



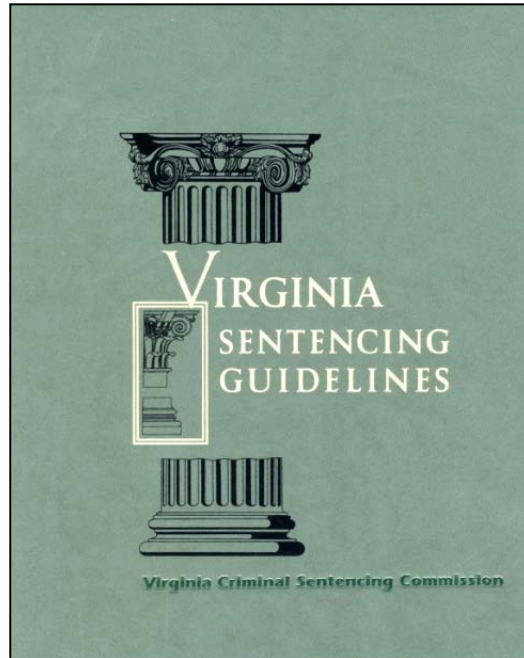
**VIRGINIA CRIMINAL
SENTENCING COMMISSION**

Felony Sentencing Guidelines Judicial Survey

September 13, 2022



Full Reanalysis of Sentencing Guidelines



IN 2021, THE COMMISSION APPROVED A FULL REANALYSIS OF ALL FELONY OFFENSE GUIDELINES

The study will be a large-scale, multi-year project.

The approach will be holistic and comprehensive.

OBJECTIVE

Re-benchmark the Guidelines so that they reflect current sentencing practices as accurately as possible.

RATIONALE FOR FULL REANALYSIS

While Virginia's judges concur with Guidelines at a high rate overall, they depart more often in certain types of cases (e.g., midpoint enhancement cases). Such cases would be examined in detail.

Recent changes in felony larceny threshold (2018, 2020)

Recent legislation to create classes of robbery (2021)



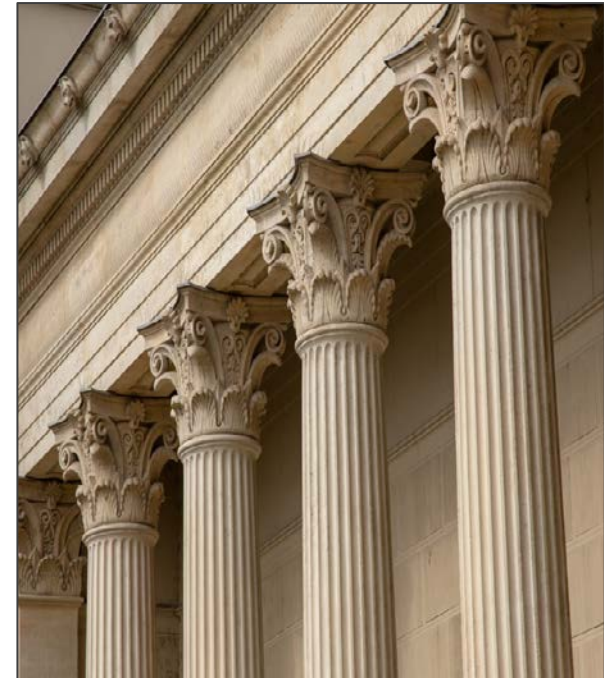
Felony Sentencing Guidelines Judicial Survey

Staff recommends conducting a **SURVEY** of circuit court judges to obtain input and guidance for the re-analysis project.

The Commission's previous survey, related to Probation Violation Guidelines, was very informative (2018).



Survey results may be useful in pointing staff to areas of the Guidelines that are in need of revision and to factors most important to judges.



Previous Judicial Survey

As part of the Probation Violation Guidelines study, the Commission conducted a survey to seek input and guidance from circuit court judges.

- Survey was administered in September - October 2018.

Judges had the option of taking the survey online through Survey Monkey or on paper.

- Nearly 70% of responding judges used the online Survey Monkey tool.

Response rate by active circuit court judges was 89.7%.

- Chief Justice Lemons sent an e-mail encouraging judges to participate.



Probation Violation Guidelines Judicial Survey

In 2003, the General Assembly directed the Sentencing Commission to develop discretionary sentencing guidelines for felony offenders who are determined by the court to be in violation of their probation supervision for reasons other than a new criminal conviction (i.e., technical violators). The General Assembly's mandate specified that violation guidelines were to be based on an examination of historical judicial sanctioning patterns in revocation hearings. Pursuant to the 2003 directive, the Commission examined sanctioning practices for violations of community supervision not involving a new conviction. Using the results of this empirical study, the Commission developed historically-based sentencing guidelines applicable to these offenders. These guidelines took effect on July 1, 2004, and were refined in 2007.

Judicial concurrence with the supervised probation violation guidelines has remained significantly lower than the overall compliance rate with the sentencing guidelines for felony offenses. The Commission recently approved a new study of probation violations that will provide the foundation needed to revise the guidelines used in revocation cases. To do this, the Commission is seeking input and guidance from circuit court judges through a survey. Responding to the survey will provide the Commission with valuable information to improve the utility of the guidelines for Virginia's judges.

The survey does not include any identifying information and responses to the survey will be completely anonymous.

Completion of the survey should take less than 30 minutes.

The Commission looks forward to receiving your input by **TBD**. Your assistance is greatly appreciated.

To complete the survey online, please use the link below:

https://www.surveymonkey.com/r/VCSC_PVG

Felony Sentencing Guidelines Judicial Survey



Staff have developed a draft survey for members to review.



If approved, staff will administer the survey in September or October 2022.



As with the previous survey, judges would have the option to take the survey online through Survey Monkey or on paper.



Results would be presented at the November 2022 meeting.





VIRGINIA CRIMINAL SENTENCING COMMISSION

100 North Ninth Street • Richmond, Virginia 23219 • Tel.: 804.225.4398 • www.vcsc.virginia.gov

PURPOSE

Felony Sentencing Guidelines Judicial Survey

The Virginia Criminal Sentencing Commission recently approved a full-scale re-analysis of all Guidelines offense groups. The approach will be holistic and comprehensive and require two to three years to complete. The goal of the study is to re-benchmark the Guidelines so that they reflect current sentencing practices as accurately as possible.

Unlike most states, Virginia's Sentencing Guidelines are based on analysis of historical sentencing data. In fact, the *Code of Virginia*, in § 17.1-803, requires the Commission to develop guidelines that take into account historical sentencing practices. In essence, the Guidelines are designed to provide judges with a benchmark of the typical case outcome given the defendant's current offenses and prior record. There is one exception to the historical basis of Virginia's Guidelines. Per § 17.1-805, the Guidelines must include enhancements to increase sentence recommendations for defendants with convictions for violent felonies. The percent enhancements specified in § 17.1-805 have been in the *Code* since 1995 and have been unchanged since that time. The 2022 General Assembly passed legislation that clarifies the Commission's authority to recommend revisions to the Guidelines based on historical sentencing data, specifically in regards to the size of midpoint enhancements.

The Commission is seeking input and guidance from circuit court judges through the survey that follows. Responding to the survey will provide the Commission with valuable information for the re-analysis project and direct the Commission's attention to areas of the Guidelines that may need revision.

The survey questions pertain only to felony sentencing events. The questions do not pertain to probation or suspended sentence revocations.

The survey does not include any identifying information and responses to the survey will be completely anonymous.

Completion of the survey should take about 20 minutes.

The Commission looks forward to receiving your input by TBD. Your assistance is greatly appreciated.



VIRGINIA CRIMINAL
SENTENCING COMMISSION

ANONYMOUS

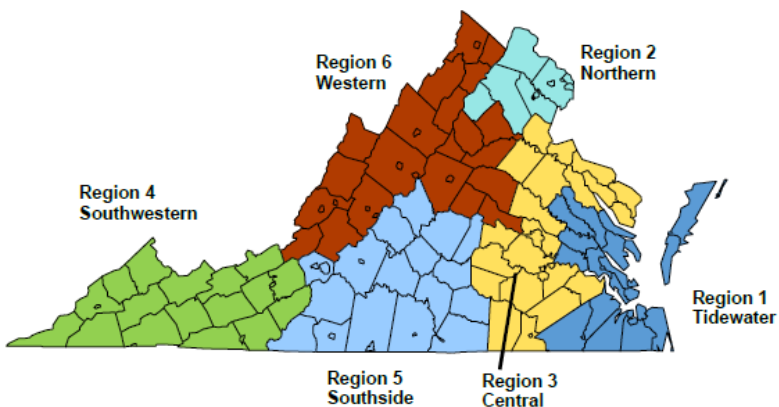


Felony Sentencing Guidelines Judicial Survey

The first set of questions pertains to your jurisdiction.

★ 1. In which region do you sit most often?

- Region 1 – Tidewater
- Region 2 – Northern
- Region 3 – Central
- Region 4 – Southwestern
- Region 5 – Southside
- Region 6 – Western



★ 2. Does the jurisdiction in which you sit most often have a Public Defender Office?

- Yes
- No

★ 3. Does the jurisdiction in which you sit most often have a Drug Court program?

- Yes
- No

★ 4. Does the jurisdiction in which you sit most often have any specialty docket program(s) other than Drug Court?

- Yes
- No



Felony Sentencing Guidelines Judicial Survey

The following questions ask about the way you approach sentencing in felony cases.

★ 5. Please identify the statement that most closely approximates the way in which you approach a sentencing decision.

- I decide whether or not a felony defendant should receive a **prison** sentence and then I decide on the appropriate prison sentence length.
- I decide whether or not a felony defendant should be **incarcerated (jail or prison)** and then I decide on the appropriate sentence length.
- Other (please describe)

★ 6. When determining a sentence, will you consider the length of time or proportion of time the defendant will serve on the sentence you order?

- No
- Yes

★ 7. When sentencing felony defendants, how does a lack of treatment/program resources affect your sentencing decision?

- More likely to incarcerate in jail
- More likely to incarcerate in prison
- Less likely to incarcerate
- No impact
- Not typically an issue in my jurisdiction
- Other _____



VIRGINIA CRIMINAL SENTENCING COMMISSION

100 North Ninth Street • Richmond, Virginia 23219 • Tel.: 804.225.4398 • www.vcsc.virginia.gov

The following questions ask about the factors that are important to you when sentencing felony defendants.

Your responses to the following questions will inform the Commission as to which factors you consider when sentencing individuals and how important those factors are in your sentencing decision.

8. When sentencing felony defendants, please indicate the importance of each of the following factors in your sentencing decision. Use the scale shown below, where 1 means “not at all important” and 5 means “extremely important.” Mark the number that best fits your opinion. Mark “N/A” if a factor is not applicable or is not typically an issue in your jurisdiction.

Factors related to the sentencing hearing

	Not at all important	2	Somewhat important	4	Extremely important	N/A
	1		3		5	
The defendant pled guilty	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Defendant accepted responsibility (did something beyond just pleading guilty)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Defendant provided substantial assistance in the apprehension or prosecution of others	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Defendant expressed remorse	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
He/she has good rehabilitation potential	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Defendant has treatment needs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
He/she obeyed all conditions of pretrial release (if released while awaiting trial)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Length of time served in jail pending violation hearing (if any)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
DOC’s COMPAS risk/needs assessment	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Sentencing Guidelines recommendation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The Sentencing Guidelines nonviolent offender risk assessment instrument: Recommendation for alternative sanction (if applicable)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Recommendation of the prosecutor	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Request of defendant/defense attorney	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Defendant will also serve time for an offense in another sentencing event	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Not at all important 1 2 Somewhat important 3 4 Extremely important 5 N/A

Defendant will also serve time for a probation violation as a result of the current conviction						
Defendant was charged with failure to appear during the court process for the current offense(s)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
He/she was arrested for a new offense while in the community awaiting trial/sentencing for the current offense(s)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Factors related to the current offense(s)

	Not at all important	2	Somewhat important	4	Extremely important	N/A
	1		3		5	
Type of most serious offense resulting in conviction (person, property, drug, other)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Degree/type of victim injury	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The number of victims across all offenses in the sentencing event	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Young victim	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Elderly or incapacitated victim	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Weapon other than a firearm was brandished or used	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Actual firearm was brandished or used	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
A simulated or feigned weapon was indicated (victim believed it to be real)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The defendant was on probation or parole supervision at the time he/she committed the current offense(s)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
He/she was under suspended sentence or period of good behavior when he/she committed the current offense(s)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The defendant was on bond or other pretrial release when he/she committed the current offense(s)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
For felony drug crimes, the type of drug(s) possessed or distributed by the defendant	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
For felony drug distribution offenses, the amount of drug sold or distributed by the defendant	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The defendant was not the leader in planning or perpetrating the offense(s)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Factors related to prior record

	Not at all important 1	2	Somewhat important 3	4	Extremely important 5	N/A
Number of prior felony convictions for crimes against the person	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Number of prior felony convictions for crimes against property (larceny, fraud, burglary with intent to commit larceny)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Number of prior felony convictions for drug offenses	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Number of misdemeanor convictions for crimes against the person	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Number of misdemeanor property crimes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Number of misdemeanor drug convictions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
For defendants under 30 years of age, juvenile record of delinquency	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
For defendants 30 years of age or older, juvenile record of delinquency	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Number of previous felony sentencing events (not the raw number of convictions)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Number of prior state-responsible prison sentences served (sentences of 1 year or more)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Number of prior local-responsible jail sentences served (sentences of 1 day to 12 months)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Length of criminal record (time period over which criminal record spans)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Number of prior supervised probation/parole or community-based program revocations	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Number of previous convictions for the same type of offense as the current offense(s) at sentencing	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Prior Category I violent felony record (as defined in § 17.1-805)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Prior Category II violent felony record (as defined in § 17.1-805)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
A gap period (lapse) between the current offense(s) and previous convictions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Factors related to substance use and mental health

	Not at all important 1	2	Somewhat important 3	4	Extremely important 5	N/A
Defendant has a substance use history prior to the offense(s) at sentencing	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Defendant has a drug addiction	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Defendant has an alcohol addiction	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Defendant was actively engaged in treatment at time of the offense(s) or is actively engaged treatment at time of sentencing	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Defendant has a mental health issue that played a role in the offense(s)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Factors related to defendant characteristics, behavior, family and peers

	Not at all important 1	2	Somewhat important 3	4	Extremely important 5	N/A
Positive support network (e.g., family, friends)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Gang membership or activity	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Anti-social peers	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Offender's positive behaviors since the offense (e.g., attending treatment or NA/AA meetings, employed, etc.)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Employment status (employed or working regularly?)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Stability of residence	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Young defendant	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Older or handicapped defendant	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Defendant has children to care for/support	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>



VIRGINIA CRIMINAL SENTENCING COMMISSION

100 North Ninth Street • Richmond, Virginia 23219 • Tel.: 804.225.4398 • www.vcsc.virginia.gov

- ★ 9. Please describe any other factors you consider when sentencing felony defendants that are not listed in the previous factor questions.
- ★ 10. When you determine the sentence for a felony defendant, what three factors are most important to you?
- #1
#2
#3
- ★ 11. In drug cases involving the sale, distribution, or possession with intent to distribute, do you consider certain drugs to be more serious and therefore warranting a harsher sentence?
- No
 Yes
- If Yes, what types of drugs do you consider to be more serious?
- ★ 12. Please identify the statement that most closely approximates the way you think the Guidelines should address a defendant's prior record.
- All prior record convictions should be given the same weight on the Guidelines.
 Older prior record should be discounted or weighed less on the Guidelines if the defendant has been relatively crime-free for a period of time.
 Older prior record should be discounted or weighed less on the Guidelines even if the defendant has had convictions in the interim.
 Certain types of convictions should always be given full weight on the Guidelines (e.g., murder, robbery, or rape) regardless of how long ago they occurred, even if other types of prior record convictions are discounted or weighed less.
 Prior record from a certain number of years in the past should not be scored at all on the Guidelines.
 Other (Please explain)

- ★ 13. If you feel that older prior record should be weighed less or should not be scored on the Guidelines, what period of time do you think is most appropriate for the prior record "look back" period?
- Most recent 10 years of prior record
 Most recent 15 years of prior record
 Most recent 20 years of prior record
 Other _____
- Not applicable to me.
- ★ 14. Should the defendant's juvenile adjudications of delinquency be scored on the Guidelines?
- No
 Yes, but they should be weighed less than adult convictions.
 Yes, and they should be weighed the same as adult convictions.
 Other (Please explain)
- ★ 15. What do you think would make the Sentencing Guidelines more helpful?
- ★ 16. Is there anything else you would like to communicate to the Sentencing Commission regarding Sentencing Guidelines?

THANK YOU FOR PARTICIPATING IN THE SURVEY



VIRGINIA CRIMINAL SENTENCING COMMISSION



Questions



VIRGINIA
SENTENCING
GUIDELINES

