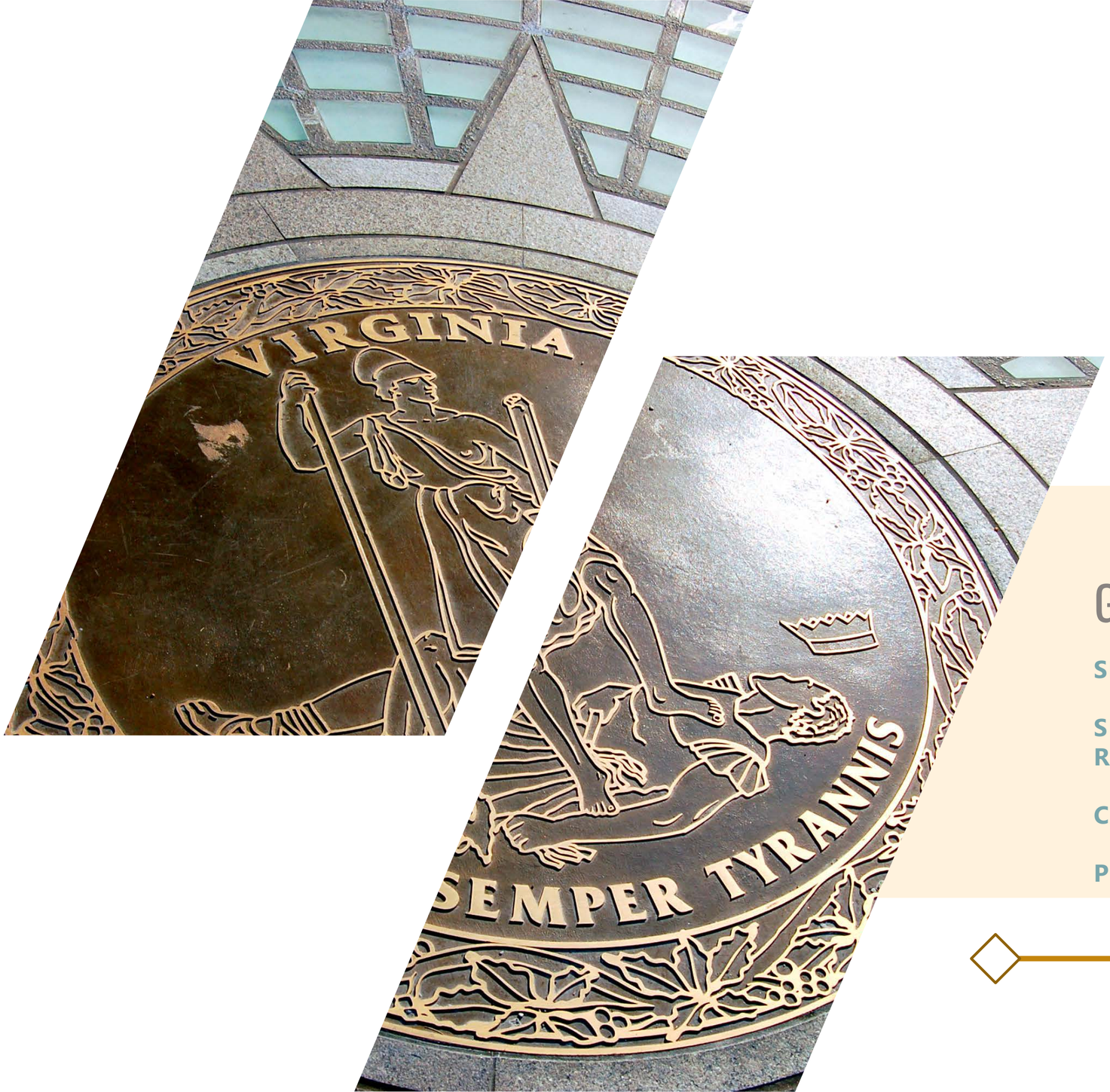
CONCURRENCE

STATUTORY REQUIREMENTS AND GUIDELINES RECOMMENDATION

PRELIMINARY ANALYSIS

IT IS TOO EARLY TO FULLY ANALYZE THE IMPACT OF STATUTORY REQUIREMENTS AND GUIDELINES REVISIONS ON SENTENCING PATTERNS IN VIRGINIA.

THE INFORMATION CONTAINED IN THIS REPORT REPRESENTS THE INITIAL REACTION BY JUDGES, ATTORNEYS, PROBATION OFFICERS AND DEFENDANTS TO THE SUBSTANTIAL CHANGES IN FISCAL YEAR 2022.



GUIDELINES

SENTENCING CONCURRENCE

SUBSTANTIAL ASSISTANCE/ RESPONSIBILITY FACTOR

CASE DETAILS WORKSHEET

PROBATION VIOLATION CONCURRENCE

FY 2022 - Cases Coded and Keyed*

Month	2021	2022	Total
JAN		170	
FEB		1	
MAR		2	
APR			
MAY			
JUN			
JUL	1,735		
AUG	1,787		
SEP	1,640		
OCT	1,602		
NOV	1,284		
DEC	782		
TOTAL	8,830	173	9,003

* As of May 5, 2022 – 5,000 to Code and Key

Modification of Recommendation

Substantial Assistance, Acceptance of Responsibility or Remorse

Definitions Based on Departure Reasons Will be Added to the Instructions in July

1. Showed positive or promising behavior while awaiting sentencing (e.g., drug free, employment, education, lifestyle change, etc.).
2. Began rehabilitation process without court intervention; took initiative to make change (e.g., enrolled in or completed drug treatment, mental health counseling, found housing, etc.).
3. Demonstrated responsibility for the support and care of family members (e.g., providing financial support, working with social services, etc.).
4. Maintained or secured employment or obtained job skills before sentencing.
5. Completed school, college, or a training program before sentencing.
6. Admitted guilt shortly after the offense, during arrest, etc., and prior to an appearance in court.
7. Prevented the crime from escalating into more serious offense (e.g., prevented a death, rape, etc.)
8. Current offense is an old crime that was committed when the defendant had a different lifestyle.
9. Behavior was out of the norm and likelihood of recidivism is low (e.g., no prior record or limited record; extremely young or elderly).
10. Time served is sufficient based on the defendant's demeanor in court or the defendant's demonstrated acceptance of responsibility/expression of remorse prior to appearance in court.
11. Substantial assistance as determined by the Commonwealth and accepted by the judge.

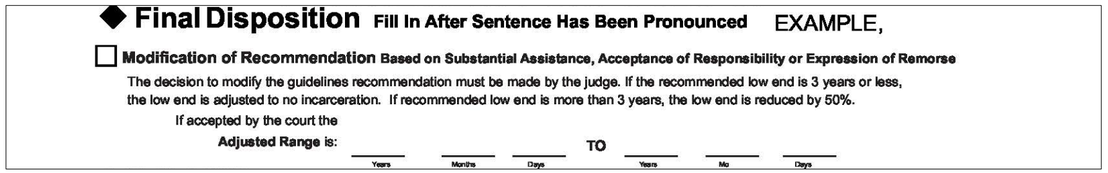
Substantial Assistance, Acceptance of Responsibility or Remorse

BOX CHECKED

991 ON 9,013 WORKSHEETS

11% OF THE WORKSHEETS

If the judge did not check the modification box, and the sentence was below the historical based guidelines recommendation, a departure reason would be required.



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

☐ **Modification of Recommendation** **Based on Substantial Assistance, Acceptance of Responsibility or Expression of Remorse**

The decision to modify the guidelines recommendation must be made by the judge. If the recommended low end is 3 years or less, the low end is adjusted to no incarceration. If recommended low end is more than 3 years, the low end is reduced by 50%.

If accepted by the court the **Adjusted Range is:** ____ Years ____ Months ____ Days **TO** ____ Years ____ Mo ____ Days

Substantial Assistance, Acceptance of Responsibility or Remorse

CONCURRENCE

461 CASES NOW IN CONCURRENCE

480 WERE ALREADY IN CONCURRENCE

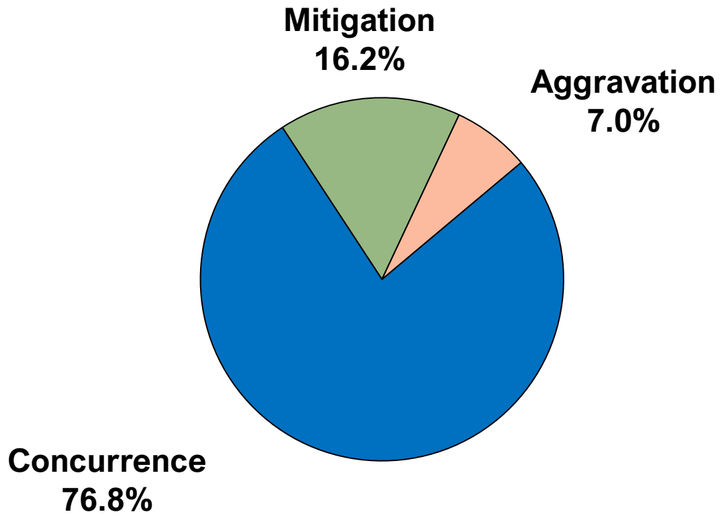
27 CASES NO CHANGE (MITIGATING)

23 CASES NO CHANGE (AGGRAVATING)

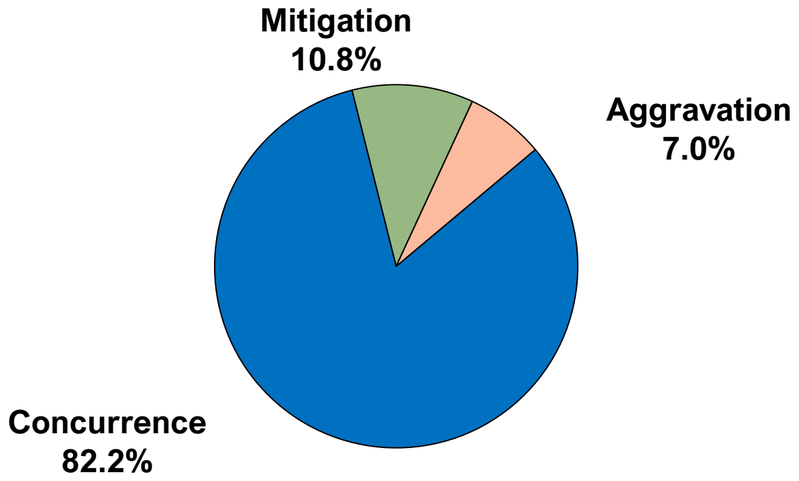
Preliminary FY 2022
Judicial Agreement with Guideline Recommendations

General Concurrence:
The degree to which judges agree with the overall Guidelines recommendation.

Overall Concurrence Rate



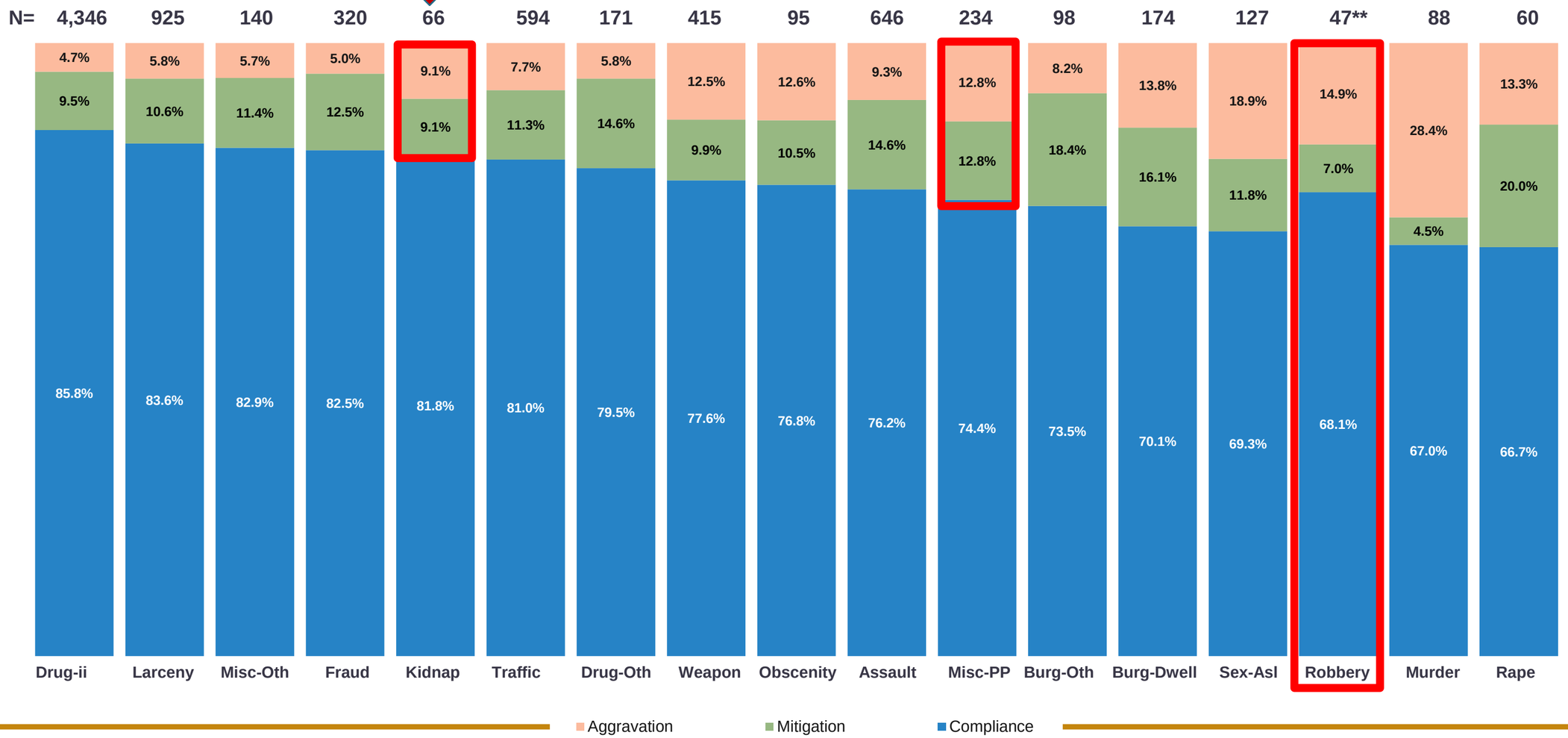
Overall Concurrence Rate
Substantial Assistance, Acceptance of Responsibility or Remorse



N=8,546 (excludes cases missing information) July 2021 – December 2021

Preliminary FY 2022 Concurrence* by Type of Offense

Modifications Made in 2020



* Concurrence includes Substantial Assistance, Acceptance of Responsibility or Remorse factor (FY22)
**Robbery only 16 cases are carjacking; others are robbery guidelines prepared in error.

N=8,546 (excludes cases missing information) July 2021 – December 2021

Case Details Worksheet
Added July 1, 2021

Sentencing Guidelines
Case Details Worksheet

SWIFT DCN: _____

1. **Defendant's Name:** EXAMPLE,

2. **Defendant Information:** Gender: Declined Race: Declined
Ethnicity: Declined Age: ___ Handicapped: ___

3. **Type of Counsel:** ☐ Retained ☐ Court Appointed ☐ Public Defender ☐ Other

4. **Pretrial Status:** ☐ Secured Bond ☐ Unsecured Bond ☐ Own Recognizance ☐ Confinement ☐ Third Party Release ☐ Unknown

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

6. **Posttrial Status:** ☐ Secured Bond ☐ Unsecured Bond ☐ Own Recognizance ☐ Confinement ☐ Third Party Release ☐ Unknown

7. **Source of Bond:** ☐ Personal ☐ Family ☐ Other ☐ Bonding Company ☐ N/A ☐ Unknown

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

9. **Number of Codefendants:** _____

10. **Legal Status at Offense** *(check all that apply)*:

☐ Escaped	☐ Inmate	☐ Mandatory Parole	☐ Discretional Parole	☐ None
☐ Geriatric Release - § 53.1-40.01	☐ Post Release - §19.2-295.2	☐ Probation	☐ Good Behavior	
☐ Recognizance	☐ Community Program	☐ Pre-Trial Supervision	☐ Bond	
☐ Juvenile Probation	☐ Juvenile Parole	☐ Summons	☐ Other_____	

11. **Weapon Use:** ☐ None ☐ Possessed ☐ Used to Injure ☐ Used to Threaten (Includes by voice, note, text, etc.)

12. **Weapon Type:** ☐ Firearm ☐ Knife ☐ Explosive ☐ Simulated/Feigned Weapon ☐ Blunt Object
☐ Note/Verbal ☐ Vehicle ☐ Animal ☐ Other _____ ☐ N/A

13. **Offender's Role** ☐ Alone ☐ Leader ☐ Accomplice ☐ Police Officer/LEO ☐ Not Determined

14. **Value of Property Taken/Damaged:** Highest value for one item $ _____ Total value of all items $ _____

15. **Location:** ☐ Bank ☐ Business ☐ Residence ☐ Street/Outside ☐ Automobile ☐ Other _____ ☐ N/A

16. **Injury to Victim:** ☐ Death ☐ Life Threatening ☐ Serious Physical ☐ Physical
☐ Emotional ☐ Threatened ☐ None ☐ N/A

17. **Victim Relationship to Offender:** ☐ None/Stranger ☐ Known ☐ Friend
☐ Family ☐ Police Officer/LEO ☐ Other

18. **Victim Information:** Gender: Declined Race: Declined
Ethnicity: Declined Age: ___ Handicapped: ____

19. **Type of Primary Drug:** _____ **Quantity:** ____ **Unit:** _____

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

Source for Question #21: ☐ Defense Attorney ☐ Defendant ☐ PSI/PSR ☐ Commonwealth Attorney ☐ Probation Officer ☐ Judge

21. **Other factors known at the time of sentencing** *(check all that apply)*

	Yes	Treatment: (in or completed treatment)	
a. **Drug abuse** (admitted, family information, documented in reports)	☐	☐ prior to offense	☐ after arrest
b. **Alcohol abuse** (admitted, family information, documented in reports)	☐	☐ prior to offense	☐ after arrest
c. **Mental health issues** (admitted, family information, documented in reports)	☐	☐ prior to offense	☐ after arrest
d. **Under the influence of drugs/alcohol at the time of the offense**	☐		

e. **Employment (Last 2 years):** ☐ Full or part-time for at least 18 months ☐ Full-time student ☐ Disabled
☐ Stay-at-home spouse/parent ☐ Retired ☐ Unemployed/Not stable

f. **Housing (Last 2 years):** ☐ Stable/same residence 1+ yrs ☐ Multiple Changes ☐ Homeless at the time of the offense

g. **Provides support:** Enter Number dependents or family members supported _____

h. **Education:** ☐ Less than High school ☐ High school/GED ☐ Technical Training ☐ Some College
☐ College Degree ☐ Post-graduate/Professional ☐ Currently Enrolled (School, College Training)

i. **Military:** ☐ Active ☐ Reserve ☐ Honorably Discharged ☐ Dishonorable Discharge
☐ Medical Discharge ☐ General Discharge ☐ Bad Conduct Discharge

j. **Defendant's Response:** ☐ Accepts Responsibility ☐ Sought Treatment ☐ Developed Rehabilitation Plans
☐ Remorseful ☐ Paid All or Part Restitution

k. **Other:** _____

MISSING INFORMATION

CASE DETAILS WORKSHEET

ALL CRIMES

Gender	45.3%
Race	34.9%
Ethnicity	48.9%
Age	51.0%
Type of Counsel	38.6%
Pretrial Status	42.5%
Pretrial Supervision	52.7%
Source of Bond	64.4%
Legal Status	47.1%
Offender's Role	46.0%
Location	53.2%
Source of Info for Q21	63.3%
Employment	67.8%
Housing	68.2%
Education	67.9%
Military	98.5%
Defendant's Response	77.8%
No Answers for Q21	58.2%

PERSON CRIMES

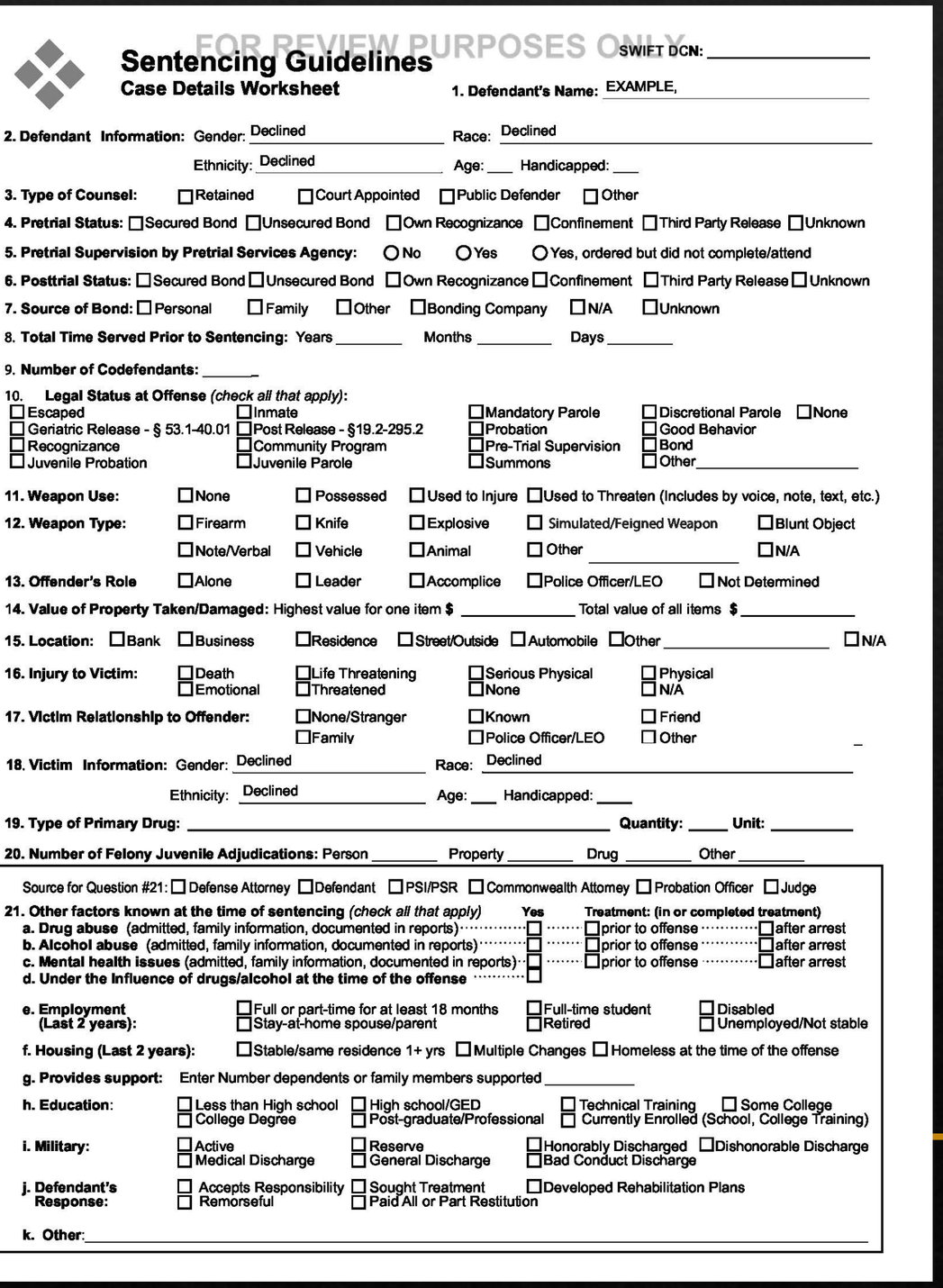
Weapon Used	36.0%
Weapon Type	42.0%
Injury to Victim	36.8%
Victim Relationship	42.0%
Victim Information:	
Gender	36.7%
Race	27.0%
Ethnicity	40.2%
Age	42.4%

PROPERTY CRIMES

Value of Property	68.0%

DRUG CRIMES

Drug Type	48.6%



FOR REVIEW PURPOSES ONLY

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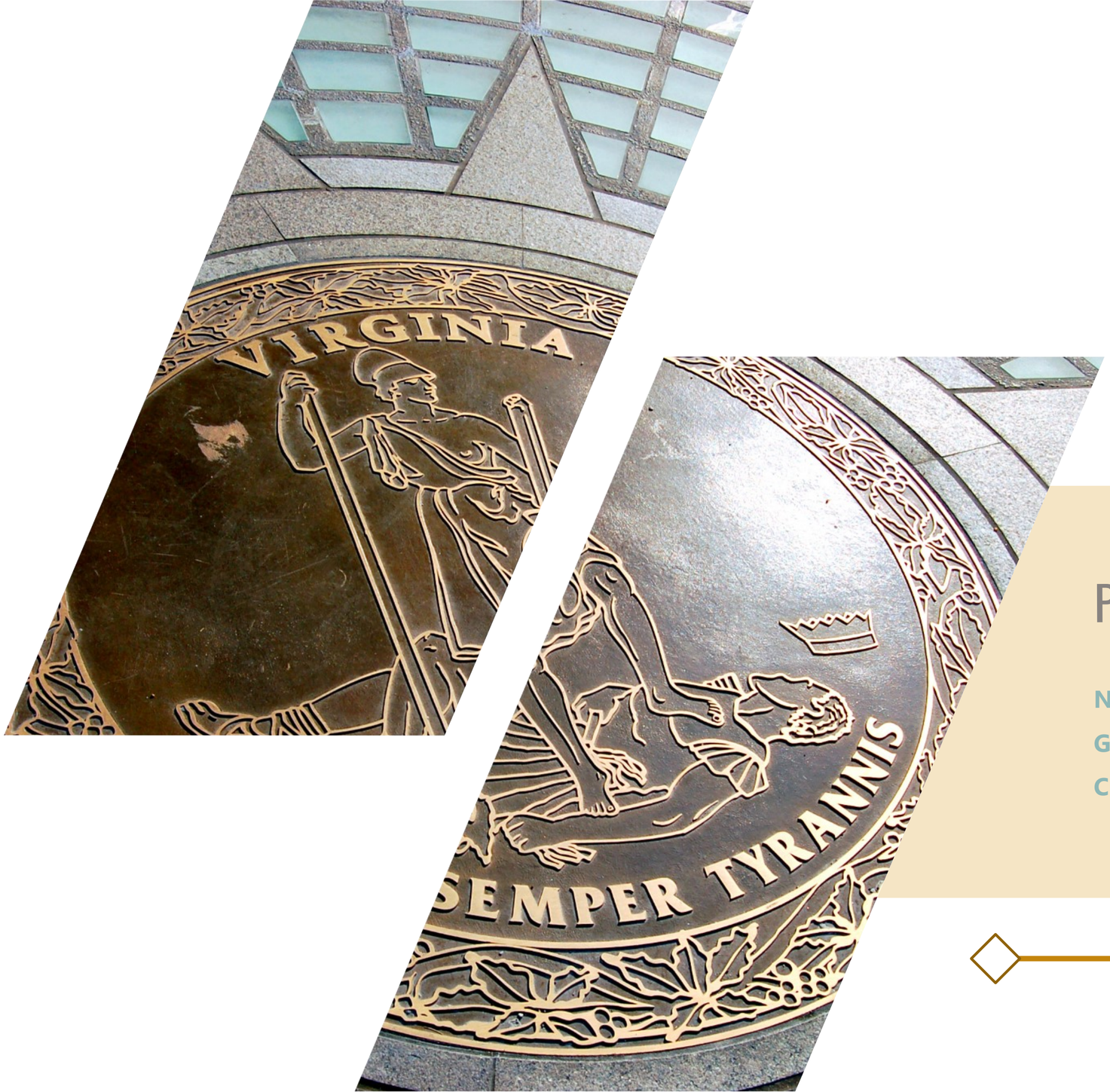

PROBATION

NUMBER OF CASES

GOOD REHABILITATION FACTOR

CONCURRENCE

NUMBER OF PROBATION SRRs & PVGs RECEIVED

TOTAL NUMBER OF ALL FORMS RECEIVED.
INCLUDES, PROBATION VIOLATIONS, GOOD BEHAVIOR AND PROCEDURAL FORMS.

FORMS RECEIVED AND KEYED BY MAY 5, 2022, ARE INCLUDED.

Month	2021	2022	Total
JAN		863	
FEB		831	
MAR		330	
APR		7	
MAY		8	
JUN			
JUL	1,218		
AUG	1,256		
SEP	1,200		
OCT	1,111		
NOV	1,066		
DEC	988		
TOTAL	6,839	2,039	8,878

N=8,927 (49 missing information)

ACCOMACK	32	FREDERICK	177	PATRICK	50
ALBEMARLE	26	FREDERICKSBURG	111	PETERSBURG	22
ALLEGHANY	63	GILES	44	PITTSYLVANIA	49
AMELIA	14	GLOUCESTER	57	PORTSMOUTH	144
AMHERST	59	GOOCHLAND	10	POWHATAN	19
APPOMATTOX	28	GRAYSON	46	PRINCE EDWARD	37
ARLINGTON	46	GREENSVILLE	29	PRINCE GEORGE	41
AUGUSTA	125	HALIFAX	90	PRINCE WILLIAM	154
BATH	10	HAMPTON	83	PULASKI	125
BEDFORD	60	HANOVER	183	RADFORD	30
BLAND	4	HENRICO	414	RAPPAHANNOCK	3
BOTETOURT	79	HENRY	91	RICHMOND CITY	170
BRISTOL	157	HOPEWELL	36	RICHMOND COUNTY	14
BRUNSWICK	2	ISLE OF WIGHT	20	ROANOKE CITY	76
BUCHANAN	62	JAMES CITY	4	ROANOKE COUNTY	132
BUCKINGHAM	19	KING & QUEEN	11	ROCKBRIDGE	80
BUENA VISTA	27	KING GEORGE	23	ROCKINGHAM	286
CAMPBELL	54	KING WILLIAM	12	RUSSELL	126
CAROLINE	33	LANCASTER	5	SALEM	70
CARROLL	41	LEE	91	SCOTT	49
CHARLES CITY	9	LOUDOUN	58	SHENANDOAH	56
CHARLOTTE	19	LOUISA	57	SMYTH	87
CHARLOTTESVILLE	12	LUNENBURG	3	SOUTHAMPTON	65
CHESAPEAKE	410	LYNCHBURG	80	SPOTSYLVANIA	222
CHESTERFIELD	325	MADISON	13	STAFFORD	214
CLARKE	4	MARTINSVILLE	21	STAUNTON	80
COLONIAL HEIGHTS	56	MATHEWS	10	SUFFOLK	139
CRAIG	1	MECKLENBURG	44	SUSSEX	2
CULPEPER	101	MIDDLESEX	5	TAZEWELL	256
CUMBERLAND	9	MONTGOMERY	79	VIRGINIA BEACH	457
DANVILLE	103	NELSON	33	WARREN	86
DICKENSON	52	NEW KENT	42	WASHINGTON	90
DINWIDDIE	15	NEWPORT NEWS	104	WAYNESBORO	75
ESSEX	3	NORFOLK	277	WESTMORELAND	23
FAIRFAX COUNTY	127	NORTHAMPTON	15	WILLIAMSBURG	68
FAUQUIER	43	NORTHUMBERLAND	4	WINCHESTER	113
FLOYD	8	NOTTOWAY	16	WISE	85
FLUVANNA	26	ORANGE	6	WYTHE	108
FRANKLIN COUNTY	184	PAGE	38	YORK	97

Final Decision/Disposition

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

◆ DECISION OF THE COURT

- ☐ Found in Violation of Conditions as Cited
- ☐ Found in Violation of Conditions as Modified by the judge: Conditions Violated: _____ _____ _____ _____
- ☐ Found in Violation of good behavior, suspended sentence, felony local probation
- ☐ Taken Under Advisement
- ☐ Not in Violation

◆ SENTENCE FOR REVOCATION

Added July 1, 2021

Rehabilitation Potential

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

Treatment Exception

☐ Sentenced to time required to participate in court ordered program/restitution review (§ 19.2-306.1 (D))

Revocable Time for Event

☐ Life + | | | | | | | | | |

Revocation Details

		Years	Months	Days	
Amount of Time Imposed.....	☐ Life +				☐ Sentenced to Time Served
Amount of Time to Serve for this Violation (total effective sentence)..	☐ Life +				

New/Revised Probation/Supervised Period

		Years	Months	Days
☐ Continued on same period of probation supervision (not extended)				
☐ Placed on a probation supervision for a new period of.....	☐ Indefinite +			
☐ Released from supervised probation				

Conditions

7,190

FY22 GUIDELINES (JUL-DEC)
USED TO CALCULATE CONCURRENCE

384 (5.3%)

IDENTIFIED AS HAVING
GOOD REHABILITATION POTENTIAL

REHABILITATION POTENTIAL

BASED ON DEPARTURE REASONS,
THE COMMISSION DEVELOPED A NEW FACTOR THAT ESTABLISHES THE LOW END OF THE GUIDELINES RANGE TO ZERO OR TIME SERVED WHEN THE JUDGE BELIEVES THAT THE DEFENDANT HAS GOOD REHABILITATION POTENTIAL

Separate from the main analysis, researchers examined the reasons cited by judges for departing from the current Probation Violation Guidelines. In particular, researchers were interested in the judge's assessment of the probationer's rehabilitation potential (good or poor) and the extent this was cited as the reason for departing from the guidelines. To do this, the analysts examined all FY2014-FY2019 SRR cover sheets (not just cases selected for the study sample). This analysis grouped offenders by judicial departure reasons - either good rehabilitation potential, poor rehabilitation potential, or neither cited - and compared effective revocation sentences for each group. Figure 48 shows the results. The median, mean, and maximum sentence for cases in which the judge cited good rehabilitation potential as the reason for departing from the PVGs are significantly lower than for the groups with poor potential or no such departure noted. Of particular note, the median or "typical" case with good potential noted received a sentence of zero (or time served). Based on these findings, the Commission concluded that a new factor could be added to the PVGs to allow the judge to adjust the low-end recommendation to "time served" (i.e., zero) if the judge finds the probationer has good rehabilitation potential. Because this factor would be based on judicial determination rather than currently available data sources, it is not possible to estimate the proportion of the study sample who would have been scored on this factor or how it might interact with other factors. Therefore, it was constructed as a standalone factor which does not contribute points to the total worksheet score.
VCSC Annual Report, December 1, 2020, page 59.

CONCURRENCE FY 2022

TYPE VIOLATION	CONCURRENCE	MITIGATION	AGGRAVATION	N
Technical First	**98.1%**	0.0%	1.9%	928
Technical Second	**97.7%**	0.0%	2.3%	481
Technical Third +	**72.2%**	23.3%	4.5%	309
Technical 9 or 11 First	**96.8%**	0.0%	3.2%	782
Technical 9 or 11 Second +	**71.6%**	23.5%	4.9%	162
Special Conditions	**79.0%**	16.5%	4.5%	937
New Misdemeanor	**84.1%**	11.3%	4.6%	1,626
New Felony	**78.5%**	14.5%	7.0%	1,958
TOTAL	**85.2%**	10.2%	4.6%	7,183

N=7,183 (7 missing information)

VIRGINIA CRIMINAL SENTENCING COMMISSION

CONCURRENCE

STATUTORY REQUIREMENTS AND GUIDELINES RECOMMENDATIONS