

The Top 50 Felonies

By John T. Hammond

Most lawyers do not practice criminal law regularly. As I described more fully in two articles five and nine years ago,¹ I developed the chart on page 34 at the request (and urging) of a number of attorneys. Some of them had little recent experience in criminal law and wanted help on the subject, while others were called on to handle criminal cases in the course of a general practice and needed information readily at hand to look up frequently charged offenses. Expressions of interest also came from probation officers, magistrates, and others who needed a quick source of information for the most frequently charged felony offenses in Michigan. Other purposes included providing guidance about the impact of the sentencing guidelines² and a handy list of the useful information found in the second edition of the Michigan Criminal Jury Instructions keyed to the most frequently charged crimes.

The current list of 50 contains only about one-fourteenth of the possible Michigan felony offenses, but these result in more than 85 percent of all felony trials and convictions. The legislature adds new felony offenses every year, sometimes by the dozens, but they are rarely charged and even more rarely result in convictions.

As I noted in my earlier articles, indeterminate prison sentences for felonies (other than those requiring a life sentence and those requiring a determinate sentence, such as felony-firearm) are expressed as a range consisting of minimum sentence (the actual

time to be served, which the guidelines address) up to the statutory maximum (which is served only by those who *really* misbehave in prison). The sentencing guidelines divide felony offenses into groups: crimes against persons (Pers, in the chart); property offenses (Prop); controlled substance offenses (C/S); crimes against public order (P/Ord); crimes against the public trust; and crimes against public safety (P/S). Note that the top 50 felonies do not include any crimes against the public trust.

The sentencing guidelines treat these groups differently because the guidelines discriminate on the basis of the defendant's prior criminal record and those aggravating circumstances allowed to be considered in a given case. The aggravating circumstances that can be considered vary with the offense group into which the sentencing offense falls.³ The safety valve of imposing a minimum sentence that is a departure from the recommended minimum sentence range under the guidelines has been severely restricted.

The sentencing guidelines also assign a class to each offense. In general, an offense punishable by life imprisonment is in class A, an offense punishable by a maximum of 20 years is in class B, a 15-year offense is in class C, a 10-year offense is in class D, a 5-year offense is in class E, a 4-year offense is in class F, and a 2-year offense is in class G. There is also a class H. There are many exceptions, however. For example, forgery and uttering and



The current list of 50 contains only about one-fourteenth of the possible Michigan felony offenses, but these result in more than 85 percent of all felony trials and convictions.

publishing are each punishable by up to 14 years' imprisonment, but are placed in class E, no matter how many thousands of dollars were misappropriated. Possession of less than 50 grams of cocaine or heroin with the intent to deliver is punishable by a maximum of 20 years' imprisonment, but is in class D instead of class B. Aberrant classifications are shown in boldface on the chart. With one exception (third-degree criminal sexual conduct), all aberrant classifications are to a lower class, resulting in a lower permissible range for the minimum sentence.

The task of computing the appropriate minimum sentence range under the guidelines is not for the short-winded,⁴ but I will try to provide a brief outline. I will use the number one felony offense, possession of less than 25 grams of cocaine or a narcotic, as an example. The statutory maximum sentence is four years.

The guidelines set forth recommended minimum sentence ranges for each offense class in a grid that has six columns and three to six rows in each column. Each grid, therefore, has 18 to 36 cells. The accompanying chart shows four numbers indicating maximum minimum sentences under the guidelines for an offense, e.g., "3-9-17*-23" for our example of possessing less than 25 grams. These numbers represent, reading from left to right, the longest permissible minimum sentence under the guidelines (in months), absent a departure, for the upper-left-most cell of the guidelines grid for the offense (for a defendant having no prior criminal record and no aggravating circumstances); the lower-left-most cell of the grid (no prior record but terrible aggravating circumstances); the upper-right-most cell (terrible prior

criminal record but no aggravating circumstances); and the lower-right-most cell (terrible prior criminal record and terrible aggravating circumstances).⁵

In our example of possession of less than 25 grams of cocaine or a narcotic, a defendant who has no prior criminal record and against whom there are no special aggravating circumstances has a recommended minimum sentence range under the guidelines of up to three months' imprisonment. That amounts to a possible sentence of imprisonment for a four-year felony that is equal to the maximum sentence for simple assault, a misdemeanor. A defendant convicted of possession of less than 25 grams who has no prior criminal record, but who has scored against him under the guidelines the maximum possible number of points for aggravating circumstances for that offense, could receive a sentence of up to nine months' imprisonment.

While it appears that a defendant convicted of possession of less than 25 grams who has no aggravating circumstances, but has a prior criminal record as long as your arm, could receive a minimum sentence of up to 17 months' imprisonment, that is not so. The entries "17 months" or "18 months," wherever they appear in a sentencing guidelines grid, are always phony, and the chart denotes this with an asterisk. One cannot be sentenced to the county jail for more than a year. Under the guidelines, if the top of the applicable guidelines range for a defendant's minimum sentence is 18 months or less, the defendant simply cannot be sent to prison under the guidelines, absent a departure.⁶ Rather, the court must impose what is called an intermediate sanction, which includes

options such as probation, house arrest, a fine, community service, and a jail term that does not exceed the upper limit of the guidelines range or 12 months, whichever is less.⁷ This translates to jail terms of 3, 9, and 12 months, at most, for our example so far.

Moreover, under Michigan's indeterminate sentencing scheme, a defendant's maximum minimum prison sentence cannot exceed two-thirds of the statutory maximum sentence,⁸ so conviction of a two-year felony (such as third-offense domestic violence or fourth-degree criminal sexual conduct) can also never result in a prison sentence. The defendant may be sentenced only to the county jail and therefore cannot be sentenced to more than one year of confinement.

Finally, a defendant convicted of possession of less than 25 grams who has a dozen prior felony convictions, was the ring-leader of the gang committing these offenses, and had every other sort of imaginable aggravating circumstance present in his or her case could receive an indeterminate sentence of 23 to 48 months in prison.

Note that for 46 of the top 50 offenses shown on the chart, no prison sentence may be imposed under the guidelines if there are no aggravating circumstances and no prior criminal record. One of the goals of the sentencing guidelines system was to prevent overcrowding our prisons.

These numbers may provide great comfort to an attorney who has discovered that his or her principal client's son has just been charged with possessing less than 25 grams of cocaine. The attorney can be reasonably certain that, unless there is a long or bad prior record and many aggravating circumstances, the son cannot possibly go to prison at all, no matter what he does in the courtroom to try to aggravate the sentencing judge. That leaves, of course, the possibility of a county jail sentence, but because many county jails are chronically overcrowded with felons diverted from prison, a really lengthy jail sentence is also not likely to be in the cards. Of course, none of us would enjoy three months (or even one month) in the county jail, but that sure beats 32 months (two-thirds of 48 months) in a state prison.

Two additional notes. The guidelines also apply to sentences imposed for subsequent probation violations.⁹ Moreover, registration as a sex offender is required for some crimes included on the list. This requirement can often be far more onerous than the sentence.¹⁰

My first effort at ranking felonies by their numbers, nearly 50 years ago now, covered only the top 20, which I called the "Terrible 20." Back then, the No. 1 felony was breaking and entering (which included what we now call breaking and entering plus what we now call home invasion). It was followed by larceny in a building, assault with a dangerous weapon (also called "felonious assault") and carrying a concealed weapon. This was before the drug-crime explosion. These former top four felonies (plus uttering and publishing a forgery) are now numbers 6 through 11 on the current list. Back then, the Terrible 20 included all felony convictions that occurred more than six times in Michigan in one year, according to the statistics then available. Resisting arrest was not in the top 10 of the Terrible 20, but police officers are much better trained today than they were in those days, when resisting

arrest was frequently punished on the spot. Back then, local police officers with college degrees were almost as rare as hen's teeth (though there were a few), and the state police had a few law school graduates. Today all police training is greatly improved.

In recent years, drug offenses (not including offenses committed to raise money to get drugs) are three of the top four. Operating while intoxicated might also be considered as a drug crime, though it does not usually involve controlled substances. Drug crimes now comprise more than one-fourth of all felonies at the circuit court level.

The only thing constant is change, but over the last three years there were relatively few major changes in the rankings on the list of the top 50. However, possession of methamphetamine went up eight places, the delivery or manufacturing of schedule 1 to 3 controlled substances went up six spots, and third-offense domestic violence went up five spots. Second-degree murder moved into the top 50, as did falsely reporting a felony and entering without breaking. Second- and third-degree criminal sexual conduct both went down nine spots, first-degree criminal sexual conduct went down eight places, unlawful driving away of a motor vehicle and felony-firearm both went down seven places, and unlawful use of a motor vehicle and identity theft both went down six places. Forgery, welfare fraud, and obtaining property under false pretenses fell out of the top 50. Overall, it's something of a mixed bag. ■



John T. Hammond is a retired circuit court judge who served for more than 40 years as a Michigan judge. He chaired the State Bar Criminal Law Section and served on the Representative Assembly, the Criminal Jurisprudence Committee, the Executive Board of the Michigan Judges Association, and the Special Committees to Revise the Criminal Code and the Code of Criminal Procedure. He is a former prosecuting attorney. He presently sits on the Standing Committee on Jury Instructions, Standard Criminal and was a member of the Criminal Law Section Council.

FOOTNOTES

1. Hammond, *The top 50 felonies: Useful statistics regarding the most frequently charged offenses*, 81 Mich B J 20 (December 2002), available at <<http://www.michbar.org/journal/pdf/pdf4article517.pdf>>; Hammond, *The top 50 felonies*, 86 Mich B J 38 (December 2007), available at <<http://www.michbar.org/journal/pdf/pdf4article1299.pdf>> (both accessed February 20, 2012).
2. See 1998 PA 318. While the act amended many sections of and added new sections to the Code of Criminal Procedure, the main provisions of the sentencing guidelines are found at MCL 777.1 *et seq.*
3. See MCL 777.22.
4. See MCL 777.21.
5. Depending on the size of the grid, these cells are numbered, respectively, 1-A; 3-A, 4-A, or 6-A; 1-F; and 3-F, 4-F, or 6-F.
6. See MCL 769.34(4)(a).
7. MCL 769.31(b).
8. See MCL 769.34(2)(b). Also note that the entries "23*" and "160^" on the chart reflect that those maximum minimum sentences are longer than two-thirds of the statutory maximum.
9. See *People v Hendrick*, 472 Mich 555; 697 NW2d 511 (2005).
10. See the Sex Offenders Registration Act, MCL 28.721 *et seq.*, as amended by 2011 PA 17 and 18.

The Top 50 Felonies

Prior Rank	Prior Rank	Rank	Offense	MCL	Group	Class	Statutory Max		Maximum Minimum for Sentencing Guideline Ranges (Mos)				Michigan Criminal Jury Instruction 2d	Rank
							Yrs	Mos	1-A	6*-A	1-F	6*-F		
1	1	1	Possess C/S cocaine/narcotic (C/N) < 25 gm	333.7403(2)(a)(v)	C/S	G (F)	4	48	3	9	17*	23	12.5	1
4	2	2	Manuf/Deliver or Poss w/ intent to deliver marijuana < 5 kg	333.7401(2)(d)(iii)	C/S	F	4	48	3	17*	23	30	12.1+	2
2	3	3	Operate vehicle while intoxicated/impaired or with C/S, 3rd offense	257.625(9)(c) and (11)(c)**	P/S	E	5	60	3	17*	23	38	15.1+	3
3	4	4	Manuf/Deliver or Poss w/ intent to deliver C/N < 50 gm	333.7401(2)(a)(iv)	C/S	D (B)	20	240	6	23	23	76	12.1+	4
5	5	5	Assault/resist/obstruct police officer etc	750.81d(1)	Pers	G (F)	2	24	3	9	17*	23*	13.1	5
10	7	6	Larceny in a building	750.360	Prop	G (F)	4	48	3	9	17*	23	23.4	6
11	11	7	Home invasion, 2nd degree	750.110(a)(3)	Pers	C	15	180	11	57	57	114	25.2b	7
6	6	8	Uttering & publishing a forgery	750.249	Prop	E (C)	14	168	3	17*	23	38	28.2	8
7	8	9	Breaking & entering building w/ intent	750.110	Prop	D (B)	10	120	6	23	23	76	25.1	9
8	10	10	Carrying a concealed weapon (CCW)	750.227	P/S	E	5	60	3	17*	23	38	11.1+	10
9	9	11	Assault w/ dangerous weapon (felonious assault)	750.82	Pers	F	4	48	3	17*	23	30	17.9	11
12	12	12	Refusal to support spouse or children	750.165	P/Ord	F	4	48	3	17*	23	30	34.4	12
14	13	13	Possess C/S analogues or certain C/S	333.7403(2)(b)(ii)	C/S	G	2	24	3	9	17*	23*	12.5	13
17	17	14	Retail fraud, 1st degree > \$1,000	750.356c	Prop	E	5	60	3	17*	23	38	23.13	14
15	15	15	Poss finan trans device (credit card) w/o consent	750.157h(1)	Prop	H (G)	4	48	1	6	17*	17*	30.3	15
18	16	16	Fleeing/eluding police officer, 3rd degree or 750.49a	257.602a(3)**	P/S	E	5	60	3	17*	23	38	13.6c	16
13	14	17	Receive/conceal stolen vehicle	750.535(7)	Prop	E	5	60	3	17*	23	38	26.1+	17
22	20	18	Larceny from a vehicle	750.356a(1)	Prop	G (E)	5	60	3	9	17*	23	23.5	18
19	19	19	Armed robbery	750.529	Pers	A	L	L	35	180	180	L	18.1	19
20	21	20	Felon possessing a firearm	750.224f	P/S	E	5	60	3	17*	23	38	11.38+	20
29	24	21	Possession of methamphetamine	333.7403(2)(b)(i)	C/S	D	10	120	6	23	23	76	12.5	21
26	22	22	Home invasion, 1st degree	750.110a(2)	Pers	B	20	240	18*	60	120	160	25.2a	22
16	18	23	Unlawfully driving away automobile (UDAA)	750.413	Prop	E	5	60	3	17*	23	38	24.1	23
21	23	24	Keeping a drug house (use)	333.7405(d)	C/S	G	2	24	3	9	17*	23*	12.8	24
24	25	25	Unarmed robbery	750.530	Pers	C	15	180	11	57	57	114	18.2	25
28	27	26	Assault w/ intent to do great bodily harm	750.84	Pers	D	10	120	6	23	23	76	17.7	26
32	32	27	Domestic violence, 3rd offense	750.81(4)	Pers	G	2	24	3	9	17*	23*	17.2a	27
27	29	28	Sex offender failing to register	28.729(1)(a)	P/Ord	F	4	48	3	17*	23	30	none	28
30	35	29	Receive/conceal stolen property > \$1,000 - < \$20,000	750.535(3)(a)	Prop	E	5	60	3	17*	23	38	26.1	29
31	31	30	Home invasion, 3rd degree	750.110a(4)	Pers	E	5	60	3	17*	23	38	25.2e+	30
35	26	31	Embezzlement > \$1,000	750.174(4)(a)	Prop	E	5	60	3	17*	23	38	27.1	31
23	33	32	Criminal sexual conduct, 3rd degree T3	750.520d	Pers	B (C)	15	180	18*	60	120	160^	20.12	32
26	34	33	Felony-firearm	750.227b	—	—	2	24	24	24	24	24	11.34	33
25	28	34	Criminal sexual conduct, 2nd degree T3	750.520c	Pers	C	15	180	11	57	57	114	20.2	34
47	41	35	Deliver/manuf C/S sched 1-3 (not marijuana)	333.7401(2)(b)(ii)	C/S	E (D)	7	84	3	17*	23	38	12.2	35
40	37	36	Fleeing/eluding police officer, 4th degree or 750.479a(3)	257.602a(2)**	P/S	G	2	24	3	9	17*	23*	13.6d	36
36	39	37	Larceny from a person	750.357	Pers	D	10	120	6	23	23	76	23.3	37
41	30	38	Criminal sexual conduct, 4th degree T1/3	750.520e	Pers	G	2	24	3	9	17*	23*	20.13	38
33	40	39	Identity theft	445.65	P/Ord	E	5	60	3	17*	23	38	none	39
34	44	40	Unlawful use of a vehicle.	750.414	Prop	H (G)	2	24	1	6	17*	17*	24.2	40
38	45	41	Larceny > \$1,000 - < \$20,000	750.356(3)	Prop	E	5	60	3	17*	23	38	23.1	41
43	42	42	Obtaining controlled substance by fraud	333.7407(1)(c)	C/S	G (F)	4	48	3	9	17*	23	none	42
44	38	43	Illegal sale/use of fin trans dev (credit card, etc)	750.157q	Prop	H (F)	4	48	1	6	17*	17*	30.5	43
39	46	44	B & E motor vehicle w/ damage	750.356a(3)	Prop	G (E)	5	60	3	9	17*	23	23.6a	44
37	36	45	Criminal sexual conduct, 1st degree T3	750.520b	Pers	A	L	L	35	180	180	L	20.1+	45
48	47	46	Malicious destruction of property > \$1,000 - < \$20,000	750.377a(1)(b)(i)	Prop	E	5	60	3	17*	23	38	32.2	46
49	50	47	False report of a felony	750.411a(1)(b)	P/Ord	F	4	48	3	17*	23	30	13.19	47
42	43	48	No-account checks	750.131a(1)	Prop	H (G)	2	24	1	6	17*	17*	29.7	48
—	—	49	Murder, 2d degree	750.317	Pers	M2	L	L	150	L	L	L	16.5	49
—	—	50	Entering w/out breaking but w/ intent	750.111	Prop	E	5	60	3	17*	23	30	25.3	50

17* = 12 months 23* = 12 months 6* = 3, 4, or 6
18* = 12 months 160^ = 120 months L = Life

Bold indicates an aberrant class, i.e., not based on the statutory maximum.

T1 or T3 indicates a tier I or tier III offense, for which registration as a sex offender is required under the Sex Offenders Registration Act, MCL 28.721 *et seq.*, as amended by 2011 PA 17 and 18. There are **many** more offenses for which registration is required. MCL 28.722(s), (u), and (w) list most tier I, II, and III offenses. MCL 28.722(s)(vi) includes a catchall provision for other offenses against minors.

**Indicates offenses that cannot be expunged under 1965 PA 213, MCL 780.621 *et seq.*