VIRGINIA CRIMINAL SENTENCING COMMISSION

Study of Burglary Guidelines:
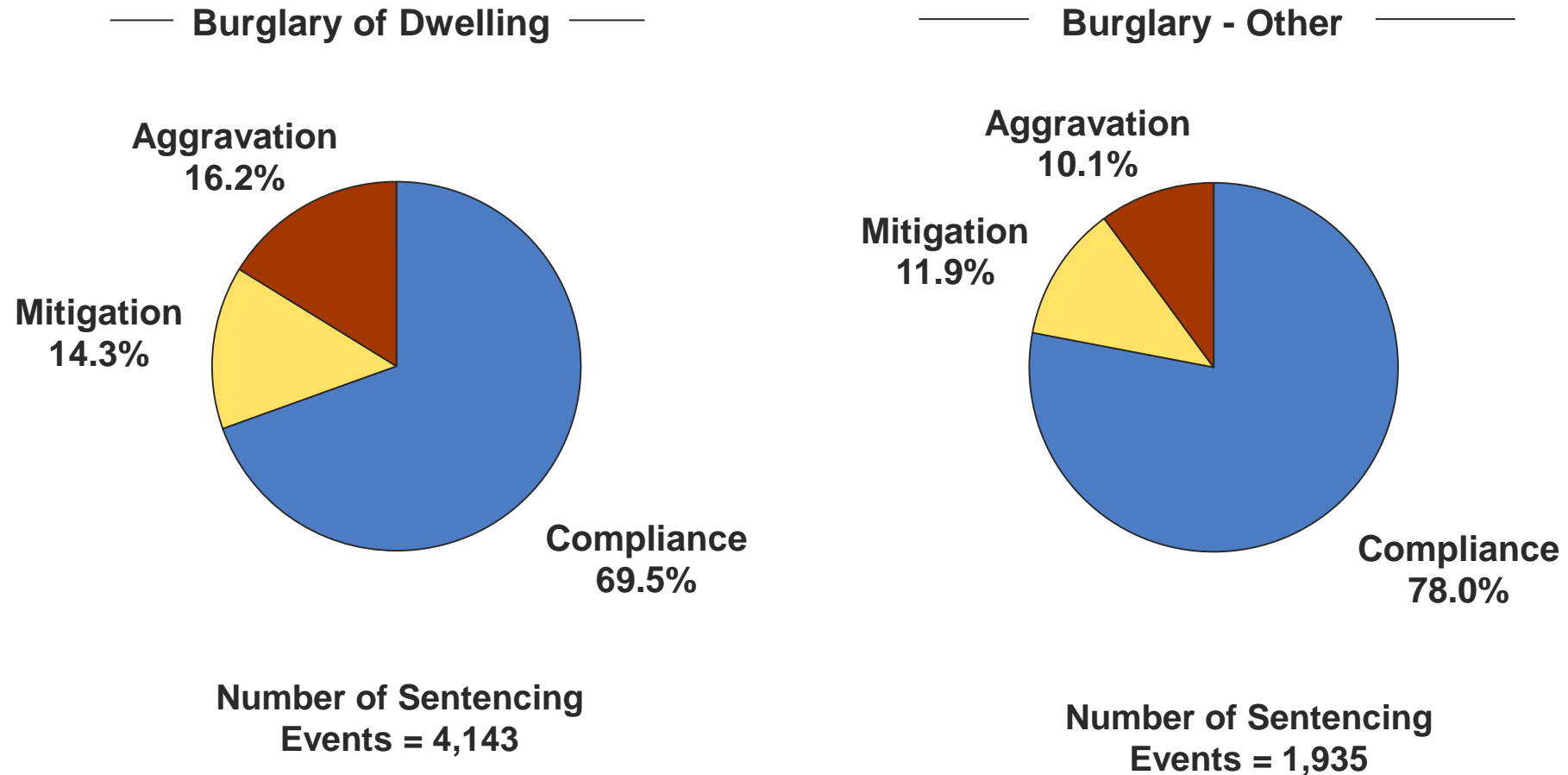# Proposed Methodology

March 25, 2019

Study of Burglary Guidelines

- **In June 2018, Commission members approved a special study of sentencing guidelines for burglary offenses.**

  - **Some circuit court judges had suggested that the Commission review the guidelines for burglary offenses.**

  - **New analysis may indicate the guidelines for burglary need to be refined to better reflect current judicial thinking in such cases.**

    - **Factors not currently accounted for by the guidelines may be pertinent in sentencing.**

    - **This type of analysis requires a special study to collect additional case details.**

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

Burglary of Dwelling

Aggravation
16.2%

Mitigation
14.3%

Compliance
69.5%

Number of Sentencing
Events = 4,143

Burglary - Other

Aggravation
10.1%

Mitigation
11.9%

Compliance
78.0%

Number of Sentencing
Events = 1,935

Note: Worksheets with scoring errors were excluded from the analysis.
Source: Sentencing Guidelines Data System (download March 5, 2019)

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Most Frequently Cited Departure Reasons in Burglary Sentencing Events FY2014-FY2018

Mitigation (n=822)

Reason	Percent of Cases
Plea agreement	37.6%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	16.8%
Sentenced to alternative punishment	13.8%
Cooperated with authorities	13.1%
Mitigating facts of the offense	9.2%
Recommended by Commonwealth atty.	7.2%

Shown as percent of mitigation cases

Aggravation (n=864)

Reason	Percent of Cases
Plea agreement	28.2%
Aggravating facts of the offense	25.6%
Extensive prior record/same type of off.	10.7%
Multiple counts, offenses or violations in the event (prosecuted or not)	9.1%
Aggravating facts of the offense, specific to breaking and entering	8.8%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	7.2%

Shown as percent of aggravation cases

Proposed Methodology:
Identification of Offenders for the Study

Staff proposes to examine offenders sentenced during FY2014-FY2018 for whom burglary was the most serious offense.

Statute	Description	Sentencing Events
§18.2-89	Dwelling at night - intent to commit felony/larceny	311
§18.2-89	Dwelling at night - intent to commit felony/larceny - weapon	41
§18.2-90	Dwelling - intent to murder, rape or rob	44
§18.2-90	Dwelling - intent to murder, rape or rob - weapon	60
§18.2-90	Other structure - intent to murder, rape or rob	15
§18.2-90	Other structure - intent to murder, rape or rob - weapon	6
§18.2-91	Dwelling - intent to commit larceny, A&B, etc.	3,492
§18.2-91	Dwelling - intent to commit larceny, A&B, etc. - weapon	92
§18.2-91	Other structure - intent to commit larceny, A&B, etc.	1,735
§18.2-91	Other structure - intent to commit larceny, A&B, etc. - weapon	12
§18.2-92	Occupied dwelling, enter - intent to commit misd	96
§18.2-92	Occupied dwelling, enter - intent to commit misd - weapon	7
§18.2-93	Burglary of bank with intent to commit larceny	6
§18.2-94	Possession of burglary tools	161
	Total	**6,078**

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Proposed Methodology: Sample Selection

- **A large sample is preferred, as some cases will be eliminated in subsequent stages.**

  - **Supplemental data may reveal a conviction for an excluded offense.**

  - **Wrong VCC may have been used.**

  - **Available data may be insufficient to include the offender in subsequent analysis.**

- **Strategy is similar to the 2013-2015 Larceny/Fraud Study.**

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Proposed Methodology: Sampling Design

- **Staff recommends sampling based on a stratified random sampling approach to under-sample the most common types of burglary and over-sample other types of burglaries.**

  - **This is done to ensure an adequate number of cases for less common burglaries are in the sample.**

Proposed Methodology:
Sampling Design

Statute	Description	Sentencing Events	Sample Size
§18.2-91	Dwelling - intent to commit larceny, A&B, etc.	3,492	700
§18.2-91	Other structure - intent to commit larceny, A&B, etc.	1,735	435
§18.2-89	Dwelling at night - intent to commit felony or larceny	311	205
§18.2-94	Possession of burglary tools	161	120
	Other burglaries	379	379
	Total	**6,078**	**1,839**

For the analysis, the sampled cases will be weighted to reflect each subgroup's actual proportion in the population.

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Proposed Methodology:
Supplemental Data Collection

**Details Related
to the Victim**

Time of day of the offense

Type of victim (individual, business, pharmacy, nonprofit, etc.)

Whether victims were present at the time of the offense

Vulnerable of victims (elderly, young children)

Victim injury (emotional, threatened, physical, life threatening)

Injury to pets/animals

Defendant's relationship to victim

Value of items taken

Types of items involved (electronics, opioids/other drugs, etc.)

Items recovered (at arrest, at pawn shop, online, etc.)

Damage to items

**Other factors of interest
to the Commission?**

Proposed Methodology:
Supplemental Data Collection

Details Related to the Offender

Role in offense

Number of codefendants

Type/use of weapon in possession during offense

Degree of planning/premeditation (e.g., stalking, monitoring)

Common scheme/serial burglar

Drug/alcohol use at time of offense

Status of restitution at time of sentencing

Number of prior burglary convictions

Number of prior trespassing convictions

Other factors of interest to the Commission?

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Electronic Data Sources

Pre/Post-Sentence Investigation (PSI) reports

- **Offense narrative field**

Officer of the Court Remote Access (OCRA) System

- **Contains scanned copies of court records**

- **101 jurisdictions currently use OCRA**

- **Commission staff requested and received access to OCRA for 2013-2015 Larceny/Fraud study**

Proposed Methodology:
Data Sources

Other Data Sources

Police reports

Court records

Probation Office records

Commonwealth's Attorneys' files

Victim Impact Statements

Proposed Work Plan

April - July 2019	—	Data collection
August 2019	—	Data analysis
September 2019	—	Present preliminary results
November 2019	—	Present proposal for guidelines revisions (if supported by data)