MICHIGAN CRIMINAL COURT SURVIVAL GUIDE

Advice, guidance, and tips from a top Michigan Law Firm

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TABLE OF CONTENTS

INTRODUCTION

This guide is intended to inform, advise, and otherwise assist an individual charged with a crime in Michigan. The information contained within is a tool to help such a person make important decisions which will prove critical to their future.

This guide contains important details about the criminal statutes which might be used to charge them in order to better prepare a defendant to defend himself in and out of court.

This guide is not intended to be a replacement for a licensed defense attorney and it is highly suggested that all criminal defendants.

CHAPTER 1: BASICCONCEPTS

This chapter is meant to introduce you to a few basic terms and concepts that are applicable to most, if not all criminal statutes that you might be charged under in the State of Michigan.

Can the state of Michigan charge me with crimes I committed in another state?

Very rarely, but there are situations where out of state conduct can expose you to criminal liability in Michigan. It all depends on that states "jurisdiction", and what kind of crime is being charged. For most criminal statutes, the crime itself must have been committed within the borders of the state of Michigan. However, under the following circumstances, you might be charged for things you did in another state:

- Part of the crime was committed in Michigan.
- In addition to an act performed in Michigan, any out of state act which qualifies as an attempt or a conspiracy to commit a crime in Michigan (see relevant chapter). If you and your cohorts specifically agree to rob a bank in Michigan, then Michigan can charge you with conspiracy to commit robbery.
- In state actions that qualify as attempt, solicitation, or conspiracy to commit a crime in another state.
- An out of state act which breaches a legal duty you owe to the state of Michigan.

What makes a crime a felony or a misdemeanor?

A misdemeanor is any crime whose maximum penalty is less than a year in prison, or punished solely by a fine.

A Felony is a crime Punishable by death or more than a year in prison. However, Michigan abolished the death penalty for all crimes except treason in 1847. Death penalty for treason was abolished in 1962. Therefore, felonies for state crimes in Michigan are determined solely by possible prison sentence. Michigan citizens can still be put to death by the federal government for federal crimes committed in Michigan.

Felonies in Michigan are divided into 8 "classes" designated by a letter of the alphabet. Each class is defined by the maximum sentence for that offense. The classes are as follows:

- Class A: punishable by a life sentence or any sentence greater than 20 years. Includes first and second degree murder, assault with a deadly weapon, and first-degree criminal sexual conduct.
- Class B: Up to 20 years. Includes second degree arson and the production of child pornography.
- Class C: Up to 15 years in prison. Includes manslaughter and robbery.
- Class D: Up to 10 years in prison. Includes embezzlement or larceny (of more than $20,000).
- Class E: Up to 5 years in prison. Includes shoplifting and third degree home invasion.
- Class F: Up to 4 years in prison. Includes possession of less than 5 grams of marijuana.
- Class G: Up to 2 years in prison. Includes: Includes a repeat offense of domestic assault and writing bad checks worth more than $500.
- Class H: Punishable by less than 2 years in prison or by alternative penalties such as probation or electronic monitoring. Includes false representation or using stolen ID to commit another felony.

What does the prosecutor need to prove in order to convict me?

In order to obtain a valid guilty verdict, the prosecution must prove beyond a reasonable doubt that you performed the specific physical act (actus reus) while having the specific mental state (mens rea) described in the statute you are being charged under.

The physical act must be voluntary (getting pushed or being unconscious doesn't count) and can also include spoken words. It can also include the failure to act when you have a legal duty to take certain actions. Examples of such duties include:

- Statutes: requiring you to file tax returns, report accidents, etc.
- Any contract requiring you to take certain actions (such as those for nurses and lifeguards).
- A special relationship such as a parent and a child which creates an elevated duty of care.
- A Good Samaritan law which creates a duty to continue to help once you start to assist someone in trouble.
- You can also be charged with failing to help someone if you were the one who put them in danger.

In order for a duty to act to be legally effective, you must be aware of the duty and be reasonably capable of performing the acts required by that duty.

What kinds of mental states are involved in crimes?

Most criminal statutes use one of several mental states that are widely used in criminal law. These crimes are known as "general intent" crimes. The mental states involved in such statutes are as follows:

- Purposely: you must have specifically intended to perform the act or create the result described in the statute.
- Knowingly: You must have acted knowing that the unlawful harm or result was certain or very likely to occur.
- Recklessly: You must have deliberately disregarded a substantial and unjustified risk that the unlawful harm/result would occur. Furthermore, this disregard must be a severe departure from the standard of careful behavior expected from a reasonable person.
- Negligence: You must have failed to be aware of a significant and unjustified risk that the unlawful harm/result would occur. This failure of awareness must be a significant departure from the level of care and prudence expected from a reasonable person. The violation of some statutes such as speed limit laws can be used as evidence of negligence.

Some criminal statutes use more unique states of mind as requirements for conviction. Certain legal defenses (like voluntary intoxication) are only available for specific intent crimes. Examples of "specific intent" crimes are as follows:

- Solicitation: must have intended to have the solicitor commit the crime
- Attempt crimes: must have intended to complete the crime
- Conspiracy: must have intended to complete the crime
- First degree murder (depending on the statute): must have had a premeditated intent to kill
- Assault: must have intended to commit a battery
- Larceny/robbery: must have intended to permanently deprived the rightful owner of their property
- Burglary: must have entered the dwelling with the intent to commit a felony
- Forgery: must have intended to defraud your victim
- False pretenses: intent to defraud
- Embezzlement: intent to defraud

Some crimes, like arson and certain forms of murder are called "malice crimes" because they require the mental state of malice. Malice is a reckless disregard for the extreme or obvious risk of a harmful event occurring.

The final category of mental state is strict liability. These are crimes such as selling liquor to minors or statutory rape. This category of crime does not require you to have awareness of all of the relevant facts (such as a certain person being younger than 18 or 21). So as long as you knowingly and voluntarily performed the underlying act (selling alcohol or having sexual relations) you can be convicted of a strict liability crime.

What if I was trying to hurt/kill someone and ended up hurting/killing someone else by accident, do I still have the proper state of mind?

Yes, most states recognize a doctrine known as "transferred intent", where the intent to harm one victim is essentially "transferred" to the person who was actually injured. The fact that they were willing to unlawfully harm someone is enough, and the criminal justice system does not want to allow someone like that to benefit from such an unfortunate accident.

CHAPTER 2:HOMICIDE

Homicide is a category of crimes involving the killing of a human being. Some homicides are justifiable and therefore legal, but any killing not authorized by law is a serious crime.

Most homicides require the mental state of “malice”. Malice involves any of the following:

- Intent to kill
- Intent to cause serious bodily harm
- Intent to create a severe risk of death or bodily harm while demonstrating a reckless disregard for human life

What is first degree murder?

Under Michigan law, first degree murder is any willful, deliberate, or premeditated killing, particularly those that involve ambushes or poison. First degree murder also includes “felony murder” and the murder of an on-duty police officer. “Premeditation” simply means that the perpetrator spent some significant amount of time thinking before killing the victim. Even a moment’s pause or “thinking twice about it” is enough to constitute premeditation. “Deliberate” or “deliberation” means that the killer was relatively calm and collected when they performed the killing.

In cases of murder involving the murder of a police officer, the killer must have known that the victim was a police officer. Also, the prosecution does not have to show that the killer specifically intended to kill the officer as long as they can still prove malice.

First degree murder carries a mandatory life sentence, making it a class A felony.

What is felony murder?

Felony murder occurs when someone is called during the commission of a dangerous felony. Michigan law defines “dangerous felony” as any one of the following felonies:

- Kidnapping
- criminal sexual conduct (i.e. rape)(first, second, or third degree)
- larceny
- robbery
- carjacking
- extortion
- abusing a vulnerable adult (first or second degree)
- breaking and entering
- home invasion (first or second degree)
- child abuse (first degree)
- substance abuse (of a major controlled substance)
- arson
- torture
- aggravated stalking
- unlawful imprisonment

In Michigan, the killing of a co-felon does not count as felony murder. If one of the felons or a police officer responding to the felony kills someone, then all of the co-felons are equally guilty of felony murder. While Michigan requires proof of malice, dangerous felonies often carry a high risk of death that makes it easy to imply malice.

The rationale behind criminalizing felony murder is acknowledging the fact that the person who commits or participates in a dangerous felony that is endangering bystanders. Therefore, they should be penalized if the danger they created ends up getting someone killed, especially if they themselves are the killer.

What is second degree murder?

Second degree murder is any murder that is not second degree murder. This includes "common law murder" which is any killing done with malice. Due to the fact that second degree murder can also be punished by life in prison, it is a class A felony (up to life in prison).

What is manslaughter?

Manslaughter is any unlawful killing that isn't a murder. Manslaughter can be either voluntary or involuntary.

What is voluntary manslaughter?

A voluntary manslaughter is any killing that would be considered a murder except for the fact that it resulted from a heat of passion triggered by adequate provocation.

In order to be "adequate" the provocation must meet a four part test:

1. The provocation would have caused a sudden and intense passion for any ordinary person it was directed at.
2. The defendant must have actually been provoked. In Michigan, insulting words alone are usually not enough to be adequate provocation.
3. There must be no significant cool-down period between the provocation and the killing. (stewing on it for 24 hours then going through with the murder does not fly in Michigan).

Voluntary manslaughter is a class C felony (15 years).

What is involuntary manslaughter?

There are three forms of involuntary manslaughter in Michigan. The first form is where the defendant has unintentionally caused someone's death and did so by acting in a "grossly negligent" manner. A reasonable person in that person's position would have realized the danger their conduct would create. That person must be aware of the danger and be capable of avoiding the harm.

The second form of involuntary manslaughter happens when someone kills in self-defense but did so with excessive force or in a grossly negligent manner.

The third form of involuntary manslaughter is known as "misdemeanor manslaughter". Misdemeanor manslaughter is similar to felony murder except the killing happens during the commission of a misdemeanor crime rather than a felony.

Involuntary manslaughter us a class C felony (15 years). It also carries a possible $7,500 fine and/or restitution to the victim's family. It can also be accompanied by a wrongful death lawsuit from said family.

What is statutory manslaughter?

A person can be charged with statutory manslaughter for pointing a gun at someone without malice, if doing so results in the death of that person. This carries the same penalty as involuntary manslaughter. A police officer cannot be charged with statutory manslaughter.

Does the prosecutor have to specify a particular murder charge they are bringing against me?

No, they do not. Michigan law allows the prosecution to bring a charge of "open murder". At that point they are free to try to make a case for any murder or manslaughter charge they please and the defendant can be convicted of any one of them.

What if I cause someone's death due to a traffic violation?

Then you are guilty of the crime known as "moving violation that results in death". A moving violation is any act or failure to act which violates the Michigan vehicle code or any local automobile ordinance. This is a misdemeanor (up to 1 year in prison/ $2,000). The prosecutor does not need to prove gross negligence, only that you actually committed the moving violation.

What if I cause an injury, but they don't die from it for over a year? Is that still homicide?

Yes, long as your actions were a cause of that person's death, it does not matter how long it takes them to succumb to their injuries.

What if the victim's death was partially the result of their own negligence/carelessness? Can I still be charged with homicide?

The contributory negligence of the victim is not a defense to a homicide. That being said, the jury may still consider the possibility that the victim's negligence, rather than your actions, was the proximate cause of their death. This might result in your acquittal, so it is beneficial to you to introduce evidence of the alleged victim's careless or negligent conduct during a homicide trial.

CHAPTER 3: ASSAULT & BATTERY

What is battery?

Battery is an unlawful application of violent force against another person. That force must result in either physical injury or an offensive touching. The contact needed for "offensive touching" can be so slight that even just poking or spitting on someone would count.

Battery is a misdemeanor in Michigan punishable by up to 93 days in prison and/or a fine of up to $500.

What is assault?

There are two types of assault. The first type is an attempted battery (i.e. a "swing and a miss"). The other type is an act beyond mere words which is intended and calculated to put the victim in "reasonable apprehension" of imminent bodily harm. "Reasonable apprehension" has little or nothing to do with the emotional state of the victim. All it means is that a reasonable person would draw the conclusion that the assailant is about to cause them bodily harm. Michigan law requires that the defendant must the actual or apparent ability to cause the threatened harm.

What is aggravated assault?

An assault becomes an aggravated assault under the following conditions:

- Felonious assault (with a deadly weapon)
- With attempt to do great bodily harm (not murder)
- Assault via strangulation or suffocation
- With intent to commit a felony
- With intent to murder (requires proving malice)
- With intent to disfigure or maim
- Aggravated domestic assault (a repeat offender's second or third offense)
- With attempt to rob
- Against a pregnant woman, resulting in a stillbirth or a miscarriage

Most aggravated assaults are either misdemeanors or class H felonies (one year/$1000). However, some of the aggravating factors can push the penalty even higher. Assault with a deadly weapon is class F (4 years/$2000). Assault with intent to commit murder is class A (up to life). Strangulation/suffocation or intent to inflict great bodily harm is a class D (10 years/$5000). Torture is class A. Intent to disfigure or maim ratchets it up to a class D. The same goes for Assault with intent to commit a felony. Assault with intent to rob is class C (15 years), unless you are armed, which makes it a class A.

What is Felonious assault?

Felonious assault is any assault involving a dangerous weapon. As the name would suggest, felonious assault is a class F felony (up to 4 years, $2000).

What is domestic assault?

Domestic assault is an assault crime committed against someone you share a domestic relationship with. A domestic relationship can range from married spouses to people who live in the same house as you. The first offense is misdemeanor (93 days/$500), the second offense is also a misdemeanor (up to 1 year/ $1000), and the third offense is a class G felony (up to 2 years/ $2500).

Aggravated Domestic Assault is when the assault results in severe injuries. The first offense is a misdemeanor (up to 1 year, $1000), the second is a class G felony.

CHAPTER 4: FALSE IMPRISONMENT AND KIDNAPPING

Both of these crimes are quite similar as both involve the perpetrator holding the victim captive. However, there are some important differences.

What is false imprisonment?

A person commits false imprisonment when they unlawfully confine another person without their consent. False imprisonment is a class C felony (15 years/$20,000).

What is kidnapping, and how is it different from false imprisonment?

Kidnapping is basically false imprisonment with a few extra elements mixed in. The unlawful and nonconsensual captivity is present. In addition the prosecutor must also prove that the alleged kidnapper moved the victim or secluded them in a secret location. In addition, the prosecutor must prove that the perpetrator performed these acts with the intent to do one of the following:

- Hold the victim for ransom
- Use the victim as a shield or hostage
- Engage in criminal sexual conduct (rape) with the victim
- Transport the victim out of the state of Michigan
- Hold the victim in involuntary servitude
- If the victim is a child, to sexually abuse the victim

There is no minimum length of confinement; any unlawful captivity is punishable under the law. Kidnapping is a class A felony (possible life sentence/ $50,000).

CHAPTER 5: SEX OFFENSES

Michigan no longer uses "rape" as the name of a criminal offense. Instead, they use a more complex and nuanced category called "criminal sexual conduct". There are four degrees to this crime, which encompass all of the traditional sex related crimes such as rape or statutory rape.

What is first degree criminal sexual conduct?

First degree criminal sexual conduct is defined by sexual penetration of the victim by any object or body part by the perpetrator under certain aggravating circumstances. These aggravating factors include:

- The victim being under the age of 13
- The victim is between 13 and 16 and is a member of the perpetrator's household. Also applies if the perpetrator was in a position of power and authority over the victim or was employed at the victim's school or child care provider.
- Sexual contact occurred during the commission of another felony
- The alleged perpetrator was aided and/or abetted by one or more third parties Furthermore the defendant must know or should have known that the victim is mentally incapacitated, physically helpless, or was otherwise subject to force or coercion
- Perpetrator was armed with a weapon or an object designed could reasonably be confused for a weapon
- The alleged perpetrator caused physical injury in addition to other force and coercion
- The perpetrator cause physical injury in addition to having knowledge of the victim's physical/mental incapacity.
- Mentally and/or physically incapable victim and the perpetrator was in a position of authority or family relation to the victim.

First degree criminal sexual conduct is a class A felony (possible life term). If the defendant was 17 or older and the victim was under 13, there is a mandatory minimum 25 year sentence. If the perpetrator was a repeat offender that was 18 or older and the victim was under 13, then they will be sentenced to life imprisonment without parole.

In all cases of first degree criminal sexual conduct, the court will also impose lifetime electronic monitoring.

What is second degree criminal sexual conduct?

Any sexual contact whatsoever (need not be penetration) under any of the aggravating circumstances for first degree sexual conduct. Second degree sexual conduct is a class C felony (15 years). If the defendant was 17 or older, and the victim was less than 13, than the court will also impose lifetime electronic monitoring.

What is third degree criminal sexual conduct?

Third degree sexual conduct is sexual penetration plus one of the following lesser aggravating circumstances:

- Victim between 13 and 16 years of age
- Force or coercion
- Perpetrator has knowledge or reason to know of victim's physical or mental incapacity
- Victim is related to the perpetrator
- The perpetrator works at the victim's school and the victim is between 16 and 18 years old
- Victim is between 16 and 26 years of age and is involved in a special education program
- Victim is at least 16 and the event occurred while they were a resident of a child care facility where the defendant was employed or a foster home.

Third degree sexual conduct is a class C felony (15 years)

What is fourth degree criminal sexual conduct?

Fourth degree sexual conduct is any sexual contact plus one of the lesser aggravating circumstances listed under the third degree. Fourth degree sexual conduct is a class G felony (2 years/$500).

What if I wasn't aware that the other person was underage?

That usually doesn't help you. The belief that the minor was actually of age, no matter how reasonable, is not a defense to statutory rape. However, if you reasonably mistook the minor for someone who was of age, then your mistake is a valid defense against criminal sexual conduct charges (so long as the sex was otherwise consensual).

Can you be convicted of criminal sexual conduct against your spouse?

Yes, you can. We are far past the days when marriage was a defense to rape charges of any kind. Marriage does not imply consent.

Can a woman be convicted for forcing a man to have sexual intercourse with her?

Yes, but it will be a lesser form of sexual misconduct given that most sexual conduct crimes only punish forced penetration, not the opposite.

CHAPTER 6: THEFT OFFENSES

What is larceny?

Larceny is defined as the "trespassory taking and carrying away of the personal property of another with the intent to permanently retain that property". "Trespassory" means you used a wrongful or unlawful method to take possession of the property. "Taking" and "carrying away" means that the alleged thief has to have actually moved the stolen property. The person being stolen from must have had legal possession of the property (i.e. it's not theft to steal from a thief). However, you can be charged with larceny for stealing your own property if the person you took it from had lawful possession.

If the person "taking" the property honestly believes they have rightful ownership or possession, then they cannot be convicted of larceny. However, if they come to understand that they are not the rightful owner or possessor, but keep the property anyway, then he will be guilty of larceny. Larceny is a misdemeanor.

What is embezzlement?

Embezzlement occurs when someone who has lawful possession of someone else's property converts (steals) that property with the intent to defraud the original owner. A good example of this is someone who has been given access and control over a corporation's bank account. If that individual started wrongfully transferring money to his personal account, then that would be embezzlement. If the alleged embezzler intends to give the exact property in the exact same state he took possession of it, then he is not guilty of embezzlement.

Embezzlement is a class D felony (10 years).

What are false pretenses?

False pretenses occur when the perpetrator obtains both possession and title (ownership) of property by using false pretenses (lies). A good example of this is acquiring goods using a check you know will bounce. The original owner is transferring ownership based on false information they believe to be true. Because this deception destroys the original owner's consent to the transaction, it is effectively stealing.

The penalty for false pretenses depends on the magnitude of the fraud. Obtaining less than $200 is a minor misdemeanor, while $100,000 or more will net you a class B felony (up to 20 years/ $35,000).

What is larceny by trick?

Larceny by trick is similar to false pretenses in the way that stealing is perpetrated by using lies and deception. The key difference is that the original owner never gives ownership to the alleged thief, they only give temporary custody. It is only after gaining such possession of the property that the thief then attempts to permanently deprive the original owner. Michigan has a rather interesting interpretation of what the original owner "intended" to give to the thief. For example, if the thief tried to trick someone into "borrowing" $50, but they accidentally hand over $100, then the perpetrator would be guilty of stealing the entire $100.

The penalty for larceny by trick has similar penalties to false pretenses.

What is robbery?

Robbery is larceny where the thief takes the property directly from the body or vicinity of the rightful owner and does so by using force or the threat of violence. "Force" means any amount of force sufficient to overcome the owner's resistance. For example, ripping a purse out of a woman's arm would be robbery. Michigan law will allow a conviction for robbery if the force or threat was used attempting to steal the property, during the larceny itself, or during the ensuing escape.

Robbery is a class C felony (15 years).

What is armed robbery? How is it different from regular robbery?

Armed robbery involves the thief using a dangerous weapon (knives, guns, screwdrivers, etc.) or any object which could be reasonably confused for a dangerous weapon.

Armed robbery is a class A felony (up to life sentence).

Is bank robbery different from other forms of robbery? Is it the same crime?

Yes, bank robbery is an entirely separate offense. This offense is based on using certain unlawful methods (such as threats) in order to open a bank vault or otherwise stealing from a bank. The severity of this felony depends on the amount taken.

What is forgery?

Forgery is altering a piece of writing in order to make its contents false with the intent to defraud someone. An example of this would be taking a check out of someone's checkbook, writing a value, signing your name, and then forging their signature.

Forgery is typically a class E felony (up to 7 years).

What about theft? Isn't that also a crime?

Not in Michigan. Unlike other states, which have consolidated all of their theft related crimes into one single category, Michigan has kept all theft offenses (larceny, robbery, etc.) separate.

Most theft offenses involving taking more than $1000 are felonies. Those for lesser values are misdemeanors.

What is burglary?

In Michigan there is no single crime named burglary. At common law, burglary is usually defined as "breaking and entering the dwelling of another with the intent to commit a felony inside. Instead, Michigan has two separate crimes: Home invasion as well as breaking and entering other structure.

What is Home invasion?

The elements of home invasion are as follows:

- Breaking and entering into a dwelling without permission."Breaking" means force was used to gain entry. However, forced entry is not actually required for a home invasion conviction. A "dwelling" is a building used as a residence.
- Intends to or actually does commit a felony, larceny, or assault once they gain entry.
- First degree home invasion: invader was armed or their where people legally present in the dwelling when they invaded.
- Second degree: unarmed invader or empty dwelling.
- Third degree: only intend or actually commit a misdemeanor
    - -First degree home invasion is a class B felony (up to 20 years/ $5,000).
    - -Second degree home invasion is a class C felony (up to 15 years/ $3,000).
    - -Third degree home invasion is a class E felony (up to 5 years/ $2,000)

Facts that will be convenient for your defense against a charge of home invasion include but are not limited to: doors or window left unlocked, evidence that you had permission to enter the residence, and evidence indicating that you had no intention of committing a felony or attacking anyone once you entered.

What is breaking and entering other structures?

Breaking and entering other structures is identical to home invasion, except it involves non-residential buildings. Furthermore, entering with the intent to "assault" is not mentioned in the statute and would therefore not count as breaking and entering. The presence of weapons or legal occupants is irrelevant.

Breaking and entering other structures is a class D felony (up to 10 years).

What if I enter without intending to commit any other crime?

This would be a crime called "illegal entry" which is a misdemeanor. If you are ever charged with any of the other home/building invasion law, consider adopting a strategy of trying to get it plead down to "illegal entry" if outright acquittal isn't possible.

What is retail fraud?

Retail fraud is what most people would refer to as shoplifting. It also includes price tag switching and fraudulent returns. Being charged with this prevents you from being charged with larceny and false pretenses even if those crimes would be applicable to the situation. Retail fraud has three degrees:

First degree retail fraud is when the stolen goods are worth at least $1000, or a repeat offense of more than $200 but less than $1000. First degree retail fraud is a class E felony (5 years/ $10,000 or triple the stolen value).

Second degree retail fraud is for stealing between $200 and $1000 or a repeat offense of less than $200. Second degree retail fraud is a misdemeanor (up to 1 year, $2,000 or triple the stolen value).

Third degree retail fraud is stealing less than $200 without prior convictions. Third degree retail fraud is a misdemeanor (93 days/ $500 or triple the stolen value).

What is circumvention of theft prevention devices?

Buying, selling, or possessing devices designed to remove or disable theft prevention devices. The first offense is a misdemeanor (up to 1 year/ $1000), the second is a class F felony (up to 4 years, $4,000).

Is it a crime to buy or receive stolen property? Even if you didn't know it was stolen?

Receiving stolen property is only a crime if you knew it was stolen when you bought/obtained it. Furthermore, you must have intended to keep the property and permanently deprive the original owner. Therefore, if you obtained the stolen property with the intent to return it to the original owner, you are not guilty of this crime.

CHAPTER 7: ARSON

I accidentally started a fire in someone's house and know I'm being charged with arson, what do I need to prove?

As a criminal defendant you technically don't have to prove anything (presumption of innocence). However, it is highly advisable for you to take steps to undermine the prosecution's case against you and to present as much evidence of your innocence as possible.

In order to convict you of arson, the state of Michigan must prove that you maliciously set burned a building. Unfortunately, the accidental nature of the fire will not necessarily absolve you. "Malicious" in this context does not always mean the fire was set on purpose with an evil intent. Malice can mean that you acted knowing that it would cause a fire, or that you were negligent and disregarded a high risk that the building would catch fire.

What if I burned down my own house? Is it still arson?

It depends. One of the requirements of first and second degree arson is that the perpetrator burns down "the dwelling of another". A dwelling is a building that somebody lives in. If someone else lives in a building that you own, then setting that building on fire might be arson, if special if that person is still inside the building.

What are the different degrees of arson?

First degree arson is one of three things:

1. Burning a multi-unit building when one of those units is a dwelling
2. Burning a building and causing an injury as a result
3. Burning a mine

First degree arson is a class A felony (possible life sentence).

Second degree arson is the malicious burning of any dwelling that does not qualify as first degree arson. Second degree arson is a class B felony (20 years/$20,000). It may also involve a fine of three times the value of the property destroyed by the fire.

Third degree arson is the malicious burning of a building that is not a dwelling and does not qualify as first or second degree arson. However, it is only third degree arson if the property destroyed exceeds $20,000. Third degree arson is a class D felony (10 years/$20,000). The fine may also be up to three times the value of the property destroyed (at least $60,000).

Fourth degree arson involves any of the following:

1. Malicious burning of any property valued between $10,000 and $20,000
2. A repeat offense of arson causing more than $200 of damage
3. Negligently burning someone else's land or allowing a fire on your land to pass to your neighbor's land

Fourth degree arson is a class E felony (5 years/$20,000) or an optional fine of three times the value of damaged property.

Fifth degree arson is a repeat arson offense where the perpetrator intentionally burns property worth $1000. Fifth degree arson is a misdemeanor (less than a year/2000) or an optional fine of three times the value of the burned property (up to $3000).

What if my first burning causes less than $1000 of damage, do I get off Scott free?

No, that would still be a crime known as misdemeanor burning. This is punishable by up to a year in prison, $2000, or three times the damage to burned property. However, if the damage is less than $200, the max sentence is 93 days in jail or up to $600.

What if I cause an explosion instead of a fire, is it still arson?

Yes, Michigan law treats both fire and explosion damage as arson.

Does the degree of burning matter when you are charged with arson?

It might, depending on how modest the damage is. An arson conviction does not require the burned property to be destroyed completely. On the other hand, mere blackening is not enough. Most jurisdictions describe the adequate degree of burning as "charring". Making this distinction will be an important tactic in limiting your liability and punishment if you are charged with arson.

I'm afraid I might be charged with arson, what should I do?

If you suspect that you might be facing arson charges it is important that you gather as much documentation and evidence about the incident as possible. It is especially important to get an estimate of the amount of damage. Make sure your attorney discusses the requirements for an arson conviction and has arguments for each one. Any evidence which suggests that the fire was an accident or unintentional would also be very helpful. After all, your first burning on your own property (causing less than $1000 of damage) is not a crime unless it was done with malice.

CHAPTER 8: MALICIOUS MISCHIEF

What is malicious mischief?

Known in Michigan as “Malicious destruction of property”, it is the act of damaging or destroying public or private property. “Malice” means that the alleged vandal must have intended to inflicted the damage or blatantly ignored the risk that the damage would occur. Malicious destruction of property is typically a felony; the penalty depends on the type of property destroyed.

CHAPTER 9: CONTRABAND/DRUG POSSESSION

What is possession of a controlled substance?

This is a crime that involves getting caught with an illegal drug or other controlled substance. The penalty for such possession depends on which drug you have and how much of it you have, but it is always a felony.

Possession of a schedule one or two drug carries penalties ranging from a class A felony (possible life sentence/$1 million fine) for 1 kilogram to a class F felony (up to 4 years/$25,000 fine) for less than 25 grams.

Any amount of a schedule 3 or 4 drug is a class G felony (up to 2 years/$2,000).

Marijuana or possession or a prescription drug without a prescription is a misdemeanor.

What if I get caught carrying a controlled substance, even if I don't own it?

That still counts as possession. Possession is criminal regardless of ownership. You can also be convicted if you have "constructive possession". Constructive possession is when someone knows that the substance is present and had the right to exercise control over that substance. Just being in the general vicinity of the substance is not enough. If you believe you might be charged with drug possession in this manner, it is important to establish facts that either demonstrate that you were not aware of the drugs or that you had no way to interact with them despite knowing their location.

Does sharing possession of the drugs reduce or eliminate my guilt?

No, exclusive possession is not required for a drug possession conviction. The only facts that can save you are the ones which demonstrate that you had no possession whatsoever of the drugs (actual or constructive).

I was charged with possession with intent to deliver, but the police never caught me delivering, is that legal?

Yes it is. Actual delivery is not required for a conviction for possession with intent to deliver. The prosecution can also use circumstantial evidence such as the quantity of the drugs, the way they were being transported/stored, and many other circumstances. The only requirement under the law is that they prove your intent to deliver the drugs beyond a reasonable doubt.

CHAPTER 10: DUI

What is DUI?

DUI stands for driving while intoxicated. It is a common term for drunk or inebriated driving. In Michigan the official term is OWI (operating while intoxicated). You can be convicted of OWI if you drive an automobile while under the effects of alcohol or any other intoxicating substance. There is also another crime called OWVI (operating while visibly impaired), which can be charged if the prosecutor can prove that there was visible proof that your ability to safely drive was hindered by the effects of alcohol or drugs.

While there are certain safe levels of alcohol consumption that will not result in a DUI, the presence of any amount of a schedule 1 drug is automatically illegal.

Due to the fact that driving is such an important activity in today's society, it is important to know how OWI/OWVI works and what the consequences can be.

What does the prosecutor have to prove for an OWI/OWVI conviction?

For a first-time OWI conviction, the prosecutor must prove that had a blood alcohol level of at least .08%, or that you were severely impaired.

An OWVI conviction only requires the government to prove that you were visibly impaired.

The penalties for OWI tend to be more severe, mainly because it either involves much worse intoxication or the fact that blood alcohol content is a more objective measure of impairment.

OWI and OWVI can also be punished by up to 360 days of community service.

These penalties are all a first time OWI/OWVI. A repeat offense will likely result in even harsher penalties. If you have no OWI/OWVI convictions for seven straight years, your record will be reset to zero and your next conviction will be considered a first-time offense.

What are the penalties for OWI/OWVI

The first OWI/OWVI offense can land you up to 93 days in jail. The fines for an OWVI are capped at $300.

If you blow a blood alcohol level of .17% or higher, the maximum jail time for OWI jumps to 180 days (nearly double). Standard fines for OWI are $100–$500 dollars, but a .17% BAC will also boost that to $200–$700.

Can I have my license suspended for OWI/OWVI?

Yes, you can. For an OWVI, your license will be "officially" suspended for 90–180 days. However, a restricted license will be available immediately. A restricted license will allow you to retain limited driving privileges. You will have to get an Ignition interlock device (stops car from starting if it detects alcohol) installed on your car.

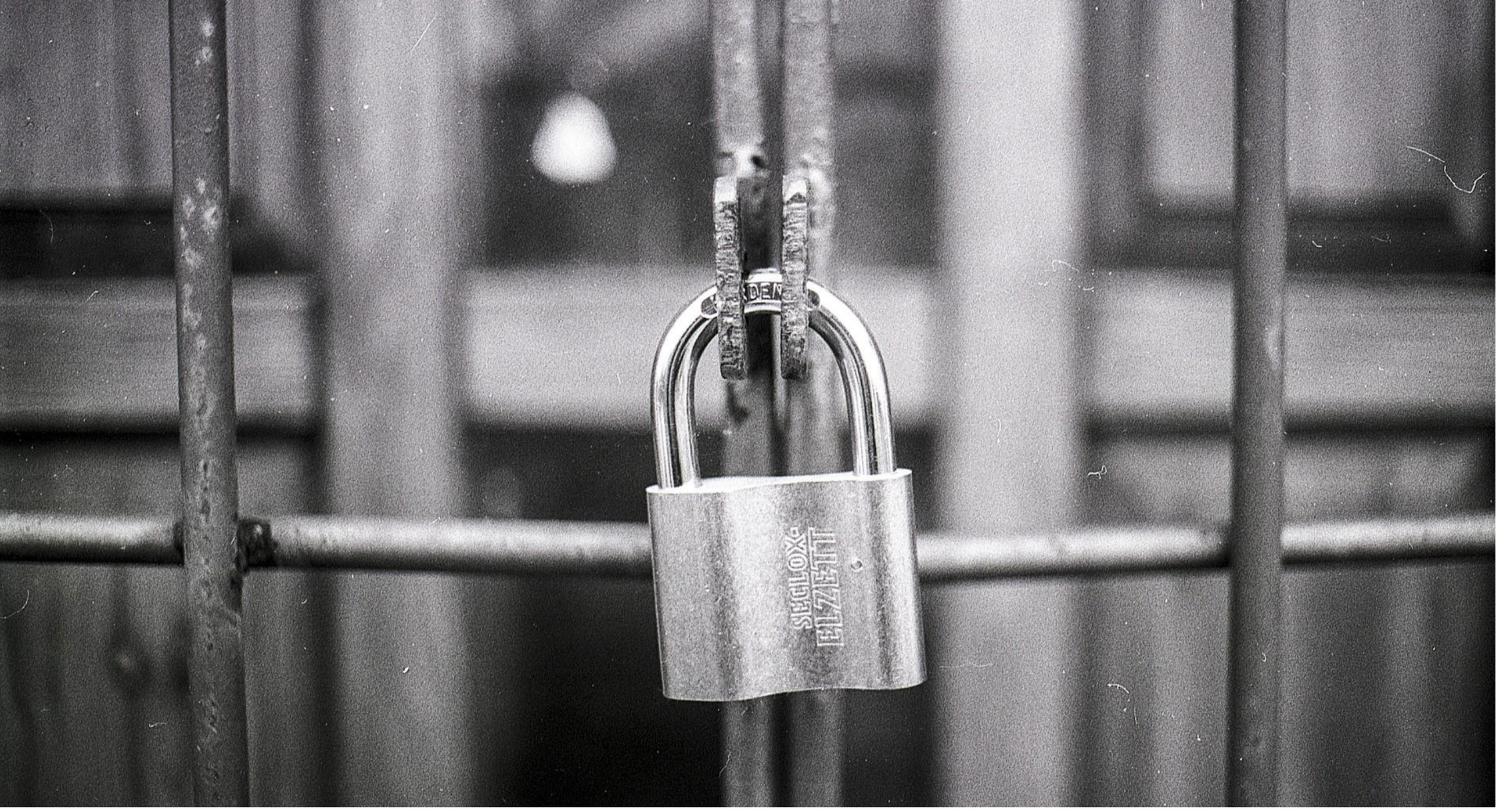
An OWI carries a 180 day (6 month) suspension and you have to wait at least 30 days (1 month) to get a restricted license. If you blow .17% or higher on a BAC test, the suspension will last for 1 year and the waiting period for a restricted license is increased to 45 days.

Can an OWI/OWVI cause me to lose my car?

Yes, it can. The court has the option to immobilize your car for six months and can even have the vehicle forfeited completely. The penalties for OWI can easily outweigh the punishments usually dished out for comparatively more serious offenses.

Are there factors which can make an OWI conviction worse?

Yes, there are such factors. Aside from blowing a $17 on a BAC test, having a passenger younger than 16 when you commit an OWI/OWVI offense will result in enhanced penalties. The fines jump to $200–$1000, and the maximum jail sentence increases to up to 1 year. The court can also impose 30 to 90 days of community service. This will also increase the suspension period to the maximum 180 days and the waiting period will jump to 90 days.



CHAPTER 11: CRIMINAL ACCOMPLICE LIABILITY

What makes someone a criminal accomplice?

In terms of criminal activity, the person who actually commits a crime is called the "principal". An accomplice is anyone who aids or encourages the principal to commit that crime. When the crime in question requires either a specific intent or a general intent other that negligence/gross negligence (i.e. intentional, knowing, or reckless), then the accomplice either intend that the principal commit the criminal act or acted to assist/encourage knowing full well that they intend to commit a crime. In other words, if you loan someone a set of bolt-cutters and you know they are going to use them to burglarize someone's house, then you are an accomplice to that crime.

If the crime in question is one involving negligence or gross negligence, then the accomplice must have acted in a way that the creation of the dangerous situation is reasonably foreseeable.

A criminal accomplice can be charged with the same crime as the principal.

It should also be noted that you can be charged as an accomplice to a crime that you yourself are not physically capable of committing.

Can you be an accomplice to an unintentional crime?

Yes, you can. As mentioned above, crimes based on negligence or recklessness rather than intentional conduct can still result in being charged as an accomplice. The only difference is that a slightly different mental state must be proven by the prosecution.

If a woman is illegally trafficked for the purposes of illegal sex trafficking, can she still be charged as an accomplice despite being a victim?

No, she cannot. Groups of people who are meant to be protected by statutes (i.e. protected classes) cannot be charged as accomplices to that crime.

Does buying drugs make you an accomplice to the illegal sale of that drug?

No. Although it makes logical sense to say that buying drugs helps the drug dealer commit his crime, the drug buyer would be exempt from accomplice liability. This is because participants who are necessary to the commission of a crime but are not mentioned in the statute are exempt. In this case, the statute punishing the sale of the drugs does not provide for a punishment for the person buying them. Possession of the drugs would typically be a separate offense.

Is there anything an accomplice can do to back out from the crime and reduce their punishment?

Yes, there is. You can avoid accomplice liability by withdrawing from the crime before it is actually committed. Withdrawal must also be done before the crime becomes unstoppable. The rationale behind this requirement is that withdrawal is meant to be that person's good faith attempt to stop the crime from occurring.

It is for this reason that certain steps must be taken when withdrawing from being an accomplice. If your role as an accomplice was merely encouraging the crime, you must then repudiate (contradict/ walk back) that encouragement in order to effectively withdraw. If you gave actual, material assistance the principal than you must take steps to neutralize or undo that assistance. Either way something more than simply not participating is needed. Calling the police or doing something to stop the crime from happening are generally good options.

CHAPTER 12:
SOLICITATION

What is solicitation?

In Michigan, solicitation is defined as offering to pay or actually paying someone either money or something of value in exchange for committing a crime. For example, in states where prostitution is illegal, paying a sex worker to have intercourse is solicitation. However, the prosecution must prove that the solicitor actually intended for the solicited party to go through with it.

Solicitation is a misdemeanor.

Can I still be convicted even if the person I solicited is never charged or convicted of a crime?

Yes, you can. The solicitation is a separate crime and is therefore independent of the actions of the party being solicited. Solicitation is criminalized in order to discourage people from encouraging others to commit crimes. That being said, there are several defenses to a charge of solicitation.

Can I still be charged even if it would have been impossible for the solicited party to actually go through with it?

Yes, impossibility is not a defense to a charge of solicitation. Also, putting a condition on the solicitation ("conditional solicitation) that is beyond your control will not protect you either.

When are you safe from a charge of solicitation?

You are categorically protected from solicitation charges if the legislature intentionally exempted a group of people from that criminal statute. For example a minor paying a sex worker cannot be charged for soliciting statutory rape.

Can I walk back my solicitation in order to avoid criminal liability?

Yes, if you do it correctly. In the context of solicitation, this is called "renunciation". However, simply renouncing or withdrawing the solicitation (i.e. withdrawing the offer) is not enough. The solicitor must either persuade the solicited party to stop, or otherwise prevent the crime from taking place.

Michigan law requires that you notify the solicited party as well as police in order for the renunciation to be effective. Furthermore, the renunciation is only effective if the crime does not occur, simply trying to stop it is not enough.

Is it worse for me if the person solicited actually commits the crime?

Yes, thanks to the doctrine of merger. Under that rule, if the person you solicit to commit a crime actually commits it, then you can be charged for that crime as well. If they take things far enough that they could be charged with the attempt to commit that crime, then the solicitor can be charged with the attempt crime (attempted murder, attempted burglary, etc.).

However, if there is an agreement, but no action, then the solicitor can only be charge with a conspiracy to commit the crime. Also, if the state does charge you with one of these crimes, it cannot also charge you with solicitation. The prosecutor must choose one or the other. Since these other crimes are usually punished more harshly the solicitation, it is generally in your best interest to properly repudiate the solicitation as soon as possible.

Are there other circumstances which make solicitation worse?

Yes, there are. More specifically, Michigan recognizes an entirely separate crime called "solicitation of a minor to commit a felony". This is applied to situations where the solicitor is at least 17 years old and the one being solicited is younger than 17. This form of solicitation is a felony and you can be convicted even if the minor does not commit the felony.

CHAPTER 13: CONSPIRACY / ACCESSORY

What is a criminal conspiracy?

A conspiracy is an agreement between two or more people to commit a crime. All co-conspirators must actually intend to uphold the agreement in order to be convicted. The end goal must be an actual crime or using unlawful methods to accomplish an otherwise legal goal.

The penalty for conspiracy depends on the underlying offense. If the crime is punishable by more than a year in prison, then the penalty for conspiracy is the same as that crime. They can also institute a $10,000 fine. Otherwise, the penalty is less than a year behind bars, and/or fined $1000.

Does a conspiracy always involve two or more people?

Technically no. A single person can be charged with conspiracy if the other co-conspirator was an undercover police officer.

If the crime requires at least two people to commit in the first place, is it still a conspiracy?

It usually isn't. Under the "Wharton rule", most crimes which require two parties period (such as adultery or drug sales) cannot be charged as a conspiracy. However, if at least 2 parties are involved, they can charge for conspiracy even though one of the necessary parties (i.e. the buyer) isn't one of the conspirators. Furthermore, the Wharton rule does not apply if the statute imposes an entirely separate punishment for the conspiracy aspect of the crime.

What if all of the other conspirators are acquitted?

Usually that means an acquittal all around. Usually, if all but one alleged conspirator is acquitted, then the court logically assumes that no agreement existed. However, this does not apply if the defendant is being tried by a different fact finder than the co-conspirators. For example, if the defendant is in a jury trial, but his criminal comrades where tried and acquitted by a judge, then their acquittal will help him.

Can any crime be a conspiracy?

No, some cannot be conspiracies. Sometime it just isn't logically possible. For example, there is no such thing as attempted second degree murder because that degree does not require premeditation, and premeditation is necessary for a conspiracy. Also the exemption of "protected classes" that the statute was meant to protect also applies to conspiracy.

Do the conspirators actually have to do anything other than agree in order to be charged with conspiracy?

Yes, they do. Although the agreement is the main feature of a conspiracy charge, Michigan law requires that one of the members of that conspiracy must have taken some "overt act" to advance the conspiracy before any of them can be convicted.

Such an overt act can be just about anything. Even simply preparing or laying the groundwork for the underlying crime is enough for a conviction.

Can I still be convicted of conspiracy even though it would have been impossible to carry out the crime?

Yes, you can still be convicted. Impossibility is not a defense to a charge of conspiracy.

Can you withdraw from or renounce a conspiracy in order to lessen or avoid punishment?

Not really. Withdrawal will protect you from being charged with any crime that happened after you withdrew, but not from the conspiracy that you already committed by entering the agreement in the first place.

However, in order for your withdrawal to effectively shield you from the future crimes of that conspiracy, you must also do the following:

- Alert all the other conspirators that you are withdrawing, and do it soon enough that they have enough time to scuttle the plan
- You must take steps to neutralize or undo any assistance you gave to the conspiracy.

If the agent of a corporation commits a crime, is the corporation itself also liable? Is it a conspiracy?

Under certain circumstances, the crimes of an employee or agent of the corporation can result in liability for that corporation. The crime itself must be an action performed on behalf of that corporation in the course of those perpetrators duties to that corporation. There can be no criminal conspiracy between a corporation and a single agent. This is because a corporation cannot act through an agent, so the actions of a single corporate agent are basically the corporation acting as an individual.

Can a member of the conspiracy be charged with any of the crimes of his co-conspirators?

Yes, they can. As long as those crimes were foreseeable and were done to advance the conspiracy, than any and all of the co-conspirators can be charged with that crime. The only way to avoid this is to withdraw from the conspiracy before that crime is committed.

If there is a web of overlapping conspiracies, can every member of every conspiracy be charged with every crime involved?

That depends on the relationship between the smaller conspiracies. If all of the sub-conspiracies are clearly working together toward one larger goal, this is known as a "chain conspiracy" and all of the crimes are attributed to everyone involved.

However, if these smaller conspiracies are only connected to each other through one or more shared members, this is known as a "hub and spoke" conspiracy. In this case, only the overlapping member is charged with all of the crimes for every conspiracy he is involved with, while all of his co-conspirators are only charged with the crimes involved with their smaller conspiracy.

If you find yourself in this kind of situation, then you should do all you can to describe the alleged conspiracy as the latter scenario. This will greatly reduce the number of possible charges the prosecutor can try to hit you with. It would be even better if you did this without pleading guilty or otherwise admitting to the conspiracy.

Does the merger doctrine apply to conspiracy? Does getting charged with conspiracy protect me from being charged with the underlying crime?

No, it does not. For example, if there was a conspiracy to rob a bank, and the robbery actually took place, then all members of the conspiracy can be charged with both conspiracy and robbery.

What makes someone an accessory to a crime?

Someone who helps another person escape arrest when they know that this person has committed a felony. This is known as "accessory after the fact", which is a class E felony (up to 5 years in prison/ $10,000). You can be charged with being an accessory after the fact even if the person who committed the felony was never convicted.

CHAPTER 14: ATTEMPT CRIMES

What is an attempt crime?

The prosecutor can charge someone with an attempt crime if they unsuccessfully tried to commit a crime, but made significant steps towards completing the crime. That substantial progress and the intent to complete the attempted crime are necessary for a conviction.

Attempt crimes are punished far less severely than the completed crime would be. If the completed crime was a punishable by death, then the attempt crime would be a class D (10 years in prison). If the complete crime was Class A-E (more than 5 years in prison), then the attempt crime is either a class E felony or a class H. If the completed crime was less than a class E, then the attempt crime is a misdemeanor.

Do all crimes have attempt crimes?

No, they do not. It is logically impossible to attempt to commit a crime based on negligence, because you could not have intended to commit such a crime.

How far do you have to go towards carrying out the crime in order to be charged with attempt?

Whatever steps that are taken towards completion must be more than mere preparation. The actions taken must be ones which would lead immediately to the completion of the crime.

Can I still be convicted for attempt if the completed crime would have been impossible?

That depends on what you mean by "impossible". The physical impossibility of the completed crime is not a defense to charge for attempt. However, it is a very different story if the completed crime is "legally impossible" "legal impossibility" just means that what you were attempting wasn't even a crime, even if you had been successful. It is not a crime to attempt to do something that is legal, even if believe it is a crime.

Can you abandon your attempt in order to avoid punishment? How?

Abandoning an attempt crime is not a defense. If you intended to commit the actual crime and took enough steps towards completing it, then you are guilty of attempt.

The best strategy to avoid conviction is to focus your energy on arguing that you have not yet taken enough substantial steps towards the completed crime.

CHAPTER 15: DEFENSES TO CRIMES

In simple terms, a legal defense is a fact or circumstance that protects a defendant from liability, even when they would otherwise be guilty of a crime. Defenses will arguably be your most useful and important tool in avoiding criminal penalties. Most defenses must be raised by either you (the defendant), or your attorney. Neither the judge, nor the prosecutor will do it for you.

What is an insanity defense and how do I make it?

Certain mental illnesses and conditions can prevent you from being guilty of a crime. This is typically the result of a condition preventing you from having the necessary mental state for a conviction. Under Michigan law legal insanity is defined as any condition which destroys you capacity to either:

- Understand that what you did was a crime, or
- Behave in a way that complies with the law. (Otherwise known as an irresistible impulse).

The defendant in a criminal case must raise the insanity defense. Furthermore the burden of proof is on them to prove their insanity (you are presumed sane unless proven otherwise). While not required, you are allowed to bring in experts to testify about your state of mind at the time of the crime.

However, if you raise your insanity plea before the trial you will not be allowed to refuse a court ordered psychiatric evaluation. Based on that evaluation, you might be found to be mentally unfit to stand trial. You may also be acquitted as a result of that insanity.

Is the insanity defense really a “get out of jail free” card?

Absolutely not. First of all, making an insanity defense does not even guarantee you an acquittal. Michigan courts will allow something called a “verdict of guilty but mentally ill”. When this happens, the court determines that you are actually mentally ill, but the condition did not prevent you from understanding/obeying the law. You will be punished as if you were not mentally ill.

Secondly, even if you are acquitted, you will not be walking free from that courtroom. Once you are acquitted because of your condition, you will be institutionalized until your condition is cured. You could even be confined for longer than the maximum sentence of whatever crime you just got acquitted of. Therefore, it is highly advisable that you think carefully before raising the insanity defense.

Is being drunk or otherwise impaired a defense?

Yes, depending on the circumstances. Intoxication can either be voluntary or involuntary. Intoxication is involuntary under the following circumstances:

- You did not know that the substance you consumed was intoxicating
- You were forced (under duress) to consume the intoxicant
- You took the substance under medical advice.

Involuntary intoxication can be used as a defense against any crime, and will be handled the same way as an insanity defense

Voluntary intoxication requires both of the following to be true:

- You consumed a legally obtained and properly used medicine or substance
- You did not know/had any reason to know that the substance was intoxicating.

Voluntary intoxication may only be used as a defense to specific-intent crimes.

What is infancy?

In some jurisdictions, infancy is a defense that can be brought by someone under the age of 14 to avoid criminal liability. Michigan is a little different. When a Michigan defendant is under the age of 17, all criminal activity is under the jurisdiction of the family court (a division of the circuit court). A juvenile who is at least 10 years old is considered competent to be in court unless proven otherwise. While the family court is a civil court, it has the authority to determine guilt and to sentence the juvenile. Sentences typically involve probation, community service, and even boot camp.

However, if a juvenile who is at least 14 commits a felony, the prosecutor may ask the family court to waive jurisdiction and send the juvenile to criminal court to be tried as an adult.

If the juvenile commits certain serious felonies like assault with intent to murder or armed robbery, the prosecutor can automatically kick the case to the adult court.

One of the greatest benefits of being tried as a juvenile is that the sentences are less harsh and it is much easier to clear your criminal record.

What is self-defense?

Normally, when you attack someone with lethal or nonlethal force, you are committing a crime. However, if they attacked you first then the defense of “self-defense” can protect you from criminal liability. There are a number of laws that govern when and how you are legally allowed to use force to defend yourself. Usually you are only permitted to use the level of force (lethal or nonlethal) that is being used against you.

What happens if my act of self-defense violates the law?

If you intentionally kill another person without being in reasonable fear of death or bodily injury, you are guilty of murder. Imperfect self-defense is usually second degree murder.

What if my self-defense was justified, but I used excessive force?

Due to the fact that you are in reasonable fear of death or bodily harm, you cannot be charged with murder. However, use of excessive force or gross negligence can result in being charged with involuntary manslaughter.

Does Michigan have a stand your ground law? What is standing your ground?

Normally, you have a duty to retreat when confronted by an assailant. When possible you must attempt to flee if possible rather than use force in self-defense when you have such a duty. Under the "Castle doctrine", there is no duty to retreat when you are attacked in your own home. The Castle doctrine applies to any residence, even if you do not own it.

A "Stand your ground" law extends the castle doctrine to any place you are legally allowed to be and largely eliminates the duty to retreat.

Whether in your home or out in the world, the rules governing the use of deadly force are the same. Lethal force may only be used if you reasonably believe that doing so is necessary to prevent imminent death, severe bodily harm, or sexual assault. Imminent means in that moment. Someone threatening to hurt or kill you tomorrow is not imminent and does not justify killing that person.

So I can use lethal self-defense whenever I am threatened with sexual assault?

Sort of. Lethal self-defense is only available in cases involving serious criminal sexual conduct (rape). More specifically, it is only available if the perpetrator is threatening imminent sexual penetration (i.e. only against men attempting actual intercourse).

Can I also attack/kill someone to protect someone other than myself?

The same right exists when you are defending someone else in a situation where they would be legally allowed to defend themselves. This also extends to the protection of an unborn fetus when the mother is under assault.

What about trespassers on my property? Are they fair game as well?

"Fair game" might not be the best phrase to use. That being said, there is a fairly permissive right to defend your dwelling available in Michigan. You may use non-lethal force to repel an attack against a dwelling if you reasonably believe it is necessary in order to prevent such an attack.

Lethal force may only be employed if there is a reasonable belief that it is necessary to prevent a direct attack against a person inside the dwelling or to prevent the intruder from committing a felony within the dwelling.

It is very important that you become familiar with these standards, because one misstep could put on the wrong end of a murder charge. If you are already facing such charges, then these are the things you and your attorney must prove in order to keep you out of prison.

What kind of force am I allowed to use to stop a fleeing felon?

The answer to this is somewhat complicated. Under federal law, nonlethal force can be used to prevent a felony. If the felony is a dangerous one that threatens lives, then lethal force is permitted. When attempting to facilitate the arrest of a fleeing felon, both police and private citizens may only employ lethal force if the felon presents an imminent threat of death or severe injury.

There are additional requirement for a private citizen attempting a citizen's arrest. Nonlethal force may only be used if there is reasonable belief that the fleeing person actually committed a felony. For lethal force, the target must have actually committed a felony. Reasonable belief is not enough. If it turns out that a private citizen killed someone who didn't commit a felony, they could face homicide charges.

However, Michigan law differs from this standard. In Michigan courts, lethal force is justified against any fleeing felon regardless of the level of danger they present.

Can I employ force in self-defense in order to resist an unlawful arrest?

Yes, you can. Any improper arrest may be resisted with nonlethal force. Resisting arrest with lethal force is only justified if you did not know that the person arresting you was a police officer.

What is duress?

The defense of duress is raised when the perpetrator commits a crime because they have been threatened or coerced by another person into doing so. This defense is only valid if a reasonable person would have believed that there was a threat of imminent death or severe bodily harm. Threats to property do not give rise to a duress defense. Duress is an effective defense against any criminal charge except for intentional homicide. This makes sense because the law does not want to allow you to sacrifice another innocent person's life to save your own. A crime is only justified to prevent an even worse harm.

What if there is no threat, but committing the crime prevented a greater harm? Is it still justified?

In that case you would raise the defense of necessity. However, necessity only justifies the use of non-violent force, it is not a blanket justification to commit crimes or to kill a person. Necessity is only a defense if it will avoid greater harm than you are inflicting.

What if I was mistaken/ignorant about the law? Is that adefense?

No, ignorance of the law is never an excuse; all citizens are presumed to know the contents of the federal and state criminal code. However, if reliance on the mistaken advice of an attorney would undermine the necessary mental state for a crime, then it can be used to cast reasonable doubt on the prosecution's case.

There is however, some exceptions to this rule. If the statute being used was never published or otherwise made available to the public before the crime occurred, then lack of knowledge of that law is a defense. The same goes for reasonable reliance on a statute/judicial interpretation.

What about a mistake about the facts of a situation?

If a mistake of fact destroys the necessary mental state of the crime then it is an effective defense, even against certain strict liability crimes. If you are charged with a specific-intent crime robbery, the mistake does not have to be a reasonable one. However it must be reasonable in order to be a defense against any other criminal conviction.

What is entrapment?

Entrapment is when police or other government officials tempt, manipulate, or trick someone into committing a crime in order to arrest them for it. In order to be an effective entrapment defense, the following conditions must be met:

- The officers or agents doing the entrapping must have engaged in tactics that would have manipulated an otherwise law abiding citizen to commit a crime
- The actions and tactics of the entrapping officers must be so reprehensible that it is unacceptable in a civilized society.

You can raise the entrapment defense without admitting that you participated in the crime. If you take this route, the court will hold separate hearings on the evidence away from the jury. The burden of proof is on the defendant to prove entrapment, but relatively little evidence is needed to make a successful entrapment defense.

You cannot be entrapped by another private citizen, only by a government official. Merely providing an ingredient for the crime is not entrapment.

Reverse-buy operations (police posing as drug dealers) do not count as entrapment unless the other elements of entrapment are proven.

If you are the victim of an entrapment scenario, it would be a good idea to scrounge up records of your communications and activities prior to your interactions with the officials who entrapped you.

I am a civilian who was recruited to be a police informant, but I was arrested for drug possession, is this entrapment?

No, you were not a law enforcement officer. Just because you thought you were authorized to deliver the controlled substance is not a defense against the charges against you.

What if my victim consented to the crime? Is that a defense?

Consent is only a defense if you have been charged with a crime based on lack of consent (i.e. rape and some assaults). Even then, you may only rely on consent that has been freely given without fraud or coercion.

CHAPTER 16: OTHER MISC. CRIMES

What is perjury?

Perjury is the crime of lying under oath about something that is material to a judicial proceeding. Something is “material” if it could affect the outcome of the case or hearing.

You cannot be convicted of perjury unless you knew that the statement you made was false. It is not a crime to be mistaken under oath. Therefore it is quite important for you and your attorney to develop arguments to demonstrate that you believed your statements are true.

Perjury is a class C felony (up to 15 years). The statute of limitations is six years from the moment you made the allegedly false statement. In a capital case (where the defendant could face life in prison) perjury is a class A felony (possible life in prison).

“Subornation of perjury” is also a crime. Subornation is the act of convincing someone else to commit perjury. Subornation of perjury is a class C felony (up to 15 years in prison).

Even if you fail to convince them to perjure themselves, that is still a crime. This crime is called “procuring perjury”. Procuring perjury is a class E felony (up to 5 years in prison).

Perjury is a particularly harmful felony to have on your criminal record because it involves dishonesty.

Is it a crime to tamper with or falsify evidence? What does tampering entail?

Yes, it is. Falsifying evidence is pretty self-explanatory, but tampering might need a bit of an explanation. It might involve refusing to comply with a court order to produce certain evidence. It might involve using illegal physical force to stop another person from reporting a crime. It might also involve retaliating against someone who might report or testify against you.
Tampering with evidence is a class D felony (up to 10 years in prison).

Is it a crime to lie to the police?

Usually it isn't. Typical conversations with police officer are not done under oath. However, certain conversations and filing false police reports may result in being charged with perjury. If your lies conceal information material to an ongoing investigation that you are aware of, that is obstruction of justice. The penalties for obstruction vary depending on the crime being investigated.

Is it illegal to carry a concealed weapon in Michigan?

It is perfectly legal so long as you have the appropriate permit to do so. You do not need a permit to carry a concealed hunting knife. Momentary innocent possession (such as carrying a gun you found on the ground to the police) is not a defense. If you find a suspicious weapon on the ground, you must either carry it openly or call a police officer to come pick it up. Having the weapon in your car also counts as carrying.

It is completely legal to carry a concealed weapon on your own property, even without a permit.

Illegal carrying of a concealed weapon is a Class E felony (up to 5 years in prison/ fines of up to $2500). This felony will make it illegal for you to ever own or carry a firearm and can result in restricted voting rights.

What is carjacking?

Carjacking is the larceny of a motor vehicle from the owner/ rightful possessor through the use or threat of violent force. It is basically robbery of an occupied motor vehicle. Carjacking is a class A Felony (up to life in prison).

What is stalking?

Stalking is a pattern repeated harassment that would cause a reasonable person to experience fear and intimidation. Stalking might involve appearing within sight of the victim, visiting their home and workplace, and repeated electronic communication.

If a stalker is put on probation, an order to refrain from stalking behavior against anyone will always be a condition of that probation. Stalking is a misdemeanor (up to 1 year in prison/ $1000). Stalking a minor who is less than 18 years old while the harasser is at least 5 years older is a class E felony (up to 5 years in prison/ $10,000).

What is Aggravated Stalking?

Aggravated stalking is any stalking that takes place under the following circumstances:

- In violation of a restraining order
- In violation of the terms of probation
- Involving at least two separate threats against a family member or housemate of the victim
- Involving a repeat stalking offender.

Aggravated stalking that results in a homicide can result in a charge of felony murder. Aggravated stalking is a Class E felony. When perpetrated against a victim who is less than 18 while the stalker is at least 5 years older, it is a class D felony (up to 10 years in prison/$15,000)

What is bribery?

Bribery is the act of paying an elected official in order to influence the way the exercise the powers of their office. Bribery is a felony in Michigan.

CHAPTER 17: OTHER CONSTITUTIONAL ISSUES

Isn't pressing multiple charges for the same incident "double jeopardy"?

No, it is only double jeopardy if the crimes have the same elements, essentially charging the same crime multiple times. However, all of the elements must be the same. IF any of the crimes charged have an element that is not shared with the rest, then it is not double jeopardy.

If the state if Michigan charges me with a law that is unconstitutional, can I still be convicted?

Yes you can. While the idea of ignoring a conviction for an unconstitutional law seems intuitive (an unconstitutional law is no law at all), there is a process for handling unconstitutional statutes. Your conviction will stand until a higher court overturns it. Furthermore, if a higher court doesn't vacate your conviction, it is entirely possible that you might have to take your case to the Michigan or U.S. Supreme court.