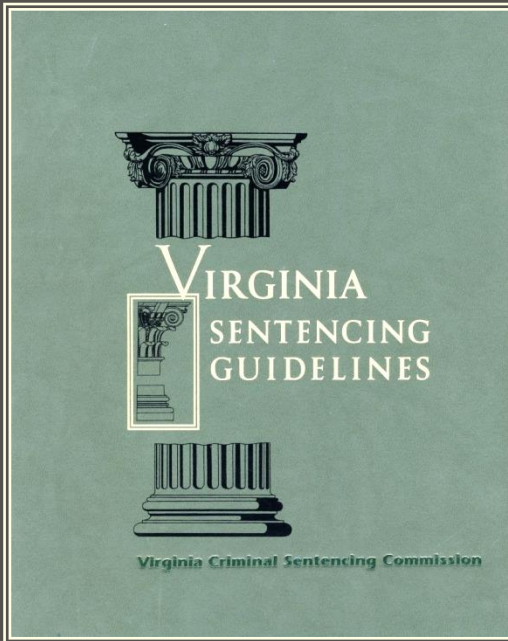




VIRGINIA CRIMINAL SENTENCING COMMISSION

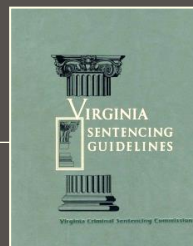


Possible Recommendations for Guidelines Revisions

November 1, 2023

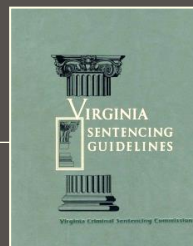
Modifications to the Sentencing Guidelines

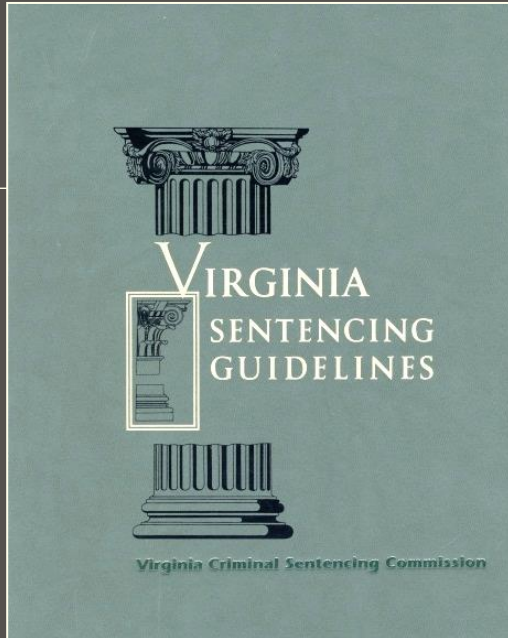
- The Commission closely monitors the sentencing guidelines system and, each year, deliberates upon possible modifications to the guidelines.
- Under § 17.1-806 of the *Code of Virginia*, any modifications adopted by the Commission must be presented in its annual report, due to the General Assembly each 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.
- 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:

Add Delivery of Drugs to Prisoner (§ 18.2-474.1) to the Miscellaneous/Other worksheets

Delivery of Drugs to Prisoner

§18.2-474.1

§ 18.2-474.1

Notwithstanding the provisions of § 18.2-474, any person who shall willfully in any manner deliver, attempt to deliver, or conspire with another to deliver to any prisoner confined under authority of the Commonwealth of Virginia, or of any political subdivision thereof, or to any person committed to the Department of Juvenile Justice in any juvenile correctional center, any drug which is a controlled substance regulated by the Drug Control Act in Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1 or marijuana is guilty of a Class 5 felony. Any person who shall willfully in any manner so deliver or attempt to deliver or conspire to deliver to any such prisoner or confined or committed person, firearms, ammunitions, or explosives of any nature is guilty of a Class 3 felony.

Delivery of Drugs to Prisoner
§ 18.2-474.1
Penalty: 1Y – 10Y

FY2017 – FY2022
Number of Sentencing Events = 401

Disposition	Percent	Median Sentence
No Incarceration	28.2%	N/A
Jail	43.4%	6 Months
Prison	28.4%	13 Months

Data reflect events in which this offense was the primary
(or most serious) offense at sentencing.

Section A - Proposed

Offenders convicted of this offense will be assigned with 2 points for 1 count.

PROPOSED SPLIT FACTOR –
Offenders convicted of one or more prior felony drug offenses will receive an additional 1 point if the primary offense is delivery of drugs to a prisoner.

Those with one or more prior felony drug convictions will have the correct proportion of offenders going to Section B vs. Section C.

Miscellaneous/Other Section A

Offender Name: _____

◆ Primary Offense

A. Perjury, falsely swear an oath (1 count).....	1
B. Nonviolent sex offender, fail to register, etc., 2nd/subsequent (1 count).....	2
C. Violent sex offender, fail to register or provide false information (1 count).....	2
D. Violent sex offender, fail to register, etc., 2nd/subsequent (1 count).....	2
E. Failure to appear in court for felony offense	
1 count.....	1
2 counts.....	4
F. Escape from correctional facility (1 count).....	7
G. Possession or sale of Schedule III drug or marijuana by prisoner (1 count).....	3
H. Participation in offense by/for gang (1 count).....	5
I. Participation in offense by/for gang with juvenile member (1 count).....	6
J. Provide wireless device to or possession of wireless device by prisoner (1 count).....	2
K. Delivery of narcotics, marijuana to prisoner (1count).....	2

◆ Primary Offense Remaining Counts Total the maximum penalties for counts of the primary not scored above

Years: 5 - 7.....	1
8 - 18.....	2
19 - 28.....	3
29 - 38.....	4
39 or more.....	5

◆ Additional Offenses Total the maximum penalties for additional offenses, including counts

Years: Less than 1.....	0
1 - 7.....	1
8 - 18.....	2
19 - 28.....	3
29 - 38.....	4
39 or more.....	5

◆ Victim Injury

Threatened, emotional, physical or serious physical.....	1
Life threatening.....	2

◆ Conviction in Current Event Requiring Mandatory Minimum Term (6 mos or more) If YES, add 8 → 0

◆ Prior Convictions/Adjudications Total the maximum penalties for the 5 most recent and serious prior record events

Primary offense: B, C, D or J: Sex offender registry violation or provide wireless device to or possession of wireless device by prisoner		Primary offense: All other offenses	
Years	Points	Years	Points
Less than 6.....	0	Less than 2.....	0
6-64.....	1	2-38.....	1
65 or more.....	2	39 or more.....	2

◆ Prior Incarcerations/Commitments If YES, add 4 → 0

◆ Legally Restrained at Time of Offense

Primary offense: B, C, D or J: Sex offender registry violation or provide wireless device to or possession of wireless device by prisoner		Primary offense: All other offenses	
Any legal restraint.....	Points 1	None.....	0
		Other than post-incarceration supervision.....	2
		Post-incarceration supervision.....	5

SCORE THE FOLLOWING FACTOR **ONLY** IF PRIMARY OFFENSE IS **H OR I: GANG OFFENSE** (§ 18.2-46.2)

◆ Type of Additional or Prior Record Convictions/Adjudications
Violent Additional or Prior Record Convictions/Adjudications If YES, add 2 → 0

SCORE THE FOLLOWING FACTOR **ONLY** IF PRIMARY OFFENSE IS **K: DELIVER DRUG TO PRISONER** (§ 18.2-474.1)

◆ Prior Record Convictions/Adjudications
Prior Felony Drug Convictions/Adjudications If YES, add 1 → 0

Total Score → 0

If total is 8 or less, go to Section B. If total is 9 or more, go to Section C.

If total is 8 or less, go to Section B. If total is 9 or more, go to Section C.

Section B - Proposed

Offenders convicted of this offense will be assigned with 9 points for 1 count.



PROPOSED SPLIT FACTOR –
Offenders convicted of one or more prior felony drug offenses will receive an additional 2 points if the primary offense is delivery of drugs to a prisoner.



Miscellaneous/Other Section B Offender Name: _____

◆ **Primary Offense**

A. Perjury, falsely swear an oath (1 count).....	7
B. Nonviolent sex offender, fail to register, etc., 2nd/subsequent (1 count).....	7
C. Violent sex offender, fail to register or provide false information (1 count).....	8
D. Violent sex offender, fail to register, etc., 2nd/subsequent (1 count).....	9
E. Failure to appear in court for felony offense (1 count).....	10
F. Escape from correctional facility (1 count).....	10
G. Possession or sale of Schedule III drug or marijuana by prisoner (1 count).....	7
H. Participation in offense by/for gang (1 count).....	7
I. Participation in offense by/for gang with juvenile member (1 count).....	8
J. Provide wireless device to or possession of wireless device by prisoner (1 count).....	8
K. Delivery of narcotics, marijuana to prisoner (1 count).....	9

Score
▼

◆ **Primary Offense Remaining Counts** Total the maximum penalties for counts of the primary not scored above

Years: 5 - 9.....	2
10 - 19.....	3
20 - 29.....	4
30 - 39.....	5
40 or more.....	6

◆ **Additional Offenses** Total the maximum penalties for additional offenses, including counts

Years: Less than 1.....	0
1 - 9.....	2
10 - 19.....	3
20 - 29.....	4
30 - 39.....	5
40 or more.....	6

◆ **Type of Additional Offense**

Primary offense: H or I: Gang Offense (§ 18.2-46.2)	Points	Primary offense: All other offenses	
Additional Offense of Assault/Felony or Misdemeanor) . 1		Do Not Score	<input type="text"/> <input type="text"/>

◆ **Victim Injury**

Threatened, emotional, physical or serious physical.....	2
Life threatening.....	3

◆ **Prior Incarcerations/Commitments**

Primary offense: B, C, or D: Sex offender registry violation or J: Provide wireless device to or possession of device by prisoner If YES, Add 1	Points	Primary offense: All other offenses	
		Do Not Score	<input type="text"/> <input type="text"/>

◆ **Type of Prior Convictions/Adjudications**

Score if Primary Offense B, C, or D: Sex Offender Registry Violations	
2 or more Prior Sex Offender Misdemeanor Registry Violations.....	1
1 or more Prior Sex Offender Felony Registry Violations.....	2
Score if Primary Offense: H or I: Gang Offense (§ 18.2-46.2)	
Prior Juvenile Felony Person Adjudication.....	1
Score if Primary Offense: J: Provide Wireless Device	
0 to 1 Prior Felony Conviction/ Adjudication against a Person.....	0
2 or more Prior Felony Convictions/ Adjudications against a Person.....	1
Score if Primary Offense: K: Delivery of Narcotics, Marijuana to Prisoner	
1 or more Prior Felony Drug Conviction/Adjudication.....	2

◆ **Legally Restrained at Time of Offense** If YES, add 1

Total Score

See Miscellaneous/Other Section B Recommendation Table to convert score to guidelines sentence.

If total is 10 or more, recommendation is JAIL 1 day to 6 months.

Section C - Proposed

Offenders convicted of this offense will be assigned the following for 1 count based on their Prior Record Classification:
Category I: 36 points
Category II: 18 points
Other: 9 points



Miscellaneous/Other Section C Offender Name: _____

◆ **Primary Offense** _____ Prior Record Classification
 Category I Category II Other

A. Perjury, falsely swear an oath (1 count).....	12	6	3
B. Nonviolent sex offender, fail to register, etc., 2nd/subsequent (1 count).....	8	4	2
C. Violent sex offender, fail to register or provide false info. (1 count).....	8	4	2
D. Violent sex offender, fail to register, etc., 2nd/subsequent (1 count).....	16	8	4
E. Failure to appear in court for felony offense (1 count).....	32	16	8
F. Escape from correctional facility (1 count).....	40	20	10
G. Possession or sale of Schedule III drug or marijuana by prisoner (1 count).....	32	16	8
H. Participation in offense by/for gang (1 count).....	84	42	21
I. Participation in offense by/for gang with juvenile member (1 count).....	104	52	26
J. Provide wireless device to or possession of wireless device by prisoner (1 count).....	8	4	2
K. Delivery of narcotics, marijuana to prisoner (1 count).....	36	18	9

Score

◆ **Primary Offense Remaining Counts** Assign points to each count of the primary not scored above and total the points

Maximum Penalty: 5, 10 (years).....

◆ **Additional Offenses** Assign points to each additional offense (including counts) and total the points

Years: Less than 5.....0
 5, 10.....1
 20.....2
 30.....3
 40 or more.....5

◆ **Type of Additional Offense** (Violent Additional Offense (as defined in § 17.1-805))

Primary offense: H or I: Gang Offense (§ 18.2-46.2) Violent Additional Offense (as defined in § 17.1-805) And Primary is without a Juvenile (MOB1291F4)..... 12 And Primary is with a Juvenile (MOB1292F3)..... 16	Primary offense: All other offenses Do Not Score	<input type="text"/> <input type="text"/>
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◆ **Firearm Used or Brandished** _____ If YES, add 2 →

◆ **Victim Injury** _____

Threatened or emotional.....	2
Physical or serious.....	4
Life threatening.....	5

◆ **Prior Convictions/Adjudications** Assign points to the 5 most recent and serious prior record events and total the points

Maximum Penalty: Less than 20 (years).....0
 20, 30, 40 or more.....1

◆ **Prior Felony Convictions/Adjudications Against Person** _____

Number of Counts: 1.....1
 2.....2
 3.....3
 4.....4
 5 or more.....5

◆ **Prior Felony Convictions/Adjudications with the Same VCC Prefix as Primary Offense** _____

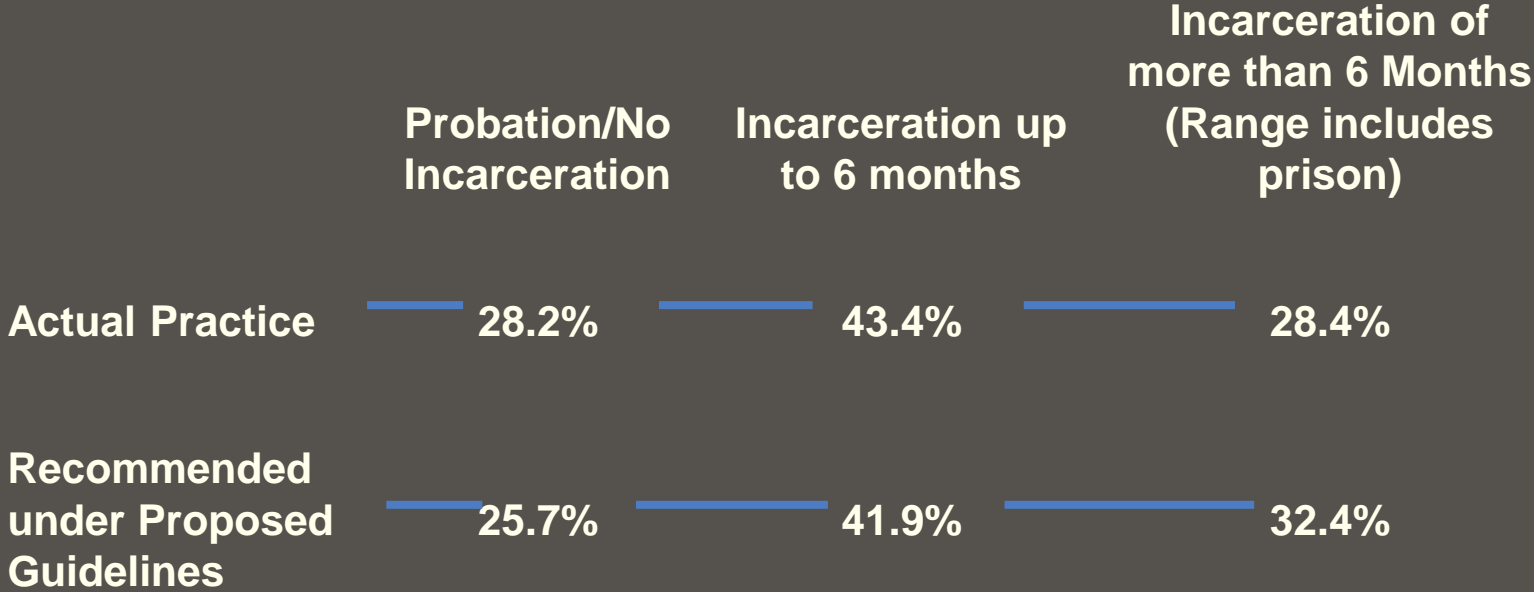
Number of Counts: 1.....2
 2.....4
 3.....6
 4.....8
 5 or more.....10

◆ **Legally Restrained at Time of Offense** _____ If YES, add 2 →

Total Score _____
 See Miscellaneous Section C Recommendation Table for guidelines sentence range.

Delivery of Drugs to Prisoner

§ 18.2-474.1



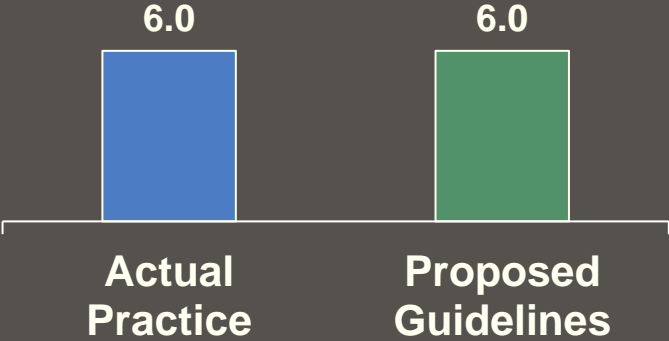
Proposed guidelines are closely aligned with the actual incarceration rates.

Delivery of Drugs to Prisoner

§ 18.2-474.1

Offenders Sentenced to
Incarceration up to 6 Months

Median Sentence (in months)

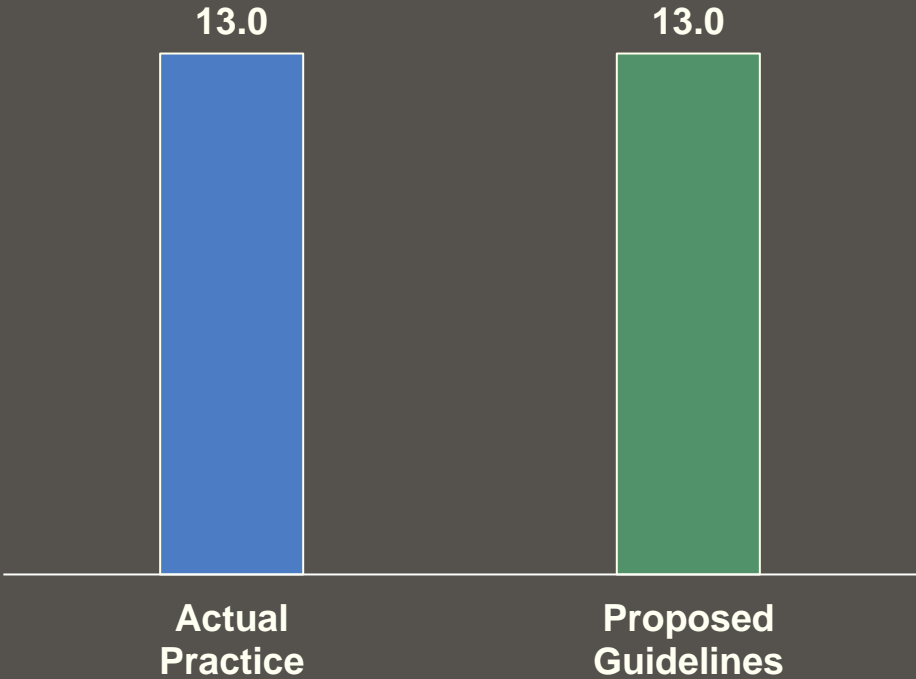


Delivery of Drugs to Prisoner

§ 18.2-474.1

Offenders Sentenced to
Incarceration of More than 6 Months

Median Sentence (in months)



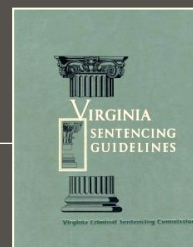
Proposed Recommendation 1

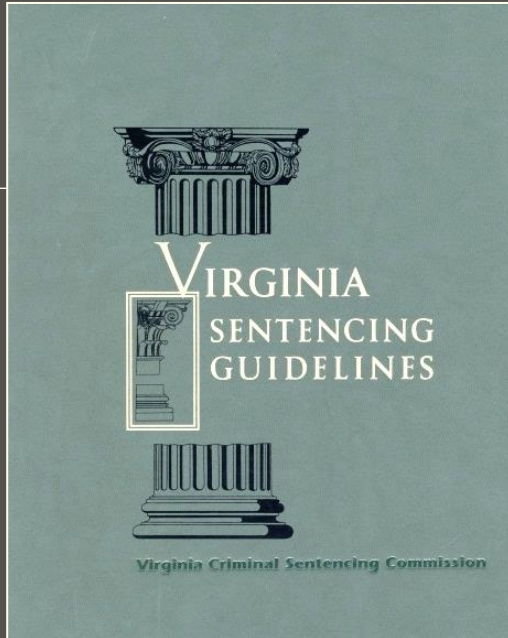
Add Delivery of Drugs to Prisoner

§ 18.2-474.1

to the Miscellaneous/Other Guidelines

as proposed





Proposed Recommendation 2:

**Add Prisoner Possess, Sell, Secrete, Etc.
Unlawful Chemical (§ 53.1-203(5))
to the Miscellaneous/Other Guidelines**

Prisoner Possess, Sell, Secrete, Etc. Unlawful Chemical § 53.1-203(5)

§ 53.1-203. Felonies by prisoners; penalties.

It shall be unlawful for a prisoner in a state, local or community correctional facility or in the custody of an employee thereof to:

5. Procure, sell, secrete or have in his possession **any chemical compound** which he has not lawfully received.

This offense is a Class 6 felony (penalty range 1 year to 5 years) and a Category II offense.

§ 53.1-203 last revised by the
2014 General Assembly

Prisoner Possess, Sell, Secrete, etc. Unlawful Chemical § 53.1-203(5)

FY2017 – FY2022
Number of Sentencing Events = 269

Disposition	Percent	Median Sentence
No Incarceration	25.3%	N/A
Jail	60.2%	6 Months
Prison	14.5%	1 Year

Data reflect events in which this offense was the primary
(or most serious) offense at sentencing.

Prisoner Possess, Sell, Secrete, etc. Unlawful Chemical § 53.1-203(5) – Proposed Section A Worksheet

Miscellaneous/Other ❖ Section A

Offender Name: _____

◆ Primary Offense _____

- A. Perjury, falsely swear an oath (1 count)..... 1
- B. Nonviolent sex offender, fail to register, etc., 2nd/subsequent (1 count) 2
- C. Violent sex offender, fail to register or provide false information (1 count) 2
- D. Violent sex offender, fail to register, etc., 2nd/subsequent (1 count) 2
- E. Failure to appear in court for felony offense
 - 1 count 1
 - 2 counts 4
- F. Escape from correctional facility (1 count)..... 7
- G. Possession or sale of Schedule III drug or marijuana by prisoner (1 count) 3
- H. Participation in offense by/for gang (1 count) 5
- I. Participation in offense by/for gang with juvenile member (1 count)..... 6
- J. Provide wireless device to or possession of wireless device by prisoner (1count)..... 2
- K. Prisoner possess, secrete, etc., unlawful chemical(1count) 1

Score

▼

0	
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Add Primary Offense K. Prisoner Possess, Secrete, Etc., Unlawful Chemical (1 count) 1 point

Prisoner Possess, Sell, Secrete, etc. Unlawful Chemical § 53.1-203(5) – Proposed Section A Worksheet

◆ **Prior Convictions/Adjudications** Total the maximum penalties for the 5 most recent and serious prior record events

Primary offense:

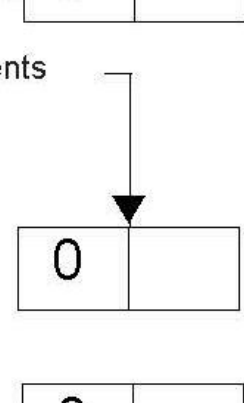
B, C, D, J or K: Sex offender registry violation, provide wireless device to or possession of wireless device by prisoner or prisoner possess chemical

Years	Points
Less than 6.....	0
6-64	1
65 or more	2

Primary offense:

All other offenses

Years	Points
Less than 2.....	0
2-38	1
39 or more	2



Add Primary Offense K. Prisoner Possess, Secrete, Etc., Unlawful Chemical

Automatic 1 Point – Prisoners are Legally Restrained

§ 53.1-203(5) – Proposed Section A Worksheet

◆ Legally Restrained at Time of Offense

Primary offense:

B, C, D, J or K: Sex offender registry violation, provide wireless device to or possession of wireless device by prisoner or prisoner possess chemical

Any legal restraint..... 1

Primary offense:

All other offenses

	Points
None.....	0
Other than post-incarceration supervision.....	2
Post-incarceration supervision	5

0	

SCORE THE FOLLOWING FACTOR **ONLY** IF PRIMARY OFFENSE IS **H OR I: GANG OFFENSE (§ 18.2-46.2)**

◆ Type of Additional or Prior Record Convictions/Adjudications

Violent Additional or Prior Record Convictions/Adjudications

If YES, add 2

0	
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SCORE THE FOLLOWING FACTOR **ONLY** IF PRIMARY OFFENSE IS **K: PRISONER POSSESS, SECRETE, ETC., UNLAWFUL CHEMICAL**

◆ Prior Record Convictions/Adjudications

3 or more Prior Felony Drug Convictions/Adjudications

If YES, add 1

0	
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Score if Primary Offense is K. Prisoner Possess, Secrete, Etc., Unlawful Chemical: If Offender Has > 2 Prior Felony Drug Convictions/Adjudications, Score 1 Point

Prisoner Possess, Sell, Secrete, etc. Unlawful Chemical § 53.1-203(5) – Proposed Section B Worksheet

Miscellaneous/Other ❖ Section B Offender Name: _____

◆ Primary Offense _____

- A. Perjury, falsely swear an oath (1 count).....7
- B. Nonviolent sex offender, fail to register, etc., 2nd/subsequent (1 count)7
- C. Violent sex offender, fail to register or provide false information (1 count)8
- D. Violent sex offender, fail to register, etc., 2nd/subsequent (1 count)9
- E. Failure to appear in court for felony offense (1 count)10
- F. Escape from correctional facility (1 count).....10
- G. Possession or sale of Schedule III drug or marijuana by prisoner (1 count)7
- H. Participation in offense by/for gang (1 count)7
- I. Participation in offense by/for gang with juvenile member (1 count).....8
- J. Provide wireless device to or possession of wireless device by prisoner (1count).....8
- K. Prisoner possess, sell, secrete unlawful chemical compound(1count).....8

Score

▼

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Add Primary Offense K. Prisoner Possess, Secrete, Etc., Unlawful Chemical (1 count)8 Points

Prisoner Possess, Sell, Secrete, etc. Unlawful Chemical § 53.1-203(5) – Proposed Section B Worksheet

Threatened, emotional, physical or serious physical 2
 Life threatening 3

0	
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◆ **Prior Incarcerations/Commitments**

Primary offense:
B, C, D J, or K: Sex offender registry violation, provide wireless device to, possession of device by prisoner or prisoner possess, sell, unlawful chemical
 If YES, Add 1

Primary offense:
All other offenses

Do Not Score

0	
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Add Primary Offense K. Prisoner Possess, Secrete, Etc., Unlawful Chemical – If Yes, Score 1 Point

Prisoner Possess, Sell, Secrete, etc. Unlawful Chemical § 53.1-203(5) – Proposed Section B Worksheet

◆ Type of Prior Convictions/Adjudications _____

Score if Primary Offense B,C, or D: Sex Offender Registry Violations

- 2 or more Prior Sex Offender Misdemeanor Registry Violations1
- 1 or more Prior Sex Offender Felony Registry Violations2

Score if Primary Offense: H or I: Gang Offense (§ 18.2-46.2)

- Prior Juvenile Felony Person Adjudication1

Score if Primary Offense is K. Prisoner Possess, Secrete, Etc., Unlawful Chemical:
If Offender Has > 1 Prior Felony Drug Conviction/Adjudication, Score 2 Points

Score if Primary Offense: Prisoner Possess, Sell, Secrete, Etc., Unlawful Chemical Compound

- 2 or more Prior Felony Drug Conviction/Adjudication2

◆ Legally Restrained at Time of Offense _____

If YES, add 1 →

↑ Total Score _____

See Miscellaneous/Other Section B Recommendation Table to convert score to guidelines sentence.

0	
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0	
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Automatic 1 Point – Prisoners are Legally Restrained

Prisoner Possess, Sell, Secrete, etc. Unlawful Chemical § 53.1-203(5) – Proposed Section C Worksheet

Miscellaneous/Other ❖ Section C Offender Name: _____

◆ **Primary Offense** _____

— Prior Record Classification —
 Category I Category II Other

A. Perjury, falsely swear an oath (1 count).....	12.....	6.....	3.....	
B. Nonviolent sex offender, fail to register, etc., 2nd/subsequent (1 count).....	8.....	4.....	2.....	
C. Violent sex offender, fail to register or provide false info. (1 count).....	8.....	4.....	2.....	
D. Violent sex offender, fail to register, etc., 2nd/subsequent (1 count).....	16.....	8.....	4.....	
E. Failure to appear in court for felony offense (1 count).....	32.....	16.....	8.....	
F. Escape from correctional facility (1 count).....	40.....	20.....	10.....	
G. Possession or sale of Schedule III drug or marijuana by prisoner (1 count).....	32.....	16.....	8.....	
H. Participation in offense by/for gang (1 count).....	84.....	42.....	21.....	
I. Participation in offense by/for gang with juvenile member (1 count).....	104.....	52.....	26.....	
J. Provide wireless device to or possession of wireless device by prisoner (1count).....	8.....	4.....	2.....	
K. Prisoner possess, sell, secrete unlawful chemical compound (1count).....	32.....	16.....	8.....	

Score

▼

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Add Primary Offense K. Prisoner Possess, Secrete, Etc., Unlawful Chemical (1 count)

If Other.....8 Points

If Category II.....16 Points

If Category I.....32 Points

Prisoner Possess, Sell, Secrete, etc. Unlawful Chemical § 53.1-203(5) – Proposed Section C Worksheet

◆ Prior Felony Convictions/Adjudications Against Person

Number of Counts:	1	1
	2	2
	3	3
	4	4
	5 or more	5

0	0	
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◆ Prior Felony Convictions/Adjudications with the Same VCC Prefix as Primary Offense

Number of Counts:	1	2
	2	4
	3	6
	4	8
	5 or more	10

0	0	
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◆ Legally Restrained at Time of Offense

If YES, add 2 →

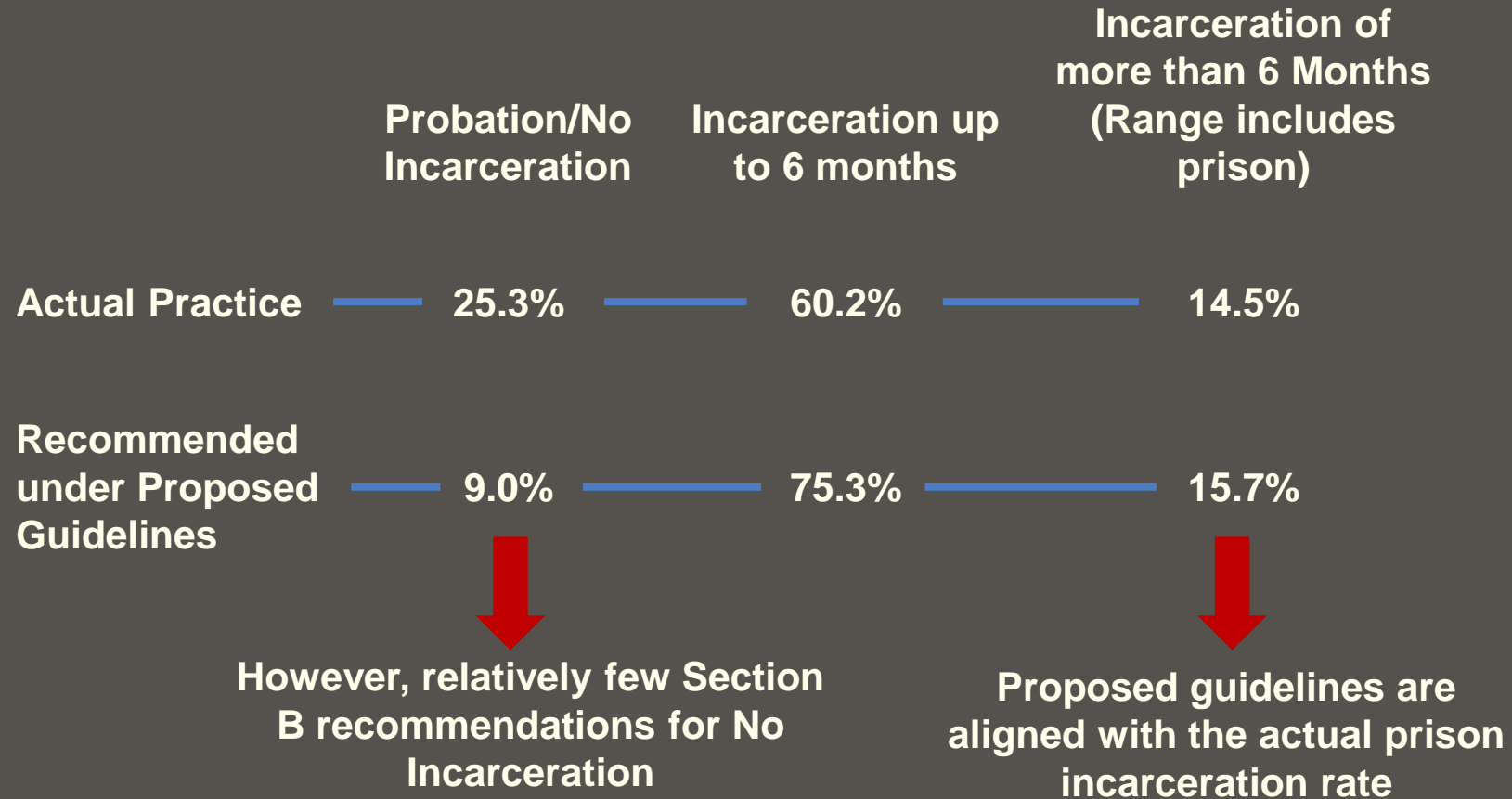
0	0	
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Prisoners are Legally Restrained
Score Automatic 1 Point (Instead of 2 Points)

Recommendation Table for guidelines sentence range.

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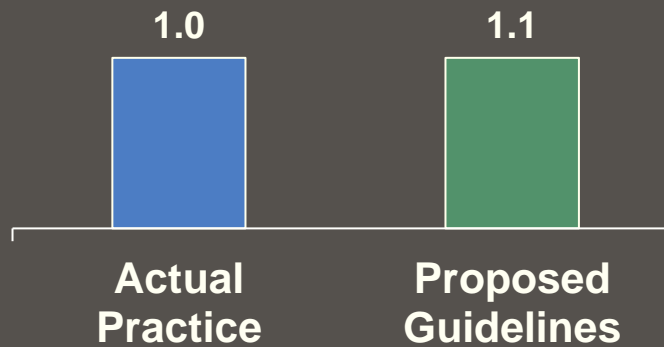
Prisoner Possess, Sell, Secrete, etc. Unlawful Chemical § 53.1-203(5) – Actual vs Recommended Dispositions



Prisoner Possess, Sell, Secrete, etc. Unlawful Chemical § 53.1-203(5) – Median Prison Sentence

Offenders Sentenced to
Incarceration of More than 6 Months

Median Sentence (in years)



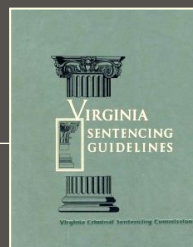
Proposed Recommendation 2

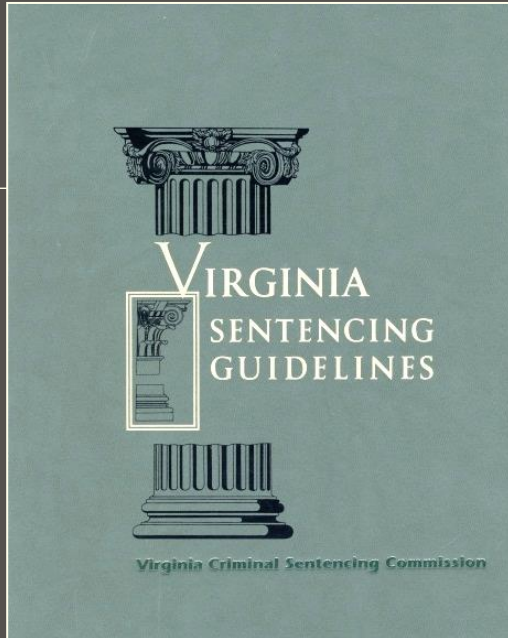
Add Prisoner Possess, Sell, Secrete, Etc. Unlawful Chemical

§ 53.1-203(5)

to the Miscellaneous/Other Guidelines

as proposed





Proposed Recommendation 3:

**Add Distributing, Etc., 10g Methamphetamines
(20g Mixture) § 18.2-248 (C,4)
to the Drug Schedule I/II Guidelines**

Violation of Distributing, Etc., 10g Methamphetamines (20g Mixture) § 18.2-248 (C,4)

§ 18.2-248(C,4)

Any person who manufactures, sells, gives, distributes or possesses with the intent to manufacture, sell, give, or distribute the following is guilty of a felony punishable by a fine of not more than \$1 million and imprisonment for five years to life, five years of which shall be a mandatory minimum term of imprisonment to be served consecutively with any other sentence:

4. 10 grams or more of methamphetamine, its salts, isomers, or salts of its isomers or 20 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers.

The mandatory minimum term of imprisonment to be imposed for a violation of this subsection shall not be applicable if the court finds that:

- a. The person does not have a prior conviction for an offense listed in subsection C of § 17.1-805;
- b. The person did not use violence or credible threats of violence or possess a firearm or other dangerous weapon in connection with the offense or induce another participant in the offense to do so;
- c. The offense did not result in death or serious bodily injury to any person;
- d. The person was not an organizer, leader, manager, or supervisor of others in the offense, and was not engaged in a continuing criminal enterprise as defined in subsection I; and
- e. Not later than the time of the sentencing hearing, the person has truthfully provided to the Commonwealth all information and evidence the person has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan, but the fact that the person has no relevant or useful other information to provide or that the Commonwealth already is aware of the information shall not preclude a determination by the court that the defendant has complied with this requirement.

Violation of Distributing, Etc., 10g Methamphetamines (20g Mixture) § 18.2-248 (C,4)

FY2017 – FY2022
Number of Sentencing Events = 218

Disposition	Percent	Median Sentence
No Incarceration	0%	NA
Incarceration Up to 6 Months	0%	NA
Incarceration More than 6 Months	100%	5 Years

Data reflect events in which this offense was the primary
(or most serious) offense at sentencing.

Section A - Proposed

Offenders convicted of this offense will be assigned the same points as Manufacturing Schedule I/II, Methamphetamines.



Drug/Schedule I/II ❖ Section A

Offender Name: _____

◆ Primary Offense

A. Possess Schedule I or II drug or First offender violation	1 count 1	
	2 counts 3	
	3 counts 8	
B. Sell, distribute, possession with intent, etc., Schedule I or II drug	1 count 12	
	2 counts 13	
	3 counts 14	
	4 counts 15	
C. Manufacture Schedule I/II, Methamphetamine (1st/2nd) or Distribute Methamphetamine 10g or more	1 count 12	
	2 counts 13	
	3 counts 14	
	4 counts 15	
D. Accommodation - Sell, distribute, possession with intent Schedule I or II drug	1 count 5	
	2 counts 7	
E. Sell, etc., imitation Schedule I or II drug (1 count).....	4	
F. Possess precursors with intent to manufacture methamphetamine (1 count).....	6	
G. Sell, etc., Schedule I or II drug to minor (1 count).....	11	

Score
▼

◆ Primary Offense Remaining Counts Total the maximum penalties for counts of the primary not scored above

Years:	5 - 10 1	31 - 42 4
	11 - 21 2	43 or more 5
	22 - 30 3	

◆ Additional Offenses Total the maximum penalties for additional offenses, including counts

Years:	Less than 4 0	22 - 30 3
	4 - 10 1	31 - 42 4
	11 - 21 2	43 or more 5

◆ Knife or Firearm in Possession at Time of Offense If YES, add 2 →

◆ Conviction in Current Event Requiring Mandatory Minimum Term (6 mos or more) If YES, add 9 →

◆ Prior Convictions/Adjudications Total the maximum penalties for the 5 most recent and serious prior record events

Years:	Less than 7 0
	7 - 26 1
	27 - 48 2
	49 or more 3

◆ Prior Incarcerations/Commitments If YES, add 2 →

◆ Prior Felony Drug Convictions/Adjudications

Primary offense: F: Possession of Methamphetamine precursors	Primary offense: All other offenses
Number of Counts	Number of Counts
1 3	1 - 2 1
2 or more 6	3 - 4 2
	5 3
	6 or more 4

◆ Prior Juvenile Record If YES, add 1 →

◆ Legally Restrained at Time of Offense

None.....	0
Other than parole/post-release, supervised probation or CCCA.....	1
Parole/post-release, supervised probation or CCCA.....	4

SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE IS A: POSSESSION OF SCHEDULE I/II DRUG (§ 18.2-250(A,a))

◆ Two or More Prior Felony Convictions/Adjudications If YES, add 2 →
For Possession, Possession with Intent, Distribution, Manufacture or Sale of Schedule I or II Drug, etc.

Total Score
If total is 10 or less, go to Section B. If total is 11 or more, go to Section C.

If total is 11 or more, go to Section C.

Section C - Proposed

Offenders convicted of this offense will be scored the same as those convicted of E. Manufacturing Schedule I/II, Methamphetamine

Adjust factor to score all mandatory minimums in the event and not just mandatory minimums for weapon offenses.

There are 121 cases between FY2018-FY2023 that would be impacted by the change. In a third (40) of the cases the Guidelines do not reflect the mandatory minimums. There is a 37% aggravation rate for these 121 cases - after the range is adjusted for the mandatory minimums. If approved, the midpoint will reflect, at least, the sum of the mandatory minimums in the event.



Drug/Schedule I/II - Section C

Offender Name: _____

Primary Offense Prior Record Classification Category I Category II Other
(scores for attempted/conspired offenses are in parentheses)

A. Possess Schedule I or II drug or First offender violation	1 count.....20	2 counts.....28	3 counts.....36	Category I.....10	Category II.....14	Other.....5
B. Sell, Distribute, Possession with intent, etc., Schedule I or II drug	1 count.....60 (48)	2 counts.....80 (64)	3 counts.....95 (75)	4 counts.....130 (104)	36 (24)	48 (32)
C. Sell, etc., Schedule I or II drug, second offense	1 count.....110 (88)	2 counts.....310 (248)	66 (44)	88 (62)	22 (22)	62 (62)
D. Sell, etc., Schedule I or II drug - third or subsequent offense	1 count.....175	2 counts.....200	105	130	35	78
E. Manufacture Schedule I/II, Methamphetamine (1st/2nd) or Distribute Methamphetamine 10g or more	1 count.....130	2 counts.....130	78	26		
F. Sell, etc., Schedule I or II drug to minor	1 count.....60	2 counts.....80	30	40	15	10
G. Accommodation-Sell, etc., Schedule I or II drug	1 count.....32	2 counts.....40	16	20	8	10
H. Sell, etc., imitation Schedule I or II drug, Possession of methamphetamine precursors	1 count.....12	2 counts.....20	6	10	3	5

Primary Offense Remaining Counts Assign points to each count of the primary not scored above and total the points
 Maximum Penalty (years) 5, 10.....1 40 or more.....5

Additional Offenses Assign points to each additional offense (including counts) and total the points

Primary offense D: Sell, etc., Sch. III 3rd or Subsequent		Primary offense: All other offenses	
Years	Points	Years	Points
Less than 5	0	Less than 5	0
5, 10	2	5, 10	1
20	4	20	2
30	6	30	4
40 or more	7	40 or more	5

Mandatory Minimum in Current Event Assign points to each additional offense with a mandatory minimum and total the points

2 Year Mandatory Minimum.....13	3 Year Mandatory Minimum.....25	5 Year Mandatory Minimum.....32	or more
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Firearm in Possession at Time of Offense _____ If YES, add 5

Prior Convictions/Adjudications Assign points to the 5 most recent and serious prior record events and total the points

Maximum Penalty (years)	Less than 5.....0	5, 10.....1	20.....2	30.....3	40 or more.....4
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Prior Felony Drug Convictions/Adjudications

Primary offense D: Sell, etc., Sch. III 3rd or Subsequent		Primary offense: All other offenses	
Number of Counts	Score	Number of Counts	Score
1	2	1	2
2	9	2	3
3	10	3	4
4	17	4	5
5 or more	20	5	8
		6 or more	10

Prior Felony Convictions/Adjudications Against Person

Number of Counts:	1.....3	2.....6	3.....9	4 or more.....12
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Prior Felony Property Convictions/Adjudications

Number of Counts:	1, 2.....1	3.....2	4 or more.....3
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Prior Juvenile Record _____ If YES, add 1

Legally Restrained at Time of Offense _____ If YES, add 3

Type of Additional Offense (Score if primary offense is E: Manufacture Methamphetamine § 18.2-248 (C1))
 Additional offense of child present during manufacture of methamphetamine _____ If YES, add 14

Sale/Quantity of Cocaine (Score if primary offense is B, C, D, or F: § 18.2-248(C) or §18.2-255(A))
 Quantity of Cocaine: Less than 28.35 grams.....0 28.35 g to less than 226.8 grams.....36 226.8 grams or more.....60

Total Score _____

See Drug/Schedule I/II Section C Recommendation Table for guidelines sentence range. Then go to Section D Nonviolent Risk Assessment and follow the instructions.

Violation of Distributing, Etc., 10g Methamphetamines (20g Mixture) § 18.2-248 (C,4)

	Probation/No Incarceration	Incarceration up to 6 months	Incarceration of more than 6 Months (Range includes prison)
Actual Practice	0%	0%	100%
Recommended under Proposed Guidelines	0%	0%	100%

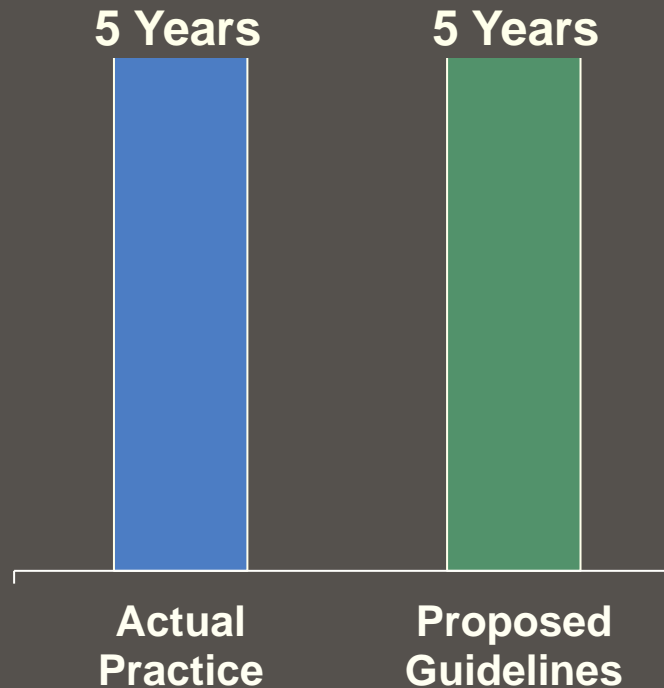


Proposed guidelines are closely aligned with the actual prison incarceration rate

**Violation of Distributing, Etc., 10g Methamphetamines (20g Mixture)
§ 18.2-248 (C,4)**

**Offenders Sentenced to Incarceration of
More than 6 Months**

Median Sentence (in years)



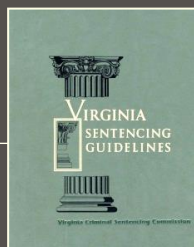
Proposed Recommendation 3

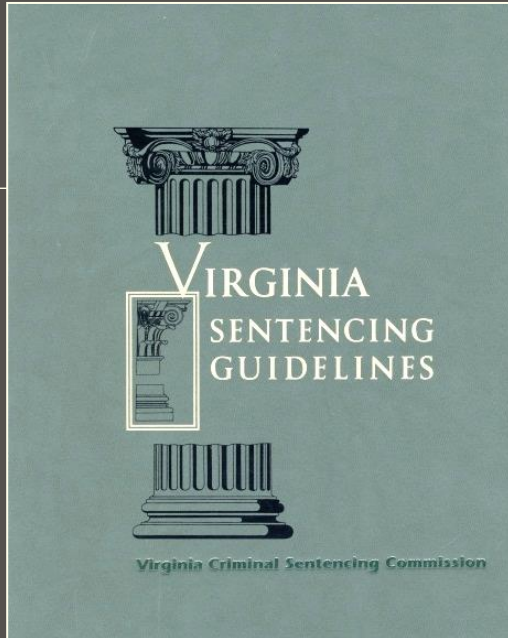
Add Distributing, Etc., 10g Methamphetamines (20g Mixture) or More

§ 18.2-248 (C,4)

to the Drug Schedule I/II Guidelines

as proposed





Proposed Recommendation 4:

Add Violation of Protective Order 3rd or subsequent within 20 years (§ 16.1-253.2(A)) to the Miscellaneous/Person & Property Guidelines

Violation of Protective Order 3rd or subsequent within 20 years

§ 16.1-253.2(A)

§ 16.1-253.2(A)

Any person convicted of a third or subsequent offense of violating a protective order, when the offense is committed within 20 years of the first conviction and when either the instant or one of the prior offenses was based on an act or threat of violence is guilty of a **Class 6 felony** and the punishment shall include a mandatory minimum term of confinement of **six months**. The mandatory minimum terms of confinement prescribed for violations of this section shall be served consecutively with any other sentence.

This offense is defined under Chapter 11. Juvenile and Domestic Relations District Courts. The protective Orders issued under this Chapter involve family abuse toward family or any household members. There is a similar violation of protective order 3rd or subsequent within 20 years under § 18.2-60.4, which involves the protective orders that do not meet the definition of family or household members, and such cases are handled by General District Court.

Violation of Protective Order 3rd or subsequent within 20 years § 16.1-253.2(A)

FY2017 – FY2022
Number of Sentencing Events = 99

Disposition	Percent	Median Sentence
No Incarceration	0%	NA
Incarceration Up to 6 Months	37.4%	6 Months
Incarceration More than 6 Months	62.6%	1 Year

Data reflect events in which this offense was the primary
(or most serious) offense at sentencing.

Section A - Proposed

Primary Offense Factor:
 Offenders convicted of this offense will be assigned with 2 points for 1 count.

Data shows this factor is currently scored only if any additional offenses have mandatory minimum terms. It will work out better if the question wording is modified so that not all of the offenders convicted under this offense as a primary are automatically recommend for Section C.

Victim Injury Factor: Follow "All other offenses"

Legally Restrained at Time of Offense: Follow J: Damage/Destroy property \$1,000 or more.

If total is 9 or more, go to Section C.

Miscellaneous/Person & Property ❖ Section A

Offender Name: _____

◆ **Primary Offense**

A. Burn unoccupied dwelling/church (1 count).....	6
B. Burn occupied dwelling/church (1 count).....	6
C. Burning of personal property, standing grain, etc., value \$500 or more	
1 count	2
2 counts	6
D. Threatening to bomb, burn or explode (1 count)	1
E. Threat by letter, communication or electronic message (1 count)	3
F. Child neglect/abuse, serious injury	
1 count	3
2 counts	7
G. Gross, reckless care of child (1 count).....	1
H. Cruelty and injury to child (1 count).....	2
I. Maliciously shoot, throw missile at train, car, etc. (1 count).....	1
J. Damage/destroy property, value \$1,000 or more (1 count).....	2
K. Violation of protective order (violence) 3rd or 4th or 20 years (1 count).....	2

Score

◆ **Primary Offense Remaining Counts** Total the maximum penalties for counts of the primary not scored above

Years: 5 - 7.....	1
8 - 18.....	2
19 - 28.....	3
29 - 38.....	4
39 or more.....	5

Score

◆ **Additional Offenses** Total the maximum penalties for additional offenses, including counts

Years: Less than 1.....	0
1 - 7.....	1
8 - 18.....	2
19 - 28.....	3
29 - 38.....	4
39 or more.....	5

Score

◆ **Victim Injury**

Primary offense: F, G, or H: Offenses with VCC prefix "FAM" Points		Primary offense: All other offenses Points	
Threatened, emotional, physical, or serious.....	2	Threatened, emotional, physical, or serious.....	1
Life threatening.....	5	Life threatening.....	2

Score

◆ **Additional Offenses in Current Event Requiring Mandatory Minimum (6 mos or more) If YES, add 8**

◆ **Prior Convictions/Adjudications** Total the maximum penalties for the 5 most recent and serious prior record events

Years: Less than 2.....	0
2 - 38.....	1
39 or more.....	2

Score

◆ **Prior Incarcerations/Commitments** If YES, add 4

◆ **Legally Restrained at Time of Offense**

Primary offense: J or K: Damage property or violation of protective order Points		Primary offense: All other offenses Points	
Any legal restraint.....	1	None.....	0
		Other than post-incarceration supervision.....	2
		Post-incarceration supervision.....	5

Score

SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE IS J: DAMAGE/DESTROY PROPERTY \$1,000 OR MORE

◆ **Prior Vandalism Convictions/Adjudications**

Misdemeanor vandalism.....	1
Felony vandalism.....	2
Both felony and misdemeanor vandalism.....	3

Score

Total Score

If total is 8 or less, go to Section B. If total is 9 or more, go to Section C.

Section B - Proposed

New FACTOR –
Only for the offenders convicted of this offense has prior convictions/adjudications (felony or misdemeanor) with the same VCC prefix as primary offense.

Primary Offense Remaining Counts: Follow “All other offenses.”

Victim Injury: Follow “All other offenses”

New FACTOR –
Only for the offenders convicted of this offense has prior convictions/adjudications (felony or misdemeanor) with the same VCC prefix as primary offense.

Miscellaneous/Person & Property Section B

Offender Name: _____

◆ **Primary Offense** _____

A. Burn unoccupied dwelling/church (1 count).....	6
B. Burn occupied dwelling/church (1 count).....	7
C. Burning of personal property, standing grain, etc., value \$500 or more (1 count).....	6
D. Threatening to bomb, burn or explode (1 count).....	6
E. Threat by letter, communication or electronic message (1 count).....	7
F. Child neglect/abuse, serious injury (1 count).....	3
G. Gross, reckless care of child (1 count).....	2
H. Cruelty and injury to child (1 count).....	2
I. Maliciously shoot, throw missile at train, car, etc. (1 count).....	7
J. Damage/destroy any property or possession \$1,000 or more (1 count).....	6
K. Violation of protective order (violence) 3rd or w/in 20 years (1 count).....	6

Score

◆ **Primary Offense Remaining Counts** Total the maximum penalties for counts of the primary not scored above

Primary offense:		Primary offense:	
J: Damage/Destroy property \$1,000 or more		All other offenses	
Years	Points	Years	Points
5 - 9.....	1	5 - 9.....	2
10 - 19.....	2	10 - 19.....	3
20 - 29.....	3	20 - 29.....	4
30 - 39.....	4	30 - 39.....	5
40 or more.....	5	40 or more.....	6

0

◆ **Additional Offenses** Total the maximum penalties for additional offenses, including counts

Years:	Less than 1.....	0
	1 - 9.....	2
	10 - 19.....	3
	20 - 29.....	4
	30 - 39.....	5
	40 or more.....	6

0

◆ **Victim Injury** _____

Primary offense:		Primary offense:	
F,G or H: Offenses with VCC prefix "FAM"		All other offenses	
Threatened, emotional, physical, or serious.....	9	Threatened, emotional, physical, or serious.....	2
Life threatening.....	10	Life threatening.....	3

◆ **Legally Restrained at Time of Offense** _____ If YES, add 1 →

SCORE THE FOLLOWING FACTOR **ONLY** IF PRIMARY OFFENSE IS J: **DAMAGE/DESTROY PROPERTY \$1,000 OR MORE**

◆ **Prior Incarcerations/Commitments** _____ If YES, add 1 →

SCORE THE FOLLOWING FACTOR **ONLY** IF PRIMARY OFFENSE IS K: **VIOLATION OF PROTECTIVE ORDER 3RD OR W/IN 20 YRS**

◆ **Any Prior Convictions/Adjudications with the Same VCC Prefix as Primary Offense** _____ If YES, add 1 →

Total Score _____

See Miscellaneous/Person & Property Section B Recommendation Table to convert score to guidelines sentence. Miscellaneous/Person & Property/Section B

If total is 10 or more, recommendation is JAIL 1 day to 6 months.

Section C - Proposed

Offenders convicted of this offense will be scored the same as those convicted of E. Threat by letter, communication etc.

Additional Offenses: Follow "All other offenses."

Victim Injury: Follow "G or H: Reckless Care/Cruelty Child."

Prior Felony Convictions/Adjudications against Person: Follow "All other offenses."

Legally Restrained at Time of Offense: Follow "F: Child neglect/abuse."

Type of Additional Offense: Follow "All other offenses (Do Not Score)."

Miscellaneous/Person & Property Section C

Offender Name: _____

Primary Offense Category I Category II Other

(Scores for attempted/conspired offenses are in parentheses)

A. Burn unoccupied dwelling/church (1 count)	68	34	17
B. Burn occupied dwelling/church			
Completed: 1 count	108	54	27
2 counts	200	100	50
Attempted or conspired: 1 count	(68)	(34)	(17)
2 counts	(72)	(36)	(18)
C. Burning of personal property, standing grain, etc., value \$500 or more (1 count)	32	16	8
D. Threatening to burn, bomb or explode (1 count)	32	16	8
E. Threat by letter, communication or electronic message (1 count)	40	20	10
F. Child neglect/abuse, serious injury (1 count)	32	16	9
G. Gross, reckless care of child (1 count)	28	14	7
H. Cruelty and injury to child (1 count)	28	14	7
I. Maliciously shoot, throw missile at train, car, etc. (1 count)	32	16	8
K. Violation of protective order (violence) 3rd or w/in 20 years (1 count)	40	20	10

Primary Offense Remaining Counts Assign points to each count of the primary not scored above and total the points

Maximum Penalty: 5, 10, 20, 30, 40 (years) 1

Life 5

Additional Offenses Assign points to each additional offense (including counts) and total the points

Primary offense: B: Burn occupied dwelling/church	Primary offense: All other offenses
Years	Years
Less than 5 0	Less than 5 0
5, 10 3	5, 10 1
20 6	20 2
30 9	30 3
40 or more 12	40 or more 5

Firearm Used or Brandished If YES, add 2 → 0 0

Victim Injury

Primary offense: G, H or K	Primary offense: F: Child Neglect/Abuse	Primary offense: All other offenses A, B, C, D, E, I or J
Threatened or emotional 6	Threatened or emotional 6	Threatened or emotional 2
Physical 7	Physical or Serious Physical 12	Physical 4
Life threatening 10	Life threatening 13	Life threatening 5

Prior Convictions/Adjudications Assign points to the 5 most recent and serious prior record events and total the points

Maximum Penalty: Less than 20 (years) 0

20, 30, 40 or more 1

Prior Felony Convictions/Adjudications Against Person

Primary offense: B: Burn occupied dwelling/church	Primary offense: All other offenses
Number of Counts	Number of Counts
1 3	1 1
2 4	2 2
3 6	3 3
4 or more 8	4 4
	5 or more 5

Prior Felony Convictions/Adjudications with the Same VCC Prefix as Primary Offense

Number of Counts: 1 2	4 8
2 4	5 or more 10

Legally Restrained at Time of Offense

Primary offense: F or K: Child neglect/abuse or violation of protective order	Primary offense: All other offenses
None 0	Any legal restraint 2
Other than post-incarceration supervision 6	
Post-incarceration supervision 9	

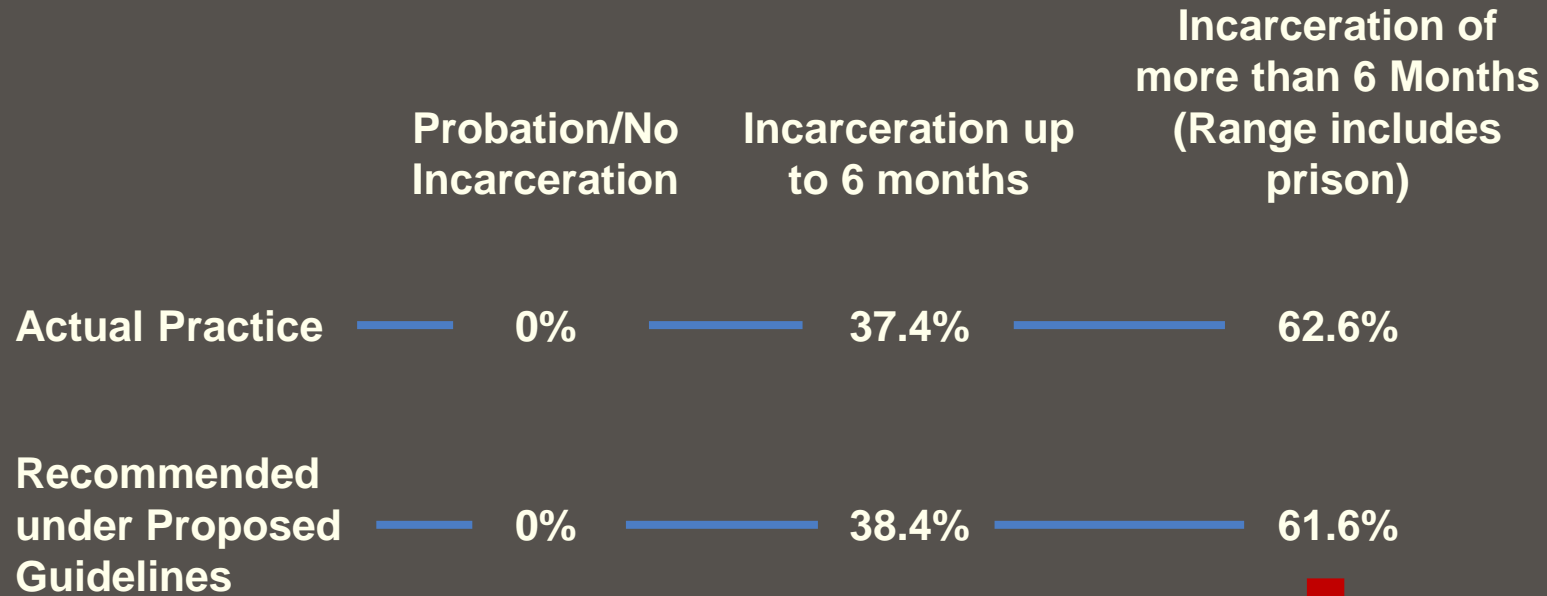
Type of Additional Offense

Primary offense: B: Burn Occupied Dwelling/Church	Primary offense: All other offenses
Additional offense with VCC Prefix "MUR" 133	Do Not Score

Total Score →

See Miscellaneous Section C Recommendation Table for guidelines sentence range.

Violation of Protective Order 3rd or subsequent within 20 years § 16.1-253.2(A)

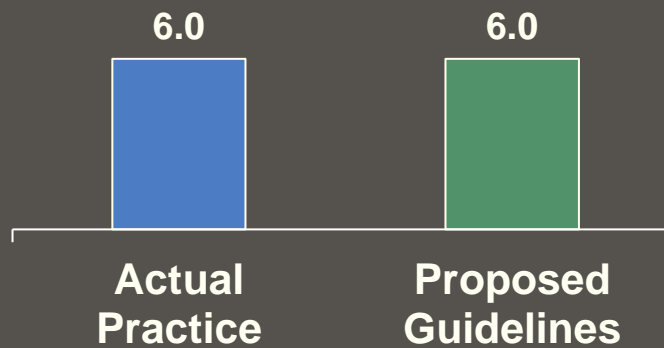


Proposed guidelines are closely aligned with the actual prison incarceration rate

Violation of Protective Order 3rd or subsequent within 20 years § 16.1-253.2(A)

Offenders Sentenced to
Incarceration up to 6 Months

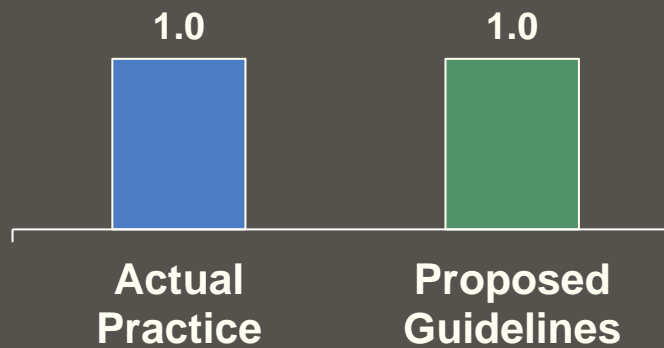
Median Sentence (in months)



Violation of Protective Order 3rd or subsequent within 20 years § 16.1-253.2(A)

Offenders Sentenced to
Incarceration of More than 6 Months

Median Sentence (in years)



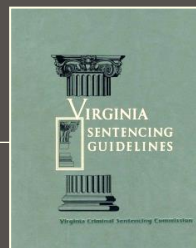
Proposed Recommendation 4

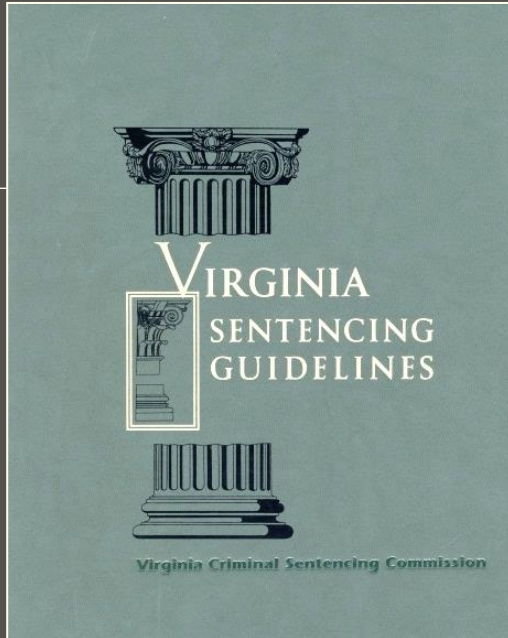
Add Violation of Protective Order 3rd or subsequent within 20 years

§ 16.1-253.2(A)

to the Miscellaneous/Person & Property Guidelines

as proposed





Proposed Recommendation 5:

Add Conspire to Commit or Assist in Larceny with an Aggregate Value of \$1,000 or More, § 18.2-23 (B), to the Larceny Guidelines

Conspire to commit or assist in larceny with an aggregate value of \$1,000 or more
§ 18.2-23 (B)

§ 18.2-248(C,4)

B. If any person shall conspire, confederate or combine with another or others in the Commonwealth to commit larceny or counsel, assist, aid or abet another in the performance of a larceny, where the aggregate value of the goods or merchandise involved is \$1,000 or more, he is guilty of a felony punishable by confinement in a state correctional facility for not less than one year nor more than 20 years. The willful concealment of goods or merchandise of any store or other mercantile establishment, while still on the premises thereof, shall be prima facie evidence of an intent to convert and defraud the owner thereof out of the value of the goods or merchandise. A violation of this subsection constitutes a separate and distinct felony.

**Conspire to commit or assist in larceny with an aggregate value of \$1,000 or more
§ 18.2-23 (B)**

FY2017 – FY2022
Number of Sentencing Events = 110

Disposition	Percent*	Median Sentence
No Incarceration	23.6%	NA
Incarceration Up to 6 Months	40.8%	3 Months
Incarceration More than 6 Months	35.6%	1 Year

Data reflect events in which this offense was the primary
(or most serious) offense at sentencing.

*Updated from September meeting to reflect the VCSC categories.

Section A - Proposed

Offenders convicted of this offense will be assigned the same points as Grand Larceny from the Person



Larceny Section A

Offender Name: _____

Primary Offense (scores for attempted/conspired offenses are in parentheses)

A. Attempted or conspired larceny (1 count).....	(1)	
B. Statutory maximum penalty equals 5 years		
1 count.....	1	
2 counts.....	4	
3 counts.....	6	
C. Statutory maximum penalty equals 10 years (1 count).....	3	
D. Grand larceny auto		
1 count.....	5	
2 counts.....	7	
3 counts.....	9	
E. Grand larceny from person		
1 count.....	4	
2 counts.....	11	
F. Grand larceny from person (4 counts).....	11	
G. Failure of bailee to return animal, aircraft, vehicle or boat (1 count).....	4	
H. Larceny of bank notes, checks or any book of accounts; Any other larceny offense with maximum penalty of 20 years		
1 count.....	2	
2 - 3 counts.....	4	
4 counts.....	6	

Primary Offense Remaining Counts Total the maximum penalties for counts of the primary not scored above

Years: 5 - 11.....	1	34 - 44.....	4
12 - 22.....	2	45 or more.....	5
23 - 33.....	3		

Additional Offenses Total the maximum penalties for additional offenses, including counts

Years: Less than 1.....	0	23 - 33.....	3
1 - 11.....	1	34 - 44.....	4
12 - 22.....	2	45 or more.....	5

Prior Convictions/Adjudications Total the maximum penalties for the 5 most recent and serious prior record events

Years: Less than 2.....	0	21 - 36.....	3
2 - 11.....	1	37 or more.....	4
12 - 20.....	2		

Prior Felony Larceny Convictions/Adjudications

Number of Counts: 1.....	2		
2 - 3.....	3		
4 or more.....	4		

Other Prior Felony Property Convictions/Adjudications

Number of Counts: 1 - 4.....	1		
5 or more.....	2		

Prior Felony Convictions/Adjudications Against Person

Number of Counts: 1.....	1		
2 or more.....	2		

Prior Misdemeanor Convictions/Adjudications (Excludes Traffic)

Number of Counts: 1 - 4.....	1		
5 - 8.....	2		
9 or more.....	3		

Prior Incarcerations/Commitments _____ If YES, add 5 → 0

Prior Juvenile Record _____ If YES, add 1 → 0

Legally Restrained at Time of Offense

None.....	0		
Other than parole/post-release, supervised probation or CCCA.....	1		
Parole/post-release, supervised probation or CCCA.....	2		

SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE IS H: EMBEZZLEMENT (§ 18.2-111)

Amount of Embezzlement

Amount: Less than \$10,000.....	0		
\$10,000-\$19,999.....	3		
\$20,000-\$74,999.....	6		
\$75,000-\$119,999.....	9		
\$120,000 or more.....	14		

Total Score _____ If total is 15 or less, go to Section B. If total is 16 or more, go to Section C.

If total is 15 or more, go to Section C.

Section B - Proposed

Offenders convicted of this offense will be assigned the same points as Grand Larceny from the Person



Larceny Section B

Offender Name: _____

◆ **Primary Offense** _____ (scores for attempted/conspired offenses are in parentheses)

A. Any attempted or conspired larceny (1 count).....	(1)
B. Maximum penalty equals 5 or 10 years	
1 count.....	3
2 counts.....	4
3 counts.....	7
C. Grand larceny auto	
1 count.....	3
2 counts.....	4
3 counts.....	7
D. Grand larceny from person (1 count).....	6
E. Grand larceny of firearm (1 count).....	1
F. Failure of bailee to return animal, aircraft, vehicle or boat (1 count).....	1
G. Larceny of bank notes, checks, etc. or any book of accounts	
1 count.....	3
2 counts.....	4
3 counts.....	7
H. Any other grand larceny offense with a maximum penalty of 20 years	
1 count.....	3
2 counts.....	4
3 counts.....	7

Score
▼
0

◆ **Primary Offense Remaining Counts** Total the maximum penalties for counts of the primary not scored above

Years: Less than 22.....	0	32 - 42.....	2
22 - 31.....	1	43 or more.....	3

0

◆ **Additional Offenses** Total the maximum penalties for additional offenses, including counts

Years: Less than 1.....	0
1 - 10.....	1
11 - 21.....	2
22 - 31.....	3
32 - 42.....	4
43 or more.....	5

0

◆ **Prior Convictions/Adjudications** Total the maximum penalties for the 5 most recent and serious prior record events

Years: Less than 2.....	0
2 - 19.....	1
20 - 38.....	2
39 or more.....	3

0

◆ **Prior Misdemeanor Convictions/Adjudications** (Excludes Traffic)

Number of Counts: 1 - 2.....	2
3.....	3
4 or more.....	4

0

◆ **Prior Incarcerations/Commitments** _____ If YES, add 7 → 0

◆ **Legally Restrained at Time of Offense** _____

None.....	0
Other than parole/post-release, supervised probation or CCCA.....	4
Parole/post-release, supervised probation or CCCA.....	5

0

SCORE THE FOLLOWING FACTOR **ONLY IF PRIMARY OFFENSE IS H: EMBEZZLEMENT (§ 18.2-111)**

◆ **Amount of Embezzlement** _____

Amount: Less than \$15,000.....	0
\$15,000 or more.....	3

0

Total Score _____

See Larceny Section B Recommendation Table to convert score to guidelines sentence. Then, go to Section D Nonviolent Risk Assessment and follow the instructions.

If total is 12 or more, recommendation is JAIL 1 day to 6 months.

Section C - Proposed

Offenders convicted of this offense will be assigned the same points as Grand Larceny from the Person



Larceny Section C

Offender Name: _____

Prior Record Classification
 Category I Category II Other
(scores for attempted/conspired offenses are in parentheses)

◆ Primary Offense

A. Attempted or conspired larceny (1 count)	.....(8).....(4).....(2)		
B. Statutory maximum penalty equals 5 or 10 years			
1 count	.....20.....10.....5		
2 counts	.....28.....14.....7		
3 counts	.....40.....20.....10		
C. Grand larceny auto			
1 count	.....32.....16.....8		
2 - 3 counts	.....56.....28.....14		
4 counts	.....72.....36.....18		
D. Grand larceny from person			
1 count	.....40.....20.....10		
2 counts	.....56.....28.....14		
3 counts	.....68.....34.....17		
E. Grand larceny from person (1 count)	.....28.....14.....7		
F. Failure of bailee to return animal, aircraft, vehicle or boat (1 count)	.....28.....14.....7		
G. Larceny of bank notes, checks, etc. or any book of accounts			
1 - 2 counts	.....32.....16.....8		
3 counts	.....96.....48.....24		
H. Any other larceny offense with a maximum penalty of 20 years			
1 count28.....14.....7		
2 counts44.....22.....11		
3 counts56.....28.....14		

Score

0		
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◆ Primary Offense Remaining Counts Assign points to each count of the primary not scored above and total the points

Maximum Penalty:	5, 101	
(years)	202	

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◆ Additional Offenses Assign points to each additional offense (including counts) and total the points

Maximum Penalty:	Less than 50	
(years)	5, 101	
	202	
	303	
	40 or more5	

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◆ Prior Convictions/Adjudications Assign points to the 5 most recent and serious prior record events and total the points

Maximum Penalty:	Less than 100	
(years)	10, 201	
	302	
	40 or more3	

0		
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◆ Prior Felony Larceny Convictions/Adjudications

Number of Counts:	11	
	22	
	33	
	4 or more	.....4	

0	0	
---	---	--

◆ Other Prior Felony Property Convictions/Adjudications

Number of Counts:	1	.....0	
	2 - 3	.....1	
	4 or more	.....2	

0	0	
---	---	--

◆ Prior Felony Convictions/Adjudications Against Person

Number of Counts:	1	.....2	
	2	.....4	
	3 or more	.....6	

0	0	
---	---	--

◆ Prior Felony Drug Convictions/Adjudications

Number of Counts:	1 - 2	.....1	
	3	.....2	
	4 or more	.....3	

0	0	
---	---	--

◆ Prior Juvenile Record If YES, add 3 →

0	0	
---	---	--

◆ Legally Restrained at Time of Offense

None	.....0	
Other than parole/post-release, supervised probation or CCCA3	
Parole/post-release, supervised probation or CCCA4	

0	0	
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SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE IS H: EMBEZZLEMENT (§ 18.2-111)

◆ Amount of Embezzlement

Amount:	Less than \$28,0000	
	\$28,000 - \$89,99924	
	\$90,000 or more30	

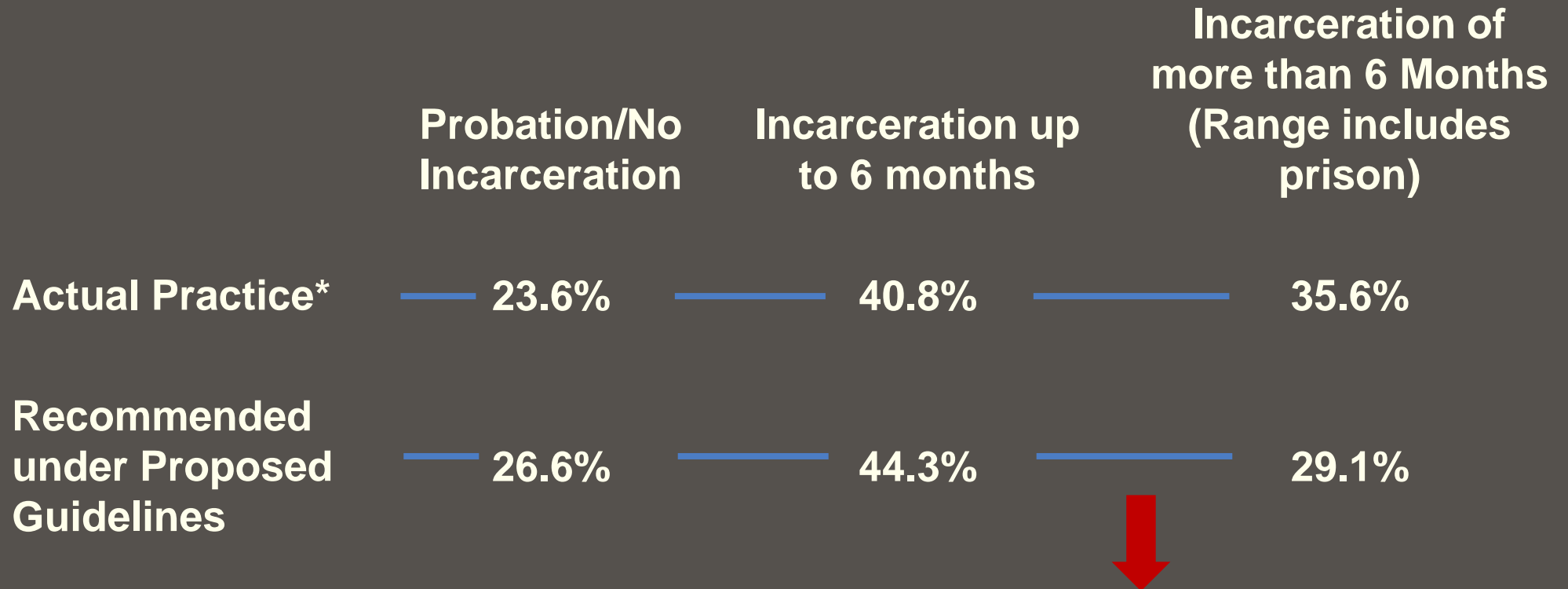
0		
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Total Score → See Larceny Section C Recommendation Table for guidelines sentence range. Then, go to Section D Nonviolent Risk Assessment and follow the instructions.

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Larceny/Section C

Conspire to commit or assist in larceny with an aggregate value of \$1,000 or more § 18.2-23 (B)



Proposed guidelines reflect the best fit with the actual prison incarceration rate

* Updated from September meeting to reflect the VCSC categories.

**Conspire to commit or assist in larceny with an aggregate value of \$1,000 or more
§ 18.2-23 (B)**

**Offenders Sentenced to Incarceration of
Incarceration up to 6 Months**

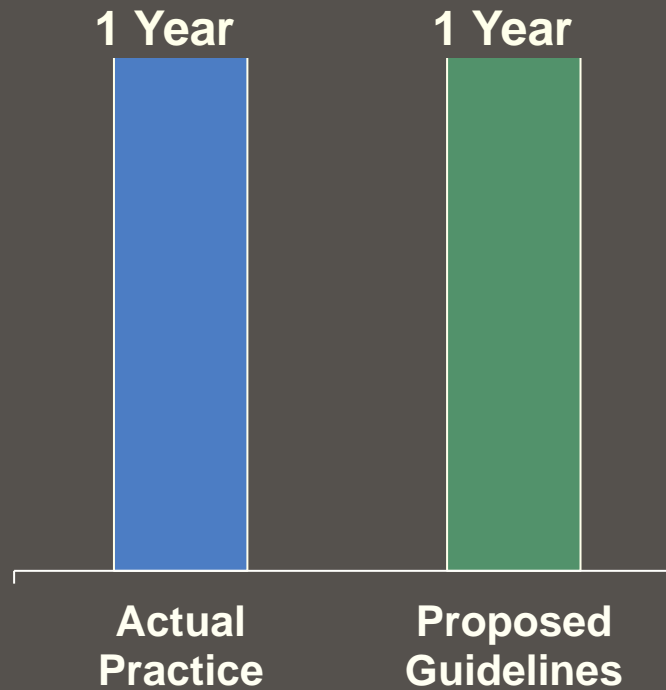
Median Sentence (in years)



**Conspire to commit or assist in larceny with an aggregate value of \$1,000 or more
§ 18.2-23 (B)**

**Offenders Sentenced to Incarceration of
More Than 6 Months**

Median Sentence (in years)



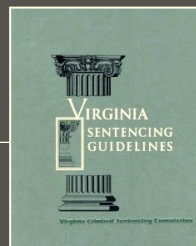
Proposed Recommendation 5

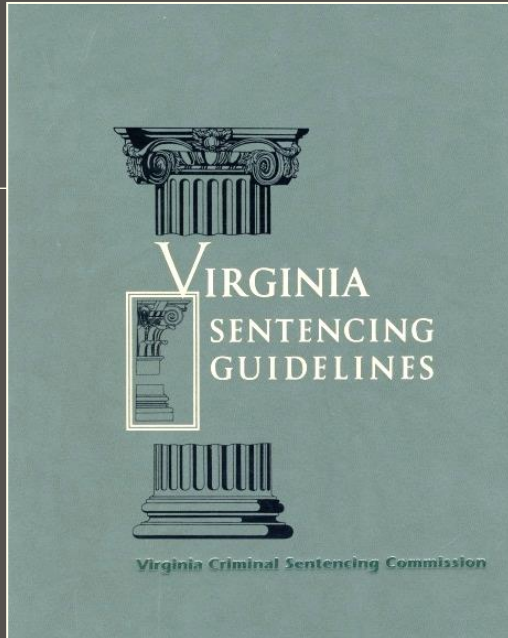
Add Conspire to commit or assist in larceny with an aggregate value of \$1,000 or more

§ 18.2-23 (B)

to the Larceny Worksheet

as proposed





Proposed Recommendation 6:

Modify the Nonviolent Risk Assessment to Exclude Defendants Serving State-Responsible Prison Sentences from Being Recommended for Alternatives to Prison

Nonviolent risk Assessment

§ 17.1-803

§ 17.1-803

4. Prepare guidelines for sentencing courts to use in determining appropriate candidates for alternative sanctions which may include, but not be limited to (i) fines and day fines, (ii) boot camp incarceration, (iii) local correctional facility incarceration, (iv) diversion center incarceration, (v) detention center incarceration, (vi) home incarceration/electronic monitoring, (vii) day or evening reporting, (viii) probation supervision, (ix) intensive probation supervision, and (x) performance of community service.
5. Develop an offender risk assessment instrument for use in all felony cases, based on a study of Virginia felons, that will be predictive of the relative risk that a felon will become a threat to public safety.
6. Apply the risk assessment instrument to offenders convicted of any felony that is not specified in (i) subdivision 1, 2 or 3 of subsection A of § 17.1-805 or (ii) subsection C of § 17.1-805 under the discretionary sentencing guidelines, and shall determine, on the basis of such assessment and with due regard for public safety needs, the feasibility of achieving the goal of placing 25 percent of such offenders in one of the alternative sanctions listed in subdivision 4. If the Commission so determines that achieving the 25 percent or a higher percentage goal is feasible, it shall incorporate such goal into the discretionary sentencing guidelines, to become effective on January 1, 1996. If the Commission so determines that achieving the goal is not feasible, the Commission shall report that determination to the General Assembly, the Governor and the Chief Justice of the Supreme Court of Virginia on or before December 1, 1995, and shall make such recommendations as it deems appropriate.

Section D - Proposed

There is a face validity problem when the Nonviolent Risk Assessment (NVRA) recommends an alternative to prison when the defendant is serving a state-responsible sentence.

As best as can be determined, the original and updated NVRA did not include drug, larceny and fraud offenses that occurred while the defendants were serving prison sentences.



Nonviolent Risk Assessment ❖ Drug/Schedule I/II Section D

Offender Name: _____

◆ Ineligibility Conditions

A. Was the offender recommended for Probation/No Incarceration on Section B? Yes No

B. Do any of the offenses at sentencing involve the sale, distribution, or possession with intent, etc. of cocaine of a combined quantity of 28.35 grams (1 ounce) or more? Yes No

C. Are any prior record offenses violent (Category I/II listed in Appendix A of the Guidelines Manual)? Yes No

D. Are any of the offenses at sentencing violent (Category I/II listed in Appendix A of the Guidelines Manual)? Yes No

E. Do any of the offenses at sentencing require a mandatory term of incarceration? Yes No

F. Did the offense occur while serving a sentence? Yes No

If answered YES to ANY, go to "Nonviolent Risk Assessment Recommendations" on cover sheet and check Not Applicable. If answered NO to ALL, complete remainder of Section D worksheet.

◆ Offender Age at Time of Offense _____

Younger than 21 years.....	9	↓
21 to 29 years.....	6	
30 to 43 years.....	3	
Older than 43 years.....	1	

◆ Gender _____

Offender is Male.....2

◆ Prior Juvenile Adjudication _____

Female with prior juvenile adjudication.....	1	↓
Male with prior juvenile adjudication.....	7	

Juvenile record unknown

◆ Prior Adult Felony Convictions _____

Number of Counts: 0.....	0	↓
1 - 2.....	1	
3.....	5	
4 or more.....	15	

◆ Prior Adult Incarcerations _____

Number: 0.....	0	↓
1 - 3.....	1	
4 or more.....	8	

◆ Prior Arrest or Confinement Within Past 12 Months (Prior to Offense) — If YES, add 3 →

Total Score _____ →

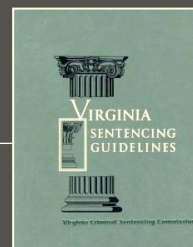
15 or less, check Recommended for Alternative Punishment.
 16 or more, check NOT Recommended for Alternative Punishment.

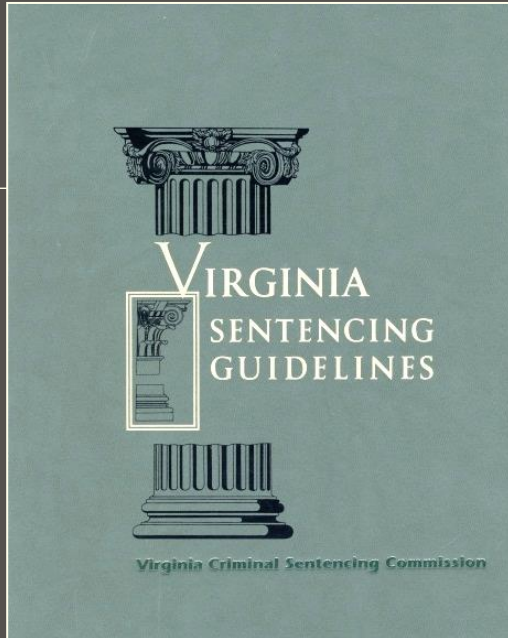
Drug/Schedule I or II Section D

Go to Cover Sheet and fill out Nonviolent Risk Assessment Recommendations.

Proposed Recommendation 6

Modify the Nonviolent Risk Assessment
as proposed





New Guidelines Analysis

Robbery – No Recommendation to Add as a Guidelines Offense

Robbery Guidelines

§ 18.2-58

§ 18.2-58

A. For the purposes of this section, "serious bodily injury" means the same as that term is defined in § 18.2-51.4.

B. Any person who commits robbery is guilty of a felony and shall be punished as follows:

1. Any person who commits robbery and causes serious bodily injury to or the death of any other person is guilty of a Class 2 felony.

2. Any person who commits robbery by using or displaying a firearm, as defined in § 18.2-308.2:2, in a threatening manner is guilty of a Class 3 felony.

3. Any person who commits robbery by using physical force not resulting in serious bodily injury or by using or displaying a deadly weapon other than a firearm in a threatening manner is guilty of a Class 5 felony.

4. Any person who commits robbery by using threat or intimidation or any other means not involving a deadly weapon is guilty of a Class 6 felony.

Robbery Guidelines § 18.2-58

FY 2022 – FY 2023

Robbery causes death	2
Robbery causes serious bodily injury	10
Robbery by using/displaying a firearm	125
Robbery by using physical force, no serious bodily injury	66
Robbery by using/displaying other deadly weapon (not firearm)	41
Robbery by threat, etc., no deadly weapon	68

Robbery Guidelines § 18.2-58

FY 2017 – FY 2021

Robbery With Use of Firearm = 691

Disposition	Percent	Mean Sentence	Median Sentence
No Incarceration	5.6%	N/A	N/A
Jail	1.3%	4.5	6.0
Prison	93.1%	107.8	84.0

Data reflect events in which robbery was the primary (or most serious) offense at sentencing. Excluded cases include those with a primary offense indicating carjacking, attempt, or conspiracy; those with an offense date prior to 7/1/16; and those with an effective sentence of 0 months.

Robbery Guidelines

§ 18.2-58

FY 2022 to Present

Robbery With Use of Firearm = 115

Disposition	Percent	Mean Sentence	Median Sentence
No Incarceration*	<u>30.4%</u>	N/A	N/A
Jail	4.3%	5.2	6.0
Prison	65.2%	43.8	36.0

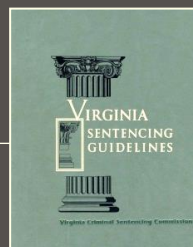
* Guidelines data from the same time-period indicate just 1 of 23 cases (4%) has a sentence of no incarceration; all other sentences, greater than 6 months, have a mean sentence of 62.1 months and a median of **42 months**.

Data reflect events in which robbery was the primary (or most serious) offense at sentencing. Excluded cases include those with a primary offense indicating carjacking, attempt, or conspiracy; those with an offense date prior to 7/1/16; and those with an effective sentence of 0 months.

Robbery Guidelines

§ 18.2-58

- The prior guidelines system saw robbery sentences more than double effective time versus the current non-guidelines system. This suggests a change in sentencing patterns for robberies occurring after 7/1/21.
- Completed Case Details regarding weapon, injury, and other details will be key to any new guidelines analysis, as we try to match up the prior system with the new system.
- Of the 125 new cases involving a firearm, 12 could not be analyzed due to an offense date that is pre-7/1/21, or the robbery being an attempt or conspiracy.
- For post-7/1/21, there are 115 cases of robbery by firearm in CMS, but only 77 are in SWIFT. Any analysis will depend on all cases being entered into SWIFT. CMS data also have some concerning discrepancies that may indicate incomplete information.



New Robbery Analysis

Continue to Monitor Robbery Convictions, Resolve Data Issues, and
Promote the Completion of the Case Details Worksheet Before
Recommending Restoring Robbery as a Guidelines Offense

