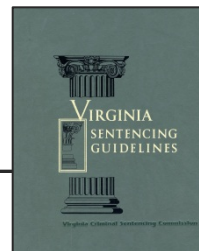


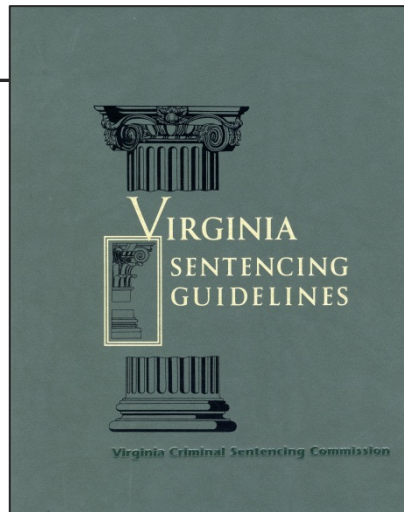
Proposed Recommendations for Guidelines Revisions

November 2010

Proposals for New Guidelines Offenses or Revisions of Existing Guidelines

- **Proposals reflect the best fit for the historical data**
- **Proposals are designed to closely match the historical rate of incarceration in prison and jail**
- **Current guidelines worksheets serve as the base for scoring historical cases, but the points assigned to those factors may be adjusted and new factors may be added**



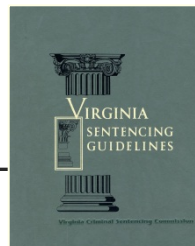


Proposed Recommendation 1:

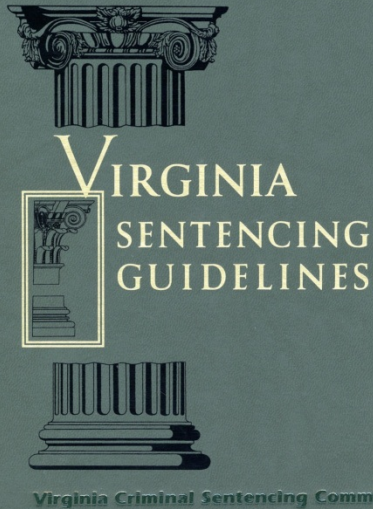
*Modify the Guidelines Instructions to Recommend
Mandatory Minimum Sentences Be Run Consecutively*

Mandatory Minimum Sentences in the Code of Virginia

- **Currently, there are 109 felony and 46 non-felony mandatory minimum sentences defined in the *Code of Virginia***
- **Many mandatory minimum penalty statutes specify that a sentence under that particular provision must be run consecutively to the sentences for all other charges; however, not all statutes clearly state this**



Current Instruction in the Guidelines Manual



If an event contains multiple counts of an offense with a mandatory minimum, the guidelines recommendations must reflect the possibility that the court may run sentences for the mandatory minimum concurrently or consecutively to each other.

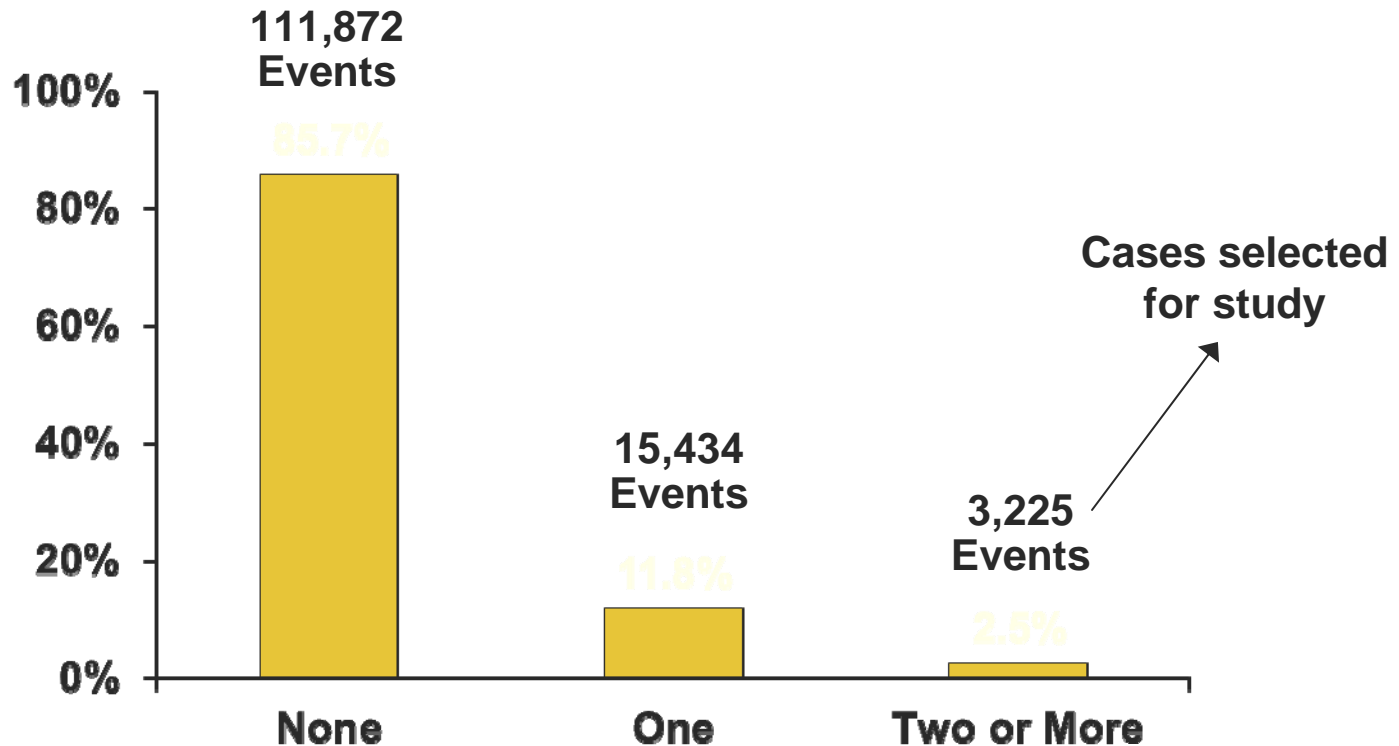
Because it is up to the judge to interpret each individual statute's language, the guidelines preparer will prepare the guidelines to reflect both possibilities – that multiple mandatory minimums may be run concurrently or consecutive to each other.

Therefore, the guidelines recommendation must reflect both. The minimum recommendation and midpoint must at least reflect the mandatory minimum sentence should the court run the sentences concurrently. The high recommendation must at least reflect the mandatory minimum sentence should the court run the mandatory sentences consecutively.

If the guidelines recommendation exceeds the mandatory minimum, no modification needs to be made.

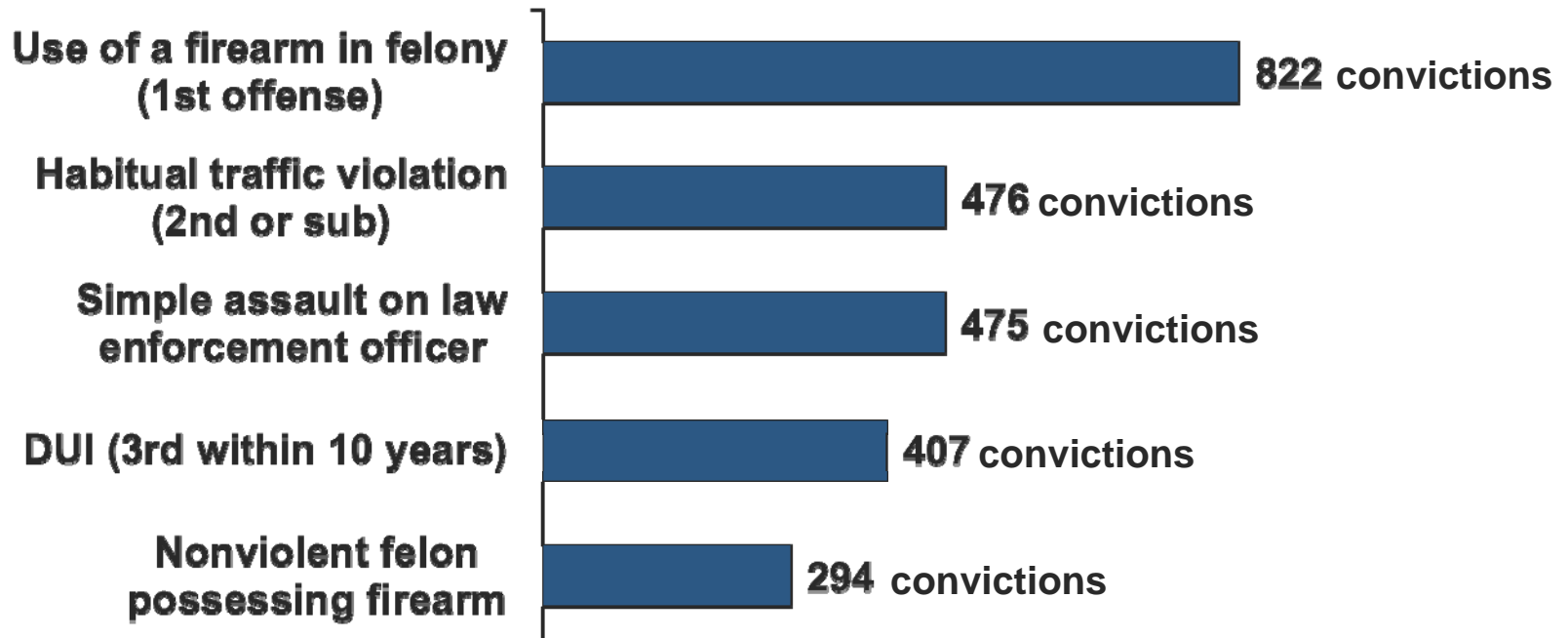
Felony Sentencing Events FY2006 – FY2010

Number of Convictions in the Sentencing Event Requiring a Mandatory Minimum Sentence



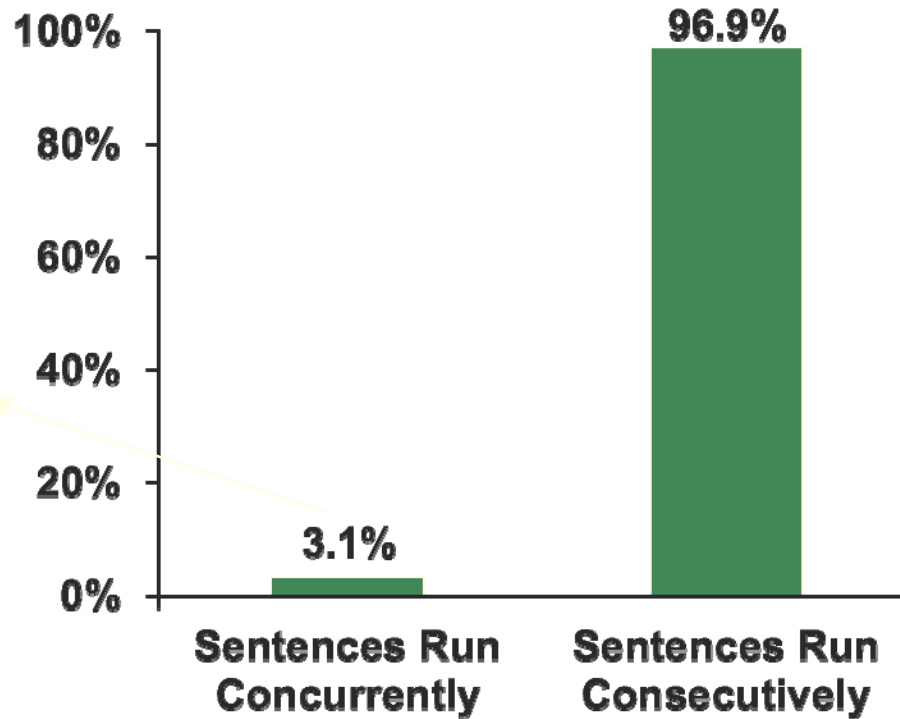
**Felony Sentencing Events
with Two or More Convictions Requiring a
Mandatory Minimum Sentence
FY2006 – FY2010**

Most Frequent Mandatory Minimum Offenses



Felony Sentencing Events with Two or More Convictions Requiring a Mandatory Minimum Sentence FY2006 – FY2010

Concurrent versus Consecutive Sentences



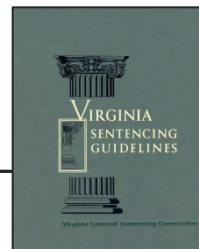
Offenses here are most often:

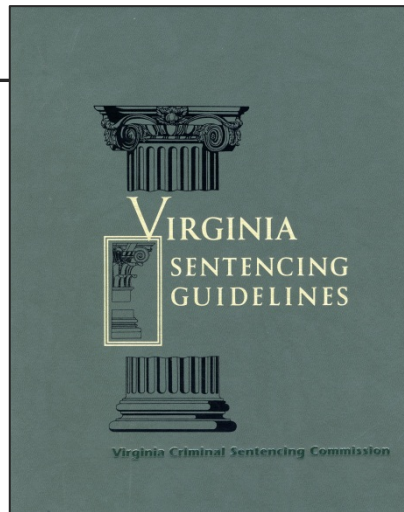
- Sale Schedule I or II drug (3rd/sub.)
- Habitual traffic violation (2nd/sub.)
- Simple assault on law enforcement officer

Proposed Recommendation 1

Revise the sentencing guidelines manual to instruct preparers to adjust any part of the guidelines recommendation that falls below the sentence needed to run all mandatory minimum sentences consecutively

The low, midpoint, and high recommendation must be at least equal to the sentence needed to run the mandatory sentences consecutively



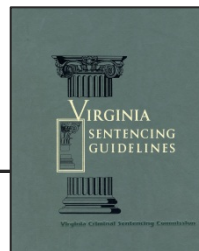


Proposed Recommendation 2:

*Add Sex Offender Registry Violations (§ 18.2-472.1)
to the Miscellaneous Guidelines*

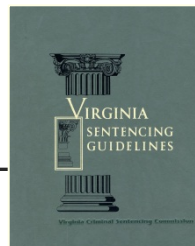
Sex Offender Registry Violations (§ 18.2-472.1)

- **Currently, Sex Offender Registry violations are not covered by the sentencing guidelines**
- **There are more felony convictions for Sex Offender Registry violations than for any other felony not currently covered by the guidelines**



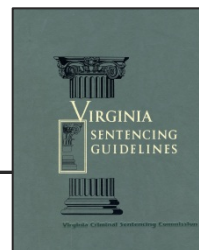
Background

- **The General Assembly has revisited Chapter 9 of Title 9.1 (Sex Offender and Crimes Against Minors Registry Act) several times in recent years**
- **In 2006, the General Assembly added to the list of offenses requiring registration and increased the penalties for second Registry violations**
 - **In addition, the *Code* was changed to allow Juvenile and Domestic Relations courts to require a juvenile who has been adjudicated delinquent for a Registry offense to register**



Background

- **During the 2007 session, the information required of registrants was expanded and the list of crimes requiring registration was expanded and reorganized**
- **In the 2008 session, the crimes requiring registration were restructured**



Sex Offender Registry Violations (§ 18.2-472.1)
FY2008 – FY2009
646 Cases

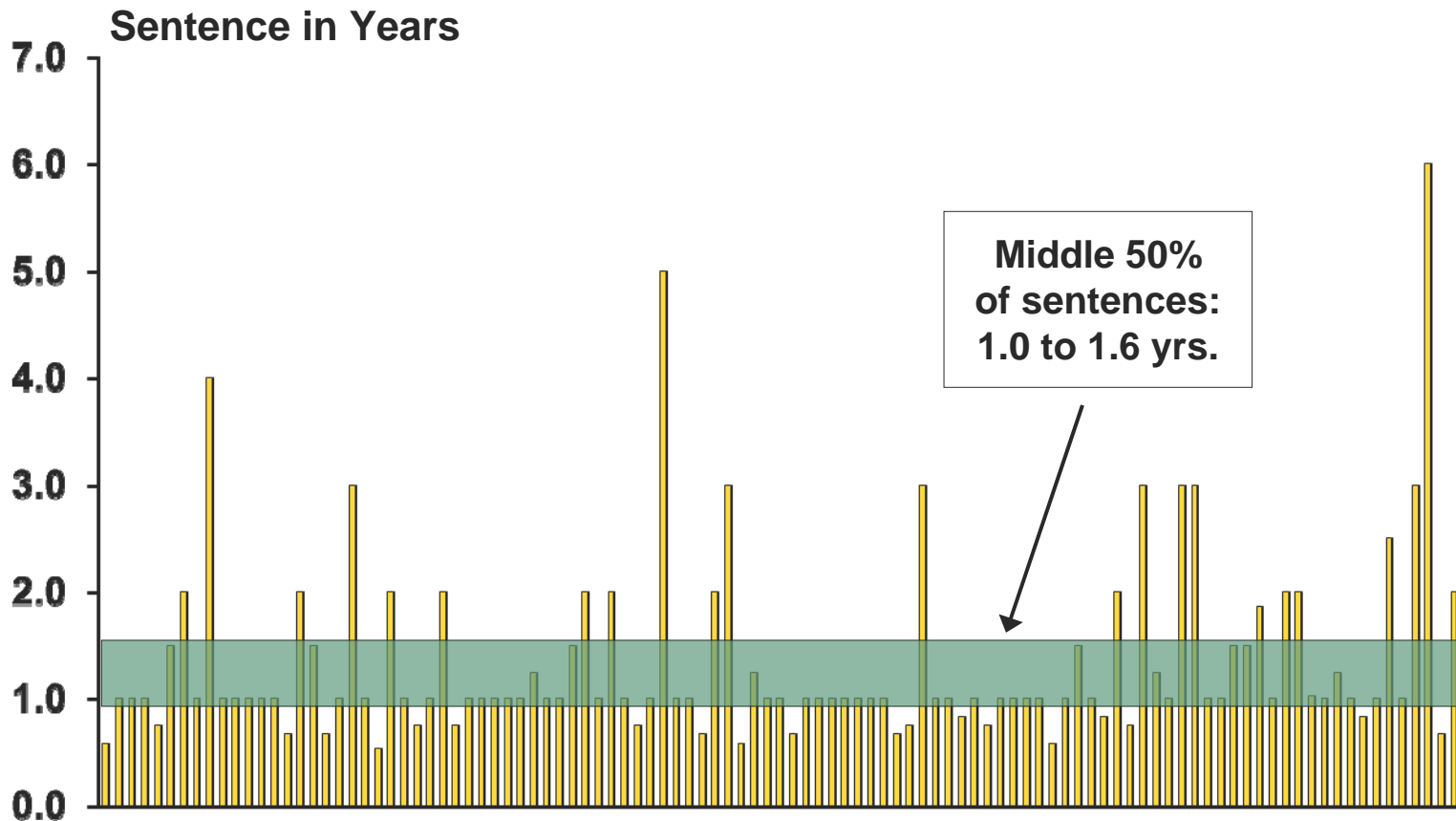
Disposition	Percent	Median Sentence
No Incarceration	34%	NA
Incarceration Up to 6 Months	39%	4 Months
Incarceration More than 6 Months	27%	1 Year

Note: Data reflect cases in which this offense was the primary (or most serious) offense at sentencing

Source: Supreme Court of Virginia, Circuit Court Automated Information System (CAIS)

Sex Offender Registry Violations (§ 18.2-472.1) FY2008 – FY2009

Offenders Sentenced to Incarceration of More than 6 Months 177 Cases



Proposed

Miscellaneous 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 \$200 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. Failure to appear in court for felony offense	
1 count.....	1
2 counts.....	4
J. Perjury, falsely swear an oath (1 count).....	1
K. Possession or sale of Schedule III drug or marijuana by prisoner (1 count).....	3
L. Escape from correctional facility (1 count).....	7
M. Maliciously shoot, throw missile at train, car, etc. (1 count).....	1
N. Damage/destroy any property or monument \$1,000 or more (1 count).....	2
O. Participation in offense by/for gang (1 count).....	5
P. Participation in offense by/for gang with juvenile member (1 count).....	6

Score

0	
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Q. Sex Offender Registry violation (1 count) 2

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

0	
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Victim Injury

Primary offense with VCC prefix "FAM"		Points	Primary offense with VCC prefix OTHER THAN "FAM"		Points
Threatened, emotional, or physical.....	2		Threatened, emotional, or physical.....	1	
Serious physical.....	5		Serious physical.....	2	

0	
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Mandatory Firearm Conviction for Current Event

If YES, add 6 →

0	
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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	
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Prior Incarcerations/Commitments

If YES, add 4 →

0	
---	--

Legally Restrained at Time of Offense

Primary offense felony vandalism-damage to property \$1,000 or more		Points	Primary offense OTHER THAN felony vandalism-damage to property \$1,000 or more		Points
Any legal restraint.....	1		None.....	0	
			Other than post-incarceration supervision.....	2	
			Post-incarceration supervision.....	5	

0	
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Score only if the Primary Offense is:

Damage to Property \$1,000 or more (§ 18.2-137(B, ii))		Points	Gang Offense (§ 18.2-46.2)		Points
Prior Vandalism Conviction/Adjudication			Violent Additional or Prior Record Conviction/Adjudication (as defined in § 17.1-805)		
Misdemeanor vandalism.....	1		Yes.....	2	
Felony vandalism.....	2		No.....	0	
Both felony and misdemeanor vandalism.....	3				

0	
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Total Score

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

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Sex Offender Registry violators
Prior Convictions/Adjudications

Less than 6.....	0
6 – 64.....	1
65 or more.....	2

Sex Offender Registry violators

Any legal restraint 1

Proposed

Miscellaneous 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 \$200 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. Failure to appear in court for felony offense (1 count).....	10
J. Perjury, falsely swear an oath (1 count).....	7
K. Possession or sale of Schedule III drug or marijuana by prisoner (1 count).....	7
L. Escape from correctional facility (1 count).....	10
M. Maliciously shoot, throw missile at train, car, etc. (1 count).....	7
N. Damage/destroy any property or monument \$1,000 or more (1 count).....	8
O. Participation in offense by/for gang (1 count).....	7

Score
▼
[] []

Q. Sex Offender Registry violation
Nonviolent offender per § 9.1-902 - 2nd or sub. (1 count) 7

R. Sex Offender Registry violation
Violent offender per § 9.1-902 - 1st conviction (1 count) 8

S. Sex Offender Registry violation
Violent offender per § 9.1-902 - 2nd or sub. (1 count) 9

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

◆ Victim Injury

Primary offense with VCC prefix "FAM"	Primary offense with VCC prefix OTHER THAN "FAM"
Threatened, emotional, or physical 9	Threatened, emotional, or physical 2
Serious physical 10	Serious physical 3

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

◆ Score Only if Primary Offense is: Gang Offense (§ 18.2-46.2) Score factors and enter the total score

A. Additional Offense of Assault (Felony or Misdemeanor).....	1	[]	+	=	Enter A + B Total	0
B. Prior Juvenile Felony Person Adjudication.....	1	[]				

◆ Score Only if Primary Offense is: Damage to Property \$1,000 or more (§ 18.2-137(B,ii))

Prior Incarcerations/Commitments..... 1 [0]

Total Score → [] []

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

Sex Offender Registry violators
Prior Incarcerations/
Commitments 1



Proposed

Miscellaneous Section C

Offender Name: _____

Primary Offense

Prior Record Classification

Category I Category II Other

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 \$200 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. Failure to appear in court for felony offense (1 count)	32	16	8
J. Perjury, falsely swear an oath (1 count)	12	6	3
K. Possession or sale of Schedule III drug or marijuana by prisoner (1 count)	32	16	8
L. Escape from correctional facility (1 count)	40	20	10
M. Maliciously shoot, throw missile at train, car, etc. (1 count)	32	16	8
N. Damage/destroy any property or monument \$1,000 or more (1 count)	32	16	8
O. Participation in offense by/for gang (1 count)	84	42	21
P. Participation in offense by/for gang with juvenile member (1 count)	104	52	26

Score

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Category I Category II Other

Q. Sex Offender Registry violation			
Nonviolent offender per § 9.1-902 - 2 nd or sub. (1 count)	8	4	2
R. Sex Offender Registry violation			
Violent offender per § 9.1-902 - 1 st conviction (1 count)	8	4	2
S. Sex Offender Registry violation			
Violent offender per § 9.1-902 - 2 nd or sub. (1 count)	16	8	4

Threatened or emotional	6
Physical	7
Serious physical	10

Threatened or emotional	2
Physical	4
Serious physical	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 (years)	0
20, 30, 40 or more	1

0	0	
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Prior Felony Convictions/Adjudications Against Person

Primary offense burn <u>occupied</u> dwelling/church	
Number of Counts	Points
1	3
2	4
3	6
4 or more	8

Primary offense <u>OTHER THAN</u> burn occupied dwelling/church	
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 of Counts: 1	2	4	6
2	4	5 or more	10
3	6		

0		
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Legally Restrained at Time of Offense

If YES, add 2

0	0	
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Score only if the Primary Offense is:

Burn Occupied Dwelling/Church (§ 18.2-77(A,j))	
Additional Offense with VCC Prefix of "MUR"	Points
Yes	133
No	0

Gang Offense (§ 18.2-46.2)	
Violent Additional Offense (as defined in § 17.1-805)	Points
And Primary (MOB1291F5) is without a Juvenile	12
And Primary (MOB1292F4) is with a Juvenile	16

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Total Score

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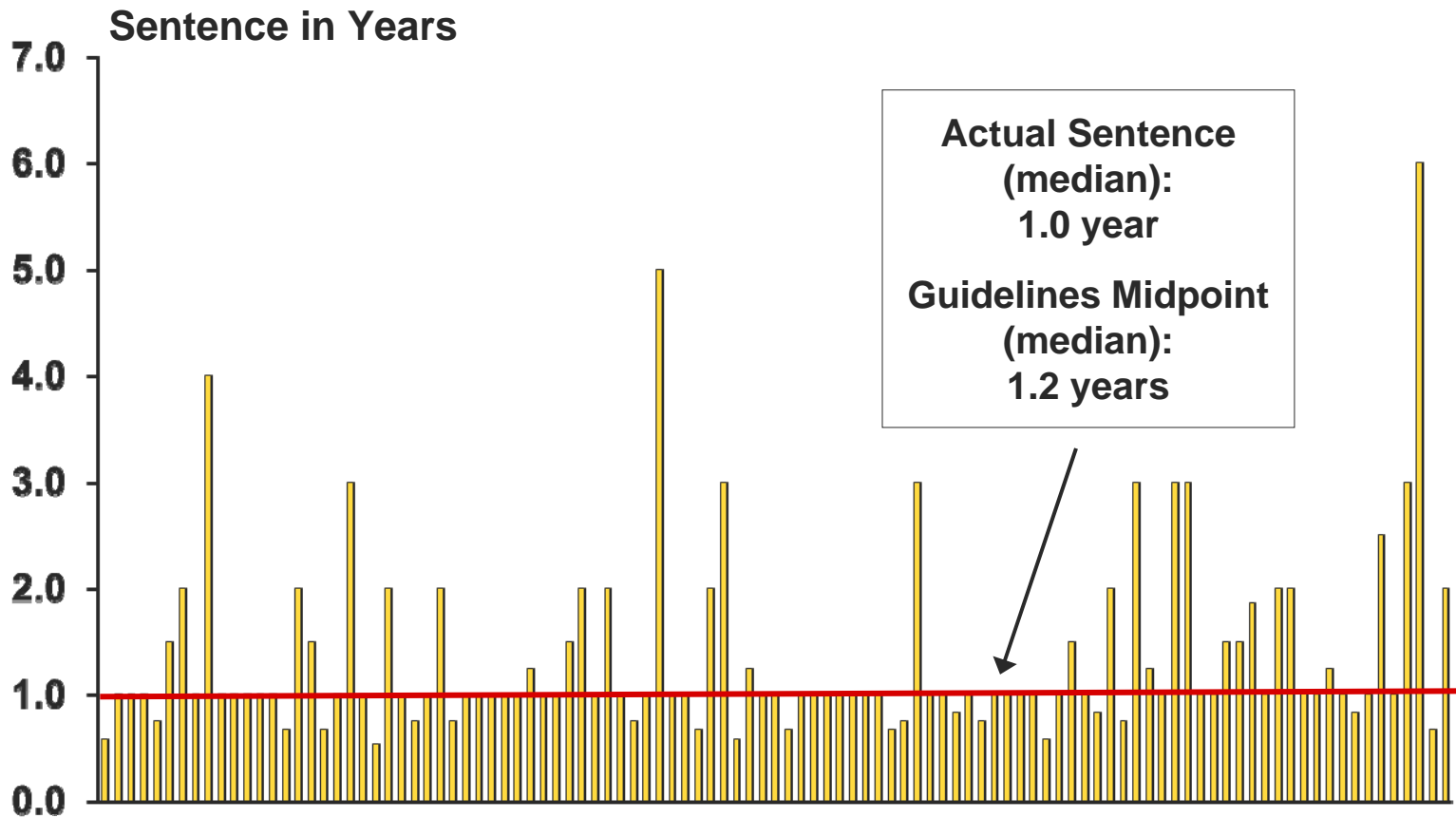
See Miscellaneous Section C Recommendation Table for guidelines sentence range.

**Sex Offender Registry Violations (§ 18.2-472.1)
 FY2008 – FY2009
 646 Cases**

Sentencing Guidelines	Recommendations under Sentencing Guidelines		Actual Practices Prior to Sentencing Guidelines	
Section A Score	Recommendation	Percent	NO PRISON Percent	PRISON Percent
Up to 8	NO PRISON	72.4%	79.3%	20.7%
9 or More	PRISON	27.6%	55.1%	44.9%
			72.6% OVERALL	27.4%

Sex Offender Registry Violations (§ 18.2-472.1) FY2008 – FY2009

Offenders Sentenced to Incarceration of More than 6 Months 177 Cases

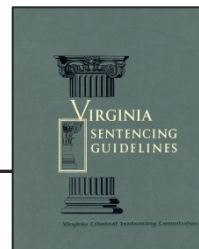


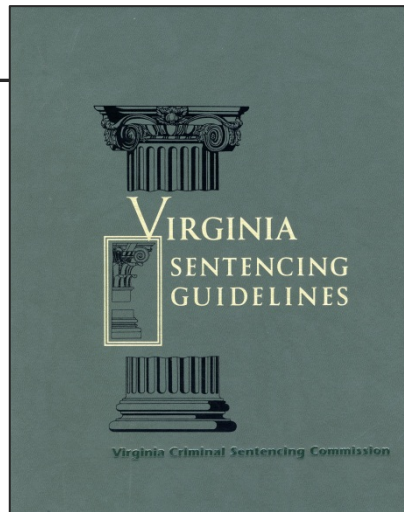
**Sex Offender Registry Violations (§ 18.2-472.1)
FY2008 – FY2009
646 Cases**

	Expected Compliance
Compliance	44.9%
Mitigation	25.2%
Aggravation	29.9%

Proposed Recommendation 2

**Revise the Miscellaneous Sentencing Guidelines to add
Sex Offender Registry violations (§ 18.2-472.1)
as proposed**



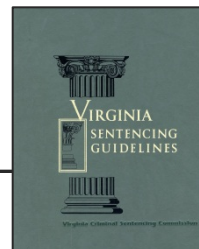


Proposed Recommendation 3:

*Split the Miscellaneous Sentencing Guidelines
into Two Offense Groups*

Miscellaneous Sentencing Guidelines

- **Currently, a large number of offenses are covered by the miscellaneous sentencing guidelines**
- **These crimes vary considerably in nature, ranging from child abuse with serious injury to perjury**



Miscellaneous Section C

Offender Name: _____

Primary Offense

Prior Record Classification

Category I Category II Other

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

Miscellaneous Section C

Offender Name: _____

Primary Offense

Prior Record Classification

Category I Category II Other

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 \$200 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
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H. Cruelty and injury to child (1 count)	28	14	7
I. Failure to appear in court for felony offense (1 count)	32	16	8
J. Perjury, falsely swear an oath (1 count).....	12	6	3
K. Possession or sale of Schedule III drug or marijuana by prisoner (1 count).....	32	16	8
L. Escape from correctional facility (1 count)	40	20	10
M. Maliciously shoot, throw missile at train, car, etc. (1 count)	32	16	8
N. Damage/destroy any property or monument \$1,000 or more (1 count)	32	16	8
O. Participation in offense by/for gang (1 count).....	84	42	21
P. Participation in offense by/for gang with juvenile member (1 count)	104	52	26

Score

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Threatened or emotional.....	6	Threatened or emotional.....	2
Physical.....	7	Physical.....	4
Serious physical.....	10	Serious physical.....	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 or more.....	1

0	0	
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Prior Felony Convictions/Adjudications Against Person

Primary offense burn <u>occupied</u> dwelling/church	
Number of Counts	Points
1.....	3
2.....	4
3.....	6
4 or more.....	8

Primary offense OTHER THAN burn occupied dwelling/church	
Number of Counts	Points
1.....	1
2.....	2
3.....	3
4.....	4
5 or more.....	5

0	0	
---	---	--

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

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

0		
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Legally Restrained at Time of Offense

If YES, add 2

0	0	
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Score only if the Primary Offense is:

Burn Occupied Dwelling/Church (§ 18.2-77(A,ii))	
Additional Offense with VCC Prefix of "MUR".....	Points
Yes.....	133
No.....	0

Gang Offense (§ 18.2-46.2)	
Violent Additional Offense (as defined in § 17.1-805).....	Points
And Primary (MOB1291F5) is without a Juvenile	12
And Primary (MOB1292F4) is with a Juvenile.....	16

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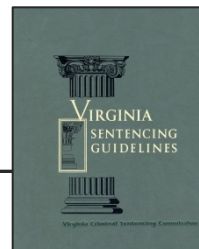
Total Score

See Miscellaneous Section C Recommendation Table for guidelines sentence range.

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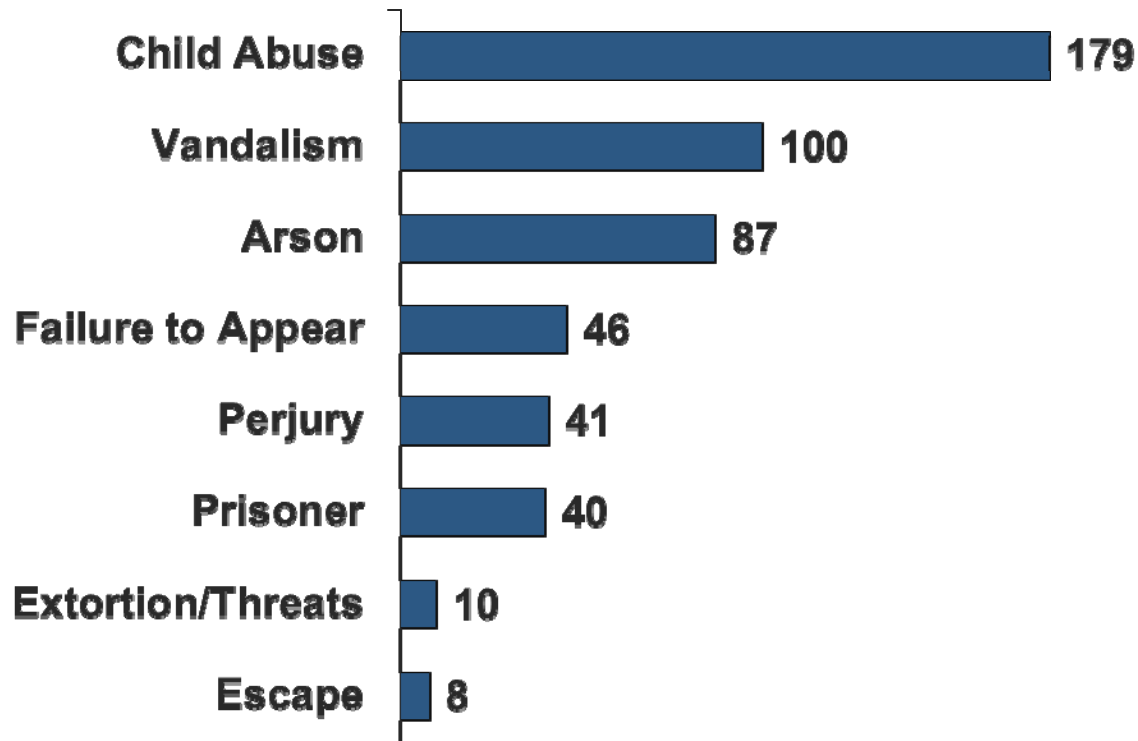
Miscellaneous Sentencing Guidelines

- **Splitting the miscellaneous guidelines into two offense groups will allow for more refined analysis in the future, which could result in improvements to the guidelines for particular offenses**
- **The current proposal does not modify the guidelines scores and will not change the sentence recommendation for any offender**



Felony Sentencing Events FY2010

Miscellaneous Offense Group



511 Felony Sentencing Events

Felony Sentencing Events FY2010

Miscellaneous Offense Group

Offense	Compliance	Mitigation	Aggravation	Events
Child Abuse	73.2%	8.9%	17.9%	179
Vandalism	79.0%	10.0%	11.0%	100
Arson	80.5%	5.7%	13.8%	87
Failure to Appear	71.7%	23.9%	4.3%	46
Perjury	82.9%	9.8%	7.3%	41
Prisoner	62.5%	27.5%	10.0%	40
Extortion/Threats	60.0%	0.0%	40.0%	10
Escape	75.0%	0.0%	25.0%	8
Overall	75.1%	11.2%	13.7%	511

Proposed Split of the Miscellaneous Offense Group

Person and Property Offenses

Child Abuse

Vandalism

Arson

Extortion/Threats

Gang (added in FY2011)

**376 Sentencing Events
in FY2010**

Prisoner and Other Offenses

Failure to Appear

Perjury

Prisoner

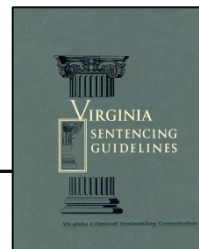
Escape

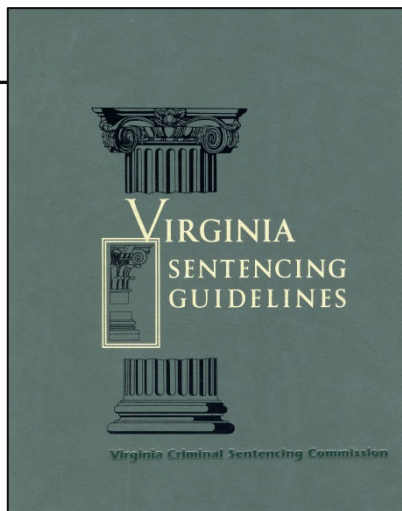
**135 Sentencing Events
in FY2010**

**Proposal to add Sex Offender
Registry violations beginning
FY2012**

Proposed Recommendation 3

Split the Miscellaneous guidelines into two offense groups as proposed

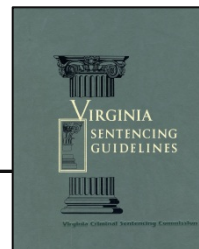




*Examination of embezzlement amount
in jury cases*

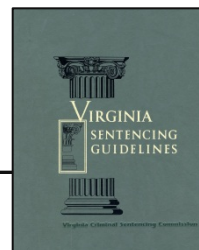
Factor for Embezzlement Amount

- **A judge has written to express his concern over the scoring of the embezzlement factor when the indictment is written in a general way (i.e., the amount is greater than \$200):**
 - **When there is a guilty plea, “there is often a stipulation as to the facts and [scoring the embezzlement factor] is not an issue”**
 - **In a jury trial, however, “the jury does not define a specific amount, as their general verdict only indicates whether they make a finding of guilt or innocence”**



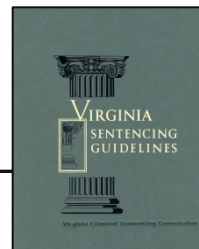
Factor for Embezzlement Amount

- According to the judge, “there can be a legitimate dispute between the Commonwealth and the defendant regarding what the amount is for scoring”
- “Ironically restitution can be determined by a separate hearing and only requires proof beyond a preponderance of the evidence. But the [guidelines] instructions say that the embezzlement amount is scored based on the amount for which the defendant was convicted, suggesting it has to be the amount for which he was found guilty beyond a reasonable doubt”

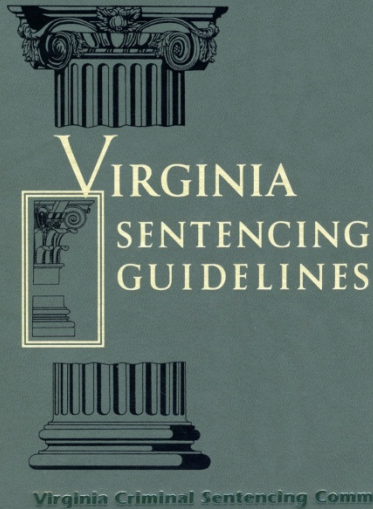


Factor for Embezzlement Amount

- **The larceny guidelines include a factor on Sections A, B, and C to score the amount involved in embezzlement cases**
- **This factor was added in 1999**
- **The dollar amounts were selected based on a special study of sentencing practices in embezzlement cases**



Current Instruction in the Guidelines Manual



Amount of Embezzlement

Score this factor only if the primary offense is an embezzlement conviction (attempted, conspired, or completed) under § 18.2-111 LAR-2707-F9.

Enter the appropriate score based on the dollar amount or value of goods embezzled. Determine the amount embezzled from official reports (e.g., police reports). The embezzlement amount is scored based on the amount for which the offender was convicted.

Larceny ❖ Section A

Offender Name: _____

SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE IS EMBEZZLEMENT § 18.2-111

◆ Amount of Embezzlement _____

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

0

Larceny ❖ Section B

Offender Name: _____

SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE IS EMBEZZLEMENT § 18.2-111

◆ Amount of Embezzlement _____

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

0

Larceny ❖ Section C

Offender Name: _____

SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE IS EMBEZZLEMENT § 18.2-111

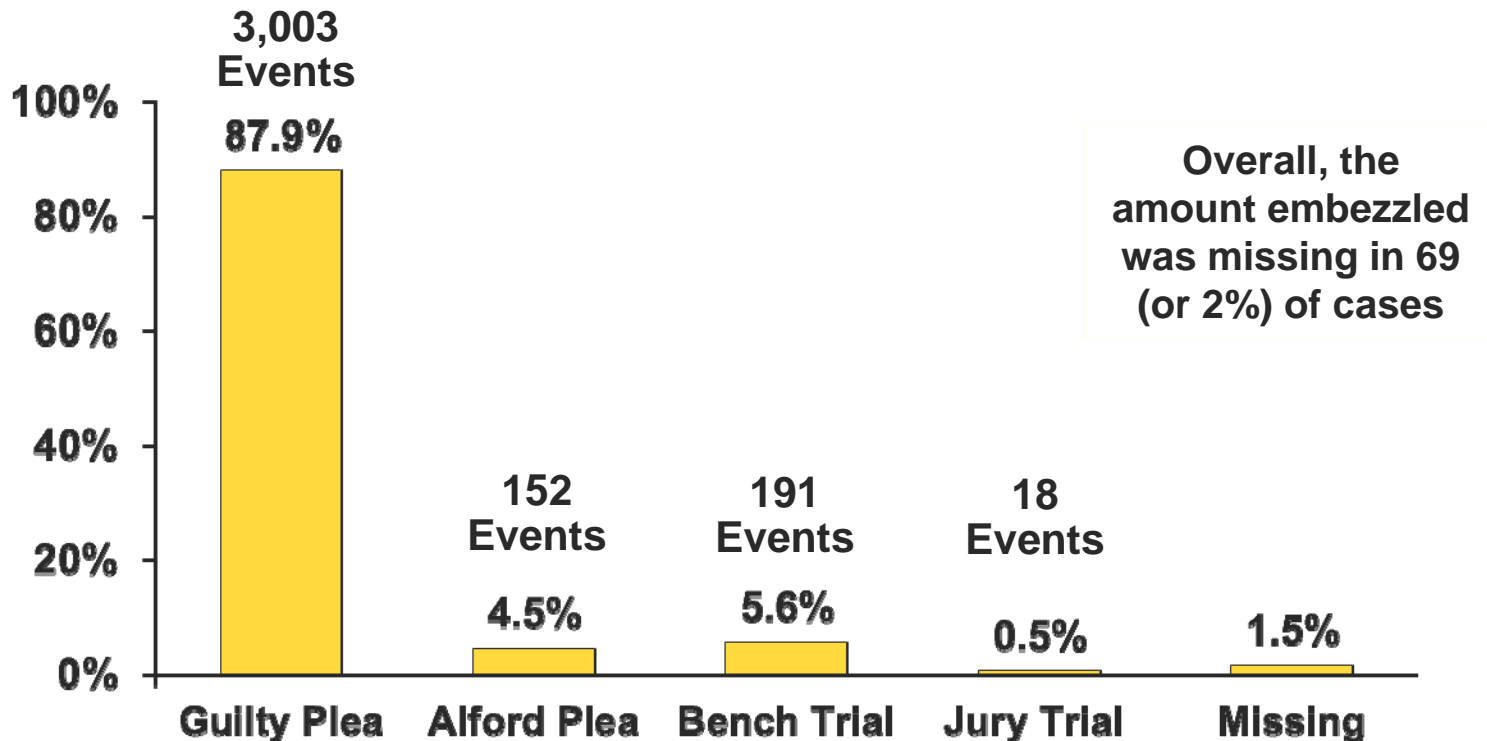
◆ Amount of Embezzlement _____

Amount:	Less than \$28,000	0
	\$28,000 - \$89,999	24
	\$90,000 or more	30

0

Felony Sentencing Events FY2006 – FY2010

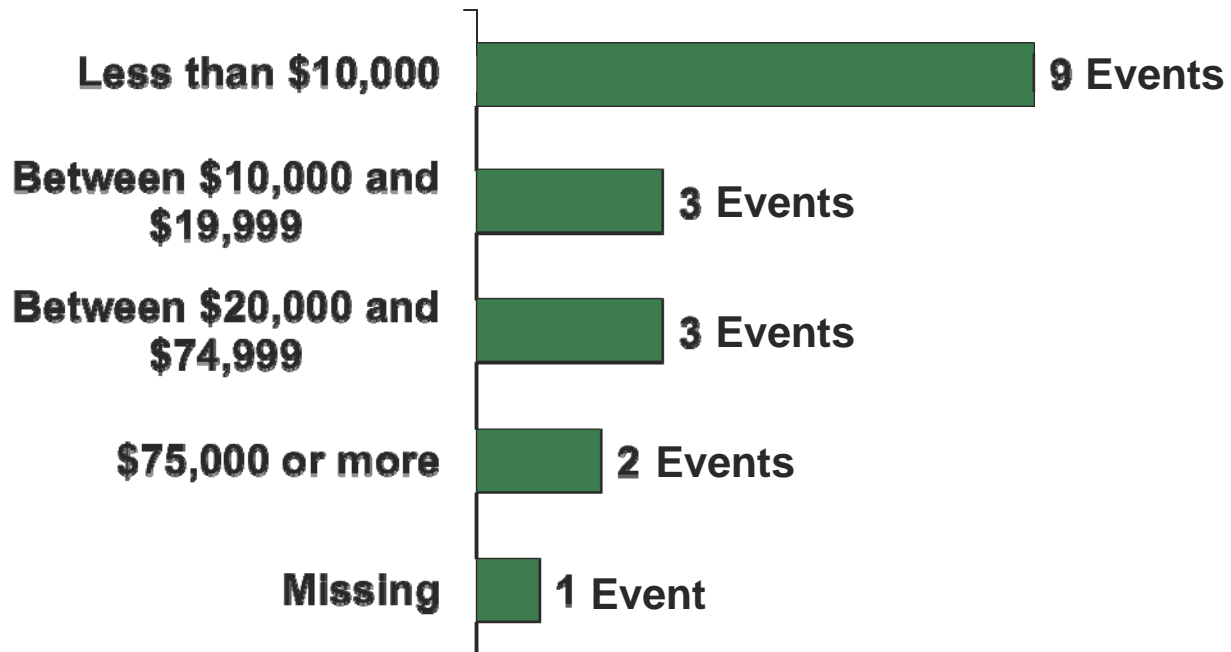
Events with Embezzlement of \$200 or More as the Most Serious Offense By Trial Type



Felony Sentencing Events FY2006 – FY2010

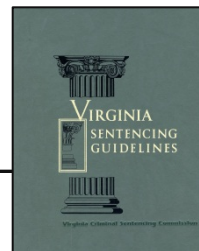
Events with Embezzlement of \$200 or More
as the Most Serious Offense

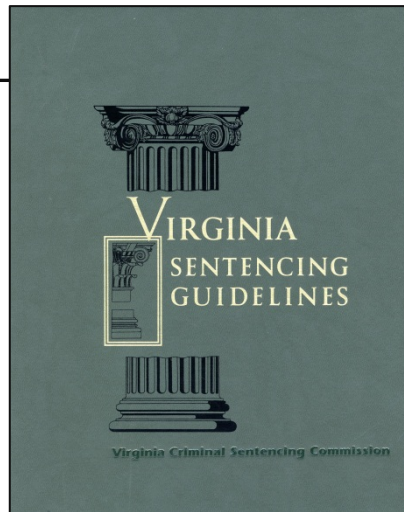
Adjudication by Jury Only



Summary of Findings

- **The number of embezzlement cases adjudicated by a jury is relatively small (18 cases in five years)**
- **The Commission could explore alternatives to the current instructions for scoring embezzlement amount**

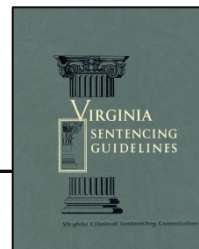




*Examination of sentencing practices
in cases involving guidelines with a
separate factor for juvenile record*

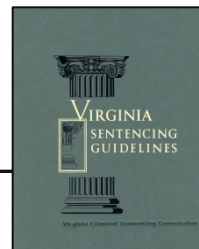
Scoring Juvenile Record

- **Currently, juvenile record is scored along with the offender's adult record on nearly all prior record factors**
 - **Examples:**
 - Prior felony larceny convictions/adjudications**
 - Prior incarcerations/commitments**



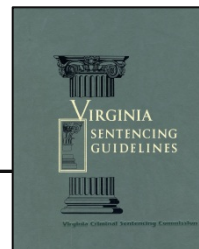
Scoring Juvenile Record

- **On some worksheets, there is also a separate and distinct factor for scoring juvenile record**
 - **This is a vestige from historical guidelines in effect prior to 1995**
 - **Prior to 1995, juvenile record was not scored on other prior record factors that, at the time, captured only the offender's adult record**



Scoring Juvenile Record

- **Truth-in-sentencing/no-parole legislation, which became effective in January 1995, specified that an offender's juvenile record was to be scored the same as his adult record**
 - **Prior record factors were modified to account for juvenile record**
 - **However, the separate juvenile record factor remains**



Example

Larceny Section A

Offender Name: _____

Primary Offense

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

Score

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

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

0	
---	--

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

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

0	
---	--

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

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

0	
---	--

Prior Felony Larceny Convictions/Adjudications

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

0	
---	--

Other Prior Felony Property Convictions/Adjudications

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

0	
---	--

Prior Felony Convictions/Adjudications Against Person

Number of Counts: 1	1
2 or more	2

0	
---	--

Prior Misdemeanor Convictions/Adjudications

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

0	
---	--

Prior Incarcerations/Commitments

If YES, add 5

0	
---	--

Prior Juvenile Record

If YES, add 1

0	
---	--

Legally Restrained at Time of Offense

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

0	
---	--

SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE IS EMBEZZLEMENT § 18.2-111

Amount of Embezzlement

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

0	
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Total Score

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

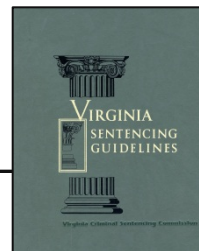
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**A separate juvenile record factor appears on
19 worksheet sections**

Offense Group	Section A	Section B	Section C
Assault	✓	✓	
Burglary-Dwelling	✓	✓	
Burglary-Other	✓	✓	
Drug-Schedule I/II	✓	✓	✓
Drug-Other	✓	✓	✓
Fraud	✓	✓	✓
Kidnapping			
Larceny	✓		✓
Murder/Homicide			
Other Sexual Assault			
Rape			
Robbery	✓		✓
Traffic-Felony			
Weapons			
Miscellaneous			

Scoring Juvenile Record

- **Since juvenile adjudications are scored across all prior record factors, is a separate factor for juvenile record significant in judicial sentencing patterns?**

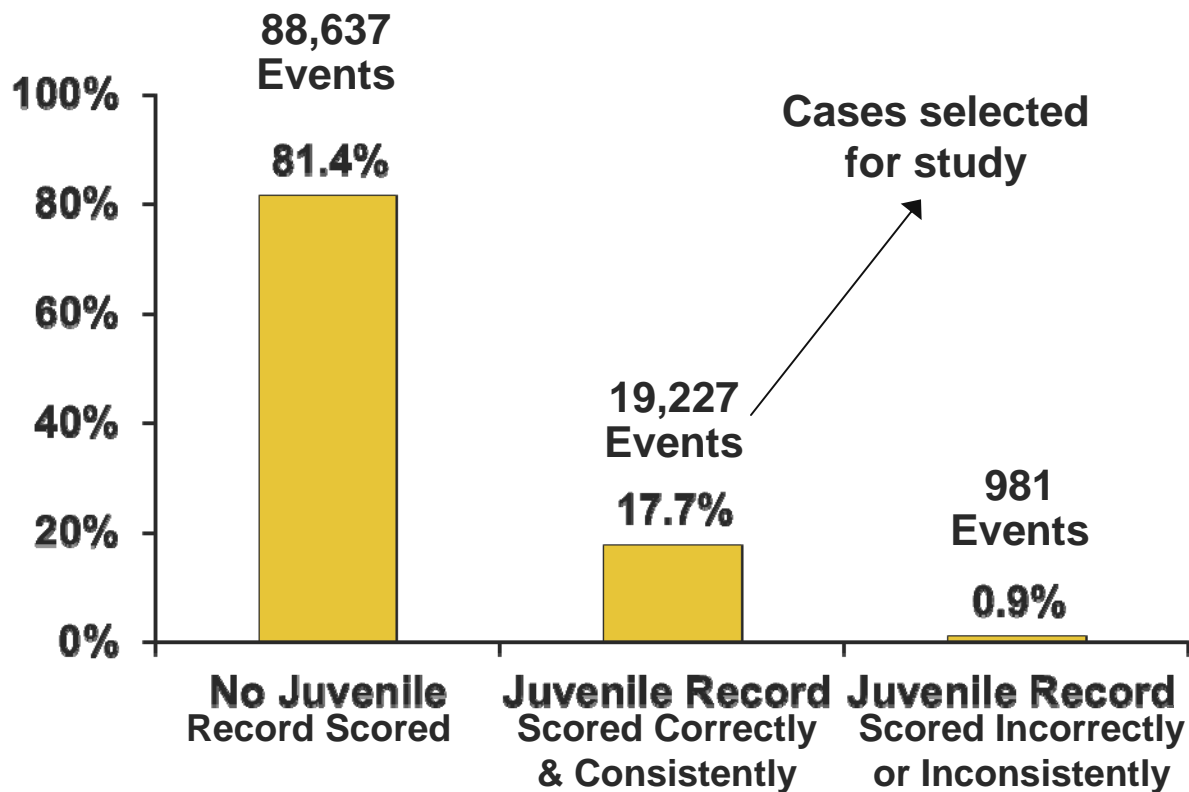


Felony Sentencing Events FY2006 – FY2010

Offense Group	Number	Percent
Assault	7,748	5.9%
Burglary-Dwelling	4,998	3.8%
Burglary-Other	3,133	2.4%
Drug-Schedule I/II	41,979	32.1%
Drug-Other	5,582	4.3%
Fraud	14,376	11.0%
Kidnapping	653	0.5%
Larceny	26,359	20.2%
Murder/Homicide	1,341	1.0%
Other Sexual Assault	2,639	2.0%
Rape	1,062	0.8%
Robbery	4,670	3.6%
Traffic-Felony	10,769	8.2%
Weapons	2,273	1.7%
Miscellaneous	2,131	1.6%
Non-Guidelines Offense	1,021	0.8%
Missing	62	0.0%
TOTAL	130,796	100.0%

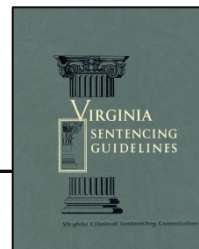
Felony Sentencing Events FY2006 – FY2010

Events involving guidelines with a
separate factor for juvenile record



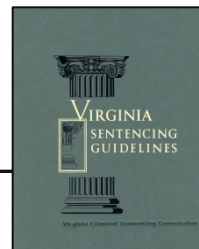
Analytical Approach

- **For cases involving guidelines with a separate juvenile record factor, Section A (the prison in/out worksheet) was re-calculated without the points for the juvenile record factor**
- **Without those points, some offenders were no longer recommended for a prison term**
 - **In these cases, it was necessary to score Section B (the probation/jail worksheet) using other information on the guidelines form**



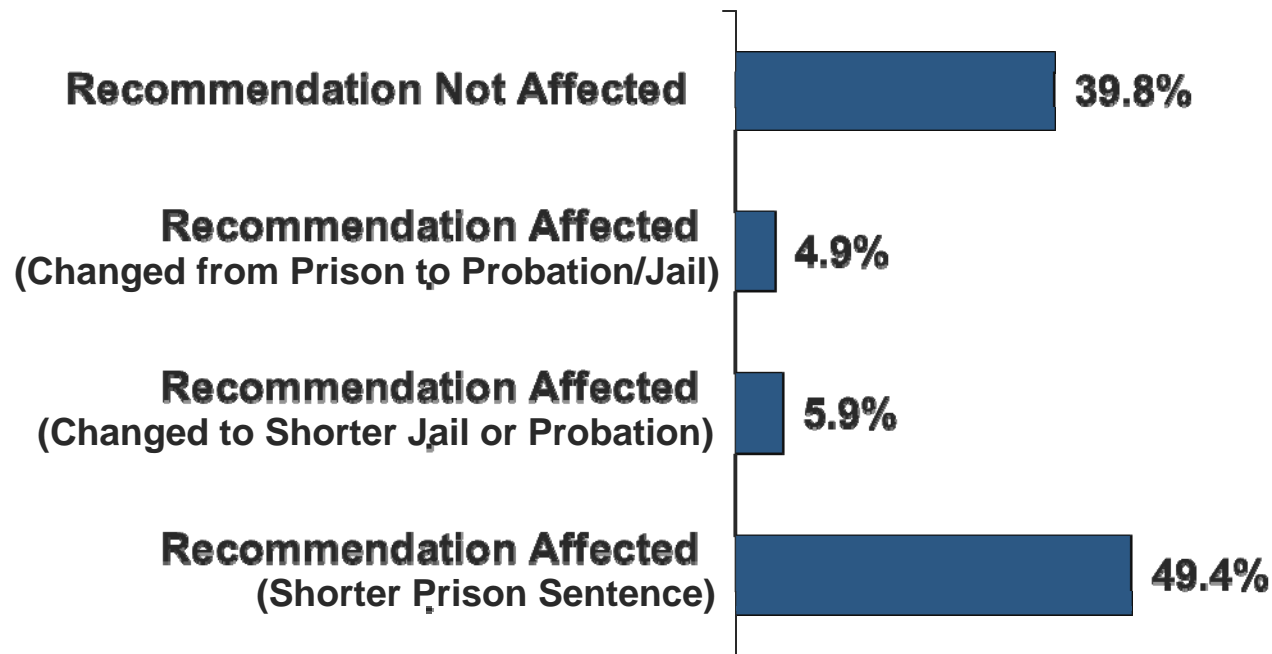
Analytical Approach

- **Once a case was re-scored, the new guidelines recommendation was determined**
- **The new guidelines recommendation was compared to the actual sentence given**



Felony Sentencing Events FY2006 – FY2010

Impact of removing the separate factor for juvenile record



19,227 Felony Sentencing Events

Felony Sentencing Events FY2006 – FY2010

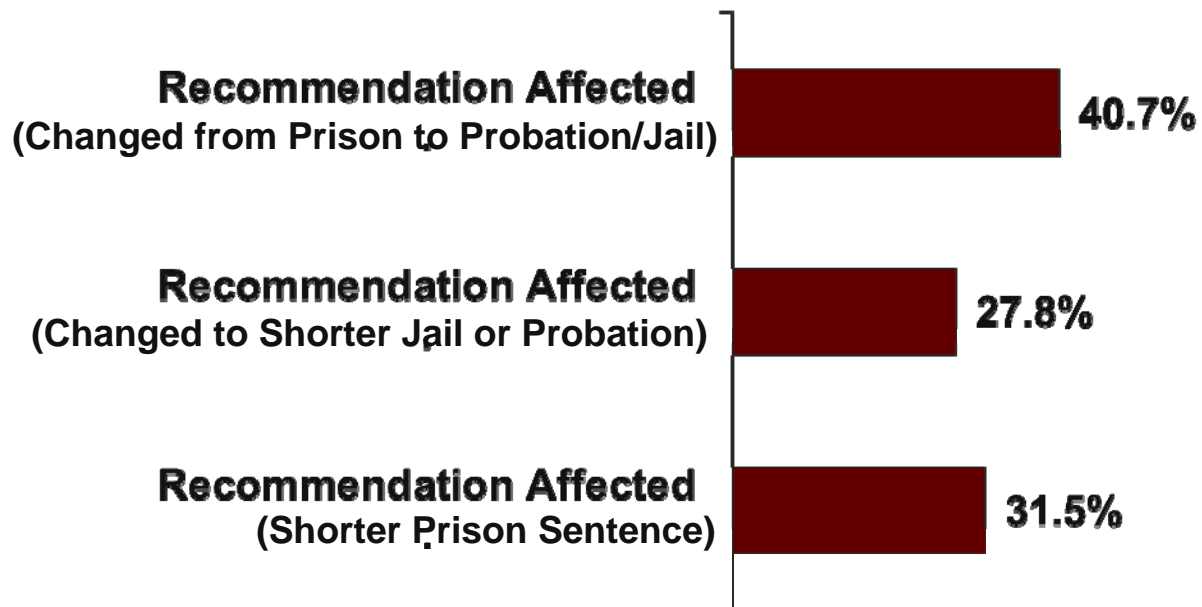
Impact of removing the separate factor for juvenile record

	Current	Without Juvenile Record Factor Scored
Compliance	73.1%	67.8%
Mitigation	17.4%	14.9%
Aggravation	9.4%	17.3%

19,227 Felony Sentencing Events

Felony Sentencing Events FY2006 – FY2010

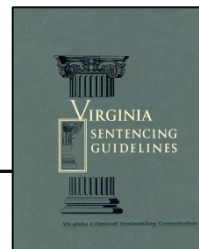
Events in which compliance status changed
when the juvenile record factor was removed

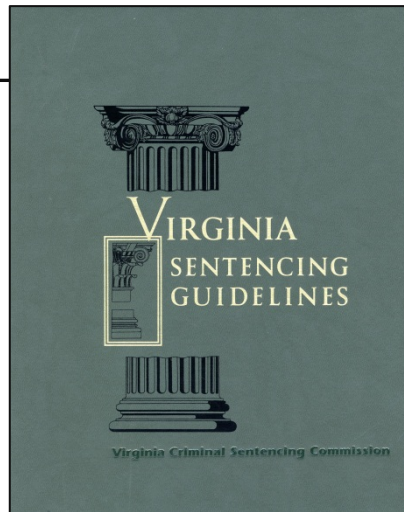


1,941 Felony Sentencing Events

Summary of Findings

- **Given current sentencing patterns, removing the juvenile record factor would result in a decrease in the compliance rate and an increase in the aggravation rate among the affected cases**

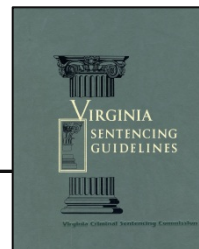




*Examination of the number of images/charges
in child pornography cases*

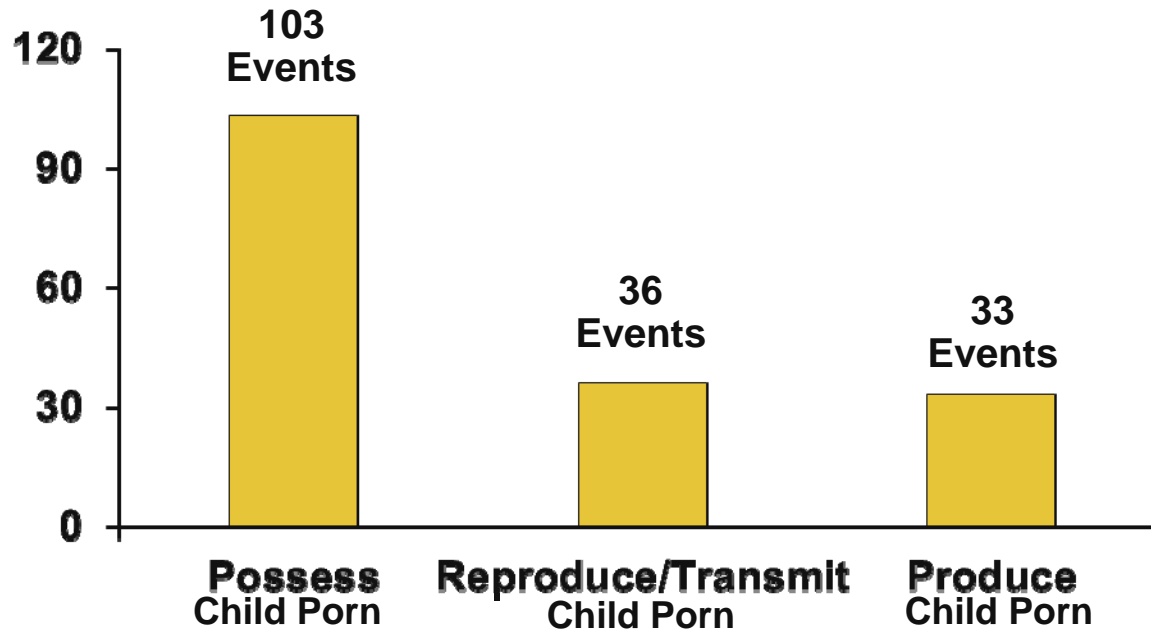
Child Pornography

- **Child pornography offenses (possession, transmission, and production) were added to the sentencing guidelines beginning in FY2008**
- **Child pornography cases involving an unusually large number of counts receive extremely long sentence recommendations under the current guidelines (e.g., a recommended sentence as long as 1,000 years is theoretically possible)**
- **Guidelines users have reported a few such cases on the Commission's hotline**



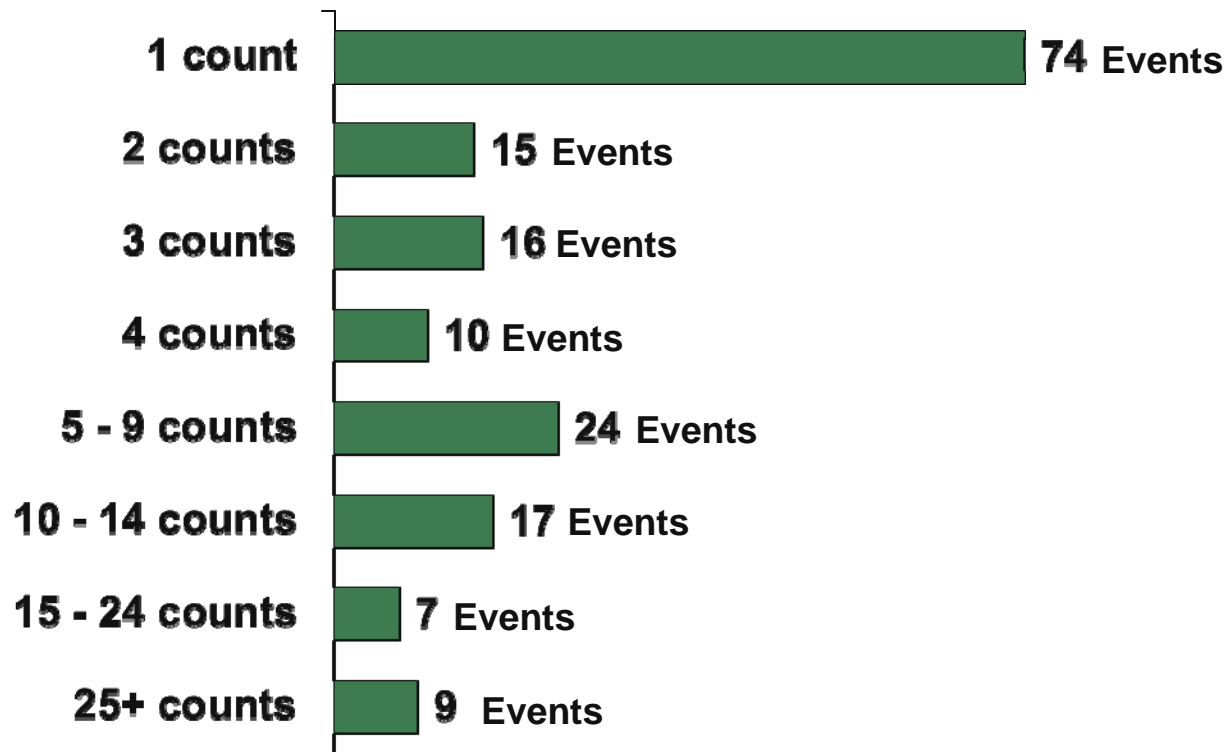
Felony Sentencing Events FY2008 – FY2010

Events with Child Pornography as the Most Serious Offense



Felony Sentencing Events FY2008 – FY2010

Events with Child Pornography as the Most Serious Offense



Felony Sentencing Events FY2008 – FY2010

Events with Child Pornography as the Most Serious Offense

Number of Counts	Compliance	Mitigation	Aggravation
1 count	64.9%	18.9%	16.2%
2 to 9 counts	53.8%	29.2%	16.9%
10 to 24 counts	66.7%	20.8%	12.5%
25+ counts	33.3%	66.7%	0.0%
Overall	59.3%	25.6%	15.1%

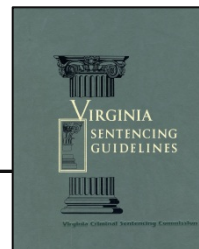
Felony Sentencing Events FY2008 – FY2010

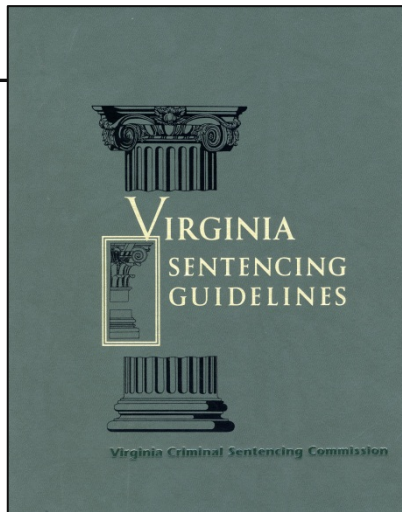
Events with Child Pornography as the Most Serious Offense and 25+ Counts

Offense Type	Number of Counts	Recommended Sentence Range (in years)	Actual Sentence (in years)	
Possession	25	8.5 to 18.3	2.0	
Production	25	16.4 to 35.3	17.1	Compliance
Production	30	14.7 to 31.5	15.0	Compliance
Possession	35	8.7 to 18.6	8.8	Compliance
Possession	40	9.8 to 21.1	2.0	
Possession	44	13.8 to 29.5	0.0	
Production	49	31.6 to 50.5	2.0	
Possession	54	35.0 to 56.0	1.0	
Production	90	85.3 to 136.5	7.0	

Summary of Findings

- **Only 5% of child pornography sentencing events involve 25 or more counts of the offense**
- **Compliance is lower and mitigation is higher in cases involving 25 or more counts**
- **The small number of these cases makes it difficult to develop possible revisions to the current guidelines**
- **Several of these offenders received sentences well below the guidelines range and it would be difficult to develop any revisions such that these cases would fall into compliance**

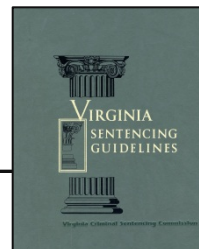




*Examination of cases involving burglary of
other (non-dwelling) structures and grand larceny*

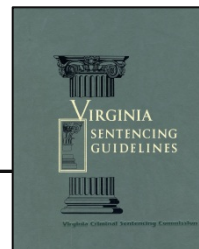
Burglary of Other (Non-Dwelling) Structures & Grand Larceny

- **In cases involving burglary of a non-dwelling with intent to commit larceny (without a weapon) and one count of grand larceny, the burglary is selected as the primary offense in the case**
 - **Both offenses carry a 20-year maximum penalty, but the burglary receives more points on the primary offense factor on Section C**
 - **Per the guidelines manual, the burglary is selected as the primary offense**



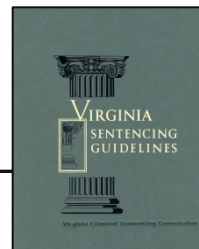
Burglary of Other (Non-Dwelling) Structures & Grand Larceny

- **However, in cases involving multiple counts of grand larceny, the multiple counts result in a higher Section C score than the burglary offense**
 - **In this circumstance, the larceny becomes the primary offense and the guidelines are prepared accordingly**



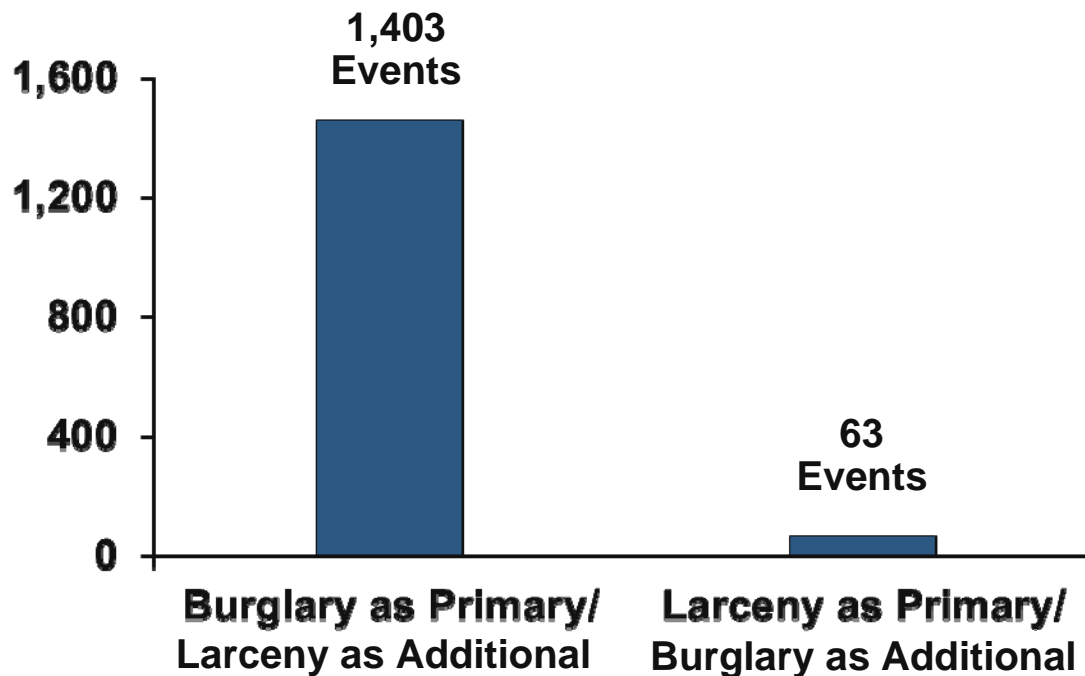
Burglary of Other (Non-Dwelling) Structures & Grand Larceny

- **The difference between the recommendation produced by the burglary guidelines versus the larceny guidelines can be sizeable**
- **Guidelines users have reported a few such cases on the Commission's hotline**



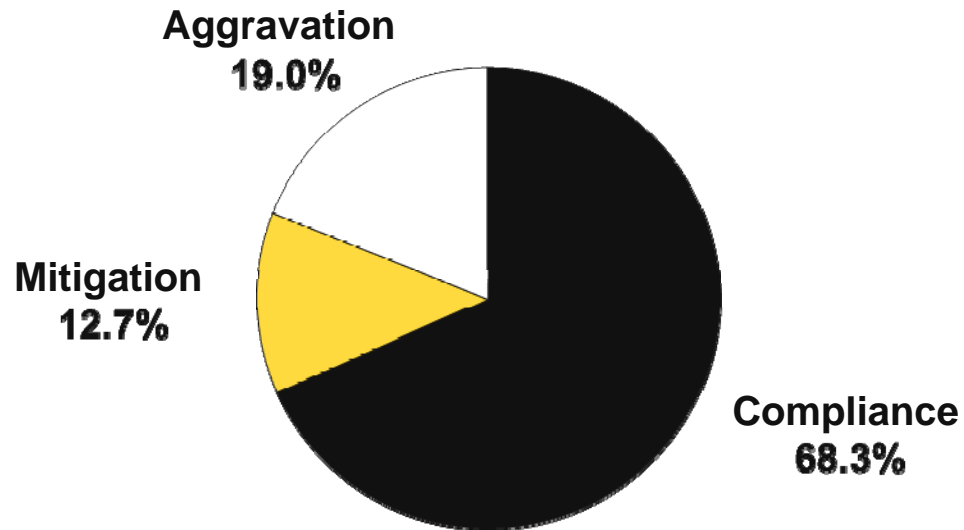
Felony Sentencing Events FY2006 – FY2010

Events involving
Burglary of Other Structure with
Intent to Commit Larceny (No Weapon) & Grand Larceny



Felony Sentencing Events FY2006 – FY2010

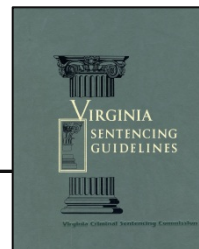
Events involving
Grand Larceny as the Primary Offense with
Burglary of Other Structure with
Intent to Commit Larceny (No Weapon) as an Additional Offense



63 Sentencing Events

Analytical Approach

- **Points were adjusted for the primary offense factor on Section C of the guidelines for burglary of other (non-dwelling) structures**
- **The adjustment would ensure that the burglary would always be scored as the primary offense, even in cases involving multiple counts of grand larceny**
- **In these cases, it was necessary to score the offenders on the burglary guidelines instead of the larceny guidelines**



BEFORE

Burglary/Other ~~Section C~~

Offender Name: _____

◆ Primary Offense _____

— Prior Record Classification —

Category I Category II Other

Other Structure Without Weapon

A. Other structure with intent to commit murder, rape, robbery or arson without deadly weapon

Attempted, conspired or completed: 1 count 60 30 15

B. Other structure with intent to commit larceny, etc. without deadly weapon

Attempted, conspired or completed: 1 count 36 18 9 ←

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

Maximum Penalty: 5, 10

(years) 20

Life

Each additional count of burglary adds 3 points

3

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AFTER

Burglary/Other ~~Section C~~

Offender Name: _____

◆ Primary Offense

— Prior Record Classification —

Category I Category II Other

Other Structure Without Weapon

A. Other structure with intent to commit murder, rape, robbery or arson without deadly weapon

Attempted, conspired or completed: 1 count 60 30 15

B. Other structure with intent to commit larceny, etc. without deadly weapon

Attempted, conspired or completed: ~~1 count 36 18 9~~



1 count	36	18	9
2 counts	48	24	12
3 counts	60	30	15

◆ Primary Offense Additional Counts

Assign points to each count of the primary not scored above and total the points

Maximum Penalty: 5, 10
 (years) 20
 Life

Each additional count beyond the first three adds 3 points

3

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Felony Sentencing Events FY2006 – FY2010

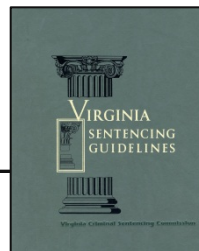
Events involving
Grand Larceny as the Primary Offense with
Burglary of Other Structure with
Intent to Commit Larceny (No Weapon) as an Additional Offense

	Current	Scoring Burglary as Primary Offense
Compliance	68.3%	60.3%
Mitigation	12.7%	17.5%
Aggravation	19.0%	22.2%

63 Sentencing Events

Additional Impact

- **Making this adjustment on Section C of the burglary of other (non-dwelling) structure guidelines would affect some offenders who are currently scored on these guidelines**
 - **Offenders convicted of multiple counts of the burglary who have a violent prior record (i.e., Category I or II) would receive longer sentence recommendations than they do currently**
- **The adjustment would not affect recommendations for offenders who do not have a violent prior record (i.e., the “Other” category)**



Felony Sentencing Events FY2006 – FY2010

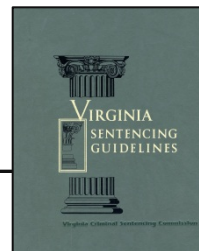
Events involving Burglary of Other Structure with Intent to Commit Larceny (No Weapon) as the Primary Offense

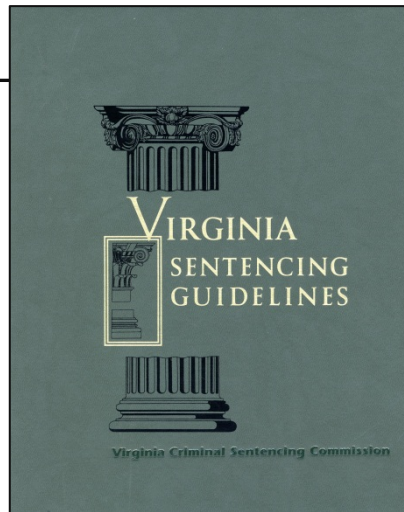
	Current	With Primary Offense Factor Adjustment
Compliance	74.0%	72.4%
Mitigation	14.3%	16.0%
Aggravation	11.7%	11.5%

Of the 2,693 sentencing events involving this burglary as the primary offense, 240 events would be affected by the adjustment in primary offense factor

Summary of Findings

- **Modifying the guidelines to ensure that burglary of other (non-dwelling) structure would always be scored as the primary offense, even in cases involving multiple counts of grand larceny, would have a modest impact on compliance**
- **Given current sentencing patterns, making this adjustment would result in a small decrease in the compliance rate**

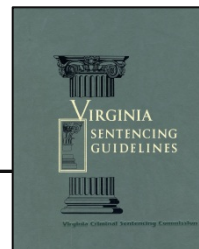




*Examination of immigration status and
the guidelines legal restraint factor*

Immigration Status and the Guidelines

- **Currently, immigration status is not considered when scoring legal restraint on the sentencing guidelines**
- **Guidelines users have inquired as to the possibility of the Commission developing a policy on the scoring of immigration status as legal restraint in certain circumstances**



Forms of Legal Restraint Currently Scored on Sentencing Guidelines

- **Supervised or unsupervised probation (adult or juvenile)**
- **Parole (adult or juvenile)**
- **Comprehensive Community Corrections Act (CCCA), Community Diversion Incentive (CDI), or Alcohol Safety Action Program (ASAP)**
- **Suspended sentence**
- **Work release**
- **Bond**
- **Outstanding warrant or detainer**
- **Escapee or fugitive from justice**

Forms of Legal Restraint Currently Scored on Sentencing Guidelines

- **This list is not exhaustive**
- **There are other forms of legal restraint not specifically listed**
- **The preparer must determine whether the offender had obligations to a court or whether the offender was released to the community on the condition that all federal, state and local laws or ordinances would be obeyed**

Possible Scenarios for Scoring Immigration Status

Scenario 1

Any person who commits a crime while present in U.S. illegally would be scored as being legally restrained on the sentencing guidelines

Scenario 2

Immigration status at the time of the offense would be scored as legal restraint under certain conditions

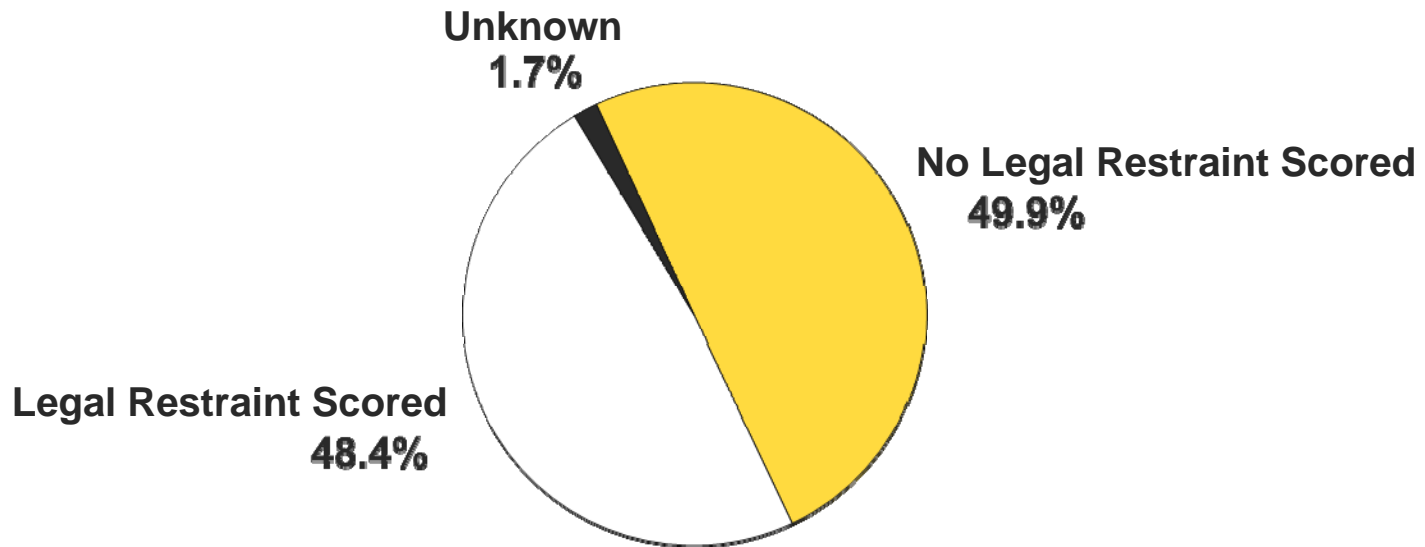
Examples include:

- Fugitive Alien
- Criminal Alien
- Immigration detainer
- 3-year or 10-year bar on return to U.S.
- Order to appear before the Immigration Court or the Board of Immigration Appeals

- **Fugitive Alien: ordered removed from US but failed to depart**
- **Criminal Alien: includes aliens removed under the Rapid REPEAT program who return to the US (the defendant would face federal charges after completing the state sentence)**
- **Immigration detainer**
- **3-year or 10-year bar on return to U.S.: any foreign national who accumulates more than six months of unlawful presence who then leaves the U.S. cannot return for three years; more than one year of unlawful presence and a foreign national cannot return for ten years**
- **Order to appear before the Immigration Court or the Board of Immigration Appeals: this includes those on bond, etc., to either of these administrative bodies**

Felony Sentencing Events FY2010

Legal Restraint as Currently Scored on the Guidelines



24,641 Sentencing Guidelines Cases

Discussion

- **Does this Commission wish to modify the instructions for legal restraint to score immigration status in some way?**
- **Would the Commission like staff to further research this issue during 2011?**

