

Felony Sentencing in Oregon 1998



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Executive Summary

Felony Sentencing in Oregon 1998 is based on 15,262 reports filed with the Oregon Criminal Justice Commission for felony sentences handed down by Oregon circuit courts in 1998. Reported statistics are for the most serious crime of conviction only, not all convictions, unless indicated otherwise.

Crimes of Conviction

- Felony crimes are classified as Person, Property, Driving, Drug, or Other. Forty-two percent of all convictions were for Drug crimes, while Property crimes accounted for 25 percent of reported felony convictions and Person crimes 16 percent. Driving and Other crimes each accounted for eight percent of the most serious convictions.
- The most frequent felony crime of conviction reported in 1998 was Possession of a Controlled Substance, accounting for 27 percent of all felony convictions as the most serious crime. Manufacture/Delivery of a Controlled Substance and Theft/Motor Vehicle Theft each accounted for 15 percent of the total in 1998.
- The 10 most frequent crimes accounted for 74 percent of all convictions.

Sentence Dispositions: Prison and Probation

- Person crimes had the highest rate of prison sentences with 58 percent of the sentences resulting in prison. Among Person crimes, homicide convictions resulted in prison sentences 86 percent of the time. Crimes classified as "Other" (such as Failure to Appear and Felon in Possession of a Firearm) showed the highest rate of local control sentencing. In Oregon, any prison sentence of 12 months or less is spent in a local facility under local control.
- Ten crimes accounted for 60 percent of all prison sentences. Manufacturing and Delivery of a Controlled Substance was the most frequent crime followed by Unauthorized Use of a Vehicle, Burglary I, Possession of a Controlled Substance, Felon in Possession of a Firearm, Theft I, Assault III, Robbery II, and Sexual Abuse I.
- Person felonies had the longest average prison sentences. Within that group of crimes, homicide had the longest average prison sentence at 117 months. Robbery and sex crimes received an average prison sentence of 53 to 65 months.
- Driving crimes resulted in the shortest average prison sentence of the major crime groups at seven months.
- Seventy-four percent of sentenced felons received probation as a sentence disposition. The highest rates of probation occurred in Driving and Drug crime convictions (87 and 85 percent, respectively). Possession of a Controlled Substance had the highest probation rate (93 percent). Drug crimes accounted for 50 percent of all felony probation sentences in 1998.
- The longest probation sentences were given for sex crimes and averaged 60 months. Possession of a controlled substances accounted for the shortest average probation sentence (18 months) of the major crime types.
- Seventy-four percent of Drug crime probation sentences included a court ordered drug treatment program. Over 50% of probation sentences for sex crimes ordered a sex offender treatment program.

Guidelines Application

- Offenders with no juvenile felonies or adult "A" misdemeanors accounted for 27 percent of all reported convictions. Eighty-one percent of felons convicted in 1998 had no prior person felony, while

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26 percent had two or more prior non-person felonies. Felons with two or more prior person felonies comprised but seven percent of all offenders convicted.

- Felony offenses are ranked according to their seriousness on a scale from “1” to “11” where “1” indicates the least serious. The most frequently reported crime seriousness category was “1”. The second most frequent seriousness category was “6.” Considering only the most serious crimes of conviction, crime seriousness categories “1” and “2” combined equaled 44 percent of all reported felonies in 1998. Crimes in seriousness categories of “9”, “10” and “11” accounted for 3.6 percent of the sentencing reports.
- Considering dispositions to state prison or local facilities, seven percent of offenders sentenced at crime seriousness category “4” received state prison sentences (sentence length more than twelve months), while 20 percent of offenders at crime seriousness category “3” (composed largely of Theft and Motor Vehicle theft) received state prison sentences. Crime seriousness category “5” had the highest rate (17 percent) of local facility prison sentences (sentence length of twelve months or less). Considering criminal histories, felons with four or more prior adult non-person felonies and no person felonies had the highest rate of sentencing to a local facility at 19 percent.

Departures from Guidelines Sentencing

- The Oregon Sentencing Guidelines Administrative Rules allow for a departure from the presumptive sentence for “substantial and compelling reasons.” Departures may be dispositional, durational, or both. Dispositional departures are those that impose a sentence of probation where the presumptive disposition is a prison sentence or a prison sentence where the presumptive disposition is probation. Durational departures are sentences that are either longer or shorter than the presumptive sentence under the Sentencing Guidelines Rules. Seventy-five percent of the felons sentenced in 1998 received the presumptive sentence under the sentencing guideline rules. Eleven percent of felons received “dispositional departures” and 14 percent received “durational departures.” Eight percent of all sentences were prison sentences instead of the presumptive probation sentence, and three percent were probation sentences instead of the presumptive prison sentence.
- Departures occurred more frequently in criminal history categories that included one or more person felonies than in criminal history categories containing non-person felonies or misdemeanors. Felons with a criminal history including four or more non-person felonies had the highest rate of prison instead of the presumptive probation sentence at 15 percent. Felons with a criminal history including one adult or juvenile person felony and no other felony had the highest departure rate for probation instead of a presumptive prison sentence at 16 percent of the sentences. Felons with a criminal history including three or more person felonies had the highest rates of durational departures, both shorter and longer than the presumptive.
- Considering crime seriousness categories, the lowest rate of presumptive sentencing occurred for category “5” with only 62 percent of felons receiving the presumptive sentence.
- Homicide had the highest rate of prison sentences longer than the presumptive at 25 percent. Sentences for Criminal Mischief (Other Property) showed the highest average presumptive rate at 83 percent.

Historic Comparisons 1994-1998

- The prison rate (the percent of felons receiving a prison sentence) for all crimes except drug increased between 1994 and 1998. The average increased from 22 percent in 1994 to 26 percent in 1998. The prison rate for Person crimes increased from 48 percent to 58 percent. The prison rate for Driving crimes increased from six percent to 13 percent. The prison rate for Property crime increased from 19 percent to 27 percent during the same period.

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- Between 1994 and 1998, the average prison sentence increased by four months. Most of the increase occurred for Drug and Property crime convictions. The average prison sentence for Property crimes increased from 11 months to 17 months. The average prison sentence for Drug crimes increased from 10 months to 15 months. The average prison sentence for Person crimes increased by two months during the same period.
- The average prison sentence for Other Sex crimes increased from 25 months to 49 months. Average prison sentences for Other Property (Criminal Mischief) more than doubled from an average of five months to 11 months. The average prison sentence for Theft/Motor Vehicle Theft increased from seven months to 13 months.
- The average length of the prison sentences increased for offenders with no prior person felonies, and decreased for those with at least one prior person felony.
- Guilty pleas to a lesser included charge increased from two percent in 1994 to five percent in 1998. Most of the increase occurred in the categories of Person crimes and Other crimes. Guilty pleas with charges dropped decreased from 53 percent to 49 percent and the guilty by trial rate decreased from eight percent to seven percent of the convictions.
- The average age at sentencing increased from 30.1 years to 31.7 years. The average increased for all crime types except Person crimes.
- The percent felons identified in reports as “Hispanic” dropped from 13 percent to 10 percent where the race and ethnic origin were known. The percentage of offenders reported as Black increased from 10 percent to 12 percent of known race from 1994 to 1998. Females accounted for 17 percent of the sentencing reports in 1994 and 19 percent of the reports in 1998.

Exceptions to Guidelines Sentencing

Person Crimes: Mandatory Minimum Prison Sentences for Crimes of Sex and Violence

- Passed by Oregon voters in 1994 and effective on April 1, 1995, Ballot Measure 11 created mandatory minimum prison sentences for 23 Person crimes involving sex or violence. In 1998, Oregon courts submitted 1,064 sentencing reports for Ballot Measure 11 crimes, including the inchoate crimes (attempt, conspiracy, and solicitation). By comparison, 1,063 reports were filed in 1994 for the same offenses.
- Between 1994 and 1998 the number of prison sentences for Ballot Measure 11 listed crimes remained about the same with 624 and 620 reports respectively. During the same time period however, the average prison sentence for the listed crimes increased from 62 months to 82 months.
- Probation as a disposition for a Measure 11 crime dropped from 302 reports in 1994 to 64 reports in 1998.
- Thirty-two percent of sentenced Measure 11 offenders had no known prior adult “A” misdemeanors or juvenile felonies. Most Measure 11 juvenile offenders (those under the age of 18 at the time of the offense) had no reported prior criminal history.

Crimes of Sex and Violence Not Subject to Mandatory Minimum Prison Sentencing

- Enacted in 1997, Senate Bill 1049 allows exceptions from the mandatory minimum sentences of Ballot Measure 11 for the crimes of Robbery II, Assault II, and Kidnapping II when certain criteria are met. In 1998 there were 240 reports of sentences for those crimes. Seventy-nine of those (33

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percent) reported less than the mandatory minimum sentence. None of the offenders receiving less than the minimum sentence had more than one known prior person felony. It is not known how many of the crimes occurred before the effective date of Measure 11, so the proportion receiving SB 1049 exceptions may be less than the full 33 percent.

- The number of reports for attempt, solicitation or conspiracy to commit Ballot Measure 11 crimes increased from 137 reports in 1994 to 380 reports in 1998. Reported sentences for these crimes increased from 45 in 1994 to 237 in 1998.
- Reported prison sentences for Person crimes other than Ballot Measure 11 crimes increased from 202 in 1994 to 516 in 1998.

Property Offenses: Prison Sentences for Repeat Property Offenders

- The number of sentencing reports for crimes listed for Repeat Property Offender (RPO) treatment with an RPO or longer prison sentence increased from 192 in 1994 to 713 in 1998. Of the latter, 381 were for sentences of 13 or 19 months, corresponding to the RPO term.
- All RPO crimes but Burglary I saw an increase in the average length of sentence. The frequencies of prison sentences for these crimes also increased except for burglary.
- Two thirds of the apparent Repeat Property Offenders (those with an RPO or longer sentence) would have had a presumptive probation sentence under sentencing guideline rules.

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Introduction

This report is based on reports filed with the Oregon Criminal Justice Commission for felony sentences handed down by Oregon circuit courts. The report consists of two parts. Part A records identification and status segments, the three “most serious” crimes with their crime seriousness ranking as determined by the sentencing guideline rules, and the criminal history classification of the offender. Part B records information on the actual sentence delivered with the most serious or primary offense listed first. The form provides room for three crimes of conviction. A supplemental worksheet is available to list up to four additional crimes of conviction. Unless otherwise noted, this report examines only the sentence for the most serious crime at the time of sentencing.

Inchoate crimes are defined at ORS 161.405-.450 and include attempt, solicitation, and conspiracy to commit a crime. In most of this report, inchoate offenses have been included with the underlying crime (i.e. reports on Assault III also include Attempted Assault III and any Solicitation or Conspiracy to commit Assault III). An exception is the discussion on Statutory Sentencing where the inchoate crimes are considered separately.

While this report captures most of the felony sentences, courts in Curry, Morrow, Umatilla, and Wheeler counties failed to submit reports on felony sentences in 1998. Washington County stopped submitting reports in mid-1998. Underrepresented at the time of this report, based on submissions from prior years, are Clackamas, Clatsop and Union counties. No attempt has been made to correct the available data to compensate for the missing reports.

Sentencing Guidelines data differ from the criminal justice data maintained by the Department of Corrections (DOC) and the Oregon State Police (OSP). Guidelines data records actual sentences for convicted felons, including jail and probation sentences. OSP, on the other hand, maintains data on the number of reported offenses and arrests. DOC records prison admissions, data on felons in diversion programs and offenders receiving a conditional discharge on their sentence.

This report is divided into four major sections. The first section combines chapters of “Crimes of Conviction,” and “Sentence Dispositions,” and gives an overview of felony sentencing in Oregon. Crimes of Conviction describe the frequency of felony sentences by crime and crime group. “Sentence Dispositions” summarizes sentences for these crimes and crime groups. The second section, “Guidelines Application” and “Departures from Guidelines Sentencing” offers more detail on sentencing under Oregon’s Sentencing Guidelines, and departures from those guidelines, respectively. The third section, “Historic Perspectives, 1994 – 1998,” examines the differences found between the data used in the previous report for 1994, and the data for 1998. The period is of considerable interest as it brackets the implementation of Ballot Measure 11 in 1995. Measure 11 established mandatory minimum sentences for certain crimes of sex and violence. Also enacted during this period was the Repeat Property Offender statute. The last section, “Statutory Sentencing,” provides more specific information on sentencing under Measure 11 and other statutes that provide for sentences outside the Sentencing Guidelines.

Introduction

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Crimes of Conviction

All crimes may be classified by type of crime. Two schemes are used in this report. The first divides crimes into five broad groups: Person, Property, Driving, Drug and Other. Person crimes include crimes of sex and violence directed toward people. Property crimes affect the property rights of others and include Burglary, Forgery, Fraud, Criminal Mischief, Theft and Motor Vehicle Theft and Other Property crimes. Driving crimes include Driving While Suspended or Revoked, Hit and Run and Attempting to Elude a Police Officer. Drug crimes include Possession, Manufacture, and Delivery of a Controlled Substance, Tampering With Drug Records, Using a Minor to Manufacture a Controlled Substance, and Drug Delivery to a Minor. Other crimes include Failure to Appear, Bribery, Custodial Interference, violations of weapons laws, and others. In 1998 there were 103 different statutes cited as the most serious crime of conviction.

Crimes may also be divided into 15 major crime groups. Both of these classification schemes were used in the 1988 Report "*Crime and Punishment in Oregon Courts: 1986 Felony Sentencing Practices*" and in reports on felony sentencing by the Oregon Criminal Justice Commission and its predecessor agency.

Most convictions for Drug crimes are sentenced under the Oregon Revised Statute (ORS) 475.992, which includes Possession, Manufacture and Delivery of the various classifications and schedules of controlled substances.

- **Crime Type.** *Drug crimes accounted for 42 percent of the most serious crimes of conviction. Property crimes accounted for 25 percent and Person crimes accounted for 16 percent of the felony sentencing reports. Driving and Other crimes each accounted for eight percent of the sentencing reports.*
- **Crime Group.** *Drug possession was the most frequent felony conviction in 1998 and accounted for 27 percent of all felony convictions as the most serious crime of conviction. Drug Manufacture and Delivery was the second most frequent crime of conviction at 15 percent of the total, with Theft and Motor Vehicle Theft also at 15 percent of the total.*
- **Most Frequent Crimes.** *The 10 most frequent crimes of conviction account for 74 percent of all convictions for the most serious crime. The most frequent crime of conviction was Possession of a Controlled Substance, followed by Delivery of a Controlled Substance, and then Theft I.*
- **Crime Type by County.** *Distributions of the types of crime differ considerably among the counties.*

Crimes of Conviction

Sentencing Reports by Crime Group

In 1998, Oregon courts of felony jurisdiction submitted 15,262 sentencing reports. Figure 1 and Table 1 show the frequencies of the types of crimes of conviction. Also shown in Table 1 is the percent distribution of the total reports by crime type. Drug crime, altogether, accounted for 42 percent of the most serious crime of conviction. Property crime was the most serious crime for 25 percent of the sentencing reports. Person crime was the most serious crime for 16 percent of the sentencing reports. Driving crime accounted for eight percent, and Other crimes made up eight percent of the total.

Drug crimes accounted for 42 percent of the most serious crimes of conviction. Property crimes accounted for 25 percent and Person crimes accounted for 16 percent of the felony sentencing reports.

Table 1. Sentencing Reports by Crime Type

Crime Type	Reports	Percent
Person	2,429	16%
Property	3,866	25%
Driving	1,258	8%
Drug	6,457	42%
Other	1,252	8%
Total	15,262	100%

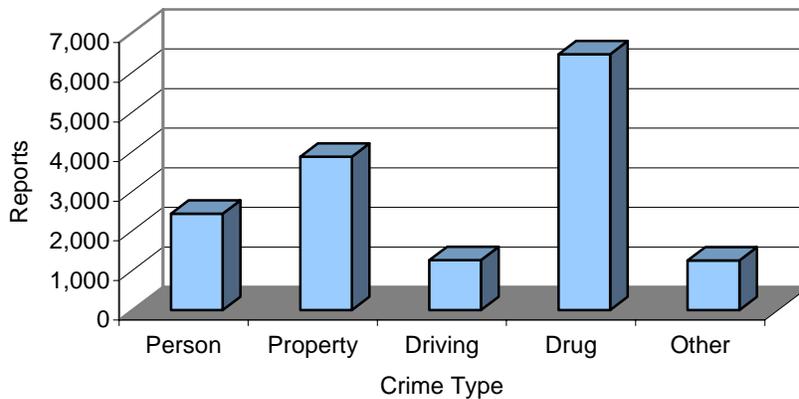
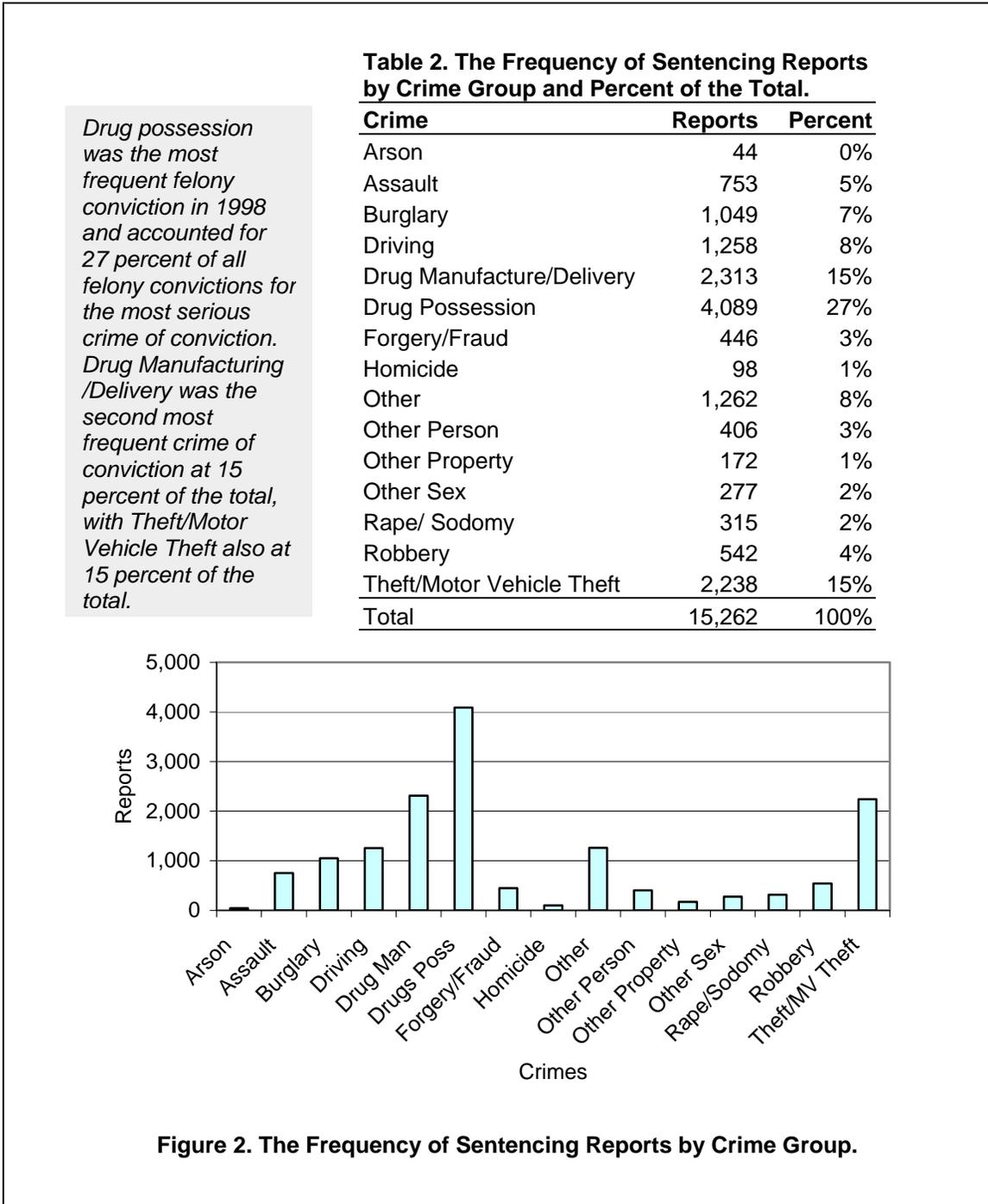


Figure 1. Frequency of Sentencing Reports by Crime Type.

Crimes of Conviction

Sentencing Reports by Crime Group

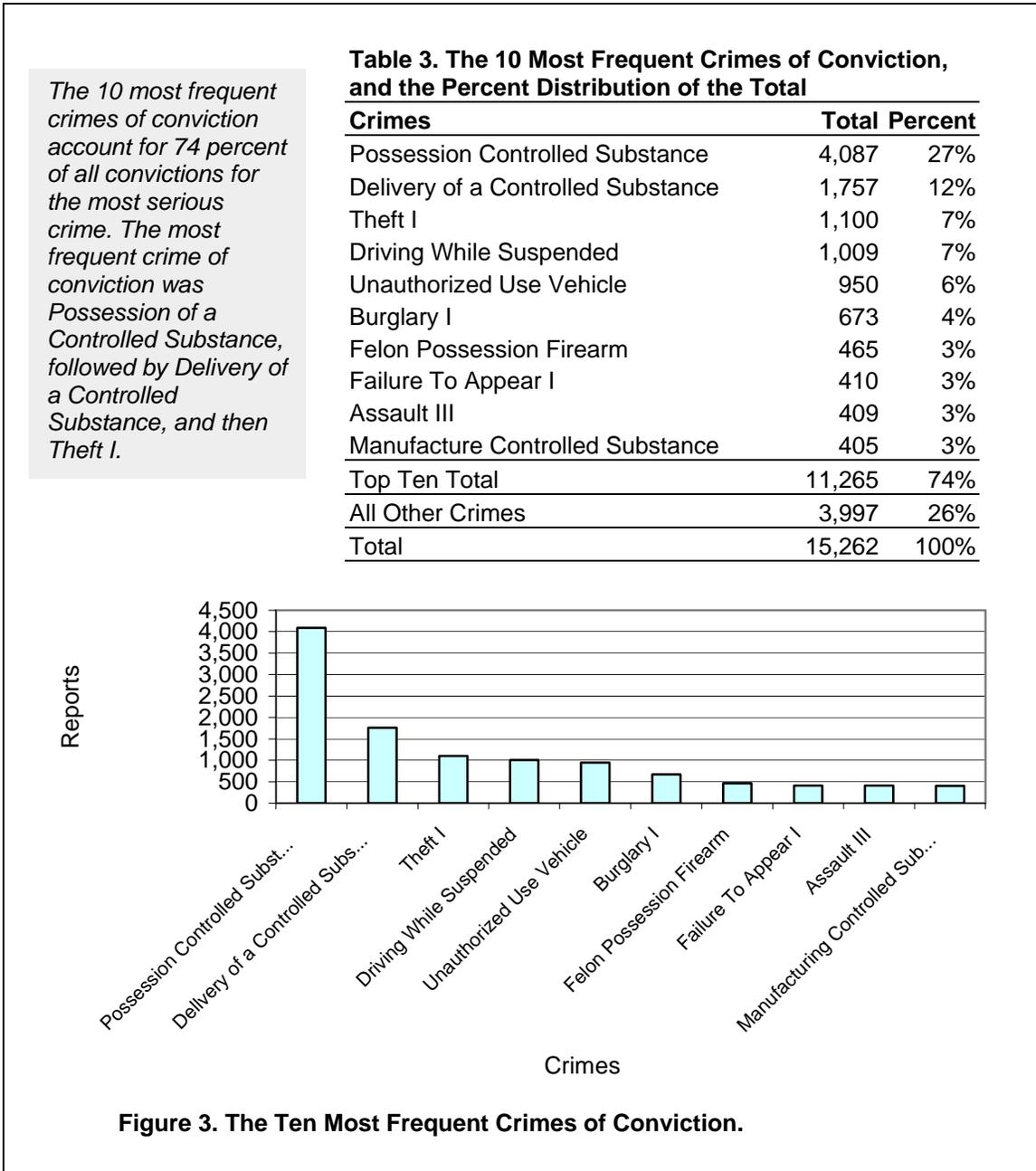
Fifteen crime categories are used to summarize 103 different citations for the crime of conviction. Table 2 and Figure 2 show the frequency of sentencing reports using those categories and their percent of the total number of reports. The crime category Other includes the crimes of Failure To Appear, Felon in Possession of a Firearm, Escape, and others. The crime category Other Person includes crimes such as Kidnapping, Carry or Use a Dangerous Weapon, Criminal Mistreatment, and other person crimes. The crime category Other Property includes only Criminal Mischief I.



Crimes of Conviction

Most Frequent Crimes

Figure 3 shows the 10 most frequent crimes of conviction by statute and Table 3 by their frequency and percent of the total. Most convictions for Drug crimes are sentenced under the Oregon Revised Statute (ORS) 475.992, which includes possession, manufacture and delivery of the various classifications and schedules of controlled substances. The drug modifier distinguishes the crimes of Manufacture, Delivery and Possession of a Controlled Substance. Twenty sentencing reports for ORS 475.992 were without a drug modifier: one was assumed to be Possession and the others appeared to be Manufacture or Delivery¹.



¹ Drug modifiers are derived from the subsection of the statute and distinguish drug possession from drug manufacture and delivery. Most reports for drug crimes just use the letters of "P", "M", or "D".

Crimes of Conviction

Frequency of Offenses by Statute

Table 4 lists in alphabetical order the frequencies of sentencing reports by the most serious crime of conviction, the statute description (subject to abbreviation), and Oregon Revised Statute number.

Table 4. The Frequency of Sentencing Reports by Statute, Description and Oregon Revised Statute Number

Statute Description	Statute Number	Reports
Abuse of Corpse II	166.085	1
Aggravated Animal Abuse I	167.322	3
Arson I	164.325	38
Arson II	164.315	6
Assault I	163.185	88
Assault II	163.175	185
Assault III	163.165	409
Assault IV	163.160	71
Attempt To Elude Police	811.540	179
Bribe-Giving	162.015	4
Burglary I	164.225	673
Burglary II	164.215	375
Buying/Selling Custody of Minor	163.537	1
Carry/Use Dangerous Weapon	166.220	90
Child Neglect I	163.547	17
Coercion	163.275	42
Compelling Prostitution	167.017	1
Criminal Impersonation	162.365	1
Criminal Impersonation of Officer	162.367	1
Criminal Mischief I	164.365	172
Criminal Mistreatment I	163.205	87
Criminal Negligent Homicide	163.145	29
Criminal Nonsupport	163.555	17
Criminal Possession Rented Property	164.140	3
Custodial Interference I	163.257	13
Custodial Interference II	163.245	11
Delivery Controlled Substance 1000 ft School	475.999	98
Delivery Controlled Substance To Minor I & II	475.995	26
Driving While Suspended	811.182	1,009
Encouraging Child Sexual Abuse I	163.684	3
Encouraging Child Sexual Abuse II	163.686	3
Escape I	162.165	2
Escape II	162.155	86
Fail Perform Duties Driver (Hit and Run/Injury)	811.705	70
Fail to Register Address Sex Offender	181.519	34
Fail to Register Sex Offender	181.599	9
Failure To Appear I	162.205	410
False Statement Election Laws	260.715	3
Felon Possession Firearm	166.270	466

Crimes of Conviction

Statute Description	Statute Number	Reports
Fish & Game Violation	496.162	1
Forged Title Or Registration	803.230	1
Forgery I	165.013	324
Fraud-Credit Card	165.055	24
Hinder Prosecution	162.325	40
Hit & Run Injury/Fatal	483.602	2
Incest	163.525	3
Inmate Possession Weapon Prison	166.275	11
Kidnapping I	163.235	32
Kidnapping II	163.225	31
Manslaughter I	163.118	14
Manslaughter II	163.125	21
Manufacture/Delivery/Possession Controlled Substance	475.992	6,270
Murder	163.115	27
Murder Solicitation	161.435	1
Murder Aggravated Attempt/Conspiracy	163.095	7
Negotiating Bad Check	165.065	3
Perjury	162.065	6
Possession Explosive/Firearm Public Building	166.370	1
Possession Forged Instrument I	165.022	42
Possession Forgery Device	165.032	2
Possession Stolen Vehicle	819.300	21
Promote Gambling I	167.127	1
Promote Prostitution	167.012	9
Racketeering	166.720	4
Rape I	163.375	66
Rape II	163.365	17
Rape III	163.355	90
Riot	166.015	6
Robbery I	164.415	103
Robbery II	164.405	172
Robbery III	164.395	267
Sexual Abuse I	163.427	206
Sexual Abuse II	163.425	50
Sexual Penetration I	163.411	34
Sexual Penetration II	163.408	3
Sodomy I	163.405	79
Sodomy II	163.395	13
Sodomy III	163.385	13
Stalking	163.732	1
Submit Wrong Claim For Payment	411.675	1
Supply Contraband	162.185	96
Tamper with Drug Records	167.212	55
Tamper with a Witness	162.285	10
Theft by Deception	164.095	11
Theft By Extortion	164.075	1

Crimes of Conviction

Statute Description	Statute Number	Reports
Theft by Receiving	164.085	16
Theft I	164.055	1,100
Theft I Aggravated	164.057	128
Theft Of Services	164.125	4
Traffic In Stolen Vehicles	819.310	4
Unauthorized Use Vehicle	164.135	950
Unlawful Factor Credit Card Transaction	165.074	1
Unlawful Manufacturing Destructive Device	166.384	6
Unlawful Obtain Public Assistance	411.630	32
Unlawful Possession Destructive Device	166.382	14
Unlawful Possession Firearms/Silencer	166.272	40
Unlawful Use Of A Computer	164.377	7
Unlawful Use Of Food Stamps	411.840	10
Use Child Display Sexual Conduct	163.670	12
Use Minor/Manufacturing Controlled Substance	167.262	8
Violation Court Stalking Order	163.750	1
Wildlife Violation	498.002	1
Grand Total		15,262

Crimes of Conviction

Crime Group by County

Table 5 summarizes the number of reports per county and distribution by crime Group.

County	Person	Property	Driving	Drug	Other	Reports
Multnomah	12%	22%	2%	60%	4%	5,525
Lane	21%	27%	7%	37%	8%	1,365
Marion	23%	26%	5%	36%	10%	1,303
Jackson	14%	33%	4%	42%	6%	831
Douglas	13%	24%	12%	35%	16%	675
Linn	15%	29%	16%	28%	12%	621
Washington *	17%	31%	11%	19%	22%	590
Deschutes	20%	28%	10%	35%	8%	507
Clackamas	12%	28%	32%	19%	9%	500
Klamath	15%	19%	12%	46%	9%	473
Josephine	21%	25%	16%	27%	10%	465
Coos	19%	22%	8%	39%	12%	441
Yamhill	20%	24%	14%	33%	8%	276
Benton	14%	37%	20%	21%	8%	239
Malheur	23%	27%	13%	27%	10%	220
Polk	19%	23%	23%	28%	7%	209
Wasco	16%	19%	21%	38%	8%	200
Lincoln	25%	28%	15%	27%	5%	125
Tillamook	11%	31%	4%	30%	25%	122
Columbia	16%	24%	18%	32%	11%	114
Crook	18%	25%	17%	24%	15%	103
Jefferson	16%	19%	29%	27%	9%	100
Hood	20%	27%	25%	13%	15%	92
Baker	21%	48%	10%	13%	8%	61
Harney	17%	24%	21%	17%	21%	29
Wallowa	5%	47%	16%	21%	11%	19
Gilliam	0%	17%	50%	22%	11%	18
Lake	38%	19%	31%	6%	6%	16
Sherman	0%	40%	10%	40%	10%	10
Grant	11%	33%	33%	0%	22%	9
Clatsop	0%	0%	33%	33%	33%	3
Union	0%	0%	0%	100%	0%	1
Curry						0
Morrow						0
Umatilla						0
Wheeler						0
Total	16%	25%	8%	42%	8%	15,262

* Washington County stopped submitting reports in mid-1998. Underrepresented at the time of this report, based on submissions from prior years, are Clackamas, Clatsop, and Union counties.

The percent distributions of the types of crime differ considerably among the counties.