

Notes about precedent cited in this document:

- **Partially reversed, overruled, or vacated Court of Appeals opinions.** For information on the precedential value of an opinion with negative subsequent history, see our [note](#).
- **Unpublished Court of Appeals opinions.** Unpublished opinions are not precedentially binding under the rule of stare decisis. [MCR 7.215\(C\)\(1\)](#).

Offense Variable 4*
Circumstances Warranting a Score of 10 Points

Evidence and Record Source	Case
Original victim impact statement indicated that the victim sought professional help because of her anxiety caused by the bank robbery, and at resentencing the victim indicated that even after 8 years she still felt anxious whenever she entered a bank.	<i>People v Odom</i> , 327 Mich App 297, 306 n 3 (2019)
Victim and victim’s father provided impact statements that reported the victim’s personality changed and he “became angry, afraid, distrustful, defensive, and hypervigilant” after the assault, and the victim slept with a knife under his bed for awhile because he was fearful , suffered flashbacks and panic attacks when reminded of the assault, was in counseling for 1 1/2 years, and attended therapy .	<i>People v Lampe</i> , 327 Mich App 104, 114-115 (2019)
Victim’s detailed testimony regarding the terror she experienced during a lengthy assault —during which her ex-husband strangled her with a belt and attempted to suffocate her with a pillow in the presence of her young child—and her fear for the fate of her children , which the defendant exploited to increase her suffering; testimony of a social worker and police officers that the victim appeared too frightened to speak to them when they visited the family home and refused to make eye contact in an interview at the police station; and victim’s statement at sentencing, and indication in the PSIR, that she and her children were actually in professional counseling after the assault	<i>People v Rosa</i> , 322 Mich App 726, 745 (2018)

* This chart was prepared for purposes of the Michigan Judicial Institute’s New Judges Seminar, January 11, 2017.

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Circumstances Warranting a Score of 10 Points

<p>Victim’s testimony that she was afraid she was going to die, wanted to look at pictures of her children as she died, testimony about “all of the things that happened” that the court heard firsthand from the victim and the court’s observations in the courtroom; the victim impact statement indicating the victim was “seeing a therapist through a domestic violence shelter because she was feeling unlovable and disgusting because of the abuse she endured,” that she has nightmares and flashbacks, and “a daily struggle with emotional stability,” and testimony that the victim was crying, shaking, and so upset she had trouble communicating after she escaped from the defendant</p>	<p><i>People v Urban</i>, 321 Mich App 198, 215-216 (2017), vacated in part on other grounds 504 Mich 950 (2019).</p>
<p>Testimony of victim of criminal sexual conduct “that the assault was traumatic for her,” that “everyday life was harder now,” and that she suffered from “continuing memory loss[;]” trial court’s observations that victim was reluctant to testify, was fidgety and nervous while testifying, and “was experiencing some digestive issues since the incident[;]” evidence that victim was on disability for anxiety and posttraumatic stress disorder (PTSD)</p>	<p><i>People v Wellman</i>, 320 Mich App 603, 609-612 (2017) (extending to OV 4 the reasoning of <i>People v Calloway</i>, 500 Mich 180, 182 (2017), which held that OV 5 did not require that a family member be presently seeking or receiving professional treatment or carrying the intent to do so)</p>
<p>Statements of victim of uttering and publishing that the past three years had been a struggle for him psychologically and that when the defendant committed the crimes, everything changed for the victim; trial court’s observation of victim’s demeanor during trial (trial testimony; victim’s letter to trial court)</p>	<p><i>People v Schrauben</i>, 314 Mich App 181, 197-198 (2016)</p>
<p>Statements of minor victim of unlawful imprisonment that he was in counseling for posttraumatic stress disorder and that he was experiencing problems with “increased anger and memory”; statement of another minor victim that he had consulted a therapist (trial testimony)</p>	<p><i>People v Bosca</i>, 310 Mich App 1, 51 (2015)</p>
<p>Child sexual assault victim’s statements that she felt confusion, emotional turmoil, anger, guilt, and the inability to trust others; victim’s father’s statements that victim was suffering emotional difficulties and that the victim would eventually receive counseling, although the victim testified that she did not want counseling (trial testimony)</p>	<p><i>People v Armstrong</i>, 305 Mich App 230, 247-248 (2014)</p>

Offense Variable 4*

Circumstances Warranting a Score of 10 Points

<p>Statement of one victim of the armed robbery of a store that the experience was traumatic and he had bad dreams about it; statement of another victim, “Not to mention what you took from us psychologically”; and statement of a third victim that he did not feel safe in his store (trial testimony; victim statement at sentencing; victim impact statement)</p>	<p><i>People v Gibbs</i>, 299 Mich App 473, 493 (2013)</p>
<p>After home invasion the victim reported feeling angry, hurt, violated, and frightened (victim impact statement)</p>	<p><i>People v Williams</i>, 298 Mich App 121, 124 (2012) (but see <i>People v White</i>, 501 Mich 160, 164 & n 2 (2017), overruling in part <i>People v Apgar</i>, 264 Mich App 321 (2004), which was cited in <i>Williams</i>, 298 Mich App at 124)</p>
<p>Statements of bank teller victimized during bank robbery that she was nervous and scared during the robbery and concerned that the defendant would harm her; that she suffered from sleeplessness for weeks and relived the events of the robbery every time she closed her eyes; and that she constantly feared being robbed by her bank customers (trial testimony; victim impact statement; victim’s letter to the court)</p>	<p><i>People v Earl</i>, 297 Mich App 104, 109-110 (2012) (but see <i>People v White</i>, 501 Mich 160, 164 & n 2 (2017), overruling in part <i>People v Apgar</i>, 264 Mich App 321 (2004), which was cited in <i>Earl</i>, 297 Mich App at 109)</p>
<p>Indication in PSIR that victim of a stabbing suffered from depression and that his personality had changed as of a result of his continuing poor health following the assault and the amputations that resulted from the attack (PSIR)</p>	<p><i>People v Ericksen</i>, 288 Mich App 192, 202-203 (2010)</p>
<p>Child sexual assault victim’s statement that the defendant had been a friend and a father figure to him, that the defendant exploited that relationship to sexually abuse him, and that he was “pretty angry” about what happened to him, and the statements of the victim’s mother that the victim was angry and that he had tried to block out memory of the abuse (trial testimony; trial court’s observations of victim)</p>	<p><i>People v Waclawski</i>, 286 Mich App 634, 681 (2009)</p>

Offense Variable 4*
Circumstances Warranting a Score of 10 Points

<p>Receipt for counseling services for child CSC-I victim; prosecutor’s statement to the court that the victim had begun another series of counseling sessions; evidence that the defendant had repeatedly sexually abused the victim over a period of years (receipt for counseling services submitted at sentencing; prosecutor’s statement to trial court before sentencing; trial testimony)</p>	<p><i>People v Davenport (After Remand)</i>, 286 Mich App 191, 200 (2009) (but see <i>People v White</i>, 501 Mich 160, 164 & n 2 (2017), overruling in part <i>People v Apgar</i>, 264 Mich App 321 (2004), which was cited in <i>Davenport</i>, 286 Mich App at 200)</p>
<p>Trial court’s observation of the behavior and statements of underage victims of sexual assaults during the assaults (depicted on videotape of the offenses)</p>	<p><i>People v Wilkens</i>, 267 Mich App 728, 740-741 (2005)</p>
<p>Sexual assault victim’s statements that life had been terrible since the incidents; that she had a lot of nightmares, problems in her marriage, problems at work, and in just about every other facet of her life; that the whole situation was a nightmare; and that she planned to seek treatment (victim impact statement)</p>	<p><i>People v Drohan</i>, 264 Mich App 77, 90 (2004), aff’d on other grounds 475 Mich 140 (2006), abrogated in part on other grounds as recognized by <i>People v Lockridge</i>, 498 Mich 358, 378-379 (2015)</p>
<p>Prosecutor informed the court at the sentencing hearing that according to the victim’s family, the victim was “undergoing and will continue to undergo” therapy, including psychological counseling, and the victim’s father said that the “defendant’s actions had caused the victim a tremendous amount of emotional pain and suffering” (victim impact statement)</p>	<p><i>People v Brown</i>, unpublished per curiam opinion of the Court of Appeals, issued February 24, 2004 (Docket No. 243961), p 2-3</p>

Offense Variable 4
Circumstances Warranting a Score of ZERO POINTS

<p>Zero points appropriate: Trial court’s conclusion that a serious psychological injury would normally occur as a result of the crime</p>	<p><i>People v White</i>, 501 Mich 160, 162 (2017), overruling in part <i>People v Apgar</i>, 264 Mich App 321 (2004)</p>
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Offense Variable 4

Circumstances Warranting a Score of ZERO POINTS

<p>Zero points appropriate: Trial court’s conclusion that “any person who has been held at gunpoint . . . [and heard] what they believe to be a trigger pulled” would have suffered psychological distress (without any record evidence that victim actually suffered psychological distress)</p>	<p><i>People v White</i>, 501 Mich 160, 163 (2017), overruling in part <i>People v Apgar</i>, 264 Mich App 321 (2004)</p>
<p>Zero points appropriate: Victim’s fear during the crime, by itself and without any other showing of psychological harm (while victim’s fear during crime may be relevant to existence of serious psychological injury, there must be other evidence of psychological harm)</p>	<p><i>People v White</i>, 501 Mich 160, 164, 165 & n 3 (2017), overruling in part <i>People v Apgar</i>, 264 Mich App 321 (2004)</p>
<p>Zero points appropriate: Defendant’s admission during plea that victim was afraid defendant was going to shoot her (where no victim impact statement, preliminary examination, or victim statement was in evidence at sentencing)</p>	<p><i>People v White</i>, 501 Mich 160, 164 (2017), overruling in part <i>People v Apgar</i>, 264 Mich App 321 (2004)</p>

Offense Variable 4
Circumstances Warranting a Score of **ZERO POINTS**

<p>Zero points appropriate: Armed robbery victim’s statement that she surrendered her purse to save her life and that of her family; indication in PSIR that victim reported to the police that she feared she was going to be killed during the incident (trial testimony; PSIR)</p>	<p><i>People v Wine</i>, 500 Mich 859 (2016), vacating sentence and rev’g in part <i>People v Wine</i>, unpublished opinion per curiam of the Court of Appeals, issued February 24, 2015 (Docket No. 318822)</p>
<p>Zero points appropriate: Evidence of victim’s psychological injury not arising from sentencing offense, but from other charged offenses of which the defendant was acquitted (where the defendant was acquitted of second-degree murder, assault with intent to commit murder, and felony-firearm, and was convicted only of felon-in-possession based on evidence apart from the shooting of the victim, the trial court erred in scoring 10 points for OV 4 because the record contained no evidence that serious psychological injury occurred to a victim as a result of the defendant being a felon and being seen carrying a gun after the shooting)</p>	<p><i>People v Biddles</i>, 316 Mich App 148, 167 (2016)</p>
<p>Zero points appropriate: Information that police officers who arrived at the scene following the robbery of a gas station indicated that the victim was “visibly shaken”; no indication from the victim herself regarding her psychological state (PSIR)</p>	<p><i>People v McChester</i>, 310 Mich App 354, 358-359 (2015)</p>
<p>Zero points appropriate: Trial court’s mere assumption that, where the defendant was convicted of CSC-I and accosting a minor for immoral purposes in a case involving several underage sisters, “any normal person of that age” would have suffered serious psychological injury as a result of “the sexual situation with the sisters being involved” (no testimony or indication in the PSIR that any victim suffered psychological harm, and no victim impact statement in the record)</p>	<p><i>People v Lockett</i>, 295 Mich App 165, 183 (2012)</p>
<p>Zero points appropriate: CSC-III child-victim’s testimony that she was fearful during the encounter with defendant</p>	<p><i>People v Apgar</i>, 264 Mich App 321, 329 (2004), as overruled in part by <i>People v White</i>, 501 Mich 160, 164 (2017)</p>