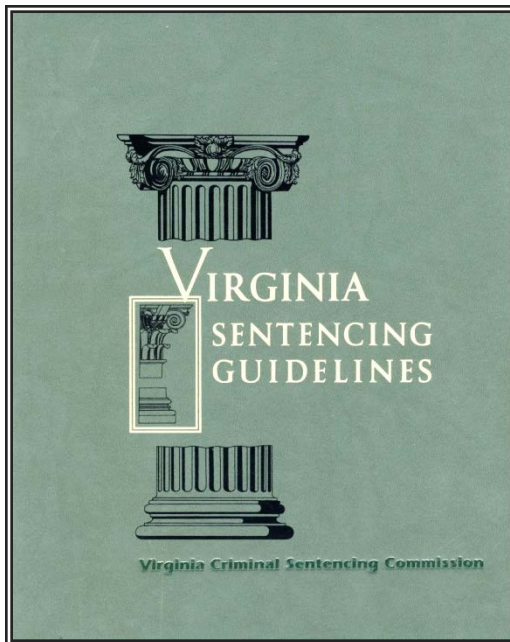




VIRGINIA CRIMINAL SENTENCING COMMISSION

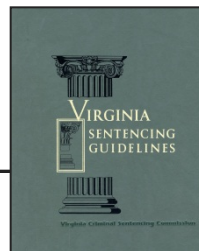


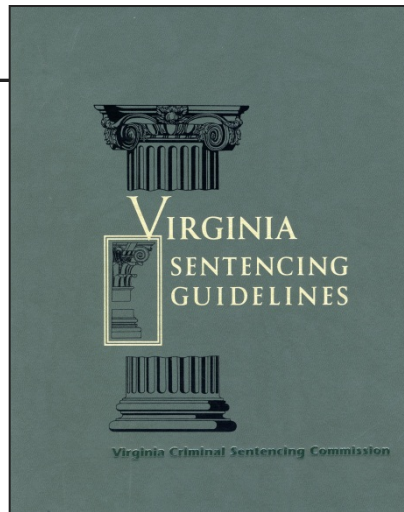
Possible Recommendations for Guidelines Revisions

November 4, 2015

Proposals for Revisions to Existing Guidelines Offenses

- **Proposals are designed to maximize compliance and balance mitigation and aggravation rates to the extent possible.**
- **Current guidelines worksheets serve as the base for scoring historical cases, but the points assigned to those factors may be adjusted and new factors may be added.**





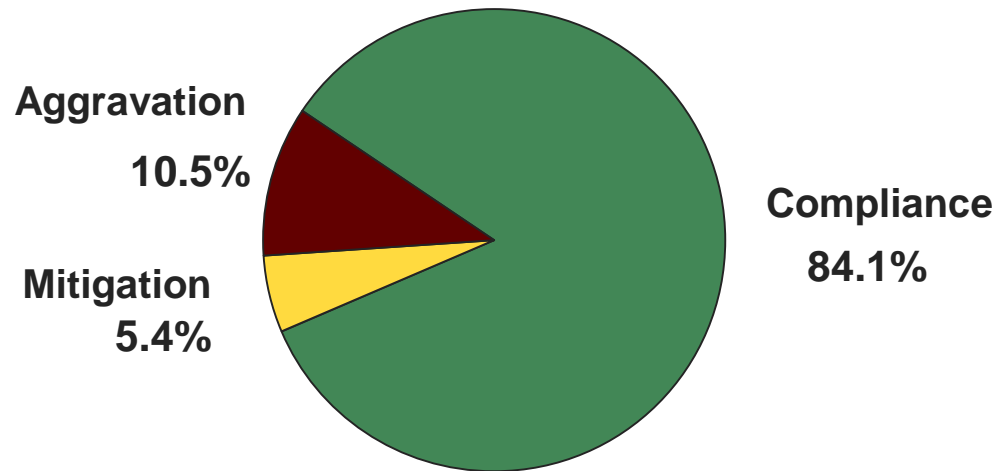
Proposed Recommendation 1:

*Revise the sentencing guidelines for
Felony Embezzlement*

(§ 18.2-111)

Compliance with Sentencing Guidelines for Felony Embezzlement (§ 18.2-111) FY2011 – FY2013

484 Sentencing Events*



* Worksheets with scoring errors or missing monetary value were excluded from the analysis.

Proposed

Increase the points for certain embezzlement cases on Section A of the Larceny guidelines

Larceny ❖ Section A

Offender Name: _____

SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE IS H: EMBEZZLEMENT (§ 18.2-111)

◆ Amount of Embezzlement

Amount:	Less than \$10,000	0
	\$10,000 - \$19,999	3
	\$20,000 - \$74,999	6
	\$75,000 or more	9

0	
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Total Score

If total is 15 or less, go to Section B. If total is 16 or more, go to Section C.

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Larceny/Section A



**SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE IS
EMBEZZLEMENT (§ 18.2-111)**

◆ Amount of Embezzlement

Amount:	Less than \$10,000	0
	\$10,000 - \$19,999	3
	\$20,000 - \$74,999	6
	\$75,000 - \$119,999	9
	\$120,000 or more	14

Larceny Section B

Offender Name: _____

◆ Primary Offense _____ (scores for attempted/conspired offenses are in parentheses)

- A. Any attempted or conspired larceny (1 count)(1)
- B. Maximum penalty equals 5 or 10 years
 - 1 count 3
 - 2 counts 4
 - 3 counts 7
- C. Grand larceny auto
 - 1 count 3
 - 2 counts 4
 - 3 counts 7
- D. Grand larceny from person (1 count) 6
- E. Grand larceny of a firearm (1 count) 1
- F. Failure of bailee to return animal, aircraft, vehicle or boat (1 count) 1
- G. Larceny of bank notes, checks, etc. or any book of accounts
 - 1 count 3

No Proposed Changes to Section B Worksheet

- 2 counts 4
- 3 counts 7

Score
▼
0

◆ Primary Offense Remaining Counts Total the maximum penalty

- Years: Less than 22 0 32 - 42
- 22 - 31 1 43 or more

◆ Additional Offenses Total the maximum penalties for additional offenses

- Years: Less than 1 0
- 1 - 10 1
- 11 - 21 2
- 22 - 31 3
- 32 - 42 4
- 43 or more 5

◆ Prior Convictions/Adjudications Total the maximum penalties for

- Years: Less than 2 0
- 2 - 19 1
- 20 - 38 2
- 39 or more 3

◆ Prior Misdemeanor Convictions/Adjudications (Exclude)

- Number of Counts: 1 - 2 0
- 3 1
- 4 or more 2

◆ Prior Incarcerations/Commitments _____

◆ Legally Restrained at Time of Offense _____

- None 0
- Other than parole/post-release, supervised probation or CCCA 1
- Parole/post-release, supervised probation or CCCA 2

SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE IS A FELONY

◆ Amount of Embezzlement _____

- Amount: Less than \$15,000 0
- \$15,000 or more 1

Total Score _____

See Larceny Section B Recommendation Table
Then, go to Section D Nonviolent Felony

Larceny Section C

Offender Name: _____

◆ Primary Offense _____ Prior Record Classification

- Category I Category II Other
- (scores for attempted/conspired offenses are in parentheses)

- A. Attempted or conspired larceny (1 count) (8) (4) (2)
- B. Statutory maximum penalty equals 5 or 10 years
 - 1 count 20 10 5
 - 2 counts 28 14 7
 - 3 counts 40 20 10
- C. Grand larceny auto
 - 1 count 32 16 8
 - 2 - 3 counts 56 28 14
 - 4 counts 72 36 18
- D. Grand larceny from person
 - 1 count 40 20 10
 - 2 counts 56 28 14
 - 3 counts 68 34 17
- E. Grand larceny of a firearm (1 count) 68 34 17
- F. Failure of bailee to return animal, aircraft, vehicle or boat (1 count) 28 14 7
- G. Larceny of bank notes, checks, etc. or any book of accounts

No Proposed Changes to Section C Worksheet

- 2 counts 44 22 11
- 3 counts 56 28 14

Score
▼
0

◆ Primary Offense Remaining Counts Assign points to each count of the primary not scored above and total the points

- Maximum Penalty: 5, 10 1
- (years) 20 2

0

◆ Additional Offenses Assign points to each additional offense (including counts) and total the points

- Maximum Penalty: Less than 5 0
- (years) 5, 10 1
- 20 2
- 30 3
- 40 or more 5

0

◆ Prior Convictions/Adjudications Assign points to the 5 most recent and serious prior record events and total the points

- Maximum Penalty: Less than 10 0
- (years) 10, 20 1
- 30 2
- 40 or more 3

0

◆ Prior Felony Larceny Convictions/Adjudications _____

- Number of Counts: 1 1
- 2 2
- 3 3
- 4 or more 4

0 0

◆ Other Prior Felony Property Convictions/Adjudications _____

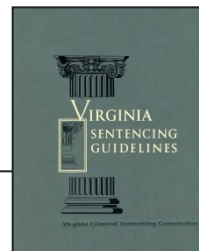
**Felony Embezzlement (§ 18.2-111)
FY2011 – FY2013
484 Sentencing Events***

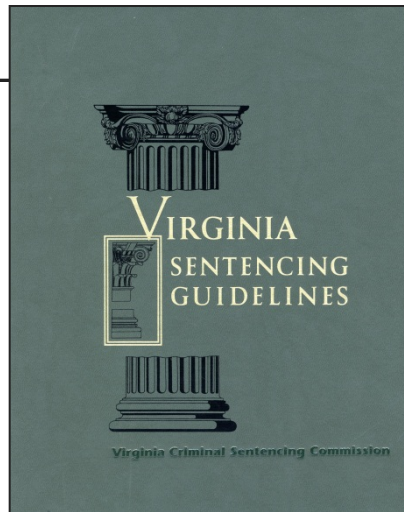
	Current	As Proposed
Compliance	84.1%	85.1%
Mitigation	5.4%	7.0%
Aggravation	10.5%	7.9%

* Worksheets with scoring errors or missing monetary value were excluded from the analysis.

Proposed Recommendation 1

**Modify the Sentencing Guidelines for
Felony Embezzlement (§ 18.2-111)
as proposed**



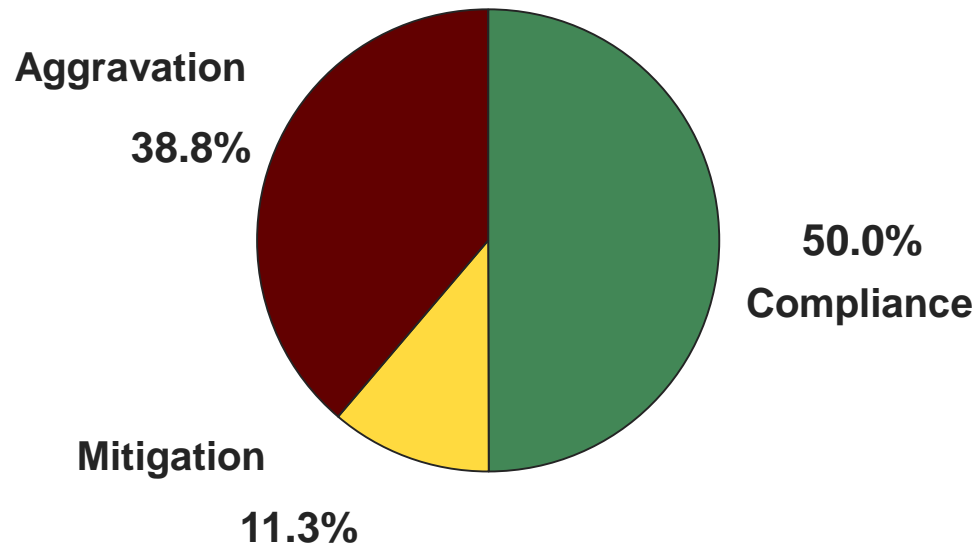


Proposed Recommendation 2:

*Revise the sentencing guidelines for
Vehicular Involuntary Manslaughter
(§ 18.2-36.1(A))*

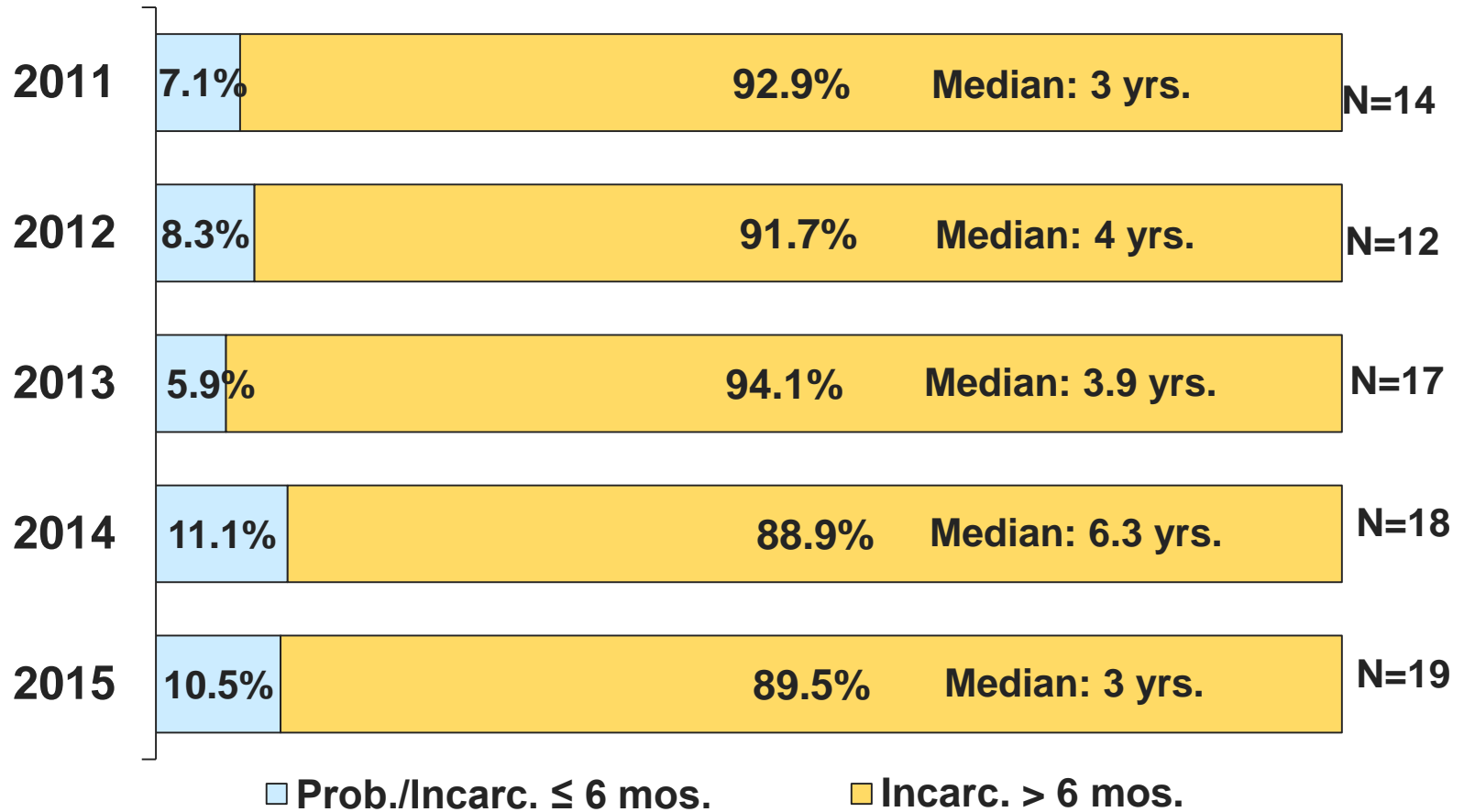
**Compliance with Sentencing Guidelines for
Vehicular Involuntary Manslaughter (§ 18.2-36.1(A))
FY2011 – FY2015**

80 Sentencing Events*



* Worksheets with scoring errors were excluded from the analysis

**Vehicular Involuntary Manslaughter (§ 18.2-36.1(A))
 FY2011 – FY2015
 80 Sentencing Events***



* Worksheets with scoring errors were excluded from the analysis.

Proposed

Increase the points for vehicular involuntary manslaughter on Section C of the Murder/Homicide guidelines

Murder/Homicide ❖ Section C

Offender Name: _____

◆ Primary Offense _____

____ Prior Record Classification ____
 Category I Category II Other
(scores for attempted/conspired offenses are in parentheses)

A. First degree murder		Completed: 1 count	Life	596	335
		2 counts	Life	652	367
		Attempted or conspired: 1 count	(120)	(118)	(59)
B. Second degree murder or felony homicide		Completed: 1 count	354	236	205
		Attempted or conspired: 1 count	(120)	(118)	(59)
C. Voluntary manslaughter		Completed: 1 count	120	96	48
		2 counts	144	96	48
		Attempted or conspired: 1 count	(60)	(48)	(24)
		2 counts	(96)	(48)	(24)
D. Involuntary manslaughter (§ 18.2-36)		Completed: 1 count	76	38	19
		Attempted or conspired: 1 count	(60)	(38)	(19)
E. Aggravated vehicular manslaughter		1 count	213	142	71

Score

▼

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or

<input type="checkbox"/> Life



	<u>Category I</u>	<u>Category II</u>	<u>Other</u>
F. Vehicular involuntary manslaughter (§ 18.2-36.1(A))			
Completed: 1 count	80	40	20
2 counts	232	116	58
3 counts	320	160	80
Attempt./Consp.: 1 count	60	38	19

Proposed

To address potential concerns regarding face validity, the primary offense score for two or more counts of completed voluntary manslaughter may be increased slightly, as shown below, without impacting compliance for this offense

Murder/Homicide ❖ Section C

Offender Name: _____

◆ Primary Offense

____ Prior Record Classification ____

Category I Category II Other

(scores for attempted/conspired offenses are in parentheses)

A. First degree murder

Completed: 1 count Life 596 335

2 counts Life 652 367

Attempted or conspired: 1 count (120) (118) (59)

B. Second degree murder or felony homicide

Completed: 1 count 354 236 205

Attempted or conspired: 1 count (120) (118) (59)

C. Voluntary manslaughter

Completed: 1 count 120 96 48

2 counts 144 96 48

Attempted or conspired: 1 count (60) (48) (24)

2 counts (96) (48) (24)

D. Involuntary manslaughter

Completed: 1 count 76 38 19

Attempted or conspired: 1 count (60) (38) (19)

E. Aggravated vehicular manslaughter

1 count 213 142 71

Score

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or

<input type="checkbox"/> Life



	<u>Category I</u>	<u>Category II</u>	<u>Other</u>
C. Voluntary manslaughter			
Completed: 1 count	120	96	48
2 counts	180	120	60

Vehicular Involuntary Manslaughter (§ 18.2-36.1(A))

Beginning in 2013, a new factor was added to Section C of the Murder/Homicide guidelines

Murder/Homicide ❖ **Section C** Offender Name: _____

**SCORE THE FOLLOWING ONLY IF PRIMARY OFFENSE AT CONVICTION IS
D: INVOLUNTARY MANSLAUGHTER WITH A VEHICLE (§ 18.2-36.1(A))**

◆ Type of Additional Offense _____

Additional offense of felony Hit and Run (§ 46.2-894) 23

0		
---	--	--

Total Score _____

See Murder/Homicide Section C Recommendation Table for guidelines sentence range.

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Murder/Homicide/Section C

This factor increases the recommended prison sentence for offenders convicted of this combination of offenses

Proposed

Include Driving While Intoxicated, Victim Permanently Impaired in the following factor on Section C of the Murder/Homicide guidelines and increase the points for this factor

Murder/Homicide ❖ Section C

Offender Name: _____

**SCORE THE FOLLOWING ONLY IF PRIMARY OFFENSE AT CONVICTION IS
D: INVOLUNTARY MANSLAUGHTER WITH A VEHICLE (§ 18.2-36.1(A))**

◆ Type of Additional Offense _____

Additional offense of felony Hit and Run (§ 46.2-894) 23

0		
---	--	--

Total Score _____

See Murder/Homicide Section C Recommendation Table for guidelines sentence range.

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Murder/Homicide/Section C

**SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE AT CONVICTION IS
INVOLUNTARY MANSLAUGHTER WITH A VEHICLE (§ 18.2-36.1(A))**

- ◆ Type of Additional Offense
Additional Offense of felony Hit and Run (§ 46.2-894) *or*
Driving While Intoxicated, Victim Permanently Impaired (§ 18.2-51.4(A)) *If YES, add 37*

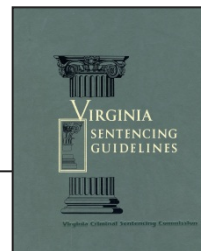
**Vehicular Involuntary Manslaughter (§ 18.2-36.1(A))
FY2011 – FY2015
80 Sentencing Events***

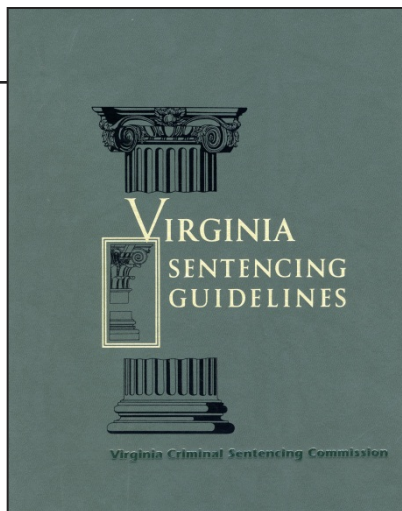
	Current	As Proposed
Compliance	50.0%	61.3%
Mitigation	11.3%	12.5%
Aggravation	38.8%	26.3%

* Worksheets with scoring errors were excluded from the analysis.

Proposed Recommendation 2

**Modify the Sentencing Guidelines for
Vehicular Involuntary Manslaughter (§ 18.2-36.1(A)) and
Voluntary Manslaughter (§ 18.2-35)
as proposed**



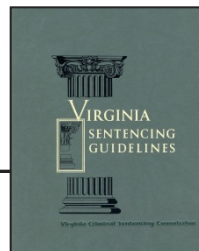


Proposed Recommendation 3:

*Add Strangulation Resulting in Injury or
Bodily Wounding (§ 18.2-51.6)
to the Assault Guidelines*

Proposals for New Guidelines Offenses

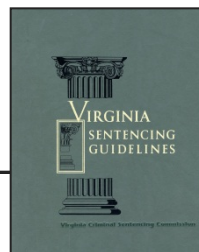
- **Proposals reflect the best fit for the historical data.**
- **Proposals are designed to closely match the historical rate of incarceration in prison and jail.**
- **Current guidelines worksheets serve as the base for scoring historical cases, but the points assigned to those factors may be different for the new offense and new factors may be added.**



Strangulation Resulting in Bodily Injury (§ 18.2-51.6)

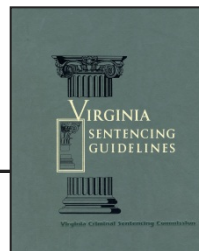
Any person who, without consent, impedes the blood circulation or respiration of another person by knowingly, intentionally, and unlawfully applying pressure to the neck of such person resulting in the wounding or bodily injury of such person is guilty of strangulation, a Class 6 felony.

(Effective July 1, 2012)

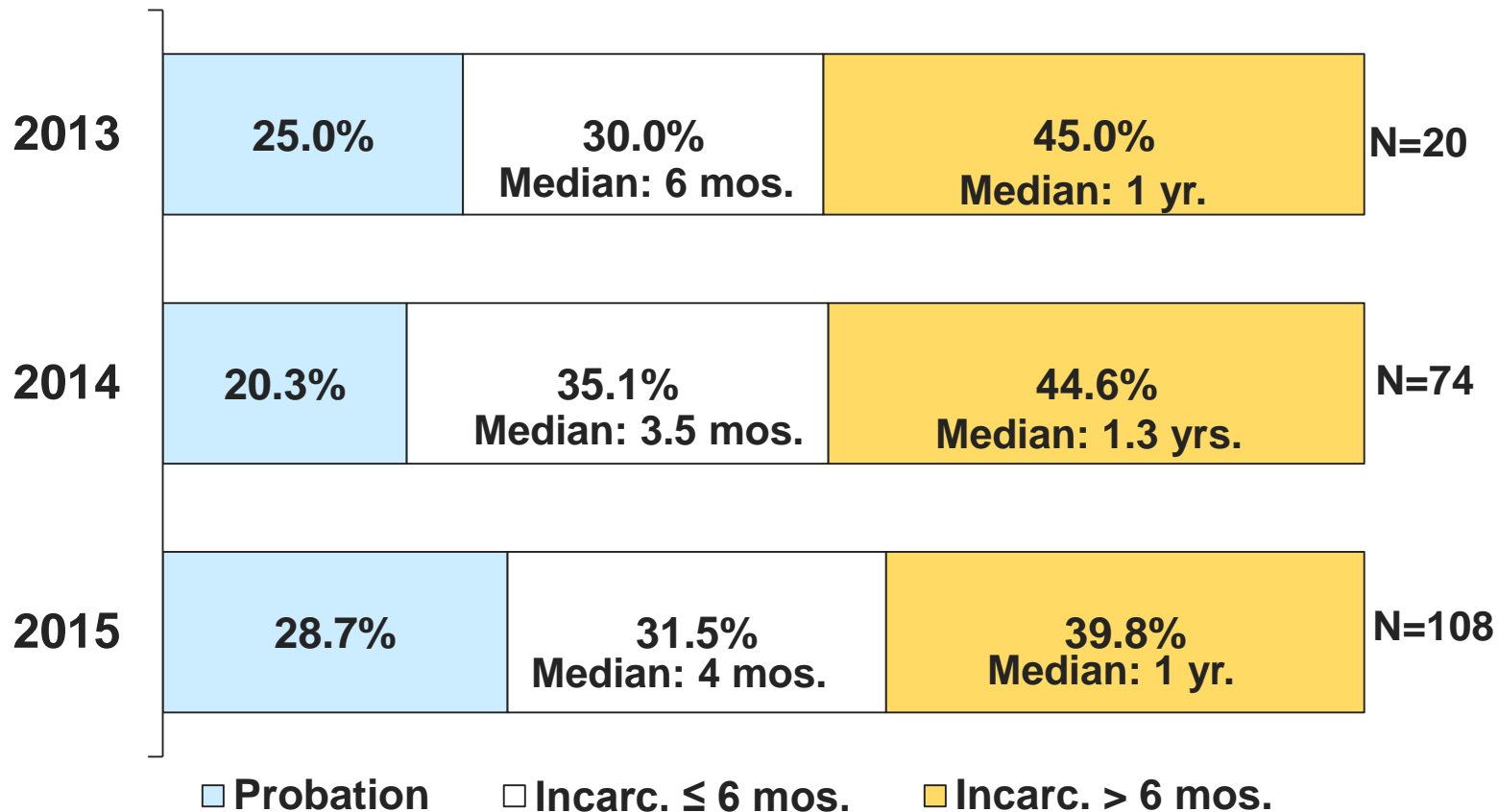


Strangulation Resulting in Bodily Injury (§ 18.2-51.6)

- **Currently, convictions under § 18.2-51.6 are not covered by the sentencing guidelines when this offense is the primary (or most serious) offense at sentencing.**



**Strangulation Resulting in Bodily Injury
(§ 18.2-51.6)
FY2013 – FY2015
202 Cases**

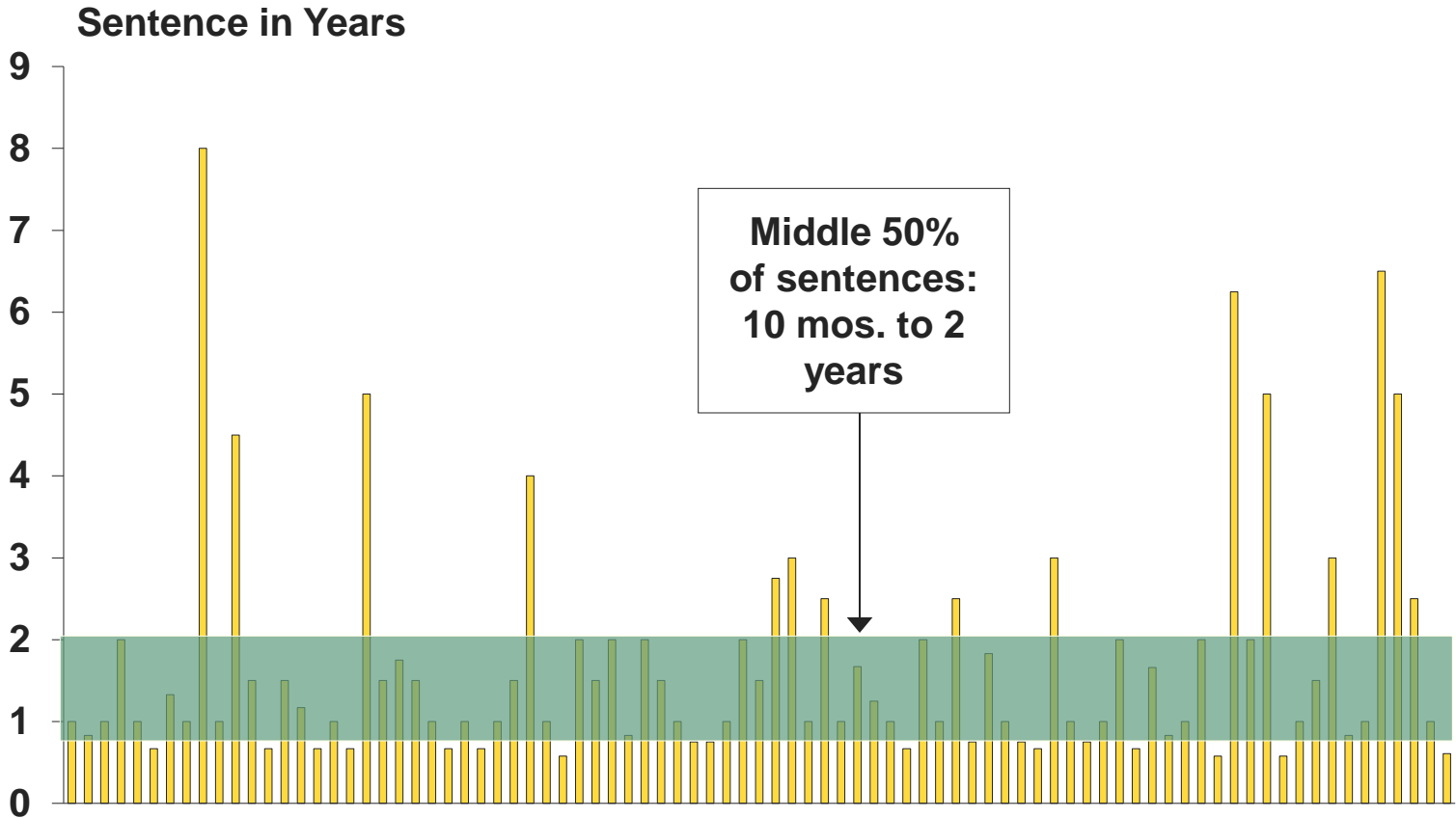


Note: Data reflect cases in which this offense was the primary (or most serious) offense at sentencing; seven offenders were excluded because a rap sheet could not be located.

Source: Supreme Court of Virginia, Circuit Court Case Management System (CMS)

**Strangulation Resulting in Bodily Injury
(§ 18.2-51.6)
FY2013 – FY2015**

**Offenders Sentenced to Incarceration of More than 6 Months
85 Cases**



Assault — Section A

Offender Name: _____

Proposed

◆ **Primary Offense** _____ (scores for attempted/conspired offenses are in parentheses)

A. Assault and battery against a family member, third or subsequent conviction (1 count)	2
B. Assault and battery against a law enforcement officer, fire or medical services, etc. (1 count)	6
C. Any attempted or conspired assault and battery or unlawful injury (1 count)	(1)
D. Unlawful injury to law enforcement officer, fire/rescue personnel services, etc. (1 count)	7
E. Any other unlawful injury	
1 count	1
2 counts	3
F. Any attempted or conspired malicious injury (1 count)	(3)
G. Any attempted, conspired or completed aggravated malicious injury (1 count)	7
H. Malicious injury to a law enforcement officer, fire or medical services, etc. (1 count)	7
I. Any other malicious injury (1 count)	7
J. Use of firearm in the commission of a felony (1 count)	4
DWI with reckless disregard, victim permanently impaired	
1 count	1
2 counts	3

Score
▼

◆ **Primary Offense Remaining Counts** Total the maximum penalties for counts of the primary not scored above

Years: 3 10 1 24 31 4

Create new Primary Offense score for strangulation

C. Any attempted or conspired assault and battery, unlawful injury, or *strangulation*

1 count 1

L. Strangulation resulting in bodily injury (§ 18.2-51.6)

1 count 3

Firearm 2

◆ **Life Threatening Injury** _____ If YES, add 2 →

◆ **Prior Convictions/Adjudications** Total the maximum penalties for the 5 most recent and serious prior record events

Primary offense:	Primary offense:
K: DWI with Reckless Disregard	All other offenses
Years	Years
Less than 1 0	Less than 7 0

If total is 5 or less, go to SECTION B. If total is 6 or more, go to SECTION C.

Proposed

Assault ❖ Section B

Offender Name: _____

◆ Victim Injury _____

Threatened, emotional, or physical 2
 Life Threatening 4

Score
 ▼

--	--

◆ Additional Offenses

Total the maximum penalties for additional offenses, including counts _____

Years: Less than 5 1
 5 or more 2

▼

0	
---	--



Split Additional Offense factor and assign higher points for Strangulation Resulting in Bodily Injury

◆ Additional Offenses

Primary offense OTHER THAN Strangulation § 18.2-51.6

Maximum Penalty	Points
Years: Less than 5	1
5 or more.....	2

Primary offense Strangulation § 18.2-51.6

Maximum Penalty	Points
Years: Less than 5	5
5 or more.....	6

◆ Prior Incarcerations/Commitments _____

Number: 1 1
 2 3
 3 or more 5

▼

0	
---	--

◆ Prior Misdemeanor Convictions/Adjudications (Excludes Traffic) _____

Number of Counts: 1 - 2 0
 3 - 5 1
 6 - 8 2
 9 or more 3

▼

0	
---	--

Proposed

Assault Section B

Offender Name: _____

◆ Victim Injury

Threatened, emotional, or physical 2
Life Threatening 4

Score
▼

--	--

◆ Additional Offenses

Total the maximum penalties for additional offenses, including counts

Years: Less than 5 1
5 or more 2

0	
---	--

◆ Weapon Used or Brandished

If YES, add 2

0	
---	--

◆ Prior Convictions/Adjudications

Total the maximum penalties for the 5 most recent and serious prior record events

Years: Less than 5 0
5 - 18 1
19 - 38 2
39 or more 3

0	
---	--



Split Prior Convictions/Adjudications factor and assign higher points for Strangulation Resulting in Bodily Injury

◆ Prior Convictions/Adjudications

Primary offense OTHER THAN Strangulation § 18.2-51.6

Maximum Penalty	Points
Years: Less than 5	0
5 – 18	1
19 – 38	2
39 or more.....	3

Primary offense Strangulation § 18.2-51.6

Maximum Penalty	Points
Years: Less than 5	0
5 – 18	3
19 – 38	4
39 or more	5

Proposed

Assault Section B

Offender Name: _____

◆ **Victim Injury** _____

	Score	
Threatened, emotional, or physical	2	0
Life Threatening	4	

◆ **Additional Offenses** Total the maximum penalties for additional offenses, including counts _____

Years: Less than 5	1	0
5 or more	2	

◆ **Weapon Used or Brandished** _____ If YES, add 2 → 0

◆ **Prior Convictions/Adjudications** Total the maximum penalties for the 5 most recent and serious prior record events _____

Years: Less than 5	0	0
5 - 18	1	
19 - 38	2	
39 or more	3	

◆ **Prior Juvenile Record** _____ If YES, add 3 → 0

SCORE THE FOLLOWING FACTORS ONLY IF PRIMARY OFFENSE AT CONVICTION IS ASSAULT & BATTERY AGAINST A FAMILY MEMBER (§ 18.2-57.2(B)) OR STRANGULATION (§ 18.2-51.6)

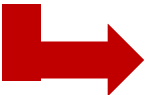
◆ **Prior Incarcerations/Commitments** _____

Number: 1	1	0
2	3	
3 or more	5	

◆ **Prior Misdemeanor Convictions/Adjudications** (Excludes Traffic) _____

Number of Counts: 1 - 2	0	0
3 - 5	1	
6 - 8	2	
9 or more	3	

Also score these factors for strangulation



Proposed

Assault ❖ Section C

Offender Name: _____

____ Prior Record Classification ____

◆ Primary Offense _____

Category I Category II Other
(scores for attempted/conspired offenses are in parentheses)

A. Assault and battery against a family member, third or subsequent conviction (1 count)	28	14	7
B. Assault and battery against a law enforcement officer, fire or medical services, etc. (1 count)	32	16	8
C. Unlawful injury (1 count)	32	16	8
D. Attempted or conspired malicious injury (1 count)	(68)	(34)	(17)
E. Attempted malicious injury			
1 count	102	68	34
2 counts	120	80	40
3 counts	204	136	68
F. Aggravated malicious injury (1 count)	321	214	107
G. Use of firearm in the commission of a felony - first offense (1 count)	32	32	32
H. Use of firearm in the commission of a felony - subsequent offense (1 count)	56	56	56
I. Driving with reckless disregard, Victim permanently impaired (1 count)	48	24	12

Score

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◆ Primary Offense Remaining Counts Assign points to each count of the primary not scored above and total the points _____

Score Strangulation Resulting in Bodily Injury the same as Assault and Battery Against a Family Member, 3rd or Subsequent

Prior Record Classification

Category I Category II Other

**A. Assault and battery against a family member, 3rd or subseq.
*or strangulation resulting in bodily injury***

1 count 28 14 7

40 or more 26	40 or more 22		
---------------------	---------------------	--	--

◆ Weapon Used _____

Primary offense:

D, E, F, G, or H: All malicious woundings or use of a firearm

Simulated weapon or other than listed below	0
Knife or firearm	4

Primary offense:

A, B, C, or I: Unlawful injury, any assault and battery or DWI

Simulated weapon or other than listed below	0
Knife	2
Firearm	3

0	0	
---	---	--

◆ Number of Victims Receiving Life Threatening Injury _____

Primary offense:

D, E, F, G, or H: All malicious woundings or use of a firearm

Number	Score
1	14
2	70
3 or more	85

Primary offense:

A, B, C, or I: Unlawful injury, any assault and battery or DWI

Number	Score
1 or more	3

0		
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◆ Prior Convictions/Adjudications Assign points to the 5 most recent and serious prior record events and total the points _____

Primary offense:

D, E, F, G, or H: All malicious woundings or use of a firearm

Maximum Penalty (years)	Points
-------------------------	--------

Primary offense:

A, B, C, or I: Unlawful injury, any assault and battery or DWI

Maximum Penalty (years)	Points
-------------------------	--------

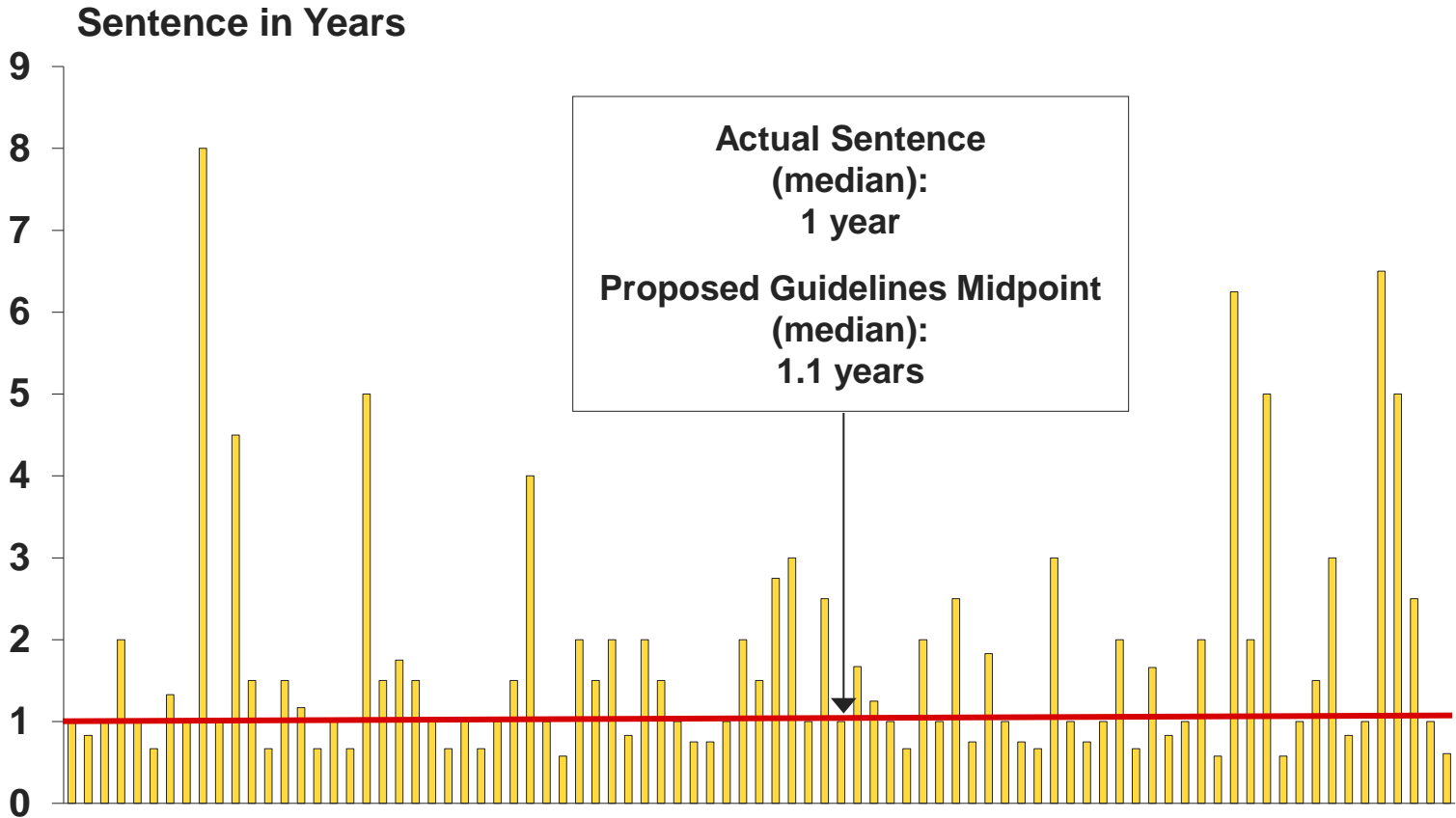
**Strangulation Resulting in Bodily Injury
 (§ 18.2-51.6)
 FY2013 – FY2015
 202 Cases**

Disposition	Recommended under Proposed Guidelines	Actual Practices Prior to Sentencing Guidelines
No Incarceration	24.8%	25.2%
Incarceration 1 Day to 3 Months	5.9%	7.4%
Incarceration 3 Months to 6 Months	26.2%	25.2%
Incarceration More than 6 Months	43.1%	42.1%

Strangulation Resulting in Bodily Injury (§ 18.2-51.6)

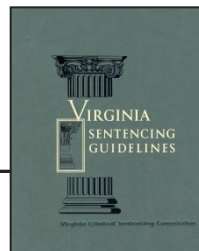
FY2013 – FY2015

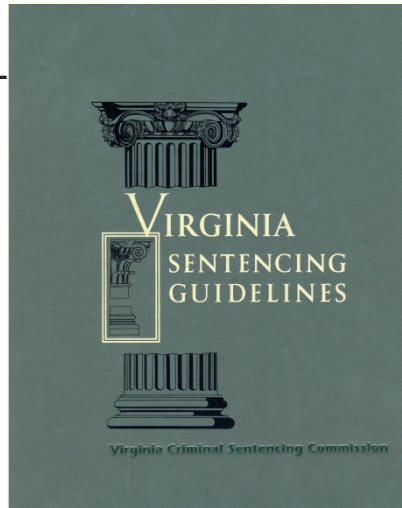
Offenders Sentenced to Incarceration of More than 6 Months
85 Cases



Proposed Recommendation 3

**Add Strangulation Resulting in Bodily Injury (§ 18.2-51.6)
to the Assault Guidelines
as proposed**





Proposed Recommendation 4:

*Modify Sentencing Guidelines for
Aggravated Sexual Battery of Child Age 13 or 14
(§ 18.2-67.3(A,4,A))*

Compliance with Sentencing Guidelines for Aggravated Sexual Battery Offenses (§ 18.2-67.3) FY2011 – FY2015

Offense	Compliance	Mit.	Agg.	# of Cases
Victim < 13 (§ 18.2-67.3(A,1))	71.2%	14.4%	14.4%	618
Mental Incapacity/Helplessness (§ 18.2-67.3(A,2))	70.5%	11.5%	17.9%	78
Parent, etc., w/ Child Age 13-17 (§ 18.2-67.3(A,3))	N/A	N/A	N/A	N/A
Victim Age 13 or 14 (§ 18.2-67.3(A,4,a))	57.6%	11.9%	30.5%	59
By Force, etc., Serious Injury (§ 18.2-67.3(A,4,b))	78.9%	5.3%	15.8%	38
By Force, etc., Threat of Weapon (§ 18.2-67.3(A,4,c))	75.0%	8.3%	16.7%	12
Overall	70.6%	13.4%	16.0%	805

Note: Cases with scoring errors were excluded from the analysis.

Other Sexual Assault ❖ **Section A (Part II)** Offender Name: _____

◆ **Primary Offense** _____

A. Other than listed below; all attempted or conspired offenses (1 count)	1
B. Non-forcible sodomy, parent/grandparent to child or grandchild age 13 to 17 (1 count)	7
C. Non-forcible sodomy, no parental relationship	
1 count	3
2 counts	4
3 counts	13
D. Indecent liberties with child	
1 - 2 counts	2
3 counts	3
E. Non-forcible carnal knowledge of child age 13, 14 (statutory rape)	
1 count	2
2 counts	8
3 counts	12
F. Aggravated sexual battery	
1 count	3
2 counts	6
3 counts	9
G. Incest with own child/grandchild (1 count)	3
H. Incest with own child/grandchild age 13 to 17 (1 count)	2

Score



◆ **Primary Offense Remaining Counts** Total the maximum penalties for counts of the primary not scored above _____

Years: 5 - 26	1
27 - 52	2
53 or more	3

◆ **Additional Offenses** Total the maximum penalties for additional offenses, including counts _____

Years: Less than 1	0
1 - 26	1
27 - 52	2
53 or more	3

◆ **Victim Less than Age 13 at Time of Offense** _____ If YES, add 5 →

◆ **Victim Injury** _____

Threatened or emotional	2
Physical or life threatening	4

◆ **Prior Convictions/Adjudications** Total maximum penalties for the 5 most recent and serious prior record events _____

Years: Less than 3	0
3 - 18	1
19 - 31	2
32 - 44	3
45 or more	4

◆ **Prior Felony Sexual Assault Convictions/Adjudications** _____

Number of Counts: 1	1
2	2
3 or more	3

◆ **Prior Incarcerations/Commitments** _____ If YES, add 3 →

◆ **Legally Restrained at Time of Offense** _____

None	0
Other than parole/post-release, supervised probation or CCCA	2
Parole/post-release, supervised probation or CCCA	3

◆ **Risk Assessment Score (From Section A Part I)** _____

Less than 28	0
28 or more (Level 1, 2, or 3)	8

Actual versus Recommended Dispositions for Aggravated Sexual Battery with Child 13 or 14 (§ 18.2-67.3(A,4,a)) FY2011 – FY2015

	Actual Practice	Recommended under Current Sentencing Guidelines
--	--------------------	--

**Probation or
Incarceration
Up to 6 Months**

25.4%

40.7%

**Incarceration
More than 6 Months
(Range includes prison)**

74.6%

59.3%



**Current guidelines could be
more closely aligned with the
actual prison incarceration rate**

Other Sexual Assault ~~✚~~ Section A (Part II) Offender Name: _____

◆ Primary Offense _____

A. Other than listed below; all attempted or conspired offenses (1 count)	1
B. Non-forcible sodomy, parent/grandparent to child or grandchild age 13 to 17 (1 count)	7
C. Non-forcible sodomy, no parental relationship	
1 count	3
2 counts	4
3 counts	13
D. Indecent liberties with child	
1 - 2 counts	2
3 counts	3
E. Non-forcible carnal knowledge of child age 13, 14 (statutory rape)	
1 count	2
2 counts	8
3 counts	12
F. Aggravated sexual battery	
1 count	3
2 counts	6
3 counts	9
Incest with own child/grandchild (1 count)	3
Incest with own child/grandchild age 13 to 17 (1 count)	2

Score

--	--

Modify Primary Offense scoring for Aggravated Sexual Battery

D. Aggravated sexual battery, victim age 13 or 14

<i>1 count</i>	<i>6</i>
<i>2 counts</i>	<i>8</i>
<i>3 counts</i>	<i>10</i>

If total is 8 or less, go to SECTION B. If total is 9 or more, go to SECTION C.

Other Sexual Assault ❖ Section B

Offender Name: _____

◆ Primary Offense

- A. Other than listed below (1 count) 1
- B. Aggravated sexual battery
 - 1 count 2
 - 2 counts 4
 - 3 counts 6

Score

0	
---	--

No Proposed Changes to Section B Worksheet

- Years: 5 - 7 2 27 - 30 8
- 8 - 11 3 31 - 34 9
- 12 - 15 4 35 - 37 10
- 16 - 19 5 38 - 41 11
- 20 - 22 6 42 or more 12
- 23 - 26 7

--	--

◆ Additional Offenses

Total the maximum penalties for each

- Years: Less than 1 1
- 1 - 2 2
- 3 - 7 3
- 8 - 11 4
- 12 - 15 5
- 16 - 19 6
- 20 - 22 7

◆ Victim Less than Age 13 at Time of Offense

◆ Prior Convictions/Adjudications

Total the maximum

- Years: Less than 3 1
- 3 - 19 2
- 20 - 39 3
- 40 or more 4

◆ Prior Incarcerations / Commitments

Total Score _____

See Other Sexual Assault Section B F

Other Sexual Assault ❖ Section C

Offender Name: _____

◆ Primary Offense

— Prior Record Classification —
 Category I Category II Other
(scores for attempted/conspired offenses are in parentheses)

- A. All attempted or conspired sexual assault (1 count) (24) (12) (6)
- B. Completed sexual assault other than listed below (1 count) 36 18 9
- C. Non-forcible sodomy, no parental relationship
 - 1 count 24 12 6
 - 2 counts 40 20 10
 - 3 counts 104 52 26
- D. Non-forcible sodomy, parent/grandparent to child/grandchild age 13 - 17
 - 1 count 36 18 9
- E. Indecent liberties with child
 - 1 count 24 12 6
 - 2 counts 40 20 10
 - 3 counts 104 52 26
- F. Non-forcible carnal knowledge of child age 13 - 14 (statutory rape)
 - 1 count 36 18 9
- G. Incest with own child/grandchild (1 count) 104 52 26
- H. Incest with own child/grandchild age 13 - 17 (1 count) 104 52 26

Score

No Proposed Changes to Section C Worksheet

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◆ Primary Offense Remaining Counts

Assign points to each count of the primary not scored above and total the points

- Maximum Penalty 5 5
- (years) 10 10
- 20 19
- 30 29
- 40 or more 39

0	
---	--

◆ Additional Offenses

Assign points to each additional offense (including counts) and total the points

- Maximum Penalty Less than 1 0
- (years) 1 1
- 2 2
- 3 3
- 4 4
- 5 5
- 10 10
- 20 19
- 30 29
- 40 or more 39

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◆ Weapon Used, Brandished, Feigned or Threatened

If YES, add 4 →

0	0
---	---

Actual versus Proposed Dispositions for Aggravated Sexual Battery with Child 13 or 14 (§ 18.2-67.3(A,4,a)) FY2011 – FY2015

	Actual Practice	Recommended Under Proposed Sentencing Guidelines
Probation or Incarceration Up to 6 Months	25.4%	32.2%
Incarceration More than 6 Months (Range includes prison)	74.6%	67.8%

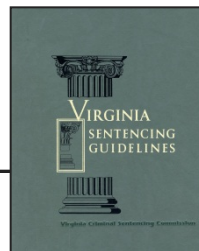

Proposed guidelines are more closely aligned to the actual prison incarceration rate

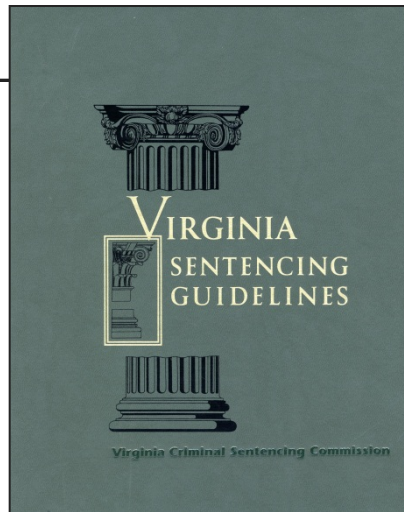
**Compliance with Sentencing Guidelines for
Aggravated Sexual Battery with Child 13 or 14 (§ 18.2-67.3(A,4,a))
FY2011 – FY2015**

Dispositional Compliance			Overall Compliance		
	Current	Projected		Current	Projected
Compliance	66.1%	71.2%	Compliance	57.6%	61.0%
Mitigation	3.4%	6.8%	Mitigation	11.9%	18.6%
Aggravation	30.5%	22.0%	Aggravation	30.5%	20.3%

Proposed Recommendation 4

**Modify the Sentencing Guidelines for
Aggravated Sexual Battery, Victim Age 13 or 14
(§ 18.2-67.3(A,4,a)) as proposed**





Proposed Recommendation 5:

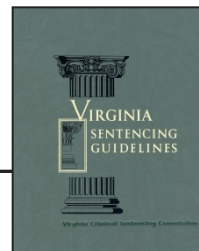
*Add Aggravated Sexual Battery of Child Age 13-17
by Parent/Grandparent (§ 18.2-67.3(A,3))
to the Other Sexual Assault Guidelines*

Aggravated Sexual Battery of Child 13-17 by Parent/Grandparent (§ 18.2-67.3(A,3))

An accused shall be guilty of aggravated sexual battery if he or she sexually abuses the complaining witness, and ... the offense is committed by a parent, step-parent, grandparent, or step-grandparent and the complaining witness is at least 13 but less than 18 years of age.

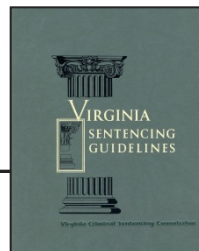
Aggravated sexual battery is a felony punishable by confinement in a state correctional facility for a term of not less than one nor more than 20 years and by a fine of not more than \$100,000.

(Effective July 1, 2005)



Aggravated Sexual Battery of Child 13-17 by Parent/Grandparent (§ 18.2-67.3(A,3))

Currently, convictions under § 18.2-67.3(A,3) involving aggravated sexual battery of a child age 13-17 by a parent or grandparent are not covered by the sentencing guidelines.



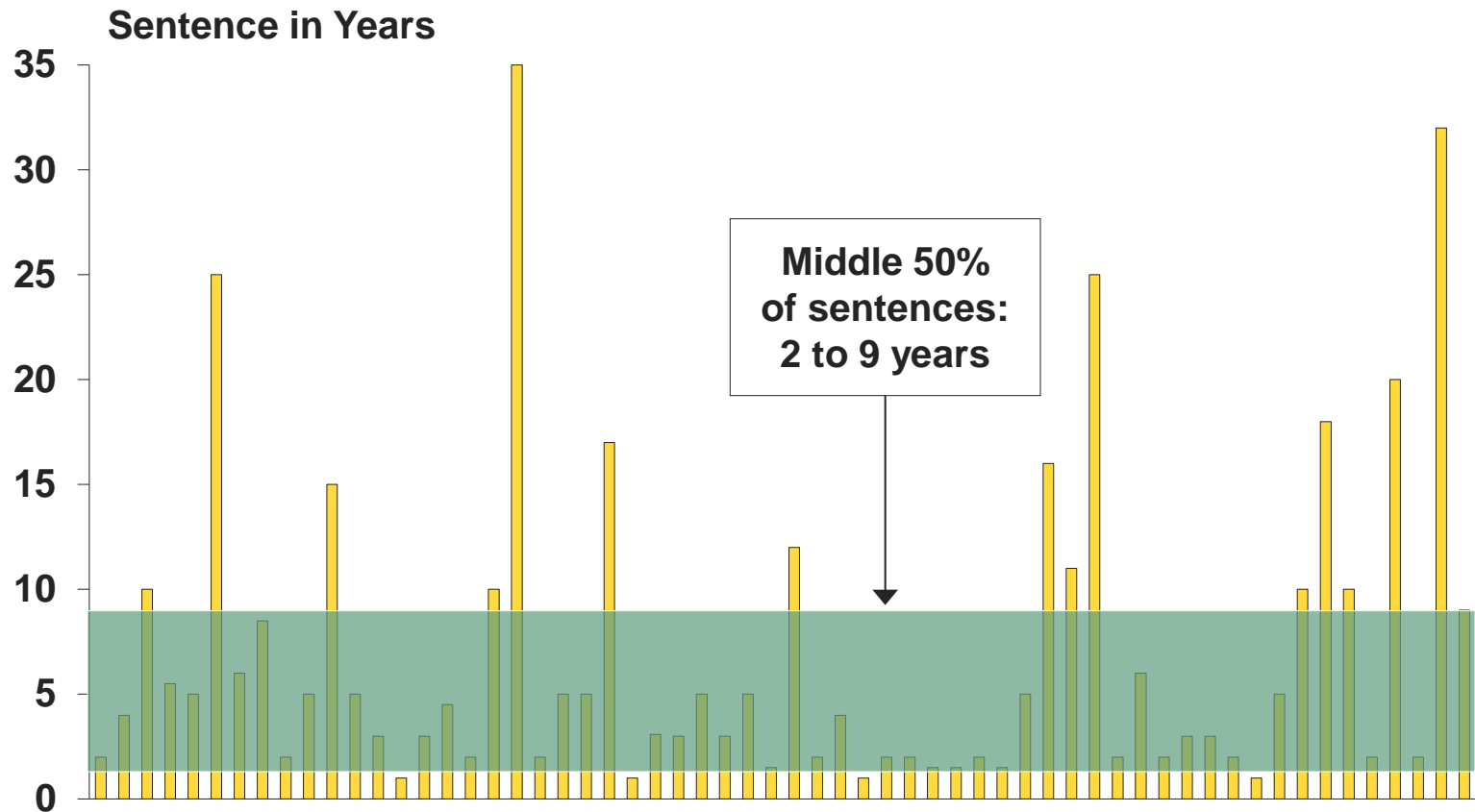
**Aggravated Sexual Battery of Child 13-17 by Parent/Grandparent
 (§ 18.2-67.3(A,3))
 FY2008 – FY2015
 84 Cases**

Disposition	Percent	Median Sentence
No Incarceration	13.1%	NA
Incarceration Up to 6 Months	15.5%	6 Months
Incarceration More than 6 Months	71.4%	4.3 Years

Note: Data reflect cases in which this offense was the primary (or most serious) offense at sentencing; six offenders were excluded because a rap sheet could not be located.

Source: Supreme Court of Virginia, Circuit Court Management System (CMS)

**Aggravated Sexual Battery of Child 13-17 by Parent/Grandparent
(§ 18.2-67.3(A,3))
FY2008 – FY2015
Offenders Sentenced to Incarceration of More than 6 Months
60 Cases**



Proposed

Other Sexual Assault ~~✦~~ Section A (Part II)

Offender Name: _____

Offenses Not Applicable for Risk Assessment:

Risk Assessment is **NOT APPLICABLE** if the primary offense is bestiality, bigamy, non-forcible sodomy, prostitution, child pornography or child solicitation. (Go to Section A (Part II))

◆ Offender's Age at Time of Offense

Younger than 35 years 12
 35 to 46 years 4
 Older than 46 years 0

◆ Less than 9th Grade Education (by conviction date)

If YES, add 4 →

Offenses Not Applicable for Risk Assessment:

Risk Assessment is **NOT APPLICABLE** if the primary offense is bestiality, bigamy, non-forcible sodomy, prostitution, child pornography or child solicitation. (Go to Section A (Part II))

or aggravated sexual battery of child 13 - 17 by parent/grandparent (§ 18.2-67.3(A,3))

◆ Aggravated Sexual Battery (Primary Offense §18.2-67.3)

No penetration or attempted penetration 0
 Penetration or attempted penetration 4

◆ Location of Offense

Place of employment 0
 Shared victim/offender residence 3
 Outdoors 3
 Motor Vehicle 4
 Victim's residence (not offender's) 5
 Offender's residence or other residence 9
 Location other than listed 3

◆ Prior Adult Felony/Misdemeanor Arrests for Crimes Against Person

Number:	0 Felonies	1 - 3 Misdemeanors	.....	1
		4+ Misdemeanors	.....	8
	1 Felony	0 - 2 Misdemeanors	.....	5
		3+ Misdemeanors	.....	8
	2+ Felonies	0 - 3 Misdemeanors	.....	8
		4+ Misdemeanors	.....	15

◆ Prior Incarcerations/Commitments

If YES, add 3 →

◆ Prior Treatment

Prior mental health commitment 0
 Prior mental health treatment 2
 Prior alcohol or drug treatment 3
 No prior treatment 4

Risk Score

Risk Level
(Risk Score)

- 44 or more Level 1
- 34 - 43 Level 2
- 28 - 33 Level 3
- up to 27 No Adjustment

Go to Section A (Part II)

Proposed

Other Sexual Assault ❖ Section A (Part II) Offender Name: _____

◆ **Primary Offense** _____

A. Other than listed below; all attempted or conspired offenses (1 count)	1
B. Non-forcible sodomy, parent/grandparent to child or grandchild age 13 to 17 (1 count)	7
C. Non-forcible sodomy, no parental relationship	
1 count	3
2 counts	4
3 counts	13
D. Indecent liberties with child	
1 - 2 counts	2
3 counts	3
E. Non-forcible carnal knowledge of child age 13, 14 (statutory rape)	
1 count	2
2 counts	8
3 counts	12
F. Aggravated sexual battery	
1 count	3
2 counts	6
3 counts	9
G. Incest with own child/grandchild (1 count)	3
H. Incest with own child/grandchild age 13 to 17 (1 count)	2

Score

--	--

◆ **Primary Offense Remaining Counts** Total the maximum penalties for counts of the primary not scored above

Years: 5 - 26	1
27 - 52	2

--	--

I. Aggravated sexual battery, parent/grandparent to child/grandchild age 13 - 17

1 count	6
2 counts	8
3 counts	10

◆ **Victim Less than Age 13 at Time of Offense** _____ If YES, add 5 →

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◆ **Victim Injury** _____

Threatened or emotional	2
Physical or life threatening	4

--	--

◆ **Prior Convictions/Adjudications** Total maximum penalties for the 5 most recent and serious prior record events

Years: Less than 3	0
3 - 18	1
19 - 31	2
32 - 44	3
45 or more	4

--	--

◆ **Prior Felony Sexual Assault Convictions/Adjudications** _____

Number of Counts: 1	1
2	2
3 or more	3

--	--

◆ **Prior Incarcerations/Commitments** _____ If YES, add 3 →

--	--

◆ **Legally Restrained at Time of Offense** _____

None	0
Other than parole/post-release, supervised probation or CCCA	2
Parole/post-release, supervised probation or CCCA	3

--	--

◆ **Risk Assessment Score (From Section A Part I)** _____

Less than 28	0
28 or more (Level 1, 2, or 3)	8

--	--

Total Score _____

If total is 8 or less, go to Section B. If total is 9 or more, go to Section C.

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Proposed

Other Sexual Assault ❖ Section B

Offender Name: _____

◆ **Primary Offense** _____

- A. Other than listed below (1 count) 1
- B. Aggravated sexual battery
 - 1 count 2
 - 2 counts 4

Score

0	
---	--

No Proposed Changes to Section B Worksheet

◆ **Primary Offense Remaining Counts** Total the maximum penalties for counts of the primary not scored above

- | | | |
|--------|-----------------|---------------------|
| Years: | 5 - 7 2 | 27 - 30 8 |
| | 8 - 11 3 | 31 - 34 9 |
| | 12 - 15 4 | 35 - 37 10 |
| | 16 - 19 5 | 38 - 41 11 |
| | 20 - 22 6 | 42 or more 12 |
| | 23 - 26 7 | |

--	--

◆ **Additional Offenses** Total the maximum penalties for additional offenses, including counts

- | | | |
|--------|---------------------|---------------------|
| Years: | Less than 1 0 | 23 - 26 7 |
| | 1 - 2 1 | 27 - 30 8 |
| | 3 - 7 2 | 31 - 34 9 |
| | 8 - 11 3 | 35 - 37 10 |
| | 12 - 15 4 | 38 - 41 11 |
| | 16 - 19 5 | 42 or more 12 |
| | 20 - 22 6 | |

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◆ **Victim Less than Age 13 at Time of Offense** _____ If YES, add 3 →

0	
---	--

◆ **Prior Convictions/Adjudications** Total the maximum penalties for the 5 most recent and serious prior record events

- | | | |
|--------|---------------------|--|
| Years: | Less than 3 0 | |
| | 3 - 19 1 | |
| | 20 - 39 2 | |
| | 40 or more 3 | |

0	
---	--

◆ **Prior Incarcerations / Commitments** _____ If YES, add 1 →

0	
---	--

Total Score _____ →

--	--

See Other Sexual Assault Section B Recommendation Table to convert score to guidelines sentence.

OtherSexualAssault/SectionB

Proposed

Other Sexual Assault Section C

Offender Name: _____

◆ Primary Offense

Prior Record Classification
 Category I Category II Other
(scores for attempted/conspired offenses are in parentheses)

A. All attempted or conspired sexual assault (1 count)	(24)	(12)	(6)
B. Completed sexual assault other than listed below (1 count)	36	18	9
C. Non-forcible sodomy, no parental relationship			
1 count	24	12	6
2 counts	40	20	10
3 counts	104	52	26
D. Non-forcible sodomy, parent/grandparent to child/grandchild age 13 - 17			
1 count	36	18	9
E. Indecent liberties with child			
1 count	24	12	6
2 counts	40	20	10
3 counts	104	52	26
F. Non-forcible carnal knowledge of child age 13 - 14 (statutory rape)			
1 count	36	18	9
G. Incest with own child/grandchild (1 count)	104	52	26
H. Incest with own child/grandchild age 13 - 17 (1 count)	104	52	26
I. Aggravated sexual battery			
1 count	90	60	34
2 counts	132	88	50
3 counts	288	192	108

Score

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J. Aggravated sexual battery, parent/grandparent to child/grandchild age 13 - 17

1 count	84	56	32
2 counts	90	60	34
3 counts	180	120	68

3	3
4	4
5	5
10	10
20	19
30	29
40 or more	39

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◆ **Weapon Used, Brandished, Feigned or Threatened** ————— If YES, add 4 →

0	0	
---	---	--

◆ Victim Injury

Threatened or emotional	6
Physical or life threatening	9

0	0	
---	---	--

◆ Prior Convictions/Adjudications Assign points to the 5 most recent and serious prior record events and total the points

Maximum Penalty Less than 2 (years)	0
2, 3, 4, 5	1
10	3
20	6
30	9
40 or more	12

0		
---	--	--

◆ Prior Felony Sexual Assault Convictions/Adjudications

Number of Counts: 1	8
2	15
3 or more	23

0		
---	--	--

◆ **On Post-Incarceration Supervision** ————— If YES, add 5 →

0	0	
---	---	--

Total Score

See Other Sexual Assault Section C Recommendation Table for guidelines sentence range.

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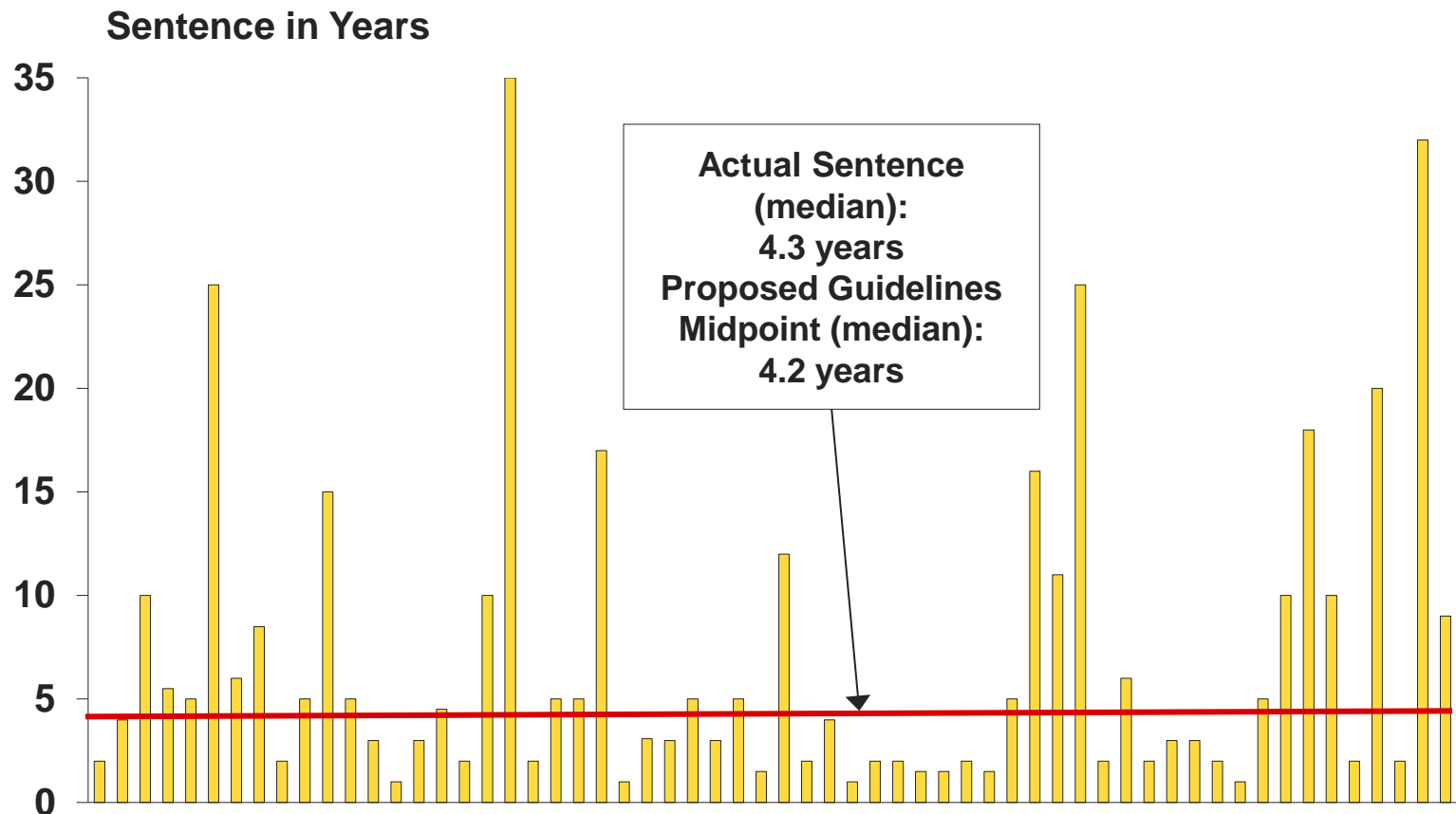
If necessary, on the cover sheet also enter the adjusted high end of the guidelines sentence range based on Risk Level: 1 2 3 or n/a

Other Sexual Assault/Section C

**Aggravated Sexual Battery of Child 13-17 by Parent/Grandparent
 (§ 18.2-67.3(A,3))
 FY2008 – FY2015
 84 Cases**

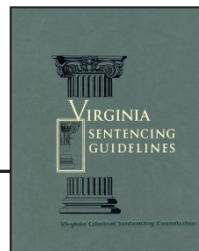
Sentencing Guidelines	Recommendations under Sentencing Guidelines		Actual Practices Prior to Sentencing Guidelines	
Section A Score	Recommendation	Percent	NO PRISON Percent	PRISON Percent
Up to 8	NO PRISON	23.8%	50.0%	50.0%
9 or More	PRISON	76.2%	21.9%	78.1%
			28.6%	OVERALL 71.4%

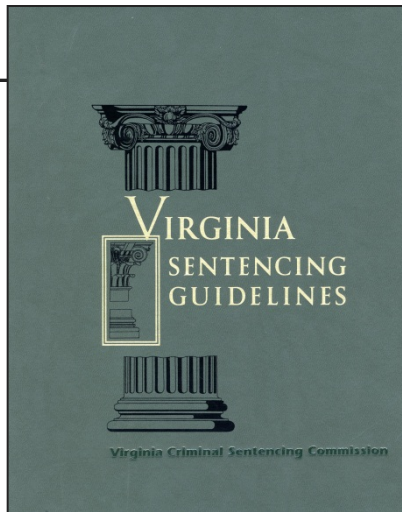
**Aggravated Sexual Battery of Child 13-17 by Parent/Grandparent
(§ 18.2-67.3(A,3))
FY2008 – FY2015
Offenders Sentenced to Incarceration of More than 6 Months
60 Cases**



Proposed Recommendation 5

**Add Aggravated Sexual Battery of Child Age 13-17
by Parent/Grandparent (§ 18.2-67.3(A,3))
to the Other Sexual Assault Guidelines
as proposed**





Proposed Recommendation 6:

*Modify Sentencing Guidelines for
Indecent Liberties by a Custodian (§ 18.2-370(A))*

**Compliance with Sentencing Guidelines for
Indecent Liberties by a Custodian (§ 18.2-370.1(A))
FY2011 – FY2015**

**Indecent Liberties
by Custodian
(§ 18.2-370.1(A))
Class 6 felony**

Compliance	56.3%
Mitigation	10.1%
Aggravation	33.7%


Cases = 208

Compliance with the current guidelines for these offenses is well below the overall compliance rate and when judges depart, they are significantly more likely to sentence above the guidelines than below.

Note: Cases with scoring errors were excluded from the analysis.

**Actual versus Recommended Dispositions for
Indecent Liberties by Custodian (§ 18.2-370.1(A))
FY2011 – FY2015**

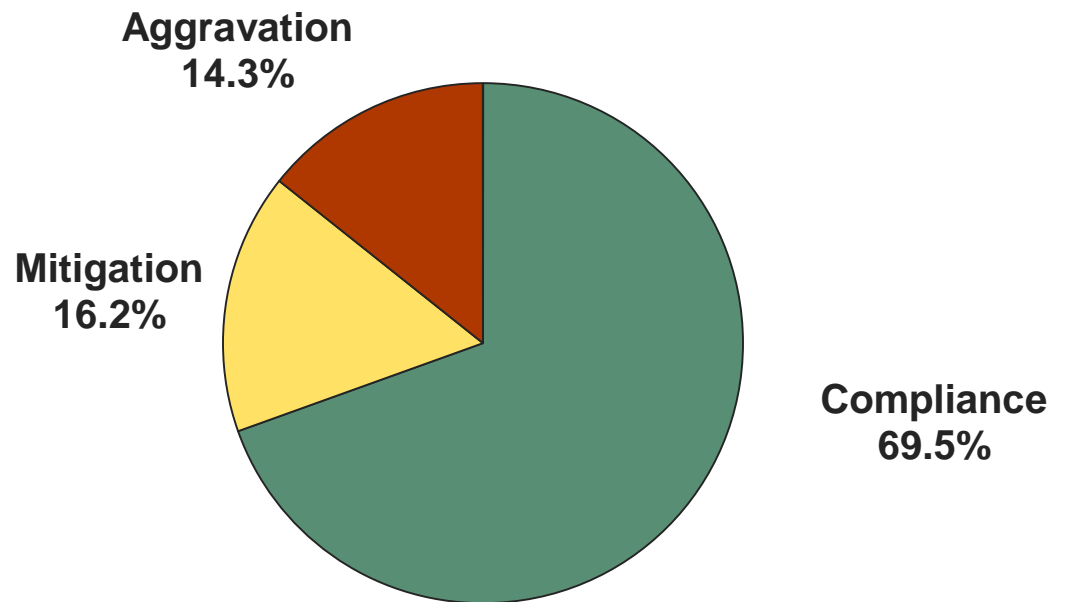
	Actual Practice	Recommended under Current Sentencing Guidelines
Probation or Incarceration Up to 6 Months	33.7%	49.5%
Incarceration More than 6 Months (Range includes prison)	66.3%	50.5%



**Current guidelines could be
more closely aligned with the
actual prison incarceration rate**

Compliance with Sentencing Guidelines for Indecent Liberties by Custodian (§ 18.2-370.1(A)) FY2011 – FY2015

**Cases in which guidelines recommend
incarceration of more than 6 months
(range includes prison)**



Cases = 105

Other Sexual Assault ~~✚~~ Section A (Part II) Offender Name: _____

◆ Primary Offense _____

A. Other than listed below; all attempted or conspired offenses (1 count)	1
B. Non-forcible sodomy, parent/grandparent to child or grandchild age 13 to 17 (1 count)	7
C. Non-forcible sodomy, no parental relationship	
1 count	3
2 counts	4
3 counts	13
D. Indecent liberties with child	
1 - 2 counts	2
3 counts	3
Non-forcible carnal knowledge of child age 13, 14 (statutory rape)	
1 count	2
2 counts	8
3 counts	12
Aggravated sexual battery	
1 count	3
2 counts	6
3 counts	9
Incest with own child/grandchild (1 count)	3
Incest with own child/grandchild age 13 to 17 (1 count)	2

Score

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Modify Primary Offense scoring for Indecent Liberties

D. Indecent liberties by custodian

<i>1 count</i>	<i>4</i>
<i>2 counts</i>	<i>6</i>
<i>3 counts</i>	<i>7</i>

If total is 8 or less, go to SECTION B. If total is 9 or more, go to SECTION C.

Other Sexual Assault Section B

Offender Name: _____

◆ Primary Offense _____

- A. Other than listed below (1 count) 1
- B. Aggravated sexual battery
 - 1 count 2
 - 2 counts 4
 - 3 counts 6

Score

▼

0	
---	--

◆ Primary Offense Remaining Counts Total the maximum penalties for counts of the primary not scored above

- | | | |
|--------|-----------------|---------------------|
| Years: | 5 - 7 2 | 27 - 30 8 |
| | 8 - 11 3 | 31 - 34 9 |
| | 12 - 15 4 | 35 - 37 10 |
| | 16 - 19 5 | 38 - 41 11 |
| | 20 - 22 6 | 42 or more 12 |
| | 23 - 26 7 | |

▼


--	--

◆ Additional Offenses Total the maximum penalties for additional offenses, including counts _____

- | | | |
|--------|---------------------|-----------------|
| Years: | Less than 1 0 | 23 - 26 7 |
| | 1 - 2 1 | 27 - 30 8 |
| | 3 - 7 2 | 31 - 34 9 |

▼

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Add new factor for Victim Injury

SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE AT CONVICTION IS INDECENT LIBERTIES BY CUSTODIAN § 18.2-370.1(A)

◆ **Victim Injury**

Threatened/Emotional 3

Physical/Life Threatening 4

Proposed

Other Sexual Assault Section C

Offender Name: _____

◆ Primary Offense

Prior Record Classification
 Category I Category II Other
(scores for attempted/conspired offenses are in parentheses)

A. All attempted or conspired sexual assault (1 count)	(24)	(12)	(6)
B. Completed sexual assault other than listed below (1 count)	36	18	9
C. Non-forcible sodomy, no parental relationship			
1 count	24	12	6
2 counts	40	20	10
3 counts	104	52	26
D. Non-forcible sodomy, parent/grandparent to child/grandchild age 13 - 17			
1 count	36	18	9
E. Indecent liberties with child			
1 count	24	12	6
2 counts	40	20	10
3 counts	104	52	26
F. Non-forcible carnal knowledge of child age 13 - 14 (statutory rape)			
1 count	36	18	9
G. Incest with own child/grandchild (1 count)	104	52	26
H. Incest with own child/grandchild age 13 - 17 (1 count)	104	52	26

Score

No Proposed Changes to Section C Worksheet

◆ Primary Offense Remaining Counts Assign points to each count of the primary not scored above and total the points

Maximum Penalty 5	5
(years) 10	10
20	19
30	29
40 or more	39

◆ Additional Offenses Assign points to each additional offense (including counts) and total the points

Maximum Penalty Less than 1	0
(years) 1	1
2	2
3	3
4	4
5	5
10	10
20	19
30	29
40 or more	39

◆ Weapon Used, Brandished, Feigned or Threatened If YES, add 4

◆ Victim Injury

Threatened or emotional	6
Physical or life threatening	9

◆ Prior Convictions/Adjudications Assign points to the 5 most recent and serious prior record events and total the points

Maximum Penalty Less than 2	0
(years) 2, 3, 4, 5	1
10	3
20	6
30	9
40 or more	12

◆ Prior Felony Sexual Assault Convictions/Adjudications

Number of Counts: 1	8
2	15
3 or more	23

◆ On Post-Incarceration Supervision If YES, add 5

Total Score


See Other Sexual Assault Section C Recommendation Table for guidelines sentence range.

If necessary, on the cover sheet also enter the adjusted high end of the guidelines sentence range based on Risk Level: 1 2 3 or n/a

Other Sexual Assault/Section C

Actual versus Proposed Dispositions for Indecent Liberties by Custodian (§ 18.2-370.1(A)) FY2011 – FY2015

	Actual Practice	Recommended Under Proposed Sentencing Guidelines
Probation or Incarceration Up to 6 Months	33.7%	35.6%
Incarceration More than 6 Months (Range includes prison)	66.3%	64.4%

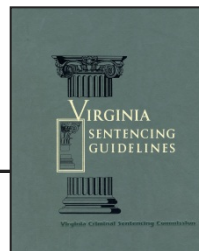

**Proposed guidelines are more
closely aligned to the actual
prison incarceration rate**

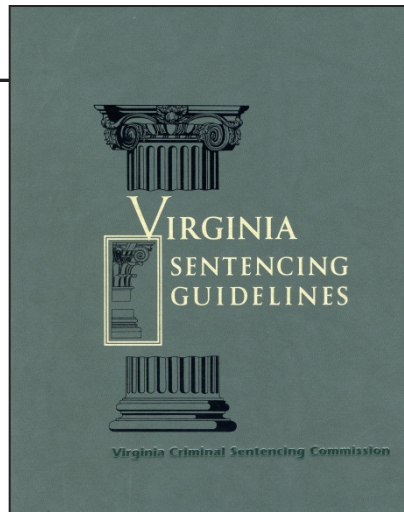
Compliance with Sentencing Guidelines for Indecent Liberties with Child by Custodian (§ 18.2-370.1(A)) FY2011 – FY2015

Dispositional Compliance			Overall Compliance		
	Current	Projected		Current	Projected
Compliance	60.1%	66.8%	Compliance	56.3%	56.7%
Mitigation	7.2%	15.4%	Mitigation	10.1%	17.8%
Aggravation	32.7%	17.8%	Aggravation	33.7%	25.5%

Proposed Recommendation 6

**Modify the Sentencing Guidelines for
Indecent Liberties by Custodian
(§ 18.2-370.1(A)) as proposed**





Proposed Recommendation 7:

*Modify Sentencing Guidelines for
Indecent Liberties with Child under 15 (§ 18.2-370.1(A))*

**Compliance with Sentencing Guidelines for
Indecent Liberties with Child under Age 15 (§ 18.2-370(A))
FY2011 – FY2015**

**Indecent Liberties with
Child under Age 15
(§ 18.2-370(A))
Class 5 felony**

Compliance	66.9%
Mitigation	9.2%
Aggravation	23.9%


Cases = 251

Compliance with the current guidelines for these offenses is well below the overall compliance rate and when judges depart, they are significantly more likely to sentence above the guidelines than below.

Note: Cases with scoring errors were excluded from the analysis.

**Actual versus Recommended Dispositions for
Indecent Liberties with Child under Age 15 (§ 18.2-370(A))
FY2011 – FY2015**

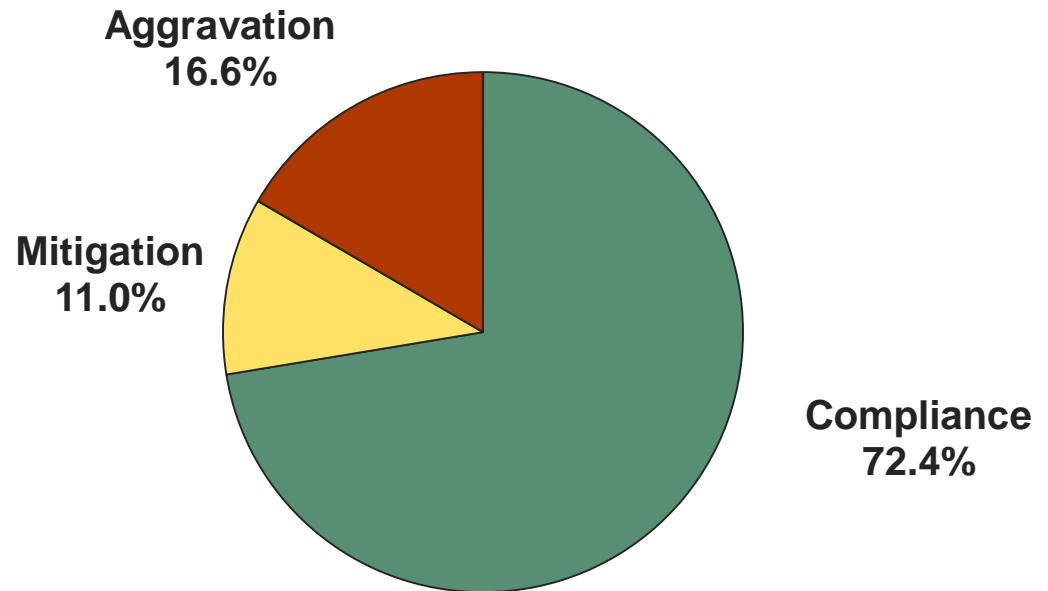
	Actual Practice	Recommended under Current Sentencing Guidelines
Probation or Incarceration Up to 6 Months	27.5%	32.7%
Incarceration More than 6 Months (Range includes prison)	72.5%	67.3%



**Current guidelines could be
more closely aligned with the
actual prison incarceration rate**

Compliance with Sentencing Guidelines for Indecent Liberties with Child under Age 15 (§ 18.2-370(A)) FY2011 – FY2015

**Cases in which guidelines recommend
incarceration of more than 6 months
(range includes prison)**



Cases = 181

Other Sexual Assault ~~✚~~ Section A (Part II) Offender Name: _____

◆ Primary Offense _____

A. Other than listed below; all attempted or conspired offenses (1 count)	1
B. Non-forcible sodomy, parent/grandparent to child or grandchild age 13 to 17 (1 count)	7
C. Non-forcible sodomy, no parental relationship	
1 count	3
2 counts	4
3 counts	13
D. Indecent liberties with child	
1 - 2 counts	2
3 counts	3
Non-forcible carnal knowledge of child age 13, 14 (statutory rape)	
1 count	2
2 counts	8
3 counts	12
Aggravated sexual battery	
1 count	3
2 counts	6
3 counts	9
Incest with own child/grandchild (1 count)	3
Incest with own child/grandchild age 13 to 17 (1 count)	2

Score

--	--

Modify Primary Offense scoring for Indecent Liberties

D. Indecent liberties with a child under age 15

<i>1 count</i>	<i>3</i>
<i>2 counts</i>	<i>8</i>
<i>3 counts</i>	<i>10</i>

If total is 8 or less, go to SECTION B. If total is 9 or more, go to SECTION C.

Other Sexual Assault ❖ Section B

Offender Name: _____

◆ Primary Offense

- A. Other than listed below (1 count) 1
- B. Aggravated sexual battery
 - 1 count 2
 - 2 counts 4
 - 3 counts 6

Score

0	
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No Proposed Changes to Section B Worksheet

- Years: 5 - 7 2 27 - 30 8
- 8 - 11 3 31 - 34 9
- 12 - 15 4 35 - 37 10
- 16 - 19 5 38 - 41 11
- 20 - 22 6 42 or more 12
- 23 - 26 7

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◆ Additional Offenses Total the maximum penalties for each

- Years: Less than 1
- 1 - 2
- 3 - 7
- 8 - 11
- 12 - 15
- 16 - 19
- 20 - 22

◆ Victim Less than Age 13 at Time of Offense

◆ Prior Convictions/Adjudications Total the maximum penalties for each

- Years: Less than 3
- 3 - 19
- 20 - 39
- 40 or more

◆ Prior Incarcerations / Commitments

Total Score _____

See Other Sexual Assault Section B F

Other Sexual Assault ❖ Section C

Offender Name: _____

◆ Primary Offense

— Prior Record Classification —
 Category I Category II Other
(scores for attempted/conspired offenses are in parentheses)

- A. All attempted or conspired sexual assault (1 count) (24) (12) (6)
- B. Completed sexual assault other than listed below (1 count) 36 18 9
- C. Non-forcible sodomy, no parental relationship
 - 1 count 24 12 6
 - 2 counts 40 20 10
 - 3 counts 104 52 26
- D. Non-forcible sodomy, parent/grandparent to child/grandchild age 13 - 17
 - 1 count 36 18 9
- E. Indecent liberties with child
 - 1 count 24 12 6
 - 2 counts 40 20 10
 - 3 counts 104 52 26
- F. Non-forcible carnal knowledge of child age 13 - 14 (statutory rape)
 - 1 count 36 18 9
- G. Incest with own child/grandchild (1 count) 104 52 26
- H. Incest with own child/grandchild age 13 - 17 (1 count) 104 52 26

Score

No Proposed Changes to Section C Worksheet

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◆ Primary Offense Remaining Counts Assign points to each count of the primary not scored above and total the points

- Maximum Penalty 5 5
- (years) 10 10
- 20 19
- 30 29
- 40 or more 39

0	
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◆ Additional Offenses Assign points to each additional offense (including counts) and total the points

- Maximum Penalty Less than 1 0
- (years) 1 1
- 2 2
- 3 3
- 4 4
- 5 5
- 10 10
- 20 19
- 30 29
- 40 or more 39

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◆ Weapon Used, Brandished, Feigned or Threatened

If YES, add 4 →

0	0
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Actual versus Proposed Dispositions for Indecent Liberties with Child under Age 15 (§ 18.2-370(A)) FY2011 – FY2015

	Actual Practice	Recommended Under Proposed Sentencing Guidelines
Probation or Incarceration Up to 6 Months	27.5%	27.9%
Incarceration More than 6 Months (Range includes prison)	72.5%	72.1%

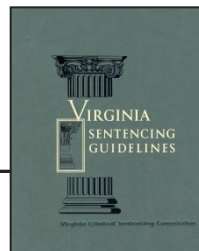

**Proposed guidelines are more
closely aligned to the actual
prison incarceration rate**

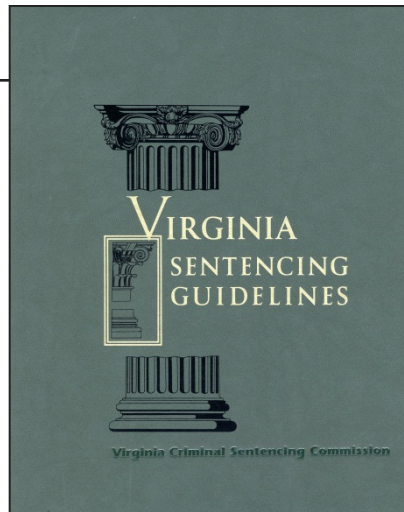
**Compliance with Sentencing Guidelines for
Indecent Liberties with Child under Age 15 (§ 18.2-370(A))
FY2011 – FY2015**

Dispositional Compliance			Overall Compliance		
	Current	Projected		Current	Projected
Compliance	76.9%	78.9%	Compliance	66.9%	67.3%
Mitigation	7.6%	8.8%	Mitigation	9.2%	10.4%
Aggravation	15.5%	12.4%	Aggravation	23.9%	22.3%

Proposed Recommendation 7

**Modify the Sentencing Guidelines for
Indecent Liberties with Child under 15
(§ 18.2-370.1(A)) as proposed**





Other Analyses:

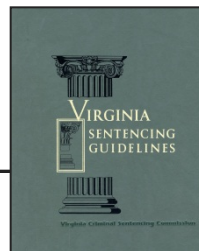
*Possession of Schedule I/II Drugs (§ 18.2-250)
and Petit Larceny 3rd Offense (§ 18.2-104)*

Possession of Schedule I/II Drugs (§ 18.2-250) and Petit Larceny 3rd Offense (§ 18.2-104)

- **In a case shared with Commission staff, a defendant was convicted of possession of a Schedule I/II drug along with a petit larceny 3rd offense and the guidelines recommended probation/no incarceration.**
 - **If the Schedule I or II drug charge had not been included in that case, the guidelines scored just for the petit larceny 3rd offense recommended a prison term.**
- **A judge familiar with the case asked if the Commission would examine this combination of offenses to see if the data supported a revision to the guidelines.**

Possession of Schedule I/II Drugs (§ 18.2-250) and Petit Larceny 3rd Offense (§ 18.2-104)

- **Between FY2011 and FY2015, there were 200 sentencing events where possession of a Schedule I or II drug was the primary offense and petit larceny 3rd was an additional offense.**



**Compliance with Sentencing Guidelines for
Possession of Schedule I/II Drugs (§ 18.2-250) with Additional Offense
of Petit Larceny 3rd (§ 18.2-104)
FY2011 – FY2015**

**Possession of Schedule I/II
(§ 18.2-250)
w/ Petit Larceny 3rd
(§ 18.2-104)**

Compliance	81.0%
Mitigation	7.5%
Aggravation	11.5%

Cases = 200

Note: Cases with scoring errors were excluded from the analysis.

Judicial Agreement with Type of Recommended Disposition Possession of Schedule I/II Drugs (§ 18.2-250) with Additional Offense of Petit Larceny 3rd (§ 18.2-104) FY2011 – FY2015

Dispositional Compliance:

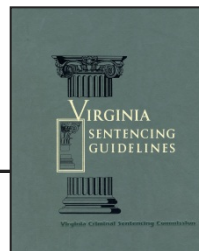
The degree to which judges agree with the type of sanction recommended.

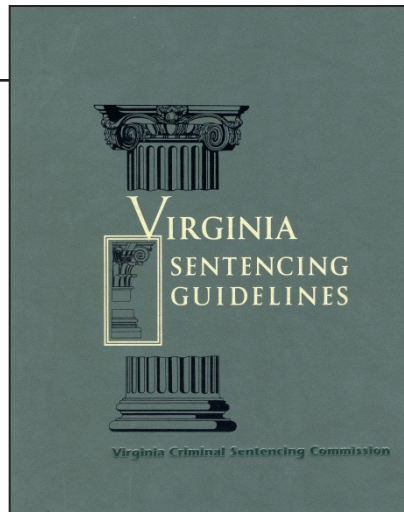
ACTUAL DISPOSITION

RECOMMENDED DISPOSITION	Incarceration			# of Cases
	Probation/No Incarceration	6 months or less	Incarceration over 6 months	
Probation/No Incarceration	71.4%	28.6%	0.0%	7
Incarceration 6 months or less	5.5%	84.5%	10.0%	110
Incarceration over 6 months	2.4%	4.8%	92.8%	83
Overall	6.5%	49.5%	44.0%	200

Possession of Schedule I/II Drugs (§ 18.2-250) and Petit Larceny 3rd Offense (§ 18.2-104)

- Staff tested several scoring scenarios to determine if compliance could be increased by adding a factor on the Drug Schedule I/II Worksheet related to an additional offense of petit larceny, 3rd or subsequent.
- Although numerous scenarios were considered, the projected compliance rates were substantially lower than current compliance rates.





*Review Pursuant to Directive from
2014 General Assembly*

House Bill 504 and Senate Bill 433

2014 General Assembly

VIRGINIA ACTS OF ASSEMBLY -- 2014 SESSION

CHAPTER 100

An Act to delay proposed modifications to the discretionary sentencing guidelines; possession of child pornography.

[H 504]

Approved March 3, 2014

Be it enacted by the General Assembly of Virginia:

1. § 1. *The proposed modifications to the discretionary sentencing guidelines for convictions related to the possession of child pornography adopted by the Virginia adopted by the § 17.1-803 of the Code of subdivision 10 of § 17.1- Sentencing Commission shall convictions related to the § 18.2-374.1:1 and complete discretionary sentencing guidelines. Report shall supersede the unless otherwise provided by*

SUMMARY AS PASSED:

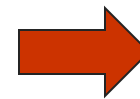
Delay proposed modifications to the discretionary sentencing guidelines; possession of child pornography. Provides that proposed modifications to the discretionary sentencing guidelines for possession of child pornography adopted by the Virginia Criminal Sentencing Commission shall not become effective until July 1, 2016. The Commission will review these guidelines and complete its review by December 1, 2015. Any proposed modification in the Commission's 2015 Annual Report shall supersede the current proposed modifications.

Sentencing Commission's 2013 Annual Report

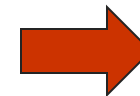
Recommendation 2:

Modify the sentencing guidelines for child pornography (§§ 18.2-374.1 and 18.2-374.1:1) to bring the guidelines more in sync with actual sentencing practices for these offenses.

- **Increase recommendations for production and reproduction/transmission in certain cases.**
- **Decrease recommendations for possession.**



**Accepted by
General Assembly**



**Delayed by
General Assembly
for additional study**

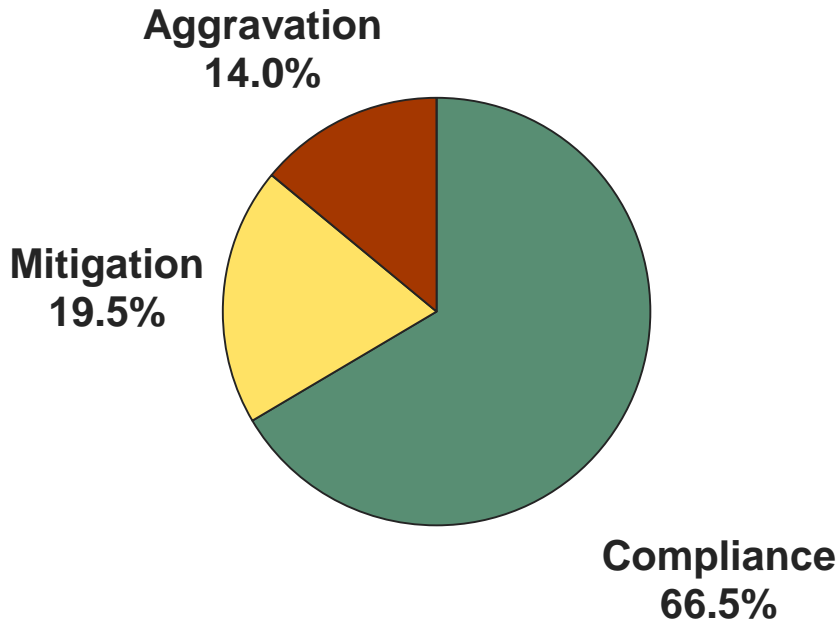
**Compliance with Sentencing Guidelines for
Possession of Child Pornography Offenses (§ 18.2-374.1:1)
FY2011 – FY2015**

Fiscal Year	Compliance	Mitigation	Aggravation
2011	68.1%	21.7%	10.1%
2012	55.1%	26.1%	18.8%
2013	67.9%	23.1%	9.0%
2014	65.4%	20.5%	14.1%
2015	75.6%	17.9%	6.4%
Overall	66.7%	21.8%	11.6%

Note: Cases with scoring errors were excluded from the analysis.

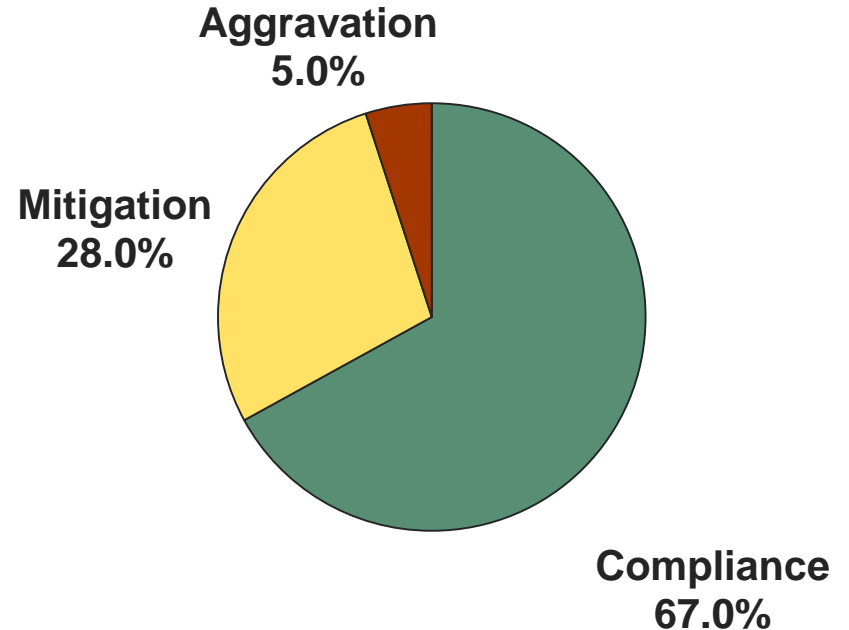
Compliance with Sentencing Guidelines for Possession of Child Pornography Offenses (§ 18.2-374.1:1) FY2011 – FY2015

**Possession
1st Offense**



Number of Cases = 272


**Possession
2nd Offense**



Number of Cases = 100

Actual versus Recommended Prison Incarceration Rates for Possession of Child Pornography Offenses (§ 18.2-374.1:1) FY2011 – FY2015

Possession Offenses	Actual Practice	Recommended under Current Sentencing Guidelines
Probation or Incarceration Up to 6 Months	31.2%	28.0%
Incarceration More than 6 months (Range includes prison)	68.8%	72.0%



Current guidelines could be more closely aligned to the actual prison incarceration rate

Testing of 2013 Proposal

Other Sexual Assault/Obscenity Section A Offender Name: _____

◆ Primary Offense _____

- A. All attempted or conspired offenses (1 count) 1
- B. Production, publication, sale or financing child pornography (1 count) 6
- C. Possess child porn (1st Offense) (1 count) 6**
- Possess child porn (2nd or subsequent) (1 count) 9
- Reproduce, transmit, sell, etc., child porn (1 count) 5
- Procure minor for obscene material by communications system (1 count) 6
- Procure minor for prostitution, sodomy, pornography by communications system (1 count) 6

Modify points for Possession of Child Porn 1st Offense

C. Possess child porn (1st Offense) (1 count) 5

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◆ Primary Offense Remaining Counts Total the maximum penalties for counts of the primary not scored above _____

Primary offense B: Production Child Porn _____

Primary offense: All other offenses _____

Expand factor to include Possession Child Porn

**Primary Offense B, C, or D:
Production or Possession Child Porn**

Years	Points
5-26	2
27 - 52	3
53 or more	4


Years	Points
5-26	1
27 - 52	2
53 or more	3

0	
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If total is 8 or less, go to SECTION B. If total is 9 or more, go to SECTION C.

Actual versus Recommended Prison Incarceration Rates for Possession of Child Pornography Offenses (§ 18.2-374.1:1) FY2011 – FY2015

	Actual Practice	Recommended under <u>2013 Proposed Sentencing Guidelines</u>
Probation or Incarceration Up to 6 Months	31.2%	28.8%
Incarceration More than 6 months (Range includes prison)	68.8%	71.2%



Proposed guidelines are more closely aligned to the actual prison incarceration rate

Testing of 2013 Proposal

Other Sexual Assault/Obscenity ❖ Section B

Offender Name: _____

◆ Primary Offense _____

- A. Production, publication, sale or financing child pornography (1 count) 1
- B. Possess child porn (1 count) 1**
- C. Reproduce, transmit, sell, etc., child porn (1 count) 1
- D. Procure minor for obscene material by communications system (1 count) 1
- E. Procure minor for prostitution, sodomy, etc. by communications system (1 count) 1
- F. Propose sex act by communications system, child less than age 15 (1 count) 6
- G. Propose sex act by communications system, child less than age 15, offender 7+ years (1 count) 6
- H. Propose sex act by communications system, child age 15 or more, offender 7+ years (1 count) 2
- I. Propose sex act by communications system, child age 15 or more, offender 7+ years (2nd/subseq.) (1 count) 2

Score

0	
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No Proposed Changes to Section B Worksheet

◆ Primary Offense Remaining Counts Total the maximum penalties for counts of the primary not scored above

- | | | |
|--------|-----------------|---------------------|
| Years: | 5 - 7 2 | 27 - 30 8 |
| | 8 - 11 3 | 31 - 34 9 |
| | 12 - 15 4 | 35 - 37 10 |
| | 16 - 19 5 | 38 - 41 11 |
| | 20 - 22 6 | 42 or more 12 |
| | 23 - 26 7 | |

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◆ Additional Offenses Total the maximum penalties for additional offenses, including counts _____

- | | | |
|--------|---------------------|---------------------|
| Years: | Less than 1 0 | 23 - 26 7 |
| | 1 - 2 1 | 27 - 30 8 |
| | 3 - 7 2 | 31 - 34 9 |
| | 8 - 11 3 | 35 - 37 10 |
| | 12 - 15 4 | 38 - 41 11 |
| | 16 - 19 5 | 42 or more 12 |
| | 20 - 22 6 | |

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Testing of 2013 Proposal

Other Sexual Assault/Obscenity Section C Offender Name: _____

◆ Primary Offense _____ — Prior Record Classification —
 Category I Category II Other
(scores for attempted/conspired offenses are in parentheses)

A.	All attempted or conspired offenses of possess, reproduce, transmit etc. child porn 1 count	(24)	(12)	(6)
B.	All attempted or conspired offenses of electronic solicitation of minor 1 count	(24)	(12)	(6)
C.	Entice, etc., minor to perform in porn; take part in child porn 1 count	68	34	17
D.	Produce child porn; finance child porn Attempted, conspired or completed: 1 count	100	50	25
	2 counts	216	108	54
E.	Possess child porn (1st Offense) 1 count	68	34	17
F.	Possess child porn (2nd or subsequent) 1 count	100	50	25
	Reproduce, transmit, sell, etc., child porn 1 count	100	50	25
	Procure minor for obscene material by communications system 1 count	68	34	17
	Procure minor for prostitution, sodomy, etc. by communications system			

Reduce points for Possession of Child Porn offenses only

	<u>Category I</u>	<u>Category II</u>	<u>Other</u>
E. Possess child porn (1st offense) 1 count	48	24	12
F. Possess child porn (2nd or subsequent offense) 1 count	76	38	19

Score
▼

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Points
▼

0		
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20	19
30	29
40 or more	39

Actual versus Recommended Prison Sentences for Possession of Child Pornography Offenses (§ 18.2-374.1:1) FY2011 – FY2015

————— 1 count —————

	Actual Practice	Recommended under Current Sentencing Guidelines	Recommended under <u>2013 Proposed Sentencing Guidelines</u>
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Mean Sentence	2.1 years	3.1 years	2.5 years
Median Sentence	1.7 years	2.5 years	2.0 years



**For cases scored on Section C,
the proposed guidelines better
reflect actual sentencing practices**

This stage of the analysis only includes offenders who were recommended for and received incarceration of more than six months.

Attempted/conspired offenses and worksheets with scoring errors were excluded from the analysis.

**Compliance with Sentencing Guidelines for
Possession of Child Pornography Offenses (§ 18.2-374.1:1)
FY2011 – FY2015**

Possession 1st Offense		
	Current	2013 Proposed
Compliance	66.5%	66.5%
Mitigation	19.5%	16.5%
Aggravation	14.0%	16.9%

Possession 2nd Offense		
	Current	2013 Proposed
Compliance	67.0%	69.0%
Mitigation	28.0%	24.0%
Aggravation	5.0%	7.0%

Testing of Alternate Scenario

Other Sexual Assault/Obscenity ❖ Section A Offender Name: _____

◆ Primary Offense _____

- A. All attempted or conspired offenses (1 count) 1
- B. Production, publication, sale or financing child pornography (1 count) 6
- C. Possess child porn (1st Offense) (1 count) 6
- D. Possess child porn (2nd or subsequent) (1 count) 9

No Proposed Changes to Section A Worksheet

- E. Produce minor for prostitution, sodomy, pornography by communications system (1 count) 8
- H. Propose sex act by communications system, child less than age 15 (1 count) 8
- I. Propose sex act by communications system, child less than age 15, offender 7+ years older (1 count) 9
- J. Propose sex act by communications system, child age 15 or more, offender 7+ years older (1 count) 8
- K. Propose sex act by communications system, child age 15 or more, offender 7+ years older (2nd/subseq.) (1 count) 9

Score ▼

◆ Primary Offense Remaining Counts _____

Primary offense B: Production, publication, sale or financing child pornography (1 count)

Years	
5-26	..... 1
27 - 52	..... 2
53 or more	..... 3

Other Sexual Assault/Obscenity ❖ Section B Offender Name: _____

◆ Primary Offense _____

- A. Production, publication, sale or financing child pornography (1 count) 1
- B. Possess child porn (1 count) 1

No Proposed Changes to Section B Worksheet

- F. Propose sex act by communications system, child less than age 15 (1 count) 6
- G. Propose sex act by communications system, child less than age 15, offender 7+ years (1 count) 6
- H. Propose sex act by communications system, child age 15 or more, offender 7+ years (1 count) 2
- I. Propose sex act by communications system, child age 15 or more, offender 7+ years (2nd/subseq.) (1 count) 2

Score ▼

0	
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◆ Primary Offense Remaining Counts Total the maximum penalties for counts of the primary not scored above _____

Years:	5 - 7 2	27 - 30 8
	8 - 11 3	31 - 34 9
	12 - 15 4	35 - 37 10
	16 - 19 5	38 - 41 11
	20 - 22 6	42 or more 12
	23 - 26 7		

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Testing of Alternate Scenario

Other Sexual Assault/Obscenity Section C Offender Name: _____

◆ Primary Offense _____ — Prior Record Classification —
 Category I Category II Other
(scores for attempted/conspired offenses are in parentheses)

A.	All attempted or conspired offenses of possess, reproduce, transmit etc. child porn	1 count	.....(24)	..... (12)	..... (6)
B.	All attempted or conspired offenses of electronic solicitation of minor	1 count	.....(24)	..... (12)	..... (6)
C.	Entice, etc., minor to perform in porn; take part in child porn	1 count	..... 68	..... 34	..... 17
D.	Produce child porn; finance child porn	Attempted, conspired or completed:			
		1 count	..... 100	..... 50	..... 25
		2 counts	..... 216	..... 108	..... 54
E.	Possess child porn (1st Offense)	1 count	..... 68	..... 34	..... 17
F.	Possess child porn (2nd or subsequent)	1 count	..... 100	..... 50	..... 25
	Reproduce, transmit, sell, etc., child porn	1 count	..... 100	..... 50	..... 25
	Procure minor for obscene material by communications system	1 count	..... 68	..... 34	..... 17
	Procure minor for prostitution, sodomy, etc. by communications system				



Reduce points for Possession of Child Porn offenses only

	<u>Category I</u>	<u>Category II</u>	<u>Other</u>
E. Possess child porn (1st offense)			
1 count	60	30	15
F. Possess child porn (2nd or subsequent offense)			
1 count	68	34	17

Score
 ▼

 points
 ▼

20	.....	19
30	.....	29
40 or more	.....	39

Testing of Alternate Scenario

◆ **Primary Offense Remaining Counts** *Assign points to each count of the primary not scored above and total the points*

Maximum Penalty 5	5
(years) 10	10
20	19
30	29
40 or more	39

↓

0		
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Split Primary Offense Remaining Counts factor and modify points for Possession of Child Porn 2nd Offense

◆ **Primary Offense Remaining Counts**

Primary offense OTHER THAN Possess child porn

Maximum Penalty (years)	Points
5	5
10	10
20	19
30	29
40 or more.....	39

Primary offense Possess child porn § 18.2-374.1:1

<i>Maximum Penalty (years)</i>	<i>Points</i>
<i>5</i>	<i>5</i>
<i>10</i>	<i>6</i>

**Actual versus Recommended Prison Sentences for
Possession of Child Pornography Offenses (§ 18.2-374.1:1)
FY2011 – FY2015**

————— 1 count —————

	Actual Practice	Recommended under Current Sentencing Guidelines	Recommended under <u>Alternate Scenario</u> Sentencing Guidelines
Mean Sentence	2.1 years	3.1 years	2.6 years
Median Sentence	1.7 years	2.5 years	1.8 years



**For cases scored on Section C,
the proposed guidelines better
reflect actual sentencing practices**

This stage of the analysis only includes offenders who were recommended for and received incarceration of more than six months.

Attempted/conspired offenses and worksheets with scoring errors were excluded from the analysis.

**Compliance with Sentencing Guidelines for
Possession of Child Pornography Offenses (§ 18.2-374.1:1)
FY2011 – FY2015**

Possession 1st Offense		
	Current	Alternate Scenario
Compliance	66.5%	67.6%
Mitigation	19.5%	18.0%
Aggravation	14.0%	14.3%

Possession 2nd Offense		
	Current	Alternate Scenario
Compliance	67.0%	67.0%
Mitigation	28.0%	21.0%
Aggravation	5.0%	12.0%

*Review Pursuant to Directive from
2014 General Assembly*

Discussion

