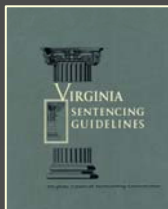


## Proposed Recommendations for Guidelines Revisions

# *Proposals for Guidelines Revisions*

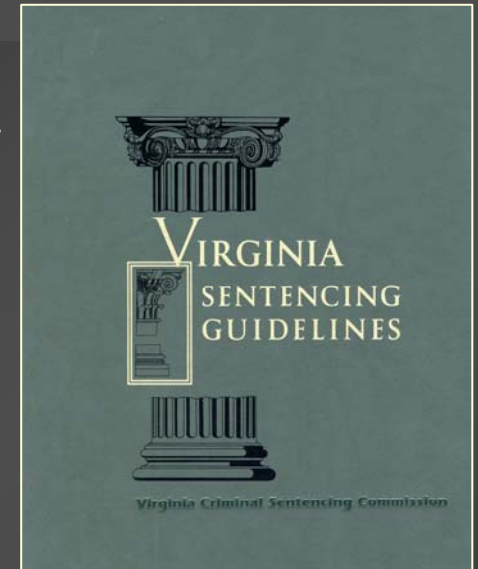
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- **Best fit for the data**
- **Steps**
  - **Review existing worksheet, compliance patterns and departure reasons**
  - **Test revised scoring scenarios**
  - **Project judicial concurrence with proposal**
    - **Score cases using guidelines data and/or pre-sentence report information**
    - **Use current Recommendation Tables**
  - **Maximize compliance (and balance departures, if possible)**



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Proposed Recommendation 1:  
Robbery and 2<sup>nd</sup> Degree Murder



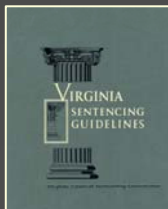
# *Proposed Recommendation 1*

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**Add a factor to the Robbery Sentencing Guidelines to increase the recommendation for offenders who are also convicted of second-degree murder**

## ■ Issue

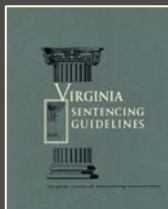
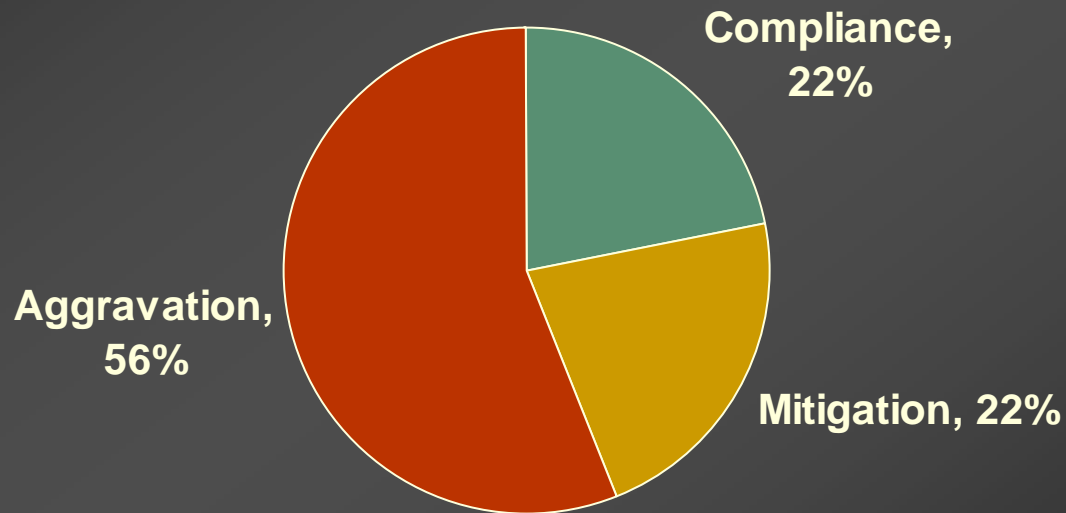
- For scoring the sentencing guidelines, the primary (most serious) offense is selected based on the statutory maximum penalty as defined in the *Code of Virginia*.
- Robbery carries a statutory maximum penalty of life in prison.
- For second-degree murder, the maximum penalty is 40 years.
- If an offender is convicted of and sentenced for robbery and second-degree murder, the robbery is selected as the primary offense on the guidelines because it has the higher maximum penalty.
- Scoring this case on the Robbery Sentencing Guidelines produces a much lower recommendation than if the case were scored on the Murder Guidelines.



# *Proposed Recommendation 1*

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## **Compliance in Cases with Convictions for Robbery and Second-Degree Murder FY2000 – FY2006 (Preliminary) 18 cases**



# *Proposed Recommendation 1*

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- A factor can be added to the Section C of the Robbery guidelines to increase the sentence recommendation for cases involving these two offenses.
- Adding 63 points in these cases, maximizes compliance and minimizes mitigation and aggravation rates.

	Current Guidelines	Proposed Change
Compliance	22%	61%
Mitigation	22%	22%
Aggravation	56%	17%



# Proposed Recommendation 1

**Robbery** ❖ **Section C** Offender Name: \_\_\_\_\_

Prior Record Classification  
 Category I    Category II    Other

◆ **Primary Offense**

A. Attempted or conspired robbery or carjacking without a gun or simulated gun (1 count)	20	10	5
B. Attempted or conspired robbery or carjacking with gun or simulated gun (1 count)	92	46	23
C. Residence or street with gun or simulated gun			
1 count	192	128	64
2 counts	270	180	90
3 counts	444	296	148
D. Bank or business with gun or simulated gun			
1 count	168	112	56
2 counts	348	232	116
3 counts	528	352	176
E. Residence, bank, business, street or carjacking without a gun or simulated gun			
1 count	84	56	28
2 counts	162	108	54
3 counts	336	224	112
F. Carjacking with gun or simulated gun (1 count)	246	164	82

**Score**  
▼  
[ ] [ ] [ ]

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

Maximum Penalty: 10 (years)	5
Life	19

▼  
[ ] [ ] [ ]

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

[ ] [ ] [ ]

◆ **Second Degree Murder Conviction for Current Event** \_\_\_\_\_ If YES, add 63 → [ ] [ ] [ ]

◆ **Weapon Used**

Firearm/simulated firearm (firearm points included with primary offense)	0
Simulated weapon other than simulated firearm	7
Weapon other than firearm, knife or explosive	7
Knife	9
Explosive	16

▼  
[ 0 ] [ ] [ ]

◆ **Prior Incarcerations/Commitments** — If YES, add 7 → [ 0 ] [ 0 ]

◆ **Legally Restrained at Time of Offense** — If YES, add 5 → [ 0 ] [ 0 ]

◆ **Prior Juvenile Record** — If YES, add 8 → [ 0 ] [ 0 ]

**SCORE THE FOLLOWING FACTORS ONLY IF PRIMARY OFFENSE IS COMPLETED ROBBERY OR CARJACKING**

◆ **Victim Injury**

Threatened	0
Emotional	2
Physical	6
Serious physical	23

▼  
[ 0 ] [ ] [ ]

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

Maximum Penalty (years)	Less than 2	0	20	5
	2, 3, 4, 5	1	30	8
	10	3	40 or more	11

▼  
[ 0 ] [ ] [ ]

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

Number:	1	3
	2	7
	3 or more	10

▼  
[ 0 ] [ ] [ ]

**SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE IS COMPLETED CARJACKING**

◆ **Felony Kidnapping or Felony Assault** (other than use of firearm) scored as additional offense — If YES, add 57 → [ 0 ] [ ] [ ]

**Total Score** → [ ] [ ] [ ] [ ] [ ] [ ]

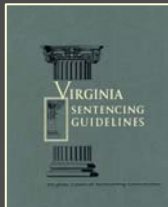
See Robbery Section C Recommendation Table for guidelines sentence range.



# *Proposed Recommendation 1*

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**Add a factor to the Robbery Sentencing Guidelines to increase the recommendation for offenders who are also convicted of second-degree murder**

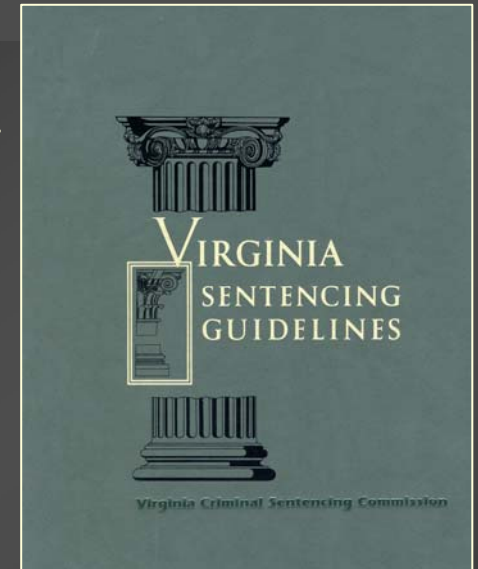




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## Proposed Recommendation 2:

### Burglary of Dwelling and Larceny of a Firearm



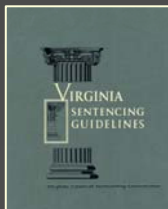
## *Proposed Recommendation 2*

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**Revise the Larceny Sentencing Guidelines to better reflect current judicial sentencing practices in cases of larceny of a firearm and to require this crime be scored as an additional offense when it accompanies a conviction for burglary of a dwelling**

### ■ Issue

- **For scoring the sentencing guidelines, if there are two offenses with the same statutory maximum penalty, the primary offense is the one that receives the greatest number of points on the Primary Offense factor on Section C of the guidelines worksheet.**
- **Burglary of a dwelling (no deadly weapon) carries a statutory maximum penalty of 20 years, as does larceny of a firearm.**
- **If an offender is convicted of both these crimes, larceny of a firearm is selected as the primary offense for the guidelines because it receives more points on the Section C Primary Offense factor.**
- **Scoring this case on the Larceny Sentencing Guidelines produces a much lower recommendation than if the case were scored on the guidelines for burglary of a dwelling.**



# Proposed Recommendation 2

## Larceny — Section C

Offender Name: \_\_\_\_\_  
 Prior Record Classification: \_\_\_\_\_

Primary Offense	Category I	Category II	Other
A. Attempted or conspired larceny (1 count) .....	8	4	2
B. Statutory maximum penalty equals 5 or 10 years			
1 count .....	20	10	5
2 counts .....	28	14	7
3 counts .....	40	20	10
C. Grand larceny auto			
1 count .....	32	16	8
2 - 3 counts .....	56	28	14
4 counts .....	72	36	18
D. Grand larceny from person			
1 count .....	40	20	10
2 counts .....	56	28	14
3 counts .....	68	34	17
E. Grand larceny of a firearm (1 count) .....	88	44	22
F. Failure of bailee to return animal, aircraft, vehicle or boat (1 count) .....	28	14	7
G. Larceny of bank notes, checks, etc. or any book of accounts			
1 - 2 counts .....	32	16	8
3 counts .....	96	48	24
H. Any other larceny offense with a maximum penalty of 20 years			
1 count .....	28	14	7
2 counts .....	44	22	11
3 counts .....	56	28	14

Score

0		
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◆ Other Felony Prior Property Convictions/Adjudications

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

◆ Prior Felony Convictions/Adjudications Against Person

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

◆ Prior Felony Drug Convictions/Adjudications

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

◆ Prior Juvenile Record ————— If YES, add 3 →

◆ Legally Restrained at Time of Offense

None ..... 0  
 Other than parole/post-release, supervised probation or CCCA ..... 3  
 Parole/post-release, supervised probation or CCCA ..... 4

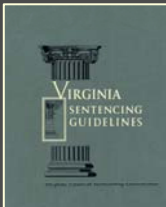
SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE IS EMBEZZLEMENT §18.2-111

◆ Amount of Embezzlement

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

**Total Score** →

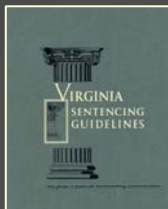
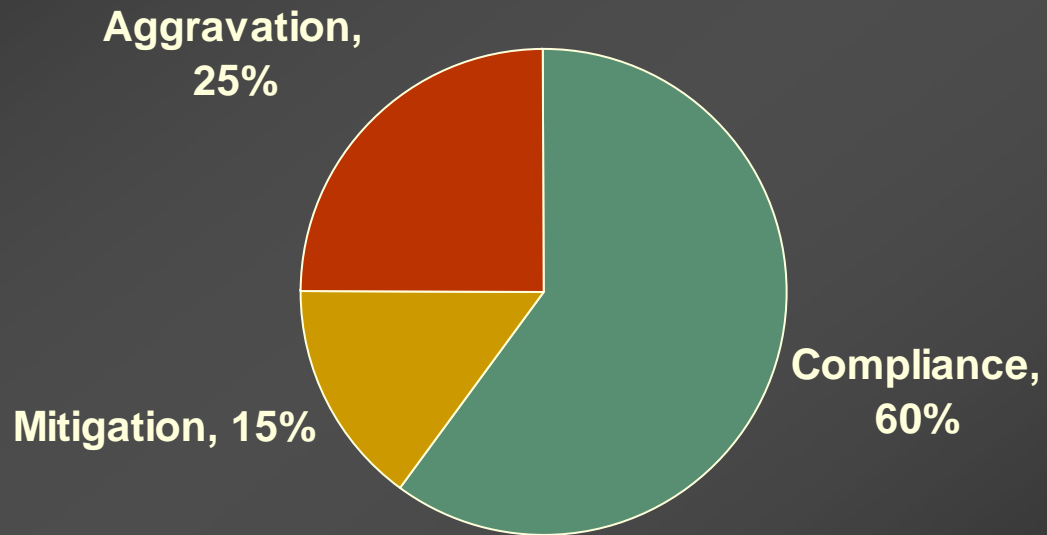
See Larceny Section C Recommendation Table for guidelines sentence range.



## *Proposed Recommendation 2*

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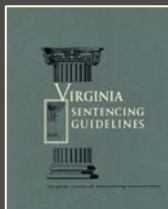
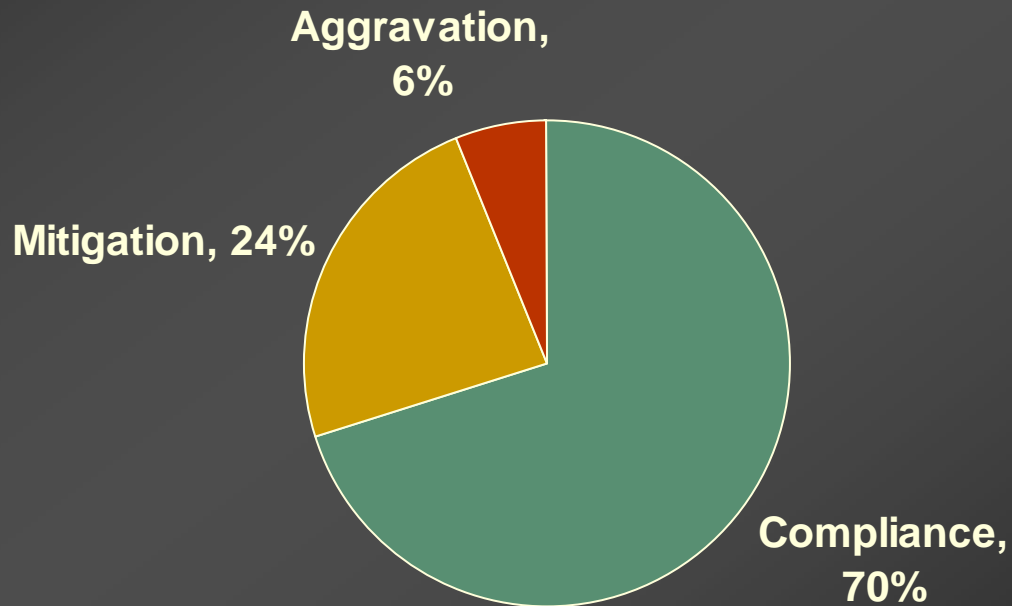
### **Compliance in Cases with Convictions for Larceny of a Firearm and Burglary of Dwelling FY2001 – FY2005 40 cases**



## *Proposed Recommendation 2*

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**Compliance in Cases with  
Convictions for Larceny of a Firearm (No Accompanying Burglary)  
- Prison (Section C) Recommendations Only -  
FY2001 – FY2005  
47 cases**



**Note: This analysis excludes cases that were scored incorrectly under current guidelines.**

# Proposed Recommendation 2

## Larceny Section C

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

— Prior Record Classification —

◆ Primary Offense \_\_\_\_\_  Category I  Category II  Other

A.	Attempted or conspired larceny (1 count) .....	8	4	2
B.	Statutory maximum penalty equals 5 or 10 years			
	1 count .....	20	10	5
	2 counts .....	28	14	7
	3 counts .....	40	20	10
C.	Grand larceny auto			
	1 count .....	32	16	8
	2 - 3 counts .....	56	28	14
	4 counts .....	72	36	18
D.	Grand larceny from person			
	1 count .....	40	20	10
	2 counts .....	56	28	14
	3 counts .....	68	34	17
<b>E.</b>	<u>Grand larceny of a firearm (1 count)</u> .....	<del>8</del> <b>68</b>	<del>4</del> <b>34</b>	<del>2</del> <b>17</b>
F.	Failure of bailee to return animal, aircraft, vehicle or boat (1 count) .....	28	14	7
G.	Larceny of bank notes, checks, etc. or any book of accounts			
	1 - 2 counts .....	32	16	8
	3 counts .....	96	48	24
H.	Any other larceny offense with a maximum penalty of 20 years			
	1 count .....	28	14	7
	2 counts .....	44	22	11
	3 counts .....	56	28	14

Score

0		
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## *Proposed Recommendation 2*

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- **Changing the Section C Primary Offense base score for larceny of a firearm from 22 to 17 points improves compliance and reduces mitigation.**

	<b>Current Guidelines</b>	<b>Proposed Change</b>
<b>Compliance</b>	<b>70%</b>	<b>77%</b>
<b>Mitigation</b>	<b>24%</b>	<b>15%</b>
<b>Aggravation</b>	<b>6%</b>	<b>8%</b>

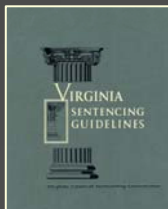
- **This change also results in the scoring of larceny of a firearm as an additional offense when there is a conviction for burglary of a dwelling in the same sentencing event.**



## *Proposed Recommendation 2*

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**Revise the Larceny Sentencing Guidelines to better reflect current judicial sentencing practices in cases of larceny of a firearm and to ensure that this crime is scored as an additional offense when it accompanies a conviction for burglary of a dwelling**

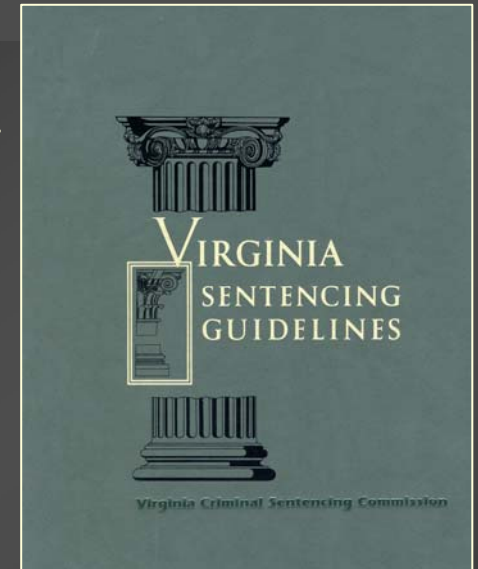




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## Proposed Recommendation 3:

Rape, Forcible Sodomy and Object Sexual Penetration Involving Victims under Age 13



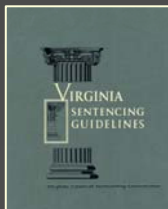
## *Proposed Recommendation 3*

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**Revise the Rape Sentencing Guidelines to increase the prison sentence recommendation for offenders convicted of two counts of rape, two counts of forcible sodomy, or two counts of object sexual penetration when the victim is under age 13**

### ■ Issue

- **Under current guidelines, an offender convicted of two counts of rape of a child under age 13 receives the same recommendation as an offender with the same case facts and criminal history who is convicted of only one count of this offense.**
- **The second conviction for the same crime does not increase the guidelines recommendation.**
- **The same is true for offenders convicted of two counts of forcible sodomy against a child under 13 or two counts of object sexual penetration against a child under 13.**



# Proposed Recommendation 3

## Rape Section C

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

### ◆ Primary Offense \_\_\_\_\_

— Prior Record Classification —

Category I    Category II    Other

A. Attempted or conspired forcible rape, forcible sodomy or object sexual penetration

1 count ..... 60 ..... 30 ..... 15

**B.** Forcible rape or object sexual penetration, victim under age 13

1 - 2 counts ..... 312 ..... 208 ..... **117**

3 counts ..... 882 ..... 588 ..... 331

**C.** Forcible sodomy, victim under age 13

1 - 2 counts ..... 354 ..... 236 ..... **133**

3 counts ..... 882 ..... 588 ..... 331

D. Forcible rape or object sexual penetration, victim age 13 or older

1 count ..... 402 ..... 268 ..... 151

2 counts ..... 882 ..... 588 ..... 331

E. Forcible sodomy, victim age 13 or older

1 count ..... 324 ..... 216 ..... 122

2 counts ..... 882 ..... 588 ..... 331

Score

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

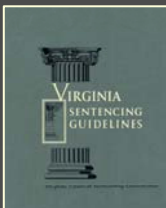
Maximum Penalty: 10 ..... 5  
 (years) Life ..... **18**

0		
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**Total Score** \_\_\_\_\_

See Rape Section C Recommendation Table for guidelines sentence range.  
 If necessary, on the cover sheet also enter the adjusted high end of the guidelines sentence range based on Risk Level:  1  2  3 or  n/a

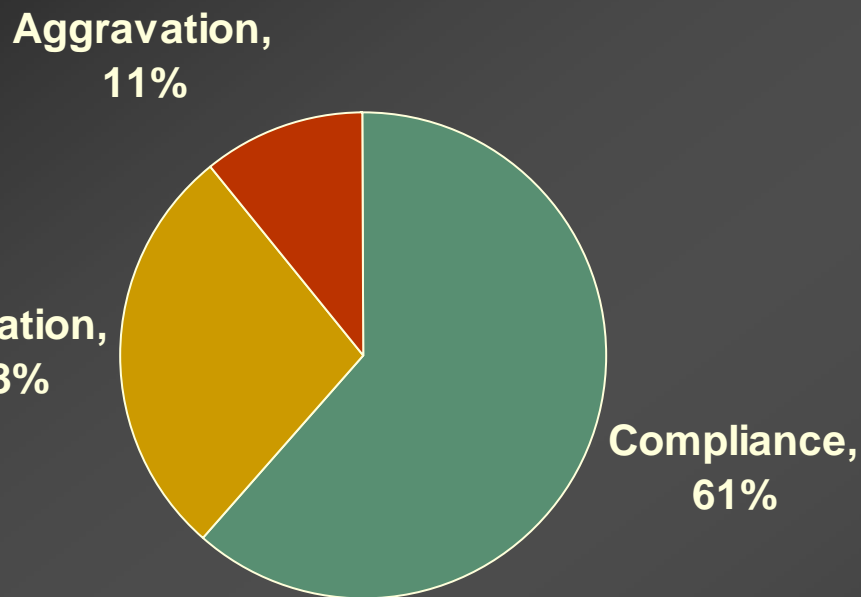
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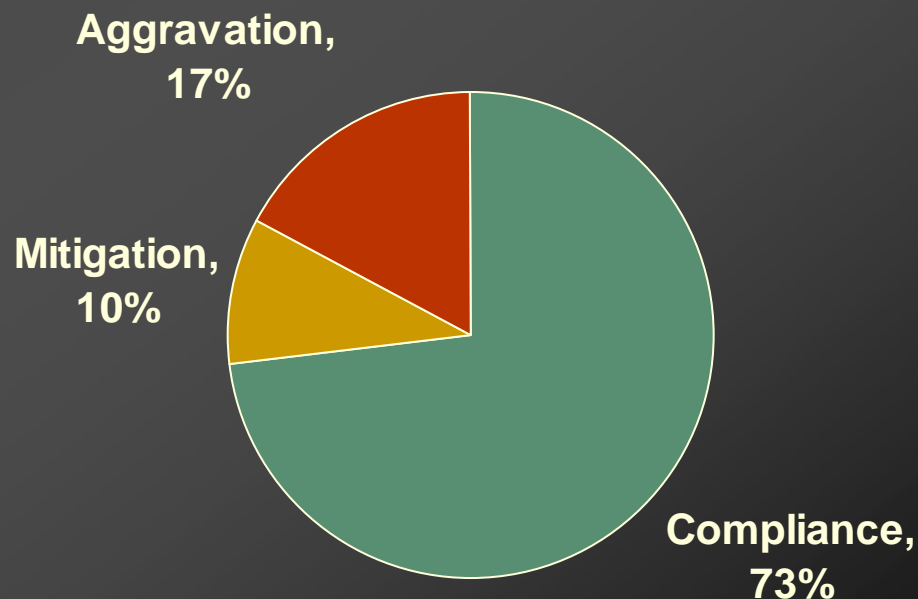
Rape/Section C - EB-7-1-01

# Proposed Recommendation 3

**One Count of  
Rape, Forcible Sodomy, or  
Object Sexual Penetration  
- Victim under Age 13 -  
FY2001 – FY2005  
450 cases**



**Two Counts of  
Rape, Forcible Sodomy, or  
Object Sexual Penetration  
- Victim under Age 13 -  
FY2001 – FY2005  
93 cases**



**Note:** This analysis excludes juvenile offenders tried and convicted as adults but sentenced back to the Department of Juvenile Justice. Attempted and conspired crimes and inaccurately scored cases are also excluded.



# Proposed Recommendation 3

## Rape Section C

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

— Prior Record Classification —

Category I    Category II    Other

### ◆ Primary Offense

A. Attempted or conspired forcible rape, forcible sodomy or object sexual penetration			
1 count .....	60	30	15
B. Forcible rape or object sexual penetration, victim under age 13			
<b>1 count</b> .....	312	208	117
<b>2 counts</b> .....	<b>360</b>	<b>240</b>	<b>135</b>
3 counts .....	882	588	331
C. Forcible sodomy, victim under age 13			
<b>1 count</b> .....	354	236	133
<b>2 counts</b> .....	<b>402</b>	<b>268</b>	<b>151</b>
3 counts .....	882	588	331
D. Forcible rape or object sexual penetration, victim age 13 or older			
1 count .....	402	268	151
2 counts .....	882	588	331
E. Forcible sodomy, victim age 13 or older			
1 count .....	324	216	122
2 counts .....	882	588	331

Score

--	--	--

### ◆ Primary Offense Additional Counts

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

Maximum Penalty:	10 .....	5
(years)	Life .....	18

0		
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## *Proposed Recommendation 2*

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- Increasing the scores for two counts of rape, forcible sodomy or object sexual penetration when the victim is under 13 will likely have a negative impact on compliance.
- Many of the cases sentenced in compliance with the guidelines are given terms at the low end of the recommended range. Increasing the recommendation drops these cases into the mitigation category.

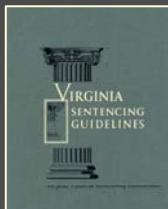
	Current Guidelines	Proposed Change
Compliance	73%	65%
Mitigation	10%	21%
Aggravation	17%	14%



## *Proposed Recommendation 3*

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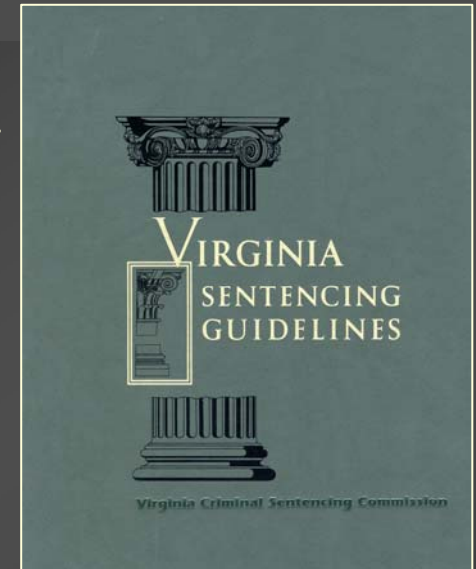
**Revise the Rape Sentencing Guidelines to increase the prison sentence recommendation for offenders convicted of two counts of rape, two counts of forcible sodomy, or two counts of object sexual penetration when the victim is under age 13**



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## Proposed Recommendation 4:

Possession of a Schedule I/II Drug  
and Crimes Carrying Mandatory  
Minimum Sentences





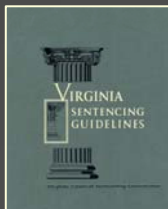
## *Proposed Recommendation 4*

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**Amend the Schedule I/II Drug Guidelines to ensure that drug offenders will always be recommended for a term of incarceration that includes prison when the drug charge is accompanied by an offense that requires a mandatory minimum term of incarceration of least six months**

### ■ Issue

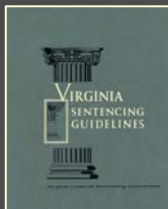
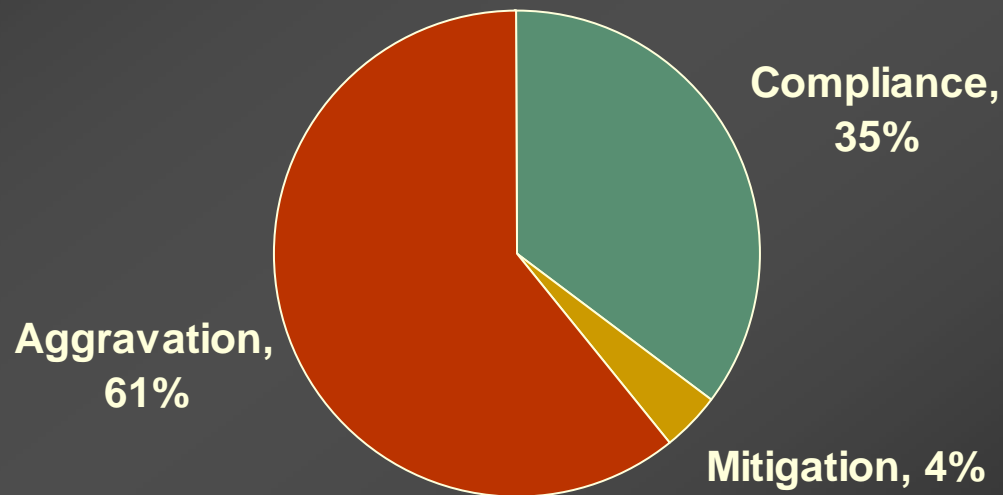
- **Currently, the Schedule I/II Drug Guidelines always recommend a term of incarceration that includes prison if the offender has been convicted of a firearm charge that carries a mandatory minimum term of confinement.**
- **There are other types of crimes, however, that also carry a mandatory minimum term of six months or more.**
  - **Assault of a law enforcement officer, habitual traffic violation, Driving while intoxicated – 4<sup>th</sup> or subsequent**
- **In some cases, such as those in which the primary offense is simple possession, the guidelines recommend probation or incarceration less than the mandatory required by law.**



# *Proposed Recommendation 4*

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**Compliance in Cases with  
Convictions for Possession of a Schedule I/II Drug and a  
Crime Requiring a Mandatory Minimum Term of Six Months or More  
- Probation/Jail (Section B) Recommendations Only -  
FY2001 – FY2005  
150 cases**



# Proposed Recommendation 4

**Drug/Schedule I/II** ❖ **Section A** Offender Name: \_\_\_\_\_

❖ **Primary Offense** \_\_\_\_\_

<b>A. Possess Schedule I or II drug</b>		
1 count .....	1	↓
2 counts .....	3	
3 counts .....	8	
<b>B. Sell, Distribute, Possession with Intent Schedule I or II drug</b>		
1 count .....	12	↓
2 counts .....	13	
3 counts .....	14	
4 counts .....	15	
<b>C. Sell, etc. Schedule I, II drug to minor (1 count) .....</b>		11
<b>D. Accommodation - Sell, Distribute, Possession with Intent Schedule I or II drug</b>		
1 count .....	5	↓
2 counts .....	7	
<b>E. Sell, etc. imitation Schedule I or II drug (1 count) .....</b>		4

**Score**

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

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

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

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

❖ **Knife or Firearm in Possession at Time of Offense** \_\_\_\_\_ If YES, add 2 →

❖ **Conviction in Current Event Requiring Mandatory Minimum Penalty of 6 Months or More** \_\_\_\_\_ If YES, add <sup>9</sup>~~X~~ →

❖ **Mandatory Firearm Conviction for Current Event** \_\_\_\_\_ If YES, add <sup>9</sup>~~X~~ →

27 - 48 .....

49 or more .....

❖ **Prior Incarcerations/Commitments** \_\_\_\_\_ If YES, add 2 →

❖ **Prior Felony Drug Convictions/Adjudications** \_\_\_\_\_

Number: 1 - 2 .....	1	↓
3 - 4 .....	2	
5 .....	3	
6 or more .....	4	

❖ **Prior Juvenile Record** \_\_\_\_\_ If YES, add 1 →

❖ **Legally Restrained at Time of Offense** \_\_\_\_\_

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

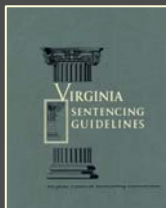
**SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE IS POSSESSION OF SCHEDULE I/II DRUG (§18.2-250(A,a))**

❖ **Two or More Prior Felony Convictions/Adjudications** \_\_\_\_\_ If YES, add 2 →

For Possession, Possession with Intent, Distribution, Manufacture or Sale of Schedule I or II Drug

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

Drug Schedule I or II/Section A ER. 7-1-0  
Drug/Schedule I/II 3



## *Proposed Recommendation 4*

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- Expanding the current factor on Section A to include all offenses requiring a mandatory minimum penalty of six months or more will yield a recommended range that includes prison for all Schedule I/II drug offenders also convicted of one of these mandatory-minimum crimes.
- This change will likely increase compliance and improve accuracy in guidelines scoring.

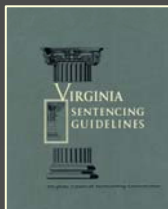
	Current Guidelines	Proposed Change
Compliance	35%	59%
Mitigation	4%	19%
Aggravation	61%	22%



## *Proposed Recommendation 4*

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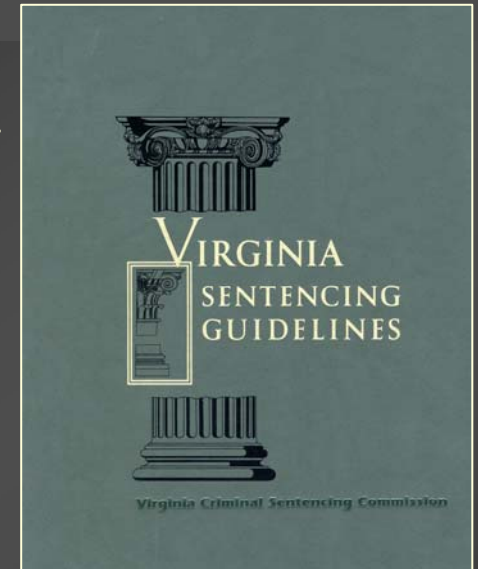
**Amend the Schedule I/II Drug Guidelines to ensure that drug offenders will always be recommended for a term of incarceration that includes prison when the drug charge is accompanied by an offense that requires a mandatory minimum term of incarceration of least six months**



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## Proposed Recommendation 5:

Possession of a Schedule I/II Drug  
With a Crime against Person



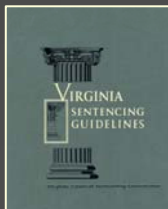
## *Proposed Recommendation 5*

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**Revise the Schedule I/II Drug Guidelines to increase the likelihood that an offender convicted of possession will be recommended for incarceration when the drug charge is accompanied by a conviction for a crime against person**

### ■ Issue

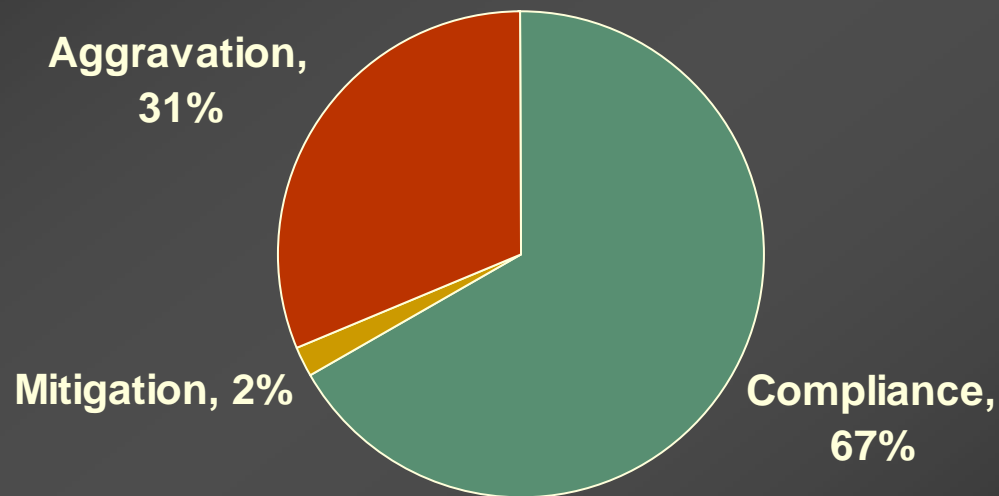
- For scoring the sentencing guidelines, the primary (most serious) offense is selected based on the statutory maximum penalty as defined in the *Code of Virginia*.
- With certain combinations of offenses, a Schedule I/II drug crime will be the primary offense for scoring the guidelines and a person crime will be scored as an additional offense in the case.
- Example
  - Possession of a Schedule I/II drug (Class 5 felony – 10 year maximum penalty) will be the primary offense while an accompanying conviction for cruelty and injuries to children (Class 6 felony – 5 year maximum penalty) will be scored as an additional offense.



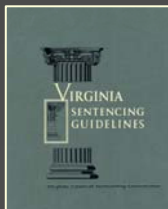
# *Proposed Recommendation 5*

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## **Compliance in Cases with Convictions for Possession of a Schedule I/II Drug and a Crime against Person FY2001 – FY2005 48 cases**



**Note:** This analysis excludes cases with crimes carrying a mandatory minimum term of incarceration of six months or more.





◆ **Primary Offense** \_\_\_\_\_

A. Possess Schedule I or II drug		
1 count .....	3	Score ▼ 0
2 counts .....	6	
B. Accommodation - Sell, distribute, possession with intent Schedule I or II drug		
1 count .....	8	0
2 counts .....	9	
C. Sell, etc. imitation Schedule I or II drug (1 count) .....		4

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

Years: 5 - 9 .....	2	0
10 - 19 .....	3	
20 - 28 .....	4	
29 - 38 .....	5	
39 or more .....	6	

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

Years: Less than 1 .....	0	0
1 - 9 .....	2	
10 - 19 .....	3	

**Felony Person Crime – Scored as an Additional Offense ----- If YES, add 1 (or 2)**

◆ **Knife or Firearm in Possession at Time of Offense** \_\_\_\_\_ If YES, add 2 → 0

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

Years: Less than 1 .....	0	0
1 - 22 .....	1	
23 - 43 .....	2	
44 or more .....	3	

◆ **Prior Misdemeanor Convictions/Adjudications** \_\_\_\_\_

Number: 1 - 4 .....	1	0
5 - 9 .....	2	
10 or more .....	3	

◆ **Prior Incarcerations/Commitments** \_\_\_\_\_ If YES, add 1 → 0

◆ **Prior Juvenile Record** \_\_\_\_\_ If YES, add 1 → 0

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

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

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

◆ **Two or More Prior Felony Convictions/Adjudications** \_\_\_\_\_ If YES, add 2 → 0  
 For Possession, Possession with Intent, Distribution, Manufacture or Sale of Schedule I or II Drug

**Total Score** \_\_\_\_\_ →

See Drug/Schedule I/II Section B Recommendation Table to convert score to guidelines sentence. Then, go to Section D Nonviolent Risk Assessment and follow the instructions.

## Proposed Recommendation 5

- A factor can be added to the Section B of the Schedule I/II Drug Guidelines to increase the likelihood that a drug offender who is also convicted of a person crime will be recommended for a jail term.
- This change, however, will likely result in a decline in compliance and increase in mitigation.

	Current Guidelines	Proposed Change - Add 1 point on Section B for person crime as additional offense	Proposed Change - Add 2 points on Section B for person crime as additional offense
Compliance	67%	58%	50%
Mitigation	2%	11%	19%
Aggravation	31%	31%	31%

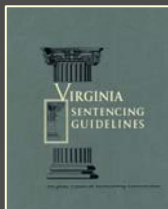
**Note:** This analysis includes the 48 cases involving possession of a Schedule I/II drug with a person crime as an additional offense, but excludes cases with crimes carrying a mandatory minimum term of incarceration of six months or more.



## *Proposed Recommendation 5*

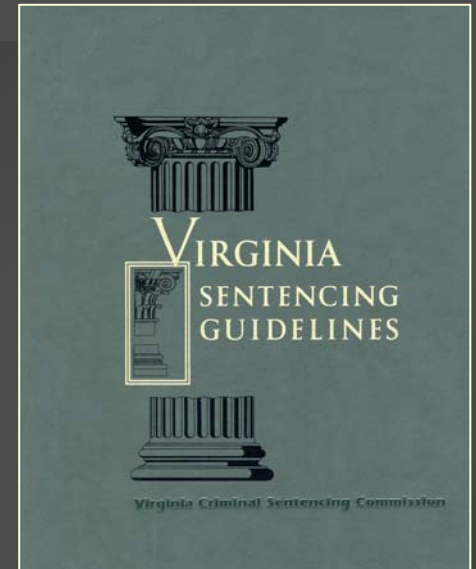
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**Revise the Schedule I/II Drug Guidelines to increase the likelihood that an offender convicted of possession will be recommended for incarceration when the drug charge is accompanied by a conviction for a crime against person**



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## Proposed Recommendation 6: Probation Violation Guidelines



## *Proposed Recommendation 6*

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**Further refine the Probation Violation Guidelines to better reflect judicial sentencing practices for felony offenders returned to court for reasons other than a new conviction, offenders also known as “technical violators”**

### ■ Issue

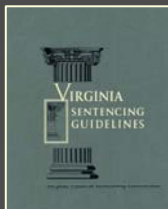
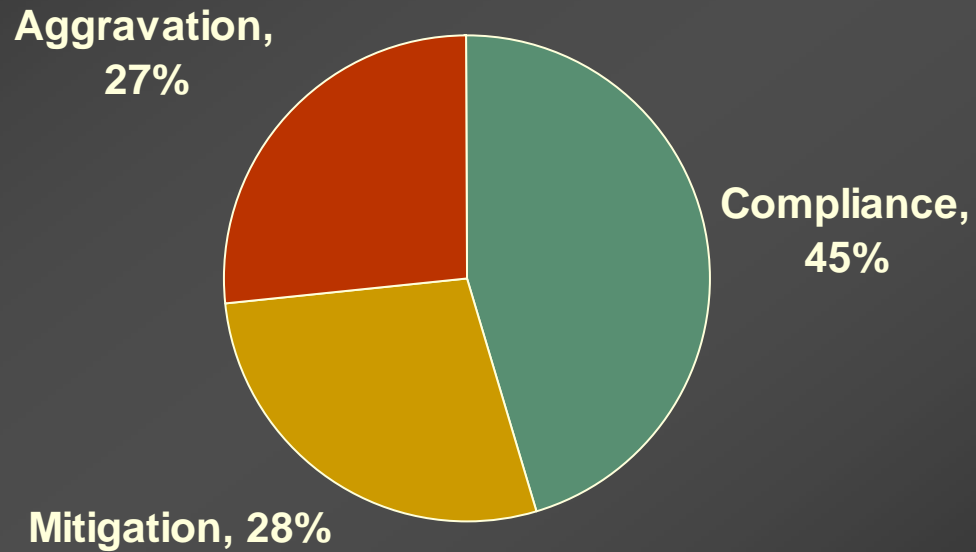
- **The 2003 General Assembly directed the Commission to develop discretionary guidelines technical probation violators based on historical judicial sanctioning practices. The Commission recommended, and the General Assembly approved, statewide implementation of guidelines beginning July 1, 2004.**
- **Compliance with the Probation Violation Guidelines suggests that further refinement is needed to better reflect current judicial thinking in the punishment of supervision violators.**



# *Proposed Recommendation 6*

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## **Compliance with Probation Violation Guidelines FY2006 5,553 cases**



# Proposed Recommendation 6

## Probation Violation Guidelines ~~Section A~~ Section A

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

◆ **Original Felony Offense Type** select the type of most serious original felony offense

A. Drug .....	<del>10</del> 13	Score ▼ <input type="text"/> <input type="text"/>
B. Person .....	<del>14</del> 15	
C. Traffic/Weapon .....	24	
D. Other .....	<del>0</del> 1	
<b>Property .....</b>	<b>3</b>	

◆ **Original Disposition was Incarceration** (including Detention/Diversion Center Incarceration) — If YES, add 1 →

◆ ~~Previous Capias/Revocation Requests~~

**Previous Adult Probation Revocation Events**

Number: 1 - 2 .....	7	<input type="text"/> <input type="text"/>
2 or more - 3 or more .....	<del>9</del> 10	

◆ **New Felony Arrests**

Number: 1 - 3 .....	<del>2</del> 4	<input type="text"/> <input type="text"/>
4 or more .....	<del>16</del> 18	

◆ **Never Reported to following Programs/Unsuccessful Discharge from:** — If YES, add 10 →

- ~~Community service, Day Reporting, Detention and/or Diversion Center, Boot Camp, Employment and/or Residential programs~~
- Community Service, Day Reporting, Employment and/or Residential programs ..... 15**
- Detention or Diversion Center ..... 18**

◆ **Condition(s) Violated:** — If YES, add 15 →

- Fail to report any arrests within 3 days to probation officer ..... 17
- Fail to maintain employment/report changes in employment ..... 17
- Fail to report as instructed ..... 18
- Fail to allow probation officer to visit home or place of employment ..... 17
- Fail to follow instructions and be truthful and cooperative ..... 18
- Use alcoholic beverages to excess ..... 17
- Use, possess, distribute controlled substances or paraphernalia ..... 31
- Use, own, possess, transport or carry firearm ..... 17
- Abscond from supervision ..... 34
- Fail to follow special conditions (sex offender) ..... 19
- Fail to follow special conditions (other than sex offender conditions) ..... 11**
- Change residence or leave State of Virginia without permission ..... 1**

**Score only the violation receiving the highest points**

◆ ~~Used, Possessed, Distributed Controlled Substances or Paraphernalia~~ — If YES, add 15 →

◆ ~~Absconded from supervision~~ — If YES, add 16 →

◆ **Time Absconded**

5 months or less .....	<del>0</del>	<input type="text"/> <input type="text"/>
6 months to 12 months .....	<del>1</del>	
13 months or more .....	<del>18</del> 5	

**Total Score**  **36**  
 If total is ~~00~~ or less, the recommendation is Probation/No Incarceration.  
 If total is ~~04~~ or more, go to Section C Worksheet.

Points for these factors have been included in the general factor for "Condition(s) Violated"



# Proposed Recommendation 6

## Probation Violation Guidelines ~~Section C~~ Section C Offender Name: \_\_\_\_\_

◆ **Original Felony Offense Type** *select the type of most serious original felony offense*

A. DWI or Habitual Offender .....	3
B. Property .....	4
C. Drug .....	5
D. Person .....	13
E. Weapon .....	16
F. Other .....	1

**Score**  
▼

◆ **Previous Adult Probation Revocation Events**

Events: 1 - 2 .....	4
3 or more .....	16

◆ **New Arrests for Crimes Against Person**

Number: 0 .....	0
1 .....	4
2 .....	15
3 - 4 .....	30
5 or more .....	38

◆ **New Arrests for Nonperson Crimes**

Number: 0 - 1 .....	0
2 .....	9
3 - 4 .....	12
5 or more .....	19

◆ **Months until First Noncompliant Incident**

10 months or less .....	28
11 months to 22 months .....	22
23 months or more .....	0

◆ **Unsuccessful Discharge from Detention Center Program** ——— If YES, add 30 →

◆ **Never Reported to Drug Treatment/Drug Education Program**

Number: 1 - 2 .....	9
3 or more .....	16

◆ **Positive Drug Test or Signed Admission (not marijuana or alcohol)** — If YES, add 10 →

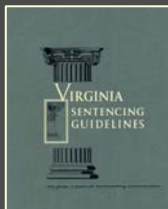
The “Violated Sex Offender Restrictions” factor would now include failure to attend sex offender treatment but exclude failure on a polygraph test conducted in association with sex offender treatment.

◆ **Violated Sex Offender Restrictions** ————— If YES, add ~~40~~<sup>5</sup> →

3 months to 24 months .....	9
25 months or more .....	12

**Total Score** →

See Probation Violation Guidelines Section C Recommendation Table for guidelines sentence range.





# Proposed Recommendation 6

## Probation Violation Guidelines – Section C Recommendation Table

Sentence Length Recommendation	Current Range (points)	Proposed Range (points)
Up to 3 mos.	Up to 33	Up to 40
3 mos. to 6 mos.	34 – 41	41 – 45
6 mos. to 12 mos.	42 – 43	46 – 48
1 yr. to 1 yr. 3 mos.	44 – 48	49 – 56
1 yr. 3 mos. to 1 yr. 6 mos.	49 – 51	
1 yr. 6 mos. to 2 yrs.	52 – 55	57 – 59
2 yrs. to 3 yrs.	56 – 62	60 – 67
3 yrs. to 4 yrs.	63 – 66	68 – 73
4 yrs. to 5 yrs.	67 – 74	74+
5 yrs. to 6 yrs.	75 – 85	
More than 6 yrs.	86 +	



## *Proposed Recommendation 6*

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**Further refine the Probation Violation Guidelines to better reflect judicial sentencing practices for felony offenders returned to court for reasons other than a new conviction**

