



# VIRGINIA CRIMINAL SENTENCING COMMISSION



Study of Burglary Guidelines:  
✎ Update ✎

September 9, 2019

# Study of Burglary Guidelines

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



Statute	Description	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
	<b>Total</b>	<b>6,078</b>	<b>1,839</b>



# 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.)

Damage to items



# 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



# Data Sources

## Limitations

Pre/Post-Sentence Investigation (**PSI**) reports

- **12.4%** - Matched Name
- **28.3%** - PSI Narrative Provided
- **59.3%** - No Presentence Report  
**1,090** out of 1839



# Data Sources

## Limitations

Officer of the Court Remote Access **(OCRA)** System

- **47 Active or Pending Accounts**
- **Denied Access to Some Courts**
  - **No Supervising Attorney**
  - **VCSC Role in Election of Judges**
  - **No Response / Not an OCRA court**



# Data Sources

## Limitations

Officer of the Court Remote Access (OCRA) System

- **Missing Information**

- **Limited Details**

- **Generally Available:**

(Indictments, Warrants, Court Orders, Restitution Orders)

Not Available

- **Stipulation of Facts**

- **Criminal Complaint**

- **Victim Impact Statements**

- **Information is Sterile & Not Unique to the Crime**





# Data Sources

## Limitations

### Travel Across the State (**Field Visits**)

- **Schedule Around Training**
- **Hired Four Retired Probation Officers**
  - Reggie Baines (Hampton Roads)
  - Terry Dziedziak (Southside)
  - Sally Johnson (Southwest)
  - Mark O'Connell (Northern)
  - Staff (Central & Valley)



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# Burglary Study 2019

Enter DCN

Docket:

PSI#: 0

Sent. Date:

Departure Reasons: Other Codes:

VCC

Off. Date:



Sentence

## DETAILS OF CRIME

A. Type(s) of structure in the sentencing event (Enter up to 3)

Other:

B. What was the degree of planning (Enter up to 3)

Other:

C. Intent of burglary or burglaries (Enter up to 3)

Expensive:

D. Intent of burglary identified by an authority as a hate crime

E. When did the most serious burglary occur?

F. Occupied By: Who/what was in the structure? (Enter up to 3)

Other:

G. Type of weapon in possession (Enter up to 3)

Other:

H. Additional Offense(s) Arrested or Charged, but NOT Convicted

VCC FORMAT: LAR2359F9

I. Number of codefendants

J. Gang involved in the burglary based on official reports.

K. If YES, indicate the role of the gang in the burglary

L. Damage to structure

M. What was used to damage the structure/content? (Enter up to 3)

Other:

N. Structure total amount of damage

EXACT  RANGE:  TO

O. Personal property: Items taken or damaged

DRUG:  OTHER:

P. Personal Property: Total value of personal property taken or damaged

EXACT  RANGE:  TO

Q. Restitution: Status of restitution at time of report or sentencing

R. Any violent act to a person or animal

S. Injury to victim(s) (human only)

T. Impact on victim, other than physical injury

OTHER

U. Relationship between offender and victim

V. Offender Issues

OTHER

W. Offender Issues: Under the influence

Under the Influence

X. Restrictions Violated

OTHER

Warned by court, sheriff or police

Y. Role: What was the offender's role?

NOTES

Coder

# Initial Observations

## Preliminary

- **Burglary & Assault:**
  - **Often Involves Domestic Situations**
- **Items that are Easy to Carry and Sell:**
  - **Electronics, Jewelry, & Cash**
- **Defendant Has Previous Knowledge if Victim has:**
  - **Large Sums of Cash & Desired Drugs**
- **Defendants Self-Report Substance Disorders:**
  - **No Confirmation Documents Available**
- **In Some Cases Level of Violence Similar to Robbery**



# Other Possible Changes

## Other Issues

**1. Burglary Other: When there are multiple counts of grand larceny and only one count of burglary, larceny becomes the primary offense.**

	Concurrence	Mitigation	Aggravation	Total
Larceny Section B	72.7%	4.5%	22.7%	N=22
Larceny Section C	93.3%	4.4%	2.2%	N=45
Total	86.6%	4.5%	9.0%	N=67

FY2014 - FY2018



# Burglary/Other ❖ Section C

Offender Name: \_\_\_\_\_

## ◆ Primary Offense

\_\_\_\_ Prior Record Classification \_\_\_\_  
 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
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Score

▼

## ◆ 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

▼

## ◆ 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		

▼

← Expand to include same number of counts as on Larceny

# Larceny ❖ Section C

Offender Name: \_\_\_\_\_

## ◆ Primary Offense

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

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

## ◆ 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.....	2

▼

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

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

▼

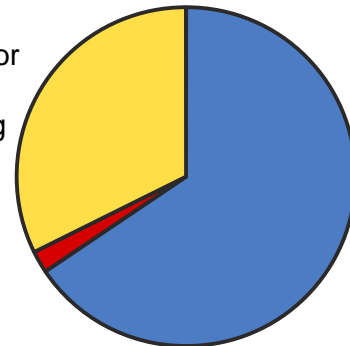
# Other Possible Changes

## Other Issues

## 2. Burglary Dwelling & Burglary Other - Concurrence

Section B – Probation to 6 Months

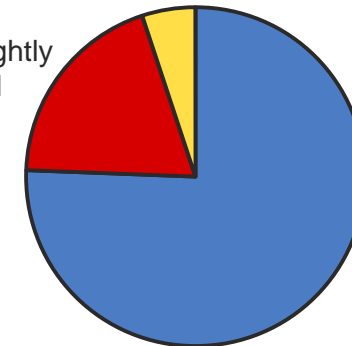
Aggravation is High for Both, but Higher for Burglary of a Dwelling



■ Concurrence ■ Mitigation ■ Aggravation ■

Section C – 7 months or More

Mitigation Rates or Slightly Higher for Category I/II Offenders



■ Concurrence ■ Mitigation ■ Aggravation ■

FY2014 - FY2018



## Proposed Work Plan

- September 2019** — **Finish Data Collection**
- October 2019** — **Data Analysis**
- November 2019** — **Present Proposal for Guidelines Revisions (if supported by data)**



