

The Criminal Defense Resource Center of the State Appellate Defender Office in association with the 46th Circuit Court presents a criminal justice training event for criminal defense attorneys, probation agents, prosecutors & judges

Advanced Michigan Felony Sentencing Guidelines Seminar

Thursday, December 29, 2011

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

Multi Purpose Room at the Alpine Center
800 Livingston Blvd.
Gaylord, MI 49735

This **free advanced** seminar provides updates on recent case law and statutory changes to the Michigan legislative sentencing guidelines and other areas of Michigan sentencing law.

Speaker:

**Jackie McCann - Assistant Defender, SADO &
Author, Defender Sentencing Book**

The seminar is free of charge - advance registration is required.

Space is limited.

Please see attached registration form to register. For registration information, please contact Heather Waara at hwaara@sado.org or 313-256-9833.

For further information on the seminar, please contact Jackie McCann at jmccann@sado.org or 313-256-9833.

The seminar is supported through a generous grant from the Michigan Commission on Law Enforcement Standards.

Registration Form

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Sentencing GuidelinesSeminar**

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Gaylord, MI 49735

The seminar is free of charge, although advance registration is required.

Please register me for the above training seminar.

Name: _____

Address: _____

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Please FAX or email to:

Heather Waara

Fax: (313) 965-0372

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State Appellate Defender Office

645 Griswold, 3300 Penobscot Building

Detroit, MI 48226

The seminar is supported through a generous grant from the
Michigan Commission on Law Enforcement Standards.

I. NEW CASE LAW ON SCORING THE SENTENCING GUIDELINES

A. PRIOR RECORD VARIABLES

1. 10-Year Gap Rule

A prior traffic misdemeanor conviction that cannot be scored pursuant to PRV 5 of the sentencing guidelines will nevertheless be considered in determining whether the defendant had a conviction free period in his history longer than 10 years which would preclude the scoring of any convictions prior to such a 10 year period. *People v Patino*, unpublished opinion of 06-23-09 (Court of Appeals #284128).

2. PRVs Are Scored for Repeat Drug Offender subject to enhancement under MCL 333.7413

Despite dicta in *People v Lowe*, 484 Mich 718 (2009), 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).

3. PRV 2 – Prior Low Severity Convictions

The defendant's Indiana state conviction for receiving stolen property, i.e. a gun with a fair market value of \$175, is properly scored as a prior low level felony conviction under Michigan's sentencing guidelines because though the monetary value would constitute misdemeanor receiving and concealing, under MCL 750.535(5), the more specific statute for receiving and concealing a stolen firearm, MCL 750.535b, which is a Class E felony, controls over the more general statute. *People v Meeks*, ___ Mich App ___ (#297030, 6-16-11).

4. PRV 5 - Prior Misdemeanors

The trial court properly scored the defendant's prior conviction for operating a vehicle as a minor with any body alcohol content (the "zero tolerance provision") under PRV5. While the defendant's prior conviction did not require proof that he was actually under the influence of alcohol or was impaired by alcohol, because the drunk driving statute itself, MCL 257.625, would count this offense as a prior conviction, this Court chooses to read the guidelines statute broadly to refer to the drunk driving statute as a whole rather than just to those offenses that require proof of operating a vehicle "under the influence of or impaired by" alcohol. *People v Bulger*, 291 Mich App 1 (2010). [NOTE: The defendant did not seek leave to appeal in the Supreme Court]

5. PRV 6 – Relationship To Criminal Justice System

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*, __ Mich App __ (#295664, 6-14-11). [NOTE: MSC application pending.]

B. OFFENSE VARIABLES

1. OVs Generally

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).

2. OV 1 – Aggravated Use of a Weapon

The trial court committed plain legal error, entitling the defendant to resentencing on her conviction for delivery of methadone, in scoring OV 1 because the defendant did not use the methadone against her child as a weapon, as is required to score this variable. *People v Carr*, 489 Mich 855 (2011). [According to media reports, Carr was being monitored for drug use when she decided to use her daughter's urine to pass routine screenings and avoid being caught still using illegal drugs. Because Carr was prescribed methadone as a treatment for heroin addiction, she gave her daughter methadone so the girl's urine would test positive for that drug and fool the people conducting the tests.]

3. OV 3 – Degree of Physical Injury

The trial court correctly scored OV 3 at 10 points where the victim suffered an infection as a result of the sexual assault. *People v McDonald*, __ Mich App __ (#297889, 7-12-11).

OV3 was erroneously assessed at 100 points reflecting that a victim of the sentencing offense was killed in a case of home invasion where the codefendant was shot by the unharmed homeowner who was the "victim"; the codefendant was not a victim because he was not harmed by the defendant's criminal activity or the crime that was committed. And, even if the codefendant could be considered a

victim, OV 3 still could not be scored for his death as it did not result from the commission of a crime but rather from the legal actions of the homeowner. *People v Laidler*, 291 Mich App 191 (2010), lv granted 489 Mich 903 (2011) on OV 3.

The trial court erred in scoring 10 points for OV 3, in addition to the 10 points scored for OV 4 (psychological injury), on the basis that the victim was having trouble breathing and kept losing consciousness while explaining the events soon after the offense. Nothing in the record indicates that the victim's breathing troubles and inability to maintain consciousness were related to a physical injury to her body sustained in the sexual assault, rather than to the psychological damage of being sexually assaulted and then having to give the details of the assault. The emergency room physician testified that she observed no physical injury to the victim. *People v Keondo Taylor*, unpublished opinion of 6-28-11 (Court of Appeals # 296915).

4. OV 7 – Aggravated Physical Abuse

Although the co-defendants engaged in a substantial beating of the victim, the conduct of the defendant who did not take part in or encourage others to participate in the beating was not sufficient to qualify as “sadism, torture, or excessive brutality” for purposes of scoring OV7 at 50 points. Moreover, unlike OV 1, OV 2, and OV 3, OV 7 does not state that “[i]n multiple offender cases, if 1 offender is assessed points for [the applicable behavior or result], all offenders shall be assessed the same number of points.” For OV 7, only the defendant's actual participation should be scored. *People v Hunt*, 290 Mich App 317 (2010).

5. OV 8 – Victim Asportation/Captivity

OV8 was improperly scored in a case of criminal sexual conduct because any movement of the complainant was merely incidental to the commission of the offenses and did not amount to asportation. *People v Thompson*, 488 Mich 888 (2010) (sex occurred in defendant's bedroom or daughter's bedroom).

6. OV 9 – Number of Victims

OV 9 was properly scored at 10 points where the mother of the individual specifically targeted by the would be robber-defendant jumped between the target and the armed defendant. *People v Harverson*, 291 Mich App 171 (2010).

OV9 was properly scored for 2 to 9 victims in a case of operating a motor vehicle under the influence causing death, where after the defendant crashed his vehicle on a freeway, another motorist with a passenger swerved and then stopped out of concern and a third vehicle also swerved and in doing so hit the second vehicle that stopped, killing that driver. *People v Lechleitner*, 291 Mich App 56 (2010).

OV9 was improperly scored in a case of operating under the influence at 25 points for 10 or more victims, but there is no evidence in the presentence report or elsewhere in the record, of how many other vehicles or pedestrians, if any, were on or near the roadway being traveled by the defendant. The prosecution's reliance on its own sentencing memoranda is misplaced, because sentencing memoranda merely represent a party's arguments regarding the sentence that should be imposed. *People v Rogers*, unpublished opinion of 11-16-10 (Court of Appeals #293926).

7. OV 10 – Exploitation of a Victim's Vulnerability

OV10 may only be scored for predatory conduct if (1) the defendant engaged in pre-offense conduct, (2) directed at one or more *specific* victims who suffered from a readily apparent vulnerability, and (3) if victimization was the defendant's primary purpose for engaging in that conduct. *People v Cannon*, 481 Mich 152 (2008). [CAUTION: modified by *Huston*, below.]

OV10 was properly scored at 15 points in a case of armed robbery where the defendant's preoffense conduct of lying in wait, armed and hidden from view, in a parking lot was "predatory conduct" under the offense variable relating to exploitation of a vulnerable victim. OV 10 does not require that the defendant's preoffense predatory conduct have been directed at one particular or specific victim, despite what we stated in *Cannon, supra*. [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. A person walking alone at night in a parking lot while two armed people hidden from that person's view lie in wait to rob that person is a "vulnerable" victim. On the other hand, the fact that the Legislature has directed sentencing courts to assess 15 points, the highest number of points that can be scored under OV 10, for "predatory conduct," also strongly suggests that the Legislature did not intend "predatory conduct" to describe any manner of "preoffense conduct." Indeed, if that were the case, 15 points could be assessed under OV 10 in almost all cases because there will almost always be some manner of preliminary or "preoffense conduct." Few criminal offenses arise utterly spontaneously and without forethought. Thus, to give meaning to the entirety of MCL 777.40(1), and out of recognition that 15 points for "predatory conduct" constitutes the highest number of points available under OV 10 and that "preoffense conduct" is being used to define "predatory conduct," we conclude that the latter term does not encompass any "preoffense conduct," but rather only those forms of "preoffense conduct" that are commonly understood as being "predatory" in nature, e.g., lying in wait and stalking, as opposed to purely opportunistic criminal conduct or "preoffense conduct involving nothing more than run-of-the-mill planning to effect a crime or subsequent escape without detection. *People v Huston*, 489 Mich 451 (2011).

The trial court erred in assessing points reflecting a domestic relationship under OV10 where the facts were merely that the defendant and the complainant had previously dated and had sexual relations, but where they had not shared a domicile or cohabitated. The sentencing guidelines do not define “domestic” or “domestic relationship.” We do not believe that simply any type of dating relationship, past or present, meets the requirements of OV 10. If this were the case, the Legislature would merely have said “relationship” or “dating relationship” rather than “domestic relationship.” Thus, to qualify as a “domestic relationship,” there must be a familial or cohabitating relationship. *People v Jamison*, 292 Mich App 440 (2011).

The trial court erred in assessing points for OV10 in a case of embezzlement by an employee of a credit union because the defendant did not use abuse an authority status as that is defined in the statute. Defendant did use “fear or deference to an authority figure” to exploit the “victim” here. He simply was in a position to take the money and hide the transfers. The Court of Appeals also questioned whether a bank could be a “vulnerable” victim. *People v Brandt*, unpublished opinion of 01-28-10 (Court of Appeals #288466), lv den 489 Mich 875 (2011) after oral argument (Justice MJ Kelly questions whether an institution could ever be a vulnerable victim).

8. OV 11 – Criminal Sexual Penetration

They really mean it

The Michigan Supreme Court once again reverses the scoring of OV 11 where the trial court scored multiple sexual penetrations of the victim by the offender going beyond the sentencing offense (not “arising out of” the sentencing offense). *People v Moore*, ___ Mich ___ (December 21, 2011; #143725). See also *People v Hobbs*, 488 Mich 954 (2010); *People v Goodman*, 480 Mich 1052 (2008); *People v Amos*, 480 Mich 852 (2007); *People v VanCleve*, 480 Mich 887 (2007); *People v Kuroda*, 475 M 865 (2006); *People v Minter*, 475 Mich 865 (2006); *People v Thompson*, 474 Mich 861 (2005).

In *People v Johnson*, 474 Mich 96 (2006), the Supreme Court explained that “arising out of” means a causal connection between two events of a sort that is more than incidental. Something that “aris[es] out of,” or springs from or results from something else, has a connective relationship, a cause and effect relationship, of more than an incidental sort with the event out of which it has arisen. In *Johnson*, the victim testified that she had sexual intercourse with defendant on two different dates in November 2001. “There is no evidence that the penetrations resulted or sprang from each other or that there is more than an incidental connection between

the two penetrations. That is, there is no evidence that the penetrations arose out of each other.”

What do they mean?

In practical terms, the multiple penetrations must occur during a single incident to be scored under OV 11.

[NOTE: If conduct cannot be scored in OV 11, it might still be scored in OV 13, which provides 50 points for a pattern of felonious criminal sexual activity involving three or more sexual penetration against a person under age 13.]

9. OV 12 – Number of Contemporaneous Felonious Criminal Acts

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. 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. *People v Light*, 290 Mich App 717 (2010). [Note: It was okay to score the act of carrying a concealed weapon.]

OV12 was scored in error for a contemporaneous “larceny in a building” in a case of home invasion where all the elements of a larceny in a building were subsumed within the sentencing offense of second-degree home invasion. The language of OV12 clearly reflects that the Legislature intended contemporaneous criminal acts to be other acts than the sentencing offense rather than other methods of classifying the sentencing offense. *People v John*, unpublished opinion of 03-15-11 (Court of Appeals #295680).

The trial court erred in assessing 25 points for OV12 reflecting 3 contemporaneous felonious acts within 24 hours involving crimes against a person on the basis of charges of disseminating sexually explicit matter to a minor, because those offenses are designated as crimes against public order. *People v Wiggins*, 289 Mich App 126 (2010).

All conduct that can be scored under OV 12 must be scored under that offense variable before proceeding to score OV 13. The trial court erred when it concluded it could score the conduct at issue under the variable yielding the highest total points. *People v Bemer*, 286 Mich App 26 (2009).

10. OV 13 – Continuing Pattern of Criminal Behavior

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).

Conspiracy, due to its nature, may be counted for OV 13 purposes based on the crime classification of the underlying felony. Here, conspiracy to commit home invasions could be counted as a crime against a person as home invasion is classified as a crime against a person. *People v Jackson*, 291 Mich App 644 (2011). But see, *Bonilla-Machado*, above.

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).

11. OV 19 – Threat to Security or Interference with the Administration of Justice

Because OV19 expressly includes events occurring after completion of the sentencing offense, the exception to the general rule set for in *People v McGraw*, 484 Mich 120 (2009) applies and OV19 may be scored for conduct occurring after completion of the sentencing offense. *People v Smith*, 488 Mich 193 (2010) [witness intimidation conduct].

OV 19 was properly scored at 15 points where the defendant told the victim that he knew who she was and that his boys had been watching her and required the victim to promise not to contact the police as a precondition to letting her go. *People v McDonald*, ___ Mich App ___ (#297889, 7-12-11).

CAUTION: The Supreme Court has granted leave to appeal on whether OV19 was properly scored for attempted interference with the administration of justice in a case of possession of drugs on the basis of the defendant's creation of a false impression about who possessed the drugs by tossing the evidence, denying guilt, and asking for a fingerprint analysis of the packaging. *People v Cooley*, lv grtd 489 Mich 870 (2011).

II. NEW CASE LAW ON DEPARTURES

A. Upward Departures Reversed

The Michigan Supreme Court recently reversed a departure sentence concluding the trial judge had a valid reason to depart when he revoked probation, but “failed to articulate any rationale to justify imposition of the longest possible minimum sentence” as required by *People v Smith*, 482 Mich 292 (2008). *People v Harrington*, ___ Mich ___ (Docket No. 142958, 9/28/11).

The Court of Appeals held that a life sentence was disproportionately severe where the sentencing guidelines recommended a range of 9 to 46 months and defendant was convicted of entry without breaking with intent to commit larceny, a Class E offense, as a fourth habitual offender. The Court of Appeals agreed that some departure would be warranted based on the defendant’s criminal history and recidivist tendencies where he had 12 prior felony convictions and rapidly committed new offenses upon release from prison for the prior offenses. But a life sentence under the guidelines is generally reserved for murder convictions and for Class A offenses with the highest OV and PRV scores. Here, the life sentence was improperly imposed for what amounted to trespassing. *People v Brooks*, ___ Mich App ___ (Docket No. 298299, 8/16/11).

Reversed upward departure where the trial court relied on “the amount of property stolen and not returned is \$93,415.00,” but the defendant received ten points under OV 16 for stealing property valued over \$20,000, and the court did not explain how or why this was a substantial and compelling reason that was not accounted for within the sentencing guidelines range. The Court also reversed where both the sentencing court and the judge who heard the motion for resentencing were unaware that the sentence was a departure from the guidelines range of 0 to 11 months, not 0 to 13 months. *People v Miller*, unpublished opinion per curiam of the Court of Appeals, issued March 17, 2011 (Docket No. 295602).

Reversed upward departure in a felony non-support case where the trial judge relied on the fact that a civil judgment was involved (in response to a discussion about prior non-payment and available employment), but the Court of Appeals concluded that this factor, while objective and verifiable, “does not irresistibly grab our attention.” *People v Canup*, unpublished opinion per curiam of the Court of Appeals, issued September 20, 2011 (Docket No. 299247).

B. Upward Departures Affirmed

The psychological injury suffered by the victim’s family members and the likelihood of the defendant reoffending were properly considered by the trial court as substantial and compelling reasons that justify a departure from the statutory sentencing guidelines. *People v Corrin*, 489 Mich 855 (2011).

C. Downward Departures Reversed

The Court of Appeals found that several of the trial court's reasons for imposing a jail sentence and probation, rather than a prison term as called for by the guidelines, were not objective and verifiable, including: 1) speculation that the defendant might become eligible for the SAI boot camp program following its restructuring; 2) the belief that the defendant would be released earlier if sentenced to a 1-year minimum prison term; 3) the opinion that the crime was out of character for the defendant; and 4) the belief that the defendant's drug problem could be better monitored locally than within the prison system. The Court of Appeals also held that the trial court's reasoning that the offense was a result of the defendant's prescription drug problem was not substantial and compelling as "it is not at all uncommon for a substance abuse problem to lead to the commission of a crime." *People v Higelmire*, unpublished opinion per curiam of the Court of Appeals, issued November 10, 2011 (Docket No. 300081).

D. Downward Departures Affirmed

In an appropriate case it is within the trial court's discretion and power to depart from a sentencing guidelines range and impose probation with conditions in order to rehabilitate a defendant. The trial court cited a number of bases for its departure, the primary one being to make sure that the community, including the victim was safe and its concern that putting defendant in prison for a few years would have no effect on his long-term rehabilitation. Although the trial court listed several factors that superficially appear to have been independent reasons for its departure, a closer analysis shows that they were simply intended to support the real reason for the departure. The trial court was "concerned about how to get services to [defendant]" and that his guidelines sentence would more-or-less ensure that he would not receive the services necessary to keep the community safe. The trial court is in the vastly superior position to observe and evaluate not only the defendant, but the victim, the context, the community, and anyone else who might have an effect on or be affected by its sentencing decision. The record amply supports the trial court's conclusion that the defendant was a fairly context-specific danger, that he would not change if he was sentenced to prison, and that he was actually working on improving himself. The trial court was clearly impressed that the defendant would continue to pose a danger unless rehabilitated, and the most effective way to do that was the sentence it imposed. The trial court did not abuse its discretion. *People v Doolittle*, unpublished opinion of the 9-28-10 (Court of Appeals #292423).

PRACTICE NOTE: Consider Military Combat Experience As A Basis For Downward Departure

The United States Supreme Court, in a case where it found counsel ineffective for failure to investigate and present the defendant's military service as a mitigating circumstance during the death penalty stage, said: Our Nation has a long tradition

of according leniency to veterans in recognition of their service, especially for those who fought on the front line as Porter did. Moreover, the relevance of Porter's extensive combat experience is not only that he served honorably under extreme hardship and gruesome conditions, but also that the jury might find mitigating the intense stress and mental and emotional toll that combat took on Porter." *Porter v McCollum*, ___ US ___; 130 SCt 447, 455; 175 LEd2d 398 (2009).

III. MANDATORY MINIMUMS AND THE SENTENCING GUIDELINES

The statutory sentencing guidelines apply to sentencing for a repeat criminal sexual conduct offender who is subject to a mandatory minimum term of at least 5 years imprisonment under MCL 750.520f, in the sense that the trial court must provide substantial and compelling reasons to support a sentence over 5 years that also exceeds the sentencing guidelines range. *People v Wilcox*, 486 Mich 60 (2010) (the trial court had imposed a sentence of 10 years to 40 years without articulating departure reasons, when the mandatory minimum only required a 5-year term and the guidelines were 27 to 56 months).

IV. PLEA BARGAINING AND THE SENTENCING GUIDELINES

In fashioning a plea bargain, the parties may agree to a specific sentence that is a departure from the guidelines range. The agreement functions as the substantial and compelling reason to depart. *People v Wiley*, 472 Mich 153 (2005).

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 preliminary evaluation of sentence length is simply for a sentence within the guidelines range, the defendant has not waived any objection to the scoring of those guidelines. *People v Price*, 477 Mich 1 (2006).

PRACTICE NOTE: *What happens if the court originally sentenced the defendant to probation, which was a downward departure from the guidelines range, in accordance with the parties' plea agreement, and then the defendant violates probation?* The sentencing court may revoke probation and sentence in accordance with the sentencing guidelines range OR the court may continue probation without having to provide substantial and compelling reasons to do so.

The original probation sentence was valid. *People v Wiley*, above. There is nothing in the sentencing guidelines legislation, MCL 769.34 et seq, that requires the court to revoke probation once a violation has occurred. *People v Hendrick*, 472 Mich 555, 562 (2005) ("[T]he Legislature did not alter our jurisprudence on probation in the statutory codification of sentencing guidelines.") In *Hendrick*, *supra* at 561-562, our Supreme Court examined MCL 771.4 and the sentencing guidelines

legislation and explained: “[I]f probation is revoked, the court “may” sentence the defendant as if probation had never been granted. While the sentencing court may sentence the probationer in the same manner and to the same penalty, nothing in the statute requires it to do so. . . . Thus, the court may continue, extend, or revoke probation. In the event that the court revokes a defendant's probation, it may sentence the defendant “in the same manner and to the same penalty as the court might have done if the probation order had never been made.” [Emphasis added.]

V. INDETERMINATE SENTENCING

The two-thirds rule of *People v Tanner*, 387 Mich 683 (1972), was codified in the sentencing guidelines legislation. See MCL 769.34(2)(b). **But, it does not apply to convictions for offenses punishable by “life or any term of years.”** *People v Washington*, 489 Mich 871 (2011)(disavowing *People v Floyd*, 481 Mich 938 (2008)); *People v Harper and Burns*, 479 Mich 599, 617, n 31 (2007); *People v Drohan*, 475 Mich. 140, 162 n 14 (2006); *People v Powe*, 469 Mich 1032 (2004). [PRACTIC NOTE: Consider how this can be used in plea bargaining.]

VI. LIFETIME ELECTRONIC MONITORING

CAUTION: The Michigan Supreme Court has granted leave to appeal to determine: 1) whether a defendant pleading guilty or no contest to first- or second-degree criminal sexual conduct must be informed that he will be subject to lifetime electronic monitoring if the victim is less than 13 years of age and the defendant is sentenced to prison; and 2) whether lifetime electronic monitoring must be included in the terms of a sentence evaluation under *People v Cobbs*, 443 Mich 276 (1993). *People v David Mark Cole*, ____ Mich ____ (#143046, 9-21-2011).

VII. SEX OFFENDER REGISTRATION – NEW DEVELOPMENTS

CAUTION: The Michigan Sex Offender Registration Act was amended by 17 PA 2011, primarily effective July 1, 2011, to comply with the federal Adam Walsh Child Protection and Safety Act. As a result, some of each of the following was changed: definitions, registration periods, registration requirements, reporting requirements, and penalties. Due to the comprehensive nature of the changes, the amended statute should be studied carefully, e.g. some offenses formerly requiring registration will no longer be counted as a listed offense; some juvenile offenders will no longer have to register; some adults and juveniles who still have to register will no longer be on the public website; only the most serious crimes will require lifetime registration and reporting; much more personal information will be collected from registered persons, some of which will be listed on the public website; and the law will provide that the defendant may avoid registration in some instances by proving the victim's consent by a preponderance of evidence, but will place many restrictions on the defendant's ability to prove consent.

The circuit court erred in finding that a homeless person is unable to comply with the notice of residence or domicile obligation of SORA and thus in dismissing a charge of failure to comply with SORA. Homelessness is not a bar to compliance with SORA because homelessness does not preclude an offender from entering a police station and reporting to a law enforcement agency regarding the offender's residence or domicile. SORA requires registration of the individual's residence or domicile, and residence may refer to a park or vacant house. If an individual has difficulty identifying their new residence or domicile (if they are kicked out of a shelter, for example), the person is nevertheless obligated to notify authorities of the change in residence/domicile. Any difficulty verifying the truthful information provided by a homeless person is the responsibility of law enforcement and does not negate the responsibility of the individual to appear and report. The Legislature intended SORA to be a comprehensive system that requires all sex offenders to register, whether homeless or otherwise. *People v Dowdy*, 489 Mich 373 (2011).

Under MCL 769.1(13) and MCL 28.724(5), a trial court must, before imposing sentence, satisfy multiple requirements in order to properly require a defendant to register as a sex offender. Because the trial court in this case failed to satisfy several of those requirements, its subsequent decision at a post-sentencing hearing, 20 months after a judgment of sentence was entered, to require registration was erroneous. *People v Lee*, 489 Mich 289 (2011) (the court had failed to: 1) require the defendant to register before sentencing; 2) have a registration form given to the defendant after sentencing and have the requirements explained to him; 3) forward the registration to the state police prior to imposing sentence; 4) include its determination on the judgment of sentence that the offense qualified for registration.) Had the People appealed the lack of registration within the time limits for doing so, a resentencing might have been proper, but the time limits for appealing were long past.

The defendant is entitled to withdraw his guilty plea to child enticement because his attorney failed to inform him that he would be required to register as a sex offender. Based on the reasoning of the U.S. Supreme Court in *Padilla v Kentucky*, 130 SCt 1473 (2010), similar to the risk of deportation, sex offender registration is, because of its close connection to the criminal process, difficult to classify as either a direct or a collateral consequence and this distinction is "ill suited to evaluate a *Strickland* claim." Like deportation, sex offender registration is not a criminal sanction, but it is a particularly severe penalty. Therefore, defense counsel must advise a defendant that registration as a sex offender is a consequence of a guilty plea. Failure to so advise defendant rendered his plea involuntary and prejudiced him as he would not have pled guilty had he known he would be required to register as a sex offender. *People v Fonville*, 291 Mich App 363 (2011). [CAUTION: In *People v Salyor*, ___ Mich ___ (November 2, 2011, # 143117), the Supreme Court has asked the Prosecutor to brief whether *Fonville* was correctly decided. The defendant's application remains pending.]

Requiring the defendant to register as a sex offender on a public registry for 10 years constitutes cruel and unusual punishment in a case where the defendant at age 18 had consensual sex with his then 14-year-old girlfriend whom he subsequently married, and where he successfully completed HYTA probation and was discharged. *People v Dipiazza*, 286 Mich App 137 (2009).

SORA is not a cruel and unusual punishment as applied to a juvenile offender adjudicated of second-degree CSC, where the offense consisted of a non-consensual predatory sexual act and where the offender did not have his adjudication discharged under HYTA. The decision in *Dipiazza*, above is limited to the specific facts of that case. *In re TD*, __ Mich App __ (#294716, 5-26-11).

The defendant adjudicated as a juvenile in 1999 at age 13 for one count of fourth-degree criminal sexual conduct and discharged in 2000, is not entitled to even discretionary removal from the Sex Offender Registry because he failed to file a petition for removal before October 1, 2007 or within three years of discharge from court jurisdiction and because the right to petition for removal only applies to juveniles charged with first-, second-, or third-degree criminal sexual conduct and not juveniles charged with fourth-degree criminal sexual conduct. *In re MS*, 291 Mich App 439 (2011). [Note: juvenile adjudications for 4th degree CSC are not on the *public* registration list.]

VIII. PAROLE AMENDMENTS

Effective March 31, 2011, inmates with a final deportation order may be paroled after serving one-half of their sentence, although this provision is not available to those serving sentences for first- or second-degree murder, first-, second- or third-degree CSC and those sentenced as an habitual offender. 2010 PA 223, amending MCL 791.234b.

IX. PRESENTENCE REPORTS

MCR 6.425 was amended effective January 1, 2011 to explicitly provide that the prosecution, defense lawyer, or the defendant if not represented by a lawyer, may retain a copy of the presentence report after sentencing.

The trial court erred in refusing to evaluate the defendant's post-sentencing objection to the accuracy of information in the presentence report because a challenge to the presentence report may be brought at sentencing, in a proper motion for resentencing, or in a proper motion to remand. *People v Lloyd*, 284 Mich App 703 (2009).

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 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 "prior high severity juvenile adjudication" 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"> • 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 777.53(2). <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 "prior low severity juvenile adjudication" 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"> • 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 777.54(2). <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 "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.	

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). MCL 777.56(3)(a).</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"> • A conviction for felony-firearm may not be counted under PRV 7. MCL 777.57(2)(b). • A concurrent felony conviction that will result in a mandatory consecutive sentence may not be counted under PRV 7. MCL 777.57(2)(c). • (Effective March 1, 2003)* 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). <p>* 2002 PA 666.</p>
10	1 subsequent or concurrent felony conviction.	
0	No subsequent or concurrent felony convictions.	

OV 1 Aggravated Use of a Weapon		
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"> • 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). • 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). • 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). • Score five points if an offender used an object to suggest that he or she had a weapon. MCL 777.31(2)(c). • Score five points if an offender used a chemical irritant, a chemical irritant or smoke device, or an imitation harmful substance or device. MCL 777.31(2)(d). • "Harmful biological substance," "harmful biological device," "harmful chemical substance," "harmful chemical device," "harmful radioactive material," "harmful radioactive device," and "imitation harmful substance or device" are defined in MCL 750.200h. MCL 777.31(3)(a). • "Incendiary device" includes gasoline or any other flammable substance, a blowtorch, fire bomb, Molotov cocktail, or other similar device. MCL 777.31(3)(b).
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"> • In cases involving multiple offenders, if one offender is assessed points for possessing a weapon, all offenders must be assessed the same number of points. MCL 777.32(2). • "Harmful biological substance," "harmful biological device," "harmful chemical substance," "harmful chemical device," "harmful radioactive material," and "harmful radioactive device" are defined in MCL 750.200h. MCL 777.32(3)(a). • A "fully automatic weapon" is a firearm that ejects an empty cartridge and loads a live cartridge from the magazine for the next shot without requiring renewed pressure on the trigger for each successive shot. MCL 777.32(3)(b). • A "pistol," "rifle," or "shotgun" includes a revolver, semi-automatic pistol, rifle, shotgun, combination rifle and shotgun, or other firearm made in or after 1898 that fires fixed ammunition. A "pistol," "rifle," or "shotgun" does not include a fully automatic weapon or short-barreled shotgun or short-barreled rifle. MCL 777.32(3)(c). • An "incendiary device" includes gasoline or any other flammable substance, a blowtorch, fire bomb, Molotov cocktail, or other similar device. MCL 777.32(3)(d).
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).	

OV 3 Degree of Physical Injury to a Victim		
Pts		Instructions
100	A victim was killed. MCL 777.33(1)(a).	<ul style="list-style-type: none"> • 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). • Score 100 points if death results from the commission of the offense and homicide is not the sentencing offense. MCL 777.33(2)(b). Any crime in which the death of a person is an element of the crime is a "homicide." MCL 777.1(c). • Score 50 points 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"> – 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); – 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 – the offender's body contained any amount of a controlled substance listed in schedule 1 under MCL 333.7212 or a rule promulgated under that section, or a controlled substance described in MCL 333.7214(a)(iv), MCL 777.33(2)(c)(iii). • Do not score five points if "bodily injury" is an element of the sentencing offense. MCL 777.33(2)(d). • "Requiring medical treatment" refers to an injury's need for treatment not whether a victim was successful in obtaining treatment. MCL 777.33(3). <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).	

OV 4 Degree of Psychological Injury to a Victim		
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"> 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). Any crime in which the death of a person is an element of the crime is a "homicide." MCL 777.1(c).
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"> 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). Ten points must be scored if a killing is intentional within the definition of second-degree murder or voluntary manslaughter but the death took place in a combative situation or in response to the decedent's victimization of the offender. MCL 777.36(2)(b). Any crime in which a person's death in an element of the crime is a "homicide." MCL 777.1(c).
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).	

OV 7 Aggravated Physical Abuse		
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"> Each person placed in danger of injury or loss of life is a victim for purposes of scoring OV 7. MCL 777.37(2). "Sadism" is "conduct that subjects a victim to extreme or prolonged pain or humiliation and is inflicted to produce suffering or for the offender's gratification." MCL 777.37(3). Effective April 22, 2002, 2002 PA 137 deleted "terrorism"* from OV 7's list of behaviors meriting points. Although "terrorism" was eliminated from consideration under OV 7, the conduct previously defined as "terrorism" remains in OV 7's statutory language as "conduct designed to substantially increase the fear and anxiety a victim suffered during the offense." MCL 777.37(1)(a). <p>*"Terrorism" is now addressed by OV 20. MCL 777.49a.</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).	

OV 8 Victim Asportation or Captivity		
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"> Each person in danger of injury or loss of life is a victim for purposes of scoring OV 8. MCL 777.38(2)(a). Zero points must be scored if the sentencing offense is kidnapping. MCL 777.38(2)(b).
0	No victim was asported or held captive. MCL 777.38(1)(b).	

OV 9 Number of Victims		
Pts		Instructions
100	Multiple deaths occurred. MCL 777.39(1)(a).	<ul style="list-style-type: none"> A “victim” for purposes of scoring OV 9 is each person placed in danger of injury or loss of life or (effective March 30, 2007)* loss of property. MCL 777.39(2)(a). 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). <p>*2006 PA 548.</p>
25	10 or more victims were placed in danger of physical injury or death. (Effective March 30, 2007.) 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. (Effective March 30, 2007.) 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. (Effective March 30, 2007.) Fewer than 4 victims were placed in danger of property loss. MCL 777.39(1)(d).	

OV 10 Exploitation of a Victim’s Vulnerability		
Pts		Instructions
15	Predatory conduct was involved. MCL 777.40(1)(a).	<ul style="list-style-type: none"> 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). “Predatory conduct” is an offender’s preoffense conduct directed at a victim for the primary purpose of victimization. MCL 777.40(3)(a). To “exploit” a victim is to manipulate a victim for the offender’s selfish or unethical purposes. MCL 777.40(3)(b). A victim’s “vulnerability” is the victim’s readily apparent susceptibility to injury, physical restraint, persuasion, or temptation. MCL 777.40(3)(c). “Abuse of authority status” means 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).
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).	

OV 11 Criminal Sexual Penetration		
Pts		Instructions
50	Two or more criminal sexual penetrations occurred. MCL 777.41(1)(a).	<ul style="list-style-type: none"> • All sexual penetrations of the victim by the offender arising out of the sentencing offense must be counted in scoring OV 11. MCL 777.41(2)(a). • Multiple sexual penetrations of the victim by the offender occurring beyond the sentencing offense may be scored in OV's 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). • 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). <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).	

OV 12 Number of Contemporaneous Felonious Criminal Acts		
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"> • A felonious criminal act is contemporaneous if both of the following circumstances exist: <ul style="list-style-type: none"> – the criminal act occurred within 24 hours of the sentencing offense, MCL 777.42(2)(a)(i), and – the criminal act has not and will not result in a separate conviction, MCL 777.42(2)(a)(ii). • Conduct scored in OV 11 must not be scored under this variable. MCL 777.42(2)(c). • 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).
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"> 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).
25	(Effective January 16, 2009.)* 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"> 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).
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"> Do not consider conduct scored in OV's 11 or 12 unless the offense was related to membership in an organized criminal group. MCL 777.43(2)(c).
10	(Effective until February 28, 2003.) 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"> Do not consider conduct scored in OV's 11 or 12 unless the offense was related to membership in an organized criminal group or (effective January 16, 2009) that are gang-related.* MCL 777.43(2)(c).
10	<p>(Effective March 1, 2003, through January 15, 2009.) 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>(Effective January 16, 2009.)* 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"> Score 50 points only if the sentencing offense is first-degree criminal sexual conduct. MCL 777.43(2)(d). (Effective March 1, 2003.) 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). 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).
10	(Effective until January 15, 2009.) 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>*2008 PA 562.</p> <p>continued on next page</p>

OV 13

Continuing Pattern of Criminal Behavior

Pts		Instructions
10	<p>(Effective March 1, 2003, through January 15, 2009.) 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>(Effective January 16, 2009.)* 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"> Consider the entire criminal transaction in which the sentencing offense occurred when determining the offender's role. MCL 777.44(2)(a). In cases involving three or more offenders, more than one offender may be considered a leader. MCL 777.44(2)(b).
0	The offender was not a leader in a multiple offender situation. MCL 777.44(1)(b).	

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

continued on
next page

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 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"> In cases involving multiple offenders or multiple victims, the appropriate point total may be determined by aggregating the value of property involved in the offense, including property involved in uncharged offenses or property involved in charges dismissed under a plea agreement. MCL 777.46(2)(a). Use the value of the property to score this variable in cases where the property was unlawfully obtained, lost to the lawful owner, or destroyed. If the property was damaged, use the amount of money necessary to restore the property to its pre-offense condition. MCL 777.46(2)(b). 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).
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"> If points are assessed against the offender for OV 6, ten points may not be scored under this variable. MCL 777.47(2). Definitions for "aircraft," "ORV," "snowmobile," "vehicle," and "vessel" are referenced in MCL 777.1.
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"> For purposes of scoring OV 18, "any bodily alcohol content" is either of the following: <ul style="list-style-type: none"> 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 any presence of alcohol within a person's body from the consumption of alcohol except for alcohol consumption as part of a generally recognized religious service or ceremony, MCL 777.48(2)(b). Definitions for "aircraft," "ORV," "snowmobile," "vehicle," and "vessel" are referenced in MCL 777.1. <p>continued on next page</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).	

OV 20 Terrorism		
Pts		Instructions
100	The offender committed an act of terrorism by using or threatening to use a harmful biological substance, harmful biological device, harmful chemical substance, harmful chemical device, harmful radioactive material, harmful radioactive device, incendiary device, or explosive device. MCL 777.49a(1)(a).	<ul style="list-style-type: none"> For purposes of scoring this variable, the terms “act of terrorism” and “terrorist” are defined in MCL 750.543b. MCL 777.49a(2)(a). “Harmful biological substance,” “harmful biological device,” “harmful chemical substance,” “harmful chemical device,” “harmful radioactive material,” and “harmful radioactive device” are defined in MCL 750.200h. MCL 777.49a(2)(b). “Incendiary device” includes gasoline or any other flammable substance, a blowtorch, fire bomb, Molotov cocktail, or other similar device. MCL 777.49a(2)(c). For purposes of OV 20, “terrorist organization” is defined in MCL 750.543c. MCL 777.49a(2)(d).
50	The offender committed an act of terrorism without using or threatening to use a harmful biological substance, harmful biological device, harmful chemical substance, harmful chemical device, harmful radioactive material, harmful radioactive device, incendiary device, or explosive device. MCL 777.49a(1)(b).	
25	The offender supported an act of terrorism, a terrorist, or a terrorist organization. MCL 777.49a(1)(c).	
0	The offender did not commit an act of terrorism or support an act of terrorism, a terrorist, or a terrorist organization. MCL 777.49a(1)(d).	

Sentencing Grid for Second-Degree Murder—MCL 777.61
Includes Ranges Calculated for Habitual Offenders (MCL 777.21(3)(a)–(c))

OV Level	PRV Level												Offender Status	
	A 0 Points		B 1-9 Points		C 10-24 Points		D 25-49 Points		E 50-74 Points		F 75+ Points			
I 0-49 Points	90	150	144	240	162	270	180	300/L	225	375/L	270	450/L		
		187		300		337		375/L		468/L		562/L	562/L	HO2
		225		360		405		450/L		562/L		675/L	HO3	
		300		480		540		600/L		750/L		900/L	HO4	
II 50-99 Points	144	240	162	270	180	300/L	225	375/L	270	450/L	315	525/L		
		300		337		375/L		468/L		562/L		656/L	HO2	
		360		405		450/L		562/L		675/L		787/L	HO3	
		480		540		600/L		750/L		900/L		1050/L	HO4	
III 100+ Points	162	270/L	180	300/L	225	375/L	270	450/L	315	525/L	365	600/L		
		337/L		375/L		468/L		562/L		656/L		750/L	HO2	
		405/L		450/L		562/L		675/L		787/L		900/L	HO3	
		540/L		600/L		750/L		900/L		1050/L		1200/L	HO4	

The statutory percentage increases for habitual offenders are rounded down to the nearest whole month.
The cell range may be less than the maximum possible minimum sentence by a fraction of a month.

Sentencing Grid for Class D Offenses—MCL 777.65
Includes Ranges Calculated for Habitual Offenders (MCL 777.21(3)(a)–(c))

OV Level	PRV Level												Offender Status	
	A 0 Points		B 1-9 Points		C 10-24 Points		D 25-49 Points		E 50-74 Points		F 75+ Points			
I 0-9 Points	0	6*	0	9*	0	11*	0	17*	5	23	10	23		
		7*		11*		13*		21		28		28		HO2
		9*		13*		16*		25		34		34		HO3
		12*		18*		22		34		46		46		HO4
II 10-24 Points	0	9*	0	11*	0	17*	5	23	10	23	19	38		
		11*		13*		21		28		28		47		HO2
		13*		16*		25		34		34		57		HO3
		18*		22		34		46		46		76		HO4
III 25-34 Points	0	11*	0	17*	5	23	10	23	19	38	29	57		
		13*		21		28		28		47		71		HO2
		16*		25		34		34		57		85		HO3
		22		34		46		46		76		114		HO4
IV 35-49 Points	0	17*	5	23	10	23	19	38	29	57	34	67		
		21		28		28		47		71		83		HO2
		25		34		34		57		85		100		HO3
		34		46		46		76		114		134		HO4
V 50-74 Points	5	23	10	23	19	38	29	57	34	67	38	76		
		28		28		47		71		83		95		HO2
		34		34		57		85		100		114		HO3
		46		46		76		114		134		152		HO4
VI 75+ Points	10	23	19	38	29	57	34	67	38	76	43	76		
		28		47		71		83		95		95		HO2
		34		57		85		100		114		114		HO3
		46		76		114		134		152		152		HO4

Intermediate sanction cells are marked by asterisks, straddle cells are shaded, and prison cells are unmarked.

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.

RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF CORRECTIONS
CENTRAL TIME COMPUTATION UNIT

DANIEL H. HEYNS
DIRECTOR

October 18, 2011

Honorable [REDACTED]
[REDACTED] County Circuit Court
[REDACTED]

NOTICE: POTENTIAL TIME COMPUTATION ISSUE

This Notice is not to be considered legal advice and is for informational purposes only

RE: [REDACTED] [REDACTED] [REDACTED]

Dear Judge [REDACTED]:

The Pre-Sentence Investigation Report indicates the sentence may have been designated as Attempt, PACC 750.92; however, there is no reference on the Judgment. If the offense was not designated as Attempt, then the maximum term imposed would be less than the statutory maximum. We currently have not entered the sentence as Attempt and can not do so unless an amended Judgment is received. Therefore, we are referring this matter back to the court for review to determine if any clerical error or omission exists.

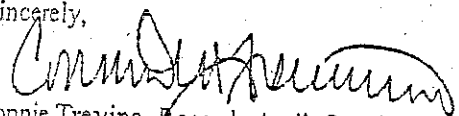
If the court finds an amended Judgment is warranted to add "Attempt", it is suggested one be provided at your earliest convenience so we may review the sentence and classification. If resentencing is necessary to accomplish this, it is suggested that process be considered and/or initiated. Any amended Judgment should be sent to this writer at the address below.

However, if the court finds no amended Judgment will be issued, we would ask for confirmation of such in writing, or via email, so that we may resolve this matter in our records and not contact the court again at a later date.

If you need further information as to the status of this prisoner or have any questions, please feel free to contact me at (517) 780-6576 or at trevino1@michigan.gov.

Thank you for your prompt attention in this matter.

Sincerely,


Connie Trevino, Records Audit Specialist
Central Time Computation Unit

cc: Audit File, Central Office File, Record Office File, Prisoner, Prosecutor's Office, Defense Counsel
Attachment (Judge only)