(2). In cases where the court orders a defendant to pay a fine, costs, restitution, assessment, or other payment, the court *must* order that payment be made from the defendant's personally deposited cash bond or bail after it has been discharged. *Id*.

Unless otherwise provided by law, a court may apply any payments made in excess of the total amount owed by a defendant in one case to any amounts owed by the same defendant in any other case. MCL 769.1k(6).

Allocation of the funds available under MCL 765.15, and of payments made by a defendant toward the total amount owed, is governed by MCL 775.22.[225]

- Fifty percent of the amount available or received must be applied to victim payments (without regard to the underlying violation). MCL 775.22(2); MCL 780.766a(2); MCL 780.794a(2); and MCL 780.826a(2).

  "'Victim payment' means restitution ordered to be paid to the victim or the victim's estate, but not to a person who reimbursed the victim for his or her loss, or an assessment under . . . MCL 780.905."[226] MCL 775.22(5).

In cases involving violations of state law, the balance of the amount available or received (after fifty percent is applied to the victim payment) must be apportioned in the following order of priority:

- Payment of the minimum state cost under MCL 769.1j.[227]
- Payment of other costs.
- Payment of fines.
- Payment of probation or parole supervision fees.
- Payment of assessments and other payments.

MCL 775.22(3); MCL 780.766a(3); MCL 780.794a(3)[228]; and MCL 780.826a(3).[229]

In cases involving violations of local ordinances, the balance of the amount available or received (after fifty percent is applied to the victim payment) must be apportioned as follows:

- Payment of the minimum state cost under MCL 769.1j.[230]
- Payment of other costs.
- Payment of fines.
- Payment of assessments and other payments.

MCL 775.22(4); MCL 780.766a(4); MCL 780.794a(4); and MCL 780.826a(4).

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[225] Provisions in the Crime Victim's Rights Act concerning the allocation of funds mirror those in MCL 775.22. See MCL 780.766a, MCL 780.794a, and MCL 780.826a.

[226] Minimum state costs. See Section 8.35 for discussion of minimum state costs.

[227] See Section 8.35 for discussion of minimum state costs.

[228] MCL 780.794a(3) also expressly includes "reimbursement to third parties who reimbursed a victim for his or her loss."

[229] MCL 780.826a(3) also expressly includes "reimbursement to third parties who reimbursed a victim for his or her loss."

[230] SeeSection 8.35 for discussion of minimum state costs.

MCL 780.766a(1) governs the allocation of money collected from an offender who is obligated to make payments in more than one proceeding and who, when making a payment, fails to specify the proceeding to which the payment applies. MCL 780.766a(1) states in part:

> "If a person is subject to fines, costs, restitution, assessments, probation or parole supervision fees, or other payments in more than 1 proceeding in a court and if a person making a payment on the fines, costs, restitution, assessments, probation or parole supervision fees, or other payments does not indicate the proceeding for which the payment is made, the court shall first apply the money paid to a proceeding in which there is unpaid restitution to be allocated as provided in this section."

If a person making a payment indicates that the payment is to be applied to victim payments, or if the payment is received as a result of a wage assignment or from the department of corrections, sheriff, department of human services, or county juvenile agency, the payment must first be applied to victim payments. MCL 780.766a(2); MCL 780.794a(2); MCL 780.826a(2).

8.39 Probation Supervision Fee

Offenders must pay a probation supervision fee when sentenced in circuit court.[231] MCL 771.3(1)(d). A table of probation supervision fees as determined by an offender's income is included in MCL 771.3c.

"[T]he court shall consider the probationer's projected income and financial resources" when determining the appropriate amount of the probationer's supervision fee. MCL 771.3c(1). In any event, the monthly supervision fee may not exceed $135, and may not continue for more than 60 months. *Id*. If a supervision fee is ordered for months in which a probationer is already subject to a supervision fee, the court must waive the fee having the shorter remaining duration. *Id*.

[231] See Section 8.40 for a detailed discussion of probation.

Part H—Specific Types of Sentences

8.40 Probation

A. In General

"It is the intent of the legislature that the granting of probation is a matter of grace conferring no vested right to its continuance." MCL 771.4.

A court may place a defendant on probation under the charge and supervision of a probation officer, if the court determines that a defendant convicted of any crime other than murder, treason, first-degree criminal sexual conduct, third-degree criminal sexual conduct, armed robbery, or major controlled substance offenses, is unlikely to engage in an offensive or criminal course of conduct again, and that the public good does not require that the defendant suffer the penalty imposed by law. MCL 771.1(1).

> **Note:** Although not included in MCL 771.1(1), the court may not place a defendant on probation when he or she was convicted of any of the offenses for which mandatory prison sentences are prescribed by statute.

> **Note:** "[T]he Legislature did not include the attempt statute [(MCL 750.92)] in the list of felonies for which a defendant could not be given probation . . . [thereby] evidenc[ing] an intent to include probation as another alternative sentence under the attempt statute." *People v McKeown*, 228 Mich App 542, 545 (1998).

Whether probation is an authorized alternative to imprisonment depends also on whether the legislative sentencing guidelines apply to a specific sentencing offense. *People v Buehler*, 477 Mich 18, 27-28 (2007). The legislative sentencing guidelines expressly authorize probationary terms for offenses subject to the guidelines when the recommended minimum sentence range falls within an intermediate sanction cell. MCL 769.31(b). Therefore, absent any substantial and compelling reason for departure, when an offense is expressly made subject to the legislative sentencing guidelines, probation is a valid alternative sentence only if the properly scored guidelines place a defendant in an intermediate sanction cell. *Buehler*, *supra* at 27-28.

Except as provided in MCL 771.2a (dealing with probation periods for various stalking and sex offenses), the term of probation imposed on a defendant convicted of a felony offense must not exceed five years. MCL 771.2(1). For purposes of the Code of Criminal

Procedure's probation statute, "felony" includes two-year misdemeanors. MCL 761.1(g); *People v Smith (Timothy)*, 423 Mich 427, 434 (1985).

If a court sentences a defendant to probation, it must, in a court order filed with the case and made a part of the record, set the length of the probationary period and determine the terms on which the probation is conditioned. MCL 771.2(2).

> **Note:** Effective March 1, 2003, 2002 PA 666 eliminated the "lifetime probation" provision in MCL 771.1(4). Before the amendment, a trial court could sentence a defendant to lifetime probation for violating or conspiring to violate MCL 333.7401(2)(a)(*iv*) or MCL 333.7403(2)(a)(*iv*). 2002 PA 666 also amended MCL 771.2 to eliminate lifetime probation sentences imposed before the amendment's effective date—March 1, 2003. MCL 771.2(3). 2010 PA 351, effective December 22, 2010, amended MCL 771.2(3) to extend the probation reforms of 2002 PA 666 to individuals placed on lifetime probation for an offense committed before March 1, 2003. MCL 771.2(3) continues to prohibit any reduction in the probation period imposed under former MCL 771.1(4) "other than by a revocation that results in imprisonment or as otherwise provided by law."

B. Mandatory Conditions of Probation

During the term of an individual's probation, he or she must comply with all of the mandatory conditions of probation set out in MCL 771.3(1)(a)-(h):

- the probationer must not violate any criminal law.
- the probationer must not leave Michigan without the court's consent.
- the probationer must report (in person or in writing) to his or her probation officer each month, or as often as the probation officer requires.
- if the probationer is sentenced in circuit court, he or she must pay a probation supervision fee as set out in MCL 771.3c.
- the probationer must pay restitution to the victim of the probationer's course of conduct leading to the conviction, or to the victim's estate.
- the probationer must pay a crime victim assessment as set out in MCL 780.905.[232]

- the probationer must pay the minimum state cost as set out in MCL 769.1j.[233]

  - MCL 769.1k(1)(a) requires a court to impose the minimum state cost (set out in MCL 769.1j) on a defendant at the time the defendant is sentenced, at the time entry of judgment of guilt is deferred, or at the time sentence is delayed. The court may also order the defendant to pay any additional costs incurred in compelling his or her appearance. MCL 769.1k(2). MCL 769.1k(1) and MCL 769.1k(2) "apply even if the defendant is placed on probation, probation is revoked, or the defendant is discharged from probation." MCL 769.1k(3).

  - For minimum state costs ordered pursuant to MCL 769.1k, MCL 769.1k(4) authorizes a court to order that a defendant pay such costs by wage assignment. In addition, a court may provide for the collection of any costs imposed pursuant to MCL 769.1k at any time. MCL 769.1k(5).

  - Unless otherwise required by law, a court may apply any payments made in excess of the total amount imposed in one case to any amounts owed by the same defendant in any other case. MCL 769.1k(6).

- if required, the probationer must be registered under the sex offenders registration act (MCL 28.721 to MCL 28.736).[234]

  - If a defendant is placed on probation for an offense listed in MCL 28.722 in the sex offenders registration act (SORA), the defendant's probation officer must register the defendant or must accept the defendant's registration. MCL 771.2(4).

C. Discretionary Conditions of Probation

A trial court has broad discretion in determining any additional terms and conditions to impose as part of probation. *People v Oswald*, 208 Mich App 444, 446 (1995). During the term of an individual's probation, he or she may be required to comply with one or more of the following discretionary terms and conditions set out in MCL 771.3(2)(a)-(q) and MCL 771.3(3):

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[232] SeeSection 8.36 for discussion of crime victim assessments.

[233] See Section 8.35 for discussion of minimum state costs.

[234] See the Michigan Judicial Institute's *Sexual Assault Benchbook* for detailed information concerning the Sex Offenders Registration Act.

- be imprisoned in the county jail for a maximum period of 12 months or up to the maximum period of confinement allowed for the charged offense if less than 12 months.
  - a period of incarceration may be served at one time or in consecutive or nonconsecutive intervals.
  - the probationer may be allowed day parole or a work or school release from jail.
- pay immediately, or within the period of his or her probation, any fine imposed when the individual was placed on probation.

  Note: The probation statutory provision, MCL 771.3(2)(b), does not restrict the amount of the fine a trial court is authorized to impose as a condition of probation. *Oswald*, 208 Mich App at 445-446 ($1,500 fine imposed as a condition of probation was valid where underlying statute permitted a maximum fine of $1,000 for conviction).

- pay costs, limited to expenses specifically incurred in prosecuting the defendant or providing legal assistance to the defendant, and supervision of the probationer.

  Note: Costs ordered by the trial court must be "limited to expenses specifically incurred in prosecuting the defendant or providing legal assistance to the defendant and supervision of the probationer." MCL 771.3(5). A defendant may be ordered to pay the costs of prosecution *and* the costs of defense. *People v Humphreys*, 221 Mich App 443, 452 (1997). A trial court may impose costs under MCL 771.3(5) to reimburse the prosecution's expense of an expert witness at trial, because such costs are "'expenses specifically incurred in prosecuting the defendant[.]'" *People v Brown (Craig)*, 279 Mich App 116, 139 (2008). However, "the Legislature did not intend the reimbursement of costs of confinement to be a proper condition of probation." *People v Houston (JT)*, 237 Mich App 707, 719 (1999).

  However, the express text of MCL 771.3(2)(p), authorizes a trial court to require as a condition of probation, that the offender "[r]eimburse[] the county for expenses incurred by the county in connection with the conviction for which probation was ordered as provided in the prisoner reimbursement to the county act, . . . MCL 801.81 to [MCL] 801.93." And see MCL

801.81, specifically referred to by the probation statute, MCL 771.3(2)(p), where the Legislature expressly provides authority—without judiciary involvement—to collect reimbursement for a defendant's confinement in a county jail. MCL 801.83 states in relevant part:

> "(1) The county may seek reimbursement for any expenses incurred by the county in relation to a charge for which a person was sentenced to a county jail as follows:
>
> > "(a) From each person who is or was a prisoner, not more than $60.00 per day for the expenses of maintaining that prisoner or the actual per diem cost of maintaining that prisoner, whichever is less, for the entire period of time the person was confined in the county jail, including any period of pretrial detention."[235]

MCL 800.404a and MCL 800.405 represent statutory authority to collect amounts owed by an offender using any appropriate legal action.

- pay any assessment ordered by the court other than the crime victim assessment.
- perform community service.
- agree to pay by wage assignment any court-ordered restitution, assessment, fine, or cost.
- participate in inpatient or outpatient drug treatment or a drug treatment court.

  Note: A drug treatment court may accept participants from any other jurisdiction based on the participant's residence or the unavailability of a drug treatment court in the jurisdiction where the participant is charged, if the defendant, the defendant's attorney, the prosecutor, the judge of the transferring court, the judge of the receiving court, and the prosecutor of the receiving drug treatment court's funding unit agree to the defendant's participation in the drug treatment court. MCL 600.1062(4)(a)-(d).

- participate in mental health treatment.

[235] MCL 800.403 - MCL 800.804..

- participate in mental health or substance abuse counseling.
- participate in a community corrections program.
- be under house arrest.
- be subject to electronic monitoring.
- participate in a residential probation program.
- satisfactorily complete a program of incarceration in a special alternative incarceration unit as set out in MCL 771.3b.[236]
- be subject to conditions reasonably necessary for the protection of one or more named persons.
- reimburse the county for expenses incurred in connection with the probationer's conviction as set out in MCL 801.81 to MCL 801.93.
- complete a high school education or the equivalent by attaining a general education development (GED) certificate.
- be subject to other lawful conditions of probation deemed proper by the court or warranted by the circumstances of the case.

  Note: "In setting additional conditions [under MCL 771.3(3)], a sentencing court must be guided by factors that are lawfully and logically related to the defendant's rehabilitation." *People v Johnson (Larry)*, 210 Mich App 630, 634 (1995).

D. Requirements When Costs Are Imposed

If costs are imposed on a probationer under MCL 771.3(2) as part of a sentence of probation, all of the provisions of MCL 771.3(6) apply:

- the court must not require the probationer to pay costs unless he or she is, or will be, able to pay them during the term of probation.
- the court must take into account the probationer's financial resources and the nature of the burden that payment of the costs will cause, considering the probationer's other obligations.

[236] See Section 8.47 for more information.

- a probationer who is required to pay costs under MCL 771.3(1)(g) or MCL 771.3(2)(c), and who is not in willful default of payment, may at any time petition the sentencing judge (or his or her successor) for a remission of the payment of any unpaid portion of those costs.

- if the court determines that payment of the amount due will cause the probationer or his or her immediate family a manifest hardship, the court may remit all or part of the amount of costs due, or modify the payment method.

If a probationer is required to pay costs as part of a sentence of probation, the court may require him or her to pay the costs:

- immediately, or

- within a specified time period, or

- in installments. MCL 771.3(7).

Whenever a probationer is ordered to pay costs as part of his or her sentence of probation, compliance with that order must be a condition of probation. MCL 771.3(8). If the probationer fails to comply with the order to pay costs, and has not made a good faith effort at compliance, the court has discretion to revoke probation. *Id*. In deciding whether to revoke probation, the court must consider the factors set out in MCL 771.3(8):

- the probationer's employment status.

- the probationer's earning ability.

- the probationer's financial resources.

- the willfulness of the probationer's failure to pay.

- any other special circumstances that may impact a probationer's ability to pay.

E. Plea Agreements and Orders of Probation

A defendant is not entitled to withdraw his or her plea or to demand specific performance of a plea agreement when a trial court imposes otherwise valid conditions on the defendant's probation even if the conditions were not included in the plea agreement. *Johnson (Larry)*, 210 Mich App at 634-635.

F. Amending an Order of Probation

A court may amend a probation order in form or substance at any time, MCL 771.2(2), and a defendant is not entitled to notice or an opportunity to be heard regarding an amendment, unless the amendment would result in a fundamental change in his or her liberty interest, such as confinement. *People v Britt*, 202 Mich App 714, 716 (1993) (placement in an electronic tether program is not the equivalent of confinement; accordingly, due process protections do not attach before amendment of a probation order to include placement in an electronic tether program).

G. Revoking Probation

"If during the probation period the sentencing court determines that the probationer is likely again to engage in an offensive or criminal course of conduct or that the public good requires revocation of probation, the court may revoke probation." MCL 771.4. A trial court's jurisdiction to revoke a defendant's probation and sentence him or her to imprisonment is limited to the duration of the probationary period; if the probationary period expires, the trial court loses jurisdiction to revoke probation and impose a prison sentence. *People v Glass (Brent)*, 288 Mich App 399, 408-409 (2010).

H. Termination of the Probation Period

When a probationer's term of probation terminates, the probation officer must report to the court that the probation period has ended. MCL 771.5(1) The officer must also inform the court of the probationer's conduct during the probation period. *Id*. "Upon receiving the report, the court may discharge the probationer from further supervision and enter a judgment of suspended sentence or extend the probation period as the circumstances require, so long as the maximum probation period is not exceeded." *Id*.

I. Stalking Offenses and Orders of Probation

1. Stalking

In accord with the general rule in MCL 771.2(1), an individual convicted of violating MCL 750.411h (stalking) may be sentenced to no more than five years of probation. MCL 771.2a(1); MCL 750.411h(3). A probationary period imposed for a stalking conviction is subject to the terms and conditions of probation contained in MCL 750.411h(3) and MCL 771.3. MCL 771.2a(1). In addition to other lawful conditions imposed, MCL

750.411h(3) permits a court to order a defendant sentenced to probation to:

- refrain from stalking any person during his or her probationary term;
- refrain from any contact with the victim of the offense for which the defendant is placed on probation;
- be evaluated to determine whether the defendant needs psychiatric, psychological, or social counseling; and
- if the court determines it is appropriate, receive the indicated counseling at the defendant's own expense. MCL 750.411h(3)(a)-(c).

2. Aggravated Stalking

An individual who is sentenced to probation for a violation of MCL 750.411i (aggravated stalking) may be sentenced to probation for any term of years, but the court must sentence the individual to a term of probation of not less than five years. MCL 771.2a(2); MCL 750.411i(4). A probationary period imposed for an aggravated stalking conviction is subject to the terms and conditions of probation contained in MCL 750.411i(4) and MCL 771.3.[237] MCL 771.2a(2). MCL 750.411i(4) also authorizes a court to order a defendant who is sentenced to probation to:

- refrain from stalking any person during the term of probation;
- refrain from any contact with the victim of the offense for which the defendant is placed on probation;
- be evaluated to determine whether the defendant needs psychiatric, psychological, or social counseling; and
- if the court determines it is appropriate, receive the indicated counseling at the defendant's own expense. MCL 750.411i(4)(a)-(c).

J. Sex Offenders and Probation Orders

Except for the nonprobationable offenses in MCL 771.1 and as otherwise provided by law, a court may place an individual convicted

[237] See Section 8.40(B) and Section 8.40(C) for mandatory and discretionary conditions of probation under MCL 771.3.

of a "listed offense"[238] on probation for any term of years but not less than five years. MCL 771.2a(6). Additional conditions of probation must be ordered when an individual is placed on probation under MCL 771.2a(6). Subject to the provisions in MCL 771.2a(7)-(12), the court must order an individual placed on probation under MCL 771.2a(6) **not** to do any of the following:

- reside within a student safety zone, MCL 771.2a(7)(a);
- work within a student safety zone, MCL 771.2a(7)(b); or
- loiter within a student safety zone, MCL 771.2a(7)(c).

A "student safety zone" is defined as the area that lies 1,000 feet or less from school property. MCL 771.2a(13)(f).

For purposes of MCL 771.2a, "school" and "school property" are defined in MCL 771.2a(13) as follows:

> "(d) 'School' means a public, private, denominational, or parochial school offering developmental kindergarten, kindergarten, or any grade from 1 through 12. School does not include a home school.
>
> "(e) 'School property' means a building, facility, structure, or real property owned, leased, or otherwise controlled by a school, other than a building, facility, structure, or real property that is no longer in use on a permanent or continuous basis, to which either of the following applies:
>
> > "(*i*) It is used to impart educational instruction.
> >
> > "(*ii*) It is for use by students not more than 19 years of age for sports or other recreational activities."

K. Sex Offenders Exempted from Probation

Even if a person was convicted of a "listed offense," MCL 771.2a(12) permits the court to exempt that person from being placed on probation under MCL 771.2a(6) if either of the following circumstances apply:

> "(a) The individual has successfully completed his or her probationary period under [the youthful trainee act, MCL 762.11-MCL 762.15,] for committing a listed

[238] Tier I, tier II, and tier III listed offenses are described in the Sex Offenders Registration Act at MCL 28.722(s), MCL 28.722(u), and MCL 28.722(w), respectively.

offense and has been discharged from youthful trainee status.

"(b) The individual was convicted of committing or attempting to commit a violation solely described in [MCL 750.520e(1)(a)[239]], and at the time of the violation was 17 years of age or older but less than 21 years of age and is not more than 5 years older than the victim."

L. School Safety Zones

There are exceptions to the mandatory probation conditions concerning school safety zones. Under the circumstances described below, the prohibitions found in MCL 771.2a(7) do not apply to individuals convicted of a listed offense.

1. Residing Within a Student Safety Zone

The court shall not prohibit an individual on probation after conviction of a listed offense from residing within a student safety zone, MCL 771.2a(7)(a), if any of the following provisions in MCL 771.2a(8) apply:

"(a) The individual is not more than 19 years of age and attends secondary school or postsecondary school, and resides with his or her parent or guardian. However, an individual described in this subdivision shall be ordered not to initiate or maintain contact with a minor within that student safety zone. The individual shall be permitted to initiate or maintain contact with a minor with whom he or she attends secondary school or postsecondary school in conjunction with that school attendance.

"(b) The individual is not more than 26 years of age, attends a special education program, and resides with his or her parent or guardian or in a group home or assisted living facility. However, an individual described in this subdivision shall be ordered not to initiate or maintain contact with a minor within that student safety zone. The individual shall be permitted to initiate or maintain contact with a minor with whom he or

[239] CSC-IV where the individual is at least 5 years older than the victim and the victim is at least 13 years of age but less than 16 years of age.

> she attends a special education program in conjunction with that attendance.
>
> "(c) The individual was residing within that student safety zone at the time the amendatory act that added this subdivision was enacted into law. However, if the individual was residing within the student safety zone at the time the amendatory act that added this subdivision was enacted into law,[240] the court shall order the individual not to initiate or maintain contact with any minors within that student safety zone. This subdivision does not prohibit the court from allowing contact with any minors named in the probation order for good cause shown and as specified in the probation order."

In addition to the above exceptions, the prohibition against residing in a student safety zone, MCL 771.2a(7)(a), does not prohibit a person on probation after conviction of a listed offense from "being a patient in a hospital or hospice that is located within a student safety zone." MCL 771.2a(9). The hospital exception "does not apply to an individual who initiates or maintains contact with a minor within that student safety zone." *Id*.

2. Working Within a Student Safety Zone

If an individual on probation under MCL 771.2a(6) was working within a student safety zone at the time the amendatory act adding these prohibitions was enacted into law,[241] he or she cannot be prohibited from working in that student safety zone as indicated in MCL 771.2a(7)(b). MCL 771.2a(10). If a person was working within a student safety zone at the time of this amendatory act, "the court shall order the individual not to initiate or maintain contact with any minors in the course of his or her employment within that student safety zone." *Id*. As with MCL 771.2a(8)(c), for good cause shown, a court is not prohibited by MCL 771.2a(10) from allowing the probationer contact with any minors named in the probation order and as specified in the probation order. MCL 771.2a(10).

If an individual on probation under MCL 771.2a(6) only intermittently or sporadically enters a student safety zone for work purposes, the court shall not impose the condition in MCL

[240] Effective January 1, 2006. 2005 PA 126.

[241] Effective January 1, 2006. 2005 PA 126.

771.2a(7)(b) that would prohibit the person from working in a student safety zone. MCL 771.2a(11). Even when a person intermittently or sporadically works within a student safety zone, he or she shall be ordered "not to initiate or maintain contact with any minors in the course of his or her employment within that safety zone." *Id*. For good cause shown and as specified in the probation order, the court may allow the person contact with any minors named in the order. *Id*.

8.41 Delayed Sentencing

Delayed sentencing refers to the process by which a defendant's guilt is adjudicated and the resulting conviction remains on record. However, where a defendant is eligible for a sentence of probation, the court may elect to delay imposing sentence on the defendant for up to one year to allow the defendant to demonstrate that probation, or other leniency compatible with the ends of justice and the defendant's rehabilitation, is an appropriate sentence for his or her conviction. During the period of delay, the court may require the defendant to comply with any applicable terms and conditions associated with a sentence of probation. See, generally, *People v Saylor (Barry)*, 88 Mich App 270, 274-275 (1979), and MCL 771.1(2).

"The purpose of a delayed sentence is to give the defendant an opportunity to demonstrate that he [or she] can fairly be placed on probation rather than be sentenced to prison. The trial court may impose conditions and restrictions with which the defendant must comply during the period of the delay, so long as the restrictions are reasonably designed to help the court determine whether probation will ultimately be appropriate. The imposition of such conditions or restrictions should not be confused with a sentence of probation, even though they are similar to those associated with probation. Thus, a delayed sentence means that no sentence is initially imposed . . . ." *People v Salgat*, 173 Mich App 742, 745-746 (1988).

"The sentence ultimately imposed should be based upon all of the circumstances of the defendant's background. Among the factors to be considered in sentencing [are] the defendant's failure to comply with the conditions and restrictions imposed in conjunction with the sentence delay." *Salgat*, 173 Mich App at 746.

MCL 771.1(2) states:

> "In an action in which the court may place the defendant on probation, the court may delay sentencing the defendant for not more than 1 year to give the defendant an opportunity to prove to the court his or her eligibility for probation or other

> leniency compatible with the ends of justice and the defendant's rehabilitation, such as participation in a drug treatment court under . . . MCL 600.1060 to [MCL] 600.1082. When sentencing is delayed, the court shall enter an order[242] 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."

"Reasonable conditions may be imposed for the delay if they will give the defendant an opportunity to prove his or her eligibility for probation or leniency." *People v Saenz*, 173 Mich App 405, 409 (1988). Requiring a defendant to participate in a drug court, MCL 771.1(2), or obtain psychiatric treatment, may be valid conditions of a delayed sentence. *Saenz*, *supra* at 409. Incarceration in jail is not a valid condition of a delayed sentence. *Id*.

A defendant generally does not have a right to a formal hearing on whether he or she violated a condition of a delayed sentencing arrangement. *Salgat*, 173 Mich App at 746. Due process is satisfied if a defendant is given the opportunity to respond to information contained in his or her presentence investigation report, and to bring any other pertinent information to the court's attention. *Saylor (Barry)*, 88 Mich App at 275.

After the one-year period of delay authorized by MCL 771.1(2), a court loses jurisdiction to sentence a defendant, unless good cause is shown for the additional delay. *People v Boynton*, 185 Mich App 669, 670-671 (1990) (court lost jurisdiction to sentence the defendant where, for unexplained reasons, the sentencing hearing was held two days past the one-year statutory time limit); *People v McLott*, 70 Mich App 524, 529-531 (1976) (court retained jurisdiction to sentence the defendant where sentencing judge was unavailable on the original sentencing date, a new date was promptly set, and sentencing was only delayed for a few days beyond the one-year statutory time limit).

"[A] defendant may waive the one-year requirement and consent to the personal jurisdiction of the court for the purpose of sentencing." *People v Richards (Larry)*, 205 Mich App 438, 445 (1994). An unexcused violation of the one-year delay in sentencing only affects the court's authority to sentence the defendant. *Boynton*, 185 Mich App at 671. "[An] unauthorized delay [in sentencing] deprives the court only of jurisdiction to sentence. The defendant remains convicted of the crime and subject to any collateral consequences thereafter." *People v Turner (Halbert)*, 92 Mich App 485, 489-490 (1979).

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[242] See SCAO form MC 294, *Order Delaying Sentence*, available at http://courts.mi.gov/Administration/SCAO/Forms/courtforms/criminaldisposition/mc294.pdf.

Supervision fees. In cases involving delayed sentencing, supervision fees are authorized under MCL 771.1(3).

If the court delays imposing sentence under MCL 771.1(2), it must indicate in the delayed sentence order that the Department of Corrections must collect a supervision fee from the defendant as provided in MCL 771.1(3).

MCL 771.1(3) contains the monetary considerations to be applied to a defendant whose sentencing has been delayed. The court must determine the amount of the monthly supervision fee owed by a defendant by considering the defendant's projected income and financial resources. MCL 771.1(3). Unlike the supervision fee ordered when a defendant is *sentenced* to a probationary period that may be for as many as 60 months (MCL 771.3c(1)), the supervision fee ordered in cases of delayed sentencing can be for no more than 12 months. MCL 771.1(3). The maximum monthly amount that may be ordered is $135, and a defendant cannot be subject to more than one supervision fee at a time. *Id*. "If a supervision fee is ordered for a person for any month or months during which that person already is subject to a supervision fee, the court shall waive the fee having the shorter remaining duration." *Id*.

Other costs. In addition to a supervision fee, a defendant whose sentencing is delayed must pay the minimum state costs detailed in MCL 769.1j.[243] MCL 769.1k(1)(a). MCL 769.1k provides a court with general authority to impose fines, costs, expenses of providing legal assistance, assessments, and reimbursement under MCL 769.1f on a defendant at the time his or her sentence is delayed. MCL 769.1k(1). A court may also order a defendant whose sentence is delayed to pay any additional costs incurred to compel his or her appearance. MCL 769.1k(2). A court may require a defendant to pay any fine, cost, or assessment ordered to be paid under MCL 769.1k by wage assignment. MCL 769.1k(4). In addition, a court may provide for the amounts imposed under MCL 769.1k to be collected at any time. MCL 769.1k(5). Unless otherwise required by law, a court may apply any payments made in excess of the total amount imposed in one case to any amounts owed by the same defendant in any other case. MCL 769.1k(6).

8.42 Deferred Adjudication of Guilt

Deferred adjudication refers to the situation in which a defendant pleads or is found guilty of a charged offense, but where the adjudication of guilt is not immediately entered. The court instead places the defendant on probation and if he or she successfully completes the terms and

[243] See Section 8.35 for discussion of minimum state costs.

conditions of probation, the court must discharge the defendant and dismiss the proceedings; no judgment of guilt is entered against the defendant. If the defendant violates a term or condition of probation during the probationary period, the court has the discretion to continue the probationary period, or to enter an adjudication of guilt and sentence the defendant. Deferred adjudication is expressly authorized for six different offenses. Under very specific circumstances, a court may defer adjudication of guilt and place an individual on probation for the following types of offenses:

- controlled substances, MCL 333.7411 (the statutory violations listed in MCL 333.7411 include both misdemeanor and felony offenses). The offenses under MCL 333.7411 for which deferred adjudication is authorized are as follows:
  - MCL 333.7403(2)(a)(*v*), possession of less than 25 mg of a schedule 1 or 2 controlled substance or cocaine-related substance (felony).
  - MCL 333.7403(2)(b), possession of a schedule 1, 2, 3, or 4 controlled substance or controlled substance analogue, or ecstasy, or methamphetamine, etc. (felony).
  - MCL 333.7403(2)(c), possession of a schedule 5 controlled substance, LSD, peyote, mescaline, etc. (misdemeanor).
  - MCL 333.7403(2)(d), possession of marijuana (misdemeanor).
  - MCL 333.7404, use of a controlled substance or controlled substance analogue without a valid prescription (misdemeanor).
  - MCL 333.7341, possession/use of an imitation controlled substance—second offense (misdemeanor).
- minor in possession, MCL 436.1703 (misdemeanor).
- impaired healthcare professional, MCL 750.430 (misdemeanor).
- domestic violence/spousal abuse, MCL 769.4a. The offenses under MCL 769.4a for which deferred adjudication is authorized are:
  - MCL 750.81, assault and battery—first offense (misdemeanor).

  - MCL 750.81a, assault causing serious injury—first offense (misdemeanor).

- parental kidnapping, MCL 750.350a (felony).

- youthful trainee status, MCL 762.11 (the statutory violations to which MCL 762.11 applies include both misdemeanor and felony offenses).

The procedure involved in deferred adjudication cases is similar for all six of the areas listed above. However, because deferral under the youthful trainee act, MCL 762.11 *et seq.*, requires attention to circumstances not shared by the other five statutes, this area is discussed separately in Section 8.43. The steps of the process for deferral under the remaining five areas—controlled substances, minor in possession, impaired healthcare professional, domestic violence/spousal abuse, and parental kidnapping—are discussed in general below, and provisions unique to any of the five areas in which a deferred adjudication of guilt is available will be noted within the discussion itself.

A. Defendant Must Have No Previous Convictions for Offenses Specified in Statute

To qualify for deferral, a defendant must not have a previous conviction for any of the offenses specified by the applicable statute.

Controlled substances ("§7411"). A defendant must have no previous convictions for an offense listed under article 7 of the controlled substance act or an offense under any statute of the United States or any state related to narcotic drugs, cocaine, marijuana, stimulants, depressants, or hallucinogenic drugs. MCL 333.7411(1).

A conviction entered simultaneously with the charge to which a defendant seeks deferment under §7411 is not a "previous conviction" for purposes of §7411 and so does not render the defendant ineligible for §7411 status. *People v Ware*, 239 Mich App 437, 442 (2000).

Minor in possession. An individual must not have a previous conviction or a juvenile adjudication for violating MCL 436.1703(1), which prohibits a minor from purchasing/attempting to purchase, consuming/attempting to consume, possessing/attempting to possess alcoholic liquor, or having any bodily alcohol content. MCL 436.1703(3). "A violation of [MCL 436.1703(1)] successfully deferred, discharged, and dismissed under [MCL 436.1703(3)] is considered a prior violation for the purposes of [MCL 436.1703(1)(b) (governing second violations of MCL 436.1703(1)) and MCL 436.1703(1)(c) (governing third or subsequent violations)]." MCL 436.1703(4).

Impaired healthcare professional. A defendant must not have a previous conviction for violating MCL 750.430(1) (engaging in the practice of his or her profession with a bodily alcohol content specified in the statute or while under the influence of an illegally or improperly used controlled substance that visibly impairs the individual's ability to practice safely). MCL 750.430(8)(a). In addition, to qualify for deferral under this provision, the conduct for which the defendant seeks deferral must not have resulted in physical harm or injury to the patient. *Id*.

Domestic violence/spousal abuse. A defendant must have no previous convictions for an assaultive crime as defined in MCL 769.4a(7)(a). MCL 769.4a(1).

Parental kidnapping. A defendant must not have a previous conviction for violating MCL 750.349 (kidnapping), MCL 750.350 (taking a child under age 14 from the child's parent, adoptive parent, or legal guardian), or MCL 750.350a (adoptive or natural parent taking a child, or retaining a child for more than 24 hours, with intent to conceal or detain the child), or for violating any statute of the United States or other state related to kidnapping. MCL 750.350a(4).

B. Defendant's Guilt Is Established by Plea or by Verdict

Generally, to qualify for deferral a defendant must plead guilty to or be found guilty of an offense listed in the statutory provision under which deferred adjudication is sought.

§7411. A defendant must plead guilty to or be found guilty of an offense expressly listed in MCL 333.7411(1). These offenses are possession of a controlled substance under MCL 333.7403(2)(a)(*v*), MCL 333.7403(2)(b), MCL 333.7403(2)(c), or MCL 333.7403(2)(d); use of a controlled substance under MCL 333.7404; or possession or use of an imitation controlled substance under MCL 333.7341 for a second time. MCL 333.7411(1).

Minor in possession. The individual must plead guilty to, or offer a plea of admission in a juvenile delinquency proceeding for, a violation of MCL 436.1703(1). MCL 436.1703(3).

Impaired healthcare professional. The statutory provision contains no language requiring a plea or other finding of guilt. See MCL 750.430(8)(a). The provision later refers to the court's entry of an adjudication of guilt, an act that implicitly requires that the defendant's guilt be established in some manner. *Id*.

Domestic violence/spousal abuse. An individual must plead guilty to or be found guilty of a violation of MCL 750.81 (assault and battery) or MCL 750.81a (assault causing serious injury). MCL

769.4a(1). The statutory provision also requires that the victim of the defendant's conduct be a person listed in the statute: the defendant's spouse/former spouse; an individual with whom the defendant has a child in common; an individual who is dating or has dated the defendant; or an individual residing in or who has resided in the same household as the defendant. *Id*.

Parental kidnapping. An individual must plead guilty to or be found guilty of a violation of MCL 750.350a. MCL 750.350a(4).

C. Defendant Must Consent to a Deferral of Adjudication

§7411. Deferred adjudication requires the defendant's consent. MCL 333.7411(1).

Minor in possession. Deferred adjudication requires the defendant's or juvenile's consent. MCL 436.1703(3).

Impaired healthcare professional. In addition to the defendant's consent, deferred adjudication also requires the prosecutor's consent. MCL 750.430(8)(a).

Domestic violence/spousal abuse. In addition to the defendant, the prosecuting attorney, in consultation with the victim, must consent to a defendant's deferred adjudication. MCL 769.4a(1).

Parental kidnapping. The defendant must consent to deferred adjudication. MCL 750.350a(4).

D. Defendant Placed on Probation and Proceedings Deferred

When all of the requirements in Section 8.42(A), Section 8.42(B), and Section 8.42(C), are satisfied, the court places the defendant on probation, further proceedings are deferred, and no judgment or adjudication of guilt is entered.

§7411. MCL 333.7411(1).

Minor in possession. MCL 436.1703(3).

Impaired healthcare professional. MCL 750.430(8)(a).

Domestic violence/spousal abuse. Before deferring proceedings under MCL 750.4a, the court must first contact the department of state police to determine whether, according to police records, the defendant has previously been convicted of an assaultive crime or has previously availed himself or herself of the deferral described in MCL 769.4a. MCL 769.4a(1). If the records show that a defendant was arrested for an assaultive crime but do not show a disposition, the

court must contact the arresting agency and the court with jurisdiction over the violation to determine the disposition of the arrest. *Id*.

Parental kidnapping. MCL 750.350a(4).

E. Terms and Conditions of Probation Imposed Pursuant to Deferred Adjudication Provisions

The offenses for which deferred adjudication is available are not limited to felony offenses. Therefore, jurisdiction over the offenses may be in district court or circuit court, depending on whether the offense is a misdemeanor or a felony. MCL 771.3(9) specifically applies to deferred adjudications occurring in circuit court, and MCL 771.3(10) specifically applies to deferred adjudications occurring in district court.

According to MCL 771.3(9):

> "If entry of judgment is deferred *in the circuit court*, the court shall require the individual to pay a supervision fee in the same manner as is prescribed for a delayed sentence under [MCL 771.1(3)], shall require the individual to pay the minimum state costs prescribed by [MCL 769.1j],[244] and may impose, as applicable, the conditions of probation described in [MCL 771.3(1), MCL 771.3(2), and MCL 771.3(3)]." (Emphasis added.)

According to MCL 771.3(10):

> "If . . . entry of judgment is deferred *in the district court* . . . , the court shall require the individual to pay the minimum state costs prescribed by [MCL 769.1j],[245] and may impose, as applicable, the conditions of probation described in [MCL 771.3(1), MCL 771.3(2), and MCL 771.3(3)]." (Emphasis added.)

For deferred adjudications in circuit court, the supervision fee required by MCL 771.1(3) must be imposed on the defendant pursuant to MCL 771.3(9). However, no express language requires that a supervision fee be imposed on a defendant whose adjudication is deferred in district court.

Imposition of a supervision fee for a defendant whose adjudication is deferred by the district court appears to be authorized by MCL

[244] See Section 8.35 for discussion of minimum state costs.

[245] See Section 8.35 for discussion of minimum state costs.

771.3(5) when costs are imposed under MCL 771.3(2), a provision expressly mentioned in MCL 771.3(10). MCL 771.3(10) expressly authorizes a district court to impose any of the conditions described in MCL 771.3(1), (2), and (3), and MCL 771.3(2) expressly authorizes the district court to require the defendant to "[p]ay costs pursuant to subsection (5)." MCL 771.3(5) states: "If the court requires the probationer to pay costs under subsection (2), the costs shall be limited to expenses specifically incurred in prosecuting the defendant or providing legal assistance to the defendant *and supervision of the probationer*." (Emphasis added.)

In sum, the interaction between and among MCL 771.3(9), MCL 771.3(10), and the individual deferred adjudication statutes must be examined carefully to determine the court's authority with regard to the imposition of supervision fees. Supervision fees are expressly required when an adjudication is deferred in circuit court. Supervision fees are not required when an adjudication is deferred in district court. However, MCL 771.3(5) may provide the district court with the authority and the discretion to impose supervision fees when adjudication is deferred in district court for misdemeanor offenses.

In the benchbook's discussion regarding the imposition of costs and supervision fees in deferred adjudication cases, care will be taken to first explain any express provisions in each individual deferred adjudication statute concerning the imposition of costs or supervision fees, followed by an explanation of the provisions in MCL 771.3(9) and MCL 771.3(10) concerning those same issues.

Any mandatory terms or conditions of probation[246] imposed under each of the areas discussed in this subsection are outlined below.

§7411. Under §7411, the defendant must pay a probation supervision fee as prescribed by MCL 771.3c. MCL 333.7411(1). The statutory language in MCL 333.7411(1) expressly mentions only that a defendant may be ordered to participate in a drug treatment court, but MCL 771.3(9) and MCL 771.3(10) authorize the court to impose any other term or condition it deems appropriate to the offense and the offender.[247]

A defendant convicted of violating article 7 of the controlled substance act (except for violations of MCL 333.7401(2)(a)(*i*) to (*iv*) or MCL 333.7403(2)(a)(*i*) to (*iv*)[248]) may, as part of the defendant's

[246] See Section 8.40 for detailed information regarding terms and conditions of probation.

[247] MCL 333.7411(1) expressly requires the court to impose on the probationer the supervision fee indicated in MCL 771.3c. This express language appears to require that the supervision fee be imposed without regard to whether the offense for which adjudication is being deferred is a misdemeanor or felony offense under the jurisdiction of either the district or the circuit court.

confinement or probation, be required to attend a program addressing the medical, psychological, and social effects of the misuse of drugs. MCL 333.7411(4). The defendant may be required to pay a fee for the program, and failure to complete a court-ordered program is a violation of the terms and conditions of the defendant's probation. *Id*.

If a defendant is twice convicted of violating MCL 333.7341(4),[249] the court must, before the court imposes a sentence under MCL 333.7411(1), order the defendant to undergo substance abuse screening and assessment to determine whether rehabilitative services would likely benefit the defendant. MCL 333.7411(5). As part of a sentence imposed under MCL 333.7411(1), the defendant may be required to participate in and successfully complete one or more appropriate rehabilitation programs (e.g., alcohol or drug education and alcohol or drug treatment programs). MCL 333.7411(5). The defendant must pay the costs of screening, assessment, and rehabilitative services, and failure to complete a court-ordered rehabilitation program is a violation of the defendant's probation. MCL 333.7411(5).

Minor in possession. The minor must comply with the sanctions outlined in MCL 436.1703(1)(a):

- a fine of not more than $100;
- if ordered, participation in substance abuse prevention services or substance abuse treatment and rehabilitation services as defined in MCL 333.6107;[250]
- if ordered, community service; and
- if ordered, substance abuse screening and assessment at his or her own expense as set out in MCL 436.1703(5).

The minor must also pay costs including the minimum state cost described in MCL 712A.18m and MCL 769.1j[251] and probation costs required by MCL 771.3. MCL 436.1703(3). Because a violation of MCL

[248] *Major controlled substance offenses* are discussed in detail in Section 8.16.

[249] Prohibits use/possession with intent to use an imitation controlled substance.

[250] MCL 333.6107(4) defines *substance abuse prevention services* as "those services which reduce the risk of individuals developing problems that could require entry into the substance abuse treatment system, including crisis intervention for potential substance abusers." *Substance abuse treatment and rehabilitation services* are defined in MCL 333.6107(5) as "the provi[sion] of identifiable services including: (a) [c]risis intervention counseling services for individuals who are current or former substance abusers[;] (b) [r]eferral services for individuals who are substance abusers, their families, and the general public[; and] (c) [p]lanned treatment services, including chemotherapy, counseling, or rehabilitation for individuals physiologically or psychologically dependent upon or abusing alcohol or drugs."

[251] SeeSection 8.35 for discussion of minimum state costs.

436.1703(1) is a misdemeanor offense over which the district court has jurisdiction, see also MCL 771.3(10), which expressly discusses terms and conditions of probation when adjudication is deferred in district court:

> "If . . . entry of judgment is deferred in the district court . . . , the court shall require the individual to pay the minimum state costs prescribed by [MCL 769.1j][252] and may impose, as applicable, the conditions of probation described in [MCL 771.3(1), MCL 771.3(2), and MCL 771.3(3)]."

Supervision fees for deferrals in district court are authorized by MCL 771.3(5). According to MCL 771.3(5), "[i]f the court requires the probationer to pay costs under [MCL 771.3(2)], the costs shall be limited to expenses specifically incurred in prosecuting the defendant or providing legal assistance to the defendant and supervision of the probationer."

Impaired healthcare professionals. The defendant must participate in the health professional recovery program established by MCL 333.16167. MCL 750.430(8)(a). The statutory provision also expressly mentions that a defendant may be ordered to participate in a drug treatment court as a condition of his or her probation *Id*.

Other than the specific conditions of probation discussed above, MCL 750.430(8)(a) makes no other express reference to the terms and conditions of probation found in MCL 771.3. MCL 750.430(8)(a) states only that court "may defer further proceedings and place the accused on probation[.]" However, because a violation of MCL 750.430 is a misdemeanor under the district court's jurisdiction, "the court shall require the individual to pay the minimum state costs prescribed by [MCL 769.1j][253] and may impose, as applicable, the conditions of probation described in [MCL 771.3(1), MCL 771.3(2), and MCL 771.3(3)]." MCL 771.3(10).

Supervision fees for deferred adjudications in district court are authorized by MCL 771.3(5). According to MCL 771.3(5), "[i]f the court requires the probationer to pay costs under [MCL 771.3(2)], the costs shall be limited to expenses specifically incurred in prosecuting the defendant or providing legal assistance to the defendant and supervision of the probationer."

Domestic violence/spousal abuse. No mandatory terms or conditions of probation are required by the provision authorizing

[252] See Section 8.35 for discussion of minimum state costs.

[253] See Section 8.35 for discussion of minimum state costs.

deferral for the offenses listed in this statute. MCL 769.4a(3) expressly indicates that a defendant may be required to participate both in a mandatory counseling program and a drug treatment court, and that "[a]n order of probation entered under [MCL 769.4a(1)] may include any condition of probation authorized under [MCL 771.3]." MCL 769.4a(3). The defendant may be required to pay the reasonable costs of the counseling program. MCL 769.4a(3).

In addition, because the qualifying violations under MCL 750.430 are misdemeanor offenses under the district court's jurisdiction,[254] "the court shall require the individual to pay the minimum state costs prescribed by [MCL 769.1j][255] and may impose, as applicable, the conditions of probation described in [MCL 771.3(1), MCL 771.3(2), and MCL 771.3(3)]." MCL 771.3(10).

Supervision fees for deferred adjudications in district court are authorized by MCL 771.3(5). According to MCL 771.3(5), "[i]f the court requires the probationer to pay costs under [MCL 771.3(2)], the costs shall be limited to expenses specifically incurred in prosecuting the defendant or providing legal assistance to the defendant and supervision of the probationer."

Parental kidnapping. No mandatory terms or conditions of probation are required by the provision authorizing deferral for the offense- listed in MCL 750.350a. Express language in MCL 750.350a(4) states only that the accused parent may be placed on probation "with lawful terms and conditions . . . [that] may include participation in a drug treatment court[.]" The statute makes no reference to the imposition of costs or supervision fees. Therefore, because a violation of MCL 750.350a(1) is a felony offense, the provisions of MCL 771.3(9) apply. According to MCL 771.3(9), when a defendant's adjudication is deferred in circuit court, the court must order the defendant to pay a supervision fee as designated in MCL 771.1(3). The court must also order the defendant to pay the minimum state costs prescribed by MCL 769.1j.[256] In addition, and as applicable, MCL 771.3(9) authorizes the court to impose any condition of probation listed in MCL 771.3(1), MCL 771.3(2), and MCL 771.3(3).

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[254] First-time violations of MCL 750.81 and MCL 750.81a are misdemeanor offenses for which deferred adjudication is available under MCL 769.4a. MCL 769.4a(1).

[255] See Section 8.35 for discussion of minimum state costs.

[256] See Section 8.35 for discussion of minimum state costs.

F. Failure to Successfully Complete the Probationary Period

With the exceptions detailed below, the court generally has discretion to enter a judgment of guilt and proceed to sentencing when a defendant violates a term or condition of his or her probation.

§7411. The court has discretion to enter an adjudication of guilt and proceed to sentencing if a defendant violates a term or condition of probation. MCL 333.7411(1). Adjudication of guilt is not mandatory under §7411 under these circumstances. *Id*.

Minor in possession. The court has discretion to enter an adjudication of guilt or finding of responsibility if a defendant or a juvenile violates a term or condition of probation, or when the court finds that the defendant or juvenile is using MCL 436.1703(3) in another court. MCL 436.1703(3).

Impaired healthcare professional. The court has discretion to enter an adjudication of guilt and sentence the defendant to prison for not more than 180 days or impose a fine of not more than $1,000, or both, if a defendant violates a term or condition of probation. MCL 750.430(8)(a)-(b).

Domestic violence/spousal abuse. Except as described below, a court has discretion to enter an adjudication of guilt and proceed to sentencing if a defendant violates a term or condition of probation. MCL 769.4a(2).

A court must enter an adjudication of guilt and proceed to sentencing if the defendant commits an assaultive crime during the period of his or her probation. MCL 769.4a(4)(a). An "assaultive crime" for purposes of this provision means the term as it is defined in MCL 770.9a(3), a violation of MCL 750.81 to MCL 750.90g, or a violation of a law of another state or of a local ordinance of a political subdivision of this state or of another state that substantially corresponds to an offense found in MCL 770.9a(3) or MCL 750.81 to MCL 750.90g. MCL 769.4a(4)(a).

Entry of an adjudication of guilt and proceeding to sentencing is also mandatory if the defendant violates a court order requiring that the defendant receive counseling for his or her violent behavior, MCL 769.4a(4)(b), or if the defendant violates a court order prohibiting contact with a named individual, MCL 769.4a(4)(c).

Parental kidnapping. The court has discretion to enter an adjudication of guilt and proceed to sentencing if the defendant violates a term or condition of probation. MCL 750.350a(4).

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G. Successful Completion of the Probationary Period

A court must discharge the defendant (or juvenile) and dismiss the proceedings against him or her when the defendant (or juvenile) has fulfilled the terms and conditions of his or her probationary period.

§7411. MCL 333.7411(1).

Minor in possession. MCL 436.1703(3).

Impaired healthcare professional. MCL 750.430(8)(a).

Domestic violence/spousal abuse. MCL 769.4a(5).

Parental kidnapping. MCL 750.350a(4).

H. Discharge and Dismissal Without Entry of an Adjudication of Guilt

§7411. With the exception of determining an individual's eligibility for discharge and dismissal from a drug treatment court (MCL 600.1076(4)), discharge and dismissal under §7411 is not a conviction for purposes of the statute under which the individual was granted a deferred adjudication of guilt, MCL 333.7411(1), or for purposes of disqualifications or disabilities imposed by law for criminal convictions, MCL 333.7411(2)(b). Additionally, the discharge and dismissal is not a conviction for purposes of the penalties imposed for subsequent convictions under MCL 333.7413. MCL 333.7411(1).

When a defendant has successfully completed the term of probation imposed under MCL 333.7411, the felony charge is dismissed and is not a felony conviction for purposes of the concealed pistol licensing act (CPLA), MCL 28.421 *et seq*. *Carr v Midland Co Concealed Weapons Licensing Bd*, 259 Mich App 428, 438 (2003).

Minor in possession. Discharge and dismissal under MCL 436.1703 is without an adjudication of guilt or a determination of responsibility in a delinquency proceeding and is not a conviction or juvenile adjudication for purposes of MCL 436.1703 or for purposes of disqualifications or disabilities imposed by law for criminal convictions (including additional penalties imposed for second or subsequent convictions or juvenile adjudications under MCL 436.1703(1)(b) and MCL 436.1703(1)(c)). MCL 436.1703(3).

Impaired healthcare professional. A discharge and dismissal under MCL 750.430 is without adjudication of guilt and is not a conviction for purposes of MCL 750.430 or for purposes of disqualifications or disabilities imposed by law for conviction of a crime, including

additional penalties imposed for second or subsequent convictions under MCL 750.430(8). MCL 750.430(8)(a).

Domestic violence/spousal abuse. A discharge and dismissal under MCL 769.4a is without adjudication of guilt and is not a conviction for purposes of MCL 769.4a or for purposes of disqualifications or disabilities imposed by law for conviction of a crime. MCL 769.4a(5). However, the statutory provision does not expressly state that a discharge and dismissal is not a conviction for purposes of subsequent convictions subject to additional penalties. *Id*.

Parental kidnapping. A discharge and dismissal under MCL 750.350a is without adjudication of guilt and is not a conviction for purposes of disqualifications or disabilities imposed by law for conviction of a crime, including any additional penalties imposed for second or subsequent convictions. MCL 750.350a(4). Unlike other deferred adjudication statutes, MCL 750.350a(4) does not include express language excepting a discharge and dismissal under this provision from being considered a conviction for purposes of MCL 750.350a. MCL 750.350a(4).

I. Record of Deferred Adjudication

§7411. The state police record and identifications division must retain a nonpublic record of an arrest and discharge or dismissal under §7411. MCL 333.7411(2). See MCL 333.7411(2)(a)-(c) for circumstances under which, and people to whom, the record will be furnished.

An offender whose adjudication of guilt is deferred under MCL 333.7411 and whose case is dismissed after successful completion of the terms of probation does not qualify as "not guilty" for purposes of MCL 28.243(8), and is therefore not entitled to the destruction of his or her fingerprints and arrest card. *People v Benjamin*, 283 Mich App 526, 527-528, 537 (2009).

A discharge and dismissal following a defendant's successful fulfillment of probation under the deferred adjudication provisions of MCL 333.7411 is not a prior misdemeanor conviction for purposes of scoring prior record variable (PRV) 5. *People v James (Derrick)*, 267 Mich App 675, 678-680 (2005). MCL 333.7411(1) specifically states that "[d]ischarge and dismissal under [MCL 333.7411] shall be without adjudication of guilt and . . . is not a conviction for purposes of [MCL 333.7411] or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime . . . ."

Minor in possession. During the period when proceedings are deferred and the individual is on probation, and if there is a discharge and dismissal, the court must maintain a nonpublic record of the

matter. MCL 436.1703(3). The secretary of state must retain a nonpublic record of a plea and of the discharge and dismissal under MCL 436.1703(3). MCL 436.1703(3). See MCL 436.1703(3)(a)-(b) for circumstances under which, and people to whom, the record will be furnished.

Impaired healthcare professional. The state police record and identifications division must retain a nonpublic record of an arrest and discharge or dismissal under MCL 750.430(8)(a). MCL 750.430(8)(a). See MCL 750.430(8)(a)(*i*)-(*ii*) for circumstances under which, and people to whom, the record will be furnished.

Domestic violence/spousal abuse. The department of state police must retain a nonpublic record of an arrest and discharge and dismissal under MCL 769.4a. MCL 769.4a(6). See MCL 769.4a(6) for circumstances under which, and people to whom, the record will be furnished.

An offender whose adjudication of guilt was deferred under MCL 769.4a and whose case is dismissed after successful completion of a diversionary program does not qualify as "not guilty" and is not entitled to the destruction of his or her fingerprint card under MCL 28.243(8). *McElroy v Michigan State Police Criminal Justice Info Ctr*, 274 Mich App 32, 33 (2007).

Parental kidnapping. The department of state police must retain a nonpublic record of an arrest and discharge and dismissal under MCL 750.350a(4). MCL 750.350a(4). See MCL 750.350a(4)(a)-(b) for circumstances under which, and people to whom, the record will be furnished.

J. Only One Discharge and Dismissal Available

Except as noted below for parental kidnapping, an individual may obtain only one discharge and dismissal under each of the deferred adjudication statutes discussed in this section.

§7411. MCL 333.7411(1).

Minor in possession. MCL 436.1703(3).

Impaired healthcare professional. MCL 750.430(8)(a).

Domestic violence/spousal abuse. MCL 769.4a(6).

Parental kidnapping. The statute governing deferred adjudication in this area does not contain any express language limiting a defendant to only one discharge and dismissal. However, because the language does not except a discharge and dismissal under this section from

being considered a conviction for purposes of this statute, an individual who has once utilized the deferral provisions of the parental kidnapping statute is ineligible to use them again by virtue of his or her previous "conviction." MCL 750.350a(4). In addition, MCL 750.350a(4)(a) contains a disclosure provision "for the purpose of showing [whether] a defendant in a criminal action has already availed himself or herself of [MCL 750.350a]."

K. Fines, Costs, and Assessments

MCL 769.1k provides a court with general authority to impose fines, costs, expenses of providing legal assistance, assessments, and reimbursement under MCL 769.1f on a defendant at the time entry of an adjudication of guilt is deferred. The court must order a defendant to pay the minimum state costs as prescribed by MCL 769.1j. MCL 769.1k(1)(a).[257] In addition, a court may order a defendant to pay any additional costs incurred to compel his or her appearance. MCL 769.1k(2). The general authority to impose the monetary penalties listed in MCL 769.1k(1) and (2) also applies when a defendant is placed on probation, probation is revoked, or a defendant is discharged from probation. MCL 769.1k(3). MCL 769.1k(4) authorizes a court to order a defendant to pay those monetary penalties by wage assignment. In addition, a court may provide for the collection of the penalties imposed pursuant to MCL 769.1k at any time. MCL 769.1k(5). Unless otherwise required by law, a court may apply any payments made in excess of the total amount imposed in one case to any amounts owed by the same defendant in any other case. MCL 769.1k(6).

Whenever adjudication is deferred for commission of a felony offense, the court must order the individual to pay a $130 crime victim assessment. MCL 780.905(1)(a). Only one crime victim assessment per case may be ordered, even when the case involves multiple offenses. MCL 780.905(2). A $75 crime victim assessment must be ordered in cases involving misdemeanors or ordinance violations. MCL 780.905(1)(b).[258]

[257] See Section 8.35 for additional discussion of minimum state costs.

[258] Effective April 1, 2012, 2011 PA 294 amended MCL 780.901 and MCL 780.905(1) to provide for a crime victim assessment of $75.00 in cases involving a conviction of *any* misdemeanor or ordinance violation (rather than only a "serious" or "specified" misdemeanor). Related provisions were amended by 2011 PA 293, 2011 PA 295, and 2011 PA 296, also effective April 1, 2012. See Section 8.36 for additional discussion of crime victim assessments.

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8.43 Youthful Trainee Act—Deferred Adjudication

"The [Holmes Youthful Trainee Act (HYTA), MCL 762.11 *et seq*.,] provides a mechanism for individuals who commit certain crimes between the time of their seventeenth and twenty-first birthdays[259] to be excused from having a criminal record." *People v Rahilly*, 247 Mich App 108, 113 (2001). Specifically, MCL 762.11(1) states that "if an individual pleads guilty to a criminal offense, committed on or after the individual's seventeenth birthday but before his or her twenty-first birthday, the court of record having jurisdiction of the criminal offense may, without entering a judgment of conviction and with the consent of that individual, consider and assign that individual to the status of youthful trainee."[260]

Assignment of an individual to youthful trainee status under MCL 762.11 is discretionary. *People v Gow*, 203 Mich App 94, 96 (1994). MCL 762.11 is remedial "and should be construed liberally for the advancement of the remedy."*People v Bobek*, 217 Mich App 524, 529 (1996). However, the trial court must "take into account the nature and severity of the crimes and the importance of public safety[]" when deciding whether to grant youthful trainee status. *People v Khanani*, 296 Mich App 175, 181-182 (2012) ("[g]iven the trial court's description of [the] defendant as 'frighten[ing]' and its apparent agreement with the prosecutor's description of [the] defendant as a serious predator," the trial court abused its discretion in nevertheless granting the defendant youthful trainee status for first-degree home invasion and several additional offenses).

A. Certain Individuals Are Ineligible

An individual is not eligible for youthful trainee status if the offense for which he or she seeks deferral is any of the following:

- a felony punishable by life imprisonment. MCL 762.11(2)(a).
- a major controlled substance offense. MCL 762.11(2)(b).[261]
- a traffic offense. MCL 762.11(2)(c).

[259] An individual over 14 years of age whose jurisdiction has been waived may be eligible for youthful trainee status. MCL 762.15.

[260] See SCAO form MC 242, *Assignment to Youthful Trainee Status*, available at http://courts.mi.gov/Administration/SCAO/Forms/courtforms/criminaldisposition/mc242.pdf.

[261] *Major controlled substance offenses* are discussed in Section 8.16.

- "'Traffic offense' means a violation of the Michigan vehicle code, . . . MCL 257.1 to [MCL] 257.923, or a violation of a local ordinance substantially corresponding to that act, that involves the operation of a vehicle and, at the time of the violation, is a felony or a misdemeanor." MCL 762.11(4)(b).

- a violation, attempted violation, or conspiracy to violate MCL 750.520b (first-degree criminal sexual conduct—CSC-I); MCL 750.520c (second-degree criminal sexual conduct—CSC-II); MCL 750.520d (third-degree criminal sexual conduct—CSC-III, other than MCL 750.520d(1)(a)); or MCL 750.520e (fourth-degree criminal sexual conduct—CSC-IV, other than MCL 750.520e(1)(a)). MCL 762.11(2)(d).

- a violation, attempted violation, or conspiracy to violate MCL 750.520g (assault with intent to commit CSC), with the intent to commit CSC-I, CSC-II, CSC-III (other than MCL 750.520d(1)(a)); or CSC-IV (other than MCL 750.520e(1)(a)). MCL 762.11(2)(e).

In addition, an individual is not eligible for youthful trainee status if any of the following apply:

- the individual was previously convicted of, or adjudicated for, a listed offense for which registration is required under the Sex Offenders Registration Act (SORA)[262] (MCL 28.721 to MCL 28.736). MCL 762.11(3)(a).

  - "'Listed offense' means that term as defined in . . . MCL 28.722." MCL 762.11(4)(a).

- the individual is charged with a listed offense for which registration is required under the SORA, MCL 762.11(3)(b).

- the court determines that the offense involved a factor set out MCL 750.520b(1)(a)-(h) (CSC-I), MCL 750.520c(1)(a)-(*l*) (CSC-II), MCL 750.520d(1)(b)-(e) (CSC-III), or MCL 750.520e(1)(b)-(f) (CSC-IV). MCL 762.11(3)(c).

A "defendant [i]s not ineligible for sentencing under the [youthful trainee act] solely because he [or she] was convicted of two criminal offenses." *People v Giovannini*, 271 Mich App 409, 410 (2006). "Interpreting MCL 762.11 to permit placement under the [youthful

[262] See the Michigan Judicial Institute's *Sexual Assault Benchbook* for a detailed discussion of the Sex Offenders Registration Act.

trainee act] only in cases involving a single offense would work contrary to the discretion invested in the trial court and to the overall purpose of the act." *Giovannini*, *supra* at 417.

"[T]he sentencing guidelines have not been held to apply to the decision whether to grant youthful trainee status." *People v Khanani*, 296 Mich App 175, 183 (2012).

B. Individual Must Consent to Deferred Adjudication

An offender must consent to be assigned the status of a youthful trainee. MCL 762.11(1).

C. Guilt Must Be Established by Guilty Plea

To be assigned the status of a youthful trainee, an individual must plead guilty to the criminal offense. MCL 762.11(1). A defendant found guilty as a result of a trial does not qualify for youthful trainee status because a guilty plea is required. *People v Dash*, 216 Mich App 412, 414 (1996). A nolo contendere plea precludes assignment to youthful trainee status because it is not a plea of "guilty." *People v Harns*, 227 Mich App 573, 579-580 (1998), vacated in part on other grounds 459 Mich 895 (1998).

D. Proceedings Are Deferred

When the above requirements are satisfied with regard to an individual seeking deferral as a youthful trainee, no judgment of conviction is entered and adjudication is deferred. MCL 762.11(1).

E. Terms and Conditions Imposed Pursuant to Deferred Adjudication

Underlying charge punishable by more than one year of imprisonment. If the underlying charge is an offense punishable by imprisonment for a term of more than one year, the court must do one of the following:

- commit the individual, for not more than three years, to the Department of Corrections (DOC) for custodial supervision and training in an institutional facility designated by the DOC for that purpose. MCL 762.13(1)(a).

- place the individual on probation for not more than three years, subject to the conditions in MCL 771.3. MCL 762.13(1)(b).

- commit the individual to the county jail for not more than one year. MCL 762.13(1)(c).

- if a youthful trainee is placed in the county jail under MCL 762.13(1)(c), or as a condition of probation, the court may authorize release for work or for educational purposes. MCL 762.13(4).

Underlying charge punishable by one year or less of imprisonment. If the underlying charge is for an offense punishable by imprisonment for one year or less, the court must place the individual on probation for not more than two years, subject to the conditions in MCL 771.3. MCL 762.13(2).

Fees, fines, and costs, etc. If the individual is placed on probation, the court must order payment of a supervision fee for each month during which the individual is on probation, up to 36 months. MCL 762.13(5).

MCL 769.1k provides a court with general authority to impose fines, costs, expenses of providing legal assistance, assessments, and reimbursement under MCL 769.1f on a defendant at the time entry of an adjudication of guilt is deferred. The court must order a defendant to pay the minimum state costs as prescribed by MCL 769.1j. MCL 769.1k(1)(a).[263] In addition, a court may order a defendant to pay any additional costs incurred to compel his or her appearance. MCL 769.1k(2). The general authority to impose the monetary penalties listed in MCL 769.1k(1) and (2) also applies when a defendant is placed on probation, probation is revoked, or a defendant is discharged from probation. MCL 769.1k(3). MCL 769.1k(4) authorizes a court to order a defendant to pay those monetary penalties by wage assignment. In addition, a court may provide for the collection of the penalties imposed pursuant to MCL 769.1k at any time. MCL 769.1k(5). Unless otherwise required by law, a court may apply any payments made in excess of the total amount imposed in one case to any amounts owed by the same defendant in any other case. MCL 769.1k(6).

Whenever an individual charged with a felony offense is assigned to youthful trainee status, the court must order the individual to pay a $130 crime victim assessment. MCL 780.905(1)(a). Only one crime victim assessment per case may be ordered, even when the case involves multiple offenses. MCL 780.905(2). A $75 crime victim assessment must be ordered in cases involving misdemeanors or ordinance violations. MCL 780.905(1)(b).[264]

[263] See Section 8.35 for additional discussion of minimum state costs.

F. Termination or Revocation of Youthful Trainee Status

A court may terminate its consideration of an individual for youthful trainee status at any time, or may revoke youthful trainee status already granted at any time before the individual's final release. MCL 762.12. However, a youthful trainee is entitled to a hearing before his or her status is revoked. *People v Webb (Homer)*, 89 Mich App 50, 53 (1979); *People v Roberson*, 22 Mich App 664, 668-669 (1970).

While "[t]here is no provision in the [youthful trainee act] that expressly prohibits modification of the probationary term or early dismissal of the charges[,]" a court must not terminate youthful trainee status without "sufficient reason." *Bobek*, 217 Mich App at 530-531 ("[t]he fact that the defendant's [youthful trainee status] was discovered by the press was not a sufficient reason to discharge the defendant from probation after twenty-eight days.").

"An individual assigned to youthful trainee status before October 1, 2004 for a listed offense enumerated in . . . MCL 28.722, is required to comply with the requirements of [the SORA]." MCL 762.14(3).

If an individual who is required to be registered under the SORA willfully violates that act, the court is required to revoke the individual's youthful trainee status. MCL 762.12.

If consideration of an individual for youthful trainee status is terminated, or if an individual's youthful trainee status is revoked, the court may enter an adjudication of guilt. MCL 762.12. If a court revokes youthful trainee status, enters an adjudication of guilt, and imposes sentence, it must specifically grant credit against the individual's sentence for time served as a youthful trainee in a DOC institutional facility or county jail. MCL 762.12.

G. Successful Completion of Probationary Period

If the individual successfully completes the probationary period, the court is required to discharge the individual and dismiss the proceedings after the individual's final release from youthful trainee status. MCL 762.14(1).

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[264] Effective April 1, 2012, 2011 PA 294 amended MCL 780.901 and MCL 780.905(1) to provide for a crime victim assessment of $75.00 in cases involving a conviction of *any* misdemeanor or ordinance violation (rather than only a "serious" or "specified" misdemeanor). Related provisions were amended by 2011 PA 293, 2011 PA 295, and 2011 PA 296, also effective April 1, 2012. See Section 8.36 for additional discussion of crime victim assessments.

H. Assignment as Youthful Trainee Is Not a Conviction

With the exception of the three circumstances listed below, assignment of an individual to youthful trainee status is not a conviction for a crime, and "[an] individual assigned to the status of youthful trainee shall not suffer a civil disability or loss of right or privilege following his or her release from that status because of his or her assignment as a youthful trainee." MCL 762.14(2).

- An assignment to youthful trainee status before October 1, 2004, constitutes a conviction for purposes of registering under the SORA unless "a petition was granted under [MCL 28.728c] at any time allowing the individual to discontinue registration under [the SORA], including a reduced registration period that extends to or past July 1, 2011, regardless of the tier designation that would apply on or after that date." MCL 28.722(a)(*ii*)(A).

- An assignment to youthful trainee status before October 1, 2004, constitutes a conviction for purposes of registering under the SORA if the individual is convicted of any other felony on or after July 1, 2011. MCL 28.722(a)(*ii*)(B).

- Assignment to youthful trainee status constitutes a conviction that is counted for scoring the sentencing guidelines. MCL 777.50(4)(a)(*i*).

I. Record of Deferral

"Unless the court enters a judgment of conviction against the individual for the criminal offense under [MCL 762.12], all proceedings regarding the disposition of the criminal charge and the individual's assignment as youthful trainee shall be closed to public inspection, but 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 only in the performance of their duties." MCL 762.14(4).

When no conviction results from an individual's youthful trainee status, the closed hearings established by MCL 762.14(4) are necessary to prevent the harm the youthful trainee act seeks to prevent—"public . . . access to information regarding the criminal charge[.]" *Bobek*, 217 Mich App at 530.

J. No Specified Limit on Use of Deferral Provision

The statute governing an individual's assignment to the status of youthful trainee does not contain any language limiting the number of times an individual may utilize the provisions of the statute. See MCL 762.11 *et seq*.

See also *Giovannini*, 271 Mich App at 410, in which the Court of Appeals held that a "defendant was not ineligible for sentencing under the [youthful trainee act] solely because he was convicted of two criminal offenses." The Court noted that "[i]nterpreting MCL 762.11 to permit placement under the [youthful trainee act] only in cases involving a single offense would work contrary to the discretion invested in the trial court and to the overall purpose of the act." *Giovannini*, *supra* at 417.

K. Review of Decision to Assign Youthful Trainee Status

A trial court's decision concerning a defendant's assignment under the HYTA is reviewed for an abuse of discretion. *People v Khanani*, 296 Mich App 175, 177-178 (2012); *Giovannini*, 271 Mich App at 411. "'An abuse of discretion occurs when the court chooses an outcome that falls outside the range of reasonable and principled outcomes.'" *Khanani*, *supra* at 178, quoting *People v Unger*, 278 Mich App 210, 217 (2008).

The trial court abused its discretion in granting youthful trainee status to the defendant, who pleaded guilty in three separate cases to six offenses, including first-degree home invasion; the trial court's decision fell outside the range of reasoned and principled outcomes in light of the defendant's age and the seriousness and timing of the home invasion offense, which was committed shortly after he turned 19 while he was on bond awaiting sentencing for the other offenses. *Khanani*, 296 Mich App at 179-182.

8.44 Conditional Sentences

When a person is convicted of an offense punishable by a fine or imprisonment, or both, the court has the discretion to impose a conditional sentence and order the person to pay a fine (with or without the costs of prosecution), and restitution as indicated in MCL 769.1a(11) or the Crime Victim Rights Act (MCL 780.751 to MCL 780.834), within a limited time stated in the sentence. MCL 769.3(1). If the person defaults on payment, the court may impose sentence. MCL 769.3(1).

If a court imposes a conditional sentence under MCL 769.3, restitution ordered under MCL 769.1a must be made a condition of the sentence.

MCL 769.1a(11). The court may impose imprisonment under the conditional sentence if the offender fails to comply with the order of restitution and if he or she has failed to make a good faith effort at compliance with the order. *Id*. When determining whether to impose imprisonment, the court must consider the offender's employment status, earning ability, financial resources, the willfulness of the offender's noncompliance, and any other circumstances that may impact the offender's ability to pay restitution. *Id*.

With the exception of a person convicted of CSC-I or CSC-III, 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 within a limited time. MCL 769.3(2). If the offender defaults on any of the payments, the court may impose sentence. MCL 769.3(2).

8.45 Suspended Sentences

Absent statutory authority to do so, a court may not indefinitely suspend a defendant's sentence, because to do so would effectively pardon a defendant for his or her crime. *People v Morgan (Sillerton)*, 205 Mich App 432, 434 (1994). Certain statutes specifically authorize a court to suspend a defendant's sentence. See MCL 750.165(4) (felony nonsupport statute specifically authorizes a court to suspend a defendant's sentence if he or she posts a bond and any sureties required by the court).

A court may not suspend a defendant's sentence once the defendant has started to serve it. *Oakland Co Pros v 52nd Dist Judge*, 172 Mich App 557, 560 (1988).

8.46 Mandatory Sentences

If a crime has a mandatory determinate penalty or a mandatory penalty of life imprisonment, the court is required to impose that penalty. MCL 769.34(5).[265] The sentencing guidelines are inapplicable to mandatory sentences. *Id*.

[265] However, a mandatory sentence of life imprisonment without the possibility of parole may not, consistently with the Eighth Amendment, be imposed upon an individual who was under the age of 18 at the time of the sentencing offense. See *Miller v Alabama*, 567 US ___, ___ (2012) (homicide offender under the age of 18 may not be sentenced to life imprisonment without the possibility of parole unless a judge or jury first has the opportunity to consider mitigating circumstances); *Graham v Florida*, 560 US ___, ___ (2010) (sentence of life imprisonment without the possibility of parole may not be imposed upon a defendant under the age of 18 for a nonhomicide offense). For additional discussion of *Miller*, 567 US ___, and *Graham*, 560 US ___, see the Michigan Judicial Institute's *Juvenile Justice Benchbook*, Chapter 18.

8.47 Special Alternative Incarceration (SAI) Units—"Boot Camp"[266]

Certain defendants are eligible to be placed in "boot camp" as a condition of probation. MCL 771.3b(1).[267] The Special Alternative Incarceration (SAI) units provide a program of physically strenuous work and exercise, modeled after military basic training. MCL 798.14(1).

A. Prisoners

If a defendant is sentenced to an indeterminate prison term, the Department of Corrections (DOC) is required to consider placing him or her in an SAI program, unless the sentencing court prohibited that type of placement. MCL 791.234a(1); MCL 791.234a(2)(f); MCL 791.234a(4). The DOC must determine whether a defendant within its jurisdiction and sentenced to an indeterminate term is eligible for placement in an SAI program according to the requirements in MCL 791.234a(2) and MCL 791.234a(3).

To be eligible for placement in an SAI program, the prisoner must meet all of the following requirements set out in MCL 791.234a(2):

- The prisoner's minimum sentence does not exceed either of the following: (1) 24 months or less for a violation of MCL 750.110 (breaking and entering) and MCL 750.110a (home invasion), if the violation involved any occupied dwelling house; or (2) 36 months or less for any other crime. MCL 791.234a(2)(a)(*i*)-(*ii*).

- The prisoner has never previously been placed in an SAI unit as a prisoner or a probationer, unless he or she was placed in an SAI unit and was removed from the unit for medical reasons as specified in MCL 791.234a(7). MCL 791.234a(2)(b).

- The prisoner is physically capable of participating in the SAI program. MCL 791.234a(2)(c).

- The prisoner does not appear to have any mental disability that would prevent him or her from participating in the program. MCL 791.234a(2)(d).

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[266] ~~The statute authorizing placement in an SAI unit, MCL 791.234a, is repealed effective September 30, 2012. 2009 PA 107; MCL 791.234a(13).~~

[267] A defendant convicted of committing or attempting to commit any of the following crimes is not eligible for placement in an SAI program: MCL 750.72, MCL 750.73, MCL 750.75, MCL 750.145c, MCL 750.520b, MCL 750.520c, MCL 750.520d, and MCL 750.520g. MCL 771.3b(17)(a)-(c).

- The prisoner is serving his or her first prison sentence. MCL 791.234a(2)(e).
- The sentencing judge, in the judgment of sentence, did not prohibit the prisoner's participation in the program. MCL 791.234a(2)(f).
- The DOC determines that the prisoner is otherwise suitable for the program. MCL 791.234a(2)(g).
- The prisoner is not serving a sentence for crimes expressly set out in MCL 791.234a(2)(h)(*i*)-(*vii*),[268] and the prisoner was not sentenced as an habitual offender, MCL 791.234a(2)(h)(*viii*).

Additionally, a prisoner who is serving a sentence for violating MCL 333.7401 or MCL 333.7403, and who has previously been convicted of violating MCL 333.7401, MCL 333.7403(2)(a), MCL 333.7403(2)(b), or MCL 333.7403(2)(e), is not eligible for placement in an SAI unit until after he or she has served the equivalent of the mandatory minimum sentence prescribed by statute for that violation. MCL 791.234a(3).

If the sentencing judge permitted the prisoner's participation in the SAI program in the judgment of sentence, that prisoner may be placed in an SAI unit if the DOC determines that the prisoner also meets the requirements of MCL 791.234a(2) and MCL 791.234a(3). MCL 791.234a(4).

If the sentencing judge neither prohibited nor permitted a prisoner's participation in an SAI program in the judgment of sentence, and the DOC determines that the prisoner meets the eligibility requirements of MCL 791.234a(2) and MCL 791.234a(3), the DOC must notify the judge or successor judge, the prosecuting attorney for the county in which the prisoner was sentenced, and any crime victim who has requested notification, of the proposed placement in the SAI unit. MCL 791.234a(4). The notices must be sent no later than 30 days before placement is intended to occur. MCL 791.234a(4).

The DOC is not allowed to place a prisoner in an SAI unit unless the sentencing judge or successor judge notifies the DOC in writing that he or she does not object to the proposed placement. MCL 791.234a(4). In deciding whether to object, the judge or successor judge is required to review any victim impact statements submitted by the victim(s) of the crime for which the prisoner was convicted. MCL 791.234a(4).

[268] MCL 791.234a(2)(h)(*i*)-(*vii*) lists more than 40 crimes for which a defendant would be ineligible for placement in an SAI unit.

The prosecution waives objection to a defendant's placement in an SAI program if it does not raise the issue at sentencing. *People v Krim*, 220 Mich App 314, 320-321 (1997).

A prisoner must consent to placement in an SAI program. MCL 791.234a(5). The prisoner must also agree that "the [DOC] may suspend or restrict privileges generally afforded other prisoners including, but not limited to, the areas of visitation, property, mail, publications, commissary, library, and telephone access. However, the [DOC] may not suspend or restrict the prisoner's access to the prisoner grievance system." MCL 791.234a(5).

Notwithstanding MCL 791.234a(4) and MCL 791.234a(5), a prisoner must not be placed in an SAI unit unless all of the following conditions are met:

- "Upon entry into the [SAI] unit, a validated risk and need assessment from which a prisoner-specific transition accountability plan and prisoner-specific programming during program enrollment are utilized." MCL 791.234a(6)(a).
- "Interaction with community-based service providers through established prison in-reach services from the community to which the prisoner will return is utilized." MCL 791.234a(6)(b).
- "Prisoner discharge planning is utilized." MCL 791.234a(6)(c).
- "Community follow-up services are utilized." MCL 791.234a(6)(d).

Placement in an SAI program must be for a period of not less than 90 days or more than 120 days. MCL 791.234a(7).

If, during the prisoner's placement, the prisoner misses more than five days of participating in the program because of medical excuse for an illness or injury that occurred after placement, the period of placement must be increased by the number of days missed, beginning with the sixth day of excused participation, but for no more than 20 days. MCL 791.234a(7). The maximum number of days in a prisoner's placement cannot exceed 120 days, including the days missed. *Id*. A prisoner who is unable to participate in the SAI program for more than 25 days must be returned to the appropriate correctional facility but may be readmitted to the program subject to the requirements for eligibility in MCL 791.234a(2) and MCL 791.234a(3). MCL 791.234a(7).

"A prisoner who fails to work diligently and productively at the [SAI unit program], or who fails to obey the rules of behavior established for the unit, shall be returned to a state correctional facility and shall no longer be eligible for placement in the program." MCL 798.16(2). If a prisoner is removed from an SAI unit on this basis, the prisoner must be credited for time served in the unit, but all disciplinary credits accumulated in the unit may be forfeited. *Id*.

Once the prisoner's completion of the SAI program is certified, the prisoner must be placed on parole. MCL 791.234a(8). The parole board must determine appropriate conditions of parole for a prisoner paroled under MCL 791.234a. MCL 791.234a(8). A prisoner paroled under MCL 791.234a must be placed on parole for not less than 18 months, or the remainder of the prisoner's minimum sentence, whichever is greater. A prisoner paroled under MCL 791.234a must be under intensive supervision for the first 120 days. MCL 791.234a(8).

The parole board may suspend or revoke parole for any prisoner paroled under MCL 791.234a subject to MCL 791.239a (arrest for alleged parole violation) and MCL 791.240a (parole revocation for cause). MCL 791.234a(9).

Each prisoner placed in the SAI program must fully participate in Michigan's prisoner reentry initiative. MCL 791.234a(12).

B. Probationers

In addition to any other term or condition of probation, the court may require an individual convicted of a crime for which he or she may be sentenced to a state correctional facility to satisfactorily complete an SAI program and to serve 120 days of probation under intense supervision. MCL 771.3b(1). This does not apply if the individual was convicted of a crime specified in MCL 771.3b(17).[269]

To be eligible for placement in an SAI program and placement on probation, the individual must meet all of the following requirements set out in MCL 771.3b(2):

- The individual has never served a sentence of imprisonment in a state correctional facility. MCL 771.3b(2)(a).

[269] MCL 771.3b(17)(a)-(c) prohibits offenders convicted of violating or attempting to violate MCL 750.72, MCL 750.73, MCL 750.75, MCL 750.145c, MCL 750.520b, MCL 750.520c, MCL 750.520d, and MCL 750.520g, from being placed in an SAI program.

- The individual would likely be sentenced to imprisonment in a state correctional facility for conviction of the offense. MCL 771.3b(2)(b).

- The upper limit of the recommended minimum sentence under the sentencing guidelines for the individual's offense is 12 months or more, unless (1) the felony sentencing guidelines do not apply to the individual's offense, or (2) the reason the individual is being considered for placement is that he or she violated the conditions of his or her probation. MCL 771.3b(2)(c).

- The individual is physically capable of participating in the SAI program. MCL 771.3b(2)(d).

- The individual does not have any apparent mental disability that would prevent his or her participation in the SAI program. MCL 771.3b(2)(e).

An individual is ineligible for placement in an SAI program if:

- He or she has previously been incarcerated in an SAI unit, MCL 771.3b(15), except that an individual may be placed in an SAI program for a second time if that individual had been placed in an SAI program but was removed from the program and returned to court for sentencing due to a medical condition existing at the time of the placement, and the medical condition has since then been corrected, MCL 771.3b(16).

- He or she has been convicted of any of the following crimes, or attempts to commit the following crimes: MCL 750.72, MCL 750.73, MCL 750.75, MCL 750.145c, MCL 750.520b, MCL 750.520c, MCL 750.520d, or MCL 750.520g. MCL 771.3b(17).

Before a court can place an individual in an SAI program, an initial investigation to establish that the person meets the requirements of MCL 771.3b(2)(a) and MCL 771.3b(2)(b) must be completed by a probation officer. MCL 771.3b(4).

After an individual is placed in an SAI program, the DOC must establish that the person meets the requirements in MCL 771.3b(2). If the person does not meet those requirements, the probation order is rescinded, and he or she must be returned to the court for sentencing. MCL 771.3b(5).

An individual must consent to his or her placement in an SAI program. MCL 771.3b(6).

Except as provided in MCL 771.3b(9) to MCL 771.3b(12), the maximum amount of time an individual may be placed in an SAI program is 120 days. MCL 771.3b(8); MCL 798.14(1). Participants are required to make up for days missed due to illness or injury. MCL 771.3b(8). If an individual misses more than five days of participation in the program because of an illness or injury that occurred after he or she was placed in the program, one day is added to the term of his or her placement for every day missed, beginning with the sixth day missed. MCL 771.3b(8). A maximum of 20 days may be added to an individual's placement. *Id*. A copy of the individual's verified medical excuse must be provided to the sentencing court. MCL 771.3b(8). If an individual is not able to participate for more than 25 days, he or she must return to the court for sentencing pursuant to MCL 771.3b(5). MCL 771.3b(8).

If the local unit of government has created a residential program providing vocational training, education, and substance abuse treatment designed for individuals who have completed an SAI program, a probationer may be required, immediately after successful completion of the SAI program, to successfully complete an additional period of up to 120 days in the local unit of government's residential program. MCL 771.3b(9); MCL 798.14(1).

A probationer who satisfactorily completes an SAI program must be placed on probation under intensive supervision for a minimum of 120 days following his or her completion of the SAI program. MCL 771.3b(12). If the probationer has been ordered to complete a program of residential treatment after completion of the SAI program, MCL 771.3b(9) or MCL 771.3b(10), the 120-day period of intensive supervision begins after the probationer completes the residential program. MCL 771.3b(12).

The court must authorize the release of the individual from confinement in the SAI unit after it receives a satisfactory report from the DOC of the individual's performance in the program. MCL 771.3b(13). The court must revoke an individual's probation after receiving an unsatisfactory report of the individual's performance in the SAI program. *Id*.

"A probationer who fails to work diligently and productively [in an SAI program], or who fails to obey the rules of behavior established for the unit, may be reported to the sentencing court for possible revocation of probation[.]" MCL 798.16(1). While the probationer awaits a probation revocation hearing on his or her failure to satisfactorily perform in the SAI program, he or she may be incarcerated in a county jail as an alternative to remaining in the SAI program. *Id*.

A probationer is entitled to credit for time spent in an SAI program if his or her probation is later revoked and he or she is sentenced to a term of imprisonment on the underlying crime. *People v Hite (After Remand)*, 200 Mich App 1, 2 (1993).

Part I—Sentence Departures

For felony convictions listed in MCL 777.11 through MCL 777.19 that occur on or after January 1, 1999, the statutory sentencing guidelines require a sentencing court to impose a minimum sentence within the appropriate sentence range, as calculated under the version of the guidelines in effect at the time the crime was committed. MCL 769.34(2). A "departure" is a sentence that does not fall within the appropriate minimum sentence range calculated under the guidelines. MCL 769.31(a). Notably, the Legislature made no distinction between upward and downward departures. *People v Hegwood*, 465 Mich 432, 440 n 16 (2001). Sections 8.49 and 8.50 distinguish between upward and downward departures for the purpose of discussing factors considered by a sentencing court in determining whether to depart from the guidelines. A court's discretion with regard to departures is limited by the provisions in MCL 769.34(3)(a)-(b), which are discussed in Section 8.48.

8.48 Requirements of a Sentence Departure

Sentence departures are governed by the language in MCL 769.34(3), which permits a court to depart from the range recommended by the guidelines if there is a substantial and compelling reason for that departure, and the court articulates that reason on the record. *People v Babcock*, 469 Mich 247, 259-260 (2003). Of critical importance is the trial court's statement (on the record) concerning how the substantial and compelling reason justifies the degree of departure chosen by the court. *Babcock, supra* at 258-260; *People v Claypool*, 470 Mich 715, 726-727 (2004).

The trial court abused its discretion when it sentenced a defendant to twice the highest minimum term recommended under the sentencing guidelines without justifying the extent of the departure on the record. *People v Smith (Gary)*, 482 Mich 292, 295 (2008). The Michigan Supreme Court concluded that providing substantial and compelling reasons for a departure does not satisfy the trial court's duty to "establish why the sentences imposed were proportionate to the offense and the offender." *Smith (Gary), supra* at 295. The Court further explained that "the statutory guidelines require more than an articulation of reasons for *a* departure; they require justification for the *particular* departure made." *Id*. at 303.

The Michigan Supreme Court set out the following summary to assist trial courts in fulfilling their statutory obligations under MCL 769.34(3):

> "(1) The trial court bears the burden of articulating the rationale for the departure it made. A reviewing court may not substitute its own reasons for departure. Nor may it speculate about conceivable reasons for departure that the trial court did not articulate or that cannot reasonably be inferred from what the trial court articulated.
>
> "(2) The trial court must articulate one or more substantial and compelling reasons that justify the departure it made and not simply *any* departure it might have made.
>
> "(3) The trial court's articulation of reasons for the departure must be sufficient to allow adequate appellate review.
>
> "(4) The minimum sentence imposed must be proportionate. That is, the sentence must adequately account for the gravity of the offense and any relevant characteristics of the offender. To be proportionate, a minimum sentence that exceeds the guidelines recommendation must be more appropriate to the offense and the offender than a sentence within the guidelines range would have been.
>
> "(5) When fashioning a proportionate minimum sentence that exceeds the guidelines recommendation, a trial court must justify why it chose the particular degree of departure. The court must explain why the substantial and compelling reason or reasons articulated justify the minimum sentence imposed.
>
> "(6) It is appropriate to justify the proportionality of a departure by comparing it against the sentencing grid and anchoring it in the sentencing guidelines. The trial court should explain why the substantial and compelling reasons supporting the departure are similar to conduct that would produce a guidelines-range sentence of the same length as the departure sentence.
>
> "(7) Departures from the guidelines recommendation cannot be assessed with mathematical precision. The trial court must comply *reasonably* with its obligations under the guidelines . . . to further the legislative goal of sentencing uniformity." *Smith (Gary)*, 482 Mich at 318-319.

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A. Substantial and Compelling Reason

According to the Michigan Supreme Court, "[t]he phrase 'substantial and compelling' has . . . acquired a peculiar and appropriate meaning in the law" and must be construed in a manner that is consistent with that meaning. *Babcock*, 469 Mich at 257-258. A reason is substantial and compelling if it is "objective and verifiable," if it "'keenly'" or "'irresistibly'" grabs a court's attention, if it is "'of considerable worth'" in deciding the length of a sentence, and if it arises only in "'exceptional cases.'" *Babcock*, *supra* at 257, quoting *People v Fields (Warren)*, 448 Mich 58, 62, 67, 68 (1995).

"The phrase 'objective and verifiable' has been defined to mean that the facts to be considered by the court must be actions or occurrences that are external to the minds of the judge, defendant, and others involved in making the decision, and must be capable of being confirmed." *People v Abramski*, 257 Mich App 71, 74 (2003).

The "location departure" has been deemed obsolete in light of existing statutory sentencing guidelines. *People v Lucey*, 287 Mich App 267, 273 (2010). Citing *People v Ratliff*, 480 Mich 1108 (2008), the *Lucey* Court noted that the Supreme Court in *Ratliff*, *supra*, had "suggested that the logistical inconvenience that may occur when sentencing a parolee to an intermediate sanction does not constitute a substantial and compelling reason for departure from the sentencing guidelines." *Lucey*, *supra* at 272. "The fact that a defendant might have to serve county jail time following additional prison incarceration for a parole violation cannot be a substantial and compelling reason to depart from the sentencing guidelines." *Id*. at 273. See also MCL 769.34(4)(a).

That a defendant presents a danger to him- or herself and the public is not an objective and verifiable factor that may be used as a substantial and compelling reason to depart from the statutory guidelines. *People v Solmonson*, 261 Mich App 657, 670 (2004).

A trial court's characterization of the defendant's offenses as "egregious" is not an objective and verifiable determination that may be used as a substantial and compelling reason to depart from the statutory guidelines. *People v Havens*, 268 Mich App 15, 18 (2005).

However, a trial court's determination that "[a] defendant's repeated perpetration of vicious acts against his wife within a short period was a 'particularly aggravating,' 'particularly compelling,' and 'staggering' factor" was objective and verifiable and constituted a substantial and compelling reason for the trial court's upward departure from the minimum sentence recommended by the statutory guidelines. *People v Horn (Marvin)*, 279 Mich App 31, 46 (2008). The Michigan Court of Appeals noted that the "[d]efendant's determined course to terrorize and abuse his wife, clearly evident

from the recurring and escalating acts of violence, [wa]s an objective and verifiable reason . . . based on occurrences external to the sentencing judge's mind, and capable of being confirmed." *Horn (Marvin)*, *supra* at 46.

A defendant's cooperation with his attorney and his respectful conduct in the courtroom were not objective and verifiable factors and did not serve as substantial and compelling reasons for departure. *People v Young (Raymond)*, 276 Mich App 446, 458 (2007). Additionally, a defendant's punctuality in reporting to the court, while objective and verifiable, cannot serve as a substantial and compelling reason for departure because it does not "keenly" or "irresistibly" grab a court's attention. *Young (Raymond)*, *supra* at 458.

Proportionality[270] is still a component of sentencing under the statutory guidelines. *Babcock*, 469 Mich at 262. When deciding whether and to what degree to depart from the recommended sentence, "[a] trial court must consider whether its sentence is proportionate to the seriousness of the defendant's conduct and his [or her] criminal history[.]" *Babcock*, *supra* at 264. "If [the sentence] is not [proportionate], the trial court's departure is necessarily not justified by a substantial and compelling reason." *Id*.

There is likely no single correct outcome in cases where a departure from the guidelines is considered and imposed. *Babcock*, 469 Mich at 269. However, a departure must fall within "th[e] principled range of outcomes." *Babcock*, *supra* at 269; *People v Reincke (On Remand)*, 261 Mich App 264, 268 (2004). As long as the trial court chooses a sentence departure within that principled range of outcomes, the court has properly exercised its discretion. *Reincke*, *supra* at 268. In *Reincke*, *supra* at 265, the trial court imposed a sentence that exceeded by more than four times the minimum sentence recommended under the guidelines—the guidelines recommended a minimum of 81 to 135 months and the court imposed a minimum of 360 months. The Court of Appeals concluded that the trial court's extreme departure from the recommended guidelines range was justified by the "incomprehensible brutality" of the crime. *Id*. at 269 (three-year-old child penetrated with such force that the tissue between the child's rectum and vaginal wall was torn to the point of being unidentifiable, general anesthesia was necessary just to examine the extent of the child's injuries, and the injuries were so extensive that the child required major reconstructive surgery).

An upward departure requires that the trial court, at sentencing, advise the defendant of his or her appellate rights regarding the sentence departure. MCR 6.425(F)(4) states:

[270] See Section 8.29 for a detailed discussion of proportionality.

> "When imposing sentence in a case in which sentencing guidelines enacted in 1998 PA 317, MCL 777.1 *et seq*., are applicable, if the court imposes a minimum sentence that is longer or more severe than the range provided by the sentencing guidelines, the court must advise the defendant on the record and in writing that the defendant may seek appellate review of the sentence, by right if the conviction followed trial or by application if the conviction entered by plea, on the ground that it is longer or more severe than the range provided by the sentencing guidelines."

B. Statutory Prohibitions

In addition to the requirement that the trial court articulate a substantial and compelling reason for departing from the guidelines, the statutory sentencing guidelines expressly prohibit a sentencing court from basing a departure on specific characteristics of a defendant and his or her defense. MCL 769.34(3)(a) states:

> "The court shall not use an individual's gender, race, ethnicity, alienage, national origin, legal occupation, lack of employment, representation by appointed legal counsel, representation by retained legal counsel, appearance in propria persona, or religion to depart from the appropriate sentence range."

Unless the court concludes that a factor has been given disproportionate or inadequate weight, the guidelines also expressly prohibit a court from basing a sentence departure on a characteristic of the offense or the offender addressed by the offense variables (OVs) and prior record variables (PRVs). MCL 769.34(3)(b) states:

> "The court shall not base a departure on an offense characteristic [(OV)] or offender characteristic [(PRV)] already taken into account in determining the appropriate sentence range unless the court finds from the facts contained in the court record, including the presentence investigation report, that the characteristic has been given inadequate or disproportionate weight."

Because points are assessed in each OV and PRV according to the applicable statement having the highest number of points and because each variable consists of a finite number of somewhat generic statements, the guidelines necessarily cannot account for the unique circumstances of specific offenses and offenders. The "all or nothing" characteristic of some of the variables further limits the guidelines from accurately accounting for circumstances of an offense not precisely described by the choices available under each variable. For

example, OV 7 addresses the aggravated physical abuse component of an offense and allows for only two choices. MCL 777.37. Fifty points must be scored if a victim was subject to treatment characterized as aggravated physical abuse under OV 7, or zero points must be scored if a victim was not subject to such abuse. MCL 777.37(1). OV 7 cannot account for a victim's treatment that falls somewhere in between, or well beyond, the two choices offered by OV 7.

The Michigan Supreme Court has provided guidance for determining when a characteristic of the offense or the offender is already adequately measured by an OV or a PRV:

> "[I]f a defendant convicted of armed robbery is scored 25 points under offense variable one because he [or she] stabbed his [or her] victim, see MCL 777.31, that the defendant stabbed his [or her] victim probably could not constitute a substantial and compelling reason to justify a departure because the Legislature has already determined what effect should be given to the fact that a defendant has stabbed his [or her] victim and the courts must abide by this determination. However, if the defendant stabbed his [or her] victim multiple times, or in a manner designed to inflict maximum harm, that might constitute a substantial and compelling reason for a departure because these characteristics may have been given inadequate weight in determining the guidelines range." *Babcock*, 469 Mich at 258 n 12.

A trial court's upward departure based on the defendant's extensive criminal history was held to be appropriate even where the PRVs "partially accounted for" the defendant's prior convictions. *People v Deline*, 254 Mich App 595, 598-599 (2002), vacated in part on other grounds 470 Mich 895 (2004).[271] The Court of Appeals explained:

> "[A]lthough defendant's history of misdemeanors and felonies was partially accounted for in the scoring of prior record variables, that scoring did not account for the number or extent of [the defendant's prior] offenses. Other factors not accounted for in the guidelines scoring indicate that defendant is unwilling or unable to accept responsibility for his actions or make the changes

[271] Conduct scored under OV 19 was also at issue in *Deline*, 254 Mich App 595, and the *Deline* Court's interpretation of OV 19—that OV 19 was limited to conduct that interfered with the judicial process—was disapproved in *People v Barbee*, 470 Mich 283, 287-288 (2004). The Michigan Supreme Court vacated the part of "the Court of Appeals judgment [in *Deline*] to the extent that it is inconsistent with [the Michigan Supreme Court's] decision in *Barbee*." *People v Deline*, 470 Mich 895 (2004). See Section 8.6(U) for discussion of OV 19.

> needed to protect the public from further driving offenses by him. For example, he was on probation for drunken driving at the time of his offense, he had a blood-alcohol level far in excess of the legal limit, he was driving although his license had been suspended, and he has been sentenced to jail for numerous drunken driving offenses." *Deline*, 254 Mich App at 598-599.

A trial court's upward departure based on the defendant's commission of multiple acts of aggravated physical abuse against his wife did not constitute an abuse of discretion where the maximum score of 50 points for OV 7 (aggravated physical abuse) could be assigned for a *single* incident; OV 7 did not take into account the number of times (18) the defendant treated his victim with sadism, torture, or excessive brutality. *People v Cline (Stephen)*, 276 Mich App 634, 652 (2007). Similarly, the trial court's upward departure based on the defendant's conviction of 18 counts of crimes against a person did not constitute an abuse of discretion where the defendant's score of 25 points (offense was part of a pattern of felonious criminal activity involving three or more crimes against a person) for OV 13 (continuing pattern of criminal behavior) did not take into account the 18 times the defendant committed a crime against a person. *Cline (Stephen)*, *supra* at 652-653.

A trial court's determination that the guidelines gave inadequate or disproportionate weight to a factor need not be expressly stated—the court's determination may be implied from the record. *People v Lowery*, 258 Mich App 167, 170 (2003). In *Lowery*, *supra* at 171, the Court of Appeals noted that "[t]he trial court expressed its reasoning for the departure by implying that the characteristics were given inadequate weight." The Court of Appeals agreed with the trial court that the guidelines sentence recommendation did not adequately account for the fact that the defendant actually shot the victim. *Id*. The Court of Appeals explained:

> "Although offense variable (OV) 1 considers whether a firearm was discharged at or toward a human being and OV 3 considers whether a victim suffered bodily injury that required medical treatment, . . . neither variable considers someone actually being shot. Injury to a victim as a result of being shot is in fact a substantial and compelling reason to depart from the guidelines, and constituted a substantial and compelling reason for the trial court's *particular* departure in this case[.]" *Lowery*, 258 Mich App at 171.

But see *People v Jackson (James)*, 474 Mich 996 (2006), where, in a peremptory order,[272] the Michigan Supreme Court clearly indicated that a sentencing court *must make a record finding* when its departure

from the sentencing guidelines recommendation is based on a characteristic's failure to adequately account for a defendant's conduct or when a characteristic is given disproportionate weight in light of the defendant's conduct. *Jackson (James)*, *supra* at 996. According to the *Jackson (James)* Court:

> "The sentencing court . . . commented on the 'excessive brutality, violence, and terrorism' to which the victims were subjected. But the 50-point score [the] defendant received on Offense Variable 7 already accounted for these circumstances. A sentencing court may base a departure on a characteristic already taken into account by the sentencing guidelines *only if the court finds that the characteristic was given inadequate or disproportionate weight. No such finding was made here*. *Jackson (James), supra* at 996 (emphasis added; internal citations omitted).

In Justice Corrigan's concurring opinion in *Jackson (James)*, *supra* at 998, Justice Corrigan noted that "[the d]efendant's crimes [we]re 'off the charts' in terms of extreme brutality, terrorism, and violence[, but b]ecause the trial court failed to state that the factor of excessive brutality, violence, and terrorism was given inadequate weight under the guidelines," the defendant should be remanded for resentencing. Justice Corrigan recognized that language appearing in both MCL 769.34(3)(b) and *People v Babcock*, 469 Mich 247, 268 (2003), justify departure when a characteristic is inadequate or disproportionate to the circumstances of the offense or the offender, and stated that "[i]t appears to [her] that such magic language is now indisputably required before this Court will sustain an upward departure." *Jackson (James)*, *supra* at 998.

See also *People v Corrin*, 489 Mich 855 (2011), where the Michigan Supreme Court agreed that "[t]he psychological injury suffered by the victim's family members and the likelihood of the defendant's reoffending were properly considered by the trial court as substantial and compelling reasons that justify a departure from the statutory guidelines."[273]

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[272] "[A] final Supreme Court disposition of an application . . . [that] contains a concise statement of the applicable facts and the reason for the decision[,]" constitutes binding precedent. *People v Crall*, 444 Mich 463, 464 n 8 (1993).

[273] In this case, the trial court expressed frustration with the fact that OV 4 made no allowance for the severity of a victim's serious psychological injury. *People v Corrin*, unpublished opinion per curiam of the Court of Appeals, issued July 27, 2010 (Docket No. 290747). The trial court also expressed its displeasure with the fact that OV 4 did not consider psychological injury to the victim's family members. *Id*. **Note:** OV 5, the variable that reflects psychological injury to a victim's family members did not apply to the defendant's CSC-II conviction; OV 5 applies only when the sentencing offense is homicide, attempted homicide, conspiracy or solicitation to commit a homicide, or assault with intent to commit murder. MCL 777.22(1).

8.49 Downward Departures

Objective and verifiable factors appropriately considered in determining whether to depart downward from the recommended minimum sentencing guidelines range include: (1) any mitigating circumstances of the offense; (2) the defendant's previous criminal record; (3) the defendant's age; (4) the defendant's employment history; and (5) any relevant post-arrest events, such as the defendant's cooperation with the police. *People v Daniel (Danny)*, 462 Mich 1, 7 (2000), citing *People v Fields (Warren)*, 448 Mich 58, 76-79 (1995). See *People v Young (Raymond)*, 276 Mich App 446, 449-458 (2007) (addressing all of the factors specified by the Court in *Fields (Warren)*, 448 Mich 58, as appropriate for a sentencing court to consider in deciding whether to depart downward from the recommended minimum sentencing guidelines range).

A. Work History

A sentencing court may consider a defendant's stable and long-term work history when determining whether a substantial and compelling reason exists for a downward departure from the recommended minimum sentencing guidelines range. *People v Shinholster*, 196 Mich App 531, 534-535 (1992). However, employment at a job for two years does not "keenly" or "irresistibly" grab one's attention and therefore, does not constitute a substantial and compelling reason to depart downward from the recommended minimum sentencing guidelines range. *People v Claypool*, 470 Mich 715, 727 (2004).

B. Education

Pursuit of a post-secondary education may be an appropriate factor for a trial court to consider in determining whether to depart downward from the recommended minimum sentencing guidelines range. *People v Perry (Willie)*, 216 Mich App 277, 280, 282 (1996).

C. Guidelines Range Versus Mandatory Minimum

If a crime is scored under the guidelines and results in a lesser minimum sentence than the mandatory minimum term contained in the penal statute under which a defendant was convicted, the guidelines range does not itself constitute a substantial and compelling reason for departing from the mandatory minimum. *People v Izarraras-Placante*, 246 Mich App 490, 498 (2001). Only when—independent of the guidelines range—a substantial and compelling reason to depart from a statutory mandatory minimum exists may a trial court properly look to the minimum range recommended by the

guidelines in order to fashion a sentence more proportionate to the offense and the offender. *Izarraras-Placante*, *supra* at 498-499.

D. Family Support

Strong family support may constitute a substantial and compelling reason for a trial court's downward departure from the recommended minimum sentencing guidelines range. *People v Harvey (Charles)*, 203 Mich App 445, 448 (1994).

E. Minimal Criminal History

Minimal criminal history may constitute a substantial and compelling reason for a trial court's downward departure from the recommended minimum sentencing guidelines range. *Daniel (Danny)*, 462 Mich at 7. However, the fact that the defendant at the age of 26 had only one previous misdemeanor conviction did not constitute a substantial and compelling reason for a downward departure from the recommended minimum sentencing guidelines range. *Claypool*, 470 Mich at 727.

F. Police Misconduct

"[P]olice misconduct, [] alone, is not an appropriate factor to consider at sentencing[, but] if it can be objectively and verifiably shown that police conduct or some other precipitating cause altered a defendant's intent, that altered intent can be considered by the sentencing judge as a ground for a downward sentence departure." *Claypool*, 470 Mich at 718.

G. Rehabilitative Potential

Where the trial court indicated that its concern was seeing that the defendant receive the rehabilitative services needed to address the context-specific criminal conduct engaged in by the defendant, and taking judicial notice of the fact that community-based services were more available and better than those offered by the Department of Corrections, the trial court did not abuse its discretion in departing downwardly from the recommended sentence, which resulted in the defendant's probation rather than incarceration for a minimum of 19 to 38 months under the guidelines. *People v Doolittle*, unpublished opinion per curiam of the Court of Appeals, issued September 28, 2010 (Docket No. 292423).[274]

The Court of Appeals noted in *Doolittle*, *supra*, that the trial court was in a "vastly superior position to observe and evaluate not only the

[274] An unpublished opinion is not binding precedent under the rule of stare decisis. MCR 7.215(C)(1).

defendant, but the victim, the context, the community, and anyone else who might have an effect on or be affected by its sentencing decision." *Doolittle*, *supra*. Finally, the Court of Appeals further noted that it was clear "that the trial court's real concern was ensuring to the maximum extent possible that [the] defendant would be a 'changed man' after completing whatever sentence was imposed." *Doolittle*, *supra*.

8.50 Upward Departures

The following factors have been addressed by Michigan's appellate courts when reviewing a trial court's upward departure from the guidelines:

A. Factors Related to a Victim of the Offense

1. Identity of the Victim

A defendant's "complete disregard" for a law enforcement officer's life is not adequately accounted for by the guidelines and may constitute a substantial and compelling reason to depart from the recommended minimum sentencing guidelines range. *People v Thomas (Samuel)*, 263 Mich App 70, 79 (2004).

2. Identity of the Victims Involved in a Defendant's Repeated Criminal Conduct

A "defendant's past criminal history of sex crimes with children, his admitted sexual attraction to children, and his repeated failure to rehabilitate himself when given the opportunity[,]" are objective and verifiable factors constituting substantial and compelling reasons to depart from the recommended minimum sentencing guidelines range. *People v Geno*, 261 Mich App 624, 636 (2004).

3. Violent Conduct Repeatedly Directed at the Same Individual

A defendant's "actual, established pattern and practice of repeatedly victimizing a targeted individual[,]" may constitute an objective and verifiable factor constituting a substantial and compelling reason to depart from the recommended minimum sentencing guidelines range. *People v Horn (Marvin)*, 279 Mich App 31, 33 (2008).

4. Effect of the Offense on the Victim

A departure may be justified where the recommended minimum sentencing guidelines range "do[es] not take into account the violation of the victim's parents' trust in defendant, the effect on the family occasioned by the victim's loss of trust in all men, including his own father, or the effect on the victim and his sister from having to learn about sexual matters at such a young age." *People v Armstrong (Rodney)*, 247 Mich App 423, 425-426 (2001).

5. Relationship to the Defendant and the Severity of the Victim's Physical Injury

The degree of physical injury sustained by a victim may constitute a substantial and compelling reason for departure when the degree of brutality is not adequately accounted for by the sentencing guidelines. *People v Granderson*, 212 Mich App 673, 680 (1995). "Where a defendant's actions [we]re so egregious that standard guidelines scoring methods simply fail[ed] to reflect their severity," the Court of Appeals affirmed a trial court's upward departure from the recommended sentence under the judicial guidelines then in effect. *Granderson*, *supra* at 680. The Court of Appeals explained:

> "Defendant severely beat an elderly woman who was a near invalid, breaking her nose and arm, and then repeatedly stabbed and shot her. His actions are rendered more appalling by the fact that he committed these acts against a woman who trusted him and who had previously hired him to perform odd jobs around her house. Must a reasonable court conclude that these circumstances are adequately accounted for by the relevant robbery offense variables, such as offense variable (OV) 1, 'A firearm is discharged by offender during commission of the offense,' or OV 2, 'Victim killed'? The answer is obvious. We wholeheartedly agree with the sentencing court in finding that the circumstances of the present crime were not adequately reflected in the offense variables." *Granderson*, 212 Mich App at 680-681.

See also *People v Reincke (On Remand)*, 261 Mich App 264, 269-270 (2004) (upward departure from the recommended minimum sentencing guidelines range appropriate where a three-year-old child was penetrated with such force that the tissue between the child's rectum and vaginal wall was torn to the point of being unidentifiable, general anesthesia was necessary just to examine

the extent of the child's injuries, and the injuries were so extensive that the child required major reconstructive surgery).

6. Ethnicity of the Victim

The ethnicity of a victim is not a factor already taken into account by the guidelines and may provide a sufficient substantial and compelling reason for departure from the recommended minimum sentencing guidelines range under specific circumstances. *People v Phung*, unpublished memorandum opinion of the Court of Appeals, issued June 12, 2003 (Docket No. 239098), aff'd sub nom *Phung v Bell*, unpublished opinion of the United States District Court for the Eastern District of Michigan, issued May 4, 2005 (No. 04-CV-73582-DT).[275] In *Phung*, *supra*, the trial court departed from the guidelines because the "defendant specifically targeted [the victims] based on their ethnicity."

7. Age and Identity of Victims

A trial court's upward departure from the recommended minimum sentencing guidelines range was appropriate where evidence showed that the "defendant performed sexual acts, including forced fellatio, on defenseless four- and five-year-old children, including his own son." *People v Kahley*, 277 Mich App 182, 190 (2007). The Court explained that although offense variable (OV) 4 addresses psychological injury to a victim, and OV 10 addresses exploitation of a vulnerable victim, those variables were "simply inadequate to address the abhorrent nature of the crimes committed by [the] defendant." *Kahley*, *supra* at 190-191.

See also *People v Keane*, unpublished opinion per curiam of the Court of Appeals, issued October 21, 2004 (Docket No. 248541) (upward departure from the recommended minimum sentencing guidelines range was appropriate where offense variable (OV) 9 (number of victims) "d[id] not consider the age of the victims or the fact that [the] defendant was willing to forego the lives of his own [two] children in []his plot [to have his former girlfriend and her eight-year-old daughter murdered to eliminate them as potential witnesses after he was charged with criminal sexual conduct involving the daughter]").

[275] Unpublished opinions are not precedentially binding under the rule of stare decisis. MCR 7.215(C)(1).

8. Unusual Consequences to a Victim of the Offense

A trial court's upward departure from the recommended minimum sentencing guidelines range was appropriate where evidence showed that the trial court based its departure on the victim's—and the victim's family's—exposure to the defendant's sexually transmitted disease, "the communicable nature of the disease[,] and the consequences of such a disease on a young victim." *People v Castro-Isaquirre,* unpublished opinion per curiam of the Court of Appeals, issued April 6, 2004 (Docket No. 242134).

B. Factors Involving the Offender

1. Repeat Violent Offenders and Community Protection

A trial court's upward departure from the recommended minimum sentencing guidelines range was proper where the defendant committed the sentencing offense shortly after his release from a 15-year sentence for a criminal episode that involved robbery, kidnapping, and sexual assault. *People v Hicks (Rodney)*, 259 Mich App 518, 535-537 (2003). The sentencing court further explained the departure by noting that the guidelines did not account for the fact that the defendant received 34 misconduct tickets during his previous incarceration and that the conduct precipitating both convictions was predatory conduct from which the community ought to be protected. *Hicks (Rodney)*, *supra* at 535-537.

2. Credible Prediction of the Defendant's Future Conduct

"[S]pecific characteristics of an offense and an offender that strongly presage future criminal acts may justify an upward departure from the recommended sentencing range if they are objective and verifiable, and if they are not already adequately contemplated by the guidelines. Although a trial court's mere opinion or speculation about a defendant's general criminal propensity is not, in itself, an objective and verifiable factor, objective and verifiable factors underlying that conclusion or judgment are not categorically excluded as proper reasons for an upward departure." *Horn (Marvin)*, 279 Mich App at 45. In *Horn (Marvin)*, *supra* at 44, the trial court engaged in an upward departure from the recommended minimum sentencing guidelines range based on its conclusion that the particular danger the defendant presented to his wife justified an increased sentence because the danger was clear from the defendant's pattern of extreme violence against his wife, and the sentencing

guidelines did not take into consideration the defendant's determined course of targeting a specific victim. In affirming the trial court, the Court of Appeals noted that "the trial court did not err in finding that [the] defendant's repeated criminal assaults upon his wife and his relentless attempts to brutalize and kill his wife presage future violence and aggression. An individual's established pattern of predatory conduct toward a selected victim clearly constitutes probative evidence of future behavior toward that victim. Accordingly, anticipatory harm based on an established pattern of violence toward a specific victim is an objective and verifiable factor, not a speculative prediction." *Id*. at 47-48.

A trial court's conclusion that the defendant was a pedophile who was likely to repeat his conduct and whose condition was not amenable to treatment was based on facts external to the mind of the court and supported by experts in the area of psychiatry. *Kahley*, 277 Mich App at 188-190. Accordingly, the Court of Appeals affirmed the trial court's upward departure from the recommended minimum sentencing guidelines range, noting its agreement with the trial court's finding "that the guidelines inadequately addressed the factual situation in which the defendant sexually abused extremely young, defenseless children, including his own child." *Kahley, supra* at 190.

See also *People v Solmonson*, 261 Mich App 657, 671 (2004), where the trial court properly based its upward departure from the recommended minimum sentencing guidelines range on the defendant's continued criminal conduct despite multiple prior sentences for the same conduct (probation, jail, and prison for drinking and driving offenses).

3. Pattern of Previous Convictions

In *People v Gagnier,* unpublished opinion per curiam of the Court of Appeals, issued August 6, 2009 (Docket No. 281868),[276] the Court of Appeals explained:

> "Although the PRVs [(prior record variables)] take into account an offender's general criminal history, the PRVs do not account for the fact that this was [the defendant's] fourth bank robbery and that he was released from parole for committing a previous bank robbery only l4 months before he committed this robbery. As the trial court noted, [the defendant] has been incarcerated for a large

[276] Unpublished opinions are not precedentially binding under the rule of stare decisis. MCR 7.215(C)(1).

> part of his adult life, but this fact has had no deterrent effect on his extreme recidivism. Also as the trial court noted, [the defendant] has fled parole and escaped from jail, demonstrating his noncompliance with previous sentences. This factor was not accounted for in the scoring of the PRVs. Accordingly, the trial court recognized that rehabilitation was not a likely goal and that society needed to be protected from [the defendant's] continuing criminal behavior. . . . In short, the trial court did not abuse its discretion by determining that [the defendant's] extreme recidivism and noncompliance with previous sentences and conditions of parole constituted substantial and compelling reasons to depart from the sentencing guidelines."

4. Excessive Prior Convictions and Adjudications

An upward departure may be justified where a defendant's prior felonies and felony juvenile adjudications greatly exceed the maximum number scored under the guidelines. *People v Annabel*, unpublished opinion per curiam of the Court of Appeals, issued September 30, 2004 (Docket No. 249238) (trial court's upward departure from the recommended minimum sentencing guidelines range affirmed where the defendant had eight previous adult felonies (and prior record variable (PRV) 2 only accounts for "4 or more" prior low severity felony convictions); ten previous felony juvenile adjudications (and prior record variable (PRV) 3 only accounts for "3 or more" prior high severity juvenile adjudications); and the defendant was only 22 years of age and had been convicted of felonies in four different states).

See also *People v Lalone*, unpublished opinion per curiam of the Court of Appeals, issued May 5, 2005 (Docket No. 251326) (trial court's upward departure from the recommended minimum sentencing guidelines range affirmed where each of the three victims described "'a dozen or more' incidents of sexual abuse" and offense variable (OV) 13 only accounts for "a pattern of felonious criminal activity involving 3 or more crimes against a person").

5. Type and Severity of Prior Convictions Not Accounted for by PRVs

"[A]lthough foreign convictions cannot be considered under PRV [(prior record variable)] 1 [(prior high severity felony

convictions)], they can, under appropriate circumstances, give rise to a substantial and compelling reason to justify a departure from the guidelines range[.]" *People v Price (Tore)*, 477 Mich 1, 5 (2006).

An upward departure from the recommended minimum sentencing guidelines range may be appropriate where the type and severity of a defendant's prior convictions are not accounted for by the prior record variables (PRVs). *People v Thomas (Ernest),* unpublished opinion per curiam of the Court of Appeals, issued October 12, 2004 (Docket No. 248097). In *Thomas (Ernest), supra*, the trial court did not abuse its discretion when it departed from the guidelines because PRVs 1 and 7 failed to adequately reflect the circumstances of the offense and the offender—although PRV 1 (prior high severity felony convictions) accounted for the defendant's previous conviction in which a death occurred, it did not reflect the defendant's history of shooting offenses, and although PRV 7 (subsequent or concurrent felony convictions) accounted for the fact that the defendant had a subsequent felony conviction, it did not reflect that the conviction was for first-degree murder.

6. Parole Absconder Status

That a defendant has absconded from parole is not reflected in the sentencing guidelines and is an objective and verifiable factor that may constitute a substantial and compelling reason to justify an upward departure from the recommended minimum sentencing guidelines range. *People v Nichols (Terry),* unpublished opinion per curiam of the Court of Appeals, issued September 16, 2004 (Docket No. 246973).

7. Absconding on Bond

A trial court's upward departure from the recommended minimum sentencing guidelines range "for [an] attempted absconding on bond conviction on the basis of its finding that [the] defendant fled the state and tried to establish a different identity" was appropriate where the "conduct went beyond that of the average absconder" and "show[ed] the great lengths to which [the] defendant was willing to go to evade the charges against him." *People v Kohns,* unpublished opinion per curiam of the Court of Appeals, issued April 12, 2005 (Docket No. 251327).

8. Other Relevant Information About a Defendant's Status at the Time of the Offense

A trial court's upward departure from the recommended minimum sentencing guidelines range may be appropriate where additional information about a defendant's status at the time of the offense is not adequately taken into account by the sentencing guidelines. *People v Ossowski,* unpublished opinion per curiam of the Court of Appeals, issued October 12, 2004 (Docket No. 246667). For example, in *Ossowski*, *supra*, while prior record variable (PRV) 6 (relationship to criminal justice system) "accounted for the fact that [the] defendant committed the [sentencing] offense while on probation," it did not account "for the short time he was on probation before lapsing back into criminal activity[,]" or the "fact that [the] defendant left a rehabilitation program in which he had been ordered to participate as a condition of his probation[.]" In affirming the trial court's upward departure, the Court of Appeals noted that "[the d]efendant's rapid violation of his probation and his unauthorized departure from a court-ordered rehabilitation program were objective and verifiable indications of [the] defendant's unwillingness to appreciate his wrongdoing and modify his behavior." *Id*.

9. Perjury

A trial court's upward departure from the recommended minimum sentencing guidelines range may be appropriate where a defendant's perjury is an objective and verifiable factor, and combined with other factors, constitutes a substantial and compelling reason for departure from the guidelines. *Kahley*, 277 Mich App at 188. In *Kahley*, *supra* at 188, the defendant's perjury was objective and verifiable where he "admitted at his sentencing that he lied to the jury and that he committed the offenses." The Court of Appeals recognized, however, that a defendant's perjured testimony is not always an objective and verifiable factor capable of supporting a sentence departure because "whether a person perjured himself or herself at trial may on some occasions be a subjective conclusion, i.e., an internal belief that the person was lying without a firm confirmation." *Id*. The Court further noted that a defendant's objective and verifiable commission of perjury alone "would be insufficient to constitute a substantial and compelling reason for departure from the guidelines; otherwise, a departure might be warranted every time a defendant testified and was found guilty." *Id*.

10. Failure to Admit Guilt or Show Remorse

"'A court cannot base its sentence even in part on a defendant's refusal to admit guilt.'" *People v Conley*, 270 Mich App 301, 314 (2006), quoting *People v Yennoir*, 399 Mich 892 (1977). See also *People v Jackson (James)*, 474 Mich 996 (2006).

"[A] defendant's expression of remorse is a subjective factor that a trial court may not consider in determining whether a departure from the sentence mandated by statute is justified." *Daniel (Danny)*, 462 Mich at 6; *People v Davis (Marcus)*, 250 Mich App 357, 370 (2002).

C. Factors Involving the Sentencing Offense

1. Dismissed or Uncharged Criminal Conduct

A trial court may engage in an upward departure from the recommended minimum sentencing guidelines range based on the prosecutor's dismissal of a more serious charge, as well as the fact that other criminal conduct occurred with which the defendant was not charged. *Armstrong (Rodney)*, 247 Mich App at 426 ("the prosecutor's decision, in exchange for [the] defendant's guilty plea, to dismiss a charge of first-degree CSC [(criminal sexual conduct)], which carries a potential life sentence, and the fact that [the] defendant was not charged with attempted CSC for trying to have the victim perform oral sex on him are additional factors that the court can consider when deciding whether departure is warranted.").

2. Specific Method and Cause of a Victim's Injury

A trial court may engage in an upward departure from the recommended minimum sentencing guidelines range where the guidelines fail to account for a very specific consequence of criminal conduct not precisely described in the prior record variables (PRVs) or offense variable (OVs). *People v Lowery*, 258 Mich App 167, 171 (2003). In *Lowery, supra* at 171, the Court of Appeals affirmed the trial court's upward departure because no offense variable or combination of variables adequately accounted for the fact that the defendant used a firearm to shoot the victim, the victim was actually shot, and the victim's injuries resulted from being shot.

3. Peculiar Circumstances of the Offense or the Offender

A trial court may engage in an upward departure from the recommended minimum sentencing guidelines range where the

guidelines fail to take into account the peculiar circumstances of the offense or the offender. *People v Evans (Mario),* unpublished opinion per curiam of the Court of Appeals, issued March 18, 2004 (Docket No. 240357).[277] In *Evans (Mario)*, *supra*, the trial court did not abuse its discretion by engaging in an upward departure where the guidelines did not take into account that the defendant "committed two murders, under similar circumstances, i.e., in both cases the evidence established that [the] defendant shot multiple times from a shotgun at close range and that he killed two people he did not know[.]"

4. OVs Cannot Measure the Context of the Offense in its Entirety

A trial court may engage in an upward departure from the recommended minimum sentencing guidelines range where the guidelines do not adequately account for "the nature of dangers" presented by the defendant's conduct. *People v Staffney,* unpublished opinion per curiam of the Court of Appeals, issued March 23, 2004 (Docket No. 244516). In *Staffney*, *supra*, the trial court did not abuse its discretion by engaging in an upward departure when, although offense variable (OV) 9 (number of victims) accounted for the fact that the defendant "lost control of his vehicle which ran onto a lawn and struck three people, two of whom died[,]" the guidelines did not account for the fact that the "[d]efendant led police on a chase at 80 to 90 miles per hour in a residential area, placing many other residents and police officers at risk."

5. Aggregating Specific Factors of an Offense

A trial court may engage in an upward departure from the recommended minimum sentencing guidelines range where the guidelines do not adequately account for aggregating specific factors of an offense. *People v Brunas,* unpublished opinion per curiam of the Court of Appeals, issued January 25, 2005 (Docket No. 252926). In *Brunas*, *supra*, the trial court did not abuse its discretion by engaging in an upward departure where the "[d]efendant recklessly drove into a crowd of people numerous times until he hit [the victim]," but the guidelines did not account for the fact that the defendant: (1) was not charged with the assaults with his vehicle, (2) repeatedly and recklessly used his vehicle which resulted in the victim's death, (3) used his vehicle as a lethal weapon, and (4) failed to improve his driving after numerous prior driving infractions.

[277] Unpublished opinions are not precedentially binding under the rule of stare decisis. MCR 7.215(C)(1).

8.51 Exceptions: When a Departure Is Not a Departure

The sentencing guidelines expressly describe situations in which a trial court's departure from the minimum sentence recommended under the guidelines is not a departure.

A. Mandatory Minimum Sentences

"If a statute mandates a minimum sentence for an individual sentenced to the jurisdiction of the department of corrections, the court shall impose sentence in accordance with that statute.[278] Imposing a mandatory minimum sentence is not a departure under this section. If a statute mandates a minimum sentence for an individual sentenced to the jurisdiction of the department of corrections and the statute authorizes the sentencing judge to depart from that minimum sentence, imposing a sentence that exceeds the recommended sentence range but is less than the mandatory minimum sentence is not a departure under this section." MCL 769.34(2)(a).

"If the Michigan vehicle code . . . MCL 257.1 to [MCL] 257.923, mandates a minimum sentence for an individual sentenced to the jurisdiction of the department of corrections and the Michigan vehicle code . . . MCL 257.1 to [MCL] 257.923, authorizes the sentencing judge to impose a sentence that is less than that minimum sentence, imposing a sentence that exceeds the recommended sentence range but is less than the mandatory minimum sentence is not a departure under this section." MCL 769.34(2)(a).See, e.g., *People v Hendrix*, 263 Mich App 18, 19-22 (2004), modified in part 471 Mich 926 (2004), where the trial court's sentence of one year of probation to be served in the county jail, which was equal to the alternative one-year mandatory minimum term of imprisonment under the jurisdiction of the Department of Corrections (DOC) specified in MCL 257.625(9)(c)(*i*), was not a departure under MCL 769.34(2)(a), even though the recommended guidelines range for the defendant's vehicle code violations was 0 to 11 months.

[278] However, a mandatory sentence of life imprisonment without the possibility of parole may not, consistently with the Eighth Amendment, be imposed upon an individual who was under the age of 18 at the time of the sentencing offense. See *Miller v Alabama*, 567 US ___, ___ (2012) (homicide offender under the age of 18 may not be sentenced to life imprisonment without the possibility of parole unless a judge or jury first has the opportunity to consider mitigating circumstances); *Graham v Florida*, 560 US ___, ___ (2010) (sentence of life imprisonment without the possibility of parole may not be imposed upon a defendant under the age of 18 for a nonhomicide offense). For additional discussion of *Miller*, 567 US ___, and *Graham*, 560 US ___, see the Michigan Judicial Institute's *Juvenile Justice Benchbook*, Chapter 18.

B. Mandatory Determinate Sentences

"If a crime has a mandatory determina[te] penalty or a mandatory penalty of life imprisonment, the court shall impose that penalty. [MCL 769.34] does not apply to sentencing for that crime." MCL 769.34(5).[279]

C. Sentences Pursuant to Valid Plea Agreements

"[A] sentence that exceeds the sentencing guidelines satisfies the requirements of MCL 769.34(3) when the record confirms that the sentence was imposed as part of a valid plea agreement." *People v Wiley*, 472 Mich 153, 154 (2005). "Under such circumstances, the statute does not require the specific articulation of additional 'substantial and compelling' reasons by the sentencing court." *Wiley, supra* at 154.

D. Enhancement Under the Repeat Offender Provision of MCL 333.7413(2)

When MCL 333.7413(2) permits a court to impose a sentence of not more than twice the term otherwise authorized, the enhancement authority extends to both the minimum and maximum terms. *People v Williams (John)*, 268 Mich App 416, 428 (2005). For example, if the recommended minimum range under the guidelines is 5 to 23 months, MCL 333.7413(2) permits an increase in both the upper and lower limit of the recommended range so that the allowable range would be 10 to 46 months. *Williams (John)*, *supra* at 431. When, subject to the ranges discussed above, a court imposes a minimum sentence of 38 months, the sentence falls within the enhanced range authorized by MCL 333.7413(2). *Williams (John)*, *supra* at 430-431. Therefore, even though a term of 38 months exceeds the original range of 5 to 23 months, the sentence does not represent a departure for which a trial court must articulate a substantial and compelling reason. *Id*.

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[279] However, a mandatory sentence of life imprisonment without the possibility of parole may not, consistently with the Eighth Amendment, be imposed upon an individual who was under the age of 18 at the time of the sentencing offense. See *Miller v Alabama*, 567 US ___, ___ (2012) (homicide offender under the age of 18 may not be sentenced to life imprisonment without the possibility of parole unless a judge or jury first has the opportunity to consider mitigating circumstances); *Graham v Florida*, 560 US ___, ___ (2010) (sentence of life imprisonment without the possibility of parole may not be imposed upon a defendant under the age of 18 for a nonhomicide offense). For additional discussion of *Miller*, 567 US ___, and *Graham*, 560 US ___, see the Michigan Judicial Institute's *Juvenile Justice Benchbook*, Chapter 18.

E. Determining Whether Probation is an Authorized Alternative to Imprisonment

The legislative sentencing guidelines expressly authorize probationary terms for offenses subject to the guidelines when the recommended minimum sentence range falls within an intermediate sanction cell. MCL 769.31(b). Therefore, absent any substantial and compelling reason for departure, when an offense is expressly made subject to the legislative sentencing guidelines, probation is a valid alternative sentence only if the properly scored guidelines place a defendant in an intermediate sanction cell:

> "[P]robation is *available* [under MCL 771.1(1)] for all nonenumerated crimes; however, this fact does not lead to the conclusion that sentencing courts have unfettered discretion to impose probation for *all* such crimes. . . . [I]f the offense is subject to the mandatory sentencing guidelines[,] . . . [t]he minimum sentence . . . *must* be within the minimum guidelines sentence range. In some instances, the Legislature has determined that probation is a permissible sentence within the sentence range, such as when the guidelines call for an intermediate sanction. However, the guidelines do not indicate that probation is available for ranges that require a minimum term of imprisonment. Therefore, probationary sentences constitute a downward departure from any sentencing guidelines range that does not permit the imposition of intermediate sanctions. In such cases, if the sentencing court desires to impose a probationary sentence, the court must articulate substantial and compelling reasons for the downward departure on the record." *People v Buehler*, 477 Mich 18, 27-28 (2007).

Part J—Selected Post-Sentencing Issues

8.52 Appellate Review of Felony Sentences

In addition to other relevant and applicable preservation requirements, a copy of the defendant's presentence investigation report (PSIR)[280] must accompany any appellate brief if an issue on appeal concerns the defendant's sentence. MCL 769.34(8)(b); MCR 7.212(C)(7); *People v Callon*,

[280] See Section 8.4 for information on presentence investigation reports.

256 Mich App 312, 332 (2003). When appealing any sentence imposed under the statutory guidelines, MCL 769.34(8) also requires that the record filed for appeal includes "[a]n entire record of the sentencing proceedings . . . [and a]ny other reports or documents the sentencing court used in imposing sentence." MCL 769.34(8)(a) and (c).

> **Note:** "An error in scoring the judicial [sentencing] guidelines does not provide a basis for appellate relief." *People v Walker (Robert)*, 485 Mich 870 (2009), citing *People v Raby*, 456 Mich 487, 496 (1998).

"The court may correct an invalid sentence, but the court may not modify a valid sentence after it has been imposed except as provided by law." MCR 6.429(A); *People v Moore (Louis)*, 468 Mich 573, 579 (2003) ("[a] trial judge has the authority to resentence a defendant only when the previously imposed sentence is invalid.").

"A motion to correct an invalid sentence may be filed by either party." MCR 6.429(A). "A sentence may be invalid no matter who is benefited by the error, because sentencing not only must be tailored to each defendant, but also must satisfy society's need for protection and interest in maximizing the offender's rehabilitative potential." *People v Harris (Marcus)*, 224 Mich App 597, 600 (1997).

MCR 6.429(B) sets out the time requirements for filing a motion to correct an invalid sentence:

> "(1) A motion to correct an invalid sentence may be filed before the filing of a timely claim of appeal.
>
> "(2) If a claim of appeal has been filed, a motion to correct an invalid sentence may only be filed in accordance with the procedure set forth in MCR 7.208(B) or the remand procedure set forth in MCR 7.211(C)(1).
>
> "(3) If the defendant may only appeal by leave or fails to file a timely claim of appeal, a motion to correct an invalid sentence may be filed within 6 months of entry of the judgment of conviction and sentence.
>
> "(4) If the defendant is no longer entitled to appeal by right or by leave, the defendant may seek relief pursuant to the procedure set forth in subchapter 6.500."

A. Invalid Sentences

A sentence is invalid under the following circumstances:

- When it violates the "two-thirds rule" in *People v Tanner*, 387 Mich 683, 689-690 (1972),[281] and MCL 769.34(2)(b).

- When it exceeds statutory limits. *People v Shipley*, 256 Mich App 367, 378 (2003). A sentence in excess of the statutory limit is only invalid to the extent it exceeds the statutory limit. MCL 769.24; *People v Thomas (Gerry)*, 447 Mich 390, 393 (1994).

- When it is an impermissible combination of terms. *People v Parish*, 282 Mich App 106, 107-108 (2009) (the defendant's sentence of a minimum term of years and a maximum of life in prison violated MCL 769.9(2), which provides that "[t]he court shall not impose a sentence in which the maximum penalty is life imprisonment with a minimum for a term of years included in the same sentence.").

- When concurrent sentences were imposed and consecutive sentencing was mandatory.[282] *People v Thomas (Roberto)*, 223 Mich App 9, 11 (1997). The due process afforded by a resentencing hearing is required when a defendant is exposed to a greater possible penalty or when a defendant's original sentence would be "drastically increased" by the modified sentence. *Thomas (Roberto)*, *supra* at 15-16.

- When the court mistakenly imposes consecutive sentences without statutory authority to do so. *People v Alexander (Ronald)*, 234 Mich App 665, 677-678 (1999). However, resentencing in *Alexander (Ronald)*, *supra* at 678, was not required because, unlike the situation in *Thomas (Roberto)*, 223 Mich App 9, the defendant's due process rights were not implicated. In *Thomas (Roberto)*, *supra* at 15-16, resentencing made the defendant vulnerable to an increased total term of incarceration. In *Alexander (Ronald)*, *supra* at 678, a resentencing hearing was unnecessary because correction of the invalid sentence would result in a decrease in the defendant's overall prison term.

- When the sentence is based on inaccurate information or an error in scoring the sentencing guidelines. *People v Jackson (Leonard)*, 487 Mich 783, 792 (2010). A defendant must be resentenced when the sentencing judge relied on the minimum range indicated in a cell that, due to an error in scoring, was later determined to be the wrong cell range, even when the defendant's original sentence

[281] See Section 8.27 for more information.

[282] See Section 8.28 for more information on concurrent and consecutive sentencing.

falls within either of the cell ranges. *Jackson (Leonard)*, *supra* at 792. MCL 769.34(10) states "[i]f a minimum sentence is within the appropriate guidelines sentence range, the court of appeals shall affirm that sentence and shall not remand for resentencing absent an error in scoring the sentencing guidelines or inaccurate information relied upon in determining the defendant's sentence." Stated another way, "the Court shall not remand for resentencing *unless* there was either an error in scoring or [the] defendant's sentence was based on inaccurate information." *Jackson (Leonard)*, *supra* at 792. "Conversely, this means that the Court is required to remand whenever one of these two circumstances is present." *Id*. In sum, "the Court may not ignore the two criteria for when a case should be remanded merely because the sentence is within the appropriate guidelines range. When the defendant's sentence is based on an *error in scoring* or *based on inaccurate information*, a remand for resentencing is required." *Id*.[283] In *Jackson (Leonard)*, *supra* at 787-789, the defendant was entitled to resentencing for an armed robbery conviction where the Court of Appeals vacated his concurrent convictions for felonious assault that had been used in calculating prior record variable (PRV) 7 for his armed robbery sentence. Because the defendant's sentence was based on inaccurate information, the Court of Appeals erred in holding that it was barred from remanding for resentencing because the defendant's minimum sentence still fell within the corrected sentencing guidelines range. *Id*. at 793.

- When the sentence is based on constitutionally impermissible grounds. *People v Miles (Dwayne)*, 454 Mich 90, 96 (1997).

  - Where a trial court implies that it might impose a more lenient sentence if the defendant provides the court with information that requires the defendant to effectively admit his guilt, the court "violate[s] [the defendant's] constitutional right against self-incrimination[,]" and the sentence is invalid. *People v Conley*, 270 Mich App 301, 314-316 (2006).

  - The statutory mandate of MCL 769.34(10)—a minimum sentence within the appropriate guidelines range must be affirmed on appeal unless it was based

[283]However, *Jackson (Leonard)*, 487 Mich 783, "does not require resentencing if [an] inaccurate score did not affect the applicable sentencing guidelines range." *People v Sims,* 489 Mich 970 (2011), modified on other grounds 490 Mich 857 (2011) (reversing the judgment of the Court of Appeals to the extent that it ordered resentencing based on an error in the scoring of an offense variable).

on inaccurate information or a scoring error—does not override the relief due a defendant for a "sentencing error[] of constitutional magnitude." *Conley*, 270 Mich App at 316. Specifically, "[i]t is axiomatic that a statutory provision, such as MCL 769.34(10), cannot authorize action in violation of the federal or state constitutions." *Conley*, *supra* at 316.

- It is constitutionally impermissible when fashioning a defendant's sentence for a trial court to rely on a defendant's constitutionally infirm prior convictions. *People v Whalen*, 412 Mich 166, 169 (1981). However, there exists no presumption that a court considered an unconstitutional prior conviction simply because the conviction was included in the information before the court at the time of sentencing. *Alexander (Ronald)*, 234 Mich App at 672. For such an issue to merit review, there must be some affirmative evidence that a sentencing court actually considered the conviction in question. *Alexander (Ronald)*, *supra* at 672.

- When the sentence is based on a trial court's improper assumption of the defendant's guilt. *Miles (Dwayne)*, 454 Mich at 96.

- When the sentence "conforms to local sentencing policy rather than individualized facts." *Miles (Dwayne)*, 454 Mich at 96.

- When a trial court "fails to exercise its discretion because of a mistaken belief in the law." *People v Green (Donte)*, 205 Mich App 342, 346 (1994).

  - A sentence was deemed invalid when the trial court imposed consecutive sentences under the mistaken belief that consecutive sentencing was mandatory. *People v Daniels (Virgil)*, 69 Mich App 345, 349-350 (1976).

  - "[T]here is no legal requirement that a trial court state on the record that it understands it has [sentencing] discretion and is utilizing that discretion [when imposing a sentence]." *People v Knapp*, 244 Mich App 361, 389 (2001). In the absence of record evidence that a court wrongly believed it had no discretion, a court is presumed to know the law and the judicial discretion the law authorizes. *Knapp*, *supra* at 389.

- When a court fails to utilize a reasonably updated presentence investigation report (PSIR) when imposing a sentence.[284] *People v Hemphill*, 439 Mich 576, 580-581 (1992).

- When the defendant and defense counsel are not given the opportunity to address the court before sentence is imposed. MCR 6.425(E)(1)(c); *People v Wells (Davan)*, 238 Mich App 383, 392 (1999).[285]

B. Correcting Invalid Sentences

The proper remedy for a violation of the two-thirds rule in MCL 769.34(2)(b) and *People v Tanner*, 387 Mich 683 (1972),[286] is a reduction in the minimum sentence. *People v Thomas (Gerry)*, 447 Mich 390, 392-394 (1994).

"Certain sentence modifications of invalid sentences are ministerial in nature and do not require a resentencing hearing; however, other modifications require the due process protections of a resentencing hearing." *Miles (Dwayne)*, 454 Mich at 98-99.

"Where a sentence is partially invalid, only the invalid part is to be vacated for resentencing; however, a wholly invalid sentence is to be vacated in its entirety, and resentencing is to be de novo." *People v Parish*, 282 Mich App 106, 108 (2009). In *Parish*, *supra* at 107, the defendant's sentence of 126 months to life in prison violated MCL 769.9(2), which provides that a court "shall not impose a sentence in which the maximum penalty is life imprisonment with a minimum for a term of years included in the same sentence." The Court of Appeals held that the defendant's original sentence was wholly invalid because it was "an impermissible *combination of* terms." *Parish*, *supra* at 108. Because the sentence was wholly invalid, the trial court was not limited to imposing "a new and valid maximum term [of imprisonment]" when it resentenced the defendant. *Id*. The Court explained that the trial court was not precluded from imposing a new sentence with a longer minimum term because resentencing on a wholly invalid sentence is de novo. *Id*.

MCL 769.27 states that a court must provide notice to all parties of any change made to a sentence:

> "If the court changes any sentence imposed under this act in any respect, the clerk of the court shall give written notice of the change to the prosecuting attorney, the defendant, and the defendant's counsel. The prosecuting attorney, the defendant's counsel, or the defendant may file an objection to the change. The court shall promptly hold a hearing on any objection filed."

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[284] See Section 8.4(E) for more information.

[285] See Section 8.23 for information on allocution.

[286] See Section 8.27 for more information.

C. No Remedy Available, Permitted, or Necessary

"[T]he court may not modify a valid sentence after it has been imposed except as provided by law." MCR 6.429(A); *Moore (Louis)*, 468 Mich at 579 ("[a] trial judge has the authority to resentence a defendant only when the previously imposed sentence is invalid").

A trial court's uncertainty about the parolable life sentence it imposed on a defendant does not entitle the defendant to later be resentenced when the Parole Board's review process ultimately did not accommodate the court's intention. *Moore (Louis)*, 468 Mich at 580. In *Moore (Louis)*, *supra* at 580, the trial court clearly expressed its intention that—despite imposing a sentence of life imprisonment—the defendant be considered for parole. On appeal, the Michigan Supreme Court emphasized that "the sentencing judge did not express any intention that defendant *actually be paroled*, but only that the Parole Board consider whether to parole him." *Id*. The Court concluded that the trial court's expectations were satisfied when the Parole Board considered the defendant for parole even though it expressed "no interest" in pursuing the matter. *Id*. "The only sense in which the sentencing judge expressed that he had been under a 'misapprehension or misunderstanding' was that he did not anticipate the infrequency with which the Parole Board would grant parole to defendants sentenced to life terms. However, the failure to accurately predict the actions of the Parole Board does not constitute a misapprehension of the law that could render the sentence invalid." *Id*.

"If a minimum sentence is within the appropriate guidelines sentence range, the court of appeals shall affirm that sentence and shall not remand for resentencing absent an error in scoring the sentencing guidelines or inaccurate information relied upon in determining the defendant's sentence." MCL 769.34(10). "In other words, if a minimum sentence falls within the appropriate guidelines range, a defendant is not entitled to be resentenced unless there has been a scoring error or inaccurate information has been relied upon." *People v Francisco*, 474 Mich 82, 88 (2006).

> **Note:** However, resentencing is required when a scoring error alters the appropriate guidelines range, even if the initial sentence falls within the corrected range, because if resentencing does not occur, "the defendant will have been given a sentence which stands differently in relationship to the correct guidelines range than may have been the trial court's intention." *Francisco*, 474 Mich at 89-92. "[R]equiring resentencing in such circumstances . . . respects the defendant's right to be sentenced on the basis of the law, [as well as] the trial

> court's interest in having defendant serve the sentence that it truly intends." *Id*. at 92.
>
> A defendant must also be resentenced when the initial sentence represents an upward departure from a cell range resulting from a scoring error, absent any record indication that the trial court would have departed to the same extent had the guidelines been properly scored. *People v Lathrop*, 480 Mich 1036 (2008).

A "trial court lacks authority to set aside a valid sentence once [a] defendant begins serving it[,]" *People v Wybrecht*, 222 Mich App 160, 166 (1997), and a trial court may not modify a valid sentence after it has been imposed, except as provided by law. MCR 6.429(A). For example, in *People v Holder*, 483 Mich 168, 170, 177 (2009), the Supreme Court held that the trial court did not have the authority to modify the defendant's sentence under MCR 6.429(A), because the sentence was valid when it was imposed. In *Holder*, *supra* at 169-170, the defendant committed several crimes after receiving an early discharge from parole, and thereafter received notice from the Department of Corrections (DOC) that his parole discharge was cancelled. The DOC then requested that the trial court "amend [the] defendant's judgment of sentence to reflect that the sentence imposed was to be served consecutively to the sentence for which the defendant was on parole." *Id*. at 170. However, "because the original judgment of sentence was valid when imposed, the court had no authority to modify it in response to the DOC's [requests]." *Id*. at 177.

D. Sentences Imposed Under the Statutory Guidelines

1. Sentences Within the Guidelines Range

"If a minimum sentence is within the appropriate guidelines sentence range, the court of appeals shall affirm that sentence and shall not remand for resentencing absent an error in scoring the sentencing guidelines or inaccurate information relied upon in determining the defendant's sentence." MCL 769.34(10). "In other words, if a minimum sentence falls within the appropriate guidelines range, a defendant is not entitled to be resentenced unless there has been a scoring error or inaccurate information has been relied upon." *Francisco*, 474 Mich at 88. However, "MCL 769.34(10) cannot constitutionally be applied to preclude relief for sentencing errors of constitutional magnitude." *People v Conley*, 270 Mich App 301, 316-317 (2006) (resentencing required when, even though the defendant's sentence was within the appropriate guidelines sentence range, the trial court constitutionally erred in considering the defendant's refusal to admit guilt at sentencing).

The requirements for appealing a sentence within the guidelines are found in MCL 769.34(10) and MCR 6.429(C):

> "A party shall not raise on appeal an issue challenging the scoring of the sentencing guidelines or challenging the accuracy of information relied upon in determining a sentence that is within the appropriate guidelines sentence range unless the party has raised the issue at sentencing, in a proper motion for resentencing, or in a proper motion to remand filed in the court of appeals."

However, resentencing is not required where a scoring error did not alter the applicable sentencing guidelines range. *Sims*, 489 Mich at 970 (2011), modified on other grounds 490 Mich 857 (2011), citing *Jackson (Leonard)*, 487 Mich 783, and *Francisco*, 474 Mich at 89 n 8.

"[W]hen the request to remand will not be ripe for review until after the Court of Appeals has adjudicated the merits, the mandate of a *proper motion* in MCL 769.34(10) is met when a defendant makes a request to remand for resentencing with supporting grounds within his [or her] appellate brief." *Jackson (Leonard)*, 487 Mich at 800 (the error in scoring the defendant's variables required the Court of Appeals to first find that the defendant was wrongly convicted of two felonies on which the trial court relied when scoring PRV 7).

"Under MCL 769.34(10), [the appellate courts] may not consider challenges to a sentence based exclusively on proportionality, if the sentence falls within the guidelines." *People v Pratt*, 254 Mich App 425, 429-430 (2003). In fact, "a sentence within the guidelines range is presumptively proportionate[.]" *People v Powell (Kelly)*, 278 Mich App 318, 323 (2008).

2. Sentences Outside the Guidelines Range[287]

MCL 769.34(7) and MCR 6.425(F)(4) authorize defendants to appeal a sentence outside the guidelines range on that basis alone. However, unlike MCL 769.34(10) and MCR 6.429(C) (provisions applicable to appealing sentences within the guidelines), MCL 769.34(7) and MCR 6.425(F)(4), the provisions governing appeals of sentences outside the guidelines, make no mention of preservation requirements. Even though the

[287] A sentence "outside the guidelines range" is a departure. Departures are discussed in detail in Sections 8.48, 8.49, and 8.50.

language used in MCL 769.34(7) and MCR 6.425(F)(4) is not identical, there is no conflict between the two provisions and neither one requires something the other does not:

> "If the trial court imposes on a defendant a minimum sentence that is longer or more severe than the appropriate sentence range, as part of the court's advice of the defendant's rights concerning appeal, the court shall advise the defendant orally and in writing that he or she may appeal the sentence as provided by law on grounds that it is longer or more severe than the appropriate sentence range." MCL 769.34(7).

> "When imposing sentence in a case in which sentencing guidelines enacted in . . . MCL 777.1 *et seq*., are applicable, if the court imposes a minimum sentence that is longer or more severe than the range provided by the sentencing guidelines, the court must advise the defendant on the record and in writing that the defendant may seek appellate review of the sentence, by right if the conviction followed trial or by application if the conviction entered by plea, on the ground that it is longer or more severe than the range provided by the sentencing guidelines." MCR 6.425(F)(4).

"[A] sentence that is outside the appropriate guidelines sentence range, for whatever reason, is appealable regardless of whether the issue was raised at sentencing, in a motion for resentencing, or in a motion to remand." *People v Kimble (Richard)*, 470 Mich 305, 310 (2004).

E. Standards of Review

- "[Appellate courts] review[] a trial court's sentencing decisions for an abuse of discretion." *People v Sexton*, 250 Mich App 211, 227 (2002).

- In cases involving a sentence departure, "whether a [particular] factor exists is reviewed for clear error, whether a factor is objective and verifiable is reviewed de novo, and whether a reason is substantial and compelling is reviewed for an abuse of discretion[.]" *People v Babcock*, 469 Mich 247, 265 (2003).

- Unpreserved sentencing errors are reviewed for plain error affecting substantial rights. *Callon*, 256 Mich App at 332.

8.53 Probation Revocation[288]

"[A] judge who sentences a defendant to probation retains jurisdiction over the case in all subsequent proceedings, including revocation of probation." *People v Manser (Mark)*, 172 Mich App 485, 487 (1988). "'The underlying policy is simply to insure that revocation will be considered by the judge who is most acquainted with the matter.'" *Manser (Mark)*, *supra* at 487, quoting *People v Clemons (Alvin)*, 116 Mich App 601, 604 (1981).

"[V]iolation of probation is not a crime, and a ruling that probation has been violated is not a new conviction." *People v Kaczmarek*, 464 Mich 478, 482-483 (2001). "'If a judge finds that a probationer violated his [or her] probation by committing an offense, the probationer is neither burdened with a new conviction nor exposed to punishment other than that to which he [or she] was already exposed . . . .'" *Kaczmarek*, *supra* at 483, quoting *People v Johnson (Eddie)*, 191 Mich App 222, 226 (1991). "Instead, revocation of probation simply clears the way for a resentencing on the original offense." *Kaczmarek*, *supra* at 483.

A trial court only has jurisdiction to revoke a defendant's probation and sentence him or her to imprisonment during the probationary period; if the probationary period expires, the trial court loses jurisdiction to revoke probation and impose a prison sentence. *People v Glass (Brent)*, 288 Mich App 399, 408 (2010).

A. Issuance of Summons or Warrant

"On finding probable cause to believe that a probationer has violated a condition of probation, the court may

> "(1) issue a summons in accordance with MCR 6.103(B) and [MCR 6.103](C) for the probationer to appear for arraignment on the alleged violation, or
>
> "(2) issue a warrant for the arrest of the probationer." MCR 6.445(A).

"An arrested probationer must promptly be brought before the court for arraignment on the alleged violation." MCR 6.445(A).

B. Arraignment

At the arraignment on the alleged probation violation, MCR 6.445(B) requires the court to take the following actions:

[288] See the Michigan Judicial Institute's *Criminal Procedure Monograph 7: Probation Revocation*, for detailed information about probation revocation.

> "(1) ensure that the probationer receives written notice of the alleged violation,
>
> "(2) advise the probationer that
>
> > "(a) the probationer has a right to contest the charge at a hearing, and
> >
> > "(b) the probationer is entitled to a lawyer's assistance at the hearing and at all subsequent court proceedings, and that the court will appoint a lawyer at public expense if the probationer wants one and is financially unable to retain one,
>
> "(3) if requested and appropriate, appoint a lawyer,
>
> "(4) determine what form of release, if any, is appropriate, and
>
> "(5) subject to [MCR 6.445](C), set a reasonably prompt hearing date or postpone the hearing."

If the probationer is being held in custody for the alleged violation, the hearing must be held no more than 14 days after the probationer's arraignment, or the probationer must be released from custody pending the hearing. MCR 6.445(C). If the alleged probation violation is the result of a criminal offense for which a separate criminal prosecution is initiated, the hearing may be postponed pending the outcome of the criminal prosecution. *Id*.

"[If] a probationer charged with probation violation has waived the assistance of a lawyer, at each subsequent proceeding the court must comply with the advice and waiver procedure in MCR 6.005(E)." MCR 6.445(D).

The probationer may plead guilty to the probation violation at the arraignment. MCR 6.445(F).

C. Hearing

Probation revocation hearings are summary and informal. MCL 771.4. "The scope of these proceedings is limited and the full panoply of constitutional rights applicable in a criminal trial do not attach." *People v Pillar*, 233 Mich App 267, 269 (1998). "However, probationers are afforded certain due process at violation hearings because of the potential for loss of liberty." *Pillar*, *supra* at 269. For example, if there is a sufficient factual basis to raise a bona fide doubt regarding the defendant's competency to understand the nature of the charges against him or her and to assist counsel, it would be improper to

accept a guilty plea to a probation violation. *People v Martin (George H)*, 61 Mich App 102, 108-109 (1975).

At the hearing, the evidence against the probationer must be disclosed to him or her. MCR 6.445(E)(1). See also MCL 771.4, which states in part that "the probationer is entitled to a written copy of the charges constituting the claim that he or she violated probation and to a probation revocation hearing."Additionally, "[t]he probationer has the right to be present at the hearing, to present evidence, and to examine and cross-examine witnesses." MCR 6.445(E)(1). A probationer has a due process right to confront witnesses against him or her, unless the hearing officer finds good cause for not allowing confrontation. *People v Breeding*, 284 Mich App 471, 484-485 (2009). However, the constitutional right to confrontation detailed in *Crawford v Washington*, 541 US 36 (2004) (Sixth Amendment generally forbids the introduction of out-of-court testimonial statements in a criminal prosecution unless the defendant has had an opportunity to cross-examine the declarant), does not apply to probation revocation proceedings because probation revocation proceedings are not part of a criminal prosecution. *Breeding*, *supra* at 482.

The court may only consider evidence that is relevant to the alleged probation violation. MCR 6.445(E)(1).

The rules of evidence are inapplicable at probation violation hearings, except those pertaining to privilege. MCL 771.4; MCR 6.445(E)(1); MRE 1101(b)(3).

The state must prove a probation violation by a preponderance of the evidence. MCR 6.445(E)(1).

A probationer has the right to a procedure comprised of:

- a factual determination that he or she is in fact guilty of violating probation; and
- a discretionary determination of whether revocation is warranted. *Pillar*, 233 Mich App at 269.

The court is required to make specific findings at the conclusion of the probation revocation hearing, either: (1) on the record, or (2) in a written opinion made a part of the record. MCR 6.403; MCR 6.445(E)(2).

"The sentencing court may not revoke the defendant's probation and impose imprisonment on the basis that the defendant has failed to pay restitution as ordered where he [or she] is financially unable to do so." *People v Lemon*, 80 Mich App 737, 744-745 (1978). "Revocation on this basis constitutes a denial of the defendant's constitutional right to

equal protection, as his [or her] imprisonment constitutes a discrimination on the basis of economic status." *Lemon*, *supra* at 745 (court's revocation of probation improper when based on the defendant's assumed ability to pay, where the defendant objected to the required restitution payment amount, and the court failed to verify that the defendant was unable to make payment).

"[O]nce a warrant for probation violation has been issued, the probation authorities must exercise due diligence in executing it. If there is a determination that the probation authorities did not act with reasonable dispatch under all the circumstances, then there is a waiver of the probation violation." *People v Ortman*, 209 Mich App 251, 254 (1995). "[A] lack of prejudice, in and of itself, is [not] sufficient to defeat a defendant's claim that the probation violation must be waived where there is a finding that the authorities did not exercise due diligence." *Ortman*, *supra* at 255-256.

Generally, the maximum term of probation for a felony is five years. MCL 771.2(1). However, a probationary term is tolled during the time a defendant absconds from probation. *People v Ritter*, 186 Mich App 701, 711 (1991). The court retains jurisdiction "if probation revocation proceedings are commenced within the probation period and are pending when it expires." *Ritter*, *supra* at 706.

D. Plea

The court must take the following steps before accepting a guilty plea to a probation violation:

- Speak directly to the probationer. MCR 6.445(F).
- Receive the probationer's response. MCR 6.445(F).
- Advise the probationer that he or she is giving up the right to a contested hearing if he or she pleads guilty to the violation. MCR 6.445(F)(1).
- Advise the probationer that if he or she is proceeding without legal representation, he or she is giving up the right to a lawyer's assistance as detailed in MCR 6.445(B)(2)(b). MCR 6.445(F)(1).
- Advise the probationer of the maximum jail or prison sentence possible for the violation. MCR 6.445(F)(2).
- Determine that the plea is understandingly, voluntarily, and accurately made. MCR 6.445(F)(3).
- Establish factual support for concluding that the probationer is guilty of the alleged violation. MCR

6.445(F)(4). See *People v McCullough (Tyree)*, 462 Mich 857 (2000) (case remanded for further proceedings where trial court did not secure an adequate factual basis to support acceptance of probationer's guilty plea).

Failure to comply "in all respects" with the requirements of MCR 6.445(F)(1) resulted in vacating a court's revocation of probation and sentence. *People v Burbank*, 461 Mich 870 (1999).

E. Sentencing

"The court may investigate and enter a disposition of the probationer as the court determines best serves the public interest." MCL 771.4.

Under MCR 6.445(G), a court may take any of the following actions if it finds that a probationer has committed a probation violation, or if the probationer pleads guilty to a probation violation:

- Continue probation.
- Modify the conditions of probation.
- Extend the period of probation. See *People v Kendall*, 142 Mich App 576, 578, 580 (1985) (trial court did not abuse its discretion when, three weeks before the end of the defendant's two-year term of probation, the court extended the defendant's probation by six months after the defendant was arrested for driving while license was revoked because a court has discretion to amend an order of probation in form or substance at any time during the period of probation, MCL 771.2(2)).
- Revoke probation and impose a sentence of incarceration.

"If a probation order is revoked, the court may sentence the probationer in the same manner and to the same penalty as the court might have done if the probation order had never been made." MCL 771.4.

"The legislative sentencing guidelines apply to sentences imposed after probation revocation." *People v Hendrick*, 472 Mich 555, 565 (2005). *Hendrick* applies retroactively. *People v Parker (Charles)*, 267 Mich App 319, 328 (2005).

The court may consider the conduct underlying a probation violation in determining whether substantial and compelling reasons exist to warrant an upward departure from the legislative sentencing guidelines. *Hendrick*, 472 Mich at 562-563. See also *People v Church (Vincent)*, 475 Mich 865 (2006) ("the acts giving rise to the probation

violation may provide a substantial and compelling reason to depart.”).

The court may consider the probation violation alone—without regard to the specific conduct underlying the violation—in determining whether a substantial and compelling reason exists to depart from the sentencing guidelines. *People v Schaafsma*, 267 Mich App 184, 186 (2005) (defendant’s probation violation itself was an objective and verifiable factor constituting a substantial and compelling reason to depart from the sentencing guidelines).

“The court may not sentence the probationer to prison without having considered a current presentence report and having complied with the provisions set forth in MCR 6.425(B) and [MCR 6.425](E).” MCR 6.445(G). A defendant may not waive preparation of the report; however, at resentencing he or she may waive preparation of an updated report unless the prior report is “manifestly outdated.” *People v Hemphill*, 439 Mich 576, 581-582 (1992).

“[A] sentencing court may not revoke good-time credit that a defendant already has earned while serving a jail sentence as a condition of probation.” *People v Resler*, 210 Mich App 24, 28 (1995).

F. Appeal Rights

On the record and immediately after imposing a sentence that involves incarceration, the court must advise the probationer of his or her appellate rights. MCR 6.445(H)(1). If the underlying conviction resulted from a trial, the probationer has an appeal of right. MCR 6.445(H)(1)(a). If the underlying conviction resulted from a guilty or nolo contendere plea, the probationer is entitled to file an application for leave to appeal. MCR 6.445(H)(1)(b).

On the record and immediately after imposing sentence in cases involving a sentence other than incarceration, the court must advise the probationer that he or she is entitled to file an application for leave to appeal. MCR 6.445(H)(2).

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Appendix A: Sentencing Grids

Sentencing Grid for Second-Degree Murder—MCL 777.61

Includes Ranges Calculated for Habitual Offenders (MCL 777.21(3)(a)-(c))

OV Level	PRV Level												Offender Status
	A 0 Points		B 1-9 Points		C 10-24 Points		D 25-49 Points		E 50-74 Points		F 75+ Points		
I 0-49 Points	90	150	144	240	162	270	180	300/L	225	375/L	270	450/L	
		187		300		337		375/L		468/L		562/L	HO2
		225		360		405		450/L		562/L		675/L	HO3
		300		480		540		600/L		750/L		900/L	HO4
II 50-99 Points	144	240	162	270	180	300/L	225	375/L	270	450/L	315	525/L	
		300		337		375/L		468/L		562/L		656/L	HO2
		360		405		450/L		562/L		675/L		787/L	HO3
		480		540		600/L		750/L		900/L		1050/L	HO4
III 100+ Points	162	270/L	180	300/L	225	375/L	270	450/L	315	525/L	365	600/L	
		337/L		375/L		468/L		562/L		656/L		750/L	HO2
		405/L		450/L		562/L		675/L		787/L		900/L	HO3
		540/L		600/L		750/L		900/L		1050/L		1200/L	HO4

The statutory percentage increases for habitual offenders are rounded down to the nearest whole month.
The cell range may be less than the maximum possible minimum sentence by a fraction of a month.

Sentencing Grid for Class A Offenses—MCL 777.62

Includes Ranges Calculated for Habitual Offenders (MCL 777.21(3)(a)-(c))

OV Level	PRV Level												Offender Status
	A 0 Points		B 1-9 Points		C 10-24 Points		D 25-49 Points		E 50-74 Points		F 75+ Points		
I 0-19 Points	21	35	27	45	42	70	51	85	81	135	108	180	
		43		56		87		106		168		225	HO2
		52		67		105		127		202		270	HO3
		70		90		140		170		270		360	HO4
II 20-39 Points	27	45	42	70	51	85	81	135	108	180	126	210	
		56		87		106		168		225		262	HO2
		67		105		127		202		270		315	HO3
		90		140		170		270		360		420	HO4
III 40-59 Points	42	70	51	85	81	135	108	180	126	210	135	225	
		87		106		168		225		262		281	HO2
		105		127		202		270		315		337	HO3
		140		170		270		360		420		450	HO4
IV 60-79 Points	51	85	81	135	108	180	126	210	135	225	171	285	
		106		168		225		262		281		356	HO2
		127		202		270		315		337		427	HO3
		170		270		360		420		450		570	HO4
V 80-99 Points	81	135	108	180	126	210	135	225	171	285	225	375/L	
		168		225		262		281		356		468/L	HO2
		202		270		315		337		427		562/L	HO3
		270		360		420		450		570		750/L	HO4
VI 100+ Points	108	180	126	210	135	225	171	285	225	375/L	270	450/L	
		225		262		281		356		468/L		562/L	HO2
		270		315		337		427		562/L		675/L	HO3
		360		420		450		570		750/L		900/L	HO4

The statutory percentage increases for habitual offenders are rounded down to the nearest whole month.
The cell range may be less than the maximum possible minimum sentence by a fraction of a month.

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Sentencing Grid for Class B Offenses—MCL 777.63

Includes Ranges Calculated for Habitual Offenders (MCL 777.21(3)(a)-(c))

OV Level	PRV Level												Offender Status
	A 0 Points		B 1-9 Points		C 10-24 Points		D 25-49 Points		E 50-74 Points		F 75+ Points		
I 0-9 Points	0	18*	12	20	24	40	36	60	51	85	72	120	
		22		25		50		75		106		150	HO2
		27		30		60		90		127		180	HO3
		36		40		80		120		170		240	HO4
II 10-24 Points	12	20	15	25	30	50	51	85	72	120	78	130	
		25		31		62		106		150		162	HO2
		30		37		75		127		180		195	HO3
		40		50		100		170		240		260	HO4
III 25-34 Points	15	25	21	35	36	60	57	95	78	130	84	140	
		31		43		75		118		162		175	HO2
		37		52		90		142		195		210	HO3
		50		70		120		190		260		280	HO4
IV 35-49 Points	21	35	24	40	45	75	72	120	84	140	87	145	
		43		50		93		150		175		181	HO2
		52		60		112		180		210		217	HO3
		70		80		150		240		280		290	HO4
V 50-74 Points	24	40	36	60	51	85	78	130	87	145	99	160	
		50		75		106		162		181		200	HO2
		60		90		127		195		217		240	HO3
		80		120		170		260		290		320	HO4
VI 75+ Points	36	60	45	75	57	95	84	140	99	160	117	160	
		75		93		118		175		200		200	HO2
		90		112		142		210		240		240	HO3
		120		150		190		280		320		320	HO4

Intermediate sanction cells are marked by asterisks, straddle cells are shaded, and prison cells are unmarked. See Section 8.3(C) for more information.
The statutory percentage increases for habitual offenders are rounded down to the nearest whole month.
The cell range may be less than the maximum possible minimum sentence by a fraction of a month.

Sentencing Grid for Class C Offenses—MCL 777.64

Includes Ranges Calculated for Habitual Offenders (MCL 777.21(3)(a)-(c))

OV Level	PRV Level												Offender Status
	A 0 Points		B 1-9 Points		C 10-24 Points		D 25-49 Points		E 50-74 Points		F 75+ Points		
I 0-9 Points	0	11*	0	17*	10	19	12	24	19	38	29	57	
		13*		21		23		30		47		71	HO2
		16*		25		28		36		57		85	HO3
		22		34		38		48		76		114	HO4
II 10-24 Points	0	17*	5	17*	12	24	19	38	29	57	36	71	
		21		21		30		47		71		88	HO2
		25		25		36		57		85		106	HO3
		34		34		48		76		114		142	HO4
III 25-34 Points	10	19	12	24	19	38	29	57	36	71	43	86	
		23		30		47		71		88		107	HO2
		28		36		57		85		106		129	HO3
		38		48		76		114		142		172	HO4
IV 35-49 Points	12	24	19	38	29	57	36	71	43	86	50	100	
		30		47		71		88		107		125	HO2
		36		57		85		106		129		150	HO3
		48		76		114		142		172		200	HO4
V 50-74 Points	19	38	29	57	36	71	43	86	50	100	58	114	
		47		71		88		107		125		142	HO2
		57		85		106		129		150		171	HO3
		76		114		142		172		200		228	HO4
VI 75+ Points	29	57	36	71	43	86	50	100	58	114	62	114	
		71		88		107		125		142		142	HO2
		85		106		129		150		171		171	HO3
		114		142		172		200		228		228	HO4

Intermediate sanction cells are marked by asterisks, straddle cells are shaded, and prison cells are unmarked. See Section 8.3(C) for more information.
The statutory percentage increases for habitual offenders are rounded down to the nearest whole month.
The cell range may be less than the maximum possible minimum sentence by a fraction of a month.

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Sentencing Grid for Class D Offenses—MCL 777.65

Includes Ranges Calculated for Habitual Offenders (MCL 777.21(3)(a)-(c))

OV Level	PRV Level												Offender Status
	A 0 Points		B 1-9 Points		C 10-24 Points		D 25-49 Points		E 50-74 Points		F 75+ Points		
I 0-9 Points	0	6*	0	9*	0	11*	0	17*	5	23	10	23	
		7*		11*		13*		21		28		28	HO2
		9*		13*		16*		25		34		34	HO3
		12*		18*		22		34		46		46	HO4
II 10-24 Points	0	9*	0	11*	0	17*	5	23	10	23	19	38	
		11*		13*		21		28		28		47	HO2
		13*		16*		25		34		34		57	HO3
		18*		22		34		46		46		76	HO4
III 25-34 Points	0	11*	0	17*	5	23	10	23	19	38	29	57	
		13*		21		28		28		47		71	HO2
		16*		25		34		34		57		85	HO3
		22		34		46		46		76		114	HO4
IV 35-49 Points	0	17*	5	23	10	23	19	38	29	57	34	67	
		21		28		28		47		71		83	HO2
		25		34		34		57		85		100	HO3
		34		46		46		76		114		134	HO4
V 50-74 Points	5	23	10	23	19	38	29	57	34	67	38	76	
		28		28		47		71		83		95	HO2
		34		34		57		85		100		114	HO3
		46		46		76		114		134		152	HO4
VI 75+ Points	10	23	19	38	29	57	34	67	38	76	43	76	
		28		47		71		83		95		95	HO2
		34		57		85		100		114		114	HO3
		46		76		114		134		152		152	HO4

Intermediate sanction cells are marked by asterisks, straddle cells are shaded, and prison cells are unmarked. See Section 8.3(C) for more information.
The statutory percentage increases for habitual offenders are rounded down to the nearest whole month.
The cell range may be less than the maximum possible minimum sentence by a fraction of a month.

Sentencing Grid for Class E Offenses—MCL 777.66

Includes Ranges Calculated for Habitual Offenders (MCL 777.21(3)(a)-(c))

OV Level	PRV Level												Offender Status
	A 0 Points		B 1-9 Points		C 10-24 Points		D 25-49 Points		E 50-74 Points		F 75+ Points		
I 0-9 Points	0	3*	0	6*	0	9*	5	23	7	23	9	23	
		3*		7*		11*		28		28		28	HO2
		4*		9*		13*		34		34		34	HO3
		6*		12*		18*		46		46		46	HO4
II 10-24 Points	0	6*	0	9*	0	11*	7	23	10	23	12	24	
		7*		11*		13*		28		28		30	HO2
		9*		13*		16*		34		34		36	HO3
		12*		18*		22		46		46		48	HO4
III 25-34 Points	0	9*	0	11*	0	17*	10	23	12	24	14	29	
		11*		13*		21		28		30		36	HO2
		13*		16*		25		34		36		43	HO3
		18*		22		34		46		48		58	HO4
IV 35-49 Points	0	11*	0	17*	5	23	12	24	14	29	19	38	
		13*		21		28		30		36		47	HO2
		16*		25		34		36		43		57	HO3
		22		34		46		48		58		76	HO4
V 50-74 Points	0	14*	5	23	7	23	14	29	19	38	22	38	
		17*		28		28		36		47		47	HO2
		21		34		34		43		57		57	HO3
		28		46		46		58		76		76	HO4
VI 75+ Points	0	17*	7	23	12	24	19	38	22	38	24	38	
		21		28		30		47		47		47	HO2
		25		34		36		57		57		57	HO3
		34		46		48		76		76		76	HO4

Intermediate sanction cells are marked by asterisks, straddle cells are shaded, and prison cells are unmarked. See Section 8.3(C) for more information.
The statutory percentage increases for habitual offenders are rounded down to the nearest whole month.
The cell range may be less than the maximum possible minimum sentence by a fraction of a month.

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Sentencing Grid for Class F Offenses—MCL 777.67

Includes Ranges Calculated for Habitual Offenders (MCL 777.21(3)(a)-(c))

OV Level	PRV Level												Offender Status
	A 0 Points		**B** 1-9 Points		**C** 10-24 Points		**D** 25-49 Points		**E** 50-74 Points		**F** 75+ Points		
I 0-9 Points	0	3*	0	6*	0	9*	2	17*	5	23	10	23	
		3*		7*		11*		21		28		28	HO2
		4*		9*		13*		25		34		34	HO3
		6*		12*		18*		34		46		46	HO4
II 10-34 Points	0	6*	0	9*	0	17*	5	23	10	23	12	24	
		7*		11*		21		28		28		30	HO2
		9*		13*		25		34		34		36	HO3
		12*		18*		34		46		46		48	HO4
III 35-74 Points	0	9*	0	17*	2	17*	10	23	12	24	14	29	
		11*		21		21		28		30		36	HO2
		13*		25		25		34		36		43	HO3
		18*		34		34		46		48		58	HO4
IV 75+ Points	0	17*	2	17*	5	23	12	24	14	29	17	30	
		21		21		28		30		36		37	HO2
		25		25		34		36		43		45	HO3
		34		34		46		48		58		60	HO4

Intermediate sanction cells are marked by asterisks, straddle cells are shaded, and prison cells are unmarked. See Section 8.3(C) for more information.
The statutory percentage increases for habitual offenders are rounded down to the nearest whole month.
The cell range may be less than the maximum possible minimum sentence by a fraction of a month.

Sentencing Grid for Class G Offenses—MCL 777.68

Includes Ranges Calculated for Habitual Offenders (MCL 777.21(3)(a)-(c))

OV Level	PRV Level												Offender Status
	A 0 Points		B 1-9 Points		C 10-24 Points		D 25-49 Points		E 50-74 Points		F 75+ Points		
I 0-9 Points	0	3*	0	6*	0	9*	0	11*	0	17*	2	17*	
		3*		7*		11*		13*		21		21	HO2
		4*		9*		13*		16*		25		25	HO3
		6*		12*		18*		22		34		34	HO4
II 10-15 Points	0	6*	0	9*	0	11*	0	17*	2	17*	5	23	
		7*		11*		13*		21		21		28	HO2
		9*		13*		16*		25		25		34	HO3
		12*		18*		22		34		34		46	HO4
III 16+ Points	0	9*	0	11*	0	17*	2	17*	5	23	7	23	
		11*		13*		21		21		28		28	HO2
		13*		16*		25		25		34		34	HO3
		18*		22		34		34		46		46	HO4

Intermediate sanction cells are marked by asterisks, straddle cells are shaded, and prison cells are unmarked. See Section 8.3(C) for more information.
The statutory percentage increases for habitual offenders are rounded down to the nearest whole month.
The cell range may be less than the maximum possible minimum sentence by a fraction of a month.

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Sentencing Grid for Class H Offenses—MCL 777.69

Includes Ranges Calculated for Habitual Offenders (MCL 777.21(3)(a)-(c))

OV Level	PRV Level												Offender Status
	A 0 Points		**B** 1-9 Points		**C** 10-24 Points		**D** 25-49 Points		**E** 50-74 Points		**F** 75+ Points		
I 0-9 Points	0	1*	0	3*	0	6*	0	9*	0	11*	0	17*	
		1*		3*		7*		11*		13*		21	HO2
		1*		4*		9*		13*		16*		25	HO3
		2*		6*		12*		18*		22		34	HO4
II 10-15 Points	0	3*	0	6*	0	9*	0	11*	0	17*	2	17*	
		3*		7*		11*		13*		21		21	HO2
		4*		9*		13*		16*		25		25	HO3
		6*		12*		18*		22		34		34	HO4
III 16+ Points	0	6*	0	9*	0	11*	0	17*	2	17*	5	17*	
		7*		11*		13*		21		21		21	HO2
		9*		13*		16*		25		25		25	HO3
		12*		18*		22		34		34		34	HO4

Intermediate sanction cells are marked by asterisks, straddle cells are shaded, and prison cells are unmarked. See Section 8.3(C) for more information. The statutory percentage increases for habitual offenders are rounded down to the nearest whole month. The cell range may be less than the maximum possible minimum sentence by a fraction of a month.

Appendix B: Statutory Offense Enhancement

The following table details the felony offenses for which an offender's previous conviction may not be used for enhancement under the general habitual offender statutes if it is used to enhance the offense under the statute prohibiting the criminal conduct.

Felonies by MCL #	Description	Crime Group	Dual enhancement prohibited by:
18.366(1)(c)	False presentation to crime victim services—$1,000 to $20,000 or $200 to $1,000 w/ 1+ priors	Property	MCL 18.366(5)
18.366(1)(d)	False presentation to crime victim services—$20,000+ or $1,000 to $20,000 w/ 2+ priors	Property	
125.1447(1)(c)	False pretenses - state housing development—$1,000 to $20,000 or $200 to $1,000 w/ 1+ priors	Property	MCL 125.1447(4)
125.1447(1)(d)	False pretenses - state housing development—$20,000+ or $1,000 to $20,000 w/ 2+ priors	Property	
285.279(2)(c)	False pretenses - family farm development act—$1,000 to $20,000 or $200 to $1,000 w/ 1+ priors	Property	MCL 285.279(6)
285.279(2)(d)	False pretenses - family farm development act—$20,000+ or $1,000 to $20,000 w/ 2+ priors	Property	
324.2157(1)(c)	Damage to state property—$1,000 to $20,000 or $200 to $1,000 w/ 1+ priors	Property	MCL 324.2157(4)
324.2157(1)(d)	Damage to state property—$20,000+ or $1,000 to $20,000 w/ 2+ priors	Property	
324.52908(1)(c)	Damage to plant—$1,000 to $20,000 or $200 to $1,000 w/ 1+ priors	Property	MCL 324.52908(4)
324.59208(1)(d)	Damage to plant—$20,000+ or $1,000 to $20,000 w/ 2+ priors	Property	
324.76107(3)	Removing or mutilating human body from Great Lakes bottomland	Public Order	MCL 324.76107(7)
324.76107(4)(c)	Recovering abandoned property from Great Lakes bottomlands—$1,000 to $20,000 or $200 to $1,000 w/ 1+ priors	Property	
324.76107(4)(d)	Recovering abandoned property from Great Lakes bottomlands—$20,000+ or $1,000 to $20,000 w/ 2+ priors	Property	

570.1110(11)(c)	Contractor - false sworn statement—$1,000 to $20,000 or $200 to $1,000 w/ 1+ priors	Property	MCL 570.1110(14)
570.1110(11)(d)	Contractor - false sworn statement—$20,000+ or $1,000 to $20,000 w/ 2+ priors	Property	
750.74(1)(c)	Arson of personal property—$1,000 to $20,000 or $200 to $1,000 w/ 1+ priors	Person	MCL 750.74(4)
750.74(1)(d)	Arson of personal property—$20,000+ or $1,000 to $20,000 w/ 2+ priors	Person	
750.77(1)(c)	Preparing to burn personal property—$1,000 to $20,000 or $200 to $1,000 w/ 1+ priors	Person	MCL 750.77(4)
750.77(1)(d)	Preparing to burn personal property—$20,000+ or $1,000 to $20,000 w/ 2+ priors	Person	
750.131(3)(b)(ii)	NSF checks—$100 to $500 - third or subsequent offense	Property	MCL 750.131(5)
750.131(3)(c)	NSF checks— $500+	Property	
750.157s(1)(b)(ii)	Using revoked or canceled financial transaction device—$100 to $500 with 2+ priors	Property	MCL 750.157s(4)
750.157s(1)(c)	Using revoked or canceled financial transaction device—$500+	Property	
750.157w(1)(c)	Fraudulently using financial transaction device to withdraw or transfer $1,000 to $20,000 or $200 to $1,000 w/1+ priors	Property	MCL 750.157w(4)
750.157w(1)(d)	Fraudulently using financial transaction device to withdraw or transfer $20,000+ or $1,000 to $20,000 w/ 2+ priors	Property	
750.174(4)	Embezzlement by agent of $1,000 to $20,000 or $200 to $1,000 w/ 1+ priors	Property	MCL 750.174(9)
750.174(5)	Embezzlement by agent of $20,000+ or $1,000 to $20,000 with 2+ priors	Property	
750.174 (6)	Embezzlement by agent of $50,000+ but less than $100,000	Property	
750.174(7)	Embezzlement by agent of $100,000+	Property	

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750.174a(4)	Embezzlement - vulnerable adult—$1,000 to $20,000 or $200 to $1,000 w/ 1+ priors	Property	MCL 750.174a(10~~8~~)
750.174a(5)	Embezzlement - vulnerable adult—$20,000 to $50,000 or $1,000 to $20,000 with 2+ priors	Property	
750.174a(6)	Embezzlement - vulnerable adult—$50,000 to $100,000 or $20,000 to $50,000 with 2+ priors	Property	
750.174a(7)	Embezzlement - vulnerable adult—$100,000+ or $50,000 to $100,000 with 2+ priors	Property	
750.177(2)	Embezzlement by chattel mortgagor—$20,000+ or $1,000 to $20,000 with 2+ priors	Property	MCL 750.177(8)
750.177(3)	Embezzlement by chattel mortgagor—$1,000 to $20,000 or $200 to $1,000 w/ 1+ priors	Property	
750.178(2)	Embezzlement of mortgaged/leased property—$20,000+ or $1,000 to $20,000 with 2+ priors	Property	MCL 750.178(8)
750.178(3)	Embezzlement of mortgaged/leased property—$1,000 to $20,000 or $200 to $1,000 w/ 1+ priors	Property	
750.181(4)	Embezzling jointly held property—$1,000 to $20,000 or $200 to $1,000 w/ 1+ priors	Property	MCL 750.181(10)
750.181(5)	Embezzling jointly held property—$20,000+ or $1,000 to $20,000 with 2+ priors	Property	
750.218(4)	False pretenses involving $1,000 to $20,000 or $200 to $1,000 w/ 1+ priors	Property	MCL 750.218(8)
750.218(5)	False pretenses involving $20,000+ or $1,000 to $20,000 with 2+ priors	Property	
750.218(6)	False pretenses involving $50,000 to $100,000	Property	
750.218(7)	False pretenses involving $100,000+	Property	
750.219a(2)(c)	Telecommunications fraud—$1,000 to $20,000 or $200 to $1,000 w/ 1+ priors	Property	MCL 750.219a(5)
750.219a(2)(d)	Telecommunications fraud—$20,000+ or $1,000 to $20,000 with 2+ priors	Property	
750.356(2)	Larceny involving $20,000+ or $1,000 to $20,000 with 2+ priors	Property	MCL 750.356(8)
750.356(3)	Larceny involving $1,000 to $20,000 or $200 to $1,000 w/ 1+ priors	Property	

750.356a(1)	Larceny from a motor vehicle	Property	MCL 750.356a(6)
750.356a(2)(c)	Breaking and entering a vehicle to steal $1,000 to $20,000 or $200 to $1,000 with 1+ priors	Property	
750.356a(2)(d)	Breaking and entering a vehicle to steal $20,000+ or $1,000 to $20,000 with 2+ priors	Property	
750.356a(3)	Breaking and entering a vehicle to steal causing damage	Property	
750.356c	Retail fraud - first degree	Property	MCL 750.356c(6)
750.362a(2)	Larceny of rental property involving $20,000+ or $1,000 to $20,000 w/ 2+ priors	Property	MCL 750.362a(8)
750.362a(3)	Larceny of rental property involving $1,000 to $20,000 or $200 to $1,000 w/ 1+ priors	Property	
750.377a(1)(a)	Malicious destruction of personal property—$20,000+ or $1,000 to $20,000 w/ 2+ priors	Property	MCL 750.377a(4)
750.377a(1)(b)	Malicious destruction of personal property—$1,000 to $20,000 or $200 to $1,000 w/ 1+ priors	Property	
750.380(2)	Malicious destruction of building—$20,000+ or $1,000 to $20,000 w/ 2+ priors	Property	MCL 750.380(8)
750.380(3)	Malicious destruction of building—$1,000 to $20,000 or $200 to $1,000 w/ 1+ priors	Property	
750.382(1)(c)	Malicious destruction of plants or turf—$1,000 to $20,000 or $200 to $1,000 w/ 1+ priors	Property	MCL 750.382(5)
750.382(1)(d)	Malicious destruction of plants or turf—$20,000+ or $1,000 to $20,000 w/ 2+ priors	Property	
750.387(5)	Malicious destruction of tomb or memorial—$1,000 to $20,000 or $200 to $1,000 w/ 1+ priors	Property	MCL 750.387(9)
750.387(6)	Malicious destruction of tomb or memorial—$20,000+ or $1,000 to $20,000 w/ 2+ priors	Property	
750.395(2)(c)	Damaging/destroying research property—$1,000 to $20,000 or $200 to $1,000 w/ 1+ priors	Property	
750.395(2)(d)	Damaging/destroying research property—$20,000+ or $1,000 to $20,000 w/ 2+ priors	Property	

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750.395(2)(e)	Damaging/destroying research property—resulting in physical injury other than serious impairment of body function	Person	MCL 750.395(6)
750.395(2)(f)	Damaging/destroying research property—resulting in serious impairment of body function	Person	
750.395(2)(g)	Damaging/destroying research property—resulting in death	Person	
750.535(2)	Receiving or concealing stolen property—$20,000+ or $1,000 to $20,000 w/ 2+ priors	Property	MCL 750.535(10)
750.535(3)	Receiving or concealing stolen property—$1,000 to $20,000 or $200 to $1,000 w/ 1+ priors	Property	
750.535(7)	Receiving or concealing stolen motor vehicle	Property	
750.540g(1)(c)	Diverting telecommunications services—$1,000 to $20,000 or $200 to $1,000 w/ 1+ priors	Property	MCL 750.540g(4)
750.540g(1)(d)	Diverting telecommunications services—$20,000+ or $1,000 to $20,000 w/ 2+ priors	Property	

Felony offenses for which dual enhancement is expressly prohibited by reference to the general larceny statute, MCL 750.356.

Felonies by MCL #	Description	Crime Group	Dual enhancement prohibited by:
750.362	Larceny by conversion—$1,000 to $20,000 or $200 to $1,000 w/ 1+ priors	Property	MCL 750.356(8)
750.362	Larceny by conversion—$20,000+ or $1,000 to $20,000 w/ 2+ priors	Property	
750.363	Larceny by false personation—$1,000 to $20,000 or $200 to $1,000 w/ 1+ priors	Property	MCL 750.356(8)
750.363	Larceny by false personation—$20,000+ or $1,000 to $20,000 w/ 2+ priors	Property	
750.367	Larceny of trees or shrubs—$1,000 to $20,000 or $200 to $1,000 w/ 1+ priors	Property	MCL 750.356(8)
750.367	Larceny of trees or shrubs—$20,000+ or $1,000 to $20,000 w/ 2+ priors	Property	

Appendix C: Alphabetical List of Felony Offenses

Alphabetical List of Felony Offenses Through ~~May~~September 1, 2012

Unless otherwise noted, the date on which the statutory guidelines were made applicable to the felony offense listed was 1/1/1999.

Lightly shaded lines indicate that the statute governing the felony offense described on that line has been amended, deleted, or replaced.

MCL	#	Group	Class	Alphabetical list of felonies* *NOTE: For ease of reference, offense descriptions in this table may not correspond precisely with the descriptions contained in the guidelines.	Stat Max	Date Offense Added to Guidelines*
750.	14	Person	G	Abortion	4	
750.	323	Person	C	Abortion resulting in death	15	
750.	14	Person	C	Abortion resulting in death of female	15	
333.	2689	Person	E	Abortion to obtain embryo [See MCL 333.2691]	5	
750.	199 a	Pub ord	F	Absconding on or forfeiting bond	4	
168.	932 (e)	Pub trst	E	Absentee ballot tampering	5	
750.	457	Pub ord	G	Accepting earnings of a prostitute	20	
750.	145 b	Person	F	Accosting children for immoral purposes – subsequent offense	4	
750.	145 b	Person	D	Accosting children for immoral purposes with prior conviction	10	6/1/02
710.	55 (1)	Pub trst	F	Adoption – persons not authorized placing child – subsequent violation	4	
400.	722 (4)	Pub saf	F	Adult foster care – maintaining operation after refusal of licensure	5	
400.	713 (13)	Pub saf	H	Adult foster care – unlicensed facility	2	7/1/01
400.	713 (13)	Pub saf	H	Adult foster care – unlicensed facility – first offense	2	
400.	713 (13)	Pub saf	F	Adult foster care – unlicensed facility – second or subsequent violation	5	
400.	713 (13)	Pub saf	F	Adult foster care – unlicensed facility – subsequent violation	5	7/1/01
333.	17764 (3)	Pub saf	F	Adulterate, misbrand, remove, or substitute a drug or device	2	10/12/04
333.	17764 (6)	Pub saf	C	Adulterate, misbrand, remove, or substitute a drug or device causing death	15	10/12/04
333.	17764 (4)	Pub saf	F	Adulterate, misbrand, remove, or substitute a drug or device causing personal injury	4	10/12/04
750.	16 (1)	Person	G	Adulterate, misbrand, remove, or substitute a drug or medicine	2	10/12/04
750.	16 (2)	Person	F	Adulterate, misbrand, remove, or substitute a drug or medicine causing personal injury	4	10/12/04
750.	16 (4)	Person	C	Adulterate, misbrand, remove, or substitute a drug or medicine resulting in death	15	10/12/04
333.	17764 (5)	Pub saf	E	Adulterate/misbrand/remove/substitute a drug/device - serious impairment of a body function	5	10/12/04
750.	16 (3)	Person	E	Adulterate/misbrand/remove/substitute a drug/medicine - serious impairment of body function	5	10/12/04
289.	5107 (2)	Pub saf	F	Adulterated, misbranded, or falsely identified food	4	10/1/00
750.	30	Pub ord	H	Adultery	4	
750.	81 a (3)	Person	G	Aggravated domestic assault – second offense	2	
750.	81 a (3)	Person	G	Aggravated domestic assault with prior convictions	2	10/1/00
750.	335 a (2) (b)	Person	G	Aggravated indecent exposure	2	2/1/06
750.	411 i (3) (a)	Person	E	Aggravated stalking	5	10/1/00
750.	411 i (3) (b)	Person	D	Aggravated stalking of a minor	10	
287.	855	Pub saf	G	Agriculture – contaminating livestock/false statement/violation of quarantine	5	
286.	455 (2)	Pub saf	G	Agriculture – hazardous substance	5	
287.	77 (1)	Pub saf	H	Agriculture – livestock condemnation	4	

205.	27 (1) (b)	Pub trst	G	Aiding and abetting tax evasion or filing false returns	5	
750.	183	Pub saf	E	Aiding escaping prisoner	7	
750.	208	Pub saf	C	Aiding or abetting explosives placement with intent to destroy property	15	
333.	5210	Person	F	AIDS – sexual penetration with uninformed partner	4	
259.	83 (2) (b)	Pub saf	G	Aircraft – failure to comply with certification requirements – second violation	2	3/31/03
259.	83 (2) (c)	Pub saf	F	Aircraft – failure to comply with certification requirements – third or subsequent violation	4	3/31/03
259.	183	Property	E	Aircraft – unlawful taking or tampering	5	
750.	367 b	Property	E	Airplanes – taking possession	5	
257.	625 (10) (b)	Person	E	Allowing a vehicle to be operated while intoxicated or impaired causing death	5	9/30/03
257.	625 (10) (c)	Person	G	Allowing a vehicle to be operated while intoxicated or impaired causing serious impairment	2	9/30/03
257.	625 (9) (b)	Person	E	Allowing a vehicle to be operated while under the influence or impaired causing death	5	Eff. until 9/30/03, replaced by (10)(b)
257.	625 (9) (c)	Person	G	Allowing a vehicle to be operated while under the influence/impaired - serious impairment	2	Eff. until 9/30/03, replaced by (10)(c)
257.	904 (7)	Person	E	Allowing a vehicle to be operated without a license causing death	5	10/1/00
257.	904 (7)	Person	G	Allowing a vehicle to be operated without a license causing serious impairment	2	10/1/00
750.	230	Pub saf	G	Altering ID mark on firearm	2	
257.	257 (1)	Property	G	Altering or forging vehicle documents – first offense	5	
257.	257 (2)	Property	G	Altering or forging vehicle documents – second offense	7	
257.	257 (3)	Property	E	Altering or forging vehicle documents – third or subsequent offense	15	
117.	25 (3)	Pub trst	E	Amendment to city electors – willfully affixing another's signature, false representation	15	
287.	744 (1)	Pub ord	G	Animal industry act violations	5	
750.	50 (4)	Pub ord	G	Animal neglect or cruelty – second offense	2	Replaced, 2007 PA 151, Eff. 4/1/08
750.	50 (4)	Pub ord	F	Animal neglect or cruelty – third or subsequent offense	4	Replaced, 2007 PA 151, Eff. 4/1/08
750.	50 (4) (d)	Pub ord	F	Animal neglect or cruelty involving 10 or more animals or with 2 or more prior convictions	4	4/1/08
750.	50 (4) (c)	Pub ord	G	Animal neglect or cruelty involving 4 or more but fewer than 10 animals or with 1 prior	2	4/1/08
750.	300	Pub ord	G	Animals – killing or/ injuring animal to defraud insurance company	2	As amended, 2012 PA 169, Eff. 6/19/12
445.	779	Pub ord	H	Antitrust violation	2	
51.	364	Pub trst	H	Appointment or selection contrary to civil service commission rules	2	
750.	529	Person	A	Armed robbery	LIFE	
750.	224 c	Pub saf	F	Armor piercing ammunition	4	
750.	72	Person	B	Arson of dwelling house	20	
750.	75	Property	D	Arson of insured property	10	
750.	80	Property	D	Arson of mines	LIFE	
750.	74	Person	F	Arson of personal property greater than $50	4	
750.	74	Person	E	Arson of personal property having a value of $1,000 to $20,000 or with prior convictions	5	10/1/00
750.	74 (1) (d)	Person	D	Arson of personal property of $20,000 or more or with prior convictions	10	10/1/00
750.	73	Property	D	Arson of real property	10	
750.	78	Pub saf	F	Arson of woods and prairies	4	
750.	90 a	Person	A	Assault against a pregnant individual causing miscarriage/stillbirth with intent or recklessness	LIFE	10/1/00
750.	90 b (b)	Person	D	Assault against a pregnant individual resulting in great bodily harm to embryo or fetus	10	10/1/00
750.	90 b (a)	Person	C	Assault against a pregnant individual resulting in miscarriage or stillbirth	15	10/1/00
750.	90 b (a)	Person	C	Assault against a pregnant individual resulting in miscarriage/stillbirth/death to embryo or fetus	15	6/1/01
750.	81 c (2)	Person	G	Assault and battery of an FIA employee	2	9/1/01; no longer listed in MCL 777.16d
750.	81 c (3)	Person	E	Assault and battery of an FIA employee causing serious impairment	5	9/1/01; no longer listed in MCL 777.16d
750.	90 a	Person	A	Assault causing miscarriage/stillbirth/death to embryo/fetus w/ intent or recklessness	LIFE	6/1/01
750	81e(2)	Person	G	Assault on utility worker causing bodily injury requiring medical attention	2	7/21/10

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750	81e(3)	Person	E	Assault on utility worker causing serious impairment of a body function	5	7/21/10
750.	87	Person	D	Assault with intent to commit a felony	10	
750.	89	Person	A	Assault with intent to commit armed robbery	LIFE	
750.	520 g (2)	Person	E	Assault with intent to commit sexual contact	5	
750.	520 g (1)	Person	D	Assault with intent to commit sexual penetration	10	
750.	88	Person	C	Assault with intent to commit unarmed robbery	15	
750.	84	Person	D	Assault with intent to do great bodily harm less than murder	10	
750.	86	Person	D	Assault with intent to maim	10	
750.	83	Person	A	Assault with intent to murder	LIFE	
750.	479 (2)	Person	G	Assaulting or obstructing certain officials	2	7/15/02
750.	479 (5)	Person	B	Assaulting or obstructing certain officials causing death	20	7/15/02
750.	479 (3)	Person	G	Assaulting or obstructing certain officials causing injury	4	7/15/02
750.	479 (4)	Person	D	Assaulting or obstructing certain officials causing serious impairment	10	7/15/02
750.	479 a (6)	Person	H	Assaulting peace officer	2	Deleted, 2002 PA 271, Eff. 7/15/02
750.	81 d (1)	Person	G	Assaulting, resisting, or obstructing certain persons	2	7/15/02
750.	81 d (4)	Person	B	Assaulting, resisting, or obstructing certain persons causing death	20	7/15/02
750.	81 d (2)	Person	F	Assaulting, resisting, or obstructing certain persons causing injury	4	7/15/02
750.	81 d (3)	Person	C	Assaulting, resisting, or obstructing certain persons causing serious impairment	15	7/15/02
752.	1027	Person	F	Assisted suicide	4	
750.	329 a	Person	E	Assisting a suicide	5	10/1/00
168.	761 (5)	Pub trst	E	Assisting an absentee voter in making a false statement	5	
750.	91	Person	A	Attempted murder	LIFE	
750.	49 (2) (f)	Pub ord	H	Attending animal fight	4	
168.	932 (b)	Pub trst	E	Ballot tampering	5	
750.	531	Person	C	Bank robbery/safebreaking	LIFE	
750.	100	Pub trst	E	Banks – conducting business when insolvent	5	
487.	1505 (6)	Pub trst	E	BIDCO act – knowingly receiving money or property at an interest rate exceeding 25%	5	
482.	49	Property	H	Bills of lading – inducing carrier to issue when goods have not been received	5	
482.	44	Property	H	Bills of lading – issuance for goods not received	5	
482.	46	Property	H	Bills of lading – issuance of duplicate negotiable bill with intent to defraud	5	As amended, 2006 PA 251, Eff. 7/3/06
482.	46	Property	H	Bills of lading – issuance of duplicate not so marked	5	
482.	50	Property	H	Bills of lading – issuance of non-negotiable bill not so marked	5	
482.	48	Property	H	Bills of lading – negotiation when goods not in carriers' possession	5	
750.	511	Person	A	Blocking or wrecking railroad track	LIFE	
451.	603 (h)	Pub trst	E	Blue sky laws – fail to notify administrator of sanctions	10	Deleted, 2008 PA 552, Eff. 1/16/09
451.	805 (b)	Pub trst	E	Blue sky laws – false representation of administrative approval	10	Deleted, 2008 PA 552, Eff. 1/16/09
451.	501	Pub trst	E	Blue sky laws – fraudulent schemes/statements	10	Deleted, 2008 PA 552, Eff. 1/16/09
451.	806 (b)	Pub trst	E	Blue sky laws – improper disclosure by cor and sec bur employee	10	Deleted, 2008 PA 552, Eff. 1/16/09
451.	502	Pub trst	E	Blue sky laws – investment advisor/agent fraud	10	Deleted, 2008 PA 552, Eff. 1/16/09
451.	503	Pub trst	E	Blue sky laws – make/sell false bullion/certificates	10	Deleted, 2008 PA 552, Eff. 1/16/09
451.	701	Pub trst	E	Blue sky laws – offer/sell unregistered securities	10	Deleted, 2008 PA 552, Eff. 1/16/09
451.	802	Pub trst	E	Blue sky laws – unlawfully selling securities	10	Deleted, 2008 PA 552, Eff. 1/16/09
451.	601	Pub trst	E	Blue sky laws – unregistered broker/dealer/agent/advisor	10	Deleted, 2008 PA 552, Eff. 1/16/09
451.	604 (a) (1) (J)	Pub trst	E	Blue sky laws – various violations	10	Deleted, 2008 PA 552, Eff. 1/16/09
451.	604 (a) (1) (K)	Pub trst	E	Blue sky laws – various violations	10	Deleted, 2008 PA 552, Eff. 1/16/09

451.	604 (a) (1) (L)	Pub trst	E	Blue sky laws – various violations	10	Deleted, 2008 PA 552, Eff. 1/16/09
451.	604 (a) (1) (M)	Pub trst	E	Blue sky laws – various violations	10	Deleted, 2008 PA 552, Eff. 1/16/09
451.	604 (a) (1) (N)	Pub trst	E	Blue sky laws – various violations	10	Deleted, 2008 PA 552, Eff. 1/16/09
451.	604 (a) (1) (O)	Pub trst	E	Blue sky laws – various violations	10	Deleted, 2008 PA 552, Eff. 1/16/09
451.	604 (a) (1) (P)	Pub trst	E	Blue sky laws – various violations	10	Deleted, 2008 PA 552, Eff. 1/16/09
451.	604 (a) (1) (Q)	Pub trst	E	Blue sky laws – various violations	10	Deleted, 2008 PA 552, Eff. 1/16/09
451.	604 (a) (1) (R)	Pub trst	E	Blue sky laws – various violations	10	Deleted, 2008 PA 552, Eff. 1/16/09
451.	604 (a) (1) (S)	Pub trst	E	Blue sky laws – various violations	10	Deleted, 2008 PA 552, Eff. 1/16/09
451.	604 (a) (1) (V)	Pub trst	E	Blue sky laws – various violations	10	Deleted, 2008 PA 552, Eff. 1/16/09
451.	604 (a) (1) (W)	Pub trst	E	Blue sky laws – various violations	10	Deleted, 2008 PA 552, Eff. 1/16/09
451.	604 (a) (1) (X)	Pub trst	E	Blue sky laws – various violations	10	Deleted, 2008 PA 552, Eff. 1/16/09
451.	604 (a) (1) (Y)	Pub trst	E	Blue sky laws – various violations	10	Deleted, 2008 PA 552, Eff. 1/16/09
451.	604 (a) (1) (Z)	Pub trst	E	Blue sky laws – various violations	10	Deleted, 2008 PA 552, Eff. 1/16/09
451.	804	Pub trst	E	Blue sky laws – willful false statements	10	Deleted, 2008 PA 552, Eff. 1/16/09
750.	517	Person	C	Boarding train to rob	LIFE	Deleted, 2002 PA 320, Eff. 7/15/02
750.	106	Property	G	Boats – making or procuring false protest	4	
752.	811	Property	H	Breaking and entering a coin operated device	3	
750.	356 b	Property	G	Breaking and entering a coin telephone	4	
750.	356 a (2) (c)	Property	E	Breaking and entering a vehicle to steal $1,000 to $20,000 or with prior convictions	5	10/1/00
750.	356 a (2) (d)	Property	D	Breaking and entering a vehicle to steal $20,000 or more or with prior convictions	10	10/1/00
750.	356 a (3)	Property	G	Breaking and entering a vehicle to steal causing damage	5	10/1/00
750.	110	Property	D	Breaking and entering with intent to commit felony or larceny	10	
750.	49 (2) (g)	Pub ord	F	Breeding or selling fighting animals	4	
750.	119	Pub trst	F	Bribing a juror or other person	4	Substituted for by 750.119(1)(a)
750.	119 (1) (a)	Pub trst	F	Bribing a juror or other person	4	3/28/01
750.	119 (1) (b)	Pub trst	D	Bribing a juror or other person in case punishable by more than 10 years	10	3/28/01
750.	117	Pub trst	F	Bribing a public officer	4	
750.	121	Pub trst	F	Bribing a public officer to influence contract	4	
750.	124	Pub trst	G	Bribing an athlete	4	
168.	932 (a)	Pub trst	E	Bribing or intimidating voters	5	
750.	122 (7) (a)	Pub ord	F	Bribing or intimidating witness	4	3/28/01
750.	122 (7) (b)	Pub ord	D	Bribing or intimidating witness in case punishable by more than 10 years	10	3/28/01
800.	281 (3)	Pub saf	H	Bringing contraband into prisons	5	
801.	262 (1) (a)	Pub saf	E	Bringing weapon into jail	5	8/1/99
800.	283 (3)	Pub saf	E	Bringing weapon into prison	5	
750.	128	Pub ord	H	Bucket shop violation	2	
750.	112	Person	A	Burglary with explosives		
750.	136 c	Person	B	Buying or selling an individual	20	10/1/00
445.	408 (2)	Pub ord	F	Buying or selling stolen scrap metal	3	3/30/07
445.	408 (2)	Pub ord	E	Buying or selling stolen scrap metal	5	As amended, 2008 PA 386, Eff. 12/29/08 As
445.	408 (3)	Pub ord	E	Buying/selling stolen scrap metal from utility pole, telecom corp/govt/utility property or jobsite	5	3/30/07
445.	408 (3)	Pub ord	E	Buying/selling stolen scrap metal – subsequent offense	5	As amended, 2010 PA 317, Eff. 4/1/11
445.	408 (3)	Pub ord	E	Buying/selling stolen scrap metal – second or subsequent offense	5	As amended, 2008 PA 386, Eff. 12/29/08 As
169.	254	Pub trst	H	Campaign finance – corporate contributions	3	
169.	255	Pub trst	H	Campaign finance – corporate solicitation for certain funds	3	

169.	266	Pub trst	H	Campaign finance – qualified campaign expenditures	3	
752.	861	Person	G	Careless discharge of firearm causing injury or death	2	
750.	90 e	Person	G	Careless or reckless driving causing miscarriage or stillbirth	2	10/1/00
750.	90 e	Person	G	Careless or reckless driving causing miscarriage, stillbirth, or death to embryo or fetus	2	6/1/01
750.	529 a	Person	A	Carjacking	LIFE	
750.	227	Pub saf	E	Carrying a concealed weapon	5	
28.	425 o (5) (c)	Pub saf	F	Carrying concealed pistol in prohibited place – third or subsequent offense	4	7/1/01
28.	425 o (~~5~~6) (c)	Pub saf	F	Carrying concealed pistol or electro-muscular disruption device in prohibited place – third or subsequent offense	4	As amended, 2012 PA 124, Eff. 8/6/12~~7/1/01~~
750.	226	Pub saf	E	Carrying firearm or dangerous weapon with unlawful intent	5	
750.	508 (2) (b)	Pub ord	G	Carrying or possessing a scanner in the commission of a crime	2	3/2/06
432.	218	Pub ord	D	Casino gaming offenses	10	
472.	21	Pub saf	A	Causing derailment/endangering life-person eng in work of/traveling by streetcar/tram/ trolley	LIFE	1/12/09
750.	99	Pub trst	G	Certifying checks without sufficient funds	4	
287.	967 (5)	Pub ord	G	Cervidae producer violations	4	10/1/00
445.	667	Pub ord	G	Changing, altering, or modifying reverse vending machine or data for reverse vending machine	2	12/29/08
750.	68	Property	G	Changing brands with intent to steal	4	
400.	293	Pub trst	E	Charitable organizations and solicitations act violations	5	3/30/11
750.	136 b (2)	Person	C	Child abuse – first degree	15	
750.	136 b (2)	Person	B	Child abuse – first degree	15	10/1/00
750.	136 b (2)	Person	~~B~~A	Child abuse – first degree	~~15~~LIFE	As amended, 2012 PA 195, Eff. 7/1/12~~10/1/00~~
750.	136 d (1) (a)	Person	A	Child abuse – first degree – in presence of another child	LIFE	7/1/12
750.	136 b (4)	Person	F	Child abuse – second degree	4	
750.	136 b (4) (a)	Person	C	Child abuse – second degree – first offense	10	7/1/12
750.	136 d (1) (b)	Person	D	Child abuse – second degree – in presence of another child – first offense	10	7/1/12
750.	136 d (1) (c)	Person	B	Child abuse – second degree – in presence of another child – second or subsequent offense	20	7/1/12
750.	136 b (4) (b)	Person	B	Child abuse – second degree – second or subsequent offense	20	7/1/12
750.	136 b (5)	Person	G	Child abuse – third degree	2	Renumbered, 2008 PA 521, Eff. 4/1/09
750.	136 b (6)	Person	G	Child abuse – third degree	2	As amended, 2012 PA 195, Eff. 7/1/12
750.	136 d (1) (d)	Person	G	Child abuse – third degree – in presence of another child	2	7/1/12
750.	145 c (3)	Person	D	Child sexually abusive activity or material~~s~~ – distributing, promoting or financing the distribution of	7	As amended, 2012 PA 195, Eff. 7/1/12
750.	145 c (2)	Person	B	Child sexually abusive activity or material~~s~~ – ~~active involvement~~producing	20	As amended, 2012 PA 195, Eff. 7/1/12
750.	145 c (4)	Person	F	Child sexually abusive ~~activities or~~ material~~s~~ – possessing~~on~~	4	~~6/1/02~~As amended, 2012 PA 195, Eff. 7/1/12
750.	528 a	Pub saf	F	Civil disorders – firearms/explosives	4	
750.	32	Pub ord	H	Cohabitation of divorced parties	4	
257.	625 m (5)	Pub saf	E	Commercial drunk driving – third or subsequent offense	5	10/1/00
750.	505	Pub ord	E	Common law offenses	5	
205.	28	Pub trst	G	Compromising/unauthorized disclosure of tax information	5	
752.	797 (1) (c)	Property	E	Computer fraud – 2 prior convictions or value of $1,000 to $20,000	5	
752.	797 (1) (d)	Property	D	Computer fraud – 3 or more prior convictions or value of $20,000 or more	10	
750.	149	Pub saf	F	Concealing an offense punishable by life	4	
750.	495 a (3)	Person	C	Concealing objects in trees or wood products – causing death	15	
750.	495 a (2)	Person	F	Concealing objects in trees or wood products – causing injury	4	
259.	83 b (2) (a)	Pub saf	F	Conducting flight operations without certificate	4	3/31/03
259.	83 b (2) (b)	Pub saf	E	Conducting flight operations without certificate – second violation	5	3/31/03
259.	83 b (2) (c)	Pub saf	D	Conducting flight operations without certificate – third or subsequent violation	10	3/31/03

500.	8197 (3)	Property	E	Consolidation merger – compensation otherwise than expressed in contract	5	
750.	157 a (a)	Pub saf	SPEC	Conspiracy	Vari-able	
750.	157 a (b)	Pub ord	H	Conspiracy – gambling	5	
750.	410 a	Person	G	Conspiracy to commit a person to state hospital unjustly	4	
750.	157 a (d)	Pub ord	G	Conspiracy to commit legal act in illegal manner	5	
570.	1207	Property	G	Construction liens – false information	4	
28.	454 (1)	Pub saf	G	Consumer fireworks certificate violation	2	12/14/11
570.	1110 (11) (c)	Property	E	Contractor – false sworn statement involving $1,000 to $20,000 or with prior convictions	5	1/1/02; as amended, 2010 PA 152, Eff. 8/23/10
570.	1110 (c)	Property	E	Contractor – false sworn statement involving $1,000 to $20,000 or with prior convictions	5	1/1/02; renumbered, 2010 PA 152, Eff. 8/23/10
570.	1110 (11) (d)	Property	D	Contractor – false sworn statement involving $20,000 or more or with prior convictions	10	1/1/02; as amended, 2010 PA 152, Eff. 8/23/10
570.	1110 (d)	Property	D	Contractor – false sworn statement involving $20,000 or more or with prior convictions	10	1/1/02; renumbered, 2010 PA 152, Eff. 8/23/10
570.	1110	Property	F	Contractor – false sworn statements over $100	4	Deleted, 2001 PA 152, Eff. 1/1/02
570.	152	Property	G	Contractor – fraudulent use of building contract fund	3	
333.	7410	CS	SPEC	Controlled substance delivery or distribution to minors or students	Vari-able	
333.	7410 a	CS	G	Controlled substance offense in or near a park	2	10/1/00
333.	7410	CS	SPEC	Controlled substance offense on or near school property	Vari-able	10/1/00
333.	7410 a	CS	G	Controlled substance offense or offense involving GBL in or near a park	2	1/1/01
333.	7410	CS	SPEC	Controlled substance offense or offense involving GBL on or near school property	Vari-able	1/1/01
333.	7410	CS	SPEC	Controlled substance offense or offense involving GBL on or near school property or library	Vari-able	As amended, 2006 PA 553, Eff. 3/30/07
333.	7405 (a)	CS	G	Controlled substance violations by licensee	2	
333.	7405 (1) (a)	CS	G	Controlled substance violations by licensee	2	12/22/10
333.	7407 (1) (a)	CS	G	Controlled substance violations by licensee	4	
328.	232	Property	E	Conversion of funeral contracts	5	
752.	1054 (2)	Property	G	Copying audio/video recordings for gain	5	
450.	795	Pub ord	H	Corporations – handicapper business opportunity act	2	
450.	775	Pub ord	H	Corporations – minority and woman owned businesses	2	
257.	312 b (6)	Pub ord	F	Corrupting a person or agency conducting a motorcycle driving test	5	3/28/01
257.	309 (6)*	Pub ord	F	Corrupting an examining officer *[See MCL 257.309(7)]	5	3/28/01
750.	260	Property	E	Counterfeiting coins or possession of 5 or more counterfeit coins	LIFE	
750.	266	Property	G	Counterfeiting railroad tickets	4	Deleted, 2002 PA 321, Eff. 7/15/02
28.	295 (1) (a)	Pub ord	D	Counterfeiting or forging state ID card or using counterfeited or forged state ID card to commit felony punishable by imprisonment for 10 years or more	10	9/1/04
28.	295 (1) (b)	Pub ord	E	Counterfeiting or forging state ID card or using counterfeited or forged state ID card to commit felony punishable by imprisonment for less than 10 years or a misdemeanor punishable by more than 6 months	5	9/1/04
38.	412 a (1)	Pub trst	H	County employee providing answers to county civil service exam	1	
45.	82	Pub trst	E	County purchasing agent – violations in awarding bids or contracts	5	
487.	1042 (2)	Pub trst	E	Criminal fraud in the conduct of money transmission services business	5	7/3/06
750.	520 b (2)	Person	A	Criminal sexual conduct -- first degree	LIFE	As amended, 2006 PA 166, Eff. 8/28/06
750.	520 b	Person	A	Criminal sexual conduct – first degree	LIFE	
750.	520 e	Person	G	Criminal sexual conduct – fourth degree	2	
750.	520 c	Person	C	Criminal sexual conduct – second degree	15	
750.	520 d	Person	C	Criminal sexual conduct – third degree	15	
750.	520 d	Person	B	Criminal sexual conduct – third degree	15	10/1/00
330.	1944	Pub saf	F	Criminal sexual psychopath leaving state without permission	4	1/9/07
438.	41	Property	E	Criminal usury	5	
324.	52908 (1) (c)	Property	E	Damage to plant involving $1,000 to $20,000 or with prior convictions	5	1/1/02

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324.	52908 (1) (d)	Property	D	Damage to plant involving $20,000 or more or with prior convictions	10	1/1/02
324.	2157 (1) (c)	Property	E	Damage to state property involving $1,000 to $20,000 or with prior convictions	5	1/1/02
324.	2157 (1) (d)	Property	D	Damage to state property involving $20,000 or more or with prior convictions	10	1/1/02
750.	385 (2) (g)	Person	C	Damaging or destroying research property resulting in death	15	Eff. 4/1/05 to 9/14/05
750.	395 (2) (g)	Person	C	Damaging or destroying research property resulting in death	15	Replaced MCL 750.385(2)(g),
750.	385 (2) (e)	Person	E	Damaging or destroying research property resulting in physical injury	5	Eff. 4/1/05 to 9/14/05
750.	395 (2) (e)	Person	E	Damaging or destroying research property resulting in physical injury	5	Replaced MCL 750.385(2)(e),
750.	385 (2) (f)	Person	D	Damaging or destroying research property resulting in serious impairment of body function	10	Eff. 4/1/05 to 9/14/05
750.	395 (2) (f)	Person	D	Damaging or destroying research property resulting in serious impairment of body function	10	Replaced MCL 750.385(2)(f),
750.	540 (5) (a)	Pub ord	H	Damaging, destroying, using, or obstructing use of electronic medium of communication	2	As amended, 2006 PA 62, Eff. 6/1/06
750.	385 (2) (d)	Property	E	Damaging/destroying research property - $20,000 or more or 2 or more prior convictions	5	Eff. 4/1/05 to 9/14/05
750.	395 (2) (d)	Property	E	Damaging/destroying research property - $20,000 or more or 2 or more prior convictions	5	Replaced MCL 750.385(2)(d),
750.	385 (2) (c)	Property	E	Damaging/destroying research property-between $1,000 and $20,000 or w/ prior convictions	5	Eff. 4/1/05 to 9/14/05
750.	395 (2) (c)	Property	E	Damaging/destroying research property-between $1,000 and $20,000 or w/ prior convictions	5	Replaced MCL 750.385(2)(c),
750.	540 (5) (b)	Person	F	Damaging/destroying/using/obstructing electronic communication resulting in injury/death	4	6/1/06
287.	323 (1)	Person	C	Dangerous animal causing death	15	
287.	323 (2)	Person	G	Dangerous animal causing serious injury	4	
287.	679	Pub ord	H	Dead animals	1	
287.	679	Pub ord	H	Dead animals – third or subsequent violation	1	10/1/01
750.	328	Person	A	Death by explosives in or near building	LIFE	
750.	327	Person	A	Death by explosives on vehicle or vessel	LIFE	
750.	145 o	Person	E	Death of vulnerable adult caused by unlicensed caretaker	5	
451.	434	Pub trst	H	Debt management act – licensee violations	2	
333.	7401 a	Person	B	Delivering a controlled substance or GBL with intent to commit criminal sexual conduct	20	1/1/01
333.	7401 a	Person	B	Delivering a controlled substance with intent to commit criminal sexual conduct	20	10/1/00
750.	317 a	Person	A	Delivery of controlled substance causing death	LIFE	1/1/06
333.	17766 a (4)	CS	G	Delivery of imitation steroids	7	Deleted, 2003 PA 309, Eff. 4/1/04
333.	7401(2)(d)(*i*)	CS	C	Delivery or manufacture of >45 kilos of marijuana	15	
333.	7401 (2) (d) (*i*)	CS	C	Delivery or manufacture of 45 or more kilograms of marijuana	15	10/1/00
333.	7401(2)(d)(*ii*)	CS	D	Delivery or manufacture of 5-45 kilos of marijuana	7	
333.	7401 (2) (d) (*ii*)	CS	D	Delivery or manufacture of 5 or more but less than 45 kilograms of marijuana	7	10/1/00
333.	7401 (2) (a) (*iii*)	CS	B	Delivery or manufacture of 50 or more but less than 450 grams of certain schedule 1 or 2 controlled substances	20	3/1/03
333.	7401 (2) (a) (*ii*)	CS	A	Delivery or manufacture of 450 or more but less than 1,000 grams of certain schedule 1 or 2 controlled substances	30	3/1/03
333.	7401 (2) (a) (*i*)	CS	A	Delivery or manufacture of 650 or more grams by juvenile	LIFE	
333.	7401 (2) (a) (*i*)	CS	A	Delivery or manufacture of 1,000 or more grams of certain schedule 1 or 2 controlled substances	LIFE	3/1/03
333.	7402 (2) (a)	CS	D	Delivery or manufacture of an imitation controlled substance	10	
333.	7401 (2) (f)	CS	D	Delivery or manufacture of an official or counterfeit prescription form	20	Deleted, 2001 PA 236, Eff. 1/6/03
333.	7402 (2) (a)	CS	D	Delivery or manufacture of certain counterfeit controlled substances	10	9/30/10
333.	7402 (2) (a)	CS	D	Delivery or manufacture of certain imitation controlled substances	10	1/1/01
333.	7401 (2) (b) (*ii*)	CS	E	Delivery or manufacture of certain schedule 1, 2, or 3 controlled substances	7	1/1/01
333.	7402 (2) (e)	CS	C	Delivery or manufacture of controlled substance analogue	15	
333.	7402 (2) (c)	CS	F	Delivery or manufacture of counterfeit schedule 4 controlled substance	4	9/30/10
333.	7402 (2) (d)	CS	G	Delivery or manufacture of counterfeit schedule 5 controlled substance	2	9/30/10
333.	7401 b (3) (a)	CS	E	Delivery or manufacture of GBL	7	1/1/01
333.	7341 (8)	CS	G	Delivery or manufacture of imitation controlled substance	2	

333.	7402 (2) (c)	CS	F	Delivery or manufacture of imitation schedule 4 controlled substance	4	
333.	7402 (2) (d)	CS	G	Delivery or manufacture of imitation schedule 5 controlled substance	2	
333.	7401 (2) (d) (*iii*)	CS	F	Delivery or manufacture of less than 5 kilograms or 20 plants of marijuana	4	
333.	7401 (2) (a) (*iv*)	CS	D	Delivery or manufacture of less than 50 grams of certain schedule 1 or 2 controlled substances	20	
333.	7401 (2) (b) (*i*)	CS	B	Delivery or manufacture of methamphetamine	20	1/1/01
333.	7401 (2) (b) (*i*)	CS	B	Delivery or manufacture of methamphetamine or 3, 4-methylenedioxymethamphetamine	20	4/1/03
333.	7401 (2) (f)	CS	D	Delivery or manufacture of prescription form or counterfeit prescription form	7	3/1/03
333.	7401 (2) (g)	CS	D	Delivery or manufacture of prescription or counterfeit form (other than official)	7	Rewritten as .7401(2)(f), 2001 PA 236
333.	7401 (2) (f)	CS	D	Delivery or manufacture of prescription or counterfeit form other than official	7	1/6/03
333.	7401 (2) (b)	CS	E	Delivery or manufacture of schedule 1, 2, or 3 controlled substance except marijuana	7	
333.	7402 (2) (b)	CS	E	Delivery or manufacture of schedule 1, 2, or 3 counterfeit controlled substance	5	9/30/10
333.	7402 (2) (b)	CS	E	Delivery or manufacture of schedule 1, 2, or 3 imitation controlled substance	5	
333.	7401 (2) (c)	CS	F	Delivery or manufacture of schedule 4 controlled substance	4	
333.	7401 (2) (e)	CS	G	Delivery or manufacture of schedule 5 controlled substance	2	
333.	17766 a (3)	CS	E	Delivery or manufacture of steroids	7	Deleted, 2003 PA 309, Eff. 4/1/04
750.	157 q	Property	H	Delivery or sale of fraudulent financial transaction device	4	
333.	7401 (2) (a) (*ii*)	CS	A	Delivery/manufacture of 225+ but less than 650 grams of certain schedule 1 or 2 substances	30	10/1/00
333.	7401 (2) (a) (*iii*)	CS	B	Delivery/manufacture of 50+ but less than 225 grams of certain schedule 1 or 2 substances	20	
333.	7401 (2) (a) (*i*)	CS	A	Delivery/manufacture of 650 or more grams of certain schedule 1 or 2 controlled substances	LIFE	10/1/00
750.	263 (3)	Property	E	Delivery/use/display items w/ counterfeit mark – subsequent offense or $1000+ or 100+ items	5	
750.	164	Pub ord	F	Desertion to escape prosecution	4	
750.	161	Pub ord	G	Desertion, abandonment, or nonsupport	3	As amended, 2012 PA 6, Eff. 2/14/12
252.	311	Property	H	Destroying a tree or shrub to make a sign more visible	2	10/1/00
750.	528	Pub saf	F	Destroying dwelling house or other property	4	
750.	528	Pub saf	F	Destroying dwelling house or other property during riot or unlawful assembly	4	As amended, 2006 PA 166, Eff. 8/28/06
168.	932 (c)	Pub trst	E	Destroying or falsifying election return or records	5	
752.	701	Property	H	Destruction or removal of timber	1	
257.	312 b (7)	Pub ord	F	Deviating from motorcycle road test criteria	5	3/28/01
257.	309 (7)*	Pub ord	F	Deviating from road test criteria *[See MCL 257.309(8)]	5	3/28/01
207.	127 c	Pub ord	G	Diesel fuel tax – embezzlement over $100	10	Offense repealed, 2000 PA 403, Eff. 4/1/01
750.	479 b (2)	Person	D	Disarming peace officer – firearm	10	
750.	479 b (1)	Person	F	Disarming peace officer – nonfirearm	4	
750.	234 c	Pub saf	F	Discharging firearm at emergency/police vehicle	4	
750.	234 a	Pub saf	F	Discharging firearm from vehicle	4	
750.	234 b	Pub saf	F	Discharging firearm in or at a building	4	
333.	2835 (9)	Pub trst	G	Disclosing confidential information – abortion	3	
168.	792 a (16)	Pub trst	E	Disclosing election result or how ballot voted	5	
168.	792 a (11)	Pub trst	E	Disclosing how ballot voted or election results early before polls are closed	5	
333.	7407 (1) (f)	CS	F	Disclosing or obtaining prescription information	4	Offense deleted, 2001 PA 236, Eff. 1/6/03
767.	4 a	Pub trst	F	Disclosing or possessing grand jury information	4	
168.	932 (d)	Pub trst	E	Disclosing votes or obstructing voter	5	
750.	160	Pub ord	D	Disinterring or mutilating dead human bodies	10	
750.	160	Pub ord	D	Disinterring or mutilating dead human body	10	4/1/04
750.	168 (2) (a)	Pub ord	G	Disorderly conduct at a funeral memorial service, viewing, procession, or burial	2	As amended, 2012 PA 6, Eff. 2/14/12
750.	168 (2) (b)	Pub ord	F	Disorderly conduct at a funeral memorial service, viewing, procession, or burial - subsequent offense	4	As amended, 2012 PA 6, Eff. 2/14/12

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257.	625 n (10)	Pub ord	G	Disposing of vehicle to avoid forfeiture	4	Misdemeanor, 1998 PA 349, Eff. 10/1/99
333.	13738 (3)	Pub saf	B	Disposing of waste – extreme indifference to human life	20	
333.	13738 (3)	Pub saf	F	Disposing of waste – indifference to human life	2	
722.	675	Pub ord	E	Distributing obscene matter to children	2	
750.	539 d (3) (b)	Pub ord	E	Distributing, disseminating, or transmitting recording or image obtained by eavesdropping	5	6/16/04
750.	539 j (2) (b)	Pub ord	E	Distributing, disseminating, or transmitting visual image obtained by surveillance	5	6/16/04
750.	540 g (1) (c)	Property	E	Diverting telecommunications services having a value of $1,000 - $20,000 or with priors	5	
750.	540 g (1) (d)	Property	D	Diverting telecommunications services having a value of $20,000 or more or with priors	10	
750.	539 e	Pub ord	H	Divulging or using information obtained by eavesdropping	2	
750.	81 (4)	Person	G	Domestic assault – third offense	2	
750.	81 (4)	Person	G	Domestic assault with prior convictions	2	10/1/00
750.	171	Person	E	Dueling	10	Deleted, 2010 PA 95, eff. 6/22/10
750.	539 c	Pub ord	H	Eavesdropping	2	
168.	757	Pub trst	E	Election inspector – unlawful conduct	5	
168.	734	Pub trst	G	Election law – election board refusing to provide challenger conveniences	2	
168.	731 (4)	Pub trst	G	Election law – filing certain false statements	2	
168.	937	Pub trst	E	Election law – forgery	5	
168.	936	Pub trst	E	Election law – perjury	5	
168.	932 e	Pub trst	E	Election law – person intentionally misrepresenting that he or she is an election official in a polling place	5	8/15/12
168.	932 (f)	Pub trst	E	Election law – possess absent voter ballot delivered to another person	5	
168.	932 c	Pub trst	E	Election law – providing compensation to a person for registering individuals to vote	5	8/15/12
168.	932 a	Pub trst	G	Election offenses	4	
168.	756	Pub trst	E	Elector's false statement concerning inability to mark ballot	5	
750.	520 n	Pub saf	G	Electronic monitoring device violation	2	8/28/06
750.	176	Pub trst	E	Embezzlement by administrator, executor, or guardian	10	As amended, 2012 PA 6, Eff. 2/14/12
750.	174 (4)	Property	E	Embezzlement by agent of $1,000 to $20,000 [or] with prior convictions	5	10/1/00
750.	174 (5)	Property	D	Embezzlement by agent of $1K-$20K from nonprofit/charitable organization, or $20K-$50K, or $1K-$20K with prior convictions	10	As amended, 2006 PA 574, Eff. 3/30/07
750.	174 (4)	Property	E	Embezzlement by agent of ~~$200 $1K from nonprofit/charitable organization, or~~ $1,000 to $20,000~~K $20K~~, or with prior convictions, or of $200 to $1,000 from nonprofit corpo-	5	As amended, ~~2006 PA 574, Eff. 3/30/07~~2012 PA
750.	174 (5)	Property	D	Embezzlement by agent of $20,000 to $50,000, or with prior convictions, or of ~~or more or~~ $1,000 to $20,000 from nonprofit corporation or charitable organization ~~with prior~~	10	~~10/1/00~~As amended, 2012 PA 168, Eff. 6/19/12
750.	174 (6)	Property	C	Embezzlement by agent of $50,000 to $100,000	15	As amended, 2012 PA 6, Eff. 2/14/12
750.	174 (7)	Property	B	Embezzlement by agent of $100,000 or more	20	3/30/07
750.	174	Property	D	Embezzlement by agent over $100	10	
750.	177 (3)	Property	E	Embezzlement by chattel mortgagor of $1,000 to $20,000 or with prior convictions	5	10/1/00
750.	177 (2)	Property	D	Embezzlement by chattel mortgagor of $20,000 or more or with prior convictions	10	As amended, 2012 PA 6, Eff. 2/14/12
750.	177	Property	H	Embezzlement by chattel mortgagor over $100	2	
750.	180	Property	D	Embezzlement by financial institution	20	As amended, 2012 PA 6, Eff. 2/14/12
750.	175	Pub trst	D	Embezzlement by public ~~official~~officer of more than $50	10	As amended, ~~2012 PA 6, Eff. 2/14/12~~2012 PA 168,
750.	174 a (4)	Property	E	Embezzlement from vulnerable adult of $1,000 to $20,000 or with prior convictions	5	As amended, 2012 PA 6, Eff. 2/14/12
750.	174 a (5)	Property	D	Embezzlement from vulnerable adult of $20,000 or more or with prior convictions	10	As amended, 2012 PA 6, Eff. 2/14/12
750.	174 a (5)	Property	D	Embezzlement from vulnerable adult of $20,000 to $50,000 ~~or more~~ or with prior convictions	10	As amended, ~~2012 PA 6, Eff. 2/14/12~~2012 PA 168,
750.	174 a (6)	Property	C	Embezzlement from vulnerable adult of $50,000 to $100,000 or with prior convictions	15	6/19/12
750.	174 a (7)	Property	B	Embezzlement from vulnerable adult of $100,000 or more or with prior convictions	20	6/19/12
750.	182	Property	G	Embezzlement by warehouses	4	
750.	181	Property	E	Embezzlement of jointly held property over $100	10	
750.	178	Property	G	Embezzlement of mortgaged or leased property – over $100	2	

750.	179	Property	G	Embezzlement of railroad tickets	4	Deleted, 2002 PA 278, Eff. 5/9/02
750.	181 (4)	Property	E	Embezzling jointly held property with value of $1,000 to $20,000 or with prior convictions	5	10/1/00
750.	181 (5)	Property	D	Embezzling jointly held property with value of $20,000 or more or with prior convictions	10	As amended, 2012 PA 6, Eff. 2/14/12
750.	178 (3)	Property	E	Embezzling mortgaged or leased property of $1,000 to $20,000 or with prior convictions	5	As amended, 2012 PA 6, Eff. 2/14/12
750	178 (2)	Property	D	Embezzling ~~of~~ mortgaged or leased property of $20,000 ~~or more~~ or with prior convictions	10	As amended, ~~2012 PA 6, Eff. 2/14/12~~2012 PA 168,
409.	122 (2)	Pub ord	G	Employment of children during certain hours – second offense	2	
409.	122 (2)	Person	G	Employment of children during certain hours – second offense	2	10/1/00
409.	122(2)	Person	E	Employment of children during certain hours – third offense	10	
409.	122 (2)	Person	E	Employment of children during certain hours – third or subsequent offense	10	10/1/00
409.	122 (3)	Person	D	Employment of children in child sexually abusive activity	20	
750.	332	Property	H	Entering horse in race under false name	4	
750.	111	Property	E	Entering without breaking with intent to commit felony or larceny	5	
750.	13	Person	D	Enticing female under 16 for immoral purposes	10	
750.	195 (2)	Pub saf	F	Escape from a felony jail sentence	4	
750.	186 a (1)	Pub saf	F	Escape from a juvenile facility	4	
750.	195 (1)	Pub saf	H	Escape from a misdemeanor jail sentence	2	
750.	197 c	Pub saf	F	Escape from jail through violence	4	Eff. until 12/29/06, 2006 PA 536
750.	197 c	Pub saf	E	Escape from jail through violence	5	As amended, 2006 PA 536, Eff. 12/29/06
750.	193	Pub saf	E	Escape from prison	5	
750.	197 (2)	Pub saf	F	Escape while awaiting trial for felony	4	
750.	197 (1)	Pub saf	H	Escape while awaiting trial for misdemeanor	2	
750.	147 b	Person	G	Ethnic intimidation	2	
324.	61521 (1)	Pub trst	G	Evading rule under NREPA	3	
750.	411 b	Pub trst	G	Excess fees to members of legislature	4	
750.	200	Pub saf	F	Explosives – transport by common carriers	4	
750.	212 a	Person	B	Explosives violation involving a vulnerable target causing death or injury	20	10/1/00
750.	135	Person	D	Exposing children with intent to injure or abandon	10	
750.	165	Pub ord	F	Failing to pay support	4	As amended, 2000 PA 279, eff. 10/1/00
750.	165	Pub ord	F	Failing to pay support and leaving state	4	
380.	1230 d (3) (a)	Pub saf	G	Failure by school employee to report charge or conviction	2	9/29/05
205.	27 (1) (a)	Pub trst	G	Failure to file or false tax return or payment	5	
445.	1520	Pub trst	G	Failure to keep or maintain record of sale of franchise	7	As amended, 2010 PA 317, Eff. 4/1/11
791.	236 (17)	Pub ord	F	Failure to provide correct notice of proposed domicile by sex offender	4	12/1/06
28.	729 (1) (a)	Pub ord	F	Failure to register as a sex offender, first offense	4	9/1/99
28.	729 (1) (b)	Pub ord	D	Failure to register as a sex offender, second offense	7	9/1/99
28.	729 (1) (c)	Pub ord	D	Failure to register as a sex offender, third or subsequent offense	10	9/1/99
722.	115 e (2) (a)	Pub saf	G	Failure to report arraignment for criminal charges - child care centers, day care centers, and employees	2	1/1/06
722.	115 f (8) (a)	Pub saf	G	Failure to report arraignment for criminal charges - family day care and group day care homes	2	1/1/06
722.	115 f (8) (a)	Pub saf	G	Failure to report arraignment on criminal charges - family child care / group child care homes	2	As amended, 2007 PA 220, Eff. 11/28/07
722.	115 i (2) (a)	Pub saf	G	Failure to report arraignment on criminal charges - foster family / foster family group homes	2	11/28/07
257.	625 k (9)	Pub saf	D	Failure to report illegal ignition interlock device	10	10/1/01
257.	625 k (9)	Pub saf	D	Failure to report that an ignition interlock device does not meet legal requirements	10	10/1/00
257.	617	Person	E	Failure to stop at scene of a serious personal injury accident	5	Substituted for by 257.617(2)
257.	617 (3)	Person	C	Failure to stop at scene of accident resulting in death when at fault	15	2/1/02
257.	617 (2)	Person	E	Failure to stop at scene of accident resulting in serious impairment or death	5	2/1/02

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324.	80134 a (3)	Person	C	Failure to stop at scene of marine accident causing death when at fault	15	4/1/04
324.	80134 a (2)	Person	E	Failure to stop at scene of marine accident causing serious impairment or death	5	4/1/04
28.	729 (2) (c)	Pub ord	F	Failure to update sex offender registration information - third or subsequent offense	4	1/1/06
28.	729 (2)	Pub ord	F	Failure to update sex offender registration information	2	Amended, 2011 PA 19, Eff. July 1, 2011
257.	653 a (4)	Person	C	Failure to use due care and caution causing death to emergency personnel	15	3/28/01
257.	653 a (3)	Person	G	Failure to use due care and caution causing injury to emergency personnel	2	3/28/01
445.	1525	Pub trst	G	False advertising of franchise	7	As amended, 2010 PA 317, Eff. 4/1/11
324.	61511	Pub trst	G	False affidavit under NREPA	5	
28.	308	Pub saf	E	False certification or statement in application for enhanced driver license or enhanced official state personal identification card	5	3/13/08
28.	293 (1)	Pub ord	E	False information when applying for state ID	5	
28.	293 (2)	Pub ord	D	False information when applying for state ID – second offense	7	
28.	293 (3)	Pub ord	C	False information when applying for state ID – third or subsequent offense	15	
18.	366 (1) (c)	Property	E	False presentation to crime victim services commission to obtain $1,000 to $20,000 or with prior convictions	5	1/1/02
18.	366 (1) (d)	Property	D	False presentation to crime victim services commission to obtain $20,000 or more or with prior convictions	10	1/1/02
18.	366 (1)	Property	E	False presentation to crime victim services commission to obtain more than $100	10	Deleted, 2001 PA 150 & 154, Eff. 1/1/02
750.	218 (4)	Property	E	False pretenses involving $1,000 or more but less than $20,000 or $200 or more but less than $1,000 with prior convictions	5	As amended, 2011 PA 202, Eff. 1/1/12
750.	218 (4)	Property	E	False pretenses involving $1,000 to $20,000 or with prior convictions	5	10/1/00
750.	218 (5)	Property	C	False pretenses involving $20,000 or more but less than $50,000 or $1,000 or more but less than $20,000 with prior convictions	15	As amended, 2011 PA 202, Eff. 1/1/12
750.	218 (5)	Property	D	False pretenses involving $20,000 or more or $1,000 to $20,000 with prior convictions	10	10/1/00
750.	218 (6)	Property	C	False pretenses involving a value of $50,000 or more but less than $100,000 or $20,000 or more but less than $50,000 with prior convictions	15	1/1/12
750.	218 (7)	Property	B	False pretenses involving a value of $100,000 or more or $50,000 or more but less than $100,000 with prior convictions	20	1/1/12
750.	218	Property	E	False pretenses over $100	10	
285.	279 (2) (c)	Property	E	False pretenses under Michigan family farm development act involving $1,000 to $20,000 or with prior convictions	5	2/1/02
285.	279 (2) (d)	Property	D	False pretenses under Michigan family farm development act involving $20,000 or more or with prior convictions	10	2/1/02
125.	1447 (1) (c)	Property	E	False pretenses under state housing development act involving $1,000 to $20,000 or with prior convictions	5	1/1/02
125.	1447 (1) (d)	Property	D	False pretenses under state housing development act involving $20,000 or more or with prior convictions	10	1/1/02
722.	115 h (b)	Pub ord	F	False report initiating special investigation	Vari-able	6/1/08
750.	411 a (2)	Pub ord	F	False report of a bombing or threat to bomb	4	Substituted for by 750.411a(3)(a)
28.	754	Pub ord	F	False report of a child abduction	4	2/1/06
28.	754 (1)	Pub ord	F	False report of a child abduction	4	Amended, 2011 PA 19, Eff. July 1, 2011
750.	411 a (1) (b)	Pub ord	F	False report of a felony	4	
750.	436 (3) (a)	Pub ord	F	False report of poisoning food, drink, medicine, or water supply	4	4/22/02
750.	436 (3) (b)	Pub ord	D	False report of poisoning food, drink, medicine, or water supply with prior conviction	10	4/22/02
333.	7407 (1) (d)	CS	G	False reports under controlled substance article	4	
333.	16170 (3)	Pub trst	F	False representation – health professional recovery program	4	
445.	1521	Pub trst	G	False representation of departmental finding, recommendation, or approval of franchise document	7	As amended, 2010 PA 317, Eff. 4/1/11
750.	217 d	Pub saf	C	False representation or practice as health professional	15	10/1/00
28.	295 a (1)	Pub ord	H	False representation to obtain or misuse personal information	4	
28.	295 a (2)	Pub ord	G	False representation to obtain or misuse personal information – second offense	7	
28.	295 a (3)	Pub ord	C	False representation to obtain or misuse personal information – third or subsequent offense	15	
324.	80130 d (1)	Pub ord	H	False representation to obtain personal information	4	
324.	80319 a (1)	Pub ord	H	False representation to obtain personal information	4	
324.	81120 (1)	Pub ord	H	False representation to obtain personal information	4	
324.	82160 (1)	Pub ord	H	False representation to obtain personal information	4	
324.	80130 d (2)	Pub ord	G	False representation to obtain personal information – second offense	7	

324.	80319 a (2)	Pub ord	G	False representation to obtain personal information – second offense	7	
324.	81120 (2)	Pub ord	G	False representation to obtain personal information – second offense	7	
324.	82160 (2)	Pub ord	G	False representation to obtain personal information – second offense	7	
324.	80130 d (3)	Pub ord	C	False representation to obtain personal information – third or subsequent offense	15	
324.	80319 a (3)	Pub ord	C	False representation to obtain personal information – third or subsequent offense	15	
324.	81120 (3)	Pub ord	C	False representation to obtain personal information – third or subsequent offense	15	
324.	82160 (3)	Pub ord	C	False representation to obtain personal information – third or subsequent offense	15	
333.	20142 (5)	Pub trst	F	False statement – application licensure health facility	4	
445.	1523	Pub trst	G	False statement of material fact to department of attorney general regarding franchise	7	As amended, 2010 PA 317, Eff. 4/1/11
750.	232 a (3)	Pub saf	G	False statement in a pistol application	4	
168.	759 b	Pub trst	E	False statement in application for emergency absentee ballot	5	
35.	980	Pub trst	H	False statement in application for Korean veterans benefits	3	
442.	219	Pub trst	E	False statement in application for license to conduct certain sales	5	As amended, 2008 PA 382, Eff. 12/29/08
35.	1029	Pub trst	H	False statement in application for Vietnam veterans benefits	3	
257.	744 a	Pub saf	D	False statement in citation – perjury	15	
493.	56 a (13)	Pub trst	C	False statement in reports – secondary mortgage	15	
445.	1671	Pub trst	E	False statement in required report by mortgage broker or lender	15	As amended, 2010 PA 317, Eff. 4/1/11
750.	157 v	Property	H	False statement of identity to obtain financial transaction device	4	
28.	516 (2)	Pub saf	F	False statement on concealed firearm certificate application	4	3/31/09
28.	425 b (3)	Pub saf	F	False statement on concealed pistol permit application	4	7/1/01
28.	422 a (4)	Pub saf	F	False statement on pistol sales record	4	7/1/01
28.	422 a (5)	Pub saf	F	False statement on pistol sales record	4	Amended, 2011 PA 19, Eff. July 1, 2011
324.	21548 (1)	Pub trst	H	False statement, report, claim, bid, work invoice, or other request for payment	5	Reworded, 2004 PA 382, Eff. 10/12/04
168.	933	Pub trst	E	False swearing to register or vote	5	
205.	27 (3)	Pub trst	G	False tax returns/perjury	15	
750.	200 l	Person	E	Falsely exposing person to harmful substance or device	5	10/23/01
285.	279	Pub trst	E	Falsely obtaining money – agricultural land	10	Deleted, 2001 PAs 133, 136 & 160
750.	182 a	Pub trst	H	Falsifying school records	2	
333.	10117	Pub ord	E	Falsifying, concealing, or defacing document of anatomical gift for financial gain	5	3/17/2008
440.	9307 (4)	Property	G	Farming – illegal sale of secured products	3	Replaced by 9320(8), 2000 PA 348, Eff. 7/1/01
440.	9320 (8)	Property	G	Farming – illegal sale of secured products	3	7/1/01
750.	227 g (1)	Pub saf	F	Felon purchasing, owning, possessing, or using body armor	4	10/1/00
750.	82 (1)	Person	F	Felonious assault	4	
750.	82 (2)	Person	F	Felonious assault – weapon-free school zone	4	
257.	626 c	Person	G	Felonious driving	2	Repealed, 2008 PA 467, Eff. 10/31/10
752.	191	Pub saf	G	Felonious driving	2	Deleted, 2001 PA 136, Eff. 2/1/02
324.	80173	Person	G	Felonious operation of a vessel	2	
750.	237 a	Pub saf	SPEC	Felony committed in a weapon-free school zone	Vari-able	10/1/00
750.	49 (10)	Person	D	Fighting animal attacking without provocation and death resulting	15	
750.	49 (2) (a)	Pub ord	F	Fighting animals or providing facilities for animal fights	4	
750.	49 (2) (b)	Pub ord	F	Fighting animals or providing facilities for animal fights	4	
750.	49 (2) (c)	Pub ord	F	Fighting animals or providing facilities for animal fights	4	
750.	49 (2) (d)	Pub ord	F	Fighting animals or providing facilities for animal fights	4	
440.	9501	Pub trst	E	Filing a false or fraudulent financing statement with the secretary of state	5	1/1/05
440.	9501a	Pub trst	E	Filing false affidavit of fraudulent financing statement	5	12/29/08

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750.	157 r	Property	H	Financial transaction device – forgery, alteration, or counterfeiting	4	
750.	157 n (1)	Property	H	Financial transaction device – stealing, retaining, or using without consent	4	
750.	157 s	Property	H	Financial transaction device – use of revoked or canceled financial device over $100	1	
38.	516	Pub trst	H	Fire and police civil service – appointment or employment contrary to act	2	
28.	435 (14) (c)	Pub saf	G	Firearm sale without trigger lock, gun case, or storage container – third or subsequent offense	2	7/1/01
257.	602 a (5)	Person	C	First degree fleeing and eluding	15	Amended, 2011 PA 59, Eff. 7/1/11
750.	104	Property	F	Fitting boat with intent to destroy	4	
750.	479 a (5)	Person	C	Fleeing and eluding – first degree	15	
750.	479 a (2)	Pub saf	G	Fleeing and eluding – fourth degree	2	
750.	479 a (4)	Person	D	Fleeing and eluding – second degree	10	
750.	479 a (3)	Pub saf	E	Fleeing and eluding – third degree	5	
750.	300 a (1) (a)	Property	G	Food stamp fraud of~~–~~ $250 or less – second offense	5	As amended, 2012 PA 169, Eff. 6/19/12
750.	300 a (1) (a)	Property	G	Food stamp fraud of~~–~~ $250 or less – third or subsequent offense	10	As amended, 2012 PA 169, Eff. 6/19/12
750.	300 a (1) (b)	Property	E	Food stamp fraud of~~–~~ more than $250 to $1,000	5	As amended, 2012 PA 169, Eff. 6/19/12
750.	300 a (1) (b)	Property	E	Food stamp fraud of~~–~~ more than $250 to $1,000 – subsequent offense	10	As amended, 2012 PA 169, Eff. 6/19/12
750.	300 a (1) (c)	Property	E	Food stamp fraud of~~–~~ more than~~over~~ $1,000	10	As amended, 2012 PA 169, Eff. 6/19/12
168.	759 (8)	Pub trst	E	Forged signature on absentee ballot	5	
750.	248	Property	E	Forgery	14	
750.	251	Property	E	Forgery of bank bills	7	
750.	248 b	Property	C	Forgery of real estate document	14	1/1/12
750.	250	Property	E	Forgery of treasury notes	7	
28.	422 (16)	Pub saf	F	Forgery on pistol – license [sic] application	4	Amended, 2011 PA 19, Eff. July 1, 2011
257.	310 (7) (b)	Pub ord	E	Forging driver license with intent to commit crime punishable by 6 months or more but less than 10 years	5	4/22/02
257.	310 (7) (a)	Pub ord	D	Forging driver license with intent to commit crime punishable by 10 years or more	10	4/22/02
28.	295 (1) (a)	Pub ord	H	Forging state ID card to commit felony	4	Replaced, 2004 PA 149, Eff. 9/1/04
257.	312 b (8)	Pub ord	F	Forging, counterfeiting, or altering motorcycle road test certification	5	3/28/01
257.	309 (8)*	Pub ord	F	Forging, counterfeiting, or altering road test certification *[See MCL 257.309(9)]	5	3/28/01
110.	28	Pub trst	G	Fourth class cities – misappropriation of money or property	3	
257.	602 a (2)	Pub saf	G	Fourth degree fleeing and eluding	2	Amended, 2011 PA 59, Eff. 7/1/11
445.	1525	Pub trst	G	Franchise investment law – false advertising	7	Reworded, 2010 PA 317, Eff. 4/1/11
445.	1521	Pub trst	G	Franchise investment law – false representation	7	Reworded, 2010 PA 317, Eff. 4/1/11
445.	1523	Pub trst	G	Franchise investment law – false statements of material fact	7	Reworded, 2010 PA 317, Eff. 4/1/11
445.	1505	Pub trst	G	Franchise investment law – fraudulent filing/offers	7	Reworded, 2010 PA 317, Eff. 4/1/11
445.	1513	Pub trst	G	Franchise investment law – illegal offers/sales	7	Reworded, 2010 PA 317, Eff. 4/1/11
445.	1520	Pub trst	G	Franchise investment law – keeping records	7	Reworded, 2010 PA 317, Eff. 4/1/11
445.	1508	Pub trst	G	Franchise investment law – sale without proper disclosure	7	Reworded, 2010 PA 317, Eff. 4/1/11
~~750.~~	~~279~~	~~Property~~	~~G~~	~~Fraud – disposition of exhausted property~~	~~4~~	
750.	276	Property	G	Fraud – obtaining signature or promise of~~to~~ vendee of grain to sell at fictitious price	4	As amended, 2012 PA 169, Eff. 6/19/12
750.	274	Property	E	Fraud – purchasing or~~/~~ collecting on fraudulent financial document	10	As amended, 2012 PA 169, Eff. 6/19/12
333.	5661	Person	F	Fraud resulting in patient death	4	
750.	277	Pub trst	G	Fraud – sale or transfer~~Promise~~ of note of~~to~~ vendee of grain to sell at a fictitious price~~– sale and transfer~~	4	As amended, 2012 PA 169, Eff. 6/19/12
750.	278	Property	G	Fraud – issuing or delivering fraudulent warehouse receipt~~s~~	5	As amended, 2012 PA 169, Eff. 6/19/12
750.	95	Property	G	Fraudulent bank notes	10	
565.	371	Property	G	Fraudulent conveyances – recording with intent to deceive	3	
750.	96	Property	G	Fraudulent disposal of bank property	4	

750.	279	Property	G	Fraudulent— disposalition of entrustedxhausted property	4	As amended, 2012 PA 169, Eff. 6/19/12
436.	1919	Pub ord	H	Fraudulent documents, labels, or stamps	1	
445.	1505	Pub trst	G	Fraudulent filing, offer, or sale of franchise	7	As amended, 2010 PA 317, Eff. 4/1/11
750.	282	Pub ord	G	Fraudulently damaging or using property ofPublic utility in amount— fraudulent use over $500	4	As amended, 2012 PA 169, Eff. 6/19/12
333.	7403 a	CS	F	Fraudulently obtaining controlled substance or prescription for controlled substance	4	12/22/10
750.	271	Property	E	Fraudulently issuing or selling domestic securities	10	
750.	157 w (1) (c)	Property	E	Fraudulently withdrawing or transferring $1,000 to $20,000 with financial transaction device	5	10/1/00
750.	157 w (1) (d)	Property	D	Fraudulently withdrawing or transferring $20,000 or more with financial transaction device	10	10/1/00
750.	157 w	Property	H	Fraudulently withdrawing or transferring more than $500 with financial transaction device	4	
800.	283 a	Pub saf	E	Furnishing cell phone to prisoner	5	12/29/06
801.	263 (1)	Pub saf	H	Furnishing contraband to prisoner in jail	5	8/1/99
750.	157 t	Property	H	Furnishing goods or services to person committing violation with financial transaction device	4	
800.	281 (1)	Pub saf	H	Furnishing prisoner with contraband	5	
800.	281 (2)	Pub saf	H	Furnishing prisoner with contraband outside	5	
801.	262 (1) (b)	Pub saf	E	Furnishing weapon to prisoner in jail	5	8/1/99
800.	283 (1)	Pub saf	E	Furnishing weapon to prisoner in prison	5	
750.	303	Pub ord	H	Gambling	2	
750.	313	Pub ord	H	Gambling in— stocks, /bonds, or/ commodities	2	As amended, 2012 PA 169, Eff. 6/19/12
750.	303	Pub ord	H	Gaming	2	As amended, 2004 PA 457, Eff. 3/1/05
750.	411 u	Pub ord	B	Gang membership felonies	20	1/16/09
750.	411 v (1)	Person	E	Gang recruitment	5	1/16/09
207.	119	Pub trst	G	Gasoline or motor fuel tax violation	4	Offense repealed, 2000 PA 403, Eff. 4/1/01
207.	118 a	Pub ord	G	Gasoline tax – embezzlement over $100	10	Offense repealed, 2000 PA 403, Eff. 4/1/01
285.	82	Pub trst	H	Grain dealers act violations	5	Substituted for by 285.83
285.	83	Pub trst	H	Grain dealers act violations	5	3/31/03
750.	280	Property	E	Gross fraud~~s~~ or/ cheat~~s~~ at common law	10	As amended, 2012 PA 169, Eff. 6/19/12
750.	338 a	Pub ord	G	Gross indecency between females	5	
750.	338 a	Pub ord	A	Gross indecency between females involving sexually delinquent person	LIFE	8/24/06
750.	338	Pub ord	G	Gross indecency between males	5	
750.	338 b	Pub ord	G	Gross indecency between males and females	5	
750.	338 b	Pub ord	A	Gross indecency between males and females involving sexually delinquent person	LIFE	8/24/06
750.	338	Pub ord	A	Gross indecency between males involving sexually delinquent person	LIFE	8/24/06
750.	90 c (b)	Person	E	Gross negligence against a pregnant individual resulting in great bodily harm to embryo or fetus	5	10/1/00
750.	90 c (a)	Person	C	Gross negligence against a pregnant individual resulting in miscarriage/stillbirth/death to embryo or fetus	15	6/1/01
750.	90 c (a)	Person	C	Gross negligence against a pregnant individual resulting in miscarriage or stillbirth	15	10/1/00
750.	50 c (7)	Pub saf	H	Harassing or causing harm to law enforcement animal while committing crime	2	
750.	50 c (7)	Pub saf	H	Harassing/harming law enforcement animal or search and rescue dog while committing crime	2	As amended, 2006 PA 518, Eff. 12/29/06
750.	199 (3)	Pub saf	F	Harboring a person for whom felony warrant has been issued	4	6/30/06
750.	200 i (2) (c)	Person	A	Harmful device causing personal injury	25	10/1/00
750.	200 i (2) (b)	Property	B	Harmful device causing property damage	20	10/1/00
750.	200 i (2) (d)	Person	A	Harmful device causing serious impairment	LIFE	10/1/00
324.	20139 (3)	Pub saf	H	Hazardous substance – knowingly releasing or causing release	2	As amended, 2004 PA 382, Eff. 10/12/04
324.	20139 (3)	Pub saf	H	Hazardous waste – knowingly releases or causes the release	2	Reworded, 2004 PA 382, Eff. 10/12/04
324.	11151 (3)	Pub saf	H	Hazardous waste – disregard for human life	2	
324.	11151 (3)	Pub saf	G	Hazardous waste – extreme indifference for human life	5	

324.	11151 (2)	Pub saf	H	Hazardous waste – subsequent offense	2	
750.	411 t (2) (c)	Person	C	Hazing resulting in death	15	8/18/04
750.	411 t (2) (b)	Person	E	Hazing resulting in serious impairment	5	8/18/04
752.	1005	Property	H	Health care fraud – conspiracy	10	
752.	1003	Property	F	Health care fraud – false claim/state, unnecessary, conceal information	4	
752.	1004	Property	F	Health care fraud – kickbacks/referral fees	4	
752.	1006	Property	D	Health care fraud – subsequent offense	20	
333.	16294	Pub saf	F	Health profession – unauthorized practice	4	
750.	421 b	Pub saf	H	Hinder transport of farm/commercial products – subsequent offense	2	
750.	543 h	Pub ord	A	Hindering prosecution of terrorism	LIFE	Eff. 4/22/02 to 7/15/02, 2002 PA 271
750.	543 h (3) (b)	Pub ord	A	Hindering prosecution of terrorism – act of terrorism	LIFE	7/15/02
750.	543 h (3) (a)	Pub ord	B	Hindering prosecution of terrorism – certain terrorist acts	20	7/15/02
500.	1371	Pub trst	H	Holding companies – violation	2	
750.	110 a (2)	Person	B	Home invasion – first degree	20	10/1/00
750.	110 a (4)	Person	B	Home invasion – first degree	20	
750.	110 a (3)	Person	C	Home invasion – second degree	15	10/1/00
750.	110 a (5)	Person	C	Home invasion – second degree	15	
750.	110 a (4)	Person	E	Home invasion – third degree	5	10/1/00
750.	329	Person	C	Homicide – weapon aimed with intent but not malice	15	
431.	330 (4)	Pub trst	G	Horse racing – administering a drug that could affect racing condition	5	
431.	332	Pub trst	G	Horse racing – influencing or attempting to influence result of race	5	
431.	307 (8)	Pub trst	G	Horse racing – testifying falsely to commissioner while under oath	4	
750.	430 a	Person	D	Human cloning	10	10/1/00
750.	462 i	Person	A	Human trafficking - compound felony	LIFE	8/24/06
750.	462 d (1)	Person	D	Human trafficking - forced labor through abuse of legal process	10	8/24/06
750.	462 d (3)	Person	A	Human trafficking - forced labor through abuse of legal process causing death	LIFE	8/24/06
750.	462 d (2)	Person	C	Human trafficking - forced labor through abuse of legal process causing injury	15	8/24/06
750.	462 f (1)	Person	D	Human trafficking - forced labor through blackmail	10	8/24/06
750.	462 f (3)	Person	A	Human trafficking - forced labor through blackmail causing death	LIFE	8/24/06
750.	462 f (2)	Person	C	Human trafficking - forced labor through blackmail causing injury	15	8/24/06
750.	462 e (1)	Person	D	Human trafficking - forced labor through destruction of ID document	10	8/24/06
750.	462 e (3)	Person	A	Human trafficking - forced labor through destruction of ID document causing death	LIFE	8/24/06
750.	462 e (2)	Person	C	Human trafficking - forced labor through destruction of ID document causing injury	15	8/24/06
750.	462 b (1)	Person	D	Human trafficking - forced labor through physical harm	10	8/24/06
750.	462 b (3)	Person	A	Human trafficking - forced labor through physical harm causing death	LIFE	8/24/06
750.	462 b (2)	Person	C	Human trafficking - forced labor through physical harm causing injury	15	8/24/06
750.	462 c (1)	Person	D	Human trafficking - forced labor through physical restraint	10	8/24/06
750.	462 c (3)	Person	A	Human trafficking - forced labor through physical restraint causing death	LIFE	8/24/06
750.	462 c (2)	Person	C	Human trafficking - forced labor through physical restraint causing injury	15	8/24/06
750.	462 g (1)	Person	B	Human trafficking - obtain minor for child sexual abusive activity	20	8/24/06
750.	462 h (2)	Person	D	Human trafficking - recruit minor for forced labor	10	8/24/06
750.	462 h (4)	Person	A	Human trafficking - recruit minor for forced labor causing death	LIFE	8/24/06
750.	462 h (3)	Person	C	Human trafficking - recruit minor for forced labor causing injury	15	8/24/06
445.	65	Pub ord	E	Identity theft	5	3/1/05
445.	65	Pub ord	D	Identity theft – second offense	10	4/1/11

445.	65	Pub ord	C	Identity theft – third or subsequent offense	15	4/1/11
324.	52908 (3)	Property	H	Illegally cutting, removing, or transporting tree or other plant involving $1,000 or more	180 days	Eff. 10/1/00 to 1/1/02, 2001 PA 156
750.	282 a	Property	E	Illegally selling or transferring product or service of electric service provider or natural gas provider to another person	5	10/19/10
445.	1513	Pub trst	G	Illegal offer or sale of franchise	7	As amended, 2010 PA 317, Eff. 4/1/11
205.	428 (3)	Pub trst	G	Illegal sale of cigarettes or other tobacco products with wholesale price of $250.00 or more	5	10/1/00
205.	428 (6)	Pub trst	F	Illegal tobacco stamp or tobacco stamp device	10	10/1/00
205.	428 (7)	Pub trst	G	Illegal vending machine license, disk, or marker	5	10/1/00
600.	908 (8)	Pub trst	E	Immunity to witness – committing perjury	15	
257.	625 (10) (c)	Pub saf	E	Impaired driving – third or subsequent offense	5	Eff. until 9/30/03, replaced by (11)(c)
750.	217 e	Pub ord	G	Impersonating a DHS employee	2	As amended, 2005 PA 171, Eff. 1/1/06
750.	217 f	Pub saf	G	Impersonating a firefighter or emergency medical service personnel	2	1/1/06
750.	217 e	Pub ord	G	Impersonating an FIA employee	2	9/1/01
750.	215 (3)	Pub saf	F	Impersonating peace officer	4	9/1/03
750.	217 c (3)	Pub ord	H	Impersonating public officer or employee	2	10/1/00
750.	217 c (3)	Pub ord	H	Impersonating public officer or employee – subsequent conviction	2	As amended, 2011 PA 202, Eff. 1/1/12
750.	217 c (4)	Pub ord	G	Impersonating public officer or employee – third or subsequent conviction	4	10/1/00
750.	217 b	Pub saf	G	Impersonating public utility employee	2	
445.	574a (3) (d)	Pub ord	H	Improper acceptance or delivery of 10,000 or more nonrefundable containers by dealer	5	12/29/08
445.	574a (4) (d)	Pub ord	H	Improper acceptance or delivery of 10,000 or more nonrefundable containers by distributor	5	12/29/08
750.	160 c	Pub ord	D	Improper disposal of dead human body after more than 180 days	10	4/1/04
445.	574a (2) (d)	Pub ord	H	Improper return of 10,000 or more nonrefundable containers	5	12/29/08
380.	1816	Pub trst	F	Improper use of bond proceeds	4	3/30/05
750.	224 (a) (6)	Pub saf	G	Improper use of electro-muscular disruption device	2	8/6/12
752.	542	Pub saf	D	Incitement to riot	10	
750.	49 (8)	Person	A	Inciting fighting animal resulting in death	LIFE	
750.	49 (9)	Person	F	Inciting fighting animal to attack	4	
750.	348	Pub saf	H	Inciting Indians to violate a treaty	4	Deleted, 2002 PA 261, Eff. 5/1/02
750.	425	Pub trst	E	Inciting or procuring perjury	5	
750.	425	Pub trst	E	Inciting or procuring perjury but perjury not committed	5	10/1/00
750.	405	Pub saf	E	Inciting soldiers to desert	5	
750.	335 a	Person	A	Indecent exposure by sexually delinquent person	LIFE	Relettered, 2005 PA 302, Eff. 2/1/06
750.	335 a (2) (c)	Person	A	Indecent exposure by sexually delinquent person	LIFE	Formerly MCL 750.335a, Eff. 2/1/06
750.	157 c	Person	SPEC	Inducing minor to commit a felony	Variable	
324.	8905 (2)	Pub saf	H	Infectious waste/pathological waste/sharps – littering violation	2	Reworded, 2004 PA 382, Eff. 10/12/04
324.	8905 (3)	Pub saf	G	Infectious waste/pathological waste/sharps – littering violation – subsequent offense	5	Reworded, 2004 PA 382, Eff. 10/12/04
286.	228 (6)	Pub ord	E	Insect pest and plant disease - intentional violation with intent to damage natural resources	5	9/1/05
286.	260 (4)	Pub ord	E	Insect pest and plant disease - intentional violation with intent to damage natural resources	5	9/1/05
750.	539 d	Pub ord	H	Installing eavesdropping device	2	Replaced, 2004 PA 157, Eff. 6/16/04
750.	539 d (3) (a) (i)	Pub ord	H	Installing, placing, or using eavesdropping device	2	6/16/04
750.	539 d (3) (a) (ii)	Pub ord	E	Installing, placing, or using eavesdropping device – subsequent offense	5	6/16/04
492.	137 (a)	Pub trst	H	Installment sales of motor vehicles	3	
500.	5252 (4)	Property	G	Insurance – improper personal interest in transactions	5	
500.	8197 (2)	Pub trst	C	Insurance – knowing or willful false statements in application for insurance	15	
500.	4511 (1)	Pub trst	F	Insurance code – fraudulent insurance act	4	
500.	1325 (3)	Pub trst	E	Insurance code – knowingly misrepresenting false financial condition	5	

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500.	1505 (2)	Pub trst	C	Insurance code – license and regulatory violations	15	
500.	4511 (2)	Pub trst	D	Insurance fraud – agreement or conspiracy to commit	10	
722.	633 (5) (b)	Person	F	Intentional false report of child abuse constituting a felony	4	
722.	633 (5) (b)	Person	F	Intentional false report of child abuse constituting a felony	Vari-able	As amended, 2005 PA 106, Eff. 9/14/05,
711.	1 (8)	Pub trst	E	Intentional false statement in petition for name change	15	
750.	483 a (4) (b)	Person	F	Interfering with police investigation by committing crime or threatening to kill or injure	10	3/28/01
750.	483 a (4) (b)	Person	D	Interfering with police investigation by committing crime or threatening to kill or injure	10	7/15/02
750.	122 (7) (c)	Person	C	Intimidating witness by committing crime or threatening to kill or injure	15	3/28/01
750.	205 a	Pub saf	F	Intimidation or harassment by device represented as an explosive	4	
324.	41309 (10) (b)	Property	E	Introduction of prohibited or genetically engineered species - intent to damage resources	5	9/1/05
324.	41309 (8)	Property	G	Introduction of prohibited or genetically engineered species - knowing identity of organ-ism	2	9/1/05
324.	41309 (9) (b)	Property	F	Introduction of prohibited or genetically engineered species - knowing introduction is unlawful	4	9/1/05
324.	41309 (10) (a)	Property	F	Introduction of restricted or nonnative species - intent to damage resources	3	9/1/05
324.	41309 (9) (a)	Property	G	Introduction of restricted or nonnative species - knowing introduction is unlawful	2	9/1/05
750.	200 j (2) (a)	Person	E	Irritant or irritant device	5	10/23/01
750.	200 j (2) (e)	Person	A	Irritant or irritant device causing death	LIFE	10/1/00
750.	200 j (2) (c)	Person	D	Irritant or irritant device causing personal injury	10	10/1/00
750.	200 j (2) (b)	Property	F	Irritant or irritant device causing property damage	4	10/1/00
750.	200 j (2) (b)	Property	E	Irritant or irritant device causing property damage	7	10/23/01
750.	200 j (2) (d)	Person	A	Irritant or irritant device causing serious impairment	25	10/1/00
750.	94	Property	G	Issuing bank notes without complying with requirements	10	
443.	52	Pub trst	E	Issuing duplicate warehouse receipt not so marked	5	
750.	513	Property	H	Issuing fraudulent railroad securities	10	Deleted, 2002 PA 320, Eff. 7/15/02
443.	50	Pub trst	E	Issuing warehouse receipt for goods not received	5	
750.	120 a (2) (a)	Pub ord	F	Juror intimidation	4	3/28/01
750.	120 a (2) (c)	Person	C	Juror intimidation by committing crime or threatening to kill or injure	15	3/28/01
750.	120 a (2) (b)	Pub ord	D	Juror intimidation in case punishable by more than 10 years	10	3/28/01
750.	120	Pub trst	F	Juror or other person accepting a bribe	4	
750.	452	Pub ord	E	Keeping a house of prostitution	5	
750.	349	Person	A	Kidnapping	LIFE	
750.	350	Person	A	Kidnapping – child enticement	LIFE	
750.	350 a	Person	H	Kidnapping – custodial interference	1	
750.	50 c (5)	Pub ord	E	Killing or causing serious physical harm to law enforcement animal	5	
750.	50 c (5)	Pub ord	E	Killing or causing serious physical harm to law enforcement animal or search and res-cue dog	5	As amended, 2006 PA 518, Eff. 12/29/06
750.	50 b (2)	Property	F	Killing or torturing animals	4	Replaced, 2008 PA 562, Eff. 1/16/09
750.	50 b (3)	Property	F	Killing or torturing animals	4	As amended, 2008 PA 562, Eff. 1/16/09
445.	433 (2)	Pub ord	E	Knowingly buying or selling stolen nonferrous metal articles	5	As amended, 2008 PA 386, Eff. 12/29/08 As
388.	936	Pub trst	F	Knowingly making false statement – school district loans	4	
388.	962	Pub trst	F	Knowingly making false statement – school district loans	4	Deleted, 2005 PA 125, Eff. 9/29/05
257.	625 k (7)	Pub saf	D	Knowingly providing false information concerning an ignition interlock device	10	10/1/00
750.	540 f (2)	Property	E	Knowingly publishing a communications access device with prior convictions	5	10/1/00
324.	5531 (4)	Pub saf	H	Knowingly releasing air pollutants	2	As amended, 2004 PA 382, Eff. 10/12/04
324.	5531 (5)	Pub saf	G	Knowingly releasing air pollutants – causing death or serious bodily injury	6	As amended, 2004 PA 382, Eff. 10/12/04
324.	5531 (6)	Pub saf	C	Knowingly releasing air pollutants – intentionally causing death or serious bodily injury	15	As amended, 2004 PA 382, Eff. 10/12/04
324.	5531 (4)	Pub saf	H	Knowingly releasing pollutants	2	Reworded, 2004 PA 382, Eff. 10/12/04

324.	5531 (5)	Pub saf	G	Knowingly releasing pollutants – causing death or serious bodily injury	6	Reworded, 2004 PA 382, Eff. 10/12/04
324.	5531 (6)	Pub saf	C	Knowingly releasing pollutants – resulting in death or serious bodily injury	15	Reworded, 2004 PA 382, Eff. 10/12/04
565.	827	Pub trst	E	Land sales act – false or fraudulent statement	10	
750.	357 b	Property	E	Larceny – stealing firearms of another	5	
750.	362	Property	E	Larceny by conversion involving $1,000 to $20,000 or with prior convictions	5	10/1/00
750.	362	Property	D	Larceny by conversion involving $20,000 or more or with prior convictions	10	10/1/00
750.	362	Property	E	Larceny by conversion over $100	5	
750.	363	Property	E	Larceny by false personation involving $1,000 to $20,000 or with prior convictions	5	10/1/00
750.	363	Property	D	Larceny by false personation involving $20,000 or more	10	10/1/00
750.	363	Property	E	Larceny by false personation over $100	5	
750.	356 a	Property	G	Larceny from a motor vehicle	5	
750.	356 a (1)	Property	G	Larceny from a motor vehicle	5	10/1/00
750.	358	Property	G	Larceny from burning building	5	
750.	365	Person	D	Larceny from car or persons detained or injured by accident	20	
750.	357	Person	D	Larceny from the person	10	
750.	360	Property	G	Larceny in a building	4	
750.	356 (3)	Property	E	Larceny involving $1,000 to $20,000 or with prior convictions	5	10/1/00
750.	356 (2)	Property	D	Larceny involving $20,000 or more or with prior convictions	10	10/1/00
750.	367	Property	D	Larceny of a tree or shrub involving $20,000 or more or with prior convictions	10	10/1/00
750.	357 a	Property	G	Larceny of livestock	4	
750.	366	Property	G	Larceny of railroad tickets	4	Deleted, 2002 PA 279, Eff. 5/9/02
750.	367 a	Property	SPEC	Larceny of rationed goods	Vari-able	
750.	362 a	Property	H	Larceny of rental property	2	
750.	362 a (3)	Property	E	Larceny of rental property involving $1,000 to $20,000 or with prior convictions	5	10/1/00
750.	362 a (2)	Property	D	Larceny of rental property involving $20,000 or more or with prior convictions	10	10/1/00
750.	367	Property	G	Larceny of trees & shrubs over $100	5	
750.	367	Property	E	Larceny of trees or shrubs involving $1,000 to $20,000 or with prior convictions	5	10/1/00
750.	356	Property	E	Larceny over $100	5	
600.	8813	Pub trst	E	Law enforcement officer – knowingly making false statement in a citation	15	
750.	135a (2) (d)	Person	B	Leaving child unattended in vehicle resulting in death	15	4/1/09
750.	135 a (2) (c)	Person	D	Leaving child unattended in vehicle resulting in serious physical harm	10	4/1/09
750.	539 j (2) (a) (i)	Pub ord	H	Lewd surveillance or capturing lewd image	2	6/16/04
750.	539 j (2) (a) (ii)	Pub ord	E	Lewd surveillance or capturing lewd image – subsequent offense	5	6/16/04
600.	2136	Pub trst	E	Library record, book, paper – false certification in court	15	
324.	12116 (2)	Pub saf	H	Liquid industrial waste – false statement in a license application	2	As amended, 2004 PA 382, Eff. 10/12/04
436.	1909 (3)	Pub ord	H	Liquor violation	1	
324.	8905 (2)	Pub saf	H	Littering – infectious waste/pathological waste/sharps	2	As amended, 2004 PA 382, Eff. 10/12/04
324.	8905 (3)	Pub saf	G	Littering – infectious waste/pathological waste/sharps – subsequent offense	5	As amended, 2004 PA 382, Eff. 10/12/04
554.	836	Property	E	Living care disclosure act – violation	7	As amended, 2010 PA 152, Eff. 8/23/10
4.	421 (1)	Pub trst	G	Lobbyists – compensation contingent on outcome of action	3	
4.	421 (2)	Pub trst	G	Lobbyists giving gifts	3	
432.	30	Property	G	Lottery – forgery of tickets	5	
750.	374	Pub ord	H	Lottery violations – subsequent offense	4	
333.	7405 (d)	CS	G	Maintaining drug house	2	
333.	7405 (1) (d)	CS	G	Maintaining drug house	2	12/22/10

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750.	105	Property	G	Making false cargo invoice for boat	4	
388.	1237	Pub trst	F	Making false statement to obtain qualification of school bond issue/improper use of proceeds	4	Substituted for by MCL 388.1937
388.	1937	Pub trst	F	Making false statement to obtain qualification of school bond issue/improper use of proceeds	4	9/29/05
205.	27 (1) (c)	Pub trst	G	Making/permitting false tax returns or payments	5	
750.	380 (3)	Property	E	Malicious destruction of a building involving $1,000 to $20,000 or with prior convictions	5	10/1/00
750.	387 (5)	Property	E	Malicious destruction of a tomb or memorial involving $1,000 to $20,000 or with priors	5	10/1/00
750.	387 (6)	Property	D	Malicious destruction of a tomb or memorial involving $20,000 or more or with prior convictions	10	10/1/00
750.	380 (2)	Property	D	Malicious destruction of building involving $20,000 or more or with prior convictions	10	10/1/00
750.	380	Property	F	Malicious destruction of building over $100	4	
750.	377 b	Property	F	Malicious destruction of fire/police property	4	
750.	386	Property	E	Malicious destruction of mine property	20	
750.	377 a (1) (b)	Property	E	Malicious destruction of personal property involving $1,000 to $20,000 or with priors	5	10/1/00
750.	377 a (1) (a)	Property	D	Malicious destruction of personal property involving $20,000 or more or with prior convictions	10	10/1/00
750.	377 a	Property	G	Malicious destruction of personal property over $100	4	
750.	382 (1) (c)	Property	E	Malicious destruction of plants or turf involving $1,000 to $20,000 or with prior convictions	5	10/1/00
750.	382 (1) (d)	Property	D	Malicious destruction of plants or turf involving $20,000 or more or with prior convictions	10	10/1/00
750.	379	Property	F	Malicious destruction of property – bridges/railroads/locks	4	
750.	378	Property	F	Malicious destruction of property – dams/canals/mills	4	
750.	392	Property	E	Malicious destruction of property – vessels	10	
750.	387	Property	G	Malicious destruction of tombs & memorials	5	
750.	383 a	Property	F	Malicious destruction of utility equipment	4	As amended, 2008 PA 414, Eff. 3/1/09
750.	383 a	Property	E	Malicious destruction of utility equipment or utility infrastructure component	5	As amended, 2008 PA 414, Eff. 3/1/09
750.	321	Person	C	Manslaughter	15	
750.	211	Pub saf	E	Manufacture of explosives with unlawful intent	5	
750.	539 f	Pub ord	H	Manufacture or possession of eavesdropping device	2	
750.	262	Property	E	Manufacture or possession of tools to counterfeit coins	10	
750.	224	Pub saf	E	Manufacture or sale of silencer, bomb, blackjack, automatic weapon, gas spray, etc.	5	
750.	224 e	Pub saf	F	Manufacture/sale/possession of devices to convert semiautomatic weapons	4	
750.	263 (4)	Property	E	Manufacturing items with counterfeit mark	5	
750.	540 c (3)	Property	F	Manufacturing or delivering a counterfeit communications device	4	Eff. 10/1/00 to 2/12/04, 2004 PA 2
333.	7405 (b)	CS	G	Manufacturing or distribution violations by licensee	2	
333.	7405 (1) (b)	CS	G	Manufacturing or distribution violations by licensee	2	12/22/10
750.	211 a (2) (c)	Person	A	Manufacturing or possessing an explosive or incendiary device causing physical injury	25	Eff. 10/1/00 to 4/1/05
750.	211 a (2) (d)	Person	A	Manufacturing or possessing an explosive or incendiary device causing physical injury	25	Relettered, 2004 PA 524, Eff. 4/1/05
750.	211 a (2) (b)	Property	B	Manufacturing or possessing an explosive or incendiary device causing property damage	20	Eff. 10/1/00 to 4/1/05
750.	211 a (2) (c)	Property	B	Manufacturing or possessing an explosive or incendiary device causing property damage	20	Relettered, 2004 PA 524, Eff. 4/1/05
750.	211 a (2) (d)	Person	A	Manufacturing or possessing an explosive or incendiary device causing serious impairment	LIFE	Eff. 10/1/00 to 4/1/05
750.	211 a (2) (e)	Person	A	Manufacturing or possessing an explosive or incendiary device causing serious impairment	LIFE	Relettered, 2004 PA 524, Eff. 4/1/05
750.	211 a (2) (a)	Pub saf	C	Manufacturing or possessing an explosive or incendiary device with malicious intent	15	Eff. 10/1/00 to 4/1/05
750.	211 a (2) (b)	Pub saf	C	Manufacturing or possessing an explosive or incendiary device with malicious intent	15	Relettered, 2004 PA 524, Eff. 4/1/05
750.	200 i (2) (a)	Pub saf	C	Manufacturing or using a harmful device	15	10/1/00
750.	211 a (2) (a)	Pub saf	F	Manufacturing/possessing a Molotov cocktail/similar device designed to explode on impact	4	4/1/05
288.	257	Pub saf	G	Margarine violations	3	Repealed, 2001 PA 267, Eff. 2/8/02
426.	106	Property	E	Marking of logs and timber – forging	5	Deleted, 2000 PA 279, Eff. 10/1/00
551.	6	Person	H	Marriage license – mental or venereal disease	5	Deleted, 2001 PA 10, Eff. 5/29/01

750.	422 a	Pub trst	E	Material false statement in petition seeking review of DNA evidence	5	1/6/09
750.	397	Person	D	Mayhem	10	
400.	606	Property	E	Medicaid fraud – conspiracy	10	
400.	607	Pub trst	G	Medicaid fraud – false claim/medically unnecessary	4	
400.	603	Pub trst	G	Medicaid fraud – false statement in benefit/concealing information	4	
400.	605	Pub trst	G	Medicaid fraud – false statement regarding institutions	4	
400.	609	Property	D	Medicaid fraud – fourth offense	10	
400.	604	Pub trst	G	Medicaid fraud – kickback/referral fees	4	
750.	492 a (2)	Pub trst	G	Medical record – health care provider - altering to conceal injury/death	4	As amended, 2006 PA 40, Eff. 3/2/06
750.	492 a (2)	Pub trst	G	Medical record – health care provider alter conceal injury/death	4	
750.	492 a (1) (a)	Pub trst	G	Medical record – intentional[ly] place false information – health care provider	4	
710.	69	Person	F	Michigan adoption law – subsequent offense	4	
338.	3471 (1) (b)	Pub trst	G	Michigan immigration clerical assistant act violation - subsequent offense	2	3/30/05
338.	3621 (1) (b)	Pub trst	G	Michigan immigration clerical assistant act violation - subsequent offense	2	Substituted for by MCL 338.3471(1)(b)
28.	468 (1) (c)	Pub saf	E	Michigan fireworks safety act violation causing serious impairment	5	12/14/11
28.	468 (1) (d)	Pub saf	C	Michigan fireworks safety act violation causing death	15	12/14/11
55.	309 (1) (b)	Pub trst	F	Michigan notary public act violation involving conveyance of interest in real property	4	1/1/12
125.	1447	Property	G	Michigan state housing development authority – false pretenses over $100	10	Deleted, 2001 PA 154, Eff. 1/1/02
750.	406	Pub saf	E	Military stores – larceny, embezzlement or destruction	5	
408.	1035 a (5)	Person	H	MIOSHA violation causing employee death	1	10/1/00
408.	1035 a (5)	Pub saf	I	MIOSHA – violations/writs of mandamus/assaults – first offense	1	
408.	1035 a (5)	Pub saf	G	MIOSHA – violations/writs of mandamus/assaults – second offense	3	
408.	1035 (5)	Pub saf	I	MIOSHA violation – first offense	1	
408.	1035 (5)	Pub saf	G	MIOSHA violation – second offense	3	
408.	1035 (5)	Person	H	MIOSHA violation causing employee death	1	10/1/00
408.	1035 (5)	Person	G	MIOSHA violation causing employee death – subsequent offense	3	10/1/00
408.	1035 a (5)	Person	G	MIOSHA violation causing employee death – subsequent offense	3	10/1/00
168.	887	Pub trst	E	Misconduct of election employee in recount	5	
168.	873	Pub trst	E	Misconduct of election employee in recount – county and local	5	
750.	545	Pub ord	E	Misprision of treason	5	
750.	18 (5)	Person	E	Mix/color/stain/powder a drug/medicine resulting in serious impairment of body function	5	10/12/04
750.	18 (6)	Person	C	Mix/color/stain/powder a drug/medicine w/ ingredient/material resulting in death	15	10/12/04
750.	18 (4)	Person	F	Mix/color/stain/powder a drug/medicine w/ ingredient/material resulting in personal injury	4	10/12/04
750.	18 (3)	Person	G	Mix/color/stain/powder a drug/medicine with an ingredient/material affecting quality/ potency	2	10/12/04
750.	249 a	Property	H	Molds or dies to forge financial transaction device	4	
750.	411 o	Pub ord	B	Money laundering – first degree	20	
750.	411 l	Pub ord	H	Money laundering – fourth degree	2	
750.	411 n	Pub ord	D	Money laundering – second degree	10	
750.	411 m	Pub ord	E	Money laundering – third degree	5	
750.	411 p (2) (c)	Property	E	Money laundering – transactions involving represented proceeds	5	
750.	411 p (2) (a)	Property	B	Money laundering of proceeds from controlled substance offense involving $10,000 or more	20	
750.	411 p (2) (b)	Property	D	Money laundering proceeds from controlled substance offense/other proceeds of $10,000+	10	
487.	1042 (1)	Pub trst	E	Money transmission - intentional false statement/misrepresentation/certification in record/document	5	7/3/06
487.	1042 (3)	Pub trst	E	Money transmission services act license violation	5	7/3/06
445.	1679	Pub trst	H	Mortgage brokers act – general violations	3	Deleted, 2008 PA 65, Eff. 4/3/08

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445.	1671	Pub trst	E	Mortgage brokers, lenders – knowingly giving a false statement	15	Reworded, 2010 PA 317, Eff. 4/1/11
290.	650	Person	G	Motor fuels – assaulting/obstructing director or authorized representative	2	
290.	650 b (3)	Pub trst	H	Motor fuels violations	2	
750.	421	Pub saf	H	Motor vehicle – designed for attack	5	
750.	420	Pub saf	H	Motor vehicle – equipping to release smoke/gas	4	
257.	1353 (2)	Pub trst	H	Motor vehicle – fail to record material matter – subsequent offense	2	
257.	1355	Pub trst	H	Motor vehicle – fail to record transaction/falsify records	2	
257.	1354 (2)	Pub trst	H	Motor vehicle – general violations – subsequent offense	2	
750.	417	Property	H	Motor vehicle – mortgaged – removal from state	4	
257.	903 (1)	Property	E	Motor vehicle code – false certification – first offense	5	
257.	903 (2)	Property	E	Motor vehicle code – false certification – second offense	7	
257.	903 (3)	Property	D	Motor vehicle code – false certification – third or subsequent offense	15	
257.	902	Pub saf	E	Motor vehicle code violations	5	
750.	415 (6)	Property	E	Motor vehicles – buy/receive/obtain w/ intent to sell/dispose knowing VIN was altered	10	10/1/00
750.	415 (5)	Property	G	Motor vehicles – buy/sell/exchange/give paraphernalia capable of changing/misrepresenting ID	4	10/1/00
750.	415 (2)	Property	G	Motor vehicles – conceal/misrepresent identity with intent to mislead	4	
257.	601 b (3)	Person	C	Moving violation causing death to another person in a work zone	15	As amended, 2008 PA 297, Eff. 10/8/08
257.	601 b (3)	Person	C	Moving violation causing death to another person in a work zone or a school bus zone	15	As amended, 2011 PA 59, Eff. 7/1/11
257.	601 b (3)	Person	C	Moving violation causing death to construction worker	15	10/1/01
257.	601 c (2)	Person	C	Moving violation causing death to operator of implement of husbandry	15	10/1/01
324.	80172	Person	G	Negligent crippling or homicide by vessel	2	
750.	324	Person	G	Negligent homicide	2	Will be repealed, 2008 PA 467, Eff. 10/31/10
750.	131 a (1)	Property	H	No account checks	2	
324.	31525	Person	G	NREPA – imminent danger of death or serious injury – subsequent offense	2	
324.	30316 (3)	Pub saf	H	NREPA violation – subsequent offense	2	
324.	33939 (1)	Pub trst	H	NREPA violation for commercial purposes	2	
750.	131 (3) (b) (ii)	Property	G	NSF checks – $100 to $500 – third or subsequent offense	2	10/1/00
750.	131 (3) (a) (iv)	Property	H	NSF checks – $50 or less – fourth offense	13 mos.	
750.	131 (3) (b) (ii)	Property	H	NSF checks – $50 to $200 – third offense	13 mos.	
750.	131 (3) (c)	Property	G	NSF checks – $500 or more	2	10/1/00
750.	131 a (2)	Property	H	NSF checks – 3 or more within 10 days	2	
750.	131 (3) (c)	Property	H	NSF checks – over $200	13 mos.	
333.	21792	Pub trst	G	Nursing homes – referral fees/bribing officials/accepting bribes	4	
752.	365 (3)	Pub ord	G	Obscenity – subsequent offense	2	
750.	241 (1)	Pub saf	F	Obstructing firefighter	4	Deleted, 2002 PA 272, Eff. 7/15/02
750.	241 (2)	Pub saf	F	Obstructing public service facility personnel in civil disturbance	4	7/15/02
750.	241 (3)	Pub saf	F	Obstructing public service facility personnel in civil disturbance	4	Substituted for by 750.241(2)
445.	67	Pub ord	E	Obtain/possess/sell/transfer identifying info/falsify police report - intent to commit identity theft	5	3/1/05; reworded, 2010 PA 317, Eff. 4/1/11
445.	67	Pub ord	D	Obtain/possess/sell/transfer personal identifying info of another/falsify police report - intent to commit identity theft – second offense	10	4/1/11
445.	67	Pub ord	C	Obtain/possess/sell/transfer personal identifying info/falsify police report - intent to commit identity theft – third or subsequent offense	15	4/1/11
333.	7407 (1) (c)	CS	G	Obtaining controlled substance by fraud	4	
750.	285	Property	E	Obtaining personal ID information without authorization	5	Eff. 4/1/01 to 3/1/05, 2004 PA 457
750.	273	Property	E	Obtaining signature to financial document with intent to defraud	10	
750.	273	Property	E	Obtaining signature ~~to financial document~~ with intent to defraud	10	As amended, 2012 PA 169, Eff. 6/19/12
257.	233 a (7)	Pub ord	G	Odometer tampering	5	

445.	1528	Pub trst	D	Offer or sale of franchise through pyramid or chain promotion	7	As amended, 2010 PA 317, Eff. 4/1/11
710.	54 (11)	Pub trst	F	Offer to give other consideration – adoption – subsequent violation	4	
750.	189	Pub saf	H	Officer negligently allowing prisoner to escape or refusing to receive prisoner	2	
500.	7034 (2)	Pub trst	E	Officer of a MEWA knowingly receive valuables for sale property or loan	10	
483.	226	Pub trst	E	Officer of a pipeline company – intent to defraud – stock	10	Deleted, 2006 PA 251, Eff. 7/3/06
750.	190	Pub saf	G	Officer receiving a reward to assist or permit escape	2	
750.	535 a	Pub ord	E	Operating a chop shop	5	Substituted for by 750.535a(2)
750.	535 a (2)	Pub ord	D	Operating a chop shop	10	10/1/00
750.	535 a (3)	Pub ord	D	Operating a chop shop – subsequent violation	10	10/1/00
462.	353 (5)	Pub saf	F	Operating a locomotive under the influence – third or subsequent offense	4	
462.	353 (5)	Pub saf	E	Operating a locomotive under the influence – third or subsequent offense	4	7/1/01
462.	353 (5)	Pub saf	E	Operating a locomotive under the influence – third or subsequent offense	5	4/1/03
324.	82126 c (1)	Person	G	Operating a snowmobile carelessly or negligently causing death or serious impairment	2	10/1/00
324.	82128 (1) (c)	Pub saf	E	Operating a snowmobile under the influence – third or subsequent offense	5	
324.	82127 (4)	Person	C	Operating a snowmobile under the influence causing death	15	
324.	82127 (5)	Person	E	Operating a snowmobile under the influence causing long-term incapacitating injury	5	
324.	82127 (5)	Person	E	Operating a snowmobile under the influence causing serious impairment	5	7/1/01
324.	82126 c (2)	Person	G	Operating a snowmobile without regard to safety causing serious impairment	2	10/1/00
257.	625 (8) (c)	Pub saf	E	Operating a vehicle under the influence – third or subsequent offense	5	Eff. until 9/30/03, replaced by (9)(c)
257.	625 (4) (a)	Person	C	Operating a vehicle under the influence or while impaired causing death	15	3/28/01
257.	625 (4) (b)	Person	B	Operating a vehicle under the influence or while impaired causing death to certain persons	20	10/1/01
257.	625 (5)	Person	E	Operating a vehicle under the influence or while impaired causing serious impairment	5	3/28/01
257.	625 (11) (c)	Pub saf	E	Operating a vehicle while impaired – third or subsequent offense	5	9/30/03
257.	625 (4) (a)	Person	C	Operating a vehicle while intoxicated or impaired causing death	15	9/30/03
257.	625 (4) (b)	Person	B	Operating a vehicle while intoxicated or impaired causing death to certain persons	20	9/30/03
257.	625 (5)	Person	E	Operating a vehicle while intoxicated or impaired causing serious impairment	5	9/30/03
257.	625 (7) (a) (*ii*)	Person	E	Operating a vehicle while intoxicated or impaired with a minor in the vehicle – subsequent offense	5	9/30/03
257.	625 (9) (c)	Pub saf	E	Operating a vehicle while intoxicated or with the presence of a controlled substance – third or subsequent offense	5	9/30/03
257.	904 (4)	Person	C	Operating a vehicle without a license causing death	15	10/1/00
257.	904 (5)	Person	E	Operating a vehicle without a license causing serious impairment	5	10/1/00
324.	80177 (1) (c)	Pub saf	E	Operating a vessel under the influence – third or subsequent offense	5	
324.	80176 (4)	Person	C	Operating a vessel under the influence causing death	15	
324.	80176 (5)	Person	E	Operating a vessel under the influence causing long-term incapacitating injury	5	
324.	80176 (5)	Person	E	Operating a vessel under the influence causing serious impairment	5	7/1/01
324.	81134 (6)	Pub saf	E	Operating an ORV under the influence – third or subsequent offense	4	
324.	81134 (6)	Pub saf	E	Operating an ORV under the influence – third or subsequent offense	5	7/1/01
324.	81134 (7)	Person	C	Operating an ORV under the influence causing death	15	10/1/00
324.	81134 (8)	Person	E	Operating an ORV under the influence causing serious impairment	5	10/1/00
750.	465 a (1) (b)	Property	G	Operating audiovisual recording device in a theatrical facility - second offense	2	12/15/04
750.	465 a (1) (c)	Property	F	Operating audiovisual recording device in a theatrical facility - third or subsequent offense	4	12/15/04
462.	353 (6)	Person	C	Operating locomotive under the influence or while impaired causing death	15	4/1/03
462.	353 (7)	Person	E	Operating locomotive under the influence or while impaired causing serious impairment	5	4/1/03
333.	7401 c (2) (a)	CS	D	Operating or maintaining controlled substance laboratory	10	1/1/01
333.	7401 c (2) (b)	CS	B	Operating or maintaining controlled substance laboratory in presence of minor	20	1/1/01
333.	7401 c (2) (e)	CS	A	Operating or maintaining controlled substance laboratory involving firearm or other harmful device	25	1/1/01

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333.	7401 c (2) (c)	CS	B	Operating or maintaining controlled substance laboratory involving hazardous waste	20	1/1/01
333.	7401 c (2) (f)	CS	B	Operating or maintaining controlled substance laboratory involving methamphetamine	20	4/1/04
333.	7401 c (2) (d)	CS	B	Operating or maintaining controlled substance laboratory near certain places	20	1/1/01
259.	185 (4)	Person	C	Operating or serving as crew of aircraft while under the influence causing death	15	10/1/00
259.	185 (5)	Person	E	Operating or serving as crew of aircraft while under the influence causing serious impairment	5	3/28/01
259.	185 (8)	Pub saf	E	Operating or serving as crew of aircraft while under the influence – third or subsequent offense	5	3/28/01
750.	90 d (a)	Person	C	Operating under the influence/impaired causing miscarriage/stillbirth/death to embryo or fetus	15	6/1/01
750.	90 d (b)	Person	E	Operating under the influence/impaired causing serious or aggravated injury to embryo/ fetus	5	10/1/00
257.	625 (7) (a) (*ii*)	Person	E	Operating under the influence/while impaired with a minor in the vehicle – subsequent offense	5	10/1/00
259.	185 (8)	Pub saf	G	Operating/serving as crew of aircraft while under the influence – third or subsequent offense	5	10/1/00
286.	929 (4)	Pub trst	G	Organic products act violations	4	3/28/01
168.	932 (i)	Pub trst	E	Organizing a meeting where absentee voter ballots are to be voted	5	
750.	49 (2) (e)	Pub ord	F	Organizing or promoting animal fights	4	
257.	625 (4)	Person	C	OUIL – causing death	15	Substituted for by 257.625(4)(a)
257.	625 (4) (b)	Person	B	OUIL – causing death to emergency personnel	20	3/28/01
257.	625 (5)	Person	E	OUIL – causing serious impairment of body function	5	
257.	625 (7) (d)	Pub saf	E	OUIL – third offense	5	
750.	90 d (a)	Person	C	OUIL causing miscarriage or stillbirth	15	10/1/00
750.	157 u	Property	H	Overcharging person using financial transaction device	4	
750.	455	Pub ord	G	Pandering	20	
750.	442	Pub ord	G	Participating in prizefights	4	Deleted, 2010 PA 98, Eff. 6/22/10
47.	8	Pub trst	H	Payment of claim against county before audit	2	
764.	1 e	Pub trst	C	Peace officer – false statement in a complaint	15	
750.	90 g (3)	Person	A	Performance of procedure on live infant with intent to cause death	LIFE	3/10/00
55.	301	Pub trst	E	Performing notarial acts while commission revoked	5	1/1/12
750.	90 h	Person	G	Performing or assisting in performance of partial-birth abortion	2	1/1/12
750.	423	Pub trst	E	Perjury	15	
750.	422	Pub trst	G	Perjury – committed in court/capital crime	LIFE	
750.	423	Pub trst	E	Perjury by falsely swearing	15	10/1/00
750.	422	Pub trst	B	Perjury committed in court – capital crime	LIFE	10/1/00
750.	422	Pub trst	C	Perjury committed in court – noncapital crime	15	10/1/00
750.	422	Pub trst	G	Perjury committed in court/noncapital crime	15	
767A.	9 (b)	Pub trst	B	Perjury committed in prosecutor's investigative hearing – capital crime	LIFE	Eff. 10/1/00, then replaced by .9(1)(b)
767A.	9 (1) (b)	Pub trst	B	Perjury committed in prosecutor's investigative hearing – capital crime	LIFE	2/1/02
767A.	9 (a)	Pub trst	C	Perjury committed in prosecutor's investigative hearing – noncapital crime	15	Eff. 10/1/00 then replaced by .9(1)(a)
767A.	9 (1) (a)	Pub trst	C	Perjury committed in prosecutor's investigative hearing – noncapital crime	15	2/1/02
750.	160 a	Pub ord	H	Photographing dead human bodies	2	
750.	160 a	Pub ord	H	Photographing dead human body	2	4/1/04
28.	422	Pub saf	G	Pistols – license application forgery	4	
28.	422	Pub saf	F	Pistols – license application forgery	4	7/1/01
750.	207 (2) (c)	Person	A	Placing an explosive causing physical injury	25	10/1/00
750.	207 (2) (b)	Property	B	Placing an explosive causing property damage	20	10/1/00
750.	207 (2) (d)	Person	A	Placing an explosive causing serious impairment	LIFE	10/1/00
750.	207 (2) (a)	Pub saf	C	Placing an explosive with malicious intent	15	10/1/00
750.	209 (1) (c)	Person	A	Placing an offensive or injurious substance causing physical injury	25	10/1/00

750.	209 (1) (b)	Property	B	Placing an offensive or injurious substance causing property damage	20	10/1/00
750.	209 (1) (d)	Person	A	Placing an offensive or injurious substance causing serious impairment	LIFE	10/1/00
750.	209 (2)	Pub saf	E	Placing an offensive or injurious substance with intent to alarm or annoy	5	10/1/00
750.	209 (1) (a)	Pub saf	C	Placing an offensive or injurious substance with intent to injure	15	10/1/00
750.	206	Person	B	Placing explosives with damage to property resulting	25	
750.	205	Pub saf	C	Placing explosives with the intent to destroy property	15	
750.	209	Pub saf	F	Placing foul or offensive substance to alarm	4	
750.	209	Pub saf	C	Placing foul or offensive substance to injure	15	
750.	397 a	Person	D	Placing harmful objects in food	10	
750.	456	Person	B	Placing spouse into prostitution	20	
750.	436 (2)	Person	A	Poison – food/drink/medicine/wells – large amounts/injury	LIFE	Deleted, 2002 PA 123, Eff. 4/22/02
750.	436 (3)	Pub saf	H	Poison – malicious false statement of poisoning	2	Deleted, 2002 PA 123, Eff. 4/22/02
750.	436 (2) (a)	Pub saf	C	Poisoning food, drink, medicine, or water supply	15	4/22/02
750.	436 (2) (c)	Person	A	Poisoning food, drink, medicine, or water supply causing injury	25	4/22/02
750.	436 (2) (b)	Property	B	Poisoning food, drink, medicine, or water supply causing property damage	20	4/22/02
750.	436 (2) (d)	Person	A	Poisoning food, drink, medicine, or water supply causing serious impairment	LIFE	4/22/02
750.	436 (1)	Person	E	Poisoning food/drink/wells	5	Deleted, 2002 PA 123, Eff. 4/22/02
750.	439	Pub ord	G	Polygamy	4	
750.	440	Pub ord	G	Polygamy – knowingly entering a prohibited marriage	4	
750.	227 c	Pub saf	G	Possessing a loaded firearm in or upon a vehicle	2	
750.	209 a	Pub saf	D	Possessing an explosive device in public place	10	10/1/00
750.	252	Property	E	Possessing counterfeit notes	7	
750.	157 p	Property	H	Possessing financial transaction device without permission and with intent to use or sell	4	
750.	157 n (2)	Property	H	Possessing fraudulent or altered financial transaction device	4	
750.	210 (2) (c)	Person	A	Possessing or carrying an explosive or combustible substance causing physical injury	25	10/1/00
750.	210 (2) (b)	Property	B	Possessing or carrying an explosive or combustible substance causing property damage	20	10/1/00
750.	210 (2) (d)	Person	A	Possessing or carrying an explosive or combustible substance causing serious impairment	LIFE	10/1/00
750.	210 (2) (a)	Pub saf	C	Possessing or carrying an explosive or combustible substance with malicious intent	15	10/1/00
750.	211 a	Pub saf	F	Possessing or manufacturing device designed to explode upon impact or heating	4	
257.	254	Property	E	Possessing stolen vehicle title	10	
259.	80 f (3)	Pub saf	D	Possessing weapon in sterile area of commercial airport	10	3/31/03
324.	48738 (4)	Property	E	Possession, importation, or planting of genetically engineered fish	5	3/30/04
257.	310 (9)	Pub ord	E	Possession of 2 or more forged driver licenses	5	4/22/02
750.	261	Property	E	Possession of 5 or fewer counterfeit coins	10	
333.	7403 (2) (a) (*iii*)	CS	B	Possession of 25-49 grams	20	
333.	7403 (2) (a) (*iv*)	CS	G	Possession of 25 or more but less than 50 grams of certain schedule 1 or 2 controlled substances	4	
333.	7403 (2) (a) (*iii*)	CS	B	Possession of 50-224 grams	20	
333.	7403 (2) (a) (*iii*)	CS	B	Possession of 50+ but less than 225 grams of certain schedule 1 or 2 controlled substances	20	
333.	7403 (2) (a) (*iii*)	CS	B	Possession of 50 or more but less than 450 grams of certain schedule 1 or 2 controlled substances	20	3/1/03
333.	7403 (2) (a) (*ii*)	CS	A	Possession of 225+ but less than 650 grams of certain schedule 1 or 2 controlled substances	30	10/1/00
333.	7403 (2) (a) (*ii*)	CS	A	Possession of 450 or more but less than 1,000 grams of certain schedule 1 or 2 controlled substances	30	3/1/03
333.	7403 (2) (a) (*i*)	CS	A	Possession of >649 grams by juvenile	LIFE	
333.	7403 (2) (a) (*i*)	CS	A	Possession of 650 or more grams of certain schedule 1 or 2 controlled substances by juvenile	LIFE	
333.	7403 (2) (a) (*i*)	CS	A	Possession of 1,000 or more grams of certain schedule 1 or 2 controlled substances	LIFE	3/1/03
750.	210	Pub saf	E	Possession of bombs with unlawful intent	5	

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750.	116	Property	E	Possession of burglar's tools	10	
333.	7403 (2) (b)	CS	G	Possession of certain schedule 1, 2, 3, or 4 controlled substances or analogue	2	
333.	7403 (2) (b) (*ii*)	CS	G	Possession of certain schedule 1, 2, 3, or 4 controlled substances or controlled substance analogue	2	1/1/01
750.	254	Property	E	Possession of counterfeit notes or bills	5	
333.	7407 (1) (f)	CS	F	Possession of counterfeit prescription form	4	1/6/03
333.	7407 (1) (g)*	CS	F	Possession of counterfeit prescription form *[See MCL 333.7407(1)(f)]	4	Rewritten as .7407(1)(f), 2001 PA 236
333.	7407 (1) (e)	CS	G	Possession of counterfeiting implements	4	
750.	255	Property	E	Possession of counterfeiting tools	10	
333.	7401 b (3) (b)	CS	G	Possession of GBL	2	1/1/01
333.	7403 (2) (a) (*v*)	CS	G	Possession of less than 25 grams of certain schedule 1 or 2 controlled substances	4	
333.	7403 (2) (b) (*i*)	CS	D	Possession of methamphetamine	10	1/1/01
333.	7403 (2) (b) (*i*)	CS	D	Possession of methamphetamine or 3, 4-methylenedioxymethamphetamine	10	4/1/03
333.	17766 c (2)	CS	G	Possession of more than 10 grams ephedrine	2	Eff. 1/1/99 to 4/1/04, 2003 PA 309
333.	17766 c (2)	CS	G	Possession of more than 12 grams ephedrine or pseudoephedrine	2	4/1/04
333.	17766 c (2) (b)	CS	G	Possession of more than 12 grams ephedrine or pseudoephedrine	2	As amended, 2011 PA 87, Eff. 7/15/11
333.	7403 (2) (e)	CS	H	Possession of official prescription form	1	Deleted, 2003 PA 311, Eff. 4/1/04
324.	41309 (4) (b)	Property	F	Possession of prohibited or genetically engineered species - intent to damage resources	4	9/1/05
324.	41309 (3) (b)	Property	G	Possession of prohibited species	2	9/1/05
324.	41309 (4) (a)	Property	G	Possession of restricted or nonnative species - intent to damage resources	2	9/1/05
750.	224 b	Pub saf	E	Possession of short barreled shotgun or rifle	5	
333.	17766 a (2)	CS	F	Possession of steroids – subsequent offense	4	Deleted, 2003 PA 309, Eff. 4/1/04
750.	543 r	Pub saf	B	Possession of vulnerable target information with intent to commit certain terrorist acts	20	7/15/02
324.	41309	Property	E	Possession or release of genetically engineered, nonnative, or prohibited fish	5	Eff. 3/30/04 to 9/1/05, 2005 PA 81
750.	224 a	Pub saf	F	Possession or sale of electrical current weapons	4	
750.	224 a (4)	Pub saf	F	Possession or sale of electrical current weapons	4	Renumbered, 2012 PA 124, Eff. 8/6/12
750.	224 f	Pub saf	E	Possession or sale of firearm by felon	5	
257.	329 (1)	Property	G	Possession/sale of stolen or counterfeit insurance certificates	5	
257.	329 (2)	Property	E	Possession/sale of stolen or counterfeit insurance certificates – second offense	7	
257.	329 (3)	Property	E	Possession/sale of stolen or counterfeit insurance certificates – third or subsequent offense	15	
445.	489	Pub ord	H	Precious metal and gem dealer failing to record transaction or falsifying transaction record, or making improper purchase	2	As amended, 2010 PA 317, Eff. 4/1/11
445.	490	Pub ord	H	Precious metal and gem dealer failure to obtain a certificate of registration	2	
445.	487 (2)	Pub ord	H	Precious metal and gem dealer failure to record material matter – subsequent offense	2	
445.	489	Pub ord	H	Precious metal and gem dealer violations	2	Reworded, 2010 PA 317, Eff. 4/1/11
445.	488 (2)	Pub ord	H	Precious metal and gem dealer violations – subsequent offense	2	
750.	77	Person	F	Preparing to burn personal property greater than $50	4	
750.	77 (1) (c)	Person	E	Preparing to burn personal property having value of $1,000 to $20,000 or w/ prior convictions	5	10/1/00
750.	77 (1) (d)	Person	D	Preparing to burn personal property of $20,000 or more or with prior convictions	10	10/1/00
750.	368 (5)	Pub ord	G	Preparing, serving, or executing unauthorized process – third or subsequent offense	4	10/1/00
801.	263 (2)	Pub saf	H	Prisoner in jail possessing contraband	5	8/1/99
801.	262 (2)	Pub saf	E	Prisoner in jail possessing weapon	5	8/1/99
800.	281 (4)	Pub saf	E	Prisoner possessing contraband	5	
800.	283 (4)	Pub saf	E	Prisoner possessing weapon	5	
750.	349 a	Person	A	Prisoner taking a hostage	LIFE	
800.	283 (2)	Pub saf	E	Prisons – knowledge of a weapon in a correctional facility	5	
750.	98	Pub ord	G	Private banking	4	

338.	823	Pub trst	F	Private detective license act violation	4	10/1/02
338.	1053	Pub trst	F	Private security business and security alarm act violation	4	3/28/01
750.	443	Pub ord	G	Prizefights – training	4	Deleted, 201 PA 98, Eff. 6/22/10
~~750.~~	~~277~~	~~Pub trst~~	~~G~~	~~Promise to vendee of grain to sell at a fictitious price – sale and transfer~~	~~4~~	
750.	458	Person	B	Prostitution – detaining female for debt	20	
750.	451	Pub ord	G	Prostitution – various offenses – third or subsequent offense	2	
750.	479 c (2) (c)	Pub ord	G	Providing false information to peace officer conducting criminal investigation	2	7/20/12
750.	479 c (2) (d)	Pub ord	F	Providing false or misleading information to peace officer conducting criminal investigation regarding certain felonies	4	7/20/12
750.	462 j (1) (a)	Person	D	Providing or obtaining labor or services of another person by force, fraud, or coercion	10	4/1/11
750.	462 j (1) (c)	Person	A	Providing or obtaining labor or services of another person by force, fraud, or coercion causing death	LIFE	4/1/11
750.	462 j (1) (b)	Person	B	Providing or obtaining labor or services of minor by force, fraud, or coercion	20	4/1/11
750.	490	Pub trst	H	Public money – safekeeping	2	
21.	154	Pub trst	E	Public officer – embezzlement	5	
750.	118	Pub trst	D	Public officer accepting bribe	10	
750.	480	Pub trst	F	Public officers – refusing to turn over books/money to successor	4	
750.	488	Pub trst	H	Public officers – state official – retaining fees	2	
750.	491	Pub trst	H	Public records – removal/mutilation/destruction	2	
~~750.~~	~~282~~	~~Pub ord~~	~~G~~	~~Public utility – fraudulent use over $500~~	~~4~~	
15.	324 (1) (d)	Pub trst	G	Purchase of public residential property by public servant	1	12/16/05
333.	10116 (1)	Pub ord	E	Purchasing or selling body part of deceased individual for transplantation or therapy	5	3/17/2008
445.	2081	Pub ord	E	Purchasing or selling stolen plastic bulk merchandise containers	5	6/20/12
18.	1268 (9)	Pub trst	H	Purposefully submitting false business certification	Fine	Deleted, 2005 PA 265, Eff. 12/16/05
445.	1528	Pub trst	D	Pyramid/chain promotions – offer or sell	7	Reworded, 2010 PA 317, Eff. 4/1/11
431.	257	Pub trst	G	Racing, boxing and exhibition racing	2	
750.	159 j	Pub saf	B	Racketeering	20	
554.	836	Property	E	Real and property – living care disclosure act	7	Reworded, 2010 PA 152, Eff. 8/23/10
750.	219 f	Property	F	Receive/possess w/ intent to forward/forwarding unauthorized credit application or proceeds	4	9/1/01
750.	219 f	Property	F	Receive/possess w/ intent to forward/forwarding unauthorized credit application/proceeds	4	3/10/00
750.	219 e	Property	F	Receive/possess/prepare/submit or receive/possess proceeds from unauthorized credit app	4	3/10/00
750.	219 e	Property	F	Receive/possess/prepare/submit unauthorized credit application or receive/possess proceeds	4	9/1/01
750.	535 (7)	Property	E	Receiving or concealing stolen motor vehicle	5	2/12/04
750.	535 (3)	Property	E	Receiving or concealing stolen property having a value of $1,000 to $20,000 or with priors	5	10/1/00
750.	535	Property	E	Receiving or concealing stolen property over $100	5	
750.	535 (2)	Property	D	Receiving/concealing stolen property having a value of $20,000 or more or with priors	10	10/1/00
257.	626 (4)	Person	C	Reckless driving causing death	15	10/31/10
257.	626 (3)	Person	E	Reckless driving causing serious impairment	5	10/31/10
752.	881	Person	G	Reckless use of bow and arrow resulting in injury or death	2	
600.	2907 a	Property	G	Recording documents affecting property without lawful cause	3	
324.	76107 (4) (c)	Property	E	Recovering abandoned property in Great Lakes having value of $1,000 to $20,000 or with prior convictions	5	1/1/02
324.	76107 (4) (d)	Property	D	Recovering abandoned property in Great Lakes having value of $20,000 or more or with prior convictions	10	1/1/02
324.	76107 (4)	Pub trst	G	Recovering abandoned property in Great Lakes without permit	2	Deleted, 2001 PA 156, Eff. 1/1/02
333.	7416 (1) (a)	CS	SPEC	Recruiting or inducing a minor to commit a controlled substance felony	Variable	
750.	462 j (2) (b)	Person	B	Recruiting or transporting minor for labor or services	20	4/1/11
750.	462 j (2) (a)	Person	D	Recruiting or transporting person for labor or services	10	4/1/11
750.	462 j (2) (c)	Person	A	Recruiting or transporting person for labor or services causing death	LIFE	4/1/11

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333.	7405 (c)	CS	G	Refusing lawful inspection	2	
333.	7405 (1) (c)	CS	G	Refusing lawful inspection	2	12/22/10
333.	7407 (2)	CS	G	Refusing to furnish records under controlled substance article	4	
493.	77 (2)	Pub trst	H	Regulatory loans	3	
333.	10204 (4)	Pub saf	F	Removal of a human organ by an unauthorized individual	4	9/1/99
333.	10205	Pub saf	F	Removal of a human organ in an unapproved facility	4	9/1/99
750.	418	Property	H	Removing a vehicle out of state without vendor's consent	4	
324.	51120 (2)	Property	H	Removing forest products over $2,500	3	
750.	93	Property	G	Removing or destroying bonds in state treasury	10	
324.	76107 (3)	Pub ord	D	Removing or mutilating human body from Great Lakes bottomland	10	1/1/02
333.	2688	Person	E	Research on dead embryo or fetus without mother's consent [See MCL 333.2691]	5	
750.	219 d (4) (a)	Pub ord	C	Residential mortgage fraud violation involving loan value of $100,000 or less	15	1/1/12
750.	219 d (4) (b)	Pub ord	B	Residential mortgage fraud violation involving loan value of more than $100,000	20	1/1/12
324.	1608	Person	G	Resisting and obstructing conservation officer	2	
750.	479	Person	G	Resisting or obstructing a peace officer	2	Substituted for by 750.479(2)
750.	356 c	Property	H	Retail fraud – first degree	2	
750.	356 c	Property	E	Retail fraud – first degree	5	10/1/00
750.	120 a (4)	Person	D	Retaliating against juror	10	3/28/01
750.	122 (8)	Person	D	Retaliating against witness	10	3/28/01
750.	483 a (2) (b)	Person	D	Retaliating for reporting crime	10	3/28/01
750.	483 a (2) (b)	Person	D	Retaliating for reporting crime punishable by more than 10 years	10	7/15/02
750.	411 v (2)	Person	B	Retaliation for withdrawal from gang	20	1/16/09
750.	145 p (2)	Person	G	Retaliation or discrimination by caregiver against vulnerable adult	2	
333.	20153	Pub saf	D	Reuse of single-use medical device	10	3/26/10
600.	8713	Pub trst	G	Revised judicature act – false statement by authorized local officials	15	
600.	2916	Pub saf	G	Revised judicature act – lethal gases for fumigation	4	
752.	541	Pub saf	D	Riot	10	
752.	542 a	Pub saf	D	Riot in state correctional facilities	10	
750.	372	Pub ord	H	Running or allowing lottery	2	
333.	7340	CS	F	Sale, distribution, or delivery of product containing ephedrine or pseudoephedrine by mail, internet, or telephone	4	10/1/06
750.	223 (2)	Pub saf	F	Sale of firearm to minor – subsequent offense	4	
750.	223 (3)	Pub ord	D	Sale of firearm to person prohibited from possessing	10	
445.	1508	Pub trst	G	Sale of franchise without proper disclosure	7	As amended, 2010 PA 317, Eff. 4/1/11
750.	272	Property	G	Sale of fraudulent stock of foreign corporations	10	
750.	210 a	Pub saf	H	Sale of valerium	5	
333.	2690	Person	E	Sale or delivery of fetus or embryo [See MCL 333.2691]	5	
752.	272 a (2) (c)	Pub saf	F	Sale or distribution of nitrous oxide device – 2 or more prior convictions	4	1/1/01
288.	223	Pub saf	G	Sale or labeling of oleomargarine violations	3	Repealed, 2001 PA 267, Eff. 2/8/02
442.	219	Pub trst	E	Sales – false statement	5	Retitled, 2008 PA 382, Eff. 12/29/08
750.	377 c	Property	E	School bus – intentional damage	5	
257.	602 a (4)	Person	D	Second degree fleeing and eluding	10	Amended, 2011 PA 59, Eff. 7/1/11
750.	317	Person	M2	Second degree murder	LIFE	
493.	77 (2)	Pub trst	H	Second mortgage loan act licensing violation	3	Deleted, 2008 PA 323, Eff. 12/18/08 Deleted,
451.	2508	Pub trst	E	Securities act violaton	10	1/16/09
451.	319	Pub trst	G	Securities, real estate, and debt management – violation	2	

750.	532	Person	H	Seduction	5	
750.	514	Property	H	Seizing locomotive with mail car	10	Deleted, 2002 PA 320, Eff. 7/15/02
28.	295 (2)	Pub ord	E	Selling counterfeited or forged state ID card or possessing counterfeited or forged state ID card with intent to deliver to another person or possessing 2 or more counterfeited or forged state ID cards	5	9/1/04
436.	1701 (2)	Person	D	Selling alcohol to a minor and causing death	10	
288.	284	Pub trst	H	Selling falsely branded cheese	2	Repealed, 2001 PA 267, Eff. 2/8/02
750.	411 w	Pub ord	E	Selling or possessing automated sales suppression device, zapper, or phatom-ware	5	8/29/12
750.	49 (2) (h)	Pub ord	F	Selling or possessing equipment for animal fights	4	
257.	310 (8)	Pub ord	E	Selling or possessing forged driver license with intent to deliver	5	4/22/02
750.	373	Pub ord	H	Selling or possessing lottery tickets	2	
257.	616 a (2) (f)	Pub ord	G	Selling or purchasing a signal preemption device	2	6/14/04
750.	204 (2) (c)	Person	A	Sending an explosive causing physical injury	25	10/1/00
750.	204 (2) (b)	Property	B	Sending an explosive causing property damage	20	10/1/00
750.	204 (2) (d)	Person	A	Sending an explosive causing serious impairment	LIFE	10/1/00
750.	204 (2) (a)	Pub saf	C	Sending an explosive with malicious intent	15	10/1/00
750.	204	Pub saf	E	Sending explosives with intent to injure persons	5	
750.	204 a	Pub saf	E	Sending or transporting an imitation explosive device with malicious intent	5	10/1/00
750.	204 a	Pub saf	F	Sending or transporting imitation explosive device with malicious intent	4	
324.	11719 (2)	Pub saf	G	Septage – false statement or entry in a license application or other record	2	10/12/04
750.	236	Person	C	Setting spring gun – death resulting	15	
28.	729	Pub ord	G	Sex offenders – failure to register	4	Substituted for by 28.729(1)(a)
750.	90	Person	D	Sexual intercourse under pretext of medical treatment	10	
750.	202	Pub saf	F	Shipping an explosive with false markings or invoice	4	
750.	158	Pub ord	E	Sodomy	15	
445.	67	Pub ord	E	Solicit/obtain/possess/sell/transfer personal identifying info/falsify police report - intent to commit identity theft	5	As amended, 2010 PA 317, Eff. 4/1/11
750.	157 b (3) (b)	Pub ord	G	Solicitation of felony punishable by less than 5 years	2	
750.	157 b (3) (a)	Pub ord	E	Solicitation of felony punishable by life or 5 or more years	5	
750.	157 b (2)	Person	A	Solicitation of murder	LIFE	
750.	145 a	Person	F	Soliciting child to commit an immoral act	4	6/1/02
750.	543 k	Pub saf	B	Soliciting material support for terrorism or terrorist acts	20	4/22/02
750.	543 k	Pub saf	B	Soliciting or providing material support for terrorism or terrorist acts	20	7/15/02
324.	11549 (2)	Pub saf	G	Solid waste - importing from foreign country	2	3/13/06
750.	411 h (2) (b)	Person	E	Stalking of a minor	5	
205.	28 (1) (e)	Pub trst	G	State employee compromising taxes	5	
324.	2157 (3)	Property	H	State owned property – damages of $1,000 or more	180 days	Deleted, 2001 PA 156, Eff. 1/1/02
207.	754 (3)	Pub trst	G	State treasurer – municipality tax – divulging confidential information	5	
750.	97	Property	H	Statements derogatory to financial condition of bank	4	
750.	535 b	Pub saf	E	Stolen firearms or ammunition	10	
750.	516	Person	C	Stopping train to rob	LIFE	Deleted, 2002 PA 320, Eff. 7/15/02
472.	36	Pub saf	A	Street railways – obstruction of track	LIFE	
28.	735 (2) (b)	Pub trst	G	Student safety zone violation involving residency - second or subsequent violation	2	1/1/06
28.	735 (2) (b)	Pub trst	G	Student safety zone violation involving residency – subsequent offense	2	Amended, 2011 PA 19, Eff. July 1, 2011
28.	734 (2) (b)	Pub trst	G	Student safety zone violation involving work or loitering – subsequent offense	2	Amended, 2011 PA 19, Eff. July 1, 2011
750.	424	Pub trst	E	Subornation of perjury	15	
750.	424	Pub trst	C	Subornation of perjury	15	10/1/00

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333.	7413 (2)	Pub trst	SPEC	Subsequent controlled substance violations	Vari-able	
333.	7413 (3)	Pub trst	SPEC	Subsequent controlled substance violations	Vari-able	
168.	932 (g)	Pub trst	E	Suggesting how a disabled voter should vote	5	
168.	932 (h)	Pub trst	E	Suggesting or influencing how an absentee voter should vote	5	
722.	859 (3)	Person	E	Surrogate parenting act – contracts for compensation	5	
722.	857	Person	E	Surrogate parenting act – contracts involving minors, mentally retarded, etc.	5	
722.	859 (3)	Person	E	Surrogate parenting contracts for compensation	5	As amended, 2005 PA 106, Eff. 9/14/05,
722.	857	Person	E	Surrogate parenting contracts involving minors, mentally retarded, etc.	5	As amended, 2005 PA 106, Eff. 9/14/05,
750.	543 r	Pub saf	B	Surveillance of vulnerable target with intent to commit terrorism	20	4/22/02
750.	11	Person	A	Taking a woman and compelling her to marry	LIFE	Deleted, 2010 PA 97, Eff. 6/25/10
750.	12	Person	H	Taking a woman with intent to compel her to marry	10	Deleted, 2010 PA 97, Eff. 6/25/10
750.	483 a (6) (a)	Pub ord	F	Tampering with evidence	4	3/28/01
750.	483 a (6) (b)	Pub ord	D	Tampering with evidence in case punishable by more than 10 years	10	3/28/01
750.	483 a (6) (a)	Pub ord	F	Tampering with evidence or offering false evidence	4	As amended, 2006 PA 40, Eff. 3/2/06
750.	483 a (6) (b)	Pub ord	D	Tampering with evidence/offering false evidence in case punishable by more than 10 years	10	As amended, 2006 PA 40, Eff. 3/2/06
750.	498 b (2) (b)	Person	C	Tampering/taking/removing marine safety device without authority causing death	15	7/1/06
750.	498 b (2) (a)	Person	E	Tampering/taking/removing marine safety device without authority causing serious impairment	5	7/1/06
750.	540	Pub ord	H	Tapping or cutting telephone lines	2	
750.	441	Pub ord	G	Teaching or advocating polygamy	4	
750.	540 c (4)	Property	F	Telecommunication violation	4	2/12/04
750.	540 c (3)	Property	F	Telecommunications and computer – manufacture or deliver counterfeit communica-tions	4	
750.	540 f (2)	Property	E	Telecommunications and computer–knowingly publishing counterfeit devices–2nd con-viction	5	
750.	219 a (2) (c)	Property	E	Telecommunications fraud - 1 or more prior convictions or value of $1,000 to $20,000	5	10/1/00
750.	219 a (2) (d)	Property	D	Telecommunications fraud - 2 or more prior convictions or value of $20,000 or more	10	10/1/00
750.	219 a (2) (c)	Property	E	Telecommunications fraud – 2 prior convictions or value between $1,000-$20,000	5	
750.	219 a (2) (d)	Property	D	Telecommunications fraud – 3 or more prior convictions or value over $20,000	10	
750.	543 f	Person	A	Terrorism without causing death	LIFE	4/22/02
750.	360 a (2) (b)	Property	F	Theft detection device offense with prior conviction	4	7/1/02
257.	602 a (3)	Pub saf	E	Third degree fleeing and eluding	5	Amended, 2011 PA 59, Eff. 7/1/11
750.	411 a (3) (a)	Pub ord	F	Threat or false report of an explosive or harmful device, substance, or material	4	4/1/01
750.	543 m	Pub ord	B	Threat or false report of terrorism	20	4/22/02
750.	411 a (3) (b)	Pub ord	D	Threat/false report of explosive or harmful device/substance/material – subsequent offense	10	4/1/01
750.	213	Person	B	Threats to extort money	20	
750.	394 (2) (e)	Person	C	Throwing or dropping dangerous object at vehicle causing death	15	1/1/04
750.	394 (2) (c)	Person	F	Throwing or dropping dangerous object at vehicle causing injury	4	1/1/04
750.	394 (2) (d)	Person	D	Throwing or dropping dangerous object at vehicle causing serious impairment	10	1/1/04
205.	428 (2)	Pub trst	G	Tobacco products tax act violations	5	
750.	85	Person	A	Torture	LIFE	3/1/06
462.	257 (1)	Person	A	Trains – endangering travel	LIFE	
750.	361	Property	H	Trains – stealing/maliciously removing parts	2	
333.	10204 (1)	Pub ord	F	Transferring a human organ for valuable consideration	4	
750.	201	Pub saf	F	Transportation of concussion or friction type explosives	4	
750.	459	Person	B	Transporting a female for prostitution	20	
750.	200	Pub saf	E	Transporting an explosive by common carrier	5	10/1/00
750.	201	Pub saf	E	Transporting certain types of explosives	5	10/1/00

750.	552 c	Pub saf	F	Trespass upon key facility	4	4/15/06
750.	552 b	Property	F	Trespassing on correctional facility property	4	
750.	530	Person	C	Unarmed robbery	15	
338.	3434 a (2)	Pub trst	F	Unauthorized disclosure of a social security number – subsequent offense	4	10/1/00
28.	214 (6) (b)	Pub trst	F	Unauthorized disclosure of information from LEIN – subsequent offense	4	Amended, 2011 PA 19, Eff. July 1, 2011
28.	214	Pub trst	F	Unauthorized disclosure of information from LEIN – subsequent offense	4	1/1/02
28.	214 (4) (b)	Pub trst	F	Unauthorized disclosure of information from LEIN – subsequent offense	4	10/1/00
333.	2813 (3)	Pub trst	F	Unauthorized disclosure of social security number – subsequent offense	4	10/1/00
551.	102 (2)	Pub trst	F	Unauthorized disclosure of social security number – subsequent offense	4	10/1/00
205.	28 (1) (f)	Pub trst	G	Unauthorized disclosure of tax information	5	
339.	601 (7) (c)	Pub trst	F	Unauthorized practice of or unauthorized operation of a school teaching, architecture prof engineering, or prof land surveyor causing serious injury/death	4	4/1/11
339.	735	Pub trst	E	Unauthorized practice of public accounting	5	12/19/05
339.	601 (6) (c)	Pub trst	F	Unauthorized practice of residential building, residential maintenance, or alteration contracting causing serious injury or death	4	4/1/11
339.	601 (6) (b)	Pub trst	G	Unauthorized practice of residential building, residential maintenance, or alteration contracting – second or subsequent offense	2	4/1/11
339.	601 (7) (c)	Pub trst	F	Unauthorized practice/operation of school teaching occupation causing serious injury/ death	4	12/23/08
750.	478 a (2)	Pub ord	H	Unauthorized process to obstruct a public officer or employee	2	10/1/00
750.	478 a (3)	Pub ord	G	Unauthorized process to obstruct a public officer or employee – subsequent offense	4	10/1/00
436.	1909 (4) (a)	Pub ord	F	Unauthorized sale, delivery, or importation of spirits – 80,000 ml or more	4	4/1/11
750.	512	Property	E	Uncoupling railroad cars	10	
324.	21324 (1)	Pub saf	G	Underground storage tanks – false or misleading information	5	
324.	21548 (1)	Pub trst	H	Underground storage tanks – false request for payment	5	As amended, 2004 PA 382, Eff. 10/12/04
421.	54 b (b) (*i*)	Property	H	Unemployment comp fraud – conspiracy with loss of $25,000 or less	2	
421.	54 b (b) (*ii*)	Property	G	Unemployment comp fraud – conspiracy with loss over $25,000	5	
421.	54 b (b) (*iii*)	Property	H	Unemployment comp fraud – conspiracy with no actual loss	2	
421.	54 (d)	Property	H	Unemployment comp fraud – disclose confidential information for financial gain	1	
421.	54 c (b) (*iii*)	Property	G	Unemployment comp fraud – embezzlement of $100,000 or more	5	
421.	54 c (b) (*ii*)	Property	H	Unemployment comp fraud – embezzlement of $25,000 to under $100,000	2	
421.	54 c (b) (*iv*)	Property	H	Unemployment comp fraud – embezzlement with no actual loss	2	
421.	54 (a) (*ii*) (B)	Property	H	Unemployment comp fraud – failure to comply with act/rule $25,000-$100,000	2	
421.	54 (a) (*ii*) (C)	Property	G	Unemployment comp fraud – failure to comply with act/rule over $100,000	5	
421.	54 a	Property	G	Unemployment comp fraud – false statement as condition of employment	10	
421.	54 (b) (*ii*) (B)	Property	H	Unemployment comp fraud – false statement or misrepresent over $25,000	2	
421.	54 (b) (*ii*) (C)	Property	H	Unemployment comp fraud – false statement or misrepresentation without actual loss	2	
421.	54 (a) (*iv*) (B)	Property	H	Unemployment comp fraud – willful violation of act/rule over $100,000	2	
752.	543	Pub saf	G	Unlawful assembly	5	
750.	413	Property	E	Unlawful driving away of an automobile	5	
28.	425 j (2)	Pub saf	F	Unlawful granting or presenting of pistol training certificate	4	7/1/01
750.	349 b	Person	C	Unlawful imprisonment	15	8/24/06
750.	227 a	Pub saf	F	Unlawful possession of pistol	4	
750.	411 s (2) (a)	Person	G	Unlawful posting of message	2	4/1/01
750.	411 s (2) (b)	Person	E	Unlawful posting of message with aggravating circumstances	5	4/1/01
750.	414	Property	H	Unlawful use of an automobile	2	
752.	797 (2) (a)	Property	E	Unlawfully accessing computer, computer system, or computer program	5	10/1/00
752.	797 (2) (b)	Property	D	Unlawfully accessing computer, computer system, or computer program, with prior conviction	10	10/1/00
333.	7405 (1) (e)	CS	G	Unlawfully dispensing out-of-state prescription	2	12/22/10

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750.	502 d	Pub saf	F	Unlawfully possessing or transporting anhydrous ammonia or tampering with containers	4	4/1/04
168.	808	Pub trst	E	Untrue statement by member of board of inspectors	4	
333.	2685	Person	E	Use of a live human embryo, fetus for nontherapeutic research [See MCL 333.2691]	5	
333.	7407 (1) (b)	CS	G	Use of fictitious, revoked, or suspended license number	4	
750.	543 p	Pub saf	B	Use of internet or telecommunications to commit certain terrorist acts	20	7/15/02
750.	543 p	Pub saf	B	Use of internet or telecommunications to commit terrorism	20	4/22/02
750.	157 s (1) (c)	Property	H	Use of revoked or canceled financial transaction device involving $500 or more	2	10/1/00
257.	616 a (2) (b)	Pub saf	G	Using a signal preemption device	2	6/14/04
257.	616 a (2) (c)	Pub saf	E	Using a signal preemption device causing a traffic accident	5	6/14/04
257.	616 a (2) (e)	Person	C	Using a signal preemption device causing death	15	6/14/04
257.	616 a (2) (d)	Person	D	Using a signal preemption device causing serious impairment of a body function	10	6/14/04
752.	797 (3) (e)	Variable	D	Using computer for crime punishable by maximum term of at least 10 yrs but less than 20 yrs	10	10/1/00
752.	797 (3) (c)	Variable	F	Using computer for crime punishable by maximum term of at least 2 yrs but less than 4 yrs	4	10/1/00
752.	797 (3) (d)	Variable	D	Using computer for crime punishable by maximum term of at least 4 yrs but less than 10 yrs	7	10/1/00
752.	797 (3) (b)	Variable	G	Using computer for crime punishable by maximum term of more than 1 yr but less than 2 yrs	2	10/1/00
752.	797 (3) (f)	Variable	B	Using computerfor crime punishable by maximum term of at least 20 yrs or for life	20	10/1/00
750.	237 (4)	Person	C	Using firearm while under the influence or impaired causing death	15	2/1/02
750.	237 (3)	Person	E	Using firearm while under the influence or impaired causing serious impairment	5	2/1/02
750.	145 d (2)	Person	G	Using internet or computer for certain crimes	2	8/1/99
750.	145 d (3)	Person	E	Using internet or computer for certain crimes or second or subsequent offense	5	8/1/99
750.	145 d (2) (b)	Variable	G	Using internet/computer for crime punishable by max term at least 1 yr but less than 2 yrs	2	10/1/00
750.	145 d (2) (e)	Variable	C	Using internet/computer for crime punishable by max term at least 10 yrs but less than 15 yrs	15	10/1/00
750.	145 d (2) (d)	Variable	D	Using internet/computer for crime punishable by max term at least 4 yrs but less than 10 yrs	10	10/1/00
750.	145 d (2) (f)	Variable	B	Using internet/computer to commit crime punishable by max term of at least 15 yrs or for life	20	10/1/00
750.	145 d (2) (c)	Variable	F	Using internet/computerfor crime punishable by max term at least 2 yrs but less than 4 yrs	4	10/1/00
750.	157 s (1) (b) (ii)	Property	H	Using revoked/canceled financial transaction device involving $100 to $500 w/ priors	2	10/1/00
750.	224 d (2)	Person	G	Using self-defense spray device	2	
28.	295 (3)	Property	H	Using stolen state ID card to commit felony	Variable	Replaced, 2004 PA 149, Eff. 9/1/04
28.	295 (5)	Property	H	Using stolen state ID card to commit felony	Variable	9/1/04
750.	248 a	Property	F	Uttering and publishing financial transaction device	4	
750.	249 b	Property	C	Uttering and publishing forged real estate document	14	1/1/12
750.	249	Property	E	Uttering and publishing forged records	14	
750.	253	Property	G	Uttering counterfeit notes	5	
752.	802	Property	H	Vending machines – manufacture/sale of slugs	5	
750.	101	Pub trst	E	Violating financial institutions act	5	
750.	79	Pub saf	F	Violating township rules concerning clearing of land and burning	4	
712A.	6 b (3)	Pub ord	G	Violation of court order – subsequent conviction	2	10/1/00
445.	2507 (2)	Pub ord	F	Violation of unsolicited commercial e-mail protection act in furtherance of crime	4	9/30/03
750.	188	Pub ord	SPEC	Voluntarily suffering prisoner to escape	Variable	
168.	769 (4)	Pub trst	E	Voting both in person and by absentee ballot	5	
750.	145 p (5)	Person	E	Vulnerable adult – caregiver or licensee violation~~s~~ against – subsequent offense	5	As amended, 2012 PA 195, Eff. 7/1/12
750.	145 p (1)	Person	G	Vulnerable adult – commingling funds of, obstructing investigation regarding, or filing false information regarding	2	As amended, 2012 PA 195, Eff. 7/1/12
750.	145 n (1)	Person	C	Vulnerable adult abuse – first degree	15	
750.	145 n (2)	Person	F	Vulnerable adult abuse – second degree	4	
750.	145 n (3)	Person	G	Vulnerable adult abuse – third degree	2	

444.	107	Pub trst	E	Warehouse certificates – willfully alter or destroy	5	
444.	13	Pub trst	H	Warehousemen and warehouse receipts	2	
324.	12116 (2)	Pub saf	H	Waste – false statement or entry in a license application	2	Reworded, 2004 PA 382, Eff. 10/12/04
324.	3115 (2)	Pub saf	H	Waste discharge violations	2	1/1/01; Reworded, 2004 PA 382, Eff. 10/12/04
324.	3115 (2)	Pub saf	H	Waste discharge violations – second offense	2	
324.	3115 (4)	Pub saf	G	Waste discharge violations – substantial endangerment	5	1/1/01; Reworded, 2004 PA 382, Eff. 10/12/04
333.	13738 (2)	Pub saf	F	Waste disposal violations – second offense	5	
324.	3115(2)	Pub saf	H	Water pollution	2	As amended, 2004 PA 382, Eff. 10/12/04
324.	3115 (4)	Pub saf	G	Water pollution – substantial endangerment	5	As amended, 2004 PA 382, Eff. 10/12/04
47.	56	Pub trst	H	Wayne County treasurer paying claims without appropriate signature	2	
750.	237 a (1)	Pub saf	F	Weapon-free school zones – general felony violations	Vari-able	
750.	227 f	Pub saf	F	Wearing body armor during commission of certain crimes	4	As amended, 2005 PA 106, Eff. 9/14/05
750.	227 f	Pub saf	F	Wearing body armor during commission of violent crime	4	
290.	631 (3)	Pub trst	G	Weights and measures	5	
290.	629 (1)	Person	G	Weights and measures – assaults enforcement officer	2	
400.	60 (2)	Property	H	Welfare – obtaining over $500 by failure to inform	4	
324.	40118 (11)	Pub ord	G	Wildlife conservation – buying/selling protected animals – subsequent offense	4	
35.	929	Pub trst	H	Willful falsification in application for veterans benefits	3	
750.	322	Person	C	Willful killing of unborn quick child	15	
324.	51512	Pub saf	D	Willfully setting forest fires	10	
750.	483 a (2) (b)	Person	D	Withholding evidence/preventing/retaliating for reporting crime punishable by more than 10 yrs	10	As amended, 2006 PA 40, Eff. 3/2/06

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Appendix D: Numerical List of Felony Offenses (in order by MCL #)

MCL List of Felony Offenses Through ~~May~~September 1, 2012

Unless otherwise noted, the date on which the statutory guidelines were made applicable to the felony offense listed was 1/1/1999.

Lightly shaded lines indicate that the statute governing the felony offense described on that line has been amended, deleted, or replaced.

	Felo-nies	by MCL #	Group	Class	Description* *NOTE: For ease of reference, offense descriptions in this table may not correspond precisely with the descriptions contained in the guidelines.	Stat Max	Date Offense Added to Guidelines*
MCL 777.11a							
	4.	421 (1)	Pub trst	G	Lobbyists – compensation contingent on outcome of action	3	
	4.	421 (2)	Pub trst	G	Lobbyists giving gifts	3	
	15.	324 (1) (d)	Pub trst	G	Purchase of public residential property by public servant	1	12/16/05
	18.	366 (1)	Property	E	False presentation to crime victim services commission to obtain more than $100	10	Deleted, 2001 PA 150 & 154, Eff. 1/1/02
	18.	366 (1) (c)	Property	E	False presentation to crime victim services commission to obtain $1,000 to $20,000 or with prior convictions	5	1/1/02
	18.	366 (1) (d)	Property	D	False presentation to crime victim services commission to obtain $20,000 or more or with prior convictions	10	1/1/02
	18.	1268 (9)	Pub trst	H	Purposefully submitting false business certification	Fine	Deleted, 2005 PA 265, Eff. 12/16/05
	21.	154	Pub trst	E	Public officer – embezzlement	5	
MCL 777.11b							
	28.	214	Pub trst	F	Unauthorized disclosure of information from LEIN – subsequent offense	4	1/1/02
	28.	214 (4) (b)	Pub trst	F	Unauthorized disclosure of information from LEIN – subsequent offense	4	10/1/00
	28.	214 (6) (b)	Pub trst	F	Unauthorized disclosure of information from LEIN – subsequent offense	4	Amended, 2011 PA 19, Eff. July 1, 2011
	28.	293 (1)	Pub ord	E	False information when applying for state ID	5	
	28.	293 (2)	Pub ord	D	False information when applying for state ID – second offense	7	
	28.	293 (3)	Pub ord	C	False information when applying for state ID – third or subsequent offense	15	
	28.	295 (1) (a)	Pub ord	H	Forging state ID card to commit felony	4	Replaced, 2004 PA 149, Eff. 9/1/04
	28.	295 (1) (a)	Pub ord	D	Counterfeiting or forging state ID card or using counterfeited or forged state ID card to commit felony punishable by imprisonment for 10 years or more	10	9/1/04
	28.	295 (1) (b)	Pub ord	E	Counterfeiting or forging state ID card or using counterfeited or forged state ID card to commit felony punishable by imprisonment for less than 10 years or a misdemeanor punishable by more than 6 months	5	9/1/04
	28.	295 (2)	Pub ord	E	Selling counterfeited or forged state ID card or possessing counterfeited or forged state ID card with intent to deliver to another person or possessing 2 or more counterfeited or forged state ID cards	5	9/1/04
	28.	295 (3)	Property	H	Using stolen state ID card to commit felony	Variable	Replaced, 2004 PA 149, Eff. 9/1/04
	28.	295 (5)	Property	H	Using stolen state ID card to commit felony	Variable	9/1/04
	28.	295 a (1)	Pub ord	H	False representation to obtain or misuse personal information	4	
	28.	295 a (2)	Pub ord	G	False representation to obtain or misuse personal information – second offense	7	
	28.	295 a (3)	Pub ord	C	False representation to obtain or misuse personal information – third or subsequent offense	15	
	28.	308	Pub saf	E	False certification or statement in application for enhanced driver license or enhanced official state personal identification card	5	3/13/08
	28.	422	Pub saf	G	Pistols – license application forgery	4	
	28.	422	Pub saf	F	Pistols – license application forgery	4	7/1/01
	28.	422 (16)	Pub saf	F	Forgery on pistol – license [sic] application	4	Amended, 2011 PA 19, Eff. July 1, 2011
	28.	422 a (4)	Pub saf	F	False statement on pistol sales record	4	7/1/01

	28.	422 a (5)	Pub saf	F	False statement on pistol sales record	4	Amended, 2011 PA 19, Eff. July 1, 2011
	28.	425 b (3)	Pub saf	F	False statement on concealed pistol permit application	4	7/1/01
	28.	425 j (2)	Pub saf	F	Unlawful granting or presenting of pistol training certificate	4	7/1/01
	28.	425 o (5) (c)	Pub saf	F	Carrying concealed pistol in prohibited place – third or subsequent offense	4	7/1/01
	28.	425 o (6~~5~~) (c)	Pub saf	F	Carrying concealed pistol or electro-muscular disruption device in prohibited place – third or subsequent offense	4	As amended, 2012 PA 124, Eff. 8/6/12~~7/1/01~~
	28.	435 (14) (c)	Pub saf	G	Firearm sale without trigger lock, gun case, or storage container – third or subsequent offense	2	7/1/01
	28.	454 (1)	Pub saf	G	Consumer fireworks certificate violation	2	12/14/11
	28.	468 (1) (c)	Pub saf	E	Michigan fireworks safety act violation causing serious impairment	5	12/14/11
	28.	468 (1) (d)	Pub saf	C	Michigan fireworks safety act violation causing death	15	12/14/11
	28.	516 (2)	Pub saf	F	False statement on concealed firearm certificate application	4	3/31/09
	28.	729	Pub ord	G	Sex offenders – failure to register	4	Substituted for by 28.729(1)(a)
	28.	729 (1) (a)	Pub ord	F	Failure to register as a sex offender, first offense	4	9/1/99
	28.	729 (1) (b)	Pub ord	D	Failure to register as a sex offender, second offense	7	9/1/99
	28.	729 (1) (c)	Pub ord	D	Failure to register as a sex offender, third or subsequent offense	10	9/1/99
	28.	729 (2)	Pub ord	F	Failure to update sex offender registration information	2	Amended, 2011 PA 19, Eff. July 1, 2011
	28.	729 (2) (c)	Pub ord	F	Failure to update sex offender registration information - third or subsequent offense	4	1/1/06
	28.	734 (2) (b)	Pub trst	G	Student safety zone violation involving work or loitering - subsequent offense	2	Amended, 2011 PA 19, Eff. July 1, 2011
	28.	735 (2) (b)	Pub trst	G	Student safety zone violation involving residency - subsequent offense	2	Amended, 2011 PA 19, Eff. July 1, 2011
	28.	754	Pub ord	F	False report of a child abduction	4	2/1/06
	28.	754(1)	Pub ord	F	False report of a child abduction	4	Amended, 2011 PA 19, Eff. July 1, 2011
MCL 777.11c							
	35.	929	Pub trst	H	Willful falsification in application for veterans benefits	3	
	35.	980	Pub trst	H	False statement in application for Korean veterans benefits	3	
	35.	1029	Pub trst	H	False statement in application for Vietnam veterans benefits	3	
	38.	412 a (1)	Pub trst	H	County employee providing answers to county civil service exam	1	
	38.	516	Pub trst	H	Fire and police civil service – appointment or employment contrary to act	2	
	45.	82	Pub trst	E	County purchasing agent – violations in awarding bids or contracts	5	
	47.	8	Pub trst	H	Payment of claim against county before audit	2	
	47.	56	Pub trst	H	Wayne County treasurer paying claims without appropriate signature	2	
	51.	364	Pub trst	H	Appointment or selection contrary to civil service commission rules	2	
	55.	301	Pub trst	E	Performing notarial acts while commission revoked	5	1/1/12
	55.	309 (1) (b)	Pub trst	F	Michigan notary public act violation involving conveyance of interest in real property	4	1/1/12
	110.	28	Pub trst	G	Fourth class cities – misappropriation of money or property	3	
	117.	25 (3)	Pub trst	E	Amendment to city electors – willfully affixing another's signature, false representation	15	
	125.	1447	Property	G	Michigan state housing development authority – false pretenses over $100	10	Deleted, 2001 PA 154, Eff. 1/1/02
	125.	1447 (1) (c)	Property	E	False pretenses under state housing development act involving $1,000 to $20,000 or with prior convictions	5	1/1/02
	125.	1447 (1) (d)	Property	D	False pretenses under state housing development act involving $20,000 or more or with prior convictions	10	1/1/02
MCL 777.11d							
	168.	731 (4)	Pub trst	G	Election law – filing certain false statements	2	
	168.	734	Pub trst	G	Election law – election board refusing to provide challenger conveniences	2	
	168.	756	Pub trst	E	Elector's false statement concerning inability to mark ballot	5	
	168.	757	Pub trst	E	Election inspector – unlawful conduct	5	
	168.	759 (8)	Pub trst	E	Forged signature on absentee ballot	5	
	168.	759 b	Pub trst	E	False statement in application for emergency absentee ballot	5	
	168.	761 (5)	Pub trst	E	Assisting an absentee voter in making a false statement	5	

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	168.	769 (4)	Pub trst	E	Voting both in person and by absentee ballot	5	
	168.	792 a (11)	Pub trst	E	Disclosing how ballot voted or election results early before polls are closed	5	
	168.	792 a (16)	Pub trst	E	Disclosing election result or how ballot voted	5	
	168.	808	Pub trst	E	Untrue statement by member of board of inspectors	4	
	168.	873	Pub trst	E	Misconduct of election employee in recount – county and local	5	
	168.	887	Pub trst	E	Misconduct of election employee in recount	5	
	168.	932 (a)	Pub trst	E	Bribing or intimidating voters	5	
	168.	932 (b)	Pub trst	E	Ballot tampering	5	
	168.	932 (c)	Pub trst	E	Destroying or falsifying election return or records	5	
	168.	932 (d)	Pub trst	E	Disclosing votes or obstructing voter	5	
	168.	932 (e)	Pub trst	E	Absentee ballot tampering	5	
	168.	932 (f)	Pub trst	E	Election law – possess absent voter ballot delivered to another person	5	
	168.	932 (g)	Pub trst	E	Suggesting how a disabled voter should vote	5	
	168.	932 (h)	Pub trst	E	Suggesting or influencing how an absentee voter should vote	5	
	168.	932 (i)	Pub trst	E	Organizing a meeting where absentee voter ballots are to be voted	5	
	168.	932 a	Pub trst	G	Election offenses	4	
	168.	932 c	Pub trst	E	Providing compensation to a person for registering individuals to vote	5	8/15/12
	168.	932 e	Pub trst	E	Person intentionally misrepresenting that he or she is an election official in a polling place	5	8/15/12
	168.	933	Pub trst	E	False swearing to register or vote	5	
	168.	936	Pub trst	E	Election law – perjury	5	
	168.	937	Pub trst	E	Election law – forgery	5	
MCL 777.11e							
	169.	254	Pub trst	H	Campaign finance – corporate contributions	3	
	169.	255	Pub trst	H	Campaign finance – corporate solicitation for certain funds	3	
	169.	266	Pub trst	H	Campaign finance – qualified campaign expenditures	3	
MCL 777.12a							
	205.	27 (1) (a)	Pub trst	G	Failure to file or false tax return or payment	5	
	205.	27 (1) (b)	Pub trst	G	Aiding and abetting tax evasion or filing false returns	5	
	205.	27 (1) (c)	Pub trst	G	Making/permitting false tax returns or payments	5	
	205.	27 (3)	Pub trst	G	False tax returns/perjury	15	
	205.	28	Pub trst	G	Compromising/unauthorized disclosure of tax information	5	
	205.	28 (1) (e)	Pub trst	G	State employee compromising taxes	5	
	205.	28 (1) (f)	Pub trst	G	Unauthorized disclosure of tax information	5	
	205.	428 (2)	Pub trst	G	Tobacco products tax act violations	5	
	205.	428 (3)	Pub trst	G	Illegal sale of cigarettes or other tobacco products with wholesale price of $250.00 or more	5	10/1/00
	205.	428 (6)	Pub trst	F	Illegal tobacco stamp or tobacco stamp device	10	10/1/00
	205.	428 (7)	Pub trst	G	Illegal vending machine license, disk, or marker	5	10/1/00
	207.	118 a	Pub ord	G	Gasoline tax – embezzlement over $100	10	Offense repealed, 2000 PA 403, Eff. 4/1/01
	207.	119	Pub trst	G	Gasoline or motor fuel tax violation	4	Offense repealed, 2000 PA 403, Eff. 4/1/01
	207.	127 c	Pub ord	G	Diesel fuel tax – embezzlement over $100	10	Offense repealed, 2000 PA 403, Eff. 4/1/01
	207.	754 (3)	Pub trst	G	State treasurer – municipality tax – divulging confidential information	5	
MCL 777.12b							
	252.	311	Property	H	Destroying a tree or shrub to make a sign more visible	2	10/1/00
MCL 777.12c							
	257.	233 a (7)	Pub ord	G	Odometer tampering	5	

	257.	254	Property	E	Possessing stolen vehicle title	10	
	257.	257 (1)	Property	G	Altering or forging vehicle documents – first offense	5	
	257.	257 (2)	Property	G	Altering or forging vehicle documents – second offense	7	
	257.	257 (3)	Property	E	Altering or forging vehicle documents – third or subsequent offense	15	
MCL 777.12d							
	257.	309 (6)*	Pub ord	F	Corrupting an examining officer *[See MCL 257.309(7)]	5	3/28/01
	257.	309 (7)*	Pub ord	F	Deviating from road test criteria *[See MCL 257.309(8)]	5	3/28/01
	257.	309 (8)*	Pub ord	F	Forging, counterfeiting, or altering road test certification *[See MCL 257.309(9)]	5	3/28/01
	257.	310 (7) (a)	Pub ord	D	Forging driver license with intent to commit crime punishable by 10 years or more	10	4/22/02
	257.	310 (7) (b)	Pub ord	E	Forging driver license with intent to commit crime punishable by 6 months or more but less than 10 years	5	4/22/02
	257.	310 (8)	Pub ord	E	Selling or possessing forged driver license with intent to deliver	5	4/22/02
	257.	310 (9)	Pub ord	E	Possession of 2 or more forged driver licenses	5	4/22/02
	257.	312 b (6)	Pub ord	F	Corrupting a person or agency conducting a motorcycle driving test	5	3/28/01
	257.	312 b (7)	Pub ord	F	Deviating from motorcycle road test criteria	5	3/28/01
	257.	312 b (8)	Pub ord	F	Forging, counterfeiting, or altering motorcycle road test certification	5	3/28/01
	257.	329 (1)	Property	G	Possession/sale of stolen or counterfeit insurance certificates	5	
	257.	329 (2)	Property	E	Possession/sale of stolen or counterfeit insurance certificates – second offense	7	
	257.	329 (3)	Property	E	Possession/sale of stolen or counterfeit insurance certificates – third or subsequent offense	15	
MCL 777.12e							
	257.	601 b (3)	Person	C	Moving violation causing death to construction worker	15	10/1/01
	257.	601 b (3)	Person	C	Moving violation causing death to another person in a work zone	15	As amended, 2008 PA 297, Eff. 10/8/08
	257.	601 b (3)	Person	C	Moving violation causing death to another person in a work zone or a school bus zone	15	As amended, 2011 PA 59, Eff. 7/1/11
	257.	601 c (2)	Person	C	Moving violation causing death to operator of implement of husbandry	15	10/1/01
	257.	602 a (2)	Pub saf	G	Fourth degree fleeing and eluding	2	Amended, 2011 PA 59, Eff. 7/1/11
	257.	602 a (3)	Pub saf	E	Third degree fleeing and eluding	5	Amended, 2011 PA 59, Eff. 7/1/11
	257.	602 a (4)	Person	D	Second degree fleeing and eluding	10	Amended, 2011 PA 59, Eff. 7/1/11
	257.	602 a (5)	Person	C	First degree fleeing and eluding	15	Amended, 2011 PA 59, Eff. 7/1/11
	257.	616 a (2) (b)	Pub saf	G	Using a signal preemption device	2	6/14/04
	257.	616 a (2) (c)	Pub saf	E	Using a signal preemption device causing a traffic accident	5	6/14/04
	257.	616 a (2) (d)	Person	D	Using a signal preemption device causing serious impairment of a body function	10	6/14/04
	257.	616 a (2) (e)	Person	C	Using a signal preemption device causing death	15	6/14/04
	257.	616 a (2) (f)	Pub ord	G	Selling or purchasing a signal preemption device	2	6/14/04
	257.	617	Person	E	Failure to stop at scene of a serious personal injury accident	5	Substituted for by 257.617(2)
	257.	617 (2)	Person	E	Failure to stop at scene of accident resulting in serious impairment or death	5	2/1/02
	257.	617 (3)	Person	C	Failure to stop at scene of accident resulting in death when at fault	15	2/1/02
MCL 777.12f							
	257.	625 (4)	Person	C	OUIL – causing death	15	Substituted for by 257.625(4)(a)
	257.	625 (4) (a)	Person	C	Operating a vehicle under the influence or while impaired causing death	15	3/28/01
	257.	625 (4) (a)	Person	C	Operating a vehicle while intoxicated or impaired causing death	15	9/30/03
	257.	625 (4) (b)	Person	B	OUIL – causing death to emergency personnel	20	3/28/01
	257.	625 (4) (b)	Person	B	Operating a vehicle under the influence or while impaired causing death to certain persons	20	10/1/01
	257.	625 (4) (b)	Person	B	Operating a vehicle while intoxicated or impaired causing death to certain persons	20	9/30/03
	257.	625 (5)	Person	E	OUIL – causing serious impairment of body function	5	
	257.	625 (5)	Person	E	Operating a vehicle under the influence or while impaired causing serious impairment	5	3/28/01
	257.	625 (5)	Person	E	Operating a vehicle while intoxicated or impaired causing serious impairment	5	9/30/03

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	257.	625 (7) (a) (*ii*)	Person	E	Operating under the influence/while impaired with a minor in the vehicle – subsequent offense	5	10/1/00
	257.	625 (7) (a) (*ii*)	Person	E	Operating a vehicle while intoxicated or impaired with a minor in the vehicle – subsequent offense	5	9/30/03
	257.	625 (7) (d)	Pub saf	E	OUIL – third offense	5	
	257.	625 (8) (c)	Pub saf	E	Operating a vehicle under the influence – third or subsequent offense	5	Eff. until 9/30/03, replaced by (9)(c)
	257.	625 (9) (b)	Person	E	Allowing a vehicle to be operated while under the influence or impaired causing death	5	Eff. until 9/30/03, replaced by (10)(b)
	257.	625 (9) (c)	Person	G	Allowing a vehicle to be operated while under the influence/impaired - serious impairment	2	Eff. until 9/30/03, replaced by (10)(c)
	257.	625 (9) (c)	Pub saf	E	Operating a vehicle while intoxicated or with the presence of a controlled substance – third or subsequent offense	5	9/30/03
	257.	625 (10) (b)	Person	E	Allowing a vehicle to be operated while intoxicated or impaired causing death	5	9/30/03
	257.	625 (10) (c)	Pub saf	E	Impaired driving – third or subsequent offense	5	Eff. until 9/30/03, replaced by (11)(c)
	257.	625 (10) (c)	Person	G	Allowing a vehicle to be operated while intoxicated or impaired causing serious impairment	2	9/30/03
	257.	625 (11) (c)	Pub saf	E	Operating a vehicle while impaired – third or subsequent offense	5	9/30/03
	257.	625 k (7)	Pub saf	D	Knowingly providing false information concerning an ignition interlock device	10	10/1/00
	257.	625 k (9)	Pub saf	D	Failure to report that an ignition interlock device does not meet legal requirements	10	10/1/00
	257.	625 k (9)	Pub saf	D	Failure to report illegal ignition interlock device	10	10/1/01
	257.	625 m (5)	Pub saf	E	Commercial drunk driving – third or subsequent offense	5	10/1/00
	257.	625 n (10)	Pub ord	G	Disposing of vehicle to avoid forfeiture	4	Misdemeanor, 1998 PA 349, Eff. 10/1/99
MCL 777.12g							
	257.	626 c	Person	G	Felonious driving	2	Repealed, 2008 PA 467, Eff. 10/31/10
	257.	626 (3)	Person	E	Reckless driving causing serious impairment	5	10/31/10
	257.	626 (4)	Person	C	Reckless driving causing death	15	10/31/10
	257.	653 a (3)	Person	G	Failure to use due care and caution causing injury to emergency personnel	2	3/28/01
	257.	653 a (4)	Person	C	Failure to use due care and caution causing death to emergency personnel	15	3/28/01
	257.	744 a	Pub saf	D	False statement in citation – perjury	15	
MCL 777.12h							
	257.	902	Pub saf	E	Motor vehicle code violations	5	
	257.	903 (1)	Property	E	Motor vehicle code – false certification – first offense	5	
	257.	903 (2)	Property	E	Motor vehicle code – false certification – second offense	7	
	257.	903 (3)	Property	D	Motor vehicle code – false certification – third or subsequent offense	15	
	257.	904 (4)	Person	C	Operating a vehicle without a license causing death	15	10/1/00
	257.	904 (5)	Person	E	Operating a vehicle without a license causing serious impairment	5	10/1/00
	257.	904 (7)	Person	G	Allowing a vehicle to be operated without a license causing serious impairment	2	10/1/00
	257.	904 (7)	Person	E	Allowing a vehicle to be operated without a license causing death	5	10/1/00
MCL 777.12j							
	257.	1353 (2)	Pub trst	H	Motor vehicle – fail to record material matter – subsequent offense	2	
	257.	1354 (2)	Pub trst	H	Motor vehicle – general violations – subsequent offense	2	
	257.	1355	Pub trst	H	Motor vehicle – fail to record transaction/falsify records	2	
MCL 777.12k							
	259.	80 f (3)	Pub saf	D	Possessing weapon in sterile area of commercial airport	10	3/31/03
	259.	83 (2) (b)	Pub saf	G	Aircraft – failure to comply with certification requirements – second violation	2	3/31/03
	259.	83 (2) (c)	Pub saf	F	Aircraft – failure to comply with certification requirements – third or subsequent violation	4	3/31/03
	259.	83 b (2) (a)	Pub saf	F	Conducting flight operations without certificate	4	3/31/03
	259.	83 b (2) (b)	Pub saf	E	Conducting flight operations without certificate – second violation	5	3/31/03
	259.	83 b (2) (c)	Pub saf	D	Conducting flight operations without certificate – third or subsequent violation	10	3/31/03
	259.	183	Property	E	Aircraft – unlawful taking or tampering	5	
	259.	185 (4)	Person	C	Operating or serving as crew of aircraft while under the influence causing death	15	10/1/00

	259.	185 (5)	Person	E	Operating or serving as crew of aircraft while under the influence causing serious impairment	5	3/28/01
	259.	185 (8)	Pub saf	G	Operating/serving as crew of aircraft while under the influence – third or subsequent offense	5	10/1/00
	259.	185 (8)	Pub saf	E	Operating or serving as crew of aircraft while under the influence – third or subsequent offense	5	3/28/01
MCL 777.12m							
	285.	82	Pub trst	H	Grain dealers act violations	5	Substituted for by 285.83
	285.	83	Pub trst	H	Grain dealers act violations	5	3/31/03
	285.	279	Pub trst	E	Falsely obtaining money – agricultural land	10	Deleted, 2001 PAs 133, 136 & 160
	285.	279 (2) (c)	Property	E	False pretenses under Michigan family farm development act involving $1,000 to $20,000 or with prior convictions	5	2/1/02
	285.	279 (2) (d)	Property	D	False pretenses under Michigan family farm development act involving $20,000 or more or with prior convictions	10	2/1/02
	286.	228 (6)	Pub ord	E	Insect pest and plant disease - intentional violation with intent to damage natural resources	5	9/1/05
	286.	260 (4)	Pub ord	E	Insect pest and plant disease - intentional violation with intent to damage natural resources	5	9/1/05
	286.	455 (2)	Pub saf	G	Agriculture – hazardous substance	5	
	286.	929 (4)	Pub trst	G	Organic products act violations	4	3/28/01
	287.	77 (1)	Pub saf	H	Agriculture – livestock condemnation	4	
	287.	323 (1)	Person	C	Dangerous animal causing death	15	
	287.	323 (2)	Person	G	Dangerous animal causing serious injury	4	
	287.	679	Pub ord	H	Dead animals	1	
	287.	679	Pub ord	H	Dead animals – third or subsequent violation	1	10/1/01
	287.	744 (1)	Pub ord	G	Animal industry act violations	5	
	287.	855	Pub saf	G	Agriculture – contaminating livestock/false statement/violation of quarantine	5	
	287.	967 (5)	Pub ord	G	Cervidae producer violations	4	10/1/00
	288.	223	Pub saf	G	Sale or labeling of oleomargarine violations	3	Repealed, 2001 PA 267, Eff. 2/8/02
	288.	257	Pub saf	G	Margarine violations	3	Repealed, 2001 PA 267, Eff. 2/8/02
	288.	284	Pub trst	H	Selling falsely branded cheese	2	Repealed, 2001 PA 267, Eff. 2/8/02
	289.	5107 (2)	Pub saf	F	Adulterated, misbranded, or falsely identified food	4	10/1/00
MCL 777.12n							
	290.	629 (1)	Person	G	Weights and measures – assaults enforcement officer	2	
	290.	631 (3)	Pub trst	G	Weights and measures	5	
	290.	650	Person	G	Motor fuels – assaulting/obstructing director or authorized representative	2	
	290.	650 b (3)	Pub trst	H	Motor fuels violations	2	
MCL 777.13b							
	324.	1608	Person	G	Resisting and obstructing conservation officer	2	
	324.	2157 (1) (c)	Property	E	Damage to state property involving $1,000 to $20,000 or with prior convictions	5	1/1/02
	324.	2157 (1) (d)	Property	D	Damage to state property involving $20,000 or more or with prior convictions	10	1/1/02
	324.	2157 (3)	Property	H	State owned property – damages of $1,000 or more	180 days	Deleted, 2001 PA 156, Eff. 1/1/02
MCL 777.13c							
	324.	3115 (2)	Pub saf	H	Waste discharge violations – second offense	2	
	324.	3115 (2)	Pub saf	H	Waste discharge violations	2	1/1/01; Reworded, 2004 PA 382, Eff. 10/12/04
	324.	3115(2)	Pub saf	H	Water pollution	2	As amended, 2004 PA 382, Eff. 10/12/04
	324.	3115 (4)	Pub saf	G	Waste discharge violations – substantial endangerment	5	1/1/01; Reworded, 2004 PA 382, Eff. 10/12/04
	324.	3115 (4)	Pub saf	G	Water pollution – substantial endangerment	5	As amended, 2004 PA 382, Eff. 10/12/04
	324.	5531 (4)	Pub saf	H	Knowingly releasing pollutants	2	Reworded, 2004 PA 382, Eff. 10/12/04
	324.	5531 (4)	Pub saf	H	Knowingly releasing air pollutants	2	As amended, 2004 PA 382, Eff. 10/12/04
	324.	5531 (5)	Pub saf	G	Knowingly releasing pollutants – causing death or serious bodily injury	6	Reworded, 2004 PA 382, Eff. 10/12/04
	324.	5531 (5)	Pub saf	G	Knowingly releasing air pollutants – causing death or serious bodily injury	6	As amended, 2004 PA 382, Eff. 10/12/04

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	324.	5531 (6)	Pub saf	C	Knowingly releasing pollutants – resulting in death or serious bodily injury	15	Reworded, 2004 PA 382, Eff. 10/12/04
	324.	5531 (6)	Pub saf	C	Knowingly releasing air pollutants – intentionally causing death or serious bodily injury	15	As amended, 2004 PA 382, Eff. 10/12/04
	324.	8905 (2)	Pub saf	H	Infectious waste/pathological waste/sharps – littering violation	2	Reworded, 2004 PA 382, Eff. 10/12/04
	324.	8905 (2)	Pub saf	H	Littering – infectious waste/pathological waste/sharps	2	As amended, 2004 PA 382, Eff. 10/12/04
	324.	8905 (3)	Pub saf	G	Infectious waste/pathological waste/sharps – littering violation – subsequent offense	5	Reworded, 2004 PA 382, Eff. 10/12/04
	324.	8905 (3)	Pub saf	G	Littering – infectious waste/pathological waste/sharps – subsequent offense	5	As amended, 2004 PA 382, Eff. 10/12/04
	324.	11151 (2)	Pub saf	H	Hazardous waste – subsequent offense	2	
	324.	11151 (3)	Pub saf	H	Hazardous waste – disregard for human life	2	
	324.	11151 (3)	Pub saf	G	Hazardous waste – extreme indifference for human life	5	
	324.	11549 (2)	Pub saf	G	Solid waste - importing from foreign country	2	3/13/06
	324.	11719 (2)	Pub saf	G	Septage – false statement or entry in a license application or other record	2	10/12/04
	324.	12116 (2)	Pub saf	H	Waste – false statement or entry in a license application	2	Reworded, 2004 PA 382, Eff. 10/12/04
	324.	12116 (2)	Pub saf	H	Liquid industrial waste – false statement in a license application	2	As amended, 2004 PA 382, Eff. 10/12/04
	324.	20139 (3)	Pub saf	H	Hazardous waste – knowingly releases or causes the release	2	Reworded, 2004 PA 382, Eff. 10/12/04
	324.	20139 (3)	Pub saf	H	Hazardous substance – knowingly releasing or causing release	2	As amended, 2004 PA 382, Eff. 10/12/04
	324.	21324 (1)	Pub saf	G	Underground storage tanks – false or misleading information	5	
	324.	21548 (1)	Pub trst	H	False statement, report, claim, bid, work invoice, or other request for payment	5	Amended, 2004 PA 390, Eff. 10/12/04
	324.	21548 (1)	Pub trst	H	Underground storage tanks – false request for payment	5	As amended, 2004 PA 390, Eff. 10/12/04
MCL 777.13d							
	324.	30316 (3)	Pub saf	H	NREPA violation – subsequent offense	2	
	324.	31525	Person	G	NREPA – imminent danger of death or serious injury – subsequent offense	2	
	324.	33939 (1)	Pub trst	H	NREPA violation for commercial purposes	2	
MCL 777.13e							
	324.	40118 (11)	Pub ord	G	Wildlife conservation – buying/selling protected animals – subsequent offense	4	
	324.	41309	Property	E	Possession or release of genetically engineered, nonnative, or prohibited fish	5	Eff. 3/30/04 to 9/1/05, 2005 PA 81
	324.	41309 (3) (b)	Property	G	Possession of prohibited species	2	9/1/05
	324.	41309 (4) (a)	Property	G	Possession of restricted or nonnative species - intent to damage resources	2	9/1/05
	324.	41309 (4) (b)	Property	F	Possession of prohibited or genetically engineered species - intent to damage resources	4	9/1/05
	324.	41309 (8)	Property	G	Introduction of prohibited or genetically engineered species - knowing identity of organ-ism	2	9/1/05
	324.	41309 (9) (a)	Property	G	Introduction of restricted or nonnative species - knowing introduction is unlawful	2	9/1/05
	324.	41309 (9) (b)	Property	F	Introduction of prohibited or genetically engineered species - knowing introduction is unlawful	4	9/1/05
	324.	41309 (10) (a)	Property	F	Introduction of restricted or nonnative species - intent to damage resources	3	9/1/05
	324.	41309 (10) (b)	Property	E	Introduction of prohibited or genetically engineered species - intent to damage resources	5	9/1/05
	324.	48738 (4)	Property	E	Possession, importation, or planting of genetically engineered fish	5	3/30/04
	324.	51120 (2)	Property	H	Removing forest products over $2,500	3	
	324.	51512	Pub saf	D	Willfully setting forest fires	10	
	324.	52908 (1) (c)	Property	E	Damage to plant involving $1,000 to $20,000 or with prior convictions	5	1/1/02
	324.	52908 (1) (d)	Property	D	Damage to plant involving $20,000 or more or with prior convictions	10	1/1/02
	324.	52908 (3)	Property	H	Illegally cutting, removing, or transporting tree or other plant involving $1,000 or more	180 days	Eff. 10/1/00 to 1/1/02, 2001 PA 156
MCL 777.13f							
	324.	61511	Pub trst	G	False affidavit under NREPA	5	
	324.	61521 (1)	Pub trst	G	Evading rule under NREPA	3	
MCL 777.13g							
	324.	76107 (3)	Pub ord	D	Removing or mutilating human body from Great Lakes bottomland	10	1/1/02
	324.	76107 (4)	Pub trst	G	Recovering abandoned property in Great Lakes without permit	2	Deleted, 2001 PA 156, Eff. 1/1/02

	324.	76107 (4) (c)	Property	E	Recovering abandoned property in Great Lakes having value of $1,000 to $20,000 or with prior convictions	5	1/1/02
	324.	76107 (4) (d)	Property	D	Recovering abandoned property in Great Lakes having value of $20,000 or more or with prior convictions	10	1/1/02
	324.	80130 d (1)	Pub ord	H	False representation to obtain personal information	4	
	324.	80130 d (2)	Pub ord	G	False representation to obtain personal information – second offense	7	
	324.	80130 d (3)	Pub ord	C	False representation to obtain personal information – third or subsequent offense	15	
	324.	80134 a (2)	Person	E	Failure to stop at scene of marine accident causing serious impairment or death	5	4/1/04
	324.	80134 a (3)	Person	C	Failure to stop at scene of marine accident causing death when at fault	15	4/1/04
	324.	80172	Person	G	Negligent crippling or homicide by vessel	2	
	324.	80173	Person	G	Felonious operation of a vessel	2	
	324.	80176 (4)	Person	C	Operating a vessel under the influence causing death	15	
	324.	80176 (5)	Person	E	Operating a vessel under the influence causing long-term incapacitating injury	5	
	324.	80176 (5)	Person	E	Operating a vessel under the influence causing serious impairment	5	7/1/01
	324.	80177 (1) (c)	Pub saf	E	Operating a vessel under the influence – third or subsequent offense	5	
	324.	80319 a (1)	Pub ord	H	False representation to obtain personal information	4	
	324.	80319 a (2)	Pub ord	G	False representation to obtain personal information – second offense	7	
	324.	80319 a (3)	Pub ord	C	False representation to obtain personal information – third or subsequent offense	15	
	324.	81120 (1)	Pub ord	H	False representation to obtain personal information	4	
	324.	81120 (2)	Pub ord	G	False representation to obtain personal information – second offense	7	
	324.	81120 (3)	Pub ord	C	False representation to obtain personal information – third or subsequent offense	15	
	324.	81134 (6)	Pub saf	E	Operating an ORV under the influence – third or subsequent offense	4	
	324.	81134 (6)	Pub saf	E	Operating an ORV under the influence – third or subsequent offense	5	7/1/01
	324.	81134 (7)	Person	C	Operating an ORV under the influence causing death	15	10/1/00
	324.	81134 (8)	Person	E	Operating an ORV under the influence causing serious impairment	5	10/1/00
	324.	82126 c (1)	Person	G	Operating a snowmobile carelessly or negligently causing death or serious impairment	2	10/1/00
	324.	82126 c (2)	Person	G	Operating a snowmobile without regard to safety causing serious impairment	2	10/1/00
	324.	82127 (4)	Person	C	Operating a snowmobile under the influence causing death	15	
	324.	82127 (5)	Person	E	Operating a snowmobile under the influence causing long-term incapacitating injury	5	
	324.	82127 (5)	Person	E	Operating a snowmobile under the influence causing serious impairment	5	7/1/01
	324.	82128 (1) (c)	Pub saf	E	Operating a snowmobile under the influence – third or subsequent offense	5	
	324.	82160 (1)	Pub ord	H	False representation to obtain personal information	4	
	324.	82160 (2)	Pub ord	G	False representation to obtain personal information – second offense	7	
	324.	82160 (3)	Pub ord	C	False representation to obtain personal information – third or subsequent offense	15	
MCL 777.13j							
	328.	232	Property	E	Conversion of funeral contracts	5	
	330.	1944	Pub saf	F	Criminal sexual psychopath leaving state without permission	4	1/9/07
MCL 777.13k							
	333.	2685	Person	E	Use of a live human embryo, fetus for nontherapeutic research [See MCL 333.2691]	5	
	333.	2688	Person	E	Research on dead embryo or fetus without mother's consent [See MCL 333.2691]	5	
	333.	2689	Person	E	Abortion to obtain embryo [See MCL 333.2691]	5	
	333.	2690	Person	E	Sale or delivery of fetus or embryo [See MCL 333.2691]	5	
	333.	2813 (3)	Pub trst	F	Unauthorized disclosure of social security number – subsequent offense	4	10/1/00
	333.	2835 (9)	Pub trst	G	Disclosing confidential information – abortion	3	
	333.	5210	Person	F	AIDS – sexual penetration with uninformed partner	4	
	333.	5661	Person	F	Fraud resulting in patient death	4	
MCL 777.13m							

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	333.	7340	CS	F	Sale, distribution, or delivery of product containing ephedrine or pseudoephedrine by mail, internet, or telephone	4	10/1/06
	333.	7341 (8)	CS	G	Delivery or manufacture of imitation controlled substance	2	
	333.	7401 (2) (a) (*i*)	CS	A	Delivery or manufacture of 650 or more grams by juvenile	LIFE	
	333.	7401 (2) (a) (*i*)	CS	A	Delivery/manufacture of 650 or more grams of certain schedule 1 or 2 controlled substances	LIFE	10/1/00
	333.	7401 (2) (a) (*i*)	CS	A	Delivery or manufacture of 1,000 or more grams of certain schedule 1 or 2 controlled substances	LIFE	3/1/03
	333.	7401 (2) (a) (*ii*)	CS	A	Delivery/manufacture of 225+ but less than 650 grams of certain schedule 1 or 2 controlled substances	30	10/1/00
	333.	7401 (2) (a) (*ii*)	CS	A	Delivery or manufacture of 450 or more but less than 1,000 grams of certain schedule 1 or 2 controlled substances	30	3/1/03
	333.	7401 (2) (a) (*iii*)	CS	B	Delivery/manufacture of 50+ but less than 225 grams of certain schedule 1 or 2 controlled substances	20	
	333.	7401 (2) (a) (*iii*)	CS	B	Delivery or manufacture of 50 or more but less than 450 grams of certain schedule 1 or 2 controlled substances	20	3/1/03
	333.	7401 (2) (a) (*iv*)	CS	D	Deliver or manufacture of less than 50 grams of certain schedule 1 or 2 controlled substances	20	
	333.	7401 (2) (b)	CS	E	Delivery or manufacture of schedule 1, 2, or 3 controlled substance except marijuana	7	
	333.	7401 (2) (b) (*i*)	CS	B	Delivery or manufacture of methamphetamine	20	1/1/01
	333.	7401 (2) (b) (*i*)	CS	B	Delivery or manufacture of methamphetamine or 3, 4-methylenedioxymethamphetamine	20	4/1/03
	333.	7401 (2) (b) (*ii*)	CS	E	Delivery or manufacture of certain schedule 1, 2, or 3 controlled substances	7	1/1/01
	333.	7401 (2) (c)	CS	F	Delivery or manufacture of schedule 4 controlled substance	4	
	333.	7401(2)(d)(*i*)	CS	C	Delivery or manufacture of >45 kilos of marijuana	15	
	333.	7401 (2) (d) (*i*)	CS	C	Delivery or manufacture of 45 or more kilograms of marijuana	15	10/1/00
	333.	7401(2)(d)(*ii*)	CS	D	Delivery or manufacture of 5-45 kilos of marijuana	7	
	333.	7401 (2) (d) (*ii*)	CS	D	Delivery or manufacture of 5 or more but less than 45 kilograms of marijuana	7	10/1/00
	333.	7401 (2) (d) (*iii*)	CS	F	Delivery or manufacture of less than 5 kilograms or 20 plants of marijuana	4	
	333.	7401 (2) (e)	CS	G	Delivery or manufacture of schedule 5 controlled substance	2	
	333.	7401 (2) (f)	CS	D	Delivery or manufacture of an official or counterfeit prescription form	20	Deleted, 2001 PA 236, Eff. 1/6/03
	333.	7401 (2) (f)	CS	D	Delivery or manufacture of prescription or counterfeit form other than official	7	1/6/03
	333.	7401 (2) (f)	CS	D	Delivery or manufacture of prescription form or counterfeit prescription form	7	3/1/03
	333.	7401 (2) (g)	CS	D	Delivery or manufacture of prescription or counterfeit form (other than official)	7	Rewritten as.7401(2)(f), 2001 PA 236
	333.	7401 a	Person	B	Delivering a controlled substance with intent to commit criminal sexual conduct	20	10/1/00
	333.	7401 a	Person	B	Delivering a controlled substance or GBL with intent to commit criminal sexual conduct	20	1/1/01
	333.	7401 b (3) (a)	CS	E	Delivery or manufacture of GBL	7	1/1/01
	333.	7401 b (3) (b)	CS	G	Possession of GBL	2	1/1/01
	333.	7401 c (2) (a)	CS	D	Operating or maintaining controlled substance laboratory	10	1/1/01
	333.	7401 c (2) (b)	CS	B	Operating or maintaining controlled substance laboratory in presence of minor	20	1/1/01
	333.	7401 c (2) (c)	CS	B	Operating or maintaining controlled substance laboratory involving hazardous waste	20	1/1/01
	333.	7401 c (2) (d)	CS	B	Operating or maintaining controlled substance laboratory near certain places	20	1/1/01
	333.	7401 c (2) (e)	CS	A	Operating or maintaining controlled substance laboratory involving firearm or other harmful device	25	1/1/01
	333.	7401 c (2) (f)	CS	B	Operating or maintaining controlled substance laboratory involving methamphetamine	20	4/1/04
	333.	7402 (2) (a)	CS	D	Delivery or manufacture of an imitation controlled substance	10	
	333.	7402 (2) (a)	CS	D	Delivery or manufacture of certain imitation controlled substances	10	1/1/01
	333.	7402 (2) (a)	CS	D	Delivery or manufacture of certain counterfeit controlled substances	10	9/30/10
	333.	7402 (2) (b)	CS	E	Delivery or manufacture of schedule 1, 2, or 3 imitation controlled substance	5	
	333.	7402 (2) (b)	CS	E	Delivery or manufacture of schedule 1, 2, or 3 counterfeit controlled substance	5	9/30/10
	333.	7402 (2) (c)	CS	F	Delivery or manufacture of imitation schedule 4 controlled substance	4	
	333.	7402 (2) (c)	CS	F	Delivery or manufacture of counterfeit schedule 4 controlled substance	4	9/30/10
	333.	7402 (2) (d)	CS	G	Delivery or manufacture of imitation schedule 5 controlled substance	2	
	333.	7402 (2) (d)	CS	G	Delivery or manufacture of counterfeit schedule 5 controlled substance	2	9/30/10
	333.	7402 (2) (e)	CS	C	Delivery or manufacture of controlled substance analogue	15	

	333.	7403 (2) (a) (*i*)	CS	A	Possession of >649 grams by juvenile	LIFE	
	333.	7403 (2) (a) (*i*)	CS	A	Possession of 650 or more grams of certain schedule 1 or 2 controlled substances by juvenile	LIFE	10/1/00
	333.	7403 (2) (a) (*i*)	CS	A	Possession of 1,000 or more grams of certain schedule 1 or 2 controlled substances	LIFE	3/1/03
	333.	7403 (2) (a) (*ii*)	CS	A	Possession of 225+ but less than 650 grams of certain schedule 1 or 2 controlled substances	30	10/1/00
	333.	7403 (2) (a) (*ii*)	CS	A	Possession of 450 or more but less than 1,000 grams of certain schedule 1 or 2 controlled substances	30	3/1/03
	333.	7403 (2) (a) (*iii*)	CS	B	Possession of 50-224 grams	20	
	333.	7403 (2) (a) (*iii*)	CS	B	Possession of 50+ but less than 225 grams of certain schedule 1 or 2 controlled substances	20	10/1/00
	333.	7403 (2) (a) (*iii*)	CS	B	Possession of 50 or more but less than 450 grams of certain schedule 1 or 2 controlled substances	20	3/1/03
	333.	7403 (2) (a) (*iii*)	CS	B	Possession of 25-49 grams	20	
	333.	7403 (2) (a) (*iv*)	CS	G	Possession of 25 or more but less than 50 grams of certain schedule 1 or 2 controlled substances	4	10/1/00
	333.	7403 (2) (a) (*v*)	CS	G	Possession of less than 25 grams of certain schedule 1 or 2 controlled substances	4	
	333.	7403 (2) (b)	CS	G	Possession of certain schedule 1, 2, 3, or 4 controlled substances or analogue	2	
	333.	7403 (2) (b) (*i*)	CS	D	Possession of methamphetamine	10	1/1/01
	333.	7403 (2) (b) (*i*)	CS	D	Possession of methamphetamine or 3, 4-methylenedioxymethamphetamine	10	4/1/03
	333.	7403 (2) (b) (*ii*)	CS	G	Possession of certain schedule 1, 2, 3, or 4 controlled substances or controlled substance analogue	2	1/1/01
	333.	7403 (2) (e)	CS	H	Possession of official prescription form	1	Deleted, 2003 PA 311, Eff. 4/1/04
	333.	7403 a	CS	F	Fraudulently obtaining controlled substance or prescription for controlled substance	4	12/22/10
	333.	7405 (a)	CS	G	Controlled substance violations by licensee	2	
	333.	7405 (1) (a)	CS	G	Controlled substance violations by licensee	2	12/22/10
	333.	7405 (b)	CS	G	Manufacturing or distribution violations by licensee	2	
	333	7405 (1) (b)	CS	G	Manufacturing or distribution violations by licensee	2	12/22/10
	333.	7405 (c)	CS	G	Refusing lawful inspection	2	
	333.	7405 (1) (c)	CS	G	Refusing lawful inspection	2	12/22/10
	333.	7405 (d)	CS	G	Maintaining drug house	2	
	333.	7405 (1) (d)	CS	G	Maintaining drug house	2	12/22/10
	333.	7405 (1) (e)	CS	G	Unlawfully dispensing out-of-state prescription	2	12/22/10
	333.	7407 (1) (a)	CS	G	Controlled substance violations by licensee	4	
	333.	7407 (1) (b)	CS	G	Use of fictitious, revoked, or suspended license number	4	
	333.	7407 (1) (c)	CS	G	Obtaining controlled substance by fraud	4	
	333.	7407 (1) (d)	CS	G	False reports under controlled substance article	4	
	333.	7407 (1) (e)	CS	G	Possession of counterfeiting implements	4	
	333.	7407 (1) (f)	CS	F	Disclosing or obtaining prescription information	4	Offense deleted, 2001 PA 236, Eff. 1/6/03
	333.	7407 (1) (f)	CS	F	Possession of counterfeit prescription form	4	1/6/03
	333.	7407 (1) (g)*	CS	F	Possession of counterfeit prescription form *[See MCL 333.7407(1)(f)]	4	Rewritten as 7407(1)(f), 2001 PA 236
	333.	7407 (2)	CS	G	Refusing to furnish records under controlled substance article	4	
MCL 777.18							
	333.	7410	CS	SPEC	Controlled substance delivery or distribution to minors or students	Variable	
	333.	7410	CS	SPEC	Controlled substance offense on or near school property	Variable	10/1/00
	333.	7410	CS	SPEC	Controlled substance offense or offense involving GBL on or near school property	Variable	1/1/01
	333.	7410	CS	SPEC	Controlled substance offense or offense involving GBL on or near school property or library	Variable	As amended, 2006 PA 553, Eff. 3/30/07
MCL 777.13m							
	333.	7410 a	CS	G	Controlled substance offense in or near a park	2	10/1/00
	333.	7410 a	CS	G	Controlled substance offense or offense involving GBL in or near a park	2	1/1/01
MCL 777.18							
	333.	7413 (2)	Pub trst	SPEC	Subsequent controlled substance violations	Variable	

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	333.	7413 (3)	Pub trst	SPEC	Subsequent controlled substance violations	Variable	
	333.	7416 (1) (a)	CS	SPEC	Recruiting or inducing a minor to commit a controlled substance felony	Variable	
MCL 777.13n							
	333.	10116 (1)	Pub ord	E	Purchasing or selling body part of deceased individual for transplantation or therapy	5	3/17/2008
	333.	10117	Pub ord	E	Falsifying, concealing, or defacing document of anatomical gift for financial gain	5	3/17/2008
	333.	10204 (1)	Pub ord	F	Transferring a human organ for valuable consideration	4	
	333.	10204 (4)	Pub saf	F	Removal of a human organ by an unauthorized individual	4	9/1/99
	333.	10205	Pub saf	F	Removal of a human organ in an unapproved facility	4	9/1/99
	333.	13738 (2)	Pub saf	F	Waste disposal violations – second offense	5	
	333.	13738 (3)	Pub saf	F	Disposing of waste – indifference to human life	2	
	333.	13738 (3)	Pub saf	B	Disposing of waste – extreme indifference to human life	20	
	333.	16170 (3)	Pub trst	F	False representation – health professional recovery program	4	
	333.	16294	Pub saf	F	Health profession – unauthorized practice	4	
	333.	17764 (3)	Pub saf	G	Adulterate, misbrand, remove, or substitute a drug or device	2	10/12/04
	333.	17764 (4)	Pub saf	F	Adulterate, misbrand, remove, or substitute a drug or device causing personal injury	4	10/12/04
	333.	17764 (5)	Pub saf	E	Adulterate, misbrand, remove, or substitute a drug or device - serious impairment of a body function	5	10/12/04
	333.	17764 (6)	Pub saf	C	Adulterate, misbrand, remove, or substitute a drug or device causing death	15	10/12/04
	333.	17766 a (2)	CS	F	Possession of steroids – subsequent offense	4	Deleted, 2003 PA 309, Eff. 4/1/04
	333.	17766 a (3)	CS	E	Delivery or manufacture of steroids	7	Deleted, 2003 PA 309, Eff. 4/1/04
	333.	17766 a (4)	CS	G	Delivery of imitation steroids	7	Deleted, 2003 PA 309, Eff. 4/1/04
	333.	17766 c (2)	CS	G	Possession of more than 10 grams ephedrine	2	Eff. 1/1/99 to 4/1/04, 2003 PA 309
	333.	17766 c (2)	CS	G	Possession of more than 12 grams ephedrine or pseudoephedrine	2	4/1/04
	333.	17766 c (2) (b)	CS	G	Possession of more than 12 grams ephedrine or pseudoephedrine	2	As amended, 2011 PA 87, Eff. 7/15/11
	333.	20142 (5)	Pub trst	F	False statement – application licensure health facility	4	
	333.	20153	Pub saf	D	Reuse of single-use medical device	10	3/26/10
	333.	21792	Pub trst	G	Nursing homes – referral fees/bribing officials/accepting bribes	4	
MCL 777.13p							
	338.	823	Pub trst	F	Private detective license act violation	4	10/1/02
	338.	1053	Pub trst	F	Private security business and security alarm act violation	4	3/28/01
	338.	3434 a (2)	Pub trst	F	Unauthorized disclosure of a social security number – subsequent offense	4	10/1/00
	338.	3471 (1) (b)	Pub trst	G	Michigan immigration clerical assistant act violation - subsequent offense	2	3/30/05
	338.	3621 (1) (b)	Pub trst	G	Michigan immigration clerical assistant act violation - subsequent offense	2	Substituted for by MCL 338.3471(1)(b)
	339.	601 (6) (b)	Pub trst	G	Unauthorized practice of residential building, residential maintenance, or alteration contracting – second or subsequent offense	2	4/1/11
	339.	601 (6) (c)	Pub trst	F	Unauthorized practice of residential building, residential maintenance, or alteration contracting causing serious injury or death	4	4/1/11
	339.	601 (7) (c)	Pub trst	F	Unauthorized operation of a school teaching an occupation causing serious injury/death	4	12/23/08
	339.	601 (7) (c)	Pub trst	F	Unauthorized practice of or unauthorized operation of a school teaching, architecture prof engineering, or prof land surveyor causing serious injury/death	4	4/1/11
	339.	735	Pub trst	E	Unauthorized practice of public accounting	5	12/19/05
	380.	1230 d (3) (a)	Pub saf	G	Failure by school employee to report charge or conviction	2	9/29/05
	380.	1816	Pub trst	F	Improper use of bond proceeds	4	3/30/05
	388.	936	Pub trst	F	Knowingly making false statement – school district loans	4	
	388.	962	Pub trst	F	Knowingly making false statement – school district loans	4	Deleted, 2005 PA 125, Eff. 9/29/05
	388.	1237	Pub trst	F	Making false statement or concealing material info to obtain qualification of school bond issue/improper use of proceeds	4	Substituted for by MCL 388.1937
	388.	1937	Pub trst	F	Making false statement or concealing material info to obtain qualification of school bond issue/improper use of proceeds	4	9/29/05
MCL 777.14a							
	400.	60 (2)	Property	H	Welfare – obtaining over $500 by failure to inform	4	

	400.	293	Pub trst	E	Charitable organizations and solicitations act violations	5	3/30/11
	400.	603	Pub trst	G	Medicaid fraud – false statement in benefit/concealing information	4	
	400.	604	Pub trst	G	Medicaid fraud – kickback/referral fees	4	
	400.	605	Pub trst	G	Medicaid fraud – false statement regarding institutions	4	
	400.	606	Property	E	Medicaid fraud – conspiracy	10	
	400.	607	Pub trst	G	Medicaid fraud – false claim/medically unnecessary	4	
	400.	609	Property	D	Medicaid fraud – fourth or subsequent offense	10	
	400.	713 (13)	Pub saf	H	Adult foster care – unlicensed facility – first offense	2	
	400.	713 (13)	Pub saf	H	Adult foster care – unlicensed facility	2	7/1/01
	400.	713 (13)	Pub saf	F	Adult foster care – unlicensed facility – second or subsequent violation	5	
	400.	713 (13)	Pub saf	F	Adult foster care – unlicensed facility – subsequent violation	5	7/1/01
	400.	722 (4)	Pub saf	F	Adult foster care – maintaining operation after refusal of licensure	5	
MCL 777.14b							
	408.	1035 (5)	Pub saf	I	MIOSHA violation – first offense	1	
	408.	1035 (5)	Person	H	MIOSHA violation causing employee death	1	10/1/00
	408.	1035 (5)	Pub saf	G	MIOSHA violation – second offense	3	
	408.	1035 (5)	Person	G	MIOSHA violation causing employee death – subsequent offense	3	10/1/00
	408.	1035 a (5)	Pub saf	I	MIOSHA – violations/writs of mandamus/assaults – first offense	1	
	408.	1035 a (5)	Person	H	MIOSHA violation causing employee death	1	10/1/00
	408.	1035 a (5)	Pub saf	G	MIOSHA – violations/writs of mandamus/assaults – second offense	3	
	408.	1035 a (5)	Person	G	MIOSHA violation causing employee death – subsequent offense	3	10/1/00
	409.	122 (2)	Pub ord	G	Employment of children during certain hours – second offense	2	
	409.	122 (2)	Person	G	Employment of children during certain hours – second offense	2	10/1/00
	409.	122(2)	Person	E	Employment of children during certain hours – third offense	10	
	409.	122 (2)	Person	E	Employment of children during certain hours – third or subsequent offense	10	10/1/00
	409.	122 (3)	Person	D	Employment of children in child sexually abusive activity	20	
MCL 777.14c							
	421.	54 (a) (ii) (B)	Property	H	Unemployment comp fraud – failure to comply with act/rule $25,000-$100,000	2	
	421.	54 (a) (ii) (C)	Property	G	Unemployment comp fraud – failure to comply with act/rule over $100,000	5	
	421.	54 (a) (iv) (B)	Property	H	Unemployment comp fraud – willful violation of act/rule over $100,000	2	
	421.	54 (b) (ii) (B)	Property	H	Unemployment comp fraud – false statement or misrepresentation over $25,000	2	
	421.	54 (b) (ii) (C)	Property	H	Unemployment comp fraud – false statement or misrepresentation without actual loss	2	
	421.	54 (d)	Property	H	Unemployment comp fraud – disclose confidential information for financial gain	1	
	421.	54 a	Property	G	Unemployment comp fraud – false statement as condition of employment	10	
	421.	54 b (b) (i)	Property	H	Unemployment comp fraud – conspiracy with loss of $25,000 or less	2	
	421.	54 b (b) (ii)	Property	G	Unemployment comp fraud – conspiracy with loss over $25,000	5	
	421.	54 b (b) (iii)	Property	H	Unemployment comp fraud – conspiracy with no actual loss	2	
	421.	54 c (b) (ii)	Property	H	Unemployment comp fraud – embezzlement of $25,000 to under $100,000	2	
	421.	54 c (b) (iii)	Property	G	Unemployment comp fraud – embezzlement of $100,000 or more	5	
	421.	54 c (b) (iv)	Property	H	Unemployment comp fraud – embezzlement with no actual loss	2	
	426.	106	Property	E	Marking of logs and timber – forging	5	Deleted, 2000 PA 279, Eff. 10/1/00
MCL 777.14d							
	431.	257	Pub trst	G	Racing, boxing and exhibition racing	2	
	431.	307 (8)	Pub trst	G	Horse racing – testifying falsely to commissioner while under oath	4	
	431.	330 (4)	Pub trst	G	Horse racing – administering a drug that could affect racing condition	5	

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	431.	332	Pub trst	G	Horse racing – influencing or attempting to influence result of race	5	
	432.	30	Property	G	Lottery – forgery of tickets	5	
	432.	218	Pub ord	D	Casino gaming offenses	10	
MCL 777.14f							
	436.	1701 (2)	Person	D	Selling alcohol to a minor and causing death	10	
	436.	1909 (3)	Pub ord	H	Liquor violation	1	
	436.	1909 (4) (a)	Pub ord	F	Unauthorized sale, delivery, or importation of spirits – 80,000 ml or more	4	4/1/11
	436.	1919	Pub ord	H	Fraudulent documents, labels, or stamps	1	
MCL 777.14g							
	438.	41	Property	E	Criminal usury	5	
	440.	9307 (4)	Property	G	Farming – illegal sale of secured products	3	Replaced by 9320(8), 2000 PA 348, Eff. 7/1/01
	440.	9320 (8)	Property	G	Farming – illegal sale of secured products	3	7/1/01
	440.	9501	Pub trst	E	Filing a false or fraudulent financing statement with the secretary of state	5	1/1/05
	440.	9501a	Pub trst	E	Filing false affidavit of fraudulent financing statement	5	12/29/08
	442.	219	Pub trst	E	Sales – false statement	5	Reworded, 2008 PA 382, Eff. 12/29/08
	442.	219	Pub trst	E	False statement in application for license to conduct certain sales	5	As amended, 2008 PA 382, Eff. 12/29/08
	443.	50	Pub trst	E	Issuing warehouse receipt for goods not received	5	
	443.	52	Pub trst	E	Issuing duplicate warehouse receipt not so marked	5	
	444.	13	Pub trst	H	Warehousemen and warehouse receipts	2	
	444.	107	Pub trst	E	Warehouse certificates – willfully alter or destroy	5	
MCL 777.14h							
	445.	65	Pub ord	E	Identity theft	5	3/1/05
	445.	65	Pub ord	D	Identity theft – second offense	10	4/1/11
	445.	65	Pub ord	C	Identity theft – third or subsequent offense	15	4/1/11
	445.	67	Pub ord	E	Obtain/possess/sell/transfer personal identifying info/falsify police report - intent to commit identity theft	5	3/1/05; reworded, 2010 PA 317, Eff. 4/1/11
	445.	67	Pub ord	E	Solicit/obtain/possess/sell/transfer personal identifying info/falsify police report - intent to commit identity theft	5	As amended, 2010 PA 317, Eff. 4/1/11
	445.	67	Pub ord	D	Obtain/possess/sell/transfer personal identifying info of another/falsify police report - intent to commit identity theft – second offense	10	4/1/11
	445.	67	Pub ord	C	Obtain/possess/sell/transfer personal identifying info/falsify police report - intent to commit identity theft – third or subsequent offense	15	4/1/11
	445.	408 (2)	Pub ord	F	Buying or selling stolen scrap metal	3	3/30/07
	445.	408 (2)	Pub ord	E	Buying or selling stolen scrap metal	5	As amended, 2008 PA 386, Eff. 12/29/08
	445.	408 (3)	Pub ord	E	Buying/selling stolen scrap metal from utility pole, telecom corp/govt/utility property or jobsite	5	3/30/07
	445.	408 (3)	Pub ord	E	Buying/selling stolen scrap metal – second or subsequent offense	5	As amended, 2008 PA 386, Eff. 12/29/08
	445.	408 (3)	Pub ord	E	Buying/selling stolen scrap metal – subsequent offense	5	As amended, 2010 PA 317, Eff. 4/1/11
	445.	433 (2)	Pub ord	E	Knowingly buying or selling stolen nonferrous metal articles	5	As amended, 2008 PA 386, Eff. 12/29/08
	445.	487 (2)	Pub ord	H	Precious metal and gem dealer failure to record material matter – subsequent offense	2	
	445.	488 (2)	Pub ord	H	Precious metal and gem dealer violations – subsequent offense	2	
	445.	489	Pub ord	H	Precious metal and gem dealer violations	2	Reworded, 2010 PA 317, Eff. 4/1/11
	445.	489	Pub ord	H	Precious metal and gem dealer failing to record transaction or falsifying transaction record, or making improper purchase	2	As amended, 2010 PA 317, Eff. 4/1/11
	445.	490	Pub ord	H	Precious metal and gem dealer failure to obtain a certificate of registration	2	
	445.	574a (2) (d)	Pub ord	H	Improper return of 10,000 or more nonrefundable containers	5	12/29/08
	445.	574a (3) (d)	Pub ord	H	Improper acceptance or delivery of 10,000 or more nonrefundable containers by dealer	5	12/29/08
	445.	574a (4) (d)	Pub ord	H	Improper acceptance or delivery of 10,000 or more nonrefundable containers by distributor	5	12/29/08
	445.	667	Pub ord	G	Changing, altering, or modifying reverse vending machine or data for reverse vending machine	2	12/29/08
	445.	779	Pub ord	H	Antitrust violation	2	
	445.	1505	Pub trst	G	Franchise investment law – fraudulent filing/offers	7	Reworded, 2010 PA 317, Eff. 4/1/11

	445.	1505	Pub trst	G	Fraudulent filing, offer, or sale of franchise	7	As amended, 2010 PA 317, Eff. 4/1/11
	445.	1508	Pub trst	G	Franchise investment law – sale without proper disclosure	7	Reworded, 2010 PA 317, Eff. 4/1/11
	445.	1508	Pub trst	G	Sale of franchise without proper disclosure	7	As amended, 2010 PA 317, Eff. 4/1/11
	445.	1513	Pub trst	G	Franchise investment law – illegal offers/sales	7	Reworded, 2010 PA 317, Eff. 4/1/11
	445.	1513	Pub trst	G	Illegal offer or sale of franchise	7	As amended, 2010 PA 317, Eff. 4/1/11
	445.	1520	Pub trst	G	Franchise investment law – keeping records	7	Reworded, 2010 PA 317, Eff. 4/1/11
	445.	1520	Pub trst	G	Failure to keep or maintain record of sale of franchise	7	As amended, 2010 PA 317, Eff. 4/1/11
	445.	1521	Pub trst	G	Franchise investment law – false representation	7	Reworded, 2010 PA 317, Eff. 4/1/11
	445.	1521	Pub trst	G	False representation of departmental finding, recommendation, or approval of franchise document	7	As amended, 2010 PA 317, Eff. 4/1/11
	445.	1523	Pub trst	G	Franchise investment law – false statements of material fact	7	Reworded, 2010 PA 317, Eff. 4/1/11
	445.	1523	Pub trst	G	False statement of material fact to department of attorney general regarding franchise	7	As amended, 2010 PA 317, Eff. 4/1/11
	445.	1525	Pub trst	G	Franchise investment law – false advertising	7	Reworded, 2010 PA 317, Eff. 4/1/11
	445.	1525	Pub trst	G	False advertising of franchise	7	As amended, 2010 PA 317, Eff. 4/1/11
	445.	1528	Pub trst	D	Pyramid/chain promotions – offer or sell	7	Reworded, 2010 PA 317, Eff. 4/1/11
	445.	1528	Pub trst	D	Offer or sale of franchise through pyramid or chain promotion	7	As amended, 2010 PA 317, Eff. 4/1/11
	445.	1671	Pub trst	E	Mortgage brokers, lenders – knowingly giving a false statement	15	Reworded, 2010 PA 317, Eff. 4/1/11
	445.	1671	Pub trst	E	False statement in required report by mortgage broker or lender	15	As amended, 2010 PA 317, Eff. 4/1/11
	445.	1679	Pub trst	H	Mortgage brokers act – general violations	3	Deleted, 2008 PA 65, Eff. 4/3/08
	445.	2081	Pub ord	E	Purchasing or selling stolen plastic bulk merchandise containers	5	6/20/12
	445.	2507 (2)	Pub ord	F	Violation of unsolicited commercial e-mail protection act in furtherance of crime	4	9/30/03
MCL 777.14j							
	450.	775	Pub ord	H	Corporations – minority and woman owned businesses	2	
	450.	795	Pub ord	H	Corporations – handicapper business opportunity act	2	
	451.	319	Pub trst	G	Securities, real estate, and debt management – violation	2	
	451.	434	Pub trst	H	Debt management act – licensee violations	2	
	451.	501	Pub trst	E	Blue sky laws – fraudulent schemes/statements	10	Deleted, 2008 PA 552, Eff. 1/16/09
	451.	502	Pub trst	E	Blue sky laws – investment advisor/agent fraud	10	Deleted, 2008 PA 552, Eff. 1/16/09
	451.	503	Pub trst	E	Blue sky laws – make/sell false bullion/certificates	10	Deleted, 2008 PA 552, Eff. 1/16/09
	451.	601	Pub trst	E	Blue sky laws – unregistered broker/dealer/agent/advisor	10	Deleted, 2008 PA 552, Eff. 1/16/09
	451.	603 (h)	Pub trst	E	Blue sky laws – fail to notify administrator of sanctions	10	Deleted, 2008 PA 552, Eff. 1/16/09
	451.	604 (a) (1) (J)	Pub trst	E	Blue sky laws – various violations	10	Deleted, 2008 PA 552, Eff. 1/16/09
	451.	604 (a) (1) (K)	Pub trst	E	Blue sky laws – various violations	10	Deleted, 2008 PA 552, Eff. 1/16/09
	451.	604 (a) (1) (L)	Pub trst	E	Blue sky laws – various violations	10	Deleted, 2008 PA 552, Eff. 1/16/09
	451.	604 (a) (1) (M)	Pub trst	E	Blue sky laws – various violations	10	Deleted, 2008 PA 552, Eff. 1/16/09
	451.	604 (a) (1) (N)	Pub trst	E	Blue sky laws – various violations	10	Deleted, 2008 PA 552, Eff. 1/16/09
	451.	604 (a) (1) (O)	Pub trst	E	Blue sky laws – various violations	10	Deleted, 2008 PA 552, Eff. 1/16/09
	451.	604 (a) (1) (P)	Pub trst	E	Blue sky laws – various violations	10	Deleted, 2008 PA 552, Eff. 1/16/09
	451.	604 (a) (1) (Q)	Pub trst	E	Blue sky laws – various violations	10	Deleted, 2008 PA 552, Eff. 1/16/09
	451.	604 (a) (1) (R)	Pub trst	E	Blue sky laws – various violations	10	Deleted, 2008 PA 552, Eff. 1/16/09
	451.	604 (a) (1) (S)	Pub trst	E	Blue sky laws – various violations	10	Deleted, 2008 PA 552, Eff. 1/16/09
	451.	604 (a) (1) (V)	Pub trst	E	Blue sky laws – various violations	10	Deleted, 2008 PA 552, Eff. 1/16/09
	451.	604 (a) (1) (W)	Pub trst	E	Blue sky laws – various violations	10	Deleted, 2008 PA 552, Eff. 1/16/09
	451.	604 (a) (1) (X)	Pub trst	E	Blue sky laws – various violations	10	Deleted, 2008 PA 552, Eff. 1/16/09
	451.	604 (a) (1) (Y)	Pub trst	E	Blue sky laws – various violations	10	Deleted, 2008 PA 552, Eff. 1/16/09
	451.	604 (a) (1) (Z)	Pub trst	E	Blue sky laws – various violations	10	Deleted, 2008 PA 552, Eff. 1/16/09

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	451.	701	Pub trst	E	Blue sky laws – offer/sell unregistered securities	10	Deleted, 2008 PA 552, Eff. 1/16/09
	451.	802	Pub trst	E	Blue sky laws – unlawfully selling securities	10	Deleted, 2008 PA 552, Eff. 1/16/09
	451.	804	Pub trst	E	Blue sky laws – willful false statements	10	Deleted, 2008 PA 552, Eff. 1/16/09
	451.	805 (b)	Pub trst	E	Blue sky laws – false representation of administrative approval	10	Deleted, 2008 PA 552, Eff. 1/16/09
	451.	806 (b)	Pub trst	E	Blue sky laws – improper disclosure by cor and sec bur employee	10	Deleted, 2008 PA 552, Eff. 1/16/09
	451.	2508	Pub trst	E	Securities act violation	10	1/16/09
MCL 777.14m							
	462.	257 (1)	Person	A	Trains – endangering travel	LIFE	
	462.	353 (5)	Pub saf	F	Operating a locomotive under the influence – third or subsequent offense	4	
	462.	353 (5)	Pub saf	E	Operating a locomotive under the influence – third or subsequent offense	4	7/1/01
	462.	353 (5)	Pub saf	E	Operating a locomotive under the influence – third or subsequent offense	5	4/1/03
	462.	353 (6)	Person	C	Operating locomotive under the influence or while impaired causing death	15	4/1/03
	462.	353 (7)	Person	E	Operating locomotive under the influence or while impaired causing serious impairment	5	4/1/03
	472.	21	Pub saf	A	Causing derailment of streetcar/tram/trolley or endangering life of person working/travel-ing by streetcar/tram/trolley	LIFE	1/12/09
	472.	36	Pub saf	A	Street railways – obstruction of track	LIFE	
MCL 777.14p							
	482.	44	Property	H	Bills of lading – issuance for goods not received	5	
	482.	46	Property	H	Bills of lading – issuance of duplicate not so marked	5	
	482.	46	Property	H	Bills of lading – issuance of duplicate negotiable bill with intent to defraud	5	As amended, 2006 PA 251, Eff. 7/3/06
	482.	48	Property	H	Bills of lading – negotiation when goods not in carriers' possession	5	
	482.	49	Property	H	Bills of lading – inducing carrier to issue when goods have not been received	5	
	482.	50	Property	H	Bills of lading – issuance of non-negotiable bill not so marked	5	
	483.	226	Pub trst	E	Officer of a pipeline company – intent to defraud – stock	10	Deleted, 2006 PA 251, Eff. 7/3/06
	487.	1042 (1)	Pub trst	E	Money transmission - intentional false statement/misrepresentation/certification in record/document	5	7/3/06
	487.	1042 (2)	Pub trst	E	Criminal fraud in the conduct of money transmission services business	5	7/3/06
	487.	1042 (3)	Pub trst	E	Money transmission services act license violation	5	7/3/06
	487.	1505 (6)	Pub trst	E	BIDCO act – knowingly receiving money or property at an interest rate exceeding 25%	5	
	492.	137 (a)	Pub trst	H	Installment sales of motor vehicles	3	
	493.	56 a (13)	Pub trst	C	False statement in reports – secondary mortgage	15	
	493.	77 (2)	Pub trst	H	Regulatory loans	3	
	493.	77 (2)	Pub trst	H	Second mortgage loan act licensing violation	3	Deleted, 2008 PA 323, Eff. 12/18/08 Deleted, 2008
MCL 777.15a							
	500.	1325 (3)	Pub trst	E	Insurance code – knowingly misrepresenting false financial condition	5	
	500.	1371	Pub trst	H	Holding companies – violation	2	
	500.	1505 (2)	Pub trst	C	Insurance code – license and regulatory violations	15	
	500.	4511 (1)	Pub trst	F	Insurance code – fraudulent insurance act	4	
	500.	4511 (2)	Pub trst	D	Insurance fraud – agreement or conspiracy to commit	10	
	500.	5252 (4)	Property	G	Insurance – improper personal interest in transactions	5	
	500.	7034 (2)	Pub trst	E	Officer of a MEWA knowingly receive valuables for sale property or loan	10	
	500.	8197 (2)	Pub trst	C	Insurance – knowing or willful false statements in application for insurance	15	
	500.	8197 (3)	Property	E	Consolidation merger – compensation otherwise than expressed in contract	5	
MCL 777.15b							
	551.	6	Person	H	Marriage license – mental or venereal disease	5	Deleted, 2001 PA 10, Eff. 5/29/01
	551.	102 (2)	Pub trst	F	Unauthorized disclosure of social security number – subsequent offense	4	10/1/00
	554.	836	Property	E	Real and property – living care disclosure act	7	Reworded, 2010 PA 152, Eff. 8/23/10

	554.	836	Property	E	Living care disclosure act – violation	7	As amended, 2010 PA 152, Eff. 8/23/10
	565.	371	Property	G	Fraudulent conveyances – recording with intent to deceive	3	
	565.	827	Pub trst	E	Land sales act – false or fraudulent statement	10	
	570.	152	Property	G	Contractor – fraudulent use of building contract fund	3	
	570.	1110	Property	F	Contractor – false sworn statements over $100	4	Deleted, 2001 PA 152, Eff. 1/1/02
	570.	1110 (11) (c)	Property	E	Contractor – false sworn statement involving $1,000 to $20,000 or with prior convictions	5	1/1/02; as amended, 2010 PA 152, Eff. 8/23/10
	570.	1110 (c)	Property	E	Contractor – false sworn statement involving $1,000 to $20,000 or with prior convictions	5	1/1/02; renumbered, 2010 PA 152, Eff. 8/23/10
	570.	1110 (11) (d)	Property	D	Contractor – false sworn statement involving $20,000 or more or with prior convictions	10	1/1/02; as amended, 2010 PA 152, Eff. 8/23/10
	570.	1110 (d)	Property	D	Contractor – false sworn statement involving $20,000 or more or with prior convictions	10	1/1/02; renumbered, 2010 PA 152, Eff. 8/23/10
	570.	1207	Property	G	Construction liens – false information	4	Deleted, 2010 PA 152, Eff. 8/23/10
MCL 777.15d							
	600.	908 (8)	Pub trst	E	Immunity to witness – committing perjury	15	
	600.	2136	Pub trst	E	Library record, book, paper – false certification in court	15	
	600.	2907 a	Property	G	Recording documents affecting property without lawful cause	3	
	600.	2916	Pub saf	G	Revised judicature act – lethal gases for fumigation	4	
	600.	8713	Pub trst	G	Revised judicature act – false statement by authorized local officials	15	
	600.	8813	Pub trst	E	Law enforcement officer – knowingly making false statement in a citation	15	
MCL 777.15f							
	710.	54 (11)	Pub trst	F	Offer to give other consideration – adoption – subsequent violation	4	
	710.	55 (1)	Pub trst	F	Adoption – persons not authorized placing child – subsequent violation	4	
	710.	69	Person	F	Michigan adoption law – subsequent offense	4	
	711.	1 (8)	Pub trst	E	Intentional false statement in petition for name change	15	
	712A.	6 b (3)	Pub ord	G	Violation of court order – subsequent conviction	2	10/1/00
MCL 777.15g							
	722.	115 e (2) (a)	Pub saf	G	Failure to report arraignment for criminal charges - child care centers, day care centers, and employees	2	1/1/06
	722.	115 f (8) (a)	Pub saf	G	Failure to report arraignment for criminal charges - family day care and group day care homes	2	1/1/06
	722.	115 f (8) (a)	Pub saf	G	Failure to report arraignment on criminal charges - family child care / group child care homes	2	As amended, 2007 PA 220, Eff. 11/28/07
	722.	115 h (b)	Pub ord	F	False report initiating special investigation	Variable	6/1/08
	722.	115 i (2) (a)	Pub saf	G	Failure to report arraignment on criminal charges - foster family / foster family group homes	2	11/28/07
	722.	633 (5) (b)	Person	F	Intentional false report of child abuse constituting a felony	4	
	722.	633 (5) (b)	Person	F	Intentional false report of child abuse constituting a felony	Variable	As amended, 2005 PA 106, Eff. 9/14/05,
	722.	675	Pub ord	E	Distributing obscene matter to children	2	
	722.	857	Person	E	Surrogate parenting act – contracts involving minors, mentally retarded, etc.	5	
	722.	857	Person	E	Surrogate parenting contracts involving minors, mentally retarded, etc.	5	As amended, 2005 PA 106, Eff. 9/14/05,
	722.	859 (3)	Person	E	Surrogate parenting act – contracts for compensation	5	
	722.	859 (3)	Person	E	Surrogate parenting contracts for compensation	5	As amended, 2005 PA 106, Eff. 9/14/05,
MCL 777.16a							
	750.	11	Person	A	Taking a woman and compelling her to marry	LIFE	Deleted, 2010 PA 97, Eff. 6/25/10
	750.	12	Person	H	Taking a woman with intent to compel her to marry	10	Deleted, 2010 PA 97, Eff. 6/25/10
	750.	13	Person	D	Enticing female under 16 for immoral purposes	10	
	750.	14	Person	C	Abortion resulting in death of female	15	
	750.	14	Person	G	Abortion	4	
	750.	16 (1)	Person	G	Adulterate, misbrand, remove, or substitute a drug or medicine	2	10/12/04
	750.	16 (2)	Person	F	Adulterate, misbrand, remove, or substitute a drug or medicine causing personal injury	4	10/12/04
	750.	16 (3)	Person	E	Adulterate/misbrand/remove/substitute a drug/medicine - serious impairment of body function	5	10/12/04

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	750.	16 (4)	Person	C	Adulterate, misbrand, remove, or substitute a drug or medicine resulting in death	15	10/12/04
	750.	18 (3)	Person	G	Mix/color/stain/powder a drug/medicine with an ingredient/material affecting quality/ potency	2	10/12/04
	750.	18 (4)	Person	F	Mix/color/stain/powder a drug/medicine w/ ingredient/material resulting in personal injury	4	10/12/04
	750.	18 (5)	Person	E	Mix/color/stain/powder a drug/medicine resulting in serious impairment of body function	5	10/12/04
	750.	18 (6)	Person	C	Mix/color/stain/powder a drug/medicine w/ ingredient/material resulting in death	15	10/12/04
	750.	30	Pub ord	H	Adultery	4	
	750.	32	Pub ord	H	Cohabitation of divorced parties	4	
MCL 777.16b							
	750.	49 (2) (a)	Pub ord	F	Fighting animals or providing facilities for animal fights	4	
	750.	49 (2) (b)	Pub ord	F	Fighting animals or providing facilities for animal fights	4	
	750.	49 (2) (c)	Pub ord	F	Fighting animals or providing facilities for animal fights	4	
	750.	49 (2) (d)	Pub ord	F	Fighting animals or providing facilities for animal fights	4	
	750.	49 (2) (e)	Pub ord	F	Organizing or promoting animal fights	4	
	750.	49 (2) (f)	Pub ord	H	Attending animal fight	4	
	750.	49 (2) (g)	Pub ord	F	Breeding or selling fighting animals	4	
	750.	49 (2) (h)	Pub ord	F	Selling or possessing equipment for animal fights	4	
	750.	49 (8)	Person	A	Inciting fighting animal resulting in death	LIFE	
	750.	49 (9)	Person	F	Inciting fighting animal to attack	4	
	750.	49 (10)	Person	D	Fighting animal attacking without provocation and death resulting	15	
	750.	50 (4)	Pub ord	G	Animal neglect or cruelty – second offense	2	Replaced, 2007 PA 151, Eff. 4/1/08
	750.	50 (4) (c)	Pub ord	G	Animal neglect or cruelty involving 4 or more but fewer than 10 animals or with 1 prior	2	4/1/08
	750.	50 (4)	Pub ord	F	Animal neglect or cruelty – third or subsequent offense	4	Replaced, 2007 PA 151, Eff. 4/1/08
	750.	50 (4) (d)	Pub ord	F	Animal neglect or cruelty involving 10 or more animals or with 2 or more prior convic-tions	4	4/1/08
	750.	50 b (2)	Property	F	Killing or torturing animals	4	Replaced, 2008 PA 562, Eff. 1/16/09
	750.	50 b (3)	Property	F	Killing or torturing animals	4	As amended, 2008 PA 562, Eff. 1/16/09
	750.	50 c (5)	Pub ord	E	Killing or causing serious physical harm to law enforcement animal	5	
	750.	50 c (5)	Pub ord	E	Killing or causing serious physical harm to law enforcement animal or search and res-cue dog	5	As amended, 2006 PA 518, Eff. 12/29/06
	750.	50 c (7)	Pub saf	H	Harassing or causing harm to law enforcement animal while committing crime	2	
	750.	50 c (7)	Pub saf	H	Harassing/harming law enforcement animal or search and rescue dog while committing crime	2	As amended, 2006 PA 518, Eff. 12/29/06
	750.	68	Property	G	Changing brands with intent to steal	4	
MCL 777.16c							
	750.	72	Person	B	Arson of dwelling house	20	
	750.	73	Property	D	Arson of real property	10	
	750.	74	Person	F	Arson of personal property greater than $50	4	
	750.	74	Person	E	Arson of personal property having a value of $1,000 to $20,000 or with prior convictions	5	10/1/00
	750.	74 (1) (d)	Person	D	Arson of personal property of $20,000 or more or with prior convictions	10	10/1/00
	750.	75	Property	D	Arson of insured property	10	
	750.	77	Person	F	Preparing to burn personal property greater than $50	4	
	750.	77 (1) (c)	Person	E	Preparing to burn personal property having value of $1,000 to $20,000 or w/ prior con-victions	5	10/1/00
	750.	77 (1) (d)	Person	D	Preparing to burn personal property of $20,000 or more or with prior convictions	10	10/1/00
	750.	78	Pub saf	F	Arson of woods and prairies	4	
	750.	79	Pub saf	F	Violating township rules concerning clearing of land and burning	4	
	750.	80	Property	D	Arson of mines	LIFE	
MCL 777.16d							
	750.	81 (4)	Person	G	Domestic assault – third offense	2	

	750.	81 (4)	Person	G	Domestic assault with prior convictions	2	10/1/00
	750.	81 a (3)	Person	G	Aggravated domestic assault – second offense	2	
	750.	81 a (3)	Person	G	Aggravated domestic assault with prior convictions	2	10/1/00
	750.	81 c (2)	Person	G	Assault and battery of an FIA employee	2	9/1/01; no longer listed in MCL 777.16d
	750.	81 c (3)	Person	E	Assault and battery of an FIA employee causing serious impairment	5	9/1/01; no longer listed in MCL 777.16d
	750.	81 d (1)	Person	G	Assaulting, resisting, or obstructing certain persons	2	7/15/02
	750.	81 d (2)	Person	F	Assaulting, resisting, or obstructing certain persons causing injury	4	7/15/02
	750.	81 d (3)	Person	C	Assaulting, resisting, or obstructing certain persons causing serious impairment	15	7/15/02
	750.	81 d (4)	Person	B	Assaulting, resisting, or obstructing certain persons causing death	20	7/15/02
	750	81e(2)	Person	G	Assault on utility worker causing bodily injury requiring medical attention	2	7/21/10
	750	81e(3)	Person	E	Assault on utility worker causing serious impairment of a body function	5	7/21/10
	750.	82 (1)	Person	F	Felonious assault	4	
	750.	82 (2)	Person	F	Felonious assault – weapon-free school zone	4	
	750.	83	Person	A	Assault with intent to murder	LIFE	
	750.	84	Person	D	Assault with intent to do great bodily harm less than murder	10	
	750.	85	Person	A	Torture	LIFE	3/1/06
	750.	86	Person	D	Assault with intent to maim	10	
	750.	87	Person	D	Assault with intent to commit a felony	10	
	750.	88	Person	C	Assault with intent to commit unarmed robbery	15	
	750.	89	Person	A	Assault with intent to commit armed robbery	LIFE	
	750.	90	Person	D	Sexual intercourse under pretext of medical treatment	10	
	750.	90 a	Person	A	Assault against a pregnant individual causing miscarriage/stillbirth with intent or reck-lessness	LIFE	10/1/00
	750.	90 a	Person	A	Assault against a pregnant person causing miscarriage/stillbirth/death to embryo/fetus w/ intent or recklessness	LIFE	6/1/01
	750.	90 b (a)	Person	C	Assault against a pregnant individual resulting in miscarriage or stillbirth	15	10/1/00
	750.	90 b (a)	Person	C	Assault against a pregnant individual resulting in miscarriage/stillbirth/death to embryo or fetus	15	6/1/01
	750.	90 b (b)	Person	D	Assault against a pregnant individual resulting in great bodily harm to embryo or fetus	10	10/1/00
	750.	90 c (a)	Person	C	Gross negligence against a pregnant individual resulting in miscarriage or stillbirth	15	10/1/00
	750.	90 c (a)	Person	C	Gross negligence against a pregnant individual resulting in miscarriage/stillbirth/death to embryo or fetus	15	6/1/01
	750.	90 c (b)	Person	E	Gross negligence against a pregnant individual resulting in great bodily harm to embryo or fetus	5	10/1/00
	750.	90 d (a)	Person	C	OUIL causing miscarriage or stillbirth	15	10/1/00
	750.	90 d (a)	Person	C	Operating under the influence/impaired causing miscarriage/stillbirth/death to embryo or fetus	15	6/1/01
	750.	90 d (b)	Person	E	Operating under the influence/impaired causing serious or aggravated injury to embryo/ fetus	5	10/1/00
	750.	90 e	Person	G	Careless or reckless driving causing miscarriage or stillbirth	2	10/1/00
	750.	90 e	Person	G	Careless or reckless driving causing miscarriage, stillbirth, or death to embryo or fetus	2	6/1/01
	750.	90 g (3)	Person	A	Performance of procedure on live infant with intent to cause death	LIFE	3/10/00
	750.	90 h	Person	G	Performing or assisting in performance of partial-birth abortion	2	1/1/12
	750.	91	Person	A	Attempted murder	LIFE	
MCL 777.16e							
	750.	93	Property	G	Removing or destroying bonds in state treasury	10	
	750.	94	Property	G	Issuing bank notes without complying with requirements	10	
	750.	95	Property	G	Fraudulent bank notes	10	
	750.	96	Property	G	Fraudulent disposal of bank property	4	
	750.	97	Property	H	Statements derogatory to financial condition of bank	4	
	750.	98	Pub ord	G	Private banking	4	
	750.	99	Pub trst	G	Certifying checks without sufficient funds	4	

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	750.	100	Pub trst	E	Banks – conducting business when insolvent	5	
	750.	101	Pub trst	E	Violating financial institutions act	5	
	750.	104	Property	F	Fitting boat with intent to destroy	4	
	750.	105	Property	G	Making false cargo invoice for boat	4	
	750.	106	Property	G	Boats – making or procuring false protest	4	
MCL 777.16f							
	750.	110	Property	D	Breaking and entering with intent to commit felony or larceny	10	
	750.	110 a (2)	Person	B	Home invasion – first degree	20	10/1/00
	750.	110 a (3)	Person	C	Home invasion – second degree	15	10/1/00
	750.	110 a (4)	Person	B	Home invasion – first degree	20	
	750.	110 a (4)	Person	E	Home invasion – third degree	5	10/1/00
	750.	110 a (5)	Person	C	Home invasion – second degree	15	
	750.	111	Property	E	Entering without breaking with intent to commit felony or larceny	5	
	750.	112	Person	A	Burglary with explosives	LIFE	
	750.	116	Property	E	Possession of burglar's tools	10	
	750.	117	Pub trst	F	Bribing a public officer	4	
	750.	118	Pub trst	D	Public officer accepting bribe	10	
	750.	119	Pub trst	F	Bribing a juror or other person	4	Substituted for by 750.119(1)(a)
	750.	119 (1) (a)	Pub trst	F	Bribing a juror or other person	4	3/28/01
	750.	119 (1) (b)	Pub trst	D	Bribing a juror or other person in case punishable by more than 10 years	10	3/28/01
	750.	120	Pub trst	F	Juror or other person accepting a bribe	4	
	750.	120 a (2) (a)	Pub ord	F	Juror intimidation	4	3/28/01
	750.	120 a (2) (b)	Pub ord	D	Juror intimidation in case punishable by more than 10 years	10	3/28/01
	750.	120 a (2) (c)	Person	C	Juror intimidation by committing crime or threatening to kill or injure	15	3/28/01
	750.	120 a (4)	Person	D	Retaliating against juror	10	3/28/01
	750.	121	Pub trst	F	Bribing a public officer to influence contract	4	
	750.	122 (7) (a)	Pub ord	F	Bribing or intimidating witness	4	3/28/01
	750.	122 (7) (b)	Pub ord	D	Bribing or intimidating witness in case punishable by more than 10 years	10	3/28/01
	750.	122 (7) (c)	Person	C	Intimidating witness by committing crime or threatening to kill or injure	15	3/28/01
	750.	122 (8)	Person	D	Retaliating against witness	10	3/28/01
	750.	124	Pub trst	G	Bribing an athlete	4	
	750.	128	Pub ord	H	Bucket shop violation	2	
	750.	131 (3) (a) (iv)	Property	H	NSF checks – $50 or less – fourth offense	13 mos.	
	750.	131 (3) (b) (ii)	Property	H	NSF checks – $50 to $200 – third offense	13 mos.	
	750.	131 (3) (b) (ii)	Property	G	NSF checks – $100 to $500 – third or subsequent offense	2	10/1/00
	750.	131 (3) (c)	Property	H	NSF checks – over $200	13 mos.	
	750.	131 (3) (c)	Property	G	NSF checks – $500 or more	2	10/1/00
	750.	131 a (1)	Property	H	No account checks	2	
	750.	131 a (2)	Property	H	NSF checks – 3 or more within 10 days	2	
MCL 777.16g							
	750.	135	Person	D	Exposing children with intent to injure or abandon	10	
	750.	135 a (2) (c)	Person	D	Leaving child unattended in vehicle resulting in serious physical harm	10	4/1/09
	750.	135a (2) (d)	Person	B	Leaving child unattended in vehicle resulting in death	15	4/1/09
	750.	136 b (2)	Person	C	Child abuse – first degree	15	
	750.	136 b (2)	Person	B	Child abuse – first degree	15	10/1/00

	750.	136 b (2)	Person	A~~B~~	First degree c~~C~~hild abuse~~ – first degree~~	~~15~~LIFE	~~10/1/00~~As amended, 2012 PA 195, Eff. 7/1/12
	750.	136 b (4)	Person	F	Child abuse – second degree	4	
	750.	136 b (4) (a)	Person	C	Second degree child abuse – first offense	10	7/1/12
	750.	136 b (4) (b)	Person	B	Second degree child abuse – second or subsequent offense	20	7/1/12
	750.	136 b (5)	Person	G	Child abuse – third degree	2	Renumbered, 2008 PA 521, Eff. 4/1/09
	750.	136 b (6)	Person	G	Third degree c~~C~~hild abuse~~ – third degree~~	2	As amended, 2012 PA 195, Eff. 7/1/12
	750.	136 c	Person	B	Buying or selling an individual	20	10/1/00
	750.	136 d (1) (a)	Person	A	First degree child abuse in presence of another child	LIFE	7/1/12
	750.	136 d (1) (b)	Person	D	Second degree child abuse in presence of another child – first offense	10	7/1/12
	750.	136 d (1) (c)	Person	B	Second degree child abuse in presence of another child – second or subsequent offense	20	7/1/12
	750.	136 d (1) (d)	Person	G	Third degree child abuse in presence of another child	2	7/1/12
	750.	145 a	Person	F	Soliciting child to commit an immoral act	4	6/1/02
	750.	145 b	Person	F	Accosting children for immoral purposes – subsequent offense	4	
	750.	145 b	Person	D	Accosting children for immoral purposes with prior conviction	10	6/1/02
	750.	145 c (2)	Person	B	Producing c~~C~~hild sexually abusive activity or material~~s – active involvement~~	20	As amended, 2012 PA 195, Eff. 7/1/12
	750.	145 c (3)	Person	D	Distributing, promoting, or financing the distribution of c~~C~~hild sexually abusive activity or material~~s – distributing, promoting or financing~~	7	As amended, 2012 PA 195, Eff. 7/1/12
	750.	145 c (4)	Person	F	Possessing c~~C~~hild sexually abusive~~ activities or~~ material~~s – possession~~	4	~~6/1/02~~As amended, 2012 PA 195, Eff. 7/1/12
	750.	145 d (2)	Person	G	Using internet or computer for certain crimes	2	8/1/99
	750.	145 d (2) (b)	Variable	G	Using internet/computer for crime punishable by max term at least 1 yr but less than 2 yrs	2	10/1/00
	750.	145 d (2) (c)	Variable	F	Using internet/computer for crime punishable by max term at least 2 yrs but less than 4 yrs	4	10/1/00
	750.	145 d (2) (d)	Variable	D	Using internet/computer for crime punishable by max term at least 4 yrs but less than 10 yrs	10	10/1/00
	750.	145 d (2) (e)	Variable	C	Using internet/computer for crime punishable by max term at least 10 yrs but less than 15 yrs	15	10/1/00
	750.	145 d (2) (f)	Variable	B	Using internet/computer to commit crime punishable by max term of at least 15 yrs or for life	20	10/1/00
	750.	145 d (3)	Person	E	Using internet or computer for certain crimes or second or subsequent offense	5	8/1/99
	750.	145 n (1)	Person	C	First degree v~~V~~ulnerable adult abuse~~ – first degree~~	15	As amended, 2012 PA 195, Eff. 7/1/12
	750.	145 n (2)	Person	F	Second degree v~~V~~ulnerable adult abuse~~ – second degree~~	4	As amended, 2012 PA 195, Eff. 7/1/12
	750.	145 n (3)	Person	G	Third degree v~~V~~ulnerable adult abuse~~ – third degree~~	2	As amended, 2012 PA 195, Eff. 7/1/12
	750.	145 o	Person	E	Death of vulnerable adult caused by unlicensed caretaker	5	
	750.	145 p (1)	Person	G	~~Vulnerable adult – c~~Commingling funds of, obstructing investigation regarding, or filing false information regarding, vulnerable adult	2	As amended, 2012 PA 195, Eff. 7/1/12
	750.	145 p (2)	Person	G	Retaliation or discrimination by caregiver against vulnerable adult	2	
	750.	145 p (5)	Person	E	Caregiver or licensee violation against v~~V~~ulnerable adult~~ – caregiver violations~~ – subsequent offense	5	As amended, 2012 PA 195, Eff. 7/1/12
	750.	147 b	Person	G	Ethnic intimidation	2	
MCL 777.16h							
	750.	149	Pub saf	F	Concealing an offense punishable by life	4	
MCL 777.18							
	750.	157 a (a)	Pub saf	SPEC	Conspiracy	Variable	
MCL 777.16h							
	750.	157 a (b)	Pub ord	H	Conspiracy – gambling	5	
	750.	157 a (d)	Pub ord	G	Conspiracy to commit legal act in illegal manner	5	
	750.	157 b (2)	Person	A	Solicitation of murder	LIFE	
	750.	157 b (3) (a)	Pub ord	E	Solicitation of felony punishable by life or 5 or more years	5	
	750.	157 b (3) (b)	Pub ord	G	Solicitation of felony punishable by less than 5 years	2	
MCL 777.18							
	750.	157 c	Person	SPEC	Inducing minor to commit a felony	Variable	
MCL 777.16h							

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	750.	157 n (1)	Property	H	Financial transaction device – stealing, retaining, or using without consent	4	
	750.	157 n (2)	Property	H	Possessing fraudulent or altered financial transaction device	4	
	750.	157 p	Property	H	Possessing financial transaction device without permission and with intent to use or sell	4	
	750.	157 q	Property	H	Delivery or sale of fraudulent financial transaction device	4	
	750.	157 r	Property	H	Financial transaction device – forgery, alteration, or counterfeiting	4	
	750.	157 s	Property	H	Financial transaction device – use of revoked or canceled financial device over $100	1	
	750.	157 s (1) (b) (ii)	Property	H	Using revoked/canceled financial transaction device involving $100 to $500 w/ priors	2	10/1/00
	750.	157 s (1) (c)	Property	H	Use of revoked or canceled financial transaction device involving $500 or more	2	10/1/00
	750.	157 t	Property	H	Furnishing goods or services to person committing violation with financial transaction device	4	
	750.	157 u	Property	H	Overcharging person using financial transaction device	4	
	750.	157 v	Property	H	False statement of identity to obtain financial transaction device	4	
	750.	157 w	Property	H	Fraudulently withdrawing or transferring more than $500 with financial transaction device	4	
	750.	157 w (1) (c)	Property	E	Fraudulently withdrawing or transferring $1,000 to $20,000 with financial transaction device	5	10/1/00
	750.	157 w (1) (d)	Property	D	Fraudulently withdrawing or transferring $20,000 or more with financial transaction device	10	10/1/00
MCL 777.16i							
	750.	158	Pub ord	E	Sodomy	15	
	750.	159 j	Pub saf	B	Racketeering	20	
	750.	160	Pub ord	D	Disinterring or mutilating dead human bodies	10	
	750.	160	Pub ord	D	Disinterring or mutilating dead human body	10	4/1/04
	750.	160 a	Pub ord	H	Photographing dead human bodies	2	
	750.	160 a	Pub ord	H	Photographing dead human body	2	4/1/04
	750.	160 c	Pub ord	D	Improper disposal of dead human body after more than 180 days	10	4/1/04
	750.	161	Pub ord	G	Desertion, abandonment, or nonsupport	3	As amended, 2012 PA 6, Eff. 2/14/12
	750.	164	Pub ord	F	Desertion to escape prosecution	4	
	750.	165	Pub ord	F	Failing to pay support and leaving state	4	
	750.	165	Pub ord	F	Failing to pay support	4	As amended, 2000 PA 279, eff. 10/1/00
	750.	168 (2) (a)	Pub ord	G	Disorderly conduct at a funeral memorial service, viewing, procession, or burial	2	As amended, 2012 PA 6, Eff. 2/14/12
	750.	168 (2) (b)	Pub ord	F	Disorderly conduct at a funeral memorial service, viewing, procession, or burial - subsequent offense	4	As amended, 2012 PA 6, Eff. 2/14/12
	750.	171	Person	E	Dueling	10	Deleted, 2010 PA 95, eff. 6/22/10
	750.	174	Property	D	Embezzlement by agent over $100	10	
	750.	174 (4)	Property	E	Embezzlement by agent of $1,000 to $20,000 [or] with prior convictions	5	10/1/00
	750.	174 (4)	Property	E	Embezzlement by agent of ~~$200 to $1,000 from nonprofit/charitable organization, or~~ $1,000 to $20,000, or with prior convictions, or of $200 to $1,000 from nonprofit corpora-	5	As amended, ~~2006 PA 574, Eff. 3/30/07~~2012 PA 168,
	750.	174 (5)	Property	D	Embezzlement by agent of $20,000 or more or $1,000 to $20,000 with prior convictions	10	10/1/00
	750.	174 (5)	Property	D	Embezzlement by agent of ~~$1,000 to $20,000 from nonprofit/charitable organization, or~~ $20,000 to $50,000, or ~~$1,000 to $20,000~~ with prior convictions, or of $1,000 to $20,000	10	As amended, ~~2006 PA 574, Eff. 3/30/07~~2012 PA 168,
	750.	174 (6)	Property	C	Embezzlement by agent of $50,000 to $100,000	15	As amended, 2012 PA 6, Eff. 2/14/12
	750.	174 (7)	Property	B	Embezzlement by agent of $100,000 or more	20	3/30/07
	750.	174 a (4)	Property	E	Embezzlement from vulnerable adult of $1,000 to $20,000 or with prior convictions	5	As amended, 2012 PA 6, Eff. 2/14/12
	750.	174 a (5)	Property	D	Embezzlement from vulnerable adult of $20,000 or more or with prior convictions	10	As amended, 2012 PA 6, Eff. 2/14/12
	750.	174 a (5)	Property	D	Embezzlement from vulnerable adult of $20,000 ~~or more~~to $50,000 or with prior convictions	10	As amended, ~~2012 PA 6, Eff. 2/14/12~~2012 PA 168,
	750.	174 a (6)	Property	C	Embezzlement from vulnerable adult of $50,000 to $100,000 or with prior convictions	15	6/19/12
	750.	174 a (7)	Property	B	Embezzlement from vulnerable adult of $100,000 or more or with prior convictions	20	6/19/12
	750.	175	Pub trst	D	Embezzlement by public ~~official~~officer of more than $50	10	As amended, ~~2012 PA 6, Eff. 2/14/12~~2012 PA 168,
	750.	176	Pub trst	E	Embezzlement by administrator, executor, or guardian	10	As amended, 2012 PA 6, Eff. 2/14/12
	750.	177	Property	H	Embezzlement by chattel mortgagor over $100	2	
	750.	177 (2)	Property	D	Embezzlement by chattel mortgagor of $20,000 or more or with prior convictions	10	As amended, 2012 PA 6, Eff. 2/14/12

	750.	177 (3)	Property	E	Embezzlement by chattel mortgagor of $1,000 to $20,000 or with prior convictions	5	10/1/00
	750.	178	Property	G	Embezzlement of mortgaged or leased property – over $100	2	
	750.	178 (2)	Property	D	Embezzling ~~of~~ mortgaged or leased property of $20,000 ~~or more~~ or with prior convictions	10	As amended, ~~2012 PA 6, Eff. 2/14/12~~2012 PA 168,
	750.	178 (3)	Property	E	Embezzling mortgaged or leased property of $1,000 to $20,000 or with prior convictions	5	As amended, 2012 PA 6, Eff. 2/14/12
	750.	179	Property	G	Embezzlement of railroad tickets	4	Deleted, 2002 PA 278, Eff. 5/9/02
	750.	180	Property	D	Embezzlement by financial institution	20	As amended, 2012 PA 6, Eff. 2/14/12
	750.	181	Property	E	Embezzlement of jointly held property over $100	10	
	750.	181 (4)	Property	E	Embezzling jointly held property with value of $1,000 to $20,000 or with prior convictions	5	10/1/00
	750.	181 (5)	Property	D	Embezzling jointly held property with value of $20,000 or more or with prior convictions	10	As amended, 2012 PA 6, Eff. 2/14/12
	750.	182	Property	G	Embezzlement by warehouses	4	
	750.	182 a	Pub trst	H	Falsifying school records	2	
MCL 777.16j							
	750.	183	Pub saf	E	Aiding escaping prisoner	7	
	750.	186 a (1)	Pub saf	F	Escape from a juvenile facility	4	
MCL 777.18							
	750.	188	Pub ord	SPEC	Voluntarily suffering prisoner to escape	Variable	
MCL 777.16j							
	750.	189	Pub saf	H	Officer negligently allowing prisoner to escape or refusing to receive prisoner	2	
	750.	190	Pub saf	G	Officer receiving a reward to assist or permit escape	2	
	750.	193	Pub saf	E	Escape from prison	5	
	750.	195 (1)	Pub saf	H	Escape from a misdemeanor jail sentence	2	
	750.	195 (2)	Pub saf	F	Escape from a felony jail sentence	4	
	750.	197 (1)	Pub saf	H	Escape while awaiting trial for misdemeanor	2	
	750.	197 (2)	Pub saf	F	Escape while awaiting trial for felony	4	
	750.	197 c	Pub saf	F	Escape from jail through violence	4	Eff. until 12/29/06, 2006 PA 536
	750.	197 c	Pub saf	E	Escape from jail through violence	5	As amended, 2006 PA 536, Eff. 12/29/06
	750.	199 (3)	Pub saf	F	Harboring a person for whom felony warrant has been issued	4	6/30/06
	750.	199 a	Pub ord	F	Absconding on or forfeiting bond	4	
MCL 777.16k							
	750.	200	Pub saf	F	Explosives – transport by common carriers	4	
	750.	200	Pub saf	E	Transporting an explosive by common carrier	5	10/1/00
	750.	200 i (2) (a)	Pub saf	C	Manufacturing or using a harmful device	15	10/1/00
	750.	200 i (2) (b)	Property	B	Harmful device causing property damage	20	10/1/00
	750.	200 i (2) (c)	Person	A	Harmful device causing personal injury	25	10/1/00
	750.	200 i (2) (d)	Person	A	Harmful device causing serious impairment	LIFE	10/1/00
	750.	200 j (2) (a)	Person	E	Irritant or irritant device	5	10/23/01
	750.	200 j (2) (b)	Property	F	Irritant or irritant device causing property damage	4	10/1/00
	750.	200 j (2) (b)	Property	E	Irritant or irritant device causing property damage	7	10/23/01
	750.	200 j (2) (c)	Person	D	Irritant or irritant device causing personal injury	10	10/1/00
	750.	200 j (2) (d)	Person	A	Irritant or irritant device causing serious impairment	25	10/1/00
	750.	200 j (2) (e)	Person	A	Irritant or irritant device causing death	LIFE	10/1/00
	750.	200 l	Person	E	Falsely exposing person to harmful substance or device	5	10/23/01
	750.	201	Pub saf	F	Transportation of concussion or friction type explosives	4	
	750.	201	Pub saf	E	Transporting certain types of explosives	5	10/1/00
	750.	202	Pub saf	F	Shipping an explosive with false markings or invoice	4	

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	750.	204	Pub saf	E	Sending explosives with intent to injure persons	5	
	750.	204 (2) (a)	Pub saf	C	Sending an explosive with malicious intent	15	10/1/00
	750.	204 (2) (b)	Property	B	Sending an explosive causing property damage	20	10/1/00
	750.	204 (2) (c)	Person	A	Sending an explosive causing physical injury	25	10/1/00
	750.	204 (2) (d)	Person	A	Sending an explosive causing serious impairment	LIFE	10/1/00
	750.	204 a	Pub saf	F	Sending or transporting imitation explosive device with malicious intent	4	
	750.	204 a	Pub saf	E	Sending or transporting an imitation explosive device with malicious intent	5	10/1/00
	750.	205	Pub saf	C	Placing explosives with the intent to destroy property	15	
	750.	205 a	Pub saf	F	Intimidation or harassment by device represented as an explosive	4	
	750.	206	Person	B	Placing explosives with damage to property resulting	25	
	750.	207 (2) (a)	Pub saf	C	Placing an explosive with malicious intent	15	10/1/00
	750.	207 (2) (b)	Property	B	Placing an explosive causing property damage	20	10/1/00
	750.	207 (2) (c)	Person	A	Placing an explosive causing physical injury	25	10/1/00
	750.	207 (2) (d)	Person	A	Placing an explosive causing serious impairment	LIFE	10/1/00
	750.	208	Pub saf	C	Aiding or abetting explosives placement with intent to destroy property	15	
	750.	209	Pub saf	C	Placing foul or offensive substance to injure	15	
	750.	209	Pub saf	F	Placing foul or offensive substance to alarm	4	
	750.	209 (1) (a)	Pub saf	C	Placing an offensive or injurious substance with intent to injure	15	10/1/00
	750.	209 (1) (b)	Property	B	Placing an offensive or injurious substance causing property damage	20	10/1/00
	750.	209 (1) (c)	Person	A	Placing an offensive or injurious substance causing physical injury	25	10/1/00
	750.	209 (1) (d)	Person	A	Placing an offensive or injurious substance causing serious impairment	LIFE	10/1/00
	750.	209 (2)	Pub saf	E	Placing an offensive or injurious substance with intent to alarm or annoy	5	10/1/00
	750.	209 a	Pub saf	D	Possessing an explosive device in public place	10	10/1/00
	750.	210	Pub saf	E	Possession of bombs with unlawful intent	5	
	750.	210 (2) (a)	Pub saf	C	Possessing or carrying an explosive or combustible substance with malicious intent	15	10/1/00
	750.	210 (2) (b)	Property	B	Possessing or carrying an explosive or combustible substance causing property damage	20	10/1/00
	750.	210 (2) (c)	Person	A	Possessing or carrying an explosive or combustible substance causing physical injury	25	10/1/00
	750.	210 (2) (d)	Person	A	Possessing or carrying an explosive or combustible substance causing serious impairment	LIFE	10/1/00
	750.	210 a	Pub saf	H	Sale of valerium	5	
	750.	211	Pub saf	E	Manufacture of explosives with unlawful intent	5	
	750.	211 a	Pub saf	F	Possessing or manufacturing device designed to explode upon impact or heating	4	
	750.	211 a (2) (a)	Pub saf	F	Manufacturing/possessing a Molotov cocktail/similar device designed to explode on impact	4	4/1/05
	750.	211 a (2) (a)	Pub saf	C	Manufacturing or possessing an explosive or incendiary device with malicious intent	15	Eff. 10/1/00 to 4/1/05
	750.	211 a (2) (b)	Pub saf	C	Manufacturing or possessing an explosive or incendiary device with malicious intent	15	Relettered, 2004 PA 524, Eff. 4/1/05
	750.	211 a (2) (b)	Property	B	Manufacturing or possessing an explosive or incendiary device causing property damage	20	Eff. 10/1/00 to 4/1/05
	750.	211 a (2) (c)	Property	B	Manufacturing or possessing an explosive or incendiary device causing property damage	20	Relettered, 2004 PA 524, Eff. 4/1/05
	750.	211 a (2) (c)	Person	A	Manufacturing or possessing an explosive or incendiary device causing physical injury	25	Eff. 10/1/00 to 4/1/05
	750.	211 a (2) (d)	Person	A	Manufacturing or possessing an explosive or incendiary device causing physical injury	25	Relettered, 2004 PA 524, Eff. 4/1/05
	750.	211 a (2) (d)	Person	A	Manufacturing or possessing an explosive or incendiary device causing serious impairment	LIFE	Eff. 10/1/00 to 4/1/05
	750.	211 a (2) (e)	Person	A	Manufacturing or possessing an explosive or incendiary device causing serious impairment	LIFE	Relettered, 2004 PA 524, Eff. 4/1/05
	750.	212 a	Person	B	Explosives violation involving a vulnerable target causing death or injury	20	10/1/00
MCL 777.16l							
	750.	213	Person	B	Threats to extort money	20	
	750.	215 (3)	Pub saf	F	Impersonating peace officer	4	9/1/03
	750.	217 b	Pub saf	G	Impersonating public utility employee	2	

	750.	217 c (3)	Pub ord	H	Impersonating public officer or employee	2	10/1/00
	750.	217 c (3)	Pub ord	H	Impersonating public officer or employee – subsequent conviction	2	As amended, 2011 PA 202, Eff. 1/1/12
	750.	217 c (4)	Pub ord	G	Impersonating public officer or employee – third or subsequent conviction	4	10/1/00
	750.	217 d	Pub saf	C	False representation or practice as health professional	15	10/1/00
	750.	217 e	Pub ord	G	Impersonating an FIA employee	2	9/1/01
	750.	217 e	Pub ord	G	Impersonating a DHS employee	2	As amended, 2005 PA 171, Eff. 1/1/06
	750.	217 f	Pub saf	G	Impersonating a firefighter or emergency medical service personnel	2	1/1/06
	750.	218	Property	E	False pretenses over $100	10	
	750.	218 (4)	Property	E	False pretenses involving $1,000 to $20,000 or with prior convictions	5	10/1/00
	750.	218 (4)	Property	E	False pretenses involving $1,000 or more but less than $20,000 or $200 or more but less than $1,000 with prior convictions	5	As amended, 2011 PA 202, Eff. 1/1/12
	750.	218 (5)	Property	D	False pretenses involving $20,000 or more or $1,000 to $20,000 with prior convictions	10	10/1/00
	750.	218 (5)	Property	C	False pretenses involving $20,000 or more but less than $50,000 or $1,000 or more but less than $20,000 with prior convictions	15	As amended, 2011 PA 202, Eff. 1/1/12
	750.	218 (6)	Property	C	False pretenses involving a value of $50,000 or more but less than $100,000 or $20,000 or more but less than $50,000 with prior convictions	15	1/1/12
	750.	218 (7)	Property	B	False pretenses involving a value of $100,000 or more or $50,000 or more but less than $100,000 with prior convictions	20	1/1/12
	750.	219 a (2) (c)	Property	E	Telecommunications fraud – 2 prior convictions or value between $1,000-$20,000	5	
	750.	219 a (2) (c)	Property	E	Telecommunications fraud - 1 or more prior convictions or value of $1,000 to $20,000	5	10/1/00
	750.	219 a (2) (d)	Property	D	Telecommunications fraud – 3 or more prior convictions or value over $20,000	10	
	750.	219 a (2) (d)	Property	D	Telecommunications fraud - 2 or more prior convictions or value of $20,000 or more	10	10/1/00
	750.	219 d (4) (a)	Pub ord	C	Residential mortgage fraud violation involving loan value of $100,000 or less	15	1/1/12
	750.	219 d (4) (b)	Pub ord	B	Residential mortgage fraud violation involving loan value of more than $100,000	20	1/1/12
	750.	219 e	Property	F	Receive/possess/prepare/submit or receive/possess proceeds from unauthorized credit app	4	3/10/00
	750.	219 e	Property	F	Receive/possess/prepare/submit unauthorized credit application or receive/possess proceeds	4	9/1/01
	750.	219 f	Property	F	Receive/possess w/ intent to forward/forwarding unauthorized credit application/pro-ceeds	4	3/10/00
	750.	219 f	Property	F	Receive/possess w/ intent to forward/forwarding unauthorized credit application or pro-ceeds	4	9/1/01
MCL 777.16m							
	750.	223 (2)	Pub saf	F	Sale of firearm to minor – subsequent offense	4	
	750.	223 (3)	Pub ord	D	Sale of firearm to person prohibited from possessing	10	
	750.	224	Pub saf	E	Manufacture or sale of silencer, bomb, blackjack, automatic weapon, gas spray, etc.	5	
	750.	224 a	Pub saf	F	Possession or sale of electrical current weapons	4	
	750.	224 a (4)	Pub saf	F	Possession or sale of electrical current weapons	4	Renumbered, 2012 PA 124, Eff. 8/6/12
	750.	224 a (6)	Pub saf	G	Improper use of electro-muscular disruption device	2	8/6/12
	750.	224 b	Pub saf	E	Possession of short barreled shotgun or rifle	5	
	750.	224 c	Pub saf	F	Armor piercing ammunition	4	
	750.	224 d (2)	Person	G	Using self-defense spray device	2	
	750.	224 e	Pub saf	F	Manufacture/sale/possession of devices to convert semiautomatic weapons	4	
	750.	224 f	Pub saf	E	Possession or sale of firearm by felon	5	
	750.	226	Pub saf	E	Carrying firearm or dangerous weapon with unlawful intent	5	
	750.	227	Pub saf	E	Carrying a concealed weapon	5	
	750.	227 a	Pub saf	F	Unlawful possession of pistol	4	
	750.	227 c	Pub saf	G	Possessing a loaded firearm in or upon a vehicle	2	
	750.	227 f	Pub saf	F	Wearing body armor during commission of violent crime	4	
	750.	227 f	Pub saf	F	Wearing body armor during commission of certain crimes	4	As amended, 2005 PA 106, Eff. 9/14/05
	750.	227 g (1)	Pub saf	F	Felon purchasing, owning, possessing, or using body armor	4	10/1/00
	750.	230	Pub saf	G	Altering ID mark on firearm	2	
	750.	232 a (3)	Pub saf	G	False statement in a pistol application	4	

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	750.	234 a	Pub saf	F	Discharging firearm from vehicle	4	
	750.	234 b	Pub saf	F	Discharging firearm in or at a building	4	
	750.	234 c	Pub saf	F	Discharging firearm at emergency/police vehicle	4	
	750.	236	Person	C	Setting spring gun – death resulting	15	
	750.	237 (3)	Person	E	Using firearm while under the influence or impaired causing serious impairment	5	2/1/02
	750.	237 (4)	Person	C	Using firearm while under the influence or impaired causing death	15	2/1/02
MCL 777.18							
	750.	237 a	Pub saf	SPEC	Felony committed in a weapon-free school zone	Variable	10/1/00
	750.	237 a (1)	Pub saf	F	Weapon-free school zones – general felony violations	Variable	
MCL 777.16n							
	750.	241 (1)	Pub saf	F	Obstructing firefighter	4	Deleted, 2002 PA 272, Eff. 7/15/02
	750.	241 (2)	Pub saf	F	Obstructing public service facility personnel in civil disturbance	4	7/15/02
	750.	241 (3)	Pub saf	F	Obstructing public service facility personnel in civil disturbance	4	Substituted for by 750.241(2)
	750.	248	Property	E	Forgery	14	
	750.	248 a	Property	F	Uttering and publishing financial transaction device	4	
	750.	248 b	Property	C	Forgery of real estate document	14	1/1/12
	750.	249	Property	E	Uttering and publishing forged records	14	
	750.	249 a	Property	H	Molds or dies to forge financial transaction device	4	
	750.	249 b	Property	C	Uttering and publishing forged real estate document	14	1/1/12
	750.	250	Property	E	Forgery of treasury notes	7	
	750.	251	Property	E	Forgery of bank bills	7	
	750.	252	Property	E	Possessing counterfeit notes	7	
	750.	253	Property	G	Uttering counterfeit notes	5	
	750.	254	Property	E	Possession of counterfeit notes or bills	5	
	750.	255	Property	E	Possession of counterfeiting tools	10	
	750.	260	Property	E	Counterfeiting coins or possession of 5 or more counterfeit coins	LIFE	
	750.	261	Property	E	Possession of 5 or fewer counterfeit coins	10	
	750.	262	Property	E	Manufacture or possession of tools to counterfeit coins	10	
	750.	263 (3)	Property	E	Delivery/use/display items w/ counterfeit mark – subsequent offense or $1000+ or 100+ items	5	
	750.	263 (4)	Property	E	Manufacturing items with counterfeit mark	5	
	750.	266	Property	G	Counterfeiting railroad tickets	4	Deleted, 2002 PA 321, Eff. 7/15/02
MCL 777.16o							
	750.	271	Property	E	Fraudulently issuing or selling domestic securities	10	
	750.	272	Property	G	Sale of fraudulent stock of foreign corporations	10	
	750.	273	Property	E	Obtaining signature to financial document with intent to defraud	10	
	750.	273	Property	E	Obtaining signature~~ to financial document~~ with intent to defraud	10	As amended, 2012 PA 169, Eff. 6/19/12
	750.	274	Property	E	~~Fraud – p~~Purchasing or~~/~~ collecting on fraudulent financial document	10	As amended, 2012 PA 169, Eff. 6/19/12
	750.	276	Property	G	~~Fraud –~~ Obtaining signature or promise of~~to~~ vendee of grain to sell at fictitious price	4	As amended, 2012 PA 169, Eff. 6/19/12
	750.	277	Pub trst	G	Sale or~~Promise to~~ transfer of note of vendee of grain to sell at a fictitious price~~– sale and transfer~~	4	As amended, 2012 PA 169, Eff. 6/19/12
	750.	278	Property	G	~~Fraud –~~ Issuing or delivering fraudulent warehouse receipt~~s~~	5	As amended, 2012 PA 169, Eff. 6/19/12
	750.	279	Property	G	Fraudulent~~–~~ disposal~~ition~~ of entrusted~~exhausted~~ property	4	As amended, 2012 PA 169, Eff. 6/19/12
	750.	280	Property	E	Gross frauds or~~/~~ cheat~~s~~ at common law	10	As amended, 2012 PA 169, Eff. 6/19/12
	750.	282	Pub ord	G	Fraudulently damaging or using property of~~Public~~ utility in amount~~– fraudulent use~~ over $500	4	As amended, 2012 PA 169, Eff. 6/19/12
	750.	282 a	Property	E	Illegally selling or transferring product or service of electric service provider or natural gas provider to another person	5	10/19/10
	750.	285	Property	E	Obtaining personal ID information without authorization	5	Eff. 4/1/01 to 3/1/05, 2004 PA 457

	750.	300	Pub ord	G	~~Animals – k~~Killing or~~/~~ injuring animal to defraud insurance company	2	As amended, 2012 PA 169, Eff. 6/19/12
	750.	300 a (1) (a)	Property	G	Food stamp fraud of~~–~~ $250 or less – second offense	5	As amended, 2012 PA 169, Eff. 6/19/12
	750.	300 a (1) (a)	Property	G	Food stamp fraud of~~–~~ $250 or less – third or subsequent offense	10	As amended, 2012 PA 169, Eff. 6/19/12
	750.	300 a (1) (b)	Property	E	Food stamp fraud of~~–~~ more than $250 to $1,000	5	As amended, 2012 PA 169, Eff. 6/19/12
	750.	300 a (1) (b)	Property	E	Food stamp fraud of~~–~~ more than $250 to $1,000 – subsequent offense	10	As amended, 2012 PA 169, Eff. 6/19/12
	750.	300 a (1) (c)	Property	E	Food stamp fraud of~~–~~ more than~~over~~ $1,000	10	As amended, 2012 PA 169, Eff. 6/19/12
	750.	303	Pub ord	H	Gambling	2	
	750.	303	Pub ord	H	Gaming	2	As amended, 2004 PA 457, Eff. 3/1/05
	750.	313	Pub ord	H	Gambling~~—~~ in stocks~~,/~~ bonds, or~~/~~ commodities	2	As amended, 2012 PA 169, Eff. 6/19/12
MCL 777.16p							
	750.	317	Person	M2	Second degree murder	LIFE	
	750.	317 a	Person	A	Delivery of controlled substance causing death	LIFE	1/1/06
	750.	321	Person	C	Manslaughter	15	
	750.	322	Person	C	Willful killing of unborn quick child	15	
	750.	323	Person	C	Abortion resulting in death	15	
	750.	324	Person	G	Negligent homicide	2	Will be repealed, 2008 PA 467, Eff. 10/31/10
	750.	327	Person	A	Death by explosives on vehicle or vessel	LIFE	
	750.	328	Person	A	Death by explosives in or near building	LIFE	
	750.	329	Person	C	Homicide – weapon aimed with intent but not malice	15	
	750.	329 a	Person	E	Assisting a suicide	5	10/1/00
MCL 777.16q							
	750.	332	Property	H	Entering horse in race under false name	4	
	750.	335 a	Person	A	Indecent exposure by sexually delinquent person	LIFE	Relettered, 2005 PA 302, Eff. 2/1/06
	750.	335 a (2) (b)	Person	G	Aggravated indecent exposure	2	2/1/06
	750.	335 a (2) (c)	Person	A	Indecent exposure by sexually delinquent person	LIFE	Formerly MCL 750.335a, Eff. 2/1/06
	750.	338	Pub ord	G	Gross indecency between males	5	
	750.	338	Pub ord	A	Gross indecency between males involving sexually delinquent person	LIFE	8/24/06
	750.	338 a	Pub ord	G	Gross indecency between females	5	
	750.	338 a	Pub ord	A	Gross indecency between females involving sexually delinquent person	LIFE	8/24/06
	750.	338 b	Pub ord	G	Gross indecency between males and females	5	
	750.	338 b	Pub ord	A	Gross indecency between males and females involving sexually delinquent person	LIFE	8/24/06
	750.	348	Pub saf	H	Inciting Indians to violate a treaty	4	Deleted, 2002 PA 261, Eff. 5/1/02
	750.	349	Person	A	Kidnapping	LIFE	
	750.	349 a	Person	A	Prisoner taking a hostage	LIFE	
	750.	349 b	Person	C	Unlawful imprisonment	15	8/24/06
	750.	350	Person	A	Kidnapping – child enticement	LIFE	
	750.	350 a	Person	H	Kidnapping – custodial interference	1	
MCL 777.16r							
	750.	356	Property	E	Larceny over $100	5	
	750.	356 (2)	Property	D	Larceny involving $20,000 or more or with prior convictions	10	10/1/00
	750.	356 (3)	Property	E	Larceny involving $1,000 to $20,000 or with prior convictions	5	10/1/00
	750.	356 a	Property	G	Larceny from a motor vehicle	5	
	750.	356 a (1)	Property	G	Larceny from a motor vehicle	5	10/1/00
	750.	356 a (2) (c)	Property	E	Breaking and entering a vehicle to steal $1,000 to $20,000 or with prior convictions	5	10/1/00
	750.	356 a (2) (d)	Property	D	Breaking and entering a vehicle to steal $20,000 or more or with prior convictions	10	10/1/00

	750.	356 a (3)	Property	G	Breaking and entering a vehicle to steal causing damage	5	10/1/00
	750.	356 b	Property	G	Breaking and entering a coin telephone	4	
	750.	356 c	Property	H	Retail fraud – first degree	2	
	750.	356 c	Property	E	Retail fraud – first degree	5	10/1/00
	750.	357	Person	D	Larceny from the person	10	
	750.	357 a	Property	G	Larceny of livestock	4	
	750.	357 b	Property	E	Larceny – stealing firearms of another	5	
	750.	358	Property	G	Larceny from burning building	5	
	750.	360	Property	G	Larceny in a building	4	
	750.	360 a (2) (b)	Property	F	Theft detection device offense with prior conviction	4	7/1/02
	750.	361	Property	H	Trains – stealing/maliciously removing parts	2	
	750.	362	Property	E	Larceny by conversion over $100	5	
	750.	362	Property	E	Larceny by conversion involving $1,000 to $20,000 or with prior convictions	5	10/1/00
	750.	362	Property	D	Larceny by conversion involving $20,000 or more or with prior convictions	10	10/1/00
	750.	362 a	Property	H	Larceny of rental property	2	
	750.	362 a (2)	Property	D	Larceny of rental property involving $20,000 or more or with prior convictions	10	10/1/00
	750.	362 a (3)	Property	E	Larceny of rental property involving $1,000 to $20,000 or with prior convictions	5	10/1/00
	750.	363	Property	E	Larceny by false personation over $100	5	
	750.	363	Property	E	Larceny by false personation involving $1,000 to $20,000 or with prior convictions	5	10/1/00
	750.	363	Property	D	Larceny by false personation involving $20,000 or more	10	10/1/00
	750.	365	Person	D	Larceny from car or persons detained or injured by accident	20	
	750.	366	Property	G	Larceny of railroad tickets	4	Deleted, 2002 PA 279, Eff. 5/9/02
	750.	367	Property	G	Larceny of trees & shrubs over $100	5	
	750.	367	Property	E	Larceny of trees or shrubs involving $1,000 to $20,000 or with prior convictions	5	10/1/00
	750.	367	Property	D	Larceny of a tree or shrub involving $20,000 or more or with prior convictions	10	10/1/00
MCL 777.18							
	750.	367 a	Property	SPEC	Larceny of rationed goods	Variable	
MCL 777.16r							
	750.	367 b	Property	E	Airplanes – taking possession	5	
	750.	368 (5)	Pub ord	G	Preparing, serving, or executing unauthorized process – third or subsequent offense	4	10/1/00
	750.	372	Pub ord	H	Running or allowing lottery	2	
	750.	373	Pub ord	H	Selling or possessing lottery tickets	2	
	750.	374	Pub ord	H	Lottery violations – subsequent offense	4	
MCL 777.16s							
	750.	377 a	Property	G	Malicious destruction of personal property over $100	4	
	750.	377 a (1) (a)	Property	D	Malicious destruction of personal property involving $20,000 or more or with prior convictions	10	10/1/00
	750.	377 a (1) (b)	Property	E	Malicious destruction of personal property involving $1,000 to $20,000 or with priors	5	10/1/00
	750.	377 b	Property	F	Malicious destruction of fire/police property	4	
	750.	377 c	Property	E	School bus – intentional damage	5	
	750.	378	Property	F	Malicious destruction of property – dams/canals/mills	4	
	750.	379	Property	F	Malicious destruction of property – bridges/railroads/locks	4	
	750.	380	Property	F	Malicious destruction of building over $100	4	
	750.	380 (2)	Property	D	Malicious destruction of building involving $20,000 or more or with prior convictions	10	10/1/00
	750.	380 (3)	Property	E	Malicious destruction of a building involving $1,000 to $20,000 or with prior convictions	5	10/1/00
	750.	382 (1) (c)	Property	E	Malicious destruction of plants or turf involving $1,000 to $20,000 or with prior convictions	5	10/1/00

	750.	382 (1) (d)	Property	D	Malicious destruction of plants or turf involving $20,000 or more or with prior convictions	10	10/1/00
	750.	383 a	Property	F	Malicious destruction of utility equipment	4	
	750.	383 a	Property	E	Malicious destruction of utility equipment or utility infrastructure component	5	As amended, 2008 PA 414, Eff. 3/1/09
	750.	385 (2) (c)	Property	E	Damaging/destroying research property-between $1,000 and $20,000 or w/ prior convictions	5	Eff. 4/1/05 to 9/14/05
	750.	385 (2) (d)	Property	E	Damaging/destroying research property - $20,000 or more or 2 or more prior convictions	5	Eff. 4/1/05 to 9/14/05
	750.	385 (2) (e)	Person	E	Damaging or destroying research property resulting in physical injury	5	Eff. 4/1/05 to 9/14/05
	750.	385 (2) (f)	Person	D	Damaging or destroying research property resulting in serious impairment of body function	10	Eff. 4/1/05 to 9/14/05
	750.	385 (2) (g)	Person	C	Damaging or destroying research property resulting in death	15	Eff. 4/1/05 to 9/14/05
	750.	386	Property	E	Malicious destruction of mine property	20	
	750.	387	Property	G	Malicious destruction of tombs & memorials	5	
	750.	387 (5)	Property	E	Malicious destruction of a tomb or memorial involving $1,000 to $20,000 or with priors	5	10/1/00
	750.	387 (6)	Property	D	Malicious destruction of a tomb or memorial involving $20,000 or more or with prior convictions	10	10/1/00
	750.	392	Property	E	Malicious destruction of property – vessels	10	
	750.	394 (2) (c)	Person	F	Throwing or dropping dangerous object at vehicle causing injury	4	1/1/04
	750.	394 (2) (d)	Person	D	Throwing or dropping dangerous object at vehicle causing serious impairment	10	1/1/04
	750.	394 (2) (e)	Person	C	Throwing or dropping dangerous object at vehicle causing death	15	1/1/04
	750.	395 (2) (c)	Property	E	Damaging/destroying research property-between $1,000 and $20,000 or w/ prior convictions	5	Replaced MCL 750.385(2)(c),
	750.	395 (2) (d)	Property	E	Damaging/destroying research property - $20,000 or more or 2 or more prior convictions	5	Replaced MCL 750.385(2)(d),
	750.	395 (2) (e)	Person	E	Damaging or destroying research property resulting in physical injury	5	Replaced MCL 750.385(2)(e),
	750.	395 (2) (f)	Person	D	Damaging or destroying research property resulting in serious impairment of body function	10	Replaced MCL 750.385(2)(f),
	750.	395 (2) (g)	Person	C	Damaging or destroying research property resulting in death	15	Replaced MCL 750.385(2)(g),
	750.	397	Person	D	Mayhem	10	
	750.	397 a	Person	D	Placing harmful objects in food	10	
	750.	405	Pub saf	E	Inciting soldiers to desert	5	
	750.	406	Pub saf	E	Military stores – larceny, embezzlement or destruction	5	
MCL 777.16t							
	750.	410 a	Person	G	Conspiracy to commit a person to state hospital unjustly	4	
	750.	411 a (1) (b)	Pub ord	F	False report of a felony	4	
	750.	411 a (2)	Pub ord	F	False report of a bombing or threat to bomb	4	Substituted for by 750.411a(3)(a)
	750.	411 a (3) (a)	Pub ord	F	Threat or false report of an explosive or harmful device, substance, or material	4	4/1/01
	750.	411 a (3) (b)	Pub ord	D	Threat/false report of explosive or harmful device/substance/material – subsequent offense	10	4/1/01
	750.	411 b	Pub trst	G	Excess fees to members of legislature	4	
	750.	411 h (2) (b)	Person	E	Stalking of a minor	5	
	750.	411 i (3) (a)	Person	E	Aggravated stalking	5	10/1/00
	750.	411 i (3) (b)	Person	D	Aggravated stalking of a minor	10	
	750.	411 l	Pub ord	H	Money laundering – fourth degree	2	
	750.	411 m	Pub ord	E	Money laundering – third degree	5	
	750.	411 n	Pub ord	D	Money laundering – second degree	10	
	750.	411 o	Pub ord	B	Money laundering – first degree	20	
	750.	411 p (2) (a)	Property	B	Money laundering of proceeds from controlled substance offense involving $10,000 or more	20	
	750.	411 p (2) (b)	Property	D	Money laundering proceeds from controlled substance offense/other proceeds of $10,000+	10	
	750.	411 p (2) (c)	Property	E	Money laundering – transactions involving represented proceeds	5	
	750.	411 s (2) (a)	Person	G	Unlawful posting of message	2	4/1/01
	750.	411 s (2) (b)	Person	E	Unlawful posting of message with aggravating circumstances	5	4/1/01
	750.	411 t (2) (b)	Person	E	Hazing resulting in serious impairment	5	8/18/04

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	750.	411 t (2) (c)	Person	C	Hazing resulting in death	15	8/18/04
	750.	411 u	Pub ord	B	Gang membership felonies	20	As amended, 2008 PA 562, 565, Eff. 4/1/09
	750.	411 v (1)	Person	E	Gang recruitment	5	12/16/10
	750.	411 v (2)	Person	B	Retaliation for withdrawal from gang	20	12/16/10
	750.	411 w	Pub ord	E	Selling or possessing automated sales suppression device, zapper, or phatom-ware	5	8/29/12
MCL 777.16u							
	750.	413	Property	E	Unlawful driving away of an automobile	5	
	750.	414	Property	H	Unlawful use of an automobile	2	
	750.	415 (2)	Property	G	Motor vehicles – conceal/misrepresent identity with intent to mislead	4	
	750.	415 (5)	Property	G	Motor vehicles – buy/sell/exchange/give paraphernalia capable of changing/misrepre-senting ID	4	10/1/00
	750.	415 (6)	Property	E	Motor vehicles – buy/receive/obtain w/ intent to sell/dispose knowing VIN was altered	10	10/1/00
	750.	417	Property	H	Motor vehicle – mortgaged – removal from state	4	
	750.	418	Property	H	Removing a vehicle out of state without vendor's consent	4	
	750.	420	Pub saf	H	Motor vehicle – equipping to release smoke/gas	4	
	750.	421	Pub saf	H	Motor vehicle – designed for attack	5	
	750.	421 b	Pub saf	H	Hinder transport of farm/commercial products – subsequent offense	2	
MCL 777.16v							
	750.	422	Pub trst	G	Perjury committed in court/noncapital crime	15	
	750.	422	Pub trst	C	Perjury committed in court – noncapital crime	15	10/1/00
	750.	422	Pub trst	G	Perjury – committed in court/capital crime	LIFE	
	750.	422	Pub trst	B	Perjury committed in court – capital crime	LIFE	10/1/00
	750.	422 a	Pub trst	E	Material false statement in petition seeking review of DNA evidence	5	1/6/09
	750.	423	Pub trst	E	Perjury	15	
	750.	423	Pub trst	E	Perjury by falsely swearing	15	10/1/00
	750.	424	Pub trst	E	Subornation of perjury	15	
	750.	424	Pub trst	C	Subornation of perjury	15	10/1/00
	750.	425	Pub trst	E	Inciting or procuring perjury	5	
	750.	425	Pub trst	E	Inciting or procuring perjury but perjury not committed	5	10/1/00
	750.	430 a	Person	D	Human cloning	10	10/1/00
	750.	436 (1)	Person	E	Poisoning food/drink/wells	5	Deleted, 2002 PA 123, Eff. 4/22/02
	750.	436 (2)	Person	A	Poison – food/drink/medicine/wells – large amounts/injury	LIFE	Deleted, 2002 PA 123, Eff. 4/22/02
	750.	436 (2) (a)	Pub saf	C	Poisoning food, drink, medicine, or water supply	15	4/22/02
	750.	436 (2) (b)	Property	B	Poisoning food, drink, medicine, or water supply causing property damage	20	4/22/02
	750.	436 (2) (c)	Person	A	Poisoning food, drink, medicine, or water supply causing injury	25	4/22/02
	750.	436 (2) (d)	Person	A	Poisoning food, drink, medicine, or water supply causing serious impairment	LIFE	4/22/02
	750.	436 (3)	Pub saf	H	Poison – malicious false statement of poisoning	2	Deleted, 2002 PA 123, Eff. 4/22/02
	750.	436 (3) (a)	Pub ord	F	False report of poisoning food, drink, medicine, or water supply	4	4/22/02
	750.	436 (3) (b)	Pub ord	D	False report of poisoning food, drink, medicine, or water supply with prior conviction	10	4/22/02
	750.	439	Pub ord	G	Polygamy	4	
	750.	440	Pub ord	G	Polygamy – knowingly entering a prohibited marriage	4	
	750.	441	Pub ord	G	Teaching or advocating polygamy	4	
	750.	442	Pub ord	G	Participating in prizefights	4	Deleted, 2010 PA 98, Eff. 6/22/10
	750.	443	Pub ord	G	Prizefights – training	4	Deleted, 201 PA 98, Eff. 6/22/10
MCL 777.16w							
	750.	451	Pub ord	G	Prostitution – various offenses – third or subsequent offense	2	

	750.	452	Pub ord	E	Keeping a house of prostitution	5	
	750.	455	Pub ord	G	Pandering	20	
	750.	456	Person	B	Placing spouse into prostitution	20	
	750.	457	Pub ord	G	Accepting earnings of a prostitute	20	
	750.	458	Person	B	Prostitution – detaining female for debt	20	
	750.	459	Person	B	Transporting a female for prostitution	20	
	750.	462 b (1)	Person	D	Human trafficking - forced labor through physical harm	10	8/24/06
	750.	462 b (2)	Person	C	Human trafficking - forced labor through physical harm causing injury	15	8/24/06
	750.	462 b (3)	Person	A	Human trafficking - forced labor through physical harm causing death	LIFE	8/24/06
	750.	462 c (1)	Person	D	Human trafficking - forced labor through physical restraint	10	8/24/06
	750.	462 c (2)	Person	C	Human trafficking - forced labor through physical restraint causing injury	15	8/24/06
	750.	462 c (3)	Person	A	Human trafficking - forced labor through physical restraint causing death	LIFE	8/24/06
	750.	462 d (1)	Person	D	Human trafficking - forced labor through abuse of legal process	10	8/24/06
	750.	462 d (2)	Person	C	Human trafficking - forced labor through abuse of legal process causing injury	15	8/24/06
	750.	462 d (3)	Person	A	Human trafficking - forced labor through abuse of legal process causing death	LIFE	8/24/06
	750.	462 e (1)	Person	D	Human trafficking - forced labor through destruction of ID document	10	8/24/06
	750.	462 e (2)	Person	C	Human trafficking - forced labor through destruction of ID document causing injury	15	8/24/06
	750.	462 e (3)	Person	A	Human trafficking - forced labor through destruction of ID document causing death	LIFE	8/24/06
	750.	462 f (1)	Person	D	Human trafficking - forced labor through blackmail	10	8/24/06
	750.	462 f (2)	Person	C	Human trafficking - forced labor through blackmail causing injury	15	8/24/06
	750.	462 f (3)	Person	A	Human trafficking - forced labor through blackmail causing death	LIFE	8/24/06
	750.	462 g (1)	Person	B	Human trafficking - obtain minor for child sexual abusive activity	20	8/24/06
	750.	462 h (2)	Person	D	Human trafficking - recruit minor for forced labor	10	8/24/06
	750.	462 h (3)	Person	C	Human trafficking - recruit minor for forced labor causing injury	15	8/24/06
	750.	462 h (4)	Person	A	Human trafficking - recruit minor for forced labor causing death	LIFE	8/24/06
	750.	462 i	Person	A	Human trafficking - compound felony	LIFE	8/24/06
	750.	462 j (1) (a)	Person	D	Providing or obtaining labor or services of another person by force, fraud, or coercion	10	4/1/11
	750.	462 j (1) (b)	Person	B	Providing or obtaining labor or services of minor by force, fraud, or coercion	20	4/1/11
	750.	462 j (1) (c)	Person	A	Providing or obtaining labor or services of another person by force, fraud, or coercion causing death	LIFE	4/1/11
	750.	462 j (2) (a)	Person	D	Recruiting or transporting person for labor or services	10	4/1/11
	750.	462 j (2) (b)	Person	B	Recruiting or transporting minor for labor or services	20	4/1/11
	750.	462 j (2) (c)	Person	A	Recruiting or transporting person for labor or services causing death	LIFE	4/1/11
	750.	465 a (1) (b)	Property	G	Operating audiovisual recording device in a theatrical facility - second offense	2	12/15/04
	750.	465 a (1) (c)	Property	F	Operating audiovisual recording device in a theatrical facility - third or subsequent offense	4	12/15/04
MCL 777.16x							
	750.	478 a (2)	Pub ord	H	Unauthorized process to obstruct a public officer or employee	2	10/1/00
	750.	478 a (3)	Pub ord	G	Unauthorized process to obstruct a public officer or employee – subsequent offense	4	10/1/00
	750.	479	Person	G	Resisting or obstructing a peace officer	2	Substituted for by 750.479(2)
	750.	479 (2)	Person	G	Assaulting or obstructing certain officials	2	7/15/02
	750.	479 (3)	Person	G	Assaulting or obstructing certain officials causing injury	4	7/15/02
	750.	479 (4)	Person	D	Assaulting or obstructing certain officials causing serious impairment	10	7/15/02
	750.	479 (5)	Person	B	Assaulting or obstructing certain officials causing death	20	7/15/02
	750.	479 a (2)	Pub saf	G	Fleeing and eluding – fourth degree	2	
	750.	479 a (3)	Pub saf	E	Fleeing and eluding – third degree	5	
	750.	479 a (4)	Person	D	Fleeing and eluding – second degree	10	

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	750.	479 a (5)	Person	C	Fleeing and eluding – first degree	15	
	750.	479 a (6)	Person	H	Assaulting peace officer	2	Deleted, 2002 PA 271, Eff. 7/15/02
	750.	479 b (1)	Person	F	Disarming peace officer – nonfirearm	4	
	750.	479 b (2)	Person	D	Disarming peace officer – firearm	10	
	750.	479 c (2) (c)	Pub ord	G	Providing false information to peace officer conducting criminal investigation	2	7/20/12
	750.	479 c (2) (d)	Pub ord	F	Providing false or misleading information to peace officer conducting criminal investigation regarding certain felonies	4	7/20/12
	750.	480	Pub trst	F	Public officers – refusing to turn over books/money to successor	4	
	750.	483 a (2) (b)	Person	D	Retaliating for reporting crime	10	3/28/01
	750.	483 a (2) (b)	Person	D	Retaliating for reporting crime punishable by more than 10 years	10	7/15/02
	750.	483 a (2) (b)	Person	D	Withholding evidence/preventing/retaliating for reporting crime punishable by more than 10 yrs	10	As amended, 2006 PA 40, Eff. 3/2/06
	750.	483 a (4) (b)	Person	F	Interfering with police investigation by committing crime or threatening to kill or injure	10	3/28/01
	750.	483 a (4) (b)	Person	D	Interfering with police investigation by committing crime or threatening to kill or injure	10	7/15/02
	750.	483 a (6) (a)	Pub ord	F	Tampering with evidence	4	3/28/01
	750.	483 a (6) (a)	Pub ord	F	Tampering with evidence or offering false evidence	4	As amended, 2006 PA 40, Eff. 3/2/06
	750.	483 a (6) (b)	Pub ord	D	Tampering with evidence in case punishable by more than 10 years	10	3/28/01
	750.	483 a (6) (b)	Pub ord	D	Tampering with evidence/offering false evidence in case punishable by more than 10 years	10	As amended, 2006 PA 40, Eff. 3/2/06
	750.	488	Pub trst	H	Public officers – state official – retaining fees	2	
	750.	490	Pub trst	H	Public money – safekeeping	2	
	750.	491	Pub trst	H	Public records – removal/mutilation/destruction	2	
	750.	492 a (1) (a)	Pub trst	G	Medical record – intentional[ly] place false information – health care provider	4	
	750.	492 a (2)	Pub trst	G	Medical record – health care provider alter conceal injury/death	4	
	750.	492 a (2)	Pub trst	G	Medical record – health care provider - altering to conceal injury/death	4	As amended, 2006 PA 40, Eff. 3/2/06
	750.	495 a (2)	Person	F	Concealing objects in trees or wood products – causing injury	4	
	750.	495 a (3)	Person	C	Concealing objects in trees or wood products – causing death	15	
	750.	498 b (2) (a)	Person	E	Tampering/taking/removing marine safety device without authority causing serious impairment	5	7/1/06
	750.	498 b (2) (b)	Person	C	Tampering/taking/removing marine safety device without authority causing death	15	7/1/06
	750.	502 d	Pub saf	F	Unlawfully possessing or transporting anhydrous ammonia or tampering with containers	4	4/1/04
	750.	505	Pub ord	E	Common law offenses	5	
	750.	508 (2) (b)	Pub ord	G	Carrying or possessing a scanner in the commission of a crime	2	3/2/06
	750.	511	Person	A	Blocking or wrecking railroad track	LIFE	
	750.	512	Property	E	Uncoupling railroad cars	10	
	750.	513	Property	H	Issuing fraudulent railroad securities	10	Deleted, 2002 PA 320, Eff. 7/15/02
	750.	514	Property	H	Seizing locomotive with mail car	10	Deleted, 2002 PA 320, Eff. 7/15/02
	750.	516	Person	C	Stopping train to rob	LIFE	Deleted, 2002 PA 320, Eff. 7/15/02
	750.	517	Person	C	Boarding train to rob	LIFE	Deleted, 2002 PA 320, Eff. 7/15/02
MCL 777.16y							
	750.	520 b	Person	A	Criminal sexual conduct – first degree	LIFE	
	750.	520 b (2)	Person	A	Criminal sexual conduct -- first degree	LIFE	As amended, 2006 PA 166, Eff. 8/28/06
	750.	520 c	Person	C	Criminal sexual conduct – second degree	15	
	750.	520 d	Person	C	Criminal sexual conduct – third degree	15	
	750.	520 d	Person	B	Criminal sexual conduct – third degree	15	10/1/00
	750.	520 e	Person	G	Criminal sexual conduct – fourth degree	2	
	750.	520 g (1)	Person	D	Assault with intent to commit sexual penetration	10	
	750.	520 g (2)	Person	E	Assault with intent to commit sexual contact	5	
	750.	520 n	Pub saf	G	Electronic monitoring device violation	2	8/28/06

	750.	528	Pub saf	F	Destroying dwelling house or other property	4	
	750.	528	Pub saf	F	Destroying dwelling house or other property during riot or unlawful assembly	4	As amended, 2006 PA 166, Eff. 8/28/06
	750.	528 a	Pub saf	F	Civil disorders – firearms/explosives	4	
	750.	529	Person	A	Armed robbery	LIFE	
	750.	529 a	Person	A	Carjacking	LIFE	
	750.	530	Person	C	Unarmed robbery	15	
	750.	531	Person	C	Bank robbery/safe breaking	LIFE	
	750.	532	Person	H	Seduction	5	
MCL 777.16z							
	750.	535	Property	E	Receiving or concealing stolen property over $100	5	
	750.	535 (2)	Property	D	Receiving/concealing stolen property having a value of $20,000 or more or with priors	10	10/1/00
	750.	535 (3)	Property	E	Receiving or concealing stolen property having a value of $1,000 to $20,000 or with priors	5	10/1/00
	750.	535 (7)	Property	E	Receiving or concealing stolen motor vehicle	5	2/12/04
	750.	535 a	Pub ord	E	Operating a chop shop	5	Substituted for by 750.535a(2)
	750.	535 a (2)	Pub ord	D	Operating a chop shop	10	10/1/00
	750.	535 a (3)	Pub ord	D	Operating a chop shop – subsequent violation	10	10/1/00
	750.	535 b	Pub saf	E	Stolen firearms or ammunition	10	
MCL 777.16aa							
	750.	539 c	Pub ord	H	Eavesdropping	2	
	750.	539 d	Pub ord	H	Installing eavesdropping device	2	Replaced, 2004 PA 157, Eff. 6/16/04
	750.	539 d (3) (a) (i)	Pub ord	H	Installing, placing, or using eavesdropping device	2	6/16/04
	750.	539 d (3) (a) (ii)	Pub ord	E	Installing, placing, or using eavesdropping device – subsequent offense	5	6/16/04
	750.	539 d (3) (b)	Pub ord	E	Distributing, disseminating, or transmitting recording or image obtained by eavesdropping	5	6/16/04
	750.	539 e	Pub ord	H	Divulging or using information obtained by eavesdropping	2	
	750.	539 f	Pub ord	H	Manufacture or possession of eavesdropping device	2	
	750.	539 j (2) (a) (i)	Pub ord	H	Lewd surveillance or capturing lewd image	2	6/16/04
	750.	539 j (2) (a) (ii)	Pub ord	E	Lewd surveillance or capturing lewd image – subsequent offense	5	6/16/04
	750.	539 j (2) (b)	Pub ord	E	Distributing, disseminating, or transmitting visual image obtained by surveillance	5	6/16/04
	750.	540	Pub ord	H	Tapping or cutting telephone lines	2	
	750.	540 (5) (a)	Pub ord	H	Damaging, destroying, using, or obstructing use of electronic medium of communication	2	As amended, 2006 PA 62, Eff. 6/1/06
	750.	540 (5) (b)	Person	F	Damaging/destroying/using/obstructing electronic communication resulting in injury/death	4	6/1/06
	750.	540 c (3)	Property	F	Telecommunications and computer – manufacture or deliver counterfeit communications	4	
	750.	540 c (3)	Property	F	Manufacturing or delivering a counterfeit communications device	4	Eff. 10/1/00 to 2/12/04, 2004 PA 2
	750.	540 c (4)	Property	F	Telecommunication violation	4	2/12/04
	750.	540 f (2)	Property	E	Telecommunications and computer–knowingly publishing counterfeit devices–2nd conviction	5	
	750.	540 f (2)	Property	E	Knowingly publishing a communications access device with prior convictions	5	10/1/00
	750.	540 g (1) (c)	Property	E	Diverting telecommunications services having a value of $1,000 - $20,000 or with priors	5	
	750.	540 g (1) (d)	Property	D	Diverting telecommunications services having a value of $20,000 or more or with priors	10	
MCL 777.16bb							
	750.	543 f	Person	A	Terrorism without causing death	LIFE	4/22/02
	750.	543 h	Pub ord	A	Hindering prosecution of terrorism	LIFE	Eff. 4/22/02 to 7/15/02, 2002 PA 271
	750.	543 h (3) (a)	Pub ord	B	Hindering prosecution of terrorism – certain terrorist acts	20	7/15/02
	750.	543 h (3) (b)	Pub ord	A	Hindering prosecution of terrorism – act of terrorism	LIFE	7/15/02
	750.	543 k	Pub saf	B	Soliciting material support for terrorism or terrorist acts	20	4/22/02
	750.	543 k	Pub saf	B	Soliciting or providing material support for terrorism or terrorist acts	20	7/15/02

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	750.	543 m	Pub ord	B	Threat or false report of terrorism	20	4/22/02
	750.	543 p	Pub saf	B	Use of internet or telecommunications to commit terrorism	20	4/22/02
	750.	543 p	Pub saf	B	Use of internet or telecommunications to commit certain terrorist acts	20	7/15/02
	750.	543 r	Pub saf	B	Surveillance of vulnerable target with intent to commit terrorism	20	4/22/02
	750.	543 r	Pub saf	B	Possession of vulnerable target information with intent to commit certain terrorist acts	20	7/15/02
	750.	545	Pub ord	E	Misprision of treason	5	
	750.	552 b	Property	F	Trespassing on correctional facility property	4	
	750.	552 c	Pub saf	F	Trespass upon key facility	4	4/15/06
MCL 777.17b							
	752.	191	Pub saf	G	Felonious driving	2	Deleted, 2001 PA 136, Eff. 2/1/02
	752.	272 a (2) (c)	Pub saf	F	Sale or distribution of nitrous oxide device – 2 or more prior convictions	4	1/1/01
	752.	365 (3)	Pub ord	G	Obscenity – subsequent offense	2	
	752.	541	Pub saf	D	Riot	10	
	752.	542	Pub saf	D	Incitement to riot	10	
	752.	542 a	Pub saf	D	Riot in state correctional facilities	10	
	752.	543	Pub saf	G	Unlawful assembly	5	
	752.	701	Property	H	Destruction or removal of timber	1	
MCL 777.17c							
	752.	797 (1) (c)	Property	E	Computer fraud – 2 prior convictions or value of $1,000 to $20,000	5	
	752.	797 (1) (d)	Property	D	Computer fraud – 3 or more prior convictions or value of $20,000 or more	10	
	752.	797 (2) (a)	Property	E	Unlawfully accessing computer, computer system, or computer program	5	10/1/00
	752.	797 (2) (b)	Property	D	Unlawfully accessing computer, computer system, or computer program, with prior conviction	10	10/1/00
	752.	797 (3) (b)	Variable	G	Using computer for crime punishable by maximum term of more than 1 yr but less than 2 yrs	2	10/1/00
	752.	797 (3) (c)	Variable	F	Using computer for crime punishable by maximum term of at least 2 yrs but less than 4 yrs	4	10/1/00
	752.	797 (3) (d)	Variable	D	Using computer for crime punishable by maximum term of at least 4 yrs but less than 10 yrs	7	10/1/00
	752.	797 (3) (e)	Variable	D	Using computer for crime punishable by maximum term of at least 10 yrs but less than 20 yrs	10	10/1/00
	752.	797 (3) (f)	Variable	B	Using computer for crime punishable by maximum term of at least 20 yrs or for life	20	10/1/00
MCL 777.17d							
	752.	802	Property	H	Vending machines – manufacture/sale of slugs	5	
	752.	811	Property	H	Breaking and entering a coin operated device	3	
	752.	861	Person	G	Careless discharge of firearm causing injury or death	2	
	752.	881	Person	G	Reckless use of bow and arrow resulting in injury or death	2	
	752.	1003	Property	F	Health care fraud – false claim/state, unnecessary, conceal information	4	
	752.	1004	Property	F	Health care fraud – kickbacks/referral fees	4	
	752.	1005	Property	H	Health care fraud – conspiracy	10	
	752.	1006	Property	D	Health care fraud – subsequent offense	20	
	752.	1027	Person	F	Assisted suicide	4	
	752.	1054 (2)	Property	G	Copying audio/video recordings for gain	5	
MCL 777.17f							
	764.	1 e	Pub trst	C	Peace officer – false statement in a complaint	15	
	767.	4 a	Pub trst	F	Disclosing or possessing grand jury information	4	
	767A.	9 (a)	Pub trst	C	Perjury committed in prosecutor's investigative hearing – noncapital crime	15	Eff. 10/1/00 then replaced by 9(1)(a)
	767A.	9 (1) (a)	Pub trst	C	Perjury committed in prosecutor's investigative hearing – noncapital crime	15	2/1/02
	767A.	9 (b)	Pub trst	B	Perjury committed in prosecutor's investigative hearing – capital crime	LIFE	Eff. 10/1/00, then replaced by 9(1)(b)
	767A.	9 (1) (b)	Pub trst	B	Perjury committed in prosecutor's investigative hearing – capital crime	LIFE	2/1/02

	791.	236 (17)	Pub ord	F	Failure to provide correct notice of proposed domicile by sex offender	4	12/1/06
MCL 777.17g							
	800.	281 (1)	Pub saf	H	Furnishing prisoner with contraband	5	
	800.	281 (2)	Pub saf	H	Furnishing prisoner with contraband outside	5	
	800.	281 (3)	Pub saf	H	Bringing contraband into prisons	5	
	800.	281 (4)	Pub saf	E	Prisoner possessing contraband	5	
	800.	283 (1)	Pub saf	E	Furnishing weapon to prisoner in prison	5	
	800.	283 (2)	Pub saf	E	Prisons – knowledge of a weapon in a correctional facility	5	
	800.	283 (3)	Pub saf	E	Bringing weapon into prison	5	
	800.	283 (4)	Pub saf	E	Prisoner possessing weapon	5	
	800.	283 a	Pub saf	E	Furnishing cell phone to prisoner	5	12/29/06
	801.	262 (1) (a)	Pub saf	E	Bringing weapon into jail	5	8/1/99
	801.	262 (1) (b)	Pub saf	E	Furnishing weapon to prisoner in jail	5	8/1/99
	801.	262 (2)	Pub saf	E	Prisoner in jail possessing weapon	5	8/1/99
	801.	263 (1)	Pub saf	H	Furnishing contraband to prisoner in jail	5	8/1/99
	801.	263 (2)	Pub saf	H	Prisoner in jail possessing contraband	5	8/1/99

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Appendix E: Practical Resources

SENTENCING

People of the State of Michigan v. _____

Case Number _____

Are you _____? Is _____ your attorney?

Plead guilty/NC on _____ to the crime of _____

which carries a maximum sentence of _____

Plea agreement was _____

Have you had a full and complete opportunity to review the presentence report with your attorney? Are you ready for sentencing today?

Are there any additions, corrections or deletions to the presentence report?

Defense attorney _____ Defendant _____ Pros. _____

The probation agent scored the PRV as ____ Level ____ Challenges? _____

OV _____ level _____. Challenges? _____

Guideline range _____ Challenges? _____

Comments: Def. attny _____ Def. _____ Victim _____ Pros. _____

Comments based on PSR with reasons for sentence i.e. punishment, rehabilitation, protect society, deterrence.

_____

_____

_____

_____

_____

_____

Is sentence within guidelines? ____ If not, what are compelling reasons for departure?

_____

_____

_____

Sentencing Information Report
Departure Evaluation*

Judge: _____ Circuit #: _____

Offender name: _____ Docket #: _____

*Whenever a judge of the circuit court determines that a minimum sentence outside the recommended minimum range should be imposed, the judge may do so. When such a sentence is imposed, the judge must explain on the sentencing information report and on the record the aspects of the case that have persuaded the judge to impose a sentence outside the recommended minimum range. Administrative Order 1988-4, 430 Mich xxi (1988).

The following aspects of this case led me to impose a sentence outside the recommended range:

The following explains why the departure sentence is more proportional[1] than a sentence in the guideline range:

Sentencing Judge:_____ Date: _____

[1] *People v Smith,* 482 Mich 292 (2008); *People v Laidlaw,* ___ Mich ___ (No 139751, 4/28/2011)

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