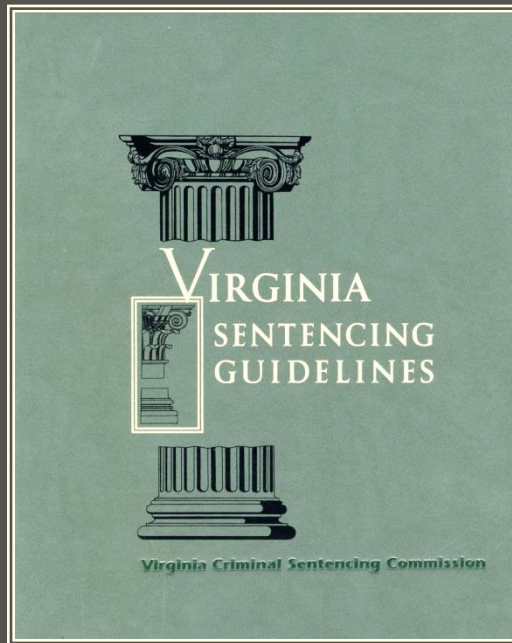




VIRGINIA CRIMINAL SENTENCING COMMISSION



Proposed Topics for Possible Guidelines Revisions

September 12, 2016

Modifications to the Sentencing Guidelines

- **The Commission closely monitors the sentencing guidelines system and, each year, deliberates upon possible modifications to the guidelines.**
- **Under § 17.1-806 of the Code of Virginia, any modifications adopted by the Commission must be presented in its annual report, due to the General Assembly each December 1.**
- **Unless otherwise provided by law, the changes recommended by the Commission become effective on the following July 1.**



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.**



Suggestions for New Guidelines Offenses

1. **Provide cell phone to, or possession of cell phone by, a prisoner**
(§ 18.2-431.1)
2. **Unlawfully discharge firearm or missile in/at occupied building**
(§ 18.2-279)
3. **Shoot, etc., missile at vehicle without malice**
(§ 18.2-154)
4. **Carry concealed weapon**
(§ 18.2-308)
 - 2nd offense
 - 3rd or subsequent offense



Provide cell phone to, or possession of cell phone by, a prisoner (§ 18.2-431.1)

§ 18.2-431.1. Illegal conveyance or possession of cellular telephone or other wireless telecommunications device by prisoner or committed person; penalty.

A. It is unlawful for any person without authorization to provide or cause to be provided a cellular telephone or other wireless telecommunications device to an incarcerated prisoner or person committed to the Department of Juvenile Justice in any juvenile correctional center.

B. It is unlawful for an incarcerated prisoner or person committed to the Department of Juvenile Justice in any juvenile correctional center without authorization to possess a cellular telephone or other wireless telecommunications device during the period of his incarceration.

C. Any violation of this section is a Class 6 felony.

(2005, c. 171; 2013, cc. 707, 782; 2015, c. 601.)

2013 General Assembly expanded to cover persons committed to the Department of Juvenile Justice

2015 General Assembly added “other wireless telecommunications device”



**Provide cell phone to, or possession of cell phone by, a prisoner
(§ 18.2-431.1)**

**FY2014 – FY2015
65 Cases**

Disposition	Percent	Median Sentence
No Incarceration	9.2%	NA
Incarceration Up to 6 Months	67.7%	6 Months
Incarceration More than 6 Months	23.1%	9 Months

**Note: Data reflect cases in which this offense was the primary
(or most serious) offense at sentencing.**



Unlawfully discharge firearm or missile in/at occupied building (§ 18.2-279)

- Currently, the guidelines cover the offense of maliciously discharging a firearm or missile in or at an occupied building under § 18.2-279.
- The guidelines currently do not cover this offense if committed unlawfully (without malice).



Unlawfully discharge firearm or missile in/at occupied building (§ 18.2-279)

FY2014 – FY2015
23 Cases

Weapon/Firearm Section C

Offender Name: _____

◆ Primary Offense

— Prior Record Classification —

Category I Category II Other

(scores for attempted/conspired offenses are in parentheses)

A. Maliciously discharge firearm, etc. in/at occupied building			
Attempted or conspired: 1 count	(32)	(16)	(8)
Completed: 1 count	56	28	14
B. Discharge firearm from vehicle (1 count)	48	24	12
C. Possess firearm on school property (1 count)	32	16	8
D. Possession of sawed-off shotgun (1 count)	36	18	9
E. False statement on consent form (1 count)	32	16	8
F. Possession of firearm, other weapon, explosives or ammunition by convicted felon (1 count) ..	32	16	8

Score

▼

0		
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Note: Data reflect cases in which this offense was the primary (or most serious) offense at sentencing.



Shoot, etc., missile at vehicle without malice (§ 18.2-154)

- Currently, the guidelines cover the offense of maliciously shooting or throwing a missile, etc., at a vehicle under § 18.2-154.
- The guidelines currently do not cover this offense if committed without malice.



Shoot, etc., missile at vehicle without malice (§ 18.2-154)

**FY2014 – FY2015
13 Cases**

Offender Name: _____

Miscellaneous/Person & Property **Section C**

◆ Primary Offense _____

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

A.	Burn unoccupied dwelling/church (1 count)	68	34	17
B.	Burn occupied dwelling/church			
	Completed: 1 count	108	54	27
	2 counts	200	100	50
	Attempted or conspired: 1 count	(68)	(34)	(17)
	2 counts	(72)	(36)	(18)
C.	Burning of personal property, standing grain, etc., value \$200 or more (1 count)	32	16	8
D.	Threatening to burn, bomb or explode (1 count)	32	16	8
E.	Threat by letter, communication or electronic message (1 count)	40	20	10
F.	Child neglect/abuse, serious injury (1 count)	32	16	9
G.	Gross, reckless care of child (1 count)	28	14	7
H.	Cruelty and injury to child (1 count)	28	14	7
I.	<u>Maliciously shoot, throw missile at train, car, etc. (1 count)</u>	<u>32</u>	<u>16</u>	<u>8</u>
J.	Damage/destroy any property or monument \$1,000 or more (1 count)	32	16	8

Score



FY 16
33% Aggravation Rate
(n=12)

Note: Data reflect cases in which this offense was the primary (or most serious) offense at sentencing.



Carry concealed weapon (§ 18.2-308)

- **The guidelines currently do not cover either the Class 6 carry concealed weapon (second offense) or the Class 4 carry concealed weapon, (third or subsequent offense)**



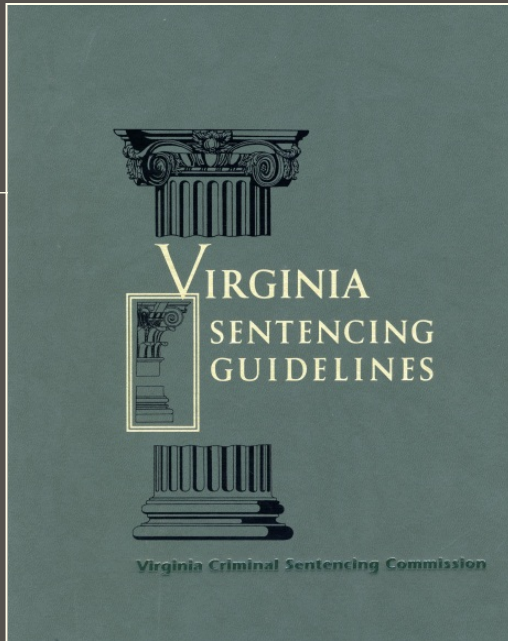
**Carry concealed weapon
(§ 18.2-308)**

FY2014 – FY2015

Disposition	2nd offense 48 cases		3rd or subsequent 10 cases	
	Percent	Median Sentence	Percent	Median Sentence
No Incarceration	50.0%	NA	30.0%	NA
Incarceration Up to 6 Months	33.3%	5 Months	20.0%	4 Months
Incarceration More than 6 Months	16.7%	1 Year	50.0%	2 Years

Note: Data reflect cases in which the offense was the primary (or most serious) offense at sentencing.





Possible Statutory Change



Guidelines Submission Requirements

§ 19.2-298.01

- Pursuant to § 19.2-298.01, following the entry of a final order of conviction and sentence in a felony case, circuit court clerks are required to send the sentencing guidelines worksheets, any departure reason, and a copy of the court order or orders, to the Commission.



Sentencing Guidelines Data Used by the Compensation Board

- **The Compensation Board uses sentencing guidelines data to calculate the Commonwealth's Attorneys workload statistics.**
- **The workload statistics affect how resources are distributed to Commonwealth's Attorney's offices.**
- **Several years ago, the Commission agreed to accept guidelines forms for cases in which the judge placed the defendant on first offender status (§ 18.2-251).**
 - **Court does not enter a finding of guilt.**
 - **These cases are included in the data provided to the Compensation Board.**





Worksheet Completion Responsibility **§ 19.2-298.01**

Plea of Not Guilty

If an offender pleads not guilty and is tried by the court (bench trial), the probation officer will be responsible for completing the guidelines worksheet. The officer will provide the original to the judge and copies to the Commonwealth's attorney and defense attorney before sentencing. The officer also retains a copy.

Plea of Guilty or Plea Agreements

If the offender pleads guilty or accepts a plea agreement (including an oral sentence recommendation), the court has the option to direct the probation officer to prepare the worksheet or, when the accused, the court and the Commonwealth's attorney concur, the Commonwealth's attorney may prepare the worksheet. In either case, the original will be provided to the judge with copies given to the Commonwealth's attorney (if prepared by the probation officer) and the defense attorney before sentencing. The preparer also retains a copy.

Jury Sentences

If the offender has been convicted by a jury and the jury has recommended a sentence, a sentencing guidelines worksheet must then be provided to the judge. No sentencing guidelines information may be provided to the jury (§ 19.2-298.01(A)). The probation officer will be responsible for completing the guidelines worksheet. The officer will provide the original to the judge and copies to the Commonwealth's attorney and defense attorney before sentencing. The officer also retains a copy.

Recording Sentence Information

- **Final Disposition** – The sentencing judge, circuit court clerk, or other judicial designee is responsible for completing the back section of the cover sheet, which specifies the actual sentence.

Policy

Sentencing for Multiple Jurisdictions

Convictions that occur in different jurisdictions, but result in one sentencing in one court, are still considered to be separate sentencing events. If the combined sentencing takes place on the same day, with the same judge, in the same court, separate worksheets must be prepared for each jurisdiction, reflecting the convictions arising in each locality. Policy does not prohibit a judge from reviewing one combined guideline, but the official guidelines must be prepared and submitted for each jurisdiction. If a judge departs from the recommendation for any jurisdiction, then a departure reason, as required by statute, must be provided.

Deferred Dispositions (e.g., First Offender)

When a court defers a finding of guilt for a guidelines offense, such as authorized under § 18.2-251, sentencing guidelines are to be submitted to the Commission after the court's decision to defer the finding. If the offender violates any condition of the deferral and the court finds the offender guilty of the guidelines offense, updated guidelines must be submitted to the court before sentencing. Guidelines must be sent to the Commission after each court action.

Factor Bargaining

The sentencing guidelines must be computed based on the rules stated within this manual. Guidelines rules are not to be circumvented by guidelines factor bargaining. Agreements that require the preparer to calculate guidelines factors in a manner that conflicts with established rules or procedures shall have no bearing on the completion of the official sentencing guidelines submitted to the court.

Departure Reasons



Guidelines Submission Requirements

§ 19.2-298.01

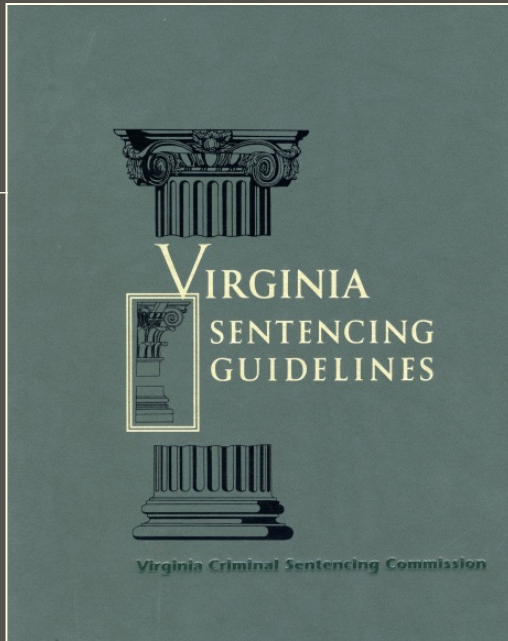
Similar Issue with §19.2-299 Presentence Investigations - Requires a Finding of Guilt

- Does the statute need to be amended to require clerks to submit sentencing guidelines when a sentence is deferred ?
- Should the Commission recommend amending § 19.2-298.01 to require circuit court clerks to submit guidelines forms for cases resulting in a § 18.2-251 placement and other cases involving a deferred finding?

§ 19.2-298.01. Use of discretionary sentencing guidelines.

E. Following the entry of a final order of conviction and sentence in a felony case, the clerk of the circuit court in which the case was tried shall cause a copy of such order or orders, the original of the discretionary sentencing guidelines worksheets prepared in the case, and a copy of any departure explanation prepared pursuant to subsection B to be forwarded to the Virginia Criminal Sentencing Commission within five days. Similarly, the statement required by §§ 19.2-295 and 19.2-303 and regarding departure from or modification of a sentence fixed by a jury shall be forwarded to the Virginia Criminal Sentencing Commission.





Proposed Changes to Guidelines Cover Sheet



Cover Sheet

- **With an increase interest in concurrence and departure reasons, should the Commission provide judges with more check boxes that can be used to consistently capture sentences and alternative programs?**



Final Disposition Fill In After Sentence Has Been Pronounced

SENTENCE

Total Time Imposed Before Suspension Life Sentence +

--	--

^{Years}

--	--

^{Months}

--	--	--

^{Days}

Total Effective Time to Serve Life Sentence +

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Post Release							
Post Release Term § 18.2-10	<table border="1" style="width: 100%; height: 20px;"><tr><td></td><td></td></tr></table>			<table border="1" style="width: 100%; height: 20px;"><tr><td></td><td></td></tr></table>			
Post Release Supervision Period § 19.2-295.2(A)	<table border="1" style="width: 100%; height: 20px;"><tr><td></td><td></td></tr></table>			<table border="1" style="width: 100%; height: 20px;"><tr><td></td><td></td><td></td></tr></table>			

Probation Period (Supervised) § 19.2 - 303 Indefinite

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Check all that apply

- Incarceration Sentence to Run Concurrently With Another Sentencing Event
- Written Plea Agreement Accepted (Rule 3A:8(c) (1) (A) or (C))
- Plea and Recommendation Accepted (Rule 3A:8 (c) (1) (B))
- Oral Sentence Recommendation Accepted
- Restitution \$ _____
- Fine \$ _____

Other Sentencing Programs (check all that apply)

- | | |
|--|--|
| <ul style="list-style-type: none"> <input type="checkbox"/> Day Reporting <input type="checkbox"/> Diversion Center Incarceration <input type="checkbox"/> Electronic Monitoring <input type="checkbox"/> Unsupervised Probation/Good Behavior <input type="checkbox"/> § 18.2-251/§ 18.2-258.1 <input type="checkbox"/> Substance Abuse Treatment | <ul style="list-style-type: none"> <input type="checkbox"/> Community-Based Program <input type="checkbox"/> Detention Center Incarceration <input type="checkbox"/> Drug Court <input type="checkbox"/> Intensive Probation <input type="checkbox"/> Youthful Offender <input type="checkbox"/> Other _____ |
|--|--|

REASON FOR DEPARTURE

Must be completed pursuant to § 19.2-298.01(B)

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SENTENCING DATE

Month	Day	Year			

Judge's Signature

ATTACH COURT ORDER AND MAIL Pursuant to § 19.2-298.01(E)

After sentencing, send to:

Virginia Criminal Sentencing Commission • 100 North Ninth Street • Fifth Floor • Richmond, Virginia 23219

Sentenced to Time Served

Amount of Time Served

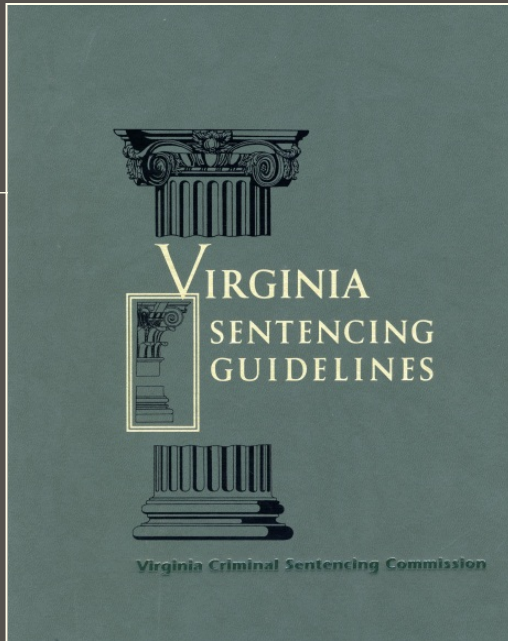
Good Behavior _____

Commitment to DJJ
 Type of Commitment
 Length of Determinant Commitment

Deferred Sentencing
 (other than § 18.2-251 or § 18.2-258.1)

Other Deferred Finding, ESS, ISS





Proposed Changes to Guidelines Drug Schedule I/II

Drug Schedule I/II

- The factor “Mandatory Minimum for Weapon Conviction(s) in Current Event” does not include a conviction for “Use of a Firearm in the Commission of a Felony” (§ 18.2-53.1 – ASL-1319-F9). The court must impose a mandatory sentence of 3 years for this offense.
- Only additional offenses that have a VCC prefix of “WPN” and a mandatory minimum of 2 years or 5 years are scored for this factor.



Drug/Schedule I/II ❖ Section C

Offender Name: _____

Primary Offense

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

A. Possess Schedule I or II drug or Attempted, conspired or completed:		1 count 20	10	5
2 counts		28	14	7
3 counts		36	18	9
B. Sell, Distribute, Possession with intent, etc., Schedule I or II drug Completed (Attempted or Conspired):		1 count 60 (48)	36 (24)	12 (12)
2 counts		80 (64)	48 (32)	16 (16)
3 counts		95 (76)	57 (38)	19 (19)
4 counts		130 (104)	78 (52)	26 (26)
C. Sell, etc., Schedule I or II drug, second offense Completed (Attempted or Conspired):		1 count 110 (88)	66 (44)	22 (22)
2 counts		310 (248)	186 (124)	62 (62)
D. Sell, etc., Schedule I or II drug - third or subsequent offense Attempted, conspired or completed:		1 count 175	105	35
2 counts		390	234	78
E. Manufacture Methamphetamine, first or second offense, § 18.2-248(C1) Attempted, conspired or completed:		1 count 145	87	29
F. Sell, etc., Schedule I or II drug to minor Attempted, conspired or completed:		1 count 60	30	15
G. Accommodation-Sell, etc., Schedule I or II drug Attempted, conspired or completed:		1 count 32	16	8
2 counts		40	20	10
H. Sell, etc., imitation Schedule I or II drug Attempted, conspired or completed:		1 count 12	6	3
2 counts		20	10	5

Score

Primary Offense Remaining Counts

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

Maximum Penalty (years) 5, 10 1	40 or more 5	<input type="text" value="0"/>
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Additional Offenses

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

Primary offense D: Sell, etc., Sch. I/II 3rd or Subsequent	
Years	Points
Less than 5	0
5, 10	2
20	4
30	6
40 or more	7

Primary offense: All other offenses	
Years	Points
Less than 5	0
5, 10	1
20	2
30	4
40 or more	5

Mandatory Minimum for Weapon Conviction(s) in Current Event

Assign points to each additional offense with a mandatory minimum and total the points

2 Year Mandatory Minimum 13	5 Year Mandatory Minimum 32	<input type="text" value="0"/> <input type="text" value="1"/> <input type="text" value="3"/>
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Firearm in Possession at Time of Offense

If YES, add 5

Prior Convictions/Adjudications

Assign points to the 5 most recent and serious prior record events and total the points

Maximum Penalty: Less than 5 0	30 3	<input type="text" value="0"/> <input type="text" value="1"/>
5, 10 1	40 or more 4	
20 2		

Prior Felony Drug Convictions/Adjudications

Primary offense D: Sell, etc., Sch. I/II 3rd or Subsequent	
Number of Counts	Score
2	9
3	10
4	17
5 or more	20

Primary offense: All other offenses	
Number of Counts	Score
1	0
2	1
3	2
4	3
5	4
6 or more	10

Prior Felony Convictions/Adjudications Against Person

Number of Counts: 1 3	3 9	<input type="text" value="0"/> <input type="text" value="0"/>
2 6	4 or more 12	

Prior Felony Property Convictions/Adjudications

Number of Counts: 1, 2 1	4 or more 3	<input type="text" value="0"/> <input type="text" value="0"/> <input type="text" value="0"/>
3 2		

Prior Juvenile Record

If YES, add 1

Legally Restrained at Time of Offense

If YES, add 3

Type of Additional Offense

Score if primary offense is E: Manufacture Methamphetamine § 18.2-248 (C1)
 Additional offense of child present during manufacture of methamphetamine If YES, add 14

Sale/Quantity of Cocaine

Score if primary offense is B, C, D, or F: § 18.2-248(C) or § 18.2-255(A)

Quantity of Cocaine: Less than 28.35 grams 0	28.35 g to less than 226.8 grams 36	226.8 grams or more 60	<input type="text" value="0"/> <input type="text" value="0"/>
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Total Score

See Drug/Schedule I/II Section C Recommendation Table for guidelines sentence range. Then go to Section D Nonviolent Risk Assessment and follow the instructions.

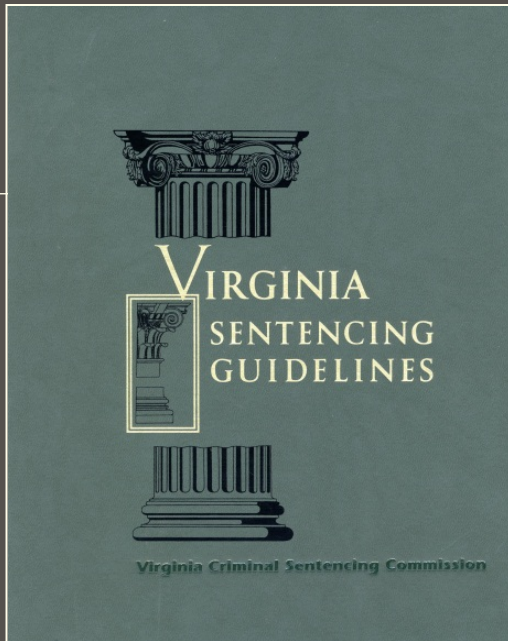
Drug Schedule I or II Section C

This is not a typical case, but it is a face validity problem.

In 10 years, there were 11 cases that included use of a firearm in the commission of a felony

Further analysis is needed to determine the impact of scoring convictions for § 18.2-53.1





Proposed Research Project

Drug Schedule I/II – Distribution

Drug Schedule I/II Research Project

- **Recommendation of attorneys for the Commonwealth to include a factor when a death is associated with a drug deal.**
 - **Need to identify cases when a connection is made between the drug transaction and the death of the user or buyer (i.e., overdose or death by other means)**
 - **AND the evidence was presented to the court**
- **Research would need to be completed before a recommendation could be made next year (FY 2017)**



VIRGINIA
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