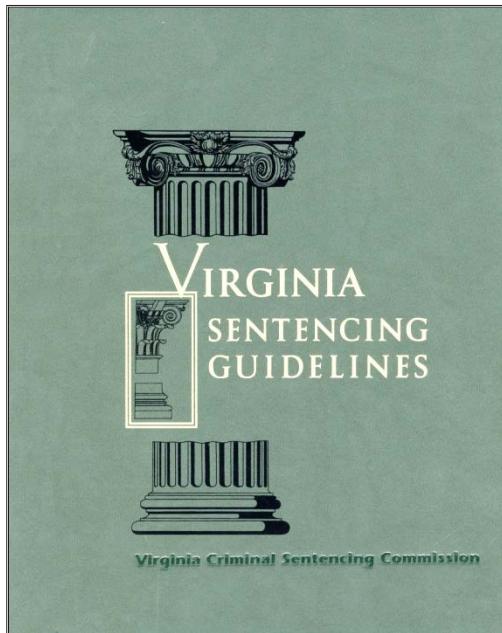




# VIRGINIA CRIMINAL SENTENCING COMMISSION

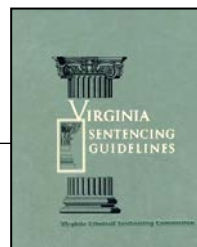


## Possible Topics for Guidelines Revisions

June 4, 2018

## Modifications to the Sentencing Guidelines

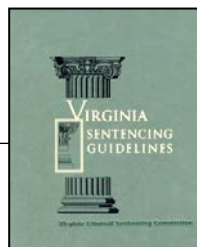
- **The Commission closely monitors the sentencing guidelines system and, each year, deliberates upon possible modifications to the guidelines.**
- **Under § 17.1-806 of the *Code of Virginia*, any modifications adopted by the Commission must be presented in its annual report, due to the General Assembly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



# Possible Topics for Guidelines Revisions

## Current guidelines offenses:

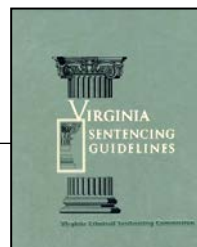
- **Manufacture, distribute, etc., Schedule I/II drug, 3<sup>rd</sup> or subsequent offense (§ 18.2-248(C))**
- **Malicious injury resulting in permanent impairment (§ 18.2-51.2(A))**
- **Child abuse and neglect resulting in serious injury (§ 18.2-371.1(A))**
- **Sex offender registry violation, 2<sup>nd</sup> or subsequent, not violent category (§ 18.2-472.1(A))**
- **Burglary offenses**



# Possible Topics for Guidelines Revisions

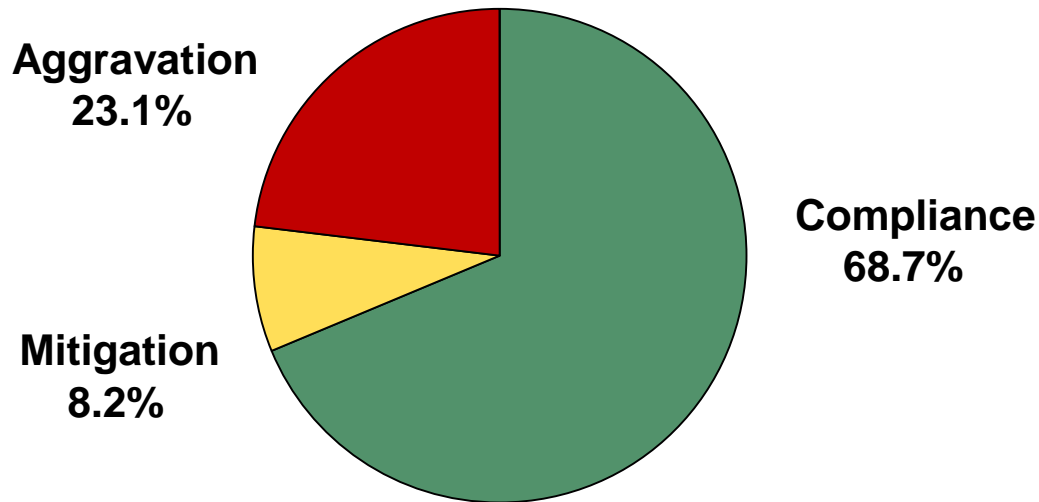
## New guidelines offenses:

- **Possess methamphetamine precursors (§ 18.2-248(J))**
- **Manufacture, sell, etc., 28g-226g of methamphetamine (§ 18.2-248.03)**
- **Delivery of narcotics/marijuana to prisoner (§ 18.2-474.1)**
- **DUI after prior felony DUI conviction (§ 18.2-266 / § 18.2-270(C,2))**



Compliance with Guidelines for  
Manufacture, Distribute, Etc., Schedule I/II drug,  
3<sup>rd</sup> or Subsequent Offense (§ 18.2-248(C))

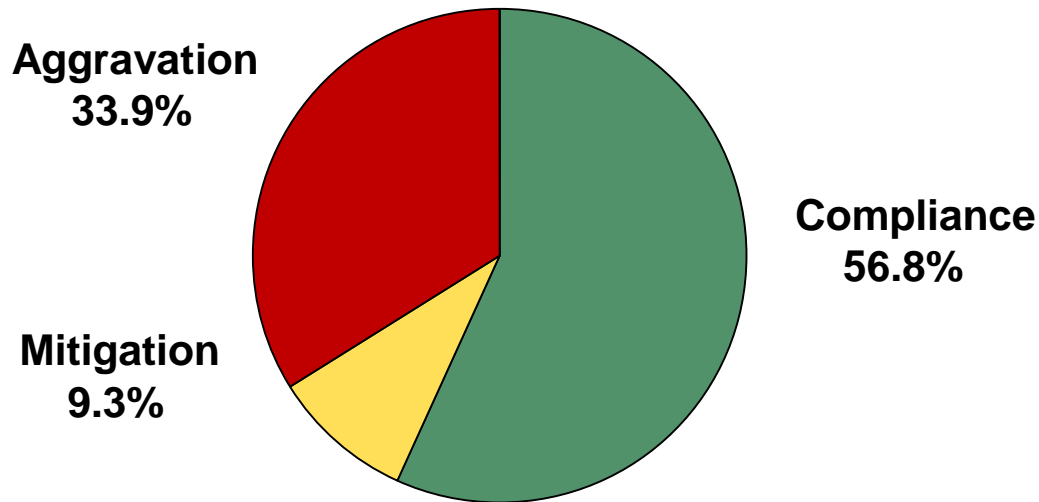
**FY2013 – FY2017**  
**Number of Sentencing Events = 294**



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

# Compliance with Guidelines for Malicious Injury Resulting in Permanent Impairment (§ 18.2-51.2(A))

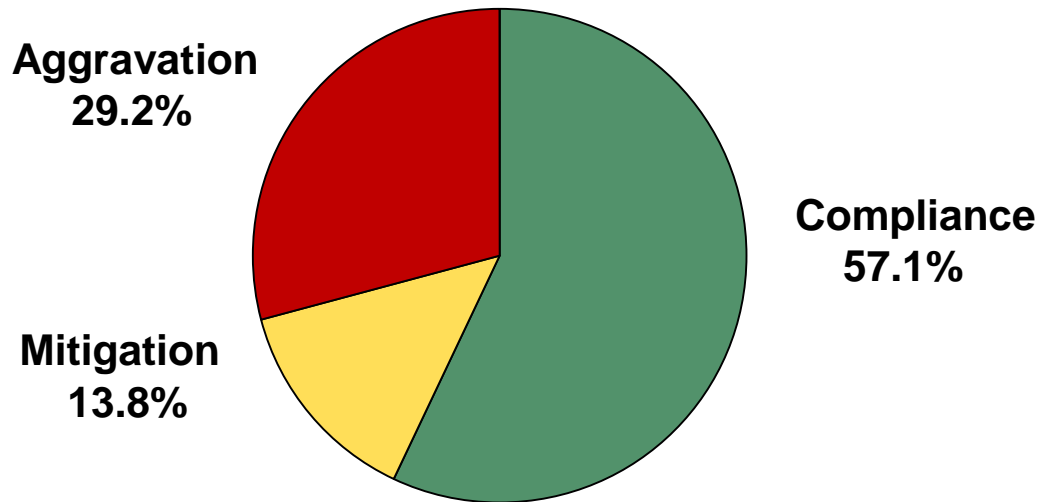
**FY2013 – FY2017**  
**Number of Sentencing Events = 301**



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

# Compliance with Guidelines for Child Abuse and Neglect Resulting in Serious Injury (§ 18.2-371.1(A))

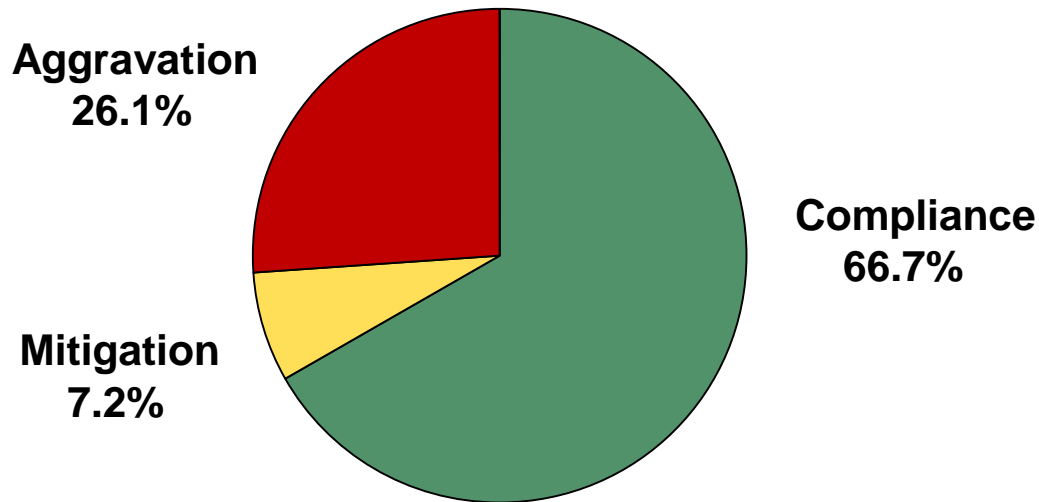
**FY2013 – FY2017**  
**Number of Sentencing Events = 240**



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

Compliance with Guidelines for  
Sex Offender Registry Violation (2<sup>nd</sup> or Subsequent),  
Not Violent Category (§ 18.2-472.1(A))

**FY2013 – FY2017**  
**Number of Sentencing Events = 153**

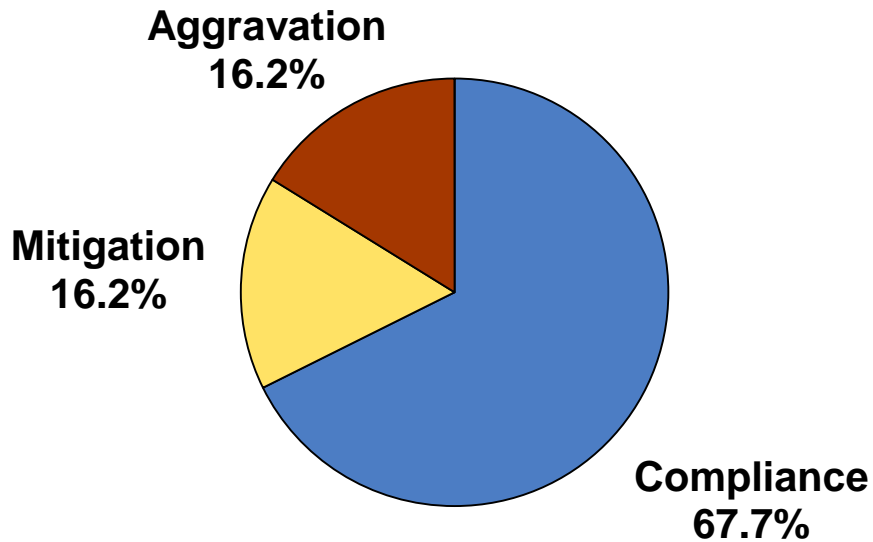


**Compliance with the current guidelines for this offense is below the overall compliance rate and, when judges depart, they are significantly more likely to sentence above the guidelines than below.**



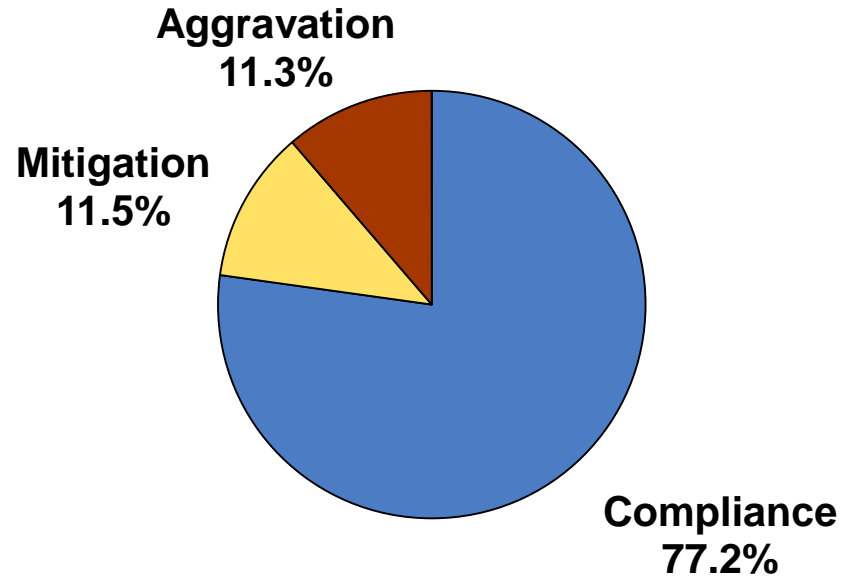
# Compliance with Guidelines for Burglary Offenses (§ 18.2-89 through § 18.2-93) FY2013-FY2017

— **Burglary of Dwelling** —



**Number of Sentencing  
Events = 4,702**

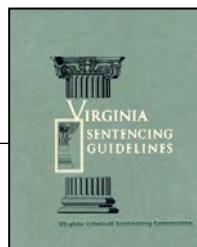
— **Burglary of Other Structure** —



**Number of Sentencing  
Events = 2,135**

# Possible Topics for Guidelines Revisions Burglary Offenses

- **Staff could attempt to examine the importance of:**
  - **Time of day of the offense**
  - **Whether a person was present in the structure at the time of the offense**
  - **Victim injury**
  - **Other factors?**
  
- **This analysis would require a special study, as additional case details would need to be collected.**



# Possess Methamphetamine Precursors

## § 18.2-248(J)

Enacted by the  
2005 General Assembly

### § 18.2-248(J)

Except as authorized in the Drug Control Act (§ 54.1-3400 et seq.), any person who possesses any two or more different substances listed below with the intent to manufacture methamphetamine, methcathinone, or amphetamine is guilty of a **Class 6 felony**:

Liquified ammonia gas, ammonium nitrate, ether, hypophosphorus acid solutions, hypophosphite salts, hydrochloric acid, iodine crystals or tincture of iodine, phenylacetone, phenylacetic acid, red phosphorus, methylamine, methyl formamide, lithium, sodium metal, sulfuric acid, sodium hydroxide, potassium dichromate, sodium dichromate, potassium permanganate, chromium trioxide, methylbenzene, methamphetamine precursor drugs, trichloroethane, or 2-propanone.

# Possess Methamphetamine Precursors § 18.2-248(J)

**FY2013 – FY2017**  
**Number of Sentencing Events = 213**

<b>Disposition</b>	<b>Percent</b>	<b>Median Sentence</b>
<b>No Incarceration</b>	<b>39.9%</b>	<b>NA</b>
<b>Incarceration Up to 6 Months</b>	<b>32.4%</b>	<b>4 Months</b>
<b>Incarceration More than 6 Months</b>	<b>27.7%</b>	<b>1 Year</b>

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

Manufacture, Sell, etc., 28g-226g of Methamphetamine  
§ 18.2-248.03

Enacted by the  
2008 General Assembly

§ 18.2-248.03

- A. Notwithstanding any other provision of law, any person who manufactures, sells, gives, distributes, or possesses with intent to manufacture, sell, give, or distribute 28 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers is guilty of a felony punishable by a fine of not more than \$500,000 and **imprisonment for not less than five nor more than 40 years, three years of which shall be a mandatory minimum term of imprisonment** to be served consecutively with any other sentence.
- B. Notwithstanding any other provision of law, any person who manufactures, sells, gives, distributes, or possesses with intent to manufacture, sell, give, or distribute 227 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers is guilty of a felony punishable by a fine of not more than \$1 million and

Manufacture, Sell, etc., 28g-226g of Methamphetamine  
§ 18.2-248.03

**FY2013 – FY2017**  
**Number of Sentencing Events = 163**

<b>Disposition</b>	<b>Percent</b>	<b>Median Sentence</b>
<b>No Incarceration</b>	<b>1.8%</b>	<b>NA</b>
<b>Incarceration Up to 6 Months</b>	<b>0.0%</b>	<b>NA</b>
<b>Incarceration More than 6 Months</b>	<b>98.2%</b>	<b>3 Years</b>

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

# Delivery of Narcotics/Marijuana to Prisoner

## § 18.2-474.1

2013 General Assembly  
expanded to include  
persons committed to DJJ

### § 18.2-474.1.

Notwithstanding the provisions of § 18.2-474, any person who shall willfully in any manner deliver, attempt to deliver, or conspire with another to deliver to any prisoner confined under authority of the Commonwealth of Virginia, or of any political subdivision thereof, or to any person committed to the Department of Juvenile Justice in any juvenile correctional center, any drug which is a controlled substance regulated by the Drug Control Act in Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1 or marijuana is guilty of a **Class 5 felony**. Any person who shall willfully in any manner so deliver or attempt to deliver or conspire to deliver to any such prisoner or confined or committed person, firearms, ammunitions, or explosives of any nature is guilty of a Class 3 felony.

Nothing herein contained shall be construed to repeal or amend § 18.2-473.

# Delivery of Narcotics/Marijuana to Prisoner

## § 18.2-474.1

**FY2013 – FY2017**  
**Number of Sentencing Events = 208**

<b>Disposition</b>	<b>Percent</b>	<b>Median Sentence</b>
<b>No Incarceration</b>	<b>26.0%</b>	<b>NA</b>
<b>Incarceration Up to 6 Months</b>	<b>33.7%</b>	<b>6 Months</b>
<b>Incarceration More than 6 Months</b>	<b>40.4%</b>	<b>1 Year</b>

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



## DUI after Prior Felony DUI Conviction § 18.2-266 / § 18.2-270(C,2)

### **§ 18.2-270(C,2)**

**A person who has been convicted of §§ 18.2-36.1, 18.2-36.2, 18.2-51.4, 18.2-51.5 or a felony violation of § 18.2-266 shall upon conviction of a subsequent violation of § 18.2-266 be guilty of a **Class 6 felony**. The punishment of any person convicted of such a subsequent violation of § 18.2-266 shall include a mandatory minimum term of imprisonment of one year and a mandatory minimum fine of \$1,000.**

**Added by the  
2013 General Assembly**

# DUI after Prior Felony DUI Conviction

## § 18.2-266 / § 18.2-270(C,2)

**FY2014 – FY2017**  
**Number of Sentencing Events = 174**

<b>Disposition</b>	<b>Percent</b>	<b>Median Sentence</b>
<b>No Incarceration</b>	<b>1.7%</b>	<b>NA</b>
<b>Incarceration Up to 6 Months</b>	<b>8.6%</b>	<b>3 Months</b>
<b>Incarceration More than 6 Months</b>	<b>89.7%</b>	<b>1 Year</b>

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

# Possible Topics for Guidelines Revisions

- **Approval for staff to proceed with proposed analyses?**
- **Suggestions from Commission members for other topics?**

