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Background Brief on ...

# Felony Sentencing

A felony is any crime that carries a penalty, upon conviction, of imprisonment in excess of one year.

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.

In 1989, the Legislative Assembly adopted Sentencing Guidelines as the primary tool for determining a felon’s sentence. However, Ballot Measures 11 and 57 have superseded sentencing guidelines in determining the sentence for many felony offenders.

## Sentencing Guidelines

Each year, approximately 14,000 felons are sentenced using the guidelines. Under sentencing guidelines, 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 axis 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.
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 that required mandatory minimum prison sentences for "serious crimes against persons" regardless of the defendant's criminal history. These mandatory minimum sentences override sentencing guidelines. For more information on Measure 11, please see the Measure 11 Background Brief.

## **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 Legislative Assembly met in special session and passed House Bill 3488 that established prison sentences for repeat property offenders. The 1999 Legislative Assembly clarified these to be presumptive, not mandatory, prison sentences for repeat offenders convicted of theft, burglary, auto theft, and identity theft. The 2001 Legislative Assembly 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.

## **Measure 57**

Measure 57 did the following:

1. Increased the penalties for drug traffickers and manufacturers who possess trafficker amounts of methamphetamine (meth), heroin, ecstasy, and cocaine by providing a sentence ranging from 58 to 130 months for a person who manufactures or deals 500 or more grams of meth or cocaine, or 100 grams of heroin or ecstasy depending upon the person's past criminal history.
2. Provided a sentence ranging from 34 to 72 months for a person who manufactures or deals 100 or more grams of meth or cocaine, or 50 or more grams of heroin or ecstasy depending upon the person's past criminal history.
3. Provided enhanced penalties for a person who delivers meth, cocaine, ecstasy, or heroin to a person under 18 years of age with a penalty ranging from 34 to 72 months depending upon the person's past criminal history. Provides bar to prosecution under this section if the person is less than three years older than the minor he or she is providing drugs to, unless he or she is a repeat offender. Provides enhanced penalties for a person who steals \$10,000 or more from a victim who is 65 years of age or older with a penalty ranging from 16 to 45 months depending upon their past criminal history.

4. Enhanced sentencing under the repeat property offender statute, ORS 137.717, by increasing sentences to a presumptive sentence of 24 and 18 months.
5. Increased identity theft from the 13-month sentence under current law to a 24-month sentence under the new law.
6. Provided increased prison sentence of two months for each additional previous conviction, with a cap of 12 months increased sentence.
7. Restricted the court's ability to depart downward to probation or a shorter prison sentence.

Measure 57 sentencing provisions apply to crimes committed after January 1, 2009. However, as a result of severe budget shortfalls and the need to reduce prison costs, those sentenced between February 15, 2010 and January 1, 2012, will not receive the enhanced Measure 57 sentence.

### **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 ten 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, contained in 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 that 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. About ten felons are sentenced under this statute each year.

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