

Michigan Appellate Assigned Counsel System

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Spotting the Appellate Issues in Plea Appeals

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Spotting the Appellate Issues in Plea Appeals

Chris Smith, SADO

Plea Appeals: Overview

“[C]riminal justice today is for the most part a system of pleas, not a system of trials. Ninety-seven percent of federal convictions and ninety-four percent of state convictions are the result of guilty pleas.”

Lafler v Cooper,
132 S Ct 1376, 1388 (2012).

Plea Appeals: Getting Started

- * Obtain Complete Record
- * Promptly Review File
- * Ascertain Client’s Goals for Appeal

[See *Minimum Standards for Indigent Criminal Appellate Defense Services*, Administrative Order No. 2004-6]

Plea Appeals: Getting Started

Remember:

The Appellant bears the burden of obtaining a complete set of transcripts.

[MCR 7.210(B)(1)(a)]

Plea Appeals: Getting Started

Remember:

In appeals by leave, all relevant transcripts must be appended to the application for leave to appeal.

[MCR 7.205(B)(4)]

Plea Appeals: Getting Started

- * The trial court will order SOME transcripts
[MCR 6.425(2)(a)]
- * But any missing transcripts should be requested within 28 days of appointment
[See MCR 7.205(G)(4)(b)]
- * The trial court must honor request and order transcripts w/n 14 days.
[MCR 6.425(G)(2)].

Plea Appeals: Overview

Typical plea appeals involve...

- I. The Plea Itself
 - a) Specific Performance of the Plea Agreement
 - b) Withdrawal from the Plea Agreement

and/or..

Plea Appeals: Overview

Typical plea appeals involve...

- II. The Sentence Imposed
 - a) Guidelines
 - b) Habitual
 - c) Credit for Time Served
 - d) Fines, Costs, and Fees

I. Challenging the Plea

Challenging the Plea: Overview



"A plea of guilty is more than a confession which admits that the accused did various acts; it is itself a conviction; nothing remains but to give judgment and determine punishment."

Boykin v Alabama,
395 US 238, 242 (1969).

Challenging the Plea: Overview



A plea of guilty or nolo contendere requires the waiver of several constitutional rights:

Fifth: Right to remain silent

Sixth: Rights to...

- Trial by jury;
- Confrontation;
- Compulsory Process

Fourteenth: Right of equal access to State's appellate procedures.


Challenging the Plea: Overview



A defendant who pleads guilty or nolo contendere "necessarily gives up all the rights and challenges associated with trial."

People v New,
427 Mich 482, 492 (1986).


Challenging the Plea:
Overview



"These rights, which essentially relate to the gathering and presentation of evidence, are lost even if a successful challenge [would lead to a dismissal or acquittal]."


People v New,
427 Mich 482, 492-493 (1986).

Challenging the Plea:
Overview



What issues survive a guilty plea?


Challenging the Plea:
Overview



"Only those rights and defenses which reach beyond the factual determination of defendant's guilt and implicate the very authority of the state to bring a defendant to trial[.]"

People v New,
427 Mich 482, 492 (1986).

Challenging the Plea: Overview



Examples:

- Double Jeopardy
- Constitutionality of Statute
- Defining Charged Offense
- Charges Brought Under Inapplicable Statute
- Jurisdictional Defects

But:

- Ineffectiveness/Bad Advice

Plea Appeals: Challenging the Plea

Areas to Examine:

- * Requirements of a Valid Plea
- * Enforcing Terms of Plea Agreements
- * Withdrawing a Guilty Plea

MCR 6.301: Available Pleas

Guilty Plea

- * D must admit guilt
- * No consent required

Nolo Contendere Plea

- * D need not admit guilt, but must agree not to challenge the allegations against him/her.
- * Consent of court required.
- * Treated as a guilty plea for sentencing purposes.

TRANSPARENCY REQUIRED

A valid waiver will not be presumed from a silent record. Courts must make a record that sufficiently overcomes the presumption against the waiver of constitutional rights.

Boykin v Alabama, 395 US 238 (1969);
People v Jaworski, 387 Mich 21 (1972).

KNOWING, INTELLIGENT, & VOLUNTARY

“Waivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences.”

Brady v U.S., 397 US 742 (1970).

KNOWING, INTELLIGENT, & VOLUNTARY

MCR 6.302(A):

“The court may not accept a plea of guilty or nolo contendere unless it is convinced that the plea is understanding, voluntary, and accurate. Before accepting a plea of guilty or nolo contendere, the court must place the defendant under oath and personally carry out [MCR 6.302(B) through (E)].”

WHEN IS A PLEA “UNDERSTANDING”?

MCR 6.302(B)(3): The *Jaworski* Rights

No Advice = Automatic Reversal
[*People v Brown*, 492 Mich 684, 696 n 42 (2012);
Guilty Plea Cases, 395 Mich 96, 118-121 (1975)].

WHEN IS A PLEA “UNDERSTANDING”?

MCR 6.302(B)(3): The *Jaworski* Rights

Advice may be given in writing, but failure to confirm
defendant’s understanding on the record requires
automatic reversal
[*People v Al-Shara*, __ Mich __ (8/18/15) (No. 320209)].

WHEN IS A PLEA “UNDERSTANDING”?

A plea is voluntary so long as the defendant is
“fully aware of the direct consequences” of
the plea.

[*Brady v US*, 397 US 742 (1970)].

WHEN IS A PLEA “UNDERSTANDING”?

Direct Consequences

A defendant cannot enter a voluntary plea without receiving advice about its direct consequences.

Collateral Consequences

A plea will still be valid even if the defendant is unaware of certain indirect consequences of his conviction.

WHEN IS A PLEA “UNDERSTANDING”?

Direct Consequences
versus
Collateral Consequences

Direct Consequences Include:

- * Maximum Possible Prison Term
 - * *People v Brown*, 492 Mich 684 (2012)
- * Any Mandatory Minimum
 - * *Id.*
- * Lifetime Electronic Monitoring
 - * *People v Cole*, 491 Mich 325 (2012)
- * Penal Fine???
 - * *People v Beaty*, unpublished (COA No. 314935)
 - * See *Southern Union v. U.S.*, 132 S Ct 2344 (2012)

Collateral Consequences Include:

- * Loss of employment
- * Loss of the right to vote
- * Loss of the right to travel freely abroad
- * Loss of the right to a driver's license
- * Loss of the right to possess firearms
- * Loss of good-time credit
- * Loss of public benefits
- * Loss of business or professional licensure
- * A plea's possible enhancing effects on a subsequent sentence

Gray Areas:

- * Immigration/Deportation
 - * *Padilla v Kentucky*, 559 US 356 (2010).
- * Sex Offender Registration
 - * *People v Fonville*, 291 Mich App 363 (2011).
- * Probation/Parole Consequences
 - * *In re Guilty Plea Cases*, 395 Mich 96 (1975).
 - * *People v Brown*, 492 Mich 684, 696 n 42 (2012).

WHEN IS A PLEA "VOLUNTARY"?

No threats
 No coercion
 No off-record promises
 No illusory consideration

WHEN IS A PLEA “VOLUNTARY”?

Illusory inducements:

- *Threats of unauthorized punishment
- *Offers of consideration outside plea process

WHEN IS A PLEA “VOLUNTARY”?

MCR 6.302(B)(4):

The defendant must disclose promises/threats at the plea proceeding or forever lose the right to challenge them.

WHEN IS A PLEA “ACCURATE”?

The record must demonstrate that the defendant is aware of the nature of the offense.

WHEN IS A PLEA "ACCURATE"?

Judge's Role: The judge must question the defendant to verify that there is a factual basis to support the plea.

Types of Plea Agreements



TYPES OF PLEA AGREEMENTS

- * Pleas without Consideration
- * Plea Bargains with the Prosecution
- * Plea Evaluations by the Judge

Pleas Without Consideration

- * Open Plea:
 - * Defendant pleads guilty as charged
 - * No charge reduction
 - * No sentencing consideration

Pleas Without Consideration

- * Open Plea:
 - * Still constitutionally valid despite lack of consideration
 - * (So long as plea is knowing, intelligent, and voluntary).

Bargains With Prosecution

- * Charge Reductions
 - * E.g., reducing first-degree murder charge to second-degree murder.
 - * Reducing or dismissing sentencing enhancements
- * Count Reductions
 - * Dismissing some counts in exchange for a plea to others
- * Sentencing Agreements [*P. v Killebrew*, 416 Mich 189 (1982)]
 - * Bind the judge
 - * Sentencing Caps
 - * Bargained-for Sentences
- * Sentencing Recommendations
 - * Do not bind the judge

Bargains With Prosecution

- * Keep in Mind:
 - * The Court is not obligated to accept the parties' agreement.
 - * If the Court rejects a charge/count reduction, no plea will enter.
 - * If the Court rejects a sentencing agreement, the defendant may withdraw plea.
 - * If the Court ignores a sentencing recommendation, there is no breach and, therefore, no remedy.

Bargains With Prosecution

- * Special Note Re: Bargained-for Sentences
- * “[A] defendant waives appellate review of a sentence that exceeds the guidelines by understandingly and voluntarily entering into a plea agreement to accept that specific sentence.”
 - * *People v Wiley*, 472 Mich 153 (2005)

Bargains With Prosecution

* Special Note Re: Bargained-for Sentences

* So...

- * If you bargain for a specific sentence,
- * And if you receive the benefit of that bargain,
- * You CANNOT complain about that sentence on appeal.
- * (Even if the sentence is outside the range or based on a guidelines error)

Bargains With Judge

Federal Courts

"[T]he court must not participate in [plea] discussions[.]"

Fed R Crim Pro 11(h).

Michigan Courts

Courts may play a limited role.

People v Cobbs, 443 Mich 276 (1993).

Bargains With Judge

Cobbs Evaluations

If (and only if) a party asks, the Court may conduct a preliminary evaluation of the case and announce the sentence it would impose based on the information before it.

Bargains With Judge

Cobbs Evaluations

If the defendant accepts that sentence, he or she must plead guilty as charged.

* Note:

- * Charging discretion rests with the prosecution.
- * The Court lacks authority to bargain away charges or enhancements.

Bargains With Judge

Cobbs Evaluations

At sentencing, the Court is not obligated to abide by its initial evaluation. (The Court may learn new information that changes its view of the appropriate sentence).

Bargains With Judge

Cobbs Evaluations

If the Court does not abide by its initial evaluation, the defendant has an ABSOLUTE RIGHT to withdraw the plea and go to trial.

Example: *People v Willis*, 482 Mich 1010 (2008). But see Amended MCR 6.310(B)(3) (eff. 2014).



Motions for Plea Withdrawal

When to Make Motion:

- * Before plea is accepted
 - * MCR 6.310(A).
- * Before sentencing
 - * MCR 6.310(B).
- * Within six months of sentencing.
 - * MCR 6.310(C).

Motions for Plea Withdrawal

Where to Make Motion: TRIAL COURT!

“A defendant convicted on the basis of a plea may not raise on appeal any claim of noncompliance with the requirements of the rules in this subchapter, or any other claim that the plea was not an understanding, voluntary, or accurate one, unless the defendant has moved to withdraw the plea in the trial court, raising as a basis for withdrawal the claim sought to be raised on appeal.” MCR 6.310(D).

Motions for Plea Withdrawal

Where to Make Motion: TRIAL COURT!

If jurisdiction rests solely in the Court of Appeals, a possible work-around:

- * File a Delayed Leave Application that requests plea withdrawal. (MCR 7.205).
- * Concurrently File a Motion to Remand
 - * MCR 7.211(c)(1)(a)(i): COA may remand if the issue “must be initially decided by the trial court.”

Motions for Plea Withdrawal

Grounds for Plea Withdrawal

The Court **MUST** grant either specific performance or plea withdrawal if the terms of the agreement have not been fulfilled.

After acceptance but before sentencing, the Court **MAY** allow plea withdrawal if it does not prejudice prosecution or offend the interests of justice.

After sentencing, the defendant bears the burden of demonstrating a defect in the plea procedure.

Motions for Plea Withdrawal

Appellate Standard: “Substantial Compliance”

Strict compliance with MCR 6.302 is not required; rather, substantial compliance is sufficient.

II. Challenging the Sentence

Sentencing Authority Resides with the Legislature

- “The ultimate authority to provide for the penalties for criminal offenses is constitutionally vested in the Legislature.” *People v Hegwood*, 465 Mich 432, 436 (2001).
- Subject to Constitutional Restraints
 - Eighth Amendment to U.S. Constitution
 - Art. 1, Sec. 16 of Michigan Constitution

Sentencing Discretion Delegated to the Judiciary

- “The authority to impose sentences and to administer the sentencing statutes enacted by the Legislature lies with the judiciary.” *People v Hegwood*, 465 Mich 432, 436-437 (2001).
- “It is, accordingly, the responsibility of a circuit judge to impose a sentence, but only within the limits set by the Legislature.” *Id.* at 437 (emphasis removed).

Determinate versus Indeterminate Sentences

Determinate: Flat Time

- Most Common Example: Felony-Firearm (MCL 750.224f).
 - Flat two years for first FF conviction.
 - Flat five years for second FF conviction.
 - Flat ten years for third FF conviction.
 - No more; no less.
- Non-prison sentences.

Determinate versus Indeterminate Sentences

Indeterminate: Some Guesswork

- Nearly all prison sentences.
- Legislature sets maximum (subject to some exceptions).
- Judiciary (specifically, the trial judge) sets minimum (subject to limits placed by Legislature).
- Executive (specifically, the Parole Board) decides when to release prisoner between minimum and maximum outdates.

Indeterminate Sentences Calculating Maximum

- Refer to statute defining offense
 - If silent, refer to MCL 750.503 thru 750.505

Indeterminate Sentences
Calculating Maximum

- Trial judge has no discretion over maximum sentence.
- Exceptions:
 - "Life or any term of years"
 - Habitual offenders

Indeterminate Sentences
Calculating Maximum

- Habitual Offenders: Trial judge enjoys the discretion to either keep the maximum set by statute OR increase it as follows:
 - 2d Offense: Multiply by as much as 1.5
 - 3d Offense: Multiply by as much as 2
 - 4th Offense
 - If statutory max is five years or more, habitual max becomes life or any term of years.
 - If statutory max is less than five years, habitual max is not more than 15 years.

Indeterminate Sentences
Calculating Maximum

- Habitual Offenders—Always check:
 - That prosecution gave notice of its intent to seek habitual enhancement within 21 days of Information.
 - That prior convictions are felonies that satisfy the criteria of MCL 769.10 thru MCL 769.13.
 - That client was either represented by counsel or made a valid waiver of his right to counsel.

Indeterminate Sentences

Calculating Maximum

- Habitual Offenders:
 - Must be "Prior"
 - Prior felony conviction must be entered before commission of current offense.

Indeterminate Sentences

Calculating Maximum

- Habitual Offenders:
 - Must be "Felony"
 - "High Court Misdemeanors" carry a two-year maximum and are considered felonies for sentencing purposes. [People v Smith, 423 Mich 427 (1985)].
 - Out-of-state offenses must correspond to an offense that Michigan defines as a felony. [People v Quintanilla, 225 Mich App 477 (1997)].
 - Note: The guidelines consider out-of-state felonies differently.

Indeterminate Sentences

Calculating Minimum

- The trial judge has the discretion to set minimum within the following limits:
 - Tanner rule
 - Legislative sentencing guidelines

Indeterminate Sentences

Calculating Minimum

- *People v Tanner*, 387 Mich 683 (1972).
 - 2/3 rule
 - Policy: Let Parole Board do its job.

Indeterminate Sentences

Calculating Minimum

- Legislative Sentencing Guidelines
 - First, judge scores the guidelines to arrive at minimum sentencing range
 - Then, judge exercises his/her to sentence within that range.
 - The guidelines limit judge's authority to depart from range (even after *Lockridge*).
 - (Note: Legislative guidelines apply only to offenses committed after January 1, 1999)

Indeterminate Sentences

Calculating Minimum

- *People v Lockridge*, ___ Mich ___ (2015).
 - Rendered the guidelines advisory
 - But: Trial courts must still score variables, calculate range, and articulate reasons for departing above or below the range.

Analyzing Guidelines Scoring

- **STEP ONE:** Identify sentencing offense
 - Single conviction: Easy.
 - Multiple convictions:
 - Use the one in highest crime class.
 - Tie-breaker: Offense which will yield the highest minimum sentencing range.
 - If one sentence is to run consecutively to another, run guidelines for both.
- Do not score guidelines for offenses carrying determinate sentences (e.g., felony-firearm) or life without possibility of parole (e.g., first-degree murder)

Analyzing Guidelines Scoring

- **STEP TWO: Identify Crime Class for Sentencing Offense**
 - Classifications:
 - Second-Degree Murder
 - Classes A, B, C, D, E, F, G, and H
 - Classes trigger which grid is in play.
 - Great Resource: Guidelines Manual
 - Crimes listed alphabetically
 - Crimes listed by MCL number

[illegible]

[illegible]

Analyzing Guidelines Scoring

- STEP FOUR: Apply Prior Record Variables (PRV-1 thru PRV-7).
 - All PRVs must be scored no matter which crime groupings.

| 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 "prior high severity felony conviction" 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"> 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 (effective January 9, 2007)* 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). <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 "prior low severity felony conviction" 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"> 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 (effective January 9, 2007)* 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). <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 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 "prior misdemeanor conviction" is a conviction:</p> <ul style="list-style-type: none"> 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, if the conviction was entered before the commission date of the sentencing offense. MCL 777.55(3)(a). <p>A "prior misdemeanor juvenile adjudication" is a juvenile adjudication:</p> <ul style="list-style-type: none"> 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, if the order of disposition for the juvenile adjudication was entered before the commission date of the sentencing offense. MCL 777.55(3)(b). |
| 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. | |
| <p>Special Instructions for PRV 5:</p> <ul style="list-style-type: none"> 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: <ul style="list-style-type: none"> 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). | | |

Common PRV Errors

The Ten-Year Gap Rule [MCL 777.50]

- If ten years pass between:
 - The discharge of one sentence, and
 - The commission of the next offense
- Then none of the convictions which precede the ten-year gap may be used to score the Prior Record Variables.

Common PRV Errors

Prior Misdemeanor Convictions [MCL 777.55]

- ONLY CERTAIN MISDEMEANORS COUNT!
- Must be one of the following:
 - Crime against person
 - Crime against property
 - Controlled substance offense
 - Weapons offense
 - Operating while Intoxicated

Common PRV Errors

Prior Misdemeanor Convictions [MCL 777.55]

Do **NOT** count misdemeanors that have already been used to enhance sentencing offense from a misdemeanor to a felony.

See, e.g.:

- Domestic violence, third offense
- Operating while intoxicated, third offense

Analyzing Guidelines Scoring

- **STEP FIVE:** Apply Offense Variables (OVs)
 - Some OVs are inapplicable depending upon the sentencing offense's crime grouping.

People v McGraw, 484 Mich 120 (2009)

| Offense-Specific Variables | Transactional Variables |
|----------------------------|-------------------------|
| * OV-1 | * OV-12 |
| * OV-3 | * OV-13 |
| * OV-7 | * OV-14 |
| * OV-9 | * OV-19 |
| * OV-15 | |
| * OV-17 | |

Analyzing Guidelines Scoring

- **STEP SIX:** Identify sentencing grid and insert PRV total and OV total to get minimum range.
 - Grid depends on crime class [MCL 777.61 thru MCL 777.69].
 - Range expands for habitual offenders. [MCL 777.21(3)]

- **Types of cells within grid:**
 - **Prison Cell:** Judge must impose indeterminate prison term unless a downward departure is warranted.
 - Example: Range of 38-76 months
 - **Intermediate Sanction:** Judge must impose probation, determinate jail term, et cetera unless an upward departure is warranted.
 - Example: Range of 0-3 months
 - **Straddle Cell:** Discretion to do either.
 - Example: Range of 10-23 months

| Sentencing Grid for Class D Offenses—MCL 777.65 | | | | | | | | | |
|--|--|---------------------------------------|---------------------------------------|---------------------------------------|---------------------------------------|---------------------------------------|---------------------------------------|---------------------------------------|---------------------------------------|
| Include Ranges Calculated for Habitual Offenders (MCL 777.2(3)(a)-(c)) | | | | | | | | | |
| Offense Level | PRV Level | | | | | | | | Offense Years |
| | A 0-6 Prisons | B 1-9 Prisons | C 10-14 Prisons | D 15-19 Prisons | E 20-24 Prisons | F 25-29 Prisons | G 30-34 Prisons | H 35-39 Prisons | |
| I 0-9 Prisons | 0 6" 12" 18" 24" | 0 9" 13" 18" 24" | 0 11" 15" 20" 24" | 0 12" 17" 22" 24" | 0 13" 18" 23" 24" | 0 14" 19" 24" 29" | 10 15" 20" 24" | 10 16" 21" 26" | 10 17" 22" 27" |
| II 10-14 Prisons | 0 11" 16" 21" | 0 12" 17" 22" | 0 13" 18" 23" | 5 14" 19" 24" | 5 15" 20" 25" | 10 16" 21" 26" | 10 17" 22" 27" | 19 22" 27" 32" | 19 23" 28" 33" |
| III 15-19 Prisons | 0 11" 16" 21" 22" | 0 12" 17" 22" 23" | 1 13" 18" 23" 24" | 10 14" 19" 24" 25" | 10 15" 20" 25" 26" | 18 16" 21" 26" 27" | 18 17" 22" 27" 28" | 29 18" 23" 28" 29" | 29 19" 24" 29" 30" |
| IV 20-24 Prisons | 0 11" 16" 21" 22" 23" | 0 12" 17" 22" 23" 24" | 5 13" 18" 23" 24" 25" | 10 14" 19" 24" 25" 26" | 10 15" 20" 25" 26" 27" | 18 16" 21" 26" 27" 28" | 18 17" 22" 27" 28" 29" | 34 18" 23" 28" 29" 30" | 34 19" 24" 29" 30" 31" |
| V 25-29 Prisons | 0 11" 16" 21" 22" 23" 24" | 5 12" 17" 22" 23" 24" | 10 13" 18" 23" 24" 25" | 19 14" 19" 24" 25" 26" | 19 15" 20" 25" 26" 27" | 33 16" 21" 26" 27" 28" | 33 17" 22" 27" 28" 29" | 38 18" 23" 28" 29" 30" | 38 19" 24" 29" 30" 31" |
| VI 30-34 Prisons | 10 11" 16" 21" 22" 23" 24" | 19 12" 17" 22" 23" 24" | 29 13" 18" 23" 24" 25" | 34 14" 19" 24" 25" 26" | 34 15" 20" 25" 26" 27" | 38 16" 21" 26" 27" 28" | 38 17" 22" 27" 28" 29" | 43 18" 23" 28" 29" 30" | 43 19" 24" 29" 30" 31" |

Analyzing Guidelines Scoring

- STEP SEVEN: Determine whether trial court imposed a minimum sentence within range.
 - Special rules for intermediate sanction cells.

Analyzing Guidelines Scoring

- STEP EIGHT: If a departure from range, identify rationale.
 - *Pre-Lockridge*:
 - Substantial and compelling reasons
 - *Post-Lockridge*:
 - Departure must be "reasonable"

Ligating Guidelines Issues on Appeal

- Appellate challenges to guidelines scoring will be deemed preserved for appeal if raised:
 - At sentencing
 - In timely motion for resentencing filed under MCR 6.429
 - In timely motion to remand filed under MCR 7.211(C)(1)

[MCL 769.34(10); *People v Kimble*, 470 Mich 305 (2004)]

Ligating Guidelines Issues on Appeal

| | |
|--|--|
| <p><i>Kimble Plain Error Test</i> (for unpreserved error)</p> <ul style="list-style-type: none"> * Resentencing required if: <li style="padding-left: 20px;">* Error occurred, <li style="padding-left: 20px;">* Error is obvious, AND <li style="padding-left: 20px;">* Sentence imposed represents a departure from the corrected range. | <p><i>Francisco Test</i> (for preserved error)</p> <ul style="list-style-type: none"> * Resentencing required if: <li style="padding-left: 20px;">* Error occurred, AND <li style="padding-left: 20px;">* Error altered controlling guidelines range. |
|--|--|

Ligating Guidelines Issues on Appeal

A trial judge mistakenly believes the guidelines range to be 19-38 months due to an error in scoring OV-13.

She imposes a 23-month sentence.

In reality, the guidelines range should have been 10-23 months. What result?

Ligating Guidelines Issues on Appeal

| | |
|---|---|
| <p><i>Kimble Plain Error Test</i> (for unpreserved error)</p> <p>The appellant is <u>not</u> entitled to the resentencing because his sentence does not represent a departure from the corrected range.</p> | <p><i>Francisco Test</i> (for preserved error)</p> <p>The appellant is entitled to resentencing because the error affected the controlling range.</p> |
|---|---|

WORKSHEET #1

JUDGMENT(S) OF SENTENCE

CLIENT: {CLIENT_NAME_LOWER}

CIRCUIT COURT DOCKET No.: {LC_No}

| | <u>Conviction(s)</u> | <u>MCL</u> | <u>HAB</u> | <u>G/L Range</u> | <u>Minimum</u> | <u>Maximum</u> |
|--------------------------------------|----------------------|---------------------------------|--|------------------|----------------|----------------|
| 1 | | | | | | |
| 2 | | | | | | |
| <u>Economic Penalties</u> | | <u>Amount</u> | <u>Compare to Statutes</u> | | | |
| State Minimum Costs | | \$ | MCL 769.1j (\$68 per felony; \$50 per misdemeanor) | | | |
| Crime Victims' Rights | | \$ | MCL 780.905 (\$130 per docketed criminal case) | | | |
| Restitution | | \$ | MCL 780.766 (enumerates types of losses) | | | |
| Attorney Fees | | \$ | MCL 769.1k(1)(b)(iii) | | | |
| Court Costs | | \$ | MCL 769.1k(1)(b)(ii) | | | |
| Other? | | \$ | | | | |
| 20% Late Fee | | Waived <or> Not Waived | MCL 600.4803(1) | | | |
| <u>Credit for Time Served</u> | | | <u>Compare to Facts</u> | | | |
| _ days | | | Date of Sentencing: Date of Arrest: Days Spent in Custody: | | | |
| <u>Additional Queries</u> | | | <u>Compare to Statutes</u> | | | |
| Concurrent or Consecutive | | | MCL 769.1h | | | |
| Lifetime Electronic Monitoring | | | MCL 750.520n | | | |
| Other Conditions | | | | | | |
| | | | | | | |
| <u>Date of Judgment:</u> | | | | | | |
| <u>Six-Month Deadline:</u> | | | | | | |

Instructions

- Examine the Judgment of Sentence, which can be found in the document labeled "Order of Appointment," which is saved to the "Lower Court" folder.
- If there are multiple judgments, analyze them separately using multiple tables.
- Nearly all of the information listed above will be found in the judgment. Exceptions include:
 - Guidelines Range (check Presentence Report or Lower Court File)
 - Arrest Dates & Time Spent in Custody (check Presentence Report or Prelim transcript)
- As you analyze the judgment(s), keep track of potential legal issues for inclusion in your Evaluation Memo

WORKSHEET #2

PLEA CHECKLIST

An Understanding Plea [MCR 6.302(B)]:

Speaking directly to the defendant, the court must advise the defendant and determine that the defendant understands:

- (1) the name of the offense (not required to explain elements or defenses)
- _____ (2) the maximum possible prison sentence and any mandatory minimum sentence required by law, including a requirement for mandatory lifetime electronic monitoring under MCL 750.520b or 750.520c

NOTE: *The Supreme Court held that the court rule requires that the defendant be advised of the maximum possible sentence as enhanced by any applicable statute, e.g. the habitual offender statutes. People v Brown, ___ Mich ___ (08-16-12)(# 143733), overruling People v Boatman, 273 Mich App 405 (2006).*

- _____ (3) if the plea is accepted, there will be no trial of any kind, and the following rights are being given up:
 - _____ (a) to be tried by a jury
 - _____ (b) to be presumed innocent until proved guilty
 - _____ (c) to have the prosecutor prove guilt beyond a reasonable doubt
 - _____ (d) to have the witnesses against the defendant appear at a trial
 - _____ (e) to question the witnesses against the defendant
 - _____ (f) to have the court order any witnesses the defendant has for a defense to appear at the trial
 - _____ (g) to remain silent during the trial
 - _____ (h) to not have that silence used against the defendant
 - _____ (i) to testify at trial if the defendant wants to testify

NOTE: *The requirements of MCR 6.302(B)(3) and (5) may be satisfied by advice in writing, provided that the court obtains from the defendant on the record an acknowledgement that the defendant read, understands and waives those rights. Mich Ct R 6.302(B).*

- _____ (4) if the plea is accepted, the defendant will be giving up any claim that the plea was the result of undisclosed promises or threats, or that it was not the defendant's choice to plead
- _____ (5) any appeal will be by application for leave to appeal and not by right

A Voluntary Plea [MCR 6.302(C)]:

- _____ (1) the court must ask the prosecutor and the defendant's lawyer whether they have made a plea agreement
- _____ (2) if there is a plea agreement, the court must ask the prosecutor or defense lawyer what the terms of the agreement are and confirm the terms of the agreement with the other lawyer and the defendant
- _____ (3) if there is a plea agreement including a specific sentence disposition or a prosecutorial sentence recommendation, the court may:
 - _____ (a) reject the agreement; or
 - _____ (b) accept the agreement after having considered the presentence report in which event the court must impose the sentence agreed to or recommended by the prosecution; or
 - _____ (c) accept the agreement without having considered the presentence report; or
 - _____ (d) take the plea under advisement

NOTE: *If the court accepts the agreement without having considered the presentence report or takes the plea under advisement, it must explain to the defendant that it is not bound by the sentence agreement or recommendation, and if the court chooses not to follow the agreement or recommendation, the defendant will be allowed to withdraw from the plea agreement.*

- _____ (4) the court must ask the defendant:
 - _____ (a) if there is no plea agreement, whether anyone has promised the defendant anything; or if there is an agreement, whether anyone has promised anything beyond what is in the plea agreement
 - _____ (b) whether anyone has threatened the defendant
 - _____ (c) whether it is the defendant's own choice to plead guilty

An Accurate Plea [MCR 6.302(D)]:

- _____ (1) if the defendant pleads guilty, the court by questioning the defendant must establish support for a finding that the defendant is guilty of the offense charged or the offense to which the defendant is pleading
- _____ (2) if the defendant pleads nolo contendere, the court may not question the defendant about the offense. The court must:
 - _____ (a) state why a plea of nolo contendere is appropriate
 - _____ (b) hold a hearing unless there has been one, that establishes support for a finding that the defendant is guilty of the offense charged or the offense to which the defendant is pleading

Additional Inquiries [MCR 6.302(E)]:

- _____ (1) the court must ask the prosecutor and the defense lawyer whether either is aware of any promises, threats, or inducements other than those already disclosed on the record
- _____ (2) the court must ask the prosecutor and the defense lawyer whether the court has complied with all the above rules

Nolo Contendere Plea [MCR 6.302(D)(2)]:

- _____ (1) the court must consent to this plea. *See* Mich. Ct. R. 6.301(B).
- _____ (2) the plea must have a valid reason
- _____ (3) the plea's factual basis must be sufficient and must be established without questioning the defendant.

Guilty But Mentally Ill Plea [MCR 6.301(C) and 6.303]:

- _____ (1) consent of court and prosecutor
- _____ (2) defendant must have asserted an insanity defense and been examined for criminal responsibility as required by statute
- _____ (3) court must examine psychiatric reports and hold a hearing that establishes support for a finding that the defendant was mentally ill at the time of the offense

Checklist for Statutory and/or Caselaw Compliance:

- _____ (1) the defendant represented by counsel or the defendant validly waived counsel (including advice on dangers of self-representation)
- _____ (2) review penal statute to determine if factual basis for all elements of offense *and* to determine if defendant advised of any mandatory minimum and correct statutory maximum
- _____ (3) review sentence to determine if enhanced above advice of maximum sentence at plea
- _____ (4) review terms of plea and/or sentence bargain to determine if illusory, and if applicable:
 - _____ (a) check for timely filing of habitual offender notice
 - _____ (b) ensure that prior listed convictions predated the date of the conviction offense; check for the existence and constitutional validity of prior convictions
 - _____ (c) review sentence transcript, presentence report, other documents, to ensure the defendant received the benefit of the bargain, if any
 - _____ (d) check for inflated or illusory benefit (such as incorrect habitual offender maximum, no authorization for consecutive sentencing)

Checklist for Statutory and/or Caselaw Compliance (continued):

- _____ (5) review circuit court file and other records for hints of:
 - _____ (a) incompetency or insanity (i.e., forensic referral)
 - _____ (b) pre-trial issues not waived by plea (double jeopardy, entrapment, etc.)
 - _____ (c) pre-trial issues "preserved" by conditional plea **None.**
 - _____ (d) dissatisfaction with counsel (motion to withdraw as counsel or to discharge counsel)
- _____ (6) review circuit court file and other records for any pre or post-sentencing motions to withdraw plea
- _____ (7) check for any unreasonable delay between offense and prosecution, or in prosecution itself
- _____ (8) check for any gratuitous advice on record that was misleading, threatening, or constituted a promise of leniency
- _____ (9) check on any significant collateral consequences of plea (deportation, probation/parole violation, etc.)
- _____ (10) check for any possible interpretive problems (client non-English speaking, deaf/mute, developmentally disabled, etc.)

1. Identify the terms of the plea bargain (charge reduction, sentencing agreement, etc.):
2. Did the defendant receive the benefit of his/her bargain?
3. Does the bargain allow the defendant to seek a lesser sentence? (See *People v Wiley*, 472 Mich 153, 154; 693 NW2d 800 (2005)).

WORKSHEET #4

ANALYZING FACTUAL BASIS

1. *Identify all of the charges filed against the defendant, including any that were dismissed as a part of the plea agreement.*

2. *Identify the statute defining each of the offenses charged. (For example, the home invasion statute can be found at MCL 750.110a).*

3. *Identify the elements of each of the offenses charged.*

4. *Explain how the prosecution would have proven these elements if all of the charges had been tried. Who were the witnesses? What was the physical evidence? Did the defendant make any admissions before the plea?*
 - Include citations to the relevant portion of the record.
 - Hint: Refer to the transcripts, the Agent's Summary within the presentence report, and any police reports in the file.

5. *Is there a factual basis for each of the defendant's convictions?*

6. *Is there a factual basis for each of the dismissed charges? If not, is the plea agreement illusory?*

WORKSHEET #5

ANALYZING HABITUAL ENHANCEMENT NOTICE

The Habitual Offender Act (MCL 769.10 through MCL 769.13) gives trial judges the discretion to enhance the minimum and maximum sentences of repeat offenders. If the prosecutor intends to seek such an enhancement, he or she must file a written notice within 21 days of the arraignment in circuit court (or, if the arraignment is waived, within 21 days of the filing of the information in circuit court). The notice must include a list of the prior convictions to be used against the defendant. Note: Some misdemeanors are considered felonies for habitual offender purposes

Habitual enhancements are as follows:

- Second Habitual Offenders (One prior felony): Maximum sentence increases by 150%. (For example, a five-year statutory maximum would increase to seven and a half years with the enhancement).
- Third Habitual Offenders (Two prior felonies): Maximum sentence increases by 200%. (For example, a five-year statutory maximum would double to ten years with the enhancement).
- Fourth Habitual Offenders (Three or more prior felonies): Maximum sentences will increase depending on the severity of the instant sentencing offense:
 - *Statutory Maximum of Five Years or More*: The judge has the discretion to increase the maximum to life or any term of years with the enhancement.
 - *Statutory Maximum of Less Than Five Years*: The judge has the discretion to increase the maximum to 15 years.
 - Note: Some fourth habitual offenders will be subject to a mandatory minimum sentence of 25 years. (See Worksheet #6).

Answer the following questions about your case:

1. *Did the prosecution file a habitual enhancement notice in your case? If so, was it second, third, or fourth?*
 - The habitual enhancement notice will be found in the lower court file.
 - Most prosecutors will include the habitual enhancement notice in the Felony Information itself. Other prosecutors will file a separate notice.
2. *If so, was the habitual enhancement notice timely? (See above)*
3. *List the prior convictions identified by the prosecution.*
4. *Does Michigan's Penal Code classify these prior convictions as felonies?*
5. *Are there any out-of-state felonies? If so, do they correspond to a crime that Michigan defines as a felony?*
6. *Was the habitual enhancement reduced or dismissed as a part of a plea bargain?*

WORKSHEET #6

APPLICABILITY OF NEW MANDATORY MINIMUM FOR FOURTH HABITUAL OFFENDERS

Review the information below and then answer the following questions about your case:

1. *Did the defendant commit the charged offense(s) after the new mandatory minimum took effect on October 1, 2012?*
 2. *Was the defendant charged as a fourth habitual offender?*
 3. *Does the instant sentencing offense qualify for the new mandatory minimum?*
 4. *Does the defendant have a qualifying prior conviction?*
 5. *Is the defendant eligible for the new mandatory minimum in this case?*
 6. *Will the defendant be eligible for the new mandatory minimum in future cases?*
-

Effective October 1, 2012, the habitual offender laws were amended to provide a mandatory minimum term of **twenty-five years** for a **fourth habitual offender** when the instant conviction is a serious listed crime, and one of the three prior felony convictions is a listed felony. 2012 PA 319, amending MCL 769.12.

The CURRENT CONVICTION must be:

Murder, second degree
Manslaughter
Assault with intent to commit murder
Assault with intent to do great bodily harm
Assault with intent to maim
Assault with intent to rob, unarmed
Assault with intent to rob, armed
Armed robbery
Carjacking
Kidnapping
Kidnapping, child under 15 years of age
Prisoner taking hostage
Mayhem
CSC first-degree
CSC second-degree
CSC third-degree
Assault with intent penetration (CSC 1st or 3rd)
Conspiracy to commit above offenses

One of the PRIOR CONVICTIONS must be:

Murder, second degree
Manslaughter
Death, firearm pointed without malice
Felonious assault
Assault with intent to murder
Assault with intent to do great bodily harm
Torture
Assault with intent to maim
Assault with intent to commit felony
Assault with intent to rob, unarmed
Assault with intent to rob, armed
Attempted murder
Solicitation to commit murder
Kidnapping
Kidnapping, child under 15 years
Prisoner taking hostage
Mayhem
Aggravated stalking
Felony stalking, victim under 18
Resisting and obstructing, death
Resisting and obstructing, serious impairment
CSC first-degree
CSC second-degree
CSC third-degree
Assault with intent CSC
Armed robbery
Unarmed robbery
Carjacking
Rioting in state correctional facility
Any drug offense punishable by more than four years
Home invasion first-degree
Home invasion second-degree
Child abuse first-degree
Child abuse second-degree
Vulnerable adult abuse first-degree
Vulnerable adult abuse second-degree
Assault of employee during escape
Fleeing and eluding first-degree (death)
Fleeing and eluding second-degree (injury)
Impaired driving causing death
Arson of dwelling
Carrying weapon unlawful intent
Carrying concealed weapon
Felony-firearm (second or subsequent offense)
Intentional discharge firearm at vehicle
Intentional discharge firearm at dwelling
Intentional discharge firearm at emergency or law enforcement vehicle
Attempt to commit the above offenses

Note: The three prior convictions must be based on offenses that did not occur during the same transaction. MCL 769.12(1)(a).

Note: Application of the 25-year mandatory minimum term to an offense committed before the effective date of the law would constitute an ex post facto violation. See *Lindsey v Washington*, 301 US 397 (1937) (application of revised statute that earlier provided for 15 year max and one year minimum to new penalty of mandatory 15 years violates ex post facto clause); *United States v Moon*, 926 F 2d 204, 210 (CA 2, 1991) (application of mandatory minimum term to offense that occurred before requirement of mandatory minimum term violates ex post facto clause).

WORKSHEET #7

CALCULATING THE GUIDELINES RANGE

INSTRUCTIONS

Refer to the instructions in the Sentencing Guidelines Manual and answer the following:

1. Identify the sentencing offense.
 - If there are multiple convictions, use the one in highest, most serious crime class. (For example, if the defendant pleads guilty to a Class A felony and a Class B felony, score the guidelines for the Class A felony).
 - If there are multiple convictions within the same crime class, use the one which will yield the highest minimum sentencing range.
 - If one sentence is to run consecutively to another, run guidelines for both.
 - Never score the guidelines for felony-firearm.
2. Identify the crime class for the sentencing offense. Classifications include:
 - Second-degree murder
 - Classes A, B, C, D, E, F, G and H
3. Identify the crime grouping for the sentencing offense. Groupings include:
 - Crimes against the person
 - Crimes against property
 - Crimes involving controlled substances
 - Crimes against public safety
 - Crimes against public trust
 - Crimes against public order
4. Complete Worksheet #8
5. Complete Worksheet #9. Please keep in mind that certain offense variables will not apply depending on the crime grouping of the sentencing offense.
6. Refer to the sentencing grid that corresponds to the crime class for the sentencing offense.
 - What is the guidelines range as scored by the trial court?
 - What is the guidelines range as scored by you?
7. Did the trial court impose a sentence within the guidelines range?
8. If not, did the trial court give reasons for going outside the range?

[illegible]

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CALCULATING PRIOR RECORD VARIABLES

| <u>No.</u> | <u>Score Assigned By Trial Court</u> | <u>My Score</u> | <u>Analysis/Risk</u> |
|-------------------|---|----------------------------|---|
| PRV-1 | | | |
| PRV-2 | | | |
| PRV-3 | | | |
| PRV-4 | | | |
| PRV-5 | | | |
| PRV-6 | | | |
| PRV-7 | | | |
| TOTAL: | | | <i>(Refer to grid for the sentencing offense with the highest crime classification)</i> |
| LEVEL: | | | |

WORKSHEET #9

ANALYZING OFFENSE VARIABLES

OV Assessment

| OV | Score Assigned by Trial Court | My Score | Explanation |
|---|--|-------------|-------------|
| OV 1 - Aggravated Use of Weapon | | | |
| OV 2 - Lethal Potential of Weapon | | | |
| OV 3 - Physical Injury | | | |
| OV 4 - Psychological Injury | | | |
| OV 5 - Psychological Injury to V's family | | | |
| OV 6 - Intent to Kill or Injure | | | |
| OV 7 - Sadism, Torture, Brutality | | | |
| OV 8 - Asportation or Captivity | | | |
| OV 9 - Multiple Victims | | | |
| OV 10 - Exploitation of Vulnerability | | | |
| OV 11 - CSC Multiple Penetration | | | |
| OV 12 - Contemporaneous Acts | | | |
| OV 13 - Continuing pattern of criminal behavior | | | |
| OV 14 - Multiple offenders leader | | | |
| OV 15 - Aggravated Controlled Substances | | | |
| OV 16 - Property Damage | | | |
| OV 17 - Negligence | | | |
| OV 18 - Operating vehicle under the influence | | | |
| OV 19 - Threat to Security or Interference w admin of justice | | | |
| OV 20 - Terrorism | | | |

| OV | Score Assigned by Trial Court | My Score | Explanation |
|-------------------|--|-------------|-------------|
| Total OV Points - | | | |
| Level | | | |

WORKSHEET #10

SAI BOOT CAMP ELIGIBILITY

SAI with PRISON (MCL 791.234a):

Defendant is INELIGIBLE for any or all of the following 13 reasons:

1. Prosecutor filed a habitual offender notice and it has not and will not be dismissed.
2. Defendant previously served a prison sentence (unless defendant is still serving that first prison commitment).
3. Defendant previously *completed* SAI program (unless did not complete for medical or mental health reasons).
4. The minimum term is greater than 3 years (or greater than 2 years for home invasion or attempted home invasion).
5. Defendant is physically unable to participate in the program.
6. Defendant has a mental disability that prevents participation.
7. The judge at sentencing or post-sentencing prohibited participation.
8. The defendant has pending charges or a pending felony or immigration detainer (per policy directive, but eligible when detainer or charges resolved).
9. The defendant does not agree to placement in SAI.

10. Defendant is convicted of any of the following crimes (including ATTEMPT, CONSPIRACY OR SOLICITATION to commit these crimes; note Conspiracy and Solicitation added by policy directive):

MCL 257.625(4)&(5) (OWI death and serious injury, only for crimes committed on or after 1-1-92)

MCL 750.10a (sexually delinquent person, per policy directive)

MCL 750.11 (taking woman and compelling to marry, per policy directive)

MCL 750.49 (animal fighting)

MCL 750.72 (arson first degree)

MCL 750.73 (arson second degree)

MCL 750.75 (arson fourth degree)

MCL 750.80 (setting fire to mines)

MCL 750.83 (assault with intent murder)

MCL 750.86 (assault with intent maim)

MCL 750.89 (assault with intent rob armed)

MCL 750.91 (attempted murder)

MCL 750.112 (burglary with explosives)

MCL 750.136 (cruelty to children, per policy directive)

MCL 750.136b (1)(2)(3) or (4) (child abuse)

MCL 750.145a (accosting, enticing or soliciting child for immoral purposes, per policy directive)

MCL 750.145b (accosting, enticing or soliciting child for immoral purposes, per policy directive)

MCL 750.145c (child sexually abusive activity or material)

MCL 750.157b (solicitation murder)

MCL 750.158 (sodomy)

MCL 750.193 (breaking prison; escape)

MCL 750.195 (jail; escape)

MCL 750.207 (explosives, intent to terrorize)

MCL 750.213 (malicious threats to extort money)

MCL 750.260 (counterfeiting)

MCL 750.316 (first-degree murder)

MCL 750.317 (second-degree murder)

MCL 750.319 (death as result of fighting duel)

MCL 750.321 (manslaughter)

MCL 750.327 (death due to explosives)

MCL 750.328 (death due to explosives with intent destroy building or object)

MCL 750.329 (death, firearm pointed intentionally but without malice)

MCL 750.333 (incest, per policy directive)

MCL 750.335a (indecent exposure)

MCL 750.336 (indecent liberties with child, per policy directive)
MCL 750.338 (gross indecency, males)
MCL 750.338a (gross indecency, female)
MCL 750.338b (gross indecency, male and female)
MCL 750.339 (debauchery by females of males under 15, per policy directive)
MCL 750.340 (debauchery by males of males under 15, per policy directive)
MCL 750.341 (carnal knowledge of state ward, per policy directive)
MCL 750.342 (carnal knowledge of female state ward, per policy directive)
MCL 750.349 (kidnapping)
MCL 750.349a (prisoner taking hostage)
MCL 750.350 (kidnapping child under 14)
MCL 750.397 (mayhem)
MCL 750.422 (perjury in court)
MCL 750.436 (poisoning food or drink)

MCL 750.448 (soliciting and accosting, per policy directive)
MCL 750.455 (pandering, per policy directive)
MCL 750.511 (attempt to wreck train or endanger safety of passengers)
MCL 750.520 (rape, per policy directive)
MCL 750.520b (CSC first-degree)
MCL 750.520c (CSC second-degree)
MCL 750.520d (CSC third-degree)
MCL 750.520e (CSC fourth-degree, per policy directive)
MCL 750.520f (CSC, second or subsequent offense, per policy directive)
MCL 750.520g (CSC, assault with intent)
MCL 750.529 (armed robbery)
MCL 750.529a (carjacking)
MCL 750.531 (bank robbery)
MCL 750.544 (treason)
MCL 750.542 (incitement to riot)

Also: MCL 769.10, 11, 12 (**ALL HABITUAL OFFENDERS**).

11. Defendant was convicted of a drug crime under MCL 333.7401 or 7403, and was previously convicted of a drug crime under 7401 or 7403(2)(a),(b), or (c) (Ineligible until defendant has served the mandatory minimum term).
12. Defendant has a prior or current conviction involving assaultive sexual behavior (Ineligible per policy directive, but MDOC does not count prior juvenile adjudications).
13. Defendant is serving a felony-firearm sentence (Ineligible during felony-firearm sentence, also ineligible if total minimum term exceeds 36 months including felony-firearm sentence, per policy directive).

SAI with **PROBATION** (MCL 771.3b)

See Ineligibility rules 2, 3, 5, 6, and 8 above, and:

Sentencing guidelines range must be at least 12 months for top number

or

Defendant is being sentenced for probation violation

and

Defendant is not sentenced for one of the following offenses (including **ATTEMPTS** to commit the following crimes):

MCL 750.72 (arson first-degree); MCL 750.73 (arson second-degree); MCL 750.75 (arson fourth degree); MCL 750.145c (child sexually abusive activity or material); MCL 750.520b (CSC first-degree); MCL 750.520c (CSC second-degree); MCL 750.520d (CSC third-degree); MCL 750.520g (CSC, assault with intent).

For further questions, contact SAI personnel at 734 475-1368.