

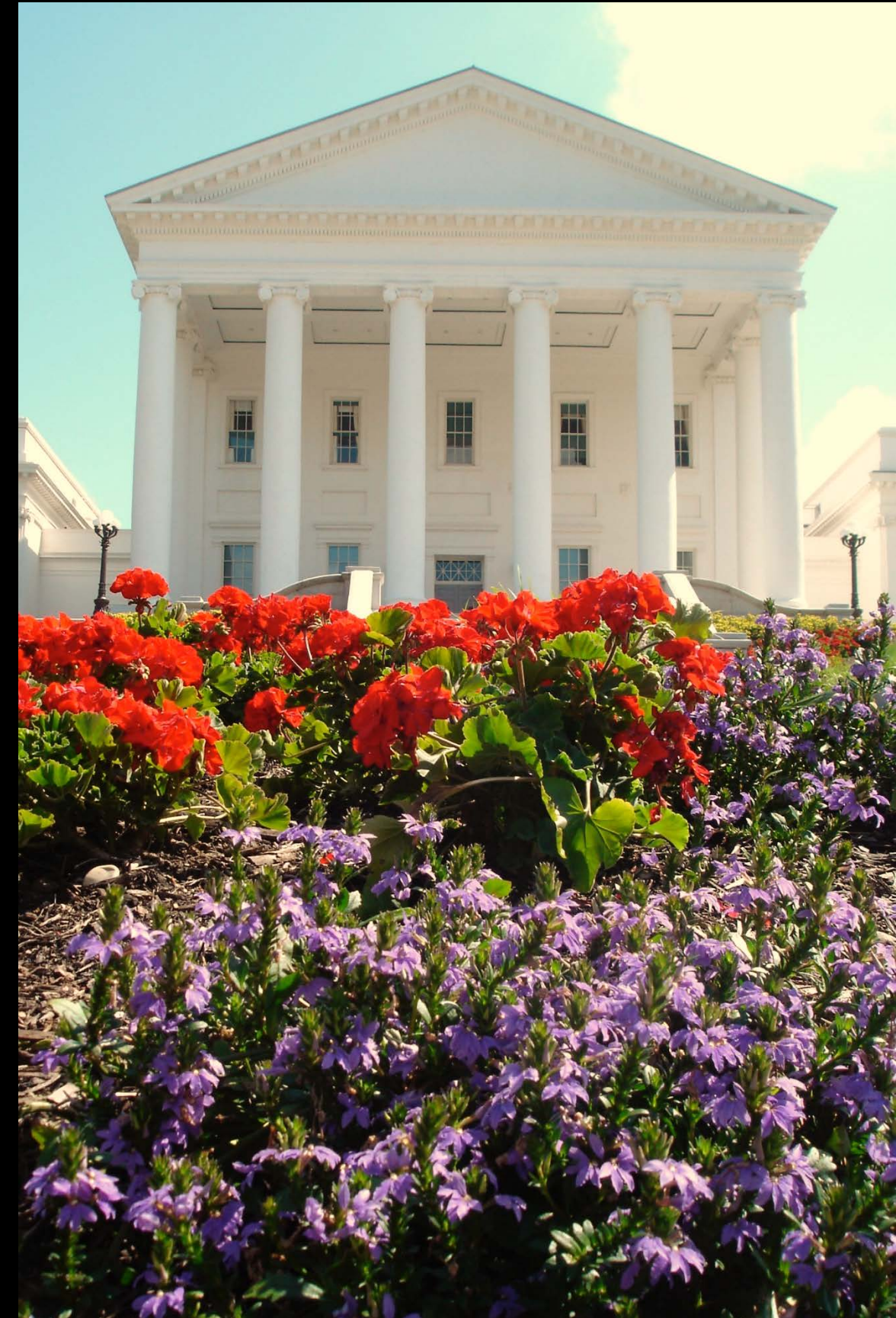
# IMPLEMENTATION

STATUTORY CHANGES AND GUIDELINES UPDATES

# 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.





# G U I D E L I N E S

**CONCURRENCE**

**SUBSTANTIAL ASSISTANCE/  
RESPONSIBILITY FACTOR**

**CASE DETAILS WORKSHEET**



## FY 2022 - Cases Coded and Keyed\*

Month	2021	2022	Total
JAN		5	
FEB		1	
MAR		0	
APR			
MAY			
JUN			
JUL	1,713		
AUG	1,766		
SEP	1,601		
OCT	1,460		
NOV	864		
DEC	102		
<b>TOTAL</b>	<b>7,506</b>	<b>6</b>	<b>7,512</b>

\* As of March 1, 2022

# Preliminary FY 2022 Judicial Agreement with Guideline Recommendations

## General Concurrence:

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

### 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.

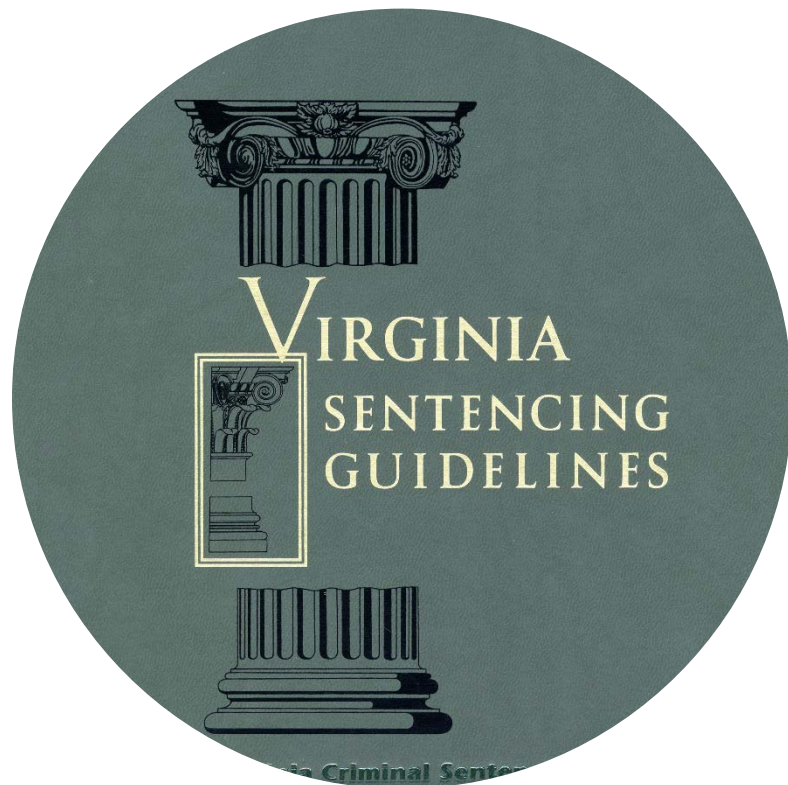
Substantial Assistance, Acceptance of Responsibility or Remorse

# BOX CHECKED

790 ON 7,156 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.



Substantial Assistance, Acceptance of Responsibility or Remorse

# CONCURRENCE

388 CASES NOW IN CONCURRENCE

382 WERE ALREADY IN CONCURRENCE

20 CASES NO CHANGE (AGGRAVATING)

FOR REVIEW PURPOSES ONLY

◆ **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%.

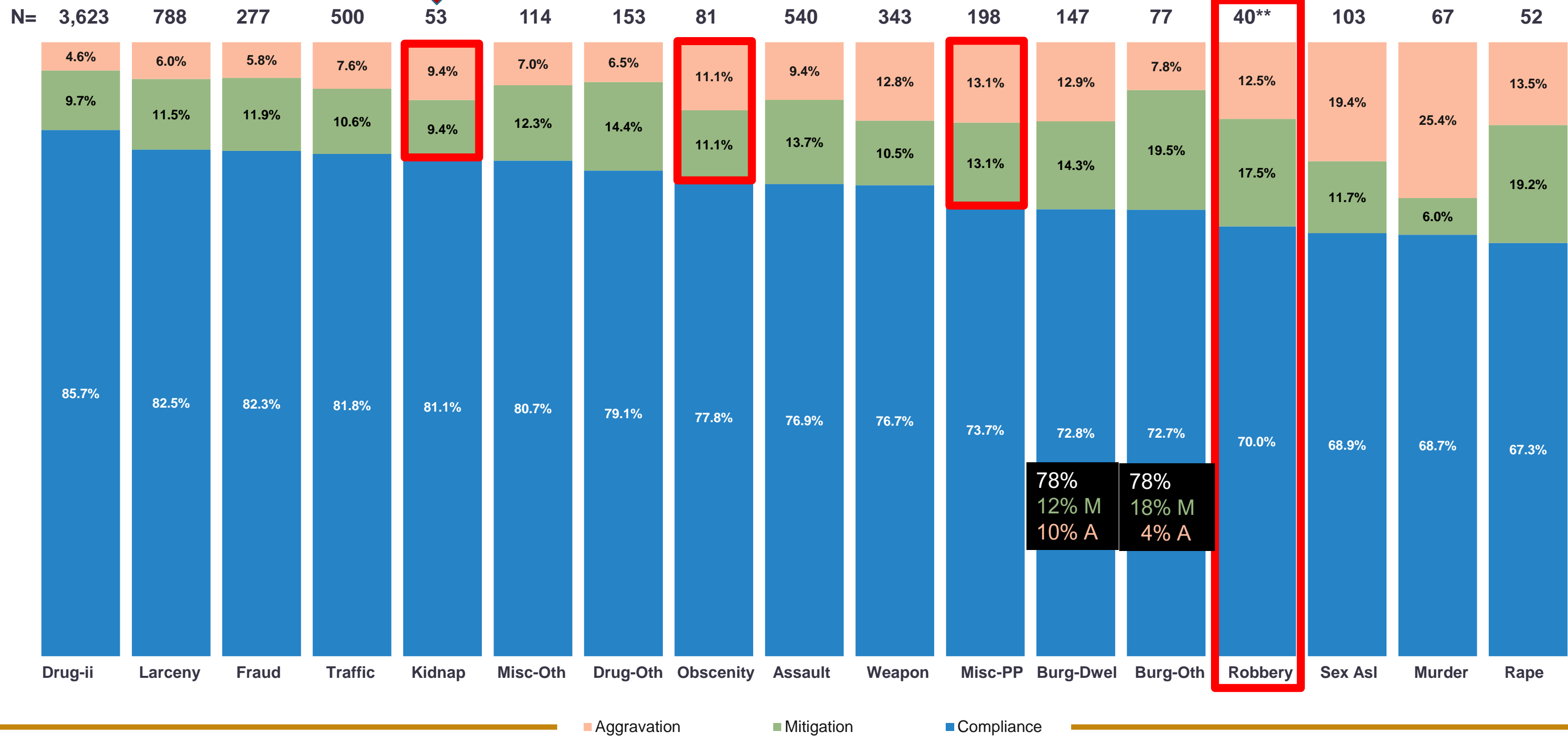
If accepted by the court the

Adjusted Range is:

\_\_\_\_ TO \_\_\_\_  
Years Months Days Years Mo Days

# 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 11 cases are carjacking; others are robbery guidelines prepared in error.



# Case Details Worksheet

## Added July 1, 2021



### Sentencing Guidelines

#### Case Details Worksheet

FOR REVIEW PURPOSES ONLY 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):

<input type="checkbox"/> Escaped	<input type="checkbox"/> Inmate	<input type="checkbox"/> Mandatory Parole	<input type="checkbox"/> Discretionary Parole	<input type="checkbox"/> None
<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"/> Good Behavior	
<input type="checkbox"/> Recognizance	<input type="checkbox"/> Community Program	<input type="checkbox"/> Pre-Trial Supervision	<input type="checkbox"/> Bond	
<input type="checkbox"/> Juvenile Probation	<input type="checkbox"/> Juvenile Parole	<input type="checkbox"/> Summons	<input type="checkbox"/> 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: \_\_\_\_\_



# CASE DETAILS WORKSHEET

## MISSING INFORMATION

(Case Details Worksheet Has at Least One Factor Marked in 54% of the Cases)

Offense	Percent
Rape	75.5%
Murder	69.1%
Sexual Assault	65.7%
Obscene	65.4%
Burglary Dwelling	64.4%
Robbery	64.3%
Assault	62.5%
Kidnapping	60.4%
Traffic	59.6%
Drug Other	57.8%
Burglary Other	55.8%
Miscellaneous Person	53.5%
Larceny	51.5%
Drug I/II	51.0%
Miscellaneous Other	50.9%
Fraud	49.1%
Weapon	48.9%

## SENTENTIAL INFORMATION

THE CASE DETAILS WORKSHEET TO PROVIDE RELEVANT INFORMATION AND MATERIAL FACTS FOR FUTURE ANALYSIS. STAFF WILL NOT BE ABLE TO ADJUST GUIDELINES TO REFLECT CRIMINAL JUSTICE REFORMS OR IDENTIFY CHANGES IN SENTENCING PATTERNS

**50 %**

Missing Defendant's Race

**68 %**

Missing Defendant's Ethnicity

**52 %**

Missing Defendant's Age

**91 %**

Missing Victim's Race

Expected to be higher. Victim information may not apply in all cases

**94 %**

Missing Victim's Ethnicity

Expected to be higher. Victim information may not apply in all cases

**93 %**

Missing Victim's Age

Expected to be higher. Victim information may not apply in all cases

**49 %**

Schedule I/II Cases Missing Drug Type

Location is Identified in 79% of the Robbery cases  
Injury is Identified in 62% of the Assault cases

# CASE DETAILS WORKSHEET

## ONE REASON FOR THE MISSING INFORMATION

### QUESTION 21

THIS QUESTION WAS DESIGNED TO PROVIDE THE JUDGE WITH REASONS TO MITIGATE FROM THE GUIDELINES RECOMMENDATION. WHEN THE INFORMATION WAS NOT AVAILABLE, IT WAS AGREED THAT THE DEFENSE ATTORNEY WOULD PROVIDE THE INFORMATION TO THE OFFICIAL GUIDELINES PREPARER (CA or PO).

#### Source of Information Missing (Most answered for Question 21 - 37%) **63%**



There may be multiple sources for the information:

Defense Attorney	8.3%
Defendant	15.7%
Presentence Report	11.3%
Commonwealth Atty	9.2%
Probation Officer	9.0%
Judge	.3%



#### Most Common Questions Answered

Source of Information	36.6%
Stable Residence	24.1%
Drug Use Admitted	21.6%
Accepts Responsibility ✓	20.2%
High School/GED	19.0%
Employment	16.2%
Under the Influence	15.2%
Unemployed	12.6%
Mental Health Issue	11.8%
Remorseful ✓	10.2%



#### Responsibility and Remorse

Acceptance of responsibility or expression of remorse on the case details worksheet does not need to be marked for the judge to make the decision to modify the low end of the guidelines. Conversely, if marked, the judge does not need to modify the low end of the guidelines.

Question 21 is only completed in about a third of all guidelines cases.

**69%** Prepared by Commonwealth's Attorney  
**31%** Prepared by Probation and Parole  
Missing 926 of 7,156



# Sentencing Guidelines Case Details Worksheet

FOR REVIEW PURPOSES ONLY

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  Discretionary 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)

**a. Drug abuse** (admitted, family information, documented in reports)  Yes  No Treatment: (in or completed treatment)  prior to offense  after arrest  
**b. Alcohol abuse** (admitted, family information, documented in reports)  Yes  No  prior to offense  after arrest  
**c. Mental health issues** (admitted, family information, documented in reports)  Yes  No  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  
 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: \_\_\_\_\_

# QUESTION 21

OFFICIAL PREPARERS ARE USING QUESTION 21 AS A REASON NOT TO COMPLETE THE CASE DETAILS WORKSHEET OR TO HAVE DEFENSE COUNSEL COMPLETE THE WORKSHEET.

DEFENSE ATTORNEYS ARE RELUCTANT TO COMPLETE THE WORKSHEET FOR SEVERAL REASONS. ONE REASON IS THAT THE INFORMATION MAY NOT BE BENEFICIAL TO THEIR CLIENT. ANOTHER REASON RELATES TO POTENTIAL ETHICAL ISSUE WITH DEFENSE COUNSEL COMPLETING THE OFFICIAL GUIDELINES. STAFF HAS BEEN IN CONTACT WITH THE STATE BAR ON THIS ISSUE.

## PROPOSAL

# LABEL QUESTION 21 AS OPTIONAL

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



# G U I D E L I N E S

## JURY TRIALS



# JURY TRIALS

## FISCAL YEARS 2007-2022\*\*

Fiscal Year	Jury Cases*	Percent of Total	Total Number of Cases
2007	377	1.46%	25,745
2008	397	1.46%	27,223
2009	381	1.46%	26,042
2010	400	1.60%	24,929
2011	351	1.42%	24,674
2012	299	1.23%	24,388
2013	295	1.18%	25,012
2014	308	1.21%	25,471
2015	261	1.05%	24,882
2016	281	1.17%	23,943
2017	286	1.15%	24,775
2018	282	1.14%	24,764
2019	315	1.21%	25,967
2020	207	0.95%	21,844
2021	66	0.32%	20,696
2022**	59	0.80%	7,380

COVID  
RESTRICTIONS  
STATUTORY CHANGE

\* Includes sentencing guidelines that identified the trial type as : jury trial, split jury/judge case and juveniles tried by a jury.

\*\* Fiscal year is from July 1, 2021, until December. This is not a complete year.



# P R O B A T I O N

**LENGTH OF PROBATION**

**AVERAGE SENTENCE**

**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 MARCH 1, 2022, ARE INCLUDED. THIS REPRESENTS SENTENCING EVENTS BETWEEN JULY 1, 2021, AND THE END OF DECEMBER 2021. (NOVEMBER AND DECEMBER ARE NOT COMPLETE)

ACCOMACK	13	FREDERICK	137	PATRICK	40
ALBEMARLE	16	FREDERICKSBURG	83	PETERSBURG	18
ALLEGHANY	42	GILES	38	PITTSYLVANIA	36
AMELIA	7	GLOUCESTER	40	PORTSMOUTH	114
AMHERST	40	GOOCHLAND	7	POWHATAN	17
APPOMATTOX	17	GRAYSON	32	PRINCE EDWARD	27
ARLINGTON	24	GREENSVILLE	18	PRINCE GEORGE	31
AUGUSTA	96	HALIFAX	64	PRINCE WILLIAM	107
BATH	8	HAMPTON	57	PULASKI	88
BEDFORD	44	HANOVER	117	RADFORD	21
BLAND	2	HENRICO	346	RAPPAHANNOCK	3
BOTETOURT	56	HENRY	51	RICHMOND CITY	109
BRISTOL	126	HOPEWELL	32	RICHMOND COUNTY	9
BRUNSWICK	1	ISLE OF WIGHT	16	ROANOKE CITY	65
BUCHANAN	48	JAMES CITY	4	ROANOKE COUNTY	89
BUCKINGHAM	17	KING & QUEEN	11	ROCKBRIDGE	47
BUENA VISTA	22	KING GEORGE	9	ROCKINGHAM	192
CAMPBELL	35	KING WILLIAM	6	RUSSELL	85
CAROLINE	28	LANCASTER	2	SALEM	53
CARROLL	13	LEE	59	SCOTT	36
CHARLES CITY	9	LOUDOUN	38	SMYTH	57
CHARLOTTE	12	LOUISA	37	SOUTHAMPTON	48
CHARLOTTESVILLE	6	LUNENBURG	3	SPOTSYLVANIA	168
CHESAPEAKE	243	LYNCHBURG	62	STAFFORD	154
CHESTERFIELD	241	MADISON	10	STAUNTON	65
CLARKE	1	MARTINSVILLE	2	SUFFOLK	72
COLONIAL HEIGHTS	38	MATHEWS	7	TAZEWELL	168
CRAIG	1	MECKLENBURG	29	VIRGINIA BEACH	345
CULPEPER	54	MIDDLESEX	4	WARREN	51
CUMBERLAND	4	MONTGOMERY	49	WASHINGTON	16
DANVILLE	67	NELSON	26	WAYNESBORO	55
DICKENSON	38	NEW KENT	31	WESTMORELAND	20
DINWIDDIE	12	NEWPORT NEWS	65	WILLIAMSBURG	50
ESSEX	2	NORFOLK	218	WINCHESTER	84
FAIRFAX COUNTY	89	NORTHAMPTON	14	WISE	58
FAUQUIER	30	NORTHUMBERLAND	3	WYTHE	81
FLOYD	8	NOTTOWAY	6	YORK	77
FLUVANNA	21	ORANGE	4	MISSING	28
FRANKLIN COUNTY	127	PAGE	23	Total	6,202

# FY2018

JULY.....	1,193
AUGUST.....	1,421
SEPTEMBER.....	1,197
OCTOBER.....	1,267
NOVEMBER.....	1,164



Includes all forms submitted

# FY2022

JULY.....	1,180
AUGUST.....	1,226
SEPTEMBER.....	1,155
OCTOBER.....	1,052
NOVEMBER.....	909

## ARE THE NUMBER OF VIOLATIONS INCREASING?

OFTEN THE COURTS DELAY SUBMITTING WORKSHEETS. THE DELAY IS AT LEAST THREE MONTHS. VIOLATIONS DURING THIS INITIAL PERIOD WERE LIKELY STARTED BEFORE JULY 1, 2021. IT WILL TAKE MUCH LONGER TO IDENTIFY TRENDS RELATED TO PROBATION VIOLATIONS.





After reviewing the preliminary data for Fiscal Year (FY) 2022, there do not appear to be many duplicate social security numbers in the data. Out of 6,202 cases there were approximately 500 revocation events for the same social security number. However, when FIPS codes are included, there are only two cases with the same social security number in the same locality.

This appears to be one of many interpretations of the statutes related to probation violations. Staff will continue to monitor the application of § 19.2-306.1 and related statutes.



*What about multiple violations not from a single course of conduct? Are they separate violations?*

## **ARE GUIDELINES COMPLETED FOR MULTIPLE INCIDENTS DURING THE SAME SUPERVISION PERIOD?**

“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.”

### **§ 19.2-306.1**

# BEFORE

FY2014-FY2018

3%

Were Sentenced To Supervised Probation of 5 Years or More\*

According to Sentencing Guidelines (PVG) data for FY2014 and FY2018, among 48,318 felony offenders, 1,426 offenders (3.0%) were sentenced to a probation term of five years or more.

The median probation sentence, if imposed, for felony offenders during this time period was 18.0 months and the mean was 20.9 months.

# AFTER

FY2022 – Jul - Dec

12%

Were Sentenced To Supervised Probation of 5 Years or More\*

According to Sentencing Guidelines (PVG) data for FY2022 (July-December), among 4,904 felony offenders, 568 offenders (11.6%) were sentenced

to a probation term of more than 5 years. Of those, 313 were given indeterminate probation periods. Indeterminate probation was set to 5 years for this analysis.

The median probation sentence, if imposed, for felony offenders during this time period was 24.0 months and the mean was 36.5 months.

\* Defendants could still be released from probation before the length set by the judge at the original sentencing

— 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 require the defendant to wear a GPS 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. The court may fix the period of probation for up to the statutory maximum period for which the defendant is eligible for probation. The limitation on the period of probation shall not apply to the extent that an additional period of probation is required by the court. The court may require the defendant to attend 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. The court may suspend or modify the sentence in the same manner as the statement required pursuant to subsection B of § 19.2-298.01. The judge, after convicting the defendant, 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, the judge shall require that fingerprints and a photograph be taken by a law-enforcement officer as a condition of probation or suspension of sentence. The court may require the defendant to register with the State Crime Records Exchange under the provisions of subsection D of § 19.2-390.

## SENTENCING GUIDELINES

FY2014-FY2018      FY2022 – Jul- Dec

42%      37%

Median 36 Months      Median 36 Months  
Mean 43.34 Months      Mean 39.22 Months

Were Sentenced To Supervised Probation of 5 Years or More\*

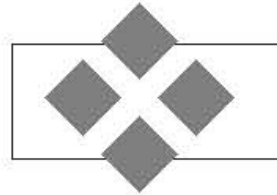


## O V E R 5 Y R S

THE ORIGINAL OFFENSES WERE  
PRIOR TO JULY 1, 2021.

6 YRS	-	5
7 YRS	-	4
8 - 9 YRS	-	5
10 YRS	-	23
11-14 YRS	-	2
15 YRS	-	3
20 + YRS	-	6

- Of the 568 cases sentenced to probation of 5 years or more, 48 exceed 5 years.
- Less than 1% (.98%) of probation periods exceed the statutory limits.
- Eight of the cases were for sex offenses (no limit for certain crimes).
- Stakeholders question if the new law applied to underlying convictions prior to July 1, 2021.
- Staff will continue to monitor this topic and report back to the VCSC.



# 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

### 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

- Amount of Time Imposed.....  Life +          Sentenced to Time Served
- 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

Recommend changing to **Indeterminate**

Staff will monitor if there is an increase in the number of defendants released from probation

# BEFORE

FY2014-FY2018

TYPE VIOLATION	Median Sentence for Violation (Months)
Technical First	3.0
Technical Second	6.0
Third Violation +	11.5
Technical 9 or 11 (Current) First	4.0
Technical 9 or 11 (Current) Second +	12.0
Special Conditions (Sex & Gang Include)	6.0
New Misdemeanor	4.0
New Felony	12.0

Source: Probation Violation Guidelines Study (2017-2020)

Note: Technical Condition 9 (Firearm) and Condition 11 (Absconding) are treated distinctly in § 19.2-306.1

# AFTER

FY2022 – Jul - Dec

TYPE VIOLATION	Median Sentence for Violation (Months)
Technical First	0.0
Technical Second	.46
Technical Third +	6.0
Technical 9 or 11 First	.46
Technical 9 or 11 Second +	5.5
Special Conditions	3.0
New Misdemeanor	3.0
New Felony	8.0

Note: Technical Condition 9 (Firearm) and Condition 11 (Absconding) are treated distinctly in § 19.2-306.1

# SENTENCE

MEDIAN EFFECTIVE TIME TO SERVE FOR PROBATION VIOLATIONS.

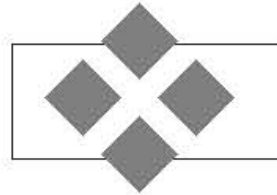
FOR COMPARISON, AN EFFORT WAS MADE TO CONVERT THE FY14-FY18 SAMPLE DATA INTO THE CATEGORIES DEFINED BY STATUTE. THIS IS NOT A PERFECT MATCH BECAUSE THE TYPES OF PRIOR TECHNICAL VIOLATIONS ARE DIFFICULT TO DETERMINE IN HISTORICAL DATA (AND IN PRACTICE).



# DEFINITION OF ABSCONDING

## VIII. Absconders from Supervision (4-APPFS-3B-10)

- A. When a reasonable effort has been made to locate an offender and their whereabouts are unknown, they should be considered as an absconder from supervision.
  - 1. Reasonable effort includes follow-up inquiry at the approved residence and employment, as well as, local jails and hospitals, and the questioning of family members and close friends.
  - 2. The P&P Officer should quickly follow-up on any suspected absconder but reserve formal action pending results of the efforts to locate the offender and an assessment of the circumstances.
  - 3. All efforts expended to locate any suspected absconder must be documented in the offender's Case Notes.



# 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

### 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

Amount of Time Imposed.....  Life +          Sentenced to Time Served

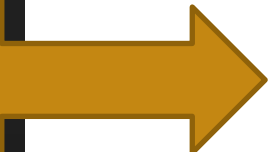
Amount of Time to Serve for this Violation (total effective sentence)..  Life +          Sentenced to Time Served

### 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

Added July 1, 2021



4,904

FY22 GUIDELINES (JUL-DEC)  
USED TO CALCULATE CONCURRENCE

182 (4%)

IDENTIFIED AS HAVING  
GOOD REHABILITATION POTENTIAL

R E H A B I L I T A T I O N  
P O T E N T I A L

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.





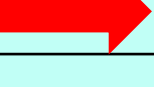


# BEFORE

## FY2014-FY2018

# AFTER

## FY2022 – Jul - Dec

TYPE VIOLATION	CONCURRENCE	MITIGATION	AGGRAVATION	N	CONCURRENCE	MITIGATION	AGGRAVATION	N
Technical First	55.0%	22.6%	22.4%	424	98.8%	0.0%	1.2%	644
Technical Second	56.8%	24.9%	18.3%	345	97.2%	0.0%	2.8%	325
Technical Third +	35.4%	41.5%	23.2%	82	 69.3%	26.1%	4.5%	199
Technical 9 or 11 First	57.7%	26.5%	15.8%	215	97.5%	0.0%	2.5%	556
Technical 9 or 11 Second +	55.1%	29.7%	15.3%	118	 70.1%	24.4%	5.5%	127
Special Conditions	56.5%	16.9%	26.6%	508	 79.4%	16.6%	4.1%	592
New Misdemeanor					 84.5%	11.2%	4.3%	1,118
New Felony					 78.6%	14.5%	7.0%	1,338
TOTAL	55.2%	23.2%	21.6%	1,857	85.5%	10.2%	4.3%	4,899

There were 165 cases that could not be grouped by type of violation. The data does not distinguish between prior new law violations and prior technical violations. All that is known is that in the defendant's record there were prior revocations. The current type of violation is used to classify the type of violation.

\*Concurrence was calculated based formulas used in FY14-18, and the new good rehabilitation factor (FY22). In future analysis, a decision will be made about continuing to apply the same rounding rules used in the past. The rules applied for this analysis are similar to the rules utilized to calculate concurrence for the regular sentencing guidelines.

Missing 5 cases

Concurrence: **79.8%\***  
(excludes cases in which statutory limits applied)

### Preliminary Strict Concurrence

FY2014-FY2018 49.8 %

FY2022 – Jul – Dec 71.6%

# CONCURRENCE

S G  
PVGs 23

# Questions Published in Annual Report

Do changes to the statute address known issues? Is there any recent case law that would be of assistance?

1. Does the statute apply to local community corrections/probation programs?
2. Does the 14-day requirement apply to the revocation event or to each technical violation? (i.e., can the penalties be stacked?)
3. 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?)
4. 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?

5. 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?

6. 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?

7. 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.

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

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

# IMPLEMENTATION

STATUTORY CHANGES AND GUIDELINES UPDATES

