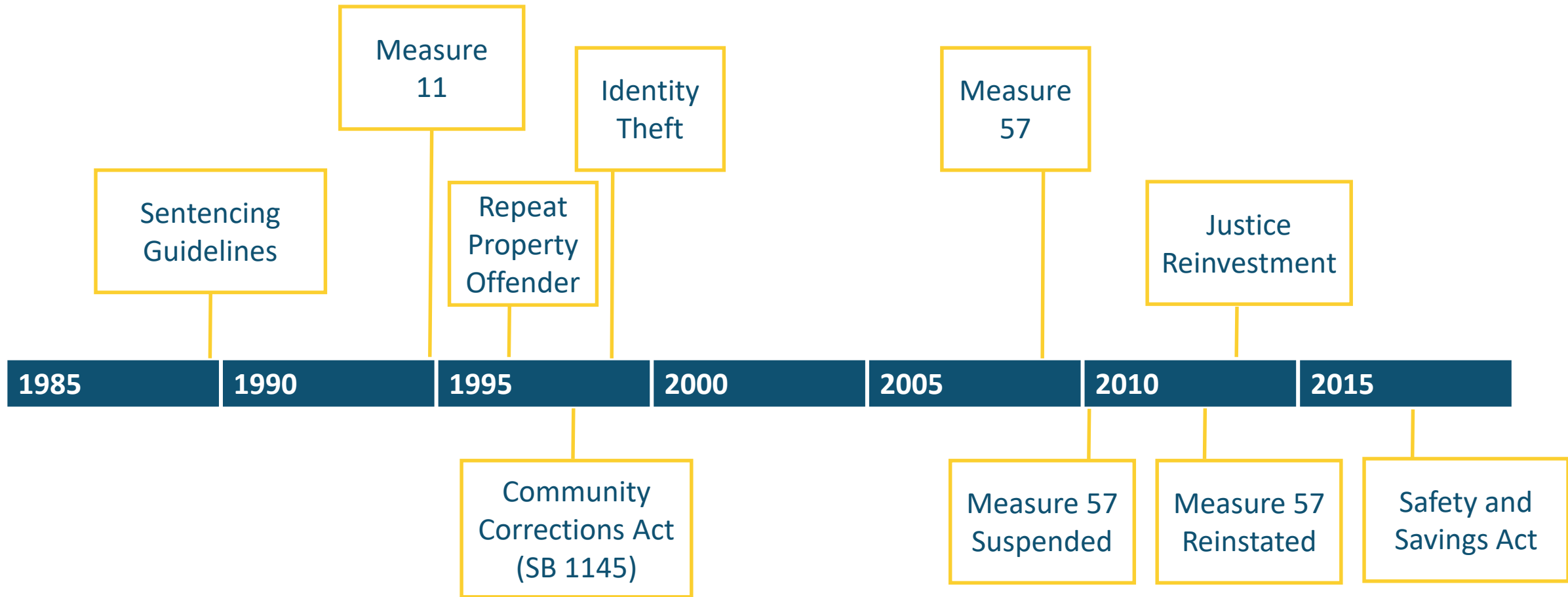


# OREGON SENTENCING GUIDELINES

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## Oregon Sentencing Changes Timeline



### The Oregon Sentencing Guidelines Grid

Crime Seriousness	A	B	C	D	E	F	G	H	I	Prob Term	Max Depart	PPS
11	225-269	196-224	178-194	164-177	149-163	135-148	129-134	122-128	120-121	5 Years		3 Years
10	121-130	116-120	111-115	91-110	81-90	71-80	66-70	61-65	58-60			
9	66-72	61-65	56-60	51-55	46-50	41-45	39-40	37-38	34-36			
8	41-45	35-40	29-34	27-28	25-26	23-24	21-22	19-20	16-18	3 Years	18 Mos.	
7	31-36	25-30	21-24	19-20	16-18	180-90	180-90	180-90	180-90			
6	25-30	19-24	15-18	13-14	10-12	180-90	180-90	180-90	180-90	2 Years	12 Mos.	2 Years
5	15-16	13-14	11-12	9-10	6-8	180-90	120-60	120-60	120-60			
4	10-11	8-9	120-60	120-60	120-60	120-60	120-60	120-60	120-60	2 Years		
3	120-60	120-60	120-60	120-60	120-60	120-60	90-30	90-30	90-30			
2	90-30	90-30	90-30	90-30	90-30	90-30	90-30	90-30	90-30	1 ½ Years	6 Mos.	1 Year
1	90-30	90-30	90-30	90-30	90-30	90-30	90-30	90-30	90-30			

The presumptive grid block for any felony conviction is the intersection where the crime seriousness ranking and the criminal history classification meet. Grid blocks in the shaded area represent the range of presumptive imprisonment and post-prison supervision (PPS). Non-shaded grid blocks are presumptive sentences of probation (Prob. Term) with local custodial sanctions in days (upper number) and maximum jail days without a departure (lower number).

In grid blocks 4-C and 4-D, for offenders sentenced under 2011 Oregon Laws ch 598 (SB 395), the upper number of sanction units shall be 180, and the lower number of sanction units shall be 90. Offenders sentenced under 2011 Oregon Laws ch 598 shall serve a mandatory minimum term of incarceration of 90 days without reduction for any reason.

The probation term of 5 years applies to levels 9-11, the term of 3 years applies to levels 6-8, 2 years applies to levels 3-5, and 1 ½ years applies to levels 1-2.

### Criminal History Categories

Oregon Administrative Rule 213-004-0007 defines criminal history categories.

A	The criminal history includes three or more person felonies in any combination of adult convictions or juvenile adjudications.
B	The criminal history includes two person felonies in any combination of adult convictions or juvenile adjudications.
C	The criminal history includes one adult conviction or juvenile adjudication for a person felony; and one or more adult conviction or juvenile adjudication for a non-person felony.
D	The criminal history includes one adult conviction or juvenile adjudication for a person felony but no adult conviction or juvenile adjudications for a non-person felony.
E	The criminal history includes four or more adult convictions for non-person felonies but no adult conviction or juvenile adjudication for a person felony.
F	The criminal history includes two or three adult convictions for non-person felonies but no adult conviction or juvenile adjudication for a person felony.
G	The criminal history includes four or more adult convictions for Class A misdemeanors; one adult conviction for a non-person felony; or three or more juvenile adjudications for non-person felonies, but no adult conviction or juvenile adjudication for a person felony.
H	The criminal history includes no adult felony conviction or juvenile adjudication for a person felony; no more than two juvenile adjudications for non-person felonies; and no more than three adult convictions for Class A misdemeanors.
I	The criminal history does not include any juvenile adjudication for a felony or any adult conviction for a felony or Class A misdemeanor.

# Sentencing Guidelines (1989)

# OREGON SENTENCING DEPARTURES

## AGGRAVATING FACTORS

- (A) Deliberate cruelty to victim.
- (B) The offender knew or had reason to know of the victim's particular vulnerability, such as the extreme youth, age, disability or ill health of victim, which increased the harm or threat of harm caused by the criminal conduct.
- (C) Threat of or actual violence toward a witness or victim.
- (D) Persistent involvement in similar offenses or repetitive assaults. This factor may be cited when consecutive sentences are imposed only if the persistent involvement in similar offenses or repetitive assaults is unrelated to the current offense.
- (E) Use of a weapon in the commission of the offense.
- (F) The offense involved a violation of public trust or professional responsibility.
- (G) The offense involved multiple victims or incidents. This factor may not be cited when it is captured in a consecutive sentence.
- (H) The crime was part of an organized criminal operation.
- (I) The offense resulted in a permanent injury to the victim.
- (J) The degree of harm or loss attributed to the current crime of conviction was significantly greater than typical for such an offense.
- (K) The offense was motivated entirely or in part by the race, color, religion, ethnicity, national origin or sexual orientation of the victim.
- (L) Disproportionate impact (for Theft I under ORS 164.055, and Aggravated Theft I under ORS 164.057).

## MITIGATING FACTORS

- (A) The victim was an aggressor or participant in the criminal conduct associated with the crime of conviction.
- (B) The defendant acted under duress or compulsion (not sufficient as a complete defense).
- (C) The defendant's mental capacity was diminished (excluding diminished capacity due to voluntary drug or alcohol abuse).
- (D) The offense was principally accomplished by another and the defendant exhibited extreme caution or concern for the victim.
- (E) The offender played a minor or passive role in the crime.
- (F) The offender cooperated with the state with respect to the current crime of conviction or any other criminal conduct by the offender or other person. The offender's refusal to cooperate with the state shall not be considered an aggravating factor.
- (G) The degree of harm or loss attributed to the current crime of conviction was significantly less than typical for such an offense.
- (H) The offender's criminal history indicates that the offender lived conviction-free within the community for a significant period of time preceding his or her current crime of conviction.
- (I) The offender is amenable to treatment and an appropriate treatment program is available to which the offender can be admitted within a reasonable period of time; the treatment program is likely to be more effective than the presumptive prison term in reducing the risk of offender recidivism; and the probation sentence will serve community safety interests by promoting offender reformation.
- (J) The offender's status as a service member as defined in ORS 135.881.

# BALLOT MEASURE 11

1994

- In 1994, Oregon Voters passed Ballot Measure 11, which:
  - Created mandatory minimum prison sentences for 16 violent or sexual offenses, and
  - Created a mandatory waiver for juveniles 15 years of age or older who committed those 16 crimes.
- Since 1994, the Legislature amended Measure 11:
  - Adding six crimes to those carrying mandatory minimum prison sentences,
  - Increasing certain sentences, and
  - Allowing certain offenders convicted of “second degree” or less serious offenses to be eligible for an “opt out” of Measure 11 if they meet certain criteria.
- Laws related to Measure 11 and the subsequent changes can be found in ORS 137.700, ORS 137.707, and ORS 137.712.

# COMMUNITY CORRECTIONS ACT

## SB 1145 (1995)

- Senate Bill 1145 created a new relationship between the State and Counties in the area of community corrections. Following SB 1145, counties assumed responsibility for adults convicted of a felony:
  - On parole,
  - On probation,
  - On post-prison supervision,
  - Sentenced to 12 months or less of incarceration, or
  - Sentenced to 12 months or less for violating a condition of parole or post-prison supervision.
- The distinction between state and county responsibility for an adult who has been convicted of a crime is based on the length of incarceration, not the labels of misdemeanor and felony.
  - Twelve months or less - county jail.
  - Twelve months or more – DOC.

# REPEAT PROPERTY OFFENDER

RPO 1996



- In a special session in 1996, the Legislature passed HB 3488, creating the Repeat Property Offender Law (ORS 137.717).
- The RPO created sentences of 13 months for certain property offenders with a goal of having adult property offenders spend time in state prison versus Oregon's jail system.

# MEASURE 11 “OPT OUT”

## SB 1049

- In 1997, SB 1049 allowed for an “opt out” of the mandatory minimum sentence if certain criteria are met for “second degree” offenses (ORS 137.712).
- The criteria for the “opt out” sentence are different depending on the crime. The judge must make all of the required findings on the record by a preponderance of the evidence.
- Additionally, a probation sentence can be granted if the court finds:
  - There is a substantial and compelling reason,
  - A sentence of probation would be more effective at reducing the risk of offender recidivism, and
  - A sentence of probation would better serve to protect society.



# IDENTITY THEFT

1999

- In 1999, the Oregon Legislature created the crime of Identity Theft in response to the rapidly expanding use of other peoples' identities for the purpose of fraud.
- A person commits this Class C felony if the person, with intent to deceive or defraud, obtains, possesses, transfers, creates, utters, or converts to the person's own use the personal identification of another person.
- Personal identification is defined broadly in statute to include almost any identification (including name, date of birth, driver's privileges, personal identification number, or photograph) of a real or imaginary person.

# MEASURE 57

2008

## Passed (2008)

Passed by the Voters, this ballot measure:

- Broadened the definition of a repeat property offender,
- Required fewer convictions for an adult to qualify for prison,
- Restricted judge's discretion regarding RPOs, and
- Increased sentence lengths.



## Suspended (2009)

Measure 57 was suspended via HB 3508 due to budgetary issues tied to the Great Recession.

Both the repeat property and the repeat drug portions were suspended for sentences imposed after February 15, 2010.



## Reinstated (2012)

The partial suspension ended in 2012 and again applied to crimes committed on or after January 1, 2012.

# JUSTICE REINVESTMENT

HB 3194 (2013) AND HB 3078 (2017)

- HB 3194 Stated Goals:
  - Reduce Recidivism
  - Reduce Prison Utilization
  - Increase Public Safety
  - Hold Offenders Accountable
- HB 3078:
  - Expanded Family Sentencing Alternative Program
  - Expanded STTL to 120 days
  - Removed ID Theft and Theft I from M57
  - Established JRI downward departure program with \$7M of supplemental funding



# GUIDELINE WEIRDNESS

- The last time guideline sentencing was examined by the CJC it was found that guideline sentences accounted for 43% of prison intakes, but only governed 24% of the impact of the prison time imposed in 2009.

-Longitudinal Study of the Application of MII and Mandatory Minimums in OR – 2011

- Fail to Appear in Court CS4 vs. Attempt to Elude in Vehicle CS2
- Animal Abuse I CS6 vs. Bribing a Witness CS6
- Perjury CS6 vs. Possession / Manufacturing Destructive Device CS6
- Incest CS6 vs. Escape II CS6

# SENTENCING OUTSIDE OF OREGON

# MICHIGAN

## BACKGROUND

- While Michigan uses a grid-based guidelines approach, it allows for more specificity during sentencing.
  - Rather than a single grid, Michigan utilizes different grids for each crime severity level.
  - By using multiple grids, the sentence is determined by three factors, the severity of the crime, the defendant's prior record, and *specific factors unique to the case in question*.



STATE OF MICHIGAN  
**Sentencing Guidelines Manual**  
*Prepared by the Michigan Judicial Institute*

Online Version Current Through 1/23/19

These changes will appear in the 2019 hard-copy volume of the *Michigan Sentencing Guidelines Manual*, which is produced by Thomson Reuters.

# MICHIGAN

## SENTENCING GRIDS

### Sentencing Grid for Class A Offenses—MCL 777.62

Includes Ranges Calculated for Habitual Offenders (MCL 777.21(3)(a)-(c))

Sentencing Grids

OV Level	PRV Level						Offender Status
	A	B	C	D	E	F	
	0 Points	1-9 Points	10-24 Points	25-49 Points	50-74 Points	75+ Points	
<b>I</b> 0-19 Points	21	35	45	70	85	135	180
		43	56	87	106	168	225
		52	67	105	127	202	270
		70	90	140	170	270	360
<b>II</b> 20-39 Points	27	45	70	85	135	180	210
		56	87	106	168	225	262
		67	105	127	202	270	315
		90	140	170	270	360	420
<b>III</b> 40-59 Points	42	70	85	135	180	210	225
		87	106	168	225	262	281
		105	127	202	315	337	360
		140	170	270	360	420	450
<b>IV</b> 60-79 Points	51	85	135	180	210	225	285
		106	168	225	262	281	356
		127	202	315	337	427	468/L
		170	270	360	420	450	570
<b>V</b> 80-99 Points	81	135	180	210	225	285	375/L
		168	225	262	281	356	468/L
		202	270	315	337	427	562/L
		270	360	420	450	570	750/L
<b>VI</b> 100+ Points	108	180	210	225	285	375/L	450/L
		225	262	281	356	468/L	562/L
		270	315	337	427	562/L	675/L
		360	420	450	570	750/L	900/L

† Certain fourth habitual offenders may be subject to a mandatory minimum sentence of 25 years' imprisonment. See MCL 769.12(1)(a).

The statutory percentage increases for habitual offenders are rounded down to the nearest whole month.  
The cell range may be less than the maximum possible minimum sentence by a fraction of a month.

### Sentencing Grid for Class D Offenses—MCL 777.65

Includes Ranges Calculated for Habitual Offenders (MCL 777.21(3)(a)-(c))

Sentencing Grids

OV Level	PRV Level						Offender Status
	A	B	C	D	E	F	
	0 Points	1-9 Points	10-24 Points	25-49 Points	50-74 Points	75+ Points	
<b>I</b> 0-9 Points	0	6*	9*	11*	17*	23	23
		7*	11*	13*	21	28	28
		9*	13*	16*	25	34	34
		12*	18*	22	34	46	46
<b>II</b> 10-24 Points	0	9*	11*	17*	23	23	38
		11*	13*	21	28	28	47
		13*	16*	25	34	34	57
		18*	22	34	46	46	76
<b>III</b> 25-34 Points	0	11*	17*	23	23	38	57
		13*	21	28	28	47	71
		16*	25	34	34	57	85
		22	34	46	46	76	114
<b>IV</b> 35-49 Points	0	17*	23	23	38	57	67
		21	28	28	47	71	83
		25	34	34	57	85	100
		34	46	46	76	114	134
<b>V</b> 50-74 Points	5	23	23	38	57	67	76
		28	28	47	71	83	95
		34	34	57	85	100	114
		46	46	76	114	134	152
<b>VI</b> 75+ Points	10	23	38	57	67	76	76
		28	47	71	83	95	95
		34	57	85	100	114	114
		46	76	114	134	152	152

† Certain fourth habitual offenders may be subject to a mandatory minimum sentence of 25 years' imprisonment. See MCL 769.12(1)(a).

Intermediate sanction cells are marked by asterisks, straddle cells are shaded, and prison cells are unmarked.

The statutory percentage increases for habitual offenders are rounded down to the nearest whole month.

# MICHIGAN

## PRIOR RECORD VARIABLES

- Prior High Severity Felonies
- Prior Low Severity Felonies
- Prior High Severity Juvenile Adjudications
- Prior Low Severity Juvenile Adjudications
- Prior Misdemeanors
- Relationship to the Justice System
- Subsequent or Concurrent Felony Convictions

PRVs and OVs - Crimes Against Property

PRV 1 Prior High Severity Felony Convictions MCL 777.51		
<i>All "prior convictions" must satisfy the 10-year gap requirements of MCL 777.50.</i>		
Pts	The offender has:	Instructions
75	3 or more prior high severity felony convictions. MCL 777.51(1)(a).	<p>A "prior high severity felony conviction" is a conviction for any of the following crimes, if the conviction was entered before the sentencing offense was committed*:</p> <ul style="list-style-type: none"> <li>• a crime listed in class M2, A, B, C, or D (or a felony under federal law or the law of another state that corresponds to a crime listed in class M2, A, B, C, or D)</li> <li>• (for offenses committed on or after January 9, 2007**) a felony that is not listed in <i>any</i> crime class (or a felony under federal law or the law of another state that does not correspond to a crime listed in <i>any</i> class) that is punishable by a maximum term of imprisonment of 10 years or more. MCL 777.51(2).</li> </ul> <p><small>* The language "if the conviction was entered before the sentencing offense was committed" was added by 2006 PA 655, effective January 9, 2007. ** See 2006 PA 655, effective January 9, 2007.</small></p>
50	2 prior high severity felony convictions. MCL 777.51(1)(b).	
25	1 prior high severity felony conviction. MCL 777.51(1)(c).	
0	No prior high severity felony convictions. MCL 777.51(1)(d).	
PRV 2 Prior Low Severity Felony Convictions MCL 777.52		
<i>All "prior convictions" must satisfy the 10-year gap requirements of MCL 777.50.</i>		
Pts	The offender has:	Instructions
30	4 or more prior low severity felony convictions. MCL 777.52(1)(a).	<p>A "prior low severity felony conviction" is a conviction for any of the following crimes, if the conviction was entered before the sentencing offense was committed*:</p> <ul style="list-style-type: none"> <li>• a crime listed in class E, F, G, or H (or a felony under federal law or the law of another state that corresponds to a crime listed in class E, F, G, or H)</li> <li>• (for offenses committed on or after January 9, 2007**) a felony that is not listed in <i>any</i> crime class (or a felony under federal law or the law of another state that does not correspond to a crime listed in <i>any</i> class) that is punishable by a maximum term of imprisonment of less than 10 years. MCL 777.52(2).</li> </ul> <p><small>* The language "if the conviction was entered before the sentencing offense was committed" was added by 2006 PA 655, effective January 9, 2007. ** See 2006 PA 655, effective January 9, 2007.</small></p>
20	3 prior low severity felony convictions. MCL 777.52(1)(b).	
10	2 prior low severity felony convictions. MCL 777.52(1)(c).	
5	1 prior low severity felony conviction. MCL 777.52(1)(d).	
0	No prior low severity felony convictions. MCL 777.52(1)(e).	

PRVs and OVs - Crimes Against Property



# MICHIGAN

## OFFENSE VARIABLES

- Aggravated Use of a Weapon/Lethal Potential of Weapon
- Physical Injury to the Victim
- Psychological Injury to Victim or Victim's Family
- Offender's Intent to Kill or Injure
- Aggravated Physical Abuse
- Number of Victims
- Exploitation of Vulnerable Victims
- Contemporaneous Criminal Acts
- Pattern of Criminal Behavior
- Offender's Role

PRVs and OVs - Crimes Against Property

OV 14 Offender's Role MCL 777.44 <i>OV 14 is scored for all felony offenses. See MCL 777.22.</i>		
Pts		Instructions
10	The offender was a leader in a multiple offender situation. MCL 777.44(1)(a).	<ul style="list-style-type: none"> <li>• Consider the entire criminal transaction when determining the offender's role. MCL 777.44(2)(a).</li> <li>• If three or more offenders were involved, more than one offender may be determined to have been a leader. MCL 777.44(2)(b).</li> </ul>
0	The offender was not a leader in a multiple offender situation. MCL 777.44(1)(b).	

OV 16 Property Obtained, Damaged, Lost, or Destroyed MCL 777.46 <i>OV 16 is scored for all felony offenses except crimes involving a controlled substance. Score for a crime against a person only if the sentencing offense is a violation or attempted violation of MCL 750.110a (home invasion). See MCL 777.22.</i>		
Pts		Instructions
10	Wanton or malicious damage occurred beyond that necessary to commit the crime for which the offender is not charged and will not be charged. MCL 777.46(1)(a).	<ul style="list-style-type: none"> <li>• In multiple offender or victim cases, the appropriate points may be determined by adding together the aggregate value of the property involved, including property involved in uncharged offenses or charges dismissed under a plea agreement. MCL 777.46(2)(a).</li> <li>• Use the value of the property to score OV 16 in cases in which the property was obtained unlawfully, lost to the lawful owner, or destroyed. If the property was damaged, use the monetary amount appropriate to restore the property to pre-offense condition. MCL 777.46(2)(b).</li> <li>• The amount of money or property involved in admitted but uncharged offenses or in charges dismissed under a plea agreement may be considered in scoring OV 16. MCL 777.46(2)(c).</li> <li>• Score OV 16 for a crime against a person only if the sentencing offense is a violation or attempted violation of MCL 750.110a (home invasion). MCL 777.22(1).</li> </ul>
10	The property had a value of more than \$20,000.00 or had significant historical, social, or sentimental value. MCL 777.46(1)(b).	
5	The property* had a value of \$1,000.00 or more but not more than \$20,000.00. MCL 777.46(1)(c).	
1	The property* had a value of \$200.00 or more but not more than \$1,000.00. MCL 777.46(1)(d).	
0	No property was obtained, damaged, lost, or destroyed or the property had a value of less than \$200.00. MCL 777.46(1)(e).	

\* Before December 28, 1999, MCL 777.46(1)(c) and MCL 777.46(1)(d) referred to "the property involved;" (emphasis supplied). See 1999 PA 227, effective December 28, 1999.

# MICHIGAN

## THE SENTENCE AND JUDICIAL DISCRETION

- The sentence falls between the minimum and maximum.
- After hearing recommendations and arguments from the parties, the judge decides where in the range the sentence falls.
- Departures beyond the minimum and maximum require finding “substantial and compelling reasons” that must be stated on the record.

22	38	
	47	HO2
	57	HO3
	76	HO4

Maximum Presumptive Sentence

Minimum Presumptive Sentence

# FEDERAL SENTENCING GRID

## OVERVIEW

- The Federal Grid is much more expansive than Oregon's, particularly regarding Offense Level.
- For offense levels, some characteristics of an offense are considered (although not as detailed as in Michigan).
- For Example:
  - Assault is a level 4 offense.
  - However, assault is a level 7 if physical contact occurred or if a dangerous weapon was possessed and its use was threatened.
  - Score will be increased 2 levels of serious bodily injury occurred and 4 levels of the injury was sustained by an child or intimate partner.

**Table 1**  
**Sentencing Table (in Months of Imprisonment)**

Offense Level	Criminal History Category (Criminal History Points)					
	I (0 or 1)	II (2 or 3)	III (4, 5, 6)	IV (7, 8, 9)	V (10, 11, 12)	VI (13 or more)
1	0-6	0-6	0-6	0-6	0-6	0-6
2	0-6	0-6	0-6	0-6	0-6	1-7
3	0-6	0-6	0-6	0-6	2-8	3-9
<b>Zone A</b>						
4	0-6	0-6	0-6	2-8	4-10	6-12
5	0-6	0-6	1-7	4-10	6-12	9-15
6	0-6	1-7	2-8	6-12	9-15	12-18
7	0-6	2-8	4-10	8-14	12-18	15-21
8	0-6	4-10	6-12	10-16	15-21	18-24
9	4-10	6-12	8-14	12-18	18-24	21-27
<b>Zone B</b>						
10	6-12	8-14	10-16	15-21	21-27	24-30
11	8-14	10-16	12-18	18-24	24-30	27-33
<b>Zone C</b>						
12	10-16	12-18	15-21	21-27	27-33	30-37
13	12-18	15-21	18-24	24-30	30-37	33-41
14	15-21	18-24	21-27	27-33	33-41	37-46
15	18-24	21-27	24-30	30-37	37-46	41-51
16	21-27	24-30	27-33	33-41	41-51	46-57
17	24-30	27-33	30-37	37-46	46-57	51-63
18	27-33	30-37	33-41	41-51	51-63	57-71
19	30-37	33-41	37-46	46-57	57-71	63-78
20	33-41	37-46	41-51	51-63	63-78	70-87
21	37-46	41-51	46-57	57-71	70-87	77-96
22	41-51	46-57	51-63	63-78	77-96	84-105
23	46-57	51-63	57-71	70-87	84-105	92-115
24	51-63	57-71	63-78	77-96	92-115	100-125
<b>Zone D</b>						
25	57-71	63-78	70-87	84-105	100-125	110-137
26	63-78	70-87	78-97	92-115	110-137	120-150
27	70-87	78-97	87-108	100-125	120-150	130-162
28	78-97	87-108	97-121	110-137	130-162	140-175
29	87-108	97-121	108-135	121-151	140-175	151-188
30	97-121	108-135	121-151	135-168	151-188	168-210
31	108-135	121-151	135-168	151-188	168-210	188-235
32	121-151	135-168	151-188	168-210	188-235	210-262
33	135-168	151-188	168-210	188-235	210-262	235-293
34	151-188	168-210	188-235	210-262	235-293	262-327
35	168-210	188-235	210-262	235-293	262-327	292-365
36	188-235	210-262	235-293	262-327	292-365	324-405
37	210-262	235-293	262-327	292-365	324-405	360-life
38	235-293	262-327	292-365	324-405	360-life	360-life
39	262-327	292-365	324-405	360-life	360-life	360-life
40	292-365	324-405	360-life	360-life	360-life	360-life
41	324-405	360-life	360-life	360-life	360-life	360-life
42	360-life	360-life	360-life	360-life	360-life	360-life
43	life	life	life	life	life	life

# CONCLUSION

## THE FUTURE OF THE OREGON GUIDELINES

- This year, the Oregon guidelines are 30 years old.
- In the intervening three decades since the creation of our guidelines, many different models and approaches have been developed across the country.
- If we were to examine those outside models and assess whether revisions to the Oregon guidelines would be necessary, what would it take?

