

VIRGINIA CRIMINAL SENTENCING COMMISSION

ANNUAL REPORT

2020



DECEMBER 1, 2020

Virginia Criminal Sentencing Commission



2020 ANNUAL REPORT

DECEMBER 1, 2020

Virginia Criminal Sentencing Commission Members

**Appointed by the Chief Justice of the Supreme Court
and Confirmed by the General Assembly**

Judge Edward L. Hogshire (Ret.)
Chairman, Charlottesville

Appointments by the Chief Justice of the Supreme Court

Judge Charles S. Sharp, Vice Chair, Stafford
Judge Steven C. Frucci, Virginia Beach
Judge Patricia Kelly, Hanover
Judge W. Revell Lewis, III, Accomack
Judge Michael Lee Moore, Lebanon
Judge Stacey W. Moreau, Chatham

Attorney General

The Honorable Mark R. Herring
(**Diane Abato**, Attorney General's Representative)

Senate Appointments

Senator John Edwards, Roanoke
Judge James S. Yoffy, Henrico

House of Delegates Appointments

Delegate Les R. Adams, Chatham
Judge James Fisher, Fauquier
Judge Thomas Mann, Fairfax County

Governor's Appointments

Timothy S. Coyne, Winchester
Kyanna Perkins, Chesterfield
Kemba Smith Pradia, Richmond City
The Honorable Shannon Taylor, Henrico

Commonwealth of Virginia

HON. EDWARD L. HOGSHIRE (RET.)
CHAIRMAN

MEREDITH FARRAR-OWENS
DIRECTOR



100 NORTH NINTH STREET
RICHMOND, VIRGINIA 23219
(804) 225 - 4398

Supreme Court of Virginia
Virginia Criminal Sentencing Commission

December 1, 2020

To: The Honorable Donald W. Lemons, Chief Justice of Virginia
The Honorable Ralph S. Northam, Governor of Virginia
The Honorable Members of the General Assembly of Virginia
The Citizens of Virginia

Section 17.1-803 of the *Code of Virginia* requires the Virginia Criminal Sentencing Commission to report annually upon its work and recommendations. Pursuant to this statutory obligation, we respectfully submit for your review the *2020 Annual Report* of the Criminal Sentencing Commission.

This report details the work of the Commission over the past year. The report includes a detailed analysis of judicial compliance with the felony sentencing guidelines during fiscal year 2020. The Commission's recommendations to the 2021 session of the Virginia General Assembly are also contained in this report.

I would like to use this opportunity to express our utmost gratitude to three Commission members who will be completing their term with the Commission at the end of 2020. The members are Judge Michael Lee Moore of Lebanon, Judge James E. Plowman of Leesburg and Judge James S. Yoffy of Henrico. They have performed their duties in an exemplary fashion and our work is far better because of their insights and valuable contributions.

The Commission wishes to sincerely thank those in the field whose diligent work with the guidelines enables us to produce this report.

Sincerely,

A handwritten signature in blue ink, appearing to read "Edward L. Hogshire".

Edward L. Hogshire
Retired Judge
Chairman

VIRGINIA CRIMINAL SENTENCING COMMISSION STAFF



Director _____ **Meredith Farrar-Owens**

Deputy Director _____ **Jody T. Fridley**

Research Associate _____ **Thomas Y. Barnes**

Research Associate _____ **Joe Boelsche**

Data Processing Specialist _____ **Alfreda Cheatham**

Research Associate _____ **Chang Kwon**

Training Associate _____ **Danielle McCowan-Lewis**

Training Associate _____ **Kim Thomas**

Research Associate _____ **Carolyn A. Williamson**

Research Assistants _____ **Trae Christian**
William Perkins, IV
Brad Puryear

TABLE OF CONTENTS

1 Introduction

Overview	1
Commission Profile	1
Commission Meetings	2
Monitoring and Oversight	2
Training, Education and Other Assistance	2
Automation Project-SWIFT!	4
Projecting the Impact of Proposed Legislation	5
Prison and Jail Population Forecasting	6
Revision of the Probation Violation Guidelines	6
Assistance to Other Agencies	7

2 Guidelines Concurrence

Introduction	9
Concurrence Defined	10
Overall Concurrence with the Sentencing Guidelines	12
Dispositional Concurrence	12
Durational Concurrence	14
Reasons for Departure from the Guidelines	15
Concurrence by Circuit	16
Virginia Localities and Judicial Circuits	18
Concurrence by Sentencing Guidelines Offense Group	20
Concurrence under Midpoint Enhancements	23
Juries and the Sentencing Guidelines	25
Concurrence and Nonviolent Offender Risk Assessment	28
Concurrence and Sex Offender Risk Assessment	31
Specific Type of Drug Study	35
Sentencing Revocation Report (SRRs)	38
Probation Violation Guidelines (PVGs)	40

3 Probation Violation Guidelines Study

Introduction	47
Highlights from the Judicial Survey	48
Highlights from the Survey of Probation Officers, Commonwealth’s Attorneys, and Defense Attorneys	50
Data Sources Used by the Commission	53
Analysis Process	57
Results	58
Connection to Survey Feedback	60
Procedural Issues and Varying Judicial Philosophies	61
SRR and Worksheet Input Field Modifications	63
Implementation Plan	64
Conclusion	64
Probation Violation Technical Supplement	70

4 Recommendations

Introduction	85
Recommendation 1	87
Recommendation 2	96
Recommendation 3	101
Recommendation 4	107
Recommendation 5	113
Recommendation 6	118
Recommendation 7	122
Appendices	129

1

INTRODUCTION

OVERVIEW

The Virginia Criminal Sentencing Commission is required by § 17.1-803 of the *Code of Virginia* to report annually to the General Assembly, the Governor, and the Chief Justice of the Supreme Court of Virginia. To fulfill its statutory obligation, the Commission respectfully submits this report.

The report is organized into four chapters. The remainder of the Introduction chapter provides a general profile of the Commission and an overview of its various activities and projects. The Guidelines Concurrence chapter that follows contains a comprehensive analysis of concurrence with the sentencing guidelines during fiscal year (FY) 2020. The third chapter describes a special study recently conducted by the Commission on the sentencing guidelines for probation violations. In the report's final chapter, the Commission presents its recommendations for revisions to the felony sentencing guidelines system.

COMMISSION PROFILE

An agency of the judicial branch of government, the Virginia Criminal Sentencing Commission is comprised of 17 members, as authorized in § 17.1-802 of the *Code of Virginia*. The Chairman of the Commission is appointed by the Chief Justice of the Supreme Court of Virginia, must not be an active member of the judiciary, and must be confirmed by the General Assembly. The Chief Justice also appoints six judges or justices to serve on the Commission. The Governor appoints four members, at least one of whom must be a victim of crime or a representative of a crime victim's organization. The Speaker of the House of Delegates makes two appointments, while the Chairman of the House Judiciary Committee, or another member of the Judiciary Committee appointed by the chairman, must serve as the third House appointment. Similarly, the Senate Committee on Rules makes one appointment and the other appointment must be filled by the Chairman of the Senate Judiciary Committee or a designee from that committee. The final member of the Commission, Virginia's Attorney General, serves by virtue of his office.

COMMISSION MEETINGS

The full membership of the Commission met four times during 2020. These meetings were held on March 23, June 1, September 14, and November 4. Minutes for each of these meetings are available on the Commission's website (www.vcsc.virginia.gov/meetings.html).

Throughout the year, staff compiles information, analyzes data, and drafts recommendations for action by the full Commission. The Commission's Chairman appoints subcommittees, when needed, to allow for more extensive discussion on special topics.

MONITORING AND OVERSIGHT

Section 19.2-298.01 of the *Code of Virginia* requires that sentencing guidelines worksheets be completed in all felony cases covered by the guidelines. The guidelines cover approximately 95% of felony sentencing events in Virginia. This section of the Code also requires judges to announce, during court proceedings for each case, that the guidelines forms have been reviewed. After sentencing, the guidelines worksheets are signed by the judge and become a part of the official record of each case. The clerk of the circuit court is responsible for sending the completed and signed worksheets to the Commission.

The sentencing guidelines worksheets are reviewed by the Commission staff as they are received. The Commission staff performs this check to ensure that the guidelines forms are being completed accurately. As a result of the review process, errors or omissions are detected and resolved.

Once the guidelines worksheets are reviewed and determined to be complete, they are automated and analyzed. The principal analysis performed with the automated guidelines database relates to judicial concurrence with sentencing guidelines recommendations. This analysis is conducted and presented to the Commission on a semiannual basis. The most recent study of judicial concurrence with the sentencing guidelines is presented in the next chapter.

TRAINING, EDUCATION AND OTHER ASSISTANCE

The Commission provides sentencing guidelines assistance in a variety of forms: training and education seminars, training materials and publications, a website, and assistance via the "hotline" phone system. Training and education are ongoing activities of the Commission. The Commission offers training and educational opportunities in an effort to promote the accurate completion of sentencing guidelines. Training seminars are designed to appeal to the needs of attorneys for the Commonwealth and probation officers, the two groups authorized by statute to

complete the official guidelines for the court. The seminars also provide defense attorneys with a knowledge base to challenge the accuracy of guidelines submitted to the court. In addition, the Commission conducts sentencing guidelines seminars for new members of the judiciary and other criminal justice system professionals. Having all sides equally versed in the completion of guidelines worksheets is essential to a system of checks and balances that ensures the accuracy of sentencing guidelines.

In FY2020, the Commission offered 26 training seminars across the Commonwealth for more than 500 criminal justice professionals. The Commission's typical training schedule was curtailed in 2020 due to the COVID-19 pandemic. The Commission provided five online seminars during 2020, adjusted hotline support to closely work with probation officers and attorneys completing sentencing guidelines for the first time and recorded training videos for users to view online or on their cell phones. During FY2020, staff developed a virtual introduction to sentencing guidelines seminars that combined the use of videos and live workshops. The format of these seminars was adjusted so as to be more compatible with online user participation via Zoom. These courses were approved by the Virginia State Bar, enabling participating attorneys to earn Continuing Legal Education credits. The Commission continued to provide a guidelines-related ethics class for attorneys, which was conducted in conjunction with the Virginia State Bar. The Virginia State Bar approved this class for one hour of Continuing Legal Education Ethics credit. A three-hour course on the development and use of sentencing guidelines, led by Judge David Carson from the 23rd Circuit and Commission staff, was conducted for newly-elected circuit court judges.

The Commission will continue to place a priority on providing sentencing guidelines training to any group of criminal justice professionals. The Commission is also willing to provide an education program on the guidelines and the no-parole sentencing system to any interested group or organization. Interested individuals can contact the Commission and place their names on a waiting list. Once a sufficient number of people have expressed interest, a seminar is presented in a locality convenient to the majority of individuals on the list.

In addition to providing training and education programs, the Commission maintains a website and a "hotline" phone and texting system. The "hotline" phone (804.225.4398) is staffed from 7:30 a.m. to 5:00 p.m., Monday through Friday, to respond quickly to any questions or concerns regarding the sentencing guidelines or their preparation. The hotline continues to be an important resource for guidelines users around the Commonwealth. Guidelines users also have the option of texting

their questions to staff (804.393.9588). Guidelines users indicated that this option was helpful, particularly when they were at the courthouse or otherwise away from the office. On a typical day staff responds to 25 to 40 phone calls, texts and emails related to scoring sentencing guidelines. During the COVID-19 pandemic the number of support calls and texts increased to assist users working away from their offices.

By visiting the Commission's website, a user can learn about upcoming training sessions, access Commission reports, look up Virginia Crime Codes (VCCs), and view on-line versions of the sentencing guidelines forms. Another resource is the Commission's mobile website and electronic guidelines manual. This resource is formatted for use on a smartphone and provides a quick resource when a guidelines manual is not available.

AUTOMATION PROJECT - SWIFT!

In 2012, staff launched a project to automate the sentencing guidelines completion and submission process. The Commission has been collaborating with the Supreme Court's Department of Judicial Information Technology (DJIT) to design a web-based application for automating the sentencing guidelines. The application is called SWIFT (Sentencing Worksheets and Integrated File Transfer).

The Commission pilot tested features of the application in Norfolk and Henrico County before expanding the pilot statewide. On July 1, 2018, SWIFT was implemented statewide and was designated as the required process for completing sentencing guidelines. The Commission is most appreciative of the 114 Circuit Court Clerks who allowed the Commission and sentencing guidelines users access to publicly available court data. The Commission continues to work with the Clerks of Buchanan County, Botetourt County, Virginia Beach, Hampton, Alexandria and Fairfax County to encourage the release of their publicly available data for use in SWIFT. This access to court information gives registered users the ability to streamline preparation of the sentencing guidelines worksheets through SWIFT.

This year, a significant amount of time was spent developing the judicial component of SWIFT and establishing an automated process to distribute guidelines to judges, clerks and the Commission. As part of this process, and at the request of Circuit Court Clerks and judges, SWIFT was modified to capture all docket numbers in a sentencing event. As full implementation of SWIFT moves forward, the next phase is to use the application to transfer sentencing guidelines between preparers, attorneys, clerks, judges and the Commission.

A focus group of Circuit Court Clerks and judges was established to help develop the protocol for the next phase of SWIFT. Preparers and users of sentencing guidelines are encouraged to let the Commission know about their concerns, issues or suggestions. Staff can be reached by phone (804.225.4398), email (swift@vacourts.gov) or text (804.393.9588) to discuss SWIFT or any sentencing guidelines topic.

PROJECTING THE IMPACT OF PROPOSED LEGISLATION

Section 30-19.1:4 of the Code of Virginia requires the Commission to prepare fiscal impact statements for any proposed legislation that may result in a net increase in periods of imprisonment in state correctional facilities. These impact statements must include details as to the impact on adult, as well as juvenile, offender populations and any necessary adjustments to sentencing guideline recommendations. Any impact statement required under § 30-19.1:4 also must include an analysis of the impact on local and regional jails, as well as state and local community corrections programs.

For the 2020 General Assembly and the 2020 Special Session convened during the late summer and fall, the Commission prepared a combined total of 472 impact statements on proposed legislation. These proposals included: 1) legislation to increase the felony penalty class of a specific crime; 2) legislation to increase the penalty class of a specific crime from a misdemeanor to a felony; 3) legislation to add a new mandatory minimum penalty; 4) legislation to expand or clarify an existing crime; and 5) legislation that would create a new criminal offense. The Commission utilizes its computer simulation forecasting program to estimate the projected impact of these proposals on the prison system. The estimated impact on the juvenile offender population is provided by Virginia's Department of Juvenile Justice. In most instances, the projected impact and accompanying analysis of a bill is presented to the General Assembly within 24 to 48 hours after the Commission is notified of the proposed legislation. When requested, the Commission provides pertinent oral testimony to accompany the impact analysis. Additional impact analyses may be conducted at the request of House Appropriations Committee staff, Senate Finance Committee staff, the Secretary of Public Safety and Homeland Security, or staff of the Department of Planning and Budget.

PRISON AND JAIL POPULATION FORECASTING

Forecasts of offenders confined in state and local correctional facilities are essential for criminal justice budgeting and planning in Virginia. The forecasts are used to estimate operating expenses and future capital needs and to assess the impact of current and proposed criminal justice policies. Since 1987, the Secretary of Public Safety and Homeland Security has utilized an approach known as “consensus forecasting” to develop the offender population forecasts. This process brings together policy makers, administrators, and technical experts from all branches of state government. The process is structured through committees. The Technical Advisory Committee is comprised of experts in statistical and quantitative methods from several agencies. While individual members of this Committee generate the various prisoner forecasts, the Committee as a whole carefully scrutinizes each forecast according to the highest statistical standards. At the Secretary’s request, the Commission’s Director or Deputy Director has chaired the Technical Advisory Committee since 2006. Due to the COVID-19 pandemic, the Secretary of Public Safety and Homeland Security opted to abbreviate the forecasting process for 2020, while still maintaining a consensus approach.

The Secretary presented updated offender forecasts to the General Assembly in a report submitted in October 2020.

REVISION OF THE PROBATION VIOLATION GUIDELINES

In 2003, the General Assembly directed the Commission to develop discretionary sentencing guidelines for probation violators returned to court for reasons other than a new criminal conviction (“technical violations”). To develop these guidelines, the Commission examined historical judicial sanctioning practices in revocation hearings. In its 2003 Annual Report, the Commission recommended that the probation violation guidelines be implemented statewide and the recommendation was accepted by the 2004 General Assembly. Statewide use began July 1, 2004. Since July 1, 2010, the Appropriation Act has specified that a Sentencing Revocation Report and, if applicable, the Probation Violation Guidelines, must be presented to the court and reviewed by the judge for any violation hearing conducted pursuant to § 19.2-306.

Although past amendments to the probation violation guidelines have increased judicial concurrence, the concurrence rate remains relatively low (58% in FY2019). This suggests that many judges are dissatisfied with the probation violation guidelines. Numerous criminal justice practitioners have requested that the Commission revise these guidelines. In 2016, the Commission approved a new study that provides the foundation needed to revise the guidelines used in revocation cases. The goal is to improve the utility of the probation violation guidelines for Virginia's judges.

As a critical first step in revising the guidelines, the Commission sought input and guidance from circuit court judges through a survey. The survey was administered in September-October 2018. Judges had the option of taking the survey online or on paper. Overall, 89.7% of active circuit court judges responded. The results of the survey have proven to be a rich source of information for the Commission. A second survey of Commonwealth's attorneys, public defenders and defense attorneys also provided helpful insight to the Commission. This information was used for planning subsequent stages of the project, especially data collection.

Work on the project continued into 2020. The Commission analyzed a sample of more than 3,400 probation revocation cases from FY2014-FY2018 and identified statistically significant factors in judicial sentencing for violations. Drawing on these results, the Commission developed an initial draft of the new probation violation guidelines worksheets. The Commission presented this draft to a focus group of 20 probation officers, defense attorneys, and Commonwealth's attorneys. With feedback from the focus group, the Commission further analyzed certain factors and refined the proposed guidelines. The study is now complete. Findings from the study are presented in the third chapter of this report. Based on the results of this large-scale, multi-year project, the Commission recommends revising the probation violation guidelines. Details of the Commission's proposal can be found in the Recommendations chapter.

ASSISTANCE TO OTHER AGENCIES

When requested, the Commission provides technical assistance, in the form of data and analysis, to other state agencies. During 2020, the Commission assisted agencies such as the Virginia State Crime Commission, a legislative branch agency, the Virginia Department of Juvenile Justice, and the Department of Planning & Budget.

2

GUIDELINES CONCURRENCE

INTRODUCTION

Beginning January 1, 1995, the practice of discretionary parole release was abolished in Virginia and the existing system of sentence credits awarded to inmates for good behavior was eliminated. Under Virginia's truth-in-sentencing laws, convicted felons must serve at least 85% of the pronounced sentence and they may earn, at most, 15% off in sentence credits, regardless of whether their sentence is served in a state facility or a local jail. The Virginia Criminal Sentencing Commission was established to develop and administer guidelines in an effort to provide Virginia's judiciary with sentencing recommendations for felony cases under the new truth-in-sentencing laws. Under the current no-parole system, guidelines recommendations for nonviolent offenders with no prior record of violence are tied to the amount of time they served during a period prior to the abolition of parole. In contrast, offenders convicted of violent crimes, and those with prior convictions for violent felonies, are subject to guidelines recommendations up to six times longer than the historical time served in prison by similar offenders. In over a half-million felony cases sentenced under truth-in-sentencing laws, judges have agreed with guidelines recommendations in more than three out of four cases.

This report focuses on cases sentenced from the most recent year of available data, fiscal year (FY) 2020 (July 1, 2019, through June 30, 2020). Concurrence is examined in a variety of ways in this report, and variations in data over the years are highlighted throughout.

Figure 1

Number and Percentage of Cases Received by Circuit - FY2020*

Circuit	Number	Percent
1	710	3.2%
2	1,118	5.1%
3	169	0.8%
4	649	3.0%
5	368	1.7%
6	440	2.0%
7	402	1.8%
8	271	1.2%
9	571	2.6%
10	673	3.1%
11	241	1.1%
12	876	4.0%
13	548	2.5%
14	1,132	5.2%
15	1,841	8.4%
16	807	3.7%
17	138	0.6%
18	63	0.3%
19	506	2.3%
20	383	1.7%
21	345	1.6%
22	647	3.0%
23	1,037	4.7%
24	1,045	4.8%
25	1,482	6.8%
26	1,317	6.0%
27	1,392	6.4%
28	785	3.6%
29	813	3.7%
30	605	2.8%
31	455	2.1%
Total	21,829	100.0%

*72 cases were missing a circuit number

In FY2020, eight judicial circuits contributed more guidelines cases than any of the other judicial circuits in the Commonwealth. Those circuits, which include the Fredericksburg area (Circuit 15), the Botetourt County area (Circuit 25), Radford area (Circuit 27), Harrisonburg area (Circuit 26), Henrico County (Circuit 14), Virginia Beach (Circuit 2), Lynchburg area (Circuit 24), and the Roanoke County area (Circuit 23) comprised nearly half (47%) of all worksheets received in FY2020 (Figure 1). See Appendix 4 for a breakdown of guidelines received by jurisdiction.

During FY2020, the Commission received 21,901 sentencing guideline worksheets. This number is significantly lower than last year. It is suspected that this is a result of the impact on workflow within the courts due to restrictions put in place for COVID-19. Of those received, 635 worksheets contained errors or omissions that affect the analysis of the case. For the purposes of conducting a clear evaluation of sentencing guidelines in effect for FY2020, the remaining sections of this chapter pertaining to judicial concurrence with guidelines recommendations focus only on those 21,267 cases for which guidelines recommendations were completed and calculated correctly.

CONCURRENCE DEFINED

In the Commonwealth, judicial compliance with the truth-in-sentencing guidelines is voluntary. A judge may depart from the guidelines recommendation and sentence an offender either to a punishment more severe or less stringent than called for by the guidelines. In cases in which the judge has elected to sentence outside of the guidelines recommendation, he or she must, as stipulated in § 19.2-298.01 of the *Code of Virginia*, provide a written reason for departure on the guidelines worksheet.

The Commission measures judicial agreement with the sentencing guidelines using two classes of concurrence: strict and general. Together, they comprise the overall concurrence rate. For a case to be in strict concurrence, the offender must be sentenced to the same type of sanction that the guidelines recommend (probation, incarceration for up to six months, incarceration for more than six months) and to a term of incarceration that falls exactly within the sentence range recommended by the guidelines. When risk assessment for nonviolent offenders is applicable, a judge may sentence a recommended offender to an alternative punishment program or to a term of incarceration within the traditional guidelines range and be considered in strict concurrence. A judicial sentence would be considered in general agreement with the guidelines recommendation if the sentence 1) meets modest criteria for rounding, 2) involves time already served (in certain instances), or 3) complies with statutorily-permitted diversion options in habitual traffic offender cases.

Concurrence by rounding provides for a modest rounding allowance in instances when the active sentence handed down by a judge or jury is very close to the range recommended by the guidelines. For example, a judge would be considered in concurrence with the guidelines if he or she sentenced an offender to a two-year sentence based on a guidelines recommendation that goes up to 1 year 11 months. In general, the Commission allows for rounding of a sentence that is within 5% of the guidelines recommendation.

Time served concurrence is intended to accommodate judicial discretion and the complexity of the criminal justice system at the local level. A judge may sentence an offender to the amount of pre-sentence incarceration time served in jail when the guidelines call for a short jail term. Even though the judge does not sentence an offender to serve incarceration time after sentencing, the Commission typically considers this type of case to be in concurrence. Conversely, a judge who sentences an offender to time served when the guidelines call for probation also is regarded as being in concurrence with the guidelines because the offender was not ordered to serve any period of incarceration after sentencing.

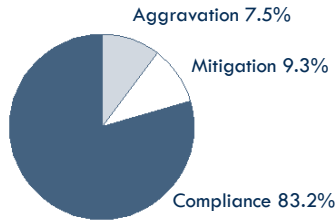
Concurrence through the use of diversion options in habitual traffic offender cases resulted from amendments to § 46.2-357(B2 and B3) of the *Code of Virginia*, effective July 1, 1997. The amendment allows judges to suspend the mandatory minimum 12-month incarceration term required in felony habitual traffic cases if they sentence the offender to a Detention Center or Diversion Center Incarceration Program. In 2017, the Department of Corrections started referring to Detention and Diversion as the Community Corrections Alternative Program (CCAP). For cases sentenced since the effective date of the legislation, the Commission considers either mode of sanctioning of these offenders to be in concurrence with the sentencing guidelines.

OVERALL CONCURRENCE WITH THE SENTENCING GUIDELINES

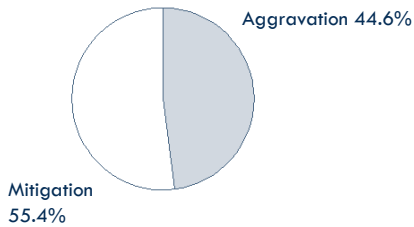
Figure 2

Overall Guidelines Concurrence and Direction of Departures - FY2020

Overall Compliance



Direction of Departures



The overall concurrence rate summarizes the extent to which Virginia's judges concur with recommendations provided by the sentencing guidelines, both in type of disposition and in length of incarceration. For the past thirteen fiscal years, the concurrence rate has hovered around 80%. During FY2020, judges continued to agree with the sentencing guidelines recommendations in approximately 83% of the cases (Figure 2).

In addition to concurrence, the Commission also studies departures from the guidelines. The rate at which judges sentence offenders to sanctions more severe than the guidelines recommendation, known as the "aggravation" rate, was 7.5% for FY2020. The "mitigation" rate, or the rate at which judges sentence offenders to sanctions considered less severe than the guidelines recommendation, was 9.3% for the fiscal year. Thus, of the FY2020 departures, 44.6% were cases of aggravation while 55.4% were cases of mitigation.

DISPOSITIONAL CONCURRENCE

Since the inception of truth-in-sentencing in 1995, the correspondence between dispositions recommended by the guidelines and the actual dispositions imposed in Virginia's circuit courts has been quite high. Figure 3 illustrates judicial concurrence in FY2020 with the type of disposition recommended by the guidelines. For instance, of all felony offenders recommended for more than six months of incarceration during FY2020, judges sentenced 85% to terms in excess of six months (Figure 3). Some offenders recommended for incarceration of more than six months received a shorter term of incarceration (one day to six months) or probation with no active incarceration, but the percentage of offenders receiving such dispositions was small.

Figure 3

Recommended and Actual Dispositions - FY2020

Recommended Disposition	Actual Disposition		
	Probation	Incarceration 1 day - 6 mos.	Incarceration > 6 mos.
Probation	75.8%	21.1%	3.0%
Incarceration 1 day - 6 months	12.6%	80.0%	7.4%
Incarceration > 6 months	6.9%	8.4%	84.7%

Judges have also typically agreed with guidelines recommendations for other types of dispositions. In FY2020, 80% of offenders received a sentence resulting in confinement of six months or less when such a sanction was recommended. In some cases, judges felt probation to be a more appropriate sanction than the recommended jail term and, in other cases, offenders recommended for short-term incarceration received a sentence of more than six months. Finally, 76% of offenders whose guidelines recommendation called for no incarceration were given probation and no post-dispositional confinement. Some offenders with a “no incarceration” recommendation received a short jail term, but rarely did these offenders receive an incarceration term of more than six months.

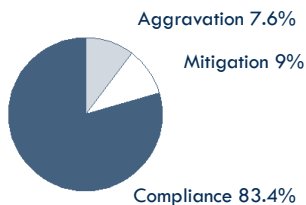
Since July 1, 1997, sentences to the state’s former Boot Camp and Detention and Diversion Centers have been defined as incarceration sanctions for the purposes of the sentencing guidelines. Although the state’s Boot Camp program was discontinued in 2002, the Detention and Diversion Center programs have evolved into Community Corrections Alternative Programs (CCAP) and have continued as sentencing options for judges. The Commission recognized that these programs are more restrictive than probation supervision in the community. In 2005, the Virginia Supreme Court concluded that participation in the Detention Center program is a form of incarceration (*Charles v. Commonwealth*). Because the Diversion Center program also involves a period of confinement, the Commission defines both the Detention Center and the Diversion Center programs as incarceration terms under the sentencing guidelines. Between 1997 and 2003, the Detention and Diversion Center programs were counted as six months of confinement. However, effective July 1, 2007, the Department of Corrections extended these programs by an additional four weeks. Therefore, beginning in FY2008, a sentence to either the Detention or Diversion Center program counted as seven months of confinement for sentencing guideline purposes. Towards the end of FY2017, the Department of Corrections again modified the two programs. Without a specific sentence to a Detention or Diversion Center, the amount of time counted for a sentence to the Community Corrections Alternative Programs is a minimum of seven months to a maximum of 12 months.

Finally, youthful offenders sentenced under the provisions of § 19.2-311, and given an indeterminate commitment to the Department of Corrections, are considered as having a four-year incarceration term for the purposes of sentencing guidelines. Under § 19.2-311, a first-time offender who was less than 21 years of age at the time of the offense may be given an indeterminate commitment to the Department of Corrections with a maximum length-of-stay of four years. Offenders convicted of capital murder, first-degree or second-degree murder, forcible rape (§ 18.2-61), forcible sodomy (§ 18.2-67.1), object sexual penetration (§ 18.2-67.2) or aggravated sexual battery of a victim less than age 13 (§ 18.2-67.3(A,1)) are not eligible for the program. For sentencing guidelines purposes, offenders sentenced solely as youthful offenders under § 19.2-311 are considered as having a four-year sentence.

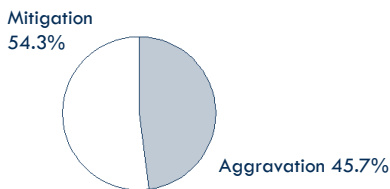
Figure 4

Durational Concurrence and Direction of Departures - FY2020*

Durational Concurrence



Direction of Departures



*Cases recommended for and receiving an active jail or prison sentence.

DURATIONAL CONCURRENCE

In addition to examining the degree to which judges concur with the type of disposition recommended by the guidelines, the Commission also studies durational concurrence, which is defined as the rate at which judges sentence offenders to terms of incarceration that fall within the recommended guidelines range. Durational concurrence analysis only considers cases for which the guidelines recommended an active term of incarceration and the offender received an incarceration sanction consisting of at least one day in jail.

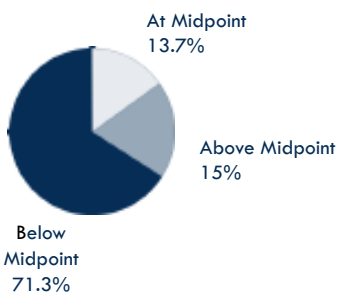
Durational concurrence among FY2020 cases was at 83%, indicating that judges, more often than not, agree with the length of incarceration recommended by the guidelines in jail and prison cases (Figure 4). Among FY2020 cases not in durational concurrence, departures tended slightly more toward mitigation than aggravation.

For cases recommended for incarceration of more than six months, the sentence length recommendation derived from the guidelines (known as the midpoint) is accompanied by a high-end and low-end recommendation. The sentence ranges recommended by the guidelines are relatively broad, allowing judges to use their discretion in sentencing offenders to different incarceration terms, while still remaining in concurrence with the guidelines. When the guidelines recommended more than six months of incarceration, and judges sentenced within the recommended range, only a small share (14% of offenders in FY2020) were given prison terms exactly equal to the midpoint recommendation (Figure 5). Most of the cases (71%) in durational concurrence with recommendations over six months resulted in sentences below the recommended midpoint. For the remaining 15% of these incarceration cases sentenced within the guidelines range, the sentence exceeded the midpoint recommendation. This pattern of sentencing within the range has been consistent since the truth-in-sentencing guidelines took effect in 1995, indicating that judges, overall, have favored the lower portion of the recommended range.

Figure 5

Distribution of Sentences within Guidelines Range - FY2020**

Guidelines Midpoint



** Analysis includes only cases recommended for more than six months of incarceration.

Overall, durational departures from the guidelines are typically no more than one year above or below the recommended range, indicating that disagreement with the guidelines recommendation, in most cases, is not extreme. Offenders receiving incarceration, but less than the recommended term, were given effective sentences (sentences less any suspended time) short of the guidelines by a median value of eight months (Figure 6). For offenders receiving longer than recommended incarceration sentences, the effective sentence exceeded the guidelines range by a median value of eleven months.

REASONS FOR DEPARTURE FROM THE GUIDELINES

Compliance with the truth-in-sentencing guidelines is voluntary. Although not obligated to sentence within guidelines recommendations, judges are required by § 19.2-298.01 of the Code of Virginia to submit to the Commission their written reason(s) for sentencing outside the guidelines range. Each year, as the Commission deliberates upon recommendations for revisions to the guidelines, the opinions of the judiciary, as reflected in their departure reasons, are an important part of the analysis. Virginia’s judges are not limited by any standardized or prescribed reasons for departure and may cite multiple reasons for departure in each guidelines case.

In FY2020, 9.3% of guidelines cases resulted in sanctions below the guidelines recommended range. The most frequently cited reasons for sentencing below the guidelines recommendation were: the acceptance of a plea agreement, a sentence to a less-restrictive sanction, judicial discretion, sentence recommended by Commonwealth, mitigating offense circumstances, defendant’s lack of or minimal prior record, and the defendant’s cooperation with law enforcement. Although other reasons for mitigation were reported to the Commission in FY2020, only the most frequently cited reasons are noted here. For 67 of the 1978 mitigating cases, a departure reason could not be discerned.

Judges sentenced 7.5% of the FY2020 cases to terms that were more severe than the sentencing guidelines recommendation, resulting in “aggravation” sentences. The most frequently cited reasons for sentencing above the guidelines recommendation were: the acceptance of a plea agreement, aggravating offense circumstances, the number of counts in the sentencing event, the severity or degree of prior record, the involvement of drugs in the offense, the degree of victim injury, and type of victim. For 43 of the 1086 cases sentenced above the guidelines recommendation, the Commission could not ascertain a departure reason.

Appendices 1 and 2 present detailed tables of the reasons for departure from guidelines recommendations for each of the 17 guidelines offense groups.

Figure 6

Median Length of Duration Departures - FY2020*



*Cases recommended for and receiving an active jail or prison sentence.

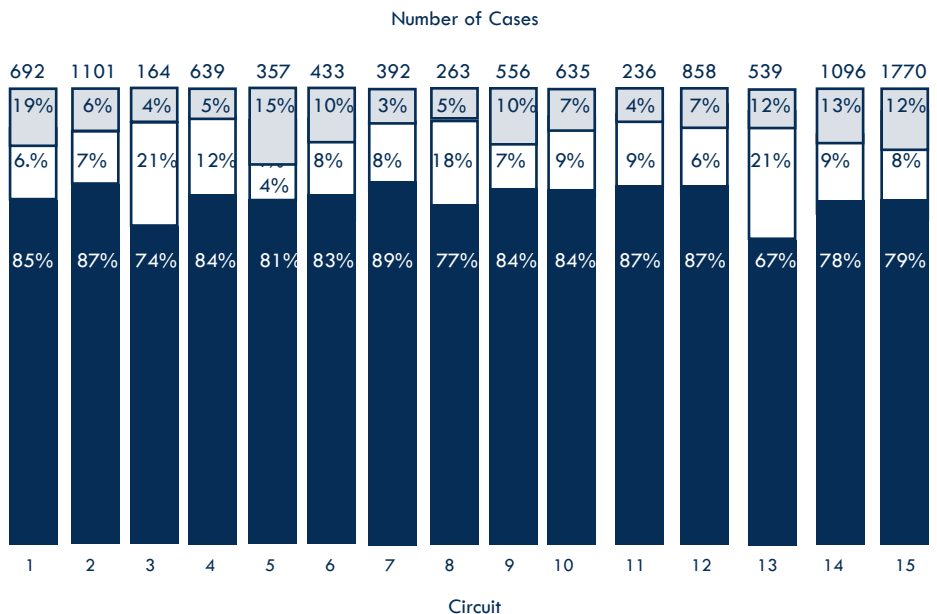
CONCURRENCE BY CIRCUIT

Since the onset of truth-in-sentencing, concurrence rates and departure patterns have varied across Virginia’s 31 judicial circuits. FY2020 continues to show differences among judicial circuits in the degree to which judges concur with guidelines recommendations (Figure 7). The map on the following pages identifies the location of each judicial circuit in the Commonwealth.

In FY2020, 58% of the state’s 31 circuits exhibited concurrence rates above 83.0%, while the remaining 42% reported concurrence rates between 65.9% and 80.9%. There are likely many reasons for the variations in concurrence across circuits. Certain jurisdictions may see atypical cases not reflected in statewide averages. In addition, the availability of alternative or community-based programs currently differs from locality to locality. The degree to which judges concur with guidelines recommendations does not seem to be related primarily to geography. The circuits with the lowest concurrence rates are scattered across the state, and both high and low concurrence circuits can be found in close geographic proximity.

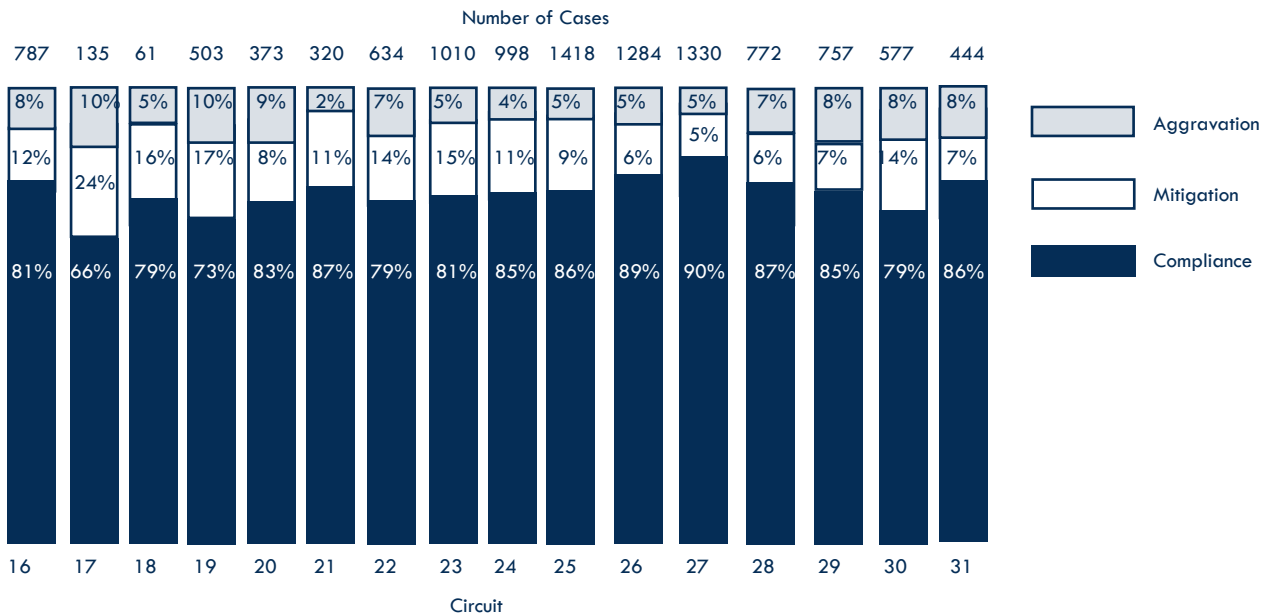
In FY2020, the highest rate of judicial agreement with the sentencing guidelines (90%) was in Circuit 27 (Radford Area). Concurrence rates of 89% were found in Circuit 26 (Harrisonburg Area) and Circuit 7 (Newport News). Circuit 17 (Arlington area), Circuit 13 (Richmond City), Circuit 19 (Fairfax), and Circuit 3 (Portsmouth) reported the lowest concurrence rates among the judicial circuits in FY2020. However, all other concurrence rates were 77% or higher.

Figure 7
Concurrence by Circuit - FY2020



In FY2020, the highest mitigation rates were found in Circuit 17 (Arlington Area), Circuit 3 (Portsmouth), Circuit 13 (Richmond City), Circuit 8 (Hampton), Circuit 19 (Fairfax), and Circuit 18 (Alexandria). Circuit 17 (Arlington Area) had a mitigation rate of 24% which is an increase from previous years. Both Circuit 3 (Portsmouth) and Circuit 13 (Richmond City) recorded a mitigation rate of 21%. Circuit 23 (Roanoke Area) had a mitigation rate of 15% for the fiscal year. Circuit 30 (Lee County) and Circuit 22 (Danville Area) had mitigation rates around 14%. With regard to high mitigation rates, it would be too simplistic to assume that this reflects areas with lenient sentencing habits. Intermediate punishment programs are not uniformly available throughout the Commonwealth, and jurisdictions with better access to these sentencing options may be using them as intended by the General Assembly. These sentences generally would appear as mitigations from the guidelines. Inspecting aggravation rates reveals that Circuit 5 (Suffolk Area) had the highest aggravation rate at 15%. Circuit 14 (Henrico), Circuit 15 (Fredericksburg), Circuit 13 (Richmond City), Circuit 17 (Arlington Area), Circuit 19 (Fairfax), and Circuit 6 (Sussex Area) followed with rates between 10% and 13%.

Appendix 3 presents concurrence figures for judicial circuits by each of the 17 sentencing guidelines offense groups.

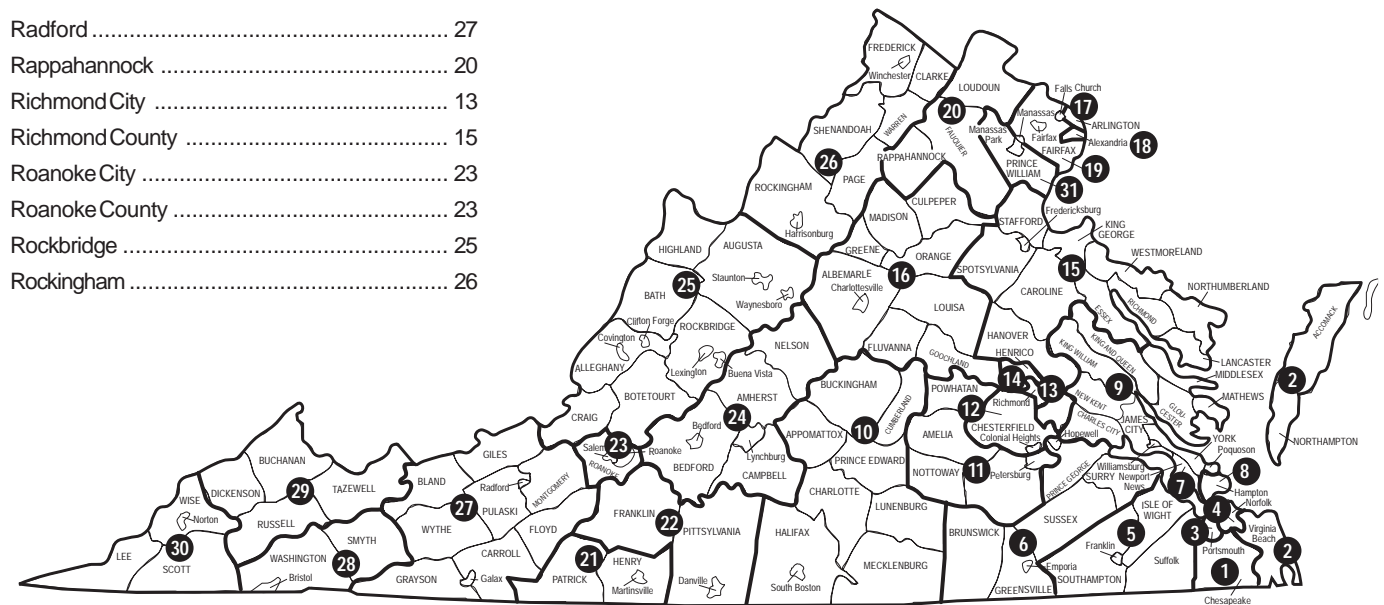


Virginia Localities and Judicial Circuits

Accomack	2	Fairfax City	19
Albemarle	16	Fairfax County	19
Alexandria	18	Falls Church	17
Alleghany	25	Fauquier	20
Amelia	11	Floyd	27
Amherst	24	Fluvanna	16
Appomattox	10	Franklin City	5
Arlington	17	Franklin County	22
Augusta	25	Frederick	26
Bath	25	Fredericksburg	15
Bedford City	24	Galax	27
Bedford County	24	Giles	27
Bland	27	Gloucester	9
Botetourt	25	Goochland	16
Bristol	28	Grayson	27
Brunswick	6	Greene	16
Buchanan	29	Greensville	6
Buckingham	10	Halifax	10
Buena Vista	25	Hampton	8
Campbell	24	Hanover	15
Caroline	15	Harrisonburg	26
Carroll	27	Henrico	14
Charles City	9	Henry	21
Charlotte	10	Highland	25
Charlottesville	16	Hopewell	6
Chesapeake	1	Isle of Wight	5
Chesterfield	12	James City	9
Clarke	26	King and Queen	9
Clifton Forge	25	King George	15
Colonial Heights	12	King William	9
Covington	25	Lancaster	15
Craig	25	Lee	30
Culpeper	16	Lexington	25
Cumberland	10	Loudoun	20
Danville	22	Louisa	16
Dickenson	29	Lunenburg	10
Dinwiddie	11	Lynchburg	24
Emporia	6		
Essex	15		

Madison	16
Manassas	31
Martinsville	21
Mathews	9
Mecklenburg	10
Middlesex	9
Montgomery	27
Nelson	24
New Kent	9
Newport News	7
Norfolk	4
Northampton	2
Northumberland	15
Norton	30
Nottoway	11
Orange	16
Page	26
Patrick	21
Petersburg	11
Pittsylvania	22
Poquoson	9
Portsmouth	3
Powhatan	11
Prince Edward	10
Prince George	6
Prince William	31
Pulaski	27
Radford	27
Rappahannock	20
Richmond City	13
Richmond County	15
Roanoke City	23
Roanoke County	23
Rockbridge	25
Rockingham	26

Russell	29
Salem	23
Scott	30
Shenandoah	26
Smyth	28
South Boston	10
Southampton	5
Spotsylvania	15
Stafford	15
Staunton	25
Suffolk	5
Surry	6
Sussex	6
Tazewell	29
Virginia Beach	2
Warren	26
Washington	28
Waynesboro	25
Westmoreland	15
Williamsburg	9
Winchester	26
Wise	30
Wythe	27
York	9



CONCURRENCE BY SENTENCING GUIDELINES OFFENSE GROUP

In FY2020, as in previous years, judicial agreement with the guidelines varied when comparing the 17 offense groups (Figure 8). For FY2020, concurrence rates ranged from a high of 87% in the Drug Schedule I/II offense group to a low of 65% in Robbery cases. In general, property and drug offenses exhibit higher rates of concurrence than the violent offense categories. Several violent offense groups (i.e., Kidnapping, Sexual Assault, Murder/Homicide, Rape, Robbery, Burglary-Dwelling, and Obscenity) had concurrence rates at or below 76%, whereas many of the property and drug offense categories had concurrence rates above 83%. Concurrence with Larceny cases dropped 2.7% in FY2020. This change may be due to the fact that these cases are deemed more serious since the felony larceny threshold was increased from \$200 to \$500 in 2018 (on July 1, 2020, the threshold was increased again to \$1,000).

During the past fiscal year, judicial concurrence with guidelines recommendations remained relatively stable, fluctuating less than three percent for most offense groups. Concurrence rates are much more susceptible to year-to-year fluctuations for offense groups with small numbers of sentencing events in a given year. Concurrence with the Kidnapping worksheets (130 cases) increased by 8 percentage points from FY2019 to FY2020, and as with FY2019 there is a tendency to sentence above the guidelines recommendation. During the same time, concurrence on the Robbery worksheets (341

Figure 8
Guidelines Concurrence by Offense - FY2020

	Compliance	Mitigation	Aggravation	Number of Cases
Drug Schedule I/II	86.5%	7.7%	5.9%	9,728
Fraud	86.5%	8.9%	4.6%	1,278
Drug Other	85.9%	7.2%	6.9%	683
Traffic	83.1%	8.3%	8.6%	1,223
Larceny	82.9%	11.0%	6.0%	3,442
Miscellaneous Other	82.0%	15.1%	2.9%	383
Burglary Other	80.4%	14.7%	4.9%	265
Assault	78.3%	11.5%	10.3%	1,326
Kidnapping	76.2%	6.9%	16.9%	130
Weapon	76.1%	10.5%	13.4%	806
Miscellaneous Person/Property	75.8%	7.6%	16.7%	396
Rape	73.9%	11.9%	14.2%	134
Burglary Dwelling	72.1%	14.1%	13.8%	405
Murder	71.4%	10.8%	17.8%	185
Obscenity	70.3%	7.5%	22.2%	212
Other Sex Assault	70.0%	7.1%	22.8%	267
Robbery	65.4%	25.5%	9.1%	341
Total	83.2%	9.3%	7.5%	21,204

cases) decreased this year by seven percentage points because judges sentenced below the guidelines recommendation in 25% of the cases, which represents a six percentage point increase from last year. Concurrence on the Murder worksheets (185 cases) increased by seven percentage points due to a significant decrease in the number of cases sentenced above the guidelines recommendations.

Several changes went into effect beginning July 1, 2019. A new felony offense defined by § 18.2-248(J), possession of methamphetamine precursors was added to the sentencing guidelines system. Also added was a new felony traffic offense defined by § 18.2-266/ §18.2-270(C,2) drive under the influence (DUI) after a prior felony DUI, manslaughter or maiming conviction. For the felony offense child abuse and neglect resulting in serious injury in violation of § 18.2-371.1(A), scores were increased for both the victim injury and legal restraint factors. A new factor was added to the Miscellaneous/Other worksheet to better reflect sentencing for non-violent sex offenders who are in violation of second or subsequent failure to register with the Sex Offender and Crimes against Minors Registry in violation of § 18.2-472.1(A)).

At the time of this report, no cases have been received for possession of methamphetamine precursors. However, concurrence rates are high for DUI after a prior felony DUI, manslaughter or maiming, with judges concurring with the guidelines recommendation in 90% of the cases. Out of the 50 cases received, judges sentenced above the guidelines recommendation in four cases and below the recommendation in only one. Compliance was mixed regarding all the other modifications that were made. Judges concurred with the guidelines' recommendation for second or subsequent failure to register with the sex offender registry in 100% of the cases. However, of the 33 cases received for child abuse and neglect resulting in serious injury, judges only concurred with the guidelines recommendation in 58% of the cases. When not in agreement, judges sentenced above the recommendation in 36% of the cases and below in only 6% of the cases.

Since 1995, departure patterns have differed across offense groups, and FY2020 was no exception. In most cases, judges are sentencing within the recommendation, but for the offense groups of Robbery, Miscellaneous-Other, Burglary-Dwelling, and Burglary-Other Structure, judges, when not in concurrence, sentenced below the recommendation. In fact, the Robbery offense group showed the highest mitigation rates with 26% of the robbery cases resulting in sentences below the guidelines. The most frequently cited mitigation reasons provided by judges in robbery cases included: the acceptance of a plea agreement, the defendant cooperated with authorities, judicial discretion, recommended by the attorney for the Commonwealth, and the lack of an extensive prior record.

Concurrence rates for Drug Schedule I/II and Fraud are comparatively high. When judges impose sentences outside the recommendation, the departure pattern is evenly split between mitigation and aggravation. Judges were just as likely to sentence above the guidelines recommendation as below in these cases. A similar pattern exists for the Burglary Dwelling. Although concurrence is not as high as it is for drug offenses, the departure pattern is almost evenly split with just a slight tendency to sentence below the recommendation rather than above.

For sex offenses, murder, kidnapping and miscellaneous person and property offense, judges are significantly more likely to sentence above the recommendation when not in concurrence. In FY2020, the offense groups with the highest aggravation rates were Sexual Assault at 23%, Obscenity at 22%, Murder/Homicide at 18% and Kidnapping at 17%. These offense groups shared similar departure reasons. The most frequently cited aggravating departure reasons were, plea agreement and facts of the case. Judges also frequently cited recommendation from a jury as the reason for the upward departure, especially in Murder/Homicide cases.

CONCURRENCE UNDER MIDPOINT ENHANCEMENTS

Section 17.1-805, formerly § 17-237, of the *Code of Virginia* describes the framework for what are known as “midpoint enhancements,” significant increases in guidelines scores for violent offenders that elevate the overall guidelines sentence recommendation. Midpoint enhancements are an integral part of the design of the truth-in-sentencing guidelines. By design, midpoint enhancements produce sentence recommendations for violent offenders that are significantly greater than the time that was served by offenders convicted of such crimes prior to the enactment of Virginia’s truth-in-sentencing laws. Offenders who are convicted of a violent crime or who have been previously convicted of a violent crime are recommended for incarceration terms up to six times longer than the terms served by offenders fitting similar profiles under the parole system. Midpoint enhancements are triggered for homicide, rape, or robbery offenses, most felony assaults and sexual assaults, and certain burglaries, when any one of these offenses is the current most serious offense, also called the “primary offense.” Offenders with a prior record containing at least one conviction for a violent crime are subject to degrees of midpoint enhancements based on the nature and seriousness of the offender’s criminal history. The most serious prior record receives the most extreme enhancement. A prior record labeled “Category II” contains at least one prior violent felony conviction carrying a statutory maximum penalty of less than 40 years, whereas a “Category I” prior record includes at least one violent felony conviction with a statutory maximum penalty of 40 years or more. Category I and II offenses are defined in § 17.1-805.

Because midpoint enhancements are designed to target only violent offenders for longer sentences, enhancements do not affect the sentence recommendation for the majority of guidelines cases. Among the FY2020 cases, 81% of the cases did not involve midpoint enhancements of any kind (Figure 9). Only 19% of the cases qualified for a midpoint enhancement because of a current or prior conviction for a felony defined as violent under § 17.1-805. The proportion of cases receiving midpoint enhancements has fluctuated very little since the institution of truth-in-sentencing guidelines in 1995.

Of the FY2020 cases in which midpoint enhancements applied, the most common midpoint enhancement was for a Category II prior record. Approximately 57% of the midpoint enhancements were of this type and were applicable to offenders with a nonviolent instant offense but a violent prior record defined as Category II (Figure 10). In FY2020, another 18% of midpoint enhancements were attributable to offenders with a more serious Category I prior record. Cases of offenders with a violent instant offense but no prior record of violence represented about 17% of the midpoint enhancements in FY2020. The most substantial midpoint enhancements target offenders with a combination of instant and prior violent offenses. Roughly 7% qualified for enhancements for both a current violent offense and a Category II prior record. A very small percentage of cases (3%) were targeted for the most extreme midpoint enhancements triggered by a combination of a current violent offense and a Category I prior record.

Figure 9

Application of Midpoint Enhancements - FY2020

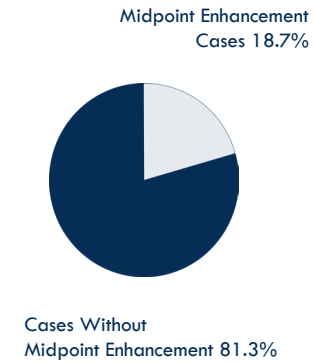


Figure 10

Type of Midpoint Enhancements Received - FY2020

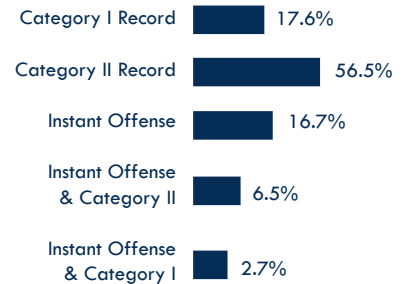


Figure 11

**Length of Mitigation Departures
in Midpoint Enhancement Cases - FY2020**



* Analysis includes only cases that were recommended for more than six months of incarceration and resulted in a sentence below the guidelines range.

Since the inception of the truth-in-sentencing guidelines, judges have departed from the guidelines recommendation more often in midpoint enhancement cases than in cases without enhancements. In FY2020, concurrence was 71% when enhancements applied, which is significantly lower than concurrence in all other cases (86%). Thus, concurrence in midpoint enhancement cases is suppressing the overall concurrence rate. When departing from enhanced guidelines recommendations, judges are choosing to mitigate in nearly three out of every four departures.

Among FY2020 midpoint enhancement cases resulting in incarceration, judges departed from the low end of the guidelines range by an average of 21 months (Figure 11). The median departure (the middle value, where half of the values are lower, and half are higher) was 12 months.

Concurrence, while generally lower in midpoint enhancement cases than in other cases, varies across the different types and combinations of midpoint enhancements (Figure 12). In FY2020 in contrast to previous years, sentencing events involving a current violent offense, but no prior record of violence generated the highest rate of concurrence of all midpoint enhancements (75%). Concurrence in cases receiving enhancements for a Category I prior record generated the lowest concurrence (62%). Concurrence for enhancement cases for Category II prior record was 74%. Cases involving a combination of a current violent offense and a Category II prior record yielded a concurrence rate of 72%, while those with the most significant midpoint enhancements, for both a violent instant offense and a Category I prior record, had a lower concurrence rate (58.5%).

Because of the high rate of mitigation departures, analysis of departure reasons in midpoint enhancement cases focuses on downward departures from the guidelines. Judges sentence below the guidelines recommendation in nearly one out of every

Figure 12

Concurrence by Type of Midpoint Enhancement - FY2020

Midpoint Enhancement	Concurrence	Mitigation	Aggravation	Number of Cases
None	85.9%	6.4%	7.8%	17,231
Category I	62.3%	33.7%	4.0%	698
Category II	73.7%	20.7%	5.6%	2,246
Instant Offense	75.0%	13.8%	11.1%	665
Instant and Category I	58.5%	37.7%	3.8%	106
Instant and Category II	72.1%	19.8%	8.1%	258
Total	83.2%	9.3%	7.5%	21,204

five midpoint enhancement cases. The most frequently cited reasons for departure include the acceptance of a plea agreement, a sentence to alternative punishment, judicial discretion (time served, other sentence to serve, consistent with codefendant, etc.), offender has minimal to no prior record, mitigated facts of the offense, recommendation of the attorney for the Commonwealth, offender has health issues, and court circumstances or proceedings.

JURIES AND THE SENTENCING GUIDELINES

There are three methods by which Virginia’s criminal cases are adjudicated: guilty/Alford pleas, bench trials, and jury trials. Felony cases in circuit courts are overwhelmingly resolved through guilty pleas from defendants, or plea agreements between defendants and the Commonwealth. During the last fiscal year, 90% of guideline cases were sentenced following guilty/Alford pleas (Figure 13). Adjudication by a judge in a bench trial accounted for 9% of all felony guidelines cases sentenced. During FY2020, 1.0% of cases involved jury trials. In a small number of cases, some of the charges were adjudicated by a judge, while others were adjudicated by a jury, after which the charges were combined into a single sentencing hearing.

Since FY1986, there has been a generally declining trend in the percentage of jury trials among felony convictions in circuit courts (Figure 14). Under the parole system in the late 1980s, the percent of jury convictions of all felony convictions was as high as 6.5% before starting to decline in FY1989. In 1994, the General Assembly enacted provisions for a system of bifurcated jury trials. In bifurcated trials, the jury establishes the guilt or innocence of the defendant in the first phase of the trial and then, in a second phase, the jury makes its sentencing decision. When the bifurcated trials became effective on July 1, 1994 (FY1995), jurors in Virginia, for the first time, were presented with information on the offender’s prior criminal record to assist them in making a sentencing decision. During the first year of the bifurcated trial process, jury convictions dropped slightly, to fewer than 4% of all felony convictions. This was the lowest rate recorded up to that time.

Among the early cases subjected to the new truth-in-sentencing provisions, implemented during the last six months of FY1995, jury adjudications sank to just over 1%. During the first complete fiscal year of truth-in-sentencing (FY1996), just over 2% of the cases were resolved by jury trials, which was half the rate of the last year before the abolition of parole. Seemingly, the introduction of truth-in-sentencing, as well as the implementation of a bifurcated jury trial system, appears to have contributed to the reduction in jury trials. Since FY2000, the percentage of jury convictions has remained less than 2%.

Figure 13
Percentage of Cases Received by Method of Adjudication, FY2020

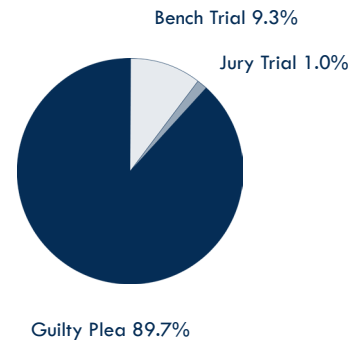
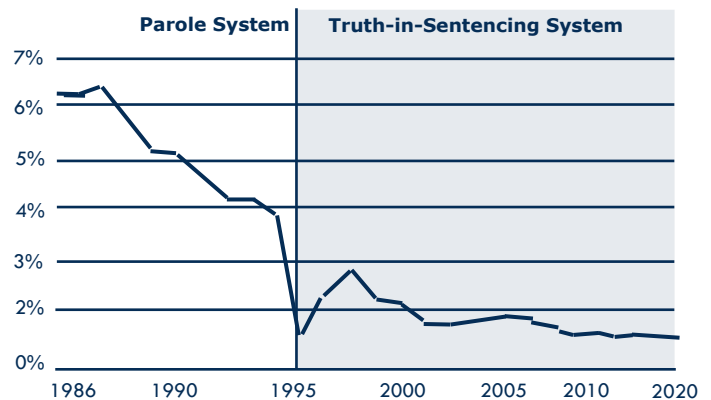


Figure 14
Percent of Felony Convictions Adjudicated by Juries FY1986-FY2020
Parole System v. Truth-in-Sentencing (No Parole) System

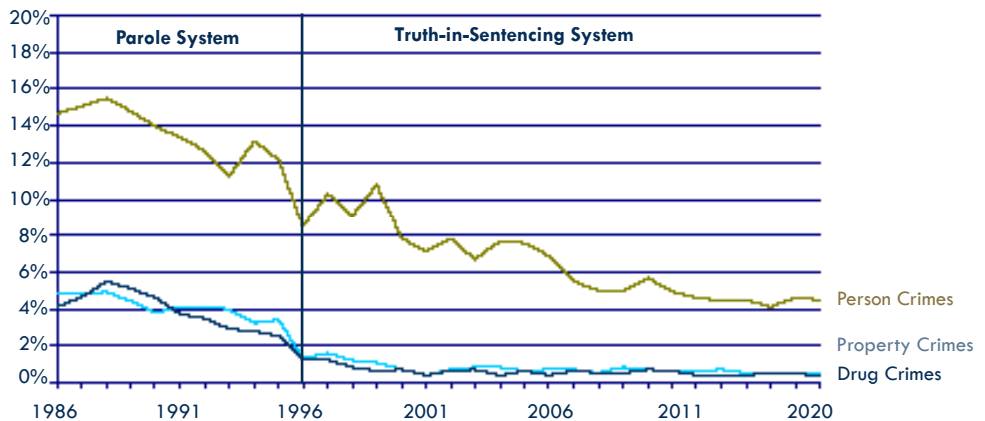


Inspecting jury data by offense type reveals very divergent patterns for person, property, and drug crimes. Under the parole system, jury cases comprised 11% to 15% of felony convictions for person crimes. This rate was typically three to four times the rate of jury trials for property and drug crimes (Figure 15). However, with the institution of bifurcated trials and truth-in-sentencing provisions, the percent of convictions decided by juries dropped dramatically for all crime types. Since FY2007, the rate of jury adjudications for person crimes has been between 4% and 6%, the lowest rates since truth-in-sentencing was enacted. The percent of felony convictions resulting from jury trials for property and drug crimes has declined to less than 1% under truth-in-sentencing.

In FY2020, the Commission received 187 cases adjudicated by juries. While the concurrence rate for cases adjudicated by a judge or resolved by a guilty plea was at 84% during the fiscal year, sentences handed down by juries concurred with the guidelines 46% of the time (Figure 16). This is a significant increase from the previous years. Of the remaining cases sentenced by a jury, those cases were more likely to fall above the guidelines (40% of the time). By law, however, juries are not allowed to receive any information regarding the sentencing guidelines.

Figure 15

**Percent of Felony Convictions Adjudicated by Juries FY1986-FY2020
Parole System v. Truth-in-Sentencing (No Parole) System**



In jury cases in which the final sentence fell short of the guidelines, it did so by a median value of 25 months (Figure 17). In cases where the ultimate sentence resulted in a sanction more severe than the guidelines recommendation, the sentence exceeded the guidelines maximum recommendation by a median value of 55 months.

In FY2020, five of the jury cases involved a juvenile offender tried as an adult in circuit court. According to § 16.1-272 of the Code of Virginia, juveniles may be adjudicated by a jury in circuit court; however, any sentence must be handed down by the judge without the intervention of a jury. Thus, juries are not permitted to recommend sentences for juvenile offenders. There are many options for sentencing these juveniles, including commitment to the Department of Juvenile Justice. Because judges, and not juries, must sentence in these cases, they are excluded from the previous analysis.

In cases of adults adjudicated by a jury, judges are permitted by law to lower a jury sentence. Typically, however, judges have chosen not to amend sanctions imposed by juries. In FY2020, judges modified 13% of jury sentences.

Figure 16

Sentencing Guidelines Concurrence in Jury and Non-Jury Cases, FY2020

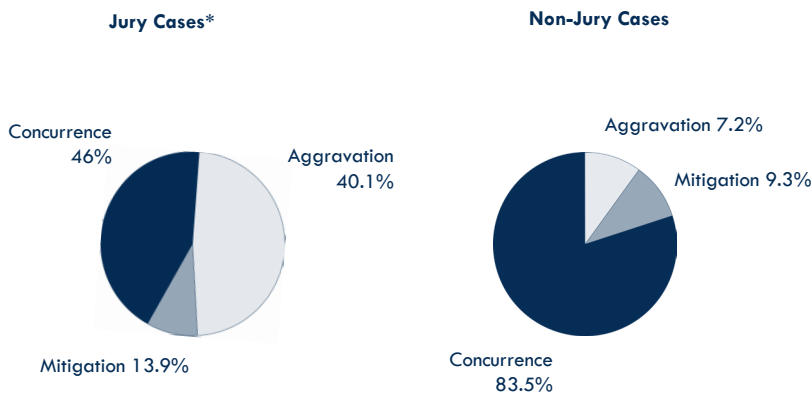


Figure 17

Median Length of Durational Departures in Jury Cases, FY2020



CONCURRENCE AND NONVIOLENT OFFENDER RISK ASSESSMENT

In 1994, as part of the reform legislation that instituted truth-in-sentencing, the General Assembly directed the Commission to study the feasibility of using an empirically-based risk assessment instrument to select 25% of the lowest risk, incarceration-bound, drug and property offenders for placement in alternative (non-prison) sanctions. By 1996, the Commission developed such an instrument and implementation of the instrument began in pilot sites in 1997. The National Center for State Courts (NCSC) conducted an independent evaluation of the use of risk assessment in the pilot sites for the period from 1998 to 2001. In 2001, the Commission conducted a validation study of the original risk assessment instrument to test and refine the instrument for possible use statewide. In July 2002, the nonviolent risk assessment instrument was implemented statewide for all felony larceny, fraud and drug cases.

Between 2010 and 2012, the Commission conducted an extensive study of recidivism among nonviolent felons in Virginia in order to re-evaluate the risk assessment instrument and potentially revise the instrument using more recent data. Based on the results of the 2010-2012 study, the Commission recommended replacing the risk assessment instrument with two instruments, one applicable to larceny and fraud offenders and the other specific to drug offenders. The Commission's study revealed that predictive accuracy was improved using two distinct instruments.

Over two-thirds of all guidelines received by the Commission for FY2020 were for nonviolent offenses. However, only 43% of these nonviolent offenders were eligible to be assessed for an alternative sanction recommendation. The goal of the nonviolent risk assessment instrument is to divert low-risk offenders who are recommended for incarceration on the guidelines to an alternative sanction other than prison or jail. Therefore, nonviolent offenders who are recommended for probation/ no incarceration on the guidelines are not eligible for the assessment. Furthermore, the instrument is not to be applied to offenders convicted of distributing one ounce or more of cocaine, those who have a current or prior violent felony conviction, or those who must be sentenced to a mandatory minimum term of incarceration required by law. In addition to those not eligible for risk assessment, a risk assessment instrument was not completed and submitted to the Commission for 1,441 nonviolent offense cases. In many of the cases missing a risk assessment, defendants had agreed to sentences specified in plea agreements. In other cases, the preparer did not indicate on the worksheet whether or not risk assessment was applicable.

Among the eligible offenders in FY2020 for whom a risk assessment form was received, 52% were recommended for an alternative sanction by the risk assessment instrument (Figure 18). Less than half of the offenders recommended for an alternative sanction through risk assessment were given some form of alternative punishment by the judge. In FY2020, 41% of offenders recommended for an alternative were sentenced to an alternative punishment option.

Among offenders recommended for and receiving an alternative sanction through risk assessment, judges used substance abuse treatment more often than any other option (Figure 19). In addition, in slightly less than half of the cases in which an alternative was recommended, judges sentenced the offender to a term of incarceration in jail (less than twelve months) rather than the prison sentence recommended by the traditional guidelines range. Other frequent sanctions utilized were: supervised probation (57%), unsupervised probation or good behavior (54%), restitution (25%), time served (13%) and fines (11%). The Department of Corrections' Community Corrections Alternative Program was used in a small percentage (4%) of the cases. Other alternatives/sanctions included: community service, programs under the Comprehensive Community Corrections Act (CCCA), first offender status under § 18.2-251, drug court, electronic monitoring, intensive probation, day reporting, and work release.

Figure 18

Eligible Nonviolent Offender Risk Assessment Cases by Recommendation Type, FY2020 (6,446 cases)

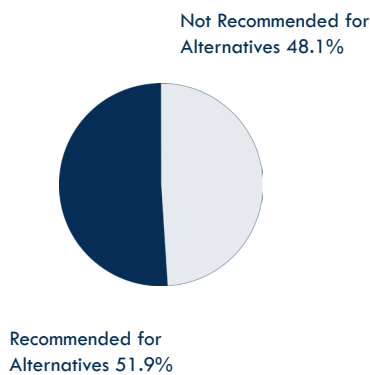
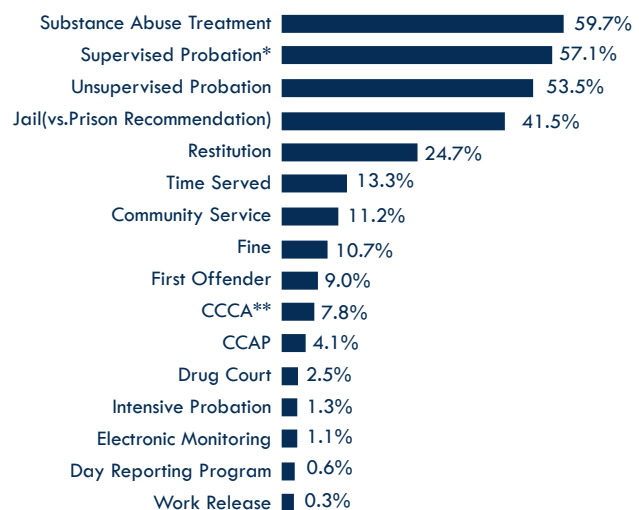


Figure 19

Types of Alternative Sanctions Imposed - FY2020



* Includes indefinite supervised probation (18%)

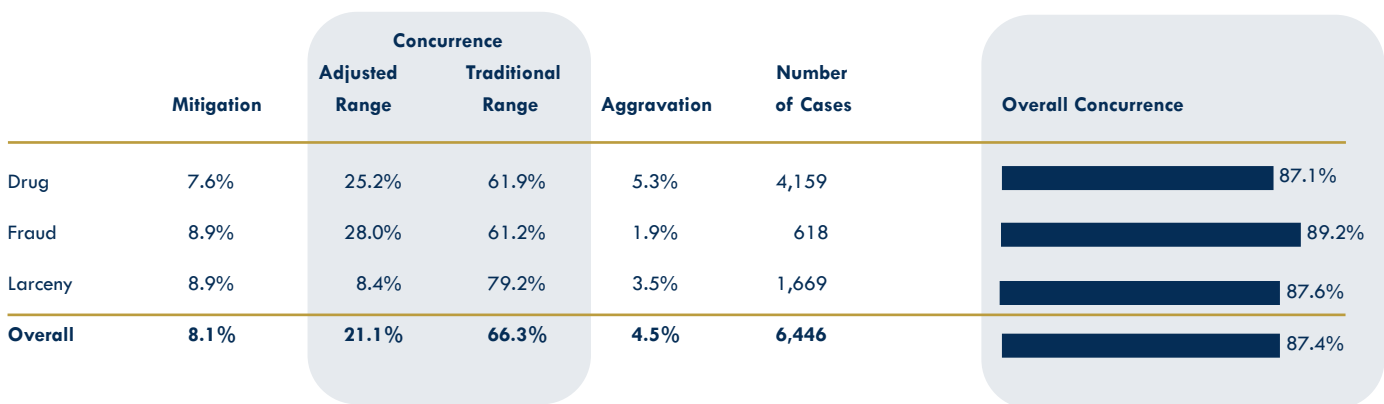
** Any program established through the Comprehensive Community Corrections Act

These percentages do not sum to 100% because multiple sanctions may be imposed in each case.

When a nonviolent offender is recommended for an alternative sanction based on the risk assessment instrument, a judge is in concurrence with the guidelines if he or she chooses to sentence the defendant to a term within the traditional incarceration period recommended by the guidelines or if he or she chooses to sentence the offender to an alternative form of punishment. For drug offenders eligible for risk assessment, the overall guidelines concurrence rate is 87%, but a portion of this concurrence reflects the use of an alternative punishment option as recommended by the risk assessment tool (Figure 20). In 25% of drug cases, judges have complied with the recommendation for an alternative sanction. Similarly, in fraud cases, with offenders eligible for risk assessment, the overall concurrence rate is 89%. In 28% of fraud cases, judges have complied by utilizing alternative punishment when it was recommended. Finally, among larceny offenders eligible for risk assessment, the concurrence rate is 88%. Judges used an alternative, as recommended by the risk assessment tool, in almost 9% of larceny cases. The lower use of alternatives for larceny offenders is primarily because larceny offenders are recommended for alternatives at a lower rate than drug and fraud offenders. The National Center for State Courts, in its evaluation of Virginia’s risk assessment tool, and the Commission, during its validation study, found that larceny offenders are the most likely to recidivate among nonviolent offenders.

Figure 20

Concurrence Rates for Nonviolent Offenders Eligible for Risk Assessment - FY2020

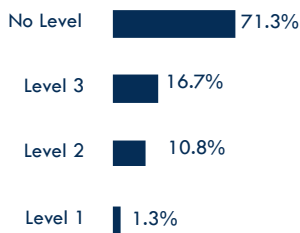


CONCURRENCE AND SEX OFFENDER RISK ASSESSMENT

In 1999, the Virginia General Assembly requested that the Commission develop a sex offender risk assessment instrument, based on the risk of re-offense, that could be integrated into the state's sentencing guidelines system. Such a risk assessment instrument could be used as a tool to identify offenders who, as a group, represent the greatest risk for committing a new offense once released back into the community. The Commission conducted an extensive study of felony sex offenders convicted in Virginia's circuit courts and developed an empirical risk assessment tool based on the risk that an offender would be rearrested for a new sex offense or other crime against a person.

Effectively, risk assessment means developing profiles or composites based on overall group outcomes. Groups are defined by having a number of factors in common that are statistically relevant to predicting repeat offending. Groups exhibiting a high degree of re-offending are labeled high risk. Although no risk assessment model can ever predict a given outcome with perfect accuracy, the risk instrument produces overall higher scores for the groups of offenders who exhibited higher recidivism rates during the course of the Commission's study. In this way, the instrument developed by the Commission is indicative of offender risk.

Figure 21
Sex Offender Risk Assessment Levels for Sexual Assault Offenders, FY2020



The risk assessment instrument was incorporated into the sentencing guidelines for sex offenders beginning July 1, 2001. For each sex offender identified as a comparatively high risk (those scoring 28 points or more on the risk tool), the sentencing guidelines were revised such that a prison term will always be recommended. In addition, the guidelines recommendation range (which comes in the form of a low end, a midpoint and a high end) is adjusted. For offenders scoring 28 points or more, the high end of the guidelines range is increased based on the offender’s risk score, as summarized below.

- For offenders scoring 44 or more, the upper end of the guidelines range is increased by 300%.
- For offenders scoring 34 through 43 points, the upper end of the guidelines range is increased by 100%.
- For offenders scoring 28 through 33 points, the upper end of the guidelines range is increased by 50%.

The low end and the midpoint remain unchanged. Increasing the upper end of the recommended range provides judges the flexibility to sentence higher risk sex offenders to terms above the traditional guidelines range and still be in concurrence with the guidelines. This approach allows the judge to incorporate sex offender risk assessment into the sentencing decision, while providing the judge with the flexibility to evaluate the circumstances of each case.

During FY2020, there were 267 offenders convicted of an offense covered by the Sexual Assault guidelines (this group excludes offenders convicted of rape, forcible sodomy, object penetration and obscenity offenses). As of July 1, 2014, solicitation of a minor and child pornography were removed from the Sexual Assault worksheet and a new Obscenity worksheet was created. In addition, the sex offender risk assessment instrument does not apply to certain guideline offenses, such as bestiality, bigamy, and prostitution (21 of the 267 cases in FY2020). Another six cases were missing information for calculating concurrence and were excluded. Of the remaining 240 sexual assault cases for which the risk assessment was applicable, the majority (71%) were not assigned a level of risk by the sex offender risk assessment instrument (Figure 21). Approximately 17% of applicable Sexual Assault guidelines cases resulted in a Level 3 risk classification, with an additional 11% assigned to Level 2. Approximately 1% of offenders reached the highest risk category of Level 1.

Under the sex offender risk assessment, the upper end of the guidelines range is extended by 300%, 100% or 50% for offenders assigned to Level 1, 2 or 3, respectively. Data suggest judges utilize these extended ranges when sentencing some sex offenders. For the three sexual assault offenders reaching Level 1 risk during the past fiscal year, one was given a sentence using the extended guidelines range. (Figure 22). Judges used the extended guidelines range in 39% of Level 2 cases and 7% of Level 3 risk cases. Judges rarely sentenced Level 1 or 2 offenders to terms above the extended guidelines range provided in these cases. For Level 3 cases judges sentenced offenders to terms above the extended ranges in 7% of the cases. Offenders who scored less than 28 points on the risk assessment instrument

Figure 22

Sexual Assault Concurrence Rates By Risk Assessment Level, FY2020

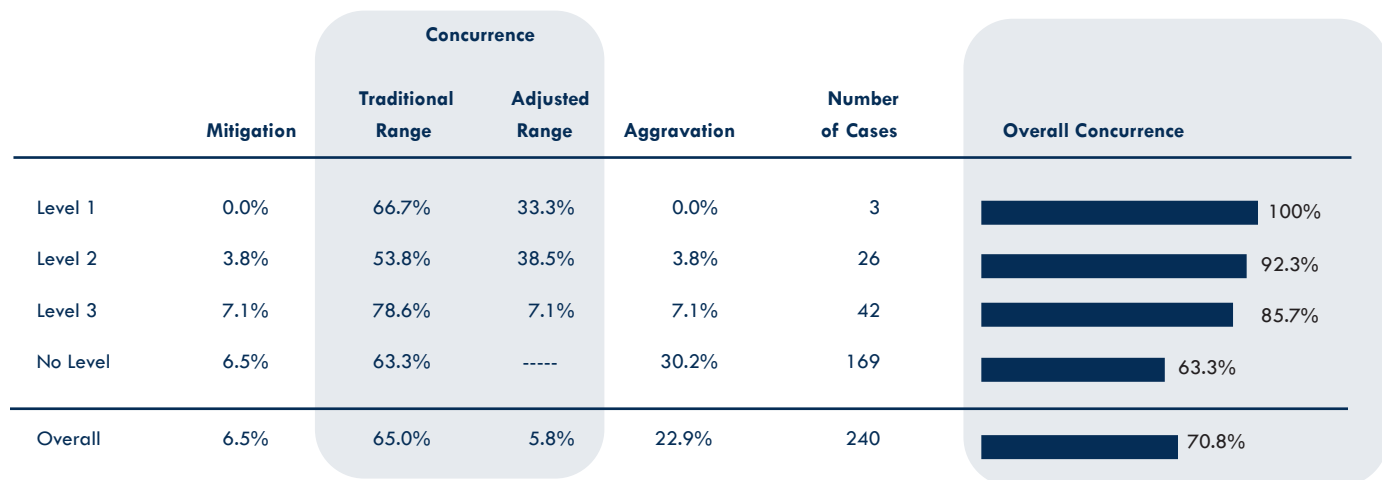
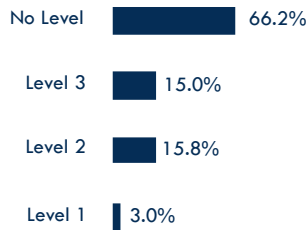


Figure 23

Sex Offender Risk Assessment Levels for Rape Offenders, FY2020



(who are not assigned a risk category and receive no guidelines adjustment) had similar concurrence rates with the traditional guidelines recommendations as Levels 2 and 3 offenders (64% concurrence rate), but were more likely to receive a sentence that was an upward departure from the guidelines (30% aggravation rate).

In FY2020, there were 133 offenders convicted of offenses covered by the Rape guidelines (which cover the crimes of rape, forcible sodomy, and object penetration). Among offenders convicted of these crimes, nearly two-thirds (66%) were not assigned a risk level by the Commission’s risk assessment instrument (Figure 23). Approximately 15% of these cases resulted in a Level 3 adjustment. An additional 16% received a Level 2 adjustment. Four cases resulted in a Level 1 adjustment. As shown below, 14% of offenders with a Level 2 risk classification and 5% of offenders with a Level 3 risk classification were given prison sentences within the adjusted range of the guidelines (Figure 24). Only one offender with a Level 1 risk classification received a prison sentence within the adjusted range of the guidelines. With extended guidelines ranges available for higher risk sex offenders, judges continue to only occasionally sentence Level 1, 2 or 3 offenders above the expanded guidelines.

Figure 24

Rape Concurrence Rates By Risk Assessment Level, FY2020

	Mitigation	Concurrence		Aggravation	Number of Cases	Overall Concurrence
		Traditional Range	Adjusted Range			
Level 1	50.0%	25.0%	25.0%	0.0%	4	50%
Level 2	9.5%	76.2%	14.3%	9.7%	21	90.5%
Level 3	15.0%	60.0%	5.0%	20.0%	20	65%
No Level	10.2%	73.9%	---	15.9%	88	73.9%
Overall	12.0%	70.7%	3.8%	13.5%	133	74.4%

SPECIFIC TYPE OF DRUG

In 2017, at the request of several Commonwealth’s Attorneys, the Commission began collecting information regarding the type of Schedule I, II and III substances. To do this, check boxes were added to the sentencing guidelines cover sheet. Identifying the specific type of drug enables policy makers to better track drug trends by locality and/or geographic region within the Commonwealth. In return, localities would be in a better position to respond with appropriate treatment options. No changes were made to the guidelines recommendations themselves.

The Commission modified the cover sheets and began to collect the specific type of drug on July 1, 2017, for cases in which a drug offense is the primary or most serious offense in the sentencing event. In FY2020, there were 9,752 Drug Schedule I/II worksheets and 686 Drug Other worksheets submitted to the Commission. In over 8,400 of these worksheets, a drug type was identified and on 948 worksheets multiple drugs were identified.

Figure 25 identifies the specific type of drug identified on the drug sentencing guidelines cover sheet. Methamphetamines was identified the most followed by cocaine and then heroin. In FY 2018, when all the opioids (i.e, heroin, fentanyl, oxycodone, morphine, codeine, and methadone) are grouped together, opioids were the most identified drugs. However, in FY2019 when combined, opioids were identified in 25.7% of the sentencing events and in 24.0% of the events in FY2020, (among cases where a drug was identified). There continues to be a decrease in the number of opioid cases identified.

Concurrence rates are not significantly different based on the type of drug involved. Judges are likely to concur with the guidelines’ recommendation in over 85% of the cases regardless of the specific type of drug. Rates of concurrence are slightly higher in methamphetamine cases and in other types of drugs (e.g., amphetamines, LSD, PCP, methadone, marijuana, etc.). In the case of methamphetamines, the sentencing guidelines take into consideration when the drug is being manufactured versus distributed and if a child was present during the manufacturing process (factors that are not available on sentencing guidelines for other drug types). The Other category includes some other types of Schedule I/II drugs, but more often Schedule III drugs, prescription drugs and marijuana. These specific types of drugs have slightly higher concurrence rates. See Figure 26 for details.

Figure 25
Number and Percentage of Cases Received by Drug Type- FY2020

Drug	Percentage	Number of Cases
Methamphetamine	33.8%	3,531
Cocaine	25.7%	2,685
Opioids*	24.0%	2,501
Heroin	15.2%	1,588
Other	6.5%	692
Fentanyl	6.3%	658
Oxycodone	3.4%	354
Hydrocodone	1.6%	168
Morphine	0.7%	74
Methylphenidate	0.6%	60
Methadone	0.4%	39
Codeine	0.3%	27

*Opioids includes the drugs heroin, fentanyl, oxycodone, morphine, codeine and methadone (multiple opioids in an event are grouped as one for this measure).

Of the 10,438 drug offenses, a drug type was identified in over 8,400 sentencing events. Multiple drugs were identified in 948 of these sentencing events.

One of the reasons the Commission was asked to collect the type(s) of drug on the drug sentencing guidelines was to provide information on drug trends by locality and/or geographic region within the Commonwealth. Representatives from several localities wanted information on drug convictions so they would be in a better position to respond with appropriate treatment options or to take other measures to address drug issues in their communities. Figure 27 lists the types of drugs by circuit.

Convictions listed in Figure 27 are not adjusted to reflect a standard measure based on the population of each locality, but simply to provide the localities the information requested. Some general conclusions are: more convictions for methamphetamine occur in Circuits 25 through Circuit 28 (Bristol area, Radford area, Staunton area and Harrisonburg area). Cocaine convictions are significant in Circuit 2 (Virginia Beach), Circuit 14 (Henrico) and Circuit 15 (Fredericksburg area). Henrico and the Fredericksburg area also report the highest number of heroin cases.

The number of convictions may not be the best approach to assessing drug problems in communities across the Commonwealth. In some cases, the number of convictions may better reflect the success of law enforcement in arresting and securing convictions for drug violations. Other measures, such as drug overdoses, demands on treatment providers and arrests for drug crimes that do not result in convictions or that have convictions deferred for treatment may be better measures. Also, defendants with substance abuse issues may not be convicted of drug offenses and this information is not directly collected on the sentencing guidelines. Most important, the drug type is not routinely reported by all jurisdictions and may limit the validity of comparisons across circuits.

The Commission will continuously monitor sentencing in drug cases. If the sentencing patterns of judges change, the Commission will recommend revisions to the guidelines. As indicated by the concurrence rates, there is no need at this time to adjust guidelines based on the type of drug involved.

Figure 26
Guidelines Concurrence by Type of Drug - FY2020

	Compliance	Mitigation	Aggravation	Number of Cases
Methamphetamine Case	88.1%	6.2%	5.7%	3,531
Cocaine Case	85.0%	9.7%	5.3%	2,684
Opioid Case	83.0%	9.7%	7.3%	2,500
Other	88.0%	6.1%	5.9%	750

Cases that include multiple types of drugs are included in each category. No drug is weighted as more serious than another

Figure 27
Type of Drug by Circuit - FY2020

Circuit*		Cocaine	Codeine	Fentanyl	Heroin	Hydrocodone	Methadone	Methamphetamines	Methylphenidate	Morphine	Oxycodone	Other**
1	Chesapeake	116	0	22	59	2	0	45	0	2	11	21
2	Virginia Beach	227	2	25	94	5	1	122	1	1	19	58
3	Portsmouth	17	0	5	14	0	0	1	0	0	1	2
4	Norfolk	143	1	17	64	2	2	31	0	0	11	3
5	Suffolk Area	50	0	8	26	2	0	10	0	0	2	16
6	Sussex Area	110	0	13	33	1	1	17	0	1	5	11
7	Newport News	79	1	15	28	2	0	2	1	0	11	11
8	Hampton	29	0	5	22	1	0	2	0	1	3	5
9	Williamsburg Area	82	0	6	37	2	0	23	0	2	9	26
10	South Boston Area	94	1	21	54	4	3	80	0	4	7	11
11	Petersburg Area	33	1	5	9	0	0	14	0	0	4	4
12	Chesterfield Area	156	3	56	99	4	1	53	1	3	16	27
13	Richmond City	164	1	24	81	1	1	7	0	0	10	5
14	Henrico	270	6	73	205	2	3	28	2	8	15	30
15	Fredericksburg	262	3	127	195	7	0	71	7	6	33	96
16	Charlottesville Area	116	1	29	63	2	3	37	0	3	6	22
17	Arlington Area	34	0	2	4	0	0	5	0	0	1	9
18	Alexandria	5	0	1	2	0	0	0	0	0	1	1
19	Fairfax	64	1	10	21	1	1	11	0	1	9	43
20	Loudoun	56	1	24	32	0	3	13	0	4	6	38
21	Martinsville Area	29	0	8	20	10	3	70	0	1	11	6
22	Danville Area	74	0	5	35	6	1	106	3	2	6	15
23	Roanoke Area	83	0	24	152	2	1	267	1	0	7	4
24	Lynchburg Area	95	0	21	46	4	2	268	8	2	11	27
25	Staunton Area	28	1	13	32	12	2	485	10	2	15	28
26	Harrisonburg Area	116	2	67	84	7	3	311	4	6	18	47
27	Radford Area	40	0	3	25	23	8	567	14	7	31	22
28	Bristol Area	10	0	6	5	21	0	467	5	8	22	17
29	Buchanan Area	23	0	7	12	31	0	163	2	9	27	30
30	Lee Area	5	2	0	0	14	0	231	1	0	12	21
31	Prince William Area	70	0	16	32	0	0	16	0	0	13	36
Total	Statewide	2,685	27	658	1,588	168	39	3,531	60	74	354	692

Note: One sentencing event may involve more than one type of drug

* Circuit is missing in 5 cases

** The other category includes some other types of Schedule I/II drugs, but more often Schedule III drugs, prescription drugs and marijuana.

SENTENCING REVOCATION REPORTS (SRRs)

Figure 28

Number and Percentage of SRRs Received by Circuit - FY 2020*

Circuit	Number	Percent
1	572	4.3
2	733	5.6
3	229	1.7
4	524	4.0
5	318	2.4
6	152	1.2
7	275	2.1
8	223	1.7
9	423	3.2
10	271	2.1
11	118	0.9
12	692	5.2
13	224	1.7
14	656	5.0
15	1143	8.7
16	365	2.8
17	102	0.8
18	35	0.3
19	197	1.5
20	176	1.3
21	187	1.4
22	512	3.9
23	506	3.8
24	443	3.4
25	688	5.2
26	945	7.2
27	567	4.3
28	425	3.2
29	930	7.1
30	261	2.0
31	292	2.2

*1 case was missing a circuit number

One of the most comprehensive resources regarding revocations of community supervision in Virginia is the Commission's Community Corrections Revocations Data System, also known as the Sentencing Revocation Report (SRR) database. First implemented in 1997 with assistance from the Department of Corrections (DOC), the SRR is a simple form designed to capture the reasons for, and the outcomes of, community supervision violation hearings. The probation officer (or Commonwealth's attorney) completes the first part of the form, which includes the offender's identifying information and checkboxes indicating the reasons why a show cause or revocation hearing has been requested. The checkboxes are based on the list of eleven conditions for community supervision established for every offender, but special supervision conditions imposed by the court also can be recorded. Following the violation hearing, the judge completes the remainder of the form with the revocation decision and any sanction ordered in the case. The completed form is submitted to the Commission, where the information is automated. A revised SRR form was developed and implemented in 2004 to serve as a companion to the new Probation Violation Guidelines introduced that year.

In FY2020, there were 13,184 alleged felony violations of probation, suspended sentences, or good behavior for which a (SRR) was submitted to the Commission. The SRRs received include cases in which the court found the defendant in violation, cases that the court decided to take under advisement until a later date, and cases in which the court did not find the defendant in violation. The circuits submitting the largest number of SRRs during the time period were Circuit 15 (Fredericksburg area), Circuit 26 (Harrisonburg), Circuit 29 (Buchanan County area), Circuit 2 (Virginia Beach), Circuit 12 (Chesterfield County) and Circuit 25 (Staunton area). Circuit 18 (Alexandria), Circuit 17 (Arlington), Circuit 11 (Petersburg area), and Circuit 6 (Sussex area) submitted the fewest SRRs during the time period (Figure 28).

For FY2020, the Commission received 13,184 SRRs. Of the total, 6,282 cases involved a new law violation. In these cases, the judge found the defendant guilty of violating Condition 1 of the Department of Corrections' Conditions of Probation (obey all federal, state, and local laws and ordinances). In 6,591 cases, the offender was found in violation of other conditions not related to a new law violation. Another 311 cases were found not in violation or the type was not identified.

Figure 29 compares new law violations with violations of other conditions (otherwise known as “technical violations”) in FY2020 with previous years. Between FY2009 and FY2014, the number of revocations based on new law violations exceeded the number of revocations based on violations of other conditions. Changes in policies for supervising offenders who violate conditions of probation that do not result in new convictions and procedures that require judges to receive and review the SRRs and Probation Violation Guidelines have impacted the number and types of revocations submitted to the court. In FY2014, the number of technical violations reviewed by the court began to increase in number. In that year, new law violations exceeded the number of technical violations by 161 cases. However, since FY2015 the number of technical violations has exceeded the number of new law violations.

Figure 29

**Sentencing Revocation Reports Received for Technical and New Law Violations
FY1998 - FY2020**

Fiscal Year	Technical Violations	New Law Violations	Number
FY1998	2,886	2,278	5,164
FY1999	3,643	2,630	6,273
FY2000	3,490	2,183	5,673
FY2001	5,511	3,228	8,739
FY2002	5,783	3,332	9,115
FY2003	5,078	3,173	8,251
FY2004	5,370	3,361	8,731
FY2005	5,320	3,948	9,268
FY2006	5,509	3,672	9,181
FY2007	6,670	4,755	11,425
FY2008	6,269	5,182	11,451
FY2009	5,001	5,134	10,135
FY2010	4,670	5,226	9,896
FY2011	5,239	6,058	11,297
FY2012	5,145	5,760	10,905
FY2013	5,444	6,013	11,457
FY2014	5,768	5,929	11,697
FY2015	6,510	6,394	12,904
FY2016	6,656	5,998	12,654
FY2017	6,652	5,616	12,268
FY2018	7,734	6,383	13,921
FY2019	6,868	6,409	13,277
FY2020	6,591	6,282	12,873

Note: Excludes cases with missing data that were incomplete or had other guidelines issues. Data from past fiscal years are continuously monitored and modified to better reflect the events for that time period.

PROBATION VIOLATION GUIDELINES (PVGs)

In 2003, the General Assembly directed the Commission to develop, with due regard for public safety, discretionary sentencing guidelines for felony offenders who are determined by the court to be in violation of their probation supervision for reasons other than a new criminal conviction (*Chapter 1042 of the 2003 Acts of Assembly*). Often, these offenders are referred to as “technical violators.” In developing the guidelines, the Commission was to examine historical judicial sanctioning practices in revocation hearings.

Early use of the probation violation guidelines, which took effect on July 1, 2004, indicated that the guidelines needed further refinement to better reflect current judicial sentencing patterns in the punishment of supervision violators. Judicial concurrence with the first edition of the probation violation guidelines was lower than expected, with only 37% of the violators being sentenced within the range recommended by the new guidelines. Therefore, the Commission’s 2004 Annual Report recommended several adjustments to the probation violation guidelines. The proposed changes were accepted by the General Assembly and the second edition of the probation violation guidelines took effect on July 1, 2005. These changes yielded an improved concurrence rate of 48% for FY2006.

Concurrence with the revised guidelines, and ongoing feedback from judges, suggested that further refinement could improve their utility as a benchmark for judges. Therefore, the Commission’s 2006 Annual Report recommended additional adjustments to the probation violation guidelines. The majority of the changes proposed in the 2006 Annual Report affected the Section A worksheet. The score on Section A of the probation violation guidelines determines whether an offender will be recommended for probation with no active term of incarceration to serve, or whether the offender will be referred to the Section C worksheet for a jail or prison recommendation. Changes to the Section A worksheet included revising scores for existing factors, deleting certain factors and replacing them with others (e.g., “Previous Adult Probation Violation Events” replaced “Previous Capias/Revocation Requests”), and adding new factors (e.g., “Original Disposition was Incarceration”).

The only change to the Section C worksheet (the sentence length recommendation) was an adjustment to the point value assigned to offenders who violated their sex offender restrictions. The proposed changes outlined in the *2006 Annual Report* were accepted by the General Assembly and became effective for technical probation violators sentenced on July 1, 2007 and after. This third version of the probation violation guidelines has resulted in consistently higher concurrence rates than previous versions of the guidelines. Figure 30 illustrates concurrence patterns over the years and the impact revisions to the guidelines had on concurrence rates. Concurrence has hovered above 50% since FY2008 and this pattern continues in FY2020.

For FY2020, 6,591 of the 13,184 SRRs involved technical violations only. Upon further examination, it was found that 645 could not be included in more detailed analysis. Cases were excluded if the guidelines were not applicable (the case involved a parole-eligible offense, a first-offender violation, a misdemeanor original offense, or an offender who was not on supervised probation), if the guidelines forms were incomplete, or if outdated forms were prepared. Cases in which the judge did not find the probationer in violation were also removed from the analysis.

Figure 30

Probation Violations Guidelines Concurrence by Year, FY2005 - FY2020

Fiscal Year	Concurrence	Mitigation	Aggravation	Total
FY2005	37.4%	27.3%	35.4%	3,140
FY2006	48.4%	30.0%	21.6%	4,793
FY2007	47.1%	31.7%	21.2%	5,929
FY2008	53.9%	25.0%	21.0%	5,028
FY2009	53.3%	25.8%	21.0%	4,488
FY2010	52.7%	25.6%	21.7%	4,233
FY2011	54.0%	24.1%	21.9%	4,773
FY2012	50.2%	25.9%	23.9%	4,504
FY2013	51.9%	23.3%	24.8%	4,792
FY2014	53.3%	22.5%	24.2%	4,973
FY2015	53.6%	24.2%	22.2%	5,713
FY2016	55.9%	25.3%	18.8%	5,791
FY2017	55.4%	25.8%	18.8%	5,683
FY2018	57.0%	27.9%	15.1%	6,643
FY2019	57.8%	30.0%	12.1%	6,000
FY2020	53.7%	34.5%	11.7%	5,946

Note: Excludes cases with missing data, that were incomplete, or had other guidelines issues. Data from past fiscal years are continuously monitored and modified to better reflect the events for that time period.

Of the 5,946 cases examined in which offenders were found to be in violation of their probation for reasons other than a new law violation, approximately 41% were under supervision for a felony property offense (Figure 31). This represents the most serious offense for which the offender was on probation. Another 38% were under supervision for a felony drug conviction. Offenders who were on probation for a crime against a person (most serious original offense) made up a smaller portion (13%) of those found in violation during FY2020.

Examining the 5,946 technical violation cases reveals that 65% of the offenders were cited for using, possessing, or distributing a controlled substance (Condition 8 of the DOC Conditions of Probation). Violations of Condition 8 may include a positive test (urinalysis, etc.) for a controlled substance or a signed admission. More than half (59%) of the offenders were cited for failing to follow instructions given by the probation officer. Other frequently cited violations included absconding from supervision (31%), changing residence or traveling outside of designated areas without permission (14%) and failing to report to the probation officer in person or by telephone when instructed (11%). In approximately 19% of the violation cases, offenders were cited for failing to follow special conditions imposed by the court, including: failing to pay court costs and restitution, failing to comply with court-ordered substance abuse treatment, or failing to successfully complete alternatives, such as the Community Corrections Alternative Program (CCAP) program. It is important to note that defendants may be, and typically are, cited for violating more than one condition of their probation (Figure 32).

Figure 31

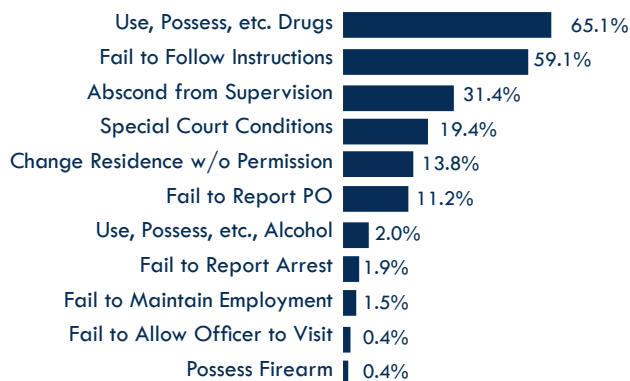
Probation Violation Guidelines Worksheets Received by Type of Most Serious Original Offense - FY2020*
N=5,946

Original Offense Type	Percent Received
Property	41.3%
Drug	38.2%
Person	13.3%
Traffic	3.8%
Other	3.4%

**Includes FY2020 cases found to be in violation that were completed accurately on current guideline forms.*

Figure 32

Violation Conditions Cited by Probation Officers, Excluding New Law Violations - FY2020*



**Includes FY2020 cases found to be in violation that were completed accurately on current guideline forms.*

The overall concurrence rate summarizes the extent to which Virginia’s judges concur with recommendations provided by the Probation Violation Guidelines, both in type of disposition and in length of incarceration. In FY2020, the overall rate of concurrence with the Probation Violation Guidelines was 54%, which is slightly higher than concurrence rates since FY2008 (Figure 33). The aggravation rate, or the rate at which judges sentence offenders to sanctions more severe than the guidelines recommend, was 12% during FY2020. The mitigation rate, or the rate at which judges sentence offenders to sanctions considered less severe than the guidelines recommendation, was 35%. In 2020, the COVID-19 pandemic not only reduced the number of violation guidelines received, long standing sentencing patterns also changed. It is believed that in an effort to reduce the impact of COVID-19 on jail and prison populations, judges sentenced defendants to alternatives or sentences that were less than recommended by the probation Violation Sentencing Guidelines. As a result, in FY2020, there was an increase in the number of mitigating cases.

Figure 34 illustrates judicial concurrence with the type of disposition recommended by the Probation Violation Guidelines for FY2020. There are three general categories of sanctions recommended by the probation violation guidelines: probation/ no incarceration, a jail sentence up to twelve months, or a prison sentence of one year or more. Data for the time period reveal that judges agree with the type of sanction recommended by the probation violation guidelines in 59% of the cases. When departing from the dispositional recommendation, judges were more likely to sentence below the guidelines recommendation than above it. Consistent with the traditional sentencing guidelines, sentences to the Community Corrections Alternative Program (CCAP) are defined as incarceration sanctions under the Probation Violation Guidelines.

Figure 33

**Overall Probation Violation Guidelines Concurrence and Direction of Departures - FY 2020
N=5,935**

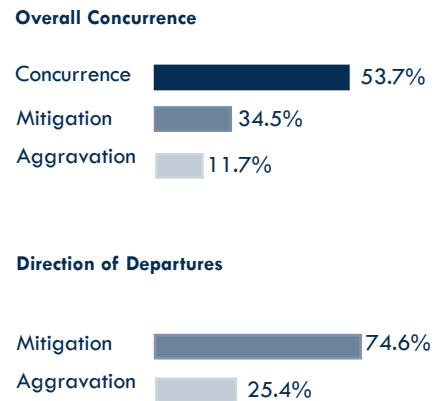


Figure 34

**Probation Violation Guidelines Dispositional Concurrence
FY2020**

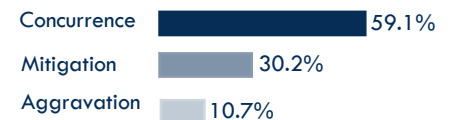
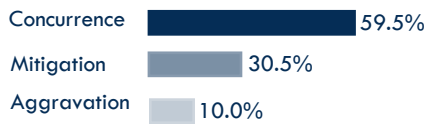


Figure 35
Probation Violation Guidelines
Durational Concurrence* FY 2020



**Concurrence in cases that are recommended for, and receive, an active jail or prison sentence.*

Another facet of concurrence is durational concurrence. Durational concurrence is defined as the rate at which judges sentence offenders to terms of incarceration that fall within the recommended guidelines range. Durational concurrence analysis only considers cases for which the guidelines recommended an active term of incarceration and the offender received an incarceration sanction consisting of at least one day in jail. Data reveal that durational concurrence for FY2020 was approximately 60% (Figure 35). For cases not in durational concurrence, aggravations were less likely than mitigations.

When judges sentenced offenders to incarceration, but to an amount less than the recommended time, offenders were given “effective” sentences (imposed sentences less any suspended time) short of the guidelines range by a median value of eight months. For offenders receiving longer than recommended incarceration sentences, the effective sentence exceeded the guidelines range by a median value of six months. Thus, durational departures from the guidelines are typically less than one year above or below the recommended range.

Prior to July 1, 2010, completion of the Probation Violation Guidelines was not required by statute or any other provision of law. However, the 2010-2012 biennium budget passed by the General Assembly specified that, as of July 1, 2010, a sentencing revocation report (SRR) and, if applicable, the Probation Violation Guidelines, must be presented to the court and reviewed by the judge for any violation hearing conducted pursuant to § 19.2-306. This requirement continues to be in the budget and can be found in Item 40 of Chapter 1283 of the 2020 Acts of Assembly. Similar to the traditional felony sentencing guidelines, sentencing in accordance with the recommendations of the Probation Violation Guidelines is voluntary. The approved budget language states, however, that in cases in which the Probation Violation Guidelines are required and the judge imposes a sentence greater than or less than the guidelines recommendation, the court must file with the record of the case a written explanation for the departure. The requirements pertaining to the Probation Violation Guidelines spelled out in the latest budget parallel existing statutory provisions governing the use of sentencing guidelines for felony offenses. Before July 1, 2010, circuit court judges were not required to provide a written

reason for departing from the Probation Violation Guidelines. Because the opinions of the judiciary, as reflected in their departure reasons, are of critical importance when revisions to the guidelines are considered, the Commission had requested that judges enter departure reasons on the Probation Violation Guidelines form. Many judges responded to the Commission's request. Ultimately, the types of adjustments to the Probation Violation Guidelines that would allow the guidelines to reflect judicial sentencing practices across the Commonwealth more closely are largely dependent upon the judges' written reasons for departure.

According to Probation Violation Guidelines data for FY2020, 46% of the cases resulted in sentences that fell outside the recommended guidelines range. With judges departing from these guidelines at such a high rate, written departure reasons are an integral part of understanding judicial sentencing decisions. An analysis of the 2,049 mitigation cases revealed that 75% included a departure reason, much higher than the percentage reported last year. For the mitigation cases in which departure reasons were provided, judges were most likely to cite the utilization of an alternative punishment option (e.g., CCAP program, treatment options), the recommendation of the attorney for the Commonwealth, progress in rehabilitation, judicial discretion based on issues related to the case, the offender's health, plea agreement or the potential for rehabilitation.

Examining the 697 aggravation cases, the Commission found that the majority (68%) included a departure reason. When a reason was provided in upward departures, judges were most likely to cite multiple revocations in the defendant's prior record, the recommendation of the attorney for the Commonwealth, the defendant's failure to follow instructions, judicial discretion, poor rehabilitation potential, or the defendant having absconded from supervision.

Based on the results of a large-scale, multi-year study completed in 2020, the Commission is recommending revisions to the Probation Violation Guidelines. Please see Chapter 3 and the Recommendations chapter in this report for details.

3

PROBATION VIOLATION GUIDELINES STUDY

INTRODUCTION

In 2003, the General Assembly directed the Virginia Criminal Sentencing Commission to develop discretionary sentencing guidelines for probation violators returned to court for reasons other than a new criminal conviction (“technical violations”). To develop these guidelines, the Commission examined historical judicial sanctioning practices in revocation hearings. In its *2003 Annual Report*, the Commission recommended that the Probation Violation Guidelines be implemented statewide and the recommendation was accepted by the 2004 General Assembly. Statewide use began July 1, 2004. Since July 1, 2010, the Appropriation Act has specified that a Sentencing Revocation Report (SRR) and, if applicable, the Probation Violation Guidelines (PVGs), must be presented to the court and reviewed by the judge for any violation hearing conducted pursuant to § 19.2-306.

Although past amendments to the PVGs have increased compliance, the compliance rate remains relatively low (58% in FY2019 and 54% in FY2020). This suggests that many judges are dissatisfied with the current PVGs. Numerous criminal justice practitioners have requested that the Commission revise these guidelines. Other stakeholders have suggested that the PVGs should be revised to include probationers who have received a new criminal conviction (Condition 1 violators). In 2016, the Commission approved a new study that would provide the foundation needed to revise the guidelines used in revocation cases. The goal is to improve the utility of the PVGs for Virginia’s judges.

HIGHLIGHTS FROM THE JUDICIAL SURVEY

As a critical first step in revising the guidelines, the Commission sought input and guidance from circuit court judges through a survey. The survey was administered in September-October 2018. Judges had the option of taking the survey online or on paper. Overall, 89.7% of active circuit court judges responded. The results of the survey have proven to be a rich source of information for the Commission. This information was used for planning subsequent stages of the project, especially data collection.

Figure 36

Geographical Distribution of Survey Respondents by Judicial Region

Region 1 Tidewater	25.9%
Region 2 Northern	19.7%
Region 3 Central	21.1%
Region 4 Southwestern	11.6%
Region 5 Southside	12.2%
Region 6 Western	9.5%

Judges from all over the Commonwealth responded to the Commission’s judicial survey. Figure 36 shows the geographical distribution of survey respondents by judicial region. Together, approximately two-thirds of the responding judges were from Region 1 (Tidewater region, 25.9%), Region 2 (Northern region, 19.7%), or Region 3 (Central region, 21.1%). The remaining one-third of responding judges came from Region 4 (Southwestern region, 11.6%), Region 5 (Southside region, 12.2%) or Region 6 (Western region, 9.5%).

The majority of responding judges felt that the PVGs should cover violations stemming from technical violations, as well as new felony and new misdemeanor convictions. While the current guidelines only cover technical violations of supervised probation, 70.7% of responding judges indicated that the guidelines should apply to violations arising from a new felony conviction and 66.2% felt that the guidelines should apply to violations arising from a new misdemeanor conviction.

Figure 37 shows that, in determining appropriate punishments for probation violations, the responding judges most often consider Major Violation Reports prepared by the probation officer (99.3%), testimony from the probationer (89.7%), and the PVGs (88.3%).

Figure 37

Sources of Information Used By Judges when Determining Punishment for Probation Violations

Answer Choices	Percent
Major Violation Report prepared by the Probation Officer	99.3%
Testimony from the probationer	89.7%
Probation Violation Guidelines (for “technical” violators only)	88.3%
Previous court records	73.1%
Testimony from the Probation Officer	62.1%
Testimony from other parties	46.9%
COMPAS risk/needs assessment results	21.4%
Other	17.2%

Judges structure the sentence for a probation violation in a variety of ways. They may choose to reimpose some or all of the revocable time, then resuspend all or a portion of the time and specify the terms and conditions of supervision. Alternatively, judges may impose a term for the violator to serve and continue the probationer on supervised probation under the same terms and conditions previously imposed or with added conditions. Almost half of the responding judges indicated that they frequently employ both of these two options, depending on the circumstances of the case (Figure 38). Other approaches are possible, however, and the methods used by judges to structure sentences for probation violations are not consistent across the Commonwealth.

It is important to note that only half of the responding judges felt that sufficient and effective alternatives to incarceration were available to them.

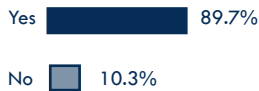
Figure 38
Ways in Which Judges Structure Sentences for Probation Violations

Answer Choices	Percent
Reimpose all/some of the revocable time then re-suspend all/some of the time and specify terms and conditions of supervised probation	37.9%
Impose a term for the violator to serve and continue on supervised probation (either the same terms and conditions previously imposed or with added conditions)	10.3%
Both of the above, depending on the circumstances	46.3%
Other	3.4%

Figure 39

Judicial Survey Question: Do you increase the punishment for a violation at each successive revocation?

Responses



Most judges indicated that the amount of revocable time remaining had little or no effect on the sentencing decision. In addition, the vast majority of responding judges (89.7%) 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 (Figure 39).

Through the survey, the judges provided insight into the factors that, on average, are weighed the most heavily in sanctioning probation violators. Some examples include:

- Type of original felony offense
- Violation of sex offender restrictions
- Violation behavior that is similar to the underlying offense
- Progress in treatment
- Never reported to a court-ordered program
- Positive tests/admissions for heroin or methamphetamine use
- New felony convictions
- Number of prior adult probation revocations and
- Gang membership or activity.

HIGHLIGHTS FROM THE SURVEY OF PROBATION OFFICERS, COMMONWEALTH'S ATTORNEYS, AND DEFENSE ATTORNEYS

The Commission also sought input from other criminal justice stakeholders (probation officers, Commonwealth's attorneys, and defense attorneys) through a second survey administered during April-May of 2019. This survey was sent to all 2,414 guidelines users and generic accounts represented in the Commission's database. Users completed the survey online; overall, 34.1% of users responded. Figure 40 shows that approximately 40% of the respondents were probation officers and approximately 30% were Commonwealth's attorneys; the remainder were defense attorneys, public defenders, or other stakeholders.

Figure 40

**Stakeholder Survey
Type of Respondents**

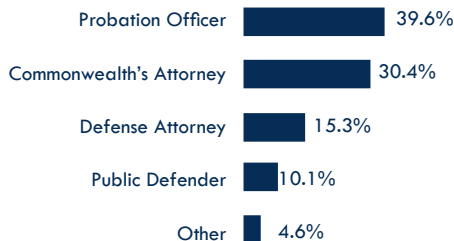


Figure 41 shows the geographical distribution of survey respondents by region. This distribution was very similar to that of judges responding to the Commission's judicial survey; almost two-thirds of the respondents were from Regions 1, 2, or 3. However, Region 2 respondents to the stakeholders survey were underrepresented when compared with the proportion of Region 2 respondents in the judicial survey (9.0% versus 19.7%).

Criminal justice stakeholders generally agreed with judges that the information provided in Major Violation Reports was critical in making appropriate sentencing decisions. They acknowledged, however, that important details needed to score the current PVGs were often missing or inaccurate. For example, respondents pointed out that it is sometimes unclear what is considered an offender's first "noncompliant incident." They also noted that, while absconding is frequently cited as a violation of probation, the actual length of time absconded is difficult to establish. Most stakeholders (84.1%) felt that judges viewed certain violations of probation, other than new law violations, as more serious than others (Figure 42). When asked which technical violations judges considered to be most serious, respondents frequently mentioned absconding (54.9%), use, etc., of controlled substances (20.5%), violation of sex offender conditions (10.6%), and possession of a firearm (5.1%).

The criminal justice stakeholders also agreed that the number of prior probation violations influenced the length and type of sentence imposed for a probation violation (Figure 43). Echoing the concerns voiced by judges responding to the 2018 judicial survey, the stakeholders generally felt that the availability (or lack) of alternatives other than incarceration also influenced the length and type of sentence imposed by judges for a probation violation (Figure 44).

Figure 41
Geographical Distribution of Survey Respondents by Judicial Region

Region 1 Tidewater	28.6%
Region 2 Northern	9.0%
Region 3 Central	27.0%
Region 4 Southwestern	10.5%
Region 5 Southside	11.2%
Region 6 Western	13.7%

Figure 42
Stakeholder Survey Question:
Do judges in your court view certain violations of probation, other than a new law violation, as more serious than others?

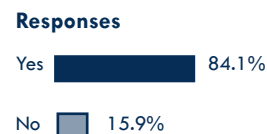


Figure 43
Stakeholder Survey Question:
In your court, does the number of prior probation violations influence the length and type of sentence imposed for a probation violation?

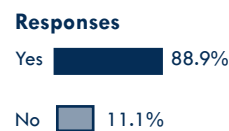
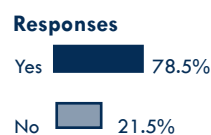


Figure 44
Stakeholder Survey Question:
Does the availability of alternatives other than incarceration influence the type and length of sentence imposed for probation violations by the judge(s) in your primary court?



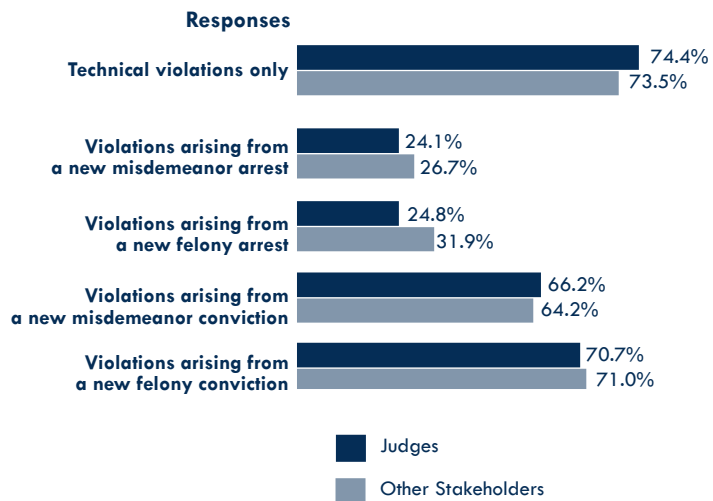
Most criminal justice stakeholders agreed with judges that the PVGs should cover violations arising from new felony and/or misdemeanor convictions, as well as cases with technical violations only. However, both groups generally felt that the guidelines should not address violations arising only from new arrests (Figure 45).

In summary, the criminal justice stakeholders who responded to the 2019 survey generally agreed that:

- The Major Violation Report is an important source of information for the sentencing judge in revocation cases. However, this report is often missing information needed to complete the current PVGs accurately.
- Probation violation cases involving new law convictions (Condition 1 violations) should be covered by the revised PVG.
- The length of absconding should be clearly defined as from the date of the last known contact to the date the probationer is located, reported in person to the probation officer, or arrested on the capias.
- The offender’s criminal history record should be updated and included with the PVGs submitted to the court.

Figure 45

Judicial and Stakeholder Survey Question: In your opinion, in what circumstances should the probation violation guidelines apply?



DATA SOURCES USED BY THE COMMISSION

The Commission used a number of data sources to obtain and construct the factors that are, based on existing theories and the Commission's probation violation survey results, expected to impact sentencing outcomes in revocation cases.

Data from the Virginia Department of Corrections (DOC), Major Violation Reports (MVRs) prepared for the court by probation officers, the Commission's own Sentencing Revocation Reports (SRR), Local Inmate Data System (LIDS) jail records, Virginia State Police (VSP) criminal history records, and the Court Case Management System (CMS) were utilized during the course of the study. All of these data sources were combined to form a main probation violation data-hub for the analyses. Matching cases across these various data sources was based on key identification variables such as the offender identification number, name, birthdate, violation date, and probation start date. The combined dataset focuses on felony probation violation cases (both new law and technical violators) with revocation dates from FY2014 through FY2018.

The SRR dataset provides comprehensive information about the offender's probation violation sentencing event. SRR data is the Commission's main data source as it is designed to capture all felony probation violation cases in the Commonwealth. By using statistical sampling methods, the Commission drew a random sample of 4,000 probation violation sentencing events for the study. The SRR dataset captures the type of the original offense and any new criminal convictions, the conditions the probationer violated, the recommended sentence range for technical violations, the effective sentence for the violation, check boxes for the judge to indicate a sentence to time-served by the probationer awaiting the revocation hearing or a sentence to one of the various sentencing alternatives available to the judge, as well as the reason(s) submitted by the judge for departing from the PVG recommendation. For technical violations, the dataset also includes information about the current guidelines factor scores and judicial concurrence with the guidelines recommendation. Furthermore, SRR data captures the specific jurisdiction of each revocation hearing. Incorporating circuit court information into the analysis is important to assess differences in sentencing patterns across jurisdictions in Virginia. Finally, a probationer's rehabilitation potential (good or poor), as determined by the judge, was hypothesized to have a significant

effect on sentencing outcomes and deviations from the sentencing guidelines. Such information is sufficiently available in judicial departure reasons recorded in the original SRR data, which makes it possible to statistically assess the impact of rehabilitation potential.

Department of Corrections (DOC) data was used for several purposes. First, as DOC data contains all relevant dates associated with probation supervision for each offender, the Commission can identify the actual start and violation dates that correspond to the current probation supervision in the sample. Next, DOC data includes the information that is suggested to be closely associated with the sentencing outcomes for probation violations. For instance, DOC data provides the record of an probationer's positive drug screens, the result of risk-needs assessment, mental health and detention records, the supervision transfer history, and the enrollment information of the various DOC supervised treatment and training programs.

Major Violation Report (MVR) data provides detailed information as reported by the probation officer regarding the probationer's background, violation behaviors, and qualitative aspects (e.g., attitude towards the treatment program) that are not easily captured by the other data sources. Based on the judge and court stakeholder survey results, the Commission developed a data collection (coding) instrument to be completed by staff based primarily on the information described in the MVR. According to the survey for judges, 99% of the judges routinely use the MVR when ascertaining punishment for a supervised probation violation. The MVR coding instrument consists of factors that were suggested by judges, probation officers, public defenders, and Commonwealth attorneys to have important effects on violation sentencing. By using MVR information, the Commission was primarily interested in finding information on sanctions, special conditions, or treatment requirements placed on an offender, the supervision start date, interstate probation/conviction records, the number of positive/negative drug screens, employment status, the number of missed appointments, restitution status, absconding status, and other detailed violation behaviors that are not typically captured on the PVG forms. MVR data was also one of the sources used to identify new offenses committed by the probationer during the supervision period.

The Commission primarily used both VSP and CMS datasets to obtain the current and prior conviction records for all probationers in the study sample. Both data sources contain important information about offense, arrest, and conviction dates; type and crime code of the conviction offense; location of the conviction, and sentence length. Such information enables the Commission to differentiate the offender's prior convictions (before the current supervision period) from the new convictions (during the current supervision period). Furthermore, subsequent analysis based on CMS and VSP data provided additional conviction information that was missing in other data sources, including the guidelines data. It was found in CMS that about 2,407 cases from the study sample had new convictions during the current supervision period (the sample was drawn from SRR data to include 2,000 probationers with new crime convictions). This suggests that new law convictions do not always result in a probation revocation.

Moreover, these data sources also provide information regarding the original sentencing event that resulted in the term of probation under study. This information enables the Commission to determine the original sentence recommendation from the felony offense guidelines and the amount of revocable time remaining over the probationer, allowing the Commission to study the effect of these factors on violation sentencing outcomes. As previous studies, current guidelines, and sentencing practitioners commonly suggest, the offender's criminal history is an important factor affecting sentencing for revocations. Accordingly, VSP and CMS data are other integral sources for the development of the revised PVGs. Lastly, VSP and CMS provide information about offender age, race, and attorney type that need to be included in the empirical framework to accurately analyze the effects of other possible guidelines factors on violation sentencing outcomes.

The Commission generally used LIDS data to calculate the duration of jail confinement for the probationer during the current supervision period. The Commission found that nearly all probation violators served some time in jail before the revocation hearing. Such information was incorporated into the analysis. The LIDS dataset also includes jail commitment codes that were very useful to determine whether an offender was confined in a jail specifically for a new offense or a probation violation. Moreover, LIDS data also provides release codes to analyze whether a defendant was released before sentencing for the violation.

In addition to the aforementioned data sources, the Commission assembled a focus group of stakeholders, including probation officers, prosecutors and defense attorneys, to provide feedback regarding the development of the new Probation Violation Guidelines. While input from the focus group was mostly difficult to quantify, the input included important qualitative information that helped the Commission refine the recommended guidelines factors.

Eventually, the information gathered across multiple data sources was combined into a large dataset with details for violation sentencing events in the study sample. As stated above, the Commission initially drew 4,000 study sample cases. However, the initial analysis found that 180 cases (4.5%) contained invalid supervision dates, missing MVR records, or wrong violation types (e.g., good behavior violation). In subsequent analyses, more cases were dropped due to invalid supervision dates, uncertainty as to new law violations, or the individual not having committed a violation of supervised probation (e.g., the individual committed a violation during a period of good behavior or unsupervised probation, which are not covered by the guidelines). Eventually, the final analysis included 3,410 cases. Of the 3,410 cases, 695 are felony new law (Condition 1) violators and 2,715 cases are technical and misdemeanor new law violators.

ANALYSIS PROCESS

The analysis mainly utilized regression techniques in the statistical packages SPSS and Stata. The Commission research staff compiled all available data sources and tested the relevance of offender and revocation case characteristics in terms of judicial sentencing. During the initial analysis, three research analysts worked independently of one another to develop competing statistical models. The analysts then met to reconcile the differences in their models. The final model generated as a result of this process includes the best elements of the separate models.

After a first round of analysis, staff then drafted an initial worksheet and a revised SRR and presented these at a focus group meeting of probation officers, prosecutors and defense attorneys. One of the main objectives of this meeting was to gauge the feasibility of the proposed scoring factors based on the preparers' ability to gather the needed information. The Commission also sought input regarding any potential for unintended consequences.

The primary feedback from the focus group meeting was that some factors may be "gameable" in the negotiation process between the defense and the prosecution, that precise instructions must be developed to construct the revocation timeline for scoring purposes, and that convictions are easier to score than the convention of "sentencing events" often employed by the Commission. Based on this feedback, staff refined certain factors and modified the description of others to support accurate scoring. After incorporating stakeholder feedback, staff conducted another round of analysis to determine proper scoring values for the newly-defined set of factors. During this phase of analysis, staff also discovered that the best fit for handling new law (Condition 1) violators was to form two scoring groups - one for felony new law violators, and one for technical and misdemeanor new law violators - using separate factors and scoring values for each group. The recommended worksheet scoring factors were finalized under the two-group model based on this second round of analysis.

Once guidelines scoring factors were determined, analysts "rescored" the sample cases against the new factors to compare each case's actual revocation sentence to the proposed total score. This approach allowed the Commission to verify the average sentencing outcomes offered by regression analysis compared favorably with individual case-level historical sentences. Analysts used the results of this rescoring to develop recommendation tables for both scoring groups, creating overlap in many recommended ranges to account for wide variation in revocation sentences across proposed worksheet scores.

RESULTS

Analysts used several controls in the analysis to ensure that the effects of potential scoring factors were not overstated or understated by the effects of other influential non-scoring case characteristics. While many controls were tested, attorney type (whether a private attorney was court appointed), gender, circuit court location, and year of revocation persisted as influential factors in the analysis. Race and age of offender were thoroughly tested; however, analysts did not find any consistent statistical effects of these factors on revocation sentencing patterns.

As noted above, two PVG scoring groups were created based on the data analysis, meaning that two PVG worksheets were developed: one for felony new law violators and one for technical and misdemeanor new law violators. Based on the final statistical model, four factors were identified as being significant in the sentencing of felony new law violators (Figure 47). For felony new law, scoring factors consist of: person type new felony convictions, non-person type new felonies, prior “home court” revocations for the original offense, and violation behavior that is the same as the original offense for any new conviction (based on Virginia Crime Code, or VCC, prefix). “Home court” revocations are those in the same jurisdiction as the original offense for which the individual is on probation. For technical and misdemeanor new law violators, the final model identified six factors as significant (Figure 46). Factors for the technical and misdemeanor new law violator group consist of: “home court” prior revocations for the original offense, “home court” revocations prior to the original offense conviction, sex offender status, felony convictions between the original sentencing date and the start of the current supervision period, absconding, new misdemeanor convictions with the same behavior as the current offense (based on VCC prefix), and drug violations. Figures 46 and 47 illustrate the contribution of each factor to the scoring composition of their respective models.

Figure 46
Significant Factors in Sentencing Outcomes for
Technical and Misdemeanor New Law Violators

Factor	Percent of Score Composition
“Home Court” Prior Revocations	40%
Registered Sex Offender	22%
Prior Felonies (since original offense)	12%
Abscond (Condition 11)	10%
Misdemeanor Same Behavior	9%
Drug Violation (Condition 8)	7%

Figure 47
Significant Factors in Sentencing Outcomes for
Felony New Law Violators

Factor	Percent of Score Composition
New Felony Convictions (Person type)	51%
“Home Court” Prior Revocations	26%
Same Behavior as Original Offense	18%
New Felony Convictions (Non-Person type)	5%

Separate from the main analysis, researchers examined the reasons cited by judges for departing from the current Probation Violation Guidelines. In particular, researchers were interested in the judge’s assessment of the probationer’s rehabilitation potential (good or poor) and the extent this was cited as the reason for departing from the guidelines. To do this, the analysts examined all FY2014-FY2019 SRR cover sheets (not just cases selected for the study sample). This analysis grouped offenders by judicial departure reasons - either good rehabilitation potential, poor rehabilitation potential, or neither cited - and compared effective revocation sentences for each group. Figure 48 shows the results.

Figure 48
Supplemental Analysis of Judicial Departures
Reasons in Probation Violation Cases:
Probationer’s Good or Poor Rehab Potential

The median, mean, and maximum sentence for cases in which the judge cited good rehabilitation potential as the reason for departing from the PVGs are significantly lower than for the groups with poor potential or no such departure noted. Of particular note, the median or “typical” case with good potential noted received a sentence of zero (or time served). Based on these findings, the Commission concluded that a new factor could be added to the PVGs to allow the judge to adjust the low end recommendation to “time served” (i.e., zero) if the judge finds the probationer has good rehabilitation potential. Because this factor would be based on judicial determination rather than currently available data sources, it is not possible to estimate the proportion of the study sample who would have been scored on this factor or how it might interact with other factors. Therefore, it was constructed as a standalone factor which does not contribute points to the total worksheet score.

Rehab Potential	Sentence in Months			
	Median	Mean	Minimum	Maximum
Good	0.0	2.8	0.0	36.0
Poor	15.0	22.7	0.0	396.0
Not Cited	6.0	9.9	0.0	857.0

Many other revocation factors were tested but found not useful as guidelines factors. Factors tested but not utilized in the final models include length of time absconded, the original offense guidelines recommendation and sentence for the original felony conviction, other standard supervision conditions cited (alcohol use, failure to maintain residence, etc.), and treatment programs. Length of absconding was not a useable factor because the timeline for last contact to arrest was not consistently reported in study MVRs. The original guidelines recommendation and original sentencing did not show a consistent trend when compared to revocation sentencing. In many cases, for conditions cited and individual treatment program types, there were too few cases associated with the factor (weapon violation, specific sex offender conditions, etc.) to draw a meaningful conclusion as to the effect on sentencing. Because treatment programs and the offender’s program status at revocation (failed, currently enrolled, or completed) were identified by stakeholders as influential in sentencing, researchers attempted many different iterations in the analysis to investigate significant program-related factors. However, no treatment type (mental health, drug, sex offender) in general or combined with program status (failed, enrolled, completed) yielded a conclusive result.

Worksheets containing the above factors and their corresponding scores are shown on pages 68 and 69.

CONNECTION TO SURVEY FEEDBACK

The results of the probation violation study reflect much of the input provided by judges and other court stakeholders through the Commission's surveys. Judges identified the original offense type, sex offender violations, prior revocations, felony convictions, and patterns of similar behavior as factors that are weighed most heavily in their revocation sentencing decisions. Guidelines revisions, resulting from analysis of the data, cover all of these factors through the same behavior, sex offender (any violation), new felony convictions, and "home court" prior revocations factors.

The probation officers and attorneys identified factors absent from the guidelines that they believed merit inclusion. From this list, "positive behavior" and "amenability to supervision" are addressed by the rehabilitation potential factor; "same offense with new conviction" is covered by the same behavior factor; "number of noncompliance incidents" and "number of prior revocations" are addressed in the prior revocation factors; and finally, the request to include new law convictions in the guidelines is met with the restructured scoring groups for both misdemeanor and felony new law violators.

Factors that the probation officers and attorneys noted as problematic to accurately score have been removed, amended, or modified. The top five factors identified as problematic include length of time absconded, months until first noncompliant incident, never reported or unsuccessful discharge from a program and previous adult revocations. All but prior revocations have been removed as scoring factors, and the prior revocations factor has been refined into the more accessible data point of "home court" revocations (i.e., those in the same jurisdiction as the original offense for which the offender is on probation). The probation officers and attorneys were also asked which technical violations the judge considers most serious in their court. The top three responses—absconding, use/possess/distribute controlled substances, and sex offender conditions—have been retained as scoring factors on the proposed guidelines.

The connection between the stakeholder survey responses and the modifications to the guidelines offers evidence that the proposed changes reflect the input of the users in what was added, removed, amended, and preserved in the scoring factors.

PROCEDURAL ISSUES AND VARYING JUDICIAL PHILOSOPHIES

During the course of the study, the Commission identified four key procedural challenges in revocation sentencing: timeliness of guidelines submissions, good behavior violations processed as probation violations, judicial access to case information, and inconsistent policies on reporting probation violations. In addition to these procedural concerns, the Commission noted substantial variation in revocation sentencing outcomes that appear to reflect varying judicial sentencing philosophies.

Timeliness of Guidelines submissions is important to ensure that the guidelines accurately capture all aspects of the probationer's violation behavior. Commission policy requires preparers to submit the PVGs no earlier than 30 days prior to the revocation hearing. If guidelines are submitted more than 30 days prior to the hearing, additional violation behaviors by the probationer may not be reported on the SRR and included in the guidelines scoring. Moreover, if new charges are pending, these charges may either a) be reported as new law violations even if the defendant is never found guilty or b) result in new convictions which are never recorded as Condition 1 probation violations on the guidelines. The Commission will emphasize the 30-day submission window in guidelines training seminars and the PVG instructions in order to improve submission timeliness. Additionally, the SWIFT electronic guidelines system has been configured to only allow Probation Violation Guidelines to be prepared for cases that have been scheduled on the Court docket, so preparers are not able to complete the Guidelines before the hearing is scheduled.

Good Behavior Violations are sometimes pursued as probation violations by Commonwealth's attorneys. When this approach is taken, the probation officer is not involved, and revocation hearings take place without the preparation of the Major Violation Report (MVR) to inform judges of violation behaviors and to provide the necessary information for the accurate completion of the PVGs worksheets. For example, the Commonwealth's attorneys may not be aware of all of the violation behavior that is known by the probation officer. To resolve this, the Commission recommends that the PVGs only apply if prepared by a probation officer or based on an MVR. Otherwise, policy would require the Commonwealth's attorney to proceed with a Good Behavior violation, without sentencing guidelines. Commonwealth's attorneys would be required to complete a recent criminal history check outlining any new convictions for offenses that occurred since the individual's last court date for the offense for which he/she is on probation.

Judicial Access to Information presents a consistency issue when some revocation cases have more detailed case documentation than others. Several decision points such as length of time absconded, treatment programs attempted or completed, and specific sex offender conditions violated have been identified by judges as important in sentencing, but are not readily available in all MVRs, SRRs, etc. Commission staff, when reviewing the MVRs for the probationers in the study sample, noted the lack of consistency in MVRs prepared in probation districts across the Commonwealth and even within the same probation office. To address this, the Commission recommends adding new documentation fields to the PVG worksheets and SRRs (see “SRR and Worksheet Input Field Modifications” section) to ensure judicial access to important case information is standardized statewide. To ensure judges have access to recent criminal history, these fields will include conviction information for any new convictions where the offense occurred since the individual’s last court date for the current probation term, including space for two convictions on the worksheets and a continuation form with ample room to list any additional convictions.

Inconsistent Policies for reporting violations occurs when different probation offices and officers have different standards on determining when, and which, violations should be handled with in-house sanctions versus returning the probationer to court for the violations. In addition, the Commission observed differences in case documentation provided by probation officers to the court. In feedback provided during the study’s focus group meeting, probation officers recommended that the Commission reach out to probation chiefs and the Department of Corrections to address such local policy issues.

Judicial philosophy, while not necessarily a procedural issue, is an influential factor in revocation sentencing outcomes. Identical case circumstances on factors such as drug use, employment, the nature of new law violations, and other details may be considered differently by judges during sentencing. This may reduce consistency and predictability in sentencing outcomes for probation violations.

SRR AND WORKSHEET INPUT FIELD MODIFICATIONS

The Commission has revised the Sentencing Revocation Report (SRR) to include several new fields that will standardize the information provided to the judge for each revocation hearing. Beginning July 1, 2021, the SRR cover sheet will include fields for:

- Use of treatment programs, sanctions, and other alternatives based on the most commonly utilized programs. Checkboxes are included to indicate the status of each program or sanction (completed/enrolled, not completed, or ineligible);
- The specific sex offender condition(s) violated based on the Department of Corrections alphabetic special instructions code;
- Pre-hearing status, including release and date ranges for pre-hearing confinement; and
- A judicially determined guidelines modification factor for “good rehabilitation potential”.

The Commission has also added documentation fields to the PVG worksheets. These modifications include:

- The amount of revocable time available for the violation (this field was moved from the SRR to the guidelines worksheet and must be determined in advance of the revocation hearing);
- The most serious offense for which the individual is on probation and the type of disposition originally ordered by the court;
- Interstate Compact Offender Tracking System (ICOTS) status and if applicable, current supervising state;
- Confinement and sentencing dates, Virginia Crime Code, sentencing status, locality, and effective sentence for any new convictions; and
- Sum of effective sentences for all new convictions.

See Figure 49 for the proposed SRR cover sheet (pages 66 and 67) and Figure 50 for the proposed PVG worksheets (pages 68 and 69). The labeling of the fields on the SRR, worksheets, and corresponding instructions are subject to change pending stakeholder feedback during the proposed implementation process. The factors on the guidelines worksheets will not change, but the Commission will continue to improve labeling and completion instructions that will improve understanding of the factors and support accurate scoring.

IMPLEMENTATION PLAN

The Commission recommends a two-year implementation. Through February 2021, the Commission will focus on refining worksheets and instructions to clearly identify factors and scoring rules. This will involve continued collaboration with stakeholders (guidelines preparers) to make sure all documentation is concise and clear for standardized use. Commission staff will conduct test scoring for a sample of revocation cases to identify any lingering issues with labels, wording, and instructions. Beginning in May 2021, Commission training staff will offer statewide training to guidelines preparers on the new worksheets and the Commission will send announcements to stakeholders regarding the upcoming implementation of the SRR and PVGS. At the start of fiscal year 2022 (July 1, 2021), the Commission will begin statewide implementation of the PVGs (Phase I). Over the course of FY2022, the Commission will monitor concurrence with the new PVG recommendations, listen to feedback from stakeholders, and examine options for refinements to improve the PVGs. Based on evaluation during Phase I, the Commission will propose any necessary refinements to the worksheets in the form of recommendations to be included in the Commission's 2022 *Annual Report* (due December 1, 2022). If the recommendations are accepted by the General Assembly, the revisions will take effect on July 1, 2023, representing Phase II of implementation.


CONCLUSION

This chapter presents the findings from the Commission's multi-year study to revise the Probation Violation Guidelines. The Commission began the project by administering two surveys, one to judges and one to other criminal justice stakeholders, to gather information from these groups regarding factors that affect sentencing practices in probation violation cases, and how revisions to the guidelines could lead to better and more consistent sentencing decisions. The Commission then utilized a large random sample of probation violation cases and obtained data on these cases from a variety of criminal justice sources. In addition, Commission staff reviewed Major Violation Reports for the sample cases and coded the information from these reports onto a supplemental data collection form. Based on an exhaustive analysis of these data, the Commission concluded that the newly-developed PVG models would serve as an improvement to the ones currently in use across the Commonwealth. Thus, the Commission has developed a detailed recommendation, with an implementation plan, to revise the PVG. The Commission's formal recommendation is contained in the chapter of this report entitled Recommendations of the Commission (see Recommendation 1). Per § 17.1-806 of the *Code of Virginia*, any modifications to the sentencing guidelines adopted by the Commission and contained in its annual report shall, unless otherwise provided by law, become effective on the following July 1.

References

- Jordan, K. L. (2014). Juvenile status and criminal sentencing: Does it matter in the adult system?. *Youth Violence and Juvenile Justice*, 12(4), 315-331.
- Kurlychek, M. C., & Johnson, B. D. (2004). The juvenile penalty: A comparison of juvenile and young adult sentencing outcomes in criminal court. *Criminology*, 42(2), 485-515.
- Johnson, B. D., & Kurlychek, M. C. (2012). Transferred juveniles in the era of sentencing guidelines: Examining judicial departures for juvenile offenders in adult criminal court. *Criminology*, 50(2), 525-564.
- Jordan, K. L. (2012). Juvenile transfer and recidivism: A propensity score matching approach. *Journal of Crime and Justice*, 35(1), 53-67.

Figure 49
Proposed Probation Violation Guidelines (PVGs)



Sentencing Revocation Report- Felony Supervision/Good Behavior/Suspended Sentence Violations

This report is not completed for probationers on supervision, etc.

◆ **OFFENDER** _____

First: _____ Middle: _____ Last: _____ Suffix: _____

Date of Birth: _____ Social Security Number: _____ SID/CCRE: _____ CORIS Offender ID: _____

◆ **COURT** _____

Judicial Circuit: _____ City/County: _____ FIPS Code: _____

◆ **TYPE OF REVOCATION** _____

(Complete SRR and Guidelines): State Supervised Probation
(Complete SRR only, guidelines do not apply): Local Probation Good Behavior Suspended Sentence CCAP
(NOTE: This form is not completed for First Offender Violations, Deferred Finding Violations or Parole Violations)

◆ **CONDITIONS CITED IN VIOLATION BY PROBATION/PAROLE OFFICER** *(check all that apply)*

- 1. Fail to obey all Federal, State, and local laws.
- 2. Fail to report any arrests within 3 days to PO.
- 3. Fail to maintain employment or to report changes.
- 4. Fail to report as instructed
- 5. Fail to allow probation officer to visit home or job.
- 6. Fail to follow instructions, be truthful, and cooperative.
- 7. Use alcoholic beverages
- 8. Use, possess, distribute controlled substances or paraphernalia
- 9. Use, own, possess, transport or carry firearm
- 10. Change residence or leave Virginia without permission
- 11. Abscond from supervision
- Fail to follow special conditions (specify) _____
- Special Sex Offender Conditions (Enter Letter for Special Sex Offender Condition(s) Violated: _____)

◆ **TREATMENT, SANCTIONS, EDUCATIONAL PROGRAMS & ALTERNATIVES UTILIZED**

	Completed/ Enrolled	Not Completed	Ineligible
Anger management	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CCAP	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Community Service	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Employment Skills Program	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gang Supervision	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Incarceration - jail or prison	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Increase in supervision level	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mental health counseling	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Parenting class	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Recidivist Prevention Program	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Reprimand	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Salvation Army Program	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sex offender treatment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Substance Abuse Program, Jail/DOC	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Substance Abuse treatment, inpatient	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Substance Abuse treatment, outpatient	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Substance Abuse treatment: AA or NA	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Substance Abuse increased in drug screens	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Thinking for a Change	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Voice Verification Biometrics Monitoring	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

◆ **PRETRIAL STATUS RELEASE** :(For the judge's information only. There is no indication that the times served will be applied to this case) Secure Bond Unsecured Bond Own Recognizance Third Party Release N/A

◆ **PRETRIAL CONFINEMENT:** (Enter Dates Confined for Current Violation) Yes No
 Confined Since Arrest for violation on ___/___/___
 Dates Confined ___/___/___ to ___/___/___ Dates Confined ___/___/___ to ___/___/___

◆ **VIOLATION GUIDELINES RECOMMENDATION** _____

RECOMMENDATION RANGE Time Served OR to

Years
Months
Days
Years
Months
Days

Recommendation modified by judge because of the defendant's good rehabilitation potential.
The low end is time served or zero additional days)



Final Decision/Disposition

To be completed by the sentencing judge or judge's designee.

◆ DECISION OF THE COURT _____

- Found in Violation as Cited
- Found in Violation as Cited, Except for Conditions Number(s) _____
- Found in Violation of Conditions Not Cited (Enter Conditions Number(s) _____)
- Found in Violation of good behavior, suspended sentence, felony local probation
- Taken Under Advisement
- Not in Violation

◆ SENTENCE FOR REVOCATION _____

- Court Finds that the defendant is a good candidate for rehabilitation (The low end of the guidelines is set to time served or zero)

Amount of Time Imposed..... Life +

--	--	--

--	--

--	--	--

Amount of Time to Serve for this Violation (total effective sentence).. Life +

--	--	--

--	--

--	--	--

Sentenced to Time Served

New/Revised probation/Supervised Period

- Continued on same period of probation supervision (not extended)
- Placed on a probation supervision for a new period of..... Life +

--	--	--

--	--

--	--	--
- Released from supervised probation
- New conditions of probation _____
- Continued on same conditions

Other Sentencing Programs (check all that apply)

- Day Reporting
- Electronic Monitoring
- Intensive Probation
- Substance Abuse Treatment
- § 18.2-251/§ 18.2-258.1
- Drug Court
- Community-Based Program _____
- CCAP Detention/Diversion Center Incarceration, 22-48 weeks
- Youthful Offender
- DJJ Commitment Indeterminate Determinate
- Other _____

Office Use Only					

◆ REASON FOR DEPARTURE FROM GUIDELINES | | | | |--|--|--| | | | | |--|--|--| _____

◆ DATE OF REVOCATION DECISION

	/		/	
Month		Day		Year

_____ *Judge's Signature*

Figure 50
Proposed Probation Violation Guidelines (PVGs)

Probation Violation Worksheet ~~ONE~~ **ONE**

Offender Name: _____

Technical or Condition 1 based on new misdemeanor conviction

Base Guidelines on the Current Primary Offense: _____ Original Sentencing was Incarceration/CCAP

ICOTS Case for Supervision of Current Primary Transferred to: State Abv: _____

Amount of Total Revocable Time at Hearing Sentencing: Life +

Years	Months	Days

◆ Prior Revocations in this Court Only

Original Sentencing Date _____ Start of Current Supervision Period _____

◆ Number of Revocations for Current Offense in this Court Only

Current Revocation Only	2	
One Prior Revocation	10	
Two or More Prior Revocations	22	

0		
---	--	--

◆ Prior Felony Conviction(s) for Offenses Between Original Sentencing Date and Start of Current Supervision

If YES, add 13 →

0		
---	--	--

◆ Prior Felony Conviction(s) Before Original Sentencing Date in this Court Only

No Prior Felony Convictions in this Court <u>OR</u> Prior Felony Convictions and No Related Prior Revocations	0	
Prior Felony Conviction(s) in this Court & One Related Prior Revocation	18	
Prior Felony Conviction(s) in this Court & Two or More Related Prior Revocations	19	

0		
---	--	--

◆ Condition 1 Violation: New Misdemeanor Conviction(s)

New Misdemeanor Conviction is Similar Behavior to Current Offense (Refer to Appendix 4)	9	
Any Other New Misdemeanor Convictions	1	

0	0	
---	---	--

Enter VCC _____ Sent./Conv. Date _____ FIPS ____ Eff Sent. __Y__M__D Pending Sentencing
 Enter VCC _____ Sent./Conv. Date _____ FIPS ____ Eff Sent. __Y__M__D Pending Sentencing

Sum of Total Effective Sentence for New Convictions __Y__M__D

◆ Condition 4 Violation: Fail to Report as Instructed

If YES, add 2 →

0		
---	--	--

◆ Condition 8 Violation: Drug Violation

If YES, add 7 →

0		
---	--	--

◆ Condition 11 Violation: Abscond

If YES, add 10 →

--	--	--

Last Date whereabouts were known ___/___/___ Date arrested for this violation ___/___/___

◆ Registered Sex Offender

If YES, add 22 →

--	--	--

Recommendation Score

Go to Cover sheet and fill out the violation guidelines recommendation range.

Recommendation Table

Score	Guidelines Sentence
<input type="checkbox"/> Under 19.....	Time served to 6 months
<input type="checkbox"/> 19 to 33.....	3 months to 1 year
<input type="checkbox"/> 34 to 43.....	1 year to 1 year 6 months
<input type="checkbox"/> 44 or more.....	1 year to 4 years

--	--	--

Probation Violation Worksheet ~~1~~ TWO

Offender Name: _____

Condition 1 based on new felony conviction

Base Guidelines on the Current Primary Offense: _____ Original Sentencing was Incarceration/CCAP

ICOTS Case for Supervision of Current Primary Transferred to: State Abv: _____

Amount of Total Revocable Time at Hearing Sentencing: Life +

Years Months Days

◆ Prior Revocations in this Court Only

Original Sentencing Date _____ Start of Current Supervision Period _____

◆ Prior Revocations for Current Offense

One or more Prior Revocation.....10

Condition 1 Violation: New Felony Conviction(s)

Enter VCC _____ Sent./Conv. Date _____ FIPS ____ Eff Sent. __Y __M __D Pending Sentencing

Enter VCC _____ Sent./Conv. Date _____ FIPS ____ Eff Sent. __Y __M __D Pending Sentencing

◆ Number of New Person Felony Convictions X 20 →

◆ Number of New Non-Person Felony Convictions X 2 →

◆ New Felony or Misdemeanor Conviction is Similar Behavior to Current Offense (Refer to Appendix 4) _____ If YES, add 7 →

Sum of Total Effective Sentence for New Convictions __Y __M __D

Recommendation Score →

Recommendation Table

Score	Guidelines Sentence
<input type="checkbox"/> 1 to 7.....	Time served to 1 year
<input type="checkbox"/> 8 to 15.....	6 months to 1 year 6 months
<input type="checkbox"/> 16 to 22.....	8 months to 2 years
<input type="checkbox"/> 23 or more.....	15 months to 4 years

Go to Cover sheet and fill out the violation guidelines recommendation range.

PROBATION VIOLATION GUIDELINES STUDY TECHNICAL SUPPLEMENT

This supplement serves to provide additional information on quantitative methods, results, and considerations of Probation Violation Guidelines Study. Sections cover the chronological progression of the study through sample selection, matching offenders to external data sources, details of supplemental data collection and narrative coding, factor selection for regression models, model specification and regression results, and finally the sample rescoring scenario where guidelines recommendation ranges were developed based on worksheet scores.

SAMPLE SELECTION AND FINAL SAMPLE

The study sample was initially selected via stratified random sampling from the Commission's Sentencing Revocation Report (SRR) data system based on the type of violation identified on the SRR form. Random samples of 2,000 cases each were drawn from a population of technical violation cases and a separate population of new law violation cases (identified as Condition 1 violators) sentenced during fiscal years (FY) 2014 through FY2018. The sampling was carried out using randomly selected seed numbers within the SPSS statistical package. Subsequently, 590 cases (14.7% of the total sample) were dropped from the study due to invalid supervision dates, lack of a Major Violation Report (MVR), an unclear Condition 1 status, wrong violation type (for example, a good behavior violation instead of a probation violation), or other issues.

Over the course of analysis, several insights led the Commission to restructure the initial sample. Commission staff discovered that it was often difficult to verify the convictions underlying an offender's Condition 1 status. Probation officer feedback noted that sometimes the SRR is submitted indicating the individual had a new law violation while the charge at issue is still pending in the court; such SRR designations are invalid if said charges do not result in conviction by the time of the revocation hearing. Therefore, it was problematic to retain cases with unverified convictions in the "New Law Violation/Condition 1" sample, and the decision was made to count these cases as technical violations for study purposes. Furthermore, regression analysis revealed that new law violators with only misdemeanor convictions tended to be more like technical violators than felony new law violators with respect to their case characteristics (see the Results section for further discussion on this pattern). Finally, the Commission made the decision to count offenders whose only new felonies were other supervision violations in the technical/misdemeanor group to avoid over-penalizing supervision violations. Therefore, the best approach for further analysis was to form two scoring groups – one applicable to violators with new felony convictions and the other specific to violators with technical violations or new misdemeanor convictions. The final set of cases for analysis consisted of 3,410 probation violation cases: 695 with new felony convictions (20.4%) and 2,715 with technical and new misdemeanor convictions (79.6%). The worksheet scoring factors identified in the statistical analysis were then finalized under the two-group model based on a second round of analyses.

MATCHING OFFENDERS TO DATA SOURCES

One of the more challenging aspects of the study involved matching offenders to their corresponding records in the other criminal justice data sources. Although the Commission drew the study samples from its own databases, that information needed to be merged with the appropriate data from several other sources. Department of Corrections (DOC) records (including Major Violation Reports (MVR) submitted to the court), Local Inmate Data System (LIDS) jail records, Virginia State Police (VSP) criminal history records, and Court Case Management System (CMS) records were also used for the analyses. All data sources were combined to form a main data-hub for the analyses. Each source contained its own unique case identifying information; however, there was no identification variable common to all data sources. Therefore, matching cases across the various data sources was based on key identification variables such as offender or case numbers, first and last name, birthdate, social security number (SSN), jurisdiction, violation date, and probation start date. The combined main dataset focuses on felony probation violation cases (both new law and technical violators) with revocation dates from FY2014 through FY2018. This resulted in the most comprehensive dataset on probation violations and revocation sentences ever compiled in Virginia.

SUPPLEMENTAL DATA COLLECTION AND NARRATIVE CODING

For most factors, the Commission focused its interest on the probationer's current supervision period (i.e., the time period between the individual's most recent court date involving the original felony offense or violation arising from that felony and the revocation date for the violation captured in the study). Any pre/post values for these variables were trimmed from the data. Most external data sources involved in this analysis consisted of variables which were essentially useable as-is after utilizing the matching strategy outlined above, with standard recoding and data cleaning checks. Two key sources which involved additional preparation were the MVR coded instruments and the CMS conviction data.

MAJOR VIOLATION REPORT CODING

The MVRs are submitted in narrative/text format and required a coding process to standardize content into quantitative variables. Commission staff developed a 43-item instrument to code each report narrative into workable study data, redrafting the instrument and refining data definitions through several rounds of test coding. Staff also developed detailed coding instructions for each data point to ensure accuracy and consistency across coders. "Problem" cases requiring further research were flagged and recoded after corresponding court records and relevant dates were reviewed.

Many offenders had multiple MVRs spanning the FY2014-2018 study window, so revocation dates were merged into the coding forms from the Commission's corresponding Probation Violation Guidelines (PVG) data to ensure the correct violation record was selected for each probationer. The MVR for the study violation served as the narrative data source for coding, and MVRs occurring before and after the study violation were preserved and noted in the coding instrument. Original offenses, new convictions, sanctions, and probation end dates were also merged into coding forms from the PVG data for reference. Supervision start dates are complicated by the fact that some offenders have multiple revocation hearings for the same offense which originally instated their probation; these hearings may or may not result in conviction and revocation. For cases involving multiple revocation hearings within the DOC supervision start date and the SRR study revocation date, the Commission defined supervision start based on the most recent revocation hearing—regardless of the hearing's outcome—between the DOC start and SRR end dates. The Commission's assumption for this date definition was that each hearing serves as an opportunity for the judge to consider and make revocation decisions on the most recent case circumstances of the supervision violation(s) at hand.

During the coding process, staff discovered some discrepancies in supervision start and end (revocation) dates. These discrepancies occurred in some cases where a continued revocation hearing was inconsistently noted across data sources, where court disposition dates did not match up with DOC dates, where a non-revocation event (good behavior violation, other new law conviction, etc.) was falsely identified as the supervision case or, in some cases, apparent data entry errors. For cases involving such date conflicts, DOC supervision end dates were selected as definitive end dates. Another obstacle staff encountered in the coding process was inconsistency in probation officer reporting conventions. For instance, in-house sanctions not constituting the current major violation were sometimes mentioned in MVRs, while other times the reports gave reference to treatment programs or continued violation without providing detail on the violations involved. Some reports gave precise dates and counts for drug screens, while others referenced only positive screens or broadly referenced the positive drug screens with terms such as "several." This process revealed that the circumstances of probation violations are not uniformly reported to judges across the state.

COURT CASE MANAGEMENT SYSTEM (CMS) DATA

Court conviction records required extensive cleaning and preparation prior to using the data in the analysis. Standard VCSC coding was used to clean the data or to update missing or incorrect conviction information from the source data, identify attempted and conspired offenses, and to assign statutory maximum sentence lengths to convictions. All conviction records in the CMS data are structured on a per charge level, but the Commission often uses sentencing events as the primary unit of analysis. Aggregation techniques were used to collapse convictions into sentencing events based on matching disposition dates and sentencing courts. Both conviction and sentencing-event counts were used in the analysis. To examine the influence of convictions on sentencing given more defined circumstances, several aggregated conviction groups were constructed based on offense type and relative time period. Offense types for felonies were grouped by crime type (person, drug, property, supervision, and other). Misdemeanors were divided into traffic (based on 17 traffic-related Virginia Crime Code prefixes such as “DUI”, “HIT”, and “REC”) or general criminal offense types. A “serious misdemeanor” variable (based on Virginia Crime Code prefixes of “PRT,” “STK,” “SEX,” or “RAP”) within the general criminal convictions was also developed to test if certain misdemeanor convictions held more influence in revocation sentencing. Offender counts for traffic infractions were also aggregated from CMS data.

Time periods for convictions were based on the offense date and disposition date of each conviction. If the conviction disposition date occurred before the study period supervision start date, the conviction was categorized as prior record. To consider the impact of recent prior record for offenders with prior revocations under the same original offense, an additional prior record variable was created to identify convictions with a) an offense date after original sentencing and but prior to the start of the study supervision period and b) a disposition date prior to the study supervision start. If the offense and disposition dates for the conviction both occurred during the study supervision period, the conviction was grouped as a “new law violation” and considered eligible for Condition 1 supervision violation. If the offense date occurred prior to the supervision start but the disposition date was during the study supervision period, the conviction was placed in a “staggered” group on the grounds that the actual criminal behavior was prior to the supervision start date. Convictions with disposition dates after the study supervision end date were excluded from the analysis, even if the offense date occurred within the study supervision period. The same time period structure was used for all count variables constructed as sentencing events. Summary variables were then constructed to characterize an offender’s behavior during the study supervision period (for example, sum of person offense type felony convictions within the study supervision period).

Following data collection, cleaning, and preparation, all resulting study variables were consolidated into a master file for analysis.

FACTOR SELECTION

The Commission developed and utilized several variables from the available data sources. As discussed in the main body of this chapter, the Commission conducted rigorous statistical analysis to thoroughly test variables for inclusion in the empirical model. Through this process, the Commission identified the set of scoring factors and control variables to be included in the final models for technical/misdemeanor violators and felony new law violators. The various model specifications reveal that these variables consistently have significant effects on revocation sentencing outcomes. Table A provides summary statistics for the variables selected for the final models.

While most independent variables are treated as binary and constructed in a straightforward and simple manner, it is necessary to explain how the Commission developed *Adjttltime* as the dependent variable for the final model. The Commission initially used the *ttltime* variable in the SRR data, which records the actual length of the effective sentence for the revocation. After that, the Commission utilized LIDS data to investigate how many offenders in the sample data had served some time in jail before the final revocation hearing. The Commission found that, except for those with missing information in LIDS, almost every offender (about 97%) served some time in jail before the revocation sentencing. Given this information, the Commission added the jail time (in months) for the offenders with a value of zero for *ttltime* who had nonetheless served time in jail waiting for the revocation hearing (or who were bonded out of jail and came back prior to the revocation sentencing). This adjustment to the dependent variable ensured the unbiased and consistent effects of the scoring factors on sentencing outcomes by incorporating the possibility that judges may have given “zero” as a sentence for cases where they considered time previously served to be a sufficient sentence for the supervision violation(s).

Table A: Descriptive Statistics for Variables

Variables	Variable Description	Mean	SD ¹	Min	Max	N
Dependent Variables						
Adjttltime	Effective Sentence for an offender (adjusted to add jail-time before RV hearing) in month	11.24	18.34	0	407	3,819
Independent Variables						
Condition 1 Felony Violators						
PerTypeNewFel	Person type new felony (Count)	0.17	0.55	0	7	937
NonPerTypeNewFel	Non-person type new felony (Count)	1.34	2.35	0	32	937
PriorStudyRev	Whether an offender has one or more prior “home court ² ” revocation under the current offense (1=Yes, 0=No)	0.19	0.39	0	1	1,007
BehaviorSameNewLaw	Same behavior as the original offense for any new conviction -based on VCC prefix (1=Yes, 0=No)	0.44	0.50	0	1	1,007
Technical and misdemeanor new law violators						
PriorStudyRevGrp1	Whether an offender has one prior “home court” revocation under the current offense (1=Yes, 0=No)	0.20	0.40	0	1	2,719
PriorStudyRevGrp2	Whether an offender has two or more prior “home court” revocation under the current offense (1=Yes, 0=No)	0.06	0.24	0	1	2,719
HomeCourtPriorGrp1	Whether an offender has one “home court” revocation prior to the current offense (1=Yes, 0=No)	0.11	0.32	0	1	2,719
HomeCourtPriorGrp2	Whether an offender has two or more “home court” revocations prior to the current offense(1=Yes, 0=No)	0.05	0.22	0	1	2,719
PriorFelPreStudy	Whether an offender has one or more non-supervision felony convictions after original sentencing, but prior to study supervision(1=Yes, 0=No)	0.13	0.33	0	1	2,719
BehaviorSameNewLaw	New Misdemeanor Same behavior as the original offense for any new conviction -based on VCC prefix (1=Yes, 0=No)	0.08	0.28	0	1	2,719
SexOffender	Offender is a registered sex offender (1=Yes, 0=No)	0.06	0.23	0	1	2,719
Drug	Whether an offender used, possessed, or distributed controlled substances or paraphernalia based on probation officer citation (1=Yes, 0=No)	0.53	0.50	0	1	2,715
Abscond	Absconded from supervision based on probation officer citation (1=Yes, 0=No)	0.26	0.44	0	1	2,715
Controls						
Male	Offender is male (1=Yes, 0=No)	0.78	0.42	0	1	3,819
AttType	Whether a private attorney was court appointed (1=Yes, 0=No)	0.37	0.48	0	1	3,819
FY*	Fiscal Year dummy (Fiscal Year 2014-2018)					
Circuit*	Circuit Court Dummy (1-31)					

¹ SD reflects Standard Deviation from the mean.

² “Home Court” revocations are those in the same jurisdiction as the original offense for which the offender is on probation.

Sources: LIDS, MVR, SRR, CMS, and VSP data sets.

*FY and Circuit dummies are categorical variables utilized to control the time and jurisdictional influence on the model.

There are 31 circuits, and the study years cover fiscal 2014-2018.

MODEL SPECIFICATION

The Commission developed the general empirical framework to examine the associations between the possible scoring factors and the dependent variable. The empirical analysis employed the Ordinary Least Squares (OLS) multivariate regression technique. OLS regression is a very common analytical technique used to quantify the association between explanatory and dependent variables. This type of method is appropriate since the dependent variable is the length of the sentence while explanatory and control factors are constructed as binary or continuous. There are several other advantages of using the OLS method. For example, the OLS only requires a simple interpretation for the relationship between the explanatory and dependent variables as the estimated coefficient value directly reflects the magnitude of the change in the dependent variable with a unit change of the explanatory (independent) variable. Under classical assumptions³, the OLS produces the best unbiased linear estimations of the predictive power of the regression model (Wooldridge 2016; Angrist and Pischke 2008). Moreover, the multivariate OLS regression can address the biased estimations of the predictive factors by including controls for the set of extralegal offender characteristics (gender, age, etc.) that may confound the relationship between the predictors and dependent variables.

The general model specification for OLS multivariate regression is as follows:

$$\text{Adjttltime}_{itc} = f(\beta * E_{itc} + \gamma * C_{itc} + \theta_t + \mu_c + \varepsilon_{itc})$$

In this basic specification, E_{itc} is the vector of the predictive scoring factors of interest. For the felony Condition 1 violators, the predictive scoring factors will be person type new felony convictions, non-person type new felony convictions, prior “home court” revocations arising from the original offense, and the same behavior as the original offense for any new conviction (based on VCC prefix). For the technical and misdemeanor new law violators, the predictive factors will be “home court” prior revocations for the original offense, “home court” revocations prior to the original offense, sex offender status, prior felony convictions since sentencing for the original offense, absconding, new misdemeanor convictions with same behavior as current offense (based on VCC prefix), and drug violations. C_{itc} indicates the group of control variables included in the model for the accurate estimations of the effects of predictive scoring factors. They are attorney type (whether a private attorney was court appointed) and sex of offender. Adjttltime indicates the adjusted length of the revocation sentencing in months.

³ There are several assumptions for OLS regression. First, all parameters in the regression model reflects the linear pattern. Second, the population mean of errors term is zero. Third, all independent variables are not correlated with error term. Fourth, the errors terms are not correlated with each other. Fifth, the error term has a constant variance (homoscedasticity). Lastly, no independent variable is the perfect linear function of other independent variables (no perfect multicollinearity).

Within this framework, other potential factors that would confound the statistical results are inserted as controls. First, this equation also controls the fiscal year and circuit court fixed effects. The fiscal year fixed effect generally implies that offender revocation patterns vary over time (fiscal year) within jurisdictions. Moreover, circuit-court fixed effect means that revocation sentencing patterns vary across circuit courts in the Commonwealth because of the time-invariant sentencing practices within each jurisdiction. Ignoring these effects would lead to the biased estimations of the scoring factors in the empirical framework. For this reason, the final model equation also includes θ and μ (fiscal year and circuit court fixed effects).

In addition, the equation also utilizes clustered standard errors for the estimations of the model. It is important to note that offender-level observations are nested within each jurisdiction. Because of this, the underlying assumption of the independence of each individual observation of the OLS regression analysis is likely to be violated. If this is not corrected, the coefficient estimation of each scoring factor is likely to be biased with underestimated standard errors. Therefore, this regression equation also incorporates clustered standard errors to test the statistical significance of the coefficient estimations of scoring factors⁴. ε is the error term that also implicitly reflects the clustered standard errors⁵.

Based on this baseline model equation, the different model specifications were developed for technical/misdemeanor violators and felony new law violators.

Another useful strategy for analysis involved building the regression models in a stepwise or sequential fashion. In this approach, important factors may be entered into the predictive model one at a time, until no more potential factors satisfy the statistical criteria for entry (forward selection). Alternatively, all factors may be entered into the predictive model initially, and then factors are deleted from the model one by one, until all remaining factors satisfy the statistical criteria for remaining in the model (backward selection). Control variables (in this study, those representing the effects of circuit, fiscal year, gender, and type of attorney) may be forced into all models considered, to adjust for the effects of extralegal factors on sentencing outcomes. Most major statistical packages (Stata, SPSS, SAS, etc.) contain routines for stepwise model fitting.

⁴ The clustered standard error is based on Huber-White correction by reflecting any correlation among the observations within the clusters and heteroskedasticity in the error term (non-uniform error variance distribution). However, it assumes that there is no correlation among observations across clusters. More information about clustered standard errors can be found in the article written by Primo et al., (2007).

⁵ The Commission utilized Stata's `vce(cluster, clustvar)` option in the regression model to obtain clustered-standard errors for the statistical analysis

One advantage of using such an approach is that it allows an analyst to investigate the relative importance of the factors; for instance, when using forward selection, the most important factors tend to enter the models first, whereas less important factors would enter the models late, or not at all. In the Commission's analyses, factors based on the number of prior probation revocations or the number of felony new law convictions tended to enter the regression models earlier than factors based on conditions cited for the current violation. Accordingly, these factors were given greater weight when calculating the proposed worksheet scores.

RESULTS

Based on the general model specification discussed earlier, the Commission performed the regression analyses for the groups of technical/misdemeanor violators and felony new law violators. Tables B & C provide the statistical results of the regression analyses. Note that a significance level of $p < 0.05$ was used as the inclusion threshold for independent variables, with two exceptions. The factor for "Same Behavior" is marginally significant in the Technical/Misdemeanor model at $p = 0.067$, but this result is complicated by the fact that the model is mostly composed of technical violators and further diluted by probationers for whom the type of new conviction (felony versus misdemeanor) was unclear in available records. Factoring in this marginality, significance of the same variable in the new felony group, and face validity of the factor given stakeholder feedback, the "Same Behavior" factor was retained in this group. Second, the "Attorney Type" control persisted at $p < 0.05$ in the majority of models until sample finalization, so this variable was retained as a conservative measure to avoid omitted variable bias.

Note that the Commission discovered that the sample size for the New Felony model (Table C) includes 242 offenders whose only new felony found in the court records data was a supervision violation. These offenders present an issue in analysis, because their SRR noted a new law violation; however, supervision violations themselves are not sufficient for a "Condition 1" violation. The Commission confirmed that the difference in results when removing these offenders from the analysis was marginal and opted to utilize results from the larger regression sample and monitor scoring outcomes over the course of the implementation plan.

The relative coefficient estimates on scoring factor variables were used to construct worksheet scores for each variable. The lowest coefficient for each model (drug violation in technical/misdemeanor model, and non-person new felonies in new felony model) was used as a reference to set a baseline score value, and every other scoring factor was given a corresponding score based on the ratio between the factor's coefficient and the lowest coefficient.

Table B: Regression Results: Violators with technical violations or new misdemeanor convictions

Dependent Variable: <i>Adjttltime</i>						
Independent Variables	Coefficient	Robust Std. Error	t	p> t	95% Conf. Interval	
PriorStudyRevGrp1	2.39	0.49	4.82	0.000	1.38	3.40
PriorStudyRevGrp2	5.48	1.11	4.93	0.000	3.21	7.75
HomeCourtPriorGrp1	4.37	1.33	3.28	0.003	1.65	7.10
HomeCourtPriorGrp2	4.55	1.38	3.30	0.003	1.74	7.37
PriorFelPreStudy	3.12	0.91	3.42	0.002	1.25	4.98
BehaviorSameNewLaw	2.28	1.19	0.07	0.067	-0.17	4.73
SexOffender	5.48	1.40	3.92	0.000	2.63	8.33
Drug	1.72	0.46	3.76	0.001	0.79	2.66
Abscond	2.48	0.52	4.73	0.000	1.41	3.55
Male	2.04	0.59	3.42	0.002	0.83	3.25
AttType	1.03	0.55	1.88	0.070	-0.09	2.15
Constant	7.47	0.83	8.99	0.000	5.77	9.16

R-squared: 0.08

Adjusted R-squared: 0.06

Observations: 2,715

The fixed effects were estimated for each of FY and Circuit dummy variables, but they are omitted from the result table to avoid

Table C: Regression Results: Violators with new felony convictions

Dependent Variable: <i>Adjttltime</i>						
Independent Variables	Coefficient	Robust Std. Error	t	p> t	95% Conf. Interval	
PerTypeNewFel	12.06	4.35	2.77	0.009	3.17	20.95
NonPerTypeNewFel	1.22	0.35	3.53	0.001	0.51	1.93
PriorStudyRev	5.94	2.87	2.07	0.047	0.08	11.81
BehaviorSameNewLaw	4.11	1.56	2.64	0.013	0.94	7.29
Male	6.68	1.38	4.83	0.000	3.85	9.51
Constant	10.82	2.90	3.72	0.001	4.88	16.77

R-squared: 0.15

Adjusted R-squared: 0.11

Observations: 937

The fixed effects were estimated for each of FY and Circuit dummy variables, but they are omitted from the result table to avoid complexity.

RESCORING SCENARIO AND DEVELOPMENT OF RECOMMENDATION TABLES

Once scoring weights were developed for each factor based on regression results, all cases in the study sample were “scored” on the proposed worksheets. This programming assigned scores based on the factor definitions developed for each worksheet and using values of each factor from the study dataset. This approach yielded the distribution of test scores for both the technical/misdemeanor and felony groups, and the variation of case circumstances across the sample⁶ as defined by the proposed scoring factors.

The next step was to compare actual revocation sentences in the study sample to the calculated test score distributions. This was done in order to create sentencing recommendation ranges. This first required an examination of effective sentences to get a sense for the general distribution notwithstanding proposed test scores. Revocation sentencing distributions for the sample skew right, with a mean sentence of 18.2 months for felony offenders and 9.1 months for technical/misdemeanor offenders. Medians are 12 and 6 months respectively for felony and technical/misdemeanor groups. The higher descriptive values for the felony group sentencing is expected, given similar findings in the study regression results, the intuitive understanding that judges would consider felonies more serious than technical or misdemeanor violations, and the fact that felonies have higher statutory maximum sentence lengths than misdemeanors. While the test score distributions mainly serve to align scoring ranges with sentencing ranges, they also inform the sample’s spread and overall fit to the factors composing the total score. Out of a maximum possible 104 points, the technical/misdemeanor sample has a median total score of 13 and a mean of 18.5. While there is no maximum possible score in the new felony sample due to the new felony conviction factors, the median score is 11 points, the mean is 14.0, and the highest score is 147. Note that because points are assigned via separate factors and regression models, raw scores are not comparable between the new felony and technical/misdemeanor groups.

⁶ Note that identical selection syntax was used to define the regression sample (N=3,410) and the scoring samples (N=3,414), but 4 cases were automatically excluded from the regressions due to missing values. These cases were still useable for scoring purposes.

Table D:
Technical/Misdemeanor Violators Sample Descriptives

		Variables	
		Adjusted Effective Sentence (Months)	Test Score Total
N		2,719.0	2,719.0
Mean		9.1	18.5
Median		6.0	13
Minimum		0.0	2
Maximum		216.0	84
Percentiles	10	0.4	3
	20	1.5	9
	30	3.0	10
	40	3.2	12
	50	6.0	13
	60	6.0	19
	70	12.0	24
	80	12.0	30
	90	21.0	37
	100	216.0	84

Table E:
New Felony Violators Sample Descriptives

		Variables	
		Adjusted Effective Sentence (Months)	Test Score Total
N		695.0	695.0
Mean		18.2	14.0
Median		12.0	11
Minimum		0.0	2
Maximum		407.0	147
Percentiles	10	3.0	2
	20	5.2	4
	30	6.0	9
	40	9.0	9
	50	12.0	11
	60	12.0	12
	70	18.0	17
	80	24.0	20
	90	36.0	27
	100	407.0	147

Preliminary scoring “bins” were developed based on the above ranges for test scores and sentence lengths, to test the relationship between scores and sentences. Groups roughly fitted sentencing percentiles to scoring percentiles, with adjustments made to fine tune marginal effects and to reconcile the discrete structure of worksheet scores and the more continuous structure of sentence lengths (judges can give sentences in units as low as one day). The mean and median effective sentences for each scoring bin were evaluated to confirm trends of increasing sentence lengths as test scores increase (by bin).

As shown in Table F & G, the mean revocation sentence consistently increased with increasing test scores for both technical/misdemeanor violators and new felony violators. In general, the median revocation sentence also increased with increasing test scores, although this trend was not as consistent as with the mean revocation sentence. Once this trend was confirmed, each bin was then assigned a recommendation range (shown below).

**Table F:
New Felony Violators Adjusted Revocation Sentence (Months) by Scoring Bin**

Scoring Bin Points	Mean	N	Percent of Sample	Median	Standard Deviation
Under 8	12.8	164	23.6%	9.5	16.6
8 to 15	16.3	315	45.3%	12.0	21.7
16 to 22	20.7	119	17.1%	12.0	26.6
23 or more	30.0	97	14.0%	16.2	47.5
Total	18.2	695	100%	12.0	27.2

**Table G:
Technical/Misdemeanor Violators Adjusted Revocation Sentence (Months) by Scoring Bin**

Scoring Bin Points	Mean	N	Percent of Sample	Median	Standard Deviation
Under 19	6.7	1,445	53.1%	3.0	10.8
19 to 33	10.3	915	33.7%	6.0	13.7
34 to 43	14.5	227	8.3%	12.0	19.2
44 or more	17.5	132	4.9%	12.0	19.4
Total	9.1	2,719	100.0%	6.0	13.5

Due to the variance in sentencing distributions within scoring groups and the skew of the sample, the Commission designed overlapping ranges to align recommendations with actual judicial sentencing practices. These ranges will be further examined during first-year implementation as the Commission monitors use of the revised guidelines.

Comparing proposed recommendation ranges to actual historical sentencing, the resulting overall concurrence (allowing for a 5% rounding) for the sample against study period revocation sentences was 62.9%, with 22.6% of sentences falling above the recommended maximum (aggravating) and 14.5% falling below the recommended minimum (mitigating). However, the Commission is hesitant to extrapolate this estimate to future judicial concurrence on the revised guidelines. It is plausible that some judges are natural “compliers” who aim to sentence within guidelines recommended ranges regardless of the factors which compose the recommendation, and this analysis is unable to account for any “complier” effect. The proposed adjustment for “good rehabilitation potential” (see description in the body of Chapter 3) reduces the low end of the recommended range to time served (i.e., zero) for violators whom judges deem to have good rehabilitation potential, and it is uncertain at what rate this factor might be utilized among cases that tend toward mitigation under the proposed guidelines. The right skewed sentencing distributions suggest that judges may frequently utilize this factor if rehabilitation potential is associated with the skew observed. Additionally, because the new factors are partially based on judicial survey feedback, judges may infer a higher level of qualitative “face validity” in proposed guidelines scores beyond the effect estimated by the staff’s analysis (a high sentence recommended under factors a judge agrees with may tend toward concurrence more often than the same sentence based on factors not identified as influential by judges).

This technical supplement presents additional details about the research methods employed (sample selection, data management, and statistical analysis) as part of the Commission’s Probation Violation Guidelines study. Based on the results of this study, the Commission’s recommendation for revising the Probation Violation Guidelines can be found in the Recommendations chapter of this report.

References

Angrist, J. D., & Pischke, J. S. (2008). *Mostly harmless econometrics: An empiricist’s companion*. Princeton University press.

Primo, D. M., Jacobsmeier, M. L., & Milyo, J. (2007). Estimating the impact of state policies and institutions with mixed-level data. *State Politics & Policy Quarterly*, 7(4), 446-459.

Wooldridge, J. M. (2016). *Introductory econometrics: A modern approach*. Nelson Education.

**Table H:
Technical or Condition 1 based on new
misdemeanor conviction**

Recommendation Table	
Score	Guidelines Sentence
<input type="checkbox"/> Under 19.....	Time served to 6 months
<input type="checkbox"/> 19 to 33.....	3 months to 1 year
<input type="checkbox"/> 34 to 43.....	1 year to 1 year 6 months
<input type="checkbox"/> 44 or more.....	1 year to 4 years

**Table I:
Condition 1 based on new felony
conviction**

Recommendation Table	
Score	Guidelines Sentence
<input type="checkbox"/> 1 to 7.....	Time served to 1 year
<input type="checkbox"/> 8 to 15.....	6 months to 1 year 6 months
<input type="checkbox"/> 16 to 22.....	8 months to 2 years
<input type="checkbox"/> 23 or more.....	15 months to 4 years

4

RECOMMENDATIONS

INTRODUCTION

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

Unlike many other states, Virginia's sentencing guidelines are based on analysis of actual sentencing practices and are designed to provide judges with a benchmark that represents the typical, or average, case. Recommendations for revisions to the guidelines are based on the best fit of the available data. Moreover, recommendations are designed to closely match the rate at which offenders are sentenced to prison and jail, meaning that offenders will be recommended for incarceration in approximately the same proportions as offenders who received incarceration sanctions historically.

The Commission draws on several sources of information to guide its discussions about modifications to the guidelines system. Commission staff meet with circuit court judges and Commonwealth's attorneys at various times throughout the year, and these meetings provide an important forum for input from these two groups. In addition, the Commission operates a "hotline" phone system, staffed Monday through Friday, to assist users with any questions or concerns regarding the preparation of the guidelines. While the hotline has proven to be an important resource for guidelines users, it has also been a rich source of input and feedback from criminal justice professionals around the Commonwealth. Moreover, the Commission conducts many training sessions over the course of a year and these sessions often provide information that is useful to the Commission. Finally, the Commission closely examines concurrence with the guidelines and departure patterns in order to pinpoint specific areas where the guidelines may need adjustment to better reflect current judicial thinking. The opinions of the judiciary, as expressed in the reasons they write for departing from the guidelines, are very important in directing the Commission's attention to areas that may require amendment.

On an annual basis, the Commission examines those crimes not yet covered by the guidelines. Currently, the guidelines cover approximately 95% of felony cases in Virginia's circuit courts. Over the years, the General Assembly has created new crimes and raised other offenses from misdemeanors to felonies. The Commission tracks all of the changes to the Code of Virginia in order to identify new felonies that may be added to the guidelines system in the future. The ability to create historically-based guidelines depends, in large part, on the number of cases that can be used to identify past judicial sentencing patterns. Of the felonies not currently covered by the guidelines, most do not occur frequently enough for there to be a sufficient number of cases upon which to develop historically-based guideline ranges. Through this process, however, the Commission can identify offenses and analyze data to determine if it is feasible to add particular crimes to the guidelines system.

The Commission has adopted seven recommendations this year. Each of these is described in detail on the pages that follow.

RECOMMENDATION 1

Revise the Probation Violation Guidelines based on stakeholder feedback and the results of the most recent study of sentencing outcomes in revocation cases.

ISSUE

In 2003, the General Assembly directed the Commission to develop sentencing guidelines for felony violations of probation supervision for reasons other than a new criminal conviction (often called “technical” violations). In developing these guidelines, the Commission examined historical judicial sanctioning practices in revocation hearings. Statewide use of the Probation Violation Guidelines began July 1, 2004. Since July 1, 2010, the Appropriation Act has specified that a Sentencing Revocation Report and, if applicable, the Probation Violation Guidelines, must be presented to the court and reviewed by the judge for any violation hearing conducted pursuant to § 19.2-306. While a series of amendments to the Probation Violation Guidelines have increased judicial concurrence, the concurrence rate remains relatively low. This suggests that many judges are dissatisfied with these guidelines. In 2016, the Commission approved a new study to provide the foundation needed to revise the guidelines used in revocation cases and improve the utility of the guidelines for Virginia’s judges. The Commission’s study is now complete. Based on the results of this large-scale multi-year project, the Commission has developed a recommendation to revise the Probation Violation Guidelines used in the state’s circuit courts.

DISCUSSION

In Virginia, one of the most comprehensive resources regarding violations of supervised probation, good behavior requirements, or suspended sentence is the Commission’s Sentencing Revocation Report (SRR). First implemented in 1997 with assistance from the Department of Corrections (DOC), the SRR is a simple form designed to capture the reasons for, and the outcomes of, violation hearings in Virginia’s circuit courts. It is completed for all violations of supervised probation, DOC’s Community Corrections Alternative Program (CCAP), good behavior or suspended sentence conditions, or local probation or community-based program requirements imposed as a result of a felony conviction. A probation officer (or Commonwealth’s attorney) completes the first part of the form, which includes the offender’s identifying information and checkboxes indicating the reasons why a show cause or revocation hearing has been requested. The checkboxes are based on the list of eleven conditions for community supervision established for every offender, but special supervision conditions imposed by the court also can be recorded. Figure 51 displays the standard conditions of probation supervision. Following the violation hearing, the judge completes the remainder of the form with the revocation decision and any sanction ordered in the case. The completed form is submitted to the Commission, where the information is automated.

Figure 51
Standard Conditions of Probation Supervision

◆ **CONDITIONS CITED IN VIOLATION** *(check all that apply)*

- 1. Fail to obey all Federal, State, and local laws and ordinances
- 2. Fail to report any arrests within 3 days to probation officer
- 3. Fail to maintain employment or to report changes in employment
- 4. Fail to report as instructed
- 5. Fail to allow probation officer to visit home or place of employment
- 6. Fail to follow instructions, be truthful, cooperative, and report
- 7. Use alcoholic beverages
- 8. Use, possess, distribute controlled substances or paraphernalia
- 9. Use, own, possess, transport or carry firearm
- 10. Change residence or leave State of Virginia without permission
- 11. Abscond from supervision
- Fail to follow special conditions (specify) _____

Once the SRR is completed, if a probationer is cited for violating the conditions of supervised probation but has not been convicted of a new offense, the Probation Violation Guidelines (PVGs) must be prepared for the court. The Probation Violation Guidelines were developed pursuant to a 2003 directive from the General Assembly and first implemented statewide on July 1, 2004. As specified in the legislative mandate, the Probation Violation Guidelines were developed based on an examination of historical judicial sanctioning patterns in revocation cases. The current guidelines do not apply if the probationer was convicted of a new crime while under supervision (a violation of Condition 1 of the standard conditions of probation). Since July 1, 2020, the Appropriation Act has included language specifying that the court must be presented with, and the judge must review, the Sentencing Revocation Report and, if applicable, the Probation Violation Guidelines, in any violation hearing in circuit court conducted pursuant to § 19.2-306.

Despite a number of revisions, judicial concurrence with the Probation Violation Guidelines remains below 60%. This is substantially lower than concurrence with the felony offense guidelines, which has reached 81%-83% in recent years. This suggests that many judges remain dissatisfied with the Probation Violation Guidelines. The Commission has received requests from judges and other court stakeholders to further revise these guidelines.

In 2016, the Commission approved a new study to provide the foundation needed to revise the Probation Violation Guidelines and improve the utility of the guidelines for Virginia's judges. The large-scale multi-year study included surveys of judges and other court stakeholders, data from multiple criminal justice data systems, supplemental data collection by Commission staff, and rigorous statistical analysis of the most comprehensive dataset on probation violations and revocation sentences ever compiled in Virginia. A detailed discussion of the Commission's study and findings can be found in Chapter 3 of this report.

As a critical first step in revising the guidelines, the Commission sought input and guidance from circuit court judges through a survey. The majority of responding judges felt that the Probation Violation Guidelines should cover violations stemming from technical violations, as well as new felony and new misdemeanor convictions. While the current guidelines only cover technical violations of supervised probation, 70.7% of responding judges indicated that the guidelines should apply to violations arising from a new felony conviction and 66.2% felt that the guidelines should apply to violations arising from a new misdemeanor conviction. Through the survey, the judges provided insight into factors that, on average, are weighed most heavily when they sanction probation violators. The Commission also sought input from other criminal justice stakeholders (probation officers, Commonwealth's attorneys, and defense attorneys) through a second survey. Most stakeholders agreed with judges that the Probation Violation Guidelines should cover violations arising from new felony and/

or misdemeanor convictions in addition to technical violations. Surveys of judges and stakeholders also identified concerns regarding problematic factors or factors not captured on the current guidelines.

The Commission analyzed a large sample of more than 3,400 probation violation sentencing events from FY2014 through FY2018. Once all available data from multiple sources were compiled, Commission staff conducted detailed statistical analysis. The Commission had two main objectives for the analysis: 1) identify factors that judges use consistently when making sentencing decisions in revocation cases, and 2) as suggested by the surveys responses, explore the feasibility of expanding the Probation Violation Guidelines to cover probation violations arising from new convictions (i.e., Condition 1 violations). Once the first round of analysis was complete and new Probation Violation Guidelines were drafted, the Commission assembled a focus group, comprised of probation officers, prosecutors and defense attorneys to provide feedback. The main objectives of this meeting were to gauge the extent to which preparers would be able to score the revised worksheets accurately and to assess whether there was any potential for unintended consequences. Following the focus group meeting, a second round of analysis was performed and the scoring factors were refined.

Through this process, the Commission concluded that the Probation Violation Guidelines could be expanded to cover violations stemming from new felony and misdemeanor convictions. Moreover, the Probation Violation Guidelines could be improved by replacing the current instrument with two instruments, one applicable to violators with new felony convictions and the other specific to violators with technical violations or new misdemeanor convictions (analysis revealed that predictive accuracy was improved using two distinct instruments). Figure 52 lists the significant factors in sentencing outcomes for violators with new felony convictions and the relative weight of each factor in the scoring composition. Figure 53 lists the significant factors in sentencing outcomes for violators with technical violations or new misdemeanor convictions, along with the relative weight of each factor.

The Commission conducted a second analysis to examine the reasons cited by judges for departing from the current Probation Violation Guidelines. The opinions of the judiciary, as expressed in the reasons they write for departing from the guidelines, are critical in directing the Commission’s attention to specific areas where the guidelines may need adjustment to better reflect current judicial thinking. This analysis revealed that the judge’s assessment of the probationer’s rehabilitation potential (good or poor)

Figure 52
Significant Factors in Sentencing Outcomes for
Felony New Law Violators

Factor	Percent of Score Composition
New Felony Convictions (Person type)	51%
“Home Court” Prior Revocations	26%
Same Behavior as Original Offense	18%
New Felony Convictions (Non-Person type)	5%

Note: “Home Court” revocations are those in the same jurisdiction as the original offense for which the offender is on probation.

Figure 53
Significant Factors in Sentencing Outcomes for
Technical and Misdemeanor New Law Violators

Factor	Percent of Score Composition
“Home Court” Prior Revocations	40%
Registered Sex Offender	22%
Prior Felonies (since original offense)	12%
Abscond (Condition 11)	10%
Misdemeanor Same Behavior	9%
Drug Violation (Condition 8)	7%

Note: “Home Court” revocations are those in the same jurisdiction as the original offense for which the offender is on probation.

was often important in the sentencing decision, as reflected in the extent to which this was cited as the reason for departing from the guidelines. Based on these empirical findings, the Commission concluded that a new factor could be added to the Probation Violation Guidelines to account for a probationer's rehabilitation potential. This factor would not be scored by the guidelines preparer on the Probation Violation Guidelines worksheet. Rather, this factor would be based on judicial determination at the revocation hearing. In cases in which the judge determines the probationer has good rehabilitation potential, despite the current violation, analysis of the data support an adjustment to the low end of the Probation Violation Guidelines to reduce the low end of the range to "time served" (i.e., zero).

Through the course of the study, the Commission noted that the information and level of detail provided to circuit court judges regarding violations varied considerably across probation districts and within the same probation office. For example, information related to the length of time absconded, treatment programs attempted or completed by the probationer, and specific sex offender conditions violated have been identified by judges as important in sentencing but are not consistently available in the Major Violation Reports (MVRs) submitted to the court. To address this, the Commission recommends adding new documentation fields to the Sentencing Revocation Report (SRR) and the Probation Violation Guidelines (PVGs) to ensure judicial access to important case information is standardized statewide. For example, these fields should include:

- Treatment programs, sanctions, and other sentencing alternatives with checkboxes to indicate the status of each item (completed/enrolled, not completed, or ineligible);
- The specific sex offender condition(s) violated based on the Department of Corrections alphabetic special instructions code;
- Pretrial status release and date ranges for pretrial confinement;
- The amount of revocable time available (determined before the violation hearing);
- Interstate Contract Offender Tracking System (ICOTS) status and if applicable, current supervising state;
- For probationers who abscond, the last date the individual's whereabouts were known and the date of arrest; and
- The conviction date, Virginia Crime Code (VCC), court, sentencing status, and effective sentence for each new conviction, as well as the sum of effective sentences for all new convictions.

In summary, the Commission recommends:

- Expanding the Probation Violation Guidelines to cover violations stemming from new felony and misdemeanor convictions;
- Replacing the current instrument with two instruments, one applicable to violators with new felony convictions and the other specific to violators with technical violations or new misdemeanor convictions;
- Adjusting the low end of the Probation Violation Guidelines range to “time served” (i.e., zero) when the judge determines that the probationer has a good rehabilitation potential; and
- Revising the Sentencing Revocation Report (SRR) and the Probation Violation Guidelines (PVGs) to standardize the information provided to circuit court judges in revocation cases, particularly information related to new convictions.

The proposed Sentencing Revocation Report (SRR) and Probation Violation Guidelines (PVGs) are shown on pages 92-95. Based on thorough examination of all available data, the Commission’s proposal is expected to yield guidelines recommendations that provide judges with a more accurate benchmark of the typical, or average, case outcome given the nature of the violation(s), original felony offense, and the probationer’s prior record of revocations.

If the recommendation is accepted by the General Assembly, the revised Sentencing Revocation Report and Probation Violation Guidelines will become effective on July 1, 2021. Prior to statewide implementation, the Commission will announce the upcoming changes to judges and court stakeholders across the Commonwealth and will provide training to individuals who prepare the Probation Violations Guidelines for the court. The Commission will closely monitor judicial response to the new Probation Violation Guidelines and will recommend further adjustments, if necessary, based on judicial practice after the changes take effect. Any recommendations for adjustments will be submitted in the Commission’s 2022 Annual Report.

No impact on correctional bed space is anticipated, since the Commission’s proposal is designed to integrate current judicial sanctioning practices into the guidelines.

Figure 54
Sentencing Revocation Report (SRR)



**Sentencing Revocation Report-
 Felony Supervision/Good Behavior/Suspended Sentence Violations**
 This report is not completed for probationers on supervision, etc.

◆ **OFFENDER** _____

First: _____ Middle: _____ Last: _____ Suffix: _____
 Date of Birth: _____ Social Security Number: _____ SID/CCRE: _____ CORIS Offender ID: _____

◆ **COURT** _____

Judicial Circuit: _____ City/County: _____ FIPS Code: _____

◆ **TYPE OF REVOCATION** _____

(Complete SRR and Guidelines): State Supervised Probation
 (Complete SRR only, guidelines do not apply): Local Probation Good Behavior Suspended Sentence CCAP
 (NOTE: This form is not completed for First Offender Violations, Deferred Finding Violations or Parole Violations)

◆ **CONDITIONS CITED IN VIOLATION BY PROBATION/PAROLE OFFICER** *(check all that apply)*

- 1. Fail to obey all Federal, State, and local laws.
- 2. Fail to report any arrests within 3 days to PO.
- 3. Fail to maintain employment or to report changes.
- 4. Fail to report as instructed
- 5. Fail to allow probation officer to visit home or job.
- 6. Fail to follow instructions, be truthful, and cooperative.
- 7. Use alcoholic beverages
- 8. Use, possess, distribute controlled substances or paraphernalia
- 9. Use, own, possess, transport or carry firearm
- 10. Change residence or leave Virginia without permission
- 11. Abscond from supervision
- Fail to follow special conditions (specify) _____
- Special Sex Offender Conditions (Enter Letter for Special Sex Offender Condition(s) Violated: _____)

◆ **TREATMENT, SANCTIONS, EDUCATIONAL PROGRAMS & ALTERNATIVES UTILIZED**

	Completed/ Enrolled	Not Completed	Ineligible
Anger management	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CCAP	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Community Service	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Employment Skills Program	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gang Supervision	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Incarceration - jail or prison	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Increase in supervision level	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mental health counseling	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Parenting class	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Recidivist Prevention Program	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Reprimand	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Salvation Army Program	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sex offender treatment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Substance Abuse Program, Jail/DOC	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Substance Abuse treatment, inpatient	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Substance Abuse treatment, outpatient	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Substance Abuse treatment: AA or NA	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Substance Abuse increased in drug screens	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Thinking for a Change	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Voice Verification Biometrics Monitoring	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

◆ **PRETRIAL STATUS RELEASE** :(For the judge's information only. There is no indication that the times served will be applied to this case) Secure Bond Unsecured Bond Own Recognizance Third Party Release N/A

◆ **PRETRIAL CONFINEMENT:** (Enter Dates Confined for Current Violation) Yes No
 Confined Since Arrest for violation on ___/___/___
 Dates Confined ___/___/___ to ___/___/___ Dates Confined ___/___/___ to ___/___/___

◆ **VIOLATION GUIDELINES RECOMMENDATION** _____

RECOMMENDATION RANGE Time Served OR Years Months Days to Years Months Days

Recommendation modified by judge because of the defendant's good rehabilitation potential.
 The low end is time served or zero additional days)



Final Decision/Disposition

To be completed by the sentencing judge or judge's designee.

◆ DECISION OF THE COURT _____

- Found in Violation as Cited
- Found in Violation as Cited, Except for Conditions Number(s) _____
- Found in Violation of Conditions Not Cited (Enter Conditions Number(s) _____)
- Found in Violation of good behavior, suspended sentence, felony local probation
- Taken Under Advisement
- Not in Violation

◆ SENTENCE FOR REVOCATION _____

Court Finds that the defendant is a good candidate for rehabilitation (The low end of the guidelines is set to time served or zero)

Amount of Time Imposed..... Life +

--	--	--

--	--	--

--	--	--

Amount of Time to Serve for this Violation (total effective sentence).. Life +

--	--	--

--	--	--

--	--	--

Sentenced to Time Served

New/Revised probation/Supervised Period

- Continued on same period of probation supervision (not extended)
- Placed on a probation supervision for a new period of..... Life +

--	--	--

--	--	--

--	--	--
- Released from supervised probation
- New conditions of probation _____
- Continued on same conditions

Other Sentencing Programs (check all that apply)

- Day Reporting
- Electronic Monitoring
- Intensive Probation
- Substance Abuse Treatment
- § 18.2-251/§ 18.2-258.1
- Drug Court
- Community-Based Program _____
- CCAP Detention/Diversion Center Incarceration, 22-48 weeks
- Youthful Offender
- DJJ Commitment Indeterminate Determinate
- Other _____

Office Use Only					

◆ REASON FOR DEPARTURE FROM GUIDELINES | | | | |--|--|--| | | | | |--|--|--| _____

◆ DATE OF REVOCATION DECISION

	/		/	
Month		Day		Year

Judge's Signature

Probation Violation Worksheet ~~ONE~~ ONE

Offender Name: _____

Technical or Condition 1 based on new misdemeanor conviction

Base Guidelines on the Current Primary Offense: _____ Original Sentencing was Incarceration/CCAP

ICOTS Case for Supervision of Current Primary Transferred to: State Abv: _____

Amount of Total Revocable Time at Hearing Sentencing: Life +

Years	Months	Days

◆ **Prior Revocations in this Court Only**

Original Sentencing Date _____ Start of Current Supervision Period _____

◆ **Number of Revocations for Current Offense in this Court Only**

Current Revocation Only	2	
One Prior Revocation	10	
Two or More Prior Revocations	22	

0		
---	--	--

◆ **Prior Felony Conviction(s) for Offenses Between Original Sentencing Date and Start of Current Supervision**

_____ If YES, add 13 →

0		
---	--	--

◆ **Prior Felony Conviction(s) Before Original Sentencing Date in this Court Only**

No Prior Felony Convictions in this Court <u>OR</u> Prior Felony Convictions and No Related Prior Revocations	0	
Prior Felony Conviction(s) in this Court & One Related Prior Revocation	18	
Prior Felony Conviction(s) in this Court & Two or More Related Prior Revocations	19	

0		
---	--	--

◆ **Condition 1 Violation: New Misdemeanor Conviction(s)**

New Misdemeanor Conviction is Similar Behavior to Current Offense (Refer to Appendix 4)	9	
Any Other New Misdemeanor Convictions	1	

0	0	
---	---	--

Enter VCC _____ Sent./Conv. Date _____ FIPS ____ Eff Sent. __Y __M __D Pending Sentencing

Enter VCC _____ Sent./Conv. Date _____ FIPS ____ Eff Sent. __Y __M __D Pending Sentencing

Sum of Total Effective Sentence for New Convictions __Y __M __D

◆ **Condition 4 Violation: Fail to Report as Instructed**

_____ If YES, add 2 →

0		
---	--	--

◆ **Condition 8 Violation: Drug Violation**

_____ If YES, add 7 →

0		
---	--	--

◆ **Condition 11 Violation: Abscond**

_____ If YES, add 10 →

--	--	--

Last Date whereabouts were known ___/___/___ Date arrested for this violation ___/___/___

◆ **Registered Sex Offender**

_____ If YES, add 22 →

--	--	--

Recommendation Score

Go to Cover sheet and fill out the violation guidelines recommendation range.

Recommendation Table

Score	Guidelines Sentence
<input type="checkbox"/> Under 19.....	Time served to 6 months
<input type="checkbox"/> 19 to 33.....	3 months to 1 year
<input type="checkbox"/> 34 to 43.....	1 year to 1 year 6 months
<input type="checkbox"/> 44 or more.....	1 year to 4 years

--	--	--	--

Probation Violation Worksheet ~~Two~~ TWO

Offender Name: _____

Condition 1 based on new felony conviction

Base Guidelines on the Current Primary Offense: _____ Original Sentencing was Incarceration/CCAP

ICOTS Case for Supervision of Current Primary Transferred to: State Abv: _____

Amount of Total Revocable Time at Hearing Sentencing: Life +

Years Months Days

◆ Prior Revocations in this Court Only

Original Sentencing Date _____ Start of Current Supervision Period _____

◆ Prior Revocations for Current Offense

One or more Prior Revocation10 0

Condition 1 Violation: New Felony Conviction(s)

Enter VCC _____ Sent./Conv. Date _____ FIPS ____ Eff Sent. __Y__M__D Pending Sentencing

Enter VCC _____ Sent./Conv. Date _____ FIPS ____ Eff Sent. __Y__M__D Pending Sentencing

◆ Number of New Person Felony Convictions X 20 →

◆ Number of New Non-Person Felony Convictions X 2 →

◆ New Felony or Misdemeanor Conviction is Similar Behavior to Current Offense (Refer to Appendix 4) _____ If YES, add 7 → 0

Sum of Total Effective Sentence for New Convictions ____Y ____M ____D

Recommendation Score →

Recommendation Table

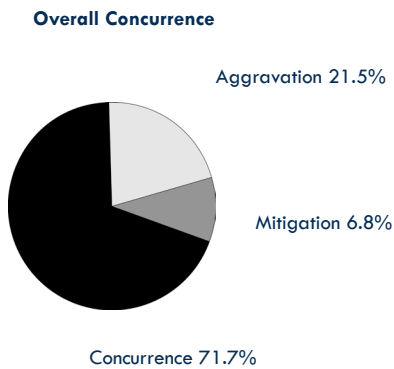
Score	Guidelines Sentence
<input type="checkbox"/> 1 to 7.....	Time served to 1 year
<input type="checkbox"/> 8 to 15.....	6 months to 1 year 6 months
<input type="checkbox"/> 16 to 22.....	8 months to 2 years
<input type="checkbox"/> 23 or more.....	15 months to 4 years

Go to Cover sheet and fill out the violation guidelines recommendation range.

RECOMMENDATION 2

Figure 55

Concurrence with Guidelines for Aggravated Sexual Battery (§ 18.2-67.3) FY2017 – FY2020 N=462



Revise the guidelines for Aggravated Sexual Battery (§ 18.2-67.3) to better reflect current sentencing practices.

ISSUE

Virginia’s sentencing guidelines were created to provide sentence recommendations based on historical practices, using information regarding the nature of the current offense(s) and a defendant’s criminal history. Generally speaking, the guidelines provide judges with a benchmark of the typical, or average, case outcome given the characteristics of the offense and the defendant’s prior record. The Aggravated Sexual Battery guidelines apply to nearly all felonies defined in § 18.2-67.3 of the Code of Virginia. Concurrence with the guidelines for these offenses is lower than the overall average concurrence rate for all offenses and, when judges depart, they are significantly more likely to sentence above the guidelines recommended range than below it. In particular, judges often disagree with the type of disposition recommended by the current guidelines. Detailed analysis of the data revealed that the Aggravated Sexual Battery guidelines could be refined to better reflect current sentencing practices and provide judges with a more accurate benchmark for the typical, or average, case.

DISCUSSION

Figure 55 presents recent concurrence and departure rates for aggravated sexual battery offenses (§ 18.2-67.3) in cases in which one of these offenses was the primary, or most serious, offense at sentencing. During fiscal year (FY) 2017 through FY2020, judicial concurrence with the Aggravated Sexual Battery guidelines was 71.7%. This is lower than the overall average concurrence rate for all offenses, which is approximately 82%. During this time period, the upward departure rate (21.5%) was considerably higher than the downward departure rate (6.8%). This indicates that, when judges depart, they are significantly more likely to sentence above the guidelines than below.

Figure 56 compares the distributions of recommended and actual sentencing dispositions for the aggravated sexual battery cases examined. During FY2017-FY2020, the current guidelines recommended 81.8% of defendants for a term of incarceration over six months, while 18.2% were recommended for a lesser sanction. In practice, however, judges sentenced 88.1% to more than six months of incarceration. Thus, the current guidelines for these offenses are not closely aligned with the actual dispositions in these cases. Judges are sentencing offenders convicted of aggravated sexual battery to incarceration terms in excess of six months more often than is recommended by the current guidelines. This suggested that the Commission needed to focus its analysis on the types of dispositions recommended by the guidelines.

When a defendant is convicted of aggravated sexual battery, the Other Sexual Assault worksheets are completed. In preparing sentencing guidelines, a user must first complete the Section A worksheet. On the Other Sexual Assault worksheets, if the defendant scores eight points or less on Section A, the guidelines will recommend probation or a term of incarceration up to six months in jail. If the offender scores nine or more on Section A, the Section C worksheet must be completed to determine the appropriate sentence length recommendation for a longer term of incarceration. On Section A, the Commission proposes two scoring modifications. Currently, aggravated sexual battery of an incapacitated victim, aggravated sexual battery

Figure 56

**Actual versus Recommended Dispositions for
Aggravated Sexual Battery (§ 18.2-67.3)
FY2017 – FY2020
N=462**

	Actual Practice	Recommended under Current Guidelines
Probation/No Incarceration up to 6 months	11.9%	18.2%
Incarceration more than 6 months (Range includes prison)	88.1%	81.8%

resulting in serious injury, and aggravated sexual battery involving a weapon are scored under part F of the Primary Offense factor (Figure 57). Under the Commission's proposal, these offenses would be moved to part G of the Primary Offense factor. As a result, defendants convicted of these particular aggravated sexual battery offenses will receive higher points on the Primary Offense factor. In part G, the Commission recommends increasing the Primary Offense points assigned for one count of the offense from six to seven. This latter change will also affect aggravated sexual battery of a victim 13 or 14 years of age and aggravated sexual battery of a child 13 to 17 years of age by a parent/grandparent. These changes in scoring will increase the likelihood that defendants convicted of certain aggravated sexual battery offenses will be recommended for more than six months

Figure 57

Proposed Changes to Other Sexual Assault Section A Worksheet

Other Sexual Assault Section A (Part II) Offender Name: _____

◆ **Primary Offense**

A. Other than listed below; all attempted or conspired offenses (1 count)	1
B. Non-forcible sodomy, parent/grandparent to child or grandchild age 13 to 17 (1 count)	7
C. Indecent liberties with child under age 15	
1 count	3
2 counts	8
3 counts	10
D. Indecent liberties by custodian	
1 count	4
2 counts	6
3 counts	7
E. Non-forcible carnal knowledge of child age 13, 14 (statutory rape)	
1 count	2
2 counts	8
3 counts	12
F. Aggravated sexual battery (Aggravated sexual battery of a victim younger than 13 will remain the same. All other aggravated sexual batteries will move to G.)	
1 count	3
2 counts	6
3 counts	9
G. Aggravated sexual battery, victim age 13 or 14 or parent/grandparent to child/grandchild age 13 to 17	
1 count	6-7
2 counts	8
3 counts	10
H. Incest with own child/grandchild (1 count)	3
I. Incest with own child/grandchild age 13 to 17 (1 count)	2

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

Years:	5 - 26	1
	27 - 52	2
	53 or more	3

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

Years:	Less than 1	0
	1 - 26	1
	27 - 52	2
	53 or more	3

◆ **Victim Less than Age 13 at Time of Offense** If YES, add 5 → 0

◆ **Victim Injury**

Threatened or emotional	2
Physical or life threatening	4

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

Years:	Less than 3	0
	3 - 18	1
	19 - 31	2
	32 - 44	3
	45 or more	4

◆ **Prior Felony Sexual Assault Convictions/Adjudications**

Number of Counts:	1	1
	2	2
	3 or more	3

◆ **Prior Incarcerations/Commitments** If YES, add 3 → 0

◆ **Legally Restrained at Time of Offense**

None	0
Other than parole/post-release, supervised probation or CCCA	2
Parole/post-release, supervised probation or CCCA	3

◆ **Risk Assessment Score (From Section A Part I)**

Less than 28	0
28 or more (Level 1, 2, or 3)	8

Total Score _____

If total is 8 or less, go to Section B. If total is 9 or more, go to Section C.

Other Sexual Assault/Section A (Part II)

of incarceration (scored on Section C). These changes will not apply to defendants convicted of aggravated sexual battery of a victim younger than 13; however, it is important to note that these defendants are given additional points elsewhere on the worksheet for committing the offense against a child under the age of 13 and nearly all such cases result in a recommendation for more than six months of incarceration.

For defendants who score eight points or less on Section A of the Other Sexual Assault worksheets, Section B is completed to determine if the defendant will be recommended for either probation/no incarceration or jail up to six months. The Commission documented that judges often depart above the guidelines in cases scored

on the Section B worksheet, specifically when the guidelines recommend probation. In those cases, judges often sentence the defendant to an active jail term.

To address this issue, the Commission recommends adding a new factor to the Section B worksheet, to be scored when the primary offense at sentencing is aggravated sexual battery. This factor accounts for the type of Additional Offense convictions in the current sentencing event (Figure 58). One point will be scored if the defendant has an additional offense with a Virginia Crime Code (VCC) prefix of “SEX”, “RAP”, or “OBS.” With this change, defendants who have an additional conviction for a sexual assault or an obscenity-related offense (such as possession of child pornography) will receive one additional point on the Section B worksheet. On Section B, a total score of four or more will result in a jail recommendation. These changes will increase the likelihood that a defendant convicted of aggravated sexual battery will be recommended for a jail term up to six months rather than probation without an active term of incarceration.

Regarding Section C, the extent to which judges concurred with the sentence length recommendation was quite high during the period examined. Judges concurred with Section C sentence length recommendations in 78.5% of the cases, and departures were not heavily skewed either upward or downward. Therefore, no changes to the Section C worksheet are proposed at this time.

The projected effect of these modifications on guidelines recommendations is displayed in Figure 59. Under the proposal, the type of disposition recommended by the guidelines would be more closely aligned with the actual sentencing dispositions in aggravated sexual battery cases.

Figure 58
Proposed Changes to
Other Sexual Assault
Section B Worksheet

Other Sexual Assault ❖ Section B

Offender Name: _____

◆ **Primary Offense** _____

A. Other than listed below (1 count)	1	
B. Aggravated sexual battery		
1 count	2	
2 counts	4	
3 counts	6	

Score

0

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

Years:	5 - 7	2	27 - 30	8
	8 - 11	3	31 - 34	9
	12 - 15	4	35 - 37	10
	16 - 19	5	38 - 41	11
	20 - 22	6	42 or more	12
	23 - 26	7		

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

Years:	Less than 1	0	23 - 26	7
	1 - 2	1	27 - 30	8
	3 - 7	2	31 - 34	9
	8 - 11	3	35 - 37	10
	12 - 15	4	38 - 41	11
	16 - 19	5	42 or more	12
	20 - 22	6		

◆ **Victim Less than Age 13 at Time of Offense** _____ If YES, add 3 →

0

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

Years:	Less than 3	0	
	3 - 19	1	
	20 - 39	2	
	40 or more	3	

◆ **Prior Incarcerations / Commitments** _____ If YES, add 1 →

0

◆ **NEW FACTOR** **Type of Additional Offense(s)** _____

Any Additional Offense has a prefix of “SEX”, “RAP”, or “OBS”

Primary offense: B. Aggravated Sexual Battery If YES, add 1	0
Primary offense: All other offenses Do Not Score	

SCORE THE FOLLOWING FACTOR **ONLY** IF PRIMARY OFFENSE AT CONVICTION IS
INDECENT LIBERTIES BY CUSTODIAN (§ 18.2-370.1(A))

◆ **Victim Injury** _____

Threatened or emotional	3	
Physical or life threatening	4	

Total Score _____ →

See Other Sexual Assault Section B Recommendation Table to convert score to guidelines sentence.

Other Sexual Assault/Section B

Figure 60 presents dispositional concurrence and departure rates for FY2017-FY2020 aggravated sexual battery cases under both the current and proposed scoring schemes. Dispositional concurrence is defined as the rate at which judges comply with the type of disposition recommended by the guidelines (probation/no incarceration, jail up to six months, or incarceration of more than six months). With the proposed changes, improvement in dispositional concurrence is anticipated. Dispositional concurrence is projected to increase from 86.4% to 89.2% and, rather than departures weighted towards upward departures, the proposal is expected to produce a near-perfect balance between dispositional departures above and below

the guidelines. The proposal effectively addresses dispositional departures from the guidelines by increasing the likelihood that defendants convicted of aggravated sexual battery will be recommended by the guidelines for a jail or prison term rather than probation/no incarceration.

As shown in Figure 60, overall concurrence is projected to remain the same under the proposal (71.7%). However, a reduction in the rate of upward departures is anticipated, which will achieve a better balance in departures above and below the guidelines.

The Commission's proposal is expected to yield guidelines recommendations that provide judges with a more accurate benchmark of the typical, or average, case outcome for similarly-situated defendants.

No impact on correctional bed space is anticipated, since the Commission's proposal is designed to integrate current judicial sanctioning practices into the guidelines.

Figure 59
Actual versus Proposed
Recommended Dispositions
for Aggravated Sexual Battery
(§ 18.2-67.3)
FY2017 – FY2020

	Actual Practice	Recommended under Proposed Guidelines
Probation/No Incarceration up to 6 months	11.9%	11.0%
Incarceration more than 6 months (Range includes prison)	88.1%	89.0%

Figure 60
Concurrence with Guidelines for Aggravated Sexual Battery (§ 18.2-67.3)
FY2017 – FY2020

	Dispositional Concurrence/ Departure Rates		Overall Concurrence/ Departure Rates	
	Current	Proposed	Current	Proposed
Concurrence	86.4%	89.2%	71.7%	71.7%
Mitigation	2.8%	5.8%	6.8%	11.7%
Aggravation	10.8%	5.1%	21.5%	16.6%

RECOMMENDATION

3

Revise the guidelines for Indecent Liberties (§ 18.2-370 and § 18.2-370.1) to better reflect current sentencing practices.

ISSUE

Virginia’s sentencing guidelines were created to provide sentence recommendations based on historical practices, using information regarding the nature of the current offense(s) and a defendant’s criminal history. Generally speaking, the guidelines provide judges with a benchmark of the typical, or average, case outcome given the characteristics of the offense and the defendant’s prior record. Currently, the guidelines cover two types of indecent liberties offenses: indecent liberties involving a child under age 15 (§ 18.2-370(A)) and indecent liberties of a child by a custodian (§ 18.2-370.1(A)). Concurrence with the guidelines for these offenses is lower than the overall average concurrence rate for all offenses and the departure pattern indicates that judges are considerably more likely to sentence above the guidelines range than below it. Specifically, judges often disagree with the type of disposition recommended by the current guidelines. Detailed analysis of the data revealed that the Indecent Liberties guidelines could be refined to better reflect current sentencing practices and provide judges with a more accurate benchmark for the typical, or average, case.

DISCUSSION

Figure 61 presents recent concurrence and departure rates for indecent liberties offenses (§ 18.2-370(A) and § 18.2-370.1(A)) in cases in which one of these offenses was the primary, or most serious, offense at sentencing. During FY2017 through FY2020, judicial concurrence with the guidelines in these cases was 63.7%. This is lower than the overall average concurrence rate of approximately 82% for all offenses. During this time period, the upward departure rate (28.0%) was substantially higher than the downward departure rate (8.3%). Thus, when departing from the guidelines, judges are much more likely to sentence above the recommended range than below it.

Figure 61

**Concurrence with Guidelines for
Indecent Liberties (§ 18.2-370 & § 18.2-370.1)
FY2017 – FY2020
N=289**

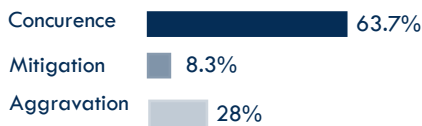


Figure 62 compares the distributions of recommended and actual sentencing dispositions for the indecent liberties cases examined. During FY2017-FY2020, the current guidelines recommended 65.1% of defendants for a term of incarceration over six months, while 34.9% were recommended for probation or a short jail term. In practice, however, judges sentenced 72.7% to more than six months of incarceration. This suggests that the current guidelines for indecent liberties are not as closely aligned with actual dispositions as they could be. Judges are sentencing offenders convicted of indecent liberties to incarceration terms in excess of six months more often than is recommended by the current guidelines. Based on this finding, the Commission first focused the analysis on the types of dispositions recommended by the guidelines.

When a defendant is convicted of indecent liberties, the Other Sexual Assault worksheets are completed. In preparing sentencing guidelines, a user must first complete the Section A worksheet. On the Other Sexual Assault worksheets, if the defendant scores eight points or less on Section A, the guidelines will recommend probation or a term of incarceration up to six months in jail. If the defendant scores nine or more on Section A, the Section C worksheet must be completed to determine the appropriate sentence length recommendation for a longer term of incarceration.

Figure 62

**Actual versus Recommended Dispositions
for Indecent Liberties (§ 18.2-370 & § 18.2-370.1)
FY2017 – FY2020
N=289**

	Actual Practice	Recommended under Current Guidelines
Probation/No Incarceration up to 6 months	27.3%	34.9%
Incarceration more than 6 months (Range includes prison)	72.7%	65.1%

On Section A, the Commission recommends revising the points for the Primary Offense factor. Currently, indecent liberties with a child under age 15 is scored under part C of the Primary Offense factor, while indecent liberties by a custodian is scored under part D (Figure 63). Under the Commission’s proposal, the points assigned on the Primary Offense factor for one count of indecent liberties with a child under age 15 would increase from three to four. For indecent liberties by a custodian, Primary Offense points would increase from four to five for one count of the offense, from six to seven for two counts, and from seven to eight for three counts, as shown in Figure 63. As a result, most defendants convicted of indecent liberties will receive higher points on the Primary Offense factor. These changes in scoring will increase the likelihood that defendants convicted of indecent liberties will be recommended for more than six months of incarceration (scored on Section C).

Figure 63

Proposed Changes to Other Sexual Assault Section A Worksheet

Other Sexual Assault Section A (Part II) Offender Name: _____

Primary Offense

A. Other than listed below; all attempted or conspired offenses (1 count).....	1	
B. Non-forcible sodomy, parent/grandparent to child or grandchild age 13 to 17 (1 count).....	7	
C. Indecent liberties with child under age 15		
1 count.....	3	4
2 counts.....	8	
3 counts.....	10	
D. Indecent liberties by custodian		
1 count.....	4	5
2 counts.....	6	7
3 counts.....	7	8
E. Non-forcible carnal knowledge of child age 13, 14 (statutory rape)		
1 count.....	2	
2 counts.....	8	
3 counts.....	12	
F. Aggravated sexual battery		
1 count.....	3	
2 counts.....	6	
3 counts.....	9	
G. Aggravated sexual battery, victim age 13 or 14 or parent/grandparent to child/grandchild age 13 to 17		
1 count.....	6	
2 counts.....	8	
3 counts.....	10	
H. Incest with own child/grandchild (1 count).....	3	
I. Incest with own child/grandchild age 13 to 17 (1 count).....	2	

REVISSED SCORES (Arrows point to the revised scores in the table above)

Score (Arrow points to the score box below)

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

Years:	5 - 26.....	1	
	27 - 52.....	2	
	53 or more.....	3	

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

Years:	Less than 1.....	0	
	1 - 26.....	1	
	27 - 52.....	2	
	53 or more.....	3	

Victim Less than Age 13 at Time of Offense If YES, add 5 → 0

Victim Injury

Threatened or emotional.....	2	
Physical or life threatening.....	4	

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

Years:	Less than 3.....	0	
	3 - 18.....	1	
	19 - 31.....	2	
	32 - 44.....	3	
	45 or more.....	4	

Prior Felony Sexual Assault Convictions/Adjudications

Number of Counts:	1.....	1	
	2.....	2	
	3 or more.....	3	

Prior Incarcerations/Commitments If YES, add 3 → 0

Legally Restrained at Time of Offense

None.....	0	
Other than parole/post-release, supervised probation or CCCA.....	2	
Parole/post-release, supervised probation or CCCA.....	3	

Risk Assessment Score (From Section A Part I)

Less than 28.....	0	
28 or more (Level 1, 2, or 3).....	8	

Total Score If total is 8 or less, go to Section B. If total is 9 or more, go to Section C. →

For defendants who score eight points or less on Section A of the Other Sexual Assault worksheets, Section B is completed to determine if the defendant will be recommended for either probation/no incarceration or jail up to six months. The Commission documented that judges often depart above the guidelines in cases scored on the Section B worksheet, specifically when the guidelines recommend probation. In those cases, judges often sentence the defendant to an active jail term.

To address this issue, the Commission recommends two modifications to Section B. First, the Victim Injury factor would be expanded. Currently, the Victim Injury factor is scored only if the most serious offense at sentencing is indecent liberties by a custodian. Under the proposal, this factor would be expanded such that defendants

convicted of indecent liberties with a child under age 15 would also be scored, as shown in Figure 64. With this change, all defendants convicted of indecent liberties who cause injury to the victim, including threatened or emotional injury, will be recommended for a short jail term. Second, a new factor would be added to the Section B worksheet that would be scored when the primary offense at sentencing is indecent liberties. This factor accounts for the type of Additional Offense convictions in the current sentencing event (Figure 64). One point will be scored if the defendant has an additional offense with a Virginia Crime Code (VCC) prefix of "SEX", "RAP", or "OBS." With this change, defendants who have an additional conviction for a sexual assault or an obscenity-related offense (such as possession of child pornography) will receive one additional point on the Section B worksheet. On Section B, a total score of four or more will result in a jail recommendation. This change will increase the likelihood that a defendant convicted of indecent liberties will be recommended for a jail term up to six months rather than probation without an active term of incarceration.

Figure 64

Proposed Changes to Other Sexual Assault Section B Worksheet

Other Sexual Assault Section B Offender Name: _____

◆ **Primary Offense** _____

A. Other than listed below (1 count)	1	Score <input style="width: 40px; height: 20px; border: 1px solid black;" type="text" value="0"/>
B. Aggravated sexual battery		
1 count	2	
2 counts	4	
3 counts	6	

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

Years:	5 - 7	2	27 - 30	8	<input style="width: 40px; height: 20px; border: 1px solid black;" type="text"/>
	8 - 11	3	31 - 34	9	
	12 - 15	4	35 - 37	10	
	16 - 19	5	38 - 41	11	
	20 - 22	6	42 or more	12	
	23 - 26	7			

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

Years:	Less than 1	0	23 - 26	7	<input style="width: 40px; height: 20px; border: 1px solid black;" type="text"/>
	1 - 2	1	27 - 30	8	
	3 - 7	2	31 - 34	9	
	8 - 11	3	35 - 37	10	
	12 - 15	4	38 - 41	11	
	16 - 19	5	42 or more	12	
	20 - 22	6			

◆ **Victim Less than Age 13 at Time of Offense** _____ If YES, add 3 →

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

Years:	Less than 3	0	<input style="width: 40px; height: 20px; border: 1px solid black;" type="text" value="0"/>
	3 - 19	1	
	20 - 39	2	
	40 or more	3	

◆ **Prior Incarcerations / Commitments** _____ If YES, add 1 →

NEW FACTOR

◆ **Type of Additional Offense(s)** _____

Any Additional Offense has a prefix of "SEX," "RAP," or "OBS"

Primary offense:

Indecent Liberties	Primary offense: All other offenses
If YES, add 1	Do Not Score

SCORE THE FOLLOWING FACTOR **ONLY** IF PRIMARY OFFENSE AT CONVICTION IS
INDECENT LIBERTIES BY CUSTODIAN § 18.2-370.1(A) (§ 18.2-370 & § 18.2-370.1)

◆ **Victim Injury** _____

Threatened or emotional	3	<input style="width: 40px; height: 20px; border: 1px solid black;" type="text" value="0"/>
Physical or life threatening	4	

Total Score _____

See Other Sexual Assault Section B Recommendation Table to convert score to guidelines sentence.

Other Sexual Assault/Section B

Defendants who score nine points or more on Section A of the Other Sexual Assault worksheets are scored on Section C, which determines the sentence length recommendation for a term of imprisonment. Pursuant to § 17.1-805 of the Code of Virginia, Primary Offense points on Section C are assigned based on the classification of an offender's prior record. A defendant is scored under the Other category if he or she does not have a prior conviction for a violent felony defined in § 17.1-805(C). A defendant is scored under Category II if he or she has a prior conviction for a violent felony that has a statutory maximum penalty of less than 40 years. Defendants are classified as Category I if they have a prior conviction for a violent felony with a statutory maximum of 40 years or more.

Figure 65

Proposed Changes to Other Sexual Assault Section C Worksheet

On Section C, the Commission recommends modifying the Primary Offense factor to increase the score for one count of indecent liberties (Figure 65). This proposed change would apply to defendants whose offense involved a child under age 15, as well as defendants whose offense was committed while custodian of a child. Currently, a defendant convicted of one count of indecent liberties receives 6 points for the Section C Primary Offense factor if his prior record is classified as Other, 12 points if he has a Category II record, or 24 points if he has a Category I record. The proposal increases those scores to 9, 18, and 36 points, respectively. For defendants convicted of indecent liberties who are scored on Section C, this change will increase the sentence recommendation by 3 to 12 months, depending on the nature of the defendant's prior record.

Other Sexual Assault - Section C Offender Name: _____

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

◆ **Primary Offense**

A. All attempted or conspired sexual assault (1 count).....	(24)	(12)	(6)
B. Completed sexual assault other than listed below (1 count)	36	18	9
C. Non-forcible sodomy, parent/grandparent to child/grandchild age 13 - 17			
1 count	36	18	9
D. Indecent liberties with child			
1 count	36	18	9
2 counts	40	20	10
3 counts	104	52	26
E. Non-forcible carnal knowledge of child age 13 - 14 (statutory rape)			
1 count	36	18	9
F. Incest with own child/grandchild (1 count)	104	52	26
G. Incest with own child/grandchild age 13 - 17 (1 count)	104	52	26
H. Aggravated sexual battery			
1 count	90	60	34
2 counts	132	88	50
3 counts	288	192	108
I. Aggravated sexual battery, parent/grandparent to child/grandchild age 13-17			
1 count	84	56	32
2 counts	90	60	34
3 counts	180	120	68

◆ **Primary Offense Remaining Counts** Assign points to each count of the primary not scored above and total the points

Maximum Penalty 5 (years)	5
10	10
20	19
30	29
40 or more	39

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

Maximum Penalty Less than 1 (years)	0
1	1
2	2
3	3
4	4
5	5
10	10
20	19
30	29
40 or more	39

◆ **Weapon Used, Brandished, Feigned or Threatened** If YES, add 4 → 0 0

◆ **Victim Injury**

Threatened or emotional	6
Physical or life threatening	9

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

Maximum Penalty Less than 2 (years)	0
2, 3, 4, 5	1
10	3
20	6
30	9
40 or more	12

◆ **Prior Felony Sexual Assault Convictions/Adjudications**

Number of Counts: 1	8
2	15
3 or more	23

◆ **On Post-Incarceration Supervision** If YES, add 5 → 0 0

Total Score → [] [] [] []

See Other Sexual Assault Section C Recommendation Table for guidelines sentence range.
If necessary, on the cover sheet also enter the adjusted high end of the guidelines sentence range based on Risk Level: 1 2 3 or n/a

Other Sexual Assault/Section C

REVISED SCORES

Score

Figure 66

Actual versus Proposed Recommended Dispositions for Indecent Liberties (§ 18.2-370 & § 18.2-370.1) FY2017 – FY2020

	Actual Practice	Recommended under Proposed Guidelines
Probation/No Incarceration up to 6 months	27.4%	27.0%
Incarceration more than 6 months (Range includes prison)	72.7%	73.0%

The projected effect of these modifications on guidelines recommendations is displayed in Figure 66. Under the proposal, the type of disposition recommended by the guidelines would be more closely aligned with the actual sentencing dispositions in indecent liberties cases.

Figure 67 presents dispositional concurrence and departure rates for FY2017-FY2020 indecent liberties cases under both the current and proposed scoring schemes. Dispositional concurrence is defined as the rate at which judges comply with the type of disposition recommended by the guidelines (probation/no incarceration, jail up to six months, or incarceration of more than six months). With the proposed changes, dispositional concurrence is projected to decrease slightly (from 73.0% to 70.9%). However, the proposal is expected to produce a near-perfect balance

between dispositional departures above and below the guidelines. Thus, the proposal effectively addresses the disproportionate rate of upward departures from the guidelines recommended disposition.

As shown in Figure 67, a modest decrease in overall concurrence is also projected (from 63.7% to 60.2%). However, a reduction in the rate of upward departures is anticipated, which will better balance departures above and below the guidelines.

The Commission's proposal is expected to yield guidelines recommendations that provide judges with a more accurate benchmark of the typical, or average, case outcome for similarly-situated defendants.

No impact on correctional bed space is anticipated, since the Commission's proposal is designed to integrate current judicial sanctioning practices into the guidelines.

Figure 67

Concurrence with Guidelines for Aggravated Sexual Battery (§ 18.2-67.3)FY2017 – FY2020

	Dispositional Concurrence/ Departure Rates			Overall Concurrence/ Departure Rates	
	Current	Proposed		Current	Proposed
Concurrence	73.0%	70.9%	Concurrence	63.7%	60.2%
Mitigation	8.0%	14.5%	Mitigation	8.3%	16.3%
Aggravation	19.0%	14.5%	Aggravation	28.0%	23.5%

RECOMMENDATION



Revise the guidelines for Carnal Knowledge (§ 18.2-63) to better reflect current sentencing practices.

ISSUE

Virginia’s sentencing guidelines were created to provide sentence recommendations based on historical practices, using information regarding the nature of the current offense(s) and a defendant’s criminal history. Generally speaking, the guidelines provide judges with a benchmark of the typical, or average, case outcome given the characteristics of the offense and the defendant’s prior record. Currently, the guidelines cover all felony acts of carnal knowledge defined in § 18.2-63. These are: carnal knowledge of a child 13 or 14 years of age (a Class 4 felony) and carnal knowledge of a consenting child 13 or 14 years of age when the accused is a minor at least three years older than the child (a Class 6 felony). Concurrence with the guidelines for carnal knowledge is lower than the overall average concurrence rate for all offenses and, when departing from the guidelines, judges heavily favor upward departures. The Commission found that judges frequently disagree with the type of disposition recommended by the current guidelines. Detailed analysis of the data revealed that the Carnal Knowledge guidelines could be refined to better reflect current sentencing practices and provide judges with a more accurate benchmark for the typical, or average, case.

DISCUSSION

Figure 68 presents recent concurrence and departure rates for carnal knowledge offenses (§ 18.2-63) in cases in which one of these offenses was the primary, or most serious, offense at sentencing. During FY2017 through FY2020, judicial concurrence with the guidelines in these cases was 65.8%. This is lower than the overall average concurrence rate of approximately 82% for all offenses. During this time period, judges sentenced above the guidelines recommended range in 28.4% of the cases, with only 5.9% of the sentences falling below the recommended range.

Figure 68

**Concurrence with Guidelines for
Carnal Knowledge (§ 18.2-63)
FY2017 – FY2020
N=222**

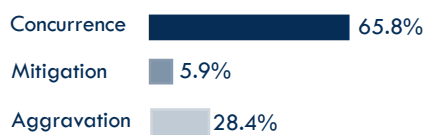


Figure 69 compares the distributions of recommended and actual sentencing dispositions for the carnal knowledge cases examined. During FY2017-FY2020, the current guidelines recommended 59.0% of defendants for a term of incarceration over six months, with the remaining 41.0% recommended for probation or a short jail term. In practice, however, judges sentenced 73.0% to more than six months of incarceration. As these data show, the current guidelines for these offenses are not closely aligned with the actual dispositions in these cases. Judges are sentencing offenders convicted of carnal knowledge to incarceration terms in excess of six months more often than is recommended by the current guidelines. Based on this finding, the Commission focused the analysis on the types of dispositions recommended by the guidelines.

When a defendant is convicted of carnal knowledge, the Other Sexual Assault worksheets are completed. In preparing sentencing guidelines, a user must first complete the Section A worksheet. On the Other Sexual Assault worksheets, if the defendant scores eight points or less on Section A, the guidelines will recommend probation or a term of incarceration up to six months in jail. If the defendant scores nine or more on Section A, the Section C worksheet must be completed to determine the appropriate sentence length recommendation for a longer term of incarceration.

Figure 69

**Actual versus Recommended Dispositions
for Carnal Knowledge (§ 18.2-63)
FY2017 – FY2020
N=222**

	Actual Practice	Recommended under Current Guidelines
Probation/No Incarceration up to 6 months	27.0%	41.0%
Incarceration more than 6 months (Range includes prison)	73.0%	59.0%

On Section A, the Commission recommends revising the points for the Primary Offense factor. Currently, carnal knowledge of a child 13 or 14 years of age is scored under part E of the Primary Offense factor (Figure 70). Under the Commission’s proposal, the score on the Primary Offense factor for carnal knowledge of a child 13 or 14 years of age would increase from two to six points for one count of the offense and from eight to nine points for two counts. Carnal knowledge of a consenting child 13 or 14 years of age when the accused is a minor at least three years older than the child is scored under part A of the Primary Offense factor and would be unaffected by the proposed change. As a result of this change, many defendants convicted of carnal knowledge of a 13 or 14-year-old child will receive higher points on the Primary Offense factor. This change in scoring will increase the likelihood these defendants will be recommended for more than six months of incarceration (scored on Section C).

Figure 70

Proposed Changes to Other Sexual Assault Section A Worksheet

Other Sexual Assault Section A (Part II) Offender Name: _____

◆ **Primary Offense**

A. Other than listed below; all attempted or conspired offenses (1 count)	1	
B. Non-forcible sodomy, parent/grandparent to child or grandchild age 13 to 17 (1 count).....	7	
C. Indecent liberties with child under age 15		
1 count	4	4
2 counts	8	
3 counts	10	
D. Indecent liberties by custodian		
1 count	5	5
2 counts	7	
3 counts	8	
E. Non-forcible carnal knowledge of child age 13, 14 (statutory rape)		
1 count	2	
2 counts	8	
3 counts	12	
F. Aggravated sexual battery		
1 count	3	
2 counts	6	
3 counts	9	
G. Aggravated sexual battery, victim age 13 or 14 or parent/grandparent to child/grandchild age 13 to 17		
1 count	6	
2 counts	8	
3 counts	10	
H. Incest with own child/grandchild (1 count).....	3	
I. Incest with own child/grandchild age 13 to 17 (1 count).....	2	

REVISSED SCORES

Score

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

Years: 5 - 26	1	
27 - 52	2	0
53 or more.....	3	

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

Years: Less than 1	0	
1 - 26	1	0
27 - 52	2	
53 or more.....	3	

◆ **Victim Less than Age 13 at Time of Offense** If YES, add 5

◆ **Victim Injury**

Threatened or emotional	2	
Physical or life threatening.....	4	0

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

Years: Less than 3.....	0	
3 - 18.....	1	
19 - 31.....	2	
32 - 44.....	3	0
45 or more.....	4	

◆ **Prior Felony Sexual Assault Convictions/Adjudications**

Number of Counts: 1	1	
2	2	0
3 or more.....	3	

◆ **Prior Incarcerations/Commitments** If YES, add 3

◆ **Legally Restrained at Time of Offense**

None.....	0	
Other than parole/post-release, supervised probation or CCCA.....	2	0
Parole/post-release, supervised probation or CCCA.....	3	

◆ **Risk Assessment Score (From Section A Part I)**

Less than 28.....	0	0
28 or more (Level 1, 2, or 3).....	8	

Total Score If total is 8 or less, go to Section B. If total is 9 or more, go to Section C.

Other Sexual Assault/Section A (Part II)

For defendants who score eight points or less on Section A of the Other Sexual Assault worksheets, Section B is completed to determine if the defendant will be recommended for either probation/no incarceration or jail up to six months. The Commission documented that judges frequently depart above the guidelines in cases scored on the Section B worksheet. In those cases, judges often sentence the defendant to an active jail term rather than the probation term recommended by the guidelines.

To address this issue, the Commission recommends two modifications to Section B. First, the Commission suggests an adjustment to the Primary Offense factor. Currently, carnal knowledge defendants scored on Section B receive only one point for the Primary Offense factor. Under the proposal, scoring for carnal knowledge would be moved from part A to part B of the Primary Offense factor, as shown in Figure 71. With this change, the Primary Offense points would increase to two points for one count, four points for two counts and six points for three counts of carnal knowledge. As a result, defendants convicted of two or more counts of carnal knowledge

who are scored on Section B will always be recommended for a short jail term. Second, a new factor would be added to the Section B worksheet that would be scored when the primary offense at sentencing is carnal knowledge. This factor accounts for the type of Additional Offense convictions in the current sentencing event (Figure 71). One point will be scored if the defendant has an additional offense with a Virginia Crime Code (VCC) prefix of "SEX", "RAP", or "OBS." With this change, defendants who have an additional conviction for a sexual assault or an obscenity-related offense (such as possession of child pornography) will receive one additional point on the Section B worksheet. On Section B, a total score of four or more will result in a jail recommendation. These changes will ensure a jail recommendation for some carnal knowledge defendants and, for others, the changes will increase the likelihood that the defendant will be recommended for a jail term up to six months rather than probation without an active term of incarceration.

Figure 71

Proposed Changes to Other Sexual Assault Section B Worksheet

Other Sexual Assault Section B Offender Name: _____

◆ **Primary Offense**

A. Other than listed below (1 count) **Remove Carnal Knowledge** 1

B. Aggravated sexual battery or carnal knowledge **Add Carnal Knowledge** 2

1 count.....4

2 counts.....4

3 counts.....6

Score

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

Years:	5 - 7 2	27 - 30 8
	8 - 11 3	31 - 34 9
	12 - 15 4	35 - 37 10
	16 - 19 5	38 - 41 11
	20 - 22 6	42 or more 12
	23 - 26 7	

Score

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

Years:	Less than 1 0	23 - 26 7
	1 - 2 1	27 - 30 8
	3 - 7 2	31 - 34 9
	8 - 11 3	35 - 37 10
	12 - 15 4	38 - 41 11
	16 - 19 5	42 or more 12
	20 - 22 6	

Score

◆ **Victim Less than Age 13 at Time of Offense** If YES, add 3 →

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

Years:	Less than 3 0
	3 - 19 1
	20 - 39 2
	40 or more 3

Score

◆ **Prior Incarcerations / Commitments** If YES, add 1 →

NEW FACTOR

◆ **Type of Additional Offense(s)**

Any Additional Offense has a prefix of "SEX," "RAP," or "OBS"

Primary offense: Carnal Knowledge Primary offense: All other offenses

If YES, add 1 Do Not Score

Score

SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE AT CONVICTION IS INDECENT LIBERTIES BY CUSTODIAN § 18.2-370.1(A)

◆ **Victim Injury**

Threatened or emotional 3	Score <input type="text" value="0"/>
Physical or life threatening 4	

Total Score

See Other Sexual Assault Section B Recommendation Table to convert score to guidelines sentence.

Other Sexual Assault/Section B

Regarding Section C, the extent to which judges concurred with the sentence length recommendation was quite high during the period examined. Judges concurred with Section C sentence length recommendations in 78.6% of the cases, and upward or downward departures were evenly balanced. Therefore, no changes to the Section C worksheet are proposed at this time.

The projected effect of these modifications on guidelines recommendations is displayed in Figure 72. By implementing the proposed changes, the type of disposition recommended by the guidelines would be more closely aligned with the actual sentencing dispositions in carnal knowledge cases.

Figure 72

**Actual versus Proposed Recommended Dispositions
for Carnal Knowledge (§ 18.2-63)
FY2017 – FY2020**

	Actual Practice	Recommended under Proposed Guidelines
Probation/No Incarceration up to 6 months	27.0%	24.8%
Incarceration more than 6 months (Range includes prison)	73.0%	75.2%

Figure 73 presents dispositional concurrence and departure rates for FY2017-FY2020 carnal knowledge cases under both the current and proposed scoring schemes. Dispositional concurrence is defined as the rate at which judges comply with the type of disposition recommended by the guidelines (probation/no incarceration, jail up to six months, or incarceration of more than six months). With the proposed changes, an improvement in dispositional concurrence is anticipated with an increase from 70.3% to 73.9% projected. In addition, the proposal is expected to produce a near-perfect balance between dispositional departures above and below the guidelines.

As shown in Figure 73, overall concurrence is projected to improve under the proposal, with an increase from 65.8% to 67.6% expected. Moreover, a reduction in the rate of upward departures is anticipated and this will result in a better balance in departures above and below the guidelines.

The Commission’s proposal is expected to yield guidelines recommendations that provide judges with a more accurate benchmark of the typical, or average, case outcome for similarly-situated defendants.

No impact on correctional bed space is anticipated, since the Commission’s proposal is designed to integrate current judicial sanctioning practices into the guidelines.

Figure 73
Concurrence with Guidelines for Carnal Knowledge (§ 18.2-67.3)
FY2017 – FY2020

	Dispositional Concurrence/ Departure Rates			Overall Concurrence/ Departure Rates	
	Current	Proposed		Current	Proposed
Concurrence	70.3%	73.9%	Concurrence	65.8%	67.6%
Mitigation	5.0%	12.1%	Mitigation	5.9%	12.6%
Aggravation	24.7%	14.0%	Aggravation	28.4%	19.8%

RECOMMENDATION



Revise the guidelines for Online Solicitation of a Minor (§ 18.2-374.3) to better reflect current sentencing practices.

ISSUE

Virginia’s sentencing guidelines were created to provide sentence recommendations based on historical practices, using information regarding the nature of the current offense(s) and a defendant’s criminal history. The guidelines are designed to provide judges with a benchmark of the typical, or average, case outcome given the characteristics of the offense and the defendant’s prior record. The current guidelines cover all felonies defined in § 18.2-374.3 related to online solicitation of minors. Concurrence with the guidelines for these offenses is well below the overall average concurrence rate for all offenses and judges, when departing, heavily favor sentences above the guidelines range. The Commission’s analysis revealed that judges often disagree with the type of disposition recommended by the current guidelines for these offenses. Further examination of the data indicated that the Online Solicitation guidelines could be refined to better reflect current sentencing practices and provide judges with a more accurate benchmark for the typical, or average, case.

DISCUSSION

Figure 74 presents recent concurrence and departure rates for online solicitation offenses (§ 18.2-374.3) in cases in which one of these offenses was the primary, or most serious, offense at sentencing. During fiscal year FY2016 through FY2020, judicial concurrence with the guidelines in these cases was 71.5%. This is lower than the overall average concurrence rate for all offenses, which is approximately 82%. During this time period, the upward departure rate (24.6%) was markedly higher than the downward departure rate (3.9%). This indicates that, when judges depart, they are significantly more likely to sentence above the guidelines than below.

Figure 74
Concurrence with Guidelines for
Online Solicitation of Minor (§ 18.2-374.3)
FY2016 – FY2020
N=390

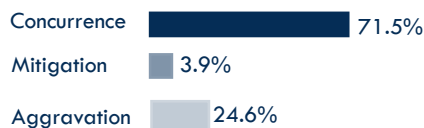


Figure 75 compares the distributions of recommended and actual sentencing dispositions for the online solicitation cases examined. During FY2016-FY2020, the current guidelines recommended 79.5% of defendants for a term of incarceration over six months. In practice, however, judges sentenced 89.5% to more than six months of incarceration. This indicates that the current guidelines for online solicitation are not closely aligned with the actual dispositions in these cases. Judges are sentencing offenders convicted of online solicitation to incarceration terms in excess of six months more often than is recommended by the current guidelines. The analysis pinpointed for the Commission the specific aspect of the guidelines that needed to be addressed.

When a defendant is convicted of online solicitation of a minor, the Other Sexual Assault/Obscenity worksheets are completed. In preparing sentencing guidelines, a user must first complete the Section A worksheet. On the Other Sexual Assault/Obscenity worksheets, if the defendant scores eight points or less on Section A, the guidelines will recommend probation or a term of incarceration up to six months in jail. If the offender scores nine or more on Section A, the Section C worksheet must be completed to determine the appropriate sentence length recommendation for a longer term of incarceration.

Figure 75

**Actual versus Recommended Dispositions
for Online Solicitation of Minor (§ 18.2-374.3)
FY2016 – FY2020**

	Actual Practice	Recommended under Current Guidelines
Probation/No Incarceration up to 6 months	10.5%	20.5%
Incarceration more than 6 months (Range includes prison)	89.5%	79.5%

On Section A, the Commission proposes one scoring modification. Currently, online solicitation offenses are scored on the Primary Offense factor under parts H through K, with points varying based on the ages of the offender and the victim and whether this is the defendant's second or subsequent offense under § 18.2-374.3 (Figure 76).

Under the Commission's proposal, the Primary Offense points assigned for online solicitation involving a child under age 15 would increase from eight to nine. With a Primary Offense score of nine points, this change in scoring will ensure that offenders convicted of online solicitation of a child under age 15 will be recommended for a prison term in all cases. Other acts of online solicitation (i.e., acts involving victims age 15 or older) would not be affected by this change.

Figure 76

Proposed Changes to Other Sexual Assault Section A Worksheet

Offender Name: _____

◆ Primary Offense

A. All attempted or conspired offenses (1 count).....	1
B. Production, publication, sale or financing child pornography (1 count).....	6
C. Possess child porn (1st Offense) (1 count).....	5
D. Possess child porn (2nd or subsequent) (1 count).....	9
E. Reproduce, transmit, sell, etc., child porn (1 count).....	5
F. Procure minor for obscene material by communications system (1 count).....	6
G. Procure minor for prostitution, sodomy, pornography by communications system (1 count).....	6
H. Propose sex act by communications system, child less than age 15 (1 count).....	9
I. Propose sex act by communications system, child less than age 15, offender 7+ years older (1 count).....	9
J. Propose sex act by communications system, child age 15 or more, offender 7+ years older (1 count).....	6
K. Propose sex act by communications system, child age 15 or more, offender 7+ yrs old (2nd/subseq.) (1 count).....	9

Score

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

<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="2">Primary offense B, C or D: Production or Possession Child Porn</th> <th>Points</th> </tr> </thead> <tbody> <tr><td>Years: 5-26</td><td>2</td><td></td></tr> <tr><td>27 - 52</td><td>3</td><td></td></tr> <tr><td>53 or more</td><td>4</td><td></td></tr> </tbody> </table>	Primary offense B, C or D: Production or Possession Child Porn		Points	Years: 5-26	2		27 - 52	3		53 or more	4		<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="2">Primary offense: All other offenses</th> <th>Points</th> </tr> </thead> <tbody> <tr><td>Years: 5-26</td><td>1</td><td></td></tr> <tr><td>27 - 52</td><td>2</td><td></td></tr> <tr><td>53 or more</td><td>3</td><td></td></tr> </tbody> </table>	Primary offense: All other offenses		Points	Years: 5-26	1		27 - 52	2		53 or more	3	
Primary offense B, C or D: Production or Possession Child Porn		Points																							
Years: 5-26	2																								
27 - 52	3																								
53 or more	4																								
Primary offense: All other offenses		Points																							
Years: 5-26	1																								
27 - 52	2																								
53 or more	3																								

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

Years: Less than 1.....	0
1 - 26	1
27 - 52	2
53 or more.....	3

◆ Victim Less than Age 13 at Time of Offense If YES, add 5 →

◆ Victim Injury

Threatened or emotional	2
Physical, serious or life threatening	4

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

Years: Less than 3.....	0
3 - 18	1
19 - 31	2
32 - 44	3
45 or more.....	4

◆ Prior Felony Sexual Assault Convictions/Adjudications

Number of Counts: 1.....	1
2.....	2
3 or more.....	3

◆ Prior Incarcerations/Commitments If YES, add 3 →

◆ Legally Restrained at Time of Offense

None.....	0
Other than parole/post-release, supervised probation or CCCA.....	2
Parole/post-release, supervised probation or CCCA	3

Total Score If total is 8 or less, go to Section B. If total is 9 or more, go to Section C.

Other Sexual Assault/Section A (Part II)

Regarding Section C, the extent to which judges concurred with the sentence length recommendation was quite high during the period examined. Judges concurred with Section C sentence length recommendations in 84.5% of the cases. Therefore, no changes to the Section C worksheet are proposed at this time.

The projected effect of these modifications on guidelines recommendations is displayed in Figure 77. Under the proposal, the type of disposition recommended by the guidelines would be more closely aligned with the actual sentencing dispositions in online solicitation cases.

Figure 77

**Recommended and Actual Dispositions
for Online Solicitation of Minor (§ 18.2-374.3)
FY2016 – FY2020**

	Actual Practice	Recommended under Proposed Guidelines
Probation/No Incarceration up to 6 months	10.5%	8.5%
Incarceration more than 6 months (Range includes prison)	89.5%	91.5%

Figure 78 presents dispositional concurrence and departure rates for FY2016-FY2020 online solicitation cases under both the current and proposed scoring schemes. Dispositional concurrence is defined as the rate at which judges comply with the type of disposition recommended by the guidelines (probation/no incarceration, jail up to six months, or incarceration of more than six months). With the proposed changes, the dispositional concurrence with the guidelines is expected to improve. Dispositional concurrence is projected to increase from 84.4% to 90.8% and, rather than departures weighted towards upward departures, a near-perfect balance between dispositional departures above and below the guidelines is anticipated. The proposal effectively addresses dispositional departures from the guidelines by increasing the likelihood that defendants convicted of online solicitation will be recommended by the guidelines for a prison term.

As shown in Figure 78 overall concurrence is also expected to increase under the proposal (from 71.5% to 77.2%). In addition, the proposal should reduce the rate of upward departures, which will achieve a somewhat improved balance in departures above and below the guidelines.

The Commission’s proposal is expected to yield guidelines recommendations that provide judges with a more accurate benchmark of the typical, or average, case outcome for similarly-situated defendants.

No impact on correctional bed space is anticipated, since the Commission’s proposal is designed to integrate current judicial sanctioning practices into the guidelines.

Figure 78
Concurrence with Guidelines for Online Solicitation of Minor (§ 18.2-374.3)
FY2016 – FY2020

	Dispositional Concurrence/ Departure Rates			Overall Concurrence/ Departure Rates	
	Current	Proposed		Current	Proposed
Concurrence	84.4%	90.8%	Concurrence	71.5%	77.2%
Mitigation	2.3%	5.1%	Mitigation	3.8%	6.2%
Aggravation	13.3%	4.1%	Aggravation	24.6%	16.7%

RECOMMENDATION

6

Revise the felony sentencing guidelines recommendations to reflect current judicial sentencing practices when defendants provide substantial assistance, accept responsibility or express remorse.

ISSUE

Virginia's felony sentencing guidelines were created to provide sentence recommendations based on historical practices, using information regarding the nature of the current offense(s) and a defendant's criminal history. The Commission closely monitors the sentencing guidelines system and, each year, deliberates upon possible modifications to enhance the usefulness of the guidelines as a tool for judges in making their sentencing decisions. Recommendations for revisions to the guidelines are based on the best fit of the available data. Guidelines are modified when judges consistently depart from guidelines recommendations and cite similar reasons for departing. The Commission has carefully examined cases in which judges, when departing from the guidelines, cited the defendant's substantial assistance in apprehension or prosecution of others, the defendant's acceptance of responsibility for the offense, or the defendant's expression of remorse for the crimes. Across all offense groups, judges have historically sentenced below the guidelines when defendants were cited as having provided substantial assistance to law enforcement, accepted responsibility, or genuinely expressed remorse for their behavior. In many cases, the defendant started the rehabilitation process or worked towards making the victim whole before the date of sentencing. After extensive analysis of five years of sentencing guidelines data, the Commission has developed a proposal to address judicial sentencing in such cases.

DISCUSSION

Plea agreements may take into consideration defendants who offer substantial assistance, accept responsibility or express remorse. The agreements, in these cases, may recommend or establish sentences within the sentencing guidelines ranges. Agreements that resulted in effective sentences within the sentencing guidelines recommendations are excluded from this analysis. This analysis only focuses on cases in which the judge gave an effective sentence below the guidelines recommended range and cited specific departure reasons based on assistance to law enforcement or prosecutors, acceptance of responsibility, or expressed remorse. There are other cases when defendants provided assistance, took responsibility or expressed remorse, and sentences established by plea agreements or judges were above the guidelines recommendations. The upward departures in these cases may be less than what the judges normally would sentence based on the facts of the case or the upward deviation was less extreme for the defendant compared to codefendants. However, the effective sentence to serve was above the guidelines recommendation. The Commission has added procedures to better capture those aggravating cases in the future.

Judicial departure reasons provided on the sentencing guidelines forms provide the only reliable data source to identify sentencing events that resulted in reduced sentences because of the defendant's assistance, acceptance of responsibility, or expressed remorse.

Between FY2016 and FY2020, there were 1,428 sentencing events with identified departures from the guidelines recommendations for one of these three reasons described above. There were 889 events that resulted in a lower sentence than recommended because of substantial assistance to law enforcement or prosecutors. In another 580 sentencing events the judges departed from the guidelines recommendations because the defendants accepted responsibility or expressed remorse. Among these, there were 32 cases that included both types of departure reasons and 9 cases excluded for data validity issues.

In these 1,428 sentencing events, 31.3% of the defendants were sentenced to probation for providing assistance. Another 42.4% percent were sentenced to probation for accepting responsibility and/or expressing remorse. Any historically-based guidelines proposed must encompass the significant number of defendants who received totally suspended sentences or were sentenced to no additional time other than time already served awaiting trial.

The best approach to capture defendants sentenced to probation or to no additional time because of the assistance provided, acceptance of responsibility or expression of remorse was to reduce the low end of the guidelines range to zero. Under the Commission's proposal, if the judge determines at sentencing that the defendant provided substantial assistance, accepted responsibility or expressed genuine remorse, the low end of the guidelines recommended range would be reduced to zero when the low end of the recommendation is three years or less. The midpoint and the high end of the sentencing guidelines range would remain unchanged. If the judge gives an effective sentence of between probation/no incarceration and the high end of the guidelines, he or she will be considered in concurrence with the guidelines. This approach captures historical sentencing for all but 3% of the defendants who historically were sentenced to probation. For defendants for whom the low end of the guidelines range is more than three years, the Commission proposes that the low end of the guidelines range be reduced by 50%. This captures defendants sentenced to some period of incarceration, but less than the sentence recommended by the guidelines. The combination of reducing the low end of the guidelines recommendation to zero in some cases and by 50% in other cases will ensure that the sentence recommendations reflect historical sentencing practices.

The recommended changes to the guidelines allow the judge to consider the defendant's assistance, acceptance of responsibility or expression of remorse, if the judge wishes to do so, and still be considered in concurrence with the guidelines. Figure 79 illustrates judicial sentencing patterns in these cases. By modifying the guidelines recommendation as proposed, 90% of the affected FY2016-FY2020 cases (all of which resulted in sentences below the guidelines) would have been brought into concurrence with the guidelines if the proposal had been in effect during that time.

Figure 79

**Sentencing Events in which Judges Departed from the Guidelines and Cited the Defendant's Substantial Assistance, Acceptance of Responsibility or Expression of Remorse
FY2016-FY2020**

Low End of Guidelines Range is:	Number of Cases	Median Low-End Guidelines Recommendation	Median Months Difference Between Effective Sentence & Recommended Low End	Percentage Effective Sentence Less Than Recommended Low-End	Percentage Sentenced to Probation	Under the Commission's proposal:
Incarceration up to 12 months	642	8.0	5.0	62.5%	53.6%	If the judge determines at sentencing that the defendant provided substantial assistance, accepted responsibility or expressed genuine remorse, the low end of the guidelines recommended range would be reduced to zero.
Greater than 12 Months to 16 Months	158	14.0	8.0	57.1%	38.0%	
Greater than 16 Months to 24 months	191	20.0	10.0	50.0%	21.5%	
Greater than 24 Months to 36 months	118	30.0	18.0	60.0%	20.3%	
Greater than 36 Months	319	55.0	31.0	48.3%	13.5%	If the judge determines at sentencing that the defendant provided substantial assistance, accepted responsibility or expressed genuine remorse, and the low end of the guidelines range is more than three years, the Commission proposes that the low end of the guidelines range be reduced by 50%.

To reflect historical sentencing and to be true to the source of the data, the decision to modify the guidelines recommendation must be made by the judge. There would be no change in court procedures. Attorneys would continue to make arguments to the judge as to why specific sentences were recommended by the plea agreements or why judges should elect to modify the guidelines recommendations for one of the specified reasons. There is no need for the guidelines to distinguish between defendants who provided assistance and those who accepted responsibility or expressed remorse. The modified recommendation would be the same for both groups.

Figure 80 is an illustration of the proposed change to the sentencing guidelines cover sheet. If the guidelines are prepared using the Commission's automated sentencing guidelines application (called SWIFT), the modified guidelines range will be calculated and shown on the back side of the guidelines coversheet. If the judge determines that the defendant meets one of the criteria, the judge simply needs to check the box indicating that determination. The judge may then utilize the modified guidelines recommended range shown below the check box.

No increase to correctional bed space is anticipated, since the Commission's proposal is designed to integrate current judicial sanctioning practices into the guidelines and can only serve to reduce the low end of the guidelines recommendation.

Figure 80

**Proposed Sentencing Guidelines Cover Sheet
Modified Sentence Recommendation when Judge Finds Substantial Assistance,
Acceptance of Responsibility or Expression of Remorse by Defendant**



MODIFICATION OF RECOMMENDATION

FOR SUBSTANTIAL ASSISTANCE, ACCEPTS RESPONSIBILITY OR EXPRESSES REMORSE:

- If Recommended Low-end is 3 Years or Less, Adjust Low-end to NO incarceration
- If Recommended Low-end is Over 3 Years, Adjust Low-end to 50% of the Low-end Recommendation

RECOMMENDATION



Revise the cover sheet to advise judges that sentencing a defendant to an alternative sanction when it was recommended by the nonviolent offender risk assessment is not considered a departure from the guidelines.

ISSUE

In 1994, as part of the reform legislation that instituted truth-in-sentencing, the General Assembly directed the Commission to study the feasibility of applying an empirically-based risk assessment instrument to select 25% of the lowest risk, incarceration-bound, drug and property offenders for placement in alternative (non-prison) sanctions. By 1996, the Commission developed such an instrument based on a study of recidivism rates and patterns among Virginia felons, and implementation of the instrument began in pilot sites in 1997. After a two-year study the instrument was modified and, in 2013, the risk assessment instrument was replaced with two instruments, one applicable to larceny and fraud offenders and the other specific to drug offenders. The Commission's study revealed that predictive accuracy was improved using two distinct instruments.

Since that time there has been interest within the judicial system and with academics on the use of the nonviolent offender risk assessment instrument by Virginia judges. A recent article, "Judicial appraisals of risk assessment in sentencing" by John Manahan, Anne L. Metz and Brandon L. Garrett of the University of Virginia School of Law (Behavioral Science Law, May 2018) addressed judicial opinions and misconceptions about the nonviolent offender risk assessment. Judges have stressed that the instrument is only useful when there are acceptable alternatives available to the court. The issue is how to better identify defendants recommended for alternatives and inform judges that the use of alternative sentences, when the defendant is recommended through risk assessment for such alternatives, is in concurrence with guidelines recommendations.

DISCUSSION

Concurrence rates with sentencing guidelines recommendations are consistently high for drug, fraud and larceny offenses. Chapter 2 of this report contains detailed information on concurrence and nonviolent offender risk assessment. As an example, in FY2020, concurrence for all drug offenses was 87.1% and over 25% of those cases were considered in concurrence because the nonviolent risk assessment recommended a less restrictive sentence. A less restrictive sentence includes use of first offender provisions, probation, good behavior or treatment, etc. In FY2020, the sentencing guidelines recommend over 51% of the distribution of Schedule I/II drug cases to alternative sentences and the majority of the possession of Schedule I/II drugs were recommended for probation sentences or alternatives: 44% for probation and 19% for an alternative (Figure 81). However, since the proportion of drug cases recommended for alternatives is significant and the concurrence rates are high, there is no indication that the guidelines can be adjusted to better reflect historical sentencing practices.

Based on feedback from Virginia’s circuit court judges, there are three areas that, if addressed, may increase judicial use of alternative sanctions when they are recommended by the nonviolent offender risk assessment. One, increase the availability of alternative sanctions across the Commonwealth. Making alternatives available

Figure 81
Guidelines Recommendations in Schedule I/II Drug Sentencing Events
FY2020

Guidelines Recommendation	Distribution of Schedule I/II Drugs § 18.2-248(C)	Possession of Schedule I/II Drugs § 18.2-250(A,a)
Probation	0%	43.7%
Alternative Sanction	51.3%	18.9%
Jail	12.6%	29.4%
Prison (No Violent Prior Record)	19.9%	3.4%
Prison (Category II Violent Prior Record)	13%	3.5%
Prison (Category I Violent Prior Record)	3.2%	1.2%

across the state and providing effective treatment options for use by the courts would allow judges to better use the nonviolent risk assessment instrument. Two, ensure the risk assessment instrument is completed by the attorney for the Commonwealth or the probation officer in every case (the Commission has determined that the risk assessment instrument, Section D, is not completed in every case it should be). Three, remind judges that if the risk assessment recommends an alternative, a sentence to an alternative sanction in lieu of a traditional jail or prison term is in concurrence with the guidelines.

While expanding alternatives would provide judges with more sentencing options, many defendants recommended for alternative sanctions who did not receive an alternative in the past would not necessarily receive less restrictive sentences if they were available. Many factors affect judicial sentencing decisions (e.g., elements of the current offense, prior record, potential for violence, defendant's attitude towards alternatives, or lack of desire for treatment) that are not considered by the risk assessment instrument.

In its examination, the Commission found that approximately 8% of Drug sentencing guidelines worksheets submitted to the Commission were missing the risk assessment instrument (Section D). In FY2020, 794 cases (12.8%) of possession of Schedule I/II cases and 136 (7.3%) of distribution of Schedule I/II cases were missing the instrument. In some of the cases, the defendants may have been recommended for probation, but it is difficult to document these cases if the relevant guideline worksheets are not submitted to the court. In other cases, plea agreements established the sentences and the completion of the risk assessment would not have changed the outcomes.

Finally, the Commission must ensure that circuit court judges in Virginia understand how concurrence with guidelines is calculated in risk assessment cases. It should be clear to judges that when the nonviolent risk assessment recommends an alternative, any less restrictive sentence ordered by the court is in concurrence with the guidelines recommendation. If the judge sentences a defendant to an alternative when recommended through risk assessment, the judge need not submit a departure reason.

In order to ensure judges are aware of this at the time of sentencing, the Commission recommends that the Sentencing Guidelines Cover Sheet be modified to better explain how the nonviolent offender risk assessment recommendation is used when

calculating concurrence. Adding a check box to the cover sheet, as shown in Figure 82, would serve two purposes. First, it would remind judges to review the risk assessment instrument in every case and ask for it if it was missing. Second, it would clarify for judges that, when the defendant is recommended for an alternative and the judge accepts the recommendation for an alternative, no departure reason is needed on the guidelines form.

The Commission’s proposal is not expected to increase jail or prison bed space needs, as the Commission’s proposal is designed to increase judicial use of alternative sanctions when they are recommended by the guidelines.

Figure 82
Sentencing Guidelines
Revised Cover Sheet

◆ **Final Disposition** Fill In After Sentence Has Been Pronounced

◆ **SENTENCE** _____

Total Time Imposed Before Suspension Life Sentence •

Total Effective Time to Serve Life Sentence • Sentenced to Time Served

Post Release
 Post Release Incarceration Term § 18.2-10 (suspended)
 Post Release Supervision Period § 19.2-295.2(A)

Probation Period (Supervised) § 19.2-303 Indefinite

Good Behavior Period (§ 19.2-306) _____
Years Months Days

Check all that apply

Incarceration Sentence to Run Concurrently With Another Sentencing Event

Written Plea Agreement Accepted = Rule 3A:8(c)(1) (A) or (C)

Plea and Recommendation Accepted = Rule 3A:8(c)(1)(B)

Oral Sentence Recommendation Accepted

Restitution \$ _____ Fine \$ _____

Other Sentencing Programs (*check all that apply*)

Day Reporting
 Electronic Monitoring
 Intensive Probation
 Substance Abuse Treatment
 § 18.2-251/§ 18.2-258.1
 Substance Abuse Treatment

Community-Based Program _____
 CCAP Detention/Diversion Center Incarceration, 22-28 weeks
 CCAP Detention/Diversion Center Incarceration, 42-48 weeks
 Drug Court
 Youthful Offender
 DJJ Commitment Indeterminate Determinate
 Other _____

◆ **REASON FOR DEPARTURE AND/OR MODIFICATION OF JURY SENTENCE**
Must be completed pursuant to § 19.2-298.01(B) and/or § 19.2-295(B)/ § 19.2-303

Accepted Nonviolent Offender Risk Assessment recommendation, no departure reason needed

◆ **SENTENCING DATE**

Judge's Signature

◆ **ATTACH COURT ORDER AND MAIL** Pursuant to § 19.2-298.01(E) _____
 After sentencing, send to:

Virginia Criminal Sentencing Commission • 100 North Ninth Street • Fifth Floor • Richmond, Virginia 23219

APPENDICES

Appendix 1

Judicial Reasons for Departure from Sentencing Guidelines Property, Drug, and Miscellaneous Offenses

Reasons for MITIGATION

Burglary of Dwelling (101 Cases)

	Number	Percent
Plea Agreement	26	45.6%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	11	19.3%
Sentenced to alternative punishment	9	15.8%
Recommended by the attorney for the Commonwealth	9	15.8%
Cooperated with authorities	8	14.0%
Mitigated facts of the offense	6	10.5%
No mitigating reason given	3	5.3%
Offender has good potential for rehabilitation	3	5.3%
Recommended by the jury	2	3.5%
Offender has substance abuse issues	2	3.5%
Offender has health issues	2	3.5%
Offender has minimal or no prior record	2	3.5%
Offender needs rehabilitation	2	3.5%
Victim circumstances (drug dealer, etc.)	2	3.5%
Request of the victim	2	3.5%
Behavior positive since commission of the offense	1	1.8%
Property was recovered or was of little value	1	1.8%
Sequence of events had impact on recommendation	1	1.8%
Mitigated court circumstances or proceedings (e.g., will resentence)	1	1.8%
Financial obligations (child support, restitution, court costs, etc.)	1	1.8%
Sentencing guidelines scoring issue (e.g., prior conviction not scored correctly, etc.)	1	1.8%
Sentencing guidelines recommendation not appropriate (non-specific)	1	1.8%
Sentencing guidelines recommendation was too high	1	1.8%
Offender issues, general (e.g., age, family support, impact on community, etc.)	1	1.8%
Offender has failed other alternatives or rehabilitation	1	1.8%
Offender has made progress in rehabilitating himself or herself	1	1.8%
Victim cannot or will not testify	1	1.8%

Burglary of Other Structure (67 Cases)

	Number	Percent
Plea Agreement	18	46.2%
Sentenced to alternative punishment	12	30.8%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	6	15.4%
Cooperated with authorities	4	10.3%
Offender has good potential for rehabilitation	4	10.3%
Mitigated facts of the offense	3	7.7%
Property was recovered or was of little value	2	5.1%
Mitigated court circumstances or proceedings (e.g., will resentence)	2	5.1%
Financial obligations (child support, restitution, court costs, etc.)	2	5.1%
Offender has health issues	2	5.1%
Offender needs rehabilitation	2	5.1%
Request of the victim	2	5.1%
Behavior positive since commission of the offense	1	2.6%
Recommended by the attorney for the Commonwealth	1	2.6%
Offender has substance abuse issues	1	2.6%
Sentence was rounded down	1	2.6%
Offender was not the leader	1	2.6%
Offender has minimal or no prior record	1	2.6%
Offender has made progress in rehabilitating himself or herself	1	2.6%
Sentenced as a juvenile to DJJ	1	2.6%

Note: Figures indicate the number of times a departure reason was cited.

Because multiple reasons may be cited in each case, figures will not total the number of cases in each offense group.

Appendix ①

Judicial Reasons for Departure from Sentencing Guidelines Property, Drug, and Miscellaneous Offenses

Reasons for AGGRAVATION

Burglary of Dwelling (96 Cases)	Number	Percent
Plea agreement	23	41.1%
Aggravated facts of the offense	16	28.6%
Offender has extensive prior record or same type of prior offense	7	12.5%
Multiple counts, offenses or violations in the event (prosecuted or not)	6	10.7%
Sentencing guidelines recommendation was too low	5	8.9%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	5	8.9%
Aggravated facts of the offense, specific to breaking and entering	4	7.1%
Recommended by the attorney for the Commonwealth	3	5.4%
Type of victim (child, weak, etc.)	3	5.4%
True offense behavior was more serious than offenses at conviction	2	3.6%
Prior record not adequately weighed by guidelines	2	3.6%
Offender has poor rehabilitation potential	2	3.6%
Victim circumstances (facts or the case, vulnerability, etc.)	2	3.6%
Degree of victim injury (physical, emotional, etc.)	2	3.6%
Degree of violence directed at victim	2	3.6%
Offense involved possession or use of a weapon	2	3.6%
Sentenced to alternative punishment	1	1.8%
Poor conduct since commission of the offense	1	1.8%
Child present at time of the offense	1	1.8%
Extreme property or monetary loss	1	1.8%
Offense involved a high degree of planning or a violation of trust	1	1.8%
Recommended by the jury	1	1.8%
Offender has substance abuse issues	1	1.8%
Financial obligations (child support, restitution, court costs, etc.)	1	1.8%
Offender violated a restraining order or stalked victim	1	1.8%
Victim requested aggravating sentence	1	1.8%

Burglary of Other Structure (26 Cases)	Number	Percent
Aggravated facts of the offense	4	30.8%
Multiple counts, offenses or violations in the event (prosecuted or not)	4	30.8%
Plea agreement	3	23.1%
Sentencing guidelines recommendation was too low	2	15.4%
Absconded from supervision	1	7.7%
Poor conduct since commission of the offense	1	7.7%
Did not exercise due caution while driving, excessive speeding, etc.	1	7.7%
Aggravated facts of the offense, specific to breaking and entering	1	7.7%
Child present at time of the offense	1	7.7%
Extreme property or monetary loss	1	7.7%
Mandatory minimum was involved in the event	1	7.7%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	1	7.7%
Offender has extensive prior record or same type of prior offense	1	7.7%
Offender has poor rehabilitation potential	1	7.7%
Degree of victim injury (physical, emotional, etc.)	1	7.7%
Offender violated a restraining order or stalked victim	1	7.7%
Victim requested aggravating sentence	1	7.7%

Note: Figures indicate the number of times a departure reason was cited.

Because multiple reasons may be cited in each case, figures will not total the number of cases in each offense group.

Appendix ①

Judicial Reasons for Departure from Sentencing Guidelines Property, Drug, and Miscellaneous Offenses

Reasons for MITIGATION

Drugs/Schedule I/II (1134 Cases)	Number	Percent
Plea Agreement	343	46.0%
Sentenced to alternative punishment	122	16.4%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	114	15.3%
Recommended by the attorney for the Commonwealth	74	9.9%
Offender has made progress in rehabilitating himself or herself	66	8.9%
Cooperated with authorities	64	8.6%
Offender has minimal or no prior record	50	6.7%
Mitigated court circumstances or proceedings (e.g., will resentence)	46	6.2%
Mitigated facts of the offense	44	5.9%
No mitigating reason given	29	3.9%
Offender has health issues	28	3.8%
Offender has good potential for rehabilitation	26	3.5%
Behavior positive since commission of the offense	18	2.4%
Offender needs rehabilitation	14	1.9%
Current offense involves drugs or alcohol (e.g., small amount)	13	1.7%
Offender has substance abuse issues	13	1.7%
Sentencing guidelines recommendation was too high	9	1.2%
Sentencing guidelines scoring issue (e.g., prior conviction not scored correctly, etc.)	8	1.1%
Offender issues, general (e.g., age, family support, impact on community, etc.)	7	0.9%
Sentencing guidelines recommendation not appropriate (non-specific)	6	0.8%
Offender has failed other alternatives or rehabilitation	5	0.7%
Financial obligations (child support, restitution, court costs, etc.)	4	0.5%
Offender was not the leader	4	0.5%
Illegible written mitigating reason	3	0.4%
Probation violation based on minimal facts of the case	3	0.4%
Sequence of events had impact on recommendation	3	0.4%
Sentencing guidelines were missing or incorrect	3	0.4%
Property was recovered or was of little value	2	0.3%
Multiple trial types (i.e., jury, bench, plea)	2	0.3%
Aggravated facts of the offense	1	0.1%
Sentencing guidelines were missing or incorrect	1	0.1%
Probation violation based on minimal circumstances involving drugs or alcohol	1	0.1%
Probation violation based on minor new offense	1	0.1%
Recommended by the jury	1	0.1%
Recommended by the probation officer	1	0.1%
Judge believed sentence was in concurrence with recommendation	1	0.1%
Sentence was rounded down	1	0.1%
Original offense was nonviolent	1	0.1%
Request of the victim	1	0.1%

Drugs/Other (72 Cases)	Number	Percent
Plea Agreement	26	53.1%
Cooperated with authorities	8	16.3%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	7	14.3%
Sentenced to alternative punishment	4	8.2%
Offender has made progress in rehabilitating himself or herself	4	8.2%
No mitigating reason given	3	6.1%
Recommended by the attorney for the Commonwealth	3	6.1%
Offender has good potential for rehabilitation	3	6.1%
Behavior positive since commission of the offense	2	4.1%
Mitigated facts of the offense	2	4.1%
Current offense involves drugs or alcohol (e.g., small amount)	2	4.1%
Offender has minimal or no prior record	2	4.1%
Illegible written mitigating reason	1	2.0%
Probation violation not based on new law violation	1	2.0%
Mitigated court circumstances or proceedings (e.g., will resentence)	1	2.0%
Judge believed sentence was in concurrence with recommendation	1	2.0%
Offender has health issues	1	2.0%
Offender issues, general (e.g., age, family support, impact on community, etc.)	1	2.0%
Judge had issues with risk assessment	1	1.5%
Offender has good potential for rehabilitation	1	1.5%
Probation violation based on minimal facts of the case	1	1.5%
Request of the victim	1	1.5%
Sentencing guidelines recommendation not appropriate (non-specific)	1	1.5%
Sentencing guidelines were missing or incorrect	1	1.5%
Victim cannot or will not testify	1	1.5%
Sentencing guidelines recommendation was too high	1	1.7%
Offender was not the leader	1	1.7%

Note: Figures indicate the number of times a departure reason was cited.

Because multiple reasons may be cited in each case, figures will not total the number of cases in each offense group.

Appendix 1

Judicial Reasons for Departure from Sentencing Guidelines Property, Drug, and Miscellaneous Offenses

Reasons for AGGRAVATION

Drugs/Schedule I/II (891 Cases)	Number	Percent
Plea agreement	269	47.4%
Multiple counts, offenses or violations in the event (prosecuted or not)	96	16.9%
Aggravated facts of the offense	68	12.0%
Offender failed alternative program	63	11.1%
Current offense involved drugs or alcohol (e.g., large amount, location, etc.)	51	9.0%
Offender has extensive prior record or same type of prior offense	43	7.6%
Sentenced to alternative punishment	27	4.8%
Recommended by the attorney for the Commonwealth	20	3.5%
Offender has substance abuse issues	19	3.3%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	18	3.2%
Offender has poor rehabilitation potential	18	3.2%
No aggravating reason given	16	2.8%
New offenses were committed while on probation	16	2.8%
Sentencing guidelines recommendation was too low	16	2.8%
Recommended by the jury	13	2.3%
Absconded from supervision	12	2.1%
Poor conduct since commission of the offense	9	1.6%
Child present at time of the offense	9	1.6%
Failed to follow instructions while on probation	8	1.4%
Aggravated court circumstances or proceedings (e.g., will resentence)	8	1.4%
Offense involved possession or use of a weapon	8	1.4%
Used, etc., drugs or alcohol while on probation	6	1.1%
Failed to attend meeting or keep appointments while on probation	6	1.1%
Offender needs rehabilitation offered by jail or prison	6	1.1%
Did not exercise due caution while driving, excessive speeding, etc.	5	0.9%
Judge believed sentence was in concurrence with recommendation	5	0.9%
Illegible written aggravating reason	4	0.7%
Failed to cooperate with authorities	4	0.7%
Offense involved a high degree of planning or a violation of trust	4	0.7%
Prior record not adequately weighed by guidelines	4	0.7%
Degree of victim injury (physical, emotional, etc.)	4	0.7%
Sentencing guidelines recommendation is not appropriate	3	0.5%
Offender issues, general (e.g., age, family support, impact on community, etc.)	3	0.5%
Type of victim (child, weak, etc.)	3	0.5%
Mandatory minimum was involved in the event	2	0.4%
Victim circumstances (facts or the case, vulnerability, etc.)	2	0.4%
Victim requested aggravating sentence	2	0.4%
Sentenced to alternative punishment	2	0.4%
Illegible written mitigating reason	1	0.2%
Violent or disruptive behavior while in custody	1	0.2%
Aggravated facts of the offense, specific to breaking and entering	1	0.2%
Gang-related offense	1	0.2%
Extreme property or monetary loss	1	0.2%
True offense behavior was more serious than offenses at conviction	1	0.2%
Recommended by the probation officer	1	0.2%
Offender was the leader	1	0.2%
Offender has health issues	1	0.2%
Offender violated sex offender restrictions	1	0.2%
Never reported for probation or signed conditions	1	0.2%
Mitigated facts of the offense	1	0.2%
Recommended by the attorney for the Commonwealth	1	0.2%
Sentencing guidelines were missing or incorrect	1	0.2%
Plea Agreement	1	0.2%

Drugs/Other (75 Cases)	Number	Percent
Plea agreement	23	50.0%
Current offense involved drugs or alcohol (e.g., large amount, location, etc.)	14	30.4%
Multiple counts, offenses or violations in the event (prosecuted or not)	11	23.9%
Aggravated facts of the offense	7	15.2%
Offender has extensive prior record or same type of prior offense	3	6.5%
Recommended by the jury	2	4.3%
Sentencing guidelines recommendation was too low	2	4.3%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	2	4.3%
No aggravating reason given	1	2.2%
Sentenced to alternative punishment	1	2.2%
New offenses were committed while on probation	1	2.2%
Child present at time of the offense	1	2.2%
Recommended by the attorney for the Commonwealth	1	2.2%
Offender has substance abuse issues	1	2.2%
Offender issues, general (e.g., age, family support, impact on community, etc.)	1	2.2%
Offender has poor rehabilitation potential	1	2.2%
Offender failed alternative program	1	2.2%
Offense involved possession or use of a weapon	1	2.2%
Plea Agreement	1	2.2%

Appendix ①

Judicial Reasons for Departure from Sentencing Guidelines Property, Drug, and Miscellaneous Offenses

Reasons for MITIGATION

Fraud (202 Cases)	Number	Percent
Plea Agreement	44	38.6%
Sentenced to alternative punishment	24	21.1%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	15	13.2%
Financial obligations (child support, restitution, court costs, etc.)	13	11.4%
Cooperated with authorities	12	10.5%
Mitigated facts of the offense	10	8.8%
Offender has minimal or no prior record	10	8.8%
Recommended by the attorney for the Commonwealth	9	7.9%
Request of the victim	9	7.9%
Offender has health issues	8	7.0%
Mitigated court circumstances or proceedings (e.g., will resentence)	6	5.3%
Offender has good potential for rehabilitation	6	5.3%
Offender has made progress in rehabilitating himself or herself	4	3.5%
Victim circumstances (drug dealer, etc.)	4	3.5%
Property was recovered or was of little value	3	2.6%
Sentencing guidelines scoring issue (e.g., prior conviction not scored correctly, etc.)	3	2.6%
Sentencing guidelines recommendation was too high	3	2.6%
Offender was not the leader	3	2.6%
Offender issues, general (e.g., age, family support, impact on community, etc.)	3	2.6%
Offender needs rehabilitation	3	2.6%
No mitigating reason given	2	1.8%
Offender has failed other alternatives or rehabilitation	2	1.8%
Probation violation based on minimal facts of the case	1	0.9%
Behavior positive since commission of the offense	1	0.9%
Recommended by the jury	1	0.9%
Offender has substance abuse issues	1	0.9%
Judge believed sentence was in concurrence with recommendation	1	0.9%
Victim cannot or will not testify	1	0.9%

Larceny (584 Cases)	Number	Percent
Plea Agreement	159	42.0%
Sentenced to alternative punishment	71	18.7%
Offender has health issues	37	9.8%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	35	9.2%
Mitigated facts of the offense	34	9.0%
Recommended by the attorney for the Commonwealth	33	8.7%
Offender has minimal or no prior record	27	7.1%
Offender has made progress in rehabilitating himself or herself	27	7.1%
Cooperated with authorities	18	4.7%
Offender has good potential for rehabilitation	17	4.5%
No mitigating reason given	16	4.2%
Financial obligations (child support, restitution, court costs, etc.)	15	4.0%
Property was recovered or was of little value	12	3.2%
Mitigated court circumstances or proceedings (e.g., will resentence)	11	2.9%
Request of the victim	11	2.9%
Offender issues, general (e.g., age, family support, impact on community, etc.)	10	2.6%
Behavior positive since commission of the offense	6	1.6%
Sentencing guidelines scoring issue (e.g., prior conviction not scored correctly, etc.)	6	1.6%
Offender has substance abuse issues	5	1.3%
Sentencing guidelines recommendation was too high	4	1.1%
Offender needs rehabilitation	4	1.1%
Sentencing guidelines recommendation not appropriate (non-specific)	3	0.8%
Offender has failed other alternatives or rehabilitation	3	0.8%
Missing information	2	0.5%
Sequence of events had impact on recommendation	2	0.5%
Judge believed sentence was in concurrence with recommendation	2	0.5%
Sentence was rounded down	2	0.5%
Victim cannot or will not testify	2	0.5%
Victim circumstances (drug dealer, etc.)	2	0.5%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	1	0.3%
Plea agreement	1	0.3%
Probation violation not based on new law violation	1	0.3%
Recommended by the jury	1	0.3%
Multiple trial types (i.e., jury, bench, plea)	1	0.3%
Sentencing guidelines were missing or incorrect	1	0.3%
Victim circumstances (facts or the case, credibility issues, etc.)	1	0.3%
Sentenced as a juvenile to DJJ	1	0.3%

Note: Figures indicate the number of times a departure reason was cited. Because multiple reasons may be cited in each case, figures will not total the number of cases in each offense group.

Appendix ①

Judicial Reasons for Departure from Sentencing Guidelines Property, Drug, and Miscellaneous Offenses

Reasons for AGGRAVATION

Fraud (90 Cases)	Number	Percent
Plea agreement	26	44.1%
Aggravated facts of the offense	14	23.7%
Offense involved a high degree of planning or a violation of trust	7	11.9%
Offender has extensive prior record or same type of prior offense	7	11.9%
Extreme property or monetary loss	6	10.2%
Multiple counts, offenses or violations in the event (prosecuted or not)	3	5.1%
Sentencing guidelines recommendation was too low	3	5.1%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	3	5.1%
Degree of victim injury (physical, emotional, etc.)	3	5.1%
Sentenced to alternative punishment	2	3.4%
Failed to cooperate with authorities	2	3.4%
Offender has poor rehabilitation potential	2	3.4%
Type of victim (child, weak, etc.)	2	3.4%
Failed to follow instructions while on probation	1	1.7%
Poor conduct since commission of the offense	1	1.7%
Recommended by the attorney for the Commonwealth	1	1.7%
Recommended by the jury	1	1.7%
Financial obligations (child support, restitution, court costs, etc.)	1	1.7%
Mandatory minimum was involved in the event	1	1.7%
Prior record not adequately weighed by guidelines	1	1.7%
Seriousness of the original offense	1	1.7%
Victim requested aggravating sentence	1	1.7%
Sentenced to alternative punishment	1	1.7%

Larceny (342 Cases)	Number	Percent
Plea agreement	72	34.6%
Aggravated facts of the offense	48	23.1%
Offender has extensive prior record or same type of prior offense	29	13.9%
Offense involved a high degree of planning or a violation of trust	26	12.5%
Multiple counts, offenses or violations in the event (prosecuted or not)	23	11.1%
Sentencing guidelines recommendation was too low	14	6.7%
Extreme property or monetary loss	12	5.8%
Recommended by the jury	9	4.3%
Sentenced to alternative punishment	8	3.8%
Recommended by the attorney for the Commonwealth	8	3.8%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	8	3.8%
Type of victim (child, weak, etc.)	8	3.8%
No aggravating reason given	7	3.4%
Offender has substance abuse issues	6	2.9%
Offender has poor rehabilitation potential	6	2.9%
Offense involved possession or use of a weapon	6	2.9%
Poor conduct since commission of the offense	5	2.4%
Absconded from supervision	4	1.9%
Degree of victim injury (physical, emotional, etc.)	4	1.9%
Offender failed alternative program	3	1.4%
Illegible written aggravating reason	2	1.0%
Used, etc., drugs or alcohol while on probation	2	1.0%
Failed to follow instructions while on probation	2	1.0%
Did not exercise due caution while driving, excessive speeding, etc.	2	1.0%
Aggravated facts of the offense, specific to breaking and entering	2	1.0%
Current offense involved drugs or alcohol (e.g., large amount, location, etc.)	2	1.0%
Financial obligations (child support, restitution, court costs, etc.)	2	1.0%
Sentencing guidelines recommendation is not appropriate	2	1.0%
Victim requested aggravating sentence	2	1.0%
Degree of violence directed at victim	2	1.0%
Illegible written mitigating reason	1	0.5%
Failed to cooperate with authorities	1	0.5%
New offenses were committed while on probation	1	0.5%
True offense behavior was more serious than offenses at conviction	1	0.5%
Aggravated court circumstances or proceedings (e.g., will resentence)	1	0.5%
Judge believed sentence was in concurrence with recommendation	1	0.5%
Mandatory minimum was involved in the event	1	0.5%
Prior record not adequately weighed by guidelines	1	0.5%
Sentence was rounded up	1	0.5%
Offender was the leader	1	0.5%
Offender has health issues	1	0.5%
Seriousness of the original offense	1	0.5%
Victim circumstances (facts or the case, vulnerability, etc.)	1	0.5%
Offender violated a restraining order or stalked victim	1	0.5%
Sentenced to alternative punishment	1	0.5%
Plea Agreement	1	0.5%

Note: Figures indicate the number of times a departure reason was cited. Because multiple reasons may be cited in each case, figures will not total the number of cases in each offense group.

Appendix ①

Judicial Reasons for Departure from Sentencing Guidelines Property, Drug, and Miscellaneous Offenses

Reasons for MITIGATION

Miscellaneous/Other (95 Cases)	Number	Percent
Plea Agreement	22	37.9%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	13	22.4%
Mitigated facts of the offense	9	15.5%
Offender has good potential for rehabilitation	8	13.8%
Recommended by the attorney for the Commonwealth	5	8.6%
Offender issues, general (e.g., age, family support, impact on community, etc.)	5	8.6%
Offender has health issues	4	6.9%
No mitigating reason given	3	5.2%
Cooperated with authorities	3	5.2%
Offender has minimal or no prior record	3	5.2%
Offender has made progress in rehabilitating himself or herself	3	5.2%
Sentenced to alternative punishment	2	3.4%
Probation violation based on minimal facts of the case	2	3.4%
Behavior positive since commission of the offense	2	3.4%
Mitigating facts of the offense, specific to sex offenses	2	3.4%
Probation violation not based on new law violation	1	1.7%
Recommended by the jury	1	1.7%
Current offense involves drugs or alcohol (e.g., small amount)	1	1.7%
Offender has substance abuse issues	1	1.7%
Judge believed sentence was in concurrence with recommendation	1	1.7%
Sentencing guidelines scoring issue (e.g., prior conviction not scored correctly, etc.)	1	1.7%
Sentencing guidelines recommendation not appropriate (non-specific)	1	1.7%
Sentencing guidelines recommendation was too high	1	1.7%
Offender needs rehabilitation	1	1.7%

Miscellaneous/Person & Property (52 Cases)	Number	Percent
Plea Agreement	18	60.0%
Mitigated court circumstances or proceedings (e.g., will resentence)	4	13.3%
Offender has health issues	4	13.3%
Mitigated facts of the offense	3	10.0%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	3	10.0%
Offender has good potential for rehabilitation	3	10.0%
Offender has minimal or no prior record	2	6.7%
Offender has made progress in rehabilitating himself or herself	2	6.7%
Victim cannot or will not testify	2	6.7%
Request of the victim	2	6.7%
No mitigating reason given	1	3.3%
Sentenced to alternative punishment	1	3.3%
Cooperated with authorities	1	3.3%
Recommended by the jury	1	3.3%
Financial obligations (child support, restitution, court costs, etc.)	1	3.3%
Offender issues, general (e.g., age, family support, impact on community, etc.)	1	3.3%
Little or no injury, offender did not intend to harm victim	1	3.3%
Role of victim in the offense	1	3.3%
Sentenced as a juvenile to DJJ	1	3.3%

Note: Figures indicate the number of times a departure reason was cited.

Because multiple reasons may be cited in each case, figures will not total the number of cases in each offense group.

Appendix 1

Judicial Reasons for Departure from Sentencing Guidelines Property, Drug, and Miscellaneous Offenses

Reasons for AGGRAVATION

Miscellaneous/Other (15 Cases)	Number	Percent
Failed to cooperate with authorities	2	18.2%
Offender has extensive prior record or same type of prior offense	2	18.2%
No aggravating reason given	1	9.1%
Failed to attend meeting or keep appointments while on probation	1	9.1%
Aggravated facts of the offense	1	9.1%
Gang-related offense	1	9.1%
Child present at time of the offense	1	9.1%
Aggravated court circumstances or proceedings (e.g., will resentence)	1	9.1%
Prior record not adequately weighed by guidelines	1	9.1%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	1	9.1%
Plea agreement	1	9.1%
Offender has poor rehabilitation potential	1	9.1%
Offender failed alternative program	1	9.1%

Miscellaneous/Person & Property (116 Cases)	Number	Percent
Plea agreement	26	39.4%
Aggravated facts of the offense	22	33.3%
Degree of victim injury (physical, emotional, etc.)	10	15.2%
Type of victim (child, weak, etc.)	9	13.6%
Multiple counts, offenses or violations in the event (prosecuted or not)	6	9.1%
Offender has poor rehabilitation potential	6	9.1%
Child present at time of the offense	5	7.6%
Current offense involved drugs or alcohol (e.g., large amount, location, etc.)	5	7.6%
Offender has extensive prior record or same type of prior offense	5	7.6%
No aggravating reason given	3	4.5%
Aggravated facts of the offense, specific to breaking and entering	3	4.5%
Recommended by the jury	3	4.5%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	3	4.5%
Sentencing guidelines recommendation is not appropriate	2	3.0%
Sentencing guidelines recommendation was too low	2	3.0%
Sentenced to alternative punishment	1	1.5%
Did not exercise due caution while driving, excessive speeding, etc.	1	1.5%
Mandatory minimum was involved in the event	1	1.5%
Sentence was rounded up	1	1.5%
Sex offender has poor rehabilitation potential	1	1.5%
Victim circumstances (facts or the case, vulnerability, etc.)	1	1.5%

Note: Figures indicate the number of times a departure reason was cited.

Because multiple reasons may be cited in each case, figures will not total the number of cases in each offense group.

Appendix 1

Judicial Reasons for Departure from Sentencing Guidelines Property, Drug, and Miscellaneous Offenses

Reasons for MITIGATION

Traffic (160 Cases)	Number	Percent
Plea Agreement	42	41.2%
Recommended by the attorney for the Commonwealth	17	16.7%
Sentenced to alternative punishment	14	13.7%
Mitigated facts of the offense	13	12.7%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	9	8.8%
Offender has minimal or no prior record	9	8.8%
Offender has made progress in rehabilitating himself or herself	9	8.8%
Offender has good potential for rehabilitation	8	7.8%
Mitigated court circumstances or proceedings (e.g., will resentence)	6	5.9%
Offender has health issues	6	5.9%
No mitigating reason given	4	3.9%
Offender issues, general (e.g., age, family support, impact on community, etc.)	4	3.9%
Recommended by the jury	2	2.0%
Sentencing guidelines scoring issue (e.g., prior conviction not scored correctly, etc.)	2	2.0%
Sentencing guidelines recommendation not appropriate (non-specific)	2	2.0%
Offender needs rehabilitation	2	2.0%
Missing information	1	1.0%
Cooperated with authorities	1	1.0%
Behavior positive since commission of the offense	1	1.0%
Sequence of events had impact on recommendation	1	1.0%
Offender has substance abuse issues	1	1.0%
Financial obligations (child support, restitution, court costs, etc.)	1	1.0%
Sentencing guidelines recommendation was too high	1	1.0%
Offender was not the leader	1	1.0%
Victim cannot or will not testify	1	1.0%
Victim circumstances (facts or the case, credibility issues, etc.)	1	1.0%
Little or no injury, offender did not intend to harm victim	1	1.0%

Weapons (138 Cases)	Number	Percent
Plea Agreement	45	52.9%
Offender has minimal or no prior record	15	17.6%
Mitigated facts of the offense	12	14.1%
Offender has good potential for rehabilitation	11	12.9%
Mitigated court circumstances or proceedings (e.g., will resentence)	10	11.8%
Recommended by the attorney for the Commonwealth	8	9.4%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	6	7.1%
Cooperated with authorities	5	5.9%
Offender has made progress in rehabilitating himself or herself	5	5.9%
Offender has health issues	4	4.7%
Sentenced to alternative punishment	2	2.4%
Sentencing guidelines recommendation was too high	2	2.4%
Offender issues, general (e.g., age, family support, impact on community, etc.)	2	2.4%
Behavior positive since commission of the offense	1	1.2%
Sequence of events had impact on recommendation	1	1.2%
Recommended by the jury	1	1.2%
Current offense involves drugs or alcohol (e.g., small amount)	1	1.2%
Judge believed sentence was in concurrence with recommendation	1	1.2%
Sentencing guidelines were missing or incorrect	1	1.2%
Sentencing guidelines recommendation not appropriate (non-specific)	1	1.2%
Offender was not the leader	1	1.2%
Offender has failed other alternatives or rehabilitation	1	1.2%
Request of the victim	1	1.2%
Weapon was not a firearm	1	1.2%

Note: Figures indicate the number of times a departure reason was cited. Because multiple reasons may be cited in each case, figures will not total the number of cases in each offense group.

Appendix 1

Judicial Reasons for Departure from Sentencing Guidelines Property, Drug, and Miscellaneous Offenses

Reasons for AGGRAVATION

Traffic (184 Cases)	Number	Percent
Aggravated facts of the offense	30	28.8%
Plea agreement	24	23.1%
Offender has extensive prior record or same type of prior offense	22	21.2%
Current offense involved drugs or alcohol (e.g., large amount, location, etc.)	16	15.4%
Did not exercise due caution while driving, excessive speeding, etc.	14	13.5%
Offender has substance abuse issues	14	13.5%
Offender has poor rehabilitation potential	10	9.6%
Multiple counts, offenses or violations in the event (prosecuted or not)	7	6.7%
Degree of victim injury (physical, emotional, etc.)	7	6.7%
No aggravating reason given	5	4.8%
Sentenced to alternative punishment	4	3.8%
Recommended by the jury	4	3.8%
Prior record not adequately weighed by guidelines	4	3.8%
Sentencing guidelines recommendation was too low	4	3.8%
Judicial discretion (e.g., time served, shock incarceration, consistent with codef., etc.)	4	3.8%
Poor conduct since commission of the offense	3	2.9%
Sentencing guidelines recommendation is not appropriate	2	1.9%
Offender has health issues	2	1.9%
Failed to follow instructions while on probation	1	1.0%
Child present at time of the offense	1	1.0%
Aggravated court circumstances or proceedings (e.g., will resentence)	1	1.0%
Recommended by the attorney for the Commonwealth	1	1.0%
Mandatory minimum was involved in the event	1	1.0%
Offender failed alternative program	1	1.0%
Type of victim (child, weak, etc.)	1	1.0%
Recommended by the attorney for the Commonwealth	1	1.0%

Weapons (166 Cases)	Number	Percent
Aggravated facts of the offense	30	28.8%
Plea agreement	24	23.1%
Offender has extensive prior record or same type of prior offense	22	21.2%
Current offense involved drugs or alcohol (e.g., large amount, location, etc.)	16	15.4%
Did not exercise due caution while driving, excessive speeding, etc.	14	13.5%
Offender has substance abuse issues	14	13.5%
Offender has poor rehabilitation potential	10	9.6%
Multiple counts, offenses or violations in the event (prosecuted or not)	7	6.7%
Degree of victim injury (physical, emotional, etc.)	7	6.7%
No aggravating reason given	5	4.8%
Sentenced to alternative punishment	4	3.8%
Recommended by the jury	4	3.8%
Prior record not adequately weighed by guidelines	4	3.8%
Sentencing guidelines recommendation was too low	4	3.8%
Judicial discretion (e.g., time served, shock incarceration, consistent with codef., etc.)	4	3.8%
Poor conduct since commission of the offense	3	2.9%
Sentencing guidelines recommendation is not appropriate	2	1.9%
Offender has health issues	2	1.9%
Failed to follow instructions while on probation	1	1.0%
Child present at time of the offense	1	1.0%
Aggravated court circumstances or proceedings (e.g., will resentence)	1	1.0%
Recommended by the attorney for the Commonwealth	1	1.0%
Mandatory minimum was involved in the event	1	1.0%
Offender failed alternative program	1	1.0%
Type of victim (child, weak, etc.)	1	1.0%
Recommended by the attorney for the Commonwealth	1	1.0%

Note: Figures indicate the number of times a departure reason was cited.

Because multiple reasons may be cited in each case, figures will not total the number of cases in each offense group.

Appendix 2

Judicial Reasons for Departure from Sentencing Guidelines Offenses Against the Person

Reasons for MITIGATION

Assault (261 Cases)

	Number	Percent
Plea Agreement	82	53.9%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	21	13.8%
Request of the victim	20	13.2%
Offender has health issues	19	12.5%
Recommended by the attorney for the Commonwealth	15	9.9%
Mitigated facts of the offense	13	8.6%
Victim cannot or will not testify	13	8.6%
Offender has minimal or no prior record	12	7.9%
Offender issues, general (e.g., age, family support, impact on community, etc.)	10	6.6%
Mitigated court circumstances or proceedings (e.g., will resentence)	7	4.6%
Sentenced as a juvenile to DJJ	7	4.6%
Sentenced to alternative punishment	5	3.3%
Offender was not the leader	4	2.6%
Cooperated with authorities	3	2.0%
Sentencing guidelines scoring issue (e.g., prior conviction not scored correctly, etc.)	3	2.0%
Offender has made progress in rehabilitating himself or herself	3	2.0%
Little or no injury, offender did not intend to harm victim	3	2.0%
Victim circumstances (drug dealer, etc.)	3	2.0%
Role of victim in the offense	3	2.0%
Illegible written mitigating reason	2	1.3%
Behavior positive since commission of the offense	2	1.3%
Recommended by the jury	2	1.3%
Offender has good potential for rehabilitation	2	1.3%
No mitigating reason given	1	0.7%
Multiple counts, offenses or violations in the event (prosecuted or not)	1	0.7%
Current offense involves drugs or alcohol (e.g., small amount)	1	0.7%
Judge believed sentence was in concurrence with recommendation	1	0.7%
Sentencing guidelines recommendation was too high	1	0.7%
Original offense was nonviolent	1	0.7%
Mitigating court probation circumstances or proceedings (e.g., extend probation)	1	0.7%
Sentencing guidelines scoring issue (e.g., prior conviction not scored correctly, etc.)	1	0.7%

Kidnapping (12 Cases)

	Number	Percent
Plea Agreement	6	66.7%
Mitigated court circumstances or proceedings (e.g., will resentence)	2	22.2%
No mitigating reason given	1	11.1%
Mitigated facts of the offense	1	11.1%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	1	11.1%
Request of the victim	1	11.1%

Note: Figures indicate the number of times a departure reason was cited.

Because multiple reasons may be cited in each case, figures will not total the number of cases in each offense group.

Appendix 2

Judicial Reasons for Departure from Sentencing Guidelines Offenses Against the Person

Reasons for AGGRAVATION

Assault (234 Cases)	Number	Percent
Aggravated facts of the offense	48	35.3%
Plea agreement	43	31.6%
Degree of victim injury (physical, emotional, etc.)	39	28.7%
Type of victim (child, weak, etc.)	16	11.8%
Recommended by the jury	14	10.3%
Multiple counts, offenses or violations in the event (prosecuted or not)	11	8.1%
Offender has extensive prior record or same type of prior offense	9	6.6%
Degree of violence directed at victim	9	6.6%
Offender has poor rehabilitation potential	8	5.9%
Sentencing guidelines recommendation is not appropriate	6	4.4%
Sentencing guidelines recommendation was too low	4	2.9%
Victim circumstances (facts or the case, vulnerability, etc.)	4	2.9%
Victim requested aggravating sentence	3	2.2%
Poor conduct since commission of the offense	2	1.5%
Current offense involved drugs or alcohol (e.g., large amount, location, etc.)	2	1.5%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	2	1.5%
Seriousness of the original offense	2	1.5%
No aggravating reason given	1	0.7%
Violent or disruptive behavior while in custody	1	0.7%
Child present at time of the offense	1	0.7%
True offense behavior was more serious than offenses at conviction	1	0.7%
Aggravated court circumstances or proceedings (e.g., will resentence)	1	0.7%
Recommended by the attorney for the Commonwealth	1	0.7%
Offender was the leader	1	0.7%
Never reported for probation or signed conditions	1	0.7%
Offender violated a restraining order or stalked victim	1	0.7%
Offense involved possession or use of a weapon	1	0.7%
Offender has health issues	1	0.7%
Plea Agreement	1	0.7%

Kidnapping (41 Cases)	Number	Percent
Aggravated facts of the offense	9	40.9%
Plea agreement	5	22.7%
Offender has poor rehabilitation potential	4	18.2%
Multiple counts, offenses or violations in the event (prosecuted or not)	3	13.6%
Offense involved a high degree of planning or a violation of trust	2	9.1%
Recommended by the jury	2	9.1%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	2	9.1%
Degree of victim injury (physical, emotional, etc.)	2	9.1%
Type of victim (child, weak, etc.)	2	9.1%
Poor conduct since commission of the offense	1	4.5%
Did not exercise due caution while driving, excessive speeding, etc.	1	4.5%
Child present at time of the offense	1	4.5%
Recommended by the attorney for the Commonwealth	1	4.5%
Sentencing guidelines recommendation is not appropriate	1	4.5%
Offender has health issues	1	4.5%
Offender has extensive prior record or same type of prior offense	1	4.5%
Victim requested aggravating sentence	1	4.5%
Degree of violence directed at victim	1	4.5%
Offense involved possession or use of a weapon	1	4.5%

Note: Figures indicate the number of times a departure reason was cited.

Because multiple reasons may be cited in each case, figures will not total the number of cases in each offense group.

Appendix ②

Judicial Reasons for Departure from Sentencing Guidelines Offenses Against the Person

Reasons for MITIGATION

Homicide (35 Cases)	Number	Percent
Plea Agreement	7	36.8%
Recommended by the jury	6	31.6%
Mitigated court circumstances or proceedings (e.g., will resentence)	3	15.8%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	3	15.8%
Offender has minimal or no prior record	3	15.8%
Request of the victim	3	15.8%
Mitigated facts of the offense	2	10.5%
Offender issues, general (e.g., age, family support, impact on community, etc.)	2	10.5%
Offender has good potential for rehabilitation	2	10.5%
Missing information	1	5.3%
Sentenced to alternative punishment	1	5.3%
Offender has made progress in rehabilitating himself or herself	1	5.3%
Sentenced as a juvenile to DJJ	1	5.3%

Robbery (159 Cases)	Number	Percent
Plea Agreement	33	37.9%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	13	14.9%
Offender issues, general (e.g., age, family support, impact on community, etc.)	12	13.8%
Offender has health issues	11	12.6%
Offender has minimal or no prior record	9	10.3%
Cooperated with authorities	8	9.2%
Mitigated facts of the offense	8	9.2%
Offender has good potential for rehabilitation	8	9.2%
Sentenced as a juvenile to DJJ	8	9.2%
Recommended by the attorney for the Commonwealth	4	4.6%
Recommended by the jury	4	4.6%
Offender was not the leader	4	4.6%
Victim cannot or will not testify	4	4.6%
Request of the victim	4	4.6%
No mitigating reason given	3	3.4%
Sentencing guidelines scoring issue (e.g., prior conviction not scored correctly, etc.)	3	3.4%
Offender needs rehabilitation	3	3.4%
Sentenced to alternative punishment	2	2.3%
Sequence of events had impact on recommendation	2	2.3%
Mitigated court circumstances or proceedings (e.g., will resentence)	2	2.3%
Sentencing guidelines recommendation was too high	2	2.3%
Multiple counts, offenses or violations in the event (prosecuted or not)	1	1.1%
Probation violation based on minor new offense	1	1.1%
Behavior positive since commission of the offense	1	1.1%
Offender has substance abuse issues	1	1.1%
Financial obligations (child support, restitution, court costs, etc.)	1	1.1%
Sentencing guidelines were missing or incorrect	1	1.1%
Sentence was rounded down	1	1.1%
Victim circumstances (facts or the case, credibility issues, etc.)	1	1.1%
Little or no injury, offender did not intend to harm victim	1	1.1%
Victim circumstances (drug dealer, etc.)	1	1.1%
Role of victim in the offense	1	1.1%
Weapon was not a firearm	1	1.1%

Note: Figures indicate the number of times a departure reason was cited.

Because multiple reasons may be cited in each case, figures will not total the number of cases in each offense group.

Appendix 2

Judicial Reasons for Departure from Sentencing Guidelines Offenses Against the Person

Reasons for AGGRAVATION

Homicide (59 Cases)

	Number	Percent
Aggravated facts of the offense	20	60.6%
Plea agreement	6	18.2%
Recommended by the jury	5	15.2%
Current offense involved drugs or alcohol (e.g., large amount, location, etc.)	4	12.1%
Degree of victim injury (physical, emotional, etc.)	4	12.1%
Did not exercise due caution while driving, excessive speeding, etc.	3	9.1%
Multiple counts, offenses or violations in the event (prosecuted or not)	3	9.1%
Sentenced to alternative punishment	2	6.1%
Offender has substance abuse issues	2	6.1%
Child present at time of the offense	1	3.0%
Recommended by the attorney for the Commonwealth	1	3.0%
Sentencing guidelines recommendation is not appropriate	1	3.0%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	1	3.0%
Offender issues, general (e.g., age, family support, impact on community, etc.)	1	3.0%
Offender has extensive prior record or same type of prior offense	1	3.0%
Offender has poor rehabilitation potential	1	3.0%
Type of victim (child, weak, etc.)	1	3.0%
Victim requested aggravating sentence	1	3.0%
Offense involved possession or use of a weapon	1	3.0%

Robbery (52 Cases)

	Number	Percent
Aggravated facts of the offense	9	29.0%
Plea agreement	7	22.6%
Recommended by the jury	6	19.4%
Multiple counts, offenses or violations in the event (prosecuted or not)	5	16.1%
Offender was the leader	3	9.7%
Offender has extensive prior record or same type of prior offense	3	9.7%
Offender has poor rehabilitation potential	3	9.7%
No aggravating reason given	2	6.5%
Recommended by the attorney for the Commonwealth	2	6.5%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	2	6.5%
Degree of victim injury (physical, emotional, etc.)	2	6.5%
Poor conduct since commission of the offense	1	3.2%
Child present at time of the offense	1	3.2%
Offense involved a high degree of planning or a violation of trust	1	3.2%
Multiple trial types (i.e., jury, bench, plea)	1	3.2%
Sentencing guidelines recommendation was too low	1	3.2%
Seriousness of the original offense	1	3.2%
Type of victim (child, weak, etc.)	1	3.2%
Sentenced as a juvenile to DJJ	1	3.2%

Note: Figures indicate the number of times a departure reason was cited.

Because multiple reasons may be cited in each case, figures will not total the number of cases in each offense group.

Appendix ②

Judicial Reasons for Departure from Sentencing Guidelines Offenses Against the Person

Reasons for MITIGATION

Rape (30 Cases)	Number	Percent
Plea Agreement	8	50.0%
Recommended by the jury	4	25.0%
Offender issues, general (e.g., age, family support, impact on community, etc.)	3	18.8%
Request of the victim	3	18.8%
Recommended by the attorney for the Commonwealth	2	12.5%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	2	12.5%
Victim cannot or will not testify	2	12.5%
Missing information	1	6.3%
Mitigated facts of the offense	1	6.3%
Mitigated court circumstances or proceedings (e.g., will resentence)	1	6.3%
Multiple trial types (i.e., jury, bench, plea)	1	6.3%
Offender has minimal or no prior record	1	6.3%
Sentenced as a juvenile to DJJ	1	6.3%

Other Sexual Assault (41 Cases)

	Number	Percent
Plea Agreement	14	73.7%
Mitigated facts of the offense	5	26.3%
Request of the victim	5	26.3%
Offender issues, general (e.g., age, family support, impact on community, etc.)	4	21.1%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	3	15.8%
Offender has minimal or no prior record	3	15.8%
Victim cannot or will not testify	2	10.5%
Mitigated court circumstances or proceedings (e.g., will resentence)	1	5.3%
Recommended by the attorney for the Commonwealth	1	5.3%
Sentencing guidelines recommendation was too high	1	5.3%
Offender has health issues	1	5.3%
Offender has good potential for rehabilitation	1	5.3%

Other Sexual Assault/Obscenity (32 Cases)

	Number	Percent
Plea Agreement	6	37.5%
Offender has good potential for rehabilitation	4	25.0%
Offender issues, general (e.g., age, family support, impact on community, etc.)	3	18.8%
Offender has minimal or no prior record	3	18.8%
Offender needs rehabilitation	3	18.8%
Mitigated facts of the offense	2	12.5%
Judge had issues with risk assessment	2	12.5%
Offender has health issues	2	12.5%
No mitigating reason given	1	6.3%
Sentenced to alternative punishment	1	6.3%
Mitigated court circumstances or proceedings (e.g., will resentence)	1	6.3%
Recommended by the attorney for the Commonwealth	1	6.3%
Sentencing guidelines recommendation not appropriate (non-specific)	1	6.3%
Offender has made progress in rehabilitating himself or herself	1	6.3%
Mitigating facts of the offense, specific to sex offenses	1	6.3%

Note: Figures indicate the number of times a departure reason was cited.

Because multiple reasons may be cited in each case, figures will not total the number of cases in each offense group.

Appendix 2

Judicial Reasons for Departure from Sentencing Guidelines Offenses Against the Person

Reasons for AGGRAVATION

Rape (36 Cases)

	Number	Percent
Offender has poor rehabilitation potential	7	36.8%
Recommended by the jury	6	31.6%
Aggravated facts of the offense	5	26.3%
Type of victim (child, weak, etc.)	5	26.3%
Offense involved a high degree of planning or a violation of trust	3	15.8%
Poor conduct since commission of the offense	1	5.3%
Multiple counts, offenses or violations in the event (prosecuted or not)	1	5.3%
Prior record not adequately weighed by guidelines	1	5.3%
Sentencing guidelines recommendation was too low	1	5.3%
Offender has extensive prior record or same type of prior offense	1	5.3%
Aggravated facts of the offense, specific to sex offenses	1	5.3%
Victim circumstances (facts or the case, vulnerability, etc.)	1	5.3%
Degree of victim injury (physical, emotional, etc.)	1	5.3%
Victim requested aggravating sentence	1	5.3%
Degree of violence directed at victim	1	5.3%

Other Sexual Assault (120 Cases)

	Number	Percent
Type of victim (child, weak, etc.)	31	50.8%
Aggravated facts of the offense	19	31.1%
Degree of victim injury (physical, emotional, etc.)	16	26.2%
Plea agreement	14	23.0%
Offense involved a high degree of planning or a violation of trust	9	14.8%
Offender has poor rehabilitation potential	7	11.5%
Sentencing guidelines recommendation was too low	6	9.8%
Recommended by the jury	3	4.9%
Multiple counts, offenses or violations in the event (prosecuted or not)	3	4.9%
Victim circumstances (facts or the case, vulnerability, etc.)	3	4.9%
Offender has extensive prior record or same type of prior offense	2	3.3%
Victim requested aggravating sentence	2	3.3%
Poor conduct since commission of the offense	1	1.6%
Current offense involved drugs or alcohol (e.g., large amount, location, etc.)	1	1.6%
Sentencing guidelines recommendation is not appropriate	1	1.6%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	1	1.6%
Offender has health issues	1	1.6%

Other Sexual Assault/Obscenity (74 Cases)

	Number	Percent
Plea agreement	23	50.0%
Aggravated facts of the offense	20	43.5%
Multiple counts, offenses or violations in the event (prosecuted or not)	6	13.0%
Offender has poor rehabilitation potential	5	10.9%
Aggravated facts of the offense, specific to sex offenses	5	10.9%
Recommended by the jury	4	8.7%
Offender has extensive prior record or same type of prior offense	3	6.5%
Type of victim (child, weak, etc.)	3	6.5%
No aggravating reason given	1	2.2%
Judge believed sentence was in concurrence with recommendation	1	2.2%
Seriousness of the original offense	1	2.2%
Sex offender has poor rehabilitation potential	1	2.2%
Victim circumstances (facts or the case, vulnerability, etc.)	1	2.2%

Note: Figures indicate the number of times a departure reason was cited.

Because multiple reasons may be cited in each case, figures will not total the number of cases in each offense group.

Appendix 3

Sentencing Guidelines Compliance by Judicial Circuit: Property, Drug, and Miscellaneous Offenses

BURGLARY OF DWELLING

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	87.5 %	12.5 %	0 %	8
2	76.2	4.8	19.0	21
3	66.7	16.7	16.7	6
4	85.7	14.3	0.0	14
5	45.5	0.0	54.5	11
6	70.0	10.0	20.0	10
7	100	0.0	0.0	9
8	56.3	31.3	12.5	16
9	62.5	6.3	31.3	16
10	81.0	9.5	9.5	21
11	90.9	9.1	0.0	11
12	72.7	0.0	27.3	11
13	33.3	66.7	0.0	3
14	50.0	7.1	42.9	14
15	57.7	15.4	26.9	26
16	70.6	17.6	11.8	17
17	0.0	66.7	33.3	3
18	0.0	0.0	0.0	0
19	50.0	50.0	0.0	6
20	100	0.0	0.0	7
21	87.5	12.5	0.0	8
22	73.7	15.8	10.5	19
23	66.7	22.2	11.1	9
24	83.9	12.9	3.2	31
25	80.0	10.0	10.0	30
26	75.0	8.3	16.7	12
27	100	0.0	0.0	20
28	66.7	20.0	13.3	15
29	78.6	21.4	0.0	14
30	22.2	55.6	22.2	9
31	66.7	16.7	16.7	6
Total	72.1	14.1	13.8	405

BURGLARY/OTHER

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	100 %	0.0 %	0.0 %	9
2	84.6	7.7	7.7	13
3	0.0	0.0	0.0	0
4	85.7	14.3	0.0	14
5	50.0	25.0	25.0	4
6	100	0.0	0.0	7
7	100	0.0	0.0	5
8	66.7	33.3	0.0	9
9	100.0	0.0	0.0	3
10	82.4	5.9	11.8	17
11	71.4	14.3	14.3	7
12	90.0	0.0	10.0	10
13	46.2	46.2	7.7	13
14	83.3	8.3	8.3	12
15	93.3	0.0	6.7	15
16	75.0	25.0	0.0	8
17	100	0.0	0.0	2
18	0.0	0.0	0.0	0
19	50.0	50.0	0.0	4
20	100	0.0	0.0	2
21	80.0	20.0	0.0	5
22	84.6	15.4	0.0	13
23	77.8	22.2	0.0	9
24	72.7	27.3	0.0	11
25	82.6	13.0	4.3	23
26	87.5	12.5	0.0	8
27	75.0	18.8	6.3	16
28	88.9	11.1	0.0	9
29	80.0	20.0	0.0	10
30	50.0	50.0	0.0	2
31	50.0	0.0	50.0	4
Total	80.4	14.7	4.9	265

DRUG/OTHER

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	94.7 %	0.0 %	5.3 %	19
2	97.2	2.8	0.0	36
3	60.0	40.0	0.0	5
4	81.8	9.1	9.1	11
5	85.7	7.1	7.1	14
6	80.0	0.0	20.0	15
7	100	0.0	0.0	12
8	85.7	14.3	0.0	7
9	90.9	0.0	9.1	11
10	80.6	6.5	12.9	31
11	80.0	20.0	0.0	5
12	92.3	0.0	7.7	26
13	77.8	16.7	5.6	18
14	80.0	0.0	20.0	25
15	92.7	0.0	7.3	55
16	85.7	7.1	7.1	14
17	75.0	25.0	0.0	4
18	0.0	0.0	0.0	0
19	83.3	11.1	5.6	36
20	92.9	7.1	0.0	14
21	100	0.0	0.0	7
22	72.7	13.6	13.6	22
23	84.6	7.7	7.7	13
24	95.5	4.5	0.0	22
25	73.8	23.8	2.4	42
26	88.5	0.0	11.5	26
27	91.1	1.8	7.1	56
28	90.0	0.0	10.0	10
29	76.3	15.8	7.9	76
30	85.7	7.1	7.1	28
31	100	0.0	0.0	22
Total	85.9	7.2	6.9	683

Appendix 3

Sentencing Guidelines Compliance by Judicial Circuit: Property, Drug, and Miscellaneous Offenses

SCHEDULE I/II DRUGS

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	87.7 %	5.1 %	7.2 %	235
2	91.5	4.2	4.2	519
3	76.0	20.0	4.0	50
4	84.7	13.6	1.7	235
5	86.2	5.3	8.5	94
6	85.5	7.6	7.0	172
7	96.5	2.8	0.7	141
8	86.7	12.0	1.2	83
9	86.3	5.7	8.0	175
10	87.7	6.5	5.8	260
11	88.6	7.6	3.8	79
12	89.3	6.5	4.2	355
13	69.6	22.6	7.8	257
14	85.8	8.8	5.5	639
15	79.0	6.9	14.1	781
16	84.9	9.7	5.4	299
17	70.9	18.2	10.9	55
18	71.4	21.4	7.1	14
19	85.4	10.6	4.1	123
20	86.7	7.0	6.3	143
21	88.1	11.1	0.7	135
22	82.4	12.6	5.0	239
23	83.3	12.2	4.5	484
24	87.3	8.6	4.1	510
25	89.5	5.9	4.6	779
26	90.2	5.0	4.8	702
27	91.6	4.3	4.1	762
28	88.1	5.2	6.7	522
29	86.5	3.6	9.9	362
30	84.1	9.8	6.1	346
31	90.4	6.2	3.4	146
Total	86.5	7.7	5.9	9728

FRAUD

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	87.7 %	4.6 %	7.7 %	65
2	91.4	8.6	0.0	58
3	50.0	30.0	20.0	10
4	92.0	6.0	2.0	50
5	82.1	0.0	17.9	28
6	90.3	6.5	3.2	31
7	71.4	23.8	4.8	21
8	93.3	6.7	0.0	15
9	91.8	2.0	6.1	49
10	88.2	5.9	5.9	34
11	93.8	6.3	0.0	16
12	86.4	9.1	4.5	66
13	80.0	20.0	0.0	10
14	73.2	4.9	22.0	41
15	87.5	5.8	6.7	120
16	94.6	5.4	0.0	56
17	81.8	18.2	0.0	11
18	100	0.0	0.0	6
19	77.3	18.2	4.5	44
20	84.4	6.3	9.4	32
21	92.9	7.1	0.0	14
22	73.8	23.8	2.4	42
23	83.0	14.9	2.1	47
24	75.8	24.2	0.0	33
25	81.5	13.6	4.9	81
26	88.9	7.8	3.3	90
27	94.9	3.4	1.7	59
28	90.9	9.1	0.0	33
29	94.3	3.8	1.9	53
30	82.6	13.0	4.3	23
31	91.7	2.8	5.6	36
Total	86.5	8.8	4.6	1277

LARCENY

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	82.1 %	6.0 %	11.9 %	168
2	83.6	12.7	3.6	165
3	78.6	21.4	0.0	28
4	82.4	13.0	4.6	108
5	86.2	1.7	12.1	58
6	77.2	7.0	15.8	57
7	85.1	14.9	0.0	74
8	82.5	15.0	2.5	40
9	84.2	6.7	9.2	120
10	85.4	8.5	6.1	82
11	86.2	13.8	0.0	29
12	90.2	4.4	5.4	205
13	61.0	31.7	7.3	41
14	71.3	11.2	17.5	143
15	81.0	10.2	8.9	315
16	76.2	17.0	6.8	147
17	55.6	37.0	7.4	27
18	92.3	7.7	0.0	13
19	71.6	24.5	3.9	102
20	81.6	9.2	9.2	76
21	87.5	9.7	2.8	72
22	82.8	13.1	4.1	122
23	82.2	16.4	1.4	219
24	84.2	13.8	2.0	152
25	86.3	11.9	1.9	160
26	92.3	3.8	3.8	183
27	91.0	6.5	2.5	200
28	89.3	4.0	6.7	75
29	86.2	6.4	7.3	109
30	70.0	20.0	10.0	60
31	83.3	7.7	9.0	78
Total	82.9	11.0	6.0	3442

Appendix 3

Sentencing Guidelines Compliance by Judicial Circuit: Property, Drug, and Miscellaneous Offenses

TRAFFIC				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	83.3 %	6.7 %	10.0 %	60
2	83.5	4.4	12.1	91
3	91.7	0.0	8.3	12
4	83.3	16.7	0.0	18
5	82.6	2.2	15.2	46
6	91.3	8.7	0.0	23
7	78.9	10.5	10.5	19
8	93.8	6.3	0.0	16
9	96.2	0.0	3.8	52
10	78.6	11.9	9.5	42
11	95.8	0.0	4.2	24
12	86.5	5.4	8.1	74
13	81.8	9.1	9.1	11
14	53.3	2.2	44.4	45
15	76.5	11.8	11.8	119
16	82.9	9.2	7.9	76
17	60.0	30.0	10.0	10
18	75.0	25.0	0.0	4
19	83.3	11.9	4.8	42
20	77.4	3.2	19.4	31
21	68.4	26.3	5.3	19
22	83.3	5.6	11.1	36
23	83.7	14.3	2.0	49
24	83.0	14.9	2.1	47
25	90.7	9.3	0.0	54
26	90.6	9.4	0.0	64
27	91.1	6.7	2.2	45
28	82.8	10.3	6.9	29
29	86.7	6.7	6.7	15
30	66.7	20.0	13.3	15
31	90.6	3.1	6.3	32
Total	83.1	8.3	8.6	1223

MISCELLANEOUS/OTHER				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	83.3 %	16.7%	0.0 %	12
2	84.6	7.7	7.7	13
3	0.0	0.0	0.0	0
4	85.0	15.0	0.0	20
5	90.0	0.0	10.0	10
6	100	0.0	0.0	8
7	90.0	10.0	0.0	10
8	66.7	33.3	0.0	9
9	81.8	9.1	9.1	11
10	100.0	0.0	0.0	14
11	80.0	20.0	0.0	5
12	80.0	20.0	0.0	15
13	92.9	7.1	0.0	14
14	87.5	12.5	0.0	16
15	81.3	12.5	6.3	32
16	60.0	40.0	0.0	10
17	0.0	0.0	0.0	0
18	0.0	0.0	0.0	0
19	88.9	11.1	0.0	9
20	70.0	20.0	10.0	10
21	66.7	16.7	16.7	6
22	94.1	5.9	0.0	17
23	79.2	16.7	4.2	24
24	78.9	21.1	0.0	19
25	71.4	28.6	0.0	28
26	88.9	5.6	5.6	18
27	100	0.0	0.0	5
28	90.9	0.0	9.1	11
29	100	0.0	0.0	14
30	47.4	52.6	0.0	19
31	66.7	0.0	33.3	3
Total	82.0	15.1	2.9	383

MISCELLANEOUS/P&P				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	83.3%	8.3 %	8.3%	12
2	83.3	5.6	11.1	18
3	100	0.0	0.0	1
4	81.8	0.0	18.2	11
5	46.7	13.3	40.0	15
6	60.0	20.0	20.0	15
7	100	0.0	0.0	7
8	62.5	0.0	37.5	8
9	50.0	8.3	41.7	12
10	100	0.0	0.0	13
11	100	0.0	0.0	6
12	57.1	7.1	35.7	14
13	100	0.0	0.0	3
14	62.5	0.0	37.5	8
15	71.9	15.6	12.5	32
16	68.8	18.8	12.5	16
17	0.0	33.3	66.7	3
18	50.0	0.0	50.0	2
19	50.0	50.0	0.0	2
20	83.3	8.3	8.3	12
21	100	0.0	0.0	7
22	57.1	0.0	42.9	7
23	86.7	0.0	13.3	15
24	84.2	10.5	5.3	19
25	74.3	5.7	20.0	35
26	83.3	8.3	8.3	24
27	88.0	0.0	12.0	25
28	81.8	9.1	9.1	11
29	80.0	5.0	15.0	20
30	73.3	0.0	26.7	15
31	66.7	33.3	0.0	6
Total	75.8	7.6	16.7	396

Appendix ③
Sentencing Guidelines Compliance by Judicial Circuit:
Property, Drug, and Miscellaneous Offenses

WEAPONS

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	76.5 %	8.8 %	14.7 %	34
2	80.4	13.0	6.5	46
3	75.0	18.8	6.3	16
4	80.6	6.5	12.9	31
5	75.0	0.0	25.0	12
6	75.0	9.4	15.6	32
7	95.8	4.2	0.0	24
8	66.7	22.2	11.1	9
9	65.5	17.2	17.2	29
10	74.5	12.8	12.8	47
11	100	0.0	0.0	8
12	86.7	6.7	6.7	15
13	58.6	11.4	30.0	70
14	66.7	10.3	23.1	39
15	77.6	6.1	16.3	49
16	85.3	5.9	8.8	34
17	75.0	25.0	0.0	4
18	100	0.0	0.0	3
19	53.3	20.0	26.7	15
20	88.9	11.1	0.0	9
21	60.0	20.0	20.0	10
22	72.0	20.0	8.0	25
23	72.9	8.3	18.8	48
24	78.9	15.8	5.3	38
25	76.3	13.2	10.5	38
26	80.0	6.7	13.3	15
27	75.7	8.1	16.2	37
28	86.7	6.7	6.7	15
29	91.3	4.3	4.3	23
30	84.2	15.8	0.0	19
31	100	0.0	0.0	9
Total	76.1	10.5	13.4	806

Appendix ④

Sentencing Guidelines Compliance by Judicial Circuit: Offenses Against the Person

ASSAULT				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	80.5%	4.9 %	14.6 %	41
2	82.8	6.3	10.9	64
3	68.4	31.6	0.0	19
4	82.8	9.4	7.8	64
5	85.0	2.5	12.5	40
6	86.1	2.8	11.1	36
7	82.9	9.8	7.3	41
8	60.9	30.4	8.7	23
9	73.7	23.7	2.6	38
10	77.8	15.6	6.7	45
11	82.8	10.3	6.9	29
12	86.7	0.0	13.3	30
13	67.4	11.6	20.9	43
14	76.5	7.8	15.7	51
15	77.0	10.7	12.3	122
16	77.2	10.5	12.3	57
17	75.0	0.0	25.0	4
18	63.6	27.3	9.1	11
19	67.6	14.7	17.6	34
20	73.3	13.3	13.3	15
21	88.2	11.8	0.0	17
22	79.2	8.3	12.5	48
23	61.8	29.1	9.1	55
24	79.7	15.3	5.1	59
25	85.2	6.2	8.6	81
26	87.8	8.1	4.1	74
27	78.3	13.3	8.3	60
28	88.0	4.0	8.0	25
29	77.4	12.9	9.7	31
30	62.1	17.2	20.7	29
31	80.0	8.6	11.4	35
Total	78.3	11.5	10.3	1326

KIDNAPPING				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	60.0 %	20.0 %	20.0 %	5
2	100	0.0	0.0	5
3	0.0	100	0.0	1
4	66.7	0.0	33.3	3
5	100	0.0	0.0	4
6	33.3	66.7	0.0	3
7	83.3	0.0	16.7	6
8	100	0.0	0.0	3
9	100	0.0	0.0	6
10	66.7	0.0	33.3	3
11	33.3	0.0	66.7	3
12	0.0	0.0	0.0	0
13	66.7	33.3	0.0	3
14	33.3	0.0	66.7	6
15	66.7	16.7	16.7	6
16	75.0	12.5	12.5	8
17	50.0	0.0	50.0	2
18	0.0	0.0	0.0	0
19	66.7	0.0	33.3	3
20	0.0	0.0	0.0	0
21	80.0	20.0	0.0	5
22	0.0	0.0	100	1
23	100	0.0	0.0	3
24	71.4	7.1	21.4	14
25	66.7	0.0	33.3	9
26	100	0.0	0.0	8
27	100	0.0	0.0	8
28	66.7	0.0	33.3	3
29	100	0.0	0.0	2
30	100	0.0	0.0	3
31	100	0.0	0.0	4
Total	76.2	6.9	16.9	130

HOMICIDE				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	100 %	0.0%	0.0 %	1
2	71.4	0.0	28.6	7
3	66.7	33.3	0.0	3
4	66.7	16.7	16.7	12
5	66.7	0.0	33.3	3
6	90.0	10.0	0.0	10
7	50.0	16.7	33.3	6
8	60.0	20.0	20.0	5
9	71.4	0.0	28.6	7
10	66.7	33.3	0.0	6
11	50.0	50.0	0.0	2
12	71.4	14.3	14.3	7
13	71.4	19.0	9.5	21
14	40.0	0.0	60.0	5
15	54.5	18.2	27.3	11
16	80.0	0.0	20.0	5
17	100	0.0	0.0	1
18	100	0.0	0.0	2
19	75.0	12.5	12.5	8
20	100	0.0	0.0	2
21	100	0.0	0.0	3
22	77.8	11.1	11.1	9
23	66.7	16.7	16.7	6
24	85.7	0.0	14.3	7
25	60.0	0.0	40.0	5
26	75.0	0.0	25.0	8
27	100	0.0	0.0	4
28	50.0	0.0	50.0	4
29	60.0	20.0	20.0	5
30	100	0.0	0.0	2
31	71.4	0.0	28.6	7
Total	71.4	10.8	17.8	185

Appendix 4

Sentencing Guidelines Compliance by Judicial Circuit:
Offenses Against the Person

ROBBERY

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	85.7 %	14.3 %	0.0 %	14
2	78.3	17.4	4.3	23
3	77.8	22.2	0.0	9
4	80.0	13.3	6.7	30
5	83.3	16.7	0.0	6
6	80.0	20.0	0.0	5
7	50.0	37.5	12.5	8
8	42.9	57.1	0.0	14
9	80.0	0.0	20.0	5
10	0.0	0.0	100.0	1
11	40.0	40.0	20.0	5
12	66.7	16.7	16.7	12
13	48.1	37.0	14.8	27
14	47.4	31.6	21.1	19
15	60.9	30.4	8.7	23
16	100	0.0	0.0	4
17	60.0	40.0	0.0	5
18	60.0	40.0	0.0	5
19	47.8	39.1	13.0	23
20	87.5	12.5	0.0	8
21	100.0	0.0	0.0	5
22	35.3	41.2	23.5	17
23	57.1	42.9	0.0	14
24	100	0.0	0.0	8
25	50.0	0.0	50.0	2
26	93.8	6.3	0.0	16
27	85.7	0.0	14.3	7
28	0.0	0.0	100.0	1
29	75.0	25.0	0.0	4
30	0.0	0.0	0.0	0
31	60.0	30.0	10.0	20
Total	65.4	25.5	9.1	341

RAPE

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	50.0 %	50.0 %	0.0 %	2
2	100	0.0	0.0	4
3	100	0.0	0.0	2
4	60.0	20.0	20.0	5
5	66.7	33.3	0.0	3
6	50.0	0.0	50.0	2
7	100	0.0	0.0	3
8	100	0.0	0.0	2
9	100	0.0	0.0	6
10	0.0	66.7	33.3	3
11	100	0.0	0.0	1
12	42.9	14.3	42.9	7
13	0.0	100.0	0.0	1
14	100	0.0	0.0	3
15	95.2	0.0	4.8	21
16	50.0	30.0	20.0	10
17	100	0.0	0.0	2
18	0.0	0.0	0.0	0
19	45.5	18.2	36.4	11
20	0.0	0.0	0.0	0
21	100	0.0	0.0	1
22	87.5	0.0	12.5	8
23	100	0.0	0.0	3
24	50.0	50.0	0.0	4
25	100	0.0	0.0	4
26	50.0	25.0	25.0	8
27	100	0.0	0.0	1
28	33.3	0.0	66.7	3
29	75.0	0.0	25.0	4
30	100	0.0	0.0	3
31	100	0.0	0.0	7
Total	73.9	11.9	14.2	134

OTHER SEXUAL ASSAULT

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	50.0 %	0.0 %	50.0 %	4
2	62.5	12.5	25.0	16
3	100	0.0	0.0	2
4	90.0	0.0	10.0	10
5	33.3	0.0	66.7	3
6	66.7	0.0	33.3	6
7	100	0.0	0.0	5
8	100	0.0	0.0	2
9	75.0	12.5	12.5	8
10	81.8	9.1	9.1	11
11	100	0.0	0.0	4
12	50.0	0.0	50.0	6
13	100	0.0	0.0	2
14	50.0	10.0	40.0	10
15	77.8	3.7	18.5	27
16	50.0	8.3	41.7	12
17	100	0.0	0.0	1
18	0.0	0.0	0.0	0
19	41.2	5.9	52.9	17
20	25.0	12.5	62.5	8
21	100	0.0	0.0	4
22	50.0	37.5	12.5	8
23	77.8	11.1	11.1	9
24	72.7	0.0	27.3	11
25	84.0	8.0	8.0	25
26	77.8	11.1	11.1	9
27	66.7	13.3	20.0	15
28	66.7	33.3	0.0	3
29	66.7	0.0	33.3	9
30	100	0.0	0.0	2
31	83.3	0.0	16.7	18
Total	70.0	7.1	22.8	267

Appendix ④

**Sentencing Guidelines Compliance by Judicial Circuit:
Offenses Against the Person**

OBSCENITY				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	100 %	0.0 %	0.0 %	3
2	0.0	0.0	100	2
3	0.0	0.0	0.0	0
4	66.7	0.0	33.3	3
5	66.7	0.0	33.3	6
6	100	0.0	0.0	1
7	100	0.0	0.0	1
8	50.0	0.0	50.0	2
9	75.0	12.5	12.5	8
10	100	0.0	0.0	5
11	100	0.0	0.0	2
12	60.0	0.0	40.0	5
13	100	0.0	0.0	2
14	70.0	0.0	30.0	20
15	43.8	12.5	43.8	16
16	71.4	7.1	21.4	14
17	100	0.0	0.0	1
18	100	0.0	0.0	1
19	54.2	12.5	33.3	24
20	50.0	25.0	25.0	4
21	100	0.0	0.0	2
22	0.0	100	0.0	1
23	100	0.0	0.0	3
24	76.9	7.7	15.4	13
25	86.4	4.5	9.1	22
26	78.9	5.3	15.8	19
27	80.0	0.0	20.0	10
28	66.7	0.0	33.3	3
29	66.7	33.3	0.0	6
30	50.0	50.0	0.0	2
31	63.6	9.1	27.3	11
Total	70.3	7.5	22.2	212

Appendix 5 Sentencing Guidelines Received by Jurisdiction

COUNTIES				CITIES	
ACCOMACK	45	LEE	162	ALEXANDRIA	62
ALBEMARLE	173	LOUDOUN	284	BEDFORD	1
ALLEGHANY	203	LOUISA	104	BRISTOL	205
AMELIA	47	LUNENBURG	33	BUENA VISTA	49
AMHERST	153	MADISON	34	CHARLOTTESVILLE	94
APPOMATTOX	67	MATHEWS	13	CHESAPEAKE	706
ARLINGTON	137	MECKLENBURG	174	COLONIAL HEIGHTS	108
AUGUSTA	362	MIDDLESEX	35	DANVILLE	337
BATH	29	MONTGOMERY	312	EMPORIA	1
BEDFORD	148	NELSON	135	FRANKLIN CITY	2
BLAND	18	NEW KENT	48	FREDERICKSBURG	234
BOTETOURT	149	NORTHAMPTON	35	HAMPTON	300
BRUNSWICK	49	NORTHUMBERLAND	26	HARRISONBURG	33
BUCHANAN	150	NOTTOWAY	66	HOPEWELL	149
BUCKINGHAM	78	ORANGE	87	LEXINGTON	1
CAMPBELL	222	PAGE	143	LYNCHBURG	352
CAROLINE	71	PATRICK	88	MARTINSVILLE	43
CARROLL	260	PITTSYLVANIA	117	NEWPORT NEWS	404
CHARLOTTE	46	POWHATAN	48	NORFOLK	650
CHESTERFIELD	771	PRINCE EDWARD	87	PETERSBURG	27
CLARKE	35	PRINCE GEORGE	97	POQUOSON	1
CRAIG	15	PRINCE WILLIAM	455	PORTSMOUTH	167
CULPEPER	192	PULASKI	260	RADFORD	69
CUMBERLAND	30	RAPPAHANNOCK	10	RICHMOND CITY	549
DICKENSON	87	RICHMOND COUNTY	29	ROANOKE CITY	456
DINWIDDIE	53	ROANOKE COUNTY	394	SALEM	184
ESSEX	28	ROCKBRIDGE	282	STAUNTON	212
FAIRFAX COUNTY	540	ROCKINGHAM	453	SUFFOLK	219
FAUQUIER	95	RUSSELL	156	VIRGINIA BEACH	1047
FLOYD	47	SCOTT	197	WAYNESBORO	177
FLUVANNA	39	SHENANDOAH	114	WILLIAMSBURG	129
FRANKLIN COUNTY	196	SMYTH	251	WINCHESTER	187
FREDERICK	231	SOUTHAMPTON	80		
GILES	114	SPOTSYLVANIA	407	MISSING	59
GLOUCESTER	132	STAFFORD	466	Total	21,902
GOOCHLAND	24	SURRY	13		
GRAYSON	110	SUSSEX	25		
GREENE	68	TAZEWELL	392		
GREENSVILLE	106	WARREN	124		
HALIFAX	196	WASHINGTON	324		
HANOVER	451	WESTMORELAND	62		
HENRICO	1,131	WISE	246		
HENRY	208	WYTHE	201		
HIGHLAND	4	YORK	150		
ISLE OF WIGHT	67				
JAMES CITY	32				
KING & QUEEN	29				
KING GEORGE	12				
KING WILLIAM	5				
LANCASTER	14				