

## SENTENCING BENCHMARKS

**Breaking and Entering Dwelling without Consent of Owner/Tenant** [G.L. 1956 § 11-8-2 - Statute indicates 2 to 10 years for first conviction]

**1) Close relationship to victim**

Less than jail or up to 1 year

**2) No relationship to victim**

Up to 18 months

**3) With/without weapon - Dwelling unoccupied**

1 to 4 years

**4) Daytime - No weapon - Dwelling occupied**

4 to 8 years

**5) Nighttime - With/without weapon - Dwelling occupied**

7 to 10 years

**6) Entering a Business**

[G.L. 1956 §11-8-4 - Statute indicates up to 10 years]

Nighttime - No weapon

Less than jail or up to 18 months

**7) Possession of a Stolen Vehicle**

[G.L. 1956 § 31-9-2 - Penalties provided in G.L. 1956 § 31-27-14 indicate 1 to 5 years (for first conviction)]

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

Less than jail or up to 18 months

**Felony Assault**

[G.L. 1956 § 11-5-2 - Statute indicates up to 20 years]

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

**8) Weapon not a firearm or knife - Slight injury or no injury**

Less than jail

**9) Weapon is firearm or knife - Slight injury or no injury**

12 to 18 months

**10) With or without weapon - Serious injury**

4 to 5 years

**11) Robbery - 2nd Degree**

[G.L. 1956 § 11-39-1 - Statute indicates 5 to 30 years]

Unarmed - No injury

3 to 6 years

**12) Robbery - 1st Degree**

[G.L. 1956 § 11-39-1 - Statute indicates 10 years to life]

Armed with dangerous weapon

8 to 12 years

**13) Robbery - 1st Degree**

[G.L. 1956 § 11-39-1 - Statute indicates 10 years to life]

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 to 22, penalties provided in G.L. 1956 § 11-41-5 indicate not more than 10 years.]

**14) Larceny over \$500**

[G.L. 1956 § 11-41-1]

First offense

Less than jail

**15) Larceny over \$500**

[G.L. 1956 § 11-41-1]

Repeat offense

3 to 5 years

**16) Larceny from the Person**

[G.L. 1956 § 11-41-7]

2 ½ to 3 ½ years

**17) Embezzlement**

[G.L. 1956 § 11-41-3]

First offense - One count

Less than jail

**18) Embezzlement**

[G.L. 1956 § 11-41-3]

Repeat offense - Multi-count indictment or large amount of money or violation of public trust

2 to 5 years

**19) Receiving Stolen Goods over \$500**

[G.L. 1956 § 11-41-2]

First offense

Less than jail

**20) Receiving Stolen Goods over \$500**

[G.L. 1956 § 11-41-2]

Repeat offense

3 to 5 years

**21) Obtaining Money under False Pretenses**

[G.L. 1956 § 11-41-4]

First offense of this type - One count to this indictment

Less than jail

**22) Obtaining Money Under False Pretenses**

[G.L. 1956 § 11-41-4]

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.

**23) Felony Shoplifting**

[G.L. 1956 § 11-41-20 - Statute indicates not more than 5 years]

1 to 3 years

**24) Driving to Endanger - Death Resulting**

[G.L. 1956 § 31-27-1 - Statute indicates not more than 10 years]

No prior motor vehicle record

3 to 5 years

**25) Driving under the Influence - Death Resulting**

[G.L. 1956 § 31-27-2.2 - Statute indicates 5 to 15 years]

3 to 10 years

**Voluntary Manslaughter**

[G.L. 1956 § 11-23-3 - Statute indicates up to 30 years]

**26) Close relationship to victim**

5 to 7 years

**27) Related to other significant criminal activity**

10 to 15 years

**28) 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]

A) Small quantity - Less than 1 ounce, Schedule I - IV, other than marijuana

[G.L. 1956 § 21-28-4.01 - Statute indicates up to 3 years]

Up to 3 years

B) Greater quantity - 1 ounce to 1 kilogram , Schedule I-IV, other than marijuana

[G.L. 1956 § 21-28-4.01.1 - Statute indicates 10 to 50 years]

10 to 50 years\*

C) Large quantity - Over 1 kilogram , Schedule I - IV, other than marijuana

[G.L. 21-28-4.01.2 - Statute indicates 20 years to life]

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.

**29) Possession of a Controlled Substance**

[G.L. 1956 § 21-28-4.01 - Statute indicates up to 3 years]

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

Less than jail

**30) Delivery of Marijuana**

[G.L. 1956 § 21-28-4.01(A)(2)(a) - Statute indicates up to 30 years]

A) Small quantity - Less than 1 ounce

Up to 1 year

B) Greater quantity - 1 ounce to 1 kilogram

1 to 3 years

C) Large quantity - 1 kilogram to 5 kilograms

[G.L. 1956 § 21-28-4.01.1 - Statute indicates 10 to 50 years\*]

10 to 50 years\*

D) Greatest quantity - over 5 kilograms

[G.L. 1956 § 21-28-4.01.2 - Statute indicates 20 years to life\*]

20 years to life\*

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

**31) 1st Degree Sexual Assault**

[G.L. 1956 § 11-37-3 - Statute indicates 10 years to life]

A) One count with no injury

10 to 15 years

B) Multiple counts with or without injury

15 to 25 years

C) 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.

**32) 2nd Degree Sexual Assault**

[G.L. 1956 § 11-37-5 - Statute indicates 3 to 15 years]

A) One count - Touching/groping over clothing

Less than jail

B) Multiple counts - Touching/groping over clothing, same incident

Less than jail

C) Multiple counts - Touching/groping over clothing

1 to 3 years

D) One or multiple counts - Touching/groping under clothing

2 to 5 years

E) One or multiple counts - Touching/groping under or over clothing with aggravating circumstances

5 to 15 years

**33) 1<sup>st</sup> or 2<sup>nd</sup> Degree Sexual Assault - Victim is mentally disabled or physically incapacitated**

[G.L. 1956 §§ 11-37-3 and 11-37-5 - Statutes indicate 10 years to life for 1<sup>st</sup> Degree; 3 to 15 years for 2<sup>nd</sup> Degree]

Jail, depending on circumstances and key facts

**34) 3<sup>rd</sup> Degree Sexual Assault**

[G.L. 1956 § 11-37-7 - Statute indicates up to 5 years]

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

**35) 1<sup>st</sup> Degree Child Molestation**

[G.L. 1956 § 11-37-8.2 - Statute indicates 20 years to life]

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

A) No relationship to victim - No injury, one count

10 to 15 years

B) Close relationship to victim - Natural/stepparent or family member no injury, one count

15 to 20 years

C) Close relationship to victim - Natural/stepparent or family member multiple counts or moderate injury, mental or physical

20 to 30 years

D) Victim is mentally or physically disabled

20 to 30 years

E) Multiple counts or physical injury or aggravating circumstances regardless of relationship to victim

25 years to life

**36) 2<sup>nd</sup> Degree Child Molestation**

[G.L. 1956 § 11-37-8.4 - Statute indicates 6 to 30 years]

A) No relationship to victim - Over clothing, one count

Less than jail to 3 years

B) No relationship to victim - Under clothing or more than one count

3 to 8 years

C) Close relationship to victim - natural/stepparent or family member over clothing - one count

3 to 8 years

D) Close relationship to victim - Natural/stepparent or family member under clothing, one count

7 to 12 years