

Commonly Used Legal Terms

A

ABSTRACT OF CONVICTION

- A form sent by courts to the Michigan Department of State reporting a person's conviction or adjudication for a traffic violation or other "reportable offense" (e.g., drug crime).

ACCESSORY

- A person who knowingly and intentionally contributes to or aids in committing a crime (before or after, but not necessarily during, the commission of the crime).
- Being an "accessory-after-the-fact" to a felony crime is a specific crime in and of itself. An "accessory after the fact" is a person who (i) knows that a crime has occurred, and (ii) helps one or more of the people who committed it avoid discovery, arrest, trial, or punishment after the crime ended. The assistance given by an accessory after the fact must tend to frustrate the course of justice. A person cannot be convicted both of the principal crime as an aider/abettor, *and* as being an accessory after the fact to the same felony crime.
- An accessory can include a person charged with conspiracy to commit a felony or misdemeanor crime.
- See also Aiding / Abetting.

ACCOMPLICE

- A person who participates in the commission of a crime, other than the person actually doing to principal criminal act. This person may be charged with actual crime committed under an "aider or abettor" theory (gave aid, assistance or encouragement to the principal defendant(s)).
- See also Accessory and Aiding / Abetting.

ACQUITTAL

- Criminal defendant being found "not guilty" of the crime. An acquittal is not a declaration of the accused's "innocence"; it is a verdict that a Prosecutor failed to prove the accused's guilt beyond a reasonable doubt.

ADJOURNMENT

- Postponing or rescheduling a case or court session until another date or time.

ADJUDICATION

- Generally, a final judicial determination of a case. In juvenile delinquency cases, it is the equivalent of a 'conviction' in adult criminal cases, when the court formally takes jurisdiction of the minor due to a plea or a trial verdict.

ADULT

- A person who is no longer deemed to be a minor. In Michigan, a person becomes an adult for criminal cases when they turn 17 [MCL 712A.2(a)]. In most other proceedings, an adult is someone age 18 or older.

AFFIDAVIT

- Written statement of fact that is verified by oath or affirmation before a notary public or officer having authority to administer oaths. (Affidavits are not admissible in criminal trials or hearings in lieu of testimony because the opposing party has no opportunity to cross-examine the affiant.)

AGENT

- Someone authorized to act for another person (known as the "principal"). Violation of a principal-agent relationship is the core of an embezzlement.

AIDING / ABETTING

- Intentionally assisting (procuring, counseling, encouraging, helping, etc.) another person in the commission of a crime.
 - Examples: A get-away car driver, a look-out, etc.
- There is no distinction between a principal and an aider/abettor. Every person involved in the commission of an offense, whether he directly commits the act constituting the offense or whether he procures, counsels, aids, or abets in its commission can be prosecuted, tried, convicted and punished as if he had directly committed such offense. [MCL 767.39] "Aiding/abetting" is not a specific crime, it is a legal theory that results in someone other than a principal actor in a crime being charged with / convicted of the actual crime.
- Mere knowledge that another person is going to commit a crime, or mere presence at the scene of a crime, is not enough.
- A person cannot be convicted both of the principal crime as an aider/abettor, *and* as being an accessory after the fact to the same felony crime.
- See also Accessory and Accomplice.

ALIBI

- "Lack of presence" defense. The defendant need not prove that he was elsewhere when the crime happened; he need only notify the Prosecutor of his intent to claim an alibi (along with his list of alibi witnesses). Ultimately, the Prosecutor must prove beyond a reasonable doubt that the defendant was present (i.e., a Prosecutor must *disprove* a claimed alibi).

ALLOCUTION

- A defendant's opportunity to make a statement to the judge at sentencing. A defendant may make a personal statement, but is not required to do so. His/her attorney may also make a statement.

APPEAL

- Request to a supervisory court, usually composed of a panel of judges, to change the legal ruling of a lower court. To make such a request is "to appeal" or "to take an appeal." One who appeals is called the Appellant; the opposing party is the Appellee.
 - **Appeal by Application for Leave** --- An appeal where a higher court must give permission to file it. A party must seek leave to appeal when a final order has not been entered, when the appeal is late, or in criminal cases when a defendant has pled guilty and is appealing an issue other than his sentence. An Application for Leave to Appeal explains the legal issues that the appellant wants reviewed, and the facts and law supporting them. The court has final discretion to accept or reject an application.
 - **Appeal by Right** --- An appeal to a higher court where permission does not have to first be obtained. The appeal must be filed within a specified time frame after the lower court's final order has been entered.

APPEARANCE

- A document filed with the court, and provided to other parties, by an attorney advising that the attorney is representing a specific individual.

ARRAIGNMENT

- Criminal defendant's first appearance before a judge. The primary purpose is to inform the defendant of the charge(s) he is facing. The judge may also determine an appropriate bail and decide on a request for court-appointed counsel.

ARREST

- To take into custody by legal authority.

ARREST WARRANT

- An order issued by a judge or magistrate to a peace officer requiring the arrest of a named person.
- See Warrantless Arrest.

ASSAULT [MCL 750.81, et seq]

- An unlawful act that places another person in reasonable apprehension of receiving an immediate battery. An attempt to commit a battery. The defendant must intend to injure the victim or make the victim reasonably fear being struck. An assault is intentional, not an accident.
- Michigan specifies many types and levels of assaults:
 - A&B - *penalty*: Misdemeanor -- 93 days &/or \$500
 - Aggravated Assault - *penalty*: Misdemeanor -- 1 year &/or \$1,000
 - Domestic Violence - *penalty*: Misdemeanor -- 93 days &/or \$500
 - Aggravated Domestic Violence - *penalty*: Misdemeanor -- 1 year &/or \$1,000

- Assault with a Dangerous Weapon (Felonious Assault) - *penalty*: Felony -- 4 years &/or \$2,000
- Assault with Intent to Do Great Bodily Harm (Assault GBH) - *penalty*: Felony -- 10 years &/or \$5,000
- Assault with Intent to Maim - *penalty*: Felony -- 10 years &/or \$5,000
- Assault with Intent to Rob While Unarmed - *penalty*: Felony -- 15 years
- Assault with Intent to Rob While Armed - *penalty*: Felony -- Life or any number of years
- Assault with Intent to Murder - *penalty*: Felony -- Life or any number of years

- **Note:** *The victim need not be actually injured for a "Simple Assault", but injuries can be circumstantial proof of higher levels of assaults. For example, proof that a victim was physically injured and needed immediate medical attention can distinguish "Simple Assault" from "Aggravated Assault". The type or severity of injury may also prove the defendant's "intent" (i.e., Assault With Intent to Do Great Bodily Harm Less Than Murder, Assault with Intent to Maim, Assault With Intent to Murder, etc.).*

- **Note:** *See self defense.*

ASSISTANT PROSECUTING ATTORNEY

- Lawyer hired by the elected Prosecuting Attorney to prosecute cases within that county as representatives of the People of the State of Michigan.

B

BAIL

- Bond money paid to a court by or on behalf of a criminal defendant as security that, when released from jail, the defendant will appear at all future hearings. The court can also set conditions of release (i.e., no contact with the victim, no alcohol consumption, etc.) If another person posts the bail money, then that third party vouches that the defendant will appear at future court dates. Bail can be forfeited if the defendant fails to appear or violates release conditions.

BATTERY

- Intentional, unwanted and forceful/violent touching of another person, or something closely connected with that person.

BENCH WARRANT

- A court order issued "from the bench" commanding the defendant's (or a missing witness') arrest and appearance in court after previously failing to appear for a hearing. A bench warrant could also be issued against a defendant for violating a court order, such as conditions of release or probation.

BIND-OVER

- Finding at a felony preliminary examination that sufficient evidence exists to require a trial at the Circuit Court level on the charges made against the defendant.

BOND / BAIL BOND

- A promise or contract to do or perform a specified act, or pay a penalty for failure to perform. This is usually guaranteed by a 'surety', who promises to pay if the 'principal' defaults, or by paying a cash bond.
- In criminal cases, 'bond' means the same thing as 'bail': a financial obligation signed by the accused or a surety intended to guarantee the defendant's future appearances in court. The amount of the bond is set by a judge or magistrate. The bond can include conditions of release (i.e., no contact with the victim, no alcohol consumption, etc.) Factors influencing the amount of bond set include the seriousness of the charge, the defendant's criminal history, and the defendant's ties to the community.
- There are four types of bonds:
 - **Personal recognizance bonds** (a.k.a. "PR" bonds, or "signature bonds") do not require the defendant or a third party to pay money to the court, unless the defendant later fails to appear.
 - **Percent bonds** require the defendant to post a percentage of the full bond (generally as low as 10%) to get out of jail, and the remaining percentage is due only if the defendant later fails to appear.
 - **Cash bonds** require the full amount of the bond to be paid in cash before the defendant can be released. If the defendant appears at all future court dates, most of the monies are returned to the person posting the bond.
 - **Surety bonds** are posted by a professional bondsman after being paid a non-refundable percentage of the full amount by the defendant.

BREAKING

- As in "breaking & entering" ... using some force to enter a building (opening a door, raising a window, taking screen off, etc.); damage need not result.

BURDEN OF PROOF

- Duty to establish through evidence a requisite degree of belief concerning a fact in the mind of a trier of fact. The duty to establish facts in an adversary proceeding.
- Different burdens of proof exist in the law:
 - **Prima facie** -- evidence which is good and sufficient "on its face" to establish a given fact when not rebutted or contradicted.
 - **Probable cause**
 - **Preponderance of the evidence** -- the burden of proof in civil cases. Evidence which, as a whole, shows that the fact sought to be proved is more probable than not. Evidence which is more credible and convincing to the mind. It is generally visualized as that side of the dispute toward which the scales tip when the credible evidence is weighed by the trier of fact. Something more than 50% of the credible evidence.

- **Clear and convincing** -- the burden of proof in selected proceedings, such as termination of parental rights. A measure of proof which produces a firm belief or a high probability as to the allegations. It is difficult to quantify, but is more than a "preponderance" and less than "beyond a reasonable doubt".
- **Beyond a reasonable doubt** -- the burden of proof in criminal cases. The degree of belief a criminal juror (or the judge in a bench trial) must have regarding all factual elements of a charged crime. No doubt, based on reason and common sense, can exist as to any fact needed to be proved.

C

CAPITAL OFFENSE

- Crime punishable by death. (Michigan does not have a death penalty.)

CARRYING A CONCEALED WEAPON

- Crime that prohibits:
 - carrying a pistol or other firearm or dangerous weapon (e.g., dagger, dirk, razor, stiletto, or knife having a blade over 3 inches in length) with an intent to use the same unlawfully against the person of another [MCL 750.226];
 - carrying a dagger, dirk, stiletto, double-edged non-folding stabbing instrument of any length, or any other dangerous weapon (except a hunting knife adapted and carried as such), concealed on or about his/her person, or whether concealed or otherwise in any vehicle operated or occupied by the person, except in his or her dwelling house, place of business or on other land possessed by the person [MCL 750.227];
 - carrying a pistol in a place or manner inconsistent with a license or permit issued pursuant to 1927 PA 372.
- Penalty: Felony -- up to 5 years or \$2,500 fine.
- Unless licensed to carry a firearm, a person may not carry a concealed weapon for "self-defense".

CHILD ABUSE [MCL 750.136b]

- Criminal mistreatment of a minor by an adult legally responsible for the minor. Concerns conduct toward an unemancipated child under 18 years of age by the parent, guardian or other person who cares for, has custody of or authority over the child. There are four degrees of child abuse.
 - **First Degree** (felony --- up to 15 years in prison) --- defendant knowingly or intentionally causes serious physical harm (i.e., substantial physical disfigurement or impairment of a body organ or limb) or serious mental harm to a child.
 - **Second Degree** (felony --- up to 4 years in prison) --- defendant willfully abandons the child, fails to provide food, clothing or shelter necessary for the child's welfare, or commits a reckless act which is likely to result in serious physical/mental harm.

- **Third Degree** (high court misdemeanor --- up to 2 years in prison) --- defendant knowingly or intentionally causes some physical harm to the child.
- **Fourth Degree** (misdemeanor --- up to 1 year in jail) --- defendant abandons the child, or willfully fails to provide food, clothing or shelter necessary for the child's welfare, or commits a reckless act, which results in some physical harm to the child.
- A defendant may raise a defense that his/her forceful actions were reasonable "parental discipline".

CHILD SEXUALLY ABUSIVE MATERIAL [MCL 750.145c]

- Developed or undeveloped photograph, film, slide, electronic visual image, computer diskette, or sound recording of a child engaging in a listed sexual act; a book, magazine, or other visual or print medium containing such a photograph, film, slide, electronic visual image, or sound recording; or any reproduction, copy, or print of such a photograph, film, slide, electronic visual image, book, magazine, other visual or print medium, or sound recording.
- A **listed sexual act** means sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, passive sexual involvement, sexual excitement, or erotic nudity. These terms are defined by statute.
- Penalties:
 - **Knowing Possession:** Misdemeanor --- up to 1 year &/or \$10,000 fine.
 - **Distribution / Promotion:** Felony --- up to 7 years &/or \$50,000 fine.
 - **Production / Financing / Inducement to Produce:** Felony --- up to 20 years &/or \$100,000 fine.

CIRCUIT COURT

- Michigan's highest level trial court, with the broadest range of powers (including hearing appeals from District Court). Circuit Court has three divisions:
 - Criminal (the trial court for all felony crimes)
 - Civil (civil law suits over \$25,000, or seeking injunctions or other equitable relief), and
 - Family (every aspect of family law, including divorce, child custody, parenting time/visitation, paternity, adoption, child & spousal support, domestic violence, PPOs, juvenile delinquency, child protection proceedings [parental neglect or abuse], as well as emancipation of minors, name changes, and waiver of parental consent to abortions).
- The Friend of the Court office is a division of the Circuit Court.
- Michigan has 57 Circuits, covering all 83 counties. Circuit Court judges are elected on a non-partisan ballot to six-year terms.

CIRCUIT COURT MISDEMEANOR

- An offense designated by the legislature as a misdemeanor, but punishable by more than one year in jail. It is processed in circuit court like a felony.

CIRCUMSTANTIAL EVIDENCE

- Indirect evidence that implies something occurred but does not directly prove it. Evidence that suggests something by implication.
- Example: circumstantial evidence of embezzlement includes proof that the defendant-employee had access to missing money and made several big-ticket purchases in cash around the time of the alleged embezzlement.
- The law does not distinguish between the weight to be given to direct and circumstantial evidence. Jurors are instructed that they may give more weight to circumstantial evidence than direct evidence if they find the circumstantial evidence to be more credible.
- [See also direct evidence.]

CIVIL INFRACTION

- Non-criminal violation of a law prosecuted by the State or a local government unit. A person cannot be sent to jail for a civil infraction. The most common example is a traffic citation, like speeding. The penalty for a civil infraction is payment of fines, costs, and fees. For a traffic civil infraction, points may be added to the driving record.
- A person can be found responsible for a civil infraction in one of four ways:
 1. by failing to respond to the citation on time; a default judgment will be entered; in most cases, the person's driver's license will be suspended until the fines & costs + a surcharge are paid;
 2. by admitting responsibility for the violation and paying the amount indicated on the ticket;
 3. after an informal hearing before a district court judge or magistrate;
 4. after a formal hearing before a district court judge.

COBBS PLEA

- Based on *People v Cobbs*, 443 Mich 276 (1993).
- A "Cobbs plea" allows a defendant to enter a conditional guilty plea which can be withdrawn if a judge's eventual sentence falls outside sentencing terms specified by the judge before the plea was tendered.
- Normally, defendants plead guilty without any legal expectation of a specific sentence, and judges are not bound by a sentencing agreement between the parties. But in "Cobbs agreements", the judge is asked to advise the parties before the plea is entered what an appropriate sentence range would be (based on case facts and the defendant's criminal history known to the judge at that time). The judge announces a sentencing 'preview', but the prosecutor is not a party to the terms of this possible sentence. If the defendant is induced to plead by this expected sentence, he may withdraw his plea if he does not receive that sentence.
- See also *Killebrew Plea*.

CO-DEFENDANT

- One who participates in the commission of a crime, along with another person.

COMMON LAW

- Body of legal principles which derives its authority solely from usages, customs or court decisions since ancient times, or from the judgments and decrees of courts recognizing, affirming, and enforcing such usages and customs, particularly the ancient unwritten law of England. Common law is distinguished from "statutory law", which is enacted by a legislative body such as Congress or a state legislature. Common law is the basis for the legal systems in every state except Louisiana. In Michigan, common law is still in effect except where it has been modified or repealed by statute.

COMPETENCY (TO STAND TRIAL)

- A defendant is incompetent to stand trial only if incapable of (1) understanding the nature and object of the proceedings; or (2) of assisting the defense in a rational manner because of mental condition.
- See MCL 330.2020.
- Incompetence may be raised at any time during the proceedings by court or by motion of the parties. Where there is evidence of incompetency, the examining magistrate must halt the preliminary examination, and refer the defendant to the center for forensic psychiatry or other facility officially certified by the department of mental health for a determination of competency.
- A competency hearing must be held within 5 days of receipt of the forensic center report.
- Treatment and/or medication may be ordered if there is substantial probability the defendant will regain competence.
- Civil commitment may be sought if no substantial likelihood that the defendant will regain competence, or the case is dismissed after 15 months of incompetency.
- Defendant not to be determined incompetent because medication is required to keep the defendant competent.
- Amnesia covering all events before, during, and after the charged offense does not render the defendant incompetent.

COMPLAINT

- In a criminal action, it is a written accusation (under oath or upon affirmation) that a felony, misdemeanor, or ordinance violation has been committed and probable cause exists that the named person is guilty of the offense.
- Document on which criminal misdemeanors are charged in District Court, as well as the initial charging document for felonies.

CONCURRENT SENTENCE

- Upon conviction for multiple crimes, a criminal sentence served at the same time as another criminal sentence, rather than one after the other. The person is release at the expiration of the longest term specified.
- See also consecutive sentence.

CONFESSION

- A statement by person, either oral or written, admitting that he or she committed a certain offense.

CONSECUTIVE SENTENCE

- Upon conviction for multiple crimes, criminal sentences that must be served one after the other, rather than at the same time. Consecutive sentences may only be imposed if there is specific statutory authority to do so. In some circumstances, consecutive sentences may be imposed within the judge's discretion (e.g., when a person is convicted of a new offense committed while on parole status); in other circumstances, consecutive sentences are mandatory (e.g., convictions for felony firearm + another offense).
- See also concurrent sentence.

CONSENT, AGE OF

- In Michigan, a minor has the legal capacity to consent to sexual activity at age 16. [See Criminal Sexual Conduct.]

CONSPIRACY [MCL 750.157a; CJI2d 10.1-10.5]

- An agreement (express or implied) between two or more people to do an illegal act, or to commit a legal act in an illegal manner.
- A person can be convicted of both the crime of conspiracy to commit (insert name of crime) *and* of the actual crime (as a principal or as an aider/abettor). This does not violate principals of double jeopardy.

CONTEMPT OF COURT

- An act or failure to act that violates a court order, impedes the functioning of the court, or impairs the authority of the court.

CONTRABAND

- Goods barred by law (e.g., specific weapons, or drugs prohibited by law, etc.).

CONVICTION

- Judge or jury's decision that the accused person is guilty of the crime.

COURT-APPOINTED ATTORNEY

- Legal counsel assigned by the court to represent an indigent criminal defendant. A court-appointed attorney is not necessarily a "free" attorney; the court can order that some or all of the attorney's bill be reimbursed. If jail time will not be imposed on a misdemeanor, the judge need not appoint an attorney.
- See also Guardian ad Litem.

COURT OF APPEALS

- "Intermediate" appellate court between the Supreme Court and the Michigan trial courts. Final decisions from a Circuit or Probate Court hearing may be appealed to the Court of Appeals. (See MCL 600.308.)
- Hearings are held in Detroit, Grand Rapids, Lansing and Marquette before a panel of three Court of Appeals judges. At least two of the three judges must agree on the ruling. The panels are frequently rotated so that a variety of judicial opinions are considered. The decision of the panel is final, except for those cases which the Supreme Court reviews.
- Court of Appeals judges are elected for 6-year terms.
- Visit the Michigan Court of Appeals web site at courtofappeals.mijud.net/.

CRIME

- An act in violation of criminal law: an offense against the State of Michigan.

CRIMINAL CASE

- Charge filed by a prosecutor against a defendant concerning violation of a criminal law. The act of violating a criminal law is an offense against the community, not a private wrong. Examples of criminal cases include theft, murder and OUIL.

CRIMINAL SEXUAL CONDUCT

- Michigan categorizes four degrees of "CSC":
 - **1st Degree:** (MCL 750.520b [amended version became effective 07/01/2008] --- Felony --- life or any term of years + AIDS~HIV~STD testing) --- a sexual act involving penetration (sexual intercourse, anal intercourse, cunnilingus, fellatio, intrusion into any other body part or object in genital or anal openings) and any of the following:
 - victim is under 13 years old
 - victim is 13-15 years old + is a blood affiliation to the defendant, lives in the defendant's household, or the defendant is in an authority position to the victim
 - multiple actors are involved and force/coercion was used to accomplish the sexual penetration or the victim is incapacitated (physically helpless, mentally incapacitated or mentally defective)
 - weapon involved
 - personal injury + force/coercion
 - personal injury + victim incapacitated
 - defendant/actor is in the process of committing another felony
 - **2nd Degree:** (MCL 750.520c [an amended version became effective 07/01/2008] --- Felony --- up to 15 years + AIDS~HIV~STD testing) --- sexual contact with the genital area, groin, inner thigh, buttock or breast, AND any of the circumstances listed for 1st Degree CSC.
 - **3rd Degree:** (MCL 750.520d [an amended version became effective 07/01/2008] --- Felony --- up to 15 years + AIDS~HIV~STD testing) --- sexual penetration and any of the following:
 - victim is 13-15 years old
 - force or coercion

- victim incapacitated
- **4th Degree:** (MCL 750.520e [an amended version became effective 07/01/2008] --- High Court Misdemeanor --- up to 2 years in prison and/or \$500.00 fine + AIDS~HIV~STD testing) --- sexual contact and any of the following:
 - force or coercion
 - victim incapacity
 - defendant works for the Department of Corrections and the victim is an inmate
- **All persons convicted of CSC must register as a sex offender.**
- No need for corroboration of victim's testimony or resistance by victim.
- A person can be charged and convicted of CSC on a spouse.

CROSS EXAMINATION

- Questioning of a witness by a party other than the one who called that witness to the witness stand, to test the truthfulness of the witness's testimony, to further develop it or to otherwise expand on it.

D

DATING RELATIONSHIP

- Frequent, intimate associations primarily characterized by the expectation of affectional involvement. This term does not include a casual relationship or an ordinary fraternization between two individuals in a business or social context. If a "dating relationship" is present, a person can get a Domestic PPO, and (as of 04/01/2002) an assault can be charged as Domestic Violence.

DEFENDANT

- Person who has been formally charged with committing a crime.

DEFENSE ATTORNEY

- The attorney representing the accused (defendant).

DEPOSITION

- Oral statement made before an officer authorized by law to administer oaths. Such statements are used in civil cases to examine potential witnesses, to obtain discovery, or to be used later in trial. Depositions are not used in criminal cases.

DIRECT EXAMINATION

- Questioning of a witness by the party who first called the witness to the stand.

DISORDERLY CONDUCT [MCL 750.167]

- *Penalty*: Misdemeanor --- up to 90 day and/or \$100
- AKA "disorderly person" ... a compilation of socially offending conduct, including:
 - refusing or neglecting to support one's family
 - common prostitution
 - window peeping
 - public intoxication that is endangering people, or causing a public disturbance
 - indecent or obscene conduct in a public place
 - vagrancy, public begging, loitering in a place of illegal business, including a house of ill fame or prostitution
 - jostling or roughly crowding people unnecessarily in a public place

DISTRICT COURT

- All criminal cases, for persons 17 years or older, start in the district court. It is the trial court for all misdemeanors for which punishment does not exceed one year, civil infractions, civil small claims actions (up to \$1,750), civil law suits for \$25,000 or less, garnishments, landlord/tenant disputes, evictions, foreclosures and other proceedings. This Court conducts initial arraignments, sets and accepts bonds, and conducts preliminary examinations in felony cases.
- District Court procedures are essentially like those used in Circuit Court with the exceptions that a city/township ordinance may be prosecuted by that city's/township's attorney ... and pre-sentence investigations are not always prepared on misdemeanors.
- There are approximately 100 district courts in Michigan. District court judges are elected for 6-year terms on a non-partisan ballot.

DIVERSION

- A process of removing some minor criminal, traffic, or juvenile cases from the full judicial process on the condition that the accused undergo rehabilitation or make restitution for damages. Diversion does not involve a formal conviction/adjudication, and may not require an admission of guilt. If the accused completes this informal probation successfully, then the entire matter may be closed, and is expunged (erased) from the person's record.
- Some Prosecutors' offices administer in-house diversion programs for first-time or property crime offenders. In those cases, charges are withheld unless the program is not completed.

DOUBLE JEOPARDY

- Being placed more than once in danger of being convicted and sentenced for the same offense. Being tried twice for the same offense. Jeopardy 'attaches' (begins) in a jury trial when the selected jury is sworn, and attaches in a bench trial when the first witness is sworn.
- If a judge declares a mistrial has occurred, a criminal case may be re-tried without violating double-jeopardy.

DRUNK DRIVING

See "OUIL"

DUE PROCESS (of Law)

- The fundamental procedural rules that guarantee "fair play" in the conduct of legal proceedings (e.g., the right to notice and a hearing, the right to an impartial judge and jury, the right to present evidence on one's own behalf, the right to confront one's accuser, the right to be represented by counsel, etc.).

E

EMBEZZLEMENT [MCL 750.174]

- Since 01/01/1999, Michigan defines 4 levels of Embezzlement:
 - **under \$200**: Misdemeanor -- up to 93 days and/or \$500, or 3 times amount embezzled, whichever is greater
 - **at least \$200 but less than \$1,000 (or repeat offender of above)**: Misdemeanor -- up to 1 year and/or \$2,000, or 3 times amount embezzled, whichever is greater
 - **at least \$1,000 but less than \$20,000 (or repeat offender of above)**: Felony -- up to 5 years and/or \$10,000, or 3 times amount embezzled, whichever is greater
 - **\$20,000 or more (or repeat offender of above)**: Felony -- up to 10 years and/or \$15,000, or 3 times amount embezzled, whichever is greater
- The essence of this crime is a violation of trust --- the agent (e.g., employee) was entrusted with the principal's (e.g., employer) property, acquired the principal's property through that relationship of trust, and dishonestly disposed of/took/hid/converted the property to his own use.

ENTRAPMENT

- Entrapment occurs when police engage in impermissible conduct that would induce an otherwise law-abiding person to commit a crime in similar circumstances, or when police engage in conduct so reprehensible that it cannot be tolerated by the court. Entrapment does not occur if the defendant has the propensity to commit the crime, and the police conduct only gives the defendant the opportunity to commit the crime.

ETHNIC INTIMIDATION (MCL 750.147b)

- *Penalty*: Felony --- up to 2 years &/or fines up to \$5,000.
- Malicious and intentional intimidation or harassment of another person because of that person's race, color, religion, gender, or national origin. This conduct must also (a) cause physical contact with another person, (b) damage, destroy, or deface real or personal property, or (c) threaten to do an act described in (a) or (b) if there is reasonable cause to believe that such an act will occur.
- Regardless of the existence or outcome of any criminal prosecution, a person who suffers injury to his/her person or damage to his/her property as a result of ethnic intimidation may sue the person who committed the offense to secure an injunction, actual damages, including damages for emotional distress, or other appropriate relief. A plaintiff may recover treble (triple) damages or \$2,000.00, whichever is greater.

EVIDENCE

- Information presented in testimony, documents, physical objects or other things that are used to prove or disprove facts relevant to a case.
- See also direct evidence, circumstantial evidence, and corroborating evidence.

EX-PARTE

- Latin term that means "by or for one party."
- Refers to situations in which only one party (and not the adversary) appears before a judge. Such meetings are often forbidden.

EX-PARTE ORDER

- Order entered without giving the party affected by the order an opportunity to be heard in court before the order is issued. An emergency order used when one party could be irreparably harmed by waiting for a hearing date. The orders are generally short-term, and hearings are scheduled soon to give the other party a chance to be heard.

EXPUNGE / EXPUNGEMENT [ADULTS: MCL 780.621, et. seq.; JUVENILES: MCL 712A.18e]

- Process where a conviction may be set aside. The official and formal elimination of part of a record. To legally void court records (including criminal records) in files, computers or other depositories under the courts jurisdiction.
- In Michigan, a person's first conviction can be set aside, but only if at the time the request is made that person has no other misdemeanor or felony convictions.
- Expungement is not allowed for (i) felonies (attempts to commit felonies) punishable by life imprisonment, (ii) CSC 2nd or 3rd Degree or Assault with Intent to Commit CSC, or (iii) a traffic code violation.
- Expungement cannot be sought until at least 5 years have passed since the date of sentencing or completion of a term of imprisonment for the conviction, whichever is later.
- A court hearing is required after MSP reports to the court about pending charges against the applicant, any record of conviction of the applicant, and the setting aside of any conviction of the applicant obtained from its own records or from the FBI. The court may set the prior conviction aside if it determines that the circumstances and behavior of the applicant warrant it, and that it would be consistent with the public welfare.
- Setting aside a conviction is a privilege and conditional and not a right.

EXTRADITE / EXTRADITION [1937 PA 144; MCL 780.1 et seq]

- The formal process of delivering a person found in one state (or nation) to authorities in another state (or nation) where that person has been accused or convicted of a crime.
- See the Uniform Criminal Extradition Act.

F

FELONY

- Crime carrying more than one year possible incarceration, unless it is specified as a misdemeanor. Felonies are tried in circuit court.

FELONY FIREARM [MCL 750.227b]

- *Penalty*: Felony --- mandatory 2 years (or 5 years for second offense) imprisonment consecutive to served before the term of imprisonment imposed for the felony or attempted felony conviction
- Crime committed when carrying or having in his possession a firearm at the time a felony is committed or attempted to be committed.
- A third party can be convicted of aiding/abetting a Felony Firearm charge, if the person procured, counseled, or assisted the accomplice in obtaining or retaining possession of the firearm.

FLEEING & ELUDING [MCL 750.479a]

- A driver of a motor vehicle who willfully fails to obey a hand, voice, emergency light, siren, visual or audible signal by a police or conservation officer, acting in the lawful performance of his/her duty, that directs the driver to bring his/her motor vehicle to a stop. It may involve the defendant increasing the speed of the vehicle, extinguishing the lights of the vehicle, or otherwise attempting to flee or elude the officer. The officer giving the signal must be in uniform, and the officer's vehicle must be identified as an official police or DNR vehicle.
 - **Fourth Degree** (Felony: up to 2 years &/or \$500 fine; license suspension)
 - **Third Degree** (Felony: up to 5 years &/or \$1,000; license suspension) --- if the violation results in a collision or accident; or a portion of the violation occurred in an area where the speed limit is 35 miles an hour or less; or the defendant commits fourth-degree Fleeing and Eluding and has a prior conviction for F&E or Attempted F&E.
 - **Second Degree** (Felony: up to 10 years &/or \$5,000; license revocation) --- if the violation results in serious injury to an individual; or the defendant has one or more prior convictions for (attempted) first-, second-, or third-degree F&E; or the defendant has any combination of two or more prior convictions for (attempted) fourth-degree F&E.
 - "Serious injury" means a physical injury that is not necessarily permanent, but that constitutes serious bodily disfigurement or that seriously impairs the functioning of a body organ or limb, including loss of or loss of the use of a limb, hand, foot, finger, thumb, eye, or ear; loss or substantial impairment of a bodily function; serious visible disfigurement; a comatose state that lasts for more than 3 days; measurable brain damage or mental impairment; a skull fracture or other serious bone fracture; and a subdural hemorrhage or hematoma.
 - **First Degree** (Felony: up to 15 years &/or \$10,000; license revocation) --- if the violation results in the death of another individual.

FORFEITURE

- Real or personal property to which a person loses his right of possession due to the commission of a crime or by way of an assessed penalty. A forfeiture may be either administrative or judicial.

FORMAL HEARING

- Hearing in which a civil infraction is contested before a District Judge (similar to a bench trial). The defendant may be represented by an attorney. The People are represented by the Prosecuting Attorney or an attorney for the local municipality.
- See also *Informal Hearing*.

404(b)

- Michigan Rule of Evidence 404(b):
**RULE 404. CHARACTER EVIDENCE NOT ADMISSIBLE TO PROVE CONDUCT;
EXCEPTIONS; OTHER CRIMES**

(a) Character Evidence Generally. ...

(b) Other Crimes, Wrongs, or Acts.

(1) Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident when the same is material, whether such other crimes, wrongs, or acts are contemporaneous with, or prior or subsequent to the conduct at issue in the case.

(2) The prosecution in a criminal case shall provide reasonable notice in advance of trial ... of the general nature of any such evidence it intends to introduce at trial and the rationale, whether or not mentioned in subparagraph (b)(1), for admitting the evidence. If necessary for a determination of the admissibility of the evidence under this rule, the defendant shall be required to state the theory or theories of defense, limited only by the defendant's privilege against self-incrimination.

- Permits some "prior bad acts" evidence to be admitted at trial.

G

GINTHER HEARING

- Based on *People v Ginther*, 390 Mich 436 (1973), an evidentiary hearing on a defendant's motion for new trial claiming ineffective assistance of counsel.

GOOD TIME

- Reduction in time served in county jails as reward for good behavior. "Truth in Sentencing" laws have eliminated good-time reduction of prison sentences for felonies.

H

HEARSAY

- Second-hand evidence not arising from personal knowledge of the witness but generally from repetition of what the witness has heard others say.
- Statement made outside of court (i.e., not from the witness stand at the present proceeding) that is offered as evidence to prove that the statement was *true*, not merely that the statement was made. Second-hand evidence not arising from personal knowledge of a witness, but generally from repeating what the witness heard others say outside the courtroom.
- Hearsay is generally inadmissible, but dozens of long-established exceptions have been approved; the exceptions are based on circumstances where the out-of-court statements carry a likelihood of trustworthiness (e.g., deathbed statements, self-incriminating statements, statements made to doctors about medical conditions, excited utterances, etc.).

H.Y.T.A. / YTA (Holmes Youthful Trainee Act) [MCL 762.11, 762.12, 762.13, 762.14]

- Discretionary sentence where person who pleads guilty to a crime committed between his/her 17th & 21st birthdays may, with the youth's consent and without entering an adjudication of guilt, be assigned the status of a youthful trainee.
- The person may be placed on probation, or committed to jail or prison. Upon successful completion of all terms set by the judge, the court will dismiss the charge.
- If the person fails to successfully complete the terms of probation, the judge may terminate YTA status, enter an adjudication of guilt and sentence the defendant.
- YTA is not permitted for life, major controlled substance or traffic offenses.
- YTA status is not a conviction for a crime.
- Unless the court enters a judgment of conviction against the individual for the criminal offense, all proceedings regarding the disposition of the criminal charge and the individual's assignment as youthful trainee are closed to public inspection, but are be open to the courts, the department of corrections, the department of social services, and law enforcement personnel for use only in the performance of their duties.

I

IMMUNITY

- A court-approved agreement by a prosecutor to not prosecute a person, in return for providing criminal evidence against another person or party.

IMPAIRED DRIVING [MCL 257.625]

- *Penalty:* Misdemeanor --- jail up to 90 days (1st offense) or 1 year (2nd offense), fines up to \$300 (1st offense) or \$1,000 (2nd offense), community service, 4 points assessed on the driver's record, and a mandatory license suspension of at least 3 months (1st offense).

- Lesser-included offense to OUIL. A person driving a vehicle while visibly affected by alcohol. A driver is considered "impaired" with a blood-alcohol level of 0.08-0.09%.

IMPEACHMENT

- Process of calling something into question, as in "impeaching the testimony of a witness." Impeachment generally challenges a witness' credibility (believability) with evidence of bias, prior inconsistent statements, etc.

INFORMAL HEARING

- Hearing in which a civil infraction is contested before a District Court magistrate. Generally, the police officer and person ticketed testify under oath, each explaining what happened. Attorneys are not allowed at informal hearings, but witnesses may attend and testify, and the defendant may ask questions of the police officer and witnesses. An adverse decision can be appealed by demanding a formal hearing and posting an appeal bond worth at least the amount of fines & costs for the charge.

INFORMATION

- Document on which criminal felony charges are filed in Circuit Court after a Preliminary Examination bind-over or waiver.

INJUNCTION

- Order of the court prohibiting (or compelling) the performance of a specific act to prevent irreparable damage or injury.

INQUIRY

- A non-custodial conference held to determine further court action.

INSANITY

- A person is legally insane if, as a result of mental illness or mental retardation as defined by MCL 330.1400a and MCL 330.1500(h) respectively, that person lacks substantial capacity either to appreciate the wrongfulness of his or her conduct to conform that conduct to the requirements of law.
- The defendant has the burden of proof by preponderance of evidence. MCL 768.21a(1).
- The defendant may be precluded from presenting evidence of insanity for failure to cooperate in the forensics center examination.

J

JOYRIDING (Unlawful Use of an Automobile) [MCL 750.414]

- *Penalty:* High Court Misdemeanor --- up to 2 years or \$1,000

- taking or using an automobile without authority, without the intent to steal (or being a party to such unauthorized taking or using). Unlike UDAA, Joyriding does not require proof of an intent to steal.

JUDGE

- Government official with authority to decide lawsuits brought before courts.

JURISDICTION

- Legal authority of a court to hear and decide a case before it, which depends on the type of case and how closely connected the parties are to the county where the court is located.
- The geographic area over which the authority to interpret and apply the law extends (e.g., the court's authority to decide cases, the prosecutor's authority to issue criminal charges, etc.). (See also venue.)
- In delinquency and abuse/neglect cases, the court's authority to enter orders affecting a youth and his/her parents or household.

JURY

- Persons selected according to law and sworn to inquire into and declare a verdict on matters of fact.
- District court and civil cases (including Family Court) use 6-person juries. Felony cases use 12-person juries.

JUVENILE

- Youth under the age of 17.

JUVENILE CODE [1939 PA 288; MCL 712A.1 *et seq*] ^{New}

- The set of laws governing juvenile delinquency proceedings, designated proceedings, and child protective proceedings.

JUVENILE COURT

- Until 01/01/1998, Juvenile Court was a division of the Probate Court, and was responsible for all juvenile delinquency offenses. Since 01/01/1998, these cases are prosecuted in the Family Division of Circuit Court.

JUVENILE DELINQUENCY PROCEEDINGS

- Proceedings in the Family Division of the Circuit Court regarding a minor under age 17 who has:
 - committed an offense that would be a crime if committed by an adult, including a misdemeanor traffic offense;
 - deserted his or her home;

- been absent from school;
- repeatedly violated school rules; or,
- disobeyed the reasonable and lawful commands of his or her parents.

K

KIDNAPPING [MCL 750.349]

- *Penalty:* Felony --- up to Life or any term of years.
- Knowingly restraining a person with the intent to (i) hold the person for ransom or hostage, (ii) use the person as a shield or hostage, (iii) engage in criminal sexual contact with the person, (iv) take the person out of the state, or (v) hold the person in involuntary servitude.
- See also Unlawful Imprisonment

KIDNAPPING (Parental)

- *Penalty:* Felony --- up to 366 days incarceration and/or \$2,000 fine
- Kidnapping is the unlawful taking and carrying away of a person by force and against his/her will. Parental Kidnapping occurs when a natural or adoptive parent takes or retains a child for more than 24 hours with intent to detain or conceal the child from the parent who has legal custody or visitation rights at the time, the person who adopted the child, or the person who had lawful charge of the child.
- **NOTE:** *The defendant may raise an affirmative defense that he/she took the child to protect the child from an immediate and actual threat of physical or mental harm, abuse or neglect.*

KILLEBREW PLEA

- Based on *People v Killebrew*, 416 Mich 189 (1992).
- A "Killebrew plea" allows a defendant to enter a conditional guilty which can be withdrawn if the judge's eventual sentence falls outside sentencing terms negotiated by the prosecutor and defense.
- Normally, defendants plead guilty without any legal expectation of a specific sentence, and judges are not bound by a sentencing agreement between the parties. But in "Killebrew agreements", the judge is advised before the plea of the sentencing terms approved by both sides and has allowed the defendant to enter this rare, conditional plea. The judge is not a party to the plea agreement and may later impose any lawful sentence. But, because the defendant was induced to plead guilty by an expected sentence, he may withdraw his plea if he does not receive that sentence.
- See also *Cobbs Plea*.

L

LARCENY

- Stealing. The unlawful taking and carrying away of property of another with the intent to keep it from the owner. This is a specific intent crime, and cannot occur accidentally. The crime is completed when the defendant actually or constructively possesses or controls the property, moves or hides it, and specifically intends to permanently deprive the owner of it.

LAWYER

- An attorney. A person authorized to practice law in a state to represent the legal interests of another person.

LEADING QUESTION

- A question that instructs a witness how to answer, or suggests which answer is desired. These questions are usually prohibited on direct examination.

L.E.I.N.

- **Law Enforcement Information Network.**
- A computerized communication network accessed by law enforcement agencies. It contains information on such things as PPOs, pretrial release conditions in criminal cases, outstanding arrest warrants, driving records, and automobile registration.
- LEIN (pronounced "lean") maintains a database that includes active arrest warrants, active PPOs, pre-trial release conditions, driving records, automobile registrations, felony and high misdemeanor convictions, etc.

LIFE OFFENSE

- one or more of the following offenses allegedly committed by a juvenile in which the prosecuting attorney may authorize the filing of a criminal complaint and warrant instead of proceeding in the juvenile court:
 - assault with intent to commit murder
 - assault with intent to rob while armed
 - attempted murder
 - first-degree murder
 - second-degree murder
 - first-degree criminal sexual conduct
 - armed robbery
 - possession of or manufacture, delivery, or possession with intent to manufacture or deliver 650 grams or more of any schedule I or II controlled substance.

M

MAGISTRATE

- Used generally, this title means a judge. In Michigan, it is a quasi-judicial officer in a district court who has the authority to set bail, accept bonds, conduct informal hearings on civil infractions, accept guilty pleas and impose sentences for traffic violations, and perform marriage ceremonies.

MALICE

- Intent to commit a wrongful act without just cause or excuse. Evil intent, motive or purpose.

MANSLAUGHTER

- Can be a lesser-included offense to murder if the defendant acted out of passion or anger brought about by adequate cause and before the defendant had a reasonable time to calm down.
 - **Voluntary Manslaughter:** (Felony --- 15 years and/or \$7,500 fine) --- defendant caused a death + intended to kill or knowingly created a very high risk of death or great bodily harm knowing that death or such harm would be the likely result.
 - **Involuntary Manslaughter:** (Felony --- 15 years and/or \$7,500 fine) --- defendant caused a death + acted in a grossly negligent manner *or* intended to injure or commit an assault/battery. "Intent to kill" is not an element.

MARIJUANA / MARIJUANA

- a Schedule 4 controlled substance.
 - **Possession of Marijuana** (Misdemeanor: 1 year and/or \$2,000 fine, license sanctions)
 - **Use of Marijuana** (Misdemeanor: 90 days and/or \$100 fine, license sanctions)

MENS REA

- The state of mind of the defendant that the prosecution must prove in order to establish criminal responsibility. Criminal intent. Some crimes require proof of a "specific intent" (i.e., in larcenies, the prosecutor must prove the defendant's specific intent to steal). Other "general intent" crimes require no proof of intent.
- Pronounced *menz RAY-uh*.

MICHIGAN COMPILED LAWS (MCL)

- Volumes of books containing the official version of Michigan statutes enacted by the state Legislature. MCLs are published by the Legislative Service Bureau.

MICHIGAN COURT RULES (MCR)

- Rules adopted by the Michigan Supreme Court to govern procedures in all courts.

MICHIGAN RULES OF EVIDENCE (MRE)

- Rules adopted by the Michigan Supreme Court to govern admissibility of evidence in all courts.

MINOR

- A youth under a law's age of majority. A youth is considered a minor regarding criminal offenses until his 17th birthday, and are handled in Juvenile Court; offenses committed after his 17th birthday are handled in District Court and Circuit Court. Some crimes have substantive age limits: alcohol offenses have an age of majority of 21, tobacco offenses have an age of majority of 18, etc.

MIRANDA WARNING

- A warning given by police before custodial interrogation. It advises the person that he does not have to talk to police, and his silence will not be held against him, and his right to legal counsel before talking to police.
- Refers to a US Supreme Court decision: *Miranda v Arizona*, 384 US 436 (1966).

MISDEMEANOR

- Crime carrying maximum jail time of one year or less.
- **Exception:** a "high court" misdemeanor (e.g., *Resisting/Obstructing a Police Officer*) can carry up to 2 years in prison, but is not labeled a "felony". High-court misdemeanors are handled procedurally like a felony.

MISTRIAL

- An erroneous or invalid trial; a trial declared by a judge to be defective and void, generally due to prejudicial error in the proceedings or a "hung jury" (a jury that could not agree upon a verdict).

MOTIVE [CJ12d 4.9]

- Whether the defendant had a reason to commit the alleged crime ... but a reason to commit the crime, by itself, is not enough to find a person guilty of a crime.
- Motive is not an element of a crime that a prosecutor must prove.

MURDER

- In Michigan, all murder is either in the first or second degree.
 - **First degree murder:** [MCL 750.316] (Felony: mandatory life; no parole) -- "felony murder" (murder committed in the course of another felony), murdering a peace officer in the line of duty, or "premeditated murder". Murder cannot occur accidentally, the defendant must have intended to kill. Premeditation means that the defendant had time to consider the pros and cons of the killing beforehand.
 - **Second degree murder:** [MCL 750.317] (Felony: Life or any term of years) -- causing death + intending to kill or do great bodily harm or knowingly creating a very high risk of death or great bodily harm knowing that death or such harm would be the likely result of his/her actions.

- **Open Murder:** [MCL 767.71] -- Michigan law does not require a prosecutor to choose between First Degree or Second Degree Murder when issuing a complaint, or even at trial. A prosecutor may charge "Open Murder", which is a combination of First and Second Degree Murder, and the jury may determine the appropriate degree based on the proofs.

N

NO CONTEST PLEA

- A plea in which the facts supporting the crime's elements come from a source other than the defendant's own words in court (generally, from police investigation reports, witnesses statements, photographs, etc.). A "nolo" plea is used when the defendant cannot recall his criminal actions (sometimes due to intoxication), or his verbal plea from a traditional guilty plea would be used in a potential civil law suit. Regardless, the plea is treated the same as a guilty plea, and the defendant is treated by a sentencing judge the same as if he was convicted via a guilty plea or trial verdict.

NOLLE PROSEQUI

- Latin term meaning "unwilling to prosecute". Form filed by a prosecutor to dismiss the prosecution of a particular defendant. A "*nolle pros*" usually means the end of the matter, but can be filed "without prejudice" so that the prosecutor may reopen the case against the defendant at a later date. This device may not be used to deny the defendant's constitutional right to a speedy trial.

NOLO CONTENDERE

- Latin term meaning "I will not contest it.". See *No Contest Plea*.

O

OBJECTION

- Taking exception to a statement or procedure in trial. Used to call the court's attention to improper evidence or procedure.
 - Objection Overruled - a judge's rejection of an objection as invalid.
 - Objection Sustained - support or agree with an objection. Used by the judge to indicate agreement with a motion or request.

OFFENSE

- A crime or ordinance violation. Generally implies an act infringing public as distinguished from private rights.

- In regard to minors, an offense is any act that violates provisions of the Juvenile Code and places the person committing the act in the jurisdiction of the juvenile court. Does not include civil infractions.

180 Day Rule

- A rule that allows people who are in *county jails* awaiting trial on felony charges for 180 days to be released on their own recognizance if the delay has not been caused by the accused or the accused's attorney.
- A rule that requires all pending charges against a *state prison* inmate be brought to trial in 180 days, or be dismissed with prejudice.

ORDER

- Decision of a court made in writing.

ORDINANCE

- A local law or regulation enacted by the governing body of a municipality or county. It has no effect outside that village, city, township or county.

OUIL (Operating Under the Influence of Intoxicating Liquor) [MCL 257.625]

- Commonly called "drunk driving". A person operating a motor vehicle on a public road, parking lot or other place open to the general public while being significantly or substantially affected by intoxicating liquor, controlled substances, or both.
- Penalties:
 - 1st offense *penalty*: Misdemeanor --- up to 90 days, \$500 fines, community service, 6 points assessed on the driver's record, mandatory 6 month license suspension
 - 2nd offense *penalty*: Misdemeanor --- up to 1 year, \$1,000 fines, community service, 6 points assessed on the driver's record, mandatory 1 year license revocation
 - 3rd offense *penalty*: Felony --- 1-5 years in prison; fines; 6 points; license revocation.

OVERRIDE

- A judge's decision to not allow an objection to prevail. Also, a decision by a higher court that a lower court's decision was in error.
- See also *sustain*.

P

PAROLE

- Conditional release from prison of a convict before the expiration of a felony sentence. The parolee (the released person) need not serve the remainder of his incarceration, unless he

violates terms of his release. The parolee is under the supervision of a state parole officer during the parole period.

PATERNITY

- Establishing legal "fatherhood". [See our Family Support web page for more information about Paternity cases.]

PERJURY

- Knowingly making a material false statement about a material fact while under oath to tell the truth.

PERSONAL PROTECTION ORDER [MCL 600.2950 - MCL 600.2950a]

- Injunctive order to prevent reoccurrences of acts or threats of assault and harassment.

PETITION

- In juvenile delinquency or child protective proceedings before the Family Division of Circuit Court, a petition is the document in which the charged offenses or allegations are set forth. The petition includes the JC01 and JC02 forms, plus additional text pages of allegations (if needed).

PETITIONER

- The person signing or filing a petition.

PLAINTIFF

- Person who originally filed a court action.

PLEA

- Defendant's response to a criminal charge (guilty, not guilty or *nolo contendere*).

PLEA AGREEMENT / BARGAIN

- A negotiated agreement between the Prosecutor and the defense counsel for the defendant to plead guilty or no-contest under certain terms and conditions. The agreement could include the defendant pleading to all pending charges with a sentence agreement, or pleading to less than all of his pending charges, or pleading to a less serious charge, or pleading guilty to one or more pending charges in exchange for dismissal of other unrelated charges. All plea agreements must be approved by the judge. Plea agreements are a means of arriving at a reasonable disposition without the necessity of a trial.

PRECEDENT

- Court decision in an earlier case with facts and law similar to a dispute currently before a court. Precedent will ordinarily govern the decision of a later similar case, unless a party can show that it was wrongly decided or that it differed in some significant way.

PRE-EXAM CONFERENCE

- Scheduled meeting between the Prosecutor and defendant's attorney days before the preliminary examination date, to discuss plea bargains, whether the "prelim" will be held or waived to circuit court, etc.
- This hearing is not required under the Michigan Court Rules. But they have been used locally in many counties to significantly reduce the number of cases scheduled for Preliminary Examinations, to reduce the numbers of subpoenas issued and served for prelims, etc. The judge does not actively participate in pre-exam conferences.

PRELIMINARY EXAMINATION

- District Court evidentiary hearing for felonies where the Prosecutor must present evidence amounting to at least probable cause that the charged felony crime(s) in fact occurred and that the defendant committed it (them). Generally, the Prosecutor presents just a fraction of his total evidence and witnesses. The defendant (or his attorney) can cross-examine the People's witnesses, and present his own proofs to refute the People's evidence. If the Prosecutor meets his burden of proof, the case is "bound over" to Circuit Court for arraignment on an information, and possible trial.
- **14-Day Rule:** defendants have a statutory right to have their Preliminary Examination within 14 days after their arraignment. [See MCL 766.4, MCR 6.104(E)(4).]

PRELIMINARY HEARING

- The first stage in a juvenile delinquency or child protective proceeding when the child is in custody. An informal proceeding in the Family Division of Circuit Court in which the juvenile &/or parents and attorney are informed about the allegations in the petition. Testimony by the petitioner may be required to determine if the juvenile should not be placed with his parents pending further action on the petition.

PRE-TRIAL CONFERENCE

- Scheduled meeting between the Prosecutor and defendant (or defendant's attorney), generally weeks before the trial date, to discuss plea bargains, trial issues, etc. The judge usually does not actively participate in pretrial conferences, but may do so to assist in expediting resolution of trial issues, or simplifying the trial.

PRIMA FACIE

- Evidence that are sufficient to prove a fact, or facts sufficient to establish a party's right to legal relief, if no evidence to the contrary is offered.

PRIOR BAD ACT

- See MRE 404(b).

PROBABLE CAUSE

- Facts and circumstance sufficient to convince a person of reasonable caution that an offense has been committed; mere suspicion or belief, unsupported by facts or circumstances, is

insufficient. A search warrant may be authorized, or a warrant-less arrest may be made, upon probable cause.

PROBATION

- Discretionary sentencing option for most misdemeanor and felony convictions where the defendant avoids some/all incarceration, and is released back into the community under the supervision of a probation officer for a specific time period, with rules to follow. Some rules are standard (i.e., to not violate any more laws), and others are specific to the defendant or crime (i.e., alcohol counseling when convicted of OUIL). If the defendant violates any term of probation, the assigned probation officer (or the Prosecutor) can ask the sentencing judge to impose additional penalties after a probation violation hearing.

PROBATION ORDER

- An official written directive from a court ordering that a criminal defendant is sentenced to a term of probation. The document is signed by the judge and the defendant. It includes all legal conditions (both standard and special conditions) with which the defendant must comply during probation, including payment of fines, costs, restitution, etc.

PRO BONO

- Legal services provided to a client free of charge.

PRO PER / PRO SE

- Person who represents himself/herself in court without an attorney. The term comes from the Latin phrase *in propria persona*.

PROSECUTING ATTORNEY

- The term Michigan uses for a Prosecutor.

PROSECUTOR

- Elected or appointed official vested with authority by a constitution, statute or ordinance to represent the public interest and take legal action against persons violating state or local criminal laws. Michigan's prosecutors are known as "Prosecuting Attorneys". In other states they are called District Attorneys, State's Attorneys, County Attorneys, Commonwealth's Attorneys, or other titles.

Q

QUASH

- Nullify, void or declare invalid. To overthrow or vacate.

R

R&C

See Receiving & Concealing Stolen Property.

RAPE

See Criminal Sexual Conduct.

REASONABLE DOUBT

- Fair, honest doubt based on the evidence produced at trial (or missing from the proofs). A reasonable doubt must be based on reason and common sense, not on conjecture, speculation, possibilities or imaginary scenarios.

RECEIVING & CONCEALING STOLEN PROPERTY [MCL 750.535]

- Buying, receiving, possessing, concealing or aiding in the concealment of stolen, embezzled or converted money, goods or property, knowing that it was stolen, embezzled or converted.
- Michigan defines 3 levels of R&C:
 - **\$20,000 or more:** Felony -- up to 10 years and/or \$15,000 fine (or 3x property's value)
 - **\$1,000 or more but less than \$20,000:** Felony -- up to 5 years and/or \$10,000 fine (or 3x property's value)
 - **\$200 or more but less than \$1,000:** Misdemeanor -- up to 1 year and/or \$2,000 fine (or 3x property's value)
 - **Under \$200:** Misdemeanor -- up to 93 days and/or \$500 fine (or 3x property's value)
- A prosecutor may charge one higher level of R&C if the defendant has been previously convicted of R&C or Attempted R&C.
- The values of property purchased, received, possessed, or concealed in separate incidents pursuant to a scheme or course of conduct within any 12-month period may be aggregated to determine the total value.
- The value element is proven by the property's fair market value (the highest price for which it would have sold in the open market).
- A dealer in or collector of merchandise or personal property (or that person's agent, employee, or representative) who fails to reasonably inquire whether the person selling or delivering the stolen, embezzled, or converted property to the dealer or collector has a legal right to do so, or who buys or receives stolen, embezzled, or converted property that has a registration, serial, or other identifying number altered or obliterated on an external surface of the property, is presumed to have bought or received the property knowing the property is stolen, embezzled, or converted. This presumption is rebuttable.

RELEVANCE

- Evidence having any tendency to make the existence of a fact that is of consequence to the determination of the action more or less probable than it would be without the evidence. MRE 401.

REMAND

- To send a case back to the court from which it came for further proceedings. This typically happens when an appellate court sends a case back to a lower court with instructions on further proceedings.

RESISTING / OBSTRUCTING A POLICE OFFICER

- Knowingly and intentionally obstructing, resisting, opposing, assaulting, beating or wounding a law enforcement officer who is engaged in his lawful acts or attempting to maintain the peace. The defendant's acts must have actually interfered with the officer in carrying out those duties.
- *Penalty:* "High court" misdemeanor punishable by up to 2 years incarceration or a \$1,000 fine.

RESTITUTION

- Payments ordered by the judge to repay victims for economic losses incurred as the result of the crime (property loss or injuries). Does not include compensation for pain and suffering, emotional distress or other non-economic damages that can result in compensation through a civil law suit.

RETAIL FRAUD [MCL 750.356c & .356d]

- Stealing merchandise (items offered for sale to the public) while the store is open for business, "price switching", or trying to get a fraudulent refund from a store. Retail Fraud is a theft crime requiring proof that the item was taken intentionally (not accidentally), with the intent to steal.
- Michigan defines 3 degrees of retail fraud:
 - **1st Degree (\$1,000 or more stolen; or 2nd Degree + prior conviction):**
Felony -- up to 5 years and/or \$10,000 fine (or 3x merchandise's value)
 - **2nd Degree (\$200 - under \$1,000 stolen; or 3rd Degree + prior conviction):**
Misdemeanor -- up to 1 year and/or \$2,000 fine (or 3x merchandise's value)
 - **3rd Degree (under \$200 stolen):**
Misdemeanor -- up to 93 days and/or \$500 fine (or 3x merchandise's value)
- In addition to criminal penalties, a shoplifter may also be subject to civil penalties demanded by the store. The penalties include the full retail price of unrecovered property or recovered property that is not in salable condition, and civil damages of 10 times the retail price of the property, but not less than \$50.00 and not more than \$200.00.

S

SEARCH WARRANT

- Written order from a judge or magistrate that an officer may search a specific location for specified items which, if found, can be seized by the government for possible use in court as evidence. Search warrants are issued upon a showing of probable cause that the items are in the place to be searched, and are evidence of a crime.
- Exceptions to the need for a search warrant include:
 - investigative stops and *Terry* pat-downs;
 - plain feel (detecting the evidence through the sense of touch during an authorized protective pat-down search; the item's incriminating character must be immediately apparent)
 - incident to arrest
 - automobile searches
 - consent searches
 - plain view (where the incriminating character of the evidence is immediately apparent, and officer had a lawful right of access to the object)
 - administrative searches
 - special needs searches (school searches, prisoner/probation searches)
 - exigent circumstances, like (i) hot pursuit of a fleeing felon, (ii) preventing the imminent destruction of evidence, (iii) precluding a suspect's escape, (iv) rendering emergency aid.
 - searches by private persons (who are not acting as agents of law enforcement in order to conduct the search)

SELF DEFENSE

- Legally-justified use of force to protect one's self, another person, or property against some injury attempted by another person ... the right to repel force with force ... the defendant (i) must have honestly and reasonably believed that he had to use force for protection, (ii) may use only the type and degree of force that seems necessary for protection at the time based on the circumstances known to him, (iii) must not have acted wrongfully and brought on the assault (i.e., provoked the attack)
- In Michigan, a Prosecutor has the burden of *disproving* a defendant's self-defense claim beyond a reasonable doubt.

SENTENCE

- Punishment ordered by a court for a defendant convicted of a crime.
 - *Indeterminate Sentence* - a sentence of imprisonment to a specified minimum and maximum period of time as authorized by statute, which is subject to termination by a parole board or other authorized agency after the prisoner has served the minimum term.

SENTENCING GUIDELINES

- Criteria adopted by the Legislature that determine an appropriate range a judge may impose for the minimum sentence on felonies and high court misdemeanors (i.e., the "60" in a "60 to 120 month" sentence). The purpose of the guidelines is to ensure conformity of sentences across the state. "Prior Record Variables" (PRVs) and "Offense Variables" (OVs) are calculated and applied to a Sentencing Range Grid. A judge may "depart" from the sentencing guideline range (on either the high- or low-side) only where there are "substantial and compelling" reasons to do so.
- The Sentencing Guidelines can be seen at the Michigan Judicial Institute web site.

SEX OFFENDER [MCL 28.721 - 28.732]

- Person convicted as an adult or adjudicated as a juvenile of CSC, Indecent Exposure, Gross Indecency, or other similar enumerated crimes. The person must register with the Michigan State Police (and verify their home address quarterly) for a minimum of 25 years.
- Michigan's searchable database of adult sex offender registrants is maintained by the Michigan State Police.

SHOPLIFTING

See Retail Fraud.

SHOW CAUSE HEARING

- Court hearing held so a person can explain why (s)he should not be considered in violation of a specific court order (i.e., a defendant violating a term of the probation order).

SPECIFIC INTENT

- Acting with intent to cause a particular result ... a special mental element that must be proven for some crimes. For example, larceny requires proof that the defendant specifically intended to steal the victim's property (i.e., to permanently deprive the owner of the property); if the defendant unknowingly possessed the victim's property or was truly borrowing it temporarily, no theft/larceny occurred ... Specific Intent may be proved by what the defendant says, does, how he does it, etc.

STALKING [MCL 750.411h & i]

- **Stalking** is (a) two or more willful acts of (b) continuing harassment or un-consented contact (c) that would cause a reasonable individual to suffer emotional distress, (d) that actually cause the victim to suffer emotional distress, (e) that would also cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed or molested, and (f) that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed or molested. Note: **ALL** of these elements must be present for "stalking" to be proven.

Penalty: Misdemeanor --- 1 year and/or \$1,000 fine, up to 5 years probation;

- "*Continuing harassment*" means repeated (i.e., more than one) instances of un-consented conduct that would cause a reasonable person emotional distress, and that actually causes emotional distress. (A single incident made up of a series of continuous acts, each immediately following the other, is not "stalking".)
- "*Emotional distress*" means significant suffering or distress that may result in, but does not necessarily require, medical or other professional treatment or counseling.

- *"Un-consented contact"* means contact that you do not want or contact that you expressed that you wanted to avoid. This includes, but is not limited to, someone following you, confronting you at your workplace, phoning you, sending you mail, or placing objects on your property.
- **Aggravated Stalking:** Stalking (i) in violation of a restraining order of which the suspect has actual notice; or (ii) in violation of a condition of bond, probation or parole; or (iii) credible threats against the victim, a member of the victim's family or household; or (iv) by a person previously convicted of Stalking.
Penalty: Felony --- 5 yrs &/or \$10,000 fine; probation from five years to any additional term of yrs.
- **Stalking a minor** is a 5-year felony. **Aggravated stalking of a minor** is now a 10-year felony.
- Michigan's Stalking statute was found to be constitutional by the US 6th Circuit Court of Appeals (02/05/2001). Read the Opinion in *Jerry Lee Staley v Kurt Jones*.

STANDING

- Party's right to make a legal claim, or to seek judicial enforcement of a right or duty.

STATUTE

- Law passed by a legislature.

STATUTE OF LIMITATIONS

- A time limit on the right to seek relief in court. Deadline set by law for filing a criminal charge or civil lawsuit after an event occurred that is the source of the charge or claim.
- In criminal cases, there are several mandatory time limits to commence prosecution: no time limit for Murder; 10 years for Assault with Intent to Murder, Conspiracy to Murder, Kidnapping or Extortion; 6 years for other felonies or misdemeanors.

STIPULATION

- An agreement between opposing parties on any matter relating to the case, including case facts. Courts must approve stipulations to take legal effect.

SUBPOENA

- Court order requiring a person to appear in court and give testimony as a witness, and/or to produce documents. An employer cannot act upon or threaten to discharge or discipline a witness for missing work to testify in court when subpoenaed.

SUPPRESS

- Legal bar to admitting evidence at a trial or other court proceeding.

SUPREME COURT

- Highest appeals court in Michigan.

- An appellant files an application for "leave to appeal" in the Supreme Court, which the Court can grant (accept) or deny (reject) at its discretion. If an application is granted, the Supreme Court will hear the case; if denied, the decision made by the lower court remains unchanged.
- The Supreme Court usually selects cases involving important constitutional issues and questions of public policy. The Supreme Court also has administrative duties --- general administrative supervision of all courts in the state, establishing rules for practice and procedure in all Michigan courts, etc.
- The Supreme Court consists of seven justices: the chief justice and six associate justices. The justices are elected to serve 8-year terms. Every two years the justices vote to elect the chief justice.
- Visit the Michigan Supreme Court web site at courts.michigan.gov/supremecourt/.

SUSTAIN

- A judge's decision to allow an objection or motion to prevail.
- See also *overrule*.

T

TESTIMONY

- Evidence presented orally and under oath by witnesses during trials or other court proceedings.

TRANSCRIPT

- Official record of the testimony taken in a trial or hearing. A written, word-for-word (verbatim) record of what was said.

TRUTH IN SENTENCING

- Legislation requiring offenders to serve their entire minimum sentence without reduction for good behavior. These prisoners may also have their minimum sentence extended for "bad behavior" while in prison. They are not eligible for placement in a corrections center or on electronic monitoring ("tether").
- Michigan's law went into effect 12/15/1998 for most serious crimes, and now applies to all felonies committed after 12/15/2000.

TURNER HEARING

- Based on *People v Turner*, 390 Mich 7 (1973), a hearing to determine whether a defendant was entrapped by law enforcement officials into committing an offense.

U

UBAL (Operating with an Unlawful Blood Alcohol Level) [MCL 750.625]

- Same penalties as OUIL
- Commonly called *Per Se* drunk driving. A person must be operating a vehicle with at least a 0.10% blood-alcohol concentration. Unlike OUIL, it is irrelevant whether or not the driver is affected by the alcohol. If convicted, the penalties are identical to a conviction for OUIL.

UDAA (Unlawfully Driving Away an Automobile) [MCL 750.413]

- *Penalty:* Felony --- up to 5 years.
- Car theft. Willfully and without authority, taking possession of and driving or taking away (or assisting in or being a party to such taking possession, driving or taking away) of any motor vehicle belonging to another. Unlike Joyriding, U.D.A.A. requires proof of theft.

UNLAWFUL IMPRISONMENT [MCL 750.349b]

- *Penalty:* Felony --- up to 15 years and/or \$20,000 fine.
- (i) Knowingly restraining a person by means of a weapon or dangerous instrument, (ii) secretly confining and knowingly restraining a person, (iii) knowingly restraining a person to facilitate the commission of a felony, (iv) knowingly restraining a person to facilitate flight after the commission of a felony.
- See also Kidnapping

UTTERING & PUBLISHING [MCL 750.249]

- *Penalty:* Felony --- up to 14 years.
- Knowingly presenting a false, altered, forged, counterfeited or fictitious instrument (e.g., check, money order, credit sales slip) with an intent to defraud or cheat.
- The instrument need not be accepted as good, or that an actual loss occurred. The crime focuses on it being offered as valid, directly or indirectly, by words or actions.

V

VACATE

- To set aside. Example: a court may vacate an earlier order.

VENUE

- Geographic location (e.g., city or county) where an event occurred. A "change of venue" happens when a case is moved to a court in another county or to a court having other jurisdictional powers ... generally because the case should have been filed there originally, or for

the convenience of the parties/witnesses, or because a fair trial cannot be had in the original court's location.

- Juvenile delinquency cases are routinely transferred to the county where the minor lives because that "home county" will ultimately be responsible for overseeing efforts to rehabilitate the child.

VERDICT

- Decision of a jury or a judge on the issues submitted to the court for determination.

VICTIM

- Person or entity who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a crime.

VOIR DIRE

- Process of jury selection, generally involving the judge and attorneys asking potential jurors about their experiences and beliefs. The purpose is to determine if the jurors are appropriate for sitting on the case at hand, particularly their willingness to decide the case only on the evidence presented in court. This French term (pronounced "vwa dear") means "to speak the truth".

W

WADE HEARING

- Based on *US v Wade*, 388 US 218 (1967), a pre-trial hearing to test the fairness of a line-up. The issue is whether to admit or suppress an identification of an accused that resulted from the line-up.

WAIVER

- Intentionally giving up a right. Example: a defendant waiving his right to remain silent to be interviewed by police.

WAIVER OF JURISDICTION

- A process by which a juvenile may be processed or convicted as an adult.

WALKER HEARING

- Based on *People v Walker*, 374 Mich 331 (1965), an evidentiary hearing on a defendant's motion to suppress his incriminating statement to the police. The hearing focuses on the totality of the circumstances surrounding the statement, including whether it was voluntarily and intelligently made, whether police advised the defendant of his *Miranda* rights and the defendant waived the rights, etc.

WARRANT

- Court order authorizing an arrest or search.

WARRANTLESS ARREST

- A police officer may arrest a person without a warrant under the following circumstances:
 - a misdemeanor or felony is committed in the officer's presence [MCL 764.15];
 - the officer has probable cause to believe that a crime punishable by imprisonment for more than 92 days has been committed, even outside of his presence [MCL 764.15];
 - the officer has probable cause to believe that domestic violence has occurred [MCL 764.15a];
 - the officer has probable cause to believe that a PPO violation [MCL 764.15b] or domestic assault no-contact bond condition violation [MCL 764.15e] has occurred;
 - the officer has a reasonable belief that the suspect was the driver of a motor vehicle at the time of an accident and was driving while intoxicated or impaired [MCL 764.15].

WITH PREJUDICE

- A dismissal "with prejudice" forever bars the same charge arising from the same incident from being brought against the same defendant again.

WITHOUT PREJUDICE

- A dismissal "without prejudice" allows a prosecutor to re-file the same charge arising from the same incident against the same defendant again.

WITNESS

- Person who comes to court (sometimes by subpoena) and swears under oath to give truthful evidence about information he/she has seen, heard or otherwise experienced.
 - *Hostile Witness* - a witness who exhibits antagonism toward the attorney or party during direct examination. The trial judge may then permit the attorney or party to question the witness with leading questions.

WORK RELEASE

- Probation program where the defendant is permitted to maintain employment while residing in jail. The defendant leaves jail on work days only for his work hours, plus limited travel time.

Y

Y.T.A. [status]

- See Holmes Youthful Trainee Act.