

# **Michigan Sentencing Guidelines Boot Camp**

**Friday, August 3, 2012**

*Sessions in alternative locations (same presentation at all locations):*

**1:00 p.m. to 4:00 p.m.**

Cooley Law School - Auburn Hills - LIVE

**Simulcast at:**

Cooley Law School - Ann Arbor  
Cooley Law School - Grand Rapids  
Cooley Law School - Lansing

**Jacqueline J. McCann**  
**State Appellate Defender Office**

Presented by the Thomas M. Cooley Law School and the  
Criminal Defense Resource Center of the  
State Appellate Defender Office with  
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## About the Speaker

**Jacqueline J. McCann** is the current author of the Defender Sentencing Book. She has been an Assistant Defender for over 10 years with the State Appellate Defender Office. Her extensive experience on appeals, particularly sentencing issues, comes from having argued hundreds of cases in the Michigan Court of Appeals and numerous cases in the Michigan Supreme Court. She is currently counsel in *People v. Scott Bennett Harris*, \_\_\_ Mich. \_\_\_, (#141513, decided July 31, 2012) and has argued several cases about the interpretation of the statutory sentencing guidelines, including *People v. Peltola*, 489 Mich. 174 (2011), *People v. Francisco*, 474 Mich. 82 (2006), and *People v. Smith*, 482 Mich. 292 (2008).

# MICHIGAN SENTENCING GUIDELINES BOOT CAMP

Friday, August 3, 2012

## Agenda

Introduction to the Michigan Statutory Sentencing Guidelines:

- indeterminate sentencing;
- the old judicial guidelines vs. current statutory sentencing guidelines;
- possible sentences within the guidelines: prison cells, intermediate sanction cells, and straddle cells;
- what constitutes a guidelines departure;
- guidelines interaction with mandatory minimum sentences;
- habitual offenders provisions;

How to Score the Sentencing Guidelines:

- the sentencing information report;
- identifying the crime group;
- identifying the crime class;
- special offenses & attempts;
- scoring the prior record variables: using the presentence report & beyond; important case law on individual variables
- scoring the offense variables: the importance of identifying “the sentencing offense”; important case law on individual variables
- standard of proof for scoring;

Guidelines & Plea Bargaining

Departures from the Sentencing Guidelines:

- articulation requirements;
- substantial and compelling reason requirement;
- statutorily forbidden reasons;
- examples of proper factors;
- examples of improper factors;
- proportionality requirement;

Hypothetical Case Scoring Exercise

## **MICHIGAN SENTENCING BOOTCAMP – JULY 2012**

### **(An Overview of MI Sentencing Law including the Sentencing Guidelines)**

*From Materials Previously Prepared by Jacqueline J. McCann  
And Shiela Robertson Deming, updated by Jacqueline J. McCann*

#### **I. INDETERMINATE SENTENCING**

Most felonies are punishable by either probation (with or without a jail term) or an indeterminate term of years sentence where the court decides the minimum sentence and the maximum is set by law (for example, the 20 year maximum term for first-degree home invasion). Many offenses may also be punishable by a “straight” jail term without probationary supervision if a prison sentence is not required by law.

There are a few exceptions: mandatory terms such as a flat two-years in prison for felony firearm or life for first-degree murder, some drug offenses where the judge can set the minimum and maximum within certain limits,<sup>1</sup> and offenses punishable by “life or any term of years” where the judge can impose a life sentence or a term of years where both the minimum and maximum terms are set by the court. A court cannot impose a sentence that mixes “numbers” and “life”; for example a sentence of 10 years to life is illegal.<sup>2</sup> A minimum sentence cannot ever exceed 2/3rds of a maximum sentence except for offenses punishable by life or any term of years.<sup>3</sup> When the maximum sentence is set by law as a number, the 2/3rd rule always applies. For example, where the statute sets the maximum term of sentence as 15 years, a sentence of 14 to 15 years is illegal. If a maximum is set by law at 15 years, the most severe minimum term is 10 years.

The minimum sentence in most cases is determined primarily by the sentencing guidelines, although a court may depart above or below the guidelines for “substantial and compelling reasons”, and the prosecution and defense may bargain for a sentence above or below the guidelines. Virtually all felony offenses are included in the guidelines. The guidelines apply to habitual offenders,<sup>4</sup> repeat drug offenders,<sup>5</sup> and probation violations.<sup>6</sup>

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<sup>1</sup> See MCL 769.9.

<sup>2</sup> *People v Foy*, 124 Mich App 107 (1983); see MCL 769.9.

<sup>3</sup> *People v Tanner*, 387 Mich 683 (1972); MCL 769.34(2)(b); *People v Washington*, 489 Mich 871 (2011)(disavowing *People v Floyd*, 481 Mich 938 (2008).

<sup>4</sup> MCL 777.21(3).

<sup>5</sup> *People v Lowe*, 484 Mich 718 (2009); *People v Peltola*, 489 Mich 174 (2011).

<sup>6</sup> *People v Hendrick*, 472 Mich 555 (2005).

## **II. THE JUDICIAL SENTENCING GUIDELINES**

From 1984 through 1998, sentencing guidelines that were developed and approved by the Supreme Court were applicable to the determination of minimum sentences for most felonies. These guidelines were “advisory”. They were held to be the best “barometer” for determine whether a sentence was proportionate; at a time when appellate review of the length of a sentence was limited to whether the sentence was proportionate to the offense and the offender. The judicial guidelines were rescinded after adoption by the legislature of statutory guidelines, but remain in effect for any offenses committed before January 1, 1999.

## **III. THE STRUCTURE OF STATUTORY SENTENCING GUIDELINES**

### *A. OVERVIEW*

Statutory sentencing guidelines were developed by a 19-member Sentencing Commission appointed pursuant to MCL 769.32, and were enacted by 1998 PA 317. The Sentencing Commission never met after the guidelines were enacted, and has since been abolished. 2002 PA 31 [eff. 4-1-02]. The statutory basis and standards for departure and appellate review are found in MCL 769.31 et seq. The actual guidelines, instructions, and definitions are primarily found in Chapter XVII of the Code of Criminal Procedure, MCL 777.1 et seq.

The statutory guidelines apply to offenses committed on or after 1-1-99. The minimum sentence shall be within the appropriate guidelines range unless there is a statutory mandatory minimum sentence which conflicts with the guidelines range, or the range exceeds two-thirds of the statutory maximum, or there is a departure. MCL 769.34(2). The Supreme Court judicial guidelines do not apply to offenses committed on or after that date. MCL 769.34(1). MCR 6.425(D) requires use of the guidelines as required by law.

The statutory guidelines have been amended from time to time. The version of the statutes in force at the time of the commission of the offense is controlling. MCL 769.34(2).

The statutory guidelines are similar in format to the former judicial guidelines. Aspects of the offender criminal history are scored in Prior Record Variables; aspects of the criminal offense are scored in Offense Variables. These two scores determine the Prior Record and Offense Severity Levels, which are applied to a two dimensional matrix grid to determine the minimum sentence range. The numbers in the cells represent the minimum sentence range in months and/or provide for a "LIFE" sentence.

### *B. CRIME GROUPS*

All felony offenses are sorted into six "offense categories" or "Crime Groups:" Crimes Against the Person, Crimes Against Property, Crimes Involving Controlled Substances, Crimes Against Public Order, Crimes Against Public Safety, and Crimes Against Public Trust. The appropriate Offense Category (Crime Group) of the sentencing offense determines which Offense Variables are to be scored. The appropriate Crime Group of prior offenses and prior felonious conduct not

resulting in conviction also affects the scoring of certain Offense Variables. The appropriate Crime Group to which prior misdemeanor offenses would belong, if felonies, also determines whether they are to be scored in Prior Record Variable 5.

For example, a conspiracy to commit an armed robbery is a “Crime Against Public Safety” and not a “Crime Against a Person”, and so it would not score for purposes of OV 13. And for example, a prior non-driving alcohol related offense would not score in PRV 5 because it is not a controlled substance offense.

### *C. CRIME CLASSES*

Every offense is also assigned by statute to one of nine Crime Classes ("offense levels" in the statutes), which reflect the relative seriousness of the offense and determine which guidelines grid is to be used to determine the appropriate minimum sentence range. The Crime Classes are:

Second Degree Murder (M2) appropriate sentences for second-degree murder;

Class A - offenses for which up to life may be appropriate;

Class B - offenses for which up to 20 years may be appropriate;

Class C - offenses for which up to 15 years may be appropriate;

Class D - offenses for which up to 10 years may be appropriate;

Class E - offenses for which up to 5 years may be appropriate;

Class F - offenses for which up to 4 years may be appropriate;

Class G - offenses for which up to 2 years may be appropriate;

Class H - offenses for which jail or other intermediate sanctions may be  
Appropriate.

Attempts to commit Class A, B, C or D offenses are classified as Class E offenses; attempts to commit Class E, F, or G offenses are classified as Class H offenses.

Attempts to commit Class H offenses are punishable by intermediate sanctions only.

MCL 777.21(4)(b) was amended (effective 1-9-07) to provide for a default crime class (Class G) where the underlying offense is a misdemeanor and the guidelines are being scored for a Special Offense (Special Offenses include second or subsequent controlled substance offenses).

There are only nine sentencing grids in the guidelines, each representing one Crime Class. The Crime Class of the conviction offense determines which grid to use. The sentencing grids include the habitual offender minimum sentence enhancement for each Crime Class. The Crime Class of

prior felony convictions determines whether they are scored in PRV 1 or PRV 2; and whether prior juvenile adjudications are scored in PRV 3 or PRV 4.

The "maximum" sentence is still determined by the statutory maximum for the offense, but the "minimum" sentence is determined by the Guidelines Crime Class. The majority of offenses are in the Class for which the "appropriate sentence" is the same as the statutory maximum sentence, but a significant number of offenses have been assigned a Crime Class in which the "appropriate sentence" is different than the statutory maximum sentence.

#### D. "CELL" TYPES

Within the Crime Class Grids, there are three (3) dispositional "levels:" "**imprisonment**" cells, "**straddle**" cells where the appropriate sentence may be either state imprisonment or intermediate sanctions, and "**intermediate sanction**" cells.

"Intermediate sanction" is defined by MCL 769.31(c), as probation or any sanction, other than imprisonment in state prison or state reformatory, that may lawfully be imposed. Intermediate sanction includes, but is not limited to, one or more of the following: inpatient or outpatient drug treatment, probation with any probation conditions required or authorized by law, residential probation, probation with jail, probation with SAI (boot camp), mental health treatment, mental health or substance abuse counseling, jail, jail with work or school release, jail with or without day parole, community corrections programs, community service, fine, house arrest, and electronic monitoring.

To determine an appropriate sentence recommendation that is within the guidelines range, one must be familiar with the descriptions of the three Cell Levels.

**Imprisonment cell:** If the upper limit of the cell range is greater than 18 months and the lower limit is greater than 12 months, a sentence to prison with a minimum term in that range shall be imposed, absent a departure. MCL 769.34(2).

**Straddle cell:** If the upper limit of the cell range is greater than 18 months and the lower limit is 12 months or less, the sentencing court shall impose: a sentence to prison with a minimum term in that range or an intermediate sanction which may include a jail term of not more than 12 months, absent a departure. MCL 769.34(4)(d).

**Intermediate sanction cell:** If the upper limit of the cell range is 18 months or less, the court shall impose an "intermediate sanction" which may include a jail term that does not exceed the upper limit of the cell or 12 months, whichever is less, and the court cannot impose a sentence to state prison, absent a departure. MCL 769.34(4)(a); see *People v Stauffer*, 465 Mich 633 (2002).

In both “straddle” and “intermediate sanction” cells, a sentence below the low end of the cell range is not considered a departure as a result of the statutory language. Cases involving prisoners that score out in “intermediate sanction” cells have caused a number of appellate reversals where a prison sentence has been imposed. For example, in *People v Ratliff*,<sup>7</sup> the Michigan Supreme Court vacated a prison sentence imposed on the defendant-prisoner that was a departure above the guidelines that called for an intermediate sanction, on the basis that the possibility of a current prisoner serving a county jail sentence is irrelevant to the offense and the offender and was not a compelling reason to deny a defendant an intermediate sanction. In another case, the defendant who was a prisoner at the time of the offense was held entitled to resentencing where the guidelines recommended an intermediate sanction and the plea agreement was for a sentence within the guidelines but the defendant had been sentenced to a prison term.<sup>8</sup>

#### **IV. APPLICATION TO HABITUAL OFFENDER SENTENCE ENHANCEMENT**

The guidelines apply to cases subject to habitual offender sentence enhancement. If the prosecution has given proper notice of habitual offender sentence enhancement and the court in its discretion decides to enhance a sentence, the guidelines are scored for the substantive offense with the appropriate grid and cell determined, but the upper limit of that appropriate cell is increased by 25, 50, or 100%, depending on the degree of habitual offender enhancement (2nd, 3rd, or 4th and subsequent offense). The lower limit of the appropriate cell remains unchanged, reflecting the legislative intent that the sentencing court may but is not required to enhance the sentence.<sup>9</sup>

The statutes do not contain actual habitual offender grids, but the Guidelines Manual contains separate habitual offender enhancement grids, to help users. The Guidelines Manual contains habitual offender grids developed by using the mathematical formula of MCL 777.21(3)(a) to show the possible increased minimum terms, and those grids contain a “LIFE” sentence option where a “LIFE” sentence is specifically included in the cell for the substantive offense. MCL 777.21(3)(a) does not specifically address the availability of a “LIFE” sentence where the offender is being sentenced as an habitual offender. In *People v Houston*, 261 Mich App 463 (2004), a panel held that a “LIFE” sentence is not a departure from the statutory sentencing guidelines when the offender is being sentenced as an habitual offender and the upper range of the guidelines is 300 months or more. On appeal, that position was renounced by the Supreme Court, which stated that a life sentence is an appropriate guidelines sentence for an enhanced habitual offender sentence only if it is within the statutory sentencing guidelines grid. *People v Houston*, 473 Mich 399 (2005).

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<sup>7</sup> 480 Mich 1108 (2008).

<sup>8</sup> *People v Dixon*, unpublished opinion of 2-25-09 (Court of Appeals #282134).

<sup>9</sup> See *People v Mauch*, 23 Mich App 723 (1970).



## **V. APPLICATION TO REPEAT DRUG OFFENSES**

MCL 333.7413(2), which permits a court to impose a sentence “not more than twice the term otherwise authorized” for a defendant convicted as a second offender under the Controlled Substances Act, doubles the guidelines range as well as the maximum sentence; where the guidelines were 10 to 23 months, but the defendant was convicted as a second drug offender, the trial court was permitted to double the guidelines, and a 46 month minimum sentence was proper and not a departure. *People v Lowe*, 484 Mich 718 (2009). Despite dicta in *Lowe*, the prior record variables are still to be scored when the sentencing court intends to double the range provided by the calculation of the sentencing guidelines under MCL 333.7413(2), for repeat drug offenders. *People v Peltola*, 489 Mich 174 (2011).

## **VI. APPLICATION TO PROBATION VIOLATIONS**

The statutory sentencing guidelines apply to a sentence imposed after a probation revocation. Acts giving rise to the probation violation may constitute substantial and compelling reasons to depart from the guidelines, although not every probation violation warrants an upward departure. *People v Hendrick*, 472 Mich 555 (2005).

## **VII. GUIDELINES AND MANDATORY MINIMUM SENTENCES**

A. “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. Imposing a mandatory minimum sentence is not a departure under this section.” MCL 769.34(2)(a).

MCL 750.520f requires for a second conviction of CSC 1st, 2nd or 3<sup>rd</sup> degrees a minimum sentence of “at least 5 years”; this permits a minimum sentence of more than five years, but the guidelines still apply; thus, a 10-year minimum that was above the defendant’s guidelines range was not proper absent a statement of substantial and compelling reasons to depart. *People v Wilcox*, 486 Mich 60 (2010).

B. “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).

C. “If the Michigan vehicle code ... mandates a minimum sentence for an individual sentenced to the jurisdiction of the department of corrections and the Michigan vehicle code., 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.” MCL 769.34(2)(a).

The sentence of 1 year in the county jail imposed on a defendant convicted of OUIL/Third Offense was valid in a case where the statutory sentencing guidelines range was 0 to 11 months, and did not constitute a departure from the guidelines because MCL 769.34(2)(a) specifically describes such a sentence as not constituting a departure because it is less than the mandatory minimum of 1 year in prison that could be imposed. The trial court was not required to impose that sentence under the jurisdiction of the Department of Corrections. *People v Hendrix*, 263 Mich App 18 (2004), modified 471 Mich 926 (2004).

## **VIII. WHAT CONSTITUTES A DEPARTURE FROM THE GUIDELINES**

A “departure” means a sentence imposed that is not within the appropriate minimum sentence range established under the sentencing guidelines.” MCL 769.31(a).

A. A sentence imposed pursuant to MCL 769.34(2)(a) is not a departure.

B. If the entire guidelines range exceeds 2/3rds of the statutory maximum, imposing a sentence below the guidelines range at 2/3rds of the maximum is not a departure. MCL 769.34(2)(b).

C. A jail term below the guidelines range of a straddle or intermediate sanction cell is not a departure.

Straddle cell: If the upper limit of the cell range is greater than 18 months and the lower limit is 12 months or less, the sentencing court shall impose: a sentence to prison with a minimum term in that range or an intermediate sanction which may include a jail term of not more than 12 months, absent a departure. MCL 769.34(4)(d).

Intermediate sanction cell: If the upper limit of the cell range is 18 months or less, the court shall impose an "intermediate sanction" which may include a jail term that does not exceed the upper limit of the cell or 12 months, whichever is less, and the court cannot impose a sentence to state prison, absent a departure. MCL 769.34(4)(a).

D. A prison sentence is a departure in an intermediate sanction cell. *People v Stauffer*, 465 Mich 633 (2002).

## **IX. GUIDELINES AND PLEA/SENTENCE BARGAINING**

### **A. TYPES OF SENTENCE BARGAINING**

“Sentence bargaining” is implicit in plea or charge bargaining, because in most instances the reduction of a charge, dismissal of charges, etc., serves to limit the potential sentence.

In addition, there are three types of sentence bargains: sentence agreements, sentence recommendations, and “preliminary evaluations of sentence length” (commonly called *Cobbs* evaluations). All may include provisions with respect to the sentencing guidelines. Sentence agreements arise from a bargain between the prosecution and defense for a certain sentence or

certain range of sentence. They are authorized by *People v Killebrew*.<sup>10</sup> A judge has the discretion to refuse to take a plea based on a sentence agreement, or can accept the plea conditionally and determine at sentencing if he or she believes the sentence agreement is resulting in an appropriate sentence. MCR 6.302(C)(3). Both parties have a right to have the plea set aside if the court determines to impose a sentence outside the parameters of the agreement. MCR 6.310(B)(2)(a).<sup>11</sup><sup>12</sup>

Sentence recommendations are also authorized by *People v Killebrew*. Sentence recommendations arise from an agreement between the prosecution and defense that the prosecution will recommend that the sentence not exceed a certain length or range (not exceed the sentence guidelines, for example) or limit the type of incarceration (county jail versus prison). As with sentence agreements, a judge has the discretion to refuse to accept the plea, or can accept the plea conditionally and determine at sentencing if he or she believes the recommendation is resulting in an appropriate sentence. MCR 6.302(C)(3). If the judge determines that a sentence in excess of the recommendation is required, the defendant must be offered the opportunity to withdraw the plea. MCR 6.310(B)(2)(a). Bargained-for sentence recommendations by the prosecution act as a “cap” on the maximum possible sentence, and the defense is free to argue at sentencing for a sentence less than the recommendation.

In *People v Cobbs*,<sup>12</sup> the Court held that a judge can, upon the request of a party but not on its own initiative, place on the record a “preliminary evaluation” of what sentence would be appropriate if the defendant pleads guilty as charged. A judge is not required to engage in this practice. If a judge does give a *Cobbs* evaluation, the defendant is entitled to an opportunity to withdraw his or her plea if the judge determines at sentencing that a more severe sentence is appropriate. MCR 6.310(B)(2)(b).

## B. CAVEATS REGARDING PLEA AND SENTENCE BARGAINING

- WAIVER OF APPELLATE REVIEW

In *People v Wiley*, 472 Mich 153 (2005), the Court held that a defendant who voluntarily pleads guilty in reliance on an agreement for a specific sentence that exceeds the statutory sentencing guidelines waives appellate review of that sentence by such a plea. Similarly, a defendant who pleads in reliance on a valid preliminary evaluation of sentence length, for a specific sentence, and who is sentenced in accordance with that evaluation, has waived any objection to the scoring of the sentencing guidelines. *People v McKay*, 474 Mich 967 (2005). If, however, the sentence agreement or preliminary evaluation of sentence length is simply for a sentence within the guidelines range, the middle of the range, or the low end, etc, the defendant has not waived any objection to the scoring of those guidelines. See *People v Price*, 477 Mich 1 (2006).

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<sup>10</sup> 416 Mich 189 (1983).

<sup>11</sup> The rule only speaks to the defendant’s right to withdraw his or her plea, but the prosecution’s right to have the plea set aside if a judge decides to impose a lesser sentence than that agreed to has been recognized by the courts. See *People v Seibert*, 450 Mich 500 (1995).

<sup>12</sup> 443 Mich 276 (1993).

- *UNDERSTAND THE SPECIFIC BARGAIN*

Where the defendant pled guilty in reliance on a prosecutor's sentence recommendation for the low to middle end of the sentencing guidelines, the prosecutor failed to make that recommendation, and the judge imposed a minimum term of sentence at the very top of the guidelines range, the defendant is entitled to a remand where the trial court may either resentence consistent with the bargained for recommendation or allow the defendant the opportunity to withdraw his plea. *People v Gross*, 480 Mich 851 (2007). Where the defendant pled guilty in reliance on a sentence at the low end of the guidelines which the parties believed at the time of the plea would be 11 ½ or 12 years to 23 years, he is entitled to resentencing where the guidelines were significantly lower than expected – 72 to 180 months or 81 to 202 months, but he was sentenced to minimum terms of 12 years. If the court determines that it cannot sentence at the bottom of the correct guidelines range, the defendant must be given the opportunity to withdraw his plea. *People v Likens*, unpublished opinion of 01-10-08 (Court of Appeals #274710).

- *ALWAYS SCORE THE GUIDELINES BEFORE BARGAINING*

Statutory maximums do not always correlate with an expected Crime Class. For example, armed robbery is a Class A offense, but bank robbery is a Class C offense. A lower Crime Class does not necessarily carry a reduced guidelines range. For example, there are Class F cells that have a higher range than Class E, or the same range.

**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		
<b>I</b> 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
<b>II</b> 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
<b>III</b> 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
<b>IV</b> 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
<b>V</b> 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
<b>VI</b> 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.

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 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		
<b>I</b> 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
<b>II</b> 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
<b>III</b> 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
<b>IV</b> 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.

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.

## **X. HOW TO SCORE THE SENTENCING GUIDELINES:**

1) Determine the Sentencing Offense that is to be Scored. In a case involving multiple convictions, only the sentencing guidelines for the highest class offense(s) need to be scored, unless the court may impose consecutive sentences. *People v Mack*, 265 Mich App 122, 126-127 (2005); MCL 771.14.

2) Identify the Crime Class (e.g. M2, A, B, C, etc) in order to know which sentencing offense to score and in order to determine which sentencing grid to use. The sentencing guidelines manuals generally contain two crime lists, one with the offenses listed in numerical order by MCL number and one with the offenses listed in alphabetical order. The crime lists will give the crime class, crime group, and statutory maximum.

3) Identify the Crime Group (e.g. Crimes Against a Person, Crimes Involving a Controlled Substance) in order to know which offense variables are applicable. See the crime lists in the sentencing guidelines manual.

4) Special Offenses.

**For offenses committed on/after 1-9-07:** A) Score the OVs for both the Special Offense and for the underlying offense. MCL 777.21(4)(a). EXAMPLE: conspiracy, a special offense, is a Crime Against Public Safety (OVs 1, 3, 4, 9, 10, 12, 13, 14, 16, 18, 19, & 20), and larceny of a firearm, is a Crime Against Property (OVs 1, 2, 3, 4, 9, 10, 12, 13, 14, 16, 19, & 20). So for the crime of conspiracy to commit a larceny of a firearm, all of the following OVs would be scored: 1, 2, 3, 4, 9, 10, 12, 13, 14, 16, 18, 19, & 20. B) Determine the offense class based on the underlying offense. If there are multiple underlying felony offenses, choose the one 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)(b).

**For offenses committed before 1-9-07:** Determine the offense class and OVs based on the underlying offense.

5) Attempts.

Remember: attempts to commit Class A, B, C or D offenses are classified as Class E offenses, MCL 777.19(3)(a); attempts to commit Class E, F, or G offenses are classified as Class H offenses, MCL 777.19(3)(b); attempts to commit Class H offenses are punishable by intermediate sanctions only, MCL 769.31(b).

6) Scoring the Prior Record Variables.

A. *General to PRVs 1 - 5:*

- *Foreign Convictions:* Do NOT score them. They may, however, constitute a substantial and compelling reason to depart from the guidelines range. *People v Price*, 477 Mich 1; 723 NW2d 201 (2006)
- *Federal Convictions or Convictions from Sister States:* Do score them, in the manner indicated in the instructions for PRVs 1 – 5, i.e. by finding corresponding MI crimes (look to the elements of the offense), or effective January 9, 2007 if there is no corresponding MI crime, then by statutory maximum.
- *MI Convictions that are NOT listed in any crime class of the statutory guidelines:* Effective January 9, 2007, score by statutory maximum.
- *Convictions/juvenile adjudications obtained in violation of the right to counsel:* Prior cases holding that convictions and/or adjudications obtained in violation of the constitutional right to counsel may not be scored under the judicial guidelines would appear to be equally applicable under the legislative sentencing guidelines. See, *People v Fortson*, 202 Mich App 13 (1993); *People v Alexander (After Remand)*, 207 Mich App 227 (1994).
- *10-year Gap Rule.* Do not use any conviction or juvenile adjudication that precedes a 10-year gap between the discharge date from a conviction/adjudication and the commission of the next offense resulting in conviction/adjudication. If a discharge date is unavailable, add the time defendant was sentenced to probation or the length of the minimum term of incarceration to the date of conviction and use that date as the discharge date. MCL 777.50.
- *Going Beyond the Presentence Report.* Practitioner tip: If something looks odd about a prior conviction listed in the PSI or the defendant tells you something is incorrect, check the information against other sources, e.g. pull the file on the prior conviction if it is in the same jurisdiction, check for on-line docket entries in other jurisdictions or call and request the docket entries be faxed to you, check the defendant's profile on the MDOC's OTIS website (or equivalents from other states).

B. *PRV 5 (Prior Misdemeanor Convictions or Prior Misdemeanor Juvenile Adjudications):*

**• ONLY certain types of misdemeanors may be scored (see the SPECIAL INSTRUCTIONS to PRV 5):**

*Scoreable misdemeanors include the following:* offenses against a person or property, weapons offenses, offenses involving controlled substances, and convictions/adjudications for operating or attempting to operate pretty much any vehicle/mode of transportation while under the influence or impaired.



Examples of offenses that are **NOT** to be scored:

- Minor in Possession of Alcohol
- Open Intoxicants - Passenger
- Failure to Stop after Property Damage Accident
- Driving on a Suspended/Revoked License
- Failure to Display Valid Operator's License

[Note: Under the judicial sentencing guidelines, the Court of Appeals held that prior misdemeanor convictions for disorderly conduct, reckless driving and trespassing, even if the offenses involved the use of alcohol, could not be scored under the more-inclusive version of PRV 5 under the judicial guidelines, *People v Williams*, 191 Mich App 269; 477 NW2d 877 (1991), lv den 439 Mich 931 (1992).]

**• Prior convictions used to enhance the sentencing offense to a felony are NOT to be scored.**

Examples:

Domestic Violence – Third Offense is a felony, predicated on two prior misdemeanor domestic violence convictions. The two prior misdemeanor domestic violence convictions may not be scored under PRV 5.

OUIL – Third Offense is a felony, predicated on two prior misdemeanor OUIL convictions. The two prior misdemeanor OUIL convictions may not be scored under PRV 5.

**• Civil Infractions are NOT misdemeanors.**

C. *PRV 6 (Offender's Relationship to the Criminal Justice System):*

**• The assessment is based on the offender's relationship at the TIME THE SENTENCING OFFENSE WAS COMMITTED rather than the time of conviction or sentencing.** While the language of the statute, MCL 777.56, is somewhat ambiguous, this is the conclusion that has been reached in many unpublished COA opinions and in dicta in *People v Hendrick*, 261 Mich App 673; 683 NW2d 218 (2004), aff'd on other gds 472 Mich 555; 697 NW2d 511 (2005). There does not appear to be any on point case law to the contrary.

- It was proper to score PRV 6 at 5 points though the defendant’s bond on a charged misdemeanor had been forfeited before he committed the sentencing offense. Though he was not “on bond” as PRV 6 states, the defendant could not be said to have “no relationship” to the criminal justice system. *People v Johnson*, 293 Mich App 79 (2011).
- **Foreign Countries.** Do not score a relationship to the criminal justice system of a foreign country. It is likely that such a relationship may be constitute a substantial and compelling reason to depart from the guidelines range, under the reasoning in *Price, supra*.

*D. PRV 7 (Subsequent or Concurrent Felony Convictions):*

- **Concurrent convictions that have a mandatory consecutive sentence are NOT to be scored.** Example: Felony-Firearm.

7) *Scoring the Offense Variables*

*A. Standard of Proof = Preponderance of the Evidence.*

A trial court determines the scoring of the sentencing variables, by reference to the record, using the preponderance of the evidence standard. *People v Osantowski*, 481 Mich 103, 111; 748 NW2d 799 (2008); *People v Drohan*, 475 Mich 140, 142-143, 715 NW2d 778 (2006).

*B. OV instructions need to be read carefully for exclusions.*

Many of the OVs have instructions that specifically prohibit them from being scored except in certain types of offenses within a crime group, e.g. OVs 5, 6, 16, 17, & 18, or specifically prohibit scoring in certain offenses, e.g. OV 8 cannot be scored in kidnapping offenses, or prohibit scoring at specific point levels for certain offenses, e.g. OVs 1 & 3.

*C. Does the OV address conduct beyond the Specific Sentencing Offense?*

Offense variables are properly scored by reference **only** to the specific sentencing offense **unless** the language of a particular offense variable statute provides otherwise. *People v McGraw*, 484 Mich 120; 771 NW2d 655 (2009). Transactional conduct not scored may be considered, however, when deciding what sentence to impose within the appropriate guidelines range and in whether to depart from the guidelines recommendation.

Only some of the OVs direct that conduct beyond the specific sentencing offense be considered, e.g. OV 11 looks to conduct “arising out of the sentencing offense”; OV 12 addresses a 24-hour period; OV 13 addresses a 5-year period; OV 14 directs that the entire criminal transaction be considered.

In *McGraw*, the sentencing offense was breaking and entering. The Supreme Court found that it was error to consider those people placed in danger during the defendant's conduct of fleeing and eluding from the police, which occurred after the breaking and entering had been completed, in scoring OV 9. In *McGraw*, the charge of fleeing and eluding had been dismissed as part of a plea deal.

Remember, however, that in multiple conviction cases, the sentencing information report (SIR) is only being scored for the highest class offense. In a footnote the *McGraw* Court specifically overruled *People v Cook*, 254 Mich App 635 (2003), which had upheld the scoring of OV 19 based on fleeing and eluding conduct that occurred after the AGBH conviction for which the SIR was being scored. The defendant in *Cook* had been convicted of the fleeing and eluding in addition to the AGBH.

The Supreme Court is currently considering reconsidering whether OV 19 is offense specific, and thus mostly limited to being scored when the sentencing offense is something like Resisting and Obstructing a Police Officer, Witness Intimidation/Bribery, or Assaulting a Prison Guard, or if OV 19 addresses transactional or offense related conduct that occurs after the offense is completed. *People v David Smith*, 485 Mich 1133 (2010).

*D. OV 1, OV 2, & OV 3 (special instruction for multiple offender situations)*

- **In multiple offender situations, if one offender is assessed points, all are to be assessed the same number of points. But not if the offenders are being sentenced for different crimes. See *People v Johnston*, 478 Mich 903; 732 NW2d 531 (2007).**

*E. OV 3 (Degree of Physical Injury to a Victim)*

- **In non-drunk driving homicide offenses, OV 3 is to be scored at 25 points for “life threatening of permanent incapacitating injury” even though the victim died. *People v Houston*, 473 Mich 399; 702 NW2d 530 (2005).**

*F. OV 7 (Aggravated Physical Abuse)*

- **Variable meant to score defendant's conduct, not the experience of victim. *People v Kegler*, 268 Mich App 187 (2005) (no error in scoring 50 points even if victim unconscious or dead and not aware of conduct since defendant intentionally tortured victim with excessive brutality in effort to increase victim's fear and anxiety at time defendant thought victim might still be alive).**
- **OV 7 cannot be scored based solely on co-defendant's conduct.** Unlike some other offense variables, such as OV 1 and OV 2, OV 7 does not allow scoring solely on the basis of codefendants' conduct. *People v Hunt*, 290 Mich App 317 (2010)(OV 7 improperly scored where defendant did not himself commit, take

part in, or encourage others to commit acts constituting “sadism, torture, or excessive brutality.”)

*G. OV 8 (Victim Asportation or Captivity)*

- **No points assessed if the sentencing offense is kidnapping.**
- **Incidental movement is not to be scored.** Movement of the complainant by the defendant that is incidental to the commission of the crime does not amount to asportation under OV 8. *People v. Thompson*, 488 Mich 888; 788 NW2d 677 (2010).

*H. OV 9 (Number of Victims). See McGraw, supra.*

*I. OV 10 (Exploitation of a Victim’s Vulnerability)*

- **Predatory conduct.** In order to score 15 points for predatory conduct, there must be a *vulnerable* victim and *exploitation* of that vulnerability in addition to preoffense conduct directed at a victim for the primary purpose of victimization. “[V]ulnerability” of a victim is not limited to inherent or personal characteristics of the victim. The factors for vulnerability listed in the statute were not meant to be an exhaustive list. *People v Cannon*, 481 Mich 152 (2008) as modified by *People v Huston*, 489 Mich 451 (2011). No points can be assessed under OV 10 where the victim is a police decoy. *People v Russell (On Remand)*, 281 Mich App 610 (2008)(applying *Cannon*). 15 points properly assessed for predatory conduct where the victims testified to multiple sexual assaults over a very long period of time and the defendant had engaged in grooming the victims for the purpose of victimization. *People v Steele*, 283 Mich App 472 (2009)(applying *Cannon*).

*J. OV 11, OV 12, & OV 13, generally.*

- **Pay attention to the relationship between OVs 11, 12 & 13 and do not skip variables.** Conduct scored in OV 11 cannot be scored in OV 12 and may only be scored in OV 13 too if related to the offender’s membership in an organized crime group. Likewise conduct scored in OV 12 cannot be scored in OV 13 too unless related to the offender’s membership in an organized crime group. (See special instructions within those variables.) Skipping the scoring of OV 11 or OV 12 in order to score conduct in OV 13 is NOT permitted. See *People v Williams*, 486 Mich 1077, 784 NW2d 206 (2010); *People v Bemer*, 286 Mich App 26, 777 NW2d 464 (2009).

An offense designated within a particular crime class under the guidelines legislation, may not be counted or designated as a different crime class by the sentencing court for purposes of scoring the guidelines. *People v Bonilla-Machado*, 489 Mich 412 (2011)(it was error to consider assault of a prison employee, statutorily designated as a crime against public safety, as a crime against a person for purposes of scoring OV 13).

*K. OV 11 (Criminal Sexual Penetration)*

- **The one penetration on which a first- or third-degree criminal sexual conduct offense is based cannot be counted for purposes of scoring OV 11.**
- **Only those penetrations that ARISE OUT OF the sentencing offense can be counted in scoring this variable.** *People v Johnson*, 474 Mich 96 (2006) (error to score 25 points for second of two convictions of CSC third where two penetrations of victim occurred on different occasions). *People v Goodman*, 480 Mich 1052 (2008) (error to score 50 points for additional convictions of first-degree CSC for acts that occurred on other dates; court rejects analysis of Court of Appeals that other offenses arose out of the sentencing offense because they could be considered part of a pattern of abuse of the young victim that occurred because of the defendant's close relationship with the victim's mother). **Note:** *Penetrations that did NOT arise out of the sentencing offense may, however, be scored in OV 12 or OV 13 depending on the circumstances.*

*L. OV 12 (Contemporaneous Felonious Criminal Acts)*

The Legislature clearly intended for contemporaneous felonious acts to be acts other than the sentencing offense and not just other methods of classifying the sentencing offense. In a case of robbery which occurred inside of a grocery store, the trial court erred in assessing points under OV12 for either a larceny from a person (necessarily included lesser) or larceny in a building (cognate) because the defendant's act of wrongfully taking the victim's money was a single act and the robbery subsumes the larceny whether it was inside a building or not. **People v Light**, 290 Mich App 717 (2010). [Note: It was okay to score the act of carrying a concealed weapon.]

*M. OV 13 (Continuing Pattern of Criminal Behavior)*

- **Only those crimes committed during a 5-year period that encompasses the sentencing offense may be considered in scoring OV 13.** *People v Francisco*, 474 Mich 82 (2006). The sentencing offense can fall anywhere within the 5-year period.
- **Concurrent convictions arising from the same criminal transaction can be counted towards the necessary three offenses under OV 13.** *People v Harmon*, 248 Mich App 522 (2001).

The trial court did not err in scoring OV13 for a continuing pattern of criminal behavior by including the defendant's juvenile adjudications because a juvenile adjudication clearly constitutes criminal activity because it amounts to a violation of a criminal statute. OV 13 does not require a criminal conviction. *People v Harverson*, 291 Mich App 171 (2010).

*N. OV 20 (Terrorism)*

- **A threat that does not itself constitute an act of terrorism cannot be scored.** *People v Osantowski*, 481 Mich 103 (2008). In *Osantowski*, the defendant, a high school student in Michigan, sent a series of e-mail or chat messages to a teenager in the State of Washington indicating his intention to commit mass murder at his Michigan high school. The defendant did not communicate the threats to the targeted population or to the government nor did he cause them to be so communicated, so he did not commit an act of terrorism. It was the Washington student that caused the messages to be brought to the government's attention, out of concern that the defendant would act on his threats. The Supreme Court upheld the trial court's score of zero for OV 20.

8) Total the PRVs & OVs and Find the Corresponding Box on the Appropriate Sentencing Class Grid.

**XI. DEPARTURES FROM THE SENTENCING GUIDELINES RANGE:**

1) *Substantial & Compelling Reason & Articulation Requirements.* Departures from the statutory sentencing guidelines range are authorized by MCL 769.34(3) which provides that:

A court may depart from the appropriate sentence range established under the sentencing guidelines ... if the court has **a substantial and compelling reason** for that departure **and states on the record the reasons for departure.**

- The Supreme Court held that the Legislature intended substantial and compelling reasons to exist **only in exceptional cases.** Only an **objective and verifiable factor** can be used as a substantial and compelling reason. A substantial and compelling reason is one that **“keenly or irresistibly” grabs a court’s attention, and “is of considerable worth in deciding the length of sentence.”** Substantial and compelling' **cannot acquire a meaning that would allow trial judges to regularly use broad discretion to deviate.** *People v Babcock*, 469 Mich 247; 666 NW2d 231 (2003); *People v Smith*, 482 Mich 292 (2008).
- The trial court's articulation of reasons for the departure must be sufficient to allow adequate appellate review. *Id.*

2) *Statutorily Forbidden Reasons for Departure.*

A. Departures cannot be based on “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.” MCL 769.34(3)(a).

B. Departures also cannot be based on “an offense characteristic or offender characteristic **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.” See *People v Young*, 276 Mich App 446, 451 (2007)

3) *Proportionality & Articulation Requirements (People v Smith, 482 Mich 292 (2008).*

- **The departing minimum sentence imposed must be proportionate to the seriousness of the offender and the offense.** 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.
- 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.
- 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.
- 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.

See *People v Kellet*, unpublished per curiam opinion of the Court of Appeals, issued September 4, 2008 (Docket No. 276817), where the Court held that the extent of the departure was not outside the range of principled outcomes if one extrapolates a higher offense severity level by reviewing the diagonal progression in the sentencing guidelines grid. See example *Kellet* grid attached.

4) *Examples of Proper Factors for Departure:*

**Extent of Prior Record Not Adequately Accounted For:** *People v Cline* 276 Mich App 634 (2007)(17 concurrent counts); *People v Clifford Charles Disney*, unpublished per curiam opinion of the Court of Appeals, issued January 17, 2008 (Docket No. 273367)(14 prior felonies).

**Similarity of Prior Record Not Accounted For:** *People v Thomas Joseph Delazzer*, unpublished per curiam opinion of the Court of Appeals, issued June 5, 2008 (Docket No. 277834)(sixth fraud crime).

**Offense Conduct Not Adequately Accounted For:** *People v Smith, supra* (duration of abuse over long period of time; threat to retaliate by evicting child victim and her family; gynecological examination of a child causing discomfort and embarrassment that added significantly to her trauma); *People v Cline* 276 Mich App 634 (2007)(18 separate acts of torture of same victim not adequately accounted for by OV 7; total OV score well in excess of that necessary to reach the highest OV level); *People v John Jerome Murriel*, unpublished per curiam opinion of the Court of Appeals, issued May 15, 2008 (Docket No. 276687)(total OV score well in excess of that necessary to reach the highest OV level).

**An Established Pattern of Violence Toward a Specific Victim:** *People v Horn* 279 Mich App 31 (2008)(the factor of repetitive acts of violence, especially escalating violence, against a specific victim is not adequately considered by the guidelines; the defendant even tried to solicit his wife's murder after he was incarcerated).

**Education, Volunteer Work, &/or Long Work History:** *People v Latosha Ann Carter*, unpublished per curiam opinion of the Court of Appeals, issued February 10, 2009 (Docket No. 279911)(defendant's work history was not lengthy enough or noteworthy enough to be substantial and compelling; defendant's pursuit of post-secondary education and volunteer work did constitute substantial and compelling reasons to depart); *People v Sonjia Jeannette Johnson*, unpublished per curiam opinion of the Court of Appeals, issued March 17, 2009 (Docket No. 282231)(extensive work history and pursuing postsecondary education were substantial and compelling reasons to depart).

**Mitigating Circumstances (Minimal Culpability):** *People v Sonjia Jeannette Johnson*, unpublished per curiam opinion of the Court of Appeals, issued March 17, 2009 (Docket No. 282231)(mitigating circumstances surrounding the offense can be substantial and compelling reasons, as in this case, where the defendant, who was convicted as an aider and abettor, did not engage in narcotics sales herself or have any knowledge of the drug quantities involved.)

5) *Examples of Improper Factors for Departure:*

**Refusal to Admit Guilt/Protestations of Innocence:** *People v Tammy Ann Sauro*, unpublished per curiam opinion of the Court of Appeals, issued March 27, 2007 (Docket No. 265951).

**Gynecological Exam (generally not exceptional):** *People v Smith, supra*.



**Consideration of Parole Violation Consequences:** *People v Ratliff*, 480 Mich 1108 (2008)(the trial court improperly relied on the erroneous assumption that defendant would serve additional time in prison on his parole matter as a reason to depart from the guidelines and impose a prison sentence.)

**Lack of a Prior Record:** *People v Young*, 276 Mich App 446 (2007)(see discussion above); *People v Cal Duane Clark*, unpublished per curiam opinion of the Court of Appeals, issued January 22, 2009 (Docket No. 282539)(the defendant's lack of a prior record is accounted for in the sentencing guidelines and, regardless, at age 19 it is not exceptional); *People v Latosha Ann Carter*, unpublished per curiam opinion of the Court of Appeals, issued February 10, 2009 (Docket No. 279911)(the defendant's relative lack of a prior record (only two misdemeanor juvenile adjudications) was accounted for by the sentencing guidelines and is not exceptional at age 19.)

**Age alone:** Age alone does not constitute a substantial and compelling reason for departure. *Young, supra* at 457; *People v Latosha Ann Carter*, unpublished per curiam opinion of the Court of Appeals, issued February 10, 2009 (Docket No. 279911).

6) *Perjury (sometimes proper; sometimes not):*

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. Perjury can be a proper reason for departure if it is objective and verifiable, such as when the defendant admits at sentencing that he lied on the stand. However, even when perjury is objective and verifiable, by itself it does not constitute a substantial and compelling reason to depart; otherwise, a departure might be warranted every time a defendant testified and was found guilty. *People v Kahley*, 277 Mich App 182 (2007). See also *People v Djonaj*, unpublished per curiam opinion of the Court of Appeals, issued January 22, 2009 (Docket No. 280294), applying *Khaley, surpa*, and remanding for resentencing.

## HYPOTHETICAL CASE SCORING EXERCISE

The following are the minimum sentence ranges for class D:

**Prior Record Variable Level**

Offense Variable Level	A 0 Points	B 1-9 Points	C 10-24 Points	D 25-49 Points	E 50-74 Points	F 75+ Points	G? 100-125 Points?
<b>I</b> 0-9 Points	0-6	0-9	0-11	0-17	5-23	10-23	19-38
<b>II</b> 10-24 Points	0-9	0-11	0-17	5-23	10-23	19-38	
<b>III</b> 25-34 Points	0-11	0-17	5-23	10-23	19-38	29-57	
<b>IV</b> 35-49 Points	0-17	5-23	10-23	19-38	29-57	34-67	
<b>V</b> 50-74 Points	5-23	10-23	19-38	29-57	34-67	38-76	
<b>VI</b> 75+ Points	10-23	19-38	29-57	34-67	38-76	43-76	
<b>VII?</b> 100-125 Points	19-38						

## PRV 1

### Prior High Severity Felony Convictions

(All “prior convictions” must satisfy the 10-year gap requirements of MCL 777.50.)

Pts	The offender has:	Instructions
75	3 or more prior high severity convictions.	<p>A “<b>prior high severity felony conviction</b>” is a conviction for any of the following crimes if the conviction was entered before the commission date of the sentencing offense:</p> <ul style="list-style-type: none"> <li>• a crime listed in class M2, A, B, C, or D (or 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</li> <li>• <b>(effective January 9, 2007)*</b> a felony that is not listed in <i>any</i> crime class (or a felony under federal law or the law of another state that does not correspond to a crime listed in <i>any</i> class) that is punishable by a maximum term of imprisonment of 10 years or more. MCL 777.51(2).</li> </ul> <p>*2006 PA 655.</p>
50	2 prior high severity convictions.	
25	1 prior high severity conviction.	
0	No prior high severity convictions.	

## PRV 2

### Prior Low Severity Felony Convictions

(All “prior convictions” must satisfy the 10-year gap requirements of MCL 777.50.)

Pts	The offender has:	Instructions
30	4 or more prior low severity convictions.	<p>A “<b>prior low severity felony conviction</b>” is a conviction for any of the following crimes if the conviction was entered before the commission date of the sentencing offense:</p> <ul style="list-style-type: none"> <li>• a crime listed in class E, F, G, or H (or 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</li> <li>• <b>(effective January 9, 2007)*</b> a felony that is not listed in <i>any</i> crime class (or a felony under federal law or the law of another state that does not correspond to a crime listed in <i>any</i> class) that is punishable by a maximum term of imprisonment of less than 10 years. MCL 777.52(2).</li> </ul> <p>*2006 PA 655.</p>
20	3 prior low severity convictions.	
10	2 prior low severity convictions.	
5	1 prior low severity conviction.	
0	No prior low severity convictions.	

### PRV 3

#### Prior High Severity Juvenile Adjudications

(All “prior convictions” must satisfy the 10-year gap requirements of MCL 777.50.)

Pts	The offender has:	Instructions
50	3 or more prior high severity juvenile adjudications.	<p>A “<b>prior high severity juvenile adjudication</b>” is an adjudication for conduct that would be any of the following if committed by an adult, if the order of disposition was entered before the commission date of the sentencing offense:</p> <ul style="list-style-type: none"> <li>• a crime listed in class M2, A, B, C, or D (or 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</li> <li>• <b>(effective January 9, 2007)*</b> a felony that is not listed in <i>any</i> crime class (or a felony under federal law or the law of another state that does not correspond to a crime listed in <i>any</i> class) that is punishable by a maximum term of imprisonment of 10 years or more. MCL 777.53(2).</li> </ul> <p>*2006 PA 655.</p>
25	2 prior high severity juvenile adjudications.	
10	1 prior high severity juvenile adjudication.	
0	No prior high severity juvenile adjudications.	

### PRV 4

#### Prior Low Severity Juvenile Adjudications

(All “prior convictions” must satisfy the 10-year gap requirements of MCL 777.50.)

Pts	The offender has:	Instructions
20	6 or more prior low severity juvenile adjudications.	<p>A “<b>prior low severity juvenile adjudication</b>” is an adjudication for conduct that would be any of the following if committed by an adult, if the order of disposition was entered before the commission date of the sentencing offense:</p> <ul style="list-style-type: none"> <li>• a crime listed in class E, F, G, or H (or 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</li> <li>• <b>(effective January 9, 2007)*</b> a felony that is not listed in <i>any</i> crime class (or a felony under federal law or the law of another state that does not correspond to a crime listed in <i>any</i> class) that is punishable by a maximum term of imprisonment of less than 10 years. MCL 777.54(2).</li> </ul> <p>*2006 PA 655.</p>
15	5 prior low severity juvenile adjudications.	
10	3 or 4 prior low severity juvenile adjudications.	
5	2 prior low severity juvenile adjudications.	
2	1 prior low severity juvenile adjudication.	
0	No prior low severity juvenile adjudications.	

## PRV 5

### Prior Misdemeanor Convictions and Prior Misdemeanor Juvenile Adjudications

(All “prior convictions” must satisfy the 10-year gap requirements of MCL 777.50.)

Pts	The offender has:	Instructions
20	7 or more prior misdemeanor convictions or prior misdemeanor juvenile adjudications.	<p>A “<b>prior misdemeanor conviction</b>” is a conviction:</p> <ul style="list-style-type: none"> <li>• 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 the law of the United States,</li> <li>• if the conviction was entered before the commission date of the sentencing offense. MCL 777.55(3)(a).</li> </ul> <p>A “<b>prior misdemeanor juvenile adjudication</b>” is a juvenile adjudication:</p> <ul style="list-style-type: none"> <li>• 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 the law of the United States,</li> <li>• if the order of disposition for the juvenile adjudication was entered before the commission date of the sentencing offense. MCL 777.55(3)(b).</li> </ul>
15	5 or 6 prior misdemeanor convictions or prior misdemeanor juvenile adjudications.	
10	3 or 4 prior misdemeanor convictions or prior misdemeanor juvenile adjudications.	
5	2 prior misdemeanor convictions or prior misdemeanor juvenile adjudications.	
2	1 prior misdemeanor conviction or prior misdemeanor juvenile adjudication.	
0	No prior misdemeanor convictions or prior misdemeanor juvenile adjudications.	

#### Special Instructions for PRV 5:

- A prior conviction used to enhance the sentencing offense to a felony may not be counted under PRV 5. MCL 777.55(2)(b).
- 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:
  - only those prior misdemeanor convictions or prior misdemeanor juvenile adjudications that are offenses against a person or property, weapons offenses, or offenses involving controlled substances, and
  - all prior misdemeanor convictions and juvenile adjudications for operating or attempting to operate a vehicle, vessel, ORV, snowmobile, aircraft, or locomotive while 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).

## PRV 6

### Offender's Relationship to the Criminal Justice System

Pts		Instructions
20	Offender is a prisoner of the department of corrections or serving a sentence in jail (includes an offender who is an escapee from jail or prison). MCL 777.56(3)(b).	<p>PRV 6 assesses points based on an offender's relationship to the criminal justice system at the time the sentencing offense was committed. MCL 777.56.</p> <p>The scope of PRV 6 includes consideration of an offender's relationship with a criminal justice system outside the state of Michigan. The point values indicated by applicable statements in PRV 6 should be assessed against an offender who is involved with the criminal justice system of another state or the federal criminal justice system.</p> <p>"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 750.350a (deferral under limited circumstances for parental kidnapping), MCL 762.11 to 762.15 (assignment to youthful trainee status), MCL 769.4a (deferral under limited circumstances for domestic assault), MCL 600.1076 (deferral involving drug treatment courts), and MCL 750.430 (deferral for impaired healthcare professionals).</p>
15	Offender is incarcerated in jail awaiting adjudication or sentencing on a conviction or probation violation.	
10	Offender is on parole, probation, or delayed sentence status or on bond awaiting adjudication or sentencing for a felony.	
5	Offender is on probation or delayed sentence status or on bond awaiting adjudication or sentencing for a misdemeanor.	
0	Offender has no relationship to the criminal justice system.	

## PRV 7

### Subsequent or Concurrent Felony Convictions

Pts	The offender has:	Instructions
20	2 or more subsequent or concurrent felony convictions.	<ul style="list-style-type: none"> <li>• A conviction for felony-firearm may not be counted under PRV 7. MCL 777.57(2)(b).</li> <li>• A concurrent felony conviction that will result in a mandatory consecutive sentence may not be counted under PRV 7. MCL 777.57(2)(c).</li> <li>• <b>(Effective March 1, 2003)*</b> a concurrent felony conviction that will result in a consecutive sentence under MCL 333.7401(3)* may not be counted under PRV 7. MCL 777.57(2)(c).</li> </ul> <p>* 2002 PA 666.</p>
10	1 subsequent or concurrent felony conviction.	
0	No subsequent or concurrent felony convictions.	

<b>OV 1</b> <b>Aggravated Use of a Weapon</b>		
Pts		Instructions
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).	<ul style="list-style-type: none"> <li>• 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).</li> <li>• In cases involving multiple offenders, if 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).</li> <li>• 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).</li> <li>• Score five points if an offender used an object to suggest that he or she had a weapon. MCL 777.31(2)(c).</li> <li>• 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).</li> <li>• “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).</li> <li>• “Incendiary device” includes gasoline or any other flammable substance, a blowtorch, fire bomb, Molotov cocktail, or other similar device. MCL 777.31(3)(b).</li> </ul>
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).	
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).	

## OV 2

### Lethal Potential of Weapon Possessed or Used

Pts		Instructions
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).	<ul style="list-style-type: none"> <li>• 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).</li> <li>• “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).</li> <li>• A “fully automatic weapon” is a firearm that ejects an empty cartridge 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).</li> <li>• 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).</li> <li>• An “incendiary device” includes gasoline or any other flammable substance, a blowtorch, fire bomb, Molotov cocktail, or other similar device. MCL 777.32(3)(d).</li> </ul>
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).	



<b>OV 3</b> <b>Degree of Physical Injury to a Victim</b>		
Pts		Instructions
100	A victim was killed. MCL 777.33(1)(a).	<ul style="list-style-type: none"> <li>• 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(3)(a).</li> <li>• 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).</li> <li>• Score 50 points under this variable if death results from an offense or attempted offense that involves the operation of a vehicle, vessel, ORV, snowmobile, aircraft, or locomotive and any of the following apply:                             <ul style="list-style-type: none"> <li>– the offender was under the influence of or visibly impaired by the use of alcohol, a controlled substance, or a combination of alcohol and a controlled substance, MCL 777.33(2)(c)(i);</li> <li>– the offender had an alcohol content of 0.08 grams* 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</li> <li>– 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).</li> </ul> </li> <li>• Do not score five points if “bodily injury” is an element of the sentencing offense. MCL 777.33(2)(d).</li> <li>• “Requiring medical treatment” refers to an injury’s need for treatment not whether a victim was successful in obtaining treatment. MCL 777.33(3).</li> </ul> <p><i>*Effective October 1, 2013, the alcohol content level increases to 0.10 grams or more.</i></p>
50	A victim was killed. MCL 777.33(1)(b). <i>(35 points for offenses committed before September 30, 2003. 2003 PA 134.)</i>	
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).	

<b>OV 4</b> <b>Degree of Psychological Injury to a Victim</b>		
Pts		Instructions
10	Serious psychological injury requiring professional treatment occurred to a victim. MCL 777.34(1)(a).	<p>Ten points may 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).</p>
0	No serious psychological injury requiring professional treatment occurred to a victim. MCL 777.34(1)(b).	

## OV 5

### Psychological Injury Sustained by a Member of a Victim’s Family

Score for crime in “Person” crime group **only** if the sentencing offense is homicide, attempted homicide, conspiracy or solicitation to commit a homicide, or assault with intent to commit murder.

Pts		Instructions
15	Serious psychological injury requiring professional treatment occurred to a victim’s family member. MCL 777.35(1)(a).	<ul style="list-style-type: none"> <li>Assess 15 points if the 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).</li> <li>Any crime in which the death of a person is an element of the crime is a “homicide.” MCL 777.1(c).</li> </ul>
0	No serious psychological injury requiring professional treatment occurred to a victim’s family member. MCL 777.35(1)(b).	

## OV 6

### Intent to Kill or Injure Another Individual

Score for crime in “Person” crime group **only** if the sentencing offense is homicide, attempted homicide, conspiracy or solicitation to commit a homicide, or assault with intent to commit murder.

Pts		Instructions
50	The offender had premeditated intent to kill or the killing was committed while committing or attempting to commit arson, criminal sexual conduct in the first or third degree, child abuse in the first degree, a major controlled substance offense, robbery, breaking and entering of a dwelling, home invasion in the first or second degree, 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).	<ul style="list-style-type: none"> <li>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. MCL 777.36(2)(a).</li> <li>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).</li> <li>Any crime in which a person’s death in an element of the crime is a “homicide.” MCL 777.1(c).</li> </ul>
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).	

<b>OV 7</b> <b>Aggravated Physical Abuse</b>		
Pts		Instructions
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).	<ul style="list-style-type: none"> <li>• Each person placed in danger of injury or loss of life is a victim for purposes of scoring OV 7. MCL 777.37(2).</li> <li>• “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).</li> <li>• Effective April 22, 2002, 2002 PA 137 deleted “terrorism”<sup>*</sup> 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).</li> </ul> <p><i>*“Terrorism” is now addressed by OV 20. MCL 777.49a.</i></p>
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).	

<b>OV 8</b> <b>Victim Asportation or Captivity</b>		
Pts		Instructions
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).	<ul style="list-style-type: none"> <li>• Each person in danger of injury or loss of life is a victim for purposes of scoring OV 8. MCL 777.38(2)(a).</li> <li>• Zero points must be scored if the sentencing offense is kidnapping. MCL 777.38(2)(b).</li> </ul>
0	No victim was asported or held captive. MCL 777.38(1)(b).	

<b>OV 9</b> <b>Number of Victims</b>		
Pts		Instructions
100	Multiple deaths occurred. MCL 777.39(1)(a).	<ul style="list-style-type: none"> <li>• A “victim” for purposes of scoring OV 9 is each person placed in danger of injury or loss of life or <b>(effective March 30, 2007)*</b> loss of property. MCL 777.39(2)(a).</li> <li>• 100 points are scored only in homicide cases. MCL 777.39(2)(b). Any crime in which a person’s death is an element of the crime is a “homicide.” MCL 777.1(c).</li> </ul> <p>*2006 PA 548.</p>
25	10 or more victims were placed in danger of physical injury or death. <b>(Effective March 30, 2007.)</b> 20 or more victims were placed in danger of property loss. MCL 777.39(1)(b).	
10	2 to 9 victims were placed in danger of physical injury or death. <b>(Effective March 30, 2007.)</b> 4 to 19 victims were placed in danger of property loss. MCL 777.39(1)(c).	
0	Fewer than 2 victims were placed in danger of physical injury or death. <b>(Effective March 30, 2007.)</b> Fewer than 4 victims were placed in danger of property loss. MCL 777.39(1)(d).	

<b>OV 10</b> <b>Exploitation of a Victim’s Vulnerability</b>		
Pts		Instructions
15	Predatory conduct was involved. MCL 777.40(1)(a).	<ul style="list-style-type: none"> <li>• 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).</li> <li>• “Predatory conduct” is an offender’s preoffense conduct directed at a victim for the primary purpose of victimization. MCL 777.40(3)(a).</li> <li>• To “exploit” a victim is to manipulate a victim for the offender’s selfish or unethical purposes. MCL 777.40(3)(b).</li> <li>• A victim’s “vulnerability” is the victim’s readily apparent susceptibility to injury, physical restraint, persuasion, or temptation. MCL 777.40(3)(c).</li> <li>• “Abuse of authority status” means the offender used a victim’s fear of or deference to an authority figure to exploit the victim. Examples of an authority figure include, but are not limited to, a teacher, parent, or physician. MCL 777.40(3)(d).</li> </ul>
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).	

<b>OV 11</b> <b>Criminal Sexual Penetration</b>		
Pts		Instructions
50	Two or more criminal sexual penetrations occurred. MCL 777.41(1)(a).	<ul style="list-style-type: none"> <li>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).</li> <li>Multiple sexual penetrations of the victim by the offender occurring beyond the sentencing offense may be scored in OVs 12 or 13.* MCL 777.41(2)(b). However, if any conduct is scored under this variable, that conduct must not be scored under OV 12 and may only be scored under OV 13 if the conduct is related to the offender’s membership in an organized criminal group. MCL 777.42(2)(c); MCL 777.43(2)(c).</li> <li>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).</li> </ul> <p><i>*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.</i></p>
25	One criminal sexual penetration occurred. MCL 777.41(1)(b).	
0	No criminal sexual penetrations occurred. MCL 777.41(1)(c).	

<b>OV 12</b> <b>Number of Contemporaneous Felonious Criminal Acts</b>		
Pts		Instructions
25	Three or more contemporaneous felonious criminal acts involving crimes against a person were committed. MCL 777.42(1)(a).	<ul style="list-style-type: none"> <li>A felonious criminal act is contemporaneous if both of the following circumstances exist:                             <ul style="list-style-type: none"> <li>the criminal act occurred within 24 hours of the sentencing offense, MCL 777.42(2)(a)(i), and</li> <li>the criminal act has not and will not result in a separate conviction, MCL 777.42(2)(a)(ii).</li> </ul> </li> <li>Conduct scored in OV 11 must not be scored under this variable. MCL 777.42(2)(c).</li> <li>Violations of MCL 750.227b (possession of a firearm during the commission of a felony) should not be counted when scoring this variable. MCL 777.42(2)(b).</li> </ul>
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).	

## OV 13 Continuing Pattern of Criminal Behavior

Pts		Instructions
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).	<ul style="list-style-type: none"> <li>To score this variable, all crimes within a period of five years, including the sentencing offense, must be counted without regard to whether the offense resulted in a conviction. MCL 777.43(2)(a).</li> </ul>
25	<b>(Effective January 16, 2009.)*</b> 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).	<ul style="list-style-type: none"> <li>The existence of an organized criminal group may be 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).</li> </ul>
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) (formerly MCL 777.43(1)(b)).	<ul style="list-style-type: none"> <li>Do not consider conduct scored in OVs 11 or 12 unless the offense was related to membership in an organized criminal group. MCL 777.43(2)(c).</li> </ul>
10	<b>(Effective until February 28, 2003.)</b> The offense was part of a pattern of felonious criminal activity involving a combination of 3 or more crimes against a person or property. MCL 777.43(1)(c).	<ul style="list-style-type: none"> <li>Do not consider conduct scored in OVs 11 or 12 unless the offense was related to membership in an organized criminal group or <b>(effective January 16, 2009)</b> that are gang-related.* MCL 777.43(2)(c).</li> </ul>
10	<p><b>(Effective March 1, 2003, through January 15, 2009.)</b> The offense was part of a pattern of felonious criminal activity involving a combination of 3 or more crimes against a person or property or a violation of MCL 333.7401(2)(a)(i) to (iii) or 333.7403(2)(a)(i) to (iii). MCL 777.43(1)(c).</p> <p><b>(Effective January 16, 2009.)*</b> The offense was part of a pattern of felonious criminal activity involving a combination of 3 or more crimes against a person or property or a violation of MCL 333.7401(2)(a)(i) to (iii) or 333.7403(2)(a)(i) to (iii) of the Public Health Code, 1978 PA 368, MCL 333.7401 and 333.7403. MCL 777.43(1)(d) (formerly MCL 777.42(1)(c)).</p>	<ul style="list-style-type: none"> <li>Score 50 points only if the sentencing offense is first-degree criminal sexual conduct. MCL 777.43(2)(d).</li> <li><b>(Effective March 1, 2003.)</b> Only one controlled substance offense arising from the criminal episode for which the offender is being sentenced may be counted when scoring this variable. MCL 777.43(2)(e).</li> <li>Only one crime involving the same controlled substance may be counted under this variable. 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).</li> </ul> <p>*2008 PA 562.</p>
10	<b>(Effective until January 15, 2009.)</b> The offense was part of a pattern of felonious criminal activity directly related to membership in an organized criminal group. MCL 777.43(1)(d).	<p><b>continued on next page</b></p>



**OV 13**  
**Continuing Pattern of Criminal Behavior**

Pts		Instructions
10	<p><b>(Effective March 1, 2003, through January 15, 2009.)</b> 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) to (iii) or 333.7403(2)(a)(i) to (iii). MCL 777.43(1)(e).</p> <p><b>(Effective January 16, 2009.)*</b> 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) to (iii) or 333.7403(2)(a)(i) to (iii) of the Public Health Code , 1978 PA 368, MCL 333.7401 and 333.7403. MCL 777.43(1)(e).</p>	
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).	

**OV 14**  
**Offender's Role**

Pts		Instructions
10	The offender was a leader in a multiple offender situation. MCL 777.44(1)(a).	<ul style="list-style-type: none"> <li>• Consider the entire criminal transaction in which the sentencing offense occurred when determining the offender's role. MCL 777.44(2)(a).</li> </ul>
0	The offender was not a leader in a multiple offender situation. MCL 777.44(1)(b).	<ul style="list-style-type: none"> <li>• In cases involving three or more offenders, more than one offender may be considered a leader. MCL 777.44(2)(b).</li> </ul>

## OV 16

### Degree of Property Damage

Score for crime in “Person” crime group **only** if the sentencing offense is a violation or attempted violation of MCL 750.110a (home invasion).

Pts		Instructions
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).	<ul style="list-style-type: none"> <li>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).</li> <li>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 pre-offense condition. MCL 777.46(2)(b).</li> <li>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).</li> </ul>
10	The property had a value of more than \$20,000.00 or had significant historical, social, or sentimental value. MCL 777.46(1)(b).	
5	The property had a value of \$1,000.00 or more but not more than \$20,000.00. MCL 777.46(1)(c).	
1	The property had a value of \$200.00 or more but not more than \$1,000.00. MCL 777.46(1)(d).	
0	No property was obtained, damaged, lost, or destroyed or the property had a value of less than \$200.00. MCL 777.46(1)(e).	

## OV 17

### Degree of Negligence Exhibited

Score for crime in “Person” crime group **only** if the offense or attempted offense involves the operation of a vehicle, vessel, ORV, snowmobile, aircraft, or locomotive.

Pts		Instructions
10	The offender showed a wanton or reckless disregard for the life or property of another person. MCL 777.47(1)(a).	<ul style="list-style-type: none"> <li>If points are assessed against the offender for OV 6, ten points may not be scored under this variable. MCL 777.47(2).</li> <li>Definitions for “aircraft,” “ORV,” “snowmobile,” “vehicle,” and “vessel” are referenced in MCL 777.1.</li> </ul>
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).	



## OV 18

### Degree to Which Alcohol or Drugs Affected the Offender

Score for crime in "Person" crime group **only** if the offense or attempted offense involves the operation of a vehicle, vessel, ORV, snowmobile, aircraft, or locomotive.

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 below 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.

Pts		Instructions
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).	<ul style="list-style-type: none"> <li>• For purposes of scoring OV 18, "any bodily alcohol content" is either of the following:                             <ul style="list-style-type: none"> <li>– 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,* MCL 777.48(2)(a), or</li> <li>– 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).</li> </ul> </li> <li>• Definitions for "aircraft," "ORV," "snowmobile," "vehicle," and "vessel" are referenced in MCL 777.1.</li> </ul> <p style="text-align: right;"><b>continued on next page</b></p>
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.	
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).	
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.	
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.	
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).	

## OV 18

### Degree to Which Alcohol or Drugs Affected the Offender

Score for crime in “Person” crime group **only** if the offense or attempted offense involves the operation of a vehicle, vessel, ORV, snowmobile, aircraft, or locomotive.

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 below 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.

Pts		Instructions
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.	*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.
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).	
0	The offender’s ability to operate a vehicle was not affected by an intoxicating liquor or a controlled substance or a combination of intoxicating liquor and a controlled substance.	

## OV 19

### Threat to Security or Interference With the Administration of Justice

Pts		Instructions
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).	

<b>OV 20 Terrorism</b>		
<b>Pts</b>		<b>Instructions</b>
<b>100</b>	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).	<ul style="list-style-type: none"> <li>• For purposes of scoring this variable, the terms “act of terrorism” and “terrorist” are defined in MCL 750.543b. MCL 777.49a(2)(a).</li> <li>• “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).</li> <li>• “Incendiary device” includes gasoline or any other flammable substance, a blowtorch, fire bomb, Molotov cocktail, or other similar device. MCL 777.49a(2)(c).</li> <li>• For purposes of OV 20, “terrorist organization” is defined in MCL 750.543c. MCL 777.49a(2)(d).</li> </ul>
<b>50</b>	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).	
<b>25</b>	The offender supported an act of terrorism, a terrorist, or a terrorist organization. MCL 777.49a(1)(c).	
<b>0</b>	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).	

## OV 15

### Aggravated Controlled Substance Offenses

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.

Pts		Instructions
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).	<ul style="list-style-type: none"> <li>• “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).</li> <li>• A “minor” is an individual 17 years of age or less. MCL 777.45(2)(b).</li> <li>• “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).</li> </ul> <p style="text-align: center;"><b>continued on next page</b></p>
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).	
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.	
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.	
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.	
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 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.	

## OV 15

### Aggravated Controlled Substance Offenses

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.

Pts		Instructions
10	The offense is a violation of MCL 333.7401(2)(a)(i) to (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).	
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).	
5	The offense involved the delivery or possession with the intent to deliver marijuana or any other controlled substance or counterfeit controlled substance or possession of controlled substances or counterfeit controlled substances having a value or under such circumstances as to indicate trafficking.	
0	The offense was not an offense described in the categories above. MCL 777.45(1)(h).	
0	The offense was not an offense described in the categories above.	

## OV 19

### Threat to Security or Interference With the Administration of Justice

Pts		Instructions
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).	

## Evaluation and Plan

The defendant, age 23, is before the court for sentencing on his third felony conviction. Defendant pled guilty to: Count I: 1<sup>st</sup> Degree Home Invasion; Count II: felon in possession of a firearm; Count III: Larceny of a Firearm.

The defendant was on probation at the time of these offenses for Larceny in a Bldg. The defendant was also convicted of unarmed robbery after these offenses and again placed on probation. He has been sentenced for violation of both those felony offenses and is incarcerated at the present time serving a year in the county jail for violation of probation.

His conduct on probation was problematic, reporting on two occasions under the influence of alcohol, failing to maintain employment, and lying to the agent about attendance at outpatient treatment.

The Michigan Department of Corrections respectfully recommends incarceration.

## Agent's Description of the Offense

On February 1, 2009, Flint Township Police were dispatched with reference to a Breaking & Entering complaint at a residence. They were met by neighbors who were keeping an eye on the home for a relative who had been out-of-town for a few weeks. Upon entry, it was apparent the entire house had been ransacked. The homeowner advised that a firearm was missing as well as a small safe including valuables, coins, jewelry, and cash. The homeowner advises she has been reimbursed by AAA in the amount of \$24,500.00.

The defendant was not arrested until nearly 6 months later due to the delay in processing evidence at the Michigan State Police Laboratory. When confronted with the scientific evidence, the defendant fully admitted the offense.

## Consecutive Sentences

Consecutive sentencing is discretionary per the Prosecutor's File.

## Criminal Justice

**Juvenile History:** According to the Probate Court, the defendant has no known juvenile record.

### Adult History:

No. 1 of 14:	7/3/01	Minor in Possession. Plea
No. 2 of 14:	7/10/05	Loitering. Dismissed without Prejudice.
No. 3 of 14:	1/1/06	Misdemeanor Larceny. Plea. 6 Days Jail.

No. 4 of 14:	5/29/06	Loitering. Plea. 6 Days Jail; credit for 6 days.
No. 5 of 14:	10/11/06	Larceny in a Bldg. Nolle Prosequi.
No. 6 of 14:	10/11/06	Loitering. Nolle Prosequi.
No. 7 of 14:	10/11/06	Attempt Breaking & Entering Bldg. Final Charge: Larceny in a Bldg. 9/14/07 Sentenced: 24 months probation. Bench Warrant issued 4/14/09 due to new felony conviction of Unarmed Robbery. Continued on Probation with SAI. Bench Warrant Issued 9/28/09 due to new felony and Used of alcohol; failure to attend treatment. Pled guilty to violation of Probation, probation revoked and sentenced to 1 year in Jail and remains Incarcerated.
No. 8 of 14:	11/13/06	Loitering. Plea. 6 Days Jail; credit for 6
No. 9 of 14:	5/23/07	Misdemeanor Receiving & Concealing Plea. Sentenced 2/6/09: \$250 or 7 Days
No. 10 of 14:	7/6/07	Hindering Police. Plea. 6 Days w/Credit for 6 days.
No. 11 of 14:	2/1/09	Instant Offense. Plea: 11/15/09. Original charges: 1 <sup>st</sup> Degree Home Invasion; Possession of Firearm by Felon; Felony-Firearm; Safe breaking; H.O. 3 <sup>rd</sup> . Final charges: 1 <sup>st</sup> Degree Home Invasion; Possession of Firearm by Felon; Larceny of a Firearm PENDING SENTENCE
No. 12 of 14:	2/7/09	Armed Robbery. Plea: 3/10/09 to Unarmed Robbery. 5 years probation w/SAI. Bench Warrant Issued on 11/15/09 due to new felony. 12/20/09 Pled guilty to PV; sentenced to 1 Year County Jail and discharged unsuccessfully from probation.

No. 13 of 14:	12/31/08	Possession of Marijuana. Plea 2/6/09. \$245 or 7 days in Jail.
No. 14 of 14:	1/1/09	Loitering. Plea 2/6/09. \$145 or 175 Hours community service.



**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		
<b>I</b> 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
<b>II</b> 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
<b>III</b> 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
<b>IV</b> 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
<b>V</b> 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
<b>VI</b> 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.

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.