

SUPERIOR COURT SENTENCING BENCHMARKS

In January 1981, the Supreme Court Sentencing Study Committee developed Sentencing Benchmarks as guidelines for the Superior Court.

Subsequently on June 26, 1981, the Superior Court adopted the following Policy on Sentencing:

“In order to eliminate, insofar as possible, disparity in the sentencing of defendants for crimes committed under the same or similar circumstances, the court may consider and utilize the sentencing benchmarks formulated by the Supreme Court Committee on Sentencing as guidelines.”

From October 1995 through 1997 an extensive review of the benchmarks was conducted, which substantially increased the number of benchmarks available from 26 to 36 and modified the sentencing ranges to reflect current practice as reflected in a statistical study of actual sentences imposed from 1993 to 1995.

The following is an explanation of the benchmarks (Using the Benchmarks) as developed by the Sentencing Study Committee in January 1981 and 1984 with the current 1995-1997 Committee's updated (1998) Benchmarks and Introductory Notes.

USING THE BENCHMARKS

The purpose of the benchmarks system is to establish a set of consistent sentencing standards in Superior Court and reduce the potential for sentencing disparity. If the system is to accomplish this purpose, it is essential that judges treat certain issues which arise in sentencing in the same manner. The following is a listing of those issues with recommendations on the way in which the benchmarks should be utilized.

1. Departure from the benchmarks

The sentence range provided for each benchmark is presumed to be appropriate whenever the case under consideration involves the same criminal offense and the same key facts as the benchmark. This presumption is critical to the success of the system.

The Benchmarks are designed to be flexible and to serve as a guideline for other similar offenses, even though the specific circumstances of the crime are not included under any particular benchmark.

An examination of the pertinent key facts and the presence of aggravating or mitigating circumstances should be considered when fashioning sentences not specifically covered by the Benchmarks.

The benchmarks will not serve as sentencing standards unless they are applied consistently. Departures from the sentence range should be made only when substantial and compelling circumstances exist.¹ If a conviction is covered by a benchmark and the sentence imposed is outside the sentence range, the judge must give specific reasons for the departure on the record.

Substantial and compelling circumstances for departure from the benchmarks may include the following:

- (a) harm to the victim.
- (b) defendant's criminal record.
- (c) circumstances of the commission of the crime.
- (d) defendant's motivation (money, provocation, sudden or unexplained impulse or drugs).
- (e) whether the crime was an isolated offense or part of an organized enterprise.
- (f) defendant's age.
- (g) mental or emotional make-up of defendant.
- (h) defendant's attitude toward society.
- (i) defendant's attitude and feeling about the crime (i.e., remorse, repentance, hostility).
- (j) defendant's education.
- (k) defendant's employment.
- (l) that the defendant testified and gave patently false testimony.
- (m) that the defendant testified for the state.
- (n) potentially injurious effects of incarceration.
- (o) restitution.
- (p) attitude of the victim.
- (q) other substantial grounds which tend to mitigate or aggravate the offender's culpability.

In considering whether a defendant's prior criminal record is serious enough to be an aggravating factor in sentencing, the sentencing justice should keep in mind the following:

1. Felony convictions should be given greater weight than misdemeanor convictions. Certain misdemeanor convictions, such as those involving traffic offenses, petty intoxication or any other minor offense, should not be considered at

¹ Examples of substantial and compelling circumstances which might justify departure from the benchmarks are listed in [the Benchmarks].

all unless the present offense is a repeat offense or the defendant was given a jail sentence.

2. Remoteness of the conviction should be a factor. Less weight should be given to any prior conviction if the person has led a substantially law abiding life for at least five years.

3. Convictions for similar offenses to the present offense are an aggravating factor.

4. Juvenile misconduct may be considered.

The sentencing justice shall make a record of each sentence imposed and indicate whether one of the benchmarks is applicable and whether the sentence is within the prescribed range.

2. Determining the benchmark offense

The applicable benchmark is determined by the offense of which the defendant is convicted. An example would be a situation in which a defendant who is charged with robbery eventually pleads guilty to larceny. Even though there may be alleged facts to support the robbery charge, the sentencing judge should refer to the benchmark provided for larceny.

When a defendant has been convicted of more than one criminal offense under the same indictment or information, the applicable benchmark is determined by the most serious offense. The benchmarks would probably not be applied to the other, less serious, offenses. For example, after imposing a jail term within the benchmark range for the most serious offense, a judge may wish to impose a suspended sentence for a lesser offense. This would be done in order to maintain a “hold” on the defendant after the jail term is completed.

3. Defendant’s criminal history/method of conviction

The sentence ranges provided for the various benchmarks were historically based on the assumption that the defendant had no criminal history and had been found guilty after trial. The Sentencing Study Committee, after much discussion and statistical analysis, has recommended a change in this original premise.

Since the inception of the benchmark system in 1981 and through subsequent periodic reviews, there has been an introduction of **presumptive sentences** in accordance with R.I.G.L. 1956 (1994 Reenactment) § 12-19.3-2 for certain crimes which constitute a certain minimum percentage of total annual felony filings. Over time, there has been a practical evolution of the imposition of sentences pursuant to the benchmarks for defendants who are not first offenders sentenced after trial. The actual practice supported by statistical analysis and a consensus of the Study Committee is that the benchmarks have been applied to defendants who present prior criminal contacts ranging from minor misdemeanor convictions to moderate felony

convictions, i.e., three or four prior convictions, and often presented as violators of previously imposed sentences.

In instances where the defendant's criminal history exceeds the aforementioned range of contacts, the defendant's criminal history should be treated as a “substantial and compelling circumstance” justifying departure from the range of the benchmark.

The fact that a defendant pled may also have a bearing on the choice of an appropriate sentence. In circumstances where a plea justifies departure, the judge should limit any reduction to within 25% of the lower end of the sentence range. The reduction is also subject to the minimum sentences which are prescribed by law.

The alternative sentence of a fine would also be appropriate in circumstances where a jail sentence is not prescribed.

If either the defendant's criminal history or the fact that the defendant has pled leads to a departure from the sentence range, the sentencing judge must provide a specific reason for the departure on the record.

It should be noted that since the adoption of the original benchmarks in 1981, the General Assembly has enacted statutes which require certain mandatory minimum sentences. A review of the 1998 revised benchmarks would appear to indicate that in some benchmarks a jail sentence of less than the mandatory minimum sentence required by law has been proposed. These recommendations recognize that the minimum sentences must be observed in determining the sentence to be imposed; however, the actual jail sentence recommended may be less than the minimum required as long as the total sentence is within the statute's mandatory minimum requirement. (Example, R.I.G.L. 11-39-1 robbery, 1st degree, requires a sentence of not less than 10 years. The new Benchmark 12 robbery, 1st degree, recommends a jail sentence of 8 to 12 years to serve. The total sentence must still be at least 10 years, even though some portion of the sentence may be suspended.) These recommendations are made based on practical experience and statistical analysis of sentences actually imposed.

In those rare cases where the statute does not allow for suspended jail sentences, the statute must be strictly observed.

4. Suspended sentences, probation, and fines

The benchmark ranges represent time to be served in jail. The use of suspended sentences, probation, and fines, in addition, is not precluded.

(a) Suspended Sentence. The court may impose a sentence and suspend the execution of the sentence, in whole or in part.

(b) Probation.

(1) The court may place a defendant on probation with or without the imposition of a term of incarceration and/or a suspended sentence. The benchmark ranges for probation are presumed to be appropriate to reduce recidivism through effective

supervision and programs, and to hold defendants accountable for restitution and for compliance with conditions.

(2) The court may attach conditions to a sentence of probation upon finding that there is a reasonable basis that the condition(s) will advance the purpose of probation and will not impose a greater burden than necessary to achieve that purpose. Those conditions may include, but are not limited to:

- (i) Satisfaction of a restitution order or other economic sanction;
- (ii) Completion of a treatment or other rehabilitative program;
- (iii) Performance of a community-service order;
- (iv) No contact order with a victim of the criminal offense.

5. Parole

The benchmark ranges specify the terms to which defendants should be sentenced. While a future decision of the parole board may cause the time actually served to be somewhat less, the benchmarks do not attempt to anticipate those decisions.

6. Violation of suspended sentence/probation/deferred sentence

The benchmark sentencing ranges are also presumed to be appropriate in cases where the sentence has been suspended or deferred and where the defendant has been declared a violator of the conditions of his or her probation. In those situations, the sentencing judge should refer to the benchmark which is applicable to the original offense. Departures from the ranges should be made only when substantial and compelling circumstances exist. As in other instances, if the sentence is outside the benchmark range, the judge must give specific reasons for the departure on the record.^[2]

Substantial and compelling circumstances for departure from the benchmarks may include the following:

- (a) Any of the examples previously set forth in Section 1. “Departure from the Benchmarks,” items (a) through (q);
- (b) the nature of the violation, whether technical or based upon misconduct reflecting a failure to keep the peace and/or be of good behavior;
- (c) if based upon misconduct, whether it constitutes a misdemeanor, a felony, or any offense involving violence or the use of force or threat of force or violence;
- (d) the defendant's record and length of compliance with his or her probation/deferred sentence.

² *Examples of substantial and compelling circumstances which might justify departure from the benchmarks are listed in the Benchmarks.

7. Concurrent vs. consecutive sentences

The Committee feels that in instances where defendants are sentenced for multiple offenses at the same time, the decision about whether the sentences should be concurrent or consecutive should remain at the discretion of the sentencing judge.

INTRODUCTORY NOTES TO THE 1998 BENCHMARK REVISIONS

(1) Benchmarks 1 & 2, breaking and entering, remain the same but have had their sentencing range adjusted based on actual sentencing practices.

Benchmark 1 still applies to the type of offense in which the victim is an estranged spouse or present or past boyfriend or girlfriend and no felonious intent accompanies the break. Sentencing range formerly less than jail: new range less than jail to one year.

Benchmark 2 recognizes a lack of felonious intent in the break even if occasioned upon a victim with whom the defendant has little or no personal relationship. Range formerly 4 to 18 months, new range up to 18 months.

(2) Former Benchmarks 3, 4, and 5 have been consolidated to reflect, in new Benchmark 3, breaking into an unoccupied dwelling in the day or night with or without a weapon. The Committee has determined that the need for the distinctions in the earlier benchmarks has changed over time, the most important key fact being that the dwelling is unoccupied. The sentencing range has been changed to one to four years to allow maximum discretion in sentencing to conform to a variety of fact patterns.

(3) New Benchmark 4, breaking and entering, daytime, dwelling occupied, no weapon, is former Benchmark 6 and the sentencing range has been expanded from 5 to 6 years to 4 to 8 years to reflect actual sentencing practices.

(4) New Benchmark 5, breaking and entering, nighttime, dwelling occupied, with or without a weapon, is former Benchmark 7. The sentencing range has been expanded from 7 to 8 years to 7 to 10 years to reflect actual sentencing practices.

(5) New Benchmark 6 is the former Benchmark 8, entering a business. This benchmark eliminates former Benchmark 9, nighttime, repeat offense or multiple count indictment, because of the infrequency of offenses of this type and to allow maximum sentencing discretion in cases of this nature.

The sentencing range in new Benchmark 6 has been increased from less than jail to less than jail or up to 18 months to reflect current sentencing practices.

(6) New Benchmark 7, possession of a stolen motor vehicle, replaces former Benchmarks 10 and 11, which divided this offense into 1st offense/one count and repeat/multiple count offenses. This crime is also subject to a presumptive sentence of 6 months to 18 months. The benchmark recommendation ranges from less than

jail to 18 months. Multiple or repeat offenses may be considered for enhanced sentences according to the key fact circumstances.

(7) Benchmarks 8, 9, and 10 under felony assault replace former Benchmarks 12, 13, and 14 and are subject to presumptive sentencing guidelines of one to 10 years.

Former Benchmark 12, weapon not a firearm or knife with slight injury, less than jail has been eliminated by the Committee and is incorporated in new Benchmark 8, weapon not a firearm or knife, slight injury or no injury, less than jail. Benchmark 9, weapon is a firearm or knife, slight injury or no injury, 12 to 18 months; Benchmark 10, felony assault with or without a weapon, serious injury, 4 to 5 years; each reflects actual sentencing practices. The new benchmarks have also been designed to reflect the actual nature of charges most commonly encountered under felony assault.

(8) New Benchmark 11, robbery — 2nd degree, replaces the robbery Benchmark 15, adds a “no injury” provision to “unarmed,” and recommends 3 to 6 years to reflect current sentencing practices and to afford sentencing discretion.

New Benchmark 12, robbery — 1st degree, replaces robbery Benchmark 16, and expands the sentencing range from 10 to 12 years to 8 to 12 years to reflect actual sentencing practices.

New Benchmark 13, 1st degree robbery, armed with a dangerous weapon with accompanying acts of violence, replaces Benchmark 17. The Committee eliminates the extensive record requirement and maintains the recommended sentence of 20 years and up.

(9) Benchmarks 14 and 15 are new and pertain to larceny over \$500. New Benchmark 16 replaces former Benchmark 18, larceny from the person, which remains unchanged.

New Benchmarks 14 and 15 divide larceny over \$500 into 1st and repeat offenses. Benchmark 14, 1st offense, less than jail; Benchmark 15, repeat offense, 3 to 5 years. The sentence ranges reflect actual sentencing practices.

(10) Benchmarks 17 and 18 are new and pertain to embezzlement, divided into 1st and repeat and/or multiple offenses, or violations of public trust. The sentencing recommendations reflect actual sentencing practices. These categories are included at this time in recognition of the increased activity in crimes of this nature. Benchmark 17, 1st offense, one count, less than jail. Benchmark 18, repeat offense, multiple counts, or large amount of money or violation of public trust, 2 to 5 years.

(11) Benchmarks 19 and 20 are new, receiving stolen goods over \$500 for 1st offense and repeat offenses. The sentences recommended by the Committee reflect actual sentencing practices: 1st offense, less than jail; repeat offense, 3 to 5 years.

(12) Benchmarks 21 and 22, obtaining money under false pretenses, replace former Benchmarks 19 and 20, the only change to which is the sentencing range in

Benchmark 22: expanded from 2 to 3 years to 2 to 4 years to reflect current sentencing practices.

(13) Benchmark 23, felony shoplifting, is new, and its inclusion reflects the increased incidence of this charge. The Committee recommends a range of 1 to 3 years. Multiple counts or repeat offenses may warrant adjustment in sentencing according to the key fact circumstances.

(14) Benchmark 24, driving to endanger, death resulting, replaces former Benchmark 21. The former sentencing range of 1 to 2 years has been expanded to 3 to 5 years to reflect current sentencing practices.

(15) Benchmark 25, driving under the influence, death resulting, is new. The recommended sentencing range of 3 to 10 years reflects current sentencing practices and allows for maximum discretion considering all relevant facts and circumstances while recognizing the graveness of this offense.

(16) Benchmarks 26 and 27, voluntary manslaughter, replace former Benchmarks 22 and 23.

Benchmark 26, close relationship to victim, remains the same as former Benchmark 22.

Benchmark 27 relates to voluntary manslaughter in conjunction with other significant criminal activity and expands the sentencing recommendation from 10 to 12 years to 10 to 15 years to reflect current sentencing practices.

(17) Benchmarks 28A, B and C, delivery/possession with intent to deliver Schedule I-IV-other than marijuana, replace former Benchmarks 24 and 25.

Benchmark 28 divides the offenses by quantity of controlled substance: A) small quantity, less than one ounce; B) greater quantity, one ounce to one kilogram; and C) large quantity, over one kilogram. The statute sets forth minimum requirements. The Committee's recommendation of up to 3 years with respect to benchmark 28A reflects current sentencing practices. Sentencing in 28B & C may be made pursuant to the statute and according to key facts and circumstances in each case. These crimes are also subject to presumptive sentences of 1-15 years for possession with intent to deliver, and 2-20 years for delivery of Schedule I/II. Please note in addition that any sentence less than the statutory minimum may be imposed only for substantial and compelling circumstances, which must be stated on the record by the trial justice.

(18) New Benchmark 29, possession of a controlled substance (other than marijuana), replaces Benchmark 26; it otherwise remains the same, i.e., less than jail. This is also subject to a presumptive sentence, 0-18 months.

(19) Benchmark 30, delivery of marijuana, is new. Like new Benchmarks 28A, B, and C, it is divided by quantity as A, B, C, and D. Sentencing is mandated by statute and the Committee's recommendations in A, up to 1 year; and B, 1 to 3 years,

reflect current sentencing practices. Sentences concerning C and D may be made according to the statute and the key facts and circumstances of each case.

(20) Benchmarks 31 through 36 inclusive are new and relate to 1st and 2nd degree sexual assault, 3rd degree sexual assault, and 1st and 2nd degree child molestation.

Since the inception of the benchmarks system in 1981, no benchmarks had been developed concerning these offenses due to variations in key facts which accompany these crimes. The Committee believes that over the last 10 to 15 years, the proliferation of these cases and the experience developed by the trial judges have enabled the Committee to formulate and adopt the benchmarks contained herein.

Each sentencing recommendation has been formulated to assist, not hinder, the sentencing authority — the Committee realizes the fact that each case of this type may be unique. The Committee has made its recommendations as aides to assist the judiciary and the bar based on actual sentencing practices, statistical analysis, and the considered opinions of the Committee. It is the committee's belief that individualization of sentencing within these guidelines is most possible, since the guidelines offer as “key facts” those situations which most routinely appear in these types of cases based on the Committee's experience and statistical analysis.

A timely review of Benchmarks 31 through 36 is contemplated by the Committee to monitor and gauge their continued accuracy and relevancy to actual sentencing practices.

SENTENCING BENCHMARKS

BREAKING AND ENTERING A DWELLING WITHOUT CONSENT OF OWNER/TENANT

[R.I.G.L. 11-8-2: Statute indicates 2 to 10 years for first conviction]

Benchmark 1

Close relationship to victim

Less than jail or up to 1 year

Benchmark 2

No relationship to victim

Up to 18 months

Benchmark 3

With/without weapon — Dwelling unoccupied

1 to 4 years

Benchmark 4

Daytime — no weapon — Dwelling occupied
4 to 8 years

Benchmark 5

Nighttime — With/without weapon — Dwelling occupied
7 to 10 years

ENTERING A BUSINESS

[R.I.G.L. 11-8-4: Statute indicates up to 10 years]

Benchmark 6

Nighttime — No weapon
Less than jail or up to 18 months

POSSESSION OF A STOLEN VEHICLE

[R.I.G.L. 31-9-2: Penalties provided in R.I.G.L. 31-27-14 indicate 1 to 5 years (for first conviction)]

[Note: The Presumptive Sentence indicates 6 to 18 months for conviction after trial.]

Benchmark 7

Less than jail or up to 18 months

FELONY ASSAULT

[R.I.G.L. 11-5-2: Statute indicates up to 20 years]

[Note: The Presumptive Sentence indicates 1 to 10 years for conviction after trial.]

Benchmark 8

Weapon not a firearm or knife — Slight injury or no injury
Less than jail

Benchmark 9

Weapon is firearm or knife — Slight injury or no injury
12 to 18 months

Benchmark 10

With or without weapon — Serious injury
4 to 5 years

ROBBERY — 2ND DEGREE

[R.I.G.L. 11-39-1: Statute indicates 5 to 30 years]

Benchmark 11

Unarmed — No injury
3 to 6 years

ROBBERY — 1ST DEGREE

[R.I.G.L. 11-39-1: Statute indicates 10 years to Life]

Benchmark 12

Armed with dangerous weapon
8 to 12 years

ROBBERY — 1ST DEGREE

[R.I.G.L. 11-39-1: Statute indicates 10 years to Life]

Benchmark 13

Armed with a dangerous weapon — Accompanying acts of violence
20 years and up

Note: In Benchmark 13, the additional factor of “accompanying acts of violence” refers to aggravating circumstances which go well beyond the elements required to prove the crime of robbery. What is contemplated is an actual commission of an act of violence, rather than only a threat, or the use of only that degree of force required to prove a robbery. Some examples would be the following:

1. Discharge of a weapon, whether or not someone is injured.
2. Physical injury to the victim(s) or bystander(s).
3. Restraining of a victim or bystander by tying up the person, etc.

LARCENY/EMBEZZLEMENT/RECEIVING STOLEN GOODS/OMUFP

[For Benchmarks 14-22, penalties provided in R.I.G.L. 11-41-5 indicate not more than 10 years.]

LARCENY OVER \$500

[R.I.G.L. 11-41-1]

Benchmark 14

First offense

Less than jail

LARCENY OVER \$500

[R.I.G.L. 11-41-1]

Benchmark 15

Repeat offense

3 to 5 years

LARCENY FROM THE PERSON

[R.I.G.L. 11-41-7]

Benchmark 16

2 ½ to 3 ½ years

EMBEZZLEMENT

[R.I.G.L. 11-41-3]

Benchmark 17

First offense — one count

Less than jail

EMBEZZLEMENT

[R.I.G.L. 11-41-3]

Benchmark 18

Repeat offense — multi-count indictment or large amount of money or violation of public trust
2 to 5 years

RECEIVING STOLEN GOODS OVER \$500

[R.I.G.L. 11-41-2]

Benchmark 19

First offense
Less than jail

RECEIVING STOLEN GOODS OVER \$500

[R.I.G.L. 11-41-2]

Benchmark 20

Repeat offense
3 to 5 years

OBTAINING MONEY UNDER FALSE PRETENSES

[R.I.G.L. 11-41-4]

Benchmark 21

First offense of this type — one count to this indictment
Less than jail

OBTAINING MONEY UNDER FALSE PRETENSES

[R.I.G.L. 11-41-4]

Benchmark 22

Repeat offender of this type of offense — multi-count indictment — Substantial amount of money
2 to 4 years

Note: A jail sentence is prescribed in a larceny case when the defendant is a repeat offender, a person whose record shows that he/she has made a career of embezzling or obtaining money under false pretenses.

FELONY SHOPLIFITNG

[R.I.G.L. 11-41-20: Statute indicates not more than 5 years]

Benchmark 23

1 to 3 years

DRIVING TO ENDANGER — DEATH RESULTING

[R.I.G.L. 31-27-1: Statute indicates not more than 10 years]

Benchmark 24

No prior motor vehicle record

3 to 5 years

DRIVING UNDER THE INFLUENCE — DEATH RESULTING

[R.I.G.L. 31-27-2.2: Statute indicates 5 to 15 years]

Benchmark 25

3 to 10 years

VOLUNTARY MANSLAUGHTER

[R.I.G.L. 11-23-3: Statute indicates up to 30 years]

Benchmark 26

Close relationship to victim

5 to 7 years

Benchmark 27

Related to other significant criminal activity

10 to 15 years

DELIVERY/POSSESSION WITH INTENT TO DELIVER

[Note: Presumptive sentence is 1 to 15 years for possession with intent to deliver and 2 to 20 years for delivery of schedule I/II]

SMALL QUANTITY — LESS THAN 1 OUNCE

[R.I.G.L. 21-28-4.01: Statute indicates up to 3 years]

Benchmark 28A

Schedule I-IV, other than marijuana

Up to 3 years

GREATER QUANTITY — 1 OUNCE TO 1 KILOGRAM

[R.I.G.L. 21-28-4.01.1: Statute indicates 10 to 50 years]

Benchmark 28B

Schedule I-IV, other than marijuana

10 to 50 years*

LARGE QUANTITY — OVER 1 KILOGRAM

[R.I.G.L. 21-28-4.01.2: Statute indicates 20 years to Life]

Benchmark 28C

Schedule I-IV, other than marijuana

20 years to Life*

[*Statute requires that trial justice set forth on the record the reason(s) for imposing any sentence less than the statutory minimum.]

Note: The benchmarks for delivery of a controlled substance are meant to apply to the “sale” of drugs. A “casual” delivery involving only the transfer of drugs without any “business” transaction would be a mitigating circumstance.

Under Benchmark 28 the four schedules of controlled substances are combined under the same sentencing guideline. Despite this, the sentencing justice should keep in mind that the Uniform Controlled Substances Act differentiates between those substances which are extremely harmful to individuals and have a high potential for addiction (Schedules I and II) and substances which are relatively less dangerous

(Schedules III and IV). Thus, the fact that a substance has a lower potential for physical harm might be a mitigating circumstance.

POSSESSION OF A CONTROLLED SUBSTANCE

[R.I.G.L. 21-28-4.01: Statute indicates up to 3 years]

Benchmark 29

Small quantity — Less than 1 ounce, Schedule I-IV, other than marijuana
Less than jail

DELIVERY OF MARIJUANA

[R.I.G.L. 21-28-4.01(A)(2)(a): Statute indicates up to 30 years]

Benchmark 30A

Small quantity — Less than 1 ounce
Up to 1 year

Benchmark 30B

Greater quantity — 1 ounce to 1 kilogram
1 to 3 years

[R.I.G.L. 21-28-4.01.1: Statute indicates 10 to 50 years]*

Benchmark 30C

Large quantity — 1 kilogram to 5 kilograms
10-50 years*

[R.I.G.L. 21-28-4.01.2: Statute indicates 20 years to life]*

Benchmark 30D

Greatest quantity — over 5 kilograms
20 years — Life*

[*Statute requires that trial justice set forth on the record the reason(s) for imposing any sentence less than the minimum.]

1ST DEGREE SEXUAL ASSAULT

[R.I.G.L. 11-37-3: Statute indicates 10 years to life]

Benchmark 31A

One count with no injury
10-15 years

Benchmark 31B

Multiple counts with or without injury
15-25 years

Benchmark 31C

One count or multiple counts, with aggravating circumstances **
Over 20 years

** Aggravating circumstances include, but are not limited to, excessive force or violence; the act having been committed in conjunction with other crimes; moderate to severe injury, mental or physical; or perpetration of acts which are particularly degrading or humiliating to the victim.

2ND DEGREE SEXUAL ASSAULT

[R.I.G.L. 11-37-5: Statute indicates 3 to 15 years]

Benchmark 32A

One count — Touching/groping over clothing
Less than jail

Benchmark 32B

Multiple counts — Touching/groping over clothing, same incident
Less than jail

Benchmark 32C

Multiple counts — Touching/groping over clothing
1 to 3 years

Benchmark 32D

One or multiple counts — Touching/groping under clothing
2 to 5 years

Benchmark 32E

One or multiple counts — Touching/groping under or over clothing with aggravating circumstances

5 to 15 years

1ST OR 2ND DEGREE SEXUAL ASSAULT

[R.I.G.L. 11-37-3 and 11-37-5: Statutes indicate 10 years to life for 1st Degree; 3 to 15 years for 2nd Degree]

Benchmark 33

Victim is mentally disabled or physically incapacitated
Jail, depending on circumstances and key facts

3RD DEGREE SEXUAL ASSAULT

[R.I.G.L. 11-37-7: Statute indicates up to 5 years]

Benchmark 34

Less than jail to 5 years, depending on age difference between perpetrator and victim and the presence or absence of aggravating circumstances

1ST DEGREE CHILD MOLESTATION

[R.I.G.L. 11-37-8.2: Statute indicates 20 years to life]

[Note: Statute indicates child is “age 14 or younger”]

Benchmark 35A

No relationship to victim — no injury, one count
10 to 15 years

Benchmark 35B

Close relationship to victim — natural/stepparent or family member no injury, one count
15 to 20 years

Benchmark 35C

Close relationship to victim — natural/stepparent of family member multiple counts or moderate injury, mental or physical
20 to 30 years

Benchmark 35D

Victim is mentally or physically disabled
20 to 30 years

Benchmark 35E

Multiple counts or physical injury or aggravating circumstances regardless of relationship to victim
25 years to Life

2ND DEGREE CHILD MOLESTATION

[R.I.G.L. 11-37-8.4: Statute indicates 6 to 30 years]

Benchmark 36A

No relationship to victim — over clothing, one count
Less than jail to 3 years

Benchmark 36B

No relationship to victim — under clothing or more than one count
3 to 8 years

Benchmark 36C

Close relationship to victim — natural/stepparent or family member over clothing — one count
3 to 8 years

Benchmark 36D

Close relationship to victim — natural/stepparent or family member under clothing, one count
7 to 12 years

PROBATION BENCHMARKS

Benchmark 37

For felony offenses, other than crimes of violence, the term of probation should not exceed three years. Departures from the probation range should be made only when substantial and compelling circumstances exist.

(a) The judge or magistrate must give specific reasons for the departure on the record.

(b) These guidelines do not apply to cases where the court has imposed a no contact order or a restitution order as a condition of probation.

(c) These guidelines do not apply to crimes of violence. For purposes of this benchmark, crimes of violence shall mean any one of the following crimes or an attempt to commit that crime: murder, manslaughter, sexual assault, child molestation, mayhem, robbery, burglary, assault with a dangerous weapon, assault or battery involving serious bodily injury, arson, breaking and entering, child molestation, kidnapping, DWI resulting in death or serious injury, driving to endanger resulting in death or serious injury, any felony violation involving the illegal manufacture, sale, or delivery of a controlled substance, or possession with intent to manufacture, sell, or deliver a controlled substance classified in Schedule I or Schedule II of § 21-28-2.08, any violation of §§ 21-28-4.01.1 or 21-28-4.01.2 or conspiracy to commit any violation of these statutes, and/or assault with intent to commit any offense punishable as a felony; upon any conviction of an offense punishable as a felony offense under § 12-29-5 or any felony involving force or violence, the threat of force or violence, or the use of a firearm.