



# VIRGINIA CRIMINAL SENTENCING COMMISSION



## **Possession of Child Pornography – Proposed Study Options –**

**June 9, 2014**

# House Bill 504 and Senate Bill 433

## 2014 General Assembly

### VIRGINIA ACTS OF ASSEMBLY -- 2014 SESSION

#### CHAPTER 100

*An Act to delay proposed modifications to the discretionary sentencing guidelines; possession of child pornography.*

[H 504]

Approved March 3, 2014

**Be it enacted by the General Assembly of Virginia:**

**1. § 1.** *The proposed modifications to the discretionary sentencing guidelines for convictions related to the possession of child pornography adopted by the Virginia Code of § 17.1-803 of the Code of subdivision 10 of § 17.1-10 Sentencing Commission shall convictions related to the § 18.2-374.1:1 and complete discretionary sentencing guidelines Report shall supersede the unless otherwise provided by*

#### **SUMMARY AS PASSED:**

**Delay proposed modifications to the discretionary sentencing guidelines; possession of child pornography.** Provides that proposed modifications to the discretionary sentencing guidelines for possession of child pornography adopted by the Virginia Criminal Sentencing Commission shall not become effective until July 1, 2016. The Commission will review these guidelines and complete its review by December 1, 2015. Any proposed modification in the Commission's 2015 Annual Report shall supersede the current proposed modifications.



# Proposed Study Options

## Option 1 (Presented at April 14, 2014 meeting)

- Use entire data collection instrument
- Travel to Circuit Court Clerks' and Commonwealth's Attorneys' offices to gather data from files
- Analyze and test factors based on data collected

## Option 2

- Use pared-down data collection instrument
- Limit travel to localities with more than 10 cases
- For remaining localities, ask Commonwealth's Attorneys' Offices to complete pared-down form
- Analyze and test factors based on data collected

## Option 3

- Add FY2014 data to the analysis and retest proposed changes presented in *2013 Annual Report*



# Proposed Study Options

## Option 1 (Presented at April 14, 2014 meeting)

- Use entire data collection instrument
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## Option 2

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- Limit travel to localities with more than 10 cases
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- Analyze and test factors based on data collected

## Option 3

- Add FY2014 data to the analysis and retest proposed changes presented in *2013 Annual Report*



# 2014 Child Pornography Study

DCN \_\_\_\_\_

Offender Name \_\_\_\_\_

## Offender/Subject Characteristics

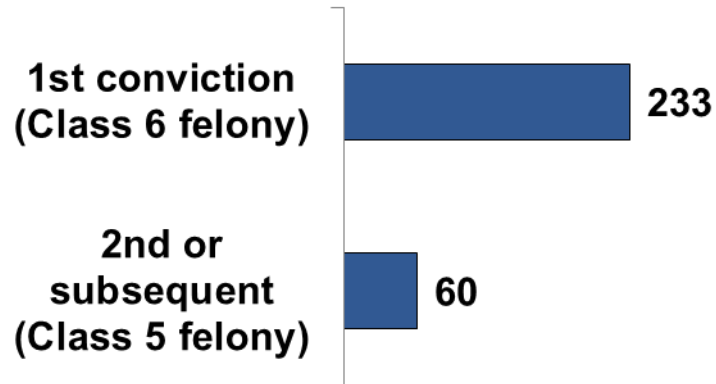
<p>A. Age of Youngest Minor Subject: _____ (99 = Unk.)</p> <p>B. Age Group (Check All That Apply):</p> <ol style="list-style-type: none"> <li>1. Under 1 (Infant)</li> <li>2. 1-3 (Toddler)</li> <li>3. 4-5 (Pre-School)</li> <li>4. 6-9 (Elementary School)</li> <li>5. 10-12 (Middle School)</li> <li>6. 13-17 (Teenage)</li> <li>9. Unknown</li> </ol> <p>C. Child Type</p> <ol style="list-style-type: none"> <li>1. Prepubescent (Prior to puberty)</li> <li>2. Post pubescent</li> <li>3. Minor – group unknown</li> </ol> <p>D. Altered Any Image to Create/Enhance Child Porn?</p> <ol style="list-style-type: none"> <li>1. Yes</li> <li>2. No</li> <li>9. Unknown</li> </ol> <p>E. Age of Oldest Minor Subject: _____ (99 = Unk.)</p> <p>F. Gender(s) of Minor Subject(s) Depicted:</p> <ol style="list-style-type: none"> <li>1. Male</li> <li>2. Female</li> <li>3. Both</li> <li>9. Unknown</li> </ol> <p>G. Number of Different Subjects: _____ (999 = Unknown)</p> <p>H. Subject Type:</p> <ol style="list-style-type: none"> <li>1. Identified (by law enforcement) subject(s)</li> <li>2. Anonymous subject(s)</li> <li>3. Both identified and anonymous subjects</li> </ol> <p>I. Subject's Relationship with Offender::</p> <ol style="list-style-type: none"> <li>1. None</li> <li>2. Babysitter</li> <li>3. Parent</li> <li>4. Step-parent</li> <li>5. Grandparent/step-grandparent</li> <li>6. Sibling/step-sibling</li> <li>7. Uncle/Aunt</li> <li>8. Cousin</li> <li>9. Other Relative</li> <li>10. Coach</li> <li>11. Teacher/counselor</li> <li>12. Youth leader</li> <li>13. Clergy</li> <li>14. Significant other</li> <li>15. Ex-significant other</li> <li>16. Other position of trust</li> <li>17. Other relationship</li> <li>99. Unknown</li> </ol>	<p>J. Drug/Alcohol Use (At Time of Recording or Production of Any Image)</p> <ol style="list-style-type: none"> <li>1. None</li> <li>2. Offender used</li> <li>3. Victim used</li> <li>4. Both used</li> <li>9. Unknown</li> </ol> <p>K. Offender provided Drugs/Alcohol to Subject (At Time of Recording or Production of Any Image)</p> <ol style="list-style-type: none"> <li>1. Yes</li> <li>2. No</li> <li>9. Unknown</li> </ol> <p>L. Substances Used by Subject: _____ (See Codes Below)</p> <p>M. Substances Used by Offender: _____ (See Codes Below)</p> <p>N. Any Subject Mentally or Physically Incapacitated?</p> <ol style="list-style-type: none"> <li>1. Yes – mentally incapacitated</li> <li>2. Yes – physically incapacitated</li> <li>3. Yes – both</li> <li>4. No</li> <li>9. Unknown</li> </ol> <p>O. Employment Provides (or Offender Has) Access to Minors at Time of Offense?</p> <ol style="list-style-type: none"> <li>1. Yes</li> <li>2. No</li> <li>9. Unknown</li> </ol> <p>P. Use of Material to "Groom" Minors?</p> <ol style="list-style-type: none"> <li>1. Yes</li> <li>2. No</li> <li>9. Unknown</li> </ol> <p>Q. Offender Psychosexual Assessment Done?</p> <ol style="list-style-type: none"> <li>1. Yes</li> <li>2. No</li> <li>9. Unknown</li> </ol> <p>R. If Psychosexual Assessment Done, Risk Level?</p> <ol style="list-style-type: none"> <li>1. Low</li> <li>2. Medium</li> <li>3. High</li> <li>9. Unknown</li> </ol> <p>S. Offender a Registered Sex Offender (at time of offense)?</p> <ol style="list-style-type: none"> <li>1. Yes</li> <li>2. No</li> <li>9. Unknown</li> </ol> <p><u>Codes for Substances Used/Given:</u></p> <table style="width: 100%; border: none;"> <tr> <td style="width: 25%;">0 None</td> <td style="width: 25%;">5 Methamphetamine</td> <td style="width: 25%;">10 Other</td> </tr> <tr> <td>1 Alcohol</td> <td>6 Ecstasy</td> <td>99 Missing</td> </tr> <tr> <td>2 Tobacco</td> <td>7 Heroin</td> <td></td> </tr> <tr> <td>3 Marijuana</td> <td>8 Other Schedule I/II drug</td> <td></td> </tr> <tr> <td>4 Cocaine</td> <td>9 Prescription drug</td> <td></td> </tr> </table>	0 None	5 Methamphetamine	10 Other	1 Alcohol	6 Ecstasy	99 Missing	2 Tobacco	7 Heroin		3 Marijuana	8 Other Schedule I/II drug		4 Cocaine	9 Prescription drug	
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### Content/Collecting Behavior

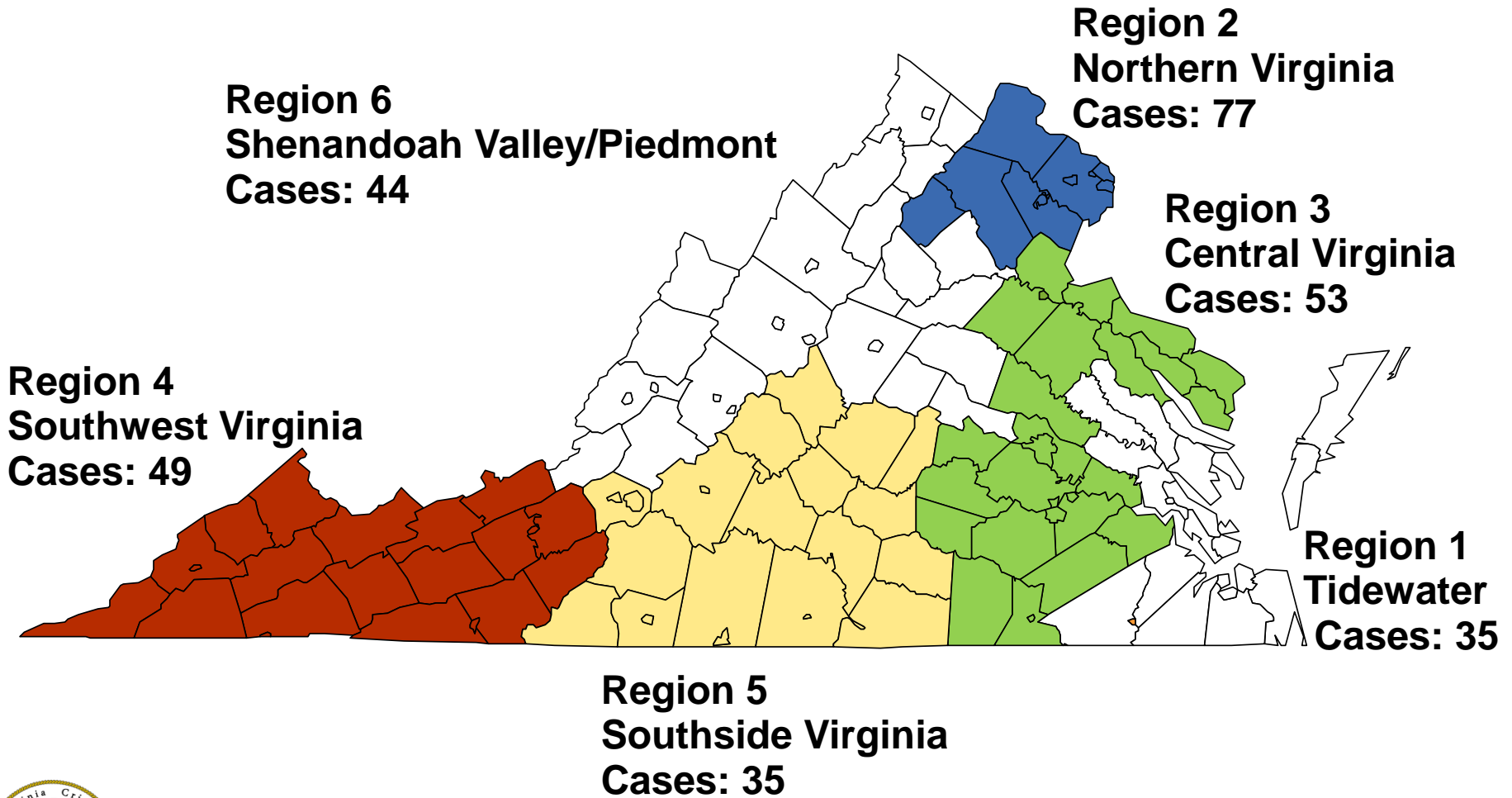
<p><b>T. How Was Child Porn Initially <u>Discovered</u>?</b></p> <ol style="list-style-type: none"> <li>1. During Sting – Online Solicitation or Child Porn Investigation</li> <li>2. Reported</li> <li>3. Computer/Phone/Device Repair or Resale</li> <li>4. Sex/Child Abuse Case</li> <li>5. Developing Picture</li> <li>6. Sent E-mail/Web</li> <li>7. Cell phone/Smart phone</li> <li>8. Other means</li> <li>9. Unknown</li> </ol> <p><b>U. Number of Still Images:</b> _____ (9999 = Unk.)</p> <p><b>V. Number of Videos:</b> _____ (9999 = Unk.) If Yes, Longest Length? _____</p> <p><b>W. Types of Sex Conduct Depicted (Check All that Apply)</b></p> <ol style="list-style-type: none"> <li>1. Genitals/exposure</li> <li>2. Masturbation</li> <li>3. Oral penetration (or attempt)</li> <li>4. Anal penetration (or attempt)</li> <li>5. Sexual intercourse (or attempt)</li> <li>6. Contact between adult and minor</li> <li>7. Contact between minors</li> <li>8. Physically violent (incl. sadism/masochism)</li> <li>9. Bondage</li> <li>10. Urination/defecation</li> <li>11. Bestiality</li> <li>12. Defendant appeared in child porn</li> <li>99. Unknown</li> </ol> <p><b>X. Defendant Produced Child Porn?</b></p> <ol style="list-style-type: none"> <li>1. No</li> <li>2. Yes</li> <li>9. Unknown</li> </ol> <p><b>Y. Defendant Distributed/Retransmitted Child Porn?</b></p> <ol style="list-style-type: none"> <li>1. No</li> <li>2. Through Peer-to-Peer (P2P) File-Sharing Programs</li> <li>3. Through Child Porn "Online Communities"</li> <li>4. Other Means</li> <li>9. Unknown</li> </ol> <p><b>Z. Offender Posted Material to Internet?</b></p> <ol style="list-style-type: none"> <li>1. No</li> <li>2. Yes – if so, then list website _____</li> <li>9. Unknown</li> </ol> <p><b>AA. How Was Child Porn Obtained? (Check All that Apply)</b></p> <ol style="list-style-type: none"> <li>1. Internet/downloaded</li> <li>2. Email</li> <li>3. Obtained from the subject</li> <li>4. Texted via cell phone/smartphone</li> <li>5. Through a social network</li> <li>6. Hardcopy (magazine, publication, by mail)</li> <li>7. Part of a group/ring/community of users</li> <li>8. Produced by offender</li> <li>9. Other means</li> <li>99. Unknown</li> </ol>	<p><b>BB. Date of Initial Involvement with Child Porn/Earliest Download Date:</b> _____</p> <p><b>CC. Date of Most Recent Involvement with Child Porn/Most Recent Download Date:</b> _____</p> <p><b>DD. Security Measures Taken to Avoid Detection (Check All that Apply)</b></p> <ol style="list-style-type: none"> <li>1. None</li> <li>2. Passwords for computer login</li> <li>3. Software to erase browsing history</li> <li>4. Encryption/locking of files</li> <li>5. Other measures</li> <li>6. Unknown</li> </ol> <p><b>EE. Pled Guilty?</b></p> <ol style="list-style-type: none"> <li>1. No</li> <li>2. Yes</li> <li>9. Unknown</li> </ol> <p style="padding-left: 40px;">If Pled Guilty, then Plea Agreement?</p> <ol style="list-style-type: none"> <li>1.No</li> <li>2.Yes</li> <li>9.Unknown</li> </ol> <p style="padding-left: 40px;">If Pled Guilty, then Sentencing Agreement?</p> <ol style="list-style-type: none"> <li>1.No</li> <li>2.Yes</li> <li>9.Unknown</li> </ol> <p><b>FF. Also Possessed Adult Pornography?</b></p> <ol style="list-style-type: none"> <li>1. No</li> <li>2. Yes</li> <li>3. Unknown</li> </ol> <p style="padding-left: 40px;">If Yes, What Percentage of Porn Involved Children? _____</p> <p><b>GG. Images Introduced Into Evidence?</b></p> <ol style="list-style-type: none"> <li>1. No</li> <li>2. Yes</li> <li>3. Unknown</li> </ol> <p><b>HH. Victim Impact Statement Submitted?</b></p> <ol style="list-style-type: none"> <li>1. No</li> <li>2. Yes, prepared by subject</li> <li>3. Yes, prepared by parent</li> <li>4. Yes, prepared by other person</li> <li>5. Yes, preparer unknown</li> <li>9. Unknown</li> </ol> <p><b>II. Data/Information Source:</b></p> <ol style="list-style-type: none"> <li>1. Police report</li> <li>2. Prosecutor's files</li> <li>3. Victim/witness statement</li> <li>4. Court records</li> <li>5. PSI report</li> <li>6. Defendant (defendant's version in PSI)</li> <li>7. Combination of multiple sources</li> <li>9. Unknown</li> </ol>
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# Study Option 1

## Sentencing Events with Possession of Child Pornography as the Most Serious Offense FY2009 – FY2013



# Study Option 1





# Study Option 1

## Cost Estimate – Field Work

	Region 1 Tidewater	Region 2 Northern	Region 3 Central	Region 4 Southwest	Region 5 Southside	Region 6 Shenandoah	TOTAL
Number of cases	35	77	53	49	35	44	293
Number of localities to visit	15	6	13	14	12	16	76
Number of localities per day	2	2	2	2	2	2	
Number of field days	7.5	4.0	6.5	7.0	6.0	8.0	39
Number of staff per team	2	2	2	2	2	2	
Number of trips	2	2	2	2	2	2	
Staff time	\$ 2,723	\$ 1,452	\$ 2,360	\$ 2,541	\$ 2,178	\$ 2,904	
Lodging	\$ 1,068	\$ 352	\$ 830	\$ 950	\$ 664	\$ 996	
Meals	\$ 704	\$ 352	\$ 616	\$ 616	\$ 528	\$ 704	
Vehicle/Gas	\$ 571	\$ 294	\$ 498	\$ 514	\$ 440	\$ 587	
<b>TOTAL</b>	<b>\$ 5,066</b>	<b>\$ 2,450</b>	<b>\$ 4,303</b>	<b>\$ 4,621</b>	<b>\$ 3,811</b>	<b>\$ 5,192</b>	<b>\$ 25,443</b>

**Extra field day due to  
large number of cases  
in Fairfax**



# Study Option 1

## Cost Estimate - Total

<b>Field work</b>	<b>\$ 25,443</b>
<b>Keying, cleaning, and analysis of data 2 staff, 1.5 months each</b>	<b>\$ 16,576</b>
<b>TOTAL</b>	<b>\$ 42,019</b>



# Proposed Study Options

## Option 1 (Presented at April 14, 2014 meeting)

- Use entire data collection instrument
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- Analyze and test factors based on data collected

## Option 2

- Use pared-down data collection instrument
- Limit travel to localities with more than 10 cases
- For remaining localities, ask Commonwealth's Attorneys' Offices to complete pared-down form
- Analyze and test factors based on data collected

## Option 3

- Add FY2014 data to the analysis and retest proposed changes presented in *2013 Annual Report*



DCN \_\_\_\_\_

Offender Name \_\_\_\_\_

**Offender/Subject Characteristics**

A. Age of Youngest Minor Subject: \_\_\_\_\_ (99 = Unk.)

B. Age Group (Check All That Apply):

1. Under 1 (Infant)
2. 1-3 (Toddler)
3. 4-5 (Pre-School)
4. 6-9 (Elementary School)
5. 10-12 (Middle School)
6. 13-17 (Teenage)
9. Unknown

C. Child Type

1. Prepubescent (Prior to puberty)
2. Post pubescent
3. Minor – group unknown

D. Altered Any Image to Create/Enhance Child Porn?

1. Yes
2. No
9. Unknown

E. Age of Oldest Minor Subject: \_\_\_\_\_ (99 = Unk.)

F. Gender(s) of Minor Subject(s) Depicted:

1. Male
2. Female
3. Both
9. Unknown

G. Number of Different Subjects: \_\_\_\_\_  
(999 = Unknown)

H. Subject Type:

1. Identified (by law enforcement) subject(s)
2. Anonymous subject(s)
3. Both identified and anonymous subjects

I. Subject's Relationship with Offender:

1. None
2. Babysitter

J. Drug/Alcohol Use (At Time of Recording or Production of Any Image)

1. None
2. Offender used
3. Victim used
4. Both used
9. Unknown

K. Offender provided Drugs/Alcohol to Subject (At Time of Recording or Production of Any Image)

1. Yes
2. No
9. Unknown

L. Substances Used by Subject: \_\_\_\_\_  
(See Codes Below)

M. Substances Used by Offender: \_\_\_\_\_  
(See Codes Below)

N. Any Subject Mentally or Physically Incapacitated?

1. Yes – mentally incapacitated
2. Yes – physically incapacitated
3. Yes – both
4. No
9. Unknown

O. Employment Provides (or Offender Has) Access to Minors at Time of Offense?

1. Yes
2. No
9. Unknown

P. Use of Material to "Groom" Minors?

1. Yes
2. No
9. Unknown

Q. Offender Psychosexual Assessment Done?

1. Yes
2. No
9. Unknown

R. If Psychosexual Assessment Done, Risk Level?

1. Low
2. Medium
3. High
9. Unknown

S. Offender a Registered Sex Offender (at time of offense)?

1. Yes
2. No
9. Unknown

Codes for Substances Used/Given:

0	None	5	Methamphetamine	10	Other
1	Alcohol	6	Ecstasy	99	Missing
2	Tobacco	7	Heroin		
3	Marijuana	8	Other Schedule I/II drug		
4	Cocaine	9	Prescription drug		

17. Other relationship      99. Unknown

**I. Subject's Relationship to Offender:**

1. Stranger/None
2. Known to Victim (not relative or step-parent)
3. Relative (not step-parent)
4. Step-Parent
5. Other Position of Trust

## Content/Collecting Behavior

### T. How Was Child Porn Initially Discovered?

1. During Sting – Online Solicitation or Child Porn Investigation
2. Reported
3. Computer/Phone/Device Repair or Resale
4. Sex/Child Abuse Case
5. Developing Picture
6. Sent E-mail/Web
7. Cell phone/Smart phone
8. Other means
9. Unknown

U. Number of Still Images: \_\_\_\_\_ (9999 = Unk.)

V. Number of Videos: \_\_\_\_\_ (9999 = Unk.)

If Yes, Longest Length? \_\_\_\_\_

### W. Types of Sex Conduct Depicted (Check All that Apply)

1. Genitals/exposure
2. Masturbation
3. Oral penetration (or attempt)
4. Anal penetration (or attempt)
5. Sexual intercourse (or attempt)
6. Contact between adult and minor
7. Contact between minors
8. Physically violent (incl. sadism/masochism)
9. Bondage
10. Urination/defecation
11. Bestiality
12. Defendant appeared in child porn
99. Unknown

### X. Defendant Produced Child Porn?

1. No
2. Yes
9. Unknown

### Y. Defendant Distributed/Retransmitted Child Porn?

1. No
2. Through Peer-to-Peer (P2P) File-Sharing Programs
3. Through Child Porn "Online Communities"
4. Other Means
9. Unknown

### Z. Offender Posted Material to Internet?

1. No
2. Yes – if so, then list website \_\_\_\_\_
9. Unknown

### AA. How Was Child Porn Obtained? (Check All that Apply)

1. Internet/downloaded
2. Email
3. Obtained from the subject
4. Texted via cell phone/smartphone
5. Through a social network
6. Hardcopy (magazine, publication, by mail)
7. Part of a group/ring/community of users
8. Produced by offender
9. Other means
99. Unknown

BB. Date of Initial Involvement with Child Porn/Earliest Download Date: \_\_\_\_\_

CC. Date of Most Recent Involvement with Child Porn/Most Recent Download Date: \_\_\_\_\_

### DD. Security Measures Taken to Avoid Detection (Check All that Apply)

1. None
2. Passwords for computer login
3. Software to erase browsing history
4. Encryption/locking of files
5. Other measures
6. Unknown

### EE. Pled Guilty?

1. No
2. Yes
9. Unknown

If Pled Guilty, then Plea Agreement?

- 1.No
- 2.Yes
- 9.Unknown

If Pled Guilty, then Sentencing Agreement?

- 1.No
- 2.Yes
- 9.Unknown

### FF. Also Possessed Adult Pornography?

1. No
2. Yes
3. Unknown

If Yes, What Percentage of Porn Involved Children?

### GG. Images Introduced Into Evidence?

1. No
2. Yes
3. Unknown

### HH. Victim Impact Statement Submitted?

1. No
2. Yes, prepared by subject
3. Yes, prepared by parent
4. Yes, prepared by other person
5. Yes, preparer unknown
9. Unknown

### II. Data/Information Source:

1. Police report
2. Prosecutor's files
3. Victim/witness statement
4. Court records
5. PSI report
6. Defendant (defendant's version in PSI)
7. Combination of multiple sources
9. Unknown

**Offender used a Peer-to-Peer (P2P)  
File-Sharing Program?**

- Yes**
- No**
- Unknown**

**Offender participated in a child  
pornography “online community”?**

- Yes**
- No**
- Unknown**

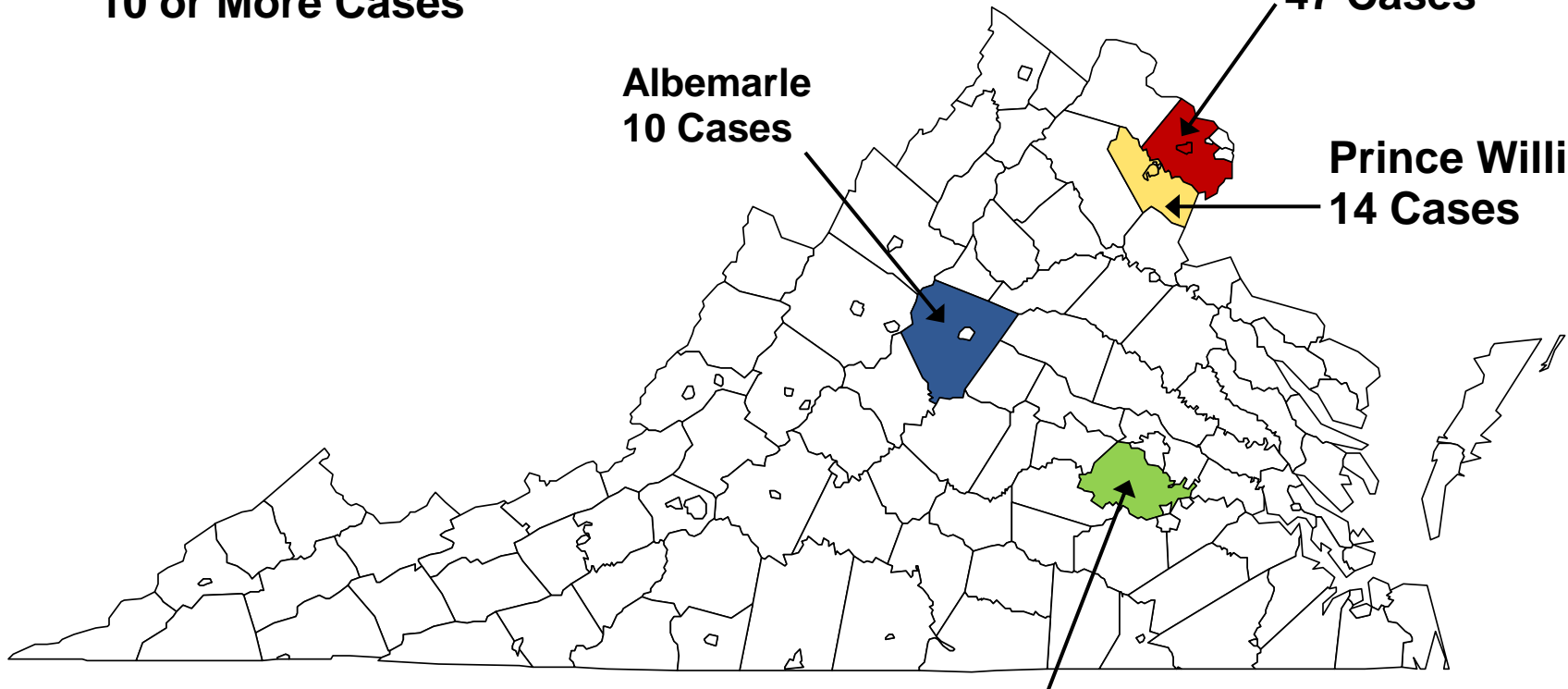
# Study Option 2

**Localities with  
10 or More Cases**

**Albemarle  
10 Cases**

**Fairfax  
47 Cases**

**Prince William  
14 Cases**



**Chesterfield  
16 Cases**



# Sentencing Events with Possession of Child Pornography as the Most Serious Offense by Jurisdiction FY2009 – FY2013

	Cases
Accomack	1
<b>Albemarle</b>	<b>10</b>
Alleghany	2
Amherst	1
Arlington	5
Augusta	1
Bedford	8
Bland	1
Buchanan	2
Buckingham	1
Campbell	1
Carroll	4
<b>Chesterfield</b>	<b>16</b>
<b>Fairfax County</b>	<b>47</b>
Fauquier	6
Fluvanna	1
Frederick	4
Gloucester	1
Goochland	1
Grayson	1
Greene	1
Hanover	3
Henrico	8
James City	1
Loudoun	3
Louisa	4
Lunenburg	2

	Cases
Middlesex	1
Montgomery	7
Nelson	1
New Kent	1
Northampton	1
Northumberland	1
Pittsylvania	2
Powhatan	1
Prince George	2
<b>Prince William</b>	<b>14</b>
Pulaski	3
Richmond County	1
Roanoke County	3
Rockbridge	2
Rockingham	3
Russell	6
Scott	2
Smyth	4
Spotsylvania	7
Stafford	3
Tazewell	3
Warren	3
Washington	2
Wise	5
Wythe	3
York	5

	Cases
Alexandria	2
Buena Vista	1
Charlottesville	3
Chesapeake	1
Colonial Heights	3
Fredericksburg	4
Hampton	1
Hopewell	1
Lynchburg	6
Martinsville	1
Newport News	2
Norfolk	8
Portsmouth	1
Radford	6
Richmond City	3
Roanoke City	6
Salem	3
Staunton	4
Suffolk	1
Virginia Beach	8
Waynesboro	1
Williamsburg	2
Winchester	3

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Total Cases = 293



# Study Option 2

## Cost Estimate – Field Work

	Fairfax	Chesterfield	Prince William	Albemarle	TOTAL
Number of cases	47	16	14	10	81
Number of staff per team	2	2	2	2	
Number of field days	3	1	1	1	6
Staff time	\$ 1,089	\$ 363	\$ 363	\$ 363	
Lodging	\$ 352	\$ 0	\$ 0	\$ 0	
Meals	\$ 264	\$ 0	\$ 0	\$ 0	
Vehicle/Gas	\$ 166	\$ 0	\$ 73	\$ 63	
<b>TOTAL</b>	<b>\$ 1,871</b>	<b>\$ 363</b>	<b>\$ 436</b>	<b>\$ 426</b>	<b>\$ 3,096</b>



# Study Option 2

## Cost Estimate - Total

<b>Field work</b>	<b>\$ 3,096</b>
<b>Sending out data collection forms &amp; follow-up with Commonwealth's Attorneys' Offices 2 staff, 5 days each</b>	<b>\$ 1,815</b>
<b>Keying, cleaning, and analysis of data 2 staff, 1.0 month each</b>	<b>\$ 11,051</b>
<b>TOTAL</b>	<b>\$ 15,962</b>



# Proposed Study Options

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## Option 2

- Use pared-down data collection instrument
- Limit travel to localities with more than 10 cases
- For remaining localities, ask Commonwealth's Attorneys' Offices to complete pared-down form
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## Option 3

- Add FY2014 data to the analysis and retest proposed changes presented in *2013 Annual Report*



# Study Option 3

## Cost Estimate - Total

**Analysis of data**  
**2 staff, 1.0 week each**

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**\$ 2,541**



# Proposed Study Options

## Option 1 (Presented at April 14, 2014 meeting)

- Use entire data collection instrument
- Travel to Circuit Court Clerks' and Commonwealth's Attorneys' offices to gather data from files
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Estimated  
Cost:  
\$ 42,019

## Option 2

- Use pared-down data collection instrument
- Limit travel to localities with more than 10 cases
- For remaining localities, ask Commonwealth's Attorneys' Offices to complete pared-down form
- Analyze and test factors based on data collected

Estimated  
Cost:  
\$ 15,962

## Option 3

- Add FY2014 data to the analysis and retest proposed changes presented in *2013 Annual Report*

Estimated  
Cost:  
\$ 2,541



# Sentencing Commission's 2013 Annual Report

## Actual versus Recommended Prison Incarceration Rates for Possession/Reproduction of Child Pornography Offenses (§ 18.2-374.1:1) FY2009 – FY2013 (Preliminary)

Possession/Reproduction Offenses	Actual Practice	Recommended under Current Sentencing Guidelines
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Probation or Incarceration Up to 6 Months

33.4%

30.9%

Incarceration More than 6 months (Range includes prison)

66.6%

69.1%



Current guidelines could be more closely aligned to the actual prison incarceration rate

# Sentencing Commission's 2013 Annual Report

## Other Sexual Assault Section A (Part II) Offender Name: \_\_\_\_\_

### ◆ Primary Offense \_\_\_\_\_

A.	Other than listed below; all attempted or conspired offenses (1 count) .....	1
B.	Non-forcible sodomy, parent/grandparent to child or grandchild age 13 to 17 (1 count) .....	7
C.	Non-forcible sodomy, no parental relationship	
	1 count .....	3
	2 counts .....	4
	3 counts .....	13
D.	Indecent liberties with child	
	1 - 2 counts .....	2
	3 counts .....	3
E.	Non-forcible carnal knowledge of child age 13, 14 (statutory rape)	
	1 count .....	2
	2 counts .....	8
	3 counts .....	12
F.	Aggravated sexual battery	
	1 count .....	3
	2 counts .....	6
	3 counts .....	9
G.	Incest with own child/grandchild (1 count) .....	3
H.	Incest with own child/grandchild age 13 to 17 (1 count) .....	2
I.	Production, publication, sale or financing child pornography (1 count) .....	5
J.	Possess child porn (1st Offense) (1 count) .....	6
K.	Possess child porn (2nd or subsequent) (1 count) .....	9
L.	Reproduce, transmit, sell, etc., child porn (1 count) .....	5
M.	Propose act by communication system - child solicitation (1 count) .....	6

→ 6  
→ 5

**Score**

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# Sentencing Commission's 2013 Annual Report

## Other Sexual Assault ❖ Section A (Part II) Offender Name: \_\_\_\_\_

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

Years: 5 - 26 ..... 1  
 27 - 52 ..... 2  
 53 or more ..... 3

0	
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### Split Additional Offense factor and increase points for certain offenses

#### ◆ Additional Offenses

**Primary offense OTHER THAN  
 Production or Possession of Child Porn  
 § 18.2-374.1 or § 18.2-374.1:1(A,B)**

Maximum Penalty	Points
Years: 5 – 26 .....	1
27 – 52 .....	2
53 or more .....	3

**Primary offense  
 Production or Possession of Child Porn  
 § 18.2-374.1 or § 18.2-374.1:1(A,B)**

Maximum Penalty	Points
Years: 5 – 26 .....	2
27 – 52 .....	3
53 or more .....	4

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

0	
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◆ Prior Incarcerations/Commitments \_\_\_\_\_ If YES, add 3 → 

0	
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◆ Legally Restrained at Time of Offense \_\_\_\_\_

None ..... 0  
 Other than parole/post-release, supervised probation or CCCA ..... 2  
 Parole/post-release, supervised probation or CCCA ..... 3

0	
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◆ Risk Assessment Score (From Section A Part I)



# Sentencing Commission's 2013 Annual Report

## Actual versus Recommended Prison Sentences Possession of Child Pornography Offenses (§ 18.2-374.1:1) FY2009 – FY2013

————— 1 count —————

	Actual Practice	Recommended under Existing Sentencing Guidelines	Recommended under <u>Proposed</u> Sentencing Guidelines
Mean Sentence	2.3 years	3.2 years	2.3 years
Median Sentence	1.7 years	2.5 years	1.9 years



For cases scored on Section C, the proposed guidelines better reflect actual sentencing practices

# Sentencing Commission's 2013 Annual Report

## Other Sexual Assault ~~Section C~~

Offender Name: \_\_\_\_\_

### ◆ Primary Offense

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

J.	Entice, etc., minor to perform in porn; take part in child porn 1 count .....	68	34	17
K.	Produce child porn; finance child porn 1 count .....	100	50	25
	<b>2 counts .....</b>	<b>216</b>	<b>108</b>	<b>54</b>
L.	Possess child porn (1st Offense) 1 count .....	<del>68</del> <b>48</b>	<del>34</del> <b>24</b>	<del>17</del> <b>12</b>
M.	Possess child porn (2nd or subsequent) 1 count .....	<del>100</del> <b>76</b>	<del>50</del> <b>38</b>	<del>25</del> <b>19</b>
N.	Reproduce, transmit, sell, etc., child porn 1 count .....	100	50	25

Fewer points  
for possession  
offenses



## Discussion