

**MEETING OF THE
VIRGINIA CRIMINAL SENTENCING COMMISSION**

September 14, 2020, 10:00 a.m.

**Richard P. Kern Memorial Conference Room
Virginia Supreme Court Building
Fifth Floor**

**** Meeting will be held by video-conference via Zoom ****

AGENDA

- I. Approval of Minutes from Last Commission Meeting [PDF Page 1](#)**

Judge Edward L. Hogshire (Ret.), Chairman
- II. Probation Violation Guidelines Study [PDF Page 3](#)**

**Jody Fridley, Deputy Director
Thomas Barnes, Research Associate
Joe Boelsche, Research Associate
Chang Kwon, Research Associate**
- III. Report on the 2020 General Assembly Special Session I [PDF Page 61](#)**

Meredith Farrar-Owens, Director
- IV. Sentencing Guidelines and Acceptance of Responsibility and Timeliness [PDF Page 79](#)**

Meredith Farrar-Owens, Director
- V. Sentencing Guidelines Supplemental Case Information Form [PDF Page 87](#)**

Jody Fridley, Deputy Director
- VI. Sentencing Guidelines Compliance and Probation Violation Guidelines – Preliminary FY2020 Report [PDF Page 95](#)**

Jody Fridley, Deputy Director
- VII. Miscellaneous Items**
 - a. Service Awards**
 - b. Members with Terms Expiring in 2020**

Meredith Farrar-Owens, Director



VIRGINIA CRIMINAL SENTENCING COMMISSION



Probation Violation Guidelines Study Update and Initial Findings

September 14, 2020



Probation Guidelines Surveys Recap



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- **The majority of responding judges felt that the guidelines should cover violations stemming from technical violations, as well as new felony and new misdemeanor convictions.**
- **In determining punishment for probation violations, responding judges most often consider: major violation reports, testimony from the probationer, and probation violation guidelines.**
- **The responding judges structure the sentence for a probation violation in a variety of ways (not consistent across the Commonwealth).**
- **In regard to the amount of revocable time remaining, the largest share of responding judges said it had no or minimal effect on the sentencing decision.**
- **The vast majority of responding judges (90%) indicated that if a probationer is brought back to court multiple times for violations stemming from the same original offense, they typically increase the punishment for a violation at each successive revocation.**

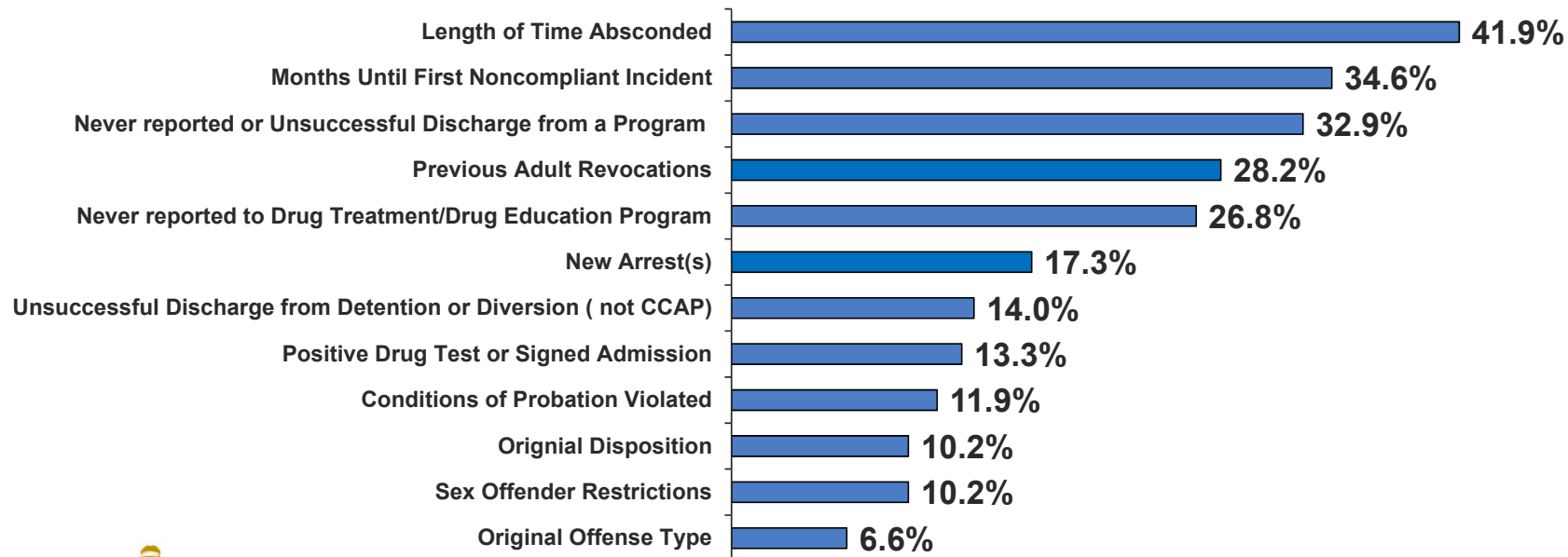


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- Only half of responding judges felt sufficient and effective alternatives to incarceration were available.
- Responding judges provided some insight into the factors that, on average, are weighed the most heavily in sanctioning probation violators. Examples:
 - Type of original felony offense
 - Violation of sex offender restrictions
 - Violation behavior that is similar to underlying offense
 - Progress in treatment
 - Never reported to court-ordered program
 - Positive tests/admissions for heroin or meth use
 - New felony convictions
 - Number of prior adult probation revocations
 - Gang membership or activity

12: Thinking about the current probation violations guidelines, are there any factors that are problematic to score accurately?

(More than one factor may have been identified and the total will not add to 100%)



13: What other factors, not currently on the probation violation guidelines, should be on the probation violation guidelines?

1. Substance or Mental Health Treatment (32)
2. Positive Behavior (24)
3. Amenable to Supervision (20)
4. Employment - Employed or Unemployed (20)
5. Same New Offense Conviction/Arrest (18)
6. Total Number of Probation Violations (15)
7. Length of Time on Supervision Before Violation (12)
8. Include Condition One (10)
9. Restitution (10)
10. Drug Type (9)
11. CCAP (7)
12. Number of Noncompliance Incidents (7)
13. Administrative Probation Issues (6)



8: Please rank the top condition of probation based on your opinion of what conditions the judges in your primary court view as the most serious technical violations (Anything other than Condition 1: New Law Violation).

Answered: 646 Skipped: 176

Answer Choices	Frequency	Percent
Condition 11: Not abscond from supervision	353	54.9%
Condition 8: Not use, possess, distribute controlled substances	132	20.5%
Condition 13: Abide by special sex offender conditions	68	10.6%
Condition 9: Not use, own, possess, transport or carry a firearm	33	5.1%
Condition 6: Follow the Probation and Parole Officer's instructions	15	2.3%
Condition 12: Abide by special conditions	13	2.0%
Condition 2: Report any arrest to the Probation and Parole Officer	7	1.1%
Condition 4: Report to the Probation and Parole Officer as instructed	5	0.8%
Condition 3: Maintain regular employment	1	0.2%
Condition 10: Not change my residence or leave the state without permission	1	0.2%
Condition 5: Permit the Probation and Parole Officer to visit my home, etc.	0	0.0%
Condition 7: Not use alcoholic beverages in excess	0	0.0%





Study Status

Study Steps Completed

- **Major Violation Report data coded**
- **External data sources obtained and cleaned**
 - **Dept. of Corrections, Local Inmate Data System, Court Case Management System, and Virginia State Police**
- **Initial analysis and procedural findings (as presented today)**

MVR Coding Instrument

Probation Violation Study 2020 «DCN» «OffName» («Name»)

Instructions: Score all factors for the current supervision period. This may be different from the first time the defendant was placed on probation. If the defendant's probation has been revoked several times, score the factors below from the date of the last court action date (e.g. found in violation, continued probation, taken under advisement, etc.) The major violation report may give you a summary of prior violations for the entire supervision event, but coders must focus on the new alleged violations. The ones since the last court action.

If asked for number of times:

Code Mentioned with no Details=22, Several=33 Multiple Times=44, Constantly = 99

- Did defendant report to probation and parole 1-Yes 0-No
Original Sent. Date: «Origdate» (Date will be different if this is not the 1st violation)
- Start Date of Current Supervision _____ Violation Date «revdate» _____
- Was this an Interstate Compact case? 1-Yes 0-No 99-N/A
- Was/Is There a Pending Charge in the Other State (Interstate Compact)? 1-Yes 0-No 99-N/A
- Officer's summary of defendant's behavior on supervision
1- No previous issues, before current issue 2- Acceptable 3- Acceptable while "clean"
4- Average/Marginal 5- Unacceptable 6- Required Constant Supervision 7- Total Disregard
8- Other _____ 99- N/A
- Offender's Poor Health Mentioned? 1-Yes 0-No 99-N/A
- Mental Health: 1- Mentioned 2- Addressed 3- Requires Attention 4- Other _____ N/A
- Sanctions or Special Conditions Imposed by the Court at Sentencing or PO During Current Supervision Period N/A From PVG: «SpecialDescription»
- Type (Use Alternative Codes) Outcome (circle): End Date
_____) 0-Missing, 1-Completed, 2-Marginal 3-Failure _____
_____) 0-Missing, 1-Completed, 2-Marginal 3-Failure _____
_____) 0-Missing, 1-Completed, 2-Marginal 3-Failure _____
_____) 0-Missing, 1-Completed, 2-Marginal 3-Failure _____
- Type of Treatment Imposed by the Court at Sentencing or PO During Current Supervision Period
- N/A From PVG: «SpecialDescription»
Type (Use Alternative Codes) Outcome (circle): End Date
_____) 0-Missing, 1-Completed, 2-Marginal 3-Failure _____
_____) 0-Missing, 1-Completed, 2-Marginal 3-Failure _____
_____) 0-Missing, 1-Completed, 2-Marginal 3-Failure _____
_____) 0-Missing, 1-Completed, 2-Marginal 3-Failure _____
- Types of Drugs Mentioned in MVR: 1- Cocaine 2- Codeine 3- Fentanyl 4- Heroin
5- Hydrocodone 6- Meth 7- Methadone 8- Methylphenidate 9- Morphine
10- Oxycodone 11- Marijuana 12- Other _____ 99- N/A
- Did Offender have a prescription for drug mentioned in current violation? 1-Yes 2-No 99-N/A

14. Number of Positive/Negative Drug Screens During Current Supervision Period or Signed Admissions
+ ____ - ____ N/A Mentioned with no Details=22, Several=33 Multiple Times=44, Constantly = 99

Number of Positive/Negative Alcohol Screens During Current Supervision Period
+ ____ - ____ N/A Mentioned with no Details=22, Several=33 Multiple Times=44, Constantly = 99

- Was any drug screen adulterated? 1-Yes 0-No 99-N/A
- Drug Screens During Current Supervision Period:
1- Increase in Number/Level 2- Decrease in Number/Level 3- No Change 99-N/A
- Change in Supervision Level During Current Supervision Period:
1-Decreased 2-Increased 3-No Change 99-N/A
- Defendant's response to Treatment Effort During Current Supervision Period:
1-Responded well 2-Open about struggle 3-Deceptive 4-In Denial 5-Overdosed 99-N/A
- Type of Residence Based on the last place the defendant resided as identified in the MVR:
1-On Own, 2-W/Family, 3-W/Friend, 4-W/Significant Relationship, 5-Group Home,
6-Halfway House, 7-Treatment Facility 8-Hotel, 9-Shelter 10-On Street
11-Other _____ 99-N/A
- Stability of Residence: 1-Stable, 2-Unstable: Many Changes, 3-Unstable: Domestic Abuse,
4-Unstable: Drug House, 5-Unstable: Prostitution, 6-Unstable: General 99-N/A
- Employment During Current Supervision Period 1-Maintaining Employment 2-Laid off no fault of defendant
3-Actively Seeking 4-Failed to Maintain (not fired) 5-Fired/Released for Conduct
6-Multiple job changes 99-N/A
- Restitution Status: 1- Missed or incomplete payment(s) 2-No attempt at payment 3-Judgement
4-On schedule 5-Fully paid 6- _____ N/A
- Restitution Outcome: 1-Released/No Obligation 2-Continued with Obligation
3-Docketed for Payment 4-Sent to Collection 5-Other _____ 99-N/A
- Only Violation was Restitution: 1-Yes 0-No 99-N/A
- CCAP – Reason Terminated: 1-Administrative (not health or record) 2-Health
3-Criminal Record, 4-Non-compliant Behavior 5-Other _____ 99-N/A
- CCAP – Type of Non-compliant Behavior: 1-Fail to Follow Instructions 2-Fail to Participate in Treatment
3-Drug Use 4-Disruptive or Violent Behavior 5-New Law Violation
VCC: _____ 99-N/A
- CCAP – Sentenced to Jail/Prison Prior to Entry for this Event 1-Yes, additional jail term given
2- No additional jail term given, incarcerated while waiting for bed
3- No additional jail term given, released on bond while waiting for bed 99-N/A

Each question is an opportunity for statistical analysis.

Some factors may be important for future guidelines, some will not be, and others may not occur frequently enough for analysis (e.g. CCAP).

MVR Coding Instrument

28. **Number of Attempted Contacts (no response from ▲) & Missed Appointments w/PO:** (Not Drug Screens)
 Attempted to Schedule Appt. _____ Missed Scheduled Appt _____ 2-Mentioned _____ N/A
Absconding Cited in PVG 1= Yes 0=No («Abscond»)

29. **Abscond from Probation:** Last contact date __/__/____ Date Arrested __/__/____ N/A

30. **Absconder Arrest Location** 1-Same Jurisdiction 2-Virginia 3-Out-of-State _____ N/A

31. **Absconder Behavior:** 1-No New Arrests 2-Arrested for new crimes
3-Convicted of New Crimes VCC _____ Conviction Date __/__/____ N/A

32. **New Law Violation VCCs During Supervision Period (most serious):** N/A

VCC	Arrest Date	Conviction Date	Sentence/Dismissed/Pending	State
_____	__/__/____	__/__/____	_____ <input type="checkbox"/> D <input type="checkbox"/> P	_____
_____	__/__/____	__/__/____	_____ <input type="checkbox"/> D <input type="checkbox"/> P	_____
_____	__/__/____	__/__/____	_____ <input type="checkbox"/> D <input type="checkbox"/> P	_____

List on New Law Violations from PVG- Research Conv: «vccnew1» «vccnew2»

33. **Was Type Violation Behavior Identical to Current Offense?** (Example Drug conviction, Behavior was drug related) 1-Yes 0-No 99-N/A Current Offense on PVG: «vccorig»

34. **Did the Behavior Result in** 1-Conviction 2-Arrest 3-Sanction by PO 4-Report to Authorities
99-N/A

35. **Type of Weapon Involved/Identified in the Violation:**
0-None 1-Firearm 2-Knife 3-Explosive 5-Other 99-N/A

36. **Sex Offender Condition(s) Violated** (Enter Letters for Conditions A- Z from PVG Manual)
 _____ N/A

37. **Specific Behavior(s) that Violated Restrictions** (Check all that Apply)

- 1. Criminal Act (Identify up to 3 Offense SG Group) _____
- 2. Substance Abuse (Drugs or Alcohol)
- 3. Drug Paraphernalia
- 4. Sex Offender Restrictions (_____)
- 5. Gang Behavior
- 6. Domestic Violence/Threats to Family
- 7. Attitude
- 8. Other _____
- 99. N/A

- 1 Assault
- 2 Burglary ~~Dwell~~
- 3 Burglary Other
- 4 Drug I/II
- 5 Drug Other
- 6 Fraud
- 7 Kidnap
- 8 Larceny
- 9 Misc
- 10 Misc Other
- 11 Misc PP
- 12 Murder
- 13 Obscene
- 14 Rape
- 15 Robbery
- 16 Sex Assault
- 17 Traffic
- 18 Weapon
- 20 Non-Guidelines

38. **PO Recommendation for Current Violation]**

- 1. Incarceration
- 2. Return to Probation
- 3. Return to Probation/Treatment
- 4. Released from Probation
- 5. No recommendation
- 6. Other _____
- 99. N/A

39. **Was the behavior similar to behavior reported for other violations in the past five years?**
Yes No N/A

40. **If Yes to question 39, how?..**

- 1. Same conditions violated
- 2. Issues with substance abuse
- 3. Absconding
- 4. Issues following Instructions
- 5. New law violation
- 6. Work issues/unemployment
- 7. Abusive behavior
- 8. Other (enter key words) _____

41. **Did the MVR include other behavior that did not result in new arrests/convictions, positive screens for substances, etc.** (i.e., what were the underlying theme or tone of the MVR)?

- 1. Violated protective order, but not arrested
- 2. Threatening or stalking behavior
- 3. Assaulted someone, but not arrested
- 4. Took advantage of elderly person
- 5. Child abuse reported
- 6. Stole property, but not arrested
- 7. Went to place prohibited by conditions
- 8. Used computer/phone in a way prohibited by conditions
- 9. Prohibited contact with person
- 10. Hostile to probation/court officials
- 20. Other (enter key words) _____

42. Question 2 - **Start date needs to be researched:** The start date is unclear because the defendant was sentenced to prison or jail, but no specific release date was given. The date is unclear because of the number of prior revocations. This case needs to be researched in LIDS.

43. **Were there Previous Major Violation Reports included in the DOC data for this case?**

- Check this box if a MVR was prepared BEFORE this case (For a previous supervision period)
- Check this box if a MVR was prepared AFTER this case (After sentencing date for this violation)

44. **Identify specific instructions from the judge cited in the MVR** for the current violation (e.g., return to court after first positive drug screen, report any contact with victim, make court aware of failure to pay restitution, etc.)

Probation Violation Guidelines Study Analysis Sample

■ Sample Based on Valid MVRs

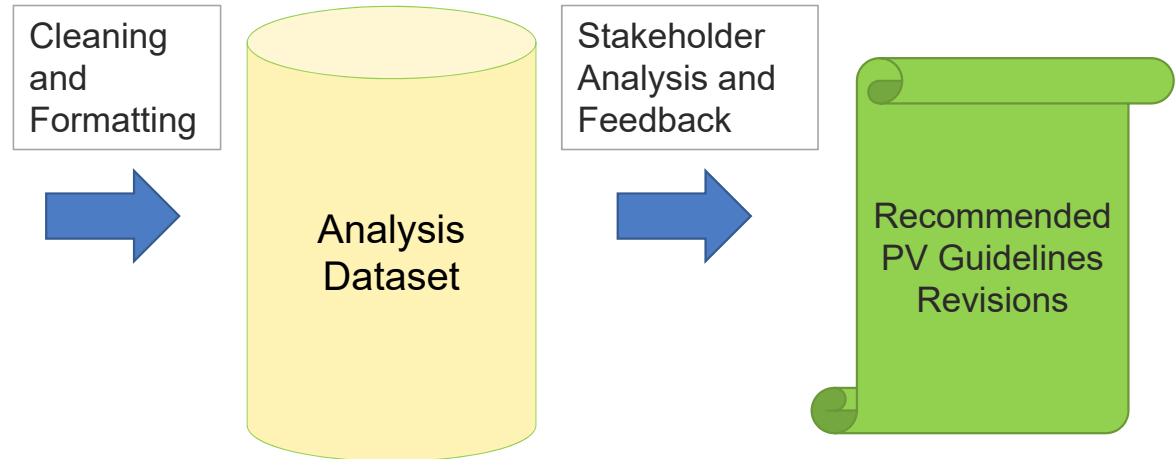
- 3,820 Cases (95.5% of initial sample)
 - 1,946 New Law (Condition 1) Violators – (50.9%)*
 - 1,874 Technical Violators – (49.1%)*
 - Revocation Dates FY2014 - FY2018
- 180 cases (4.5%) dropped due to invalid supervision dates, lack of MVR, or wrong violation type (Good Behavior etc.)

*New convictions during the study supervision period were identified in CMS for 2,407 cases. This suggests that for many cases, new convictions are resolved after MVRs and sentencing guidelines are completed, so Condition 1 violations are under-reported.



Study Data Flow

Data Source	Sentencing Factors	Timeline Construction
Dept. of Corrections (DOC) Supervision Data	✓	
Major Violation Reports	✓	✓
Sentencing Guidelines/ Revocation Reports	✓	✓
Local Inmate Data System (LIDS) Jail Records		✓
State Police Arrest Records		✓
Court Case Management System (CMS) Data		✓



Prepared and combined data sources serve as the analysis dataset. The results of the analysis combined with stakeholder feedback will drive recommendations for revision.

Study Next Steps

- **Test initial findings and analyze other factors**
- **Stakeholder meetings**
- **Recommendations to Commission (Nov. meeting)**

Initial Findings

- **Three analyses based on stated commission priorities**
 - **Prior revocations**
 - **Original sentencing/original Guidelines recommendation**
 - **Jail time served during supervision (awaiting revocation hearing)**



Initial Findings: “Stairstep” Prior Revocations Analysis

Initial Finding – “Stairstep” Revocation Sentencing

■ Study Questions

- Do judges give longer sentences for subsequent violations?
- As number of prior violations increases, how do sentences trend with revocable time and guidelines recommendation?
- Are offenders with more prior violations released from probation more frequently?

■ Data Sources

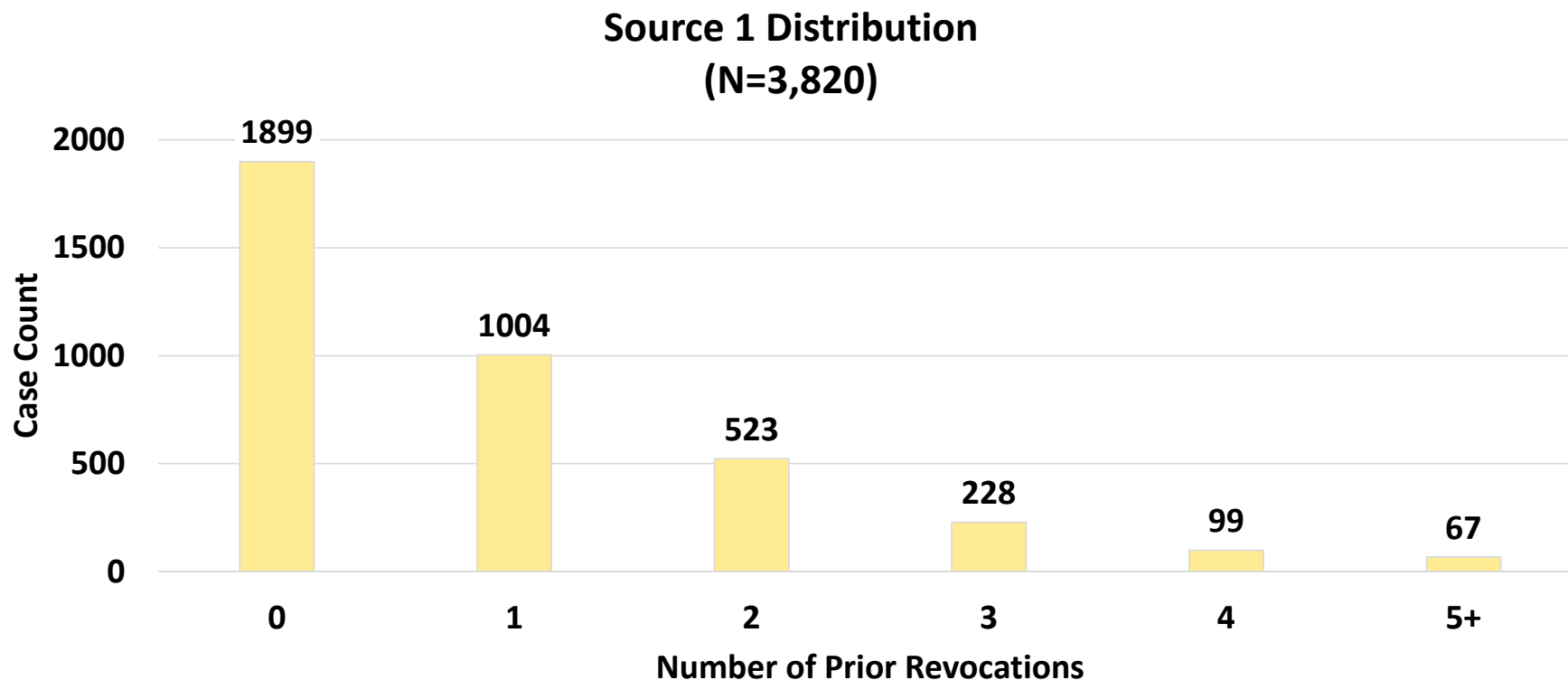
- Source 1: “Multi-System” record review of Sentencing Revocation Report, CMS, and Sentencing Guidelines data
- Source 2: Study period Probation Guidelines violation score on existing prior revocations factor

◆ Previous Adult Probation Revocation Events *(Federal, State and Local)*

Number of Violation Events:	1 - 2	7	[] []
	3 or more.....	10	

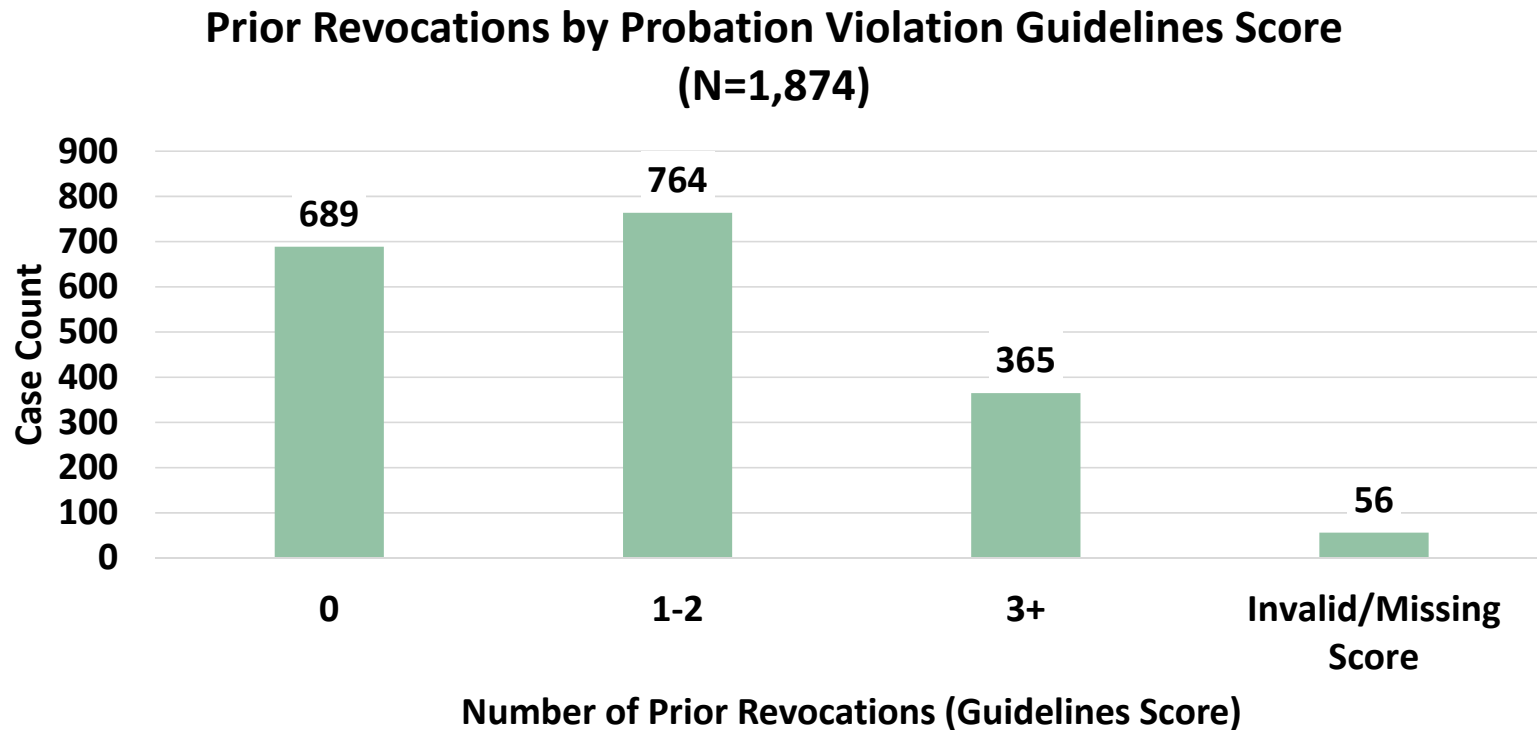
- Allows for two scenarios of judicial information, and analysis of Condition 1 violators

Source 1 – Distribution of Prior Revocation Count



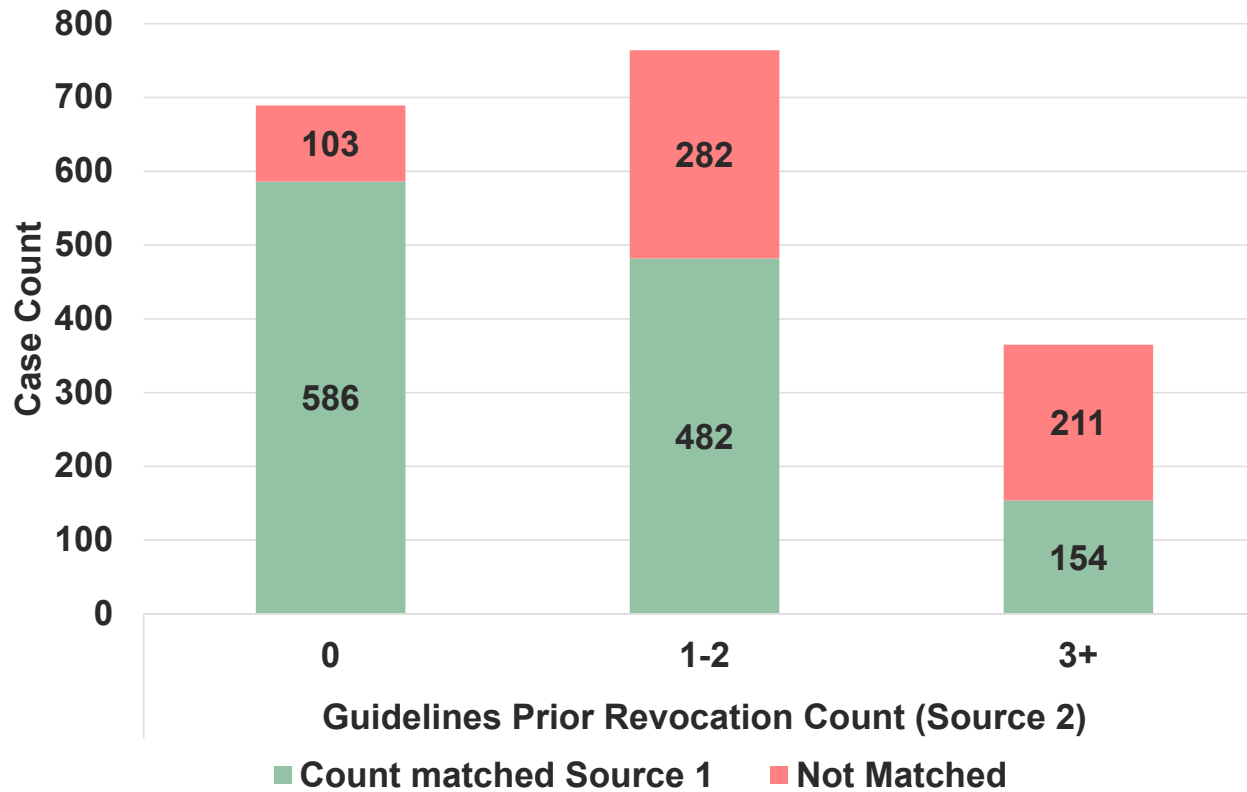
Prior revocations not found for about half (49.7%) of review cases, with decreasing frequency for each additional prior.

Source 2 – Probation Violation Guidelines Score (Technical Violators)



Grouping of categories and limiting sample to technical violators shows a different (and difficult to compare) trend for prior revocations by guidelines score.

Matching Source 1 and Source 2 on Prior Revocations



Among technical violations, 596 prior revocation GL scores (33%) did not match prior record review data.*

*Prior record dataset does not include out of state revocations or revocations prior to Calendar Year 2005.

Source 1 – Distribution of Disposition Type

Prior Revocations (Multi-System Review)	Probation	Jail	Median Jail Sentence	Prison	Median Prison Sentence
None	24.1%	50.5%	4 months	25.3%	18 months
1	18.4%	46.9%	6 months	34.7%	18 months
2	17.2%	42.8%	6 months	40.0%	20 months
3	15.2%	37.5%	6 months	47.3%	24 months
4	22.2%	34.3%	3 months	43.4%	22 months
5+	11.9%	44.8%	5.5 months	43.3%	18 months

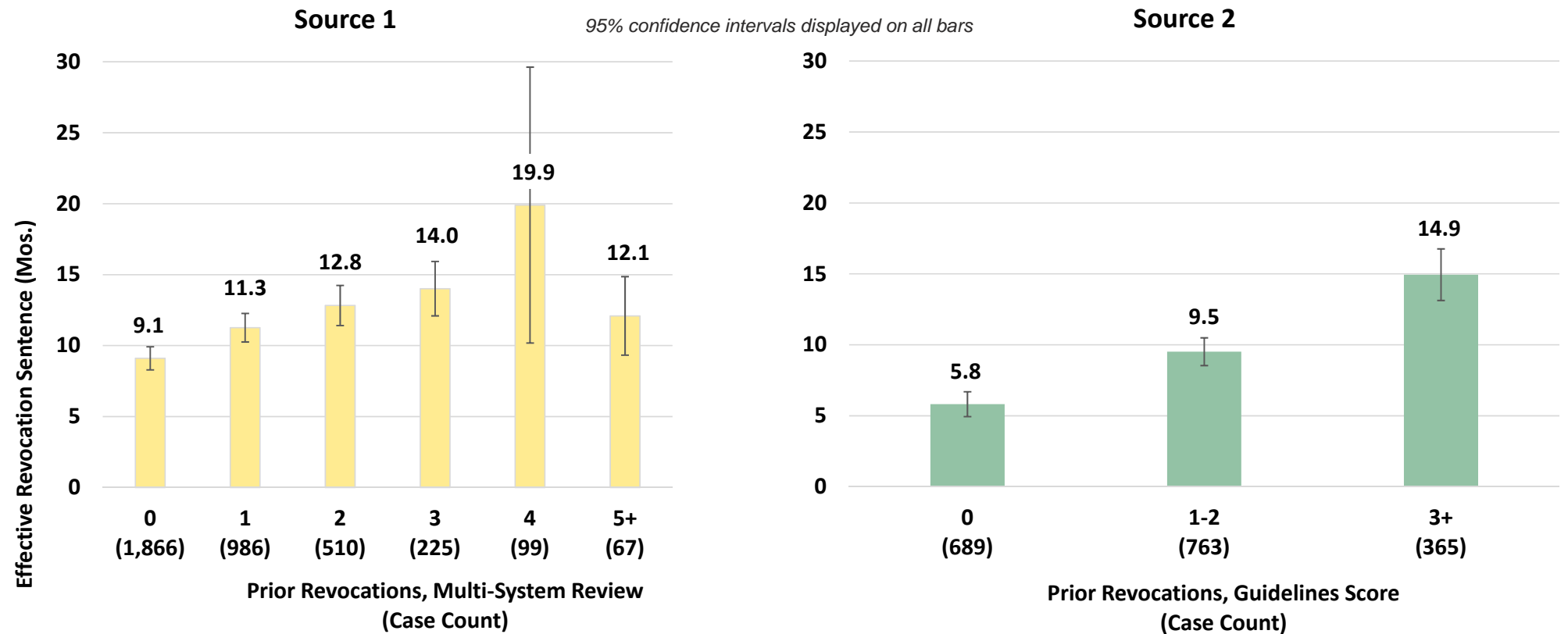
Initial finding: Based on Source 1 prior revocations, prison sentences trend upward with a peak at 3 prior revocations.

Source 2 – Distribution of Disposition Type

Prior Revocations (Guidelines Score)	Probation	Jail	Median Jail Sentence	Prison	Median Prison Sentence
None	26.9%	58.0%	3 Months	15.1%	13.5 Months
1 – 2	17.7%	54.6%	6 Months	27.7%	16 Months
3 or More	14.8%	31.3%	6 Months	53.9%	18 Months

Initial finding: Based on guidelines prior revocation score, rate of incarceration trends higher with longer sentences as prior revocations increase. **Overall disposition trends are consistent between Source 1 and Source 2.**

Effective Revocation Sentence by Prior Revocations

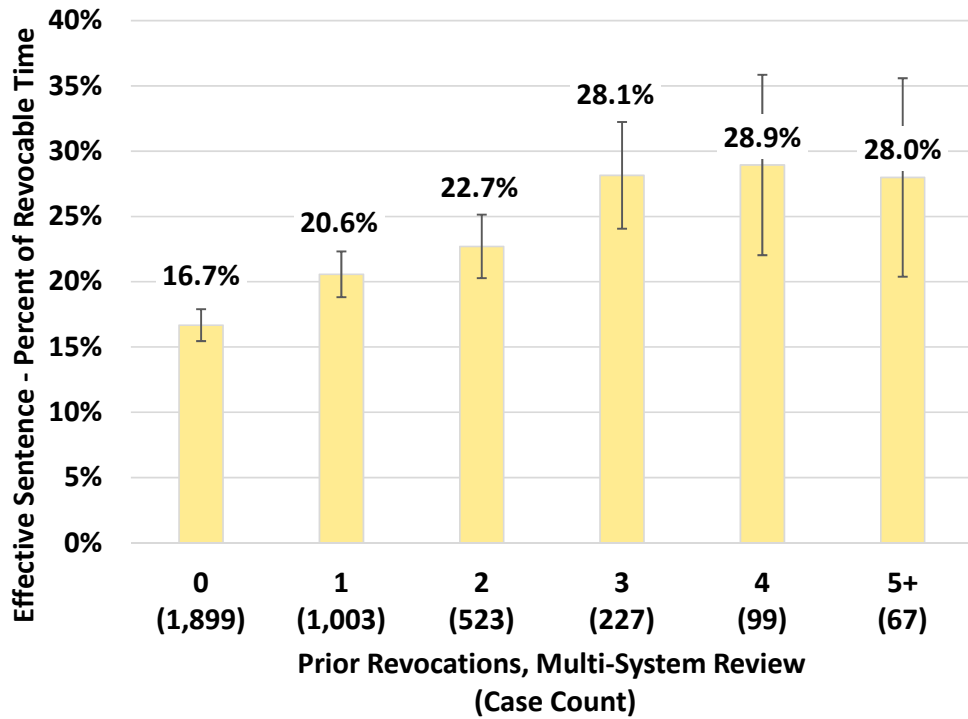


Source 1 shows a marginal stairstep pattern for time revoked that requires further analysis; Source 2 shows a consistent increase as prior revocations increase.

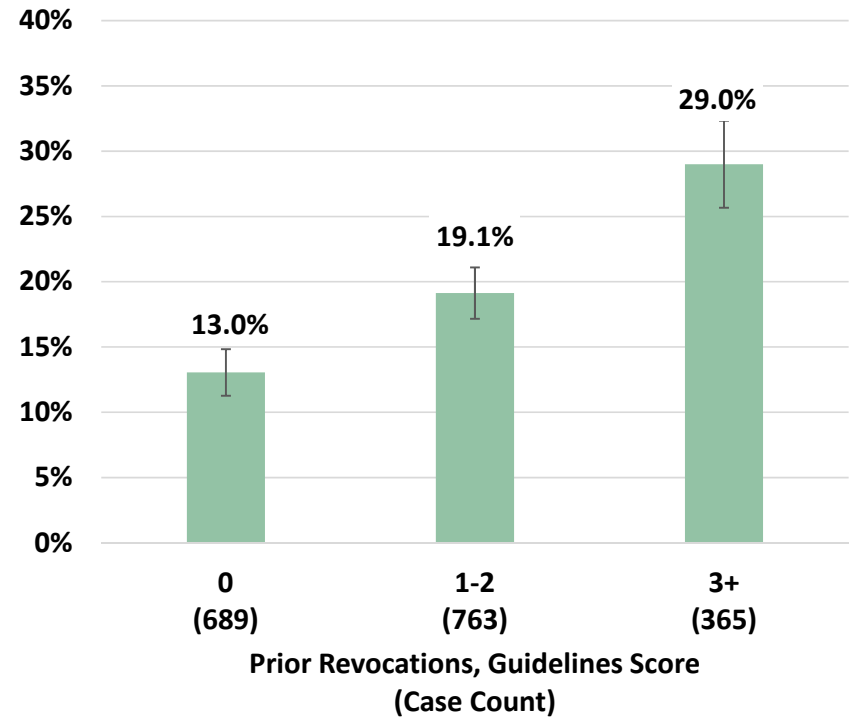
Effective Revocation Sentence (% of Revocable Time) by Prior Revocations

Source 1

95% confidence intervals displayed on all bars

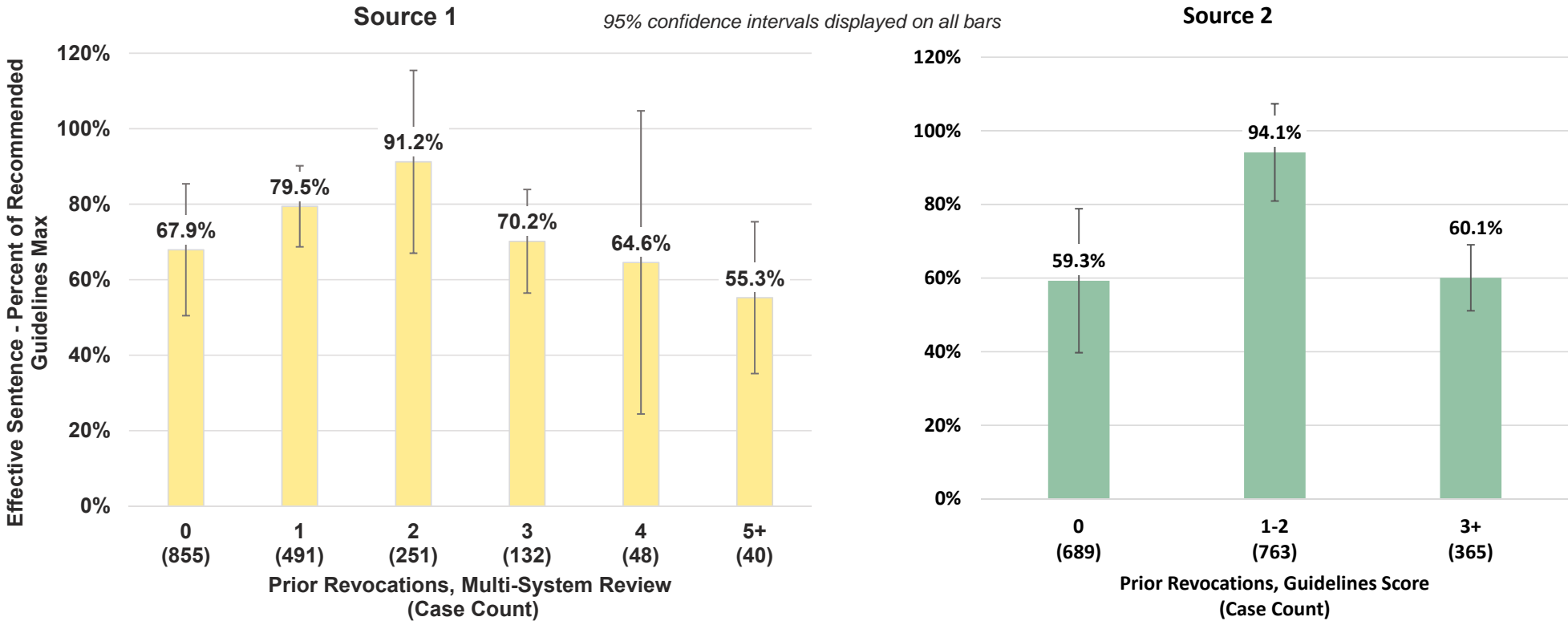


Source 2



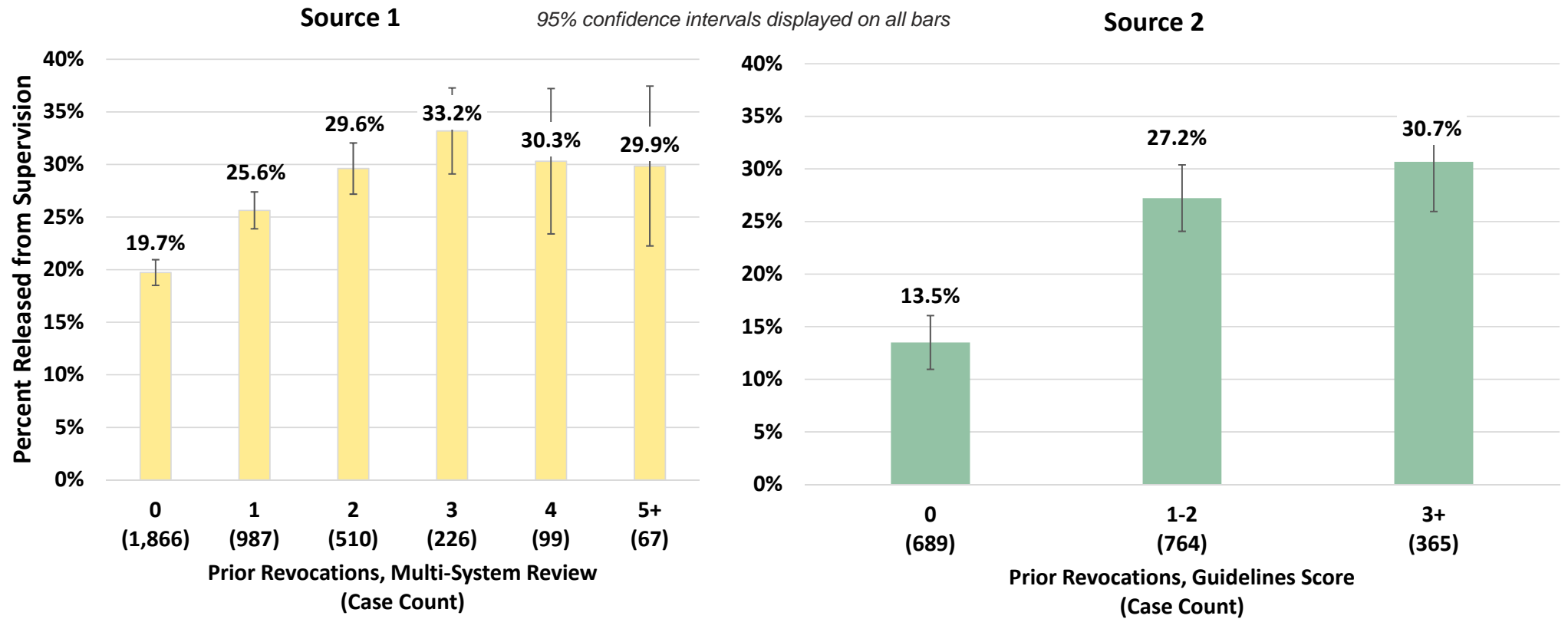
Source 2 shows an increasing trend of revocable time utilized as prior revocations increase, but this trend doesn't show a clear "stairstep" in Source 1.

Effective Revocation Sentence (% of Probation Guidelines Maximum) by Prior Revocations



There is some indication of a peak in sentencing (rate of probation guidelines recommendation maximum) at the 1-2 prior revocations level, but lots of variation these cases for Source 1. No clear conclusion on sentencing against guidelines.

Percent Released from Supervision by Prior Revocations



While release from probation shows less of a significant “stairstep” increase with prior revocations, both sources indicate a trend that having prior revocations (vs. none) increases the likelihood of release.

“Stairstep” Initial Takeaways

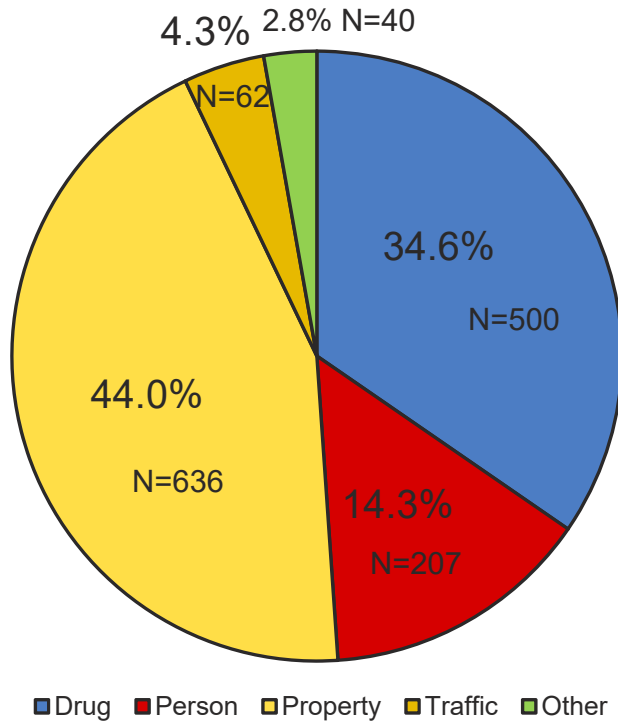
- **Do judges give longer sentences for subsequent violations?**
 - Likely yes, but “stairstep” increase with each subsequent violation needs further testing.
- **As number of prior violations increases, how do sentences trend with revocable time and guidelines recommendation?**
 - Strong evidence for “guidelines stairstep” toward maximum revocable time with Source 2, but no significant trend with either Source against guidelines maximum (lots of variation).
- **Are offenders with more prior violations released from probation more frequently?**
 - There appears to be an increased release rate for priors versus no priors, but there is more variation of release rate as prior revocations increase.



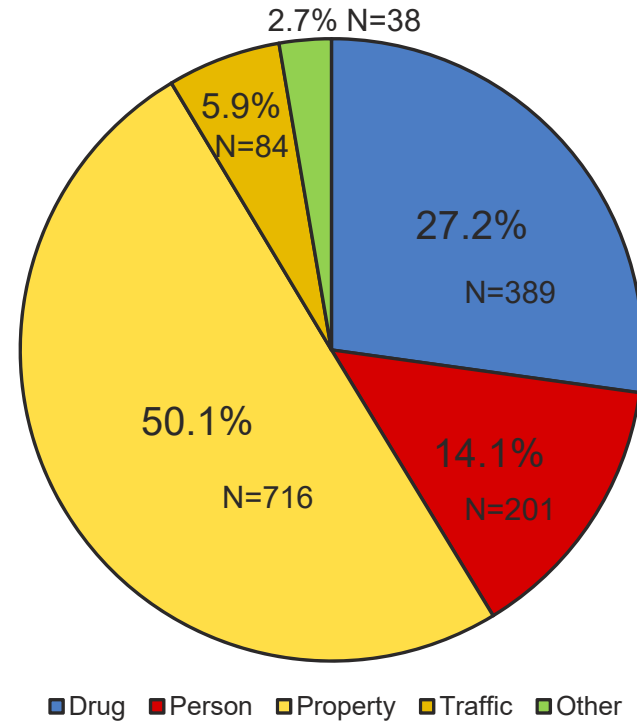
Initial Findings:
Original Sentencing Analysis

Original Offense Type – Technical and Condition 1 Violators

Technical Violators

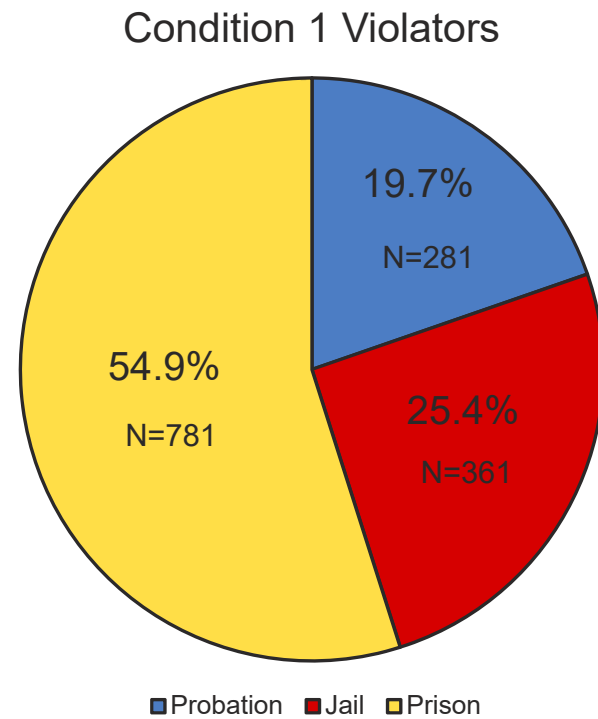
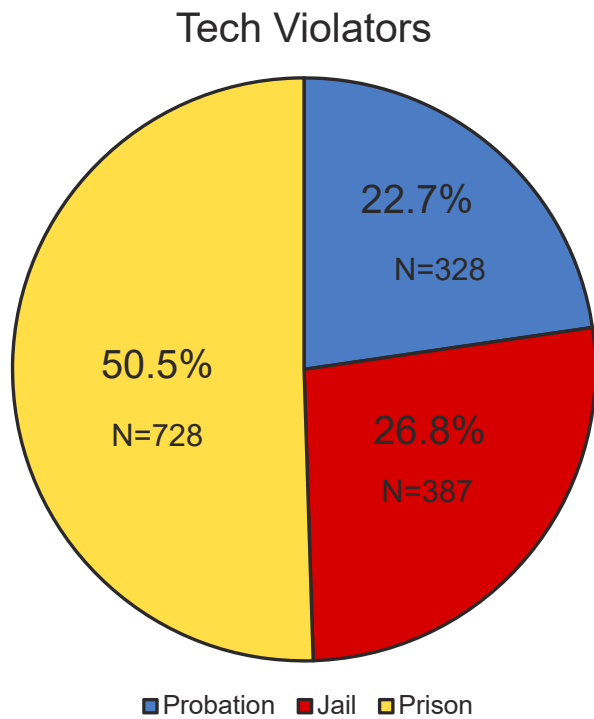


Condition 1 Violators



The data show more property crimes and fewer drug crimes for the original offense among Condition 1 violators.

Original Guidelines Recommended Disposition – Technical and Condition 1 Violators

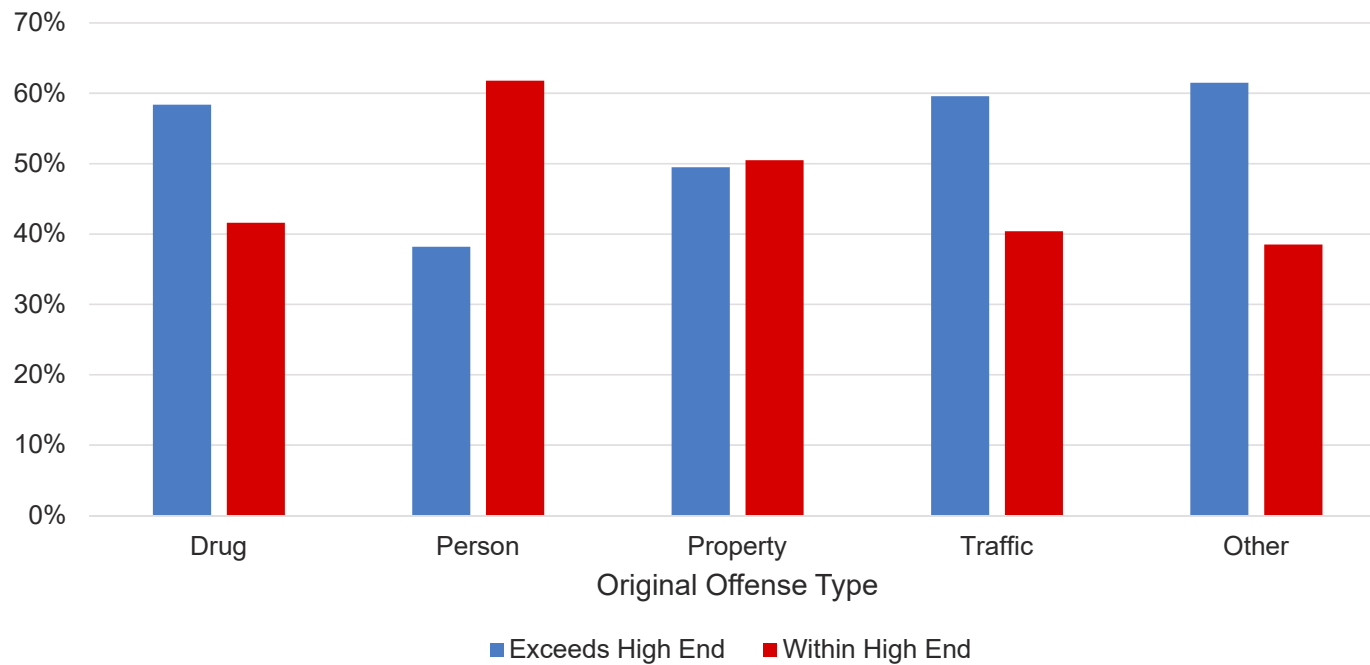


Prison was recommended slightly more often for the original offense among Condition 1 violators.

Original Offense Sentence vs Revocation Sentence

- Length of the original offense sentence did not appear to be strongly correlated with the length of the revocation sentence, either for technical violators or Condition 1 violators.
- We also looked at the **combined effective sentence** for the two events (**original sentence + revocation sentence**). Question of interest: how frequently does the combined sentence exceed the high end of the original guidelines recommendation?
 - In the cases analyzed, this occurred 51.5% of the time. However, the combined sentence was more likely to exceed the high end of the original recommendation in Drug, Traffic, and Other Primary Offense cases.

Combined Sentence vs Original Guidelines Recommendation



The combined sentence exceeds the original recommendation high end for most cases, but 61.8% of cases with a person crime as the original offense have a combined sentence at or below the high end.

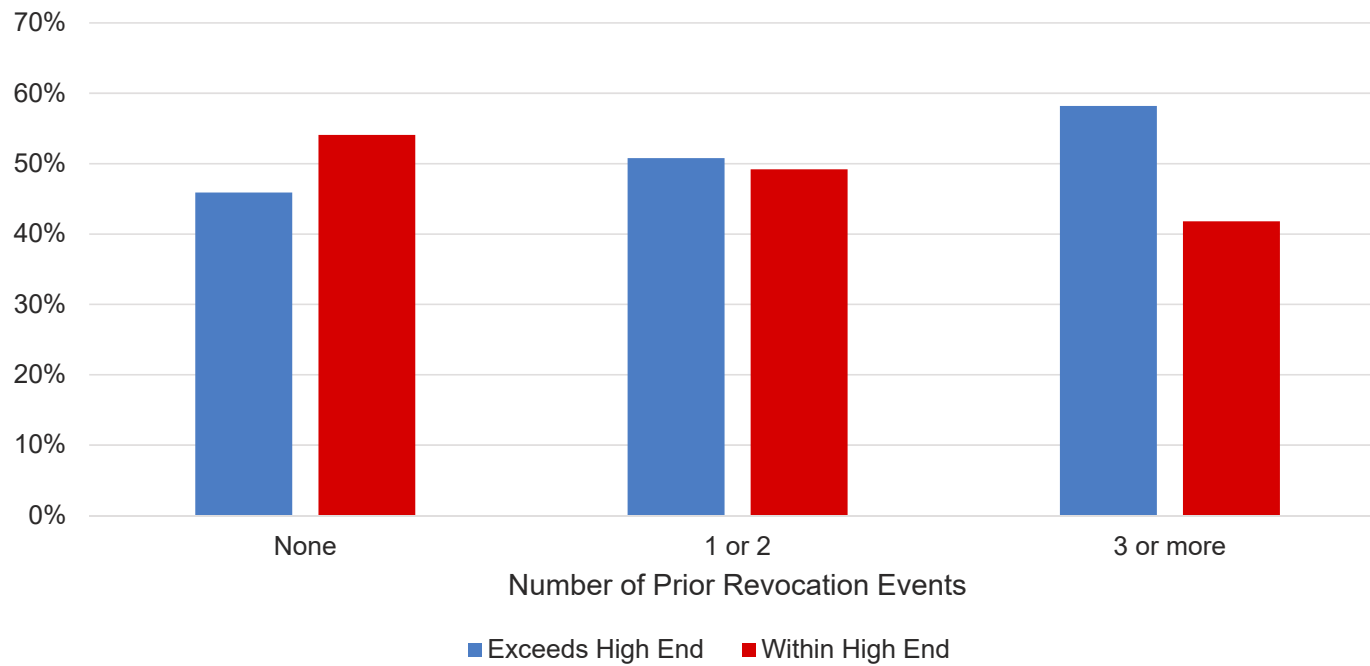
Original Offense Sentence vs Revocation Sentence

- **What about the subset of cases where the guidelines for the original sentencing event recommended incarceration, but the judge mitigated?**
- **This pattern was observed in approximately 10% of the cases available for analysis.**
- **In this subset of cases, the combined sentence exceeded the high end of the original guidelines recommendation only 16.4% of the time.**

Technical Violators – Prior Revocation Events

- **Technical violators who had one or more prior revocation events were more likely to receive a prison sanction at revocation, and had a higher median prison sentence than technical violators with no prior revocations.**
- **Also, the combined sentence was more likely to exceed the high end of the original guidelines recommendation among offenders who had one or more prior revocation events.**

Technical Violators - Combined Sentence vs Original Guidelines Recommendation



Combined sentence exceeds the original high end more often among cases with prior revocations scored.

Initial Finding – Original Offense Type

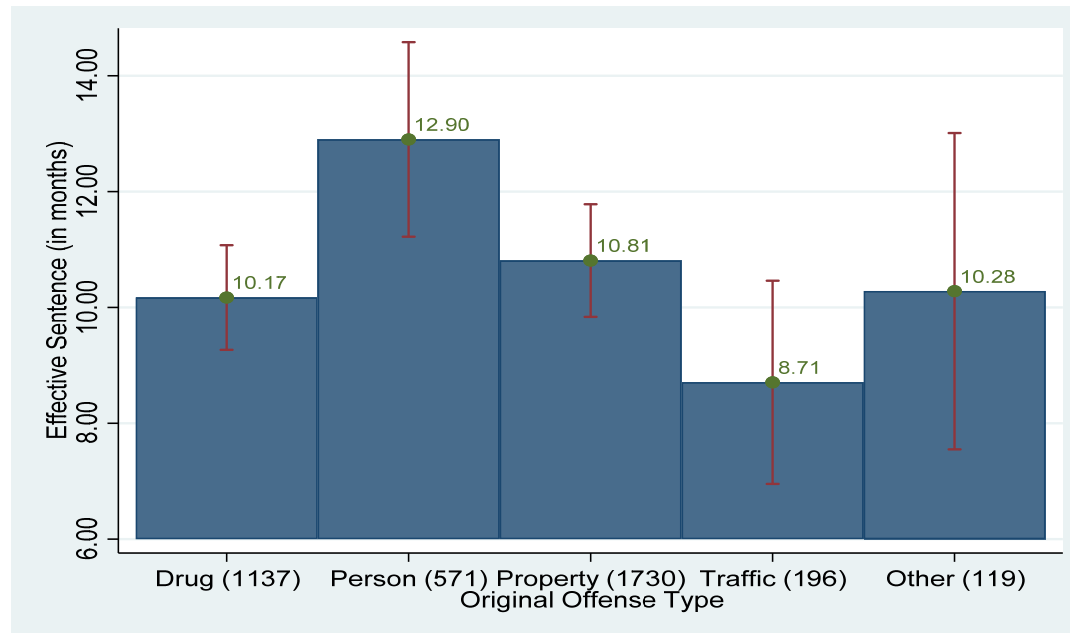
- **Study Questions**

- **Does original primary offense type impact revocation sentencing?**
- **Does revocation sentencing differ if violation behavior or a new conviction is identical/similar to the original offense type?**

Effective Revocation Sentence by Original Offense Type (Overall)

- **Mean effective revocation sentence (months) by original offense type: All sample cases**

Initial finding: Based on all samples cases, mean effective sentence (revocation) is the highest for person offenses. The mean is lowest for traffic offenses.



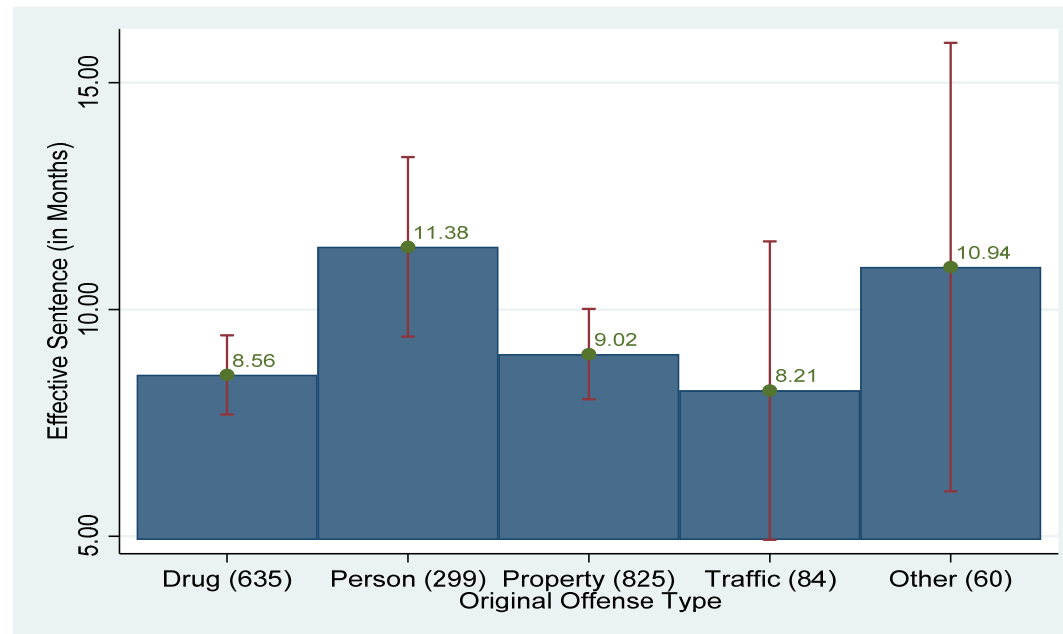
Case counts in parentheses.

The bar chart includes all sample cases (both technical and Condition 1 violators). Red error bars represent 95% confidence intervals of each mean effective sentence.

Effective Revocation Sentence by Original Offense Type (Technical Violators)

- Mean effective revocation sentence (months) by original offense type: Technical violators

Initial finding: Based on technical violator sample cases, mean effective sentence (revocation) is the highest for person offenses. The mean the lowest for traffic offenses.



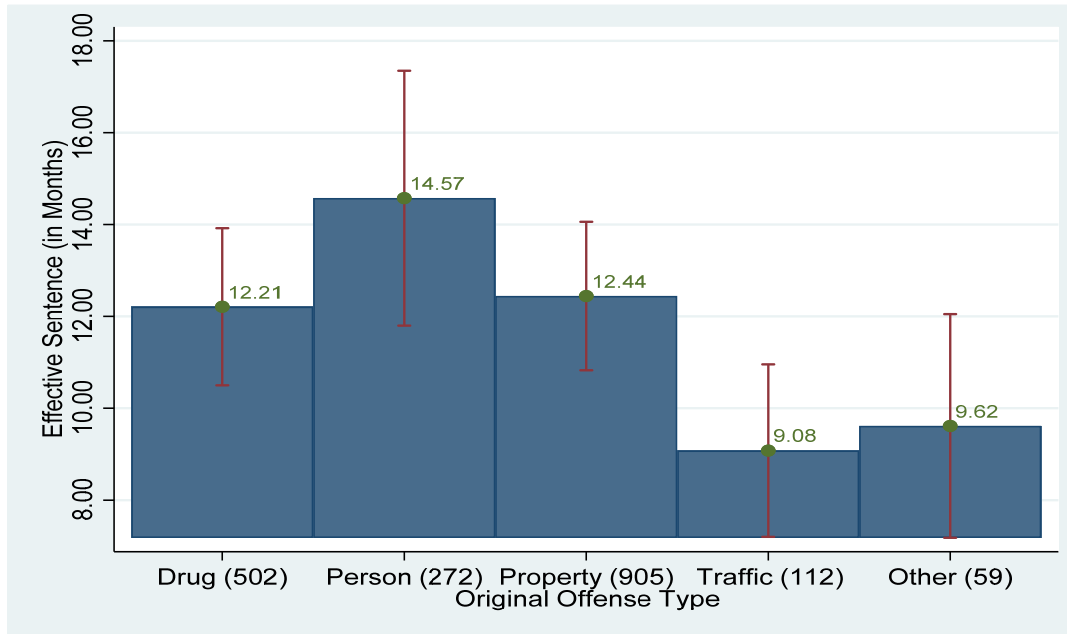
Case counts in parentheses.

Red error bars represent 95% confidence intervals of each mean effective sentence.

Effective Revocation Sentence by Original Offense Type (Condition 1 Violators)

- **Mean effective revocation sentence (months) by original offense type: Condition 1 violators**

Initial finding: Based on Condition 1 violator sample cases, mean effective sentence (revocation) is the highest for person offenses. The mean is lowest for traffic offenses.



Case counts in parentheses.

Red error bars represent 95% confidence intervals of each mean effective sentence.

Initial Finding – Original Offense Type

- **Mean effective revocation sentence differences: New conviction/behavior-identical/similar to the original offense?**

Initial finding: The difference in mean effective sentences (revocation) is statistically significant for both sample-T tests.

This generally suggests that the defendant with the new conviction or behavior identical/similar to the original offense type tends to face longer revocation sentences.

	Mean (1=Yes)	Mean (0=No)	Difference
New Conviction: Identical to original offense type? ¹	15 (N=418)	11.6 (N=1229)	3.4 months***
Behavior: Identical/similar to original offense type? ²	12.6 (N=1309)	9.9 (N=1673)	2.7 months***

The results are based on Independent Sample T-test. The cases with missing values are excluded from the analyses.

***significance at the one percent level

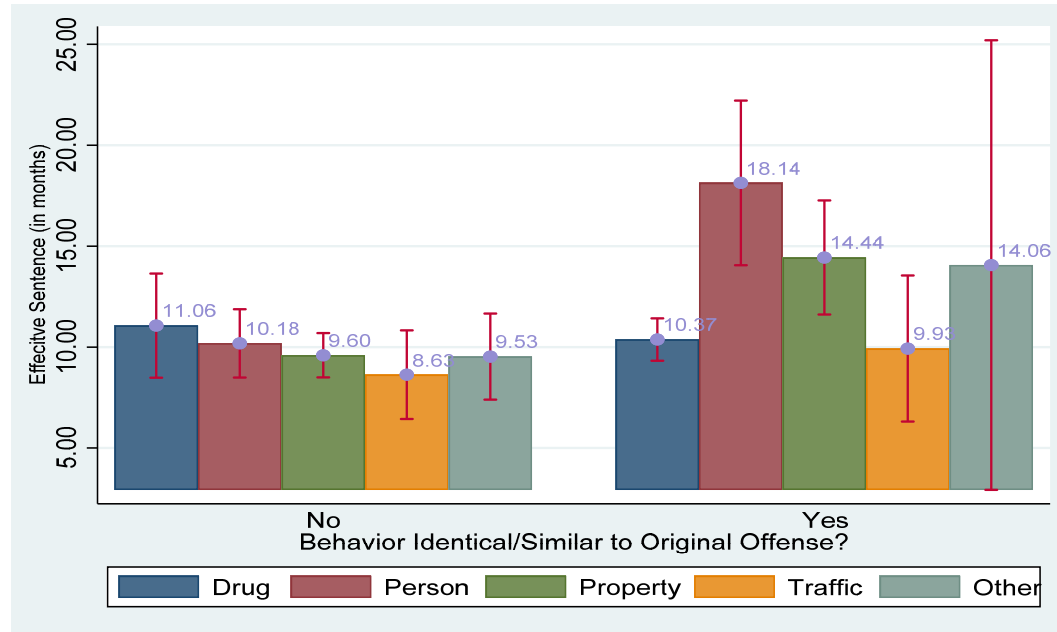
1. Analysis only incorporates Condition 1 violators.

2. Analysis incorporates all sample cases (both technical and Condition 1 violators).

Effective Revocation Sentence by Similar/Identical Behavior to Original Offense

- Mean effective revocation sentence (months) by original offense type: Behavior identical/similar to original offense type?

Initial finding: When each specific original offense category is considered, the mean effective sentence (revocation) is generally higher for the offenders with behavior identical/similar to the original offense type. Drug is the only exception.



Case Counts

No:
 Drug (269)
 Person (300)
 Property (940)
 Traffic (96)
 Other (68)

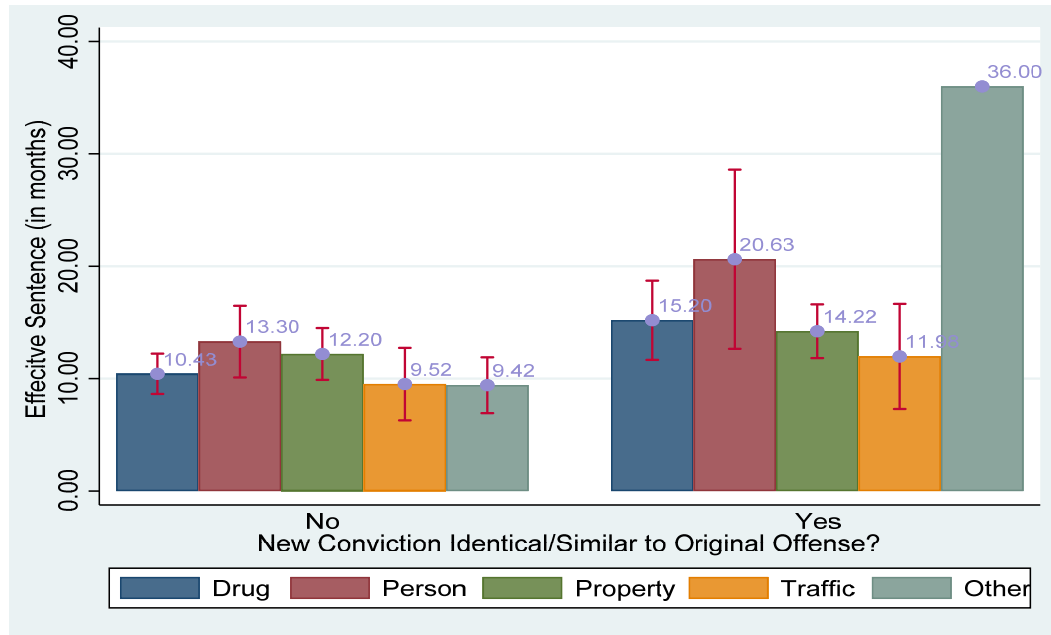
Yes:
 Drug (660)
 Person (152)
 Property (408)
 Traffic (73)
 Other (16)

Red error bars represent 95% confidence intervals of each mean effective sentence. The bar chart represents all sample cases (both technical and Condition 1 violators).

Effective Revocation Sentence by Similar/Identical New Conviction

- Mean effective revocation sentence (months) by original offense type: New Conviction identical to original offense type?

Initial finding: When each specific original offense category is considered, the mean effective sentence (revocation) is always higher for the offenders with new conviction identical to the original offense type.



Case Counts

No:
 Drug (318)
 Person (209)
 Property (581)
 Traffic (80)
 Other (51)

Yes:
 Drug (129)
 Person (36)
 Property (226)
 Traffic (28)
 Other (1)

Red error bars represent 95% confidence intervals of each mean effective sentence. The bar chart only represents the sample cases of Condition 1 violators

“Original Offense Types” Initial Takeaways

- **Does the type of the original primary offense impact revocation sentencing?**
 - Mean revocation sentence is consistently higher for Person original offense type.
 - The initial analyses show that mean revocation sentence for one original offense group is generally different from those of two or more other original offense groups.
 - However, such mean differences are complicated by underlying offender characteristics that may be systematically different across original offense groups. These characteristics need to be tested and accounted for to validate a significant relationship between offense types and sentence length.
 - Therefore, for the later analysis, the staff will use a statistical matching technique (e.g., propensity score matching) to balance out offender’s baseline characteristics and to estimate the independent effect of the original offense type on revocation sentencing.

- **Does revocation sentencing differ if violation behavior or a new conviction is the same as the original offense type?**
 - The initial analyses generally suggest that offenders with violation behavior or a new conviction identical/similar to the original offense type tend to face longer revocation sentences.
 - Again, the initial analyses do not control for other underlying factors that would be systematically different across different groups. Thus, further statistical analysis will be conducted to test this initial finding.



Initial Findings:
Supervision Period Jail Time Analysis

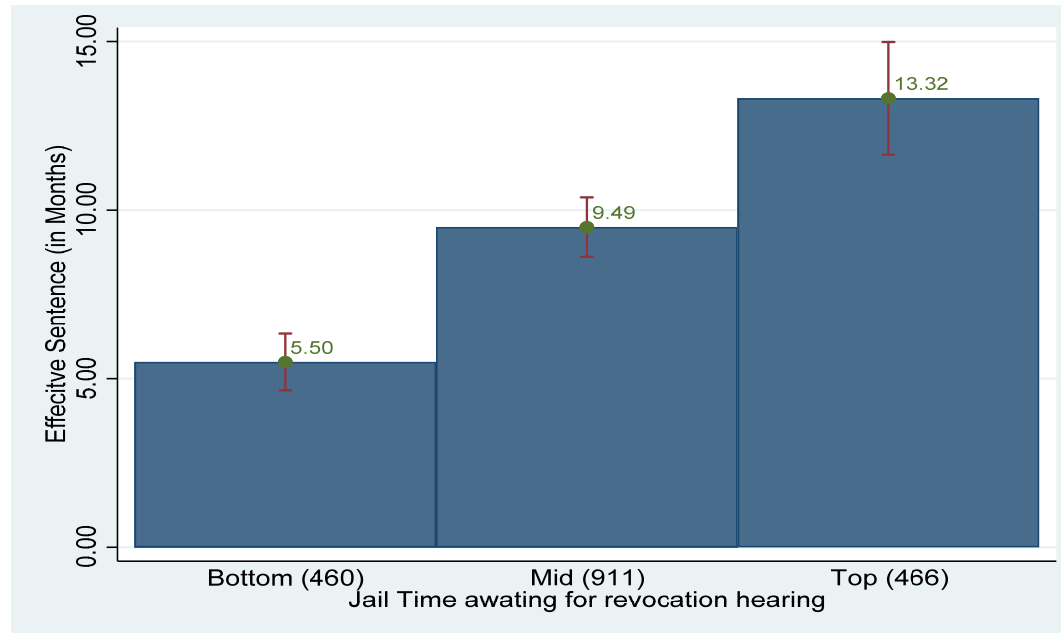
Initial Finding – Jail time

- **Study Question**
 - **Does the amount of jail time while waiting for revocation hearing (jail commitment days just before the revocation hearing) impact revocation sentencing?**

Effective Revocation Sentence by Jail Time Awaiting Revocation (Technical Violators)

- **Mean effective revocation sentence (months) by Jail-Time awaiting revocation hearing (Bottom 25%, Mid 25%-75%, Top 25%): Technical violators**

Initial finding: When technical violators are considered, there is an increasing pattern of mean revocation sentencing outcomes as jail time increases. The mean is the highest for top 25% jail-time groups.



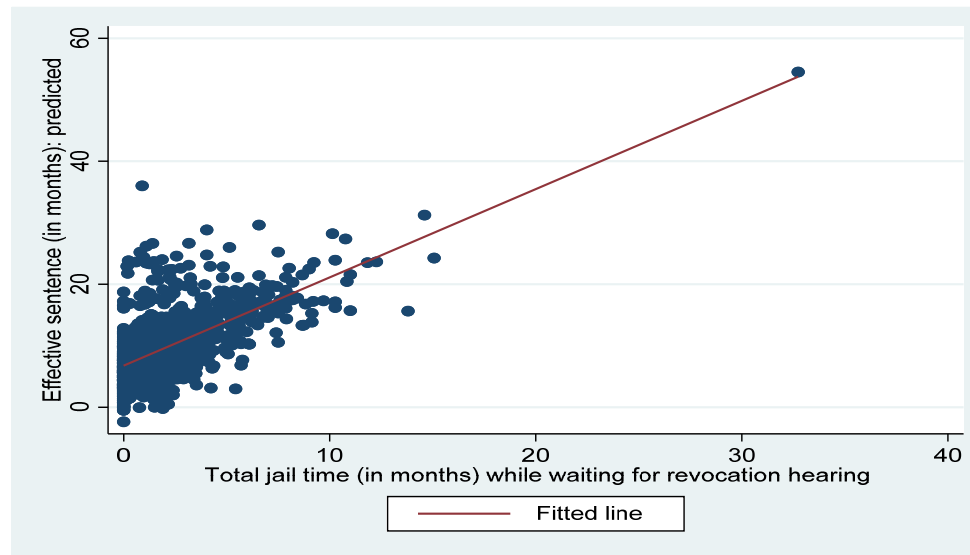
Bottom 25%: 0 -21 days Mid 25%-75%: 22-78 days Top 25%: 79-1050 days. Case counts in parentheses.
Red error bars represent 95% confidence intervals of each mean effective sentence.
Jail-time range on x-axis: days between the last jail commitment and revocation sentencing.

Effective Revocation Sentence by Jail Time Awaiting Revocation (Technical Violators)

- **Scatter Plot with Fitted Line: Jail time (months) awaiting revocation hearing & Predicted effective sentence (months): Technical violators**

Initial finding: This preliminary regression presents revocation effective sentence as the dependent variable, and total jail-time awaiting revocation hearing as an independent variable among “controls” accounting for other significant factors.

The findings from the simpler comparison in the previous slide hold. When technical violators are considered, the association between revocation effective sentence (in months) and the time in a jail while waiting for revocation hearing is positive.

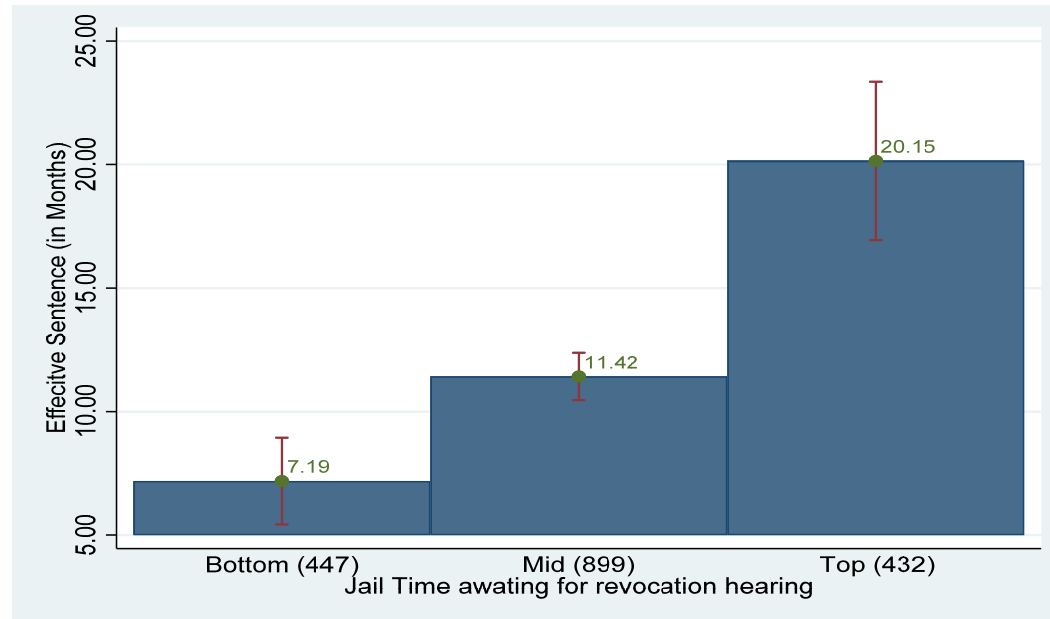


Jail-time on x-axis: months between last jail commitment and revocation sentencing.
Effective sentence (in months) on y-axis: linear prediction of the revocation sentence based on the preliminary regressions model.

Effective Revocation Sentence by Jail Time Awaiting Revocation (Condition 1 Violators)

- **Mean effective revocation sentence (months) by Jail-Time awaiting revocation hearing (Bottom 25%, Mid 25%-75%, Top 25%): Condition 1 violators**

Initial finding: When Condition 1 violators are considered, there is an increasing pattern of mean revocation sentencing outcomes as jail time increases. The mean is the highest for top 25% jail-time groups.



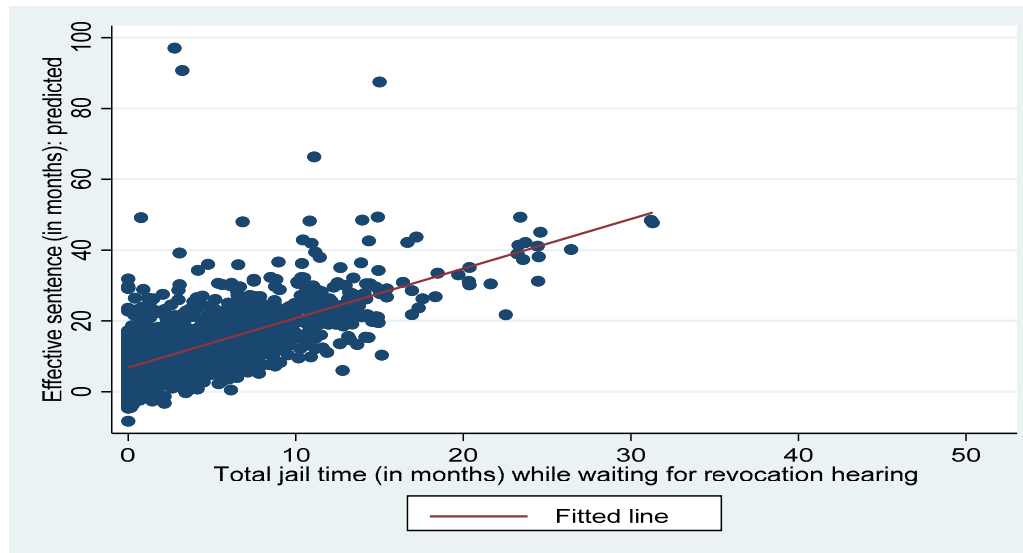
Bottom 25%: 0 -25 days Mid 25%-75%: 26-189 days Top 25%: 190-1562 days. Case counts in parentheses.
Red error bars represent 95% confidence intervals of each mean effective sentence.
Jail-time range on x-axis: days between the last jail commitment and revocation sentencing

Effective Revocation Sentence by Jail Time Awaiting Revocation (Condition 1 Violators)

- **Scatter Plot with Fitted Line: Jail time (months) awaiting revocation hearing & Predicted effective sentence (months): Condition 1 violators**

Initial Finding: This preliminary regression presents revocation effective sentence as the dependent variable, and total jail-time awaiting revocation hearing as an independent variable among “controls” accounting for other significant factors.

The findings from the simpler comparison in the previous slide hold. When Condition 1 violators are considered, the association between revocation effective sentence (in months) and the time in a jail while waiting for revocation hearing is positive.



Jail-time on x-axis: months between last jail commitment and revocation sentencing.
Effective sentence (in months) on y-axis: linear prediction of the revocation sentence based on the preliminary regressions model.

"Jail Time" Initial Takeaways

- **Does the amount of jail time while waiting for revocation hearing (jail commitment days just before the revocation hearing) impact revocation sentencing?**
 - The initial analyses generally suggest that an offender with more days in jail awaiting for revocation hearing tends to receive the longer revocation sentencing.
 - This pattern is consistently found for both technical and condition-1 violators.

Analysis Next Steps

- **Test initial findings against other important legal factors such as general prior record and type of technical violation, and non-legal factors such as demographics and year of sentencing.**
- **Use statistical modeling to find the most significant factors within other data sources (each analyst will independently perform an analysis), and develop scoring systems for these factors in the probation violation guidelines worksheets.**
- **Present analysis to stakeholder group of probation officers, public defenders, and Commonwealth Attorneys who will provide real-world input on developing feasible scoring models and supporting documentation.**
- **Incorporate stakeholder input for final recommendations to the Commission on Probation Violation Guidelines revisions (November meeting).**



VIRGINIA CRIMINAL SENTENCING COMMISSION



Probation Violation Guidelines Study Procedural Issues Identified

September 14, 2020

Procedural Issues

- Probation Officers Are submitting guidelines at the time of the capias request & not within 30-days prior to the hearing
 - **Guidelines do not capture the full extent of the violation**
 - New law violations may be dismissed
 - New convictions are not identified
 - Defendant may violate additional conditions
 - Treatment may have been completed



Procedural Issues

- Commonwealth's Attorneys moving forward with Probation Violations Instead of agreeing that the probation officers submit the request or alternatively proceeding with Good Behavior Violations
 - Probation Guidelines are not always complete and accurate because the attorneys may not have access to the probation officers' records
 - Differences over when a defendant has violated probation (i.e., different standards)



Procedural Issues

- Judges Across The State Are Not Receiving and Reviewing the Same Information on Similar Probation Violations
 - Major Violation Reports vary by jurisdiction and officer
 - No summary of the number of probation periods completed or failed
 - No consistent report available to the judge on the number and type of alternatives and treatments tried, completed and/or failed
 - No requirement that an updated criminal history be prepared for the judge
 - No standardized process to identify the amount of time served awaiting violation hearing (time may be for a new conviction, time served in another jurisdiction, etc.)



Procedural Issues

- Inconsistent policies across the state on reporting violations to the court
 - Zero tolerance policies
 - DOC pilot program to reduce technical violations
 - Local jail space issues



Procedural Issues

- Judicial philosophies vary
 - Multiple violations may lead to increased sentences for some and removal from probation for others.
 - The approach to structuring sentences for new law violations may result in significant time for the new law violation and little or no time for the probation violation or vice versa ([additional research required](#))





VIRGINIA CRIMINAL SENTENCING COMMISSION



September 14, 2020



VIRGINIA CRIMINAL SENTENCING COMMISSION



September 14, 2020

2020 General Assembly Special Session I

- **The Governor may call a special session when it is deemed necessary or advisable, and must do so when petitioned by two-thirds of the members of both houses.**
- **The 2020 Special Session convened on August 16, 2020.**
- **Special Session topics: Budget revisions made necessary due to revenue shortfall (COVID-19) and police/criminal justice reform.**
- **As of September 11, 421 bills have been introduced for the Special Session (137 bills referred to Courts, Public Safety, Judiciary, or Rehab & Social Services Committees).**
- **As of September 11, 61 bills and substitute bills have been sent to the Commission for fiscal impact analysis.**



Most Common Types of Offenses in Legislation Requiring Fiscal Impact Statements

- **Law Enforcement Officer (18 analyses)**
- **Violent Offenses/Riot (10 analyses)**
- **Assault (9 analyses)**
- **Sex Offenders and Offenses (6 analyses)**
- **Parole (4 analyses)**
- **Obstruction of Justice (3 analyses)**
- **Weapons (3 analyses)**
- **Perjury (3 analyses)**
- **Drugs (1 analysis)**
- **Election (1 analysis)**
- **Firearms (1 analysis)**
- **Fraud/Larceny (1 analysis)**
- **Murder/Homicide (1 analysis)**





SB 5045

Virginia Criminal Sentencing Commission; fiscal impact statements

Introduced by: Scott A. Surovell

SUMMARY AS ENGROSSED:

Requires the Virginia Criminal Sentencing Commission to prepare a fiscal impact statement reflecting the operating costs attributable to and necessary appropriations for any bill that would result in a net decrease in periods of imprisonment in state adult correctional facilities. This act shall not become effective unless reenacted by the 2021 General Assembly. A pilot project shall be conducted based on four bills chosen by the Chairs of the Senate Finance and House Appropriations Committees, with impact statements submitted by December 15, 2020. Provisions of the bill shall not become effective unless reenacted by the 2021 Session of the General Assembly.

HISTORY

08/16/20 Senate: Referred to Committee on Rules

08/19/20 Senate: Reported from Rules with amendment (12-Y 3-N)

08/26/20 Senate: Committee amendment agreed to

08/26/20 Senate: Engrossed by Senate as amended SB5045E

08/27/20 Senate: Read third time and passed Senate (21-Y 13-N 1-A)

<https://lis.virginia.gov/cgi-bin/legp604.exe?202+sum+SB5045>



SB 5007

Jury sentencing reform

Introduced by: Joseph D. Morrissey

SUMMARY AS INTRODUCED:

Provides that, in a criminal case, the court shall ascertain the punishment unless the accused has requested that the jury ascertain punishment or he was found guilty of capital murder. Such request for a jury to ascertain punishment must be filed as a written pleading with the court at least 30 days prior to trial. The bill specifies that the attorney for the Commonwealth may not demand a jury trial when an order declaring a judicial emergency has suspended criminal jury trials.

HISTORY

07/31/20 Senate: Referred to Committee on the Judiciary

08/20/20 Senate: Reported from Judiciary with substitute (10-Y 5-N)

08/20/20 Senate: Rereferred to Finance and Appropriations

09/03/20 Senate: Reported from Finance and Appropriations with substitute (11-Y 4-N)

09/09/20 Senate: Committee substitute from Judiciary rejected 20200902D-S1

09/09/20 Senate: Committee substitute from Finance and Appropriations agreed to

09/10/20 Senate: Read third time and passed Senate (22-Y 18-N)

<https://lis.virginia.gov/cqi-bin/legp604.exe?202+sum+SB5007>

Virginia Sentencing Guidelines Data

Felony Sentencing Events by Trial Type FY2014-FY2019

Fiscal Year	Guilty/Alford Plea	Bench Trial	Jury Trial	Missing	Total
2014	89.2%	8.9%	1.2%	0.7%	25,608
2015	90.3%	8.2%	1.1%	0.4%	25,006
2016	90.3%	8.0%	1.2%	0.5%	24,101
2017	90.6%	8.0%	1.2%	0.2%	24,894
2018	89.2%	8.1%	1.2%	1.5%	25,180
2019	88.8%	8.7%	1.3%	1.3%	25,906
Total	89.7%	8.3%	1.2%	0.8%	150,695

Note: Sentencing events in which at least one charge was adjudicated by a jury are included in the "Jury Trial" category, even if some charges in the sentencing event were adjudicated by other means.

Felony Sentencing Events Adjudicated by a Jury Guidelines Concurrence and Judicial Modifications FY2014-FY2019

Fiscal Year	Number of Felony Sentencing Events Involving a Jury	Jury Sentence			Jury Sentence Was Modified by Judge
		Within Guidelines	Below Guidelines	Above Guidelines	
2014	301	33.9%	14.3%	51.8%	19.3%
2015	257	41.6%	9.7%	48.6%	20.2%
2016	288	44.1%	9.4%	46.5%	14.3%
2017	277	43.0%	11.5%	45.5%	13.6%
2018	259	39.8%	10.8%	49.4%	15.7%
2019	290	49.7%	13.8%	36.5%	8.6%

Note: This table excludes sentencing events in which the guidelines worksheets contained errors that affected the calculation of concurrence with the guidelines. This table also excludes sentencing events in which any charges were adjudicated by means other than a jury (i.e., bench trial or guilty plea). Finally, the table excludes defendants who were under the age of 18 at the time of the offense, as juries do not sentence in those cases.

Felony Sentencing Events, FY2014-FY2019 Overall Median Sentence by Offense Group and Trial Type

Offense Group	Overall Median Sentence (in years)		
	Guilty/Alford Plea	Bench Trial	Jury Trial
Assault	1.0	1.5	4.0
Burglary-Dwelling	1.5	2.5	10
Burglary-Other Structure	1.0	2.0	3.1
Schedule I/II Drug	0.2	0.4	7.0
Other Drug	0.2	0.3	1.0
Fraud	0.5	0.6	1.5
Kidnapping	1.5	3.0	9.0
Larceny	0.3	0.5	1.3
Murder/Manslaughter	12.0	10.0	20.5
Child Pornography/Online Solicitation	3.0	5.0	7.5
Rape/Forcible Sodomy/ Obj Sexual Penetration	12.0	13.9	17.5
Robbery	5.0	7.5	10.0
Sexual Assault	2.0	3.0	5.0
Weapon	1.0	1.9	5.0

Source: Sentencing Guidelines Data System (downloaded February 17, 2020)
Prepared: February 28, 2020

**Department of Planning and Budget
2020 Special Session I - Fiscal Impact Statement**

1. **Bill Number:** SB5007S2

House of Origin Introduced Substitute Engrossed
Second House In Committee Substitute Enrolled

2. **Patron:** Morrissey

3. **Committee:** Senate Finance and Appropriations

4. **Title:** Sentencing reform in criminal cases

5. **Summary:** The substitute bill provides that in a criminal case the court shall ascertain the extent of the punishment unless the accused has requested that the jury ascertain punishment or was found guilty of capital murder. The bill establishes that the court will determine the period of incarceration and the amount of the fine, if any, when a person is convicted of a criminal offense unless the accused is tried by a jury and has requested that the jury ascertain punishment. Such request for a jury to ascertain punishment must be filed as a written pleading with the court at least 30 days prior to trial.

The bill states the Commonwealth's Attorney cannot withhold his concurrence to proceeding without the intervention of a jury if the accused consents to proceeding in such a manner when an order declaring a judicial emergency has been entered and such order suspends criminal jury trials.

6. **Budget Amendment Necessary:** See Line 8.

7. **Fiscal Impact Estimates:** Indeterminate (see Line 8)

8. **Fiscal Implications:** According to the Executive Secretary of the Supreme Court ("OES") and the Virginia Association of Commonwealth's Attorneys ("VACA"), the proposed bill is expected to impact multiple areas of the judicial system due to the anticipated increase in the percentage of criminal defendants who will be tried by juries. However, because the choice of trial by jury is the result of choices by independent decision-makers, it is not possible to quantify the fiscal impact.

Circuit court judges

An increase in the number of criminal jury trials could create a stacking effect on circuit court dockets, delaying the adjudication of all cases. The delay in hearing civil cases would be particularly pronounced because (i) jury trials are far more time-consuming than bench trials, and (ii) criminal proceedings generally take precedence over civil matters. While it is not possible to calculate a specific fiscal impact, OES believes there will be an impact on the circuit court docket.

The current weighted caseload calculations used to predict judicial staffing needs in the courts are estimates of the total time required for various categories of cases, however, they do not separately, specifically identify the additional amount of time associated with the choice of trial by jury. Consequently, any estimate on the number of additional circuit judges needed could not be ascertained until the weighted caseload calculations are revised with new case weights that would reflect the increase in jury trials that are expected if this bill is enacted. The difficulty of creating quantitative fiscal estimates is further complicated by the orientation of the circuit court case management system, which is case-based, not defendant-based or trial-based.

For reference purposes, the first year annual cost for each new circuit court judge is \$276,314. The annual cost in the second year and beyond would be \$273,814.

Circuit court clerks

With the addition of more judges and in order to avoid delays, additional court staff may be needed including additional deputy circuit court clerk positions. Currently, jury trials comprise only a small portion of all trials conducted but it is expected that the provisions of this bill will increase jury trials in the Commonwealth. One of the biggest unknowns is the amount of additional clerk time that would be necessary. According to OES, there is no metric available to determine the average length of a jury trial versus a bench trial. However, jury trials are typically longer and place additional responsibilities on clerks (i.e.-compile jury lists, call jury panel, etc.), therefore, more clerks may be needed.

It is not possible to determine the number of additional clerks (or the associated fiscal impact) that would be necessary under the provisions of this bill. For reference purposes, the annual cost for a new deputy court clerk I position is \$27,941, with a shared benefits cost to the locality of \$878. Circuit court clerks receive their state-supported appropriations through the State Compensation Board.

For each new judgeship added, a new deputy circuit court clerk position would be needed.

Jurors

In FY 2019, OES reports that \$2.3 million was paid out under § 17.1-618, Code of Virginia, in jury expenses. This figure represents the juror cost only for criminal jury trials. With the provisions of this bill, juror costs may increase. As noted above, many of the requirements regarding jurors are the responsibility of clerk's offices.

Commonwealth's Attorneys

According to data received by VACA from the National Center for State Courts, the rate at which a defendant proceeds with a jury trial instead of a guilty plea, bench trial, or some other dismissal ranges from a high of 4.1 percent to a low of less than 1.0 percent. According to the Sentencing Commission, there were 24,499 sentencing guideline worksheets submitted in FY2018. Adjudication by a judge in a bench trial accounted for 8 percent (roughly 1,960) of all felony guideline cases sentenced. In FY2018, the Commission received 270 felony guidelines for cases adjudicated by a jury, a rate of 1.1 percent. While this data shows that

the current percentage of cases tried by a jury is low, any increases in the number of jury trials may have a workload impact.

It is not possible to determine the precise fiscal impact this bill would have on Commonwealth's Attorneys offices; however, for reference purposes, the starting salary for each new Assistant Commonwealth's Attorney position is \$56,697. The cost for each associated administrative support position is \$26,185.

Public Defenders

According to the Virginia Indigent Defense Commission ("VIDC"), the proposed bill is not expected to create a material fiscal impact for the agency. However, in areas of the Commonwealth that are not covered by a VIDC office, court-appointed attorneys would be called upon to provide legal services. If court-appointed attorneys start receiving more jury cases as a result of this bill, it could have a fiscal impact on the court-appointed attorney waiver program appropriation. Currently, under Item 36, Chapter 1289, 2020 Virginia Acts of Assembly (the Appropriation Act), \$5,175,000 is appropriated each year of the biennium for the waiver program.

Sheriffs

Sheriff's office personnel are responsible for providing courtroom security when court is in session. If more court days are in session or courtrooms are created to handle the anticipated increase in jury trials, this will have an impact on Sheriff's office staffing. This impact could be accounted for through current deputy sheriffs working additional hours or the hiring of additional deputy sheriff positions. Due to the unknown potential number of new court days and number of variables that would have to be considered by each individual Sheriff, it is not possible to calculate a fiscal impact.

The annual cost (salary + benefits) for each new entry level sworn court services deputy is \$36,843 the first year and \$38,523 for the second year and the years thereafter.

The Appropriation Act (Item 68 C. of Chapter 1289, 2020 Virginia Acts of Assembly) caps the number of deputy sheriffs assigned to Circuit courtroom security while court is in session at two. For each new circuit court judgeship added, two deputy sheriff positions should be funded.

Office of the Attorney General

According to the Office of the Attorney General (OAG), the proposed legislation could increase jury trial appeals which tend to have longer records and additional considerations for appellate review (i.e. voir dire, jury instructions, etc.). The OAG also believes that it is likely there would be less plea agreements and more trials which would mean more opportunities for individuals to appeal convictions. However, the exact number of additional cases the OAG would have to handle is unknown at this time. If more appeals are filed as a result of this legislation, the OAG has indicated that they may need up to two positions at an estimated cost of \$319,975 to handle appellate reviews.



HB 5146

Criminal records; automatic expungement for certain convictions, etc.

Introduced by: Charniele L. Herring

SUMMARY AS INTRODUCED:

Establishes a process for the automatic expungement of criminal records for certain convictions and deferred dispositions, as well as expungement for acquittals and charges that were nolle prossed or otherwise dismissed. The bill also provides for the automatic expungement for charges arising from mistaken identity or unauthorized use of identifying information. The bill has staggered delayed effective dates in order to develop systems for implementing the bill.

HISTORY

09/02/20 House: Reported from Courts of Justice with substitute (13-Y 8-N)

09/02/20 House: Referred to Committee on Appropriations

09/03/20 House: Reported from Appropriations with substitute (13-Y 9-N)

09/08/20 House: Courts of Justice Committee substitute rejected 20201121D-H1

09/08/20 House: Appropriations Committee substitute rejected 20201128D-H2

09/08/20 House: Substitute by Delegate Herring agreed to 20201147D-H3

09/09/20 House: Passage (59-Y 37-N 1-A)

<https://lis.virginia.gov/cgi-bin/legp604.exe?202+sum+HB5146>

HB 5146

Criminal records; automatic expungement for certain convictions, etc.

ELIGIBILITY FOR AUTOMATIC EXPUNGEMENT:

CHARGES deferred and dismissed under §§ 4.1-305, 18.2-250, or 18.2-250.1.

CONVICTIONS under §§ 4.1-305, 18.2-57.01, 18.2-60, 18.2-71, 18.2-71.1, 18.2-86, 18.2-94, 18.2-96, 18.2-104, 18.2-119, 18.2-120, 18.2-121.3, 18.2-126, 18.2-127, 18.2-128, 18.2-132.1, 18.2-134, 18.2-136, 18.2-137, 18.2-138, 18.2-144.2, 18.2-145.1, 18.2-146, 18.2-147, 18.2-147.2, 18.2-151, 18.2-151.1, 18.2-152.3:1, 18.2-152.7:1, 18.2-152.7:2, 18.2-152.15, 18.2-152.17, 18.2-156, 18.2-159, 18.2-160.1, 18.2-162.1, 18.2-163, 18.2-164, 18.2-165.1, 18.2-165.2, 18.2-250, 18.2-250.1, 18.2-251, 18.2-251.4, 18.2-255.1, 18.2-265.5, 18.2-265.7, 18.2-265.18, 18.2-265.21, 18.2-313.1, 18.2-313.2, 18.2-323.01, 18.2-323.02, 18.2-324, 18.2-326, 18.2-328, 18.2-329, 18.2-330, 18.2-331, 18.2-340, 18.2-371.3, 18.2-403.4, 18.2-404, 18.2-409, 18.2-410, 18.2-414.1, 18.2-415, 18.2-427, 18.2-428, 18.2-431.1, 18.2-462, 18.2-468, 18.2-471.1, 18.2-477.2, 18.2-487, 18.2-488, 18.2-499, 18.2-505, or 18.2-511.1.

CONDITIONS FOR AUTOMATIC EXPUNGEMENT:

For a charge deferred and dismissed or misdemeanor conviction, 8 years have passed since the date of the conviction and the person convicted of the offense has not been convicted of violating any law of the Commonwealth that requires a report to the Central Criminal Records Exchange, excluding traffic infractions.

For a felony conviction, 8 years have passed since the date of the conviction or release from incarceration, whichever date occurred later, and the person convicted of the offense has not been convicted of violating any law of the Commonwealth that requires a report to the Central Criminal Records Exchange, excluding traffic infractions.

No offense shall be automatically expunged if, on the date of the deferral, dismissal or conviction, the person was convicted of another offense that is not eligible for automatic expungement.

HB 5146

Criminal records; automatic expungement for certain convictions, etc.

ELIGIBILITY FOR AUTOMATIC EXPUNGEMENT:

CHARGES excluding traffic infractions, resulting in acquittal, nolle prosequi, or dismissal (excluding any charge that is deferred and dismissed after a finding of facts sufficient to justify a finding of guilt)

CONDITIONS FOR AUTOMATIC EXPUNGEMENT:

At the time of the acquittal, nolle prosequi, or dismissal is entered, the court shall order that the charge be automatically expunged unless the attorney for the Commonwealth or any other person advises the court at the time of the acquittal, nolle prosequi, or dismissal is entered that:

1. The charge is ancillary to another charge that resulted in a conviction or a finding of facts sufficient to justify a finding of guilt;
2. The charge was nolle prossed/dissmissed as part of a plea agreement;
3. Another charge arising out of the same facts and circumstances is pending against the person;
4. The Commonwealth intends to reinstitute the charge or any other charge arising out of the same facts/circumstances within 3 months;
5. Good cause exists, as established by the Commonwealth by a preponderance of the evidence, that such charge should not be automatically expunged; or
6. The person charged with the offense objects to the automatic expungement.



HB 5146

Criminal records; automatic expungement for certain convictions, etc.

Introduced by: Charniele L. Herring

IMPACTED AGENCIES:

The bill specifies requirements for the Virginia State Police, the Office of the Executive Secretary of the Supreme Court, and court clerks.

- However, the **Sentencing Commission** maintains guidelines data, including the offenses resulting in conviction and the sentence imposed by the court. The guidelines data is subject to release through the Freedom of Information Act (FOIA).
- Does this bill require the **Sentencing Commission** to withhold certain records from release or redact the names of defendants whose convictions were expunged?



See also
SB 5034 (Boysko, et al.)

HB 5148

Department of Corrections; awarding of earned sentence credits.

Introduced by: Don L. Scott

SUMMARY AS INTRODUCED:

Establishes a four-level classification system to increase the awarding of earned sentence credits. The bill has a delayed effective date of July 1, 2021, and requires the calculation of earned sentence credits to apply retroactively to the entire sentence of any inmate who is confined in a state correctional facility and participating in the earned sentence credit system on July 1, 2021. This bill is a recommendation of the Virginia State Crime Commission.

HISTORY

09/02/20 House: Reported from Courts of Justice with substitute (11-Y 9-N)

09/02/20 House: Referred to Committee on Appropriations

09/04/20 House: Reported from Appropriations with substitute (13-Y 9-N)

09/09/20 House: Courts of Justice Committee substitute rejected 20201113D-H1

09/09/20 House: Appropriations Committee substitute rejected 20201142D-H2

09/09/20 House: Substitute by Delegate Scott agreed to 20201159D-H3

09/10/20 House: Passage #2 (54-Y 41-N)

<https://lis.virginia.gov/cgi-bin/legp604.exe?202+sum+HB5148>

HB 5148

Department of Corrections; awarding of earned sentence credits.

AS INTRODUCED

Proposed Rates

- Level 1
 - Year 1 = 13 days per 30 served
 - Year 2 (consecutive) = 16 days per 30 served
 - Year 3 (consecutive) = 20 days per 30 served
 - Year 4 (consecutive) = 25 days per 30 served
 - Year 5 & subsequent consecutive years = 30 days per 30 served
- Level 2 = 7.5 days per 30 served
- Level 3 = 3.5 days per 30 served
- Level 4 = 0 days per 30 served

Estimated Additional Releases from SR Incarceration on or before February 28, 2021 as a Result of Progressive Good Time Earning Rates Proposed by HB1532 by Gender (as of February 28, 2020)*

	Males			Females			Total SR Confined	
	Number	Col %	Row %	Number	Col %	Row %	Number	% of Total
<i>Analysis Provided by the Virginia Department of Corrections</i>								
Race								
Black	3,477	57%	95%	172	37%	5%	3,649	56%
White	2,567	42%	90%	293	63%	10%	2,860	44%
Other	34	1%	94%	2	0%	6%	36	1%
Total	6,078	100%	93%	467	100%	7%	6,545	100%
Ethnicity								
Non-Hispanic	5,920	97%	93%	460	99%	7%	6,380	97%
Hispanic	158	3%	96%	7	1%	4%	165	3%
Age Group (As of 2/28/2020)								
Under 25	276	5%	96%	12	3%	4%	288	4%
25 - 34	1,734	29%	92%	145	31%	8%	1,879	29%
35 - 44	1,832	30%	92%	161	34%	8%	1,993	30%
45 - 54	1,278	21%	93%	96	21%	7%	1,374	21%
55+	958	16%	95%	53	11%	5%	1,011	15%
Average Age	41.4			40.5			41.3	

HB 5148 (Substitute)

Department of Corrections; awarding of earned sentence credits.

The **SUBSTITUTE OF HB 5148** excludes inmates convicted of the following:

- Class 1 felony;
- 1st or 2nd degree murder, solicitation to commit murder, lynching;
- Certain acts of terrorism or treason;
- Felony kidnapping;
- Malicious wounding or felony assault of family/household member;
- Robbery or carjacking;
- Felony sexual assault (Article 7 of Chapter 4 of Title 18.2);
- Burglary (§§ 18.2-90, 18.2-91, 18.2-93);
- Felony stalking (§ 18.2-60.3);
- Felony violation of protective order (§§ 16.1-253.2, 18.2-60.4);
- Felony prostitution, sex trafficking (Article 3 of Chapter 8 of Title 18.2);
- Use of machine gun or sawed-off shotgun in crime;
- Indecent liberties, certain felony crimes against children (Article 4 of Chapter 8 of Title 18.2 (except for § 18.2-362 or 18.2-371.1);
- Child pornography offenses (except 1st offense possession) or online solicitation of minors (Article 5 of Chapter 8 of Title 18.2);
- Cruelty and injuries to children (§ 40.1-103);
- Torture of animals;
- Trespass on school property – intent to abduct child;
- Escape from custody as a sexually violent predator;
- Second of subsequent convictions for:
manslaughter, mob-related felonies, unlawful wounding, aiding terrorism, burglary (§§ 18.2-89, 18.2-92), certain arsons, animal fighting, 1st offense possession of child pornography, felony failure to pay wages; or burn cross, or display noose/swastika to intimidate.

HB 5148 (Substitute)

Department of Corrections; awarding of earned sentence credits.

The **SUBSTITUTE OF HB 5148** specifies the following:

Proposed Rates

- Level 1 = 15 days per 30 days served
- Level 2 = 7.5 per 30 days served
- Level 3 = 3.5 per 30 days served
- Level 4 = 0 days for 30 days served



SB 5032

Assault and battery; penalty.

Introduced by: Scott A. Surovell

SUMMARY AS PASSED SENATE:

Eliminates the mandatory minimum term for simple assault or an assault and battery of a law-enforcement officer, correctional officer, judge, magistrate, firefighter, etc.

Any person charged with such offense where the degree of culpability is slight, a jury or the court may find the accused not guilty of such offense but guilty of a simple assault or assault and battery, punishable as a Class 1 misdemeanor.

Before any arrest, indictment, etc., of a juvenile is made for an alleged assault and battery against a law-enforcement officer, such alleged offense shall be investigated by another law-enforcement officer.

HISTORY

08/13/20 Senate: Referred to Committee on the Judiciary

08/18/20 Senate: Reported from Judiciary with substitute (9-Y 5-N)

08/20/20 Senate: Committee substitute agreed to 20200824D-S1

08/20/20 Senate: Engrossed by Senate - committee substitute SB5032S1

08/26/20 Senate: Read third time and passed Senate (21-Y 15-N)

<https://lis.virginia.gov/cgi-bin/legp604.exe?202+sum+SB5032>



General Assembly website:

<http://viriniageneralassembly.gov/>



VIRGINIA CRIMINAL SENTENCING COMMISSION



Sentencing Guidelines and Acceptance of Responsibility and Timeliness

September 14, 2020

Federal Sentencing Guidelines and Acceptance of Responsibility

- **Acceptance of responsibility is a provision in the US Sentencing Guidelines providing for a decrease by 2 or 3 levels in offenders' offense level for admitting guilt and otherwise demonstrating behavior consistent with acceptance of responsibility, such as ending criminal conduct and associations.**
- **The 3-level reduction is only available to defendants with an offense level of 16 or greater, and it requires a timely guilty plea.**
- **Federal plea agreements usually include a stipulation that the government will support granting the defendant the acceptance of responsibility reduction.**
- **This adjustment is not intended to apply to a defendant who puts the government to its burden of proof at trial by denying the essential factual elements of guilt, is convicted, and only then admits guilt and expresses remorse.**



Federal Sentencing Guidelines and Acceptance of Responsibility

- **Conviction by trial, however, does not automatically preclude a defendant from consideration for such a reduction.**
 - **In rare situations a defendant may clearly demonstrate an acceptance of responsibility for his criminal conduct even though he exercises his constitutional right to a trial.**
 - **In such instance, a determination that a defendant has accepted responsibility will be based primarily upon pre-trial statements and conduct.**
- **Because the vast majority of federal criminal cases are settled by plea bargains, the application of this reduction is extremely common.**



Federal Sentencing Guidelines Sentencing Table

Under the US Sentencing Guidelines, if the defendant accepts responsibility the Offense Level is decreased by 2 or 3 levels in the Sentencing Table.

SENTENCING TABLE
(in months of imprisonment)

Offense Level	Criminal History Category (Criminal History Points)					
	I (0 or 1)	II (2 or 3)	III (4, 5, 6)	IV (7, 8, 9)	V (10, 11, 12)	VI (13 or more)
1	0-6	0-6	0-6	0-6	0-6	0-6
2	0-6	0-6	0-6	0-6	0-6	1-7
3	0-6	0-6	0-6	0-6	2-8	3-9
4	0-6	0-6	0-6	2-8	4-10	6-12
5	0-6	0-6	1-7	4-10	6-12	9-15
6	0-6	1-7	2-8	6-12	9-15	12-18
7	0-6	2-8	4-10	8-14	12-18	15-21
8	0-6	4-10	6-12	10-16	15-21	18-24
9	4-10	6-12	8-14	12-18	18-24	21-27
10	6-12	8-14	10-16	15-21	21-27	24-30
11	8-14	10-16	12-18	18-24	24-30	27-33
12	10-16	12-18	15-21	21-27	27-33	30-37
13	12-18	15-21	18-24	24-30	30-37	33-41
14	15-21	18-24	21-27	27-33	33-41	37-46
15	18-24	21-27	24-30	30-37	37-46	41-51
16	21-27	24-30	27-33	33-41	41-51	46-57
17	24-30	27-33	30-37	37-46	46-57	51-63
18	27-33	30-37	33-41	41-51	51-63	57-71
19	30-37	33-41	37-46	46-57	57-71	63-78
20	33-41	37-46	41-51	51-63	63-78	70-87
21	37-46	41-51	46-57	57-71	70-87	77-96
22	41-51	46-57	51-63	63-78	77-96	84-105
23	46-57	51-63	57-71	70-87	84-105	92-115
24	51-63	57-71	63-78	77-96	92-115	100-125
25	57-71	63-78	70-87	84-105	100-125	110-137
26	63-78	70-87	78-97	92-115	110-137	120-150
27	70-87	78-97	87-108	100-125	120-150	130-162



Federal Sentencing Guidelines and Acceptance of Responsibility

2019 Sourcebook of Federal Sentencing Statistics

Acceptance of Responsibility (§ 3E1.1)	Percent of Cases	Guilty Pleas	Percent of Cases
Offender accepted responsibility (-3 levels)	56.5%	US Total	97.6%
Offender accepted responsibility (-2 levels)	39.8%	Fourth Circuit	96.9%
Offender did not accept responsibility	3.7%	Virginia	96.8%



Source: <https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2019/Table21.pdf>
<https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2019/Table11.pdf>

State Sentencing Guidelines Systems

Do the guidelines in the state expressly address mitigations based on a guilty plea, acceptance of responsibility, and/or providing assistance to law enforcement?

Jurisdiction	Guilty Plea	Acceptance of Responsibility	Assistance to Law Enforcement
Alabama	No	No	Mitigating factor
Arkansas	Mitigating factor	Mitigating factor	Mitigating factor (based on timeliness, completeness)
Delaware	Yes (-25%, if timely; not available for every category)	Guilty plea denoted as acceptance of responsibility	No
DC	No	Mitigating factor	Mitigating factor
Florida	Departure reason	No	Departure reason
Kansas	No	No	Mitigating factor (based on usefulness, timeliness)
Maryland	Yes, in plea agreement	No	No
Massachusetts	Mitigating reason	No	No
Michigan	No	No	No
Minnesota	No	No	Departure reason
North Carolina	No	Mitigating reason	Mitigating reason
Ohio	No	Mitigating factor	No
Oregon	No	No	Mitigating factor
Pennsylvania	No	No	No
Tennessee	No	No	Mitigating factor
Utah	No	No	Mitigating circumstance
Washington State	No	No	No

Source: Robina Institute of Criminal Law and Criminal Justice (<https://sentencing.umn.edu/elements>)

Virginia Sentencing Guidelines Data

**Felony Sentencing Events by Trial Type
FY2014-FY2019**

Fiscal Year	Guilty/Alford Plea	Bench Trial	Jury Trial	Missing	Total
2014	89.2%	8.9%	1.2%	0.7%	25,608
2015	90.3%	8.2%	1.1%	0.4%	25,006
2016	90.3%	8.0%	1.2%	0.5%	24,101
2017	90.6%	8.0%	1.2%	0.2%	24,894
2018	89.2%	8.1%	1.2%	1.5%	25,180
2019	88.8%	8.7%	1.3%	1.3%	25,906
Total	89.7%	8.3%	1.2%	0.8%	150,695

Note: Sentencing events in which at least one charge was adjudicated by a jury are included in the "Jury Trial" category, even if some charges in the sentencing event were adjudicated by other means.

**Felony Sentencing Events, FY2014-FY2019
Overall Median Sentence by Offense Group and Trial Type**

Offense Group	Overall Median Sentence (in years)		
	Guilty/Alford Plea	Bench Trial	Jury Trial
Assault	1.0	1.5	4.0
Burglary-Dwelling	1.5	2.5	10
Burglary-Other Structure	1.0	2.0	3.1
Schedule I/II Drug	0.2	0.4	7.0
Other Drug	0.2	0.3	1.0
Fraud	0.5	0.6	1.5
Kidnapping	1.5	3.0	9.0
Larceny	0.3	0.5	1.3
Murder/Manslaughter	12.0	10.0	20.5
Child Pornography/Online Solicitation	3.0	5.0	7.5
Rape/Forcible Sodomy/ Obj Sexual Penetration	12.0	13.9	17.5
Robbery	5.0	7.5	10.0
Sexual Assault	2.0	3.0	5.0
Weapon	1.0	1.9	5.0

Source: Sentencing Guidelines Data System (downloaded February 17, 2020)
Prepared: February 28, 2020





VIRGINIA CRIMINAL SENTENCING COMMISSION



Sentencing Guidelines Supplemental Case Information Form

September 14, 2020



Sentencing Guidelines Supplemental Form

SWIFT/DCN: _____

1. Defendant's Name: _____

2. Type of Counsel: Retained Court Appointed Public Defender Other

3. Pretrial Status: Secure Bond Own Recognizance Confinement Third Party Release

4. Pretrial Supervision by Pretrial Services Agency: No Yes Yes, ordered but did not complete/attend

5. Posttrial Status: Secure Bond Own Recognizance Confinement Third Party Release

6. Source of Bond: Personal Family Other Bonding Company N/A

7. Total Time Served Prior to Sentencing: Years _____ Months _____ Days _____

8. Number of Codefendants: _____

9. Legal Status at Offense:

- | | | | |
|---|--|--|---|
| <input type="checkbox"/> Escaped | <input type="checkbox"/> Bond | <input type="checkbox"/> Mandatory Parole | <input type="checkbox"/> Discretionary Parole |
| <input type="checkbox"/> Geriatric Release-§ 53.1-40.01 | <input type="checkbox"/> Inmate | <input type="checkbox"/> Probation | <input type="checkbox"/> Post Release -§ 19.2-295.2 |
| <input type="checkbox"/> Recognizance | <input type="checkbox"/> Community Program | <input type="checkbox"/> Pre Release | <input type="checkbox"/> Good Behavior |
| <input type="checkbox"/> Juvenile Probation | <input type="checkbox"/> Juvenile Parole | <input type="checkbox"/> Trial Supervision | <input type="checkbox"/> Summons <input type="checkbox"/> Other <input type="checkbox"/> None |

10. Weapon Use: None Used to Injure Used to Threaten (Includes by voice, note, text, etc.)

11. Weapon Used/ Firearm Knife Explosive Simulated/Feigned Weapon

10. **Weapon Use:** None Used to Injure Used to Threaten (Includes by voice, note, text, etc.)
11. **Weapon Used/
Possessed:** Firearm Knife Explosive Simulated/Feigned Weapon
 Note/Verbal Vehicle Animal Other N/A
12. **Offender's Role** Alone Leader Accomplice Not Determined
13. **Value of Property Taken/Damaged:** Highest value for one item \$ _____ Total value of all items \$ _____
14. **Injury to Victim:** Death Life Threatening Serious Physical Physical
 Emotional Threatened None N/A
15. **Victim Relationship to Offender:** None/Stranger Known Friend
 Family Police Officer/LEO Other
16. **Victim Information:** Handicapped: _____ Gender: _____ Race: _____ Ethnicity: _____ Age: _____
17. **Type of Primary Drug:** _____ **Quantity of Primary Drug:** _____
18. **Number of Felony Juvenile Adjudications:** Person _____ Property _____ Drug _____ Other _____
19. **Other factors known at the time of sentencing (check all that apply)** Yes Treatment: (in or completed treatment)
- a. **Drug abuse** (admitted, family information, documented in reports)..... prior to offense after arrest
- b. **Alcohol abuse** (admitted, family information, documented in reports)..... prior to offense after arrest
- c. **Mental Health issues** (admitted, family information, documented in reports) .. prior to offense after arrest
- d. **Under the Influence of drugs/alcohol at the time of the offense**.....
- e. **Employment:** Stable (Employed full or part-time for 18 months) Full-time student Disabled
 Stay-at-home spouse/parent Retired

18. Number of Felony Juvenile Adjudications: Person _____ Property _____ Drug _____ Other _____

19. Other factors known at the time of sentencing (*check all that apply*)
- | | Yes | Treatment: (in or completed treatment) | |
|--|---|--|---|
| a. Drug abuse (admitted, family information, documented in reports)..... | <input type="checkbox"/> | <input type="checkbox"/> prior to offense | <input type="checkbox"/> after arrest |
| b. Alcohol abuse (admitted, family information, documented in reports)..... | <input type="checkbox"/> | <input type="checkbox"/> prior to offense | <input type="checkbox"/> after arrest |
| c. Mental Health issues (admitted, family information, documented in reports)..... | <input type="checkbox"/> | <input type="checkbox"/> prior to offense | <input type="checkbox"/> after arrest |
| d. Under the Influence of drugs/alcohol at the time of the offense..... | <input type="checkbox"/> | | |
| e. Employment: | <input type="checkbox"/> Stable (Employed full or part-time for 18 months)
<input type="checkbox"/> Stay-at-home spouse/parent | <input type="checkbox"/> Full-time student
<input type="checkbox"/> Retired | <input type="checkbox"/> Disabled |
| f. Housing: | <input type="checkbox"/> Stable/same residence 1+ years | <input type="checkbox"/> Homeless at the time of the offense | |
| g. Provides support: | Enter Number dependents or family members supported _____ | | |
| h. Education: | <input type="checkbox"/> High school/GED
<input type="checkbox"/> Currently Enrolled | <input type="checkbox"/> Technical Training | <input type="checkbox"/> Some College
<input type="checkbox"/> College Degree |
| i. Military: | <input type="checkbox"/> Active
<input type="checkbox"/> Medical Discharge | <input type="checkbox"/> Reserve
<input type="checkbox"/> General Discharge | <input type="checkbox"/> Honorably Discharged
<input type="checkbox"/> Undesirable
<input type="checkbox"/> Bad Conduct Discharge |
| j. Defendant's Response: | <input type="checkbox"/> Accepts Responsibility
<input type="checkbox"/> Remorseful | <input type="checkbox"/> Sought Treatment
<input type="checkbox"/> Paid All or Part Restitution | <input type="checkbox"/> Developed Rehabilitation Plans |
| k. Other: | _____ | | |

INSTRUCTIONS

❖ Sentencing Guidelines – Supplemental Form

- 1. Defendant's Name:** Enter Last, First, Middle and Suffix & SWIFT Number
- 2. Type of Counsel:**
 - Retained** – any private attorney retained by the defendant
 - Court Appointed** – any private attorney appointed by the judge
 - Public Defender** – any public defender appointed by the judge
 - Other** – defendant serves as own counsel or any other type of counsel
- 3. Pretrial Status:**
 - Secured Bond** - defendant has guaranteed presence in court for trial by posting a monetary property pledge. Non-appearance in court will mean forfeiture of said bond. Must be secured bond.
 - Own Recognizance** - defendant signs a promise to appear in court for trial without bond.

7. Total Time Served Prior to Sentencing:

Enter the sum of pretrial time and posttrial time served in a jail or secured facility prior to sentencing for the current offense.

8. Number of Codefendants:

Enter the number of codefendants. A codefendant is defined as anyone who participated in contemporaneous criminal acts or occurrences or in a series of such acts or occurrences. Codefendants do not have to be indicted or convicted of the same crime.

9. Legal Status at Time of Offense:

Escape – defendant had absconded from incarceration, work release or furlough
Inmate – offender was serving a sentence of incarceration

10. Weapon Use

None – no weapon possessed, or no weapon used to injure or threaten. Includes body parts, unmodified clothing and accessories
Used to Injure – a weapon was used to injure (hit, stab, shoot, cut, etc.)
Used to Threaten – victim reasonably believed that a weapon was present or a weapon was possessed or nearby but not used.

11. Weapon Used/Possessed (Scored from the Victim's Perspective)

Firearm – gun, rifle, etc.
Knife – a cutting or stabbing instrument with a sharp blade or any object used to cut or stab
Explosive – anything capable of causing an explosion or fire
Simulated/Feigned Weapon – a false impression given that there is a weapon present (e.g., a finger, or object used to project an image a weapon was present)
Note/Verbal – a note or verbal comments that give the impression there is a weapon present

j. Defendant's Response: (Mark all that apply) - Accepts Responsibility (Defendant takes some action to resolve or address the issue such as paying restitution, seeking counseling, etc.), Remorseful (to be defined), Paid All or Part Restitution, Sought Treatment, or Developed Rehabilitation Plans.

5. Posttrial Status:

Bond - defendant has guaranteed presence in court for trial by posting a monetary or property pledge. Non-appearance in court will mean forfeiture of said bond. Must be a secured bond.
Own Recognizance - defendant signs a promise to appear in court for trial without bond.
Unsecured Bond - defendant posts a monetary amount to be forfeited upon non-appearance. This would be marked as unsecured bond.
Confinement – detention in jail or any secured facility
Third-Party Release – non-bond release where another person or organization maintains responsibility for offender's appearance in court.

6. Source of Bond:

Personal – defendant has paid specific bail amount
Family – a member of the defendant's family posts the monetary amount set by the court
Other – friends, associates, etc., post the monetary amount set by the court
Bonding Company – a person, licensed, who pledges to pay a certain amount of money if the offender fails to appear in court
N/A – mark if pretrial status is marked confinement, own recognizance, unsecured bond, or third-party release.

pending charges (§ 19.2-123).

Good Behavior – defendant was released with the direction to be of good behavior and not to violate any federal, state or local laws or ordinance. This includes defendants released on unsupervised probation.

Juvenile Probation - defendant was under active state or local juvenile supervised probation or a previous delinquent or status adjudication.

Juvenile Parole - defendant was under active state or local juvenile supervised parole or serving a sentence in a secured juvenile facility

Summons – defendant was at liberty at the time of the offense but was under written order to appear in court at a specified time to answer charges.

Other – refers to any legal restraint imposed on a defendant, implied or specific, that requires the defendant to obey all federal, state and local laws. This includes, but is not limited to, outstanding detainers or warrants (known or unknown by the offender), charges under a protective order, and any form of community control not mentioned in any of the other categories. (Please specify)

None – defendant was under no legal restraint at the time of the offense.

From the current convictions, identify the most expensive item that was taken, or the amount of damage inflicted. Then enter the sum of all the property taken and damaged from the current convictions. Do not include the value for any offense that did not result in a conviction or sentence.

14. Injury to Victim: Complete this factor for injury to the victim whether it was the defendant, codefendant or uncharged assailant who did the injuring. If there is injury to more than one victim, complete the information for the most seriously injured person.

Death – victim died because of the injury

Life Threatening - victim sustained an injury involving a substantial risk of death, an injury that resulted in a permanent physical disability. Being hospitalized, by itself, is not an indicator of life-threatening injury. A life-threatening injury includes injuries where the victim could have died without the extensive intervention of medical treatment (e.g., the patient required a lifesaving procedure such as surgery to repair internal injuries that result in the permanent impairment of an organ, removal of an organ or limb, a tracheotomy, a chest tube for a collapsed lung, surgery for a head trauma, cardiopulmonary resuscitation (CPR), was comatose). Ongoing health care that utilizes mechanical or other artificial means to sustain, restore, or supplant a spontaneous vital function is scored as life-threatening. Life threatening injury includes permanent disability injuries that result in the loss or major and permanent

QUESTIONS

❖ Sentencing Guidelines – Supplemental Form

- 1. Defendant's Name:** Enter Last, First, Middle and Suffix & SWIFT Number
- 2. Type of Counsel:**
Retained – any private attorney retained by the defendant
Court Appointed – any private attorney appointed by the judge
Public Defender – any public defender appointed by the judge
Other – defendant serves as own counsel or any other type of counsel
- 3. Pretrial Status:**
Secured Bond – defendant has guaranteed presence in court for trial by property pledge. Non-appearance in court will mean forfeiture of said bond.
Own Recognizance – defendant signs a promise to appear in court for trial by pledge anything of value to be forfeited upon non-appearance. This will be an unsecured bond.
Confinement – detention in jail or any secured facility
Third-Party Release – non-bond release where another person or organization assumes responsibility for offender's appearance in court.
- 4. Pretrial Supervision by Pretrial Services Agency**
No – defendant was not ordered by the court to participate in pretrial programs provided by a pretrial services agency.
Yes – defendant was ordered by the court to participate in pretrial supervision program provided by a pretrial services agency and complied with the terms. **Yes, Ordered But Did Not Complete/Attend** – defendant was ordered to participate in pretrial supervision or a pretrial program provided by a pretrial services agency but did not fully comply with the order.
- 5. Posttrial Status:**
Bond – defendant has guaranteed presence in court for trial by posting a pledge. Non-appearance in court will mean forfeiture of said bond. Mark **Yes** if defendant was ordered to post bond.
Own Recognizance – defendant signs a promise to appear in court for trial by pledge anything of value to be forfeited upon non-appearance. This will be an unsecured bond.
Confinement – detention in jail or any secured facility
Third-Party Release – non-bond release where another person or organization assumes responsibility for offender's appearance in court.
- 6. Source of Bond:**
Personal – defendant has paid specific bail amount
Family – a member of the defendant's family posts the monetary amount
Other – friends, associates, etc., post the monetary amount set by the court
Bonding Company – a person, licensed, who pledges to pay a certain amount if the offender fails to appear in court
N/A – mark if pretrial status is marked confinement, own recognizance, or third-party release.



Sentencing Guidelines Supplemental Form

SWIFT/DCN: _____

- 1. Defendant's Name:** _____
- 2. Type of Counsel:** Retained Court Appointed Public Defender Other
- 3. Pretrial Status:** Secure Bond Own Recognizance Confinement Third Party Release
- 4. Pretrial Supervision by Pretrial Services Agency:** No Yes Yes, ordered but did not complete/attend
- 5. Posttrial Status:** Secure Bond Own Recognizance Confinement Third Party Release
- 6. Source of Bond:** Personal Family Other Bonding Company N/A
- 7. Total Time Served Prior to Sentencing:** Years _____ Months _____ Days _____
- 8. Number of Codefendants:** _____
- 9. Legal Status at Offense:**
 Escaped Bond Mandatory Parole Discretionary Parole
 Geriatric Release-§ 53.1-40.01 Inmate Probation Post Release -§ 19.2-295.2
 Recognizance Community Program Pre Release Good Behavior
 Juvenile Probation Juvenile Parole Pre-Trial Supervision Summons Other None
- 10. Weapon Used:** None Used to Injure Used to Threaten (Includes by voice, note, text, etc.)
- 11. Weapon Used/ Possessed:** Firearm Knife Explosive Simulated/Feigned Weapon
 Note/Verbal Vehicle Animal Other N/A
- 12. Offender's Role** Alone Leader Accomplice Not Determined
- 13. Value of Property Taken/Damaged:** Highest value for one item \$ _____ Total value of all items \$ _____
- 14. Injury to Victim:** Death Life Threatening Serious Physical Physical
 Emotional Threatened None N/A
- 15. Victim Relationship to Offender:** None/Stranger Known Friend
 Family Police Officer/LEO Other
- 16. Victim Information:** Handicapped: _____ Gender: _____ Race: _____ Ethnicity: _____ Age: _____
- 17. Type of Primary Drug:** _____ **Quantity of Primary Drug:** _____
- 18. Number of Felony Juvenile Adjudications:** Person _____ Property _____ Drug _____ Other _____
- 19. Other factors known at the time of sentencing (check all that apply)** Yes Treatment: (in or completed treatment)
 a. Drug abuse (admitted, family information, documented in reports)..... prior to offense after arrest
 b. Alcohol abuse (admitted, family information, documented in reports)..... prior to offense after arrest
 c. Mental Health issues (admitted, family information, documented in reports)..... prior to offense after arrest
 d. Under the influence of drugs/alcohol at the time of the offense.....
- e. Employment:** Stable (Employed full or part-time for 18 months) Full-time student Disabled
 Stay-at-home spouse/parent Retired
- f. Housing:** Stable/same residence 1+ years Homeless at the time of the offense
- g. Provides support:** Enter Number dependents or family members supported _____
- h. Education:** High school/GED Technical Training Some College College Degree
 Currently Enrolled
- i. Military:** Active Reserve Honorably Discharged Undesirable Discharge
 Medical Discharge General Discharge Bad Conduct Discharge
- j. Defendant's Response:** Accepts Responsibility Sought Treatment Developed Rehabilitation Plans
 Remorseful Paid All or Part Restitution
- k. Other:** _____

Total Time Served Prior to Sentencing:

Enter the sum of pretrial time and posttrial time served in a jail or secured facility prior to sentencing for the current offense.

Number of Codefendants:

Enter the number of codefendants. A codefendant is defined as anyone who participated in contemporaneous criminal acts or occurrences or in a series of such acts or occurrences. Codefendants do not have to be indicted or convicted of the same crime.

Legal Status at Time of Offense:

Escape – defendant had absconded from incarceration, work release or furlough
Inmate – offender was serving a sentence of incarceration
Mandatory Parole – defendant was released from incarceration on mandatory parole
Discretionary Parole – defendant was released from incarceration at the discretion of the board or parole authority
Geriatric Release – defendant was released from incarceration based on advanced age. If defendant is 65 years of age or older at the time of sentencing, mark this box if the defendant was released as authorized under § 53.1-40.01
Post Release Supervision – defendant was released on a period of post release supervision established by the court at the time of sentencing (§ 19.2-295.2).
Probation – defendant was under active state or local supervision for a previous conviction. Included is a defendant on probation supervision for first offender or a deferred fine.
Bond – defendant was released on a secured bond while awaiting trial for pending charges.
Recognizance/Unsecured Bond – defendant was at liberty based on a promise to appear in court for trial without a pledge to forfeit anything of value for non-appearance. This includes a defendant released on an unsecured bond.
Community Program – defendant was participating in a community, religious, and/or educational program at the direction of the court.
Pre-Trial Supervision – defendant was released to pretrial supervision while awaiting trial for pending charges (§ 19.2-123).
Good Behavior – defendant was released with the direction to be of good behavior and not to violate any federal, state or local laws or ordinance. This includes defendants released on unsupervised probation.
Juvenile Probation – defendant was under active state or local juvenile supervised probation.
Juvenile Parole – defendant was under active state or local juvenile supervised parole serving a sentence in a secured juvenile facility
Summons – defendant was at liberty at the time of the offense but was under written court order to appear in court at a specified time to answer charges.
Other – refers to any legal restraint imposed on a defendant, implied or specific, that requires the defendant to obey all federal, state and local laws. This includes, but is not limited to, outstanding detainers or warrants (known or unknown by the offender), charges under advisement and any form of community control not mentioned in any of the other categories. (Please specify)
None – defendant was under no legal restraint at the time of the offense.





Preliminary
CONCURRENCE REPORT
FY 2020

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FY 2020 - Cases Coded and Keyed*

	2019	2020	Total
JAN		2,377	2,377
FEB		2,239	2,239
MAR		1,440	1,440
APR		540	540
MAY		865	865
JUN		1,708	1,708
JUL	2,086		2,086
AUG	2,312		2,312
SEP	2,060		2,060
OCT	2,231		2,231
NOV	1,931		1,931
DEC	1,810		1,810
TOTAL	12, 430	9,169	21,599

*Keyed as of August 27, 2020 (Includes all forms received)

FY 2020 - Cases Received by County - FIPS

ACCOMACK	45	CHESTERFIELD	771	HALIFAX	196	NELSON	135	SCOTT	194
ALBEMARLE	162	CLARKE	35	HANOVER	451	NEW KENT	48	SHENANDOAH	114
ALLEGHANY	203	CRAIG	15	HENRICO	1129	NORTHAMPTON	35	SMYTH	251
AMELIA	47	CULPEPER	192	HENRY	207	NORTHUMBERLAND	26	SOUTHAMPTON	80
AMHERST	153	CUMBERLAND	30	HIGHLAND	4	NOTTOWAY	66	SPOTSYLVANIA	407
APPOMATTOX	67	DICKENSON	87	ISLE OF WIGHT	67	ORANGE	86	STAFFORD	465
ARLINGTON	137	DINWIDDIE	53	JAMES CITY	32	PAGE	143	SURRY	13
AUGUSTA	360	ESSEX	28	KING & QUEEN	29	PATRICK	87	SUSSEX	25
BATH	29	FAIRFAX COUNTY	540	KING GEORGE	12	PITTSYLVANIA	117	TAZEWELL	391
BEDFORD	148	FAUQUIER	95	KING WILLIAM	5	POWHATAN	48	WARREN	118
BLAND	18	FLOYD	47	LANCASTER	14	PRINCE EDWARD	87	WASHINGTON	310
BOTETOURT	149	FLUVANNA	39	LEE	145	PRINCE GEORGE	97	WESTMORELAND	62
BRUNSWICK	49	FRANKLIN COUNTY	184	LOUDOUN	279	PRINCE WILLIAM	454	WISE	246
BUCHANAN	136	FREDERICK	231	LOUISA	104	PULASKI	260	WYTHE	200
BUCKINGHAM	78	GILES	114	LUNENBURG	10	RAPPAHANNOCK	9	YORK	150
CAMPBELL	222	GLOUCESTER	132	MADISON	34	RICHMOND COUNTY	29		
CAROLINE	71	GOOCHLAND	24	MATHEWS	13	ROANOKE COUNTY	392		
CARROLL	258	GRAYSON	110	MECKLENBURG	173	ROCKBRIDGE	282		
CHARLES CITY	0	GREENE	68	MIDDLESEX	35	ROCKINGHAM	453		
CHARLOTTE	46	GREENSVILLE	106	MONTGOMERY	311	RUSSELL	156		

N=21,599

FY 2020 - Cases Received by City - FIPS

ALEXANDRIA	76	NORFOLK	650
BRISTOL	205	PETERSBURG	26
BUENA VISTA	49	PORTSMOUTH	167
CHARLOTTESVILLE	94	RADFORD	69
CHESAPEAKE	704	RICHMOND CITY	549
COLONIAL HEIGHTS	89	ROANOKE CITY	456
DANVILLE	336	SALEM	183
FAIRFAX CITY	2	STAUNTON	211
FREDERICKSBURG	113	SUFFOLK	205
HAMPTON	293	VIRGINIA BEACH	1046
HARRISONBURG	33	WAYNESBORO	177
HOPEWELL	148	WILLIAMSBURG	129
LEXINGTON	1	WINCHESTER	186
LYNCHBURG	351	MISSING	3
MARTINSVILLE	43		
NEWPORT NEWS	399		

N=21,599

Preliminary FY2020 Report: General Concurrence

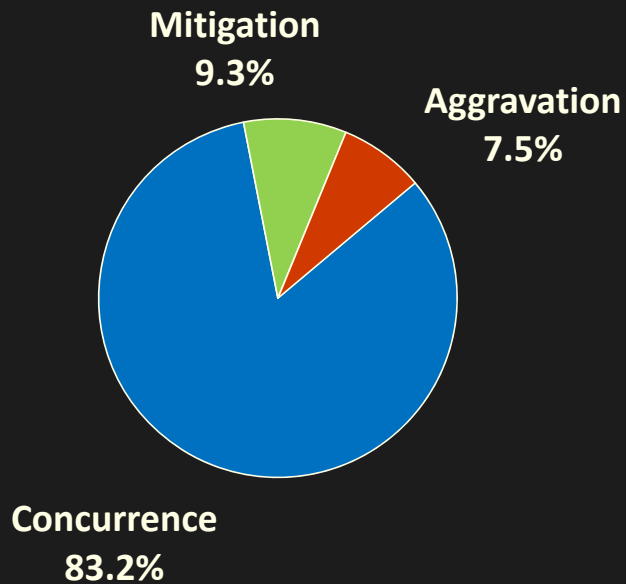


Preliminary FY2020 Report Judicial Agreement with Guideline Recommendations

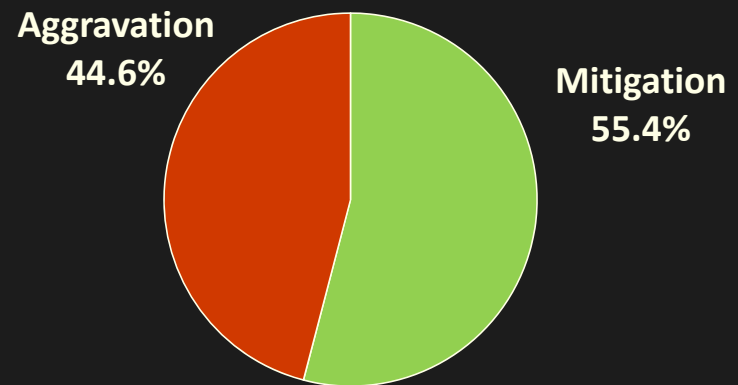
General Concurrence:

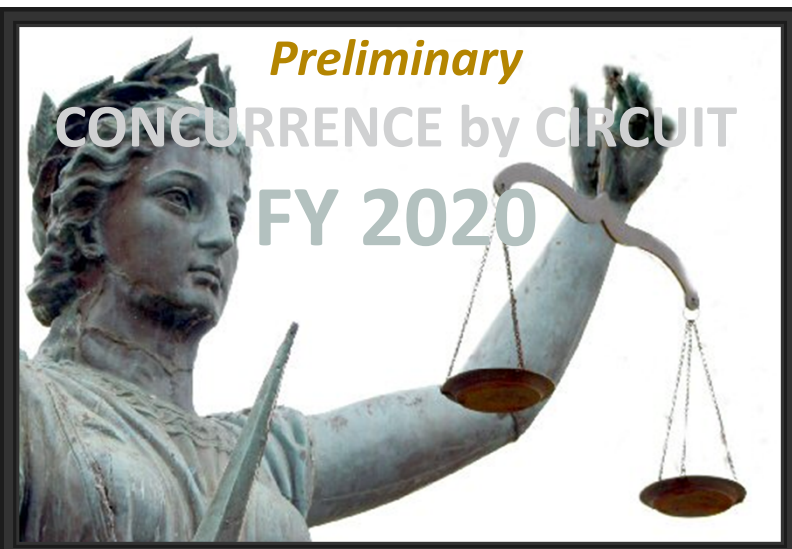
The degree to which judges agree with the overall guidelines recommendation.

Overall Concurrence Rate



Direction of Departures





Circuit Name	Circuit	Concurrence	Mitigation	Aggravation	No. of Cases
Chesapeake	1	84.6%	6.1%	9.3%	690
Virginia Beach	2	87.5%	6.5%	6.0%	1,100
Portsmouth	3	74.4%	21.3%	4.3%	164
Norfolk	4	83.6%	11.7%	4.7%	640
Suffolk Area	5	81.0%	3.2%	15.7%	343
Sussex Area	6	82.6%	7.6%	9.7%	432
Newport News	7	89.4%	8.0%	2.6%	387
Hampton	8	76.6%	18.8%	4.7%	256
Williamsburg Area	9	83.6%	6.8%	9.5%	556
South Boston Area	10	83.8%	8.7%	7.5%	611
Petersburg Area	11	86.8%	8.9%	4.3%	235
Chesterfield Area	12	86.8%	6.0%	7.2%	834
Richmond City	13	67.2%	21.3%	11.5%	539
Henrico	14	78.4%	8.6%	13.0%	1,094
Fredericksburg Area	15	78.9%	8.7%	12.4%	1,652
Charlottesville Area	16	81.1%	11.6%	7.3%	776
Arlington Area	17	65.9%	23.7%	10.4%	135
Alexandria	18	78.7%	16.4%	4.9%	61
Fairfax	19	72.8%	17.1%	10.1%	503
Loudoun Area	20	82.3%	8.2%	9.5%	367
Martinsville Area	21	86.8%	11.0%	2.2%	318
Danville Area	22	78.9%	13.5%	7.6%	621
Roanoke Area	23	80.8%	14.5%	4.7%	1,007
Lynchburg Area	24	84.6%	11.3%	4.1%	997
Staunton Area	25	86.2%	8.4%	5.4%	1,416
Harrisonburg Area	26	89.3%	5.6%	5.1%	1,277
Radford Area	27	90.1%	5.1%	4.8%	1,326
Bristol Area	28	86.7%	5.8%	7.5%	759
Buchanan Area	29	84.8%	6.6%	8.6%	745
Lee Area	30	79.2%	13.2%	7.5%	559
Prince William Area	31	85.8%	6.5%	7.7%	443



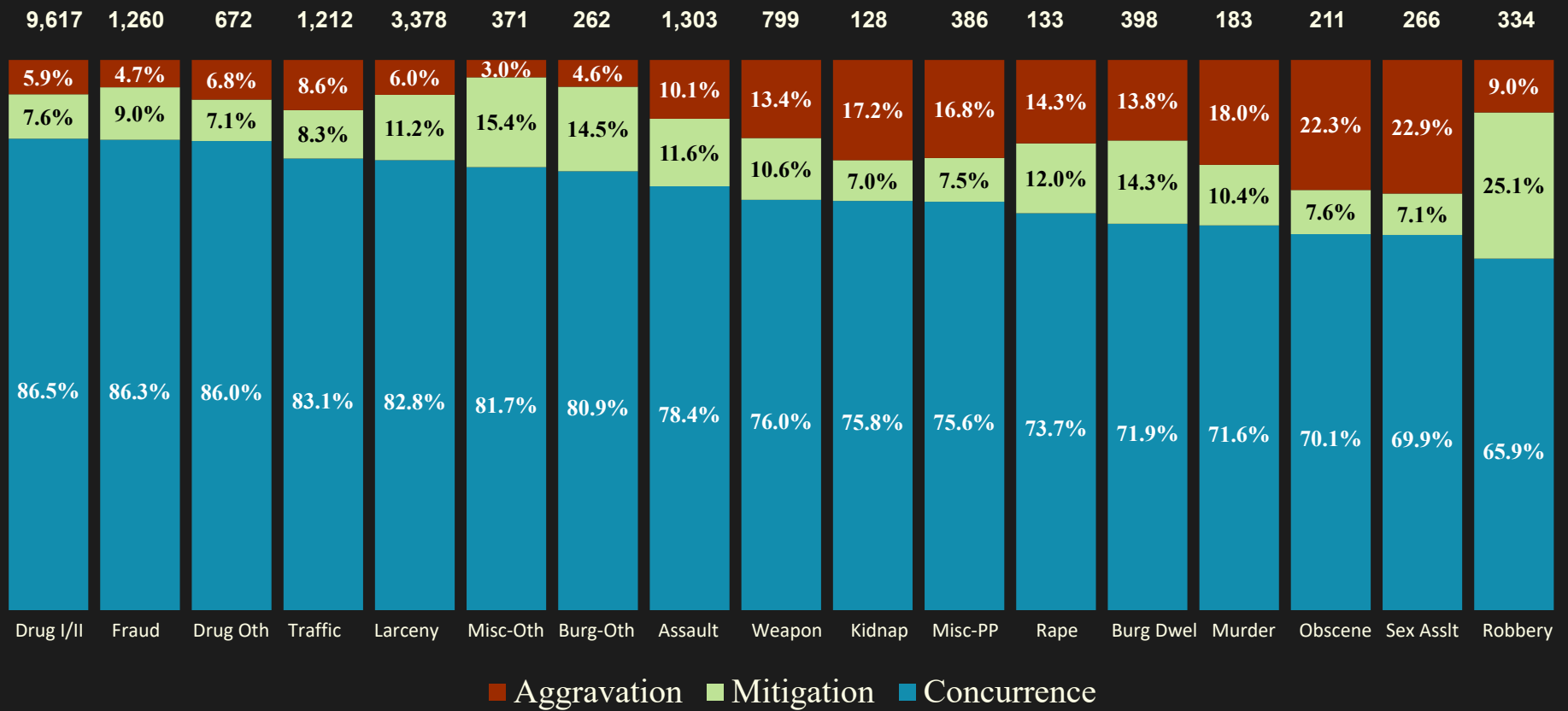
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83.2
83.2

Preliminary FY2020 Report: Concurrence by Offense Type



Preliminary
FY2020 Report
Concurrence by Type of Offense





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