

THE CODE OF CRIMINAL PROCEDURE (EXCERPT)

Act 175 of 1927

PART 4

OFFENSE VARIABLES

777.31 Aggravated use of weapon; definitions.

Sec. 31. (1) Offense variable 1 is aggravated use of a weapon. Score offense variable 1 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

- (a) 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 25 points
 - (b) 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 20 points
 - (c) 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 15 points
 - (d) The victim was touched by any other type of weapon 10 points
 - (e) A weapon was displayed or implied 5 points
 - (f) No aggravated use of a weapon occurred 0 points
- (2) All of the following apply to scoring offense variable 1:
- (a) Count each person who was placed in danger of injury or loss of life as a victim.
 - (b) In multiple offender cases, if 1 offender is assessed points for the presence or use of a weapon, all offenders shall be assessed the same number of points.
 - (c) Score 5 points if an offender used an object to suggest the presence of a weapon.
 - (d) Score 5 points if an offender used a chemical irritant, chemical irritant device, smoke device, or imitation harmful substance or device.
 - (e) Do not score 5 points if the conviction offense is a violation of section 82 or 529 of the Michigan penal code, 1931 PA 328, MCL 750.82 and 750.529.
- (3) As used in this section:
- (a) "Chemical irritant", "chemical irritant device", "harmful biological substance", "harmful biological device", "harmful chemical substance", "harmful chemical device", "harmful radioactive material", "harmful radioactive device", and "imitation harmful substance or device" mean those terms as defined in section 200h of the Michigan penal code, 1931 PA 328, MCL 750.200h.
 - (b) "Incendiary device" includes gasoline or any other flammable substance, a blowtorch, fire bomb, Molotov cocktail, or other similar device.

History: Add. 1998, Act 317, Eff. Dec. 15, 1998;—Am. 1999, Act 227, Imd. Eff. Dec. 28, 1999;—Am. 2001, Act 136, Imd. Eff. Oct. 23, 2001;—Am. 2002, Act 137, Eff. Apr. 22, 2002.

777.32 Lethal potential of weapon possessed or used.

Sec. 32. (1) Offense variable 2 is lethal potential of the weapon possessed or used. Score offense variable 2 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

- (a) 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 15 points
 - (b) The offender possessed or used an incendiary device, an explosive device, or a fully automatic weapon 15 points
 - (c) The offender possessed or used a short-barreled rifle or a short-barreled shotgun 10 points
 - (d) The offender possessed or used a pistol, rifle, shotgun, or knife or other cutting or stabbing weapon 5 points
 - (e) The offender possessed or used any other potentially lethal weapon 1 point
 - (f) The offender possessed or used no weapon 0 points
- (2) In multiple offender cases, if 1 offender is assessed points for possessing a weapon, all offenders shall be assessed the same number of points.
- (3) As used in this section:
- (a) "Harmful biological substance", "harmful biological device", "harmful chemical substance", "harmful

chemical device", "harmful radioactive material", and "harmful radioactive device" mean those terms as defined in section 200h of the Michigan penal code, 1931 PA 328, MCL 750.200h.

(b) "Fully automatic weapon" means a firearm employing gas pressure or force of recoil or other means to eject an empty cartridge from the firearm after a shot, and to load and fire the next cartridge from the magazine, without renewed pressure on the trigger for each successive shot.

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

(d) "Incendiary device" includes gasoline or any other flammable substance, a blowtorch, fire bomb, Molotov cocktail, or other similar device.

History: Add. 1998, Act 317, Eff. Dec. 15, 1998;—Am. 2001, Act 136, Imd. Eff. Oct. 23, 2001.

777.33 Physical injury to victim; offense variable 3; scoring; "requiring medical treatment" defined.

Sec. 33. (1) Offense variable 3 is physical injury to a victim. Score offense variable 3 by determining which of the following subdivisions apply and by assigning the number of points attributable to the applicable subdivision that has the highest number of points:

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|--|------------|
| (a) A victim was killed | 100 points |
| (b) A victim was killed | 50 points |
| (c) Life threatening or permanent incapacitating injury occurred to a victim | 25 points |
| (d) Bodily injury requiring medical treatment occurred to a victim | 10 points |
| (e) Bodily injury not requiring medical treatment occurred to a victim | 5 points |
| (f) No physical injury occurred to a victim | 0 points |

(2) All of the following apply to scoring offense variable 3:

(a) In multiple offender cases, if 1 offender is assessed points for death or physical injury, all offenders must be assessed the same number of points.

(b) Score 100 points if death results from the commission of a crime and homicide is not the sentencing offense.

(c) Score 50 points if death results from the commission of a crime and the offense or attempted offense involves the operation of a vehicle, vessel, ORV, snowmobile, aircraft, or locomotive and any of the following apply:

(i) The offender was under the influence of or visibly impaired by the use of alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance.

(ii) 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 or, beginning 5 years after the state treasurer publishes a certification under section 625(28) of the Michigan vehicle code, 1949 PA 300, MCL 257.625, the offender had an alcohol content of 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(iii) The offender's body contained any amount of a controlled substance listed in schedule 1 under section 7212 of the public health code, 1978 PA 368, MCL 333.7212, or a rule promulgated under that section, or a controlled substance described in section 7214(a)(iv) of the public health code, 1978 PA 368, MCL 333.7214.

(d) Do not score 5 points if bodily injury is an element of the sentencing offense.

(3) As used in this section, "requiring medical treatment" refers to the necessity for treatment and not the victim's success in obtaining treatment.

History: Add. 1998, Act 317, Eff. Dec. 15, 1998;—Am. 2000, Act 279, Eff. Oct. 1, 2000;—Am. 2003, Act 134, Eff. Sept. 30, 2003;—Am. 2013, Act 24, Imd. Eff. May 9, 2013;—Am. 2017, Act 152, Eff. Feb. 6, 2018;—Am. 2021, Act 81, Eff. Nov. 21, 2021;—Am. 2021, Act 84, Imd. Eff. Sept. 24, 2021.

777.34 Psychological injury to victim.

Sec. 34. (1) Offense variable 4 is psychological injury to a victim. Score offense variable 4 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

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| (a) Serious psychological injury requiring professional treatment occurred to a victim | 10 points |
| (b) For a conviction under section 50b of the Michigan penal code, 1931 PA 328, MCL 750.50b, serious psychological injury requiring professional treatment occurred to the owner of a companion animal | 5 points |
| (c) No serious psychological injury requiring professional treatment occurred to a victim | 0 points |

(2) Score 10 points if the serious psychological injury may require professional treatment. In making this

determination, the fact that treatment has not been sought is not conclusive.

History: Add. 1998, Act 317, Eff. Dec. 15, 1998;—Am. 2018, Act 652, Eff. Mar. 28, 2019.

777.35 Psychological injury to member of victim's family.

Sec. 35. (1) Offense variable 5 is psychological injury to a member of a victim's family. Score offense variable 5 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

(a) Serious psychological injury requiring professional treatment occurred to a victim's family 15 points

(b) No serious psychological injury requiring professional treatment occurred to a victim's family 0 points

(2) Score 15 points if the serious psychological injury to the victim's family may require professional treatment. In making this determination, the fact that treatment has not been sought is not conclusive.

History: Add. 1998, Act 317, Eff. Dec. 15, 1998;—Am. 2000, Act 279, Eff. Oct. 1, 2000.

777.36 Intent to kill or injure another individual.

Sec. 36. (1) Offense variable 6 is the offender's intent to kill or injure another individual. Score offense variable 6 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

(a) 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 50 points

(b) 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 25 points

(c) 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 10 points

(d) The offender had no intent to kill or injure 0 points

(2) All of the following apply to scoring offense variable 6.

(a) The sentencing judge shall score this variable consistent with a jury verdict unless the judge has information that was not presented to the jury.

(b) Score 10 points if a killing is intentional within the definition of second degree murder or voluntary manslaughter, but the death occurred in a combative situation or in response to victimization of the offender by the decedent.

History: Add. 1998, Act 317, Eff. Dec. 15, 1998.

777.37 Offense variable 7; aggravated physical abuse; "sadism" defined.

Sec. 37. (1) Offense variable 7 is aggravated physical abuse. Score offense variable 7 by determining which of the following apply and by assigning the number of points attributable to the 1 that has the highest number of points:

(a) A victim was treated with sadism, torture, excessive brutality, or similarly egregious conduct designed to substantially increase the fear and anxiety a victim suffered during the offense 50 points

(b) No victim was treated with sadism, torture, excessive brutality, or similarly egregious conduct designed to substantially increase the fear and anxiety a victim suffered during the offense 0 points

(2) Count each person who was placed in danger of injury or loss of life as a victim.

(3) As used in this section, "sadism" means conduct that subjects a victim to extreme or prolonged pain or humiliation and is inflicted to produce suffering or for the offender's gratification.

History: Add. 1998, Act 317, Eff. Dec. 15, 1998;—Am. 2002, Act 137, Eff. Apr. 22, 2002;—Am. 2015, Act 137, Eff. Jan. 5, 2016.

777.38 Victim asportation or captivity.

Sec. 38. (1) Offense variable 8 is victim asportation or captivity. Score offense variable 8 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

(a) 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 15 points

(b) No victim was asported or held captive 0 points

(2) All of the following apply to scoring offense variable 8:

(a) Count each person who was placed in danger of injury or loss of life as a victim.

(b) Score 0 points if the sentencing offense is kidnapping.

History: Add. 1998, Act 317, Eff. Dec. 15, 1998.

777.39 Offense variable 9; number of victims; scoring.

Sec. 39. (1) Offense variable 9 is number of victims. Score offense variable 9 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

(a) Multiple deaths occurred 100 points

(b) There were 10 or more victims who were placed in danger of physical injury or death, or 20 or more victims who were placed in danger of property loss 25 points

(c) There were 2 to 9 victims who were placed in danger of physical injury or death, or 4 to 19 victims who were placed in danger of property loss 10 points

(d) There were fewer than 2 victims who were placed in danger of physical injury or death, or fewer than 4 victims who were placed in danger of property loss 0 points

(2) All of the following apply to scoring offense variable 9:

(a) Count each person who was placed in danger of physical injury or loss of life or property as a victim.

(b) Score 100 points only in homicide cases.

History: Add. 1998, Act 317, Eff. Dec. 15, 1998;—Am. 2006, Act 548, Eff. Mar. 30, 2007.

777.40 Exploitation of vulnerable victim.

Sec. 40. (1) Offense variable 10 is exploitation of a vulnerable victim. Score offense variable 10 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

(a) Predatory conduct was involved 15 points

(b) 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 10 points

(c) 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 5 points

(d) The offender did not exploit a victim's vulnerability 0 points

(2) The mere existence of 1 or more factors described in subsection (1) does not automatically equate with victim vulnerability.

(3) As used in this section:

(a) "Predatory conduct" means preoffense conduct directed at a victim, or a law enforcement officer posing as a potential victim, for the primary purpose of victimization.

(b) "Exploit" means to manipulate a victim for selfish or unethical purposes. Exploit also means to violate section 50b of the Michigan penal code, 1931 PA 328, MCL 750.50b, for the purpose of manipulating a victim for selfish or unethical purposes.

(c) "Vulnerability" means the readily apparent susceptibility of a victim to injury, physical restraint, persuasion, or temptation.

(d) "Abuse of authority status" means a victim was exploited out of fear or deference to an authority figure,

including, but not limited to, a parent, physician, or teacher.

History: Add. 1998, Act 317, Eff. Dec. 15, 1998;—Am. 2014, Act 350, Imd. Eff. Oct. 17, 2014;—Am. 2018, Act 652, Eff. Mar. 28, 2019.

777.41 Criminal sexual penetration.

Sec. 41. (1) Offense variable 11 is criminal sexual penetration. Score offense variable 11 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

- (a) Two or more criminal sexual penetrations occurred 50 points
- (b) One criminal sexual penetration occurred 25 points
- (c) No criminal sexual penetration occurred 0 points

(2) All of the following apply to scoring offense variable 11:

- (a) Score all sexual penetrations of the victim by the offender arising out of the sentencing offense.
- (b) Multiple sexual penetrations of the victim by the offender extending beyond the sentencing offense may be scored in offense variables 12 or 13.
- (c) Do not score points for the 1 penetration that forms the basis of a first- or third-degree criminal sexual conduct offense.

History: Add. 1998, Act 317, Eff. Dec. 15, 1998.

777.42 Contemporaneous felonious criminal acts.

Sec. 42. (1) Offense variable 12 is contemporaneous felonious criminal acts. Score offense variable 12 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

- (a) Three or more contemporaneous felonious criminal acts involving crimes against a person were committed 25 points
- (b) Two contemporaneous felonious criminal acts involving crimes against a person were committed 10 points
- (c) Three or more contemporaneous felonious criminal acts involving other crimes were committed 10 points
- (d) One contemporaneous felonious criminal act involving a crime against a person was committed 5 points
- (e) Two contemporaneous felonious criminal acts involving other crimes were committed 5 points
- (f) One contemporaneous felonious criminal act involving any other crime was committed 1 point
- (g) No contemporaneous felonious criminal acts were committed 0 points

(2) All of the following apply to scoring offense variable 12:

- (a) A felonious criminal act is contemporaneous if both of the following circumstances exist:
 - (i) The act occurred within 24 hours of the sentencing offense.
 - (ii) The act has not and will not result in a separate conviction.
- (b) A violation of section 227b of the Michigan penal code, 1931 PA 328, MCL 750.227b, should not be considered for scoring this variable.
- (c) Do not score conduct scored in offense variable 11.

History: Add. 1998, Act 317, Eff. Dec. 15, 1998.

777.43 Continuing pattern of criminal behavior.

Sec. 43. (1) Offense variable 13 is continuing pattern of criminal behavior. Score offense variable 13 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

- (a) 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 50 points

- (b) The offense was part of a pattern of felonious criminal activity directly related to causing, encouraging, recruiting, soliciting, or coercing membership in a gang or communicating a threat with intent to deter, punish, or retaliate against another for withdrawing from a gang 25 points
- (c) The offense was part of a pattern of felonious criminal activity involving 3 or more crimes against a person 25 points
- (d) 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 section 7401(2)(a)(i) to (iii) or section 7403(2)(a)(i) to (iii) of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403 10 points
- (e) The offense was part of a pattern of felonious criminal activity involving a combination of 3 or more violations of section 7401(2)(a)(i) to (iii) or section 7403(2)(a)(i) to (iii) of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403 10 points
- (f) The offense was part of a pattern of felonious criminal activity involving 3 or more crimes against property 5 points
- (g) No pattern of felonious criminal activity existed 0 points
- (2) All of the following apply to scoring offense variable 13:
- (a) For determining the appropriate points under this variable, all crimes within a 5-year period, including the sentencing offense, shall be counted regardless of whether the offense resulted in a conviction.
- (b) The presence or absence of multiple offenders, the age of the offenders, or the degree of sophistication of the organized criminal group is not as important as the fact of the group's existence, which may be reasonably inferred from the facts surrounding the sentencing offense.
- (c) Except for offenses related to membership in an organized criminal group or that are gang-related, do not score conduct scored in offense variable 11 or 12.
- (d) Score 50 points only if the sentencing offense is first degree criminal sexual conduct.
- (e) Do not count more than 1 controlled substance offense arising out of the criminal episode for which the person is being sentenced.
- (f) Do not count more than 1 crime involving the same 1 controlled substance. For example, do not count conspiracy and a substantive offense involving the same amount of controlled substances or possession and delivery of the same amount of controlled substances.

History: Add. 1998, Act 317, Eff. Dec. 15, 1998;—Am. 1999, Act 227, Imd. Eff. Dec. 28, 1999;—Am. 2000, Act 279, Eff. Oct. 1, 2000;—Am. 2002, Act 666, Eff. Mar. 1, 2003;—Am. 2008, Act 562, Eff. Apr. 1, 2009.

Compiler's note: In subsection (2)(f), the numeral "1" was not included in the language "the same 1 controlled substance" as passed by the legislature, but was incorrectly inserted during the electronic formatting of the bill. Subsection (2)(f) should read as follows:

"(f) Do not count more than 1 crime involving the same controlled substance. For example, do not count conspiracy and a substantive offense involving the same amount of controlled substances or possession and delivery of the same amount of controlled substances."

777.44 Offender's role.

Sec. 44. (1) Offense variable 14 is the offender's role. Score offense variable 14 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

- (a) The offender was a leader in a multiple offender situation 10 points
- (b) The offender was not a leader in a multiple offender situation 0 points
- (2) All of the following apply to scoring offense variable 14:
- (a) The entire criminal transaction should be considered when scoring this variable.
- (b) If 3 or more offenders were involved, more than 1 offender may be determined to have been a leader.

History: Add. 1998, Act 317, Eff. Dec. 15, 1998.

777.45 Aggravated controlled substance offenses; definitions.

Sec. 45. (1) Offense variable 15 is aggravated controlled substance offenses. Score offense variable 15 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

- (a) 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 section 7214(a)(iv) 100 points

- (b) 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 section 7214(a)(iv) 75 points
- (c) 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 section 7214(a)(iv) 50 points
- (d) The offense involved traveling from another state or country to this state while in possession of any mixture containing a controlled substance classified in schedule 1 or 2 that is a narcotic drug or a drug described in section 7212 or 7214 with the intent to deliver that mixture in this state 50 Points
- (e) The offense involved the sale or delivery of a controlled substance other than marihuana or a mixture containing a controlled substance other than marihuana by the offender who was 18 years of age or older to a minor who was 3 or more years younger than the offender 25 points
- (f) The offense involved the sale, delivery, or possession with intent to sell or deliver 45 kilograms or more of marihuana or 200 or more of marihuana plants 10 points
- (g) The offense is a violation of section 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 section 7214(a)(iv) and was committed in a minor's abode, settled home, or domicile, regardless of whether the minor was present 10 points
- (h) The offense involved the delivery or possession with intent to deliver marihuana 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 5 points
- (i) The offense was not an offense described in subdivisions (a) through (h) 0 points
- (2) As used in this section:
- (a) "Deliver" means the actual or constructive transfer of a controlled substance from 1 individual to another regardless of remuneration.
- (b) "Minor" means an individual 17 years of age or less.
- (c) "Trafficking" means the sale or delivery of controlled substances or counterfeit controlled substances on a continuing basis to 1 or more other individuals for further distribution.

History: Add. 1998, Act 317, Eff. Dec. 15, 1998;—Am. 2002, Act 666, Eff. Mar. 1, 2003;—Am. 2013, Act 203, Eff. Mar. 19, 2014.

777.46 Property obtained, damaged, lost, or destroyed.

Sec. 46. (1) Offense variable 16 is property obtained, damaged, lost, or destroyed. Score offense variable 16 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

- (a) For a conviction under section 50 of the Michigan penal code, 1931 PA 328, MCL 750.50, the property was 25 or more animals 25 points
- (b) For a conviction under section 50 of the Michigan penal code, 1931 PA 328, MCL 750.50, the property was 10 or more animals but fewer than 25 animals 10 points
- (c) Wanton or malicious damage occurred beyond that necessary to commit the crime for which the offender is not charged and will not be charged 10 points
- (d) The property had a value of more than \$20,000.00 or had significant historical, social, or sentimental value 10 points
- (e) The property had a value of \$1,000.00 or more but not more than \$20,000.00 5 points
- (f) The property had a value of \$200.00 or more but not more than \$1,000.00 1 point
- (g) No property was obtained, damaged, lost, or destroyed or the property had a value of less than \$200.00 0 points

(2) All of the following apply to scoring offense variable 16:

(a) In multiple offender or victim cases, the appropriate points may be determined by adding together the aggregate value of the property involved, including property involved in uncharged offenses or charges dismissed under a plea agreement.

(b) In cases in which the property was obtained unlawfully, 28 lost to the lawful owner, or destroyed, use the value of the property in scoring this variable. If the property was damaged, use the monetary amount appropriate to restore the property to pre-offense condition in scoring this variable.

(c) The amount of money or property involved in admitted but uncharged offenses or in charges that have been dismissed under a plea agreement may be considered.

History: Add. 1998, Act 317, Eff. Dec. 15, 1998;—Am. 1999, Act 227, Imd. Eff. Dec. 28, 1999;—Am. 2018, Act 652, Eff. Mar. 28, 2019.

Compiler's note: In subsection (2)(b), the reference to "unlawfully, 28 lost" evidently should read "unlawfully, lost."

777.47 Degree of negligence exhibited.

Sec. 47. (1) Offense variable 17 is degree of negligence exhibited. Score offense variable 17 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

- (a) The offender showed a wanton or reckless disregard for the life or property of another person 10 points
 - (b) The offender failed to show the degree of care that a person of ordinary prudence in a similar situation would have shown 5 points
 - (c) The offender was not negligent 0 points
- (2) Do not score 10 points if points are given in offense variable 6.

History: Add. 1998, Act 317, Eff. Dec. 15, 1998.

777.48 Operator ability affected by alcohol or drugs; offense variable 18; scoring; "any bodily alcohol content" defined.

Sec. 48. (1) Offense variable 18 is operator ability affected by alcohol or drugs. Score offense variable 18 by determining which of the following subdivisions apply and by assigning the number of points attributable to the applicable subdivision that has the highest number of points:

- (a) 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 20 points
- (b) 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 15 points
- (c) 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 section 7212 of the public health code, 1978 PA 368, MCL 333.7212, or a rule promulgated under that section, or a controlled substance described in section 7214(a)(iv) of the public health code, 1978 PA 368, MCL 333.7214; 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 5 years after the state treasurer publishes a certification under section 625(28) of the Michigan vehicle code, 1949 PA 300, MCL 257.625, 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 10 points
- (d) 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 5 points
- (e) 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 0 points

(2) As used in this section, "any bodily alcohol content" means either of the following:

(a) 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 or, beginning 5 years after the state treasurer publishes a certification under section 625(28) of the Michigan vehicle code, 1949 PA 300, MCL 257.625, 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.

(b) Any presence of alcohol within an individual's body resulting from the consumption of alcoholic or intoxicating liquor other than the consumption of alcoholic or intoxicating liquor as part of a generally recognized religious service or ceremony.

History: Add. 1998, Act 317, Eff. Dec. 15, 1998;—Am. 1999, Act 227, Imd. Eff. Dec. 28, 1999;—Am. 2000, Act 279, Eff. Oct. 1, 2000;—Am. 2003, Act 134, Eff. Sept. 30, 2003;—Am. 2013, Act 24, Imd. Eff. May 9, 2013;—Am. 2017, Act 152, Eff. Feb. 6, 2018;—Am. 2021, Act 81, Eff. Nov. 21, 2021;—Am. 2021, Act 84, Imd. Eff. Sept. 24, 2021.

777.49 Security threat to penal institution or court or interference with administration of justice or emergency services.

Sec. 49. Offense variable 19 is threat to the security of a penal institution or court or interference with the administration of justice or the rendering of emergency services. Score offense variable 19 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

- (a) The offender by his or her conduct threatened the security of a penal institution or court 25 points
- (b) 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 15 points
- (c) The offender otherwise interfered with or attempted to interfere with the administration of justice, or directly or indirectly violated a personal protection order 10 points
- (d) 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 threat of force 0 points

History: Add. 1998, Act 317, Eff. Dec. 15, 1998;—Am. 2001, Act 136, Imd. Eff. Oct. 23, 2001;—Am. 2002, Act 137, Eff. Apr. 22, 2002;—Am. 2018, Act 652, Eff. Mar. 28, 2019.

777.49a Terrorism; definitions.

Sec. 49a. (1) Offense variable 20 is terrorism. Score offense variable 20 by determining which of the following applies and by assigning the number of points attributable to the one that has the highest number of points:

- (a) 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 100 points
- (b) The offender committed an act of terrorism without using or threatening to use a harmful biological substance, harmful biological device, harmful chemical substance, harmful chemical device, harmful radioactive material, harmful radioactive device, incendiary device, or explosive device 50 points
- (c) The offender supported an act of terrorism, a terrorist, or a terrorist organization 25 points
- (d) The offender did not commit an act of terrorism or support an act of terrorism, a terrorist, or a terrorist organization 0 points

(2) As used in this section:

(a) "Act of terrorism" and "terrorist" mean those terms as defined in section 543b of the Michigan penal code, 1931 PA 328, MCL 750.543b.

(b) "Harmful biological substance", "harmful biological device", "harmful chemical substance", "harmful chemical device", "harmful radioactive material", and "harmful radioactive device" mean those terms as defined in section 200h of the Michigan penal code, 1931 PA 328, MCL 750.200h.

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

(d) "Terrorist organization" means that term as defined in section 543c of the Michigan penal code, 1931 PA 328, MCL 750.543c.

History: Add. 2002, Act 137, Eff. Apr. 22, 2002.