

Useful statistics regarding the most frequently charged offenses

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The Top 50 Felonies

By John T. Hammond

The topic of the top 50 felonies might seem to some to be of interest to only a handful of law school professors or other academicians, and perhaps a few judges. The chart that accompanies these notes was developed at the request and urging of a number of attorneys. For example, an attorney who did not practice criminal law had a client (the son of the CEO of the major client of his law firm) get into some difficulty and the attorney had little recent experience in criminal law and wanted some help on the subject. The next request came from an attorney who was called upon to handle criminal cases in the course of a general practice and needed information quick-at-hand to look up frequently charged offenses.

Then the legislature adopted sentencing guidelines¹ and everyone needed to know about the impact of sentencing guidelines on cases. Attorneys realized that the Standard Criminal Jury Instructions² contained a lot of useful information, and wanted a handy-dandy list keyed to the most frequently charged cases.

Other expressions of interest came from probation officers, magistrates, and others who needed a handy source of information for the most frequently utilized of our list of felony offenses in Michigan. This list of 50, as of the last year for which statistics are available, is only about 1/13th of the possible Michigan felony offenses, but they constitute better than 82 percent of all convictions.

While non-attorneys might need further explanation, most attorneys should instantly understand all that appears on this chart, except possibly those who have not had recent dealings with felony cases and are therefore unfamiliar with the Michigan Sentencing Guidelines as adopted by the legislature. Prison sentences for felonies (other than life sentence offenses and "felony-firearm") are expressed as the minimum (the actual time to be served, which the guidelines address) to the statutory maximum (which is only served by those who *really* misbehave in prison). The sentencing guidelines divide up felony offenses into groups: crimes against persons, property offenses, controlled substances offenses, crimes against public order, crimes against public trust, and crimes against public safety.

The sentencing guidelines treat these groups differently because the sentencing guidelines discriminate based on the prior criminal record of the defendant and on certain aggravating circumstances present, and allowed to be considered, in a given case.

The aggravating circumstances that are allowed to be considered vary with the group of the offenses. For example, in the case of a criminal sexual conduct offense, the number of sexual penetrations committed (beyond the first) is an aggravating circumstance. However, if the offense is a property offense, and since criminal sexual penetration is ordinarily not involved in such an offense, it is not considered, even if present. So, for example, if a criminal sexual conduct in the first-degree case (committed during a burglary) is dismissed in return for a plea to breaking and entering a building, the criminal sexual penetrations are not considered under the guidelines.

The sentencing guidelines also assign a class to each offense. In general, though there are several hundred exceptions, an offense punishable by life imprisonment is in class A, a 20-year offense is in class B, a 15-year offense is in class C and a 10-year offense is in class D. Similarly, a five-year offense is in class E, a four-year offense is in class F, and two-year offenses are in class G. There is also a class H. For example, home invasion in the 2nd degree is punishable by imprisonment for up to 15 years (maximum) and is there-



fore placed in class C. Unlawfully driving away a motor vehicle has a five-

year statutory maximum penalty and therefore is placed in class E. However, Forgery and Uttering and Publishing are both punishable for up to 14 years imprisonment, but, under the guidelines, they are placed in class E, no matter how many thousands of dollars were misappropriated.

Malicious Destruction of Property to a value of greater than \$1,000 but less than \$20,000 is punishable by up to five years imprisonment, but under the guidelines is placed in class G, rather than class E.

Possession of less than 50 grams of cocaine or heroin with the intent to deliver, is punishable by not to exceed 20 years imprisonment, and therefore, would be expected to be in class B, but instead

it is in class D. Currently, the statutory minimum sentences for such drug offenses "trump" the guidelines. If the proposed constitutional amendment (which did not get on the ballot) had been adopted, reversing the situation, this would have had enormous impact. There is also legislation³ pending to eliminate mandatory minimum drug sentences, which are seen as Draconian, and eliminating lifetime probation, (reverting to five years).

The task of computing the appropriate sentencing range is not

one for the short-winded, but I have made an effort to provide a brief outline in this chart. Using the number one offense, "Possession of less than 25 grams of cocaine or narcotic," as an example, the statutory maximum sentence is four years. The guideline ranges for each class of offense are set forth in a grid, which has six columns, and three to six rows in each column. Each grid therefore has 18 to 36 cells.

The four numbers shown for "max.min." (e.g. 3-9-(17)-23) on the table accompanying these notes are, reading from left to right, the *longest* guideline sentence, in months, for: the upper left hand most cell of the guidelines grid (no prior criminal record and no aggravating circumstances); the lower left hand most cell of the grid (no prior record and terrible aggravating circumstances); the upper right most cell (terrible prior criminal record but no aggravating circumstances); and the lower right most cell (terrible prior

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Prior Rank	Rank	Top 50 Felonies Name of Offense	Stat. Max.	Sentence Guidelines Grp. Cl. Max. Min. (mo.)			Jury Inst.	Statute MCL	Cumulative percent	Rank
1	1	C/S Poss. C/Narc. < 25 gm.	4 y.	C/S	G	3-9-(17)-23	12.5	333.7403(2)A5	9.27%	1
3	2	C/S Poss. W/I Del. C/N <50	20 y.	C/S	D	6-23-23-76	12.3	333.7401(2)A4	15.21%	2
4	3	OUIL/OUID 3rd Offense	5 y.	P/S	E	3-(17)-23-38	15.1-7	257.625 7D	19.50%	3
5	4	AWDW ("Felonious Assault")	4 y.	Pers.	F	3-(17)-23-38	17.9	750.82	23.54%	4
7	5	CCW	5 y.	P/S	E	3-(17)-23-38	11.1,2	750.227	27.43%	5
8	6	C/S Del/Poss. W/I Del. MJ	4 y.	C/S	F	3-(17)-23-38	12.2,3	333.7401(2)Diii	31.08%	6
13	7	U & P	14 y.	Prop.	E	3-(17)-23-38	28.2	750.249	34.53%	7
10	8	Larceny In Bldg.	4 y.	Prop.	G	3-9-(17)-23	23.4	750.360	37.95%	8
2	9	Retail Fraud 1st. Degree	*2 y.	Prop.	H	1-6-12-12	23.13	750.356c	41.19%	9
9	10	B & E w/Intent	10 y.	Prop.	D	6-23-23-76	25.1	750.110	44.27%	10
6	11	RCSP >\$1,000 <\$20,000	5 y.	Prop.	E	3-(17)-23-38	26.1	750.535(3)	47.22%	11
12	12	H.I. 2nd Degree	15 y.	Pers.	C	11-57-57-114	25.2b,d	750.110A(5)	50.17%	12
17	13	Unlawful Drive Away Vehicle	5 y.	Prop.	E	3-(17)-23-38	24.1	750.413	52.20%	13
29	14	Fleeing/Eluding 3rd Degree	5 y.	P/S	E	3-(17)-23-38	13.6c	750.479A(3) or 257.602A(3)	53.96%	14
14	15	Embezzlement > \$20,000	10 y.	Prop.	D	6-23-23-76	27.1	750.174	55.71%	15
15	16	R&O Police	*2 y.	Pers.	G	3-9-(17)-(23)	13.1	750.479	57.22%	16
20	17	CSC 2nd Degree	15 y.	Pers.	C	11-57-57-114	20.2	750.520C	58.69%	17
19	18	Robbery Armed	Life	Pers.	A	35/180/180/450	18.1	750.529	60.14%	18
>50	19	Disarming police (F/A)	10 y.	Pers.	D	6-23-23-76	13.18	750.479B(2)	61.45%	19
31	20	Fleeing/Eluding 4th Degree	*2 y.	P/S	G	3-9-(17)-(23)	13.6d	750.479A(2) or 257.602A(2)	62.74%	20
21	21	CSC 4th Degree	*2 y.	Pers.	G	3-9-(17)-(23)	20.13	750.520E	63.89%	21
25	22	CSC 3rd Degree	15 y.	Pers.	C	11-57-57-114	20.12	750.520D	64.98%	22
24	23	Assault W/I GBH	10 y.	Pers.	D	6-23-23-76	17.7	750.84	66.07%	23
26	24	Unlawful Use of motor veh.	*2 y.	Prop.	H	1-6-12-12	24.2-4	750.414	67.09%	24
27	25	H.I. 1st Degree	20 y.	Pers.	B	12-60-120-160	25.2a,c	750.110A(4)	68.08%	25
23	26	FTD, Poss. W/O consent	4 y.	Prop.	H	1-6-12-12	30.5	750.157N	69.01%	26
33	27	CSC 1st Degree	Life	Pers.	A	35/180/180/450	20.1	750.520B	69.88%	27
30	28	Rob Unarmed	15 y.	Pers.	C	11-57-57-114	18.2	750.530	70.73%	28
16	29	MDOP > \$1000	5 y.	Prop.	G	3-9-(17)-23	32.2	750.377A(1)B1	71.53%	29
>50	30	B&E Motor Vehicle w/dam.	5 y.	Prop.	G	3-9-(17)-23	23.7	750.356A(2)	72.29%	30
>50	31	Felon Possessing Firearm	5 y.	P/S	E	3-(17)-23-38	11.38A	750.224F	73.03%	31
>50	32	RCSP >\$20,000 or 3rd. Off.	10 y.	Prop.	D	3-23-23-76	26.1	750.535(2)	73.74%	32
11	33	Larceny from M/V	5 y.	Prop.	G	3-9-(17)-23	23.5	750.356A	74.44%	33
32	34	C/S 2nd Off. (Dbl Penalty)	~	C/S	~	Varies	N/A	333.7413	75.10%	34
34	35	Larceny from Person	10 y.	Pers.	D	6-23-23-76	23.3	750.357	75.72%	35
22	36	Checks w/o Acct.	*2 y.	Prop.	H	1-6-12-12	29.7-9	750.131A	76.30%	36
>50	37	Welfare Fraud >\$500	4 y.	Prop.	H	1-6-12-12	34.3	400.602-B	76.85%	37
>50	38	Keeping Drug House	*2 y.	C/S	G	3-9-(17)-(23)	12.8	333.7405D	77.40%	38
37	39	Forgery	14 y.	Prop.	E	3-(17)-23-38	28.1	750.248	77.93%	39
18	40	Larceny > \$1000	5 y.	Prop.	E	3-(17)-23-38	23.1	750.356	78.46%	40
28	41	OPUPF > \$1000	10 y.	Prop.	E	3-(17)-23-38	23.11	750.218	78.96%	41
44	42	Dom Viol 3rd Offense	*2 y.	Pers.	G	3-9-(17)-(23)	17.2a	750.81(4)	79.44%	42
49	43	2nd Degree Murder	Life	Pers.	M2	150-270-450-600	16.5	750.317	79.89%	43
>50	44	False Report of Felony	4 y.	Pub. Ord.	F	3-(17)-23-38	13.19	750.411A(1)B	80.30%	44
41	45	MDOP Police/Fire Prop.	4 y.	Prop.	F	3-(17)-23-38	~32.2	750.377B	80.70%	45
35	46	Weapon/Poss.by Felon	5 y.	P/Safe	E	3-(17)-23-38	11.38	750.224F	81.07%	46
>50	47	Assault W/I Murder	Life	Pers.	A	35-180-180-450	17.3	750.85	81.40%	47
46	48	Esc/Att to Brk/Esc.Prison	5 y.	P/Safe	E	3-(17)-23-38	13.8	750.193	81.73%	48
>50	49	Bond Jumping (Felony Case)	4 y.	Pub. Ord.	F	3-(17)-23-38	13.17	750.199A	82.04%	49
45	50	Assault W/I Rob—Armed	Life	Pers.	A	35/180/180/450	18.3	750.89	82.36%	50
notes		*2 y. means 1 year jail max. (except P/V)				(17) means 12 (23) means 12			JTH 2002	*

criminal record and terrible aggravating circumstances).

Returning to our example of possession of cocaine or narcotic less than 25 grams, the defendant who has no prior record and against whom there are no special aggravating circumstances has a sentence guideline range of up to three months imprisonment. As is immediately obvious, that amounts to a lower maximum possible sentence of imprisonment under the guidelines than could be imposed for many offenses, which used to be 90-day misdemeanors, but now have been extended to 93-day misdemeanors (so that their fingerprints would have to be recorded).

The defendant convicted of that same offense, who has no prior criminal record, but who has charged against him the maximum possible number of points for aggravating circumstances of the offense, could get a sentence of up to nine months imprisonment. Similarly, it would appear that the defendant convicted of that same offense, who has no aggravating circumstances, but a prior criminal record as long as your arm, could receive a minimum sentence of up to 17 months imprisonment, but not so. The entry "17 months," wherever it appears in a sentence guideline grid, is *always* phony.

Most lawyers know that one cannot be sentenced to the county jail for more than a year. An interesting wrinkle in the guidelines is that if the top of the applicable guideline range is less than 18 months, the defendant simply cannot be sent to prison under the guidelines. The defendant therefore may be sentenced initially only to the county jail, and therefore cannot be sentenced to more than one year. [N.B. The guidelines do not apply to a sentence imposed for a subsequent probation violation.]

Utilizing again the same crime, the defendant who has a dozen prior felony convictions, was the ringleader of the gang committing these offenses, (and had every other sort of imaginable aggravating circumstance present in his case), could receive a 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 lot of 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 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 likely not to be in the cards.

The sentencing guidelines divide up felony offenses into groups: crimes against persons, property offenses, controlled substances offenses, crimes against public order, crimes against public trust, and crimes against public safety.

This is not to say that a short county jail sentence is a trifling thing. None of us would enjoy three months in the county jail, but that sure beats 32 months in state prison even without considering the fact that a deduction for good behavior is allowable in the county jail, but in the state prisons "good time" deductions from a sentence are only a memory. "Truth in sentencing" is now the rule in prison.

For those with a historical interest, I have included the prior rank computed on the basis of the statewide convictions two years previously. You will notice that there are some significant changes. Disarming a police officer of a firearm is now 19th on the list in terms of frequency of conviction during the year in question, and before it was not in the top 50 at all. Retail fraud 1st degree fell from 2nd place to 9th place, while Malicious Destruction of Property over \$1,000 fell 13 places. No-Account Checks fell 14 places. Larceny From a Motor Vehicle and Grand Larceny (over \$1,000) both fell 22 places, while Fleeing and Eluding Police in the 3rd degree went up 15 places. Receiving Stolen Property more than \$20,000, Felon in Possession of a Firearm, and Breaking and Entering a Motor Vehicle all went up 18 or more places.

While one can guess about the reason for a couple of those seeming dramatic changes, I present no explanation. "Just the facts Ma'am, just the facts." ♦

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Footnotes

1. Act 318, P.A. 1998; MCL 769.8, et seq. (as amended).
2. Published by the Institute of Continuing Legal Education, Ann Arbor, MI.
3. House Bills 5394 and 5395.