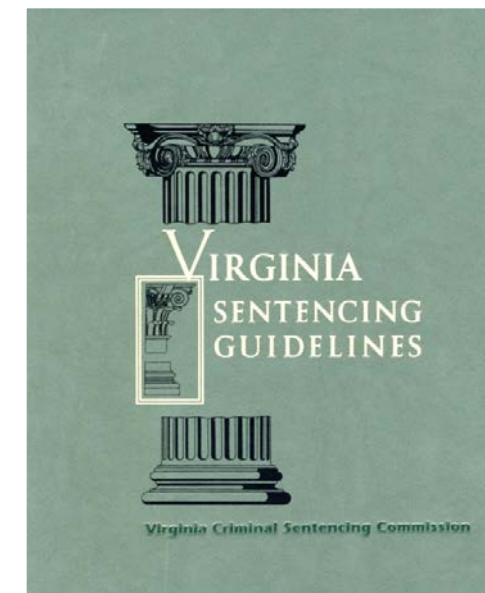




VIRGINIA CRIMINAL SENTENCING COMMISSION



September 4, 2024

Modifications to the Sentencing Guidelines



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



Under § 17.1-806 of the *Code of Virginia*, any Guidelines modifications adopted by the Commission must be presented in its annual report, due to the General Assembly each December 1.



Unless otherwise provided by law, the changes recommended by the Commission become effective on the following July 1.



Proposals for New Guidelines Offenses



Proposals reflect the best fit for the historical data analyzed.

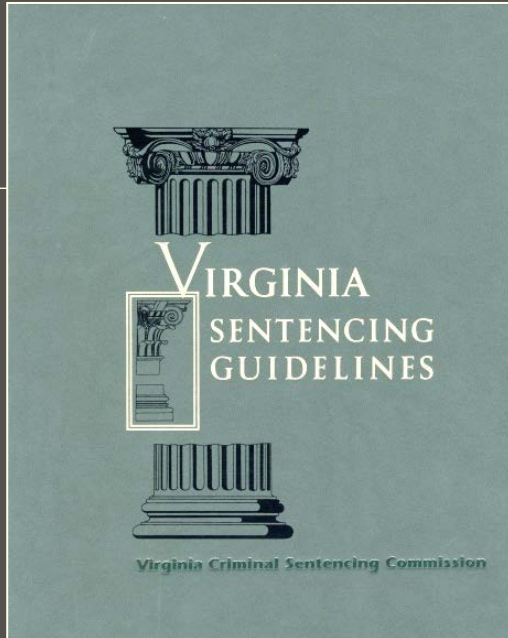


Proposals are designed to closely match the historical rate of incarceration in prison and jail.



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





Discussion

Possession of Firearms While In
Possession of Certain Substances
(§ 18.2-308.4(A))

Possess Firearm While in Possession of Certain Substances

§18.2-308.4(A)

§ 18.2-308.4

- A. It shall be unlawful for any person **unlawfully in possession of a controlled substance classified in Schedule I or II of the Drug Control Act (§ 54.1-3400 et seq.) of Title 54.1 to simultaneously** with knowledge and intent **possess any firearm.** A violation of this subsection is a Class 6 felony and constitutes a separate and distinct felony.
- B. ...simultaneously with knowledge and intent possess any firearm on or about his person...

Possess Firearm While in Possession of Certain Substances §18.2-308.4(A)

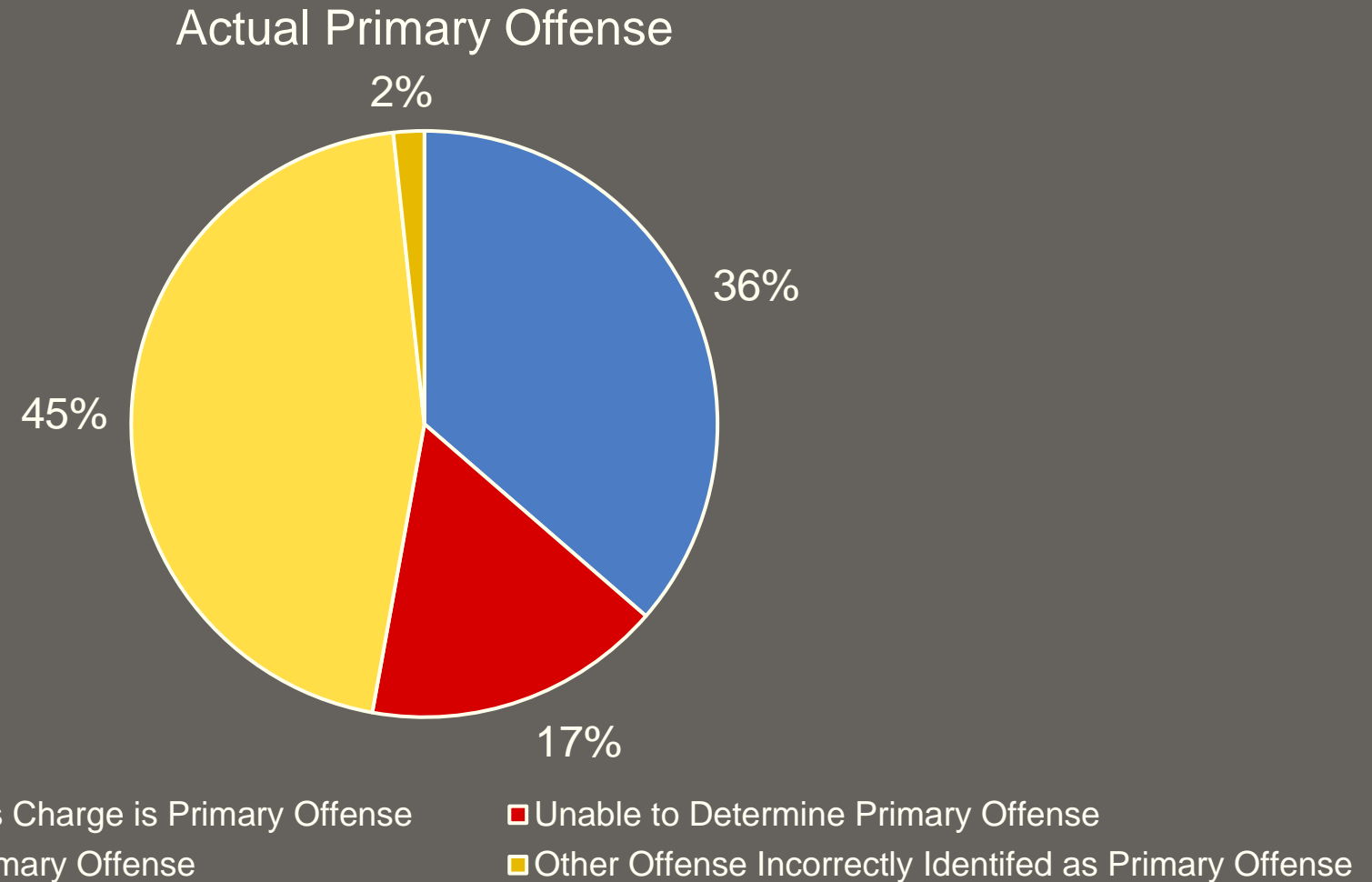
2015-2023
Number of Sentencing Events = 121

Disposition	Percent	Median Sentence
No Incarceration	62.8%	N/A
Local Responsible	27.3%	0.9 Months
State Responsible	9.9%	12 Months

Possess Firearm While in Possession of Certain Substances §18.2-308.4(A)

- Analysis found this offense is often not the true primary offense. Instead, it's the remaining offense after Possession of Schedule I/II Drugs charges are deferred, taken under advisement, or sentenced to First Time Offender.
- Even when this is the primary offense, it is often the result of Possession of Schedule I/II Drugs charges being dropped or a more serious firearm charge with a mandatory minimum being amended down.

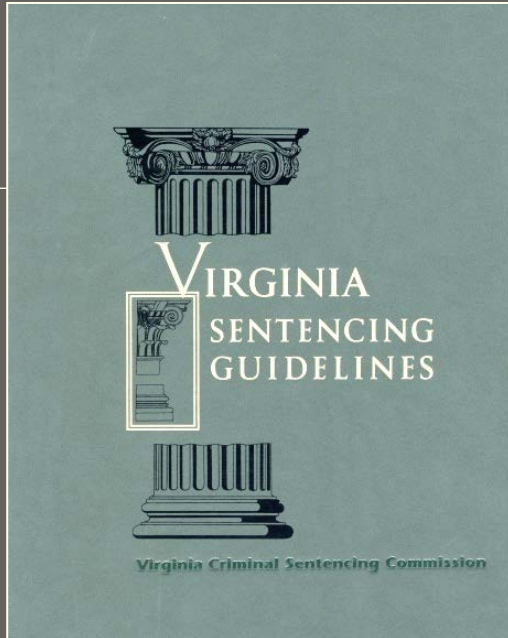
Possess Firearm While in Possession of Certain Substances §18.2-308.4(A)



Source: Supreme Court of Virginia - Circuit Court Management System (CMS)

Possess Firearm While in Possession of Certain Substances §18.2-308.4(A)

- Just 55 cases have possession of firearm while in possession of drugs as the true primary; there are not enough cases to perform a thorough analysis.
- Because this charge is most often either the remainder after other charges are deferred, or the result of dropped or amended charges, it is more a *companion* charge than a *true* primary offense.
- For these reasons, guidelines cannot be developed at this time.



Proposed Recommendation 1:

Resist Arrest/Obstruct Justice by Threats or force (§ 18.2-460(C)) to the Miscellaneous/Person & Property Guidelines

Resisting Arrest by Threats of Bodily Harm or Force

§18.2-460(C)

Penalty: 1Y – 10Y(II)

§ 18.2-460(C)

C. If any person by threats of bodily harm or force knowingly attempts to intimidate or impede a judge, magistrate, justice, juror, attorney for the Commonwealth, witness, any law-enforcement officer, lawfully engaged in the discharge of his duty, or to obstruct or impede the administration of justice in any court relating to a violation of or conspiracy to violate § 18.2-248 or subdivision (a)(3), (b) or (c) of § 18.2-248.1, or § 18.2-46.2 or § 18.2-46.3, or relating to the violation of or conspiracy to violate any violent felony offense listed in subsection C of § 17.1-805, he is guilty of a Class 5 felony.

Resisting Arrest by Threats of Bodily Harm or Force
§18.2-460(C)
Penalty: 1Y – 10Y(II)

FY2018 – FY2023
Number of Sentencing Events = 124

Disposition	Percent	Median Sentence
No Incarceration	32.3%	N/A
Incarceration Up to 6 Months	45.2%	3 Months
Incarceration More than 6 Months	22.6%	12 Months

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

Section A - Proposed

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

Victim Injury: Follow "All other offenses"

Legal Restraint: Follow "J or K: Damage property or violation of protective order"

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 any property or monument \$1,000 or more (1 count).....	2
K. Violation of protective order (violence) 3rd or subsequent w/in 20 years (1 count).....	2
L. Resisting arrest, obstructing justice by threats bodily harm or force (1 count).....	1

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

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

Years: Less than 1.....	0
(12 months = 1 year) 1 - 7.....	1
8 - 18.....	2
19 - 28.....	3
29 - 38.....	4
39 or more.....	5

◆ **Victim Injury**

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

Primary offense:	
All other offenses.....	Points
Threatened, emotional, physical, or serious.....	1
Life threatening.....	2

◆ **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

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

◆ **Legally Restrained at Time of Offense**

Primary offense:	
J, K or L: Damage property, violation of protective order or felony obstruction.....	Points
Any legal restraint.....	1

Primary offense:	
All other offenses.....	Points
None.....	0
Other than post-incarceration supervision.....	2
Post-incarceration supervision.....	5

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

Total Score

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

Primary Offense:
Offenders convicted of this offense will be assigned with 7 points for 1 count.

Primary Offense Remaining Counts: Follow "All other offenses."

Victim Injury: Follow "F, G, or H: Offenses with VCC prefix 'FAM.'"

Prior Incarcerations/Commitments: Follow "J: Damage/Destroy Property \$1,000 or More"

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 monument \$1,000 or more (1 count).....	8
K. Violation of protective order (violence) 3rd or subsequent w/in 20 years (1 count).....	6
L. Resisting arrest, obstructing justice by threats bodily harm or force (1 count).....	7

Score

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Primary Offense Remaining Counts

Total the maximum penalties for counts of the primary not scored above

Primary offense:
J: Damage/Destroy property \$1,000 or more

Years	Points
5 - 9.....	1
10 - 19.....	2
20 - 29.....	3
30 - 39.....	4
40 or more.....	5

Primary offense:
All other offenses

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

0	
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Additional Offenses

Total the maximum penalties for additional offenses, including counts

Years: Less than 1.....	0
(12 months = 1 year) 1 - 9.....	2
10 - 19.....	3
20 - 29.....	4
30 - 39.....	5
40 or more.....	6

0	
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Victim Injury

Primary offense:
F, G, H or L: Offenses with VCC prefix "FAM" or "JUS"

Threatened, emotional, physical, or serious.....	9
Life threatening.....	10

Primary offense:
All other offenses

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

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Legally Restrained at Time of Offense

If YES, add 1

0	
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SCORE THE FOLLOWING FACTOR **ONLY** IF PRIMARY OFFENSE IS **J: DAMAGE/DESTROY PROPERTY \$1,000 OR MORE OR L: RESISTING ARREST, OBSTRUCTING JUSTICE**

Prior Incarcerations/Commitments

If YES, add 1

0	
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SCORE THE FOLLOWING FACTOR **ONLY** IF PRIMARY OFFENSE IS **K: VIOLATION OF PROTECTIVE ORDER 3RD OR SUB. W/IN 20 YRS**

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

If YES, add 3

0	
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Total Score

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

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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: 20 points
Category II: 10 points
Other: 5 points



Additional Offenses:
 Follow "All other offenses."

Victim Injury:
 Follow "All other offenses: A, B, C, D, E, I, and J."

Prior Felony Convictions/Adjudications Against Person:
 New box with scores as follows:
 1 count: 0 points
 2 counts: 2 points
 3 counts: 3 points
 4 counts: 4 points
 5 or more counts: 5 points

Legally Restrained at Time of Offense:
 Follow "All other offenses."

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

Offender Name: _____

Miscellaneous/Person & Property Section C

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

A. Burn unoccupied dwelling/church (1 count)	108	54	27
B. Burn occupied dwelling/church	200	100	50
Completed: 1 count	68	34	17
2 counts	(108)	(54)	(27)
Attempted or conspired: 1 count	(72)	(36)	(18)
2 counts			
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	8
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
J. Damage/destroy any property or monument \$1,000 or more (1 count)	32	16	8
K. Violation of protective order (category 2) or subsequent wife (20 years) (1 count)	40	20	10
L. Resisting arrest, obstructing justice by threats bodily harm or force	20	10	5

Score [] [] []

◆ **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, 15 3	5, 10, 15 1
20 6	20 2
30 9	30 3
40, 50, Life 12	40, 50, Life 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, J, or L
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, 50, Life 1 [0] [0] []

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

Primary offense: B: Burn occupied dwelling/church	Primary offense: L: Felony Obstruction	Primary offense: All other offenses
Number of Counts	Number of Counts	Number of Counts
1 3	1 0	1 1
2 4	2 2	2 2
3 6	3 3	3 3
4 or more 8	4 4	4 4
	5 or more 5	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
 3 6

◆ **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	

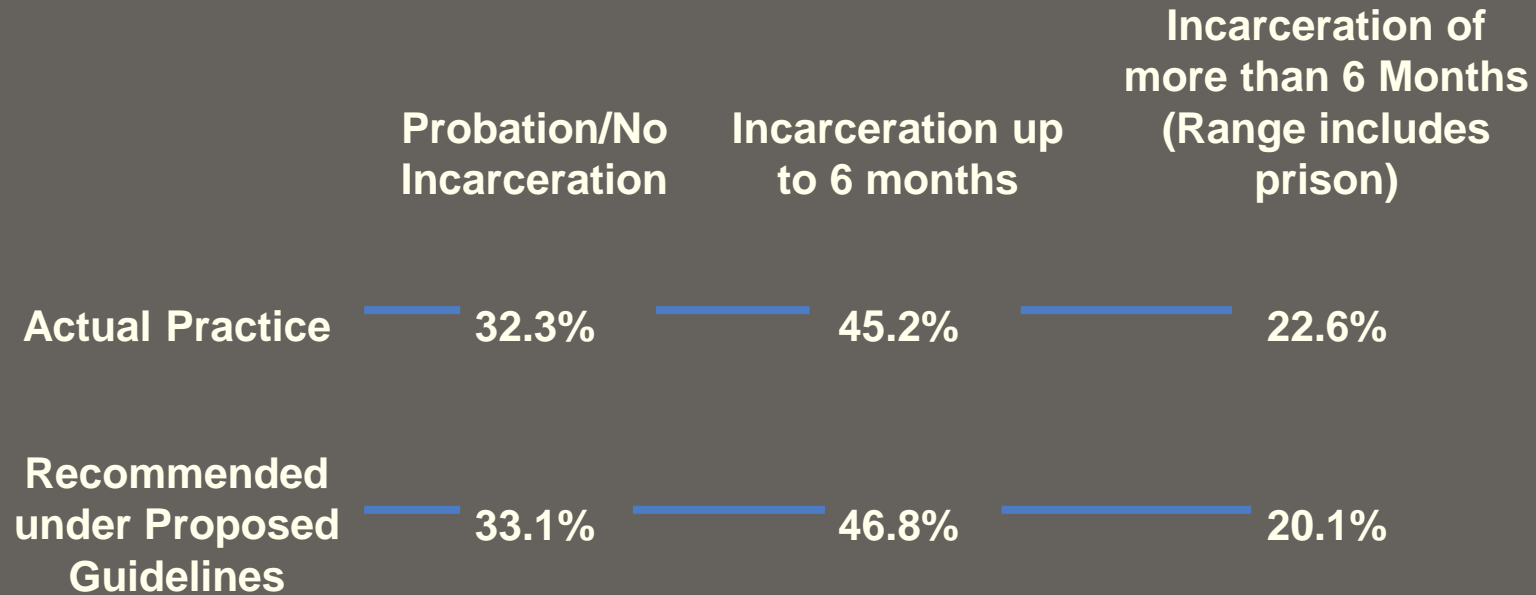
◆ **Type of Additional Offense**

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.

Resisting Arrest by Threats of Bodily Harm or Force
§18.2-460(C)
Penalty: 1Y – 10Y(II)

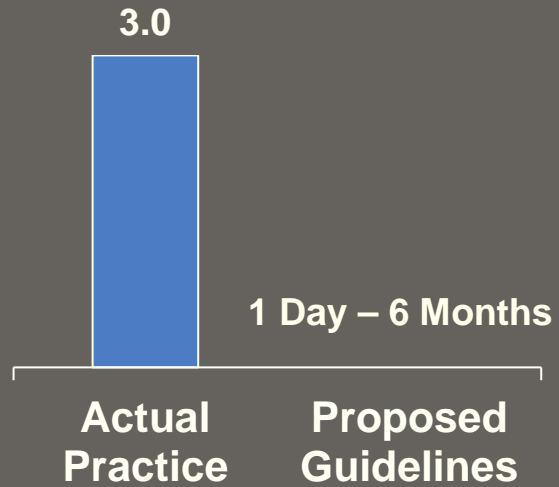


Proposed guidelines are closely aligned with the actual incarceration rates.

Resisting Arrest by Threats of Bodily Harm or Force
§18.2-460(C)
Penalty: 1Y – 10Y(II)

Offenders Sentenced to
Incarceration up to 6 Months

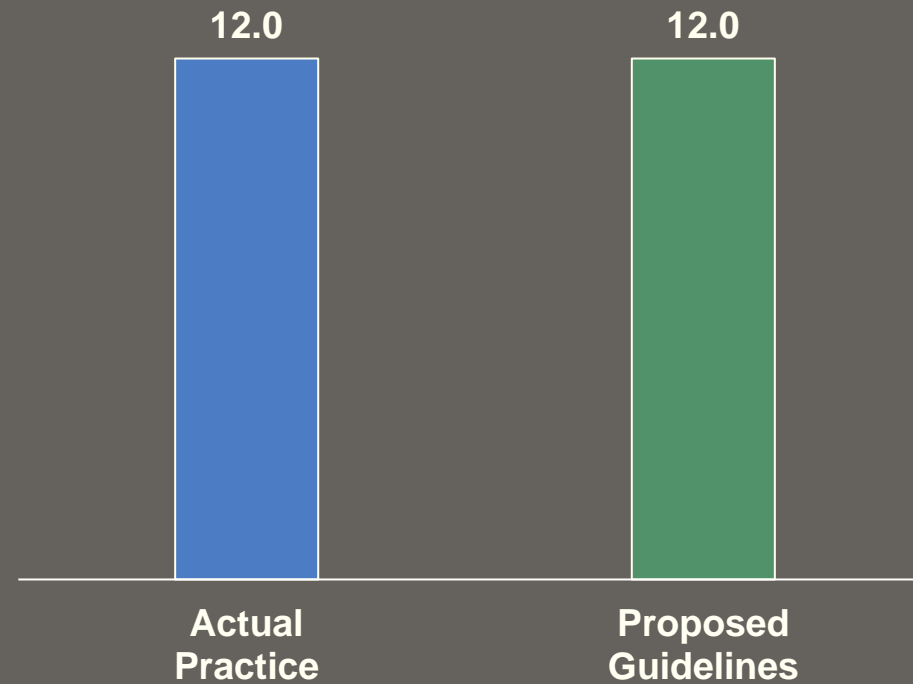
Median Sentence (in months)



Resisting Arrest by Threats of Bodily Harm or Force
§18.2-460(C)
Penalty: 1Y – 10Y(II)

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

Median Sentence (in months)



Miscellaneous/Person & Property ❖ Section A

Offender Name: _____

◆ **Primary Offense**

A. Burn unoccupied dwelling/church (1 count).....	6	Score ▼ <input style="width: 30px; height: 20px; border: 1px solid black;" type="text" value="0"/>
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 any property or monument \$1,000 or more (1 count).....	2	
K. Violation of protective order (violence) 3rd or subsequent w/in 20 years (1 count).....	2	
L. Resisting arrest, obstructing justice by threats bodily harm or force (1 count).....	1	

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

Years:	5 - 7.....	1	▼ <input style="width: 30px; height: 20px; border: 1px solid black;" type="text" value="0"/>
	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	▼ <input style="width: 30px; height: 20px; border: 1px solid black;" type="text" value="0"/>
(12 months = 1 year)	1 - 7.....	1	
	8 - 18.....	2	
	19 - 28.....	3	
	29 - 38.....	4	
	39 or more.....	5	

◆ **Victim Injury**

<p>Primary offense: F, G, or H: Offenses with VCC prefix "FAM"</p> <table border="0"> <tr> <td>Threatened, emotional, physical, or serious.....</td> <td style="text-align: right;">Points</td> <td>2</td> </tr> <tr> <td>Life threatening.....</td> <td></td> <td>5</td> </tr> </table>	Threatened, emotional, physical, or serious.....	Points	2	Life threatening.....		5	<p>Primary offense: All other offenses</p> <table border="0"> <tr> <td>Threatened, emotional, physical, or serious.....</td> <td style="text-align: right;">Points</td> <td>1</td> </tr> <tr> <td>Life threatening.....</td> <td></td> <td>2</td> </tr> </table>	Threatened, emotional, physical, or serious.....	Points	1	Life threatening.....		2	▼ <input style="width: 30px; height: 20px; border: 1px solid black;" type="text" value="0"/>
Threatened, emotional, physical, or serious.....	Points	2												
Life threatening.....		5												
Threatened, emotional, physical, or serious.....	Points	1												
Life threatening.....		2												

◆ **Additional Offenses in Current Event Requiring Mandatory Minimum(6 mos or more) if YES, add 3** →

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

Years:	Less than 2.....	0	▼ <input style="width: 30px; height: 20px; border: 1px solid black;" type="text" value="0"/>
	2 - 38.....	1	
	39 or more.....	2	

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

◆ **Legally Restrained at Time of Offense**

<p>Primary offense: J, K or L: Damage property, violation of protective order or felony obstruction</p> <table border="0"> <tr> <td>Any legal restraint.....</td> <td style="text-align: right;">Points</td> <td>1</td> </tr> </table>	Any legal restraint.....	Points	1	<p>Primary offense: All other offenses</p> <table border="0"> <tr> <td>None.....</td> <td style="text-align: right;">Points</td> <td>0</td> </tr> <tr> <td>Other than post-incarceration supervision.....</td> <td></td> <td>2</td> </tr> <tr> <td>Post-incarceration supervision.....</td> <td></td> <td>5</td> </tr> </table>	None.....	Points	0	Other than post-incarceration supervision.....		2	Post-incarceration supervision.....		5	▼ <input style="width: 30px; height: 20px; border: 1px solid black;" type="text" value="0"/>
Any legal restraint.....	Points	1												
None.....	Points	0												
Other than post-incarceration supervision.....		2												
Post-incarceration supervision.....		5												

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

◆ **Prior Vandalism Convictions/Adjudications**

Misdemeanor vandalism.....	1	▼ <input style="width: 30px; height: 20px; border: 1px solid black;" type="text" value="0"/>
Felony vandalism.....	2	
Both felony and misdemeanor vandalism.....	3	

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

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 monument \$1,000 or more (1 count).....8
- K. Violation of protective order (violence) 3rd or subsequent w/in 20 years (1 count).....6
- L. Resisting arrest, obstructing justice by threats bodily harm or force (1 count).....7

Score
▼

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

Primary offense:
J: Damage/Destroy property \$1,000 or more

Years	Points
5 - 9	1
10 - 19	2
20 - 29	3
30 - 39	4
40 or more	5

Primary offense:
All other offenses

Years	Points
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 10
 (12 months = 1 year) 1 - 92
 10 - 193
 20 - 294
 30 - 395
 40 or more6

◆ Victim Injury

Primary offense:
F, G, H or L: Offenses with VCC prefix "FAM" or "JUS"

	Points
Threatened, emotional, physical, or serious	9
Life threatening	10

Primary offense:
All other offenses

	Points
Threatened, emotional, physical, or serious	2
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 OR L: RESISTING ARREST, OBSTRUCTING JUSTICE**

◆ Prior Incarcerations/Commitments

_____ If YES, add 1 →

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

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

_____ If YES, add 3 →

Total Score

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

Miscellaneous/Person & Property ❖ Section C

◆ Primary Offense Prior Record Classification
 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
J. Damage/destroy any property or monument \$1,000 or more (1 count).....	32	16	8
K. Violation of protective order (violence) 3rd or subsequent w/in 20 years (1 count).....	40	20	10
L. Resisting arrest, obstructing justice by threats bodily harm or force.....	20	10	5

Score

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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, 10, 20, 30, 40.....	1
(years) Life.....	5

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

<p>Primary offense: B: Burn occupied dwelling/church</p> <table border="1" style="width: 100%; text-align: center;"> <tr><th>Years</th><th>Points</th></tr> <tr><td>Less than 5.....</td><td>0</td></tr> <tr><td>5, 10, 15.....</td><td>3</td></tr> <tr><td>20.....</td><td>6</td></tr> <tr><td>30.....</td><td>9</td></tr> <tr><td>40, 50, Life.....</td><td>12</td></tr> </table>	Years	Points	Less than 5.....	0	5, 10, 15.....	3	20.....	6	30.....	9	40, 50, Life.....	12	<p>Primary offense: All other offenses</p> <table border="1" style="width: 100%; text-align: center;"> <tr><th>Years</th><th>Points</th></tr> <tr><td>Less than 5.....</td><td>0</td></tr> <tr><td>5, 10, 15.....</td><td>1</td></tr> <tr><td>20.....</td><td>2</td></tr> <tr><td>30.....</td><td>3</td></tr> <tr><td>40, 50, Life.....</td><td>5</td></tr> </table>	Years	Points	Less than 5.....	0	5, 10, 15.....	1	20.....	2	30.....	3	40, 50, Life.....	5
Years	Points																								
Less than 5.....	0																								
5, 10, 15.....	3																								
20.....	6																								
30.....	9																								
40, 50, Life.....	12																								
Years	Points																								
Less than 5.....	0																								
5, 10, 15.....	1																								
20.....	2																								
30.....	3																								
40, 50, Life.....	5																								

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◆ Firearm Used or Brandished If YES, add 2 →

0	0
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◆ Victim Injury

<p>Primary offense: G, H or K</p> <table border="1" style="width: 100%; text-align: center;"> <tr><th>Points</th></tr> <tr><td>Threatened or emotional.....</td><td>6</td></tr> <tr><td>Physical.....</td><td>7</td></tr> <tr><td>Life threatening.....</td><td>10</td></tr> </table>	Points	Threatened or emotional.....	6	Physical.....	7	Life threatening.....	10	<p>Primary offense: F: Child Neglect/Abuse</p> <table border="1" style="width: 100%; text-align: center;"> <tr><th>Points</th></tr> <tr><td>Threatened or emotional.....</td><td>6</td></tr> <tr><td>Physical or Serious Physical.....</td><td>12</td></tr> <tr><td>Life threatening.....</td><td>13</td></tr> </table>	Points	Threatened or emotional.....	6	Physical or Serious Physical.....	12	Life threatening.....	13	<p>Primary offense: All other offenses A, B, C, D, E, I, J, or L</p> <table border="1" style="width: 100%; text-align: center;"> <tr><th>Points</th></tr> <tr><td>Threatened or emotional.....</td><td>2</td></tr> <tr><td>Physical.....</td><td>4</td></tr> <tr><td>Life threatening.....</td><td>5</td></tr> </table>	Points	Threatened or emotional.....	2	Physical.....	4	Life threatening.....	5
Points																							
Threatened or emotional.....	6																						
Physical.....	7																						
Life threatening.....	10																						
Points																							
Threatened or emotional.....	6																						
Physical or Serious Physical.....	12																						
Life threatening.....	13																						
Points																							
Threatened or emotional.....	2																						
Physical.....	4																						
Life threatening.....	5																						

0		
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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 20.....	0
(years) 20, 30, 40, 50, Life.....	1

0	0
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◆ Prior Felony Convictions/Adjudications Against Person

<p>Primary offense: B: Burn occupied dwelling/church</p> <table border="1" style="width: 100%; text-align: center;"> <tr><th>Number of Counts</th><th>Points</th></tr> <tr><td>1.....</td><td>3</td></tr> <tr><td>2.....</td><td>4</td></tr> <tr><td>3.....</td><td>6</td></tr> <tr><td>4 or more.....</td><td>8</td></tr> </table>	Number of Counts	Points	1.....	3	2.....	4	3.....	6	4 or more.....	8	<p>Primary offense: L: Felony Obstruction</p> <table border="1" style="width: 100%; text-align: center;"> <tr><th>Number of Counts</th><th>Points</th></tr> <tr><td>1.....</td><td>0</td></tr> <tr><td>2.....</td><td>2</td></tr> <tr><td>3.....</td><td>3</td></tr> <tr><td>4.....</td><td>4</td></tr> <tr><td>5 or more.....</td><td>5</td></tr> </table>	Number of Counts	Points	1.....	0	2.....	2	3.....	3	4.....	4	5 or more.....	5	<p>Primary offense: All other offenses</p> <table border="1" style="width: 100%; text-align: center;"> <tr><th>Number of Counts</th><th>Points</th></tr> <tr><td>1.....</td><td>1</td></tr> <tr><td>2.....</td><td>2</td></tr> <tr><td>3.....</td><td>3</td></tr> <tr><td>4.....</td><td>4</td></tr> <tr><td>5 or more.....</td><td>5</td></tr> </table>	Number of Counts	Points	1.....	1	2.....	2	3.....	3	4.....	4	5 or more.....	5
Number of Counts	Points																																			
1.....	3																																			
2.....	4																																			
3.....	6																																			
4 or more.....	8																																			
Number of Counts	Points																																			
1.....	0																																			
2.....	2																																			
3.....	3																																			
4.....	4																																			
5 or more.....	5																																			
Number of Counts	Points																																			
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 1.....	2	4.....	8
of Counts: 2.....	4	5 or more.....	10
3.....	6		

0		
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◆ Legally Restrained at Time of Offense

<p>Primary offense: F or K: Child neglect/abuse or violation of protective order</p> <table border="1" style="width: 100%; text-align: center;"> <tr><th>Points</th></tr> <tr><td>None.....</td><td>0</td></tr> <tr><td>Other than post-incarceration supervision.....</td><td>6</td></tr> <tr><td>Post-incarceration supervision.....</td><td>9</td></tr> </table>	Points	None.....	0	Other than post-incarceration supervision.....	6	Post-incarceration supervision.....	9	<p>Primary offense: All other offenses</p> <table border="1" style="width: 100%; text-align: center;"> <tr><th>Points</th></tr> <tr><td>Any legal restraint.....</td><td>2</td></tr> </table>	Points	Any legal restraint.....	2
Points											
None.....	0										
Other than post-incarceration supervision.....	6										
Post-incarceration supervision.....	9										
Points											
Any legal restraint.....	2										

0	0
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◆ Type of Additional Offense

<p>Primary offense: B: Burn Occupied Dwelling/Church</p> <table border="1" style="width: 100%; text-align: center;"> <tr><th>Points</th></tr> <tr><td>Additional offense with VCC Prefix "MUR".....</td><td>153</td></tr> </table>	Points	Additional offense with VCC Prefix "MUR".....	153	<p>Primary offense: All other offenses</p> <table border="1" style="width: 100%; text-align: center;"> <tr><td>Do Not Score</td></tr> </table>	Do Not Score
Points					
Additional offense with VCC Prefix "MUR".....	153				
Do Not Score					

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Total Score →

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See Miscellaneous Section C Recommendation Table for guidelines sentence range.

Proposed Recommendation 1

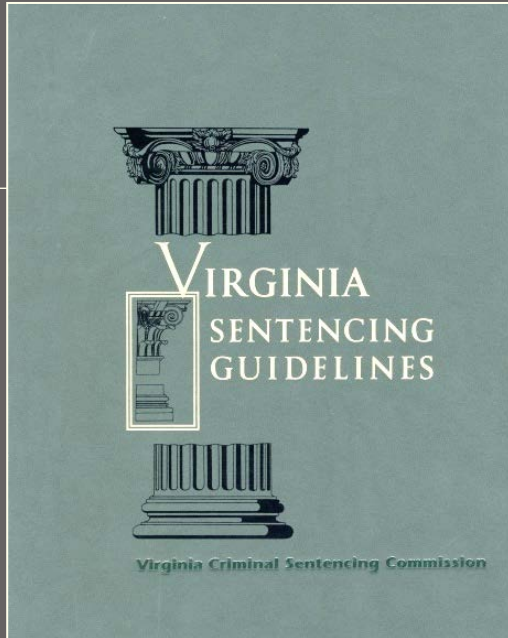
Add Resisting Arrest by Threats of Bodily Harm/Force

§ 18.2-460(C)

to the Miscellaneous/Person & Property 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)

FY2019 – FY2023
Number of Sentencing Events = 256

Disposition	Percent	Median Sentence
No Incarceration	34.7%	N/A
Incar up to 6 Months	43.8%	3.3 Months
Incar > 6 Months	21.5%	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: 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:

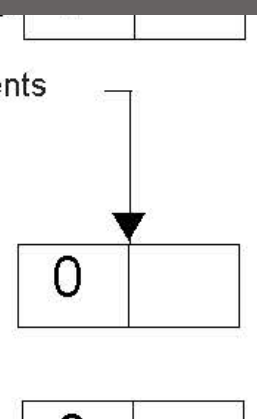
B, C, D, J or K: Sex offender registry violation, provide wireless device to or possession of wireless device by prisoner or prisoner possess chemical

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: Prisoner Possess, Secrete, Etc., Unlawful Chemical

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

Automatic 4 Points - Offenders are
Prisoners



◆ **Prior Incarcerations/Commitments**

_____ If YES, add 4 →

0

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.....	Points
	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

2 or more Prior Felony Drug Convictions/Adjudications

If YES, add 1

0	
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Score if Primary Offense is Prisoner Possess, Secrete, Etc., Unlawful Chemical:
If Offender Has > 1 Prior Felony Drug Conviction/Adjudication, 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)..... 7

Score
▼

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Add Primary Offense: Prisoner Possess, Secrete, Etc., Unlawful Chemical (1 count)7 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	
◆ Prior Incarcerations/Commitments	<hr/>			
	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		
			0	



Add Primary Offense: Prisoner Possess, Secrete, Etc., Unlawful Chemical – 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 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 is Prisoner Possess, Secrete, Etc., Unlawful Chemical:
If Offender Has Any Prior Felony Drug Convictions/Adjudications, Score 1 Point**



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

- 1 or more Prior Felony Drug Conviction/Adjudication 1

◆ **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: 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 →

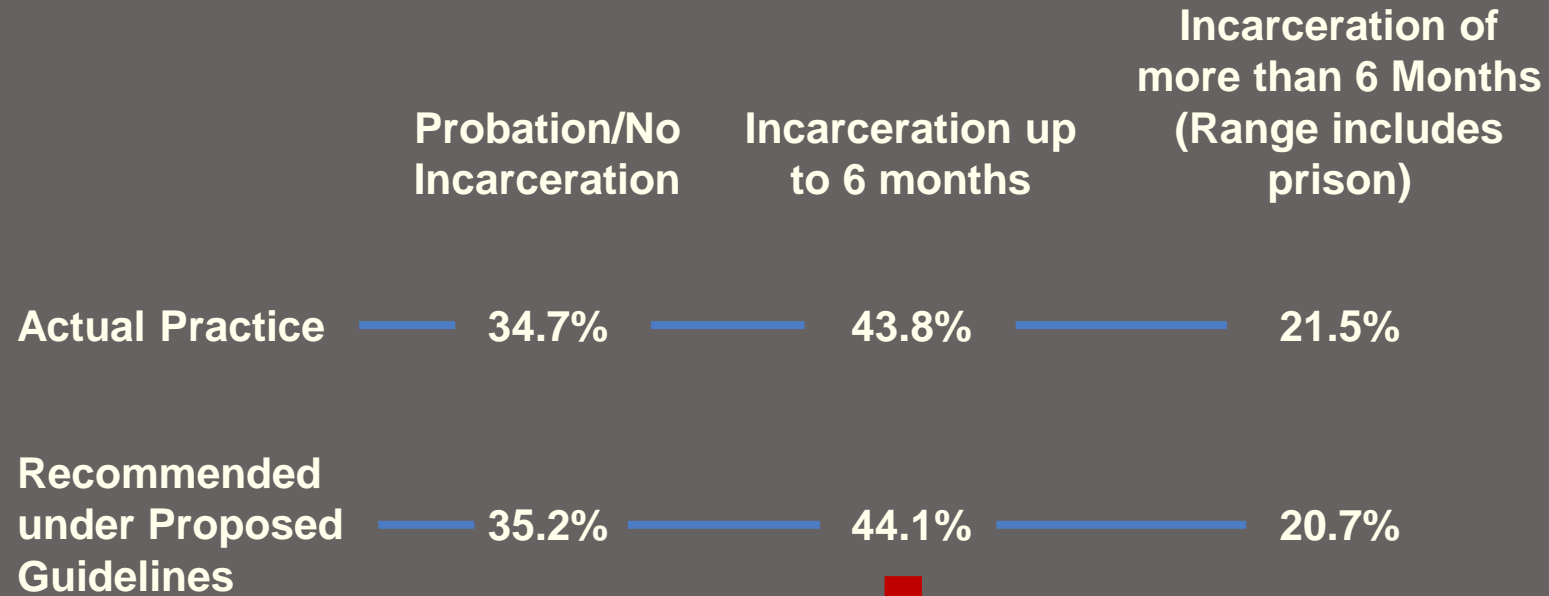
0	0	
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Prisoners are Legally Restrained
Score Automatic 2 Points

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

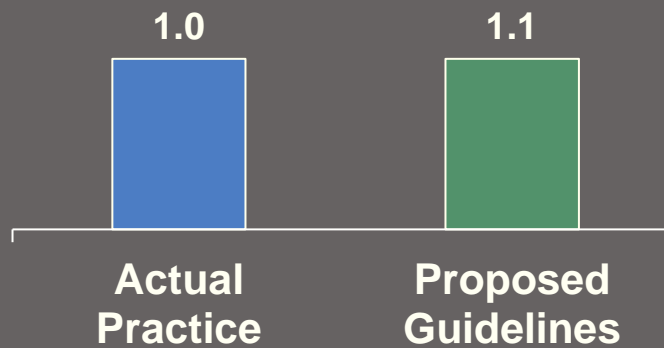


Proposed guidelines are aligned with the actual disposition rates

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)



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 or for gang (1 count).....	5
I. Participation in offense by or 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 (1 count).....	2
L. Prisoner possess, secrete, etc., unlawful chemical (1 count).....	1

Score
▼
0

◆ **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

0

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

Years: Less than 1.....	0
(12 months = 1 year) 1 - 7.....	1
8 - 18.....	2
19 - 28.....	3
29 - 38.....	4
39 or more.....	5

0

◆ **Victim Injury**

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

0

◆ **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, J or L: 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

0

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

◆ **Legally Restrained at Time of Offense**

Primary offense:	
B, C, D, J or L: Sex offender registry violation, provide wireless device to or possession of wireless device by prisoner or prisoner possess chemical	
Any legal restraint.....	Points
.....	1

Primary offense:	
All other offenses	
None.....	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

SCORE THE FOLLOWING FACTOR **ONLY** IF PRIMARY OFFENSE IS **K: DELIVER DRUGS TO PRISONER [§ 18.2-474.1]**

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

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

◆ **Prior Record Convictions/Adjudications** 2 or more Prior Felony Drug Convictions/Adjudications If YES, add 1 → 0

Total Score _____ If total is 8 or less, go to Section B. If total is 9 or more, go to Section C. → 0

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
L. Prisoner possess, sell, secrete unlawful chemical compound (1 count).....	7

Score

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◆ **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

0	
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◆ **Additional Offenses** Total the maximum penalties for additional offenses, including counts

Years: Less than 1.....	0
(12 months = 1 year) 1 - 9.....	2
10 - 19.....	3
20 - 29.....	4
30 - 39.....	5
40 or more.....	6

0	
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◆ **Type of Additional Offense**

<p>Primary offense: H or I: Gang Offense (§ 18.2-46.2)</p> <table border="1"> <tr><td>Additional Offense of Assault(Felony or Misdemeanor) . 1</td><td>Points</td></tr> </table>	Additional Offense of Assault(Felony or Misdemeanor) . 1	Points	<p>Primary offense: All other offenses</p> <table border="1"> <tr><td>Do Not Score</td></tr> </table>	Do Not Score	<table border="1"> <tr><td>0</td><td> </td></tr> </table>	0	
Additional Offense of Assault(Felony or Misdemeanor) . 1	Points						
Do Not Score							
0							

◆ **Victim Injury**

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

0	
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◆ **Prior Incarcerations/Commitments**

<p>Primary offense: B, C, D, J, or L: Sex offender registry violation, provide wireless device to, possession of device by prisoner or prisoner possess, sell, unlawful chemical If YES, Add 1</p> <table border="1"> <tr><td> </td></tr> </table>		<p>Primary offense: All other offenses</p> <table border="1"> <tr><td>Do Not Score</td></tr> </table>	Do Not Score	<table border="1"> <tr><td>0</td><td> </td></tr> </table>	0	
Do Not Score						
0						

◆ **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: L: Prisoner Possess, Secrete, Etc., Unlawful Chemical	
1 or more Prior Felony Drug Conviction/Adjudication.....	1

0	
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◆ **Legally Restrained at Time of Offense** _____ If YES, add 1 →

0	
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Total Score _____

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

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
L. Prisoner possess, sell, secrete unlawful chemical compound (1 count).....	32	16	8

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).....1 [] [] []

◆ **Additional Offenses** Assign points to each additional offense (including counts) and total the points
 Years: Less than 50
 5, 10, 151
 202
 303
 40, 50, Life5 [] [] []

◆ **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) Points And Primary is without a Juvenile (MOB1291F4)..... 12 And Primary is with a Juvenile (MOB1292F3)..... 16	Primary offense: All other offenses Do Not Score
--	---

[0] [] []

◆ **Firearm Used or Brandished** _____ If YES, add 2 → [0] [0] []

◆ **Victim Injury** _____
 Threatened or emotional2
 Physical or serious.....4
 Life threatening5 [0] [0] []

◆ **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 [0] [0] []
 20, 30, 40, 50, Life.....1

◆ **Prior Felony Convictions/Adjudications Against Person** _____
 Number of Counts: 11
 22
 33
 44
 5 or more5 [0] [0] []

◆ **Prior Felony Convictions/Adjudications with the Same VCC Prefix as Primary Offense** _____
 Number of Counts: 12
 24
 36
 48
 5 or more10 [0] [0] []

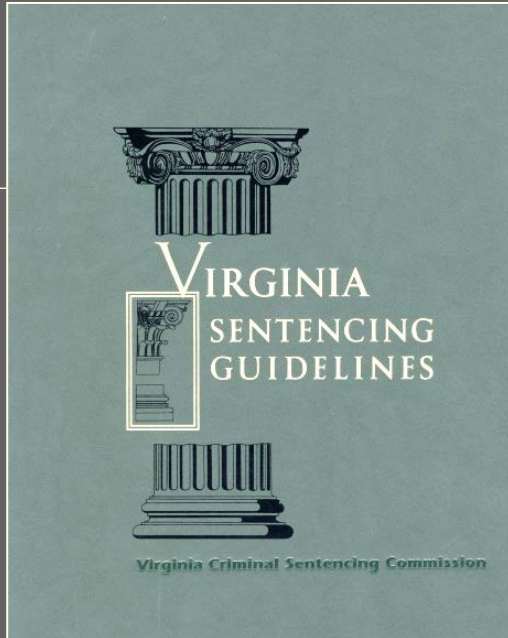
◆ **Legally Restrained at Time of Offense** _____ If YES, add 2 → [0] [0] []

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

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 Unlawfully Shoot or Throw Missile at Train, Car, Etc. to the Miscellaneous/Other worksheets

&

Modify Maliciously Shoot or Throw Missile at Train, Car, Etc. § 18.2-154 currently on the Miscellaneous/Other worksheets

Shoot or Throw Missile at Train, Car, Etc. §18.2-154

§ 18.2-474.1

§ 18.2-154. Shooting at or throwing missiles, etc., at train, car, vessel, etc.; penalty.

Any person who maliciously shoots at, or maliciously throws any missile at or against, any train or cars on any railroad or other transportation company or any vessel or other watercraft, or any motor vehicle or other vehicles when occupied by one or more persons, whereby the life of any person on such train, car, vessel, or other watercraft, or in such motor vehicle or other vehicle, may be put in peril, is guilty of a Class 4 felony.... **Guidelines Offense**

If any such act is committed unlawfully, but not maliciously, the person so offending is guilty of a Class 6 felony...

The Class 4 felony is Category II offense (§ 17.1-805).

Shoot or Throw Missile at Train, Car, Etc. § 18.2-154

Maliciously shoot or throw missile at train, car, etc. Class 4 felony

FY	Concurrence	Mitigation	Aggravation	Number of Cases
2007	61.3%	6.5%	32.3%	31
2008	70.8%	8.3%	20.8%	24
2009	71.0%	6.5%	22.6%	31
2010	61.9%	14.3%	23.8%	21
2011	58.3%	0.0%	41.7%	24
2012	76.5%	5.9%	17.6%	17
2013	82.4%	0.0%	17.6%	17
2014	66.7%	11.1%	22.2%	9
2015	64.5%	0.0%	35.5%	31
2016	71.4%	0.0%	28.6%	14
2017	72.2%	5.6%	22.2%	18
2018	70.8%	0.0%	29.2%	24
2019	61.1%	5.6%	33.3%	18
2020	64.3%	0.0%	35.7%	14
2021	76.0%	8.0%	16.0%	25
2022	70.8%	4.2%	25.0%	48
2023	67.4%	4.3%	28.3%	46
2024	66.7%	0.0%	33.3%	21
Total	68.4%	4.4%	27.3%	433

Unlawfully shoot or throw missile at train, car, etc. Class 6 felony

FY2018 – FY2023
Number of Sentencing Events = 92

Original Charge	Number of Events
Maliciously shoot or throw missile	55
Unlawfully shoot or throw missile	32
Attempted murder	2
Shoot from vehicle	1
Assault on LEO	1
Attempted malicious wounding	1

Source: Supreme Court of Virginia - Circuit Court Management System (CMS)

Developing Guidelines for unlawfully shoot or throw missile has been difficult because of the similarities with maliciously shoot or throw missile

Judges are more likely to sentence above the Guidelines than below when departing from the recommendation

Shoot or Throw Missile at Train, Car, Etc. § 18.2-154

Maliciously shoot or throw missile at train, car, etc. Class 4 felony

FY2019 – FY2023
Number of Sentencing Events = 128

Disposition	Percent	Median Sentence
Probation/No Incarceration	17.2%	N/A
Incarceration up to 6 months	25.0%	3.0 Months
Incarceration of more than 6 Months	57.8%	1.5 Years

Unlawfully shoot or throw missile at train, car, etc. Class 6 felony

FY2019 – FY2023
Number of Sentencing Events = 47

Disposition	Percent	Median Sentence
Probation/No Incarceration	48.9%	N/A
Incarceration up to 6 months	34.0%	3.5 Months
Incarceration of more than 6 Months	17.0%	1.3 Years

Data reflect events in which this offense was the primary (or most serious) offense at sentencing and a Virginia criminal history was available.

Section A - Proposed

PRIMARY

Maliciously Shoot, etc..... 3

Unlawfully Shoot, etc..... 2

INJURY

	Maliciously		Unlawfully
Threatened/Emotional.....	1	1
Physical/Serious Physical....	2	2
Life Threatening.....	2	2

New Factor: Only for Unlawful Shooting

Any Additional Offense is a Person Crime (misdemeanor or felony) 5

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 \$1,000 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 any property or monument \$1,000 or more (1 count).....	2
K. Violation of protective order (violence) 3rd w/in 20 yrs (1 count).....	2

Score

0

◆ **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

0

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

Years: Less than 1.....0
(12 months = 1 year) 1 - 7.....1
8 - 18.....2
19 - 28.....3
29 - 38.....4
39 or more.....5

0

◆ **Victim Injury**

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

0

◆ **Additional Offense in Current Event Requiring Mandatory Minimum (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

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

0

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

◆ **Legally Restrained at Time of Offense**

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

0

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

0

Total Score _____

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

PRIMARY

Maliciously Shoot, etc.....	7
Unlawfully Shoot, etc.....	7

INJURY

	Maliciously	Unlawfully
Threatened/Emotional.....	2	2
Physical/Serious Physical....	3	3
Life Threatening.....	4	4

WEAPON USED (NEW)

	Maliciously	Unlawfully
Other than Firearm.....	0	1
Firearm.....	0	3

PRIOR INCARCERATION

Maliciously	1	Unlawfully	1
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ANY PRIOR CONVICTION with the "VAN" VCC Prefix) (NEW)

Maliciously	0	Unlawfully	2
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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 \$1,000 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 monument \$1,000 or more (1 count).....	8
K. Violation of protective order (violence) 3rd w/in 20 yrs (1 count).....	6

Score

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

Primary offense: J: Damage/Destroy property \$1,000 or more	Primary offense: 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
(12 months = 1 year)	1 - 9	2
	10 - 19	3
	20 - 29	4
	30 - 39	5
	40 or more	6

0

Victim Injury

Primary offense: F,G or H: Offenses with VCC prefix "FAM"	Primary offense: 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 W/IN 20 YRS

Any Prior Convictions/Adjudications with the "PRT" VCC Prefix _____ If YES, add 3 →

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

PRIMARY

Maliciously Shoot, etc.....	40	20	10
Unlawfully Shoot, etc.....	40	20	10

INJURY

	Maliciously	Unlawfully
Threatened/Emotional.....	6	6
Physical/Serious Physical....	7	7
Life Threatening.....	10	10

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 \$1000 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	8
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, etc. (1 count).....	40	20	10
J. Damage/destroy any property or monument \$1,000 or more (1 count).....	32	16	8
K. Violation of protective order, protective order with 24-hour notice (1 count).....	16	8	4

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, 15.....3	5, 10, 15.....1
20.....6	20.....2
30.....9	30.....3
40, 50, Life.....12	40, 50, life.....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 and J
Points	Points	Points
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, 50, Life.....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.....8	4.....4
4 or more.....8	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
3.....6	

Legally Restrained at Time of Offense

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

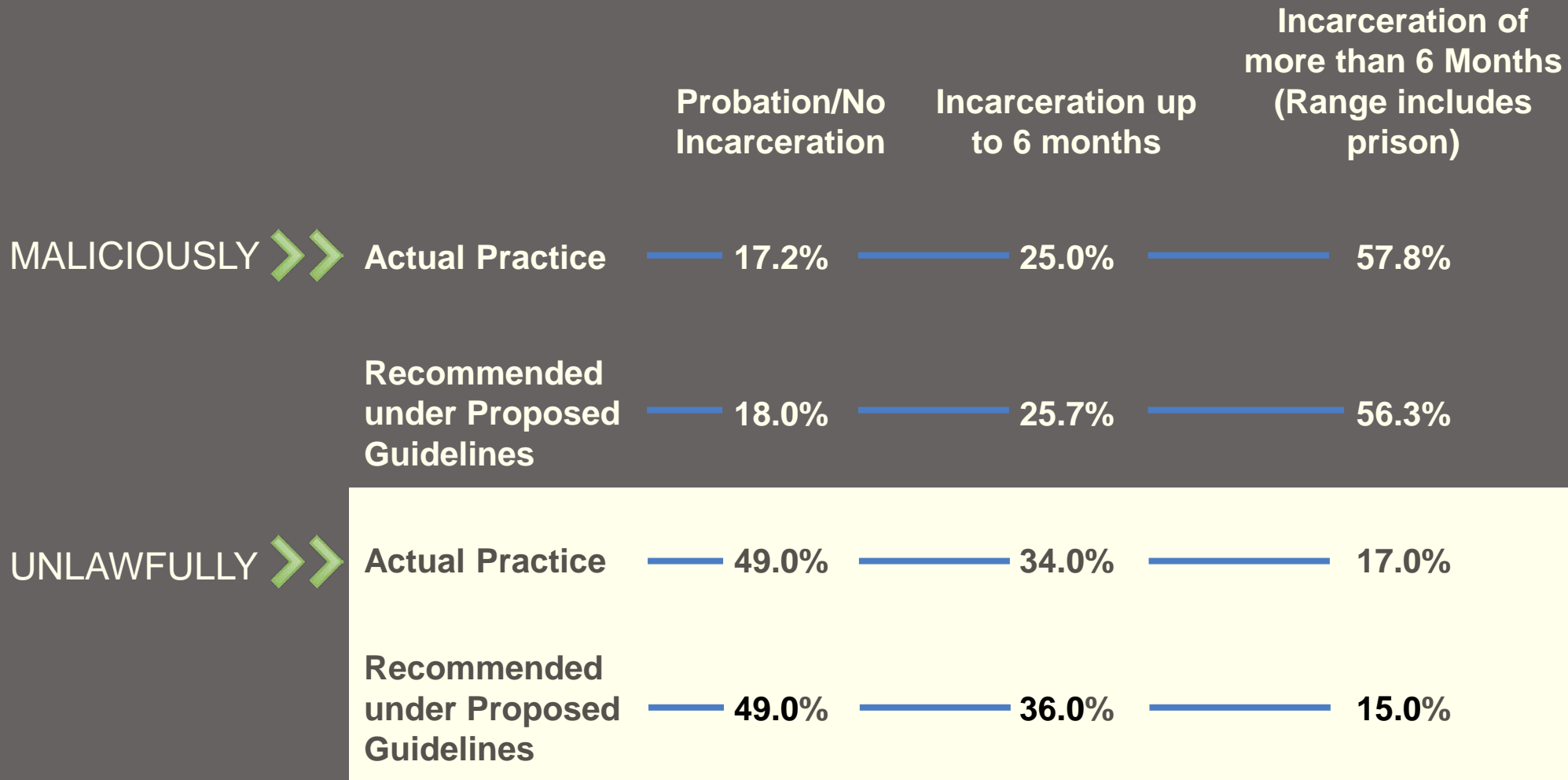
Type of Additional Offense

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

Total Score →

See Miscellaneous Section C Recommendation Table for guidelines sentence range.

Shoot or Throw Missile at Train, Car, Etc. § 18.2-154

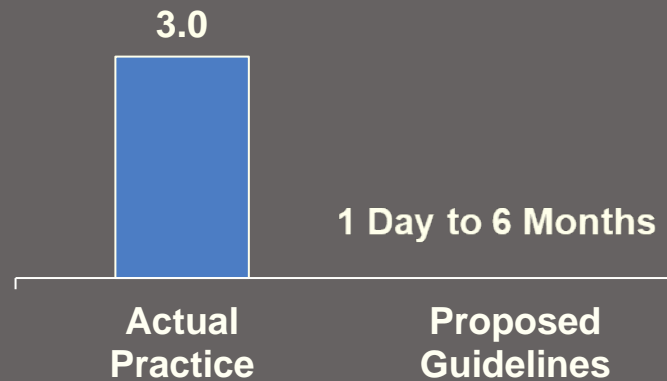


Proposed guidelines are closely aligned with the actual incarceration rates.

Maliciously Shoot or Throw Missile at Train, Car, Etc. § 18.2-154

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

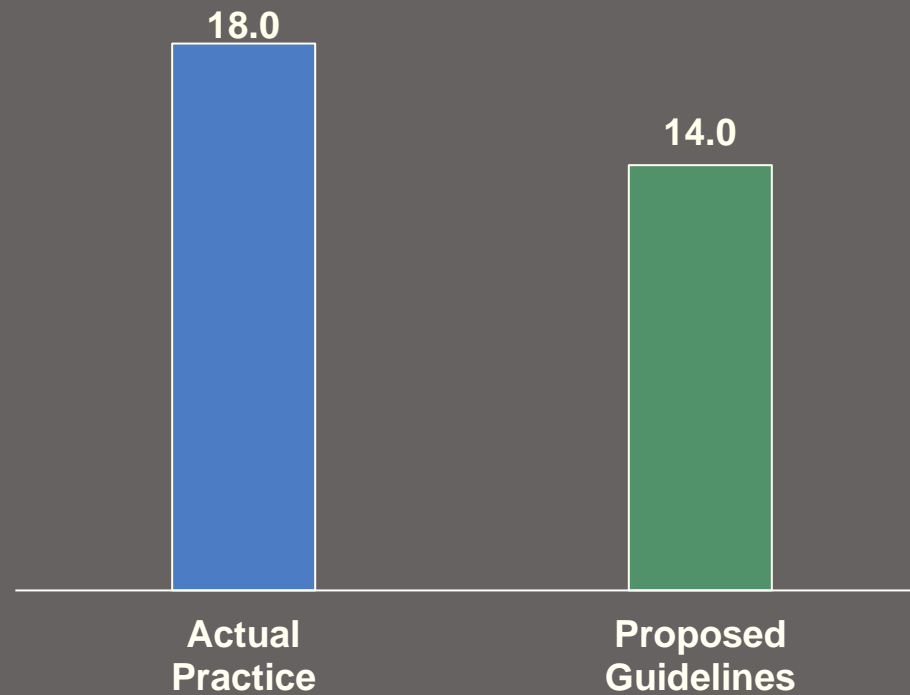
Median Sentence (in months)



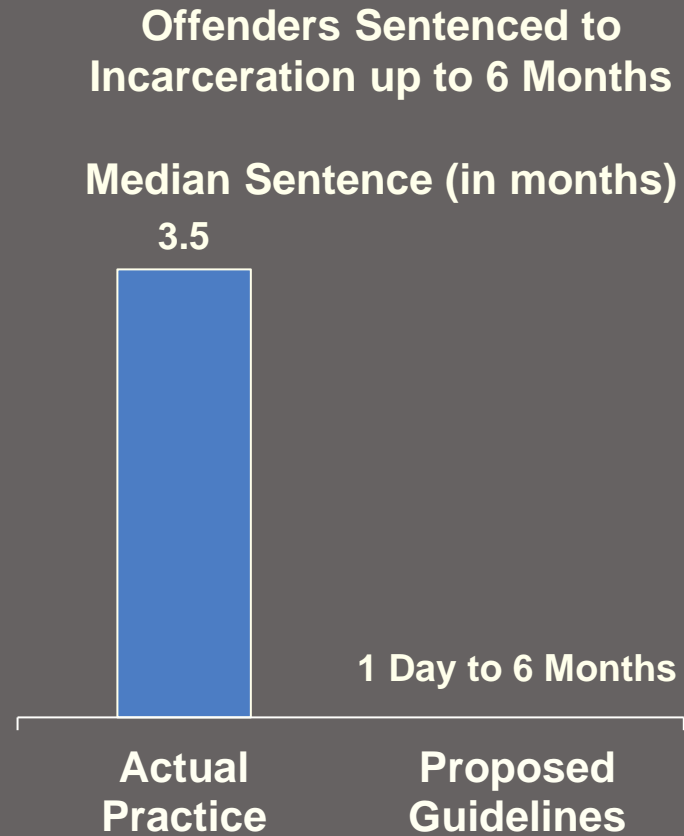
Maliciously Shoot or Throw Missile at Train, Car, Etc. § 18.2-154

Offenders Sentenced to Incarceration of More than 6 Months

Median Sentence (in months)



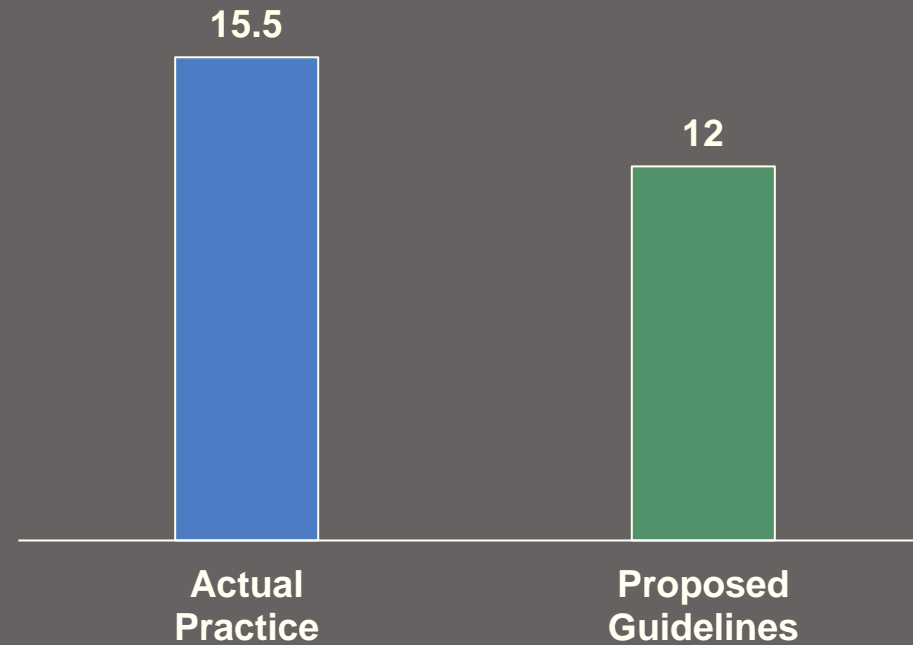
Unlawfully Shoot or Throw Missile at Train, Car, Etc. § 18.2-154



Unlawfully Shoot or Throw Missile at Train, Car, Etc. § 18.2-154

Offenders Sentenced to Incarceration of More than 6 Months

Median Sentence (in months)



Miscellaneous/Person & Property ❖ Section A

◆ **Primary Offense** _____ Offender Name: _____

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).....	3
J. Unlawfully shoot, throw missile at train, car, etc. (1 count).....	2
K. Damage/destroy any property or monument \$1,000 or more (1 count).....	2
L. Violation of protective order (violence) 3rd or subsequent w/in 20 years (1 count).....	2

Score
▼
0

◆ **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

▼
0

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

Years: Less than 1.....	0
(12 months = 1 year) 1 - 7.....	1
8 - 18.....	2
19 - 28.....	3
29 - 38.....	4
39 or more.....	5

▼
0

◆ **Victim Injury**

Primary offense: F, G or H: VCC prefix "FAM" Points	Primary offense: I or J: Points	Primary offense: All other offenses Points
Threatened or emotional 2	Threatened or emotional 1	Threatened or emotional 1
Physical or Serious Physical... 2	Physical or Serious Physical .. 2	Physical or Serious Physical... 1
Life threatening 5	Life threatening 2	Life threatening 2

▼
0

◆ **Additional Offenses in Current Event Requiring Mandatory Minimum**(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

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

▼
0

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

◆ **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

▼
0

SCORE THE FOLLOWING FACTOR **ONLY** IF PRIMARY OFFENSE IS **J: UNLAWFULLY SHOOT, THROW MISSILE AT CAR, ETC.**

◆ **Type of Additional Offense**

Any Additional Offense is a Person Crime (misdemeanor or felony) _____ If YES, add 5 → 0

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

◆ **Prior Vandalism Convictions/Adjudications**

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

▼
0

Total Score _____
If total is 8 or less, go to Section B. If total is 9 or more, go to Section C. →

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, bum 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. Unlawfully shoot, throw missile at train, car, etc. (1 count).....	7
K. Damage/destroy any property or monument \$1,000 or more (1 count).....	8
L. Violation of protective order (violence) 3rd or subsequent w/in 20 years (1 count).....	6

Score

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

Primary offense: K: Damage/Destroy property \$1,000 or more	Primary offense: All other offenses																								
<table border="0"> <tr><th>Years</th><th>Points</th></tr> <tr><td>5 - 9.....</td><td>1</td></tr> <tr><td>10 - 19.....</td><td>2</td></tr> <tr><td>20 - 29.....</td><td>3</td></tr> <tr><td>30 - 39.....</td><td>4</td></tr> <tr><td>40 or more.....</td><td>5</td></tr> </table>	Years	Points	5 - 9.....	1	10 - 19.....	2	20 - 29.....	3	30 - 39.....	4	40 or more.....	5	<table border="0"> <tr><th>Years</th><th>Points</th></tr> <tr><td>5 - 9.....</td><td>2</td></tr> <tr><td>10 - 19.....</td><td>3</td></tr> <tr><td>20 - 29.....</td><td>4</td></tr> <tr><td>30 - 39.....</td><td>5</td></tr> <tr><td>40 or more.....</td><td>6</td></tr> </table>	Years	Points	5 - 9.....	2	10 - 19.....	3	20 - 29.....	4	30 - 39.....	5	40 or more.....	6
Years	Points																								
5 - 9.....	1																								
10 - 19.....	2																								
20 - 29.....	3																								
30 - 39.....	4																								
40 or more.....	5																								
Years	Points																								
5 - 9.....	2																								
10 - 19.....	3																								
20 - 29.....	4																								
30 - 39.....	5																								
40 or more.....	6																								

0	
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◆ Additional Offenses Total the maximum penalties for additional offenses, including counts

Years: Less than 1.....0 (12 months = 1 year) 1 - 9.....2 10 - 19.....3 20 - 29.....4 30 - 39.....5 40 or more.....6	<table border="1"> <tr><td> </td><td> </td></tr> </table>		

0	
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◆ Victim Injury

Primary offense: F, G or H: VCC prefix "FAM"	Primary offense: I or J:	Primary offense: All other offenses												
<table border="0"> <tr><th>Points</th></tr> <tr><td>Threatened or emotional.....9</td></tr> <tr><td>Physical or Serious Physical.....9</td></tr> <tr><td>Life threatening.....10</td></tr> </table>	Points	Threatened or emotional.....9	Physical or Serious Physical.....9	Life threatening.....10	<table border="0"> <tr><th>Points</th></tr> <tr><td>Threatened or emotional.....2</td></tr> <tr><td>Physical or Serious Physical...3</td></tr> <tr><td>Life threatening.....4</td></tr> </table>	Points	Threatened or emotional.....2	Physical or Serious Physical...3	Life threatening.....4	<table border="0"> <tr><th>Points</th></tr> <tr><td>Threatened or emotional.....2</td></tr> <tr><td>Physical or Serious Physical...2</td></tr> <tr><td>Life threatening.....3</td></tr> </table>	Points	Threatened or emotional.....2	Physical or Serious Physical...2	Life threatening.....3
Points														
Threatened or emotional.....9														
Physical or Serious Physical.....9														
Life threatening.....10														
Points														
Threatened or emotional.....2														
Physical or Serious Physical...3														
Life threatening.....4														
Points														
Threatened or emotional.....2														
Physical or Serious Physical...2														
Life threatening.....3														

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◆ Weapon Used

Primary offense: J. Unlawfully shoot, throw missile at car, etc.	Primary offense: All other offenses			
<table border="0"> <tr><td>Other than a firearm.....1</td></tr> <tr><td>Firearm.....3</td></tr> </table>	Other than a firearm.....1	Firearm.....3	<table border="0"> <tr><td>Do Not Score</td></tr> </table>	Do Not Score
Other than a firearm.....1				
Firearm.....3				
Do Not Score				

0	0
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◆ Legally Restrained at Time of Offense

If YES, add 1 →

0	
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◆ Prior Incarcerations/Commitments

Primary offense: I, J or K:	Primary offense: All other offenses		
<table border="0"> <tr><td>Prior Incarceration.....1</td></tr> </table>	Prior Incarceration.....1	<table border="0"> <tr><td>Do Not Score</td></tr> </table>	Do Not Score
Prior Incarceration.....1			
Do Not Score			

0	0
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◆ Prior Convictions/Adjudications VCC Prefix

Primary offense: J. Unlawfully shoot, throw missile at car, etc.	Primary offense: L: Violation of Protective Order		
<table border="0"> <tr><td>Any prior conviction with the "VAN" prefix.....2</td></tr> </table>	Any prior conviction with the "VAN" prefix.....2	<table border="0"> <tr><td>Any prior conviction with the "PRT" prefix.....3</td></tr> </table>	Any prior conviction with the "PRT" prefix.....3
Any prior conviction with the "VAN" prefix.....2			
Any prior conviction with the "PRT" prefix.....3			

0	0
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Total Score

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

Miscellaneous/Person & Property/Section B

Miscellaneous/Person & Property ❖ Section C

◆ **Primary Offense** Prior Record Classification
 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).....	40	20	10
J. Unlawfully shoot, throw missile at train, car, etc. (1 count).....	40	20	10
K. Damage/destroy any property or monument \$1,000 or more (1 count).....	32	16	8
L. Violation of protective order (violence) 3rd or subsequent w/in 20 years (1 count).....	40	20	10

Score

▼

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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, 10, 20, 30, 40..... 1

(years) Life..... 5

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

<p>Primary offense: B: Burn occupied dwelling/church</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 80%;">Years</th> <th style="width: 20%;">Points</th> </tr> </thead> <tbody> <tr><td>Less than 5.....</td><td style="text-align: right;">0</td></tr> <tr><td>5,10, 15.....</td><td style="text-align: right;">3</td></tr> <tr><td>20.....</td><td style="text-align: right;">6</td></tr> <tr><td>30.....</td><td style="text-align: right;">9</td></tr> <tr><td>40, 50, Life.....</td><td style="text-align: right;">12</td></tr> </tbody> </table>	Years	Points	Less than 5.....	0	5,10, 15.....	3	20.....	6	30.....	9	40, 50, Life.....	12	<p>Primary offense: All other offenses</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 80%;">Years</th> <th style="width: 20%;">Points</th> </tr> </thead> <tbody> <tr><td>Less than 5.....</td><td style="text-align: right;">0</td></tr> <tr><td>5,10, 15.....</td><td style="text-align: right;">1</td></tr> <tr><td>20.....</td><td style="text-align: right;">2</td></tr> <tr><td>30.....</td><td style="text-align: right;">3</td></tr> <tr><td>40, 50, Life.....</td><td style="text-align: right;">5</td></tr> </tbody> </table>	Years	Points	Less than 5.....	0	5,10, 15.....	1	20.....	2	30.....	3	40, 50, Life.....	5
Years	Points																								
Less than 5.....	0																								
5,10, 15.....	3																								
20.....	6																								
30.....	9																								
40, 50, Life.....	12																								
Years	Points																								
Less than 5.....	0																								
5,10, 15.....	1																								
20.....	2																								
30.....	3																								
40, 50, Life.....	5																								

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◆ **Firearm Used or Brandished** If YES, add 2 →

0	0	
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◆ **Victim Injury**

<p>Primary offense: G, H, I, J, or L</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 80%;">Threatened or emotional</th> <th style="width: 20%;">Points</th> </tr> </thead> <tbody> <tr><td>.....</td><td style="text-align: right;">6</td></tr> <tr><td>Physical.....</td><td style="text-align: right;">7</td></tr> <tr><td>Life threatening.....</td><td style="text-align: right;">10</td></tr> </tbody> </table>	Threatened or emotional	Points	6	Physical.....	7	Life threatening.....	10	<p>Primary offense: F: Child Neglect/Abuse</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 80%;">Threatened or emotional</th> <th style="width: 20%;">Points</th> </tr> </thead> <tbody> <tr><td>.....</td><td style="text-align: right;">6</td></tr> <tr><td>Physical or Serious Physical</td><td style="text-align: right;">12</td></tr> <tr><td>Life threatening.....</td><td style="text-align: right;">13</td></tr> </tbody> </table>	Threatened or emotional	Points	6	Physical or Serious Physical	12	Life threatening.....	13	<p>Primary offense: All other offenses A, B, C, D, E, I or K</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 80%;">Threatened or emotional</th> <th style="width: 20%;">Points</th> </tr> </thead> <tbody> <tr><td>.....</td><td style="text-align: right;">2</td></tr> <tr><td>Physical.....</td><td style="text-align: right;">4</td></tr> <tr><td>Life threatening.....</td><td style="text-align: right;">5</td></tr> </tbody> </table>	Threatened or emotional	Points	2	Physical.....	4	Life threatening.....	5
Threatened or emotional	Points																									
.....	6																									
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Life threatening.....	13																									
Threatened or emotional	Points																									
.....	2																									
Physical.....	4																									
Life threatening.....	5																									

0		
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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 20..... 0

(years) 20, 30, 40, 50, Life..... 1

0	0	
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◆ **Prior Felony Convictions/Adjudications Against Person**

<p>Primary offense: B: Burn occupied dwelling/church</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 80%;">Number of Counts</th> <th style="width: 20%;">Points</th> </tr> </thead> <tbody> <tr><td>1.....</td><td style="text-align: right;">3</td></tr> <tr><td>2.....</td><td style="text-align: right;">4</td></tr> <tr><td>3.....</td><td style="text-align: right;">6</td></tr> <tr><td>4 or more.....</td><td style="text-align: right;">8</td></tr> </tbody> </table>	Number of Counts	Points	1.....	3	2.....	4	3.....	6	4 or more.....	8	<p>Primary offense: All other offenses</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 80%;">Number of Counts</th> <th style="width: 20%;">Points</th> </tr> </thead> <tbody> <tr><td>1.....</td><td style="text-align: right;">1</td></tr> <tr><td>2.....</td><td style="text-align: right;">2</td></tr> <tr><td>3.....</td><td style="text-align: right;">3</td></tr> <tr><td>4.....</td><td style="text-align: right;">4</td></tr> <tr><td>5 or more.....</td><td style="text-align: right;">5</td></tr> </tbody> </table>	Number of Counts	Points	1.....	1	2.....	2	3.....	3	4.....	4	5 or more.....	5
Number of Counts	Points																						
1.....	3																						
2.....	4																						
3.....	6																						
4 or more.....	8																						
Number of Counts	Points																						
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**

<p>Number of Counts: 1..... 2</p> <p> 2..... 4</p> <p> 3..... 6</p>	<p>4..... 8</p> <p>5 or more..... 10</p>
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0		
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◆ **Legally Restrained at Time of Offense**

<p>Primary offense: F or L: Child neglect/abuse or violation of protective order</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 80%;">None</th> <th style="width: 20%;">Points</th> </tr> </thead> <tbody> <tr><td>.....</td><td style="text-align: right;">0</td></tr> <tr><td>Other than post-incarceration supervision.....</td><td style="text-align: right;">6</td></tr> <tr><td>Post-incarceration supervision.....</td><td style="text-align: right;">9</td></tr> </tbody> </table>	None	Points	0	Other than post-incarceration supervision.....	6	Post-incarceration supervision.....	9	<p>Primary offense: All other offenses</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 80%;">Any legal restraint</th> <th style="width: 20%;">Points</th> </tr> </thead> <tbody> <tr><td>.....</td><td style="text-align: right;">2</td></tr> </tbody> </table>	Any legal restraint	Points	2
None	Points												
.....	0												
Other than post-incarceration supervision.....	6												
Post-incarceration supervision.....	9												
Any legal restraint	Points												
.....	2												

0	0	
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◆ **Type of Additional Offense**

<p>Primary offense: B: Burn Occupied Dwelling/Church</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 80%;">Additional offense with VCC Prefix "MUR"</th> <th style="width: 20%;">Points</th> </tr> </thead> <tbody> <tr><td>.....</td><td style="text-align: right;">133</td></tr> </tbody> </table>	Additional offense with VCC Prefix "MUR"	Points	133	<p>Primary offense: All other offenses</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 80%;">Do Not Score</th> <th style="width: 20%;">Points</th> </tr> </thead> <tbody> <tr><td>.....</td><td style="text-align: right;"></td></tr> </tbody> </table>	Do Not Score	Points	
Additional offense with VCC Prefix "MUR"	Points								
.....	133								
Do Not Score	Points								
.....									

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Total Score →

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See Miscellaneous Section C Recommendation Table for guidelines sentence range.

Proposed Recommendation 3

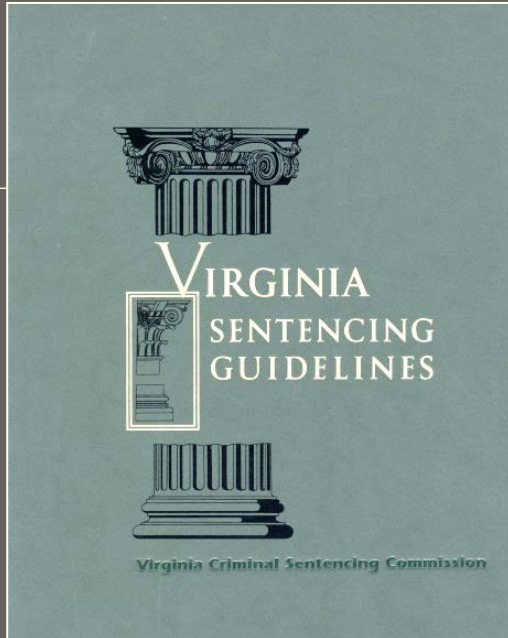
Modify Maliciously Shoot or Throw Missile at Train, Car, Etc., § 18.2-154,
to the Miscellaneous/Other Guidelines as proposed



Proposed Recommendation 3

Add Unlawfully Shoot or Throw Missile at Train, Car, Etc., § 18.2-154,
to the Miscellaneous/Other Guidelines as proposed





Proposed Recommendation 4:

Adopt Guidelines for Robbery (§ 18.2-58) that reflect sentencing practices under the revised penalty structure (effective July 1, 2021)

Modify Guidelines for Carjacking (§ 18.2-58.1) to reflect current sentencing practices

Changes in Robbery Penalties 2021 General Assembly

House Bill 1936 Elements of Robbery (§ 18.2-58)	Penalty (Effective July 1, 2021)
Results in serious bodily injury or death	Class 2 felony (20 years - Life)
Use or display of firearm in threatening manner	Class 3 felony (5 - 20 years)
Use of physical force not resulting in serious bodily injury or Use of a deadly weapon other than firearm in a threatening manner	Class 5 felony (1 - 10 years)
Use of threat/intimidation not involving a deadly weapon	Class 6 felony (1 - 5 years)

At the time the legislation became effective, data were insufficient to perform the analysis necessary to develop Guidelines based on the proposed classes.

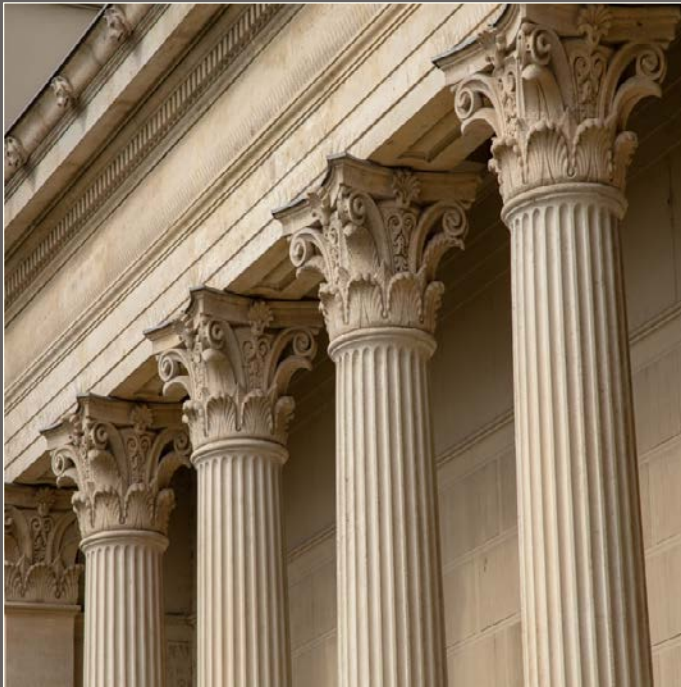
The existing Guidelines likely did not accurately reflect the typical or average robbery outcomes based on the new classifications.

For these reasons, the **Commission suspended the Robbery Guidelines** until a full analysis of sentencing under the new penalty structure could be completed.

Prior to July 2021, Robbery Guidelines were delineated by location (street, business, residence, or bank and whether or not a firearm/simulated firearm was used.

Virginia's Sentencing Guidelines

THE COMMISSION MUST DEVELOP GUIDELINES THAT TAKE INTO ACCOUNT **HISTORICAL SENTENCING PRACTICES** (§ 17.1-803).



In essence, Guidelines are designed to provide a benchmark for the typical, or average, case outcome based on the offenses at conviction, circumstances of the offense and prior record.

Exception:

Midpoint enhancements required by § 17.1-805 for defendants with violent offense convictions

Proposals for New Sentencing Guidelines

STAFF PROPOSALS FOR NEW GUIDELINES ARE BASED ON ANALYSIS OF *SENTENCING DATA*.



Proposals reflect the best fit for the historical data.

Proposals are designed to closely match the historical rate of incarceration.

Requirements for Guidelines Midpoint Enhancements

§ 17.1-805 specifies various enhancements based on the defendant's current and prior convictions for offenses defined as violent in § 17.805(C).

EXAMPLE

§ 17.1-805 (A,2)

The midpoint of the initial recommended sentencing range for voluntary manslaughter, ROBBERY ... shall be further increased by (i) **100 percent** in cases **Category 2** defendant has no previous conviction of a violent felony offense, (ii) **300 percent** in cases in which the defendant has previously been convicted of a violent felony offense **Category 1** by a maximum term of imprisonment of less than 40 years, or (iii) **500 percent** in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of 40 years or more;

Requirements for Guidelines Midpoint Enhancements

§ 17.1-805.1

The Commission shall adopt discretionary felony sentencing guidelines that may increase the midpoint of the recommended sentencing range based on the defendant's record of convictions for violent felony offenses, as defined in subsection C of § 17.1-805.

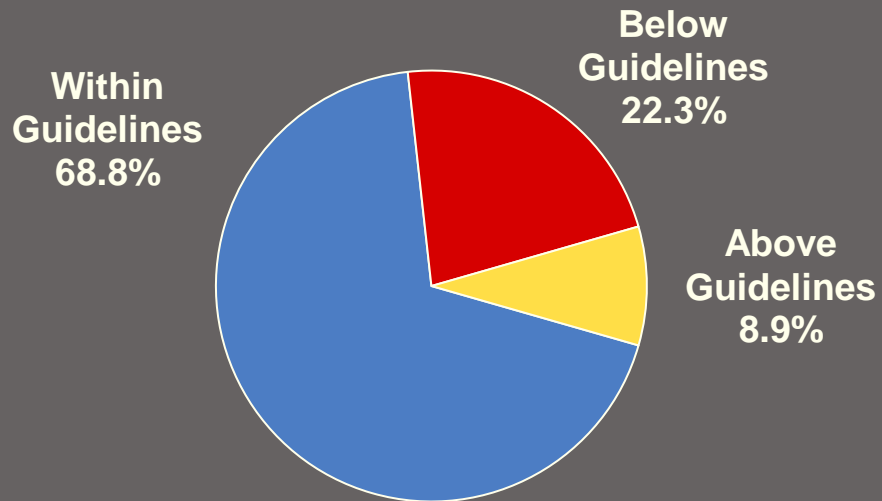
*Delayed effective
date of 7/1/2023*

For guidelines that become effective on or after July 1, 2022, **the Commission may increase the midpoint of the recommended sentencing range for such defendants as set forth in subsection A of § 17.1-805 or the Commission may recommend increases in the midpoint to the degree indicated by historical data** for felony offenses sentenced in the Commonwealth. Any recommendations adopted by the Commission to modify the sentencing guidelines midpoints shall be contained in the annual report required under § 17.1-803 and shall become effective in accordance with § 17.1-806.

Judicial Concurrence with Robbery Sentencing Guidelines

Judicial Concurrence with Robbery Guidelines FY2017-FY2021

Overall



N=2,294

Judicial Concurrence with Robbery Guidelines FY2017-FY2021

By Prior Record Category

	Within Guidelines	Below Guidelines	Above Guidelines
Other	72.1%	19.7%	8.3%
Category 2	68.3%	23.7%	8.0%
Category 1	56.6%	39.4%	4.0%

Robbery Sentencing Events Examined

Sentencing Events with Robbery as the Primary or an Additional Offense FY2022-FY2024 (through March 30)

Robbery Offense Dates on or after 7/1/2021

	Number of Sentencing Events
Robbery is Primary Offense	451
Robbery is Additional Offense and has the same statutory maximum as the Primary Offense	69
TOTAL	520

There are other sentencing events with Robbery as an additional offense and, in these events, Robbery will remain an additional offense because it has the lower statutory maximum penalty than the primary offense (81 events).

Note: Table excludes Alexandria cases as that clerk does not participate in the statewide Case Management System (CMS) and the clerk has not provided data to VCSC. Two events were excluded because the Robbery identified as the Primary Offense was committed prior to 7/1/2021; in that case, an Additional Offense of Robbery was committed on or after 7/1/2021. Two additional cases with errors were also excluded.

Source: Supreme Court of Virginia - Circuit Court Case Management System (CMS) as analyzed by the Virginia Criminal Sentencing Commission

Robbery Sentencing Events Examined

**Sentencing Events with
Robbery as the Primary Offense
FY2022-FY2024 (through
March 30, 2024)


Robbery Offense Dates on
or after 7/1/2021**

		Number of Sentencing Events
Robbery - Attempted/Consp - No Firearm		36
Robbery - Attempted/Consp - Firearm		38
Robbery - Other	Class 6 felony	72
Robbery - Phys Force/No Serious Injury	Class 5 felony	59
Robbery - Other Deadly Weapon	Class 5 felony	43
Robbery - Firearm	Class 3 felony	153
Robbery - Serious Injury/Death	Class 2 felony	24
Carjacking	Unclassed felony - life max	26
TOTAL		451

Additional Data Collection

Information on the **CASE DETAILS WORKSHEET** is important for development of new Guidelines.



 **Sentencing Guidelines**
Case Details Worksheet

SWIFT/DCN: _____

1. Defendant's Name: _____

2. Defendant Information: Gender: _____ Race: _____ Ethnicity: _____ Age: _____
 Physical Disability Intellectual Disability Autism Spectrum Disorder Unknown

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

4. Pretrial Status: Secured Bond Unsecured Bond Own Recognition Confinement Third Party Release Unknown

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

6. Posttrial Status: Secured Bond Unsecured Bond Own Recognition Confinement Third Party Release Unknown

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

8. Total Time Served Prior to Sentencing: Years _____ Months _____ Days _____ N/A

9. Number of Codefendants: _____

10. Legal Status at Offense (check all that apply):
 Escaped Inmate Mandatory Parole Discretionary Parole
 Geriatric Release - § 53.1-40.01 Post Release - §19.2-295.2 Probation Bond
 Recognizance Community Program Pre-Trial Supervision Good Behavior Unknown
 Juvenile Probation Juvenile Parole Summons Other _____ None

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

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

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

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

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

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

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

18. Victim Information: Gender: _____ Race: _____ Ethnicity: _____ Age: _____

The Commission has not received Guidelines Coversheets and Case Details Worksheets for all robbery cases.

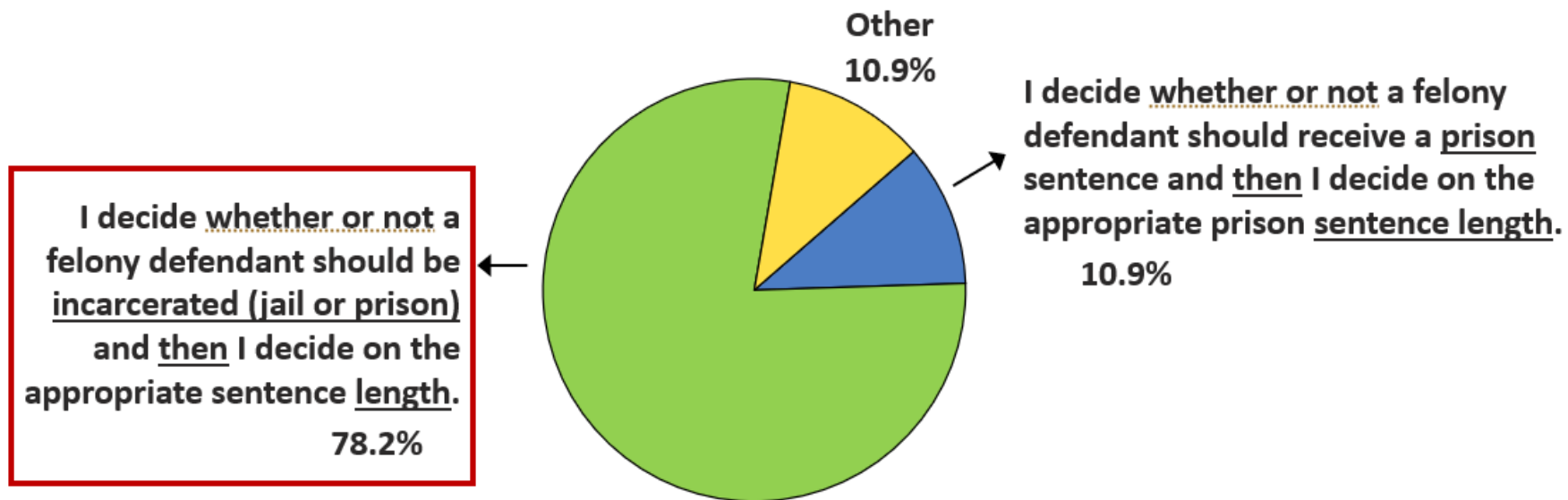


Staff conducted additional data collection to gather key pieces of information that appear on the Case Details Worksheet.

Staff also requested **criminal history data** from the Virginia State Police.

Judicial Survey (2022)

Q5: Please identify the statement that most closely approximates the way in which you approach a sentencing decision.



Section A - Proposed

Incarceration In-Out Recommendation

Robbery Section A

Offender Name: _____

◆ Prior Convictions/Adjudications (excluding Probation Violations)

Number: 0 Felonies:	0 Misdemeanors	0
	1 Misdemeanor	1
	2+ Misdemeanors	2
1 Felony:	0 Misdemeanors	3
	1 Misdemeanor	4
	2+ Misdemeanors	5
2+ Felonies:	0 Misdemeanors	6
	1 Misdemeanor	7
	2+ Misdemeanors	8

◆ Legally Restrained at Time of Offense

None.....	0
Supervised probation	4
Parole, post-release supervision (§ 19.2-295.2) or geriatric release (§ 53.1-40.01).....	8

0

◆ Any Mandatory Minimum Sentence Required

If YES, add 9

0 0

Total Score

If total is 5 or less, the guidelines sentence is Probation/No Incarceration or Incarceration to 6 months.
If total is 6 or more, go to Section C.

Robbery Section A

Supervised probation	4
Parole, post-release supervision (§ 19.2-295.2) or geriatric release (§ 53.1-40.01).....	8

0

◆ Any Mandatory Minimum Sentence Required

If YES, add 9

0 0

Total Score

If total is 5 or less, the guidelines sentence is Probation/No Incarceration or Incarceration to 6 months.
If total is 6 or more, go to Section C.

Robbery Section A

If total is 6 or more, go to Section C.

Section C - Proposed

Sentence Length Recommendation

Incarceration 1 Day or More

Robbery Section C

Offender Name: _____

◆ **Weapon Used**

Primary offense:
F, G, or H: Completed robbery with firearm, carjacking with firearm/simulated firearm or robbery with other deadly weapon

Do Not Score

Weapons points are built into primary offense points for these offenses.

Primary offense:
All other offenses

	Points
None	0
Simulated.....	5
Other Weapon	5
Knife	6
Firearm	11

0

◆ **Victim Injury**

None	0
Threatened	3
Emotional	7
Physical.....	7
Serious Physical	8
Life threatening	22
Death	29

0

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

Maximum Penalty: 1	0
(years) 2, 3, 4 5	1
10, 15	3
20	5
30	8
40, 50, Life	10

0

◆ **Legally Restrained at Time of Offense**

None.....	0
Supervised probation	12
Parole, post-release supervision (§ 19.2-295.2) or geriatric release (§ 53.1-40.01).....	30

0

Total Score

See Robbery Section C Recommendation Table for guidelines sentence range.

0

Parole, post-release supervision (§ 19.2-295.2) or geriatric release (§ 53.1-40.01)..... 30

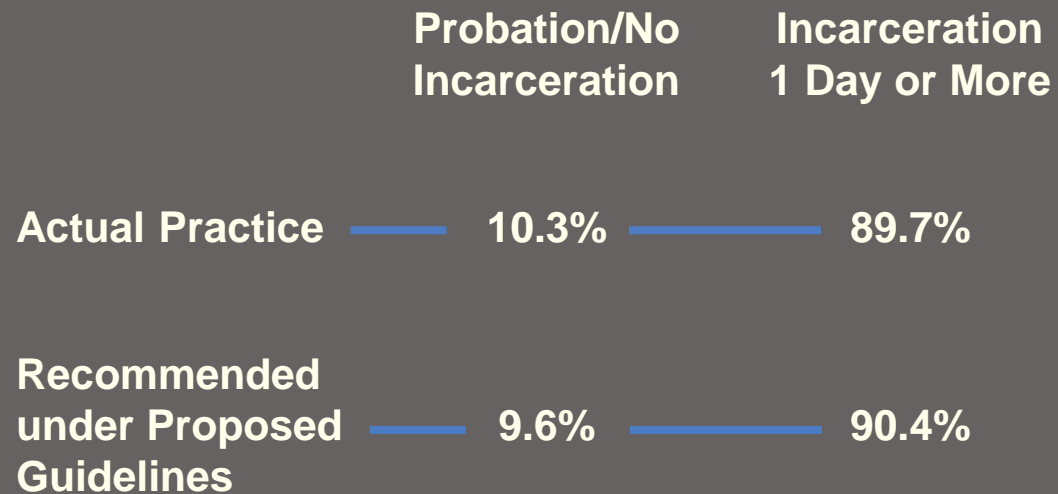
0

Total Score

See Robbery Section C Recommendation Table for guidelines sentence range.

0

Robbery (§ 18.2-58) and Carjacking (§ 18.2-58.1) Proposed Section A

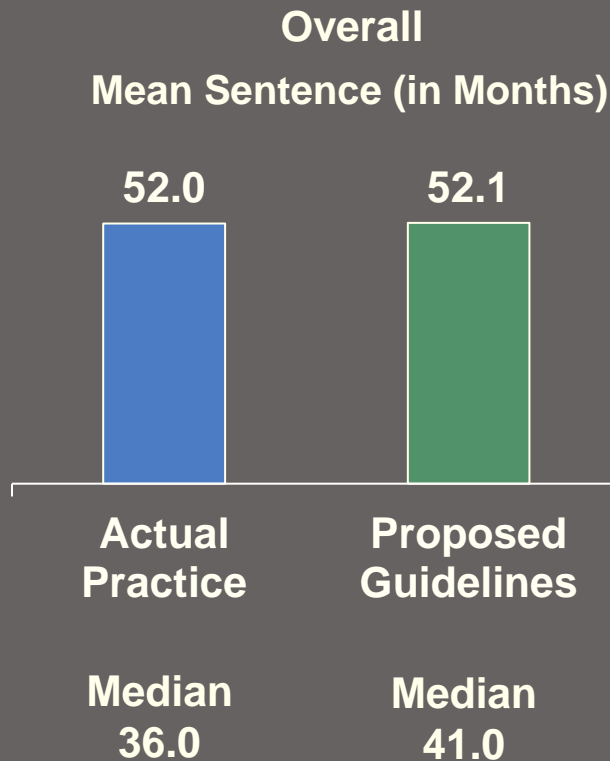


85% of disposition outcomes were correctly classified by the model.

Proposed guidelines are closely aligned with the actual incarceration rates.

Robbery (§ 18.2-58) and Carjacking (§ 18.2-58.1) Proposed Section C

Defendants Sentenced to Incarceration of 1 Day or More

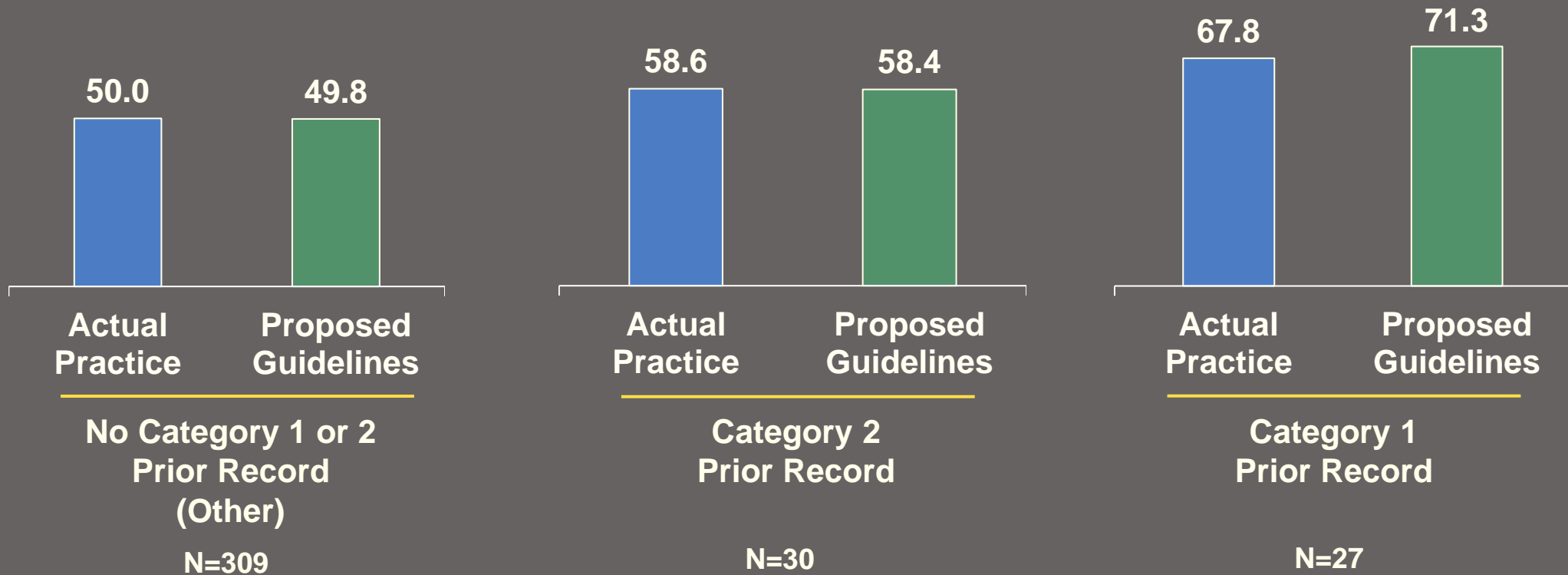


Most Serious Offense	Mean Sentence (in Months)	
	Actual Practice	Proposed Guidelines
Robbery - Attempted/Consp - No Firearm	23.2	26.9
Robbery - Attempted/Consp - Firearm	28.8	31.3
Robbery - Other	28.1	28.3
Robbery - Phys Force/No Serious Injury	32.2	33.1
Carjacking - No Firearm/Simulated Firearm	83.0	85.1
Robbery - Other Deadly Weapon	38.8	38.9
Robbery - Firearm	66.8	64.9
Carjacking - Firearm/Simulated Firearm	94.5	97.3
Robbery - Serious Injury/Death	137.0	138.1

Robbery (§ 18.2-58) and Carjacking (§ 18.2-58.1) Proposed Section C

Defendants Sentenced to Incarceration of 1 Day or More

Mean Sentence (in Months)
by Prior Record Category



Proposed Recommendation 4

Adopt Guidelines for Robbery (§ 18.2-58) that reflect sentencing practices under the revised penalty structure (effective July 1, 2021)

Modify Guidelines for Carjacking (§ 18.2-58.1) to reflect current sentencing practices

