

LEGISLATIVE REFERENCE GUIDE TITLE 45 FELONY SENTENCING STATUTES

By Crime Seriousness Ranking, Crime, MCA Reference, Description, and Sentence Range
(not including misdemeanors, 3 strikes, fines, or other conditions)

This document is a companion reference guide to the Judiciary Committee Title 45 Sentencing Statutes Analysis Tool (contained in the Appendix). The Introduction below, describes what is included and not in this guide.

INTRODUCTION

In this document, the Montana Code Annotated (MCA) Title 45 felony sentencing statutes are organized by the Crime Seriousness Ranking developed by the 1995 Montana Sentencing Commission (Commission)¹. The Commission based its ranking on the nature and degree of harm caused or likely to be caused by the offense, the culpability of the offender, and the rights of the victim². The predecessor to the Law and Justice Interim Committee (LJIC or Committee) adopted this tool as a starting point for reference by legislators for the 2001 Legislative Session and for future analysis of criminal statutes³. This document is an updated snapshot of the current (2001) state of the statutes governing Montana's indeterminate sentencing system. The snapshot is intended to reveal any inequities or anomalies that can occur in a system that is amended on a regular basis during biennial legislative sessions without a mechanism or entity to review and analyze new criminal offenses or amendments to existing statutes.

This analysis tool and reference guide (hereafter, "Guide") is intended to be used by the Senate and House Judiciary Committees or others whenever deliberating legislation proposing new criminal offenses or sentences or changes to existing criminal statutes. It can also be used as a tool for the Committee or other entities to analyze criminal sentencing statutes in the MCA.

¹ The Montana Sentencing Commission adopted a ten-level scale and had apportioned property crimes by different values resulting in multiple listings of the same property crime. The Law, Justice, and Indian Affairs Interim Committee adopted the tool in 2000 without the monetary value levels and placed each property crime in the first level in which it appeared in the scale. In doing so, Level VIII was empty. This tool was renumbered and contains nine levels.

² From *Montana Sentencing Commission: Report to the Montana 55th Legislative Assembly*, January 1997.

³ The precursor to this document was titled, *Judiciary Committee: Title 45 Felony Sentencing Statutes Analysis Tool and Reference Guide 2001*. It was authored by Susan B. Fox, Research Analyst, Montana Legislative Services Division.

The Guide lists the offenses in Title 45, MCA, that may rise to the level of a felony on a first conviction by virtue of the sentence imposed upon the conviction: death or imprisonment in a state prison for a term exceeding 1 year (45-2-101(22), MCA). For many of these offenses, a sentence of less than one year may be imposed, and by definition, the offense would then be a misdemeanor.

This Guide does not contain over 500 misdemeanor offenses "for which the sentence imposed upon conviction is imprisonment in a county jail for any amount of time or a fine, or both, or for which the sentence imposed is imprisonment in a state prison for a term of one year or less" (45-2-101(41), MCA).

The "two-strikes and three-strikes" provisions in 46-18-219 and 46-18-220, MCA, that were enacted in 1995 and that increase the penalties for some of the offenses under certain circumstances are not included in this document.⁴

There are miscellaneous charges and other conditions that may be imposed during sentencing and they are not included in this document. All of these other criminal offenses and sentencing conditions are part of Montana's complicated, indeterminate sentencing system.

This Guide, including the appendices, was compiled using the 2001 MCA and may not be an exhaustive list because of the vagaries of statutory language dealing with criminal felony offenses and the difficulty of identifying every (non-Title 45) felony. It is intended that this Guide be updated and refined each interim by the Committee and by other entities that analyze criminal statutes.

⁴Two-strikes and three-strikes laws in Montana require that an offender who is convicted of deliberate homicide, aggravated kidnapping, sexual intercourse without consent, sexual abuse of children, or ritual abuse of a minor and who was previously convicted of one of those offenses (two-strikes) or convicted of a third offense that added to the list of offenses mitigated deliberate homicide, aggravated assault, kidnapping, or robbery (three strikes) must be sentenced to life in prison or to death, if applicable.

HOW THIS REFERENCE GUIDE IS ORGANIZED

By level: LEVEL II:

The levels represent the crime seriousness ranking assigned by the Sentencing Commission to the crimes listed within each Level. The Levels are arranged from most serious (Level I) to least serious (Level IX), based on the Sentencing Commission's criteria.

Including a "Description of characteristics":

- Offenses against the person: violent, used or threatened physical force with victim, or victim death with mitigating circumstances.

This information summarizes the elements of the offenses within each crime seriousness level. Criminal statutes in Title 45, MCA, are organized into chapters based on the types of crime, i.e. crimes "against the person", crimes against "property", crimes against "public administration", and crimes against "public order".

Listing by crime or offense name: Aggravated Kidnaping⁵

Listing by Montana Code Annotated (MCA) section: 45-5-303:

The section of the MCA in which this crime can be found. Below the name of the crime and the MCA section is a summary of the crime as it is described in the MCA.

Including cross references: (See also Level III):

This note appears at the end of the summary for some crimes because some crimes appear in more than one Crime Seriousness Level. Whenever this happens, the elements of the crime will be different in each level. For example, Aggravated Kidnaping appears in Level II and Level III. In the Level III offense, the offender must have voluntarily released the victim alive, in a safe place, and not suffering from serious bodily injury as that term is defined in the criminal law. In addition, the sentence range for a crime that appears in different levels may be different. For example, the sentence range for Level II Aggravated Kidnaping is 2-100 years, Life, or Death while the sentence range for Level III Aggravated Kidnaping is 2-10 years.

Including sentence range: (2-100, L, D):

This information identifies the sentence range (2-100 years) that a judge may impose when someone is convicted of the crime. "L" stands for life imprisonment and "D" indicates that the death penalty may be imposed for this crime.

⁵Offenses enacted since 1995, when this guide was originally compiled and felony drug offenses, were not contained in prior versions of this guide. They are included in this version in boldface type.

LEVEL I:

Description of characteristics:

- Offense against the person: violent, victim death.

Deliberate Homicide

45-5-102

A person commits deliberate homicide if the person causes the death of another human being; or in the process of attempting or committing a forcible felony, causes the death of another human being.

LEVEL II:

Description of characteristics:

- Offenses against the person: violent, used or threatened physical force with victim, or victim death with mitigating circumstances.

Aggravated Kidnaping

45-5-303

A person commits aggravated kidnaping if the person restrains another person to hold them for ransom or as a hostage; to facilitate commission of any felony or flight; inflicts bodily injury to terrorize the victim; to interfere with governmental or political function; or to hold them for a position of involuntary servitude (unless the offender has voluntarily released the victim alive, in a safe place, and not suffering from serious bodily injury.) (*See also Level III*) (2-100, L, D)

Mitigated Deliberate Homicide

45-5-103

A person commits mitigated deliberate homicide if the person purposely or knowingly causes the death of another human being while under extreme mental or emotional stress for which there is a reasonable explanation. (2-40)

LEVEL III:

Description of characteristics:

- Offenses against the person: three violent (two with serious bodily injury (sbi), one without causing sbi), three sexual, one against the family
- Aggravated promotion of prostitution is not considered a sex crime by the FBI and in Montana is an offense against the family. As an element of the offense in this level, the victim is a dependent of the offender.
- Serious drug offenses, involving distribution, production, or manufacture of dangerous drugs (three).

Aggravated Assault

45-5-202(1)

A person commits aggravated assault if the person causes *serious bodily injury* to another.

(2-20)

Negligent Vehicular Assault (serious bodily injury caused)

45-5-205(3)

A person commits negligent vehicular assault (with serious bodily injury caused) if the person negligently operates a vehicle while under the influence and causes serious bodily

injury to another.

(0-10)

Sexual Intercourse Without Consent 45-5-503

(1) A person commits the offense of sexual intercourse without consent if the person has sexual intercourse (any penetration) with another without that person's consent. (*See also Level ~~IV~~ 100, L*)

OR

(3)(a) if the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury on anyone in the course of committing sexual intercourse without consent; (4-100, L)

OR

(3)(b) if two or more offenders are convicted of the offense with the same victim in an incident in which each offender was present at the location of the offense...and each offender could have reasonably known of the other's offense; (5-100, L)

OR

(3)(c) if the offender was previously convicted of this offense; (L, D)

OR

(3)(d) if the victim was incarcerated in an adult or juvenile correctional, detention, or treatment facility at the time of the offense and the offender had supervisory or disciplinary authority over the victim. (0-5)

Incest 45-5-507

A person commits incest if the person marries, cohabits with, or has sexual intercourse or sexual contact with an ancestor, descendant, brother or sister (whole or half), or stepson or stepdaughter, if any of the factors listed under Sexual Intercourse Without Consent are present. (*See also Levels V and VII*). (0-100, L; victim <16: 4-100, L)

Sexual Abuse of Children 45-5-625

A person commits sexual abuse of children if the person knowingly employs, uses, or permits the employment or use of a child in an exhibition of sexual conduct, actual or simulated

OR

The offender knowingly photographs, films, videotapes, develops, or duplicates the photographs, films, or videotapes, or records a child engaging in sexual conduct

OR

The offender persuades, entices, counsels, or procures a child to engage in sexual conduct, actual or simulated;

OR

The offender knowingly possesses, processes, develops, prints, publishes, transports, distributes, sells, exhibits, or advertises any visual or print medium in which children are engaged in sexual conduct, actual or simulated;

OR

The offender knowingly finances conduct constituting an offense.(See also Level VI)

(0-100, L; victim <16: 4-100, L)

Aggravated Promotion of Prostitution 45-5-603(1)(b) and (c)

A person commits aggravated promotion of prostitution if the person purposely or knowingly (1)(b) promotes prostitution of a child under the age of 18 years, whether or not the offender is aware of the child's age;

OR

(1)(c) The offender promotes the prostitution of one's spouse, child, ward, or any person for whose care, protection, or support the offender is responsible. (See also Level VI) (0-20)

Aggravated Kidnaping 45-5-303

(The offender voluntarily released the victim alive, in a safe place, and *not suffering from serious bodily injury*.) A person commits aggravated kidnaping if the person restrains another person to hold them for ransom or as a hostage; to facilitate commission of any felony or flight; inflicts bodily injury or terrorizes the victim; to interfere with governmental or political function; or to hold them for a position of involuntary servitude. (See also Level I) (2-10)

Criminal Distribution of Dangerous Drugs 45-9-101

A person commits criminal distribution of dangerous drugs if the person sells, barter, exchanges, or gives away, or offers to sell, barter, exchange, or give away a dangerous drug. (1-40, L)

Criminal Distribution of Dangerous Drugs on or Near School Property 45-9-109 A

person commits this offense if 45-9-101 is committed in, on, or within 1,000 feet of the real property comprising a public or private elementary or secondary school. (3-L)

Criminal Production or Manufacture of Dangerous Drugs 45-9-110 A

person commits this offense if the person knowingly or purposely produces, manufactures, prepares, cultivates, compounds, or processes a dangerous drug.(5-40, L)

Operation of an Unlawful Clandestine Laboratory 45-9-132

A person commits this offense if the person purposely or knowingly engages in the procurement, possession, use, transportation, or arrangement of transportation of chemicals, precursors to dangerous drugs, supplies, equipment, or a laboratory location for the criminal production or manufacture of dangerous drugs, or purposely or knowingly engages in the setting up of equipment or supplies in preparation for the criminal production or manufacture of dangerous drugs. The imprisonment term is enhanced if any of the following also occurred during any phase of the operation: substantial risk of death or serious bodily injury; operation in the presence of a person under 18 years of age or within 500 feet of a school, residence, business, or church; the use of a firearm or booby trap. (0-40)

LEVEL IV:

Description of characteristics:

- Five are considered offenses against the person: four violent, one sexual.
- Aggravated burglary could be considered violent because elements of the crime include use of a weapon or bodily injury. Burglary is traditionally categorized as an offense against property.
- Escape is an offense against the public administration, but an element of the offense described in this level is the use of force or physical violence or use of an actual or simulated weapon.
- Arson is considered an offense against property, although destruction and placing another person in danger are elements of the offense.
- Possession of a deadly weapon, rioting, and inciting riot are offenses against the public order, however rioting and inciting riot may only be committed by inmates under state or county jurisdiction.

Sexual Intercourse Without Consent	45-5-503(1)
A person commits sexual intercourse without consent if the person has sexual intercourse without consent with another person. <i>(See also Level III)</i>	(2-100, L)
Assault on a Peace Officer	45-5-210
A person commits assault on a peace or judicial officer if the person causes bodily injury to a peace officer or a judicial officer.	(2-10)
Mistreating Prisoners	45-5-204
A person commits mistreating prisoner if the person assaults or injures a prisoner, or intimidates, threatens, endangers, or withholds reasonable necessities from the prisoner to obtain a confession or violates any civil right.	(0-10)
Kidnaping	45-5-302
A person commits kidnaping if the person restrains another person by holding in isolation or threatening physical force.	(2-10)
Robbery	45-5-401
A person commits robbery if the person in the course of committing a theft inflicts or threatens to inflict bodily injury or commits or threatens to commit any felony.	(2-40)
Aggravated Burglary	45-6-204(2)
A person commits aggravated burglary if the person knowingly enters or remains unlawfully in an occupied structure to commit an offense therein; and 1) in the course of entry, committing the offense or flight is armed with explosives or a weapon; or 2) purposely, knowingly, or negligently inflicts or attempts to inflict bodily injury on another.	(0-40)

Escape 45-7-306(3)(a)
(Situations where the detained person uses or threatens to use force, physical violence, a weapon, or a simulated weapon.) A person commits escape when the person knowingly or purposely eludes official detention or fails to return to official detention following temporary leave granted for a specific purpose or in county work program fails to appear for work. *(See also Level V)*
(0-20)

Arson 45-6-103
A person commits arson if the person damages or destroys a structure, vehicle, crop, or personal property that exceeds \$1000 in value, crop, pasture, forest, or other real property (a) that is property of another without consent or (b) that the person owns or has a possessory interest in with purposes of obtaining a pecuniary interest or gain through fraud or deception. A person commits arson if the person places another person, including a firefighter, in danger of death or bodily injury.
(0-20)

Possession of a Deadly Weapon By a Prisoner 45-8-318
A person commits possession of a deadly weapon by a prisoner if the person is imprisoned in the state prison, a jail, a youth detention or youth correctional facility, or while in transit to or from such institutions and possesses a weapon.
(5-15)

Rioting 45-8-103(3)
A person commits riot if the person engages in an act of violence while incarcerated in the state prison or a jail.
(1-5)

Incitement to Riot 45-8-104(3)
A person commits incitement to riot if the person engages in conduct that encourages other persons to riot while incarcerated in a state correctional facility.
(1-5)

LEVEL V:

Description of characteristics

- Six are offenses against the person: three violent, two sexual; criminal endangerment is creating a substantial risk of death or serious bodily injury
- One offense against the person or the property of a person or public property
- One offense against property
- Escape is an offense against the public administration and in this level no force is used.
- The "deviate sexual relations" element of deviate sexual conduct is sexual contact or sexual intercourse between two persons of the same sex or any form of sexual intercourse with an animal.

Negligent Homicide 45-5-104
A person commits negligent homicide if the person negligently causes the death of another human being.
(0-20)

Criminal Endangerment	45-5-207
A person commits criminal endangerment if the person engages in conduct that creates a substantial risk of death or serious bodily injury to another.	
	(0-10)
Assault with a Weapon	45-5-213
A person commits assault with a weapon if the person causes bodily injury or reasonable apprehension of serious bodily injury to another by use of a weapon.	
	(0-20)
Assault Upon A Minor	45-5-212
A person commits assault upon a minor if a person 18 years of age or older causes bodily injury to a victim less than 14 years old.	
	(0-5)
Malicious Intimidation or Harassment	45-5-221
A person commits malicious intimidation or harassment when, because of another person's race, creed, religion, color, national origin, or involvement in civil or human rights activities, the person purposely or knowingly, with intent to terrify, intimidate, threaten, harass, annoy, or offend, causes bodily injury to another, causes reasonable apprehension of bodily injury to another, or damages, destroys, or defaces property of another or public property.	
	(0-5)
Burglary	45-6-204
A person commits burglary if the person enters or remains unlawfully in an occupied structure with the purpose to commit an offense in the occupied structure.	
	(0-20)
Sexual Assault	45-5-502(3)
A person commits felony sexual assault if a person knowingly subjects another person to any sexual contact without consent and:	
	(2-100, L)
If the victim is less than 16 years old and the offender is 3 or more years older than the victim	
	(victim <16: 2-100, L)
OR	
The offender inflicts bodily injury upon anyone in the course of committing sexual assault.	
	(2-100, L)
Deviate Sexual Conduct	45-5-505
A person commits deviate sexual conduct by knowingly engaging in deviate sexual relations or by causing another to engage in deviate sexual relations.	
	(0-10)
Incest	45-5-507
A person commits incest if it is a Sexual Assault and one of the factors listed under Sexual Assault is present. (<i>See also Levels III, VII</i>)	
	(0-100, L; victim <16: 4-100, L)

Escape 45-7-306(3)(b)
A person commits escape if the person has been charged with or convicted of a felony and eludes official detention or fails to return to official detention following temporary leave granted for a specific purpose or in a county work program fails to appear for work. (Detained person does not use or threaten to use force, physical violence, or a weapon or a simulated weapon.)(*See also Level IV*) (0-10)

LEVEL VI:

Description of characteristics

- Aggravated promotion of prostitution is an offense against the person, specifically against the family. The victim is not a dependent of the offender.
- Five additional offenses are against the person: two of which are sexual but with no victim contact.
- Eleven are offenses against property.
- Five offenses relate to dangerous drugs.

Aiding Or Soliciting Suicide 45-5-105
A person commits aiding or soliciting suicide if a person purposely aids or solicits another to commit a suicide that does not occur. (0-10)

Intimidation 45-5-203
A person commits intimidation if the person threatens another, under circumstances which reasonably tend to produce fear that the threat will be carried out, or to cause the other person to perform or omit the performance of any act. (0-10)

Aggravated Promotion of Prostitution 45-5-603(1)(a)
A person commits aggravated promotion of prostitution if the person purposely or knowingly compels another to engage in or promote prostitution or promotes the prostitution of a person under 18 years of age or of a spouse, child, ward, or other person for whom the person is responsible. (*See also Level III*) (0-100, L)

Sexual Abuse of Children 45-5-625(1)(e)
A person commits sexual abuse of children if the person possesses any visual or print medium in which children are engaged in sexual conduct, actual or simulated.(*See also Level III*) (0-10)

Criminal Mischief 45-6-101
A person commits criminal mischief if the person injures, damages, destroys, or tampers with property over \$1,000 in value of another without consent. (0-10)

Desecration of Capitol, Place of Worship, Cemetery, or Public Memorial 45-6-104
A person commits desecration if the person purposely defiles or defaces the capitol, etc., places on or attaches a mark, design, or materials not properly a part of the capitol, etc., or injures, damages,

or destroys any portion of the capitol, or of a place of worship, cemetery, or public memorial with over \$1,000 damage. (0-10)

Theft 45-6-301 (all sections and subsections)

A person commits the offense of theft when the person obtains or exerts control over property of the owner and exerts unauthorized control over the property exceeding \$1,000 or over any domesticated hooved animal; obtains control by threat or deception; obtains control of property known to have been stolen; obtains control over public assistance, workers' compensation benefits; or commits insurance fraud. (0-10)

Failure to Return Rented or Leased Personal Property 45-6-309

A person commits when fails to return rented or leased property over \$1,000 in value to the rightful owner within 48 hours after the time provided for the return in the rental/lease agreement. (0-10)

Unlawful Use of a Computer 45-6-311

A person commits unlawful use of a computer when the person obtains the use of or alters or destroys a computer or computer equipment over \$1,000 without consent of the owner. (0-10)

Unauthorized Acquisition or Transfer of Food Stamps 45-6-312

A person commits unauthorized acquisition or transfer of food stamps when the person acquires, purchases, possesses, or uses more than \$1,000 in food stamps that the person is not entitled to; or transfers, sells, trades, or gives more than \$1,000 in food stamps to another person not entitled to use them; or as part of a common scheme. (0-10)

Medicaid Fraud 45-6-313

A person commits medicaid fraud when the person obtains Medicaid payment or benefit under false pretenses over \$1,000 in value. (0-10)

Issuing a Bad Check 45-6-316

A person commits issuing a bad check when the person issues a check over \$1,000, either real or fictitious, knowing that it will not be paid by the depository. (0-10)

Deceptive Practices 45-6-317

A person commits the offense of deceptive practices by deceptively using a credit card or making a deceptive statement to obtain property, labor, or services that exceeds \$1,000. (0-10)

Forgery 45-6-325

A person commits forgery when the person, without authority, makes or alters any document capable of being used to defraud and if the value of the property, labor, or services exceeds \$1,000. (0-20)

Illegal Branding or Altering or Obscuring a Brand 45-6-327
A person commits illegal branding or altering or obscuring a brand when the person brands any commonly domesticated hooved animal or removes, covers, alters, or defaces a brand with the purpose to obtain unauthorized control over the animal. (0-10)

Theft of Identity 45-6-332
A person commits theft of identity if the person purposely or knowingly obtains personal identifying information of another person and uses it for an unlawful purpose if an economic benefit of \$1,000 or more was gained or attempted to be gained. (0-10)

Criminal Possession of Dangerous Drugs (0-5) 45-9-102
Carrying Dangerous Drugs on a Train (0-5) 45-9-127
Criminal Possession of Precursors to Dangerous Drugs (2-20) 45-9-107
Criminal Possession with Intent to Distribute (0-20) 45-9-103
Fraudulently Obtaining Dangerous Drugs (1-10) 45-9-104 & 45-9-106

The above offenses are all dangerous drug felonies the descriptions of which are adequately stated in the name of the offense. "Precursors to dangerous drugs" are a material, compound, mixture, or preparation that contains a combination of certain drugs.

LEVEL VII:

Description of characteristics

- Six offenses are against the public administration
- Four offenses are against the public order, three of which involve destruction and one is minding other people's business (privacy in communications).
- Five offenses are against the person: one is a sexual offense (incest), family related and considered a crime by definition; another is also family related, but under the part for kidnaping (which is traditionally considered a violent offense) - custodial interference. They are related to the other three that are specifically offenses against the family: aggravated nonsupport, aggravated interference with parent-child contact, and parenting interference.
- Four offenses are for activities related to imitations of dangerous drugs.

Possession of Destructive Device 45-8-334
A person commits possession of a destructive device when, with the purpose to commit a felony, a person possesses a destructive device in a public place, private habitation, or on public transportation. (0-10)

Possession of Explosives 45-8-335
A person commits possession of explosives when the person possesses, manufactures, transports, buys, or sells an explosive compound, flammable material or timing/detonating device for use with an explosive compound or incendiary device. (0-20)

- Possession of Silencer 45-8-336
 A person commits possession of a silencer when the person possesses, manufactures, transports, buys, or sells a silencer to use it to commit an offense or knows that another person has such a purpose. (5-30)
- Incest 45-5-507(1)
 A person commits the offense of incest if the person knowingly marries or cohabits with an ancestor, a descendant, a brother or sister of the whole or half blood, or any stepson or stepdaughter. (See also Levels III - SIWC, V - Sex Assault) (0-100, L; victim <16: 4-100, L)
- Aggravated Nonsupport 45-5-621(2)(a)(i) and (ii)
 A person commits aggravated nonsupport when the person leaves the state without making reasonable provisions for the support of a spouse, child, or other dependent; or has been previously convicted of nonsupport. (0-10)
- Aggravated Interference With Parent-Child Contact 45-5-632
 A person commits aggravated interference with parent-child contact when the person changes the residence of a minor child to another state without giving written notice to or without written consent of the person entitled to parent-child contact pursuant to a court order. (0-18 months)
- Custodial Interference 45-5-304
 A person commits custodial interference when, knowing the person has no legal right to do so, and takes, entices, or withholds from lawful custody any child, incompetent person, or other person entrusted by authority of law to the custody of another person or institution. (Note: exception for 1st alleged commission, leaving state, and voluntarily returning child.) (0-10)
- Parenting Interference 45-5-634**
A person commits the offense of parenting interference if, knowing that he or she has no legal right to do so, the person: (1) before entry of a court order determining parenting rights, takes, entices, or withholds a child from the other parent when the action manifests a purpose to substantially deprive that parent of parenting rights, or (2) is one of two persons with parenting authority over a child under a court order and takes, entices, or withholds the child from the other when the action manifests a purpose to substantially deprive the other parent of parenting rights. (0-10)
- Bribery In Official Political Matters 45-7-101
 A person commits bribery in official political matters when the person confers, agrees to confer upon another, or solicits, accepts, or agrees to accept benefit as a consideration for the recipient's decision, vote, recommendation, or other exercise of discretion as a public servant, party official, voter, or exercise of official discretion in a judicial or administrative proceeding. (0-10)

Threats and Other Improper Influence in Official and Political Matters	45-7-102
A person commits this offense when a person threatens harm or injures any person, public servant, party official, or juror, family member of that person, or property of that person with the purpose to influence the person's decision, opinion, recommendation, vote or other exercise of discretion as a public servant.	
	(0-10)
Perjury	45-7-201
A person commits perjury when the person, in any official proceeding, makes a false statement under oath or swears or affirms the truth of a statement previously made when the statement is material.	
	(0-10)
Tampering With Witnesses and Informants	45-7-206
A person commits tampering with witnesses and informants when the person, believing that an official proceeding or investigation is pending or about to be instituted, attempts to induce or cause a witness or informant to testify or inform falsely, withhold testimony or information, or absent one's self from any proceeding or investigation to which one has been summoned.	
	(0-10)
Tampering With Or Fabricating Physical Evidence	45-7-207
A person commits tampering with or fabricating physical evidence when the person, believing that an official proceeding or investigation is pending or about to be instituted, alters, destroys, conceals or removes any record, document, or thing in order to impair its verity or availability in a proceeding or investigation; or makes, presents, or uses any record, document or thing that is false to mislead an investigator.	
	(0-10)
Bail Jumping	45-7-308
A person commits bail jumping if the person, after being released on bond by the court, fails to appear at that time and place for the proceeding.	
	(0-10)
Privacy in Communications	45-8-213(1)(b)
A person commits violating privacy in communications when a person uses a telephone or electronic mail to attempt to extort money or another thing of value from any person or to disturb by repeated phone calls the peace, quiet, or right of privacy of any person at the place where the telephone call or calls are received.	
	(0-5)
Criminal Distribution of Imitation Dangerous Drug (0-10)	45-9-112
Criminal Possession of Imitation Dangerous Drug, with the purpose to distribute	(0-5)
	45-9-113
Criminal Advertisement of Imitation Dangerous Drug (0-10)	45-9-114
Criminal Manufacture of Imitation Dangerous Drug (0-10)	45-9-115
The above offenses are all dangerous drug felonies the descriptions of which are	

adequately stated in the name of the offense. "Imitation dangerous drug" means a substance that is not a dangerous drug but is expressly or impliedly represented as a dangerous drug or as simulating the effect of a dangerous drug.

LEVEL VIII:

Description of characteristics:

- One offense is against public administration.
- One offense is against the public order and could be considered a weapons offense.

Carrying A Concealed Weapon 45-8-316(2)
A person commits carrying a concealed weapon when the person who has previously been convicted of a felony, carries or bears a concealed weapon. (0-5)

Impersonation of a Public Servant 45-7-209
A person commits impersonation of a public servant when the person falsely pretends to hold a position in the public service with the purpose to induce another individual to submit to the pretended official authority or otherwise act in reliance upon that pretense to the individual's prejudice. (0-5)

LEVEL IX:

Description of characteristics:

- The single offense is related to animals and considered an offense against the public order.

Causing Animals to Fight 45-8-210
A person commits causing animals to fight when the person owns, possesses, keeps, or trains any animal with an intent for the animal to fight or be engaged in an exhibition to fight; allows an animal to fight; permits a violation on premises, aids, or abets; participates in an exhibition. (1-5)

APPENDICES

Appendix 1

**JUDICIARY COMMITTEE TITLE 45 SENTENCING STATUTES ANALYSIS TOOL
SHORT FORM**

CSR	OFFENSE	MIN SENT	MAX SENT	LIFE	DEATH	SEE ALSO CSR
I	Deliberate Homicide	10	100	L	D	
II	Aggravated Kidnaping	2	100	L	D	III
	Mitigated Deliberate Homicide	2	40			
III	Aggravated Assault (serious bodily injury)	2	20			
	Negligent Vehicular Assault	0	10			
	Sexual Intercourse W/O Consent Victim <16	4	100	L		IV
	Sexual Intercourse W/O Consent - multi offenders	5	100	L		IV
	Sexual Intercourse W/O Consent - incarcerated victim	0	5			
	Sexual Intercourse W/O Consent - 2nd offense			L	D	IV
	Incest (elements Sexual Intercourse W/O Consent)	0	100	L		V, VII
	Incest (Sexual Intercourse W/O Consent) Victim <16	4	100	L		V, VII
	Sexual Abuse of Children	0	100	L		VI
	Sexual Abuse of Children Victim<16	4	100	L		VI
	Criminal Distribution of Dangerous Drugs	1	40	L		
	Criminal Distribution of Dangerous Drugs on or Near School Property	3	L			
	Criminal Production or Manufacture of Dangerous Drugs	5	40	L		
	Operation of an Unlawful Clandestine Laboratory	0	40			
	Aggravated Promotion of Prostitution (vict<18,dep)	0	20			VI
	Aggravated Kidnaping (no serious bodily injury)	2	10			II
IV	Sexual Intercourse W/O Consent	2	100	L		III
	Assault on a Peace or Judicial Officer	2	10			
	Mistreating prisoners	0	10			
	Kidnaping	2	10			
	Robbery	2	40			
	Aggravated Burglary	0	40			
	Escape (use or threat of force, violence, weapon)	0	20			V
	Arson	0	20			

	Possession of a deadly weapon by a Prisoner	5	15			
	Rioting (in prison or jail)	1	5			
	Incitement to Riot (in state corr facility)	1	5			
V	Negligent Homicide	0	20			
	Criminal Endangerment	0	10			
	Assault with a Weapon	0	20			
	Assault Upon a Minor (victim <14, offender 18+)	0	5			
	Malicious Intimidation or Harassment	0	5			
	Burglary	0	20			
	Deviate Sexual Conduct	0	10			
	Sexual Assault	2	100	L		
	Incest (sexual assault)	0	100	L		III, VII
	Incest (sexual assault) - victim<16	4	100	L		III, VII
	Escape (no use, threat of force, violence, weapon)	0	10			IV
VI	Aiding or Soliciting Suicide	0	10			
	Aggravated Promotion of Prostitution	0	100	L		III
	Intimidation	0	10			
	Sexual Abuse of Children (possession of visual or print medium)	0	10			III
	Criminal Mischief	0	10			
	Desecration of Capitol, Place of Worship, Cemetery, Public Memorial	0	10			
	Criminal Possession of Dangerous Drugs	0	5			
	Carrying Dangerous Drugs on a Train	0	5			
	Criminal Possession of Precursors to Dangerous Drugs	2	20			
	Criminal Possession with Intent to Distribute	0	20			
	Fraudulently Obtaining Dangerous Drugs	1	10			
	Theft	0	10			
	Theft of Identity	0	10			
	Failure to return Rented or Leased Personal Property	0	10			
	Unlawful Use of a Computer	0	10			
	Unauthorized Acquisition or Transfer of Food Stamps	0	10			
	Medicaid Fraud	0	10			
	Issuing a bad check	0	10			

	Deceptive Practices	0	10			
	Forgery	0	20			
	Illegal Branding or Altering or Obscuring a brand	0	10			
VII	Possession of a destructive device	0	10			
	Possession of explosives	0	20			
	Possession of silencer	5	30			
	Incest (marries or cohabits only)	0	100	L		III, V
	Incest (marries or cohabits only) victim <16	4	100	L		III, V
	Aggravated Nonsupport	0	10			
	Aggravated Interference With Parent-Child Contact	0	18 mos			
	Custodial Interference	0	10			
	Parenting Interference	0	10			
	Bribery in Official Political Matters	0	10			
	Threats and Other Improper Influence in Official and Political Matters	0	10			
	Perjury	0	10			
	Tampering with Witnesses and Informants	0	10			
	Tampering with or Fabricating Physical Evidence	0	10			
	Criminal Distribution of Imitation Dangerous Drug	0	10			
	Criminal Possession of Imitation Dangerous Drug with the Purpose to Distribute	0	5			
	Criminal Advertisement of Imitation Dangerous Drug	0	10			
	Criminal Manufacture of Imitation Dangerous Drug	0	10			
	Bail Jumping	0	10			
	Privacy in Communications	0	5			
VIII	Carrying a Concealed Weapon	0	5			
	Impersonation of a Public Servant	0	5			
IX	Causing Animals to Fight	1	5			

Appendix 2
Crime Seriousness Ranking Decision Tool for Non-Title 45 Felony Offenses

Statute	Felony Offense	Min sent	Max sent	May Be Similar to a Title 45 Crime Against				Prelim. CSR Level
				Person	Property	Public Admin.	Public Order	
2-16-114	Use of facsimile signature of authorized officer on a public security or instrument of payment with intent to defraud.	0	10 y		X	X		VII
10-3-507	Violation of rules and orders under a proclamation of emergency	0	5 y				X	VIII
15-61-205	Medical care savings account false claims over \$300	0	10y		X			VI
16-6-302	Penalty for sale of alcoholic beverage without a license	1 y	5 y			X		VIII
16-11-134 16-11-146	Forgery of tobacco license stamp or insignia	1 y	14 y			X		VI
19-18-207	Theft from disability and pension fund of a fire department relief association	1 y	10 y		X	X		VI
20-9-435	Failure or refusal of school trustee to pay county treasury after sale of bond	1 y	10 y			X		VI
22-3-808(1)(b)	Unauthorized possession, buy, sell, transport, barter, display human skeletal remains or burial material for commercial use	0	20 y		X			VI
23-5-155 23-5-162	Counterfeiting or defacing a (gambling-related DOJ) document	0	10 y			X		VI
23-5-156 23-5-162	Fraud, illegal activity in gambling activity over \$750 in value or use of illegal gambling device or enterprise or as a common scheme	0	10 y		X	X		VI
23-5-622 23-5-162	Tampering with video gambling machine	0	10 y		X	X		VII
27-1-606	Violation of abolition of certain causes of action	1	5 y	X	X			IX

May Be Similar to a Title 45 Crime Against

Statute	Felony Offense	Min sent	Max sent	Person	Property	Public Admin.	Public Order	Prelim. CSR Level
30-7-701	UCC penalty for issuing receipt when goods not delivered	0	5 y		X			VII
30-7-703	UCC Penalty for issuing duplicate receipt when original is outstanding without marking it "duplicate"	0	5 y		X			VII
30-10-306	Violation of securities regulations	0 (1 y on second)	5 y		X	X		VII
30-10-325	Operation of pyramid scheme	0	10 y		X			VII
30-10-913	Violate Montana's Living Trust Act	0	10 y		X			VII
30-13-142	Unauthorized manufacture of sound recordings	0	10 y		X			VII
30-14-704	Fraudulent financing of mining and oil companies	90 days	3 y		X			VII
30-14-1414	Telemarketing fraud over \$500	0	10 y		X			VI
32-1-234	False official report as to condition of bank	0	5 y		X	X		VII
32-1-236	False statements, entries, papers by bank personnel	1	10 y		X			VII
32-1-441*	Violation of operation and regulation of banks and trust companies	0	10 y					VII
32-1-463*	Sale of securities by officer to bank	0	10 y		X			VII
32-1-464*	Fraud by bank director, officer, agent, or employee	0	10 y		X			VII
32-1-473	Theft of funds by bank director, officer, employee	0	20 y		X			VI
32-1-504	Receive/accepting trust deposits in insolvent bank as general assets	0	5 y		X			VII
32-1-505	Receiving deposits when insolvent and false statements	0	5 y		X			VII

May Be Similar to a Title 45 Crime Against

Statute	Felony Offense	Min sent	Max sent	Person	Property	Public Admin.	Public Order	Prelim. CSR Level
32-2-107*	Obtaining property by fraud building and loan association	0	10 y		X			VII
32-2-307	False official report of condition of building and loan association	2 y	5 y		X			VII
32-8-518	Violation of confidentiality of foreign capital depository	0	10 y			X		VII
32-8-522	Unlawful disclosure of financial record of foreign capital depository	0	10 y			X		VII
33-2-104*	Representing or aiding unauthorized insurer	0	10 y			X		VII
33-3-401	Unlawful removal of records or assets of domestic insurer	0	5 y		X	X		VII
37-3-325	False application or medical license, practice of medicine under false name, or impersonation of another licensee	1 y	10 y			X		VII
39-33-205	Employment of strikebreakers	1 y	2 y			X		IX
39-71-2327	Improper use of State Fund funds	0 y	2 y		X	X		VIII
46-18-224	Additional sentence for use of armor-piercing ammo	5 y	25 y	X		X		IV
46-23-507	Failure of sexual or violent offender to register	0	5 y			X		VIII
46-31-204	Escape from custody on detainer	1 y	10 y			X		V
49-2-602	Housing discrimination - bodily injury - death	0 0	10 y life	X				VI V
50-20-108 50-20-112	Death of viable premature infant born alive	0	5 y	X		X		V
50-20-109 50-20-112	Unlawful practice of abortion	0	5 y			X		VII
50-20-215	Coercion of minor to abort	0	5 y	X		X		VII

May Be Similar to a Title 45 Crime Against

Statute	Felony Offense	Min sent	Max sent	Person	Property	Public Admin.	Public Order	Prelim. CSR Level
50-20-401	Partial-birth abortion	5 y	10 y			X		VI
50-32-405	Failure to report the distribution of a precursor to a controlled substance	0	10 y			X		VII
50-63-102	Malicious setting or leaving fire causing damage with intent to destroy	1 y	50 y		X	X		IV
50-79-303	Knowingly dispose of radioactive material, byproduct material, or special nuclear material	0	2 y			X		VI
52-5-114	Aiding resident in leaving or not returning to a youth correctional facility	0	2 y			X		V
61-3-603	Alteration or forgery of certificate of motor vehicle ownership or assignment of	0	10 y		X	X		VI
61-3-604	Falsify motor vehicle identification number	0	10 y		X	X		VI
61-3-607	Tampering with odometer, violate odometer statement	0	10 y		X	X		VI
61-4-405	Monopolies in financing of motor vehicles	1 y	5 y			X		VI
61-8-422	Transfer, sale or encumbrance of vehicle subject to seizure or forfeiture	0	2 y		X	X		VI
61-8-731	DUI or driving with excessive alcohol or drug content	13mo.	73mo.			X		V
69-14-1205	Intentional vandalism to railroad property	0	life		X			V
69-14-1206	Theft of railroad freight or receiving stolen railroad freight	0	5y		X			VI
72-17-302	Sale or purchase of human body parts	0	5 y			X		VII
75-10-418	Waste and litter control violations	0	3 y 6 y 2nd			X		VII
77-1-112 77-1-115	Administration of state lands violation, exceeds \$1,000	1 y	10 y			X		VI

May Be Similar to a Title 45 Crime Against

Statute	Felony Offense	Min sent	Max sent	Person	Property	Public Admin.	Public Order	Prelim. CSR Level
77-3-409*	Misconduct of officers in relation to oil and gas leases.	0	10 y			X		VI
77-3-410*	False statements relating to oil and gas leases	0	10 y			X		VI
80-4-428*	Operating warehouse or commodity dealer without a license, fraudulent receipt, false information	0	10 y		X	X		VI
80-4-429*	Commodity dealer or warehouse operator violations	0	10 y		X	X		VI
80-8-306	Major pesticide violations that results in significant harm	0	10 y	X	X			V, VI
81-3-233	Removal of livestock from state without inspection	0	3 y			X		VIII
81-5-102	Driving animals upon railroad track with intent and injury or death results	0	5 y		X			VI
81-7-113*	False certificate or affidavit in claim for bounty	0	10 y		X			VI
81-8-216*	Knowingly fails to establish a custodial account for money for others	0	10 y		X			VI
81-8-234 81-8-235	Bad checks for livestock purchase	0	5 y		X			VI
81-9-234	Livestock slaughter and sales violations with intent to defraud or distribution of adulterated article	0	3 y		X			VII
81-9-423	Mutilation or concealment of hides	1 y	10 y		X			VI
81-30-105	Protection of farm animals and research facilities violations over \$500 in damage	0	10 y		X			VI
82-2-115	Filing of false mining claims	0	5 y		X			VII
85-1-622	No gain from renewable resource grant and loan program transaction ion other than salary, fee, compensation.	0	2 y			X		VII

May Be Similar to a Title 45 Crime Against

Statute	Felony Offense	Min sent	Max sent	Person	Property	Public Admin.	Public Order	Prelim. CSR Level
87-2-114	Unlawful possession of hunting license or permit or another	0	5 y			X		VII
87-3-118	Sale or possession of wildlife over \$1,000	0	5 y			X		VII
90-2-1121	Prohibited compensation to public officers or employees for reclamation or development grants	0	2 y			X		VII

Appendix 3
Title 45 Felony Drug Offenses*

Statute	Offense	Min sent	Max sent
45-9-101	Criminal distribution of dangerous drugs	1-40y	Life
45-9-102 45-9-127	Criminal possession of dangerous drugs Carrying dangerous drugs on a train	0-2y	5y
45-9-103	Criminal possession with intent to distribute	0-2y	20y
45-9-104, 106	Fraudulently obtaining dangerous drugs	1-5y	5-10y
45-9-107	Criminal possession of precursors to dangerous drugs	2y	20y
45-9-109	Criminal distribution of dangerous drugs on or near school property	3y	Life
45-9-110	Criminal production or manufacture of dangerous drugs	5-40y	Life
45-9-112	Criminal distribution of imitation dangerous drug	0	5-10y
45-9-113	Criminal possession of imitation dangerous drug with purpose to distribute	0	5y
45-9-114	Criminal advertisement of imitation dangerous drug	0	10y
45-9-115	Criminal manufacture of imitation dangerous drug	0	10y
45-9-132	Operation of unlawful, clandestine laboratory	0	40y

*Sentence ranges may be dependent on type or amount of drug, number of previous convictions, or age of victim. There are also sentence enhancement for continuing criminal enterprise (45-9-125), possession and storage of dangerous drugs (45-9-130), and alternative sentencing authority and exemptions in Title 45, ch. 9, pt. 2, MCA.

Appendix 4

Misdemeanors That May Rise to Level of a Felony Upon Second or Subsequent Offense

Statute	Offense	#	Min sent	Max sent
22-3-808(1)(a) 22-3-808(1)(c)	Violations of human remains and burial site protection	2nd	0	5 y
30-14-1414	Failure to comply with the Telemarketing Registration and Fraud Prevention Act	2nd	0	5 y
42-8-108	Violation licensure of child-placing agency	2nd	0	5 y
45-5-206(3)(a)	Partner and family member assault	3rd	30 days	5 y
45-5-220(3)	Stalking	2nd or TRO	0	5 y
45-5-223	Surreptitious visual observation or recordation in a place or residence	3rd	0	5 y
45-8-213(1)(a)	Privacy in Communications	3rd	0	5 y
45-5-504(1) and (2)(c)	Indecent exposure	3rd	5 y	100 Life
45-8-340(4)	Possessing a sawed off firearm	3rd	0	5 y
45-8-211	Cruelty to Animals	2nd	0	2 y
45-6-319	Chain Distributor Schemes	2nd	0	5 y
45-9-102	Criminal possession of dangerous drugs	2nd	0	3 y
50-20-215	Coercion of minor to have abortion	2nd	10 days	5 y
52-3-825	Elder abuse, abuse of a developmentally disabled person	2nd	0	10 y
61-3-604	Altering motor vehicle identification number	2nd	1 y	5 y
61-8-731	Driving under influence of alcohol or drugs	4th	6 mos	13 mos
75-5-632	Water quality violations	2nd	0	2 y
80-15-414	Violate agricultural chemical ground water protection	2nd	0	2 y
81-9-118	Slaughter violation or falsifying records	2nd	1 y	5 y

**DRAFT LEGISLATIVE REFERENCE GUIDE:
FELONY SENTENCING STATUTES 2003**

Prepared for the Law and Justice Interim Committee

by

**John MacMaster, Staff Attorney
Dave Bohyer, Research Director**

November 2001

Published By



Legislative Services Division
PO Box 201706
Helena, MT 59620-1706
PHONE: (406) 444-3064
FAX: (406) 444-3036
<http://leg.mt.gov/>

**DRAFT LEGISLATIVE REFERENCE GUIDE:
FELONY SENTENCING STATUTES 2003**

INDEX

Introduction	Pages 1-2
How This Reference Guide is Organized	Page 3
Levels I-IX	Pages 4-15
Appendix 1 - Judiciary Committee Title 45 Sentencing Statutes Analysis Tool Short Form	Pages 17-19
Appendix 2 - Crime Seriousness Ranking Decision Tool for Non-Title 45 Felony Offenses	Pages 20-25
Appendix 3 - Title 45 Felony Drug Offenses	Page 26
Appendix 4 - Misdemeanors That May Rise to Level of a Felony Upon Second or Subsequent Offenses	Page 27