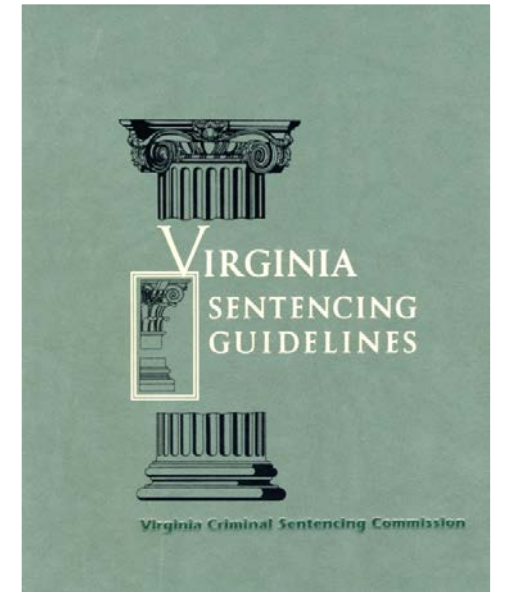




VIRGINIA CRIMINAL SENTENCING COMMISSION



Possible Recommendations for
Guidelines Revisions



November 2, 2022

Modifications to the Sentencing Guidelines



The Commission closely monitors the sentencing guidelines system and, each year, deliberates upon possible modifications to the guidelines.

Under § 17.1-806 of the *Code of Virginia*, any Guidelines 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.



Proposals for New Guidelines Offenses



Proposals reflect the best fit for the historical data analyzed.

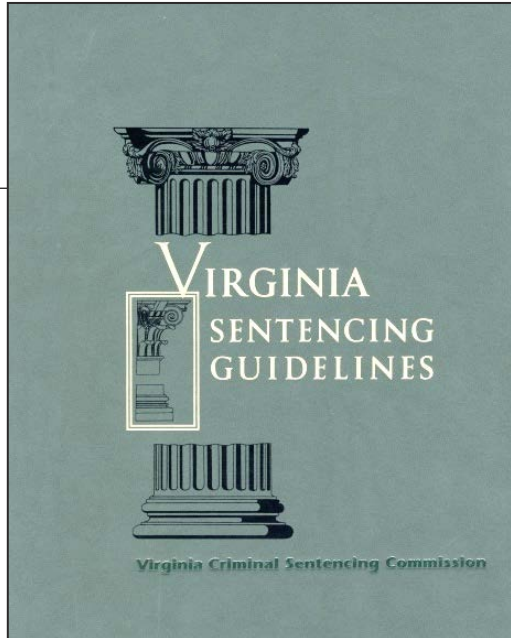


Proposals are designed to closely match the historical rate of incarceration in prison and jail.



Current guidelines worksheets serve as the base for scoring historical cases, but the points assigned to those factors may be different for the new offense and new factors may be added.





Proposed Recommendation 1:

Request legislation to modify § 19.2-298.01 to specify that Sentencing Guidelines worksheets for cases resulting in deferred dispositions are to be submitted to the Commission

Proposed Recommendation 1



There are four *Code* sections that provide for deferred dispositions.

- § 18.2-251 – First offender for drug possession
- § 18.2-258.1 – Obtain controlled substance by fraud or deceit
- § 19.2-303.6 – Deferred dispositions in certain cases for defendants diagnosed with autism (2020 General Assembly)
- § 19.2-298.02 – Deferred disposition with agreement of defendant and Commonwealth (2020 General Assembly, Special Session I)



Proposed Recommendation 1

For a number of years, it has been the Sentencing Commission's policy that Guidelines for defendants placed under First Offender (§ 18.2-251) and other deferred cases be submitted to the Commission.

The rationale is three-fold:

- ◆ **The Commission is charged with studying felony sentencing patterns (§ 17.1-803).**
- ◆ **Currently, annual Sentencing Guidelines counts are used in the workload formula for Commonwealth's Attorneys.**
- ◆ **To respond to policymakers about what types of offenses are deferred, who receives a deferred disposition, success and violation rates.**



Proposed Recommendation 1



The General Assembly has recently expanded judicial options for deferred dispositions (§§ 19.2-303.6 and 19.2-298.02).



While Commission policy has established that the Guidelines be submitted for First Offender and deferred cases, the *Code of Virginia* specifies that Guidelines and court orders be submitted to the Commission “following the entry of a final order of conviction and sentence” (§ 19.2-298.01(E)).



Proposed Recommendation 1



With the expansion of deferred dispositions, there is not a good way to track defendants who fail to comply with the conditions of the deferral and monitor differences in sentencing patterns after a deferral failure.



Language could be added to § 19.2-298.01 to specify that Guidelines for defendants who receive a deferred disposition are to be submitted to the Commission.

Proposed Recommendation 1

PROPOSED

§ 19.2-298.01. Use of discretionary sentencing guidelines.

A. In all felony cases, other than Class 1 felonies, the court shall (i) have presented to it the appropriate discretionary sentencing guidelines worksheets and (ii) review and consider the suitability of the applicable discretionary sentencing guidelines established pursuant to Chapter 8 (§ 17.1-800 et seq.) of Title 17.1. Before imposing sentence or deferring disposition as authorized by §§ 18.2-251, 18.2-258.1, 19.2-298.02, or 19.2-303.6, the court shall state for the record that such review and consideration have been accomplished and shall make the completed worksheets a part of the record of the case and open for inspection. In cases tried by a jury, the jury shall not be presented any information regarding sentencing guidelines.

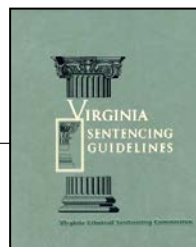
B. In any felony case, other than Class 1 felonies, in which the court imposes a sentence which is either greater or less than that indicated by the discretionary sentencing guidelines the court shall file with the record of the case a written explanation of such departure.

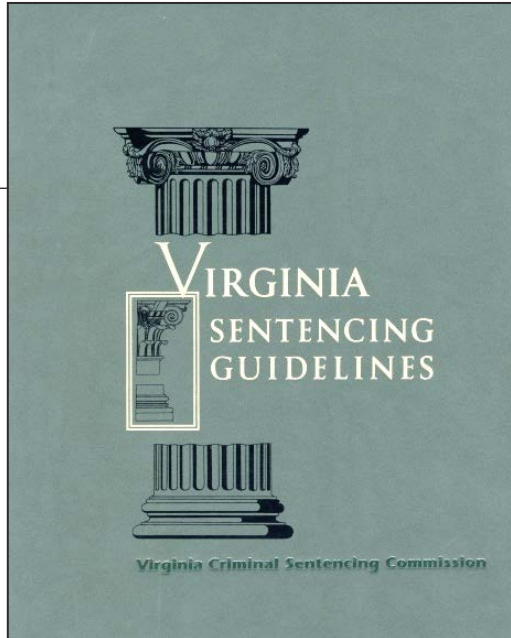
E. Following the entry of a final order of conviction and sentence in a felony case, or following a deferred disposition as authorized by §§ 18.2-251, 18.2-258.1, 19.2-298.02, or 19.2-303.6, the clerk of the circuit court in which the case was tried shall cause a copy of such order or orders, the original of the discretionary sentencing guidelines worksheets prepared in the case, and a copy of any departure explanation prepared pursuant to subsection B to be forwarded to the Virginia Criminal Sentencing Commission within five days. Similarly, the statement required by §§ 19.2-295 and 19.2-303 and regarding departure from or modification of a sentence fixed by a jury shall be forwarded to the Virginia Criminal Sentencing Commission.

F. The failure to follow any or all of the provisions of this section or the failure to follow any or all of the provisions of this section in the prescribed manner shall not be reviewable on appeal or the basis of any other post-conviction relief.

Proposed Recommendation 1

Request legislation to modify § 19.2-298.01
to specify that Sentencing Guidelines worksheets
for cases resulting in deferred dispositions are to
be submitted to the Commission





Proposed Recommendation 2:

Modify the Sentencing Guidelines Cover Sheet to identify convictions that are the result of violations of the conditions of deferred dispositions (§§ 18.2-251, 18.2-258.1, 19.2-298.02, or 19.2-303.6)

Save

Sentencing Guidelines • Burglary/Dwelling Cover Sheet

Sched. Sentencing: 07/11/22

Complete this form ONLY for applicable felonies sentenced on or after July 1, 2021 and before July 1, 2022.

Offender

Name	CCRE:
First:	CORIS Offender ID:
Middle:	PSI #:
Last:	SSN:
Suffix:	Date of Birth: mm/dd/yyyy

Court

Judicial Circuit: 25 FIPS Code: 005
 City/County:
 Sentencing Judge's Name:
 Prosecuting Commonwealth's Attorney:
 Defense Attorney:
 Preparer Name:
 Commonwealth's Attorney
 Probation Officer

Convictions

Offense	Counts	VCC	Offense Date	Docket No.
			MM DD YY	
<input type="checkbox"/> Deferred Primary Offense Violation STAT. BURGLARY OF DWELLING TO MURDER, E'	1 +	BUR 2212 D2	01 01 22	CR2200027400
Additional Offense + <input checked="" type="radio"/> Text <input type="radio"/> Drop-Down				
- 1. <input type="checkbox"/> FIREARM USE IN COMMISSION OF FELONY-(FIR:	1 +	ASL 1319 D9	01 01 22	CR2200027401

Primary Offense Code Section §: 18.2-90

METHOD OF ADJUDICATION

Jury Trial Sentence Set by: Judge Jury yyy/mm/ddd Life Juvenile Fine Only
 Bench Trial Guilty Plea Alford Plea/Nolo contendere

SENTENCING GUIDELINES RECOMMENDATION

No Recommendation Offense (Primary offense does not yield a recommendation)

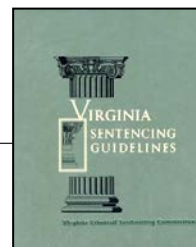
Section B	Section C
<input type="radio"/> Probation/No Incarceration	<input checked="" type="radio"/> Incarceration (Enter Midpoint and Range Below)
<input type="radio"/> Incarceration 1 Day to 3 Months	Range Midpoint: 5 10 0 yyy/mm/ddd
<input type="radio"/> Incarceration 3 to 6 Months	Sentence Range: 4 10 0 to 8 6 0

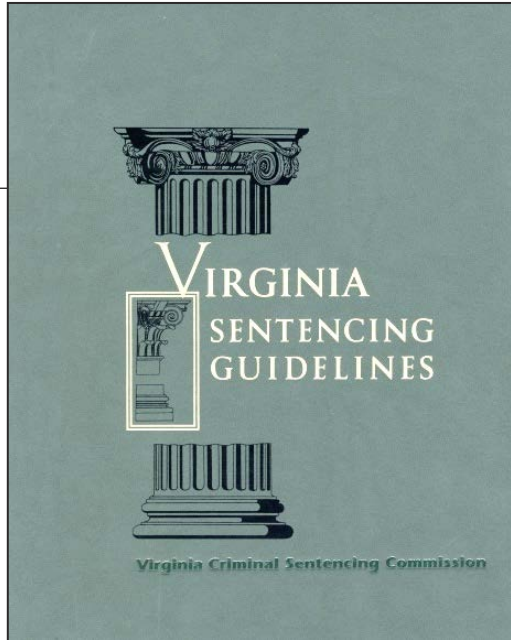
SUM OF ALL MANDATORY MINIMUMS

Add check boxes to identify cases that are returned to circuit court due to violation of the conditions of the deferral.

Proposed Recommendation 2

Modify the Sentencing Guidelines Cover Sheet to identify convictions that are the result of violations of the conditions of deferred dispositions (§§ 18.2-251, 18.2-258.1, 19.2-298.02, or 19.2-303.6) as proposed





Proposed Recommendation 3:

Modify the Virginia Crime Codes (VCCs) used by criminal justice agencies to identify convictions that are the result of violations of the conditions of deferred dispositions (§§ 18.2-251, 18.2-258.1, 19.2-298.02, or 19.2-303.6)

Proposed Recommendation 3

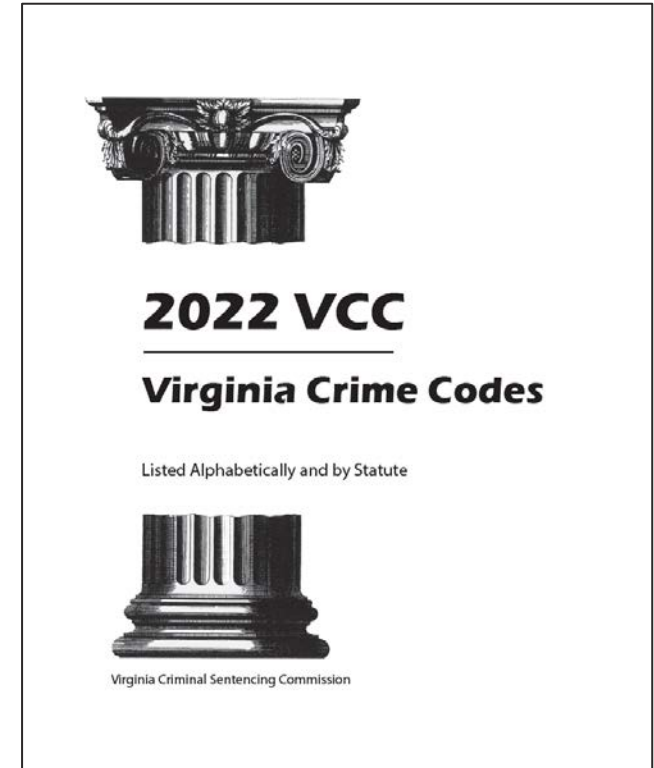


The *Code* requires criminal justice agencies in Virginia to use VCCs in their data systems to identify offenses (§ 19.2-390.01).

**Example: NAR-3022-F5
Possession of Schedule I or II drug**



Since 1995, the Sentencing Commission has administered the VCC system, including the creation or modification of VCCs.



Proposed Recommendation 3

PROPOSAL

Add a modifier to the VCC system to identify defendants sentenced for a felony offense after violating the conditions of the deferred dispositions.

Replace the “F” with a “D” for a violation of §§ 18.2-251, 18.2-258.1, 19.2-298.02 or 19.2-303.6.

LAR-2359-F9  LAR-2359-D9

The Seriousness Index

The first digit of the seriousness index (digit 8 of the VCC) is a letter which takes on the following meanings:

F = Felony Offense

M = Misdemeanor Offense

A = Attempt (*Felonies Only*)

C = Conspiracy (*Felonies Only*)

S = Special Penalty Structure

L = Life Without Parole (§ 19.2-297.1)

**X = Subsequent Violent Sexual Assault
(§18.2-67.5:3 and § 18.2-67.5:2)**

O = Local Ordinance

J = Adult sentenced for Juvenile offense (§ 16.1-284)

Y = Commitment of serious juvenile offender (§ 16.1-285.1)

T = Solicitation to commit a felony (§ 18.2-29)

V = Solicitation to commit a felony-adult solicits juvenile (§ 18.2-29)

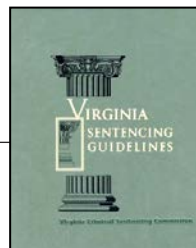
Note: Solicitation convictions under § 18.2-29 cannot be the primary offense on Sentencing Guidelines.

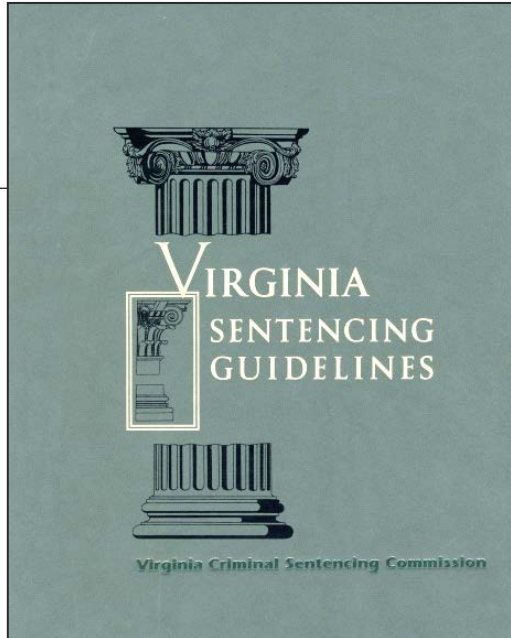
The second position of the offense seriousness index (position 9 of VCC) is described below.

Thus, when the letter “F” is paired with the number “2” (F2) the interpretation is that the offense is a class two felony with a statutory maximum penalty of life; “M3” would represent a class three misdemeanor with a maximum penalty of a fine only.

Proposed Recommendation 3

Modify the Virginia Crime Codes (VCCs) used by criminal justice agencies to identify convictions that are the result of violations of the conditions of deferred dispositions (§§ 18.2-251, 18.2-258.1, 19.2-298.02, or 19.2-303.6) as proposed





Proposed Recommendation 4:

Modify the Sentencing Guidelines Case Details Worksheet to identify defendants diagnosed with autism spectrum disorder and other intellectual disabilities

Proposed Recommendation 4



The 2020 General Assembly passed Senate Bill 133 to allow deferred dispositions in certain cases for defendants diagnosed with autism spectrum disorder or intellectual disabilities (see § 19.2-303.6).

Criminal cases involving aggravated murder (§ 18.2-31) or a crime of violence as defined in § 19.2-297.1 are not eligible for deferred disposition under this provision.



Currently, there is no way to track how often this provision is applied, or could be applied, in circuit court. There is also no way to identify other types of mental health conditions that may impact sentencing.

Text in effect from and after July 1, 2020

Title 19.2 Criminal Procedure Chap. 18 Sentence; Judgment; Execution of Sentence, §§ 19.2-295 — 19.2-316.4 Art. 1
General Provisions, §§ 19.2-295 — 19.2-310.1

§ 19.2-303.6. Deferred disposition in a criminal case; persons with autism or intellectual disabilities. —

A. In any criminal case, except a violation of § 18.2-31, an act of violence as defined in § 19.2-297.1, or any crime for which a deferred disposition is provided for by statute, upon a plea of guilty, or after a plea of not guilty, and the facts found by the court would justify a finding of guilt, the court may, if the defendant has been diagnosed by a psychiatrist or clinical psychologist with (i) an autism spectrum disorder as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association or (ii) an intellectual disability as defined in § 37.2-100 and the court finds by clear and convincing evidence that the criminal conduct was caused by or had a direct and substantial relationship to the person's disorder or disability, without entering a judgment of guilt and with the consent of the accused, after giving due consideration to the position of the attorney for the Commonwealth and the views of the victim, defer further proceedings and place the accused on probation subject to terms and conditions set by the court. Upon violation of a term or condition, the court may enter an adjudication of guilt; or upon fulfillment of the terms and conditions, the court may discharge the person and dismiss the proceedings against him without an adjudication of guilt. This section shall not limit the authority of any juvenile and domestic relations court granted to it in Title 16.1.

B. Deferred disposition shall be available to the defendant even though he has previously been convicted of a criminal offense, been adjudicated delinquent as a juvenile, or had proceedings deferred and dismissed under this section or under any other provision of law, unless, after having considered the position of the attorney for the Commonwealth, the views of the victims, and any evidence offered by the defendant, the court finds that deferred disposition is inconsistent with the interests of justice. (2020, c. 1004.)



Currently, there is not a consistent method to track sentencing patterns for other types of mental health conditions (§ 19.2-271.6 of the Code identifies three types)

Title 19.2 Criminal Procedure Chap. 16 Evidence and Witnesses, §§ 19.2-267 — 19.2-282 Art. 1 In General, §§ 19.2-267 — 19.2-271.6

§ 19.2-271.6. Evidence of defendant's mental condition admissible; notice to Commonwealth. —

A. For the purposes of this section:

"Developmental disability" means the same as that term is defined in § 37.2-100.

"Intellectual disability" means the same as that term is defined in § 37.2-100.

"Mental illness" means a disorder of thought, mood, perception, or orientation that significantly impairs judgment or capacity to recognize reality.

Title 37.2 Mental Health, Mental Retardation, and Substance Abuse Services Chap. 1 Definitions, §§ 37.2-100 — 37.2-101

§ 37.2-100. Definitions. — As used in this title, unless the context requires a different meaning:

"Developmental disability" means a severe, chronic disability of an individual that (i) is attributable to a mental or physical impairment, or a combination of mental and physical impairments, other than a sole diagnosis of mental illness; (ii) is manifested before the individual reaches 22 years of age; (iii) is likely to continue indefinitely; (iv) results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and (v) reflects the individual's need for a combination and sequence of special interdisciplinary or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated. An individual from birth to age nine, inclusive, who has a substantial developmental delay or specific congenital or acquired condition may be considered to have a developmental disability without meeting three or more of the criteria described in clauses (i) through (v) if the individual, without services and supports, has a high probability of meeting those criteria later in life.

"Intellectual disability" means a disability, originating before the age of 18 years, characterized concurrently by (i) significant subaverage intellectual functioning as demonstrated by performance on a standardized measure of intellectual functioning, administered in conformity with accepted professional practice, that is at least two standard deviations below the mean and (ii) significant limitations in adaptive behavior as expressed in conceptual, social, and practical adaptive skills.

"Mental illness" means a disorder of thought, mood, emotion, perception, or orientation that significantly impairs judgment, behavior, capacity to recognize reality, or ability to address basic life necessities and requires care and treatment for the health, safety, or recovery of the individual or for the safety of others.

Proposed Recommendation 4

5. Pretrial Supervision by Pretrial Services Agency: No Yes Yes, ordered but did not complete/attend Unknown
 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 _____ N/A
 9. Number of Codefendants: _____



Sentencing Guidelines Case Details Worksheet

SWIFT/DCN: _____

1. Defendant's Name: _____

As defined by the statutes listed

2. Defendant Information: Gender: _____ Race: _____ Ethnicity: _____

Physical Handicap ___ Autism Spectrum Disorder § 19.2-303.6 ___ Intellectual Disability § 37.2-100 ___
 Developmental Disability § 37.2-100 ___ Mental Illness § 37.2-100 ___ Unknown ___

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

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 Unknown

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 _____ N/A

9. Number of Codefendants: _____

i. Military: Active Reserve Honorably Discharged Undesirable Discharge
 Medical Discharge General Discharge Bad Conduct Discharge

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

k. Other: _____

Proposed Recommendation 4

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

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 _____ N/A

9. **Number of Codefendants:** _____

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

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

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

12. **Weapon Type:**

<input type="checkbox"/> Firearm	<input type="checkbox"/> Knife	<input type="checkbox"/> Explosive	<input type="checkbox"/> Simulated/Feigned Weapon	<input type="checkbox"/> Blunt Object
<input type="checkbox"/> Note/Verbal	<input type="checkbox"/> Vehicle	<input type="checkbox"/> Animal	<input type="checkbox"/> Other _____	<input type="checkbox"/> N/A

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

14. **Value of Property Taken/Damaged:** Highest value for _____

15. **Location:** Bank Business Residence

16. **Injury to Victim:**

<input type="checkbox"/> Death	<input type="checkbox"/> Life Threatening	<input type="checkbox"/> Serious Physical	<input type="checkbox"/> Physical
<input type="checkbox"/> Emotional	<input type="checkbox"/> Threatened	<input type="checkbox"/> None	<input type="checkbox"/> N/A

17. **Victim Relationship to Offender:**

<input type="checkbox"/> None/Stranger	<input type="checkbox"/> Known	<input type="checkbox"/> Friend
<input type="checkbox"/> Family	<input type="checkbox"/> Police Officer/LEO	<input type="checkbox"/> Other _____ <input type="checkbox"/> N/A

18. **Victim Information:** Gender: _____ Race: _____ Ethnicity: _____ Age: _____ Handicapped: _____ Unknown

Similar options would be available for the victim factor

Information is not available

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):**

<input type="checkbox"/> Full or part-time for at least 18 months	<input type="checkbox"/> Full-time student	<input type="checkbox"/> Disabled
<input type="checkbox"/> Stay-at-home spouse/parent	<input type="checkbox"/> Retired	<input type="checkbox"/> 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:**

<input type="checkbox"/> Less than High school	<input type="checkbox"/> High school/GED	<input type="checkbox"/> Technical Training	<input type="checkbox"/> Some College
<input type="checkbox"/> College Degree	<input type="checkbox"/> Post-graduate/Professional	<input type="checkbox"/> Currently Enrolled (School, College Training)	

i. **Military:**

<input type="checkbox"/> Active	<input type="checkbox"/> Reserve	<input type="checkbox"/> Honorably Discharged	<input type="checkbox"/> Undesirable Discharge
<input type="checkbox"/> Medical Discharge	<input type="checkbox"/> General Discharge	<input type="checkbox"/> Bad-Conduct Discharge	

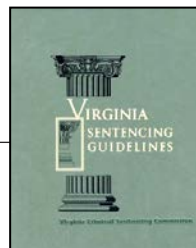
j. **Defendant's Response:**

<input type="checkbox"/> Accepts Responsibility	<input type="checkbox"/> Sought Treatment	<input type="checkbox"/> Developed Rehabilitation Plans
<input type="checkbox"/> Remorseful	<input type="checkbox"/> Paid All or Part Restitution	

k. **Other:** _____

Proposed Recommendation 4

Modify the Sentencing Guidelines Case Details
Worksheet to identify defendants diagnosed with autism
spectrum disorder and other intellectual disabilities



DRAFT - NOT FOR USE BY THE COURT
FINALIZE IN 5075 - NOT TO BE SIGNED BY JUDGE

Sentencing Guidelines

Case Details Worksheet

1. Defendant's Name: T.

2. Defendant Information: Gender: MA Race: NA
Ethnicity: NA Age: Handicapped

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

4. Pretrial Status: Secured Bond Unsecured Bond No Recognizance **Confinement** Third Party Release Unknown

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

6. Posttrial Status: Secured Bond Unsecured Bond No 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 N/A

9. Number of Codefendants:

10. Legal Status at Offense (check all that apply):
 Charged Arraigned Mandatory Parole Discretionary Parole None None
 Criminal Release - § 53-140-01 Post Release - § 19-2-205-2 Probation Good Behavior Unknown
 Recognizance Community Program Pre-Trial Supervision Bond
 Juvenile Probation Juvenile Parole Summary Other

11. Weapon Use: None Possessed Used to Injure Used to Threaten (includes use, see, etc.) Unknown

12. Weapon Type: Firearms Knife Explosive Simulated/Feigned Weapon Blunt Object N/A
 Motor/Vehicle Vehicle Aerial Other

13. Offender's Role: Alone Leader Accomplice Police Officer/LED Not Determined Unknown

14. Value of Property Taken/Damaged: Highest value for one item \$ Total value of all items \$ N/A

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

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

17. Victim Relationship to Offender: None/Stranger Known Friend N/A Other
 Family Police Officer/LED

18. Victim Information: Gender: NA Race: NA
Ethnicity: NA Age: Handicapped:

19. Type of Primary Drug: N/A Quantity: Unit:

20. Number of Past Juvenile Adjudications: Person Property Drug Other None Unknown

21. Source for Question 21:
 Defense Attorney Defendant PDP/PR Commonwealth Attorney Probation Officer Judge Information not available

24. Other factors known at the time of sentencing (check all that apply): Yes Yes/Not (in or completed treatment) Information not available

a. Drug abuse (submitted, family information, documented in reports): prior to offense after arrest

b. Alcohol abuse (submitted, family information, documented in reports): prior to offense after arrest

c. Mental health issues (submitted, family information, documented in reports): prior to offense after arrest

d. Under the influence of drugs/alcohol at the time of the offense: Yes No

e. Employment (Last 2 years): Full or part-time for at least 18 months Full-time student Disabled Unemployed/stable
 Stay at home spouse/partner Student Retired Unemployed/unstable

f. Housing (Last 2 years): Stable/home ownership 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 None
 College Degree Post graduate/Professional Currently Enrolled (College, College Training)

i. Military: Active Reserve Honorable Discharge Dishonorable Discharge
 Medical Discharge General Discharge Bad Conduct Discharge

j. Defendant's Response: Accepts Responsibility Waives Rights Developed Rehabilitation Plans
 Remorseful Paid All or Part Restitution

k. Other:

Update 1:

Responses to many of the factors on the Case Details Worksheet are missing. Users have suggested that Question 21 is difficult to complete unless the information is provided by the defendant or defense attorney. Often defense attorneys are hesitant to provide information that may be detrimental to their case. As a result, the factors in other sections, that are needed for future analysis, are left blank.

Is Defense Counsel Required to Complete the Case Details Worksheet if the Official Preparer Refuses?

ETHICS COUNSEL FOR THE STATE BAR:

“I believe that it is antithetical to the role of defense counsel and the adversary system to be requiring defense counsel to volunteer or under court order supply information detrimental to their client’s best interests. I also note the unfairness in that the Commonwealth’s Attorneys can refuse to fill out the case details worksheet but that some judges are making the defense counsel perform this task. At the very least it seems to me that defense counsel should be able to opt-in or opt-out of performing this task.

The rules of professional conduct require that a lawyer be loyal to the defendant and not take any action that would prejudice the client in the course of the representing the client. Rule 1.3(c). In addition, Rule 1.6(a) provides that a lawyer must not disclose information that is detrimental to the client. Rule 1.6(b)(1) does allow that a lawyer may reveal information protected under Rule 1.6 when required by law or court order. But I think that requiring defense counsel to reveal prejudicial information in this context is an overreach.”

- Jim McCauley 3/25/22

44 %

Missing Defendant's Gender

Sentencing Guidelines Case Details Worksheet

DCN: _____

1. Defendant's Name: T. _____

Defendant Information: Gender: Declined Race: Declined Ethnicity: Declined Age: ___ Handicapped: ___

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
Time Served Prior to Sentencing: Years ___ Months ___ Days ___

50 %

Missing Defendant's Age

Not Including Drug Cases

90 %

Missing Victim's Race

Legal Status at Offense (check all that apply): [] Inmate [] Mandatory Parole [] Discretionary Parole [] Probation [] Good Behavior [] Pre-Trial Supervision [] Bond [] Summons [] Other
Weapon Use: [] None [] Possessed [] Used to Injure [] Used to Threaten (Includes by voice, note, or gesture)
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 \$ ___

47 %

Missing Defendant's Race

68 %

Larceny Cases Missing Value

Location: [] Bank [] Business [] Residence [] Street/Outside [] Automobile [] Other
Injury to Victim: [] Death [] Life Threatening [] Serious Physical [] Physical [] Emotional [] Threatened [] None [] N/A
Victim Relationship to Offender: [] None/Stranger [] Known [] Friend [] Family [] Police Officer/LEO [] Other
Victim Information: Gender: Declined Race: Declined Ethnicity: Declined Age: ___ Handicapped: ___
Type of Primary Drug: _____ Quantity: ___ Unit: _____

If Weapon Used Factor is Not Marked as None

79 %

Missing How Weapon Was Used

50 %

Drug I/II Cases Missing Drug Type

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 a
b. Alcohol abuse (admitted, family information, documented in reports) [] [] prior to offense [] after a
c. Mental health issues (admitted, family information, documented in reports) [] [] prior to offense [] after a
d. Under the influence of drugs/alcohol at the time of the offense []
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 Working
Residence (Last 2 years): [] Stable/same residence 1+ yrs [] Multiple Changes [] Homeless at the time of the offense
Dependent support: Enter Number dependents or family members supported: ___
Education: [] Less than High school [] High school/GED [] Technical Training [] Some College [] College Degree [] Post-graduate/Professional [] Currently Enrolled (School, College, etc.)
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: _____

34 %

Assault Cases Missing Injury

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: _____

Source Missing 64%

21a – Answered 23%

21b – Answered 9%

21c – Answered 13%

21d – Answered 15%

21e – Answered 33%

21f – Answered 33%

21g – Answered 11%

21h – Answered 33%

21i – Answered 2%

21j – Answered 21%

Update 1

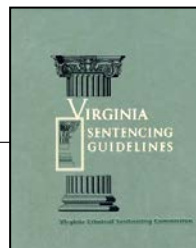
Modify the Sentencing Guidelines Case Details Worksheet.

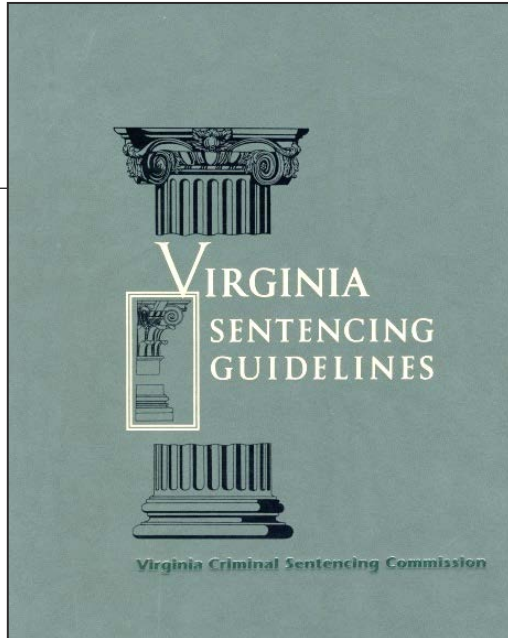
Options in the past have been to:

A - Label Question 21 as optional

B - Remove Question 21 from the Case Details Worksheet

C - No changes or modifications to Question 21





Update 2:

Add a factor to the Probation Violation Guidelines similar to the Modification of Recommendation factor on the Sentencing Guidelines. The Sentencing Guidelines factor was developed using departure reasons for substantial assistance, acceptance of responsibility or expression of remorse.

Sentencing Guidelines

Final Disposition **Fill In After Sentence Has Been Pronounced** T,

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 Months Days

SENTENCE

Total Time Imposed Before Suspension Life Sentence + _____

Total Effective Time to Serve Life Sentence + _____ Sentenced to Time Served

Incarceration Sentence to Run Concurrently With Another Event

Restitution \$ _____ Fine \$ _____

Post Release

Post Release Incarceration Term §18.2-10 (Suspended) (6 months to 3 years) _____

Post Release Supervision Period §19.2-295.2(A) (6 months to 3 years) _____

Probation (Sentenced to no time, probation up to statutory maximum; Sentenced to incarceration, probation up to 5 years)

Probation Period (Supervised) § 19.2 - 303 Indefinite _____

Good Behavior

Good Behavior Period § 19.2 - 306 _____ (Up to Statutory Maximum)

Agreements and Other Details (check all that apply)

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

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

Oral Sentence Recommendation Accepted

Other Sentencing Programs (check all that apply)

- Day Reporting
- Electronic Monitoring
- Intensive Probation
- Substance Abuse Treatment
- § 18.2-251/§ 18.2-258.
- § 19.2-298.02, § 19.2-303.6 (Deferred Disposition)
- Community-Based Program
- CCAP Community Corrections Alternative Program
- Drug Court
- Youthful Offender
- DJJ Commitment
- Other

REASON FOR DEPARTURE AND/OR MODIFICATION OF JURY SENTENCE

Must be completed pursuant to § 19.2-298.01(B) and/or § 19.2-295(B)/ § 19.2-303

Accepted Nonviolent Risk Assessment recommendation, no departure reason needed.

Probation Violation Guidelines

Final Decision/Disposition

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

Offender Name: PVG, CASE EXAMPLE 4

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

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 + 4 0 0

Revocation Details

Amount of Time Imposed _____ Life + _____

Amount of Time to Serve for this Violation (total effective sentence) Life + _____ Sentenced to Time Served

New/Revised Probation/Supervised Period

- Continued on same period of probation supervision (not extended)
- Placed on a probation supervision for a new period of _____ Indefinite + _____
- Released from supervised probation

Conditions

Good Behavior _____ Life + _____

- New conditions of probation: _____
- Continued on same conditions

Other Sentencing Programs (Check all that apply)

- Day Reporting
- Electronic Monitoring
- Intensive Probation
- Substance Abuse Treatment
- § 18.2-251/§ 18.2-258.1 (First Offender)
- Drug Court
- Community-Based Program
- CCAP
- Youthful Offender
- DJJ Commitment
- Indeterminate
- Determinate
- § 19.2-298.02 § 19.2-303.6 (Deferred Disposition)
- Other

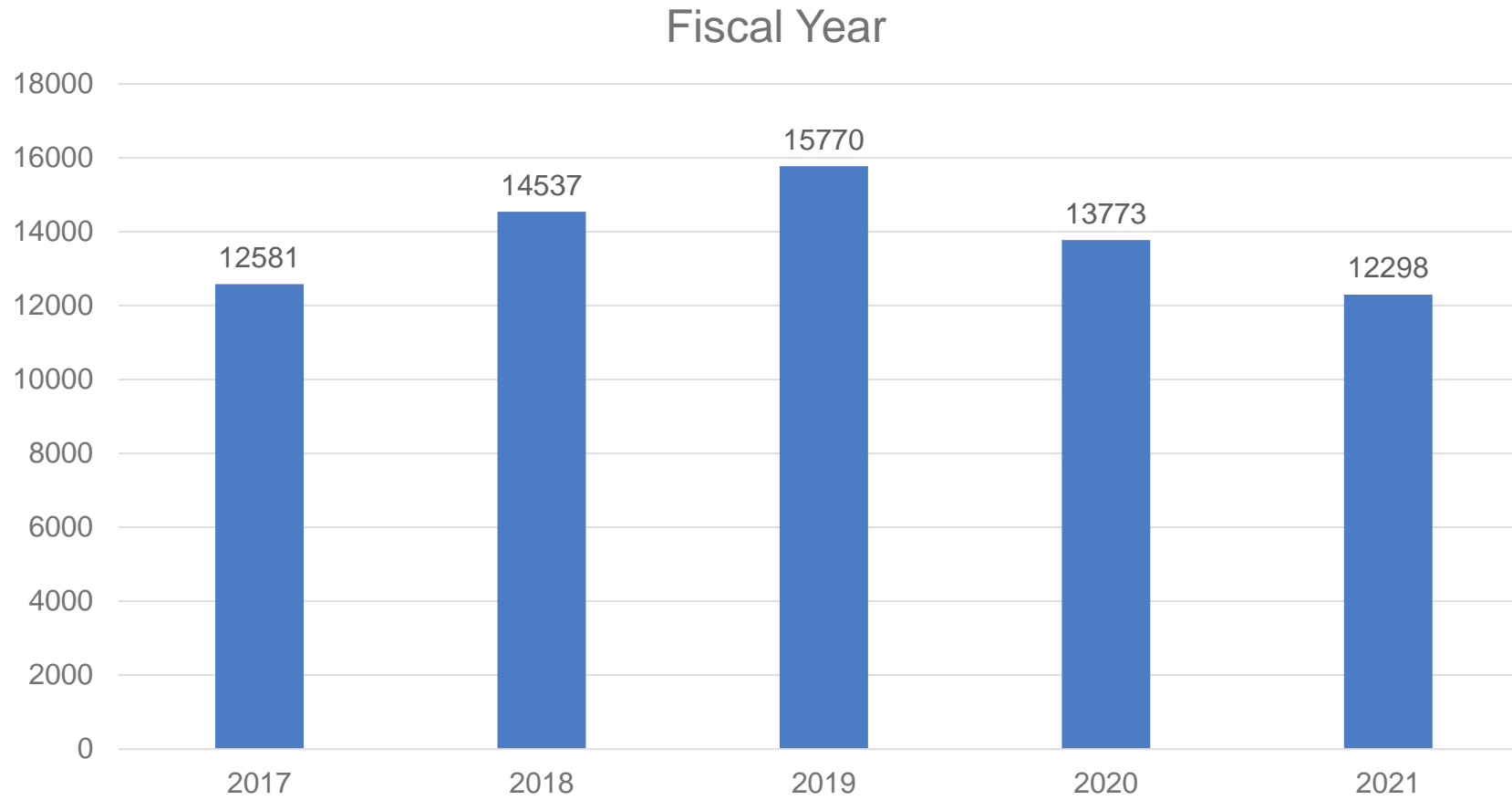
Criminal History

Updated Criminal History Provided

REASON FOR DEPARTURE FROM GUIDELINES

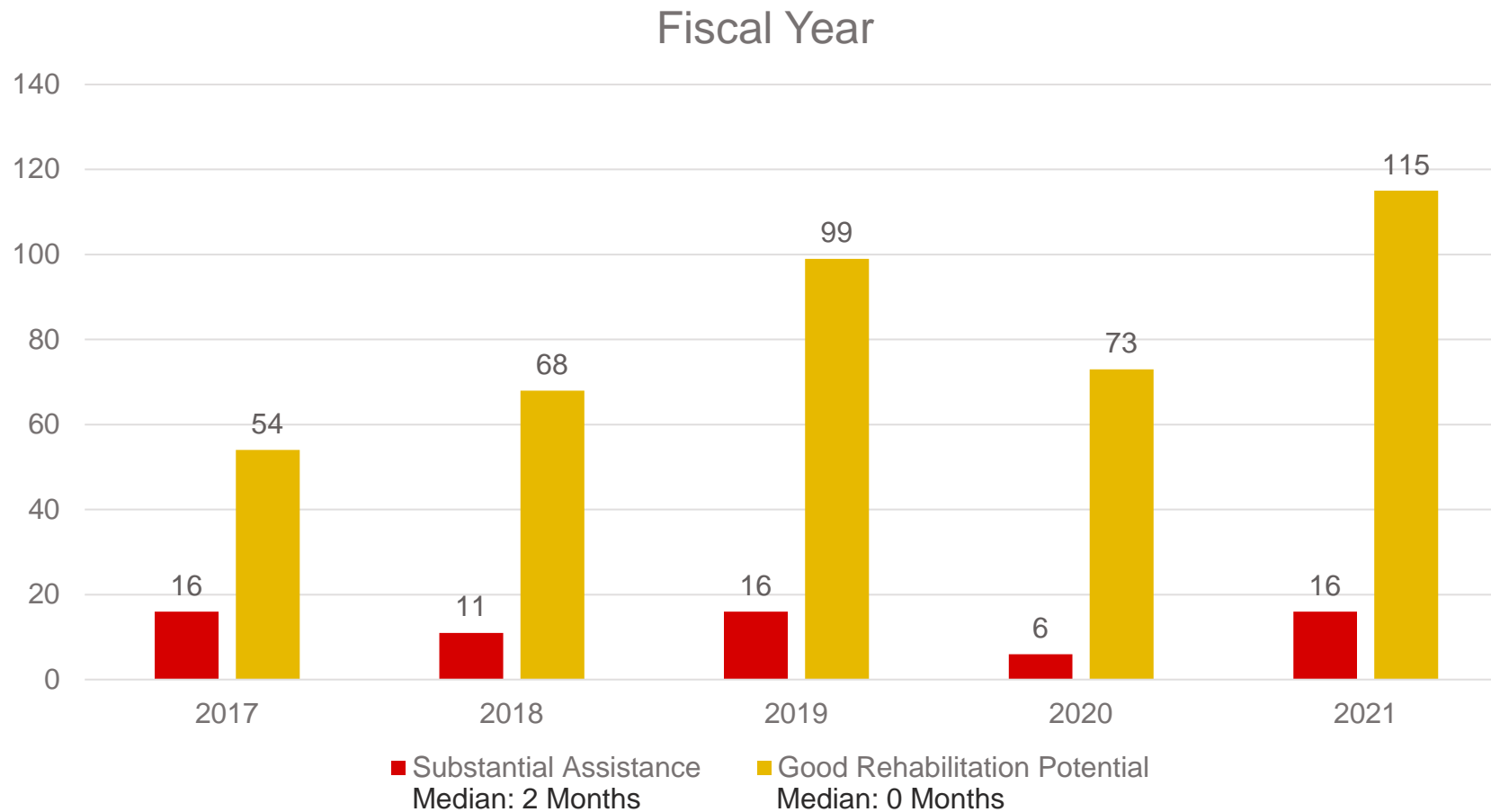
Both Factors were added in FY2021. Based on departure reasons provided by the judge and to reflect historical sentencing practices the low end drops to zero time for many cases. If the low end of the range is 3 years or less and the judge checks the Modification of Recommendation box, the low end drops to zero. If the recommendation is over 3 years, the low end is adjusted to half. In the case of the Probation Violation Guidelines, if the judge checks the Rehabilitation Box, the low end drops to zero.

Probation Violation Guidelines Received



Note: FY2022 = 13,790

Probation Violation Guidelines Received



Update 2

Continue to monitor sentencing patterns to determine if a Modification of Recommendation factor based on substantial assistance, acceptance of responsibility or expression of remorse can be supported by the data.

