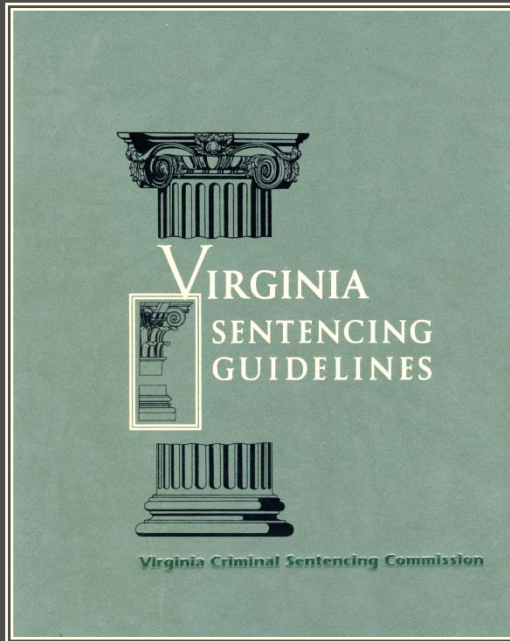




VIRGINIA CRIMINAL SENTENCING COMMISSION

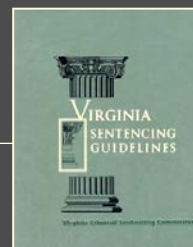


Possible Recommendations for Guidelines Revisions

November 6, 2019

Modifications to the Sentencing Guidelines

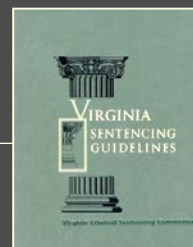
- **The Commission closely monitors the sentencing guidelines system and, each year, deliberates upon possible modifications to the guidelines.**
- **Under § 17.1-806 of the *Code of Virginia*, any modifications adopted by the Commission must be presented in its annual report, due to the General Assembly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

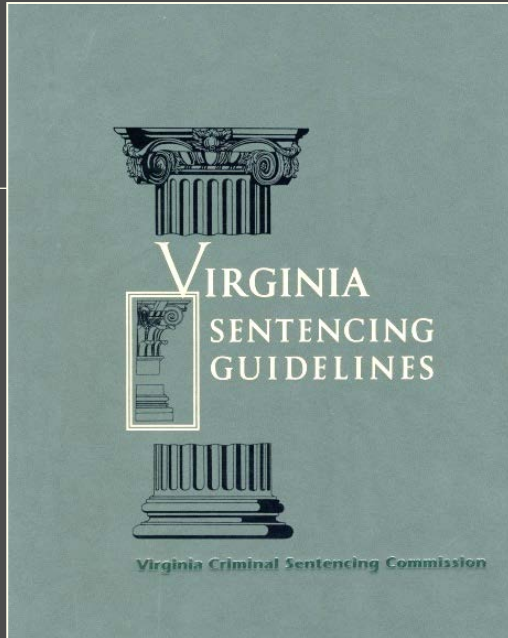


Modifications to the Sentencing Guidelines

- **Proposals reflect the best fit for the historical data.**
- **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.**

Procedure: Is the preference to vote on each proposal separately?





Proposed Recommendation 1:

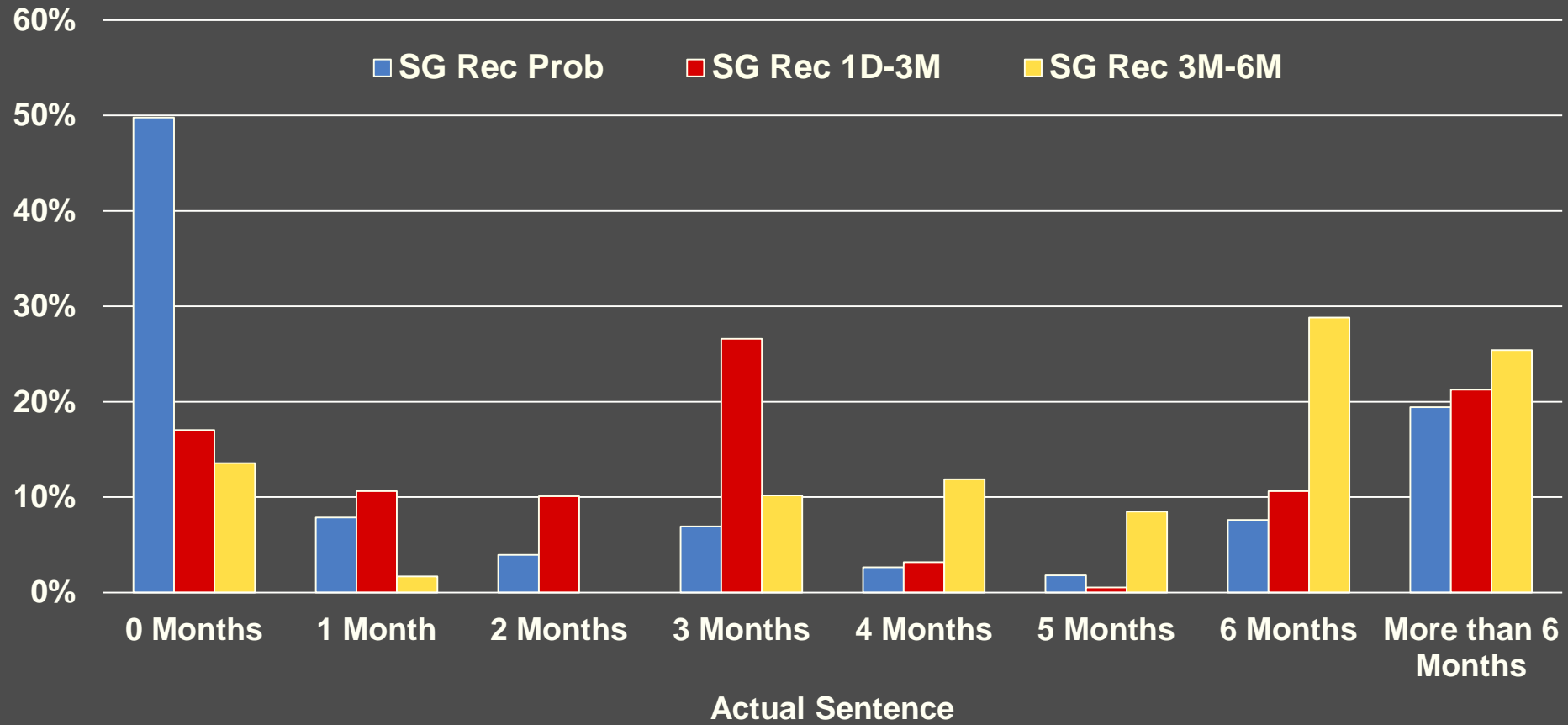
Simplify the Section B Recommendation Table for the Burglary-Dwelling and Burglary-Other Guidelines

Analysis of Burglary Sentencing Data

- **Analysis of data from the Burglary Guidelines Study suggests that the guidelines need to be refined to better reflect current judicial sentencing practices.**
- **Section B recommendations of 1 Day - 3 Months and 3 - 6 Months are narrower than current sentencing data would suggest.**
- **Sentencing models perform better when the Section B recommendation is broadly defined as**
 - **Probation/No Incarceration, or**
 - **Incarceration of 1 Day - 6 Months**

Section B Recommendation Tables for Fraud, Larceny, Traffic, Weapon, and Miscellaneous Guidelines are already structured this way.

Analysis of Burglary Sentencing Data



Current Section B Recommendation Tables

Burglary/Dwelling ❖ Section B



Recommendation Table

Score	Guideline Sentence
0 - 6	Probation/No Incarceration
7 - 8	Incarceration 1 Day up to 3 Months
9+	Incarceration 3 to 6 Months

Burglary/Other ❖ Section B



Recommendation Table

Score	Guideline Sentence
0 - 6	Probation/No Incarceration
7 - 8	Incarceration 1 Day up to 3 Months
9+	Incarceration 3 to 6 Months

PROPOSED Section B Recommendation Tables

Burglary/Dwelling ❖ **Section B**

❖

Recommendation Table

Score	Guideline Sentence
0 - 6	Probation/No Incarceration
7+	Incarceration 1 Day up to 6 Months

Burglary/Other ❖ **Section B**

❖

Recommendation Table

Score	Guideline Sentence
0 - 6	Probation/No Incarceration
7+	Incarceration 1 Day up to 6 Months

Compliance with Burglary Guidelines FY2014-FY2018

Burglary-Dwelling Guidelines

	Current	As Proposed
Compliance	69.6%	70.2%
Mitigation	14.2%	14.2%
Aggravation	16.2%	15.6%

Burglary-Other Structure Guidelines

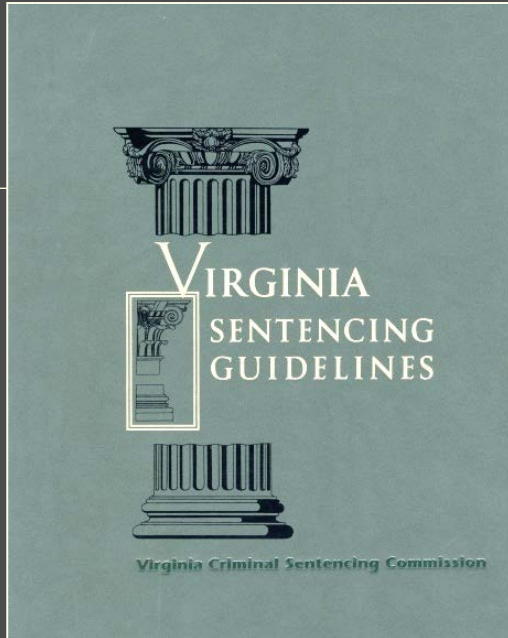
	Current	As Proposed
Compliance	78.2%	79.0%
Mitigation	11.8%	11.7%
Aggravation	10.0%	9.4%

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

Proposed Recommendation 1

Simplify the Section B Recommendation
Table for the Burglary-Dwelling and
Burglary-Other Structure Guidelines
as proposed



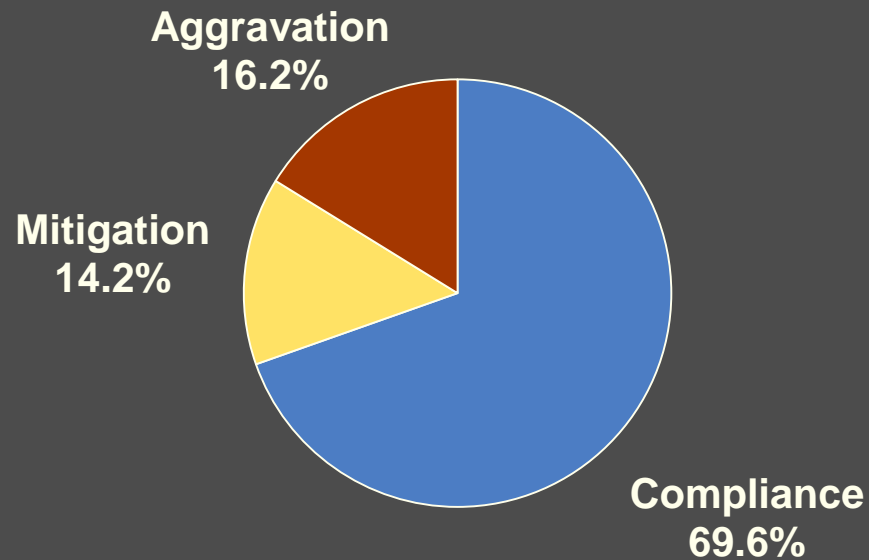


Proposed Recommendation 2:

Revise the Burglary-Dwelling Guidelines to better reflect current sentencing practices

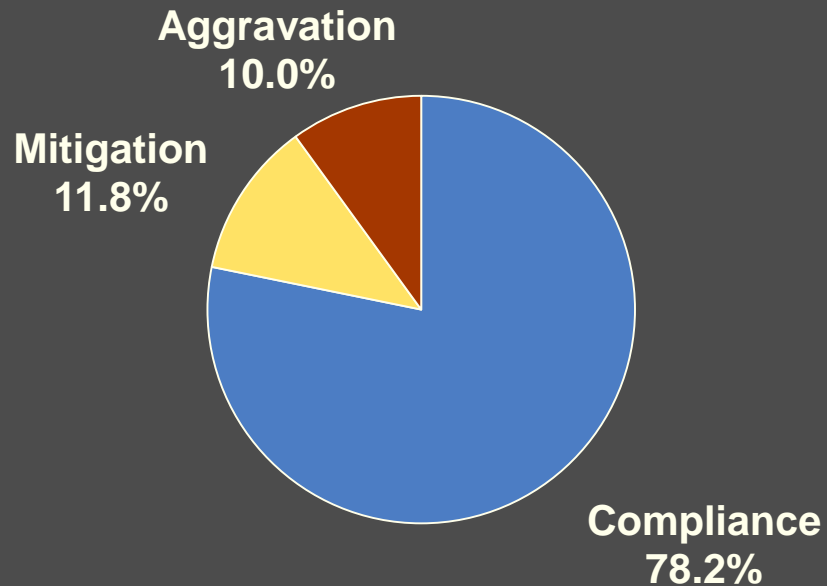
Compliance with Guidelines for
Burglary Offenses (§ 18.2-89 through § 18.2-94)
FY2014-FY2018

Burglary of Dwelling



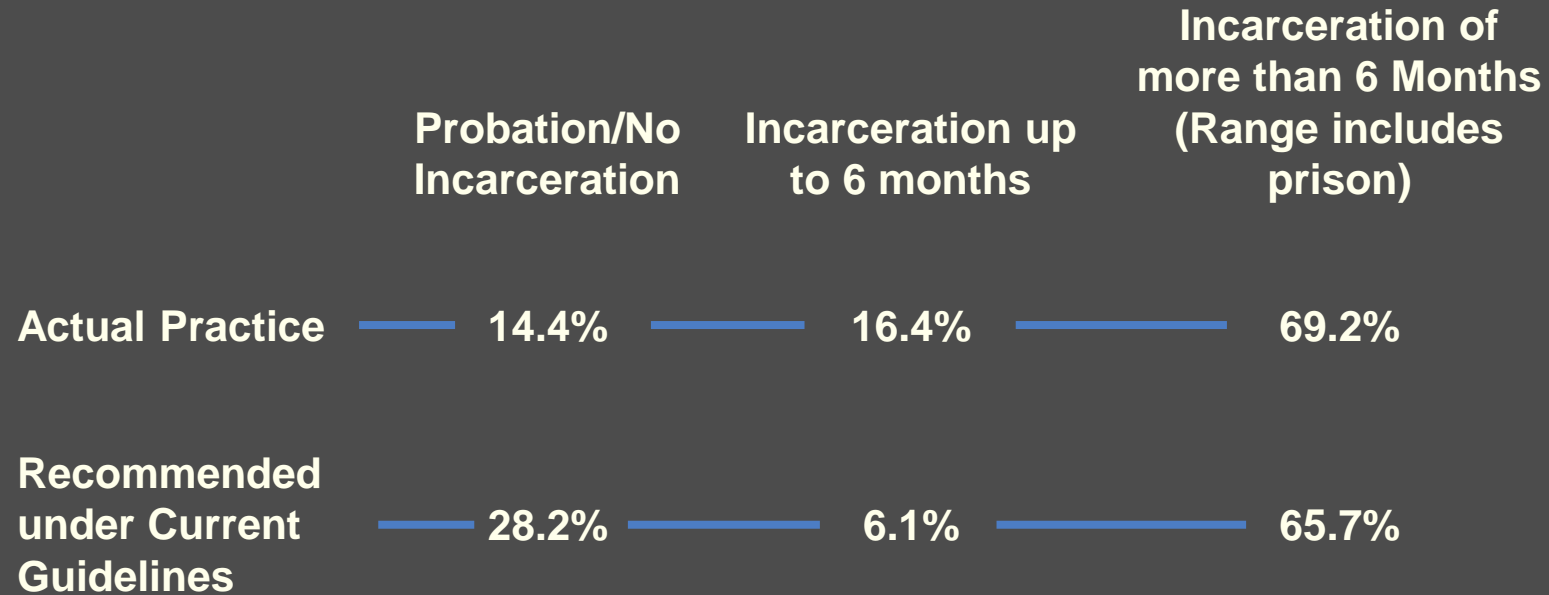
Number of Sentencing
Events = 4,131

Burglary - Other



Number of Sentencing
Events = 1,931

Recommended and Actual Dispositions in Burglary-Dwelling Sentencing Events FY2014-FY2018



Current guidelines are not closely aligned with actual dispositions in these cases

Compliance with Guidelines for Burglary-Dwelling Offenses FY2014-FY2018

	Guidelines Compliance		
	Compliance	Mitigation	Aggravation
Recommended for Probation or Incarceration up to 6 Months	61.4%	1.8%	36.9%
Recommended for Incarceration of more than 6 Months	73.9%	20.7%	5.4%

When the guidelines recommend probation or short incarceration, departures are more likely to be above the recommended range.

When the guidelines recommend longer incarceration (Section C), departures are more likely to be below the recommended range.

No changes proposed for Section A

Burglary/Dwelling Section A

Offender Name: _____

1 Primary Offense _____

A. Occupied dwelling with intent to commit a misdemeanor without deadly weapon (1 count)1
 B. Dwelling with intent to commit larceny, etc. without deadly weapon; Dwelling at night without deadly weapon
 1 count3
 2 counts5
 3 counts7
 C. Dwelling at night with intent to commit larceny with deadly weapon (1 count)7
 D. Dwelling with intent to commit larceny, etc. with deadly weapon (1 count)5
 E. Occupied dwelling with intent to commit misdemeanor with deadly weapon (1 count)9
 F. Dwelling with intent to commit murder, rape, robbery or arson with or without a deadly weapon (1 count)14

Score

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

Years: 5 - 141
 15 - 272
 28 - 433
 44 or more4

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

Years: Less than 50
 5 - 141
 15 - 272
 28 - 433
 44 or more4

4 Conviction in Current Event Requiring Mandatory Minimum Term (6 mos or more) If YES, add 13 →

5 Weapon Used _____

None0
 Simulated weapon or other than listed below2
 Knife4
 Firearm8

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

Years: Less than 20 20 - 313
 2 - 81 32 - 414
 9 - 192 42 or more5

7 Prior Adult Felony Property Convictions _____

Number: 11
 of Counts 2 - 52
 6 - 103
 11 or more4

8 Prior Juvenile Property Adjudications _____

Number: 1 - 21
 of Counts 3 - 112
 12 or more3

9 Prior Misdemeanor Convictions/Adjudications (Excludes Traffic) _____

Number: 11
 of Counts 2 - 42
 5 - 63
 7 - 94
 10 or more5

	Did Not Receive Section C Disposition	Received Section C Disposition
Not Recommended for Section C	80.0%	20.0%
Recommended for Section C	5.1%	94.9%

Section B - Proposed

Burglary/Dwelling ❖ Section B

Offender Name: _____

❖ **Primary Offense** _____

A. Dwelling with intent to commit larceny, etc. without deadly weapon (all counts)		Score ▼ <table border="1" style="width: 40px; height: 40px; text-align: center; border-collapse: collapse;"> <tr><td style="font-size: 24px;">0</td><td style="width: 20px;"></td></tr> </table>	0	
0				
1 count.....	3			
2 counts or more.....	5			
B. Dwelling at night with intent to commit larceny, etc. without deadly weapon (all counts)				
1 count.....	3			
2 counts or more.....	5			
C. Other than listed above (all counts).....		4		

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

Years:	Less than 5.....	0	▼ <table border="1" style="width: 40px; height: 40px; text-align: center; border-collapse: collapse;"> <tr><td style="font-size: 24px;">0</td><td style="width: 20px;"></td></tr> </table>	0	
0					
	5 or more.....	2			

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

Years:	1 - 32.....	1	▼ <table border="1" style="width: 40px; height: 40px; text-align: center; border-collapse: collapse;"> <tr><td style="font-size: 24px;">0</td><td style="width: 20px;"></td></tr> </table>	0	
0					
	33 or more.....	2			

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

Number:	1 - 2.....	1	▼ <table border="1" style="width: 40px; height: 40px; text-align: center; border-collapse: collapse;"> <tr><td style="font-size: 24px;">0</td><td style="width: 20px;"></td></tr> </table>	0	
0					
of Counts	3 - 5.....	2			
	6 - 8.....	3			
	9 or more.....	4			

❖ **Prior Juvenile Record** _____ If YES, add 4 →

0	
---	--

❖ **Legally Restrained at Time of Offense** _____ If YES, add 4 →

0	
---	--

❖ **Firearm Removed from Property During Burglary** _____ If YES, add 1 →

0	
---	--

If total is 7 or more, a jail term is recommended.

Section B - Proposed Changes

Burglary/Dwelling ❖ **Section B**

Offender Name: _____

◆ **Primary Offense** _____

- A. Dwelling with intent to commit larceny, etc. without deadly weapon (all counts).....1
- B. Dwelling at night with intent to commit larceny, etc. without deadly weapon (all counts).....1
- C. Other than listed above (all counts).....4

Score

0	
---	--

Increase points for Primary Offense for most offenders



- A. Dwelling with intent to commit larceny, etc. without deadly weapon (all counts)
 - 1 count.....3
 - 2 counts or more.....5
- B. Dwelling at night with intent to commit larceny, etc. without deadly weapon (all counts)
 - 1 count.....3
 - 2 counts or more.....5

Create NEW FACTOR to account for Additional Offenses



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

- Years: Less than 5.....0
- 5 or more.....2

0	
---	--

Increase points for Legally Restrained



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

If YES, add ~~3~~ **4**

0	
---	--

Create NEW FACTOR to account for stolen firearms (based on supplemental data collection)



◆ **Firearm Removed from Property During Burglary** _____

If YES, add 1 →

0	
---	--

No changes proposed for Section C

Burglary/Dwelling Section C

Offender Name: _____

1 Primary Offense _____

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

Dwelling Without Weapon			
A. Occupied dwelling with intent to commit a misdemeanor without deadly weapon (1 count)	48	32	16
B. Dwelling with intent to commit murder, rape, robbery or arson without deadly weapon			
Completed: 1 count	90	60	30
Attempted/conspired: 1 count	(60)	(30)	(15)
C. Dwelling with intent to commit larceny, etc. without deadly weapon			
Completed: 1 count	51	34	17
Attempted/conspired: 1 count	(36)	(18)	(9)
D. Dwelling at night with intent to commit larceny etc. without deadly weapon			
Completed: 1 count	54	36	18
Attempted/conspired: 1 count	(36)	(18)	(9)
Dwelling With Weapon			
E. Occupied dwelling with intent to commit misdemeanor with deadly weapon			
Completed: 1 count	114	76	38
Attempted/conspired: 1 count	(76)	(38)	(19)
F. Dwelling with intent to commit larceny, etc. with deadly weapon			
Completed: 1 count	90	60	30
Attempted/conspired: 1 count	(60)	(30)	(15)
G. Dwelling with intent to commit murder, rape, robbery or arson with deadly weapon; or Dwelling at night with intent to commit larceny, etc. with deadly weapon			
Completed: 1 count	168	112	56
Completed: 2 counts	456	304	152
Attempted/conspired: 1 count	(112)	(56)	(28)
Attempted/conspired: 2 counts	(240)	(152)	(76)
Attempted/conspired: 3 counts	(304)	(152)	(76)

Score

--	--	--

2 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	3
	Life	6

--	--	--

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

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

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4 Weapon Used _____

Other than listed below	0
Knife or firearm	12

0		
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5 Physical/Serious or Life Threatening Victim Injury _____ If YES, add 10

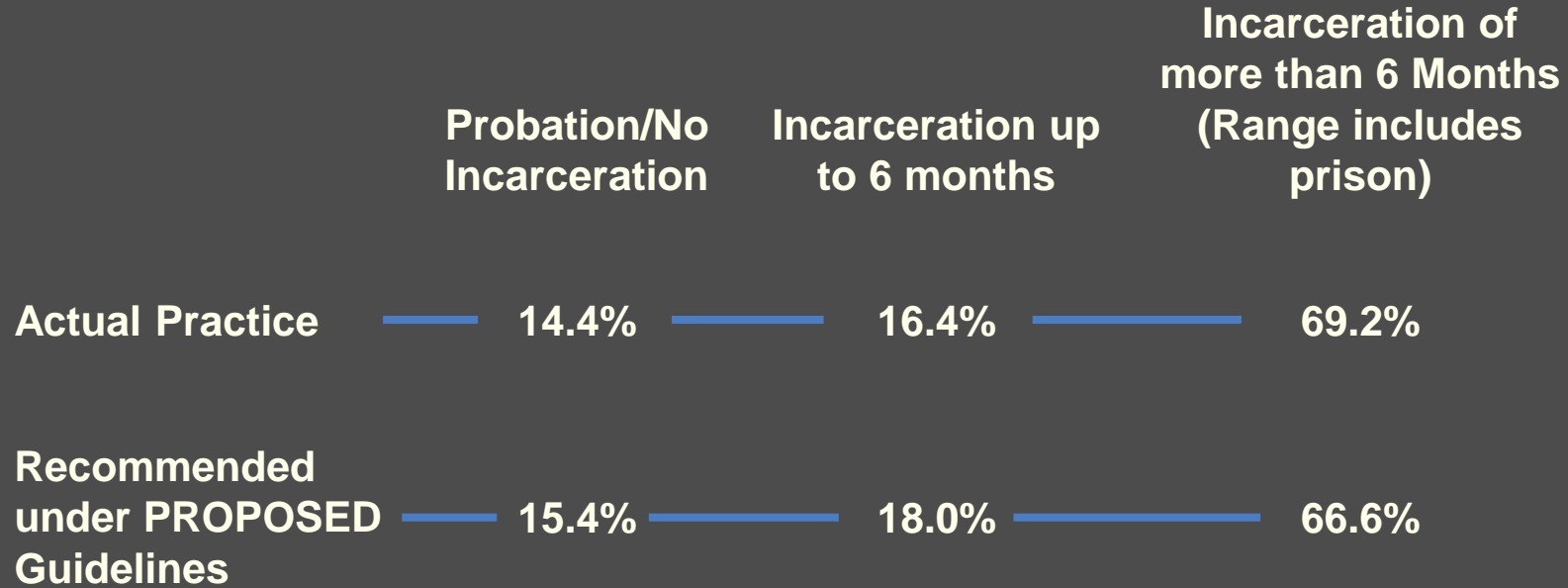
0		
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6 Prior Convictions/Adjudications Assign points to the 5 most recent and serious prior record events and total the points

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

0		
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Proposed and Actual Dispositions in Burglary-Dwelling Sentencing Events FY2014-FY2018



Proposed guidelines are more closely aligned with actual dispositions in these cases

Note: Proposed guidelines are based on data compiled for the 2019 Burglary Guidelines Study, which utilized a sample of cases from the full FY2014-FY2018 dataset so that supplemental case details could be collected and analyzed.

Compliance with Guidelines for Burglary-Dwelling Sentencing Events FY2014-FY2018

Dispositional Compliance and Departure Rates

	Current	As Proposed
Compliance	78.8%	80.8%
Mitigation	4.3%	8.0%
Aggravation	16.9%	11.3%

Dispositional compliance is the degree to which judges agree with the type of sanction recommended by the guidelines.

Overall Compliance and Departure Rates

	Current	As Proposed
Compliance	69.2%	69.1%
Mitigation	15.5%	19.1%
Aggravation	15.3%	11.8%

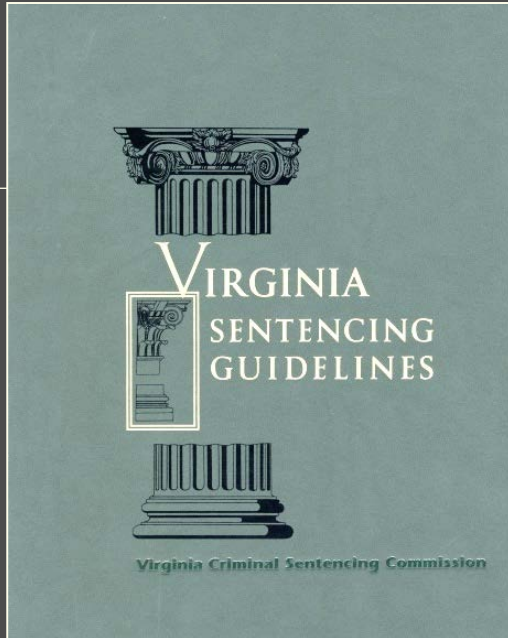
Compliance and departure rates shown in this table assume that the Section B Recommendation Table is simplified to recommend Probation or Incarceration 1 Day to 6 Months (see Recommendation 1).

Note: The above analysis is based on data compiled for the 2019 Burglary Guidelines Study, which utilized a sample of cases from the full FY2014-FY2018 dataset so that supplemental case details could be collected and analyzed.

Proposed Recommendation 2

Revise the Burglary-Dwelling Guidelines to better reflect current sentencing practices in regards to dispositional outcomes

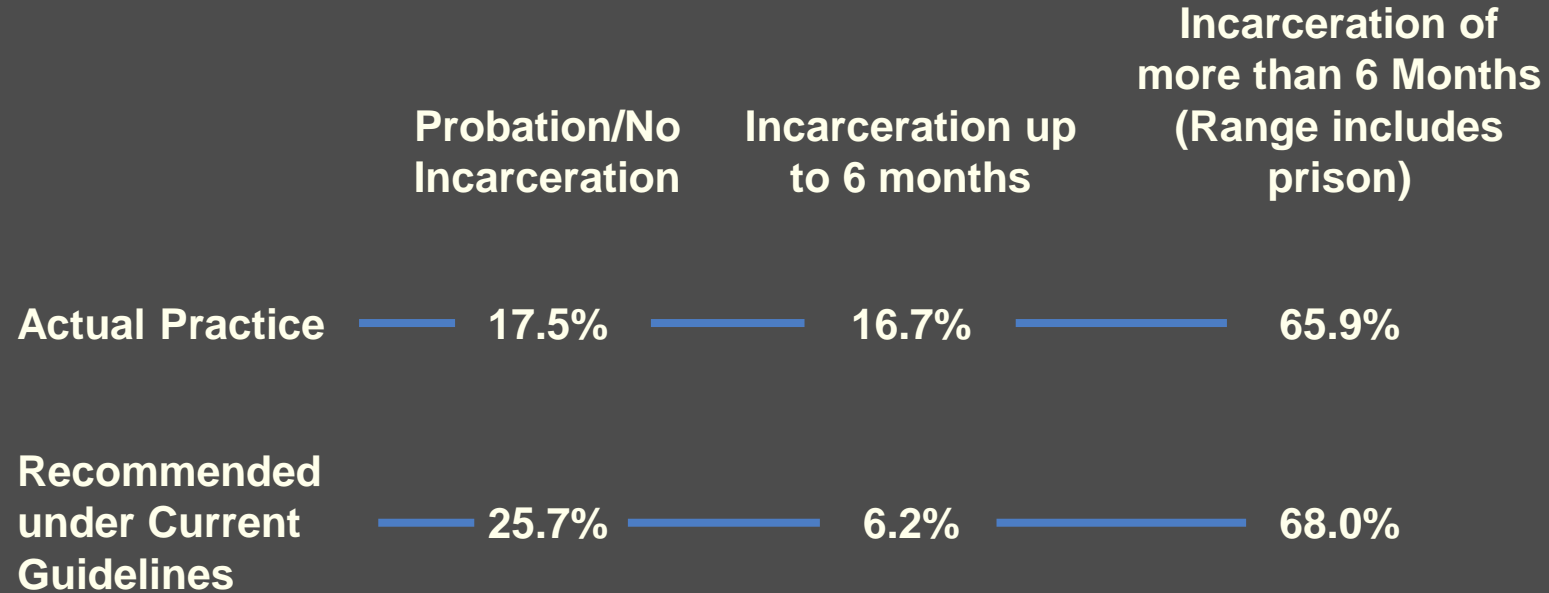




Proposed Recommendation 3:

Revise the Burglary-Other Guidelines to better reflect current sentencing practices

Recommended and Actual Dispositions in Burglary-Other Sentencing Events FY2014-FY2018



Current guidelines are not closely aligned with actual dispositions in these cases

Compliance with Guidelines for Burglary-Other Offenses FY2014-FY2018

	Guidelines Compliance		
	Compliance	Mitigation	Aggravation
Recommended for Probation or Incarceration up to 6 Months	74.1%	2.1%	23.8%
Recommended for Incarceration of more than 6 Months	80.1%	16.3%	3.6%

When the guidelines recommend probation or short incarceration, departures are more likely to be above the recommended range.

When the guidelines recommend longer incarceration (Section C), departures are more likely to be below the recommended range.

No changes proposed for Section A

Burglary/Other Section A

Offender Name: _____

1 **Primary Offense** _____

A. Possession of burglarious tools (1 count) 1

B. Other structure with intent to commit larceny, etc. with or without deadly weapon

 1 count 3

 2 counts 5

 3 counts 7

C. Burglary of bank with deadly weapon (1 count) 9

D. Other structure with intent to commit murder, rape, robbery or arson with or without a deadly weapon (1 count) 14

Score

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

Years: 5 - 14 1

 15 - 27 2

 28 - 43 3

 44 or more 4

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

Years: Less than 5 0

 5 - 14 1

 15 - 27 2

 28 - 43 3

 44 or more 4

4 **Conviction in Current Event Requiring Mandatory Minimum Term (6 mos or more)- If YES, add 13** →

5 **Weapon Used** _____

None 0

Simulated weapon or other than listed below 2

Knife 4

Firearm 8

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

Years: Less than 2 0 20 - 31 3

 2 - 8 1 32 - 41 4

 9 - 19 2 42 or more 5

7 **Prior Adult Felony Property Convictions** _____

Number of Counts: 1 1

 2 - 5 2

 6 - 10 3

 11 or more 4

8 **Prior Juvenile Property Adjudications** _____

Number of Counts: 1 - 2 1

 3 - 11 2

 12 or more 3

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

Number of Counts: 1 1

 2 - 4 2

 5 - 6 3

 7 - 9 4

 10 or more 5

	Did Not Receive Section C Disposition	Received Section C Disposition
Not Recommended for Section C	90.4%	9.6%
Recommended for Section C	7.7%	92.3%

Section B - Proposed Changes

Increase points for Primary Offense for most offenders

Create NEW FACTOR to account for Additional Offenses

Increase points for Legally Restrained

Burglary/Other

Section B

Offender Name: _____

◆ **Primary Offense** _____

- A. Other structure with intent to commit larceny, etc. (all counts).....1
- B. Possession of burglarious tools (all counts).....4
- C. Other than listed above (all counts).....4

Score

▼

0	
---	--

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

- Years: Less than 5.....0
- 5 or more.....1

0	
---	--

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

- Years: 1 - 32.....1
- 33 or more.....2

0	
---	--

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

- Number: 1 - 2.....1
- of Counts 3 - 5.....2
- 6 - 8.....3
- 9 or more.....4

0	
---	--

◆ **Prior Juvenile Record** _____ If YES, add 4 →

0	
---	--

◆ **Legally Restrained at Time of Offense** _____ If YES, add 3 →

4

0	
---	--

No changes proposed for Section C

Burglary/Other Section C

Offender Name: _____

_____ Prior Record Classification _____

1 Primary Offense _____ Category I Category II Other
(scores for attempted/conspired offenses are in parentheses)

Other Structure Without Weapon

- A. Other structure with intent to commit murder, rape, robbery or arson without deadly weapon
 Attempted, conspired or completed: 1 count..... 60..... 30..... 15
- B. Other structure with intent to commit larceny, etc. without deadly weapon
 Attempted, conspired or completed: 1 count..... 36..... 18..... 9

Other Structure With Weapon

- C. Bank with deadly weapon
 Completed: 1 count..... 168..... 112..... 56
 2 counts..... 456..... 304..... 152
 Attempted/conspired: 1 count..... (112)..... (56)..... (28)
 2 counts..... (240)..... (152)..... (76)
 3 counts..... (304)..... (152)..... (76)
- D. Other structure with intent to commit murder, rape, robbery or arson with deadly weapon
 Completed: 1 count..... 114..... 76..... 38
 Attempted/conspired: 1 count..... (76)..... (38)..... (19)
- E. Other structure with intent to commit larceny, etc. with deadly weapon
 Completed: 1 count..... 54..... 36..... 18
 Attempted/conspired: 1 count..... (36)..... (18)..... (9)

Miscellaneous

- F. Possession of burglarious tools (1 count)..... 32..... 16..... 8

Score

--	--	--

2 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..... 3
- Life..... 6

--	--	--

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

- Maximum Penalty: Less than 5..... 0 30..... 4
- (years) 5, 10..... 1 40 or more..... 6
- 20..... 3

--	--	--

4 Weapon Used _____

- Other than listed below..... 0
- Knife or firearm..... 12

0		
---	--	--

5 Physical/Serious or Life Threatening Victim Injury _____ If YES, add 10 →

0		
---	--	--

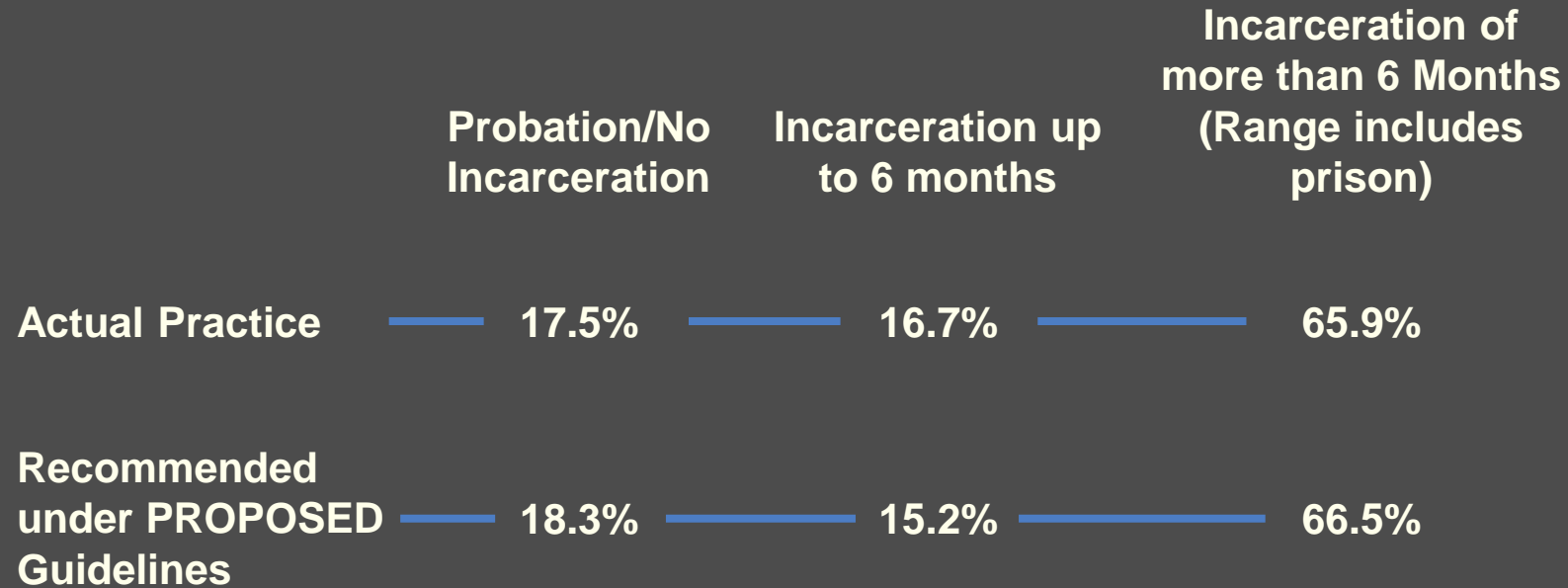
6 Prior Convictions/Adjudications Assign points to the 5 most recent and serious prior record events and total the points

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

0		
---	--	--

7 Prior Felony Burglary Convictions/Adjudications _____

Recommended and Actual Dispositions in Burglary-Other Sentencing Events FY2014-FY2018



Proposed guidelines are more closely aligned with actual dispositions in these cases

Note: Proposed guidelines are based on data compiled for the 2019 Burglary Guidelines Study, which utilized a sample of cases from the full FY2014-FY2018 dataset so that supplemental case details could be collected and analyzed.

Compliance with Guidelines for Burglary-Other Sentencing Events FY2014-FY2018

Dispositional Compliance and Departure Rates

	Current	As Proposed
Compliance	82.0%	82.5%
Mitigation	5.5%	8.7%
Aggravation	12.5%	8.8%

Dispositional compliance is the degree to which judges agree with the type of sanction recommended by the guidelines.

Overall Compliance and Departure Rates

	Current	As Proposed
Compliance	78.9%	78.0%
Mitigation	10.2%	13.4%
Aggravation	10.9%	8.6%

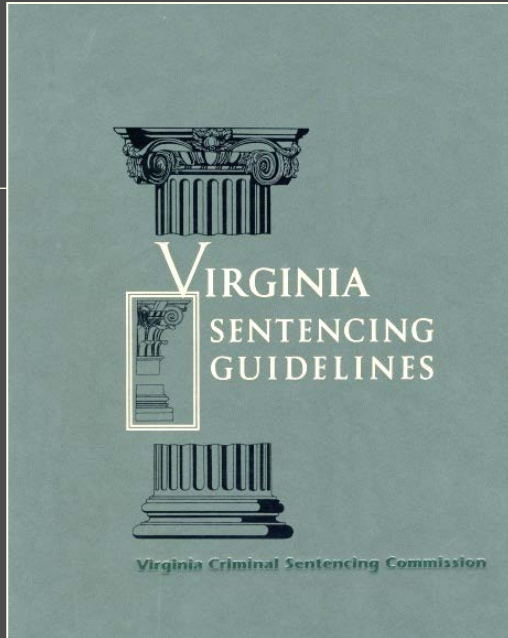
Compliance and departure rates shown in this table assume that the Section B Recommendation Table is simplified to recommend Probation or Incarceration 1 Day to 6 Months (see Recommendation 1).

Note: The above analysis is based on data compiled for the 2019 Burglary Guidelines Study, which utilized a sample of cases from the full FY2014-FY2018 dataset so that supplemental case details could be collected and analyzed.

Proposed Recommendation 3

Revise the Burglary-Other Guidelines to better reflect current sentencing practices in regards to dispositional outcomes





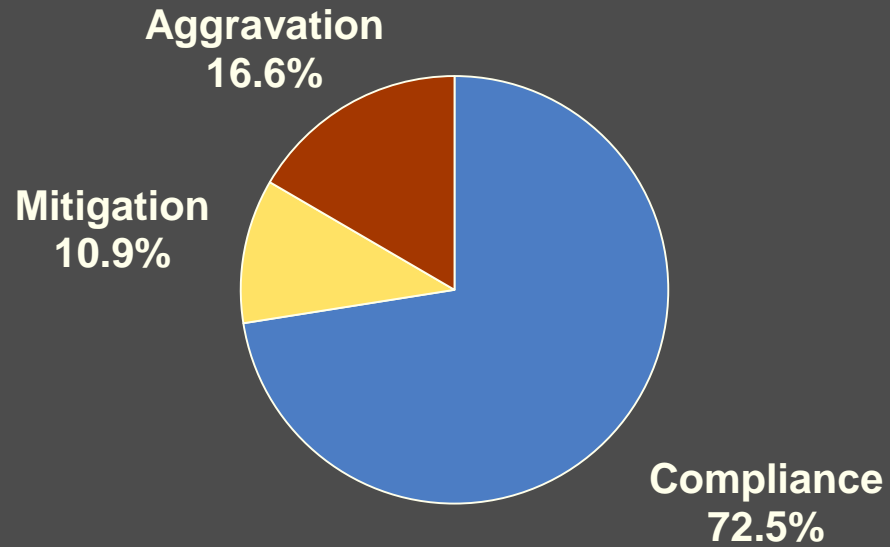
Proposed Recommendation 4:

Revise the Kidnapping Guidelines to better reflect current sentencing practices

Kidnapping Guidelines

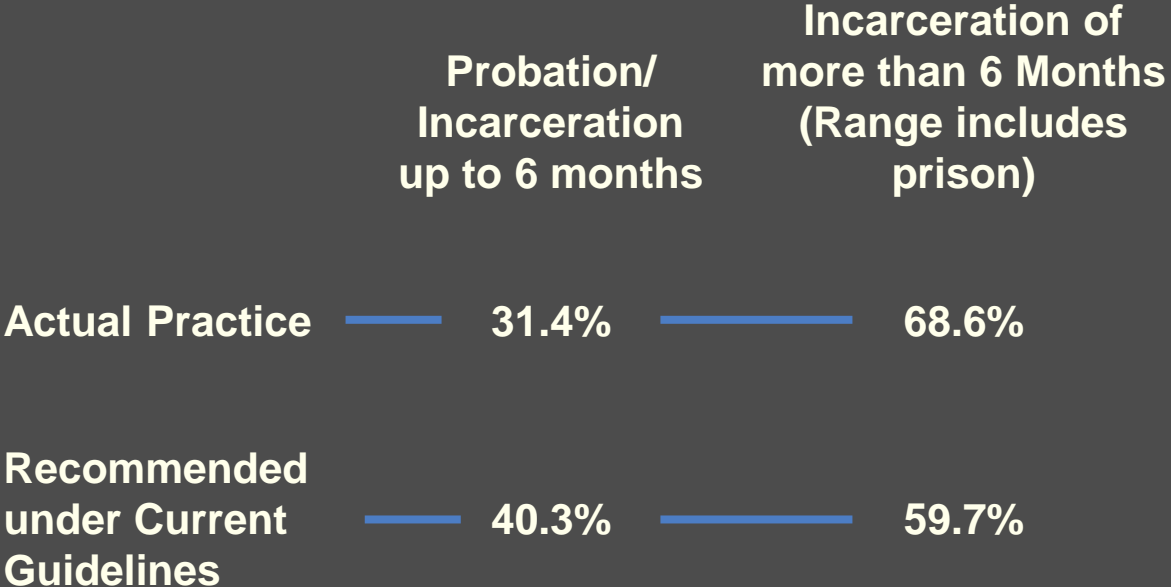
- **Currently, the Kidnapping guidelines cover two Class 5 felony offenses:**
 - **Abduction by force without legal justification (§ 18.2-47(A)), and**
 - **Assist or threaten abduction (§ 18.2-49)**
- **Abduction by force without legal justification (§ 18.2-47(A)) accounted for nearly 82% of the kidnapping sentencing events during CY2014-CY2018.**

Compliance with Guidelines for
Kidnapping Class 5 Felony Offenses (§ 18.2-47(A) & § 18.2-49)
CY2014-CY2018



Number of Sentencing
Events = 494

Recommended and Actual Dispositions for Kidnapping Class 5 Felony Offenses (§ 18.2-47(A) & § 18.2-49) CY2014-CY2018



Current guidelines are not closely aligned with actual dispositions in these cases

Note: Worksheets with scoring errors were excluded from the analysis.
Source: Sentencing Guidelines Data System CY14-CY18

Compliance with Guidelines for
Kidnapping Class 5 Felony Offenses (§ 18.2-47(A) & § 18.2-49)
CY2014-CY2018

Offenders Recommended for Probation or
Incarceration up to 6 Months

	Guidelines Compliance		
	Compliance	Mitigation	Aggravation
No Additional Offenses	75.9%	0.0%	24.1%
With Additional Offenses	67.5%	0.0%	32.5%



Number of Sentencing
Events = 199

Kidnapping Class 5 Felony Offenses
 (§ 18.2-47(A) & § 18.2-49)
 CY2014-CY2018

**Offenders Recommended for Probation or
 Incarceration up to 6 Months**

Type of Additional Offense	Number
Assault	95
Protective Order Violation	19
Vandalism	15
Sex Offense	10
Family	5
Trespassing	3

Each sentencing event
 may involve multiple
 additional offenses.

Number of Sentencing
 Events = 120

Section A - Proposed

Kidnapping Section A

Offender Name: _____

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

- A. Felony kidnapping by parent (1 count) 1
- B. Abduction by force without legal justification
 - Completed: 1 count 4
 - Attempted or conspired: 1 count (3)
- C. Assisting or threatening to abduct
 - Completed: 1 count 4
 - Attempted or conspired: 1 count (3)
- D. Abduction with intent to defile
 - Completed: 1 count 5
 - Attempted or conspired: 1 count (4)
- E. Extortion, abduction with intent to gain pecuniary benefit
 - Completed: 1 count 5
 - Attempted or conspired: 1 count (4)
- F. Abduct child under age 16
 - Completed: 1 count 7
 - Attempted or conspired: 1 count (6)

Score

▼

0	
---	--

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

- Years: Less than 21 0
- 21 - 37 1
- 38 or more 2

▼

0	
---	--

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

- Years: Less than 21 0
- 21 - 37 1
- 38 or more 2

▼

0	
---	--

4 Type of Additional Offense _____

Any Additional offense has a prefix of "PRT", "SEX", "RAP", or "FAM"

Primary offense:

B or C: Abduction by force without legal justification or Assisting or threatening to abduct
If YES, add 1

Primary offense: All other offenses

Do Not Score

▼

0	
---	--

5 Conviction in Current Event Requiring Mandatory Minimum

Primary offense:

B or C: Abduction by force without legal justification or

Primary offense: All other offenses

If total is 5 or more, Section C is completed.

Section A - Proposed Changes

Create NEW FACTOR to account for certain Types of Additional Offenses

Create NEW FACTOR to account for Convictions Requiring a Mandatory Minimum Term

Create NEW FACTOR to account for Victim Injury

NEW FACTORS will be scored only when the Primary Offense is Abduction by Force without Legal Justification (§ 18.2-47(A)) or Assisting/Threatening to Abduct (§ 18.2-49)

E. Extortion, abduction with intent to gain pecuniary benefit	Completed: 1 count.....	5
	Attempted or conspired: 1 count.....	(4)
F. Abduct child under age 16	Completed: 1 count.....	7
	Attempted or conspired: 1 count.....	(6)

Score

0	
---	--

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

Years: Less than 21.....	0
21 - 37.....	1
38 or more.....	2

0	
---	--

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

Years: Less than 21.....	0
21 - 37.....	1
38 or more.....	2

0	
---	--

4 Type of Additional Offense

Any Additional offense has a prefix of "PRT", "SEX", "RAP", or "FAM"

Primary offense:

B or C: Abduction by force without legal justification or Assisting or threatening to abduct
If YES, add 1

Primary offense: All other offenses

Do Not Score

0	
---	--

5 Conviction in Current Event Requiring Mandatory Minimum Term (6 mos or more)

Primary offense:

B or C: Abduction by force without legal justification or Assisting or threatening to abduct
If YES, add 1

Primary offense: All other offenses

Do Not Score

0	
---	--

6 Victim Injury

Primary offense:

B or C: Abduction by force without legal justification or Assisting or threatening to abduct

Threatened (points included with primary offense).....	0
Emotional.....	1
Physical, Serious Physical, Life Threatening.....	2

Primary offense: All other offenses

Do Not Score

0	
---	--

7 Any Conviction/Sentencing and Adjudication Events

1.....	1
2.....	2
3.....	3
4.....	
5 or more.....	

If total is 5 or more, Section C is completed.

8 Weapon Used or Brandished

If YES, add 1

0	
---	--

Section C - Proposed

Kidnapping Section C

Offender Name: _____

1 Primary Offense _____ Category I Category II Other

— Prior Record Classification —

A. Felony kidnapping by parent (1 count).....	24.....	12.....	6.....
B. Abduction by force without legal justification			
1 count.....	76.....	38.....	19.....
2 counts.....	100.....	50.....	25.....
3 counts.....	116.....	58.....	29.....
C. Assisting or threatening to abduct (1 count).....	24.....	12.....	6.....
D. Extortion, abduction with intent to gain pecuniary benefit			
1 count.....	232.....	116.....	58.....
2 counts.....	256.....	128.....	64.....
3 counts.....	272.....	136.....	68.....
E. Abduction with intent to defile			
1 count.....	296.....	148.....	74.....
2 counts.....	316.....	158.....	79.....
3 counts.....	336.....	168.....	84.....
F. Abduct child under age 16			
1 count.....	476.....	238.....	119.....
2 counts.....	500.....	250.....	125.....
3 counts.....	516.....	258.....	129.....

Score

--	--	--

2 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) Life	5

--	--	--

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

Maximum Penalty: Less than 4.....	0
(years) 4, 5, 10	1
20	2
30	4
40 or more.....	5

--	--	--

4 Type of Additional Offense _____

Any Additional offense has a prefix of "PRT", "SEX", "RAP", or "FAM"

Primary offense:

B or C: Abduction by force without legal justification or
Assisting or threatening to abduct
If YES, add 6

Primary offense: All other offenses

Do Not Score

0	0	
---	---	--

5 Conviction in Current Event Requiring Mandatory Minimum Term (6 mos or more) _____

Primary offense:

Section C - Proposed Changes

Create NEW FACTOR to account for certain Types of Additional Offenses

Create NEW FACTOR to account for Convictions Requiring a Mandatory Minimum Term

Create NEW FACTOR to account for Victim Injury

NEW FACTORS will be scored only when the Primary Offense is Abduction by Force without Legal Justification (§ 18.2-47(A)) or Assisting/Threatening to Abduct (§ 18.2-49)

Maximum Penalty: 5, 10 1
(years) Life 5

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

Maximum Penalty: Less than 4 0
(years) 4, 5, 10 1
20 2
30 4
40 or more 5

4 Type of Additional Offense

Any Additional offense has a prefix of "PRT", "SEX", "RAP", or "FAM"

Primary offense:
B or C: Abduction by force without legal justification or
Assisting or threatening to abduct
If YES, add 6

Primary offense: All other offenses

Do Not Score

0 0

5 Conviction in Current Event Requiring Mandatory Minimum Term (6 mos or more)

Primary offense:
B or C: Abduction by force without legal justification or
Assisting or threatening to abduct
If YES, add 6

Primary offense: All other offenses

Do Not Score

0 0

6 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 1
5 2
10 4
20 7
30 11
40 or more 15

0

7 Weapon Used or Brandished If YES, add 14

0

8 Victim Injury

Primary offense:
B or C: Abduction by force without legal justification or
Assisting or threatening to abduct

Threatened (points included with primary offense) 0
Emotional 2
Physical, Serious Physical, Life Threatening 6

Primary offense: All other offenses

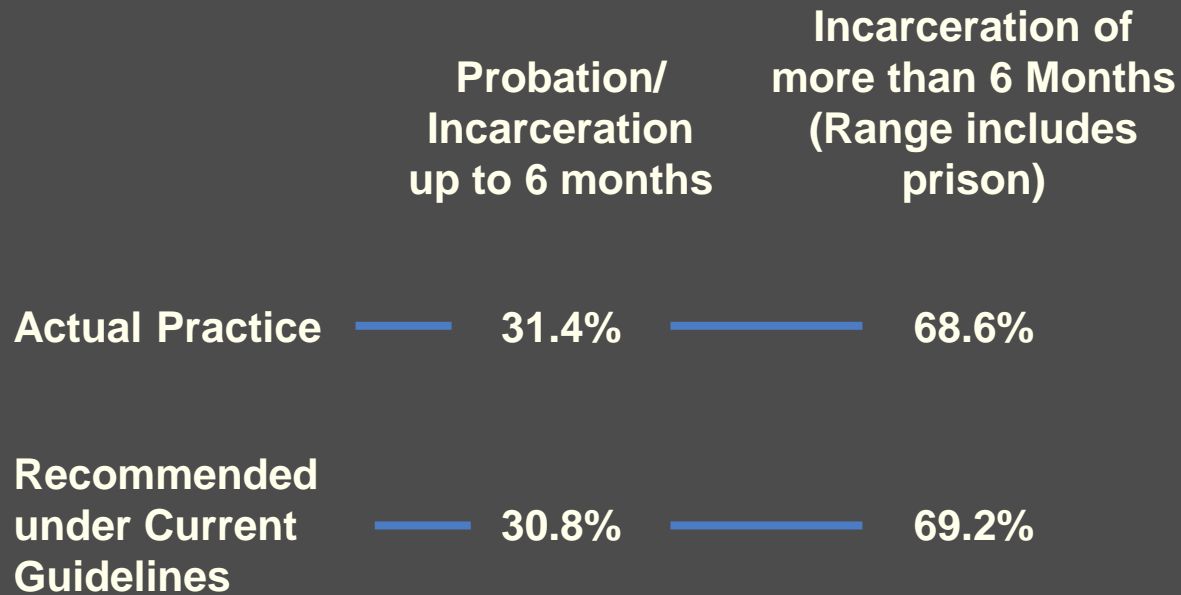
Do Not Score

0 0

Total Score

See Kidnapping Section C Recommendation Table for guidelines sentence range.

Recommended and Actual Dispositions for Kidnapping Class 5 Felony Offenses (§ 18.2-47(A) & § 18.2-49) CY2014-CY2018



Proposed guidelines are more
closely aligned with actual
dispositions in these cases

Compliance with Guidelines for Kidnapping Class 5 Felony Offenses (§ 18.2-47(A) & § 18.2-49) CY2014-CY2018

Dispositional Compliance and Departure Rates

	Current	As Proposed
Compliance	82.6%	86.8%
Mitigation	4.3%	6.9%
Aggravation	13.2%	6.3%

Dispositional compliance is the degree to which judges agree with the type of sanction recommended by the guidelines.

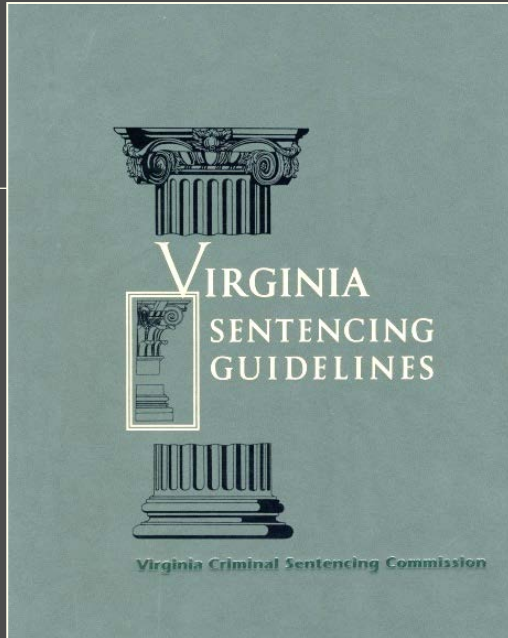
Overall Compliance and Departure Rates

	Current	As Proposed
Compliance	72.5%	73.1%
Mitigation	10.9%	15.8%
Aggravation	16.6%	11.1%

Proposed Recommendation 4

Revise the Kidnapping Guidelines to better
reflect current sentencing practices
as proposed





Proposed Recommendation 5:

Revise the guidelines for Manufacture of Methamphetamine (« 18.2-248(C) and (C1))

Compliance Rate for Manufacture Methamphetamines §§ 18.2-248(C) and 18.2-248(C1)

Overall Compliance	
Compliance	74.8%
Mitigation	20.3%
Aggravation	4.9%

Source: CY2014-CY2018 Sentencing Guidelines Data System

Manufacture Meth (NAR3131) vs. Manufacture Schedule I/II (NAR3044): Sentencing Data

Baseline Sentence Patterns (1 count of Primary, no additional offenses)				
VCC	Mean (Mos.)	Median (Mos.)	N	Baseline Compliance*
NAR3044F9 (Manufacture)	12.2	9	25	52.0%
NAR3131F9 (Manufacture Meth)	24.8	20	173	67.6%
Total	23.2	-	198	65.7%

The NAR3131 baseline sentence average is double the NAR3044 average, resulting in an additional 12 months of time sentenced. The concurrence rate for NAR3131 is 15.6 percentage points higher.

NAR3131 is used in 88% of manufacture cases.

* This is not general compliance, but calculated to strictly look at cases with only one count of manufacture meth and no additional offenses.

Top 5 Manufacture VCC Circuits (includes attempts and conspiracies)				
Circuit	NAR3044	NAR3131	Total	Rate of NAR3131
27th (Radford, Pulaski)	37	168	205	82%
29th (Tazewell, Buchanan)	0	115	115	100%
25th (Staunton, Lexington)	7	98	105	93%
28th (Smyth, Bristol)	11	77	88	88%
26th (Harrisonburg, Shenandoah)	18	57	75	76%
Total Statewide	104	763	867	88%

The 27th and 26th circuits have the highest rate of NAR3044 use.

Current and Recommended Drug Manufacture Scoring

- NAR3131 currently scores higher than NAR3044 as a primary offense due to:
 - Higher Factor 1 points regardless of offense counts
 - No reduction for attempt/conspiracy designation
 - Possibility of Factor 12 points for “child present” additional offenses
- NAR3131 also has a higher statutory minimum (10yrs vs. 5yrs)

Drug/Schedule I/II Section C Offender Name: _____

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

A. Possess Schedule I or II drug or First offender violation	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.....	.....	15.....
G. Accomodation-Sell, etc., Schedule I or II drug	Attempted, conspired or completed:	1 count.....	32.....	18.....	8.....
		2 counts.....	40.....	.....	10.....
H. Sell, etc., imitation Schedule I or II drug; Possession of methamphetamine precursors	Attempted, conspired or completed:	1 count.....	12.....	.....	3.....

Score: [] [] []

Current NAR-3044 → (130, 78, 26)

Current NAR-3131 → (145, 87, 29)

Proposed Both VCCs → (130, 78, 26)

Proposed scoring would balance the recommended scores for manufacturing methamphetamines with an increased score for NAR-3044 cases and decreased score for NAR-3131.

Rescoring Compliance Effects

Overall Compliance and Departure Rates

	Current	As Proposed	Net Change (points)
Compliance	74.8%	76.9%	+2.1%
Mitigation	20.3%	15.7%	-4.6%
Aggravation	4.9%	7.4%	+2.5%

Rescoring Sample: NAR-3044 – 73 and NAR3131 – 640 (Total: 713)

Source: CY2014 - CY2018 Sentencing Guidelines Data System



What are the Pros and Cons of Adjusting the Scores for Manufacture Methamphetamines ?



Pros and Cons of Adjusting the Points for Manufacturing Methamphetamines

§§ 18.2-248(C) and 18.2-248(C1)

PROS

- Eliminate regional disparity for the same criminal behavior
- Simplify scoring rules and reduce mis-scoring
- Slight increase in concurrence rates for defendants sentenced under § 18.2-248
- Reflects the typical case

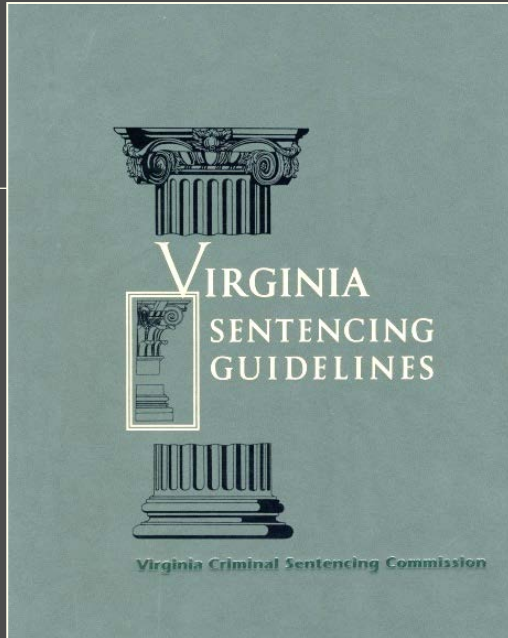
CONS

- Valid regional reasons for using § 18.2-248(C) may still exist, but could not be determined by the analysis

Proposed Recommendation 5

Revise the guidelines for
Manufacture of Methamphetamine
(§ 18.2-248(C) and (C1))





Proposed Recommendation 6:

Eliminate the Drug Exception Rule for scoring primary offenses

Proposed Recommendation

- 1. Eliminate the drug exception rule to promote accurate scoring of multiple Schedule I/II drug distributions in one sentencing event**
- 2. Change VCC labels (NAR-3042 and NAR-3045) to better distinguish between sale for profit and distribution of drugs.**
- 3. Conduct follow-up analysis to gauge differences in sentencing patterns for Distribution of Schedule I/II drugs.**

Where the Drug Exception Rule (DER) applies

- “If more than one of the VCC’s appear in the sentencing event, they represent multiple counts of the primary offense, *not* additional offenses.”

NAR-3042 (Distribution of Schedule I/II Drug)

NAR-3043 (Possession w/intent to sell, etc., Schedule I/II Drug)

NAR-3044 (Manufacture Schedule I/II Drug)

NAR-3045 (Sell for Profit Schedule I/II Drug)

- Includes attempt/conspiracy convictions if offense type suffixes match.

A defendant is being sentenced for:

1 count—Sale of cocaine for profit

NAR-3045-F9

1 count—Possess w/ intent to sell

NAR-3043-F9

2	3
3	8
B. Sell, Distribute, Possession with Intent, etc., Schedule I or II drug	
1	12
2	13
3	14
4	15
C. Manufacture Methamphetamine (1st or 2nd conviction)	
1	12
2	13
3	14
4	15
D. Accommodation - Sell, Distribute, Possession with Intent Schedule I or II drug	
1	5
2	7
G. Sell, etc., imitation Schedule I or II drug	
1	4
F. Possess precursors with intent to manufacture methamphetamine	
1	6
G. Sell, etc., Schedule I or II drug to minor	
1	11

2 counts Sell, etc. Schedule I/II drug

1 3

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

Years	5 -10	1
	11 - 21	2
	22 - 30	3
	31 - 42	4
	43 or more	5

0

C. Manufacture Methamphetamine (1st or 2nd conviction)		
1	.....	12
2	.....	13
3	.....	14
4	.....	15
D. Accommodation - Sell, Distribute, Possession with Intent Schedule I or II drug		
1	.....	5
2	.....	7
G. Sell, etc., imitation Schedule I or II drug		
1	.....	4
F. Possess precursors with intent to manufacture methamphetamine		
1	.....	6
G. Sell, etc., Schedule I or II drug to minor		
1	.....	11

1 3

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

Years	5 -10	.....	1
	11 - 21	.....	2
	22 - 30	.....	3
	31 - 42	.....	4
	43 or more	.....	5

0

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

Years	Less than 4	.....	0
	4 - 10	.....	1
	11 - 21	.....	2
	22 - 30	.....	3
	31 - 42	.....	4
	43 or more	.....	5

Not Scored as an Additional Offense

0

Drug/Schedule I/II



The sentencing guidelines for this section apply to the following offenses:

Relevant Code of Virginia Statutes

Relevant Virginia Crime Codes (VCC)

18.2-248(A)/(C)	NAR-3038-F9 (5 yrs.-life)
	NAR-3042-F9 (5-40 yrs.)
	NAR-3043-F9 (5-40 yrs.)
	NAR-3044-F9 (5-40 yrs.)
	NAR-3045-F9 (5-40 yrs.)
	NAR-3087-F9 (5 yrs.-life)

Drug Exception Rule

- Schedule I/II drugs only
- ALL Must Be Completed or Conspired or Attempted
- Not 2nd or Subsequent Offenses

NAR-3042-F9 Distribution • NAR-3043-F9 • Possess With Intent • NAR-3044-F9 Manufacture • NAR-3045-F9 Sale for Profit

18.2-250(A,a)	NAR-3022-F5 (1-10 yrs.)
---------------------	-------------------------





Currently Are There Differences in Sentencing Patterns?

Descriptive Summaries

- The Drug Exception Rule (DER) does not apply to the majority of Schedule I/II sentencing events (76%).
- Sentencing patterns do slightly vary for offenses included in the Drug Exception Rule. Effective sentence means vary by 7 months for the DER VCCs.

Case Counts			
Cases with DER VCC as Primary	10,940		
DER May Apply (Rescoring Sample n=)	2,610		
DER- Applies (Incorrectly Scored n=) (Scored as if the Drug Exception Rule did not apply)	376		
Baseline Sentence Patterns (1 count of Primary, no additional offenses)			
VCC	Mean (Months)	Median (Months)	N
NAR3042F9 (Distribution)	15.1	11	1,649
NAR3043F9 (Possess w/intent to Sell)	19.1	12	1,675
NAR3045F9 (Sale for Profit)	13.6	10	1,007
NAR3044F9 (Manufacture)	12.2	9	25
NAR3131F9 (Manufacture Meth)	24.8	20	173
Total	16.6	12	4,529

Rescoring sample excludes invalid scores.
 NAR-3131 is not a Drug Exception rule (DER) offense, but provides context to NAR-3044.



Impact on Concurrence with Sentencing Guidelines Recommendations

Drug Exception Rule Rescoring

- Identified all cases with multiple counts of the Drug Exception Rule VCCs scored as primary offenses.
- Rescored cases without applying the Drug Exception Rule to gauge the “**worst case**” impact on raw scores and sentencing concurrence.
- Compared to concurrence rates for Drug Exception Rule eligible cases that were incorrectly scored (i.e., scored as proposed: as if the Drug exception rule did not exist).

Rescoring Sample Characteristics

Prior Classification	Count
Category I	95 (3.6%)
Category II	332 (12.7%)
Other	2,183 (83.7%)
VCC Suffix Type	Count
Completed (F)	2,577 (98.7%)
Conspired (C)	32 (1.3%)
Attempted (A)	1 (0.0%)

- Majority have no violent classification in prior record, meaning no enhancement to the primary offense scores and lower worksheet scores on average.
- For Category I and Category II cases, higher worksheet scores are assigned for completed offenses vs. conspired or attempted offenses.

Analysis

- **Average 0.8 score decrease (i.e., ~1 month sentence recommendation) if rule is eliminated (median and mode=1).**
- **Current “bunching” of sentences at recommended minimum suggests high sensitivity to score increases.**
- **Some cases definitely do not follow the drug exception rule. Among cases with multiple primary offense counts, there is no sure way to determine whether it is a Drug Exception Rule eligible case.**

Mechanics of Rescoring

- All subsequent primary counts were subtracted from Section 1B and added to Section 3
- Results in lower scores for Category I/II cases (3-55 points)
- Slightly higher scores for “Other” cases (1-3 points)
- Untestable: True primary offense rate

Drug/Schedule I/II ❖ Section C

Offender Name: _____

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

A. Possess Schedule I or II drug or First offender violation	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.....	.....	35.....
		2 counts.....	390.....	.....	78.....
E. Manufacture Methamphetamine, first or second offense, § 18.2-248(C1)	Attempted, conspired or completed:	1 count.....	145.....	7.....	29.....
F. Sell, etc., Schedule I or II drug to minor	Attempted, conspired or completed:	1 count.....	60.....	30.....	15.....
G. Accomodation—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; Possession of methamphetamine precursors	Attempted, conspired or completed:	1 count.....	12.....	6.....	3.....
		2 counts.....	20.....	10.....	5.....

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 →

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

Primary offense D: Sell, etc., Sch. VII 3rd or Subsequent		Primary offense: All other offenses	
Years	Points	Years	Points
Less than 5.....	0	Less than 5.....	0
5,10.....	2	5,10.....	1
20.....	4	20.....	2
30.....	6	30.....	4
40 or more.....	7	40 or more.....	5

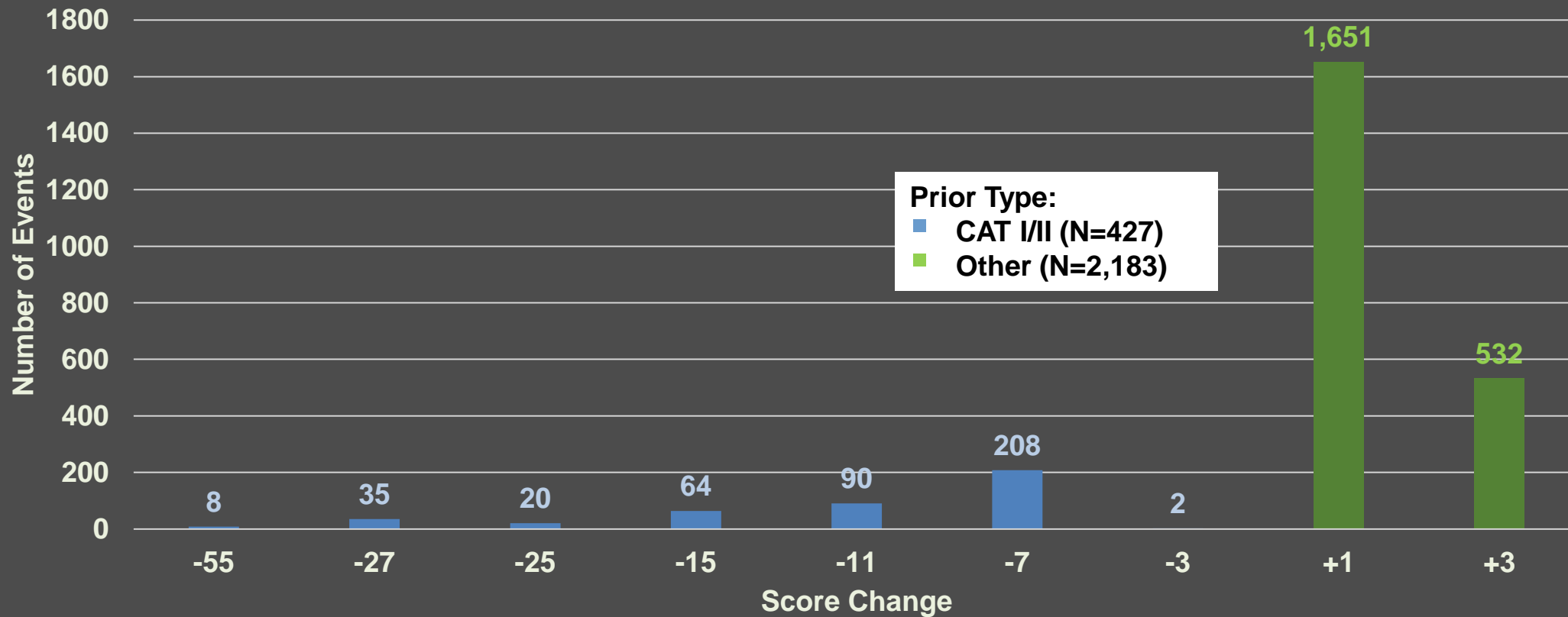
Score

Score

Score

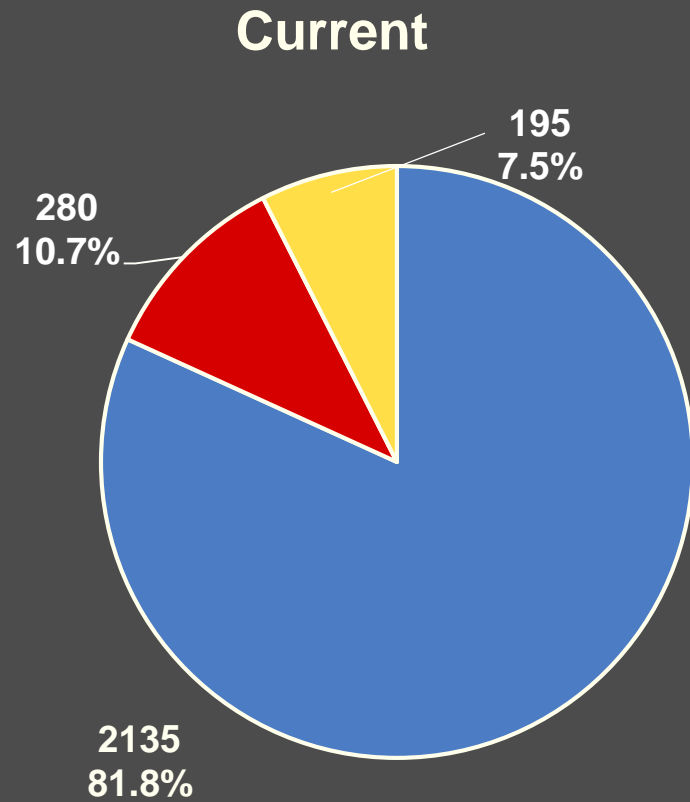
Score Change Distribution Worst Case Scenario

(N=2,610)

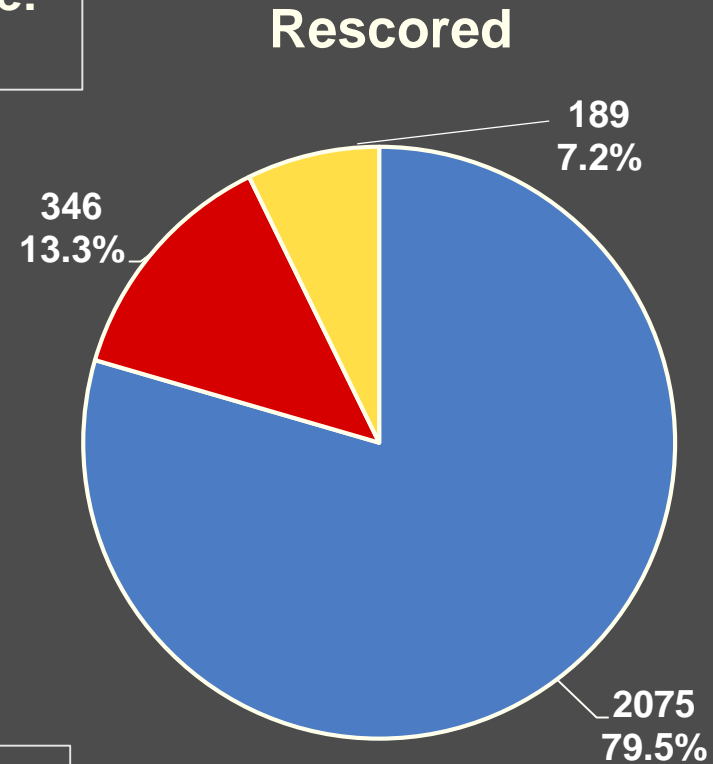


Most cases are “Other” and experience small score increases when we remove the rule. Category I/II cases see decreases ranging from 3 to 55 points (~recommended months).

Compliance Results: Rescoring Sample Worst Case Scenario



Compliance net change:
-2.3 points



Departure rate change:
Mitigation 10.7% to 13.3%
Aggravation 7.5% to 7.2%

Compliance Results: DER-Eligible Sample

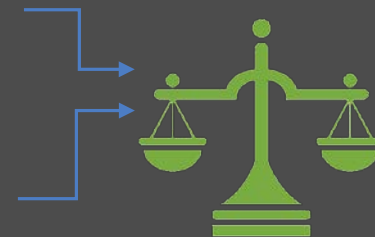
How Judges are Currently Sentencing When the Drug Exception Rule is Not Applied

Definition:

1 count of DER primary offense with counts of other DER VCCs scored as additional offenses

Drug Exception Rules Were Not Applied					
Prior Record Classification					
		CAT1	CAT2	OTHER	TOTAL
Compliance	Number	8	33	269	310
	Percentage	47.1%	66.0%	87.1%	82.4%
Mitigation	Number	8	14	12	34
	Percentage	47.1%	28.0%	3.9%	9.0%
Aggravation	Number	1	3	28	32
	Percentage	5.9%	6.0%	9.1%	8.5%
Total		17	50	309	376

Compliance 0.6 pts higher than pre score sample



More balanced distribution of aggravating/mitigating departures



What are the Pros and Cons of Eliminating the Drug Exception Rule?



Cons of Removal

- Removing the Drug Exception Rule potentially involves changing worksheet scores .
- If the “worst case” scenario is correct, a slight increase in departures (mitigating) possible.
- Users will need to be trained on the elimination of the DER.

Pros of Removal

- Ability to monitor sentencing patterns for each specific type of drug distribution defined by the VCCs.
- Improve Scoring Consistency:
The Drug Exception rule is not always followed currently.
- Existing sample of cases not scored according to the rule suggests removal may slightly decrease departures and balance departure type (mitigating vs. aggravating).



How Should the VCCs Be Labeled to Better Reflect Behavior?

Virginia Crime Code Alternatives

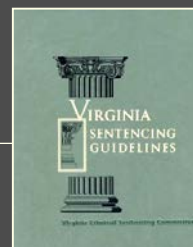
- **NAR-3042-F9**
Distribution, wholesale (provide/sell drugs to be resold by others)
- **NAR-3045-F9**
Sale, give, etc. for profit or benefit, retail (street level distribution)
- **NAR-3043-F9**
Possession with intent to sell, distribute, etc.
- **NAR-3044-F9**
Manufacture (making/producing drugs from raw base products)

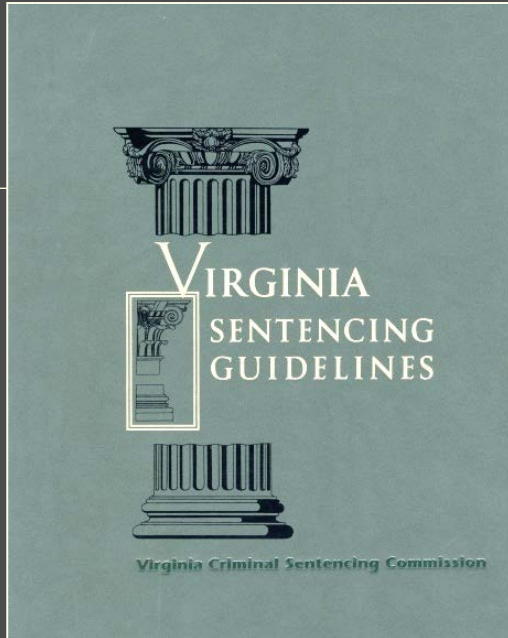
Proposed Recommendation 6

- 1. Eliminate the drug exception rule to promote accurate scoring of multiple Schedule I/II drug distributions in one sentencing event**
- 2. Change VCC labels (NAR-3042 and NAR-3045) to better distinguish between sale for profit and distribution of drugs.**
- 3. Conduct follow-up analysis to gauge differences in sentencing patterns for Distribution of Schedule I/II drugs**

Proposed Recommendation 6

Eliminate the Drug Exception Rule for
scoring primary offenses
as proposed





Proposed Recommendation 7:

Amend § 9.1-101 to designate the Virginia Criminal Sentencing Commission as a Criminal Justice Agency

Access to Criminal History Information

- **While the Commission has sufficient access to Virginia criminal history records, the process required to access out-of-state criminal history records is cumbersome and time-consuming.**
- **The US Sentencing Commission and other state sentencing commissions face the same challenges.**
- **Directors from the Virginia, Pennsylvania and Maryland sentencing commissions discussed the issue at the most recent NASC conference.**
 - **There is interest in working together to seek change at the federal level to simplify the process and ease access for commissions.**

Federal Bureau of Investigation CJILU Research Policy

While state sentencing commissions are authorized pursuant to 28 USC § 534 to obtain FBI criminal history record information, each study must be approved by the FBI's Institutional Review Board. This can be a lengthy process.

FBI CJILU Research Policy

Requests for FBI criminal history record information (CHRI) for research purposes must be submitted on official letterhead by an authorized criminal justice agency, or the governmental agency with which the researcher is working, consistent with Title 28, Code of Federal Regulations (C.F.R.) Part 22. The request must contain a privacy certificate or reference to a privacy certification that contains the following information as identified in 28 C.F.R. § 22.23:

1. point of contact and telephone number,
2. title of study or project, along with a brief statement concerning the nature of the research and the intended goals,
3. specific statutory authority, if any, under which the project is being conducted,
4. any grants/agreements/funding, citing the source and grant number(s),
5. the identities of all participants, i.e. private researchers, universities, other government agencies, etc., including complete names, titles, addresses, and telephone numbers,
6. the identities of individuals authorized to execute an Information Transfer Agreement (ITA) on behalf of his/her respective agency, including complete names, titles, addresses, and telephone numbers, and email addresses,
7. if any human subjects are directly involved and to what extent,
8. if human subjects are involved, have they consented to allow researchers access to their FBI CHRI, along with copies of any consent forms,
9. a description of physical and/or administrative procedures to be followed to insure the security of the data to meet the requirements of § 22.25,
10. copies of any Institutional Review Board (IRB) certification/approval.

Requests should be directed to:

Betsy C. Taylor
Acting Unit Chief
Criminal Justice Information Law Unit
Office of the General Counsel
Federal Bureau of Investigation
1000 Custer Hollow Road
Clarksburg, WV 26306
CJILU@FBI.gov

The Office of the General Counsel will review the request to determine if access to CHRI is consistent with federal law and regulations and advise accordingly. The FBI will provide the ITA for signature by all parties once the project/study has been approved. No data will be transferred until the ITA have been signed and returned to the FBI.

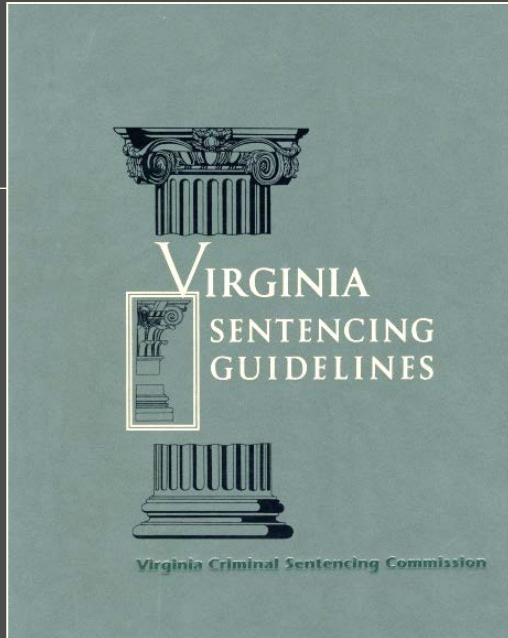
Next Steps

- **Amending the *Code of Virginia* to explicitly name the Sentencing Commission as a state criminal justice agency may prove beneficial in pursuing change at the federal level.**
- **As approved by the Commission in September 2019, staff will work with other state sentencing commissions to seek change.**
 - **A delegation could meet with FBI representatives to determine what must be changed (Federal Code or regulation) to clear the path for more direct access to criminal history information.**
 - **A delegation could meet with members of Congress to gauge support and discuss a course of action.**

Proposed Recommendation 7

Amend § 9.1-101 to designate the
Virginia Criminal Sentencing Commission
as a State Criminal Justice Agency





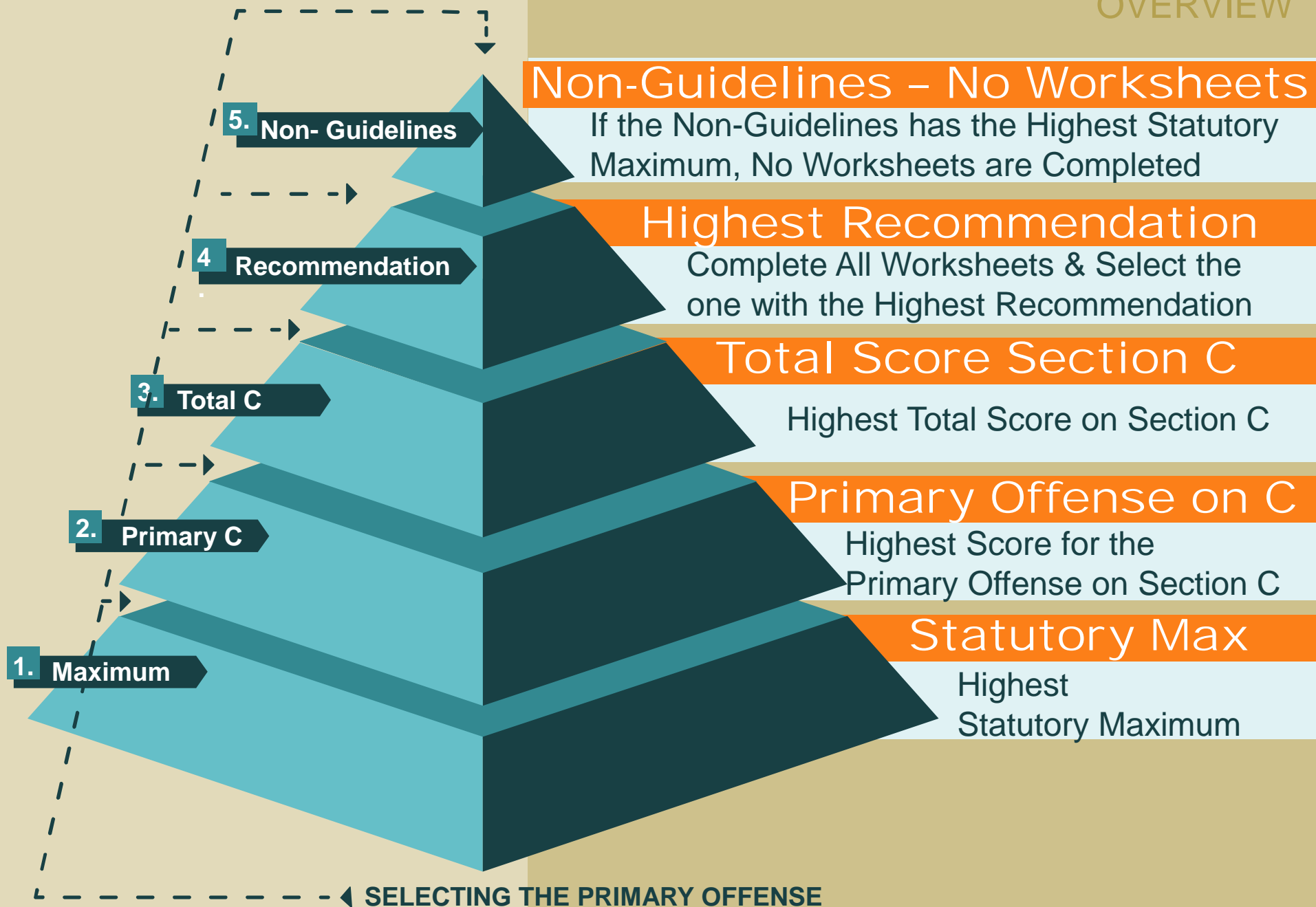
Analysis Not Resulting in Recommendation

Burglary-Other Structure with Multiple
Counts of Grand Larceny

ISSUE

The guidelines recommendation is low when there are multiple counts of Grand Larceny and only one count of Burglary of an Other Structure in the sentencing event.





Burglary/Other ❖ Section C

Offender Name: _____

Prior Record Classification

Category I Category II Other

(scores for attempted/conspired offenses are in parentheses)

◆ Primary Offense

Other Structure Without Weapon

A. Other structure with intent to commit murder, rape, robbery or arson without deadly weapon	Attempted, conspired or completed:	1 count.....	60.....	30.....	15.....
B. Other structure with intent to commit larceny, etc. without deadly weapon	Attempted, conspired or completed:	1 count.....	36.....	18.....	9.....

Other Structure With Weapon

C. Bank with deadly weapon	Completed:	1 count.....	168.....	112.....	56.....
	Attempted/conspired:	1 count.....	456.....	304.....	152.....
		2 counts.....	(112).....	(56).....	(28).....
		3 counts.....	(240).....	(152).....	(76).....
		3 counts.....	(304).....	(152).....	(76).....

D. Other structure with intent to commit murder, rape, robbery or arson with deadly weapon	Completed:	1 count.....	114.....	76.....	38.....
	Attempted/conspired:	1 count.....	(76).....	(38).....	(19).....

E. Other structure with intent to commit larceny, etc. with deadly weapon	Completed:	1 count.....	54.....	36.....	18.....
	Attempted/conspired:	1 count.....	(36).....	(18).....	(9).....

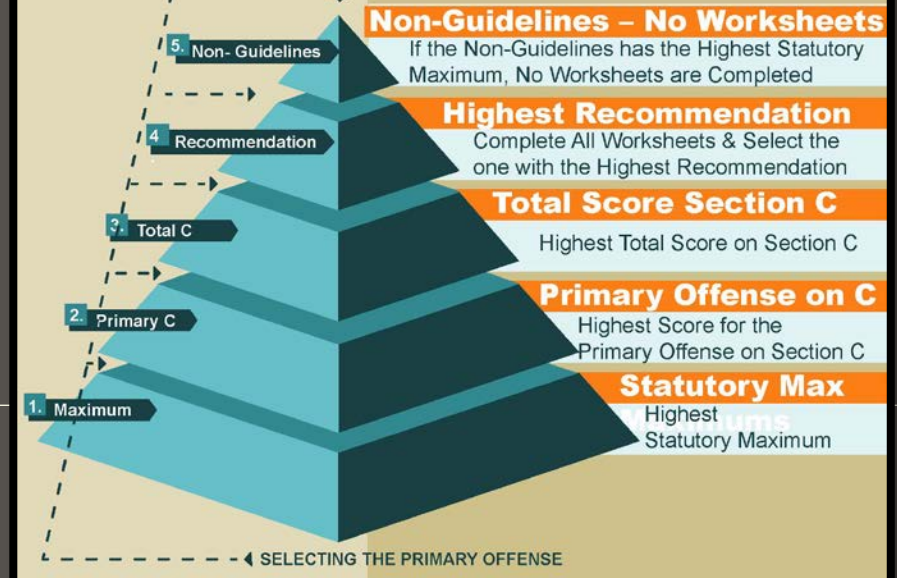
Miscellaneous

F. Possession of burglarious tools (1 count)	32.....	16.....	8.....
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Score

		9
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OVERVIEW



Larceny ❖ Section C

Offender Name: _____

Prior Record Classification

Category I Category II Other

(scores for attempted/conspired offenses are in parentheses)

◆ Primary Offense

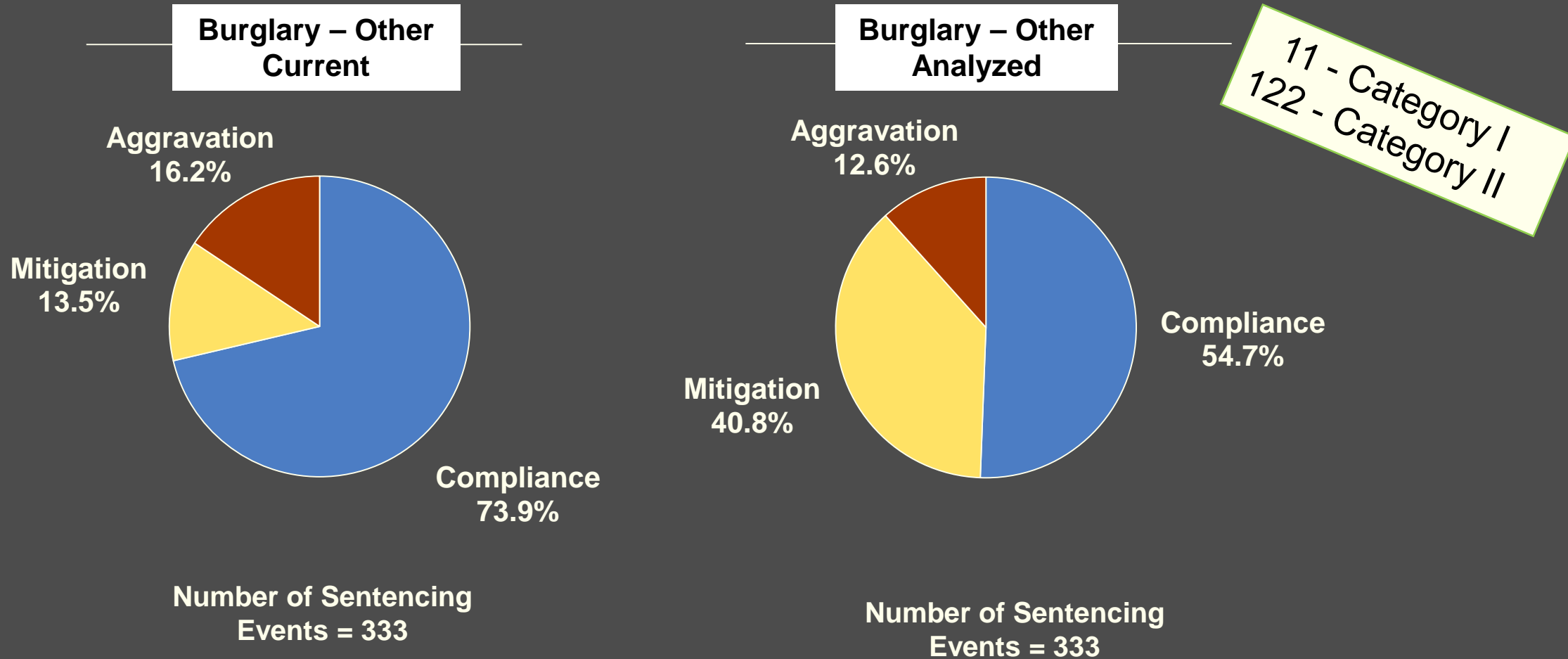
A. Attempted or conspired larceny (1 count)	.....	(8).....	(4).....	(2).....
B. Statutory maximum penalty equals 5 or 10 years	1 count.....	20.....	10.....	5.....
	2 counts.....	28.....	14.....	7.....
	3 counts.....	40.....	20.....	10.....
C. Grand larceny auto	1 count.....	32.....	16.....	8.....
	2 - 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	1 - 2 counts.....	32.....	16.....	8.....
	3 counts.....	96.....	48.....	24.....
H. Any other larceny offense with a maximum penalty of 20 years	1 count.....	28.....	14.....	7.....
	2 counts.....	44.....	22.....	11.....
	3 counts.....	56.....	28.....	14.....

Score

0	1	1
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- Analysis 1 -

Add Multiple Counts of Statutory Burglary of Other Structure to Commit Larceny, etc. to Worksheet C



- Analysis 2 to 4 -
Larceny Worksheet Focus

- **Add points to Larceny Worksheet A when additional offense is BUR-2216-F9, to refer more cases to Larceny Worksheet C**
- **Reduce the number of primary offense counts scored on Larceny Worksheet C, so burglary offense would always be the primary offense**
- **Add points to Larceny Section B when additional offense is BUR-2216-F9**

Recommendation

Continue to study this issue.





VIRGINIA
SENTENCING
GUIDELINES



Virginia Criminal Sentencing Commission