



THE TOP 50 FELONIES

BY JOHN T. HAMMOND

The top 50 felonies might seem to be of interest to only a relatively small number of lawyers and judges and a few law school professors, but read on. As I described more fully in an article five years ago,¹ I developed the chart that accompanies this article 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. 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. After the legislature adopted the sentencing guidelines,² every lawyer who had any criminal cases needed to know about the guidelines' impact on their cases. Realizing that the second edition of the Michigan Criminal Jury Instructions contains a lot of useful information, many attorneys wanted a handy list keyed to the most frequently charged crimes. 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. The current list of 50 contains only about one-thirteenth of the possible Michigan felony offenses, but these result in more than 82 percent of all felony trials and convictions.

As I noted in my earlier article, 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 minimum sentence (the actual time to be served, which the guidelines address) 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).

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's group.³ Academicians have suggested that there are only three valid sentencing factors: the statutory maximum (and any statutory minimum) sentence, the defendant's prior criminal conviction record, and the actual facts of the case (damage done, intent, etc.). Unfortunately, the guidelines consider only selected factors. Moreover, the safety valve of departure from 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 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.

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." These numbers represent, reading from left to right, the longest minimum sentence under the guidelines (in months) 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, 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 maximum minimum 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

**THE COST OF CARING FOR A
DRUG-ADDICTED NEWBORN
INFANT UNTIL IT CAN BE
RELEASED FROM THE HOSPITAL
IS CURRENTLY ABOUT \$300,000.
NO WONDER HEALTH COSTS
ARE SOARING. DRUG OFFENSES
ARE NOT VICTIMLESS CRIMES.**

guidelines the maximum possible number of points for aggravating circumstances for that offense, could receive a minimum 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 Moreover, under Michigan's indeterminate sentencing scheme, a defendant's maximum minimum prison sentence cannot exceed two-thirds of the statutory maximum sentence,⁷ so conviction of a two-year felony 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 case could receive an indeterminate sentence of 23 to 48 months in prison.

These numbers may provide great comfort to an attorney who has discovered that his principal client's son has just been charged with such an offense. The attorney can be reasonably certain that, unless there is a long or bad prior record and a lot of aggravating circumstances, the defendant cannot possibly go to prison at all, no matter what he does in the courtroom to try to aggravate the



Prisoner Industrial Complex by F. Mumford

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, even without considering the fact that deductions for good behavior and jail overcrowding are allowable in the county jail, while in the state prison “good time” deductions from a sentence are only a memory, replaced by less substantial disciplinary credits and the possibility of added disciplinary time.

The guidelines also apply to sentences imposed for subsequent probation violations.⁸ While this was not the general understanding when the former Sentencing Commission proposed the version of the guidelines ultimately enacted, as I noted in my earlier article, the language adopted compelled the Supreme Court to rule otherwise.

It is said that the only thing constant is change. Comparing the figures available from February 2007 with those of the year before shows some changes in the rankings of felony offenses on the chart. First-degree criminal sexual conduct went from 37th to 26th place. Fourth-degree criminal sexual conduct went from 16th to 31st place. Receiving and concealing stolen property over \$1,000 went from 18th to 32nd place. Third-degree fleeing and eluding went from 29th to 37th place. Breaking and entering a building went from 14th to 8th place. Being a felon in possession of a firearm went from 24th to 19th place. Breaking and entering a motor vehicle went from 31st to 36th place. Possession of methamphetamine went from 28th to 22nd place. Possession of controlled substance analogues went from 34th to 29th place. Keeping a drug house went from 27th to 23rd place. A comparison with the chart from five years ago is also interesting.⁹ While the top two felonies then were the same as now, operating a vehicle under the influence (third offense) was in 3rd place, assault with a dangerous weapon (AWDW) was in 4th place, and carrying a concealed weapon was in 5th place.

THE ENTRIES “17 MONTHS” OR “18 MONTHS” ARE ALWAYS PHONY, AND THE CHART DENOTES THIS WITH AN ASTERISK. ONE CANNOT BE SENTENCED TO THE COUNTY JAIL FOR MORE THAN A YEAR.

My first effort at ranking felonies by their numbers, 40 years ago, covered only the “Terrible 20,” but those included 86 percent of all felonies charged statewide. None of the first four offenses on that list¹⁰ (which produced more than half of all felony charges at that time) were drug offenses. This year, drug offenses were three of the top four offenses, and all felony drug charges made up more than 26 percent of the felonies charged statewide. Several physicians have advised me that the cost of caring for a drug-addicted newborn infant until it can be released from the hospital is currently about \$300,000. No wonder health costs are soaring. Drug offenses are not victimless crimes. ■



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 Criminal Jury Instruction Committee and is 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>> (accessed November 16, 2007).
2. 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. 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.
8. *People v Hendrick*, 472 Mich 555; 697 NW2d 511 (2005).
9. Hammond, *supra* at 23.
10. Those offenses are now in 7th through 11th place on this year’s chart. Breaking and entering a building (which was then in 1st place) formerly included home invasion (which is in 11th place this year).

THE TOP 50 FELONIES

Prior Rank	Rank	Offense	MCL	Cumulative Percent	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	Possess C/S cocaine/narcotic (C/N) < 25 gm	333.7403(2)(a)(v)	9.62%	C/S	G	4	48	3	9	17*	23	12.05	1
2	2	Possess C/S w/intent to del C/N < 50 gm	333.7401(2)(a)(iv)	15.15%	C/S	D	20	240	6	23	23	76	12.03	2
4	3	Possess w/intent to del marijuana < 5kg	333.7401(2)(d)(iii)	20.04%	C/S	F	4	48	3	17*	23	30	12.03	3
5	4	Uttering & publishing a forgery	750.249	24.85%	Prop	E	14	168	3	17*	23	38	28.02	4
3	5	Operate vehicle while intoxicated	257.625(9)(c)	29.15%	P/S	E	5	60	3	17*	23	38	15.01+	5
8	6	Assault / resist / obstruct police officer etc	750.81d(1)	32.70%	Pers	G	2	24	3	9	17*	23*	13.01	6
6	7	Assault w/dangerous weapon (AWDW)	750.82	36.13%	Pers	F	4	48	3	17*	23	30	17.09	7
14	8	Breaking & entering building w/intent	750.110	39.54%	Prop	D	10	120	6	23	23	76	25.01	8
7	9	Larceny in a building	750.360	42.64%	Prop	G	4	48	3	9	17*	23	23.04	9
9	10	Carrying concealed weapon (CCW)	750.227	45.42%	P/S	E	5	60	3	17*	23	38	11.01+	10
10	11	Home invasion, 2nd degree	750.110(a)(3)	47.94%	Pers	C	15	180	11	57	57	114	25.02b	11
11	12	Refuse to support spouse or children	750.165	49.88%	P/Ord	F	4	48	3	17*	23	30	none	12
12	13	Receive/conceal stolen vehicle	750.535(7)	51.71%	Prop	E	5	60	3	17*	23	38	26.01+	13
15	14	Possess fin. trans. dev. (credit card) w/o consent	750.157n(1)	53.39%	Prop	H	4	48	1	6	17*	17*	30.03	14
13	15	Unlawfully drive away automobile (UDAA)	750.413	55.05%	Prop	E	5	60	3	17*	23	38	24.01	15
19	16	Retail fraud, 1st degree	750.356c	56.37%	Prop	E	5	60	3	17*	23	38	23.13	16
17	17	Criminal sexual conduct, 2nd degree	750.520c	57.70%	Pers	C	15	180	11	57	57	114	20.02	17
20	18	Fleeing/eluding, 3rd degree (Vehicle Code)	257.602a(3)	58.94%	P/S	E	5	60	3	17*	23	38	13.06c	18
24	19	Felon possessing a firearm	750.224f	60.10%	P/S	E	5	60	3	17*	23	38	11.38+	19
21	20	Criminal sexual conduct, 3rd degree	750.520d	61.25%	Pers	B	15	180	18*	60	120	160^	20.12	20
23	21	Armed robbery	750.529	62.38%	Pers	A	L	L	35	180	180	L	18.01	21
28	22	Possession of methamphetamine	333.7403(2)(b)(i)	63.48%	C/S	D	10	120	6	23	23	76	12.05	22
27	23	Keeping a drug house (use)	333.7405(d)	64.58%	C/S	G	2	24	3	9	17*	23*	12.08	23
22	24	Larceny from a vehicle	750.356a(1)	65.67%	Prop	G	5	60	3	9	17*	23	23.05	24
25	25	Home invasion, 1st degree	750.110a(2)	66.71%	Pers	B	20	240	18*	60	120	160	25.02	25
37	26	Criminal sexual conduct, 1st degree	750.520b	67.63%	Pers	A	L	L	35	180	180	L	20.01+	26
26	27	Assault w/intent to do great bodily harm	750.84	68.55%	Pers	D	10	120	6	23	23	76	17.07	27
30	28	Unlawful use of a vehicle.	750.414	69.47%	Prop	H	2	24	1	6	17*	17*	24.02	28
34	29	Possess C/S analogues or certain C/S	333.7403(2)(b)(ii)	70.38%	C/S	G	2	24	3	9	17*	23*	12.05	29
33	30	Unarmed robbery	750.530	71.30%	Pers	C	15	180	11	57	57	114	18.02	30
16	31	Criminal sexual conduct, 4th degree	750.520e	72.20%	Pers	G	2	24	3	9	17*	23*	13.06d	31
18	32	Receive/conceal stolen property >\$1,000	750.535(3)(a)	73.07%	Prop	E	5	60	3	17*	23	38	26.01	32
36	33	Felony-firearm	750.227b	73.91%			2	24	24	24	24	24	11.34	33
32	34	Embezzlement > \$1,000	750.174(4)(a)	74.74%	Prop	E	5	60	3	17*	23	38	27.01	34
35	35	Home invasion, 3rd degree	750.110a(4)	75.55%	Pers	E	5	60	3	17*	23	38	25.02e+	35
31	36	B & E motor vehicle w/damage	750.356a(3)	76.32%	Prop	G	5	60	3	9	17*	23	23.06a	36
29	37	Fleeing/eluding, 3rd degree (Penal Code)	750.479a(3)	77.06%	P/S	E	5	60	3	17*	23	38	13.06c	37
38	38	No-account checks	750.131a(1)	77.77%	Prop	H	2	24	1	6	17*	17*	29.07	38
39	39	Larceny from the person	750.357	78.43%	Pers	D	10	120	6	23	23	76	23.03	39
42	40	Domestic violence, 3rd offense	750.81(4)	79.03%	Pers	G	2	24	3	9	17*	23*	17.02a	40
41	41	Fleeing/eluding, 4th degree (Vehicle Code)	257.602a(2)	79.59%	P/S	G	2	24	3	9	17*	23*	13.06d	41
43	42	Sex offender failing to register	28.729(1)(a)	80.13%	P/Ord	F	4	48	3	17*	23	30	none	42
40	43	Forgery	750.248	80.64%	Prop	E	14	168	3	17*	23	38	28.01	43
46	44	Larceny > \$1,000 < \$20,000	750.356(3)	81.12%	Prop	E	5	60	3	17*	23	38	23.01	44
48	45	Obtain controlled substance by fraud	333.7407(1)(c)	81.56%	C/S	G	4	48	3	9	17*	23	none	45
45	46	Malicious destruction police/fire property	750.377b	81.98%	Prop	F	4	48	3	17*	23	30	~32.02	46
>	47	Illegal use of fin. trans. dev. (credit card, etc)	750.157p	82.41%	Prop	H	4	48	1	6	17*	17*	30.05	47
>	48	Welfare fraud over \$500 by failure to inform	400.60(2)	82.82%	Prop	H	4	48	1	6	17*	17*	34.03	48
47	49	Malicious destruction of property > \$1000	750.377a(1)(b)(i)	83.23%	Prop	E	5	60	3	17*	23	38	32.02	49
49	50	False report of a felony	750.411a(1)(b)	83.64%	P/Ord	F	4	48	3	17*	23	30	13.19	50

17* = 12 months 23* = 12 months
18* = 12 months 160^ = 120 months

Bold indicates an aberrant class

L=Life