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Legislative Committee Services  
State Capitol Building  
Salem, Oregon 97301  
(503) 986-1813

Background Brief on ...

# Felony Sentencing

*Prepared by: Bill Taylor*

## Background

A felony is any crime which carries a penalty, upon conviction, of imprisonment in excess of one year. Since 1989, several key laws, enacted by the Legislature and voters' initiatives, have shaped Oregon's criminal justice system. Prior to 1989, judges decided whether a felon should be put on probation or sent to prison upon conviction. For those sent to prison, the judge set a maximum amount of time the offender would serve, known as an "indeterminate sentence." The Parole Board would then decide how much of the sentence would be served based on the nature of the crime and the "history risk score" of the individual. The average offender served a fraction of the indeterminate sentence imposed by the judge. The felony sentencing guidelines, established by the Legislature in 1989, and Ballot Measure 11, which was voted into law by the People of the State of Oregon in November of 1994, changed this system.

## Sentencing Guidelines

The 1989 Legislature approved sentencing guidelines to achieve four goals:

- Proportional punishment, imposing the most severe sentences on the most serious offenders
- Truth in sentencing, so the sentence imposed by the judge more closely reflects the time the offender will actually serve
- Sentence uniformity, to reduce disparities among judges
- Maintenance of correctional capacity consistent with sentencing policy, so the criminal justice system will be able to deliver proposed penalties

Each year approximately 14,000 felons are sentenced using the guidelines. As a result of sentencing guidelines, parole release has been abolished, and state prisoners serve at least 80 percent of their prison sentences. Sentencing under the guidelines is referred to as sentencing according to the "grid" because the seriousness of the crime and criminal history of a felon are the vertical and horizontal axes on a grid that practitioners and judges use in sentencing. A judge sentences a felon under the following guidelines:

1. *Determine the crime seriousness ranking of the offense(s)* - The ranking is established by rule, and constitutes the vertical axis on the grid. Some crimes have more than one ranking to capture different levels of conduct within a crime (e.g., weapon use, age

of victim, etc.). The rankings range from 1 to 11, with 11 being the most serious.

2. *Establish the offender's criminal history category* - Categories are established by rule, and use the offender's adult convictions for felonies and Class A misdemeanors, and juvenile adjudications for conduct that would be a felony if committed by an adult. Criminal history categories constitute the horizontal axis of the grid (A-I, A being the most serious). The guidelines put additional weight on person offenses (categories A-D).
3. *Identify the presumptive sentence* - The presumptive sentence is the sentence in the grid block at the intersection of the offender's crime seriousness ranking and criminal history category. The presumptive sentence should be imposed in the typical case. Sentences in non-typical cases are handled with departures.
4. *Identify any grounds for a departure* - Sentences may be modified through the "departure" process. Departures can be dispositional (prison or probation), durational (increase or decrease in length) or both. As a result of the United States Supreme Court decision in *Blakely v. Washington* (2003), a jury, rather than a judge, must find a "substantial and compelling" reason to impose each departure. The rules establish limits on upward departures to maintain the consistency and proportionality of the sentencing structure.
5. *Impose the sentence* - Probation sentences generally include conditions, such as jail time, treatment, restitution and others. Generally, two-thirds of the presumptive jail term is reserved to sanction conditions of supervision. All prison sentences must be followed by a term of post-prison supervision, the length of which is established by rule.

### **Exceptions to the Sentencing Guidelines Measure 11**

In November 1994, voters passed Ballot Measure 11 which required mandatory minimum prison sentences for "serious crimes against persons" regardless of the defendant's criminal history. Refer to the Background Brief on Measure 11 for additional information.

### **Repeat Property Offenders**

Under sentencing guidelines, most property crimes carry a presumptive sentence of probation, regardless of the criminal history of the individual offender. In 1996, the Legislature met in special session and passed House Bill 3488, which established prison sentences for repeat property offenders. The 1999 Legislature clarified these to be presumptive, not mandatory, prison sentences for repeat offenders convicted of theft, burglary, auto theft, and identity theft. The 2001 Legislature broadened the scope of the Repeat Property Offender statute (ORS 137.717) with Senate Bill 293 to include forgery and computer crimes, and changed the way prior offenses are calculated under the statute. Each year, approximately 500 felons are sentenced under the Repeat Property Offender statute.

### **Gun Minimum Sentences**

When a person is convicted of using or threatening the use of a firearm in the course of a felony, the person is subject to enhanced penalties outside of the sentencing guidelines. The first such conviction carries a possible five year prison sentence, from which the judge may depart. If a person is found to have committed a felony by using or threatening the use of an automatic weapon, short-barreled rifle, short-barreled shotgun, or firearm equipped with a silencer, the court may sentence for 10 years. For a second conviction under this sentencing statute, the court must impose a 10 year prison sentence, increased to 20 years if the specific firearms described above are used. A third conviction carries a 30 year minimum sentence. About 50 felons are sentenced under these statutes, ORS Chapter 161, each year.

### **Dangerous Offenders**

If a defendant is found to be a dangerous offender, the court may depart from the sentencing guidelines and sentence the defendant to up to a 30 year indeterminate sentence. The court must set a minimum amount the defendant must serve, which may be up to twice the presumptive prison sentence prescribed by the guidelines. To be considered a dangerous offender, the defendant must be found to suffer from a severe personality disorder indicating a propensity toward crimes that

seriously endanger the life or safety of another.  
Only about 10 felons are sentenced under this  
statute each year.

**Staff and Agency Contacts**

Craig Prins, Criminal Justice Commission  
503-378-4858

Bill Taylor, Judiciary Committee Counsel  
503-986-1694