

Crosby Remands¹ Quick Reference Guide

Procedure for Handling *Crosby* Remands Under *Lockridge*

If an appellate court has remanded a case for possible resentencing under *Lockridge* and *Crosby*:

- (1) Read the appellate order or opinion to determine if any special instructions are included. (Typically, the language of the order or opinion will simply track the requirements set out in *Lockridge*.)
- (2) Determine whether resentencing is required.
 - (a) Defendant must be given the opportunity to advise the court (in writing) that he or she does NOT seek resentencing. Defendant must assert his or her right to avoid resentencing “before the trial court expresses its intent to resentence the defendant.”²
 - (b) The court must appoint counsel for the defendant if he or she is unrepresented.³ The court must obtain the views of counsel, but no hearing is required and defendant need not be present.
 - (c) The court must determine whether the sentence would have been materially different if the court had not been constrained by the guidelines range, based solely on circumstances existing at the time of the original sentencing.
 - (d) When the original sentencing judge is unavailable, the newly-assigned judge must allow the defendant an opportunity to appear before the court and be heard before determining whether to resentence the defendant.⁴
- (3) If you determine that resentencing is required because a materially different sentence would have been imposed if the guidelines had been merely advisory and not mandatory at the time of sentencing, schedule a sentencing hearing and resentence defendant.
 - (a) Defendant must be present at resentencing, and all the usual procedural rules for sentencing apply. See [MCR 6.425](#).
 - (b) The guidelines range MUST be determined, using a preponderance-of-the-evidence standard.

¹ *United States v Crosby*, 397 F3d 103 (CA 2, 2005). See *People v Lockridge*, 498 Mich 358, 395-399 (2015).

² *People v Odom*, 327 Mich App 297, 312 (2019).

³ *People v Howard*, 232 Mich App 239, 247 (2018).

⁴ *People v Howard*, 232 Mich App 239, 253 (2018).

(c) The guidelines range is advisory only, but **MUST** be considered by the trial court.

(d) The court need not articulate substantial and compelling reasons to depart from the guidelines range; however, a departure sentence must be reasonable. Under *People v Steanhouse*,⁵ this means proportionate under the principles expressed in *People v Milbourn*⁶ and its progeny.

(e) For purposes of appellate review, the court should provide an explanation for the sentence imposed.

⁵ *People v Steanhouse*, 500 Mich 453, 471 (2017).

⁶ *People v Milbourn*, 435 Mich 630 (1990).