



Revision of the Probation Violation Guidelines - Study Planning

June 6, 2016



Background

Sentencing Revocation Report Data System

- Pursuant to § 17.1-803(7), the Commission is required to monitor sentencing practices in felony cases throughout the Commonwealth.
- In 1997, the Commission partnered with the Virginia Department of Corrections (DOC) to systematically gather data on the reasons for, and the outcomes of, community supervision violation proceedings in Virginia's Circuit Courts.
 - This collaboration resulted in the creation of the Sentencing Revocation Report (SRR) and the establishment of the SRR database.



2003 General Assembly Directive

Item 40 of Chapter 1042 of the 2003 Acts of Assembly

- The 2003 General Assembly directed the Commission to develop, with due regard for public safety, sentencing guidelines for felony probation violators returned to court for reasons other than a new criminal conviction (“technical violations”).
- To develop these guidelines, the Commission examined historical sentencing practices in revocation hearings.



Technical Violator Study, 2003-2004

- Sample of 600 technical probation violators was drawn from the Commission's Sentencing Revocation Report database.
- Supplemental information was gathered on factors of interest that were not contained in the automated data.
 - Based on additional review, 72 cases were excluded from the study because the offenders were on parole or the files contained insufficient information.
- Final sample was 528 cases.



2003 Study

Supplemental Data Collection Instrument

- Letters to Court

(Major Violation Report)

Employment Information

Number of Times Probationer Failed to Report

Participation in Programs

1	Offender Name: <u>Smith, Robert</u> Orig. Date: <u>01/22/2000</u>	Rev. Date: <u>12/13/2001</u>				
Basic Instructions: For numbers, use actual number if known, otherwise; none = 0, > 1 = 55, > 2 = 66, Continuous = 77, unknown = 99, never [reported] = 100. For unknown dates, use 99/99/99. Please check or put X in boxes if applicable.						
GENERAL INFORMATION:						
Data Source: <i>(mark all that apply)</i>						
<input type="checkbox"/> Request for Capias / Probation Revocation letter <input type="checkbox"/> Status Report (initiated revocation report)						
Original Sentence Date: _____ Date placed under active supervision/release from jail: _____						
Date of capias/show cause report: _____ Date of first non-compliance incident: _____						
Transferred to another district for supervision? <input type="checkbox"/> If yes, District # _____ <i>(out of state = 50, unknown = 99)</i>						
Number of prior revocations _____ If yes, date of 1st _____ Date of most recent _____						
Number of requests for Capias/Revocations _____						
NEW LAW VIOLATIONS – Conditions 1 or 2 (while on current sample probation period)						
Number of Misdemeanors _____	Person _____	Property _____	Drug _____	Traffic _____	Traffic Infraction _____	Other _____
Number of Felonies _____						
Date of 1 st law violation: _____	Arrest: <input type="checkbox"/>	Conviction: <input type="checkbox"/>	Failed to report arrest or conviction <input type="checkbox"/>			
Date of most recent law violation: _____	Arrest: <input type="checkbox"/>	Conviction: <input type="checkbox"/>				
EMPLOYMENT – Condition 3						
Length of time fail to work (weeks): _____			Number of job changes during sample period ? _____			
Fail to report job changes: <input type="checkbox"/>			Number of times fired during sample period? _____			
FAIL TO REPORT – Conditions 4 or 6						
Number of Probation Officer visits missed: _____			Number Attempted Contacts by PO: _____			
Number of times <i>never reported</i> to program other <i>(mark number on left for all that all that apply – DO NOT USE CODING SCHEME)</i>						
_____ Employment	_____ Residential	_____ Financial	_____ Community	_____ Property Crime		
_____ Education	_____ Religious	_____ Other (_____)				
Number of times <i>failed to attend</i> program other than listed above <i>(all that apply):</i>						
_____ Employment	_____ Residential	_____ Financial	_____ Community	_____ Property Crime		
_____ Education	_____ Religious	_____ Other (_____)				
Number of <i>unsuccessful discharges</i> from program other than listed above <i>(all that apply):</i>						
_____ Employment	_____ Residential	_____ Financial	_____ Community	_____ Property Crime		
_____ Education	_____ Religious	_____ Other (_____)				
Number of times <i>not in compliance</i> with program other than listed above <i>(all that apply):</i>						
_____ Employment	_____ Residential	_____ Financial	_____ Community	_____ Property Crime		
_____ Education	_____ Religious	_____ Other (_____)				
MENTAL/PHYSICAL HEALTH – Conditions 4 or 6						
Treatment/program (completed) _____			Medical	Mental Health	Sex Offender Treatment	
A. Never reported (number) _____			_____	_____	_____	
B. Fail to attend _____			_____	_____	_____	
C. Unsuccessful Discharge (number) _____			_____	_____	_____	
D. Non-compliance (number) _____			_____	_____	_____	
E. Leave without approval _____			_____	_____	_____	
Fail to be honest or follow instructions _____			_____	_____	_____	
Fail testing (include polygraph or other) _____			_____	_____	_____	
Number of incidents reported to probation officer By:						
A. Law Enforcement <i>(arrest, citation, conviction)</i> _____			_____	_____	_____	
B. Employer _____			_____	_____	_____	
C. Family/Friend/Domestic _____			_____	_____	_____	
D. Observed (By PO) _____			_____	_____	_____	
Other Problem _____			_____	_____	_____	

2003 Study Supplemental Data Collection Instrument

- Letters to Court (Major Violation Report)

Type of Drug(s)
Used

Condition 6 Details
(Failure to Follow
Instructions or Be
Honest)

Information
Regarding
Absconders

DRUGS/ALCOHOL/SUBSTANCE ABUSE – Conditions 4, 6, 7, or 8 (please fill in all that are applicable)

	Drugs	Alcohol	Substance Abuse
Treatment/program (completed) _____	_____	_____	_____
a. Never reported (number) _____	_____	_____	_____
b. Fail to attend _____	_____	_____	_____
c. Unsuccessful Discharge (number) _____	_____	_____	_____
d. Non-compliance (number) (incl drug screens) _____	_____	_____	_____
e. Leave without approval _____	_____	_____	_____
Number of tests failed: _____	_____	_____	_____
Number of admissions of Use: _____	_____	_____	_____
Fail to be honest or follow instructions _____	_____	_____	_____
Number of incidents reported to probation officer by:			
a. Law Enforcement (arrest, citation, conviction) _____	_____	_____	_____
b. Employer _____	_____	_____	_____
c. Family/Friend/Domestic _____	_____	_____	_____
d. Observed (by PO) _____	_____	_____	_____
Date of 1 st failed test/admission: _____	Date of most recent failed test/admission: _____		

Drug paraphernalia found in residence or on offender

Type of drug found in screening/admitted use (mark all that apply):

Marijuana Cocaine Hallucinogens Opiates Heroin Synthetic Drugs Ecstasy

Amphetamines Barbiturates Methamphetamine Oxycontin Alcohol Others _____

FAIL TO FOLLOW INSTRUCTIONS OR BE HONEST – Conditions 6 (mark all that apply):

Associate with prohibited people:	Education requirements:	<input type="checkbox"/> Life skills
<input type="checkbox"/> Friends	<input type="checkbox"/> GED	<input type="checkbox"/> Go to Prohibited Areas
<input type="checkbox"/> Victims	<input type="checkbox"/> Vocational	<input type="checkbox"/> Violate Curfew
<input type="checkbox"/> Minors	<input type="checkbox"/> Other _____	<input type="checkbox"/> Restitution/Court Costs
<input type="checkbox"/> Other _____		

RESIDENCE/ABSCOND – Conditions 9 or 11

Date of last contact with defendant: _____ Number of Changes of residence _____

Absconded to: Outside state (other than transfer) Another city within the state Did not leave area Unknown

OTHER:

Successful Completion of Program

Type of Program (mark number on left for all that apply):

____ Employment ____ Residential ____ Education ____ Financial ____ Alternatives

____ Community ____ Religious ____ Property Crime ____ Other (_____)

Reports to Probation Officer about (mark number on left for all that apply):

____ Domestic abuse ____ Drug abuse ____ Alcohol abuse ____ Behavioral problems

____ Employment problems ____ Not maintaining authorized residence ____ Other: (_____)

Technical Violator Study, 2003-2004

Probation Violation Guidelines ❖ Section A

Offender Name: _____

◆ Original Disposition was Incarceration _____ If YES, add 1 →

◆ Original Felony Offense Type *select the type of most serious original felony offense* _____

- A. Person15
- B. Property3
- C. Traffic/Weapon24
- D. Other1
- E. Drug13

◆ Previous Adult Probation Revocation Events _____

- Number of Violation 1 - 27
- Events: 3 or more10

◆ New Felony Arrests _____

- Number of Counts: 1 - 34
- 4 or more18

◆ Never Reported to/Unsuccessful Discharge from following Programs _____

- Community service, day reporting, employment programs and/or residential programs.....15
- Detention or Diversion Center.....18

◆ Condition Violated *score only the violation receiving the highest points* _____

- 2. Fail to report any arrests within 3 days to probation officer 17
- 3. Fail to maintain employment/report changes in employment 17
- 4. Fail to report as instructed 18
- 5. Fail to allow probation officer to visit home or place of employment 17
- 6. Fail to follow instructions and be truthful and cooperative 18
- 7. Use alcoholic beverages to excess 17
- 8. Use, possess, distribute controlled substances or paraphernalia 31
- 9. Use, own, possess, transport or carry firearm 17
- 10. Change of residence or leave Commonwealth of Virginia 1
- 11. Abscond from supervision 34
- Fail to follow special conditions (sex offender) 19
- Fail to follow special conditions (other than sex offender conditions). 11

◆ Absconded 13 months or more _____ If YES, add 5 →

Total Score _____ If total is 36 or less, the recommendation is Probation/No Incarceration. →

In its 2003 Annual Report, the Commission recommended that the probation violation guidelines be implemented statewide. This recommendation was accepted by the 2004 General Assembly.

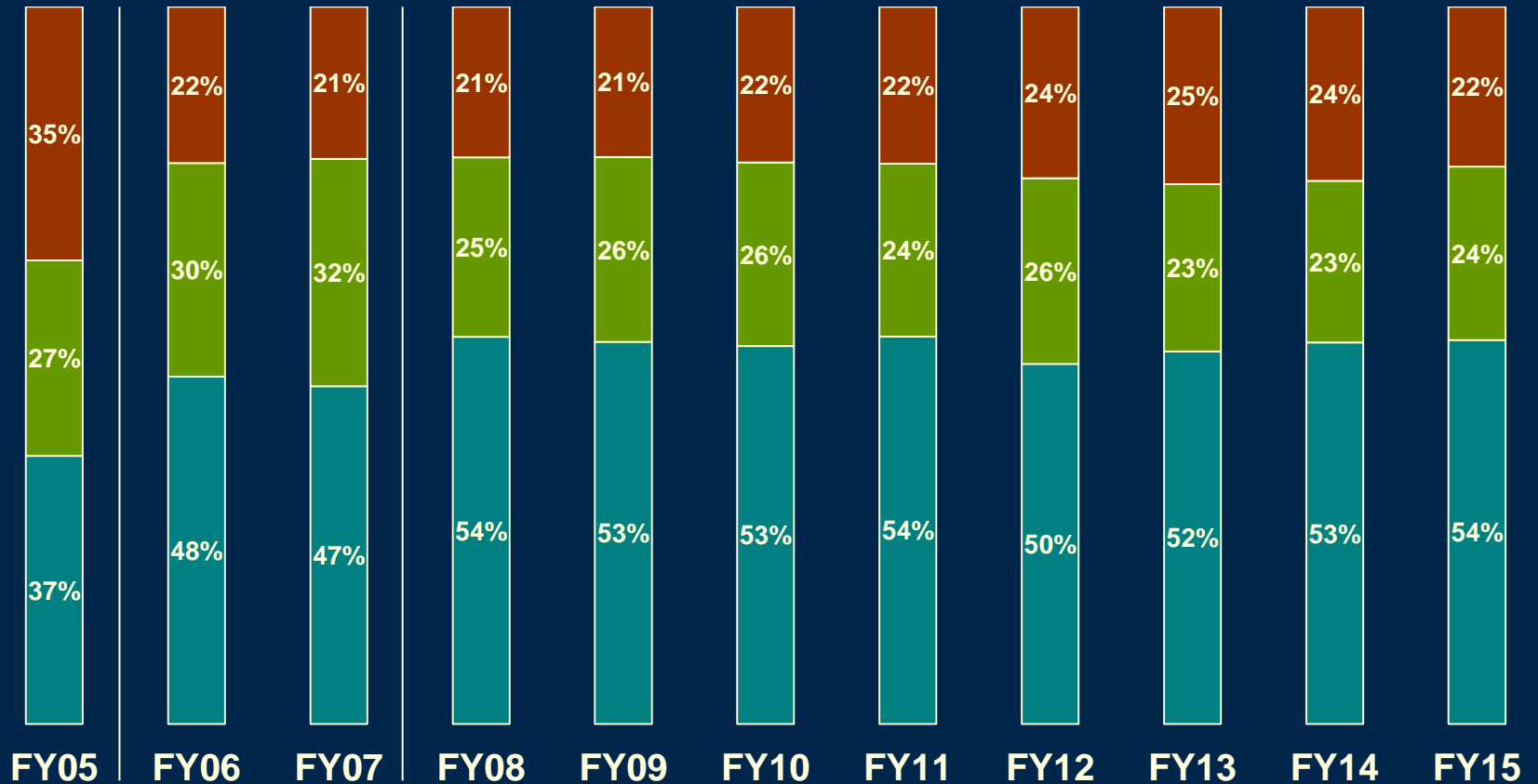
The Commission has since revised the probation violation guidelines twice.

Probation Violation Guidelines – “Technical Violations”

Compliance by Fiscal Year

FY2005 – FY2015

N = 3,140 N = 4,905 N = 5,930 N = 5,027 N = 4,488 N = 4,231 N = 4,768 N = 4,503 N = 4,786 N = 4,960 N = 5,610



■ Compliance
 ■ Mitigation
 ■ Aggravation

Note: Only includes cases found in violation with no missing conditions. Analysis excludes cases with scoring errors.

Requirements Since July 1, 2010

2015 Session

Budget Bill - HB1400 (Chapter 665)

Bill Order » Judicial Department » Item 39

Circuit Courts

Item 39

First Year - FY2015

Second Year - FY2016

	First Year - FY2015	Second Year - FY2016
Pre-Trial, Trial, and Appellate Processes (32100)	\$101,104,861 \$111,933,636	\$100,410,221 \$109,566,242
Trial Processes (32103)	\$41,339,485 \$44,353,368	\$40,649,845 \$45,973,886
Other Court Costs and Allowances (Criminal Fund) (32104)	\$59,765,376 \$67,580,268	\$59,760,376 \$63,592,356
Fund Sources:		
General	\$101,099,861 \$111,928,636	\$100,405,221 \$109,561,242
Special	\$5,000	\$5,000

Authority: Article VI, Section 1, Constitution of Virginia; Title 17.1, Chapter 5; § 19.2-163, Code of Virginia.

F.1. For any hearing conducted pursuant to § 19.2-306, Code of Virginia, the circuit court shall have presented to it a sentencing revocation report prepared on a form designated by the Virginia Criminal Sentencing Commission indicating the condition or conditions of the suspended sentence, good behavior, or probation supervision that the defendant has allegedly violated.

2. For any hearing conducted pursuant to § 19.2-306 in which the defendant is cited for violation of a condition or conditions other than a new criminal offense conviction, the court shall also have presented to it the applicable probation violation guideline worksheets established pursuant to Chapter 1042 of the Acts of Assembly 2003. The court shall review and consider the suitability of the discretionary probation violation guidelines. Before imposing sentence, the court shall state for the record that such review and consideration have been accomplished and shall make the completed worksheets a part of the record of the case and open for inspection. In hearings in which the court imposes a sentence that is either greater or less than that indicated by the discretionary probation violation guidelines, the court shall file with the record of the case a written explanation of such departure.

F.1. All Violations under § 19.2-306:
Submit Sentencing Revocation Report

F.2. Technical Violations:
Submit Revocation Report & Probation Violation Guidelines



Current Study

Considerations for Revision of Probation Violation Guidelines

- Although past amendments to the probation violation guidelines have increased compliance, the compliance rate remains relatively low.
- Multiple criminal justice practitioners have requested that the Commission revise the guidelines associated with probation violations, including:
 - Modifying existing factors,
 - Accounting for additional factors beyond those currently covered, and
 - Expanding probation violation guidelines to cover “New Law” (Condition 1) violators.





Sentencing Revocation Report

Date Form Completed: _____

◆ OFFENDER _____

- ① First: _____ Middle: _____
 Last: _____ Suffix: [][][][]
 ② Date of Birth: [][][] / [][] / [][][] ③ Social Security Number: [][][] - [][][] - [][][][]
 ④ SID/CCRE: _____

◆ COURT _____

- ⑤ Judicial Circuit: [][] ⑥ City/County: _____ ⑦ FIPS Code: [][][]
 ⑧ Judge's Name: _____ [][][][][][]
Office Use Only

⑨ ◆ MOST SERIOUS ORIGINAL FELONY OFFENSE INFORMATION _____

Primary Offense _____ VCC _____ Sentencing Date (Original) _____
Month Day Year

⑩ PSI NUMBER: _____

⑪ ◆ ORIGINAL DISPOSITION INFORMATION _____

- No Incarceration Detention or Diversion Center Incarceration (no active incarceration) Jail or Prison

⑫ ◆ TYPE OF REVOCATION (check all that apply) _____

- Probation Post Release Good Behavior Suspended Sentence Community-Based Program

⑬ ◆ CONDITIONS CITED IN VIOLATION (check all that apply) _____

1. Fail to obey all Federal, State, and local laws and ordinances
 2. Fail to report any arrests within 3 days to probation officer
 3. Fail to maintain employment or to report changes in employment
 4. Fail to report as instructed
 5. Fail to allow probation officer to visit home or place of employment
 6. Fail to follow instructions and be truthful and cooperative
 7. Use alcoholic beverages
 8. Use, possess, distribute controlled substances or paraphernalia
 9. Use, own, possess, transport or carry firearm
 10. Change residence or leave State of Virginia without permission
 11. Abscond from supervision
 Fail to follow special conditions (specify) _____

⑭ Complete if there are any new law or ordinance convictions:
 VCCs for most serious convictions

 Location of Arrest:
 Virginia Out of State or Federal

◆ VIOLATION GUIDELINES RECOMMENDATION _____

- ⑮ Probation/No Incarceration
 Incarceration (Enter Range Below)
 Range [][] Years [][] Months [][] Days to [][] Years [][] Months [][] Days
 ⑯ Recommendation Exceeds Revocable Time of [][][] Years [][] Months [][] Days

- ⑰ Probation Violation Guidelines Do Not Apply (check reason)
 _____ Condition 1 Violation
 _____ 1st Offender Violation
 _____ Parole Eligible Case
 _____ Revocation Other Than Probation

New Law Violation:

Condition 1

◆ **CONDITIONS CITED IN VIOLATION** (*check all that apply*)

- 1. Fail to obey all Federal, State, and local laws and ordinances
- 2. Fail to report any arrests within 3 days to probation officer
- 3. Fail to maintain employment or to report changes in employment
- 4. Fail to report as instructed
- 5. Fail to allow probation officer to visit home or place of employment
- 6. Fail to follow instructions and be truthful and cooperative
- 7. Use alcoholic beverages
- 8. Use, possess, distribute controlled substances or paraphernalia
- 9. Use, own, possess, transport or carry firearm
- 10. Change residence or leave State of Virginia without permission
- 11. Abscond from supervision
- Fail to follow special conditions (specify) _____

Complete if there are any new law or ordinance convictions:
VCCs for most serious convictions

____-____-____

____-____-____

Location of Arrest:
 Virginia Out of State or Federal

Technical Violations:

Conditions 2 – 11 & Special Conditions

Sentencing Revocation Reports (SRRs) Received for Technical and New Law Violations* FY2008 - FY2015



*Note: Only includes cases found in violation with no missing conditions.

Source: Virginia Criminal Sentencing Commission's Sentencing Revocation Report Database

Analysis of Sentencing Revocation Reports

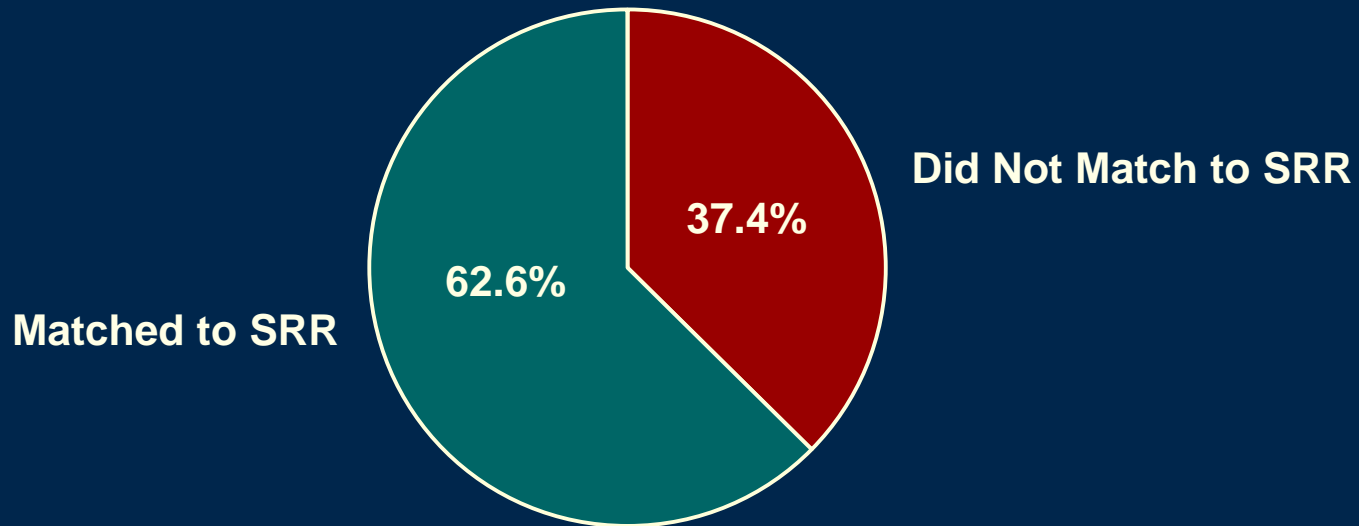
- **Sentencing Revocation Report (SRR) data for FY2011 to FY2015 indicate that 58,063 SRRs were submitted for felony revocations during this time period.**
- **As an initial step, staff matched SRR data to Circuit Court Case Management System (CMS) and Sentencing Guidelines (SG) data to assess the completeness of the SRR database.**



Analysis of Sentencing Revocation Reports - Matching to Circuit Court Data -

Slightly less than 2/3 of the 73,631 felony revocation events under § 19.2-306 in Circuit Court CMS data had a corresponding Sentencing Revocation Report.

**Felony Revocation Events in Circuit Court CMS
Matched to SRR Database
FY2011 - FY2015
73,631 Cases**



Note: Fairfax and Alexandria do not participate in the Circuit Court Case Management System. Virginia Beach left the system in FY2009, but returned in October 2014.

Analysis of Sentencing Revocation Reports - Matching to Circuit Court Data -

The Commission was more likely to receive a SRR if the offender was revoked due to a supervised probation violation.

Felony Revocation Events in Circuit Court Matched to SRR Database by Type of Revocation FY2011 - FY2015 73,631 Cases

Type of Revocation (§ 19.2-306)	Matched to SRR	Did Not Match to SRR	Number of Events
Probation Revocation	63.6%	36.4%	68,109
Other Revocation	52.1%	49.8%	4,965
Unknown	47.9%	50.2%	557
Total	62.6%	37.4%	73,631



Note: Fairfax and Alexandria do not participate in the Circuit Court Case Management System. Virginia Beach left the system in FY2009, but returned in October 2014.

Analysis of Sentencing Revocation Reports - Matching to Circuit Court Data -

The percentage of circuit court revocation events in which a SRR was received also varied by jurisdiction.

Jurisdictions with Highest Match Rate

Jurisdiction	% Matched to SRR	Events Matched/Total
Bedford	93.0%	343 / 369
Alleghany/ Covington	92.6%	239 / 258
Hanover	91.5%	1,015 / 1,109
Appomattox	91.3%	188 / 206
Tazewell	90.6%	1,449 / 1,599

Jurisdictions with Lowest Match Rate

Jurisdiction	% Matched to SRR	Events Matched/Total
Wythe	2.2%	13 / 580
Caroline	4.3%	9 / 212
Buckingham	4.5%	7 / 157
Lee	13.1%	50 / 383
Washington	14.9%	120 / 804

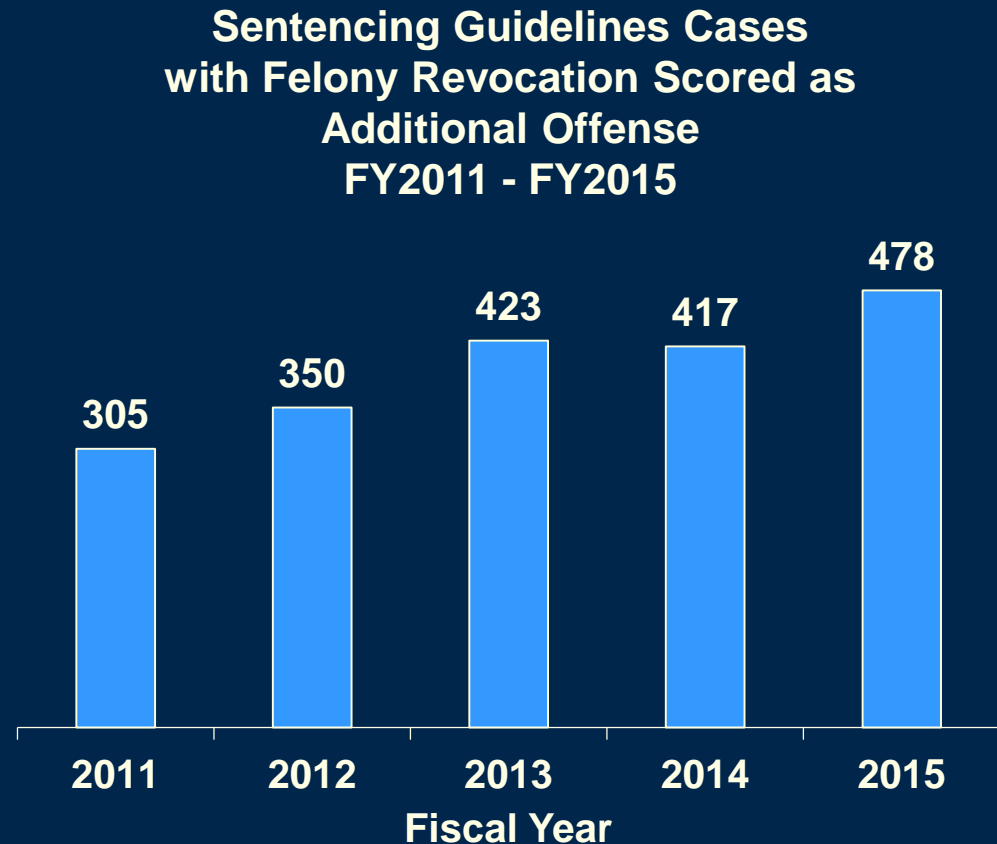
Note: Fairfax and Alexandria do not participate in the Circuit Court Case Management System. Virginia Beach left the system in FY2009, but returned in October 2014.

Analysis of Sentencing Revocation Reports - Matching to Felony Sentencing Guidelines -

To assess the completeness of the SRR data in regard to new law violations, staff also matched SRR data to felony sentencing guidelines cases.

- Between FY2011 and FY2015, a felony revocation under § 19.2-306 was scored as an additional offense on the felony sentencing guidelines in 1,973 sentencing events.

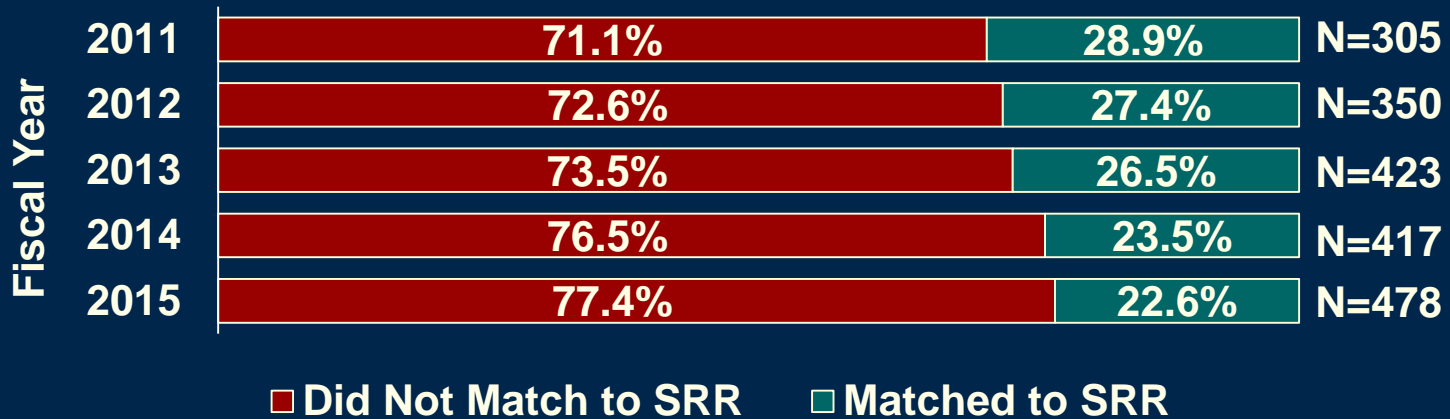
Overall, this represents less than 2% of all sentencing guidelines cases.



Analysis of Sentencing Revocation Reports - Matching to Felony Sentencing Guidelines -

Of the 1,973 sentencing events in which a felony revocation was scored as an additional offense on the felony sentencing guidelines, a corresponding SRR was submitted in 25.4%.

Sentencing Guidelines Cases
with Felony Revocations Matched to SRR
FY2011 - FY2015
1,973 Cases



Possible Next Steps

Incomplete Sentencing Revocation Report Data:

- Encourage submission of SRRs by sending a letter to criminal justice practitioners with a reminder of the language requiring submission of the forms.

Study:

- Identify particular areas of concern with existing probation violation guidelines by:
 - Examining departure reasons.
 - Conducting focus groups with criminal justice practitioners.
- Request Major Violation Report (MVR) data from the Department of Corrections (DOC).
- Match MVR data to other data sources to identify revocation events and use this data as a sampling frame.



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