



2021 Annual Report

The Virginia Criminal Sentencing Commission is a Judicial Branch agency established in accordance with § 17.1-800, et seq., of the Code of Virginia. The sentencing guidelines, which are discretionary, provide circuit court judges with a range of recommended sentencing options. After adoption of the initial guidelines, any modification to the discretionary sentencing guidelines adopted by the Commission shall be contained in the annual report required under § 17.1-803 and shall, unless otherwise provided by law, become effective on the next following July 1.

December 1, 2021

SENTENCING COMMISSION

MEMBERS

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

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

Appointments by the Chief Justice of the Supreme Court

Judge Charles S. Sharp, Vice Chair, Stafford
Judge Steven C. Frucci, Virginia Beach
Judge Jack S. Hurley, Jr., Tazewell
Judge Patricia Kelly, Hanover
Judge W. Revell Lewis, III, Accomack
Judge Stacey W. Moreau, Chatham

Attorney General

The Honorable Mark R. Herring
(**K. Scott Miles**, Attorney General's Representative)

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Marcus Elam, Virginia Beach

House of Delegates Appointments

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

Governor's Appointments

Timothy S. Coyne, Winchester
Kyanna Perkins, Chesterfield
Linda W. Brown, Chesapeake
The Honorable Shannon L. Taylor, Henrico

**VIRGINIA CRIMINAL
SENTENCING COMMISSION**

**MESSAGE FROM
THE CHAIR**

♦

Judge Edward L. Hogshire, Circuit Judge (Ret.)



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 2021 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 2021. The Commission's recommendations to the 2022 session of the Virginia General Assembly are also contained in this report.

The Commission wishes to sincerely thank circuit court judges, prosecutors, probation officers and other criminal justice practitioners whose diligent work with the Guidelines enables us to produce this report.

A handwritten signature in blue ink, appearing to read 'E. Hogshire', written over a light blue circular stamp.

Edward L. Hogshire
Circuit Judge (Ret.)
Chair

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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) 2021. The third chapter provides an overview of recent legislation adopted by the General Assembly that establishes limits on periods of probation and terms of supervised probation and sets caps on sentences for technical probation violations (see House Bill 2038, 2021 General Assembly, Special Session I). This chapter documents a number of questions that have been expressed by court stakeholders as to interpretation of the new statutory language. This chapter also describes potential unintended consequences of the legislation that are emerging in the Commonwealth. 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 Courts of Justice Committee, or another member of the Courts 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 Courts of Justice 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 2021. These meetings were held on March 22, June 7, September 13, and November 3. 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 the Sentencing Guidelines.

In FY2021, the Commission offered 88 training seminars across the Commonwealth for more than 1,400 criminal justice professionals. The Commission’s typical training schedule was modified in 2021 due to the COVID-19 pandemic. The Commission provided 16 online seminars during 2021, adjusted hotline support to closely work with probation officers and attorneys completing Sentencing Guidelines for the first time and provided training videos for users to view online or on their cell phones. During FY2021, staff began to transition from virtual seminars to live and in-person Introduction to Sentencing Guidelines seminars and What’s New seminars. Approximately 900 criminal justice professionals attended live training. Another 400 participated in a live remote What’s New training seminar offered through the Supreme Court of Virginia. Demand for the What’s New training was so high that the video was made available for online viewing. It is estimated that another 300 participants viewed the recording of the live seminar. These courses were approved by the Virginia State Bar, enabling participating attorneys to earn Continuing Legal Education credits. During this fiscal year, the Commission paused offering the Guidelines-related ethics classes, understanding rap sheets workshops and advanced guidelines topics seminars. 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, as Commission staff provided additional support for 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 public 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. Pilot testing of this feature ended in June of 2021 with a statewide rollout scheduled to begin in August of 2021.

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 2021 General Assembly and the 2021 Special Session, the Commission prepared a combined total of 158 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 in 2020 and 2021, while still maintaining a consensus approach.

The Secretary presented updated offender forecasts to the General Assembly in a report submitted in October 2021.

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 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 worksheet. The Commission presented this draft to a focus group of 20 probation officers, defense attorneys, and Commonwealth attorneys. With feedback from the focus, the Commission further analyzed certain factors and refined the guidelines.

The study is now complete. Recommendations for revising the Probation Violation Guidelines, based on the results of the study, were presented in the Commission's 2020 Annual Report and were ultimately accepted by the General Assembly. The new Probation Violation Guidelines were implemented statewide on July 1, 2021.

PRE-TRIAL DATA PROJECT

The Virginia State Crime Commission has been studying various aspects of the pre-trial system in the Commonwealth since 2016. There was a significant lack of data readily available to answer many important questions related to the pre-trial process. As a result, the Virginia Pre-Trial Data Project ("Project") was established. This was an unprecedented, collaborative effort between numerous state and local agencies representing all three branches of government. The Project consisted of two phases: (i) developing a cohort of adult defendants charged with a criminal offense in Virginia during October 2017 (referred to as the "contact event") and (ii) tracking various outcomes within that cohort. Data for the Project was obtained from multiple agencies. The Sentencing Commission acted as the central repository for the data provided by these agencies.

Sentencing Commission staff spent a tremendous amount of time creating a single dataset for analysis. The development of this dataset required numerous iterations of data cleaning, merging, and matching to ensure accuracy when linking information from each data system to each specific defendant in the Project cohort.

A cohort of 22,986 adult defendants charged with a criminal offense during a one-month period (October 2017) was developed. The cohort was tracked until final case disposition or December 31, 2018, whichever came first. The Project dataset contains over 700 variables for each of the 22,986 defendants in the cohort, such as demographics, nature of the October 2017 charge(s), bond type, release status, whether the defendant received pretrial services agency supervision, prior criminal history, and risk level. When compiled, the Sentencing Commission transferred the dataset to the Crime Commission for its ongoing study of Virginia's pre-trial process.

Pursuant to House Bill 2110 and Senate Bill 1391 (2021 General Assembly, Special Session I), the Crime Commission provided the Sentencing Commission with the final dataset for the October 2017 cohort and the Sentencing Commission made the dataset, excluding any personal and case identifying information, available electronically on its website as of October 1, 2021. As required by the new law, the Sentencing Commission will begin to collect and maintain, on an annual basis, statewide and locality-level pretrial data for adults charged with a criminal offense punishable by confinement. The annual statewide pretrial dataset (containing only the publicly available information) and related electronic data dashboard will be launched in December 2022.

See the Virginia State Crime Commission's final report on the Pre-Trial Data Project, which can be found at <http://vscc.virginia.gov/virginiapretrialdataport.asp>

ASSISTANCE TO OTHER AGENCIES

When requested, the Commission provides technical assistance, in the form of data and analysis, to other state agencies. During 2021, the Commission assisted agencies such as the Virginia State Crime Commission (a legislative branch agency), Virginia Department of Criminal Justice Services, Virginia Department of Juvenile Justice, and the Department of Planning & Budget.

GUIDELINES CONCURRENCE

2

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 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) 2021 (July 1, 2021, through June 30, 2021). 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 - FY2021*

Circuit	Number	Percent
1	737	3.7%
2	1,185	5.9%
3	137	0.7%
4	522	2.6%
5	405	2.0%
6	400	2.0%
7	334	1.7%
8	232	1.2%
9	618	3.1%
10	680	3.4%
11	236	1.2%
12	865	4.3%
13	452	2.3%
14	818	4.1%
15	1,866	9.3%
16	654	3.3%
17	143	0.7%
18	29	0.1%
19	301	1.5%
20	227	1.1%
21	298	1.5%
22	493	2.5%
23	839	4.2%
24	986	4.9%
25	1,417	7.1%
26	1,333	6.7%
27	1,443	7.2%
28	826	4.1%
29	722	3.6%
30	496	2.5%
31	286	1.4%
Total	20,003	100.0%

*23 cases were missing a circuit number

In FY2021, 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), Radford area (Circuit 27), the Botetourt County area (Circuit 25), Harrisonburg area (Circuit 26), Virginia Beach (Circuit 2), Lynchburg area (Circuit 24), Chesterfield (Circuit 12) and the Roanoke County area (Circuit 23) comprised of nearly half (49.7%) of all worksheets received in FY2021 (Figure 1).

During FY2021, the Commission received 20,003 Sentencing Guideline worksheets. As stated in the previous annual report, this number is significantly lower than our previous fiscal year (FY2020). It is suspected that this is a result of the impact on workflow within the courts due to restrictions put in place to mitigate the spread of COVID-19.

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.

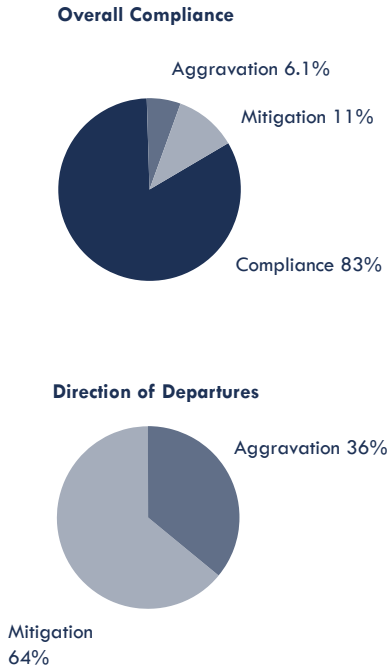
Time served concurrence is intended to accommodate judicial discretion and the complexity of the criminal justice system at the local level. A judge may sentence an offender to the amount of pre-sentence incarceration time served in jail when the Guidelines call for a short jail term. Even though the 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 using diversion options in habitual traffic 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 - FY2021



The overall concurrence rate summarizes the extent to which Virginia’s judges concur with the Sentencing Guidelines that have been developed by the Commission, both in type of disposition and in length of incarceration. For over a decade, the general concurrence rate of cases throughout the Commonwealth has hovered around 80 percent, and this year has followed said pattern. As can be seen in Figure 2, judges continued to agree with the Sentencing Guidelines recommendations in approximately 83% of the cases throughout FY2021.

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 6.1% for FY2021, down from 7.5% from FY2020. The “mitigation” rate, or the rate at which judges sentence offenders to sanctions considered less severe than the Guidelines recommendation, was 11.0% for the fiscal year, up from 9.5% from FY2020. A total of 3,403 cases saw a departure from Sentencing Guidelines in FY2021, 64% (2,192 cases) of which resulted in a mitigating sentence, with its complimentary 36% (1,211 cases) of cases resulting in aggravating sentences.

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 FY2021 with the type of disposition recommended by the Guidelines. For instance, of all felony offenders recommended for more than six months of incarceration during FY2021, judges sentenced 82% 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 were small. These sentencing practices correlate closely to sentencing practices in previous fiscal years.

Figure 3

Recommended and Actual Dispositions - FY2021

Recommended Disposition	Actual Disposition		
	Probation	Incarceration 1 day - 6 mos.	Incarceration > 6 mos.
Probation	81.5%	16.1%	2.3%
Incarceration 1 day - 6 months	16.2%	77.0%	6.8%
Incarceration > 6 months	8.5%	9.1%	82.4%

Judges have also typically agreed with Guidelines recommendations for other types of dispositions. In FY2021, 77% 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 (16%) than the recommended jail term and, in other cases, offenders recommended for short-term incarceration received a sentence of more than six months (7%). Finally, 82% 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 of less than six months (16%), but rarely did these offenders receive an incarceration term of more than six months (2%).

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 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*). In turn, 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 - FY2021*

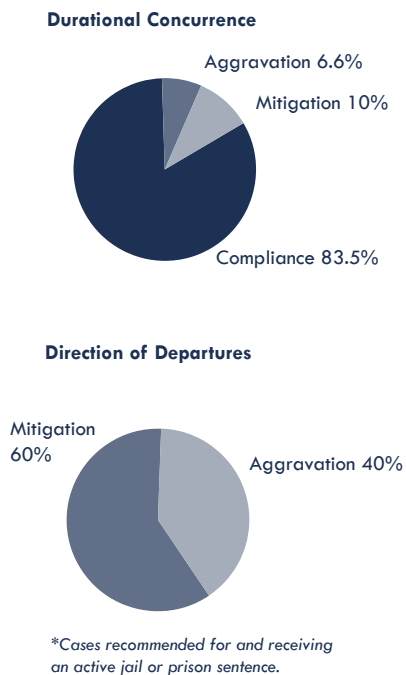
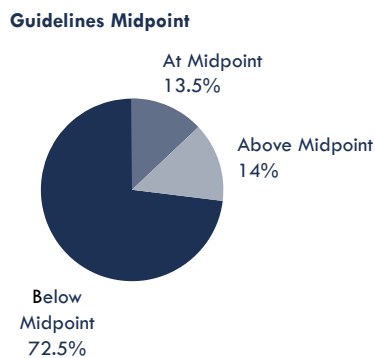


Figure 5

Distribution of Sentences within Guidelines Range - FY2021**



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

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 FY2021 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). Of the 17% of cases in which the recommended duration of sentence was departed from, 60% of said cases were mitigating in nature and the opposing 40% were aggravating.

In cases in which the recommendation exceeds six months in time, singular Sentencing Guidelines (known as the sentencing midpoint) are accompanied by a high-end and a low-end recommendation. Said sentencing ranges recommended by the Guidelines are relatively broad to allow judges to exercise discretion in sentencing offenders to different incarceration terms, while still remaining in concurrence with the Guidelines and, in turn, keeping aligned with sentencing practices of their colleagues throughout the Commonwealth. 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 FY2021) were given prison terms exactly equal to the midpoint recommendation (Figure 5). Most of the cases (73%) in durational concurrence with recommendations over six months resulted in sentences below the recommended midpoint. For the remaining 14% of these incarceration cases sentenced within the Guidelines range, the sentence exceeded the midpoint recommendation. These sentencing practices relating to durational concurrence almost mirror sentencing practices of FY2020. 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.

In order to gauge the severity of durational departures from the Sentencing Guidelines, it is effective to consider the median length of durational departures. In sum, and once again mirroring FY2020, durational departures from the Guidelines are no more than a year in time in either a mitigating or aggravating fashion. This indicates to the Commission that the durational departures are, in most cases, 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. For offenders receiving longer than recommended incarceration sentences, the effective sentence also exceeded the Guidelines range by a median value of eleven months (Figure 6).

Figure 6

Median Length of Duration Departures - FY2021*



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

REASONS FOR DEPARTURE FROM THE GUIDELINES

Compliance with the truth-in-sentencing Guidelines is voluntary, exhibiting an effort on behalf of the Commonwealth to embrace judicial discretion in sentencing practices. 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. While the Commission has provided a standardized list of reasons for departure via an evaluation of past sentencing departure reasons of judges across the Commonwealth, judges are not limited to any of these standardized departure reasons. Moreover, judges are free to report more than one departure reason in a given sentencing event.

In FY2021 the most frequently cited reasons for sentencing below the Guidelines recommendation were: the acceptance of a plea agreement, a sentence recommendation by the Commonwealth, sentenced to alternative punishments, mitigating offense circumstances, health issues of the offender, progress in rehabilitation on behalf of the offender, 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 FY2021, only the most frequently cited reasons are noted here. For 5 of the 2187 mitigating cases, a departure reason could not be discerned.

Subsequently, 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 offender’s prior record, the type of victim, the degree of victim injury, and the poor rehabilitation potential of the offender. For 8 of the 1210 cases sentenced above the Guidelines recommendation, the Commission could not ascertain a departure reason.

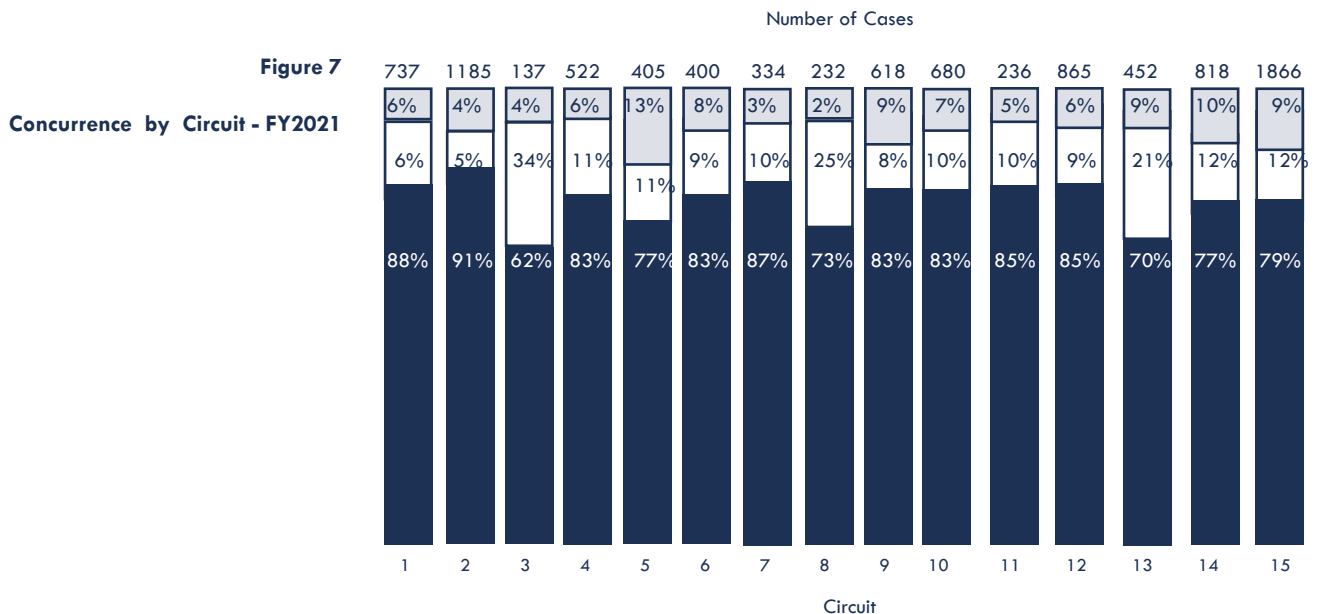
Appendices 1 and 2 present detailed tables of the reasons for departure from Guidelines recommendations for each of the 17 Guidelines offense groups.

CONCURRENCE BY CIRCUIT

Since the onset of truth-in-sentencing, concurrence rates and departure patterns have varied across Virginia’s 31 judicial circuits. FY2021 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.

As previously mentioned, in FY2021 the overall concurrence rate throughout the entirety of the Commonwealth was 83%, equal to the median concurrence rate of the Commonwealth. Further, 16 (52%) of the 31 circuits throughout the Commonwealth had a concurrence rate above the statewide concurrence rate of 83% while the remaining 15 circuits (48%) exhibited concurrence rates below the overall rate of the Commonwealth. Seeing as these rates surround the median concurrence rate of the Commonwealth equally, these results are to be expected. Circuits outside the interquartile range (values outside of the 25th-75th percentiles) are patterned in this case as well, as there are eight circuits above the 75th percentile (85.9% concurrence) and six circuits below the 25th percentile (77.2% concurrence).

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

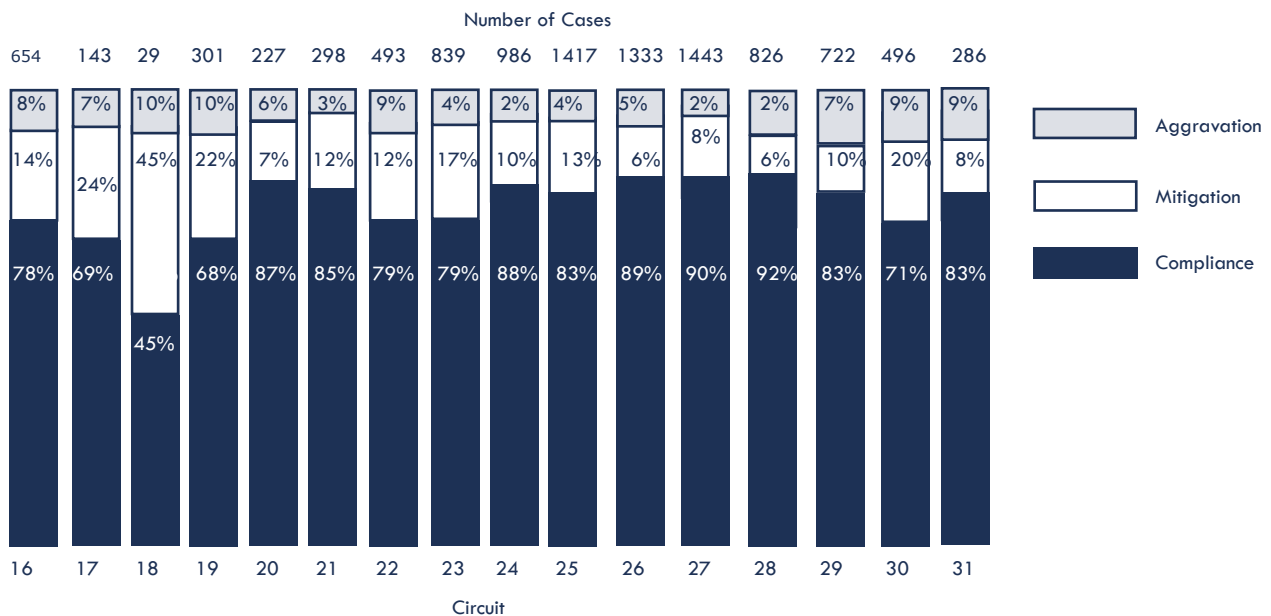


with the lowest concurrence rates are scattered across the state, and both high and low concurrence circuits can be found in close geographic proximity. This variation in concurrence rate is going to be especially nuanced in the fiscal year under evaluation, as data ranging from June 2020 to July 2021 have been exposed to the intricacies of dealing with the COVID19 pandemic. This pandemic could have exponentiated concurrence, mitigation, or aggravation rates for a variety of reasons, and it is too early to speculate on any specific reasons for these changes.

Figure 7 presents the concurrence, mitigation, and aggravation rates by circuit for FY2021. Of note, the Bristol Area (92%), Virginia Beach (91%), and Radford Area (90%) circuits were at the top of the list in terms of concurrence rates amongst all circuits in the Commonwealth. Mitigation rates were highest in the Alexandria circuit (45%), the Portsmouth circuit (34%) and the Hampton circuit (25%). Further, the aggravation rates were highest in the Suffolk Area circuit (13%), the Alexandria circuit (10%), and the Henrico circuit (10%). Reference Figure 7 below for a complete overview of the concurrence rates by circuit for FY2021.

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. Figure 7 also does not consider the type of offense that is in question that is either being issued a concurring, mitigating, or aggravating sentence.

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

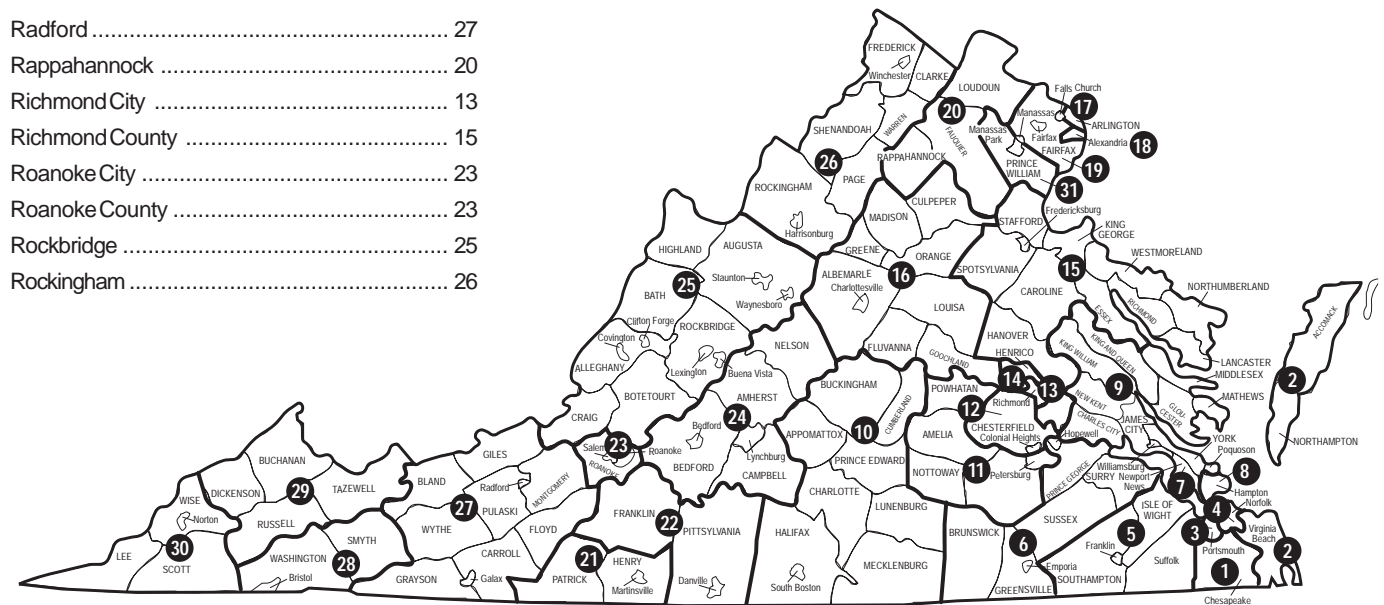


Virginia Localities and Judicial Circuits

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 FY2021, as in previous years, judicial agreement with the Guidelines varied when comparing the 17 offense groups (Figure 8). For FY2021, concurrence rates ranged from a high of 86% in the Drug/Other offense group to a low of 63% in Rape 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 78%, whereas many of the property and drug offense categories had concurrence rates above 83%.

Figure 8
Guidelines Concurrence by Offense - FY2021

	Compliance	Mitigation	Aggravation	Number of Cases
Drug Other	86.4%	8.4%	5.2%	501
Drug I/II	86.4%	9.1%	4.6%	9,752
Miscellaneous Other	84.4%	11.1%	4.5%	333
Larceny	83.4%	12.6%	4.0%	2,850
Fraud	83.1%	14.4%	2.5%	954
Traffic	81.3%	10.5%	8.2%	1,195
Miscellaneous Person/Property	78.8%	9.1%	12.0%	416
Burglary Other	78.1%	17.8%	4.1%	242
Weapon	77.8%	12.2%	10.0%	890
Burglary Dwelling	77.7%	12.1%	10.1%	355
Kidnapping	77.4%	14.8%	7.8%	115
Assault	77.0%	14.9%	8.1%	1,287
Obscenity	73.5%	10.1%	16.4%	268
Robbery	68.6%	23.1%	8.3%	277
Murder	67.5%	15.1%	17.5%	166
Sex Assault	65.1%	10.2%	24.7%	275
Rape	63.0%	15.0%	22.0%	127
TOTAL	83.0%	11.0%	6.1%	20,003

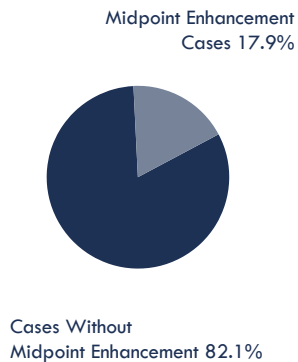
Highest compliance rates are seen in offense groups such as Drug/Other (86%), Drug Schedule I/II (86%), Miscellaneous (84%), Larceny (83%), and Fraud (83%). Conversely, the highest rates of mitigation are seen across Robbery cases (23%), Burglary (non-dwelling) cases (18%), Murder cases (15%), and Rape cases (15%). Sexual Assault cases (25%), Rape cases (22%), Murder cases (18%), and Obscenity cases (16%) were the offense types with the highest rates of aggravating sentences.

During the past fiscal year, judicial concurrence with Guidelines recommendations remained relatively stable, fluctuating less than three percent for most offense groups. The most drastic changes in concurrence rates exhibited from FY2020 to FY2021 was an 11% decrease in concurrence in Rape sentencing events, followed by a 5% decrease in concurrence in other sexual assault cases that exclude Rape and Obscenity. Further, there was a 6% increase in concurrence for Burglary of a Dwelling cases in FY2021 compared to FY2020. When offense groups only possess small percentages of overall sentencing events in a fiscal year, they are more susceptible to increased fluctuation in year-to-year comparisons. For example, all three of the aforementioned offense types with elevated fluctuations in comparison to FY2020 (Rape, Other Sexual Assault, and Burglary of a Dwelling) consist of only 0.6%, 1.4%, and 1.8% of all sentencing events in the Commonwealth in FY2021, respectively.

CONCURRENCE UNDER MIDPOINT ENHANCEMENTS

Figure 9

Application of Midpoint Enhancements - FY2021



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. Figure 9 indicates that 82% of offenders in FY2021 did not have a midpoint enhancement in effect, while the other 18% of offenders did. This 18% of offenders 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 FY2021 cases in which midpoint enhancements were applied, the most common midpoint enhancement was for a Category II prior record. Approximately 59% 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 FY2021, another 17% of midpoint enhancements were attributable to offenders with a more serious Category I prior record or offenders with a violent instant offense but no prior record of violence represented. The most substantial midpoint enhancements target offenders with a combination of instant and prior violent offenses. Roughly 5% qualified for enhancements for both a current violent offense and a Category II prior record. A very small percentage of cases (2%) were targeted for the most extreme midpoint enhancements triggered by a combination of a current violent offense and a Category I prior record.

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 FY2021, 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. To further support the notion that judges have historically departed more frequently in cases where midpoint enhancements have been included in the sentencing recommendation, these percentages are consistent with FY2020, even in consideration of dealing with pandemic-related issues.

Figure 10

Type of Midpoint Enhancements Received - FY2021

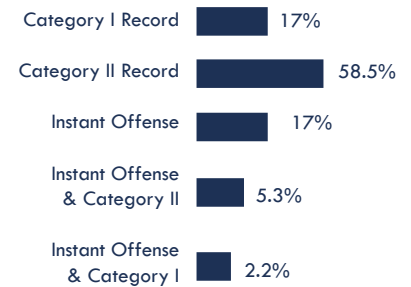


Figure 11

**Length of Mitigation Departures
in Midpoint Enhancement Cases - FY2021**



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

Among FY2021 midpoint enhancement cases resulting in incarceration, judges departed from the low end of the Guidelines range by an average of 22 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 FY2021, sentencing events involving a current violent offense, but no prior record of violence generated a concurrence rate of 73%. Concurrence in cases receiving enhancements for a Category I prior record generated a concurrence rate of 63% while concurrence for enhancement cases with a 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 70%, 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 (50%).

Figure 12

Concurrence by Type of Midpoint Enhancement - FY2021

Midpoint Enhancement	Concurrence	Mitigation	Aggravation	Number of Cases
None	85.6%	8.1%	6.3%	16,428
Category I	62.6%	35.4%	2.0%	607
Category II	73.6%	23.0%	3.3%	2091
Instant Offense	73.4%	15.4%	11.2%	609
Instant Offense & Category I	49.4%	44.3%	6.3%	79
Instant Offense & Category II	70.4%	21.2%	8.5%	189
Total	83.0%	11.0%	6.1%	20,003

JURIES AND THE SENTENCING GUIDELINES

There are three methods by which Virginia’s criminal cases are adjudicated: guilty 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, 91% of Guideline cases were sentenced following guilty pleas (Figure 13). Adjudication by a judge in a bench trial accounted for 9% of all felony Guidelines cases sentenced. During FY2021 less than one percent 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, FY2021

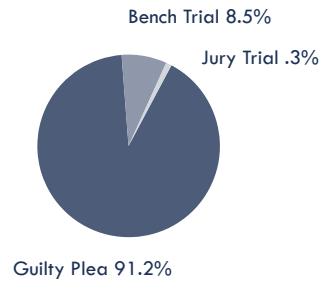
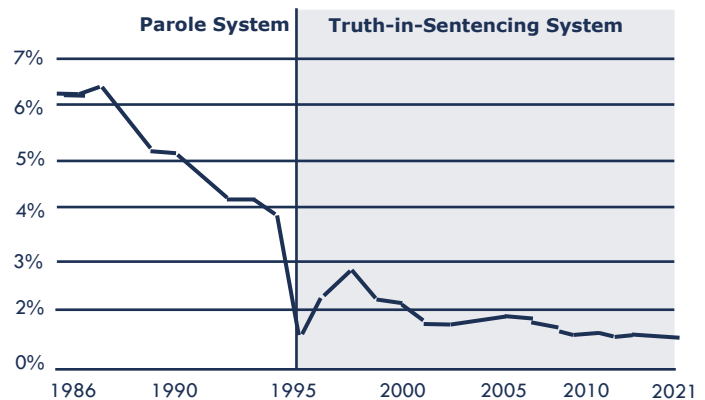


Figure 14

Percent of Felony Convictions Adjudicated by Juries FY1986-FY2021 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 16% 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 and this trend continued throughout the 2021 fiscal year.

In FY2021, the Commission received 55 cases adjudicated by juries. While the concurrence rate for cases adjudicated by a judge or resolved by a guilty plea was at 83% during the fiscal year, sentences handed down by juries concurred with the Guidelines 44% of the time (Figure 16) which stays consistent with FY2020 but is a continuation of the significant increase seen in comparison to previous years. Of the remaining cases sentenced by a jury, those juries were more likely to recommend a sentence above the Guidelines 40% of the time. This pattern of jury sentencing vis-à-vis the Guidelines yields a slight inconsistency (variation) since the truth-in-sentencing Guidelines became effective in 1995. 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-FY2021
Parole System v. Truth-in-Sentencing (No Parole) System**

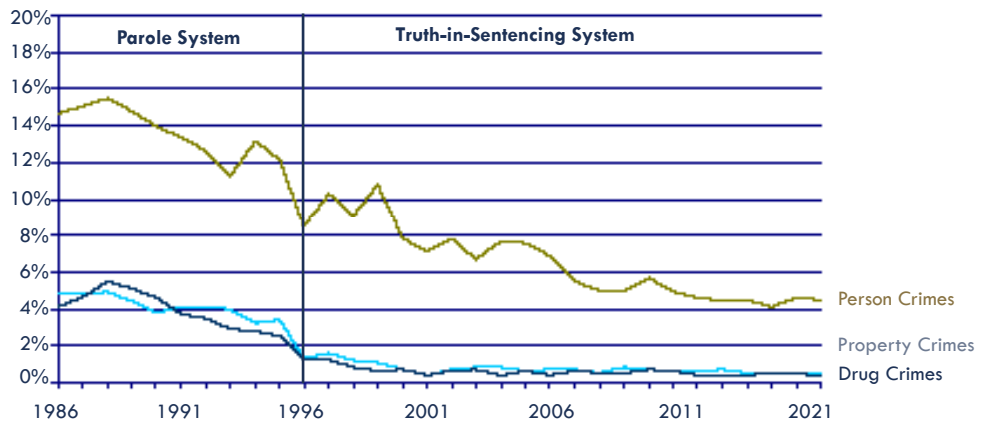


Figure 17 exhibits the variation in sentencing lengths (by months) in which mitigating or aggravating sentences were instituted on behalf of juries throughout the Commonwealth. Mitigating sentences fell below the Sentencing Guidelines by a median length of 11 months, while aggravating sentences increased sentences by a median value of 63 months above the Sentencing Guidelines.

In FY2021, 13 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 FY2021, judges modified 26% of jury sentences.

Figure 16

Sentencing Guidelines Concurrence in Jury and Non-Jury Cases, FY2021

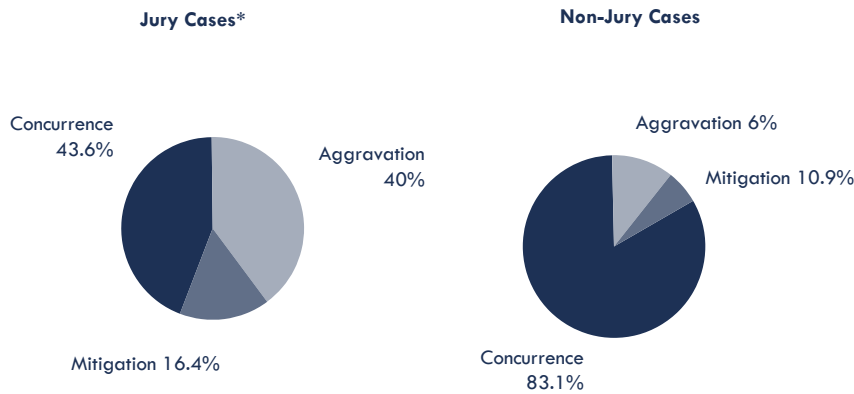


Figure 17

Median Length of Durational Departures in Jury Cases, FY2021



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 to re-evaluate the risk assessment instrument and potentially revise the instrument based upon 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 FY2021 were for nonviolent offenses. However, only 39% 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 1,565 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 that the risk assessment was not applicable.

Among the eligible offenders in FY2021 for whom a risk assessment form was received (2,865 cases), 52% were recommended for an alternative sanction by the risk assessment instrument (Figure 18). Less than a quarter of the offenders (24.1%) recommended for an alternative sanction through risk assessment were given some form of alternative punishment by the judge. This rate of reception of alternative sanctions is down significantly compared to FY2020, where just less than half of offenders who were recommended for an alternative sanction as a non-violent offender received an alternative sanction.

Among offenders recommended for and receiving an alternative sanction through risk assessment, judges used modes of Supervised Probation more often than any other option (Figure 19). Other frequent sanctions utilized were: Substance Abuse Treatment (47%), Unsupervised Probation (31.7%), Restitution (12%), and Time Served (9%). The Department of Corrections' Community Corrections Alternative Program was used in a small percentage (0.5%) of the cases, consistent with rates of incorporation in the 2020 fiscal year. Other alternatives/sanctions included: first offender status under § 18.2-251 and drug court.

Figure 18

Eligible Nonviolent Offender Risk Assessment Cases by Recommendation Type, FY2021 (5,488 cases)

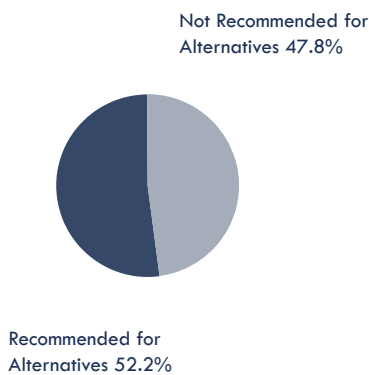
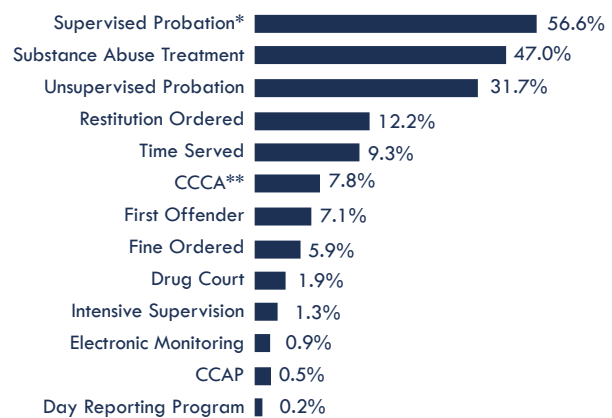


Figure 19

Types of Alternative Sanctions Imposed - FY2021



* Includes indefinite supervised probation (13.5%)

** Any program established through the Comprehensive Community Corrections Act

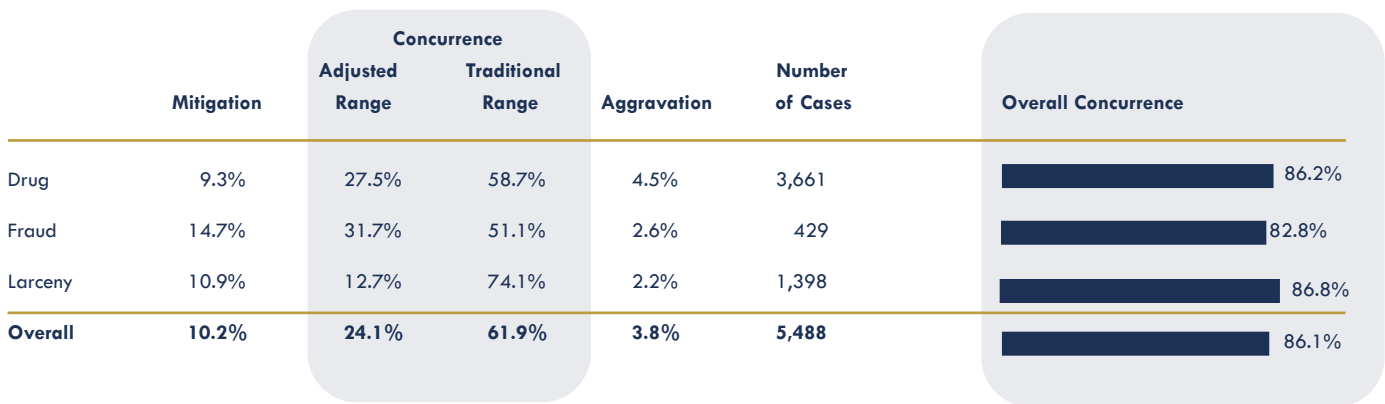
These percentages do not sum to 100% because multiple sanctions may be imposed in each case.

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 86%, but a portion of this concurrence reflects the use of an alternative punishment option as recommended by the risk assessment tool (Figure 20). In 28% of these 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 83%.

In 32% of these 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 87%. Judges used an alternative, as recommended by the risk assessment tool, in 13% 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 - FY2021

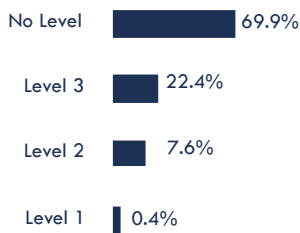


CONCURRENCE AND SEX OFFENDER RISK ASSESSMENT

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 several 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 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, FY2021



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 have been 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 FY2021, there were 275 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 (17 of the 275 in FY2021). Another 8 cases were missing information for calculating concurrence and were excluded. Of the remaining 250 sexual assault cases for which the risk assessment was applicable, the majority (70%) were not assigned a level of risk by the sex offender risk assessment instrument (Figure 21). Approximately 22% of applicable Sexual Assault Guidelines cases resulted in a Level 3 risk classification, with an additional 8% assigned to Level 2. Less than 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. The one sexual assault offender reaching Level 1 risk during the past fiscal year, one was given a sentence using the traditional Guidelines range. (Figure 22). Judges used the extended Guidelines range in 11% of Level 2 cases and 23% of Level 3 risk cases. Judges rarely sentenced Level 1, 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 14% of the cases. Offenders who scored less than 28 points on the risk assessment instrument (who are not assigned a risk category and receive no Guidelines adjustment) had concurrence rates like that of other levels of Sex Offender Risk Assessment (SORA) offenders; however, their aggravation rates (33%) were much higher compared to that of Level 1 (0%), 2 (0%), or 3 (14.3%) offenders.

Figure 22

Sexual Assault Concurrence Rates By Risk Assessment Level, FY2021

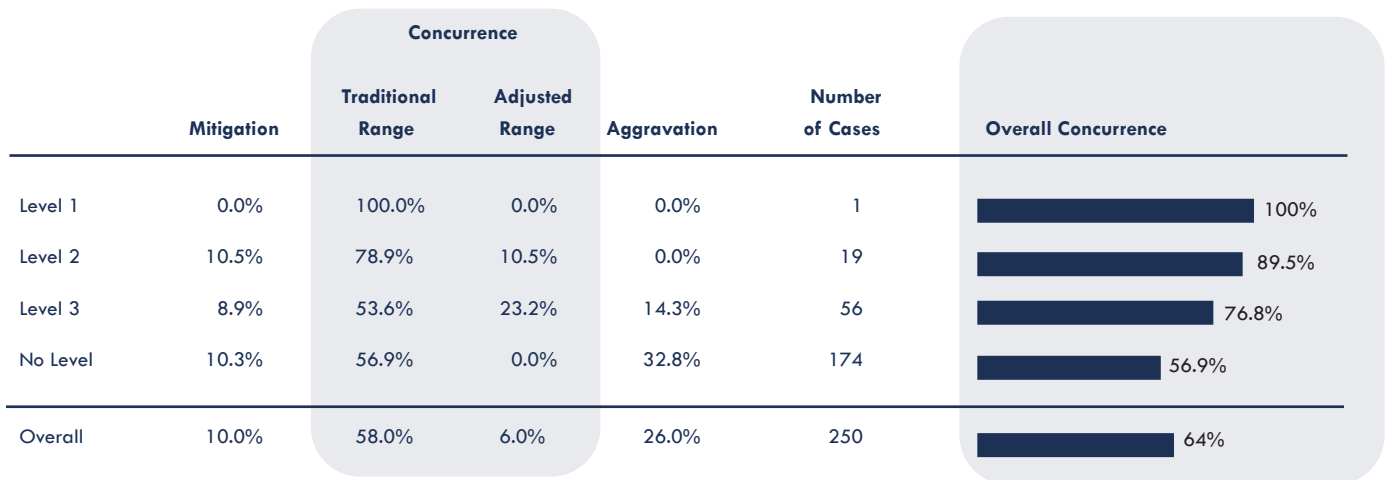
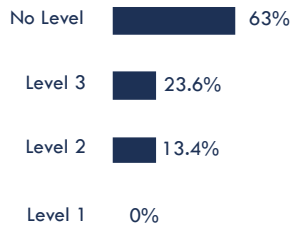


Figure 23

Sex Offender Risk Assessment Levels for Rape Offenders, FY2021



There were 127 offenders convicted of offenses covered by the Rape Guidelines (which cover the crimes of rape, forcible sodomy, and object penetration) in FY2021. According to Figure 23 approximately 63 percent were not assigned a risk level by the Commission’s risk assessment instrument. Approximately 24% of these cases resulted in a Level 3 adjustment. An additional 13% received a Level 2 adjustment. There were zero offenders in FY2021 that received a Level 1 adjustment for a rape conviction. As shown below, 12% of offenders with a Level 2 risk classification and 23% of offenders with a Level 3 risk classification were given prison sentences within the adjusted range of the Guidelines. Defendants 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 (54% concurrence rate), but were more likely to receive a sentence that was an upward departure from the Guidelines (30% aggravation rate).

Figure 24

Rape Concurrence Rates By Risk Assessment Level, FY2021

	Mitigation	Concurrence		Aggravation	Number of Cases	Overall Concurrence
		Traditional Range	Adjusted Range			
Level 1	0.0%	0.0%	0.0%	0.0%	0	
Level 2	17.6%	58.8%	11.8%	11.8%	17	70.6%
Level 3	10.0%	60.0%	23.2%	6.7%	30	83.3%
No Level	16.3%	53.8%	0.0%	30.0%	80	53.8%
Overall	15.0%	55.9%	7.1%	22.0%	127	63.0%

SPECIFIC TYPE OF DRUG

In 2017, at the request of several Commonwealth's Attorneys, the Commission began identifying the type of Schedule I, II and III substances on 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. The purpose of the recommendation was not to encourage changes in sentencing based on drug type.

The Commission modified the cover sheets and began to collect the specific type of drug on July 1, 2017 when a drug offense was the primary or most serious offense in the sentencing event. In FY 2021 there were 9,752 Drug Schedule I/II worksheets and 501 Drug Other worksheets submitted to the Commission.

Figure 25 identifies the specific type of drug identified on the drug Sentencing Guidelines. When opioids were grouped together, they were the most frequently occurring drug type in Commonwealth sentencing events (29.7%). However, methamphetamine, measured solely, was arguably just as frequently sentenced in drug offenses throughout the Commonwealth in FY2021, appearing in 29.1% of cases. These two drugs were followed closely by cases involving cocaine (17%), heroin (9%), and fentanyl (7%).

Concurrence rates are not significantly different based on the type of drug involved. In FY2021, judges concurred with the Guidelines' recommendation in over 86% of the cases, regardless of the specific type of drug. Rates of concurrence are slightly higher in methamphetamine cases (88%), while opioid cases involving opioids and cocaine had a slightly lower than average concurrence rate of 84 percent. 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. These factors are not available on the 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 - FY2021

Drug	Percentage	Number of Cases
Methamphetamine	29.1%	4,119
Opioids*	29.7%	4,204
Cocaine	16.6%	2,343
Heroin	8.8%	1,237
Fentanyl	6.5%	912
Other	5.4%	760
Oxycodone	1.9%	275
Hydrocodone	0.8%	117
Methylphenidate	0.5%	70
Morphine	0.3%	37
Methadone	0.2%	35
Codeine	0.2%	24

*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.

Figure 26
Guidelines Concurrence by Type of Drug - FY2021

	Compliance	Mitigation	Aggravation	Number of Cases
Methamphetamine Case	88.3%	7.4%	4.3%	4,119
Cocaine Case	84.4%	11.0%	4.7%	2,343
Opioid Case	83.9%	10.0%	6.1%	2,219
Other Case	87.2%	8.1%	4.7%	826
Total	86.2%	9.0%	4.8%	9,507

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

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. General conclusions regarding methamphetamines are as follows: the Radford Area (Circuit 27), the Bristol Area (Circuit 28), and the Staunton Area (Circuit 25) have the highest frequencies of methamphetamine-related sentencing events across the Commonwealth. Further, cocaine-related sentencing events appear more frequently in the Fredericksburg (Circuit 15), Virginia Beach (Circuit 2), and Henrico (Circuit 14) circuits in comparison to the rest of the Commonwealth.

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. These topics and limitations of the use of sentencing data for an evaluation of drug prevalence by geographic location ought to be taken into consideration when evaluating Figure 27.

The Commission will continue to monitor sentencing in drug cases as requested. If the sentencing patterns of judges change, so will the Guidelines. As indicated by the concurrence rates of drug sentences throughout the Commonwealth, there is no need at this time to adjust Guidelines based on the type of drug involved.

Figure 27
Type of Drug by Circuit - FY2021

Circuit		Cocaine	Codeine	Fentanyl	Heroin	Hydrocodone	Methadone	Methamphetamines	Methylphenidate	Morphine	Oxycodone	Other*
1	Chesapeake	131	1	44	84	1	0	94	2	1	6	24
2	Virginia Beach	198	1	34	84	2	1	186	1	1	27	66
3	Portsmouth	15	0	3	15	0	1	0	0	0	1	1
4	Norfolk	78	0	12	32	1	0	20	0	0	4	8
5	Suffolk Area	41	3	15	18	1	1	10	0	0	6	12
6	Sussex Area	94	1	34	33	0	1	32	1	1	9	13
7	Newport News	71	0	11	17	1	0	5	1	0	6	5
8	Hampton	46	0	5	11	0	0	0	0	0	2	7
9	Williamsburg Area	66	0	16	37	0	2	76	1	1	3	24
10	South Boston Area	100	1	21	31	1	3	102	2	0	5	23
11	Petersburg Area	25	0	6	3	0	0	21	0	1	2	4
12	Chesterfield Area	151	0	90	84	3	1	87	3	1	13	37
13	Richmond City	144	0	31	63	1	0	10	0	0	10	7
14	Henrico	188	1	92	94	4	2	34	1	4	10	16
15	Fredericksburg	282	3	210	205	4	5	156	5	4	28	161
16	Charlottesville Area	108	0	28	46	1	0	49	3	3	13	31
17	Arlington Area	21	1	1	7	0	0	7	0	0	2	11
18	Alexandria	2	0	1	1	0	0	0	0	0	1	0
19	Fairfax	53	0	8	10	1	0	4	0	0	5	27
20	Loudoun	27	0	22	19	0	0	6	0	0	4	21
21	Martinsville Area	20	0	6	23	3	0	78	1	0	7	11
22	Danville Area	53	0	7	23	5	1	140	1	0	7	16
23	Roanoke Area	54	1	55	78	5	1	191	5	2	3	8
24	Lynchburg Area	97	2	17	42	5	3	250	14	1	9	29
25	Staunton Area	43	4	23	26	18	3	508	6	5	16	34
26	Harrisonburg Area	127	1	73	58	6	4	353	2	3	18	63
27	Radford Area	32	1	15	38	19	2	709	11	5	20	32
28	Bristol Area	11	1	5	16	14	3	515	2	0	15	19
29	Buchanan Area	11	1	7	16	10	0	235	4	3	12	11
30	Lee Area	3	1	2	2	9	0	224	2	1	6	11
31	Prince William Area	49	0	18	19	2	0	14	2	0	4	28
Total	Statewide	2,343	24	912	1,237	117	35	4,119	70	37	275	760

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

* 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 2021*

Circuit	Number	Percent
1	577	4.8%
2	739	6.1%
3	187	1.6%
4	337	2.8%
5	293	2.4%
6	124	1.0%
7	190	1.6%
8	182	1.5%
9	420	3.5%
10	309	2.6%
11	120	1.0%
12	659	5.5%
13	154	1.3%
14	586	4.9%
15	1,150	9.6%
16	406	3.4%
17	93	0.8%
18	3	0.0%
19	217	1.8%
20	172	1.4%
21	210	1.7%
22	466	3.9%
23	437	3.6%
24	336	2.8%
25	625	5.2%
26	959	8.0%
27	591	4.9%
28	430	3.6%
29	597	5.0%
30	296	2.5%
31	172	1.4%

*4 cases were 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 Sentencing Guidelines introduced that year.

In FY2021, there were 12,037 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 FY2021 were Circuit 15 (Fredericksburg area), Circuit 26 (Harrisonburg), Circuit 2 (Virginia Beach), Circuit 12 (Chesterfield), and Circuit 25 (Staunton area). Circuit 18 (Alexandria), Circuit 17 (Arlington), Circuit 6 (Sussex area), and Circuit 11 (Petersburg area) submitted the fewest SRRs during FY2021 (Figure 28).

Of the 12,037 SRRs received by the Commission in FY2021, 6,323 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 5,312 cases, the offender was found in violation of other conditions not related to a new law violation. In a number of cases, the offender was not found in violation of any condition (111 cases) or the type of violation was not identified on the SRR form (285 cases).

Figure 29 compares new law violations with “technical violations” in FY2021 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. Historical data indicates that since FY2015, technical violations have exceeded new law violations; however, FY2021 saw the end of this trend seeing as the 6,323 new law violations exceed the 5,312 technical violations reported to the Commission.

Figure 29

**Sentencing Revocation Reports Received for Technical and New Law Violations
FY1998 - FY2021**

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	5,510	3,672	9,182
FY2007	6,670	4,755	11,425
FY2008	6,269	5,182	11,451
FY2009	5,001	5,134	10,135
FY2010	4,670	5,228	9,898
FY2011	5,239	6,058	11,297
FY2012	5,147	5,760	10,907
FY2013	5,444	6,014	11,458
FY2014	5,772	5,930	11,702
FY2015	6,511	6,397	12,908
FY2016	6,660	6,000	12,660
FY2017	6,655	5,627	12,282
FY2018	7,789	6,426	14,215
FY2019	8,077	7,250	15,327
FY2020	6,842	6,515	13,357
FY2021	5,312	6,323	11,635

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. Most 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 FY2021.

For FY2021, 5,312 of the 12,037 SRRs involved technical violations only. Upon further examination, it was found that 481 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 - FY2021

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%	5,934
FY2021	50.9%	39.9%	9.3%	4,822

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.

Figure 31

**Probation Violation
Guidelines Worksheets Received by
Type of Most Serious
Original Offense - FY2021*
N=4,831**

Original Offense Type	Percent Received
Drug	42.2%
Property	36.8%
Person	13.5%
Traffic	3.4%
Other	4.1%

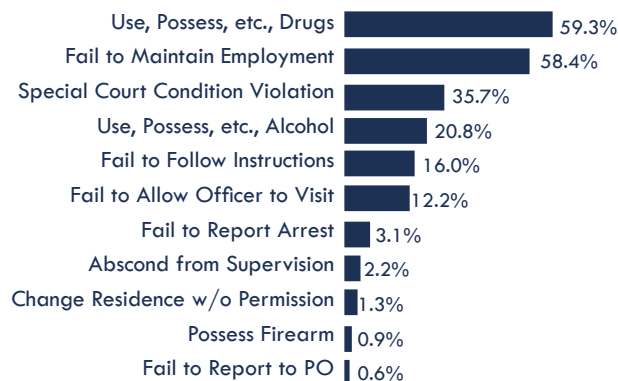
**Includes FY2021 cases found to be in violation that were completed accurately on current guideline forms.*

Of the 4,831 cases examined in which offenders were found to be in violation of their probation for reasons other than a new law violation, approximately 42% were under supervision for a felony drug offense (Figure 31). This represents the most serious offense for which the offender was on probation. Another 37% were under supervision for a felony property conviction. Offenders who were on probation for a crime against a person (most serious original offense) made up a smaller portion (14%) of those found in violation during FY2021.

Examining the 4,831 technical violation cases reveals that over half (59%) 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. Offenders were cited for failing to maintain employment in 58% of cases as well. Other frequently cited violations included the violation of a special court condition (36%), the use, or possession of, alcohol (21%), and the failure of offenders to follow instructions (16%). In the 36% of cases where offenders were cited for failing to follow special conditions imposed by the court, these special conditions can include the following: 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 32

**Violation Conditions Cited by Probation Officers,
Excluding New Law Violations - FY2021***



**Includes FY2021 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 FY2021, the overall rate of concurrence with the Probation Violation Guidelines was 51%, similar to the concurrence rate observed since FY2008 with the exception of last year (Figure 33). The aggravation rate, or the rate at which judges sentence offenders to sanctions more severe than the Guidelines recommend, was 9% during FY2021. The mitigation rate, or the rate at which judges sentence offenders to sanctions considered less severe than the Guidelines recommendation, was 40%. Of the 2,372 cases in which the recommendations of the Probation Violation Guidelines were departed from, 81% (1,925 cases) were departed from in a mitigating fashion in comparison to the 19% (447 cases) which included aggravating sentences.

Figure 34 illustrates judicial concurrence with the type of disposition recommended by the Probation Violation Guidelines for FY2021. 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 56% of the cases. When departing from the dispositional recommendation, judges were more likely to sentence below the Guideline’s 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 2021 N=4,822

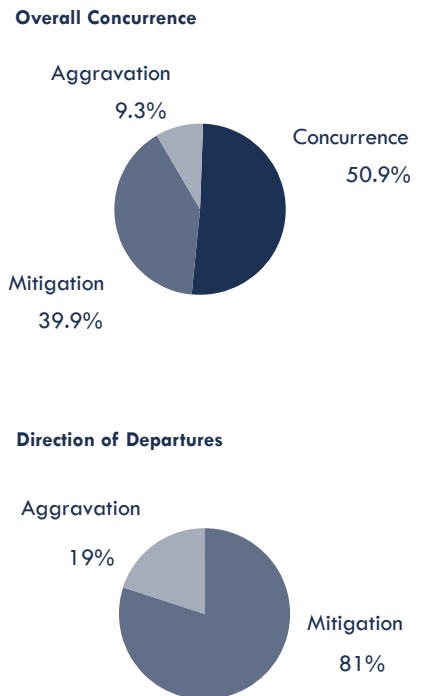


Figure 34

Probation Violation Guidelines Dispositional Concurrence FY2021

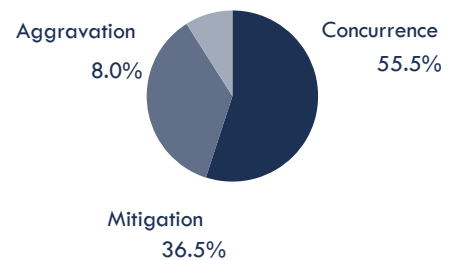
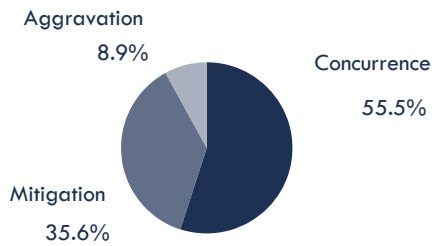


Figure 35
Probation Violation Guidelines
Durational Concurrence* FY2021



**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 FY2021 was approximately 56% (Figure 35). For cases not in durational concurrence, mitigating sentences were more likely than aggravating sentences.

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 nine 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 FY2021, 49% 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 1,925 mitigation cases revealed that 85% included a departure reason, a percentage that has continually increased over recent years. For the mitigation cases in which departure reasons were provided, judges were most likely to cite the fact that the sentence was recommended by the Commonwealth's attorney, unusual circumstances of the cases, the defendant responding to probation, supervision, etc., or the utilization of substance abuse or mental health treatment.

Examining the 447 aggravation cases, the Commission found that an increasing majority (82%) included a departure reason. When a departure 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 flagrancy of the offense, the failure of the defendant to follow instructions, absconding from supervision, or poor rehabilitation potential. FY2021 data suggest that judicial concurrence with Probation Violation Guidelines recommendations remains above 50% since the changes implemented July 1, 2007. As with the felony Sentencing Guidelines first implemented in 1991, the development of useful sentencing tools for judges to deal with probation violators will be an iterative process, with improvements made over several years. Feedback from judges, especially through written departure reasons, is of critical importance to the process of continuing to improve the Guidelines, thereby making them a more useful tool for judges in formulating sanctions in probation violation hearings. In FY2019 the Commission surveyed judges, attorneys, and probation officers on the usefulness of the Probation Violation Guidelines. In FY2021, the Commission members began to update the probation Guidelines based on user input and updated data sources to better reflect judicial sentencing.

RECENT LEGISLATION RELATED TO PROBATION SUPERVISION AND REVOCATION

OVERVIEW OF HOUSE BILL 2038

During the 2021 General Assembly (Special Session I), legislators passed House Bill 2038 to establish new requirements for probation supervision and revocation in Virginia. In passing the legislation, the General Assembly sought significant changes in the way Virginia's courts handle probation and address violations of the conditions of supervision. The legislation amended §§ 19.2-303, 19.2-303.1 and 19.2-306 and added a section numbered 19.2-306.1. Among other changes, the legislation limits the length of probation supervision, creates deadlines for revocation hearings, defines a technical violation, and restricts the time that may be imposed by a court when the defendant is found to have committed technical violations. The provisions of House Bill 2038 became effective on July 1, 2021. Specific aspects of the legislation are described below. The full text of House Bill 2038 can be found at the end of this chapter.

Summary of House Bill 2038 (2021 General Assembly, Special Session I):

- A court may suspend imposition of sentence or suspend the sentence in whole or part and place the defendant on probation under such conditions as the court shall determine; however, a court may fix the period of probation only up to statutory maximum of the offense (§19.2-303).
- Any term of supervised probation ordered by a court may not exceed five years from the release of the defendant from any active period of incarceration (§19.2-303).¹
 - The limitation does not apply to the extent that an additional period of probation is necessary for the defendant to participate in a court-ordered program. Furthermore, the limitation does not apply to defendants convicted of specified sex offenses, as House Bill 2038 leaves the current requirements in place.
- In any case where a court suspends the imposition or execution of a sentence, the court may fix the period of suspension only up to the statutory maximum of the offense (§ 19.2-303.1).

¹ Analysis of FY2019-FY2020 Sentencing Guidelines data revealed that approximately 3% of felony offenders received a probation supervision term in excess of five years. The median probation supervision term during FY2019-FY2020 was 18 months.

- A court may not conduct a revocation hearing unless the court issues process to notify the accused or to compel his appearance before the court within 90 days of receiving notice of the alleged violation or within one year after the expiration of the period of probation or the period of suspension, whichever is sooner, or, in the case of a failure to pay restitution, within three years after such expiration (§ 19.2-306).
- If neither a probation period nor a period of suspension was fixed by the court, then the court must issue process within six months (rather than one year) after the expiration of the maximum period for which the defendant might originally have been sentenced to be incarcerated (§ 19.2-306).
- If a court finds a defendant in violation of the terms of a suspended sentence, the court may revoke the suspension and impose a sentence in accordance with the provisions of the new § 19.2-306.1. The court may again suspend all or any part of this sentence for a period up to the statutory maximum period for which the defendant might originally have been sentenced to be imprisoned, less any time already served, and may place the defendant upon terms and conditions of probation. The court must measure the period of any suspension of sentence from the date of the entry of the original sentencing order (§ 19.2-306).

- If a court finds that a defendant has absconded from the jurisdiction of the court, the court may extend the period of probation or suspended sentence for a period not to exceed the length of time that the defendant absconded (§ 19.2-306).
- For the purposes of § 19.2-306.1, a “technical violation” means a violation based on the probationer’s failure to:
 - Report an arrest within 3 days;
 - Maintain regular employment or notify of changes in employment;
 - Report within 3 days of release from incarceration;
 - Permit probation officer to visit home or employment;
 - Follow instructions of the probation officer, be truthful/cooperative;
 - Refrain from the use of alcoholic beverages to excess;
 - Refrain from the use, possession, or distribution of drugs or paraphernalia;
 - Refrain from the use, ownership, possession, etc., of a firearm;
 - Gain permission to change residence;
 - Maintain contact with the probation officer such that his whereabouts are no longer known to the probation officer (absconding).

These violations are based on the standard Conditions of Probation Supervision signed by a felony offender when a Virginia Department of Corrections Probation and Parole Officer begins supervising the individual in the community. The violations defined as technical violations reflect Conditions 2 through 11 of the standard Conditions of Probation Supervision. A violation of Condition 1, failure to obey all federal, state, and local laws and ordinances, is not included in the definition of a technical violation. Similarly, a violation of any special condition set by the court is not included in the definition of a technical violation.

- Multiple technical violations arising from a single course of conduct or considered at the same revocation hearing shall not be considered separate technical violations for the purposes of sentencing (§ 19.2-306.1).

- The amount of active incarceration a court can impose for a technical violation of probation supervision is limited, as shown below (§ 19.2-306.1).

1st technical violation	No active incarceration
2nd technical violation, or 1st technical violation related to firearm or absconding	Presumption against incarceration or, if the defendant cannot be safely diverted, up to 14 days incarceration
3rd or subsequent technical violation, or 2nd or subsequent technical violation related to firearm or absconding	Whatever sentence may have been originally imposed by the court (up to the amount of remaining revocable time)

- Limits on the amount of active incarceration for violations of supervised probation are not applicable to violations arising out of new convictions or violations associated with special conditions, such as sex offender or gang-related restrictions.
- The limitations on sentencing for technical violations do not apply to the extent that an additional term of incarceration is necessary to allow a defendant to be evaluated for or to participate in a court-ordered drug, alcohol, or mental health treatment program.

NEW PROBATION VIOLATION GUIDELINES

In 2003, the General Assembly directed the Commission to develop discretionary sentencing guidelines for probation violators returned to court for technical violations (see Chapter 1042 of the 2003 Acts of Assembly). As required by the legislative mandate, the Commission examined historical judicial sanctioning practices in revocation cases to develop the Guidelines. The Commission's study had revealed wide variations in the handling of technical probation violations across the Commonwealth. One of the primary goals of Virginia's Guidelines is to reduce unwarranted sentencing disparity and increase consistency and predictability in sentencing outcomes. In its *2003 Annual Report*, the Commission recommended that the Probation Violation Guidelines be implemented statewide, and the recommendation was accepted by the General Assembly. Statewide use began on July 1, 2004.

In 2016, the Commission approved a study that would provide the foundation needed to revise the Probation Violation Guidelines. The goal was to improve the utility of these Guidelines for Virginia's judges. As a critical first step in revising the Guidelines, the Commission utilized a survey to seek input from Circuit Court judges. The majority of responding judges felt that the Probation Violation Guidelines should be expanded to cover not only technical violations but also violations arising out of new felony or new misdemeanor convictions. With judicial feedback in mind, the Commission conducted a comprehensive analysis of sentencing outcomes in revocation cases handled in Virginia's Circuit Courts. Based on the results of this large-scale multi-year project, the Commission recommended revisions to the Probation Violation Guidelines, including an expansion to cover, for the first time, violations associated with new convictions (see the Commission's *2020 Annual Report*).

In summary, the Commission recommended:

- 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.

Based on analysis of revocation data, the new Probation Violation Guidelines are

designed to produce recommendations that provide judges with a more accurate benchmark of the typical, or average, case outcome given the nature of the violation(s), the original most serious offense, the probationer's prior revocations, and any new convictions. The 2021 General Assembly accepted the Commission's recommendations. The new Probation Violation Guidelines took effect on July 1, 2021.

With the passage of House Bill 2038, the Commission adjusted the new Probation Violation Guidelines to ensure they are compatible with the requirements of the new law. The historically-based Guidelines were modified so that they will not recommend more incarceration time than that permitted under the provisions of § 19.2-306.1.

Questions Raised by Court Stakeholders and Potential Unintended Consequences of House Bill 2038

Because the Commission is charged with the development and administration of Virginia's Sentencing Guidelines, the Commission is also responsible for educating all court stakeholders in the preparation and application of the Guidelines. Specifically, the Commission trains probation officers and Commonwealth's attorneys (the two groups authorized by statute to complete the Guidelines) to accurately prepare Guidelines worksheets for submission to the court. The Commission's seminars also provide defense attorneys with a knowledge base to challenge the accuracy of Guidelines submitted to the court. The Commission conducts Guidelines seminars for new members of the judiciary, as well. The Commission offers many training and educational opportunities, both in-person and virtual. Having all sides equally versed in the completion of the Guidelines is essential to the court process. In addition to its seminars, the Commission provides assistance to Guidelines users through its website, numerous publications, "hotline" phone system, and its new texting service - all important resources for Guidelines users. Commission staff are available throughout the day to respond quickly to any questions or concerns regarding the Guidelines or their preparation. Thus, Commission staff interact with a large number of court stakeholders from all perspectives (prosecutors, defense attorneys, probation officers and judges) working throughout the Commonwealth.

Since the passage of House Bill 2038, the Commission has received a number of questions related to the legislation and requests for guidance regarding interpretation of the new law. The Commission, however, cannot advise court stakeholders as to legal interpretation. Interpretation of the law lies with the purview of the courts and individual judges hearing such cases. Nonetheless, the Commission is in a unique position to document the questions raised by an array of court stakeholders and the potential unintended consequences of the legislation they describe. The questions from stakeholders, and the unintended consequences they suggest, are discussed below.

Does the statute apply to local community corrections/probation programs?

The new § 19.2-306.1 appears to define technical violations based on the standard Conditions of Probation for adults supervised by the state Department of Corrections. Probationers supervised by a local community corrections/probation office do not sign the same conditions. However, it is unclear if the statute is intended to apply to all types of probation, including supervision by a local community corrections program.

Does the 14-day requirement apply to the revocation event or to each technical violation? (i.e., can the penalties be stacked?)

The new § 19.2-306.1 limits the amount of time the court may impose to 14 days for a second technical violation of probation or a first violation of probation associated with absconding or possessing a firearm. Defendants often have multiple technical violations in one event. The multiple technical violations in an event may be due to the fact that the individual was convicted of multiple felonies in the original sentencing event, or it may be due to different felony sentencing events in the same jurisdiction that each require the individual to be supervised on probation. If found in violation of each condition or found in violation for each probation term ordered by the court, it is unclear if the court can sentence up to 14 days for each technical violation. Some judges have interpreted the statutory limit to apply to the entire probation violation event and not to each count, each technical violation, or each period of supervision. Others have indicated that they believe the 14-day penalties can be run consecutively to one another (e.g., stacked) in such circumstances.

Does the legislation apply to offenders sentenced and placed on probation prior to July 1, 2021, or only to offenders sentenced and placed on probation on or after July 1, 2021? (i.e., does it apply to court orders filed before the change in law?)

The legislation does not specify whether or not the new requirements found in § 19.2-306.1 apply to offenders sentenced prior to July 1, 2021. Some have argued that the new restrictions only apply to defendants who are sentenced to probation on or after July 1, 2021 (the effective date of the legislation). Under this interpretation, anyone sentenced to probation prior to July 1, 2021, is not subject to the sentence caps for technical violations committed while under supervision. However, others have argued that the sentence caps for technical violations apply to all probationers, regardless of when they were sentenced for the original offenses.

The Code, for the first time, requires that the court not only know the number of previous probation revocations, but the type of revocations (i.e., the specific conditions violated). As a result, several questions have been asked by criminal justice stakeholders implementing the new statute: Do previous technical violations from prior to July 1, 2021, count? Do technical violations from prior probation terms (for other offenses in the jurisdiction) count? Do technical violations from any prior probation term (in the individual's history) count?

In order to apply the new sentence caps for technical violations correctly, the court must know the number and type of technical violations the defendant has accumulated. It is unclear if the count of violations begins on July 1, 2021, or if the count includes technical violations that occurred prior to July 1, 2021.

Once the time frame has been established, the court must decide which technical violations are counted. When applying the provisions of the statute, in most cases, the courts have limited the count of prior technical violations to violations for the same underlying offense(s) (i.e., the same offense(s) for which the individual is facing revocation in the current hearing). However, the statute is unclear. If the intent of the statute is for the court to consider the defendant's overall behavior while under probation supervision, limiting the count to prior technical violations for just the underlying offenses may not achieve that intent. If the intent of the statute is to focus on the current behavior on probation for the underlying offenses, a decision to include prior technical violations for other offenses or technical violations in other courts does not support that intent. Criminal justice stakeholders have advised that the statute does not provide clear guidance regarding the General Assembly's intent, nor does it specify which prior technical violations are to be included in the count.

The legislation treats technical violations for absconding or possessing a firearm in a specific manner and assigns sentence caps differently than for other technical violations. Because of the specific treatment in the legislation, do technical violations for absconding or possessing firearms take precedent over other types of technical violations? That is to say, do the provisions of the Code limit the court to 14 days if it is the first technical violation for absconding or possessing a firearm, even if it is the probationer's third technical violation overall?

For the purposes of scoring Guidelines, the Commission has always instructed that, if a statute or the facts of a case are unclear, users must err on behalf of the defendant when scoring the Guidelines worksheets. Therefore, the Commission has instructed Guidelines users that technical violations related to absconding or firearms take precedent over any other technical violations. In such cases, the number of previous revocations for other types of violations will not be used to determine which Guidelines worksheet will be completed. The Guidelines will be completed based on the absconding or firearm violation and reflect the applicable statutory sentence cap for that violation. The Commission will continue to instruct users to score the Guidelines in this manner until the issue is resolved by the court, case law and/or the General Assembly.

In addition to technical violations defined by statute, many probationers are also assigned special conditions of supervision. Special conditions may include financial obligations to the victims and/or the courts, restrictions placed on sex offenders or gang members, treatment requirements, and orders of no contact with victims. The special conditions may be imposed by the court or authorized by the court. Probation officers are often authorized by the court to impose additional conditions as needed to supervise an offender based on the individual's risks/needs. The new statutory language, however, is silent as to special conditions. It is unclear if the special condition must be specified in the court order. If it must appear in the court order, does the special condition need to be specified in the initial court order that places the defendant on probation or can the judge identify the special conditions violated in the revocation order?

Based on information provided to the Commission, prosecutors appear to have taken the position that special conditions must be specified in the original court order. The Commission staff has been informed that this may be based on the federal system. Under 18 U.S.C. § 3563, the court may decide on the special conditions of supervision. However, in Virginia, probationers are required to sign the standard Conditions of Probation Supervision along with an acknowledgment of any special conditions. The standard probation conditions are not included in the court order, while the special conditions are sometimes included in the court order – but not always. Some judges, in their orders, will authorize the Probation Officer to include whatever conditions are needed to effectively supervise an offender. Conditions needed for public safety and the well-being of the probationer (such as substance abuse treatment) may be established after sentencing based on a risk/needs assessment.

Violations of special conditions are not subject to the sentence caps specified in § 19.2-306.1 for technical violations. The new § 19.2-306.1 is silent as to special conditions. Interpretation by the courts has been varied. As a result, a violation that is treated as a special condition violation in some courts (no sentence caps apply) may be treated as a technical violation (failure to follow the Probation Officer's instructions) in other courts and subject to the sentence caps defined in § 19.2-306.1.

The statute includes the term “good conduct” violation. In the past, the term “good conduct” was used to define an offender’s behavior while incarcerated. “Good behavior” has been the term traditionally used to define the period established pursuant to § 19.2-306. In the new statutory language, is a “good conduct” violation the same as a “good behavior” violation, or does a “good behavior” violation differ from a “good conduct” violation?

According to the amended § 19.2-306, the court is authorized to revoke a suspended sentence and impose a sentence in accordance with the provisions of the new § 19.2-306.1. However, it is unclear if good behavior violations are restricted to the same statutory restrictions as supervised probation under § 19.2-306.1. Under § 19.2-306.1, if the court finds that the defendant has committed a violation other than a technical violation or a “good conduct violation that did not result in a criminal conviction,” the court may revoke the suspended sentence and impose or re-suspend any or all of the sentence that had been previously suspended. Criminal justice stakeholders have questioned if the Code is now silent on the issue of good behavior as established by the revised statute, or if good behavior was redefined as good conduct.

Do the new or revised probation statutes create due process issues? Are there any provisions that prevent courts from issuing capiases and incarcerating probationers for first or second technical violations while they await the revocation hearing? Under the new statute, the court may not impose any active time for the first technical violation and may impose only up to 14 days for a second technical violation.

Based on feedback provided to the Commission, courts have been handling capias requests for alleged technical violations in different ways. Some judges are asking that the Probation Officer replace the request for a capias (requiring the probationer’s arrest) with a request for a show cause order (letter instructing the probationer to appear in court on a certain day) when it is the defendant’s first or second technical violation. Other judges are issuing capiases for first and second technical violations and holding defendants until their revocation hearings. Complicating the issue, the court may not know at the time of the capias request if the alleged violations are associated with new offense convictions or first, second or third technical violations. Also, the court may not know if, in the past, the probationer had absconded or possessed or used a firearm while under supervision. It has been difficult for criminal justice stakeholders to apply the requirements of the statute without changes to court documents and data systems.

Do probation officers issue PB-15s for the first technical violation when the probationer is a threat to themselves or the community?

This question is related to how the courts proceed with capias requests. If the court intends to replace the capias or PB-15 with a show cause order and require no period of confinement, the PB-15 will result in little or no time away from the community. In some jurisdictions, especially when the probationer may be at risk for a drug overdose, the prosecutor will issue a capias for a good behavior violation. This allows the court time to find appropriate treatment for the probationer. PB-15 requirements were not addressed in the revised statutes.

Are there other unintended consequences of the new provisions in §§ 19.2-306 and 19.2-306.1?

The Virginia Department of Corrections (DOC) oversees adult probation supervision for felony offenders and that agency is the best resource for information related to its policies and practices for handling technical violators. It is the Commission's understanding, however, that Probation Officers often work with offenders for some time to resolve supervision issues before reaching out to the court and a requesting revocation hearing. Thus, Probation Officers may address a number of technical violations with the offender before initiating a return to court. Staff is also aware of at least one DOC project developed with the primary objective of reducing the number of probationers returned to court.

With the revised statutes, however, some judges, prosecutors and probation officers may begin to change their practices. For example, probationers may be returned to court quickly for their first and second technical violations (rather than Probation Officers working with the client through multiple violations, as was previous practice in most areas of the state).

One Circuit Court judge in Virginia has ruled that the sentence limits specified in the new § 19.2-306.1 are unconstitutional. It is unclear the extent to which other judges may agree with that determination.

The Commission has learned that some courts are not using the current Probation Violation Guidelines (as approved by the Commission in 2020 and accepted by the General Assembly in 2021) because they were modified to be compatible with the new law (the Guidelines will not recommend more time than permitted by § 19.1-306.1). The Probation Violation Guidelines, proposed in the Commission's 2020 Annual Report and accepted by the 2021 General Assembly, were designed to help reduce disparity in sentencing outcomes for supervision violations.

Given the different ways in which the new provisions are being interpreted and applied (and possible changes in practice that may evolve), many criminal justice stakeholders have expressed concern about the potential increase in disparity. Differences in implementation may not be based on agreement or disagreement with the intent of the statutory requirements. Differences may occur because the statute is unclear, difficult to administer or, as written, does not provide clear guidance as to the General Assembly's intent. From the Commission's perspective, concerns regarding the potential increase in disparity in the handling of revocation cases are valid and are of paramount concern to the Commission, as well.

CONCLUSION

This chapter presents many questions and concerns raised by court stakeholders from all perspectives (prosecutors, defense attorneys, probation officers and judges) regarding House Bill 2038 (2021 General Assembly, Special Session I). The Commission cannot offer advice as to legal interpretation of the legislation. However, the Commission is in a unique position, as staff travels throughout the Commonwealth conducting Sentencing Guidelines seminars, to hear the questions expressed by stakeholders and the potential unintended consequences of the legislation that stakeholders have described. These questions and concerns fall into several general categories, including:

- Interpretation of the new and amended statutes by the courts;
- Due process concerns related to confining probationers charged with first or second technical violations until the revocation hearing;
- The definition of special conditions of probation;
- Handling absconding/firearm violations differently than other types of technical probation violations.
- Effect of the statutes on Guidelines recommendations and sentencing decisions;
and
- Potential increase in disparity in revocation cases.

The Commission will continue to observe the ongoing implementation of House Bill 2038 and document questions and concerns raised by court stakeholders as they are shared with Commission members and staff.

VIRGINIA ACTS OF ASSEMBLY -- 2021 RECONVENED SPECIAL SESSION I

CHAPTER 538

An Act to amend and reenact §§ 19.2-303, 19.2-303.1, and 19.2-306 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 19.2-306.1, relating to probation, revocation, and suspension of sentence; limitations.

[H 2038]

Approved April 7, 2021

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-303, 19.2-303.1, and 19.2-306 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 19.2-306.1 as follows:

§ 19.2-303. Suspension or modification of sentence; probation; taking of fingerprints and blood, saliva, or tissue sample as condition of probation.

After conviction, whether with or without jury, the court may suspend imposition of sentence or suspend the sentence in whole or part and in addition may place the defendant on probation under such conditions as the court shall determine, including monitoring by a GPS (Global Positioning System) tracking device, or other similar device, or may, as a condition of a suspended sentence, require the defendant to make at least partial restitution to the aggrieved party or parties for damages or loss caused by the offense for which convicted, or to perform community service, or both, under terms and conditions which shall be entered in writing by the court. *The court may fix the period of probation for up to the statutory maximum period for which the defendant might originally have been sentenced to be imprisoned. Any period of supervised probation shall not exceed five years from the release of the defendant from any active period of incarceration. The limitation on the period of probation shall not apply to the extent that an additional period of probation is necessary (i) for the defendant to participate in a court-ordered program or (ii) if a defendant owes restitution and is still subject to restitution compliance review hearings in accordance with § 19.2-305.1.* The defendant may be ordered by the court to pay the cost of the GPS tracking device or other similar device. If, however, the court suspends or modifies any sentence fixed by a jury pursuant to § 19.2-295, the court shall file a statement of the reasons for the suspension or modification in the same manner as the statement required pursuant to subsection B of § 19.2-298.01. The judge, after convicting the defendant of any offense for which a report to the Central Criminal Records Exchange is required in accordance with subsection A of § 19.2-390, shall determine whether a copy of the defendant's fingerprints or fingerprint identification information has been provided by a law-enforcement officer to the clerk of court for each such offense. In any case where fingerprints or fingerprint identification information has not been provided by a law-enforcement officer to the clerk of court, the judge shall require that fingerprints and a photograph be taken by a law-enforcement officer as a condition of probation or of the suspension of the imposition or execution of any sentence for such offense. Such fingerprints shall be submitted to the Central Criminal Records Exchange under the provisions of subsection D of § 19.2-390.

In those courts having electronic access to the Local Inmate Data System (LIDS) within the courtroom, prior to or upon sentencing, the clerk of court shall also determine by reviewing LIDS whether a blood, saliva, or tissue sample has been taken for DNA analysis and submitted to the DNA data bank maintained by the Department of Forensic Science pursuant to Article 1.1 (§ 19.2-310.2 et seq.) of Chapter 18 of this title. In any case in which the clerk has determined that a DNA sample or analysis is not stored in the DNA data bank, or in any case in which electronic access to LIDS is not available in the courtroom, the court shall order that the defendant appear within 30 days before the sheriff or probation officer and allow the sheriff or probation officer to take the required sample. The order shall also require that, if the defendant has not appeared and allowed the sheriff or probation officer to take the required sample by the date stated in the order, then the sheriff or probation officer shall report to the court the defendant's failure to appear and provide the required sample.

After conviction and upon sentencing of an active participant or member of a criminal street gang, the court may, as a condition for suspending the imposition of the sentence in whole or in part or for placing the accused on probation, place reasonable restrictions on those persons with whom the accused may have contact. Such restrictions may include prohibiting the accused from having contact with anyone whom he knows to be a member of a criminal street gang, except that contact with a family or household member, as defined in § 16.1-228, shall be permitted unless expressly prohibited by the court.

~~It~~ *Notwithstanding any other provision of law, in any case where a defendant is convicted of a violation of § 18.2-48, 18.2-61, 18.2-63, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-370, or 18.2-370.1, committed on or after July 1, 2006, and some portion of the sentence is suspended, the judge shall order that the period of suspension shall be for a length of time at least equal to the statutory maximum period for which the defendant might originally have been sentenced to be imprisoned, and the*

defendant shall be placed on probation for that period of suspension subject to revocation by the court. The conditions of probation may include such conditions as the court shall determine, including active supervision. Where the conviction is for a violation of clause (iii) of subsection A of § 18.2-61, subdivision A 1 of § 18.2-67.1, or subdivision A 1 of § 18.2-67.2, the court shall order that at least three years of the probation include active supervision of the defendant under a postrelease supervision program operated by the Department of Corrections, and for at least three years of such active supervision, the defendant shall be subject to electronic monitoring by means of a GPS (Global Positioning System) tracking device, or other similar device.

If a person is sentenced to jail upon conviction of a misdemeanor or a felony, the court may, at any time before the sentence has been completely served, suspend the unserved portion of any such sentence, place the person on probation ~~for such time as the court shall determine~~ *in accordance with the provisions of this section*, or otherwise modify the sentence imposed.

If a person has been sentenced for a felony to the Department of Corrections but has not actually been transferred to a receiving unit of the Department, the court which heard the case, if it appears compatible with the public interest and there are circumstances in mitigation of the offense, may, at any time before the person is transferred to the Department, suspend or otherwise modify the unserved portion of such a sentence. The court may place the person on probation ~~for such time as the court shall determine~~ *in accordance with the provisions of this section*.

§ 19.2-303.1. Fixing period of suspension of sentence.

In any case where a court suspends the imposition or execution of a sentence, it may fix the period of suspension for a ~~reasonable time, having due regard to the gravity of the offense, without regard~~ *up to the statutory maximum period for which the defendant might originally have been sentenced to be imprisoned. The limitation on the period of suspension shall not apply to the extent that an additional period of suspension is necessary for the defendant to participate in a court-ordered program.*

§ 19.2-306. Revocation of suspension of sentence and probation.

A. In any case in which the court has suspended the execution or imposition of sentence, the court may revoke the suspension of sentence for any cause the court deems sufficient that occurred at any time within the probation period, or within the period of suspension fixed by the court. If neither a probation period nor a period of suspension was fixed by the court, then the court may revoke the suspension for any cause the court deems sufficient that occurred within the maximum period for which the defendant might originally have been sentenced to be imprisoned.

B. The court may not conduct a hearing to revoke the suspension of sentence unless the court issues process to notify the accused or to compel his appearance before the court within *90 days of receiving notice of the alleged violation or within one year after the expiration of the period of probation or the period of suspension, whichever is sooner*, or, in the case of a failure to pay restitution, within three years after such expiration. If neither a probation period nor a period of suspension was fixed by the court, then the court shall issue process within ~~one year~~ *six months* after the expiration of the maximum period for which the defendant might originally have been sentenced to be incarcerated. Such notice and service of process may be waived by the defendant, in which case the court may proceed to determine whether the defendant has violated the conditions of suspension.

C. If the court, after hearing, finds good cause to believe that the defendant has violated the terms of suspension, then: ~~(i) if the court originally suspended the imposition of sentence, the court shall revoke the suspension, and the court may pronounce whatever sentence might have been originally imposed or (ii) if the court originally suspended the execution of the sentence, the court shall revoke the suspension and the original sentence shall be in full force and effect~~ *revoke the suspension and impose a sentence in accordance with the provisions of § 19.2-306.1. The court may again suspend all or any part of this sentence for a period up to the statutory maximum period for which the defendant might originally have been sentenced to be imprisoned, less any time already served, and may place the defendant upon terms and conditions or probation. The court shall measure the period of any suspension of sentence from the date of the entry of the original sentencing order. However, if a court finds that a defendant has absconded from the jurisdiction of the court, the court may extend the period of probation or suspended sentence for a period not to exceed the length of time that such defendant absconded.*

D. If any court has, after hearing, found no cause to impose a sentence that might have been originally imposed, or to revoke a suspended sentence or probation, then any further hearing to impose a sentence or revoke a suspended sentence or probation, based solely on the alleged violation for which the hearing was held, shall be barred.

E. Nothing contained herein shall be construed to deprive any person of his right to appeal in the manner provided by law to the circuit court having criminal jurisdiction from a judgment or order revoking any suspended sentence.

§ 19.2-306.1. Limitation on sentence upon revocation of suspension of sentence; exceptions.

A. For the purposes of this section, "technical violation" means a violation based on the probationer's failure to (i) report any arrest, including traffic tickets, within three days to the probation officer; (ii) maintain regular employment or notify the probation officer of any changes in employment; (iii) report within three days of release from incarceration; (iv) permit the probation officer to visit his

home and place of employment; (v) follow the instructions of the probation officer, be truthful and cooperative, and report as instructed; (vi) refrain from the use of alcoholic beverages to the extent that it disrupts or interferes with his employment or orderly conduct; (vii) refrain from the use, possession, or distribution of controlled substances or related paraphernalia; (viii) refrain from the use, ownership, possession, or transportation of a firearm; (ix) gain permission to change his residence or remain in the Commonwealth or other designated area without permission of the probation officer; or (x) maintain contact with the probation officer whereby his whereabouts are no longer known to the probation officer. Multiple technical violations arising from a single course of conduct or a single incident or considered at the same revocation hearing shall not be considered separate technical violations for the purposes of sentencing pursuant to this section.

B. If the court finds the basis of a violation of the terms and conditions of a suspended sentence or probation is that the defendant was convicted of a criminal offense that was committed after the date of the suspension, or has violated another condition other than (i) a technical violation or (ii) a good conduct violation that did not result in a criminal conviction, then the court may revoke the suspension and impose or resuspend any or all of that period previously suspended.

C. The court shall not impose a sentence of a term of active incarceration upon a first technical violation of the terms and conditions of a suspended sentence or probation, and there shall be a presumption against imposing a sentence of a term of active incarceration for any second technical violation of the terms and conditions of a suspended sentence or probation. However, if the court finds, by a preponderance of the evidence, that the defendant committed a second technical violation and he cannot be safely diverted from active incarceration through less restrictive means, the court may impose not more than 14 days of active incarceration for a second technical violation. The court may impose whatever sentence might have been originally imposed for a third or subsequent technical violation. For the purposes of this subsection, a first technical violation based on clause (viii) or (x) of subsection A shall be considered a second technical violation, and any subsequent technical violation also based on clause (viii) or (x) of subsection A shall be considered a third or subsequent technical violation.

D. The limitations on sentencing in this section shall not apply to the extent that an additional term of incarceration is necessary to allow a defendant to be evaluated for or to participate in a court-ordered drug, alcohol, or mental health treatment program. In such case, the court shall order the shortest term of incarceration possible to achieve the required evaluation or participation.

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 of the guidelines 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 three recommendations this year. Each of these is described in detail on the pages that follow.

RECOMMENDATION 1

Modify the Sentencing Guidelines Manual to create an exception specifying that the Sentencing Guidelines do not apply to any sentencing event involving a conviction for aggravated murder as defined in § 18.2-31.

ISSUE

The 2021 General Assembly passed legislation to abolish the death penalty, including for persons currently on death row (House Bill 2263/Senate Bill 1165). In the legislation, capital murder is redefined as “aggravated murder” in § 18.2-31 and remains a Class 1 felony. Effective July 1, 2021, the punishment for aggravated murder is imprisonment for life and a fine of up to \$100,000 (§ 18.2-10). Any person who was 18 years of age or older at the time of the offense and who is sentenced to imprisonment for life upon conviction of a Class 1 felony is not eligible for (i) parole, (ii) any good conduct allowance or any earned sentence credits under Chapter 6 (§ 53.1-186 et seq.) of Title 53.1, or (iii) conditional release pursuant to § 53.1-40.01 or 53.1-40.02.

While the Sentencing Guidelines do not cover the crime of aggravated murder as the primary (or most serious) offense, aggravated murder can be scored under current Guidelines rules as an additional offense to another felony that also carries a life maximum penalty. Because Guidelines analyses never included capital (now aggravated) murder, the Guidelines may produce recommendations that seem counterintuitive.

DISCUSSION

For the purposes of Virginia’s Sentencing Guidelines, the primary offense is the offense with the highest statutory maximum penalty defined in the *Code of Virginia*. If there is a tie in statutory maximums, and one offense is covered by the Guidelines while the other one is not, Guidelines are completed using the Guidelines-covered offense as the primary and the non-Guidelines offense as the additional offense. For example, both forcible sodomy and aggravated murder have a statutory maximum penalty of life imprisonment. Forcible sodomy is covered by the Guidelines, while aggravated murder is not. Preparers are instructed to use the Guidelines offense (forcible sodomy) as the primary offense and score the non-Guidelines offense (aggravated murder) as an additional offense in the case. Scoring aggravated murder as an additional offense to another felony may produce sentence recommendations that seem counterintuitive to judges and other Guidelines users. This is because previous guidelines analyses never included capital (now aggravated) murder.

To address this, the Commission recommends a change to the Guidelines rules to create an exception for aggravated murder. Under the proposed exception, the Sentencing Guidelines Manual would be revised to instruct users not to prepare Guidelines for any sentencing event that contains a conviction for completed, attempted or conspired aggravated murder.

The Commission will collect sentencing and other data on convictions for aggravated murder. When sufficient data have accumulated, the Commission will conduct the analysis necessary to develop Guidelines for aggravated murder. Once the Guidelines for this offense have been developed, the Commission will include a recommendation in its *Annual Report*, which will be submitted to the General Assembly as required by § 17.1-806.

RECOMMENDATION 2

Request legislation to codify the Probation Violation Guidelines in the same manner as the Sentencing Guidelines for felony offenses and ensure that the statutory language accurately reflects the current Probation Violation Guidelines, as approved by the Virginia Criminal Sentencing Commission in 2020 and accepted by the General Assembly in 2021.

ISSUE

While the requirements for the Sentencing Guidelines for felony offenses are spelled out in statute (see § 17.1-803 and § 19.2-298.01), requirements related to the Probation Violation Guidelines are not codified. Since July 1, 2010, the Appropriation Act has included language to specify 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. In 2020, the Commission completed a large-scale, multi-year study to revise and update the Probation Violation Guidelines. Based on the results of this study, the Commission recommended revisions to the Probation Violation Guidelines, including an expansion to cover, for the first time, violations associated with new convictions. The 2021 General Assembly accepted the Commission's recommendation. In November 2021, the Sentencing Commission approved a proposal to pursue legislation to codify the Probation Violation Guidelines in the same manner as the felony offense Sentencing Guidelines.

DISCUSSION

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, often referred to as "technical violations" (see Chapter 1042 of the 2003 Acts of Assembly). As required by the legislative mandate, the Commission examined historical judicial sanctioning practices in revocation cases to develop these guidelines. The Commission's study had revealed wide variations in the handling of probation revocations across the Commonwealth. One of the primary goals of Virginia's Guidelines is to reduce unwarranted sentencing disparity and increase consistency and predictability in sentencing outcomes. In its 2003 *Annual Report*, the Commission recommended that the Probation Violation Guidelines be implemented statewide and the recommendation was accepted by the General Assembly. Statewide use began on July 1, 2004.

In 2016, the Commission approved a study that would provide the foundation needed to revise the Probation Violation Guidelines. The goal was to improve the utility of these 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 majority of responding judges felt that the Probation Violation Guidelines should be expanded to cover not only technical violations but also violations arising out of new felony or new misdemeanor convictions. Based on the results of this large-scale multi-year project, the Commission recommended revisions to the Probation Violation Guidelines, including an expansion to cover, for the first time, violations associated with new convictions (see the Commission's *2020 Annual Report*). The 2021 General Assembly accepted the Commission's recommendation.

While the requirements for the Sentencing Guidelines for felony offenses are spelled out in statute (see § 17.1-803 and § 19.2-298.01), requirements related to the Probation Violation Guidelines are not codified. Since July 1, 2010, however, the Appropriation Act has included language to specify 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. Because the Probation Violation Guidelines in place prior to July 2021 only applied to technical violations of probation, the current Appropriation language references the use of the Guidelines in hearings in which the defendant is cited for a violation of a condition or conditions other than a new criminal offense conviction. As noted above, the Probation Violation Guidelines that took effect on July 1, 2021, were expanded to cover probation violations associated with new offense convictions. Thus, the current Appropriation language does not accurately reflect the revised Probation Violation Guidelines now in use throughout the Commonwealth.

The proposed legislation would serve to codify the Probation Violation Guidelines in the same manner as the Sentencing Guidelines for felony offenses and would ensure that the statutory language accurately reflects the current Probation Violation Guidelines, as approved by the Commission in 2020 and accepted by the General Assembly in 2021. Furthermore, codifying these requirements will bolster the validity and reliability of the data provided to the Commission and support the Commission's efforts to develop Guidelines that promote greater consistency and predictability in sentencing outcomes.

RECOMMENDATION

3

Request legislation to clarify the authority of the Virginia Criminal Sentencing Commission to recommend revisions to the Sentencing Guidelines based on historical sentencing data, specifically in regards to the size of midpoint enhancements.

ISSUE

Unlike most states, Virginia's Sentencing Guidelines are based on analysis of historical sentencing data. In fact, the *Code of Virginia*, in § 17.1-803, requires the Commission to develop guidelines that take into account historical sentencing practices. In essence, the Guidelines are designed to provide judges with a benchmark of the typical case outcome given the defendant's current offenses and prior record. There is one exception to the historical basis of Virginia's Sentencing Guidelines. Pursuant to § 17.1-805, the Sentencing Guidelines must include midpoint enhancements to increase sentence recommendations for defendants who have been convicted of violent felony offenses (as defined in § 17.1-805(C)). This section of the Code specifies enhancements of 100%, 125%, 300% or 500% depending on the nature of the defendant's current and prior convictions for violent felonies. The percent enhancements specified in § 17.1-805 are not based on empirical analysis of sentencing data. The General Assembly set the size of these enhancements during a Special Session in 1994.

DISCUSSION

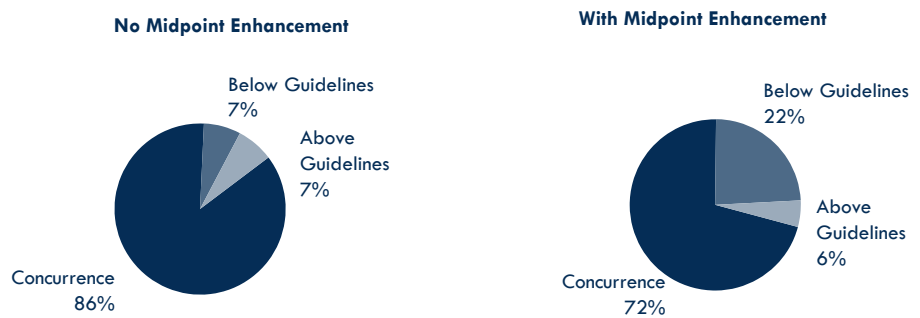
In June 2021, the Virginia Criminal Sentencing Commission approved a full-scale re-analysis of all Guidelines offense groups. The re-analysis will take place over the next three years. The approach envisioned by the Commission is holistic and comprehensive. The goal of the study is to re-benchmark the Sentencing Guidelines so that they reflect recent sentencing practices as accurately as possible.

Examining judicial concurrence with, and patterns of departure from, Guidelines recommendations, the Commission has identified areas of the current Guidelines that appear to be out of sync with recent sentencing practices. While Virginia’s Circuit Court judges concur with the Guidelines at a high rate overall, data show that judges often depart from the Guidelines in cases involving midpoint enhancements required by § 17.1-805. When no enhancements apply, judges concur with the Guidelines in nearly 86% of the cases. When enhancements do apply, judges comply at a much lower rate – about 72% (Figure 36). When judges depart from the Guidelines in midpoint enhancement cases, they nearly always sentence below the range recommended by the enhanced Guidelines. The Commission’s recently-approved study would include a detailed examination of these cases.

The proposed legislation would serve to clarify the Commission’s authority to recommend revisions to the Guidelines based on historical sentencing data, specifically in regards to the size of midpoint enhancements. Under the proposal, the Commission would not be required to set the enhancements at 100%, 125%, 300% or 500%, as currently designated in § 17.1-805. Rather, the Commission would be authorized to set the magnitude of midpoint enhancements based on analysis of actual sentencing data for felony offenses. This would allow the Commission to develop Sentencing Guidelines that better reflect actual sentencing practices and provide judges with a more accurate benchmark of typical case outcomes for felony offenses.

Figure 36

Sentencing Guidelines Concurrence in Midpoint Enhancement and No Midpoint Enhancement Cases, FY2019-2021



APPENDICES



Appendix 1

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

Reasons for MITIGATION

Burglary of Dwelling (43 Cases)	Number	Percent
Plea Agreement	15	34.9%
Recommended by the attorney for the Commonwealth	7	16.3%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	7	16.3%
Offender has health issues	6	14.0%
Offender has minimal or no prior record	6	14.0%
Sentenced to alternative punishment	5	11.6%
Cooperated with authorities	4	9.3%
Mitigated facts of the offense	4	9.3%
Request of the victim	4	9.3%
Offender has good potential for rehabilitation	3	7.0%
Financial obligations (child support, restitution, court costs, etc.)	2	4.7%
Sentencing guidelines scoring issue (e.g., prior conviction not scored correctly, etc.)	2	4.7%
Offender has made progress in rehabilitating himself or herself	2	4.7%
No mitigating reason given	1	2.3%
Absconding from supervision in question	1	2.3%
Probation violation based on minimal facts of the case	1	2.3%
Multiple trial types (i.e., jury, bench, plea)	1	2.3%
Current offense involves drugs or alcohol (e.g., small amount)	1	2.3%
Sentencing guidelines recommendation not appropriate (non-specific)	1	2.3%
Offender was not the leader	1	2.3%
Offender issues, general (e.g., age, family support, impact on community, etc.)	1	2.3%
Mitigating court probation circumstances or proceedings (e.g., extend probation)	1	2.3%
Victim cannot or will not testify	1	2.3%
Victim circumstances (facts of the case, credibility issues, etc.)	1	2.3%
Little or no injury, offender did not intend to harm victim	1	2.3%
Victim circumstances (drug dealer, etc.)	1	2.3%

Burglary of Other Structure (74 Cases)	Number	Percent
Plea Agreement	21	48.8%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	7	16.3%
Sentenced to alternative punishment	6	14.0%
Recommended by the attorney for the Commonwealth	6	14.0%
Mitigated facts of the offense	5	11.6%
Offender has made progress in rehabilitating himself or herself	5	11.6%
Mitigated court circumstances or proceedings (e.g., will resentence)	4	9.3%
Offender has minimal or no prior record	3	7.0%
Offender has good potential for rehabilitation	3	7.0%
Cooperated with authorities	2	4.7%
Financial obligations (child support, restitution, court costs, etc.)	2	4.7%
Offender has health issues	2	4.7%
Property was recovered or was of little value	1	2.3%
Sequence of events had impact on recommendation	1	2.3%
Offender has substance abuse issues	1	2.3%
Sentencing guidelines recommendation was too high	1	2.3%
Offender was not the leader	1	2.3%
Offender issues, general (e.g., age, family support, impact on community, etc.)	1	2.3%
Offender has failed other alternatives or rehabilitation	1	2.3%
Request of the victim	1	2.3%

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

Burglary of Dwelling (36 Cases)	Number	Percent
Aggravated facts of the offense	12	33.3%
Sentencing guidelines recommendation was too low	6	16.7%
Plea agreement	6	16.7%
Aggravated facts of the offense, specific to breaking and entering	4	11.1%
Offender has extensive prior record or same type of prior offense	4	11.1%
Victim requested aggravating sentence	4	11.1%
Offense involved a high degree of planning or a violation of trust	3	8.3%
Multiple counts, offenses or violations in the event (prosecuted or not)	3	8.3%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	3	8.3%
Degree of victim injury (physical, emotional, etc.)	3	8.3%
Offense involved possession or use of a weapon	3	8.3%
No aggravating reason given	1	2.8%
Absconded from supervision	1	2.8%
Poor conduct since commission of the offense	1	2.8%
Gang-related offense	1	2.8%
Child present at time of the offense	1	2.8%
Recommended by the attorney for the Commonwealth	1	2.8%
Recommended by the jury	1	2.8%
Offender has poor rehabilitation potential	1	2.8%
Offender failed alternative program	1	2.8%
Aggravated facts of the offense, specific to sex offenses	1	2.8%
Victim circumstances (facts or the case, vulnerability, etc.)	1	2.8%
Offender violated a restraining order or stalked victim	1	2.8%

Burglary of Other Structure (13 Cases)	Number	Percent
Plea agreement	4	40.0%
Aggravated facts of the offense	2	20.0%
Multiple counts, offenses or violations in the event (prosecuted or not)	2	20.0%
No aggravating reason given	1	10.0%
Sentenced to alternative punishment	1	10.0%
Did not exercise due caution while driving, excessive speeding, etc.	1	10.0%
Recommended by the attorney for the Commonwealth	1	10.0%
Sentencing guidelines recommendation was too low	1	10.0%

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 ①

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

Reasons for MITIGATION

Drugs/Schedule I/II (1433 Cases)	Number	Percent
Plea Agreement	366	41.4%
Sentenced to alternative punishment	147	16.6%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	128	14.5%
Recommended by the attorney for the Commonwealth	125	14.2%
Offender has made progress in rehabilitating himself or herself	88	10.0%
Mitigated facts of the offense	78	8.8%
Cooperated with authorities	65	7.4%
Offender has good potential for rehabilitation	61	6.9%
Offender has minimal or no prior record	54	6.1%
Offender has health issues	52	5.9%
Mitigated court circumstances or proceedings (e.g., will resentence)	45	5.1%
Current offense involves drugs or alcohol (e.g., small amount)	36	4.1%
No mitigating reason given	28	3.2%
Offender has substance abuse issues	23	2.6%
Offender issues, general (e.g., age, family support, impact on community, etc.)	20	2.3%
Offender needs rehabilitation	18	2.0%
Sentencing guidelines recommendation not appropriate (non-specific)	13	1.5%
Sentencing guidelines scoring issue (e.g., prior conviction not scored correctly, etc.)	11	1.2%
Behavior positive since commission of the offense	10	1.1%
Sentencing guidelines recommendation was too high	8	0.9%
Offender was not the leader	8	0.9%
Sequence of events had impact on recommendation	7	0.8%
Financial obligations (child support, restitution, court costs, etc.)	5	0.6%
Sentence was rounded down	5	0.6%
Sentencing guidelines were missing or incorrect	4	0.5%
Victim circumstances (facts or the case, credibility issues, etc.)	4	0.5%
Missing information	3	0.3%
Probation violation based on minimal facts of the case	3	0.3%
Victim cannot or will not testify	3	0.3%
Illegible written mitigating reason	2	0.2%
Probation violation based on minor new offense	2	0.2%
Judge had issues with risk assessment	2	0.2%
Mitigating court probation circumstances or proceedings (e.g., extend probation)	2	0.2%
Request of the victim	2	0.2%
Probation violation not based on new law violation	1	0.1%
Recommended by the jury	1	0.1%
Multiple trial types (i.e., jury, bench, plea)	1	0.1%
Judge believed sentence was in concurrence with recommendation	1	0.1%
Probation violation guidelines scoring issue	1	0.1%
Drugs/Other (74 Cases)	Number	Percent
Plea Agreement	21	50.0%
Recommended by the attorney for the Commonwealth	7	16.7%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	6	14.3%
Offender has good potential for rehabilitation	6	14.3%
Sentenced to alternative punishment	5	11.9%
Mitigated facts of the offense	5	11.9%
Cooperated with authorities	4	9.5%
Offender has made progress in rehabilitating himself or herself	4	9.5%
Mitigated court circumstances or proceedings (e.g., will resentence)	3	7.1%
Offender has minimal or no prior record	3	7.1%
Offender has health issues	2	4.8%
Offender issues, general (e.g., age, family support, impact on community, etc.)	2	4.8%
No mitigating reason given	1	2.4%
Sequence of events had impact on recommendation	1	2.4%
Current offense involves drugs or alcohol (e.g., small amount)	1	2.4%
Financial obligations (child support, restitution, court costs, etc.)	1	2.4%
Sentencing guidelines recommendation not appropriate (non-specific)	1	2.4%
Sentencing guidelines recommendation was too high	1	2.4%

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 (663 Cases)	Number	Percent
Plea agreement	226	51.4%
Multiple counts, offenses or violations in the event (prosecuted or not)	108	24.5%
Aggravated facts of the offense	42	9.5%
Offender failed alternative program	32	7.3%
Current offense involved drugs or alcohol (e.g., large amount, location, etc.)	31	7.0%
Recommended by the attorney for the Commonwealth	26	5.9%
Offender has extensive prior record or same type of prior offense	25	5.7%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	16	3.6%
Offender has substance abuse issues	13	3.0%
No aggravating reason given	12	2.7%
Aggravated court circumstances or proceedings (e.g., will resentence)	12	2.7%
Poor conduct since commission of the offense	9	2.0%
Sentencing guidelines recommendation was too low	9	2.0%
Offender has poor rehabilitation potential	9	2.0%
Used, etc., drugs or alcohol while on probation	8	1.8%
Absconded from supervision	7	1.6%
New offenses were committed while on probation	7	1.6%
Sentenced to alternative punishment	6	1.4%
Mandatory minimum was involved in the event	6	1.4%
Degree of victim injury (physical, emotional, etc.)	6	1.4%
Failed to follow instructions while on probation	5	1.1%
Did not exercise due caution while driving, excessive speeding, etc.	5	1.1%
Prior record not adequately weighed by guidelines	5	1.1%
Offender needs rehabilitation offered by jail or prison	5	1.1%
Recommended by the jury	4	0.9%
Offense involved possession or use of a weapon	4	0.9%
Child present at time of the offense	3	0.7%
Sentenced to alternative punishment	3	0.7%
Failed to cooperate with authorities	2	0.5%
Violent or disruptive behavior while in custody	2	0.5%
Failed to attend meeting or keep appointments while on probation	2	0.5%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	2	0.5%
Missing information	1	0.2%
Offense involved a high degree of planning or a violation of trust	1	0.2%
True offense behavior was more serious than offenses at conviction	1	0.2%
Sentencing guidelines recommendation is not appropriate	1	0.2%
Sentencing guidelines scoring issue (e.g., recommendation not adjusted for mandatory time)	1	0.2%
Offender was the leader	1	0.2%
Seriousness of the original offense	1	0.2%
Sex offender has poor rehabilitation potential	1	0.2%
Offender violated a restraining order or stalked victim	1	0.2%
Victim requested aggravating sentence	1	0.2%
Cooperated with authorities	1	0.2%

Drugs/Other (52 Cases)	Number	Percent
Multiple counts, offenses or violations in the event (prosecuted or not)	13	50.0%
Plea agreement	11	42.3%
Aggravated facts of the offense	6	23.1%
Recommended by the attorney for the Commonwealth	4	15.4%
Offender has extensive prior record or same type of prior offense	4	15.4%
Current offense involved drugs or alcohol (e.g., large amount, location, etc.)	2	7.7%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	2	7.7%
Degree of victim injury (physical, emotional, etc.)	2	7.7%
Poor conduct since commission of the offense	1	3.8%
Did not exercise due caution while driving, excessive speeding, etc.	1	3.8%
Child present at time of the offense	1	3.8%
Mandatory minimum was involved in the event	1	3.8%
Sentencing guidelines recommendation was too low	1	3.8%
Offender was the leader	1	3.8%
Offender failed alternative program	1	3.8%
Offense involved possession or use of a weapon	1	3.8%

Appendix 1

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

Reasons for MITIGATION

Fraud (239 Cases)	Number	Percent
Plea Agreement	58	42.3%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	23	16.8%
Sentenced to alternative punishment	21	15.3%
Offender has good potential for rehabilitation	19	13.9%
Financial obligations (child support, restitution, court costs, etc.)	17	12.4%
Recommended by the attorney for the Commonwealth	15	10.9%
Offender has health issues	12	8.8%
Mitigated facts of the offense	11	8.0%
Mitigated court circumstances or proceedings (e.g., will resentence)	10	7.3%
Request of the victim	10	7.3%
Offender has minimal or no prior record	8	5.8%
Offender has made progress in rehabilitating himself or herself	7	5.1%
Offender needs rehabilitation	6	4.4%
Offender issues, general (e.g., age, family support, impact on community, etc.)	5	3.6%
Sentencing guidelines recommendation was too high	4	2.9%
No mitigating reason given	3	2.2%
Cooperated with authorities	3	2.2%
Sequence of events had impact on recommendation	1	0.7%
Offender has substance abuse issues	1	0.7%
Judge believed sentence was in concurrence with recommendation	1	0.7%
Sentencing guidelines were missing or incorrect	1	0.7%
Sentencing guidelines scoring issue (e.g., prior conviction not scored correctly, etc.)	1	0.7%
Offender was not the leader	1	0.7%
Victim cannot or will not testify	1	0.7%
Larceny (609 Cases)	Number	Percent
Plea Agreement	169	47.1%
Recommended by the attorney for the Commonwealth	52	14.5%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	42	11.7%
Offender has health issues	42	11.7%
Mitigated facts of the offense	39	10.9%
Sentenced to alternative punishment	37	10.3%
Financial obligations (child support, restitution, court costs, etc.)	25	7.0%
Property was recovered or was of little value	24	6.7%
Offender has good potential for rehabilitation	24	6.7%
Offender has made progress in rehabilitating himself or herself	22	6.1%
Offender has minimal or no prior record	19	5.3%
Offender issues, general (e.g., age, family support, impact on community, etc.)	16	4.5%
Cooperated with authorities	15	4.2%
Mitigated court circumstances or proceedings (e.g., will resentence)	14	3.9%
No mitigating reason given	11	3.1%
Request of the victim	10	2.8%
Victim circumstances (drug dealer, etc.)	8	2.2%
Offender has substance abuse issues	6	1.7%
Sentencing guidelines recommendation was too high	4	1.1%
Sequence of events had impact on recommendation	3	0.8%
Judge believed sentence was in concurrence with recommendation	3	0.8%
Offender needs rehabilitation	3	0.8%
Victim cannot or will not testify	3	0.8%
Behavior positive since commission of the offense	2	0.6%
Sentencing guidelines were missing or incorrect	2	0.6%
Offender was not the leader	2	0.6%
Offender has failed other alternatives or rehabilitation	2	0.6%
Mitigating court probation circumstances or proceedings (e.g., extend probation)	2	0.6%
Illegible written mitigating reason	1	0.3%
Probation violation based on minimal facts of the case	1	0.3%
Probation violation not based on new law violation	1	0.3%
Recommended by the probation officer	1	0.3%
Sentencing guidelines scoring issue (e.g., prior conviction not scored correctly, etc.)	1	0.3%
Sentencing guidelines recommendation not appropriate (non-specific)	1	0.3%
Original offense was nonviolent	1	0.3%
Victim circumstances (facts or the case, credibility issues, etc.)	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 (39 Cases)	Number	Percent
Plea agreement	9	37.5%
Offender has extensive prior record or same type of prior offense	8	33.3%
Multiple counts, offenses or violations in the event (prosecuted or not)	4	16.7%
Type of victim (child, weak, etc.)	3	12.5%
Extreme property or monetary loss	2	8.3%
Offense involved a high degree of planning or a violation of trust	2	8.3%
Offender has substance abuse issues	2	8.3%
Victim requested aggravating sentence	2	8.3%
Sentenced to alternative punishment	1	4.2%
Violent or disruptive behavior while in custody	1	4.2%
Aggravated facts of the offense	1	4.2%
Recommended by the jury	1	4.2%
Sentencing guidelines recommendation was too low	1	4.2%
Offender has poor rehabilitation potential	1	4.2%
Degree of victim injury (physical, emotional, etc.)	1	4.2%

Larceny (194 Cases)	Number	Percent
Plea agreement	44	38.9%
Aggravated facts of the offense	26	23.0%
Multiple counts, offenses or violations in the event (prosecuted or not)	21	18.6%
Recommended by the attorney for the Commonwealth	11	9.7%
Offender has extensive prior record or same type of prior offense	11	9.7%
Offense involved a high degree of planning or a violation of trust	10	8.8%
Offender has poor rehabilitation potential	8	7.1%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	6	5.3%
Extreme property or monetary loss	6	5.3%
Financial obligations (child support, restitution, court costs, etc.)	5	4.4%
No aggravating reason given	4	3.5%
Aggravated facts of the offense, specific to breaking and entering	4	3.5%
Aggravated court circumstances or proceedings (e.g., will resentence)	4	3.5%
Type of victim (child, weak, etc.)	3	2.7%
Sentenced to alternative punishment	3	2.7%
Offender has substance abuse issues	3	2.7%
Offender failed alternative program	3	2.7%
Sentencing guidelines recommendation was too low	2	1.8%
Sentenced to alternative punishment	2	1.8%
Poor conduct since commission of the offense	2	1.8%
New offenses were committed while on probation	2	1.8%
Failed to cooperate with authorities	2	1.8%
Degree of victim injury (physical, emotional, etc.)	2	1.8%
Current offense involved drugs or alcohol (e.g., large amount, location, etc.)	2	1.8%
Victim requested aggravating sentence	1	0.9%
Sentence was rounded up	1	0.9%
Recommended by the jury	1	0.9%
Offense involved possession or use of a weapon	1	0.9%
Offender has made progress in rehabilitating himself or herself	1	0.9%
Failed to attend meeting or keep appointments while on probation	1	0.9%
Did not exercise due caution while driving, excessive speeding, etc.	1	0.9%
Absconded from supervision	1	0.9%

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 (61 Cases)	Number	Percent
Plea Agreement	19	51.4%
Mitigated facts of the offense	10	27.0%
Offender has made progress in rehabilitating himself or herself	7	18.9%
Sentenced to alternative punishment	4	10.8%
Recommended by the attorney for the Commonwealth	3	8.1%
Offender has health issues	3	8.1%
Offender issues, general (e.g., age, family support, impact on community, etc.)	3	8.1%
Sentencing guidelines recommendation not appropriate (non-specific)	2	5.4%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	2	5.4%
Probation violation based on minimal facts of the case	1	2.7%
Behavior positive since commission of the offense	1	2.7%
Mitigated court circumstances or proceedings (e.g., will resentence)	1	2.7%
Current offense involves drugs or alcohol (e.g., small amount)	1	2.7%
Offender has substance abuse issues	1	2.7%
Sentencing guidelines scoring issue (e.g., prior conviction not scored correctly, etc.)	1	2.7%
Offender has good potential for rehabilitation	1	2.7%
Offender needs rehabilitation	1	2.7%

Miscellaneous/Person & Property (74 Cases)	Number	Percent
Plea Agreement	15	39.5%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	8	21.1%
Offender has made progress in rehabilitating himself or herself	7	18.4%
Request of the victim	7	18.4%
Offender has health issues	5	13.2%
Offender has minimal or no prior record	5	13.2%
Mitigated facts of the offense	4	10.5%
Offender has good potential for rehabilitation	4	10.5%
Sentenced to alternative punishment	3	7.9%
Mitigated court circumstances or proceedings (e.g., will resentence)	3	7.9%
No mitigating reason given	2	5.3%
Recommended by the attorney for the Commonwealth	2	5.3%
Financial obligations (child support, restitution, court costs, etc.)	2	5.3%
Cooperated with authorities	1	2.6%
Probation violation based on minimal facts of the case	1	2.6%
Sequence of events had impact on recommendation	1	2.6%
Judge believed sentence was in concurrence with recommendation	1	2.6%
Sentencing guidelines scoring issue (e.g., prior conviction not scored correctly, etc.)	1	2.6%
Offender issues, general (e.g., age, family support, impact on community, etc.)	1	2.6%
Offender needs rehabilitation	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

Miscellaneous/Other (25 Cases)	Number	Percent
Plea agreement	5	33.3%
Offender has extensive prior record or same type of prior offense	4	26.7%
Aggravated facts of the offense	3	20.0%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	3	20.0%
Multiple counts, offenses or violations in the event (prosecuted or not)	2	13.3%
No aggravating reason given	1	6.7%
Violent or disruptive behavior while in custody	1	6.7%
Failed to follow instructions while on probation	1	6.7%
Prior record not adequately weighed by guidelines	1	6.7%
Offender has poor rehabilitation potential	1	6.7%
Aggravated facts of the offense, specific to sex offenses	1	6.7%
Degree of victim injury (physical, emotional, etc.)	1	6.7%
Victim requested aggravating sentence	1	6.7%

Miscellaneous/Person & Property (89 Cases)	Number	Percent
Aggravated facts of the offense	21	42.0%
Plea agreement	16	32.0%
Type of victim (child, weak, etc.)	12	24.0%
Offender has extensive prior record or same type of prior offense	7	14.0%
Multiple counts, offenses or violations in the event (prosecuted or not)	6	12.0%
Offender has poor rehabilitation potential	4	8.0%
Degree of victim injury (physical, emotional, etc.)	4	8.0%
Recommended by the attorney for the Commonwealth	3	6.0%
Child present at time of the offense	2	4.0%
Recommended by the jury	2	4.0%
No aggravating reason given	1	2.0%
Absconded from supervision	1	2.0%
Aggravated facts of the offense, specific to breaking and entering	1	2.0%
Prior record not adequately weighed by guidelines	1	2.0%
Sentencing guidelines recommendation was too low	1	2.0%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	1	2.0%
Sex offender has poor rehabilitation potential	1	2.0%
Offender violated a restraining order or stalked victim	1	2.0%
Victim requested aggravating sentence	1	2.0%
Degree of violence directed at victim	1	2.0%
Offense involved possession or use of a weapon	1	2.0%
Mitigated facts of the offense	1	2.0%

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 ①

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

Reasons for MITIGATION

Traffic (227 Cases)	Number	Percent
Plea Agreement	46	37.1%
Mitigated facts of the offense	22	17.7%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	20	16.1%
Recommended by the attorney for the Commonwealth	18	14.5%
Offender has minimal or no prior record	17	13.7%
Offender has health issues	11	8.9%
Offender has made progress in rehabilitating himself or herself	11	8.9%
Sentenced to alternative punishment	10	8.1%
Cooperated with authorities	10	8.1%
Mitigated court circumstances or proceedings (e.g., will resentence)	9	7.3%
Offender has good potential for rehabilitation	9	7.3%
Offender issues, general (e.g., age, family support, impact on community, etc.)	8	6.5%
Financial obligations (child support, restitution, court costs, etc.)	6	4.8%
Sentencing guidelines recommendation was too high	4	3.2%
Little or no injury, offender did not intend to harm victim	4	3.2%
Offender has substance abuse issues	3	2.4%
Sentencing guidelines recommendation not appropriate (non-specific)	3	2.4%
Request of the victim	3	2.4%
Probation violation based on minimal facts of the case	2	1.6%
Sequence of events had impact on recommendation	2	1.6%
No mitigating reason given	1	0.8%
Offender has substance abuse issues	1	0.8%
Probation violation not based on new law violation	1	0.8%
Behavior positive since commission of the offense	1	0.8%
Judge believed sentence was in concurrence with recommendation	1	0.8%
Sentencing guidelines scoring issue (e.g., prior conviction not scored correctly, etc.)	1	0.8%
Offender needs rehabilitation	1	0.8%
Offender has failed other alternatives or rehabilitation	1	0.8%
Victim cannot or will not testify	1	0.8%
Weapons (184 Cases)	Number	Percent
Plea Agreement	58	53.2%
Offender has minimal or no prior record	22	20.2%
Mitigated facts of the offense	18	16.5%
Mitigated court circumstances or proceedings (e.g., will resentence)	12	11.0%
Recommended by the attorney for the Commonwealth	11	10.1%
Offender has good potential for rehabilitation	9	8.3%
Offender has made progress in rehabilitating himself or herself	8	7.3%
Cooperated with authorities	6	5.5%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	5	4.6%
Offender has health issues	5	4.6%
Offender issues, general (e.g., age, family support, impact on community, etc.)	5	4.6%
No mitigating reason given	4	3.7%
Sentenced to alternative punishment	3	2.8%
Offender needs rehabilitation	2	1.8%
Weapon was not a firearm	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%
Sequence of events had impact on recommendation	1	0.9%
Recommended by the jury	1	0.9%
Financial obligations (child support, restitution, court costs, etc.)	1	0.9%
Sentencing guidelines scoring issue (e.g., prior conviction not scored correctly, etc.)	1	0.9%
Probation violation guidelines scoring issue	1	0.9%
Sentencing guidelines recommendation not appropriate (non-specific)	1	0.9%
Sentencing guidelines recommendation was too high	1	0.9%
Offender was not the leader	1	0.9%
Original offense was nonviolent	1	0.9%
Victim cannot or will not testify	1	0.9%
Victim circumstances (facts or the case, credibility issues, etc.)	1	0.9%
Request of the victim	1	0.9%

Appendix ①

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

Reasons for AGGRAVATION

Traffic (170 Cases)	Number	Percent
Aggravated facts of the offense	24	24.5%
Plea agreement	23	23.5%
Offender has substance abuse issues	18	18.4%
Current offense involved drugs or alcohol (e.g., large amount, location, etc.)	16	16.3%
Did not exercise due caution while driving, excessive speeding, etc.	15	15.3%
Offender has extensive prior record or same type of prior offense	14	14.3%
Offender has poor rehabilitation potential	12	12.2%
Multiple counts, offenses or violations in the event (prosecuted or not)	9	9.2%
No aggravating reason given	5	5.1%
Sentenced to alternative punishment	4	4.1%
Judicial discretion (e.g., time served, shock incarceration, consistent w/codefendant, etc.)	4	4.1%
Aggravated court circumstances or proceedings (e.g., will resentence)	3	3.1%
Prior record not adequately weighed by guidelines	3	3.1%
Degree of victim injury (physical, emotional, etc.)	3	3.1%
Failed to follow instructions while on probation	2	2.0%
Missing information	1	1.0%
Used, etc., drugs or alcohol while on probation	1	1.0%
Failed to attend meeting or keep appointments while on probation	1	1.0%
Poor conduct since commission of the offense	1	1.0%
Extreme property or monetary loss	1	1.0%
Recommended by the attorney for the Commonwealth	1	1.0%
Judge believed sentence was in concurrence with recommendation	1	1.0%
Sentencing guidelines recommendation is not appropriate	1	1.0%
Sentencing guidelines recommendation was too low	1	1.0%
Offender has health issues	1	1.0%
Offender issues, general (e.g., age, family support, impact on community, etc.)	1	1.0%
Seriousness of the original offense	1	1.0%
Offender needs rehabilitation offered by jail or prison	1	1.0%
Offender failed alternative program	1	1.0%
Type of victim (child, weak, etc.)	1	1.0%

Weapons (130 Cases)	Number	Percent
Plea agreement	57	64.0%
Multiple counts, offenses or violations in the event (prosecuted or not)	22	24.7%
Aggravated facts of the offense	17	19.1%
Judicial discretion (e.g., time served, shock incarceration, consistent w/ codefendant, etc.)	5	5.6%
No aggravating reason given	3	3.4%
Recommended by the attorney for the Commonwealth	3	3.4%
Mandatory minimum was involved in the event	3	3.4%
Offender has extensive prior record or same type of prior offense	3	3.4%
Degree of victim injury (physical, emotional, etc.)	3	3.4%
Aggravated court circumstances or proceedings (e.g., will resentence)	2	2.2%
Type of victim (child, weak, etc.)	2	2.2%
Missing information	1	1.1%
New offenses were committed while on probation	1	1.1%
Did not exercise due caution while driving, excessive speeding, etc.	1	1.1%
Recommended by the jury	1	1.1%
Offender has substance abuse issues	1	1.1%
Prior record not adequately weighed by guidelines	1	1.1%
Sentencing guidelines recommendation was too low	1	1.1%
Offender has poor rehabilitation potential	1	1.1%
Sex offender has poor rehabilitation potential	1	1.1%
Offense involved possession or use of a weapon	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 MITIGATION

Assault (359 Cases)

	Number	Percent
Plea Agreement	104	54.2%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	31	16.1%
Offender has health issues	25	13.0%
Request of the victim	24	12.5%
Mitigated facts of the offense	22	11.5%
Recommended by the attorney for the Commonwealth	21	10.9%
Victim cannot or will not testify	21	10.9%
Mitigated court circumstances or proceedings (e.g., will resentence)	16	8.3%
Little or no injury, offender did not intend to harm victim	11	5.7%
Offender has minimal or no prior record	10	5.2%
Victim circumstances (drug dealer, etc.)	9	4.7%
Offender has good potential for rehabilitation	8	4.2%
Offender issues, general (e.g., age, family support, impact on community, etc.)	7	3.6%
Offender was not the leader	6	3.1%
Offender has made progress in rehabilitating himself or herself	6	3.1%
Role of victim in the offense	6	3.1%
Cooperated with authorities	5	2.6%
Victim circumstances (facts or the case, credibility issues, etc.)	4	2.1%
No mitigating reason given	3	1.6%
Sentenced to alternative punishment	3	1.6%
Recommended by the jury	3	1.6%
Probation violation based on minimal facts of the case	2	1.0%
Offender has substance abuse issues	2	1.0%
Financial obligations (child support, restitution, court costs, etc.)	2	1.0%
Offender needs rehabilitation	2	1.0%
Behavior positive since commission of the offense	1	0.5%
Sequence of events had impact on recommendation	1	0.5%
Current offense involves drugs or alcohol (e.g., small amount)	1	0.5%
Judge had issues with risk assessment	1	0.5%
Mitigating court probation circumstances or proceedings (e.g., extend probation)	1	0.5%
Behavior was positive while in custody	1	0.5%

Kidnapping (27 Cases)

	Number	Percent
Plea Agreement	5	29.4%
Request of the victim	4	23.5%
Recommended by the attorney for the Commonwealth	3	17.6%
Offender has good potential for rehabilitation	3	17.6%
Victim circumstances (drug dealer, etc.)	3	17.6%
No mitigating reason given	2	11.8%
Illegible written mitigating reason	1	5.9%
Mitigated facts of the offense	1	5.9%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	1	5.9%
Offender was not the leader	1	5.9%
Offender has health issues	1	5.9%
Offender has minimal or no prior record	1	5.9%
Victim cannot or will not testify	1	5.9%

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 (194 Cases)	Number	Percent
Plea agreement	36	34.6%
Aggravated facts of the offense	35	33.7%
Degree of victim injury (physical, emotional, etc.)	25	24.0%
Multiple counts, offenses or violations in the event (prosecuted or not)	18	17.3%
Offender has extensive prior record or same type of prior offense	10	9.6%
Offender has poor rehabilitation potential	9	8.7%
Type of victim (child, weak, etc.)	7	6.7%
Recommended by the attorney for the Commonwealth	6	5.8%
Sentencing guidelines recommendation is not appropriate	6	5.8%
Sentencing guidelines recommendation was too low	5	4.8%
No aggravating reason given	4	3.8%
Recommended by the jury	4	3.8%
Offense involved a high degree of planning or a violation of trust	3	2.9%
Offender has substance abuse issues	3	2.9%
Victim requested aggravating sentence	3	2.9%
Degree of violence directed at victim	3	2.9%
Violent or disruptive behavior while in custody	2	1.9%
Absconded from supervision	2	1.9%
Offense involved possession or use of a weapon	2	1.9%
Missing information	1	1.0%
Poor conduct since commission of the offense	1	1.0%
Did not exercise due caution while driving, excessive speeding, etc.	1	1.0%
Gang-related offense	1	1.0%
Hate crime offense	1	1.0%
Child present at time of the offense	1	1.0%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	1	1.0%
Offender has health issues	1	1.0%
Offender issues, general (e.g., age, family support, impact on community, etc.)	1	1.0%
Offender violated a restraining order or stalked victim	1	1.0%
Offender had behavior issues while on probation	1	1.0%

Kidnapping (16 Cases)	Number	Percent
Aggravated facts of the offense	4	44.4%
Plea agreement	4	44.4%
Victim requested aggravating sentence	2	22.2%
Illegible written aggravating reason	1	11.1%
Illegible written mitigating reason	1	11.1%
Recommended by the jury	1	11.1%
Multiple counts, offenses or violations in the event (prosecuted or not)	1	11.1%
Sentencing guidelines recommendation was too low	1	11.1%
Type of victim (child, weak, etc.)	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 MITIGATION

Homicide (48 Cases)	Number	Percent
Aggravated facts of the offense	4	44.4%
Plea agreement	4	44.4%
Victim requested aggravating sentence	2	22.2%
Illegible written aggravating reason	1	11.1%
Illegible written mitigating reason	1	11.1%
Recommended by the jury	1	11.1%
Multiple counts, offenses or violations in the event (prosecuted or not)	1	11.1%
Sentencing guidelines recommendation was too low	1	11.1%
Type of victim (child, weak, etc.)	1	11.1%

Robbery (117 Cases)	Number	Percent
Plea Agreement	22	34.4%
Cooperated with authorities	9	14.1%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	9	14.1%
Mitigated court circumstances or proceedings (e.g., will resentence)	8	12.5%
Recommended by the attorney for the Commonwealth	8	12.5%
Offender issues, general (e.g., age, family support, impact on community, etc.)	7	10.9%
Sentenced to alternative punishment	6	9.4%
Offender has good potential for rehabilitation	6	9.4%
Sentenced as a juvenile to DJJ	6	9.4%
Mitigated facts of the offense	5	7.8%
Sequence of events had impact on recommendation	4	6.3%
Offender has health issues	4	6.3%
Offender was not the leader	3	4.7%
Offender has minimal or no prior record	3	4.7%
Request of the victim	3	4.7%
Multiple trial types (i.e., jury, bench, plea)	2	3.1%
Offender has made progress in rehabilitating himself or herself	2	3.1%
Victim cannot or will not testify	2	3.1%
No mitigating reason given	1	1.6%
Recommended by the jury	1	1.6%
Recommended by the probation officer	1	1.6%
Judge believed sentence was in concurrence with recommendation	1	1.6%
Sentencing guidelines recommendation not appropriate (non-specific)	1	1.6%
Judge had issues with risk assessment	1	1.6%
Offender needs rehabilitation	1	1.6%
Victim circumstances (drug dealer, etc.)	1	1.6%

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 2

Judicial Reasons for Departure from Sentencing Guidelines Offenses Against the Person

Reasons for AGGRAVATION

Homicide (56 Cases)

	Number	Percent
Aggravated facts of the offense	12	41.4%
Degree of victim injury (physical, emotional, etc.)	12	41.4%
Type of victim (child, weak, etc.)	5	17.2%
Plea agreement	4	13.8%
Sentencing guidelines recommendation was too low	3	10.3%
Recommended by the jury	2	6.9%
Multiple counts, offenses or violations in the event (prosecuted or not)	2	6.9%
Offender has extensive prior record or same type of prior offense	2	6.9%
Offender has poor rehabilitation potential	2	6.9%
Victim requested aggravating sentence	2	6.9%
Failed to cooperate with authorities	1	3.4%
Failed to follow instructions while on probation	1	3.4%
Poor conduct since commission of the offense	1	3.4%
Did not exercise due caution while driving, excessive speeding, etc.	1	3.4%
Aggravated facts of the offense, specific to breaking and entering	1	3.4%
Offense involved a high degree of planning or a violation of trust	1	3.4%
Recommended by the attorney for the Commonwealth	1	3.4%
Current offense involved drugs or alcohol (e.g., large amount, location, etc.)	1	3.4%
Offender has substance abuse issues	1	3.4%
Sentencing guidelines recommendation is not appropriate	1	3.4%

Robbery (46 Cases)

	Number	Percent
Aggravated facts of the offense	14	60.9%
Plea agreement	5	21.7%
Sentencing guidelines recommendation was too low	4	17.4%
Multiple counts, offenses or violations in the event (prosecuted or not)	3	13.0%
Offender has extensive prior record or same type of prior offense	3	13.0%
Degree of victim injury (physical, emotional, etc.)	3	13.0%
Type of victim (child, weak, etc.)	3	13.0%
Offense involved a high degree of planning or a violation of trust	2	8.7%
Recommended by the jury	2	8.7%
Victim requested aggravating sentence	2	8.7%
Offense involved possession or use of a weapon	2	8.7%
Recommended by the attorney for the Commonwealth	1	4.3%
Offender has poor rehabilitation potential	1	4.3%
Never reported for probation or signed conditions	1	4.3%

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 MITIGATION

Rape (38 Cases)

	Number	Percent
Plea Agreement	8	42.1%
Offender has minimal or no prior record	8	42.1%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	4	21.1%
Request of the victim	4	21.1%
Mitigated court circumstances or proceedings (e.g., will resentence)	3	15.8%
Offender issues, general (e.g., age, family support, impact on community, etc.)	3	15.8%
Offender has health issues	2	10.5%
Mitigated facts of the offense	1	5.3%
Recommended by the attorney for the Commonwealth	1	5.3%
Recommended by the jury	1	5.3%
Sentencing guidelines recommendation was too high	1	5.3%
Victim circumstances (drug dealer, etc.)	1	5.3%
Role of victim in the offense	1	5.3%

Other Sexual Assault (58 Cases)

	Number	Percent
Request of the victim	11	39.3%
Plea Agreement	9	32.1%
Recommended by the attorney for the Commonwealth	7	25.0%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	6	21.4%
Victim cannot or will not testify	5	17.9%
Offender has health issues	4	14.3%
Mitigated facts of the offense	3	10.7%
Offender has minimal or no prior record	3	10.7%
Offender has made progress in rehabilitating himself or herself	2	7.1%
No mitigating reason given	1	3.6%
Cooperated with authorities	1	3.6%
Mitigated court circumstances or proceedings (e.g., will resentence)	1	3.6%
Sentencing guidelines recommendation was too high	1	3.6%
Offender issues, general (e.g., age, family support, impact on community, etc.)	1	3.6%
Offender needs rehabilitation	1	3.6%
Victim circumstances (facts or the case, credibility issues, etc.)	1	3.6%
Victim circumstances (drug dealer, etc.)	1	3.6%

Other Sexual Assault/Obscenity (59 Cases)

	Number	Percent
Offender issues, general (e.g., age, family support, impact on community, etc.)	9	33.3%
Offender has health issues	7	25.9%
Plea Agreement	7	25.9%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	6	22.2%
Offender has good potential for rehabilitation	6	22.2%
Mitigated facts of the offense	5	18.5%
Recommended by the attorney for the Commonwealth	3	11.1%
Offender has minimal or no prior record	3	11.1%
Offender has made progress in rehabilitating himself or herself	3	11.1%
Request of the victim	3	11.1%
Cooperated with authorities	1	3.7%
Mitigated court circumstances or proceedings (e.g., will resentence)	1	3.7%
Sentencing guidelines scoring issue (e.g., prior conviction not scored correctly, etc.)	1	3.7%
Sentencing guidelines recommendation not appropriate (non-specific)	1	3.7%
Judge had issues with risk assessment	1	3.7%
Mitigating facts of the offense, specific to sex offenses	1	3.7%
Victim circumstances (drug dealer, etc.)	1	3.7%

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 2

Judicial Reasons for Departure from Sentencing Guidelines Offenses Against the Person

Reasons for AGGRAVATION

Rape (53 Cases)

	Number	Percent
Type of victim (child, weak, etc.)	17	68.0%
Aggravated facts of the offense	13	52.0%
Degree of victim injury (physical, emotional, etc.)	5	20.0%
Plea agreement	4	16.0%
Recommended by the jury	3	12.0%
Sentencing guidelines recommendation was too low	3	12.0%
Multiple counts, offenses or violations in the event (prosecuted or not)	2	8.0%
Child present at time of the offense	1	4.0%
Offense involved a high degree of planning or a violation of trust	1	4.0%
Offender has poor rehabilitation potential	1	4.0%
Aggravated facts of the offense, specific to sex offenses	1	4.0%
Victim circumstances (facts or the case, vulnerability, etc.)	1	4.0%
Victim requested aggravating sentence	1	4.0%

Other Sexual Assault (150 Cases)

	Number	Percent
Offender has poor rehabilitation potential	23	33.8%
Type of victim (child, weak, etc.)	21	30.9%
Aggravated facts of the offense	20	29.4%
Plea agreement	14	20.6%
Victim requested aggravating sentence	14	20.6%
Multiple counts, offenses or violations in the event (prosecuted or not)	13	19.1%
Sentencing guidelines recommendation was too low	7	10.3%
Recommended by the attorney for the Commonwealth	6	8.8%
Offense involved a high degree of planning or a violation of trust	5	7.4%
Offender has extensive prior record or same type of prior offense	5	7.4%
Aggravated facts of the offense, specific to sex offenses	5	7.4%
Degree of victim injury (physical, emotional, etc.)	5	7.4%
Sentencing guidelines recommendation is not appropriate	2	2.9%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	2	2.9%
Sex offender has poor rehabilitation potential	2	2.9%
Poor conduct since commission of the offense	1	1.5%
Did not exercise due caution while driving, excessive speeding, etc.	1	1.5%
Child present at time of the offense	1	1.5%
Aggravated court circumstances or proceedings (e.g., will resentence)	1	1.5%
Sentencing guidelines scoring issue (e.g., recommendation not adjusted for mandatory time)	1	1.5%
Offender issues, general (e.g., age, family support, impact on community, etc.)	1	1.5%

Other Sexual Assault/Obscenity (73 Cases)

	Number	Percent
Plea agreement	19	43.2%
Aggravated facts of the offense	15	34.1%
Multiple counts, offenses or violations in the event (prosecuted or not)	14	31.8%
Type of victim (child, weak, etc.)	5	11.4%
Offender has poor rehabilitation potential	3	6.8%
Aggravated facts of the offense, specific to sex offenses	3	6.8%
No aggravating reason given	2	4.5%
Recommended by the attorney for the Commonwealth	2	4.5%
Degree of victim injury (physical, emotional, etc.)	2	4.5%
Offender violated a restraining order or stalked victim	2	4.5%
Aggravated facts of the offense, specific to breaking and entering	1	2.3%
Sentencing guidelines recommendation was too low	1	2.3%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	1	2.3%
Offender issues, general (e.g., age, family support, impact on community, etc.)	1	2.3%
Victim circumstances (facts or the case, vulnerability, etc.)	1	2.3%
Mitigated facts of the offense	1	2.3%

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

BURGLARY OF DWELLING

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	75%	13%	12%	16
2	89.5	10.5	0.0	19
3	71.4	14.3	14.3	7
4	73.9	13.0	13.0	23
5	71.4	0.0	28.6	7
6	80.0	10.0	10.0	10
7	37.5	62.5	0.0	8
8	72.7	18.2	9.1	11
9	46.2	23.1	30.8	13
10	92.9	7.1	0.0	14
11	87.5	12.5	0.0	8
12	62.5	0.0	37.5	8
13	71.4	28.6	0.0	7
14	75.0	12.5	12.5	8
15	63.2	5.3	31.6	19
16	92.3	0.0	7.7	13
17	50.0	0.0	50.0	2
18	0.0	0.0	0.0	0
19	100.0	0.0	0.0	3
20	100.0	0.0	0.0	3
21	88.9	0.0	11.1	9
22	54.5	9.1	36.4	11
23	83.3	8.3	8.3	12
24	95.5	4.5	0.0	22
25	74.1	22.2	3.7	27
26	91.7	0.0	8.3	12
27	89.7	10.3	0.0	29
28	72.7	27.3	0.0	11
29	75.0	16.7	8.3	12
30	100.0	0.0	0.0	5
31	80.0	20.0	0.0	5
Total	77.7	12.1	10.1	355

BURGLARY/OTHER

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	83%	0.0%	17%	6
2	100.0	0.0	0.0	8
3	0.0	100.0	0.0	1
4	75.0	25.0	0.0	8
5	62.5	12.5	25.0	8
6	33.3	50.0	16.7	6
7	66.7	33.3	0.0	3
8	100.0	0.0	0.0	7
9	90.9	0.0	9.1	11
10	85.7	14.3	0.0	14
11	100.0	0.0	0.0	5
12	83.3	16.7	0.0	6
13	77.8	22.2	0.0	9
14	77.8	22.2	0.0	9
15	84.6	7.7	7.7	13
16	62.5	37.5	0.0	8
17	50.0	50.0	0.0	2
18	0.0	100.0	0.0	2
19	100.0	0.0	0.0	1
20	100.0	0.0	0.0	2
21	81.8	9.1	9.1	11
22	80.0	20.0	0.0	5
23	72.2	27.8	0.0	18
24	83.3	16.7	0.0	18
25	69.6	30.4	0.0	23
26	85.7	14.3	0.0	7
27	80.0	20.0	0.0	10
28	83.3	0.0	16.7	6
29	83.3	16.7	0.0	6
30	60.0	0.0	40.0	5
31	100.0	0.0	0.0	4
Total	78.1	17.8	4.1	242

DRUG/OTHER

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	100%	0%	0%	13
2	88.9	7.4	3.7	27
3	100.0	0.0	0.0	2
4	88.9	11.1	0.0	9
5	88.9	11.1	0.0	9
6	83.3	0.0	16.7	6
7	100.0	0.0	0.0	4
8	71.4	14.3	14.3	7
9	92.9	0.0	7.1	14
10	90.0	10.0	0.0	20
11	60.0	40.0	0.0	5
12	96.3	0.0	3.7	27
13	66.7	11.1	22.2	9
14	75.0	12.5	12.5	16
15	83.9	3.2	12.9	31
16	87.5	6.3	6.3	16
17	72.7	18.2	9.1	11
18	100.0	0.0	0.0	1
19	77.8	22.2	0.0	18
20	90.0	10.0	0.0	10
21	70.0	20.0	10.0	10
22	90.0	10.0	0.0	10
23	100.0	0.0	0.0	7
24	94.1	5.9	0.0	17
25	80.8	19.2	0.0	26
26	82.8	3.4	13.8	29
27	85.7	7.1	7.1	42
28	93.3	6.7	0.0	15
29	90.6	5.7	3.8	53
30	78.9	15.8	5.3	19
31	93.8	6.3	0.0	16
Total	86.4	8.4	5.2	501

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

DRUG SCHEDULE I/II

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	88.2%	3.7%	8%	323
2	95.3	3.1	1.6	573
3	51.2	48.8	0.0	43
4	90.7	7.9	1.4	140
5	82.8	8.6	8.6	93
6	90.5	5.4	4.2	168
7	89.4	8.7	1.9	161
8	81.2	17.4	1.4	69
9	88.3	4.7	7.0	214
10	87.9	4.6	7.5	280
11	82.4	10.3	7.4	68
12	88.0	7.9	4.1	366
13	71.6	22.6	5.8	208
14	84.5	12.1	3.4	445
15	80.6	10.6	8.8	978
16	83.0	11.0	6.0	283
17	66.7	25.8	7.6	66
18	25.0	75.0	0.0	4
19	78.2	21.8	0.0	101
20	93.0	3.5	3.5	86
21	78.3	20.2	1.6	129
22	82.4	11.1	6.6	244
23	82.9	12.1	4.9	346
24	89.0	8.0	3.0	501
25	87.8	9.1	3.1	812
26	92.0	5.4	2.6	779
27	90.8	7.5	1.8	855
28	92.9	4.2	3.0	575
29	82.5	8.7	8.7	412
30	73.0	17.6	9.4	319
31	88.5	9.6	1.9	104
Total	86.4	9.1	4.6	9,752

FRAUD

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	90.5%	3.2%	6.3%	63
2	82.4	13.7	3.9	51
3	71.4	28.6	0.0	7
4	94.4	5.6	0.0	18
5	87.5	9.4	3.1	32
6	88.0	8.0	4.0	25
7	100.0	0.0	0.0	9
8	63.6	36.4	0.0	11
9	88.2	8.8	2.9	34
10	86.1	13.9	0.0	36
11	90.5	4.8	4.8	21
12	87.0	13.0	0.0	46
13	88.9	11.1	0.0	9
14	62.5	34.4	3.1	32
15	76.3	17.8	5.9	118
16	71.4	25.0	3.6	28
17	73.3	26.7	0.0	15
18	0.0	100.0	0.0	1
19	61.5	30.8	7.7	13
20	83.3	5.6	11.1	18
21	100.0	0.0	0.0	16
22	91.7	8.3	0.0	24
23	67.6	32.4	0.0	37
24	85.2	14.8	0.0	27
25	78.3	21.7	0.0	60
26	93.8	6.3	0.0	64
27	94.2	5.8	0.0	52
28	97.2	2.8	0.0	36
29	66.7	29.6	3.7	27
30	75.0	16.7	8.3	12
31	77.8	22.2	0.0	9
Total	83.1	14.4	2.5	954

LARCENY

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	90.2%	7.7%	2.1%	143
2	89.8	6.8	3.4	176
3	55.6	33.3	11.1	18
4	80.9	16.2	2.9	68
5	80.5	7.8	11.7	77
6	79.5	12.8	7.7	39
7	80.6	13.9	5.6	36
8	77.3	22.7	0.0	44
9	83.5	11.0	5.5	127
10	83.5	10.3	6.2	97
11	83.3	8.3	8.3	36
12	89.6	6.6	3.8	182
13	74.3	11.4	14.3	35
14	80.2	8.6	11.1	81
15	79.3	15.2	5.6	270
16	71.6	22.2	6.2	81
17	86.4	9.1	4.5	22
18	66.7	16.7	16.7	6
19	68.6	28.6	2.9	35
20	94.4	5.6	0.0	36
21	93.9	4.1	2.0	49
22	78.2	11.5	10.3	78
23	76.4	22.2	1.4	212
24	87.8	10.9	1.4	147
25	79.3	19.3	1.3	150
26	90.6	8.3	1.1	180
27	88.1	10.2	1.7	176
28	91.4	6.9	1.7	58
29	89.0	9.0	2.0	100
30	66.0	32.0	2.0	50
31	89.5	7.9	2.6	38
Total	83.4	12.6	4.0	2,850

Appendix 3

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

TRAFFIC				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	93.9%	6.1%	0.0%	49
2	89.9	3.0	7.1	99
3	70.0	30.0	0.0	10
4	71.4	14.3	14.3	21
5	75.6	7.3	17.1	41
6	81.5	11.1	7.4	27
7	83.3	16.7	0.0	24
8	62.5	37.5	0.0	16
9	92.3	1.9	5.8	52
10	68.9	21.3	9.8	61
11	90.0	10.0	0.0	20
12	83.3	8.3	8.3	72
13	100.0	0.0	0.0	5
14	51.0	6.1	42.9	49
15	76.3	13.7	10.1	139
16	81.5	13.0	5.6	54
17	75.0	25.0	0.0	4
18	100.0	0.0	0.0	1
19	53.8	30.8	15.4	13
20	92.3	7.7	0.0	13
21	93.8	0.0	6.3	16
22	77.3	22.7	0.0	22
23	80.0	17.1	2.9	35
24	91.1	5.4	3.6	56
25	84.7	8.3	6.9	72
26	86.8	2.6	10.5	76
27	90.7	7.4	1.9	54
28	90.0	10.0	0.0	30
29	68.2	22.7	9.1	22
30	58.8	29.4	11.8	17
31	90.9	0.0	9.1	22
Total	81.3	10.5	8.2	1,195

MISCELLANEOUS/OTHER				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	100%	0.0%	0.0%	8
2	93.3	0.0	6.7	15
3	100.0	0.0	0.0	1
4	94.7	0.0	5.3	19
5	70.0	20.0	10.0	10
6	80.0	0.0	20.0	5
7	100.0	0.0	0.0	11
8	40.0	60.0	0.0	5
9	88.9	11.1	0.0	9
10	93.3	6.7	0.0	15
11	100.0	0.0	0.0	5
12	82.4	17.6	0.0	17
13	50.0	50.0	0.0	8
14	66.7	27.8	5.6	18
15	88.2	8.8	2.9	34
16	76.9	7.7	15.4	13
17	0.0	0.0	0.0	0
18	0.0	0.0	0.0	0
19	66.7	33.3	0.0	3
20	100.0	0.0	0.0	2
21	100.0	0.0	0.0	6
22	75.0	0.0	25.0	8
23	92.7	7.3	0.0	41
24	87.5	0.0	12.5	8
25	76.5	17.6	5.9	17
26	83.3	8.3	8.3	12
27	90.9	9.1	0.0	11
28	88.9	0.0	11.1	9
29	87.5	6.3	6.3	16
30	33.3	66.7	0.0	6
31	100.0	0.0	0.0	1
Total	84.4	11.1	4.5	333

MISCELLANEOUS/P&P				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	63.6%	18.2%	18.2%	11
2	81.8	9.1	9.1	22
3	60.0	20.0	20.0	5
4	78.6	0.0	21.4	14
5	69.2	15.4	15.4	13
6	71.4	7.1	21.4	14
7	100.0	0.0	0.0	5
8	66.7	33.3	0.0	3
9	78.6	7.1	14.3	14
10	60.0	20.0	20.0	15
11	94.1	5.9	0.0	17
12	100.0	0.0	0.0	7
13	100.0	0.0	0.0	3
14	58.3	0.0	41.7	12
15	71.4	8.6	20.0	35
16	61.5	7.7	30.8	13
17	50.0	50.0	0.0	2
18	0.0	100.0	0.0	2
19	100.0	0.0	0.0	1
20	50.0	50.0	0.0	4
21	100.0	0.0	0.0	8
22	61.5	7.7	30.8	13
23	88.9	11.1	0.0	9
24	92.0	4.0	4.0	25
25	77.1	11.4	11.4	35
26	66.7	12.5	20.8	24
27	91.7	6.3	2.1	48
28	89.5	10.5	0.0	19
29	100.0	0.0	0.0	13
30	80.0	0.0	20.0	5
31	100.0	0.0	0.0	4
Total	78.8	9.1	12.0	416

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

WEAPONS

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	89.2%	8.1%	2.7%	37
2	80.3	8.2	11.5	61
3	61.9	33.3	4.8	21
4	79.2	5.6	15.3	72
5	78.1	12.5	9.4	32
6	86.1	2.8	11.1	36
7	78.3	13.0	8.7	23
8	63.2	36.8	0.0	19
9	82.4	2.9	14.7	34
10	72.7	18.2	9.1	44
11	87.5	12.5	0.0	16
12	75.0	9.4	15.6	32
13	63.6	14.5	21.8	55
14	64.7	14.7	20.6	34
15	76.1	17.4	6.5	46
16	77.8	14.8	7.4	27
17	60.0	40.0	0.0	5
18	0.0	0.0	0.0	0
19	55.6	22.2	22.2	9
20	80.0	0.0	20.0	5
21	90.9	9.1	0.0	11
22	80.0	6.7	13.3	30
23	73.0	8.1	18.9	37
24	86.4	11.4	2.3	44
25	79.5	10.3	10.3	39
26	91.4	8.6	0.0	35
27	92.7	7.3	0.0	41
28	64.3	35.7	0.0	14
29	50.0	25.0	25.0	8
30	58.3	33.3	8.3	12
31	100.0	0.0	0.0	11
Total	77.8	12.2	10.0	890

Appendix ④

Sentencing Guidelines Compliance by Judicial Circuit: Offenses Against the Person

ASSAULT				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	74.4%	16.3%	9.3%	43
2	87.0	3.9	9.1	77
3	72.7	27.3	0.0	11
4	88.1	10.2	1.7	59
5	72.5	22.5	5.0	40
6	75.0	16.7	8.3	36
7	92.6	3.7	3.7	27
8	64.7	17.6	17.6	17
9	70.7	15.5	13.8	58
10	80.0	10.9	9.1	55
11	76.2	14.3	9.5	21
12	79.2	10.4	10.4	48
13	69.6	19.6	10.9	46
14	55.8	23.3	20.9	43
15	73.5	15.3	11.2	98
16	76.8	15.9	7.2	69
17	75.0	25.0	0.0	4
18	50.0	25.0	25.0	4
19	76.5	11.8	11.8	17
20	64.7	23.5	11.8	17
21	81.8	18.2	0.0	11
22	79.2	16.7	4.2	24
23	70.4	22.2	7.4	54
24	85.7	12.9	1.4	70
25	72.4	24.1	3.4	87
26	83.6	11.5	4.9	61
27	80.3	10.6	9.1	66
28	83.8	16.2	0.0	37
29	86.8	5.3	7.9	38
30	76.0	16.0	8.0	25
31	68.2	13.6	18.2	22
Total	77.0	14.9	8.1	1,287

KIDNAPPING				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	100.0	0.0	0.0	4
2	100.0	0.0	0.0	4
3	100.0	0.0	0.0	2
4	50.0	50.0	0.0	2
5	71.4	0.0	28.6	7
6	100.0	0.0	0.0	5
7	40.0	40.0	20.0	5
8	50.0	50.0	0.0	2
9	100.0	0.0	0.0	3
10	75.0	25.0	0.0	4
11	0.0	0.0	0.0	0
12	50.0	50.0	0.0	2
13	100.0	0.0	0.0	3
14	66.7	0.0	33.3	3
15	75.0	25.0	0.0	8
16	57.1	42.9	0.0	7
17	100.0	0.0	0.0	1
18	0.0	0.0	0.0	0
19	50.0	0.0	50.0	2
20	100.0	0.0	0.0	1
21	75.0	25.0	0.0	4
22	100.0	0.0	0.0	1
23	0.0	0.0	0.0	0
24	85.7	14.3	0.0	7
25	60.0	20.0	20.0	10
26	60.0	0.0	40.0	5
27	100.0	0.0	0.0	4
28	100.0	0.0	0.0	6
29	100.0	0.0	0.0	4
30	60.0	40.0	0.0	5
31	100.0	0.0	0.0	4
Total	77.4	14.8	7.8	115

HOMICIDE				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	33.3%	0.0%	66.7%	3
2	80.0	0.0	20.0	5
3	0.0	100.0	0.0	1
4	76.9	15.4	7.7	13
5	80.0	0.0	20.0	5
6	75.0	0.0	25.0	4
7	0.0	0.0	0.0	0
8	0.0	100.0	0.0	1
9	75.0	0.0	25.0	4
10	75.0	12.5	12.5	8
11	100.0	0.0	0.0	3
12	71.4	14.3	14.3	14
13	68.8	31.3	0.0	16
14	72.7	9.1	18.2	11
15	84.6	7.7	7.7	13
16	40.0	20.0	40.0	5
17	100.0	0.0	0.0	1
18	0.0	0.0	0.0	0
19	80.0	20.0	0.0	5
20	72.7	9.1	18.2	11
21	100.0	0.0	0.0	1
22	100.0	0.0	0.0	1
23	50.0	50.0	0.0	8
24	40.0	40.0	20.0	5
25	25.0	0.0	75.0	4
26	50.0	0.0	50.0	4
27	50.0	33.3	16.7	6
28	100.0	0.0	0.0	2
29	50.0	0.0	50.0	2
30	0.0	0.0	100.0	1
31	66.7	0.0	33.3	9
Total	67.5	15.1	17.5	166

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%	7
2	83.9	9.7	6.5	31
3	83.3	16.7	0.0	6
4	52.0	32.0	16.0	25
5	0.0	66.7	33.3	3
6	45.5	36.4	18.2	11
7	100.0	0.0	0.0	10
8	75.0	25.0	0.0	8
9	44.4	55.6	0.0	9
10	83.3	0.0	16.7	6
11	60.0	40.0	0.0	5
12	78.6	14.3	7.1	14
13	50.0	45.0	5.0	20
14	91.7	0.0	8.3	12
15	68.4	10.5	21.1	19
16	60.0	20.0	20.0	5
17	50.0	50.0	0.0	4
18	0.0	100.0	0.0	1
19	62.5	31.3	6.3	16
20	100.0	0.0	0.0	4
21	100.0	0.0	0.0	4
22	62.5	25.0	12.5	8
23	77.8	22.2	0.0	9
24	83.3	16.7	0.0	12
25	44.4	44.4	11.1	9
26	100.0	0.0	0.0	3
27	80.0	20.0	0.0	5
28	100.0	0.0	0.0	2
29	0.0	100.0	0.0	1
30	60.0	0.0	40.0	5
31	33.3	66.7	0.0	3
Total	68.6	23.1	8.3	277

RAPE

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	100%	0%	0%	3
2	75.0	25.0	0.0	4
3	100	0.0	0.0	1
4	60.0	20.0	20.0	5
5	50.0	0.0	50.0	4
6	100.0	0.0	0.0	4
7	100.0	0.0	0.0	2
8	40.0	60.0	0.0	5
9	60.0	20.0	20.0	5
10	0.0	0.0	100	1
11	0.0	0.0	0.0	0
12	33.3	33.3	33.3	3
13	57.1	28.6	14.3	7
14	83.3	0.0	16.7	6
15	70.0	0.0	30.0	10
16	57.1	14.3	28.6	7
17	0.0	100	0.0	1
18	100.0	0.0	0.0	2
19	52.9	5.9	41.2	17
20	100.0	0.0	0.0	3
21	100.0	0.0	0.0	3
22	66.7	33.3	0.0	3
23	50.0	50.0	0.0	2
24	28.6	42.9	28.6	7
25	57.1	28.6	14.3	7
26	66.7	0.0	33.3	6
27	100	0.0	0.0	4
28	100	0.0	0.0	2
29	0.0	0.0	100	1
30	0.0	0.0	100	1
31	0.0	0.0	100	1
Total	63.0	15.0	22.0	127

OTHER SEXUAL ASSAULT

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	100%	0%	0%	4
2	100	0.0	0.0	10
3	0.0	0.0	0.0	0
4	90.0	10.0	0.0	10
5	66.7	16.7	16.7	6
6	50.0	0.0	50.0	2
7	100.0	0.0	0.0	6
8	80.0	20.0	0.0	5
9	66.7	8.3	25.0	12
10	62.5	12.5	25.0	8
11	100.0	0.0	0.0	2
12	40.0	13.3	46.7	15
13	50.0	16.7	33.3	6
14	66.7	0.0	33.3	6
15	68.2	9.1	22.7	22
16	66.7	13.3	20.0	15
17	0.0	0.0	100.0	2
18	50.0	25.0	25.0	4
19	50.0	25.0	25.0	16
20	33.3	0.0	66.7	6
21	57.1	28.6	14.3	7
22	66.7	0.0	33.3	6
23	25.0	0.0	75.0	4
24	88.9	11.1	0.0	9
25	63.6	13.6	22.7	22
26	60.0	0.0	40.0	15
27	70.6	17.6	11.8	17
28	75.0	25.0	0.0	4
29	100.0	0.0	0.0	4
30	50.0	25.0	25.0	4
31	57.7	0.0	42.3	26
Total	65.1	10.2	24.7	275

Appendix ④

Sentencing Guidelines Compliance by Judicial Circuit:
Offenses Against the Person

OBSCENITY				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	100%	0%	0%	4
2	66.7	33.3	0.0	3
3	100	0.0	0.0	1
4	93.8	6.3	0.0	16
5	61.1	0.0	38.9	18
6	100	0.0	0.0	2
7	0.0	0.0	0.0	0
8	100	0.0	0.0	2
9	80.0	0.0	20.0	5
10	50.0	0.0	50.0	2
11	100.0	0.0	0.0	4
12	33.3	33.3	33.3	6
13	100	0.0	0.0	6
14	81.8	0.0	18.2	33
15	76.9	0.0	23.1	13
16	70.0	10.0	20.0	10
17	0.0	100	0.0	1
18	0.0	100	0.0	1
19	51.6	22.6	25.8	31
20	83.3	0.0	16.7	6
21	100	0.0	0.0	3
22	60.0	20.0	20.0	5
23	75.0	12.5	12.5	8
24	72.7	27.3	0.0	11
25	82.4	5.9	11.8	17
26	66.7	9.5	23.8	21
27	87.0	13.0	0.0	23
28	0.0	0.0	0.0	0
29	100	0.0	0.0	3
30	40.0	40.0	20.0	5
31	71.4	0.0	28.6	7
Total	73.5	10.1	16.4	268

Appendix 5 Sentencing Guidelines Received by Jurisdiction

COUNTIES				CITIES	
ACCOMACK	82	LEE	114	ALEXANDRIA	29
ALBEMARLE	102	LOUDOUN	138	BRISTOL	273
ALLEGHANY	197	LOUISA	102	BUENA VISTA	58
AMELIA	40	LUNENBURG	34	CHARLOTTESVILLE	81
AMHERST	135	MADISON	17	CHESAPEAKE	738
APPOMATTOX	55	MATHEWS	20	COLONIAL HEIGHTS	115
ARLINGTON	143	MECKLENBURG	186	COVINGTON	1
AUGUSTA	385	MIDDLESEX	28	DANVILLE	201
BATH	27	MONTGOMERY	329	EMPORIA	2
BEDFORD	187	NELSON	90	FALLS CHURCH	3
BLAND	18	NEW KENT	37	FREDERICKSBURG	223
BOTETOURT	192	NORTHAMPTON	38	HAMPTON	234
BRUNSWICK	33	NORTHUMBERLAND	16	HARRISONBURG	44
BUCHANAN	124	NOTTOWAY	62	HOPEWELL	111
BUCKINGHAM	53	ORANGE	35	LYNCHBURG	367
CAMPBELL	181	PAGE	125	MARTINSVILLE	6
CAROLINE	82	PATRICK	113	NEWPORT NEWS	334
CARROLL	288	PITTSYLVANIA	67	NORFOLK	522
CHARLES CITY	11	POWHATAN	31	PETERSBURG	49
CHARLOTTE	60	PRINCE EDWARD	75	PORTSMOUTH	137
CHESTERFIELD	750	PRINCE GEORGE	125	RADFORD	70
CLARKE	13	PRINCE WILLIAM	285	RICHMOND CITY	452
CRAIG	19	PULASKI	265	ROANOKE CITY	392
CULPEPER	196	RAPPAHANNOCK	9	SALEM	122
CUMBERLAND	27	RICHMOND COUNTY	21	STAUNTON	204
DICKENSON	73	ROANOKE COUNTY	325	SUFFOLK	241
DINWIDDIE	54	ROCKBRIDGE	197	VIRGINIA BEACH	1068
ESSEX	32	ROCKINGHAM	461	WAYNESBORO	136
FAIRFAX COUNTY	298	RUSSELL	129	WILLIAMSBURG	161
FAUQUIER	82	SCOTT	205	WINCHESTER	145
FLOYD	39	SHENANDOAH	79	MISSING	2
FLUVANNA	42	SMYTH	259		
FRANKLIN COUNTY	225	SOUTHAMPTON	87		
FREDERICK	326	SPOTSYLVANIA	517		
GILES	106	STAFFORD	468		
GLOUCESTER	161	SURRY	3		
GOOCHLAND	35	SUSSEX	31		
GRAYSON	126	TAZEWELL	399		
GREENE	56	WARREN	140		
GREENSVILLE	95	WASHINGTON	292		
HALIFAX	222	WESTMORELAND	42		
HANOVER	389	WISE	178		
HENRICO	820	WYTHE	202		
HENRY	167	YORK	119		
HIGHLAND	2				
ISLE OF WIGHT	77				
JAMES CITY	13				
KING & QUEEN	40				
KING GEORGE	42				
KING WILLIAM	28				
LANCASTER	18				
				Total	19,984