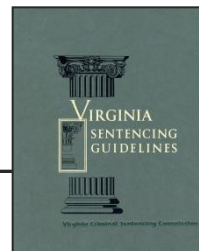


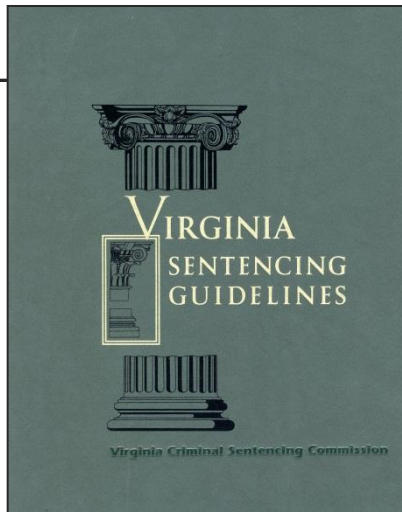
Proposed Recommendations for Guidelines Revisions

November 2011

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 Sentencing Guidelines for
3rd or Subsequent Sale of a Schedule I/II Drug
(18.2-248(C))*

3rd or Subsequent Sale of a Schedule I/II Drug (18.2-248(C))

When a person is convicted of a third or subsequent offense under this subsection and it is alleged in the warrant, indictment or information that he has been before convicted of two or more such offenses or of substantially similar offenses in any other jurisdiction which offenses would be felonies if committed in the Commonwealth and such prior convictions occurred before the date of the offense alleged in the warrant, indictment, or information, he shall be sentenced to imprisonment for life or for a period of not less than five years, five years of which shall be a mandatory minimum term of imprisonment to be served consecutively with any other sentence and he shall be fined not more than \$500,000. (Effective July 1, 2006)

In 2006, the 3-year mandatory minimum sentence was increased to 5 years

3rd or Subsequent Sale of a Schedule I/II Drug (18.2-248(C))
FY2007 – FY2011
240 Cases

Disposition	Percent	Median Sentence
No Incarceration	0%	NA
Incarceration Up to 6 Months	0%	NA
Incarceration More than 6 Months	100%	7 Years

3rd or Subsequent Sale of a Schedule I/II Drug (18.2-248(C))

In 2007, the Commission voted to add a factor to Section C of the Schedule I/II and Other Drug Sentencing Guidelines to increase the prison sentence recommendation for offenders who have an accompanying weapons offense that carries a mandatory minimum term.

	Prior to Modification	After Modification
Compliance	62.7%	65.4%
Mitigation	4.5%	6.7%
Aggravation	32.8%	27.9%

Proposed

Drug/Schedule I/II ❖ Section C

Offender Name: _____

◆ Primary Offense _____

— Prior Record Classification —
 Category I Category II Other

A. Possess Schedule I or II drug or First offender violation-Attempted, conspired or completed:				
	1 count	20	10	5
	2 counts	28	14	7
	3 counts	36	18	9
B. Sell, Distribute, Possession with intent, etc., Schedule I or II drug				
	Completed: 1 count	60	36	12
	2 counts	80	48	16
	3 counts	95	57	19
	4 counts	130	78	26
	Attempted or conspired: 1 count	48	24	12
	2 counts	64	32	16
	3 counts	76	38	19
	4 counts	104	52	26
C. Sell, etc. Schedule I or II drug, second offense; third and subsequent offense				
	Completed: 1 count	110	66	22
	2 counts	310	186	62
	Attempted or conspired: 1 count	66	44	22
	2 counts	248	124	62
D. Sell, etc. Schedule I or II drug to minor				
	Attempted, conspired or completed: 1 count	60	30	15
E. Accomodation-Sell, etc. Schedule I or II drug - Attempted, conspired or completed:				
	1 count	32	16	8
	2 counts	40	20	10
F. Sell, etc. imitation Schedule I or II drug - Attempted, conspired or completed:				
	1 count	12	6	3
	2 counts	20	10	5

Score

▼

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G. Sell, etc. Schedule I or II drug, third or subsequent offense			
1 count	175	105	35
2 counts	390	234	78

Proposed

Drug/Schedule I/II ❖ Section C

Offender Name: _____

◆ **Primary Offense** _____

Prior Record Classification: Category I Category II Other

A. Possess Schedule I or II drug or First offender violation-Attempted, conspired or completed:		20	10	5
1 count	.....	25	14	7
2 counts	.....	36	18	9
3 counts	.....		
B. Sell, Distribute, Possession with intent, etc., Schedule I or II drug		60	36	12
Completed:		80	48	16
1 count	.....	95	57	19
2 counts	.....	130	78	26
3 counts	.....	48	24	12
Attempted or conspired:		64	32	16
1 count	.....	76	38	19
2 counts	.....	104	52	26
3 counts	.....		
4 counts	.....		
C. Sell, etc. Schedule I or II drug, second offense; third and subsequent offense		110	66	22
Completed:		310	186	62
1 count	.....	88	44	22
2 counts	.....	248	124	62
Attempted or conspired:				
1 count	.....		
2 counts	.....		
D. Sell, etc. Schedule I or II drug to minor				
Attempted, conspired or completed:		60	30	15
1 count	.....		

◆ Additional Offenses

Primary offense OTHER THAN Sell, etc. Sch. I/II 3rd or Subseq

Maximum Penalty	Points
Years: Less than 5	0
5, 10	1
20	2
30	4
40 or more	5

Primary offense Sell, etc. Sch. I/II 3rd or Subseq

Maximum Penalty	Points
Years: Less than 5	0
5, 10	2
20	4
30	6
40 or more	7

◆ Prior Felony Convictions/Adjudications Against Person

Number of Counts:	1	.....	3			
	2	.....	6			
	3	.....	9			
	4 or more	.....	12			

◆ Prior Felony Property Convictions/Adjudications

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

◆ Prior Juvenile Record _____ If YES, add 1 →

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

SCORE THE FOLLOWING FACTORS ONLY IF PRIMARY OR ADDITIONAL OFFENSE INVOLVES THE SALE, ETC. OF COCAINE

◆ Sale/Quantity of Cocaine (§18.2-248(C) or §18.2-255(A) convictions only)

Quantity of Cocaine	Less than 28.35 grams	.....	0			
	28.35 grams to less than 226.8 grams	.....	36			
	226.8 grams or more	.....	60			

Total Score

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

Proposed

Drug/Schedule I/II ❖ Section C

Offender Name: _____

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

A. Possess Schedule I or II drug or First offender violation-Attempted, conspired or completed:

1 count	20	10	5
2 counts	28	14	7
3 counts	36	18	9

B. Sell, Distribute, Possession with intent, etc., Schedule I or II drug

Completed:	1 count	60	36	12
	2 counts	80	48	16
	3 counts	95	57	19
	4 counts	130	78	26
Attempted or conspired:	1 count	48	24	12
	2 counts	64	32	16
	3 counts	76	38	19
	4 counts	104	52	26

C. Sell, etc. Schedule I or II drug, second offense; third and subsequent offense

Completed:	1 count	110	66	22
	2 counts	310	186	62
Attempted or conspired:	1 count	88	44	22
	2 counts	248	124	62

D. Sell, etc. Schedule I or II drug to minor

Attempted, conspired or completed:	1 count	60	30	15
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E. Accomodation-Sell, etc. Schedule I or II drug - Attempted, conspired or completed:

1 count	32	16	8
2 counts	40	20	10

F. Sell, etc. imitation Schedule I or II drug - Attempted, conspired or completed:

1 count	12	6	3
2 counts	20	10	5

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

Maximum Penalty:	5,10	1
(years)	40 or more	5

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

Score

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Score

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◆ **Prior Felony Drug Convictions/Adjudications**

<u>Primary offense OTHER THAN Sell, etc. Sch. I/II 3rd or Subseq</u>	Points
Number: 1	2
2	3
3	5
4	7
5	8
10 or more	10

<u>Primary offense Sell, etc. Sch. I/II 3rd or Subseq</u>	Points
Number: 2	9
3	10
4	17
5 or more	20

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

0	0	
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SCORE THE FOLLOWING FACTORS ONLY IF PRIMARY OR ADDITIONAL OFFENSE INVOLVES THE SALE, ETC. OF COCAINE

◆ **Sale/Quantity of Cocaine** (§18.2-248(C) or §18.2-255(A) convictions only)

Quantity of Cocaine	Less than 28.35 grams	0
	28.35 grams to less than 226.8 grams	36
	226.8 grams or more	60

Total Score →

0		
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See Drug/Schedule I/II Section C Recommendation Table for guidelines sentence range. Then go to Section D Nonviolent Risk Assessment and follow the instructions.

Drug Schedule I or II/ Section C

Drug/Schedule I/II Section C

Offender Name: _____

Primary Offense Category I Category II Other

A. Possess Schedule I or II drug or First offender violation-Attempted, conspired or completed:

1 count	20	10	5
2 counts	28	14	7
3 counts	36	18	9

B. Sell, Distribute, Possession with intent, etc., Schedule I or II drug

Completed:			
1 count	60	36	12
2 counts	80	48	16
3 counts	95	57	19
4 counts	130	78	26
Attempted or conspired:			
1 count	48	24	12
2 counts	64	32	16
3 counts	76	38	19
4 counts	104	52	26

C. Sell, etc. Schedule I or II drug, second offense; third and subsequent offense

Completed:			
1 count	110	66	22
2 counts	310	186	62
Attempted or conspired:			
1 count	88	44	22
2 counts	248	124	62

	Category I	Category II	Other
G. Sell, etc. Schedule I or II drug, third or subsequent offense			
1 count	175	105	35
2 counts	390	234	78
2 counts	20	10	5

Sell, etc. Sch. I/II 3rd or Subseq

Maximum Penalty (years)	Points
Less than 5	0
5, 10	2
20	4
30	6
40 or more	7

Sell, etc. Sch. I/II 3rd or Subseq

Number of Counts	Points
2	9
3	10
4	17
5 or more	20

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

Maximum Penalty: 5, 10 1
 (years) 40 or more 5

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

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

Mandatory Minimum for Weapon Conviction(s) in Current Event Assign points to each additional offense with a mandatory minimum and total the points

2 Year Mandatory Minimum 13
 5 Year Mandatory Minimum 32

Firearm in Possession at Time of Offense If YES, add 5 → 0 0

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

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

Prior Felony Drug Convictions/Adjudications

Number of Counts: 1 2 4 7
 2 3 5 8
 3 5 6 or more 10

Prior Felony Convictions/Adjudications Against Person

Number of Counts: 1 3
 2 6
 3 9
 4 or more 12

Prior Felony Property Convictions/Adjudications

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

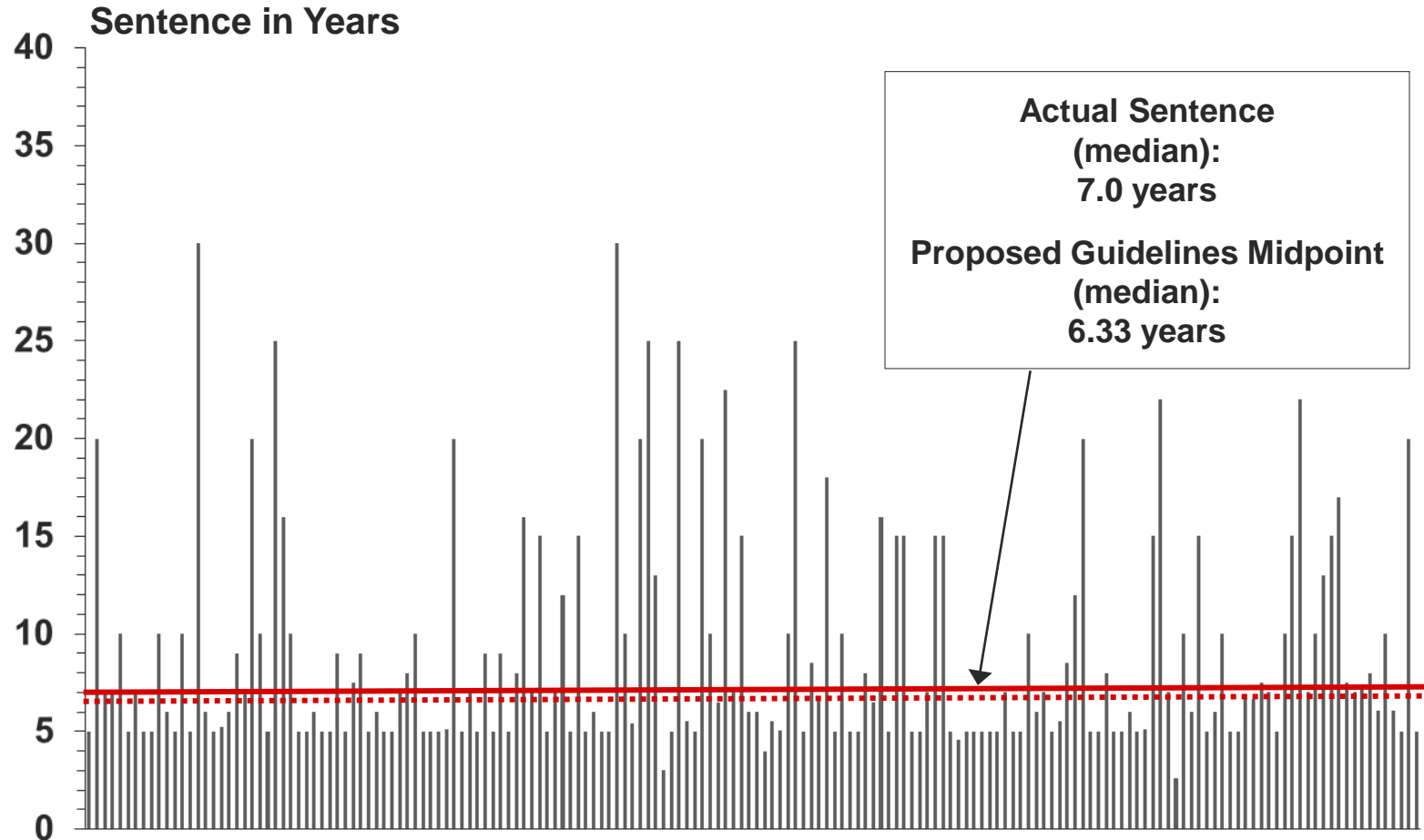
Prior Juvenile Record If YES, add 1 → 0 0

Legally Restrained at Time of Offense If YES, add 3 → 0 0

Proposed

3rd or Subsequent Sale of a Schedule I/II Drug (18.2-248(C))

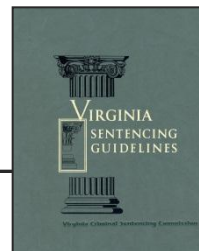
Offenders Sentenced to Incarceration of More than 6 Months 240 Cases

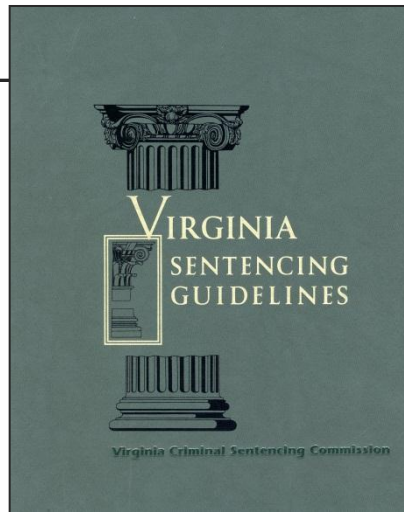


Note: The recommended high falls below the 5-year mandatory minimum for one case.

Proposed Recommendation 1

**Revise the sentencing guidelines for 3rd or Subsequent
Sale of a Schedule I/II Drug (18.2-248(C))
as proposed**





Proposed Recommendation 2:

*Add Manufacture of Methamphetamine (§ 18.2-248(C1))
to the Schedule I/II Drug Guidelines*

Manufacture Methamphetamine (§ 18.2-248(C1))

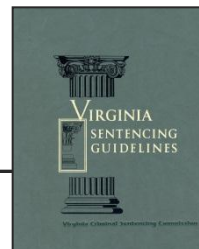
Any person who violates this section with respect to the manufacturing of methamphetamine... shall, upon conviction, be imprisoned for not less than 10 nor more than 40 years and fined not more than \$500,000. Upon a second conviction of such a violation, any such person may, in the discretion of the court or jury imposing the sentence, be sentenced to imprisonment for life or for any period not less than 10 years, and be fined not more than \$500,000. When a person is convicted of a third or subsequent offense under this subsection and it is alleged in the warrant, indictment, or information that he has been previously convicted of two or more such offenses or of substantially similar offenses... and such prior convictions occurred before the date of the offense alleged in the warrant, indictment, or information, he shall be sentenced to imprisonment for life or for a period not less than 10 years, three years of which shall be a mandatory minimum term of imprisonment to be served consecutively with any other sentence and he shall be fined not more than \$500,000.

(Effective July 1, 2005)

Manufacture Methamphetamine (§ 18.2-248(C1))

- **Currently, convictions under § 18.2-248(C1) for manufacturing methamphetamine are not covered by the sentencing guidelines**

- **Offenders who manufacture methamphetamine can be charged under the general Schedule I/II drug provision (§ 18.2-248(C))**
 - **When this occurs, methamphetamine cases cannot be distinguished from other drugs**



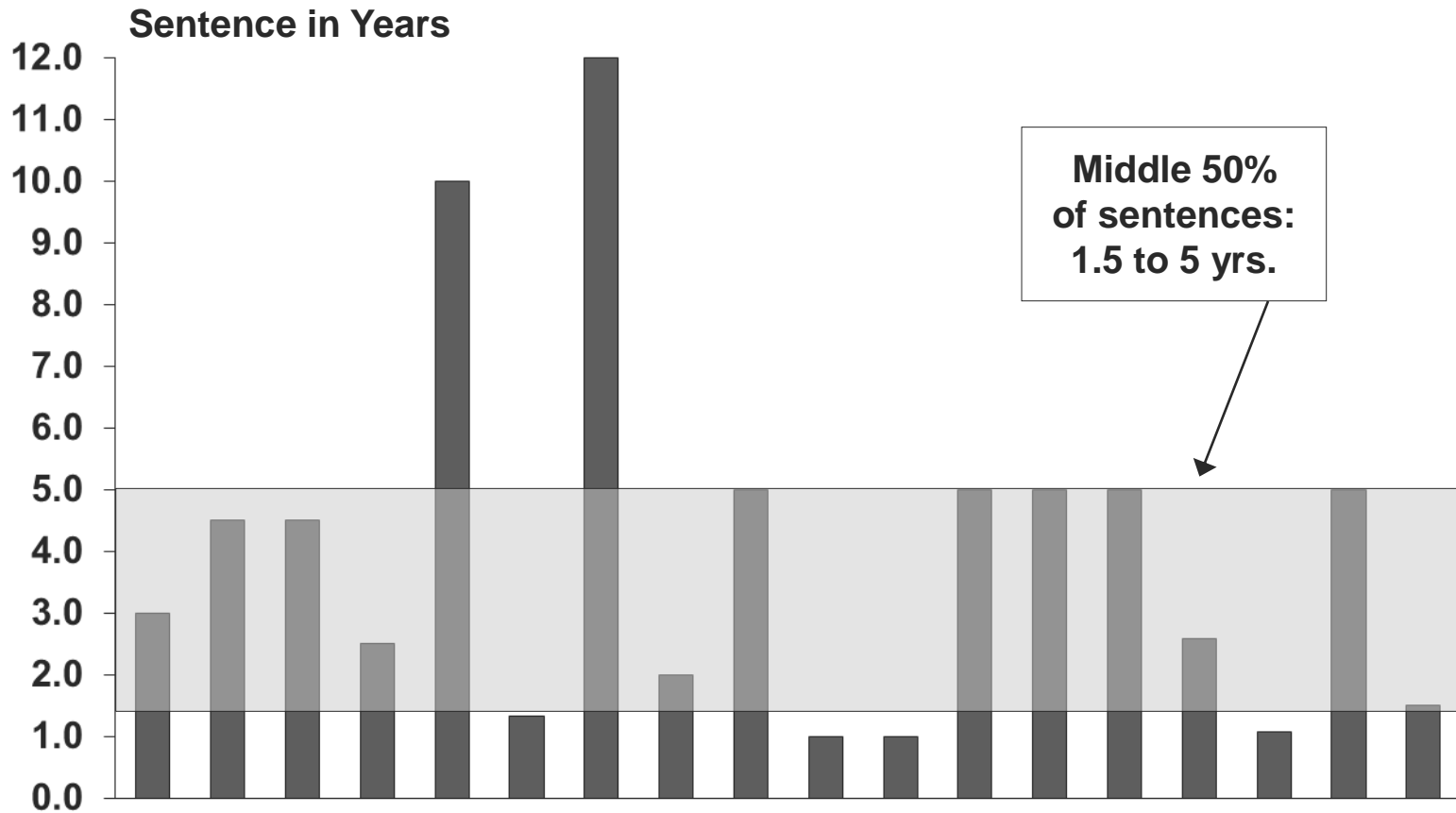
**Manufacture Methamphetamine (§ 18.2-248(C1))
 FY2007 – FY2011
 23 Cases**

Disposition	Percent	Median Sentence
No Incarceration	17.4%	NA
Incarceration Up to 6 Months	4.3%	1 Month
Incarceration More than 6 Months	78.3%	3.75 Years

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)

Manufacture Methamphetamine (§ 18.2-248(C1)) FY2007 – FY2011

Offenders Sentenced to Incarceration of More than 6 Months 18 Cases



Drug/Schedule I/II ❖ Section C

Offender Name: _____

◆ Primary Offense

Prior Record Classification
 Category I Category II Other

A. Possess Schedule I or II drug or First offender violation-Attempted, conspired or completed:					
1 count	20	10	5		
2 counts	28	14	7		
3 counts	36	18	9		
B. Sell, Distribute, Possession with intent, etc., Schedule I or II drug					
Completed:					
1 count	60	36	12		
2 counts	80	48	16		
3 counts	95	57	19		
4 counts	130	78	26		
Attempted or conspired:					
1 count	48	24	12		
2 counts	64	32	16		
3 counts	76	38	19		
4 counts	104	52	26		
C. Sell, etc. Schedule I or II drug, second offense; third and subsequent offense					
Completed:					
1 count	110	66	22		
2 counts	310	186	62		
Attempted or conspired:					
1 count	88	44	22		
2 counts	248	124	62		
D. Sell, etc. Schedule I or II drug to minor					
Attempted, conspired or completed:					
1 count	60	30	15		
E. Accomodation-Sell, etc. Schedule I or II drug - Attempted, conspired or completed:					
1 count	32	16	8		
2 counts	40	20	10		
F. Sell, etc. imitation Schedule I or II drug - Attempted, conspired or completed:					
1 count	12	6	3		
2 counts	20	10	5		

Score

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G. Manufacture Methamphetamine, first or second offense, § 18.2-248(C1): 1 count 145 87 29

(years) 40 or more 5

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

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

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◆ Mandatory Minimum for Weapon Conviction(s) in Current Event Assign points to each additional

SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE IS MANUFACTURE METHAMPHETAMINE, FIRST OR SECOND OFFENSE (§ 18.2-248(C1))

◆ Additional offense of child present during manufacture of methamphetamine (§ 18.2-248.02) — If YES, add 14

Number of Counts:	1	2	4	7
	2	3	5	8
	3	5	6 or more	10

0		
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◆ Prior Felony Convictions/Adjudications Against Person

Number of Counts:	1	3
	2	6
	3	9
	4 or more	12

0		
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◆ Prior Felony Property Convictions/Adjudications

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

0	0	
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◆ Prior Juvenile Record — If YES, add 1

0	0	
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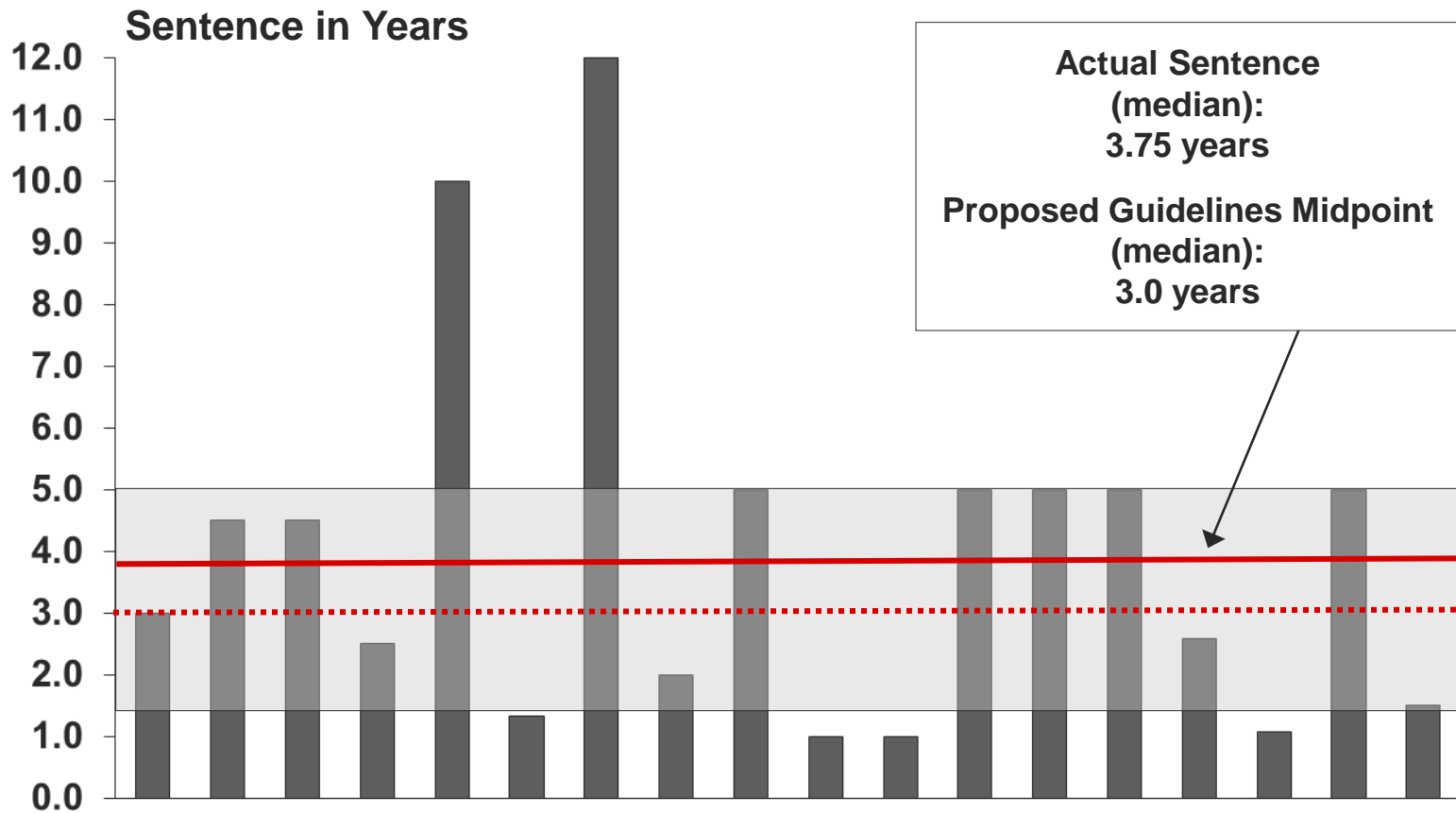
◆ Legally Restrained at Time of Offense — If YES, add 3

0	0	
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Proposed

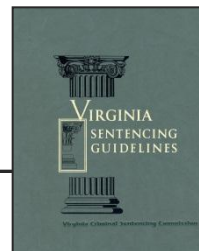
Manufacture Methamphetamine (§ 18.2-248(C1)) FY2007 – FY2011

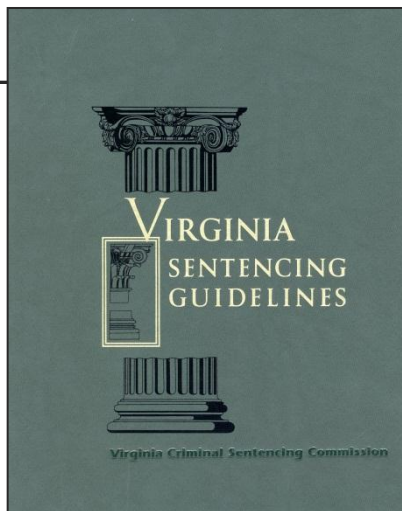
Offenders Sentenced to Incarceration of More than 6 Months 18 Cases



Proposed Recommendation 2

**Revise the Schedule I/II Drug Guidelines to add
Manufacture of Methamphetamine (§ 18.2-248(C1))
as proposed**





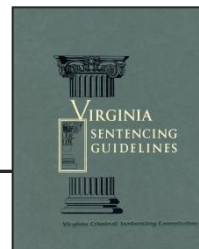
Proposed Recommendation 3:

*Add DWI-Victim Permanently Impaired (§ 18.2-51.4(A))
to the Assault Guidelines*

DWI – Victim Permanently Impaired (§ 18.2-51.4(A))

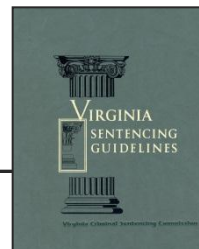
Any person who, as a result of driving while intoxicated in violation of § 18.2-266 or any local ordinance substantially similar thereto in a manner so gross, wanton and culpable as to show a reckless disregard for human life, unintentionally causes the serious bodily injury of another person resulting in permanent and significant physical impairment shall be guilty of a Class 6 felony. The driver's license of any person convicted under this section shall be revoked pursuant to subsection B of § 46.2-391.

(Effective July 1, 2000)



DWI-Victim Permanently Impaired (§ 18.2-51.4(A))

- **Currently, convictions under § 18.2-51.4(A) involving DWI-victim permanently impaired are not covered by the sentencing guidelines**



**DWI-Victim Permanently Impaired (§ 18.2-51.4(A))
 FY2007 – FY2011
 46 Cases**

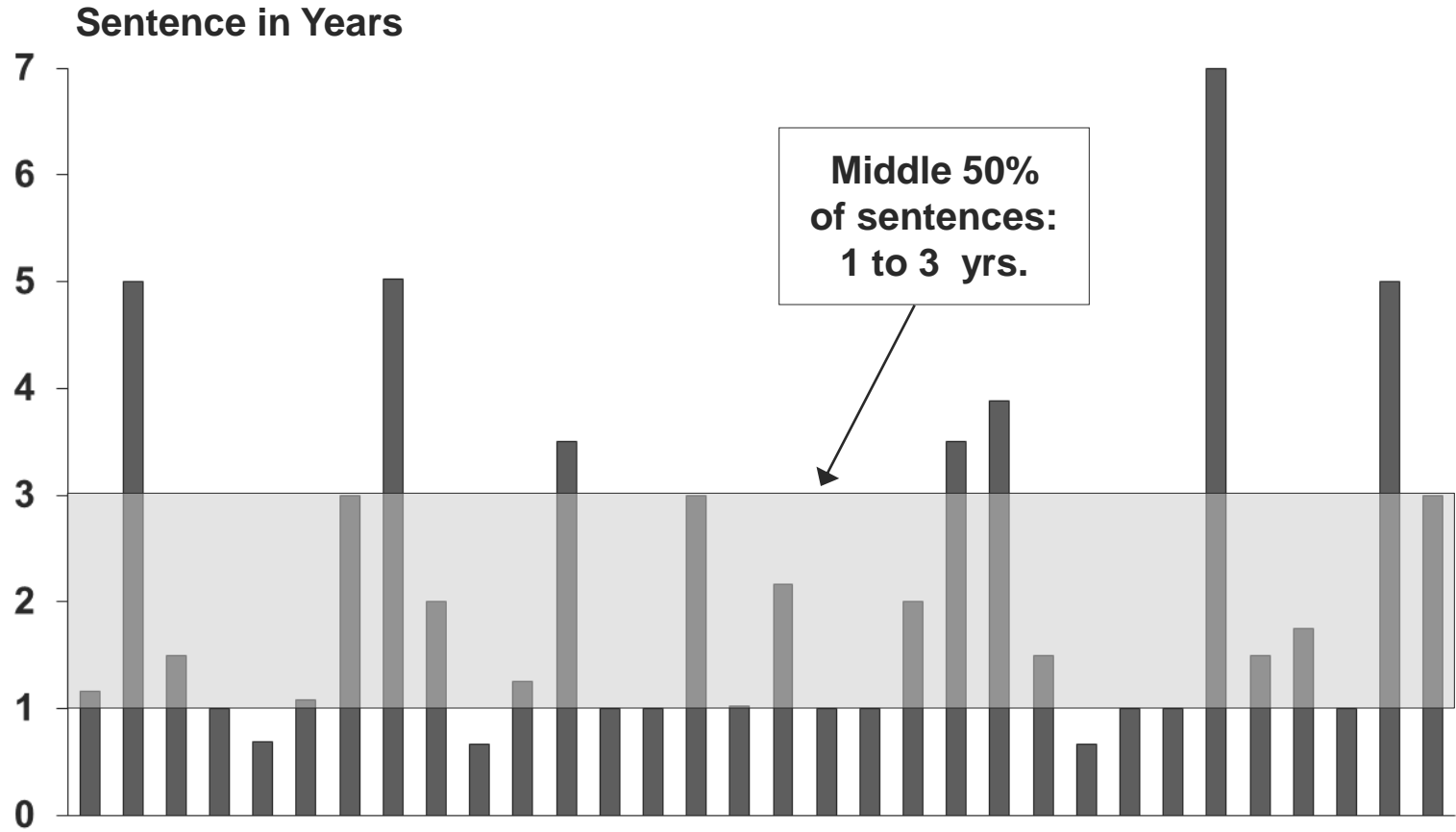
Disposition	Percent	Median Sentence
No Incarceration	10.9%	NA
Incarceration Up to 6 Months	19.6%	4 Months
Incarceration More than 6 Months	69.6%	1.5 Years

Note: Data reflect cases in which this offense was the primary (or most serious) offense at sentencing; one offender was excluded because a rap sheet could not be located

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

DWI-Victim Permanently Impaired (§ 18.2-51.4(A)) FY2007 – FY2011

Offenders Sentenced to Incarceration of More than 6 Months 32 Cases



Proposed

Assault ❖ Section A

Offender Name: _____

◆ Primary Offense

- A. Assault and battery against a family member, third or subsequent conviction (1 count) 2
- B. Assault and battery against a law enforcement officer, fire or rescue personnel (1 count) 6
- C. Any attempted or conspired assault and battery or unlawful injury (1 count) 1
- D. Unlawful injury to law enforcement officer, fire or rescue personnel (1 count) 7
- E. Any other unlawful injury
 - 1 count 1
 - 2 counts 3
- F. Any attempted or conspired malicious injury or aggravated malicious injury (1 count) 3
- G. Aggravated malicious injury (1 count) 7

Score

K. DWI – Victim permanently impaired (§ 18.2-51.4(A))

- (1 count) 1
- (2 counts) 3

Years: 3-10 1 24 - 31 4
 11 - 17 2 22 - 30 5

◆ Additional Offenses

Primary offense

DWI - Victim permanently impaired

Maximum Penalty	Points
Years: Less than 2	0
2 - 17	2
18 - 23	3
24 - 31	4
32 - 39	5
40 or more	6

Primary offense OTHER THAN

DWI - Victim permanently impaired

Maximum Penalty	Points
Years: Less than 2	0
2 - 10	1
11 - 17	2
18 - 23	3
24 - 31	4
32 - 39	5
40 or more	6

◆ Primary Convictions/Adjudications

Primary offense

DWI - Victim permanently impaired

Maximum Penalty	Points
Years: Less than 1	0
1 - 46	2
47 or more	3

Primary offense OTHER THAN

DWI - Victim permanently impaired

Maximum Penalty	Points
Years: Less than 7	0
7 - 23	1
24 - 46	2
47 or more	3

Total Score

If total is 5 or less, go to Section B. If total is 6 or more, go to Section C.

Proposed

Assault Section B

Offender Name: _____

◆ **Victim Injury** _____ Score

Threatened, emotional, or physical	2	<div style="border: 1px solid black; padding: 5px; display: inline-block;">0</div>
Serious physical	4	

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

Years: Less than 5	1	<div style="border: 1px solid black; padding: 5px; display: inline-block;">0</div>
5 or more	2	

◆ **Weapon Used or Brandished** _____ If YES, add 2 →

0

◆ **Prior** No modifications necessary _____

Years: Less than 5	0	<div style="border: 1px solid black; padding: 5px; display: inline-block;">0</div>
5 - 18	1	
19 - 38	2	
39 or more	3	

◆ **Prior Juvenile Record** _____ If YES, add 3 →

0

SCORE THE FOLLOWING ONLY IF PRIMARY OFFENSE AT CONVICTION IS ASSAULT & BATTERY AGAINST A FAMILY MEMBER § 18.2-57.2(B)

◆ **Prior Incarcerations/Commitments** _____

Number: 1	1	<div style="border: 1px solid black; padding: 5px; display: inline-block;">0</div>
2	3	
3 or more	5	

◆ **Prior Misdemeanor Convictions/Adjudications** _____

Number of Counts: 1 - 2	0	<div style="border: 1px solid black; padding: 5px; display: inline-block;">0</div>
3 - 5	1	
6 - 8	2	
9 or more	3	

Total Score _____ →

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

Proposed

Assault Section C

Offender Name: _____

____ Prior Record Classification ____

◆ Primary Offense

Category I Category II Other

A. Assault and battery against a family member, third or subsequent conviction (1 count)	28	14	7
B. Assault and battery against a law enforcement officer, fire or rescue personnel (1 count)	32	16	8
C. Unlawful injury (1 count)	32	16	8
D. Any attempted or conspired malicious injury (1 count)	68	34	17
E. Any completed malicious injury			
1 count	102	68	34
2 counts	120	80	40
3 counts	204	136	68
F. Aggravated malicious injury (1 count)	264	176	88
G. Use of firearm in the commission of a felony- first offense (1 count)	32	32	32
H. Use of firearm in the commission of a felony- subsequent offense (1 count)	56	56	56

Score

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I. DWI – Victim permanently impaired (§ 18.2-51.4(A)): 1 count 48 24 12

Maximum Penalty (years)	Points
3	2
5	3
10	6
20	13
30	19
Life	26

Maximum Penalty (years)	Points
5	3
10	5

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

Primary offense malicious, aggravated malicious wounding or use of firearm

Maximum Penalty (years)	Points
Less than 1	0
1, 2	1
3	2
4, 5	3
10	6
20	13
30	19
40 or more	26

Primary offense unlawful injury or any assault and battery

Maximum Penalty (years)	Points
Less than 1	0
1, 2	1
3, 4	2
5	3
10	5
20	11
30	16
40 or more	22

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◆ Weapon Used

Primary offense malicious, aggravated malicious wounding or use of firearm

Simulated weapon or other than listed below	0
Knife or firearm	4

Primary offense unlawful injury or any assault and battery

Simulated weapon or other than listed below	0
Knife	2
Firearm	3

0	0	
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◆ Number of Victims Receiving Serious Physical Injury

Primary offense malicious, aggravated malicious wounding or use of firearm

Number	Score
1	14
2	70
3 or more	85

Primary offense unlawful injury or any assault and battery

Number	Score
1 or more	3

0		
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◆ Prior Convictions/Adjudications Assign points to the 5 most recent and serious prior record events and total the points

Primary offense malicious, aggravated malicious wounding or use of firearm

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

Primary offense unlawful injury or any assault and battery

Maximum Penalty (years)	Points
Less than 4	0
4, 5, 10	1
20	3
30	4
40 or more	6

0		
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◆ Prior Felony Convictions/Adjudications Against Person

Primary offense malicious, aggravated malicious wounding or use of firearm

Number of Counts	Score
1	6
2	12
3 or more	18

Primary offense unlawful injury or any assault and battery

Do Not Score

0		
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◆ Legally Restrained at Time of Offense

Primary offense malicious, aggravated malicious wounding or use of firearm

If YES, add 6

Primary offense unlawful injury or any assault and battery

If YES, add 2

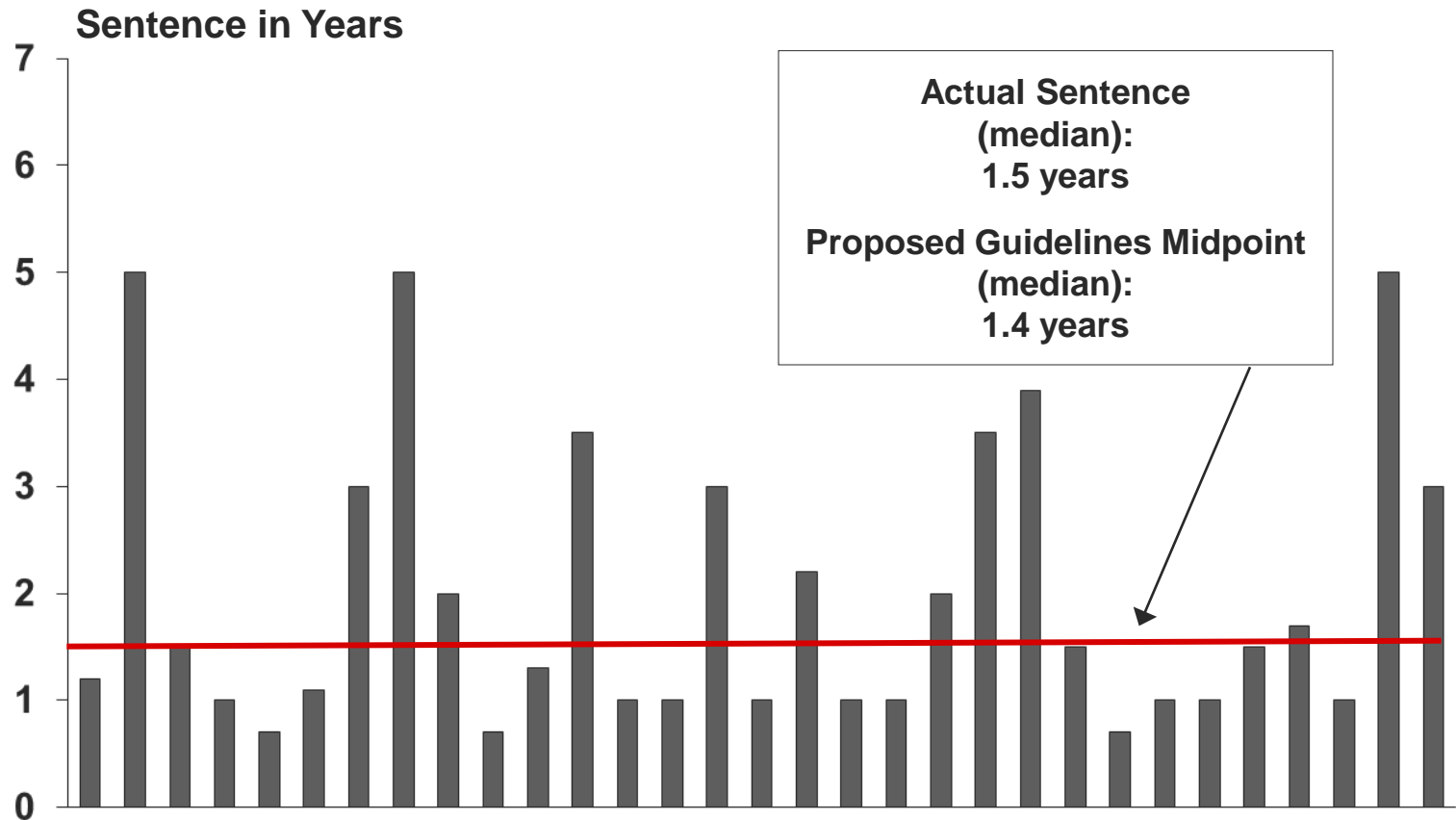
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**DWI-Victim Permanently Impaired (§ 18.2-51.4(A))
 FY2007 – FY2011
 46 Cases**

Sentencing Guidelines	Recommendations under Sentencing Guidelines		Actual Practices Prior to Sentencing Guidelines	
Section A Score	Recommendation	Percent	NO PRISON Percent	PRISON Percent
Up to 5	NO PRISON	30.4%	50.0%	50.0%
6 or More	PRISON	69.6%	20.0%	80.0%
			34.8%	OVERALL 65.2%

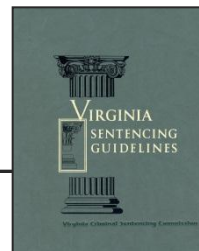
DWI-Victim Permanently Impaired (§ 18.2-51.4(A)) FY2007 – FY2011

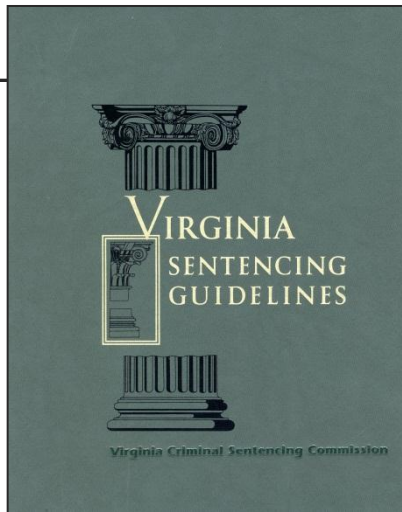
Offenders Sentenced to Incarceration of More than 6 Months 32 Cases



Proposed Recommendation 3

**Revise the Assault Guidelines to add
DWI-Victim Permanently Impaired (§ 18.2-51.4(A))
as proposed**





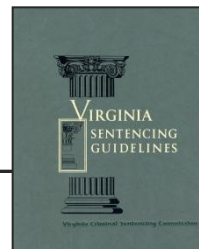
Proposed Recommendation 4:

*Add Driving on Suspended License after a DWI –
3rd Offense within 10 Years (§ 18.2-272(A))
to the Felony Traffic Guidelines*

Driving on Suspended License after a DWI – 3rd Offense within 10 Years (§ 18.2-272(A))

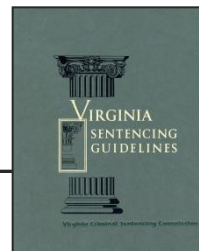
Any person who drives or operates any motor vehicle, engine or train in the Commonwealth during the time for which he was deprived of the right to do so (i) upon conviction of a violation of § 18.2-268.3 or of an offense set forth in subsection E of § 18.2-270, (ii) by § 18.2-271 or 46.2-391.2, (iii) after his license has been revoked pursuant to § 46.2-389 or 46.2-391, or (iv) in violation of the terms of a restricted license issued pursuant to subsection E of § 18.2-271.1, is guilty of a Class 1 misdemeanor except as otherwise provided in § 46.2-391, and is subject to administrative revocation of his driver's license pursuant to §§ 46.2-389 and 46.2-391. Any person convicted of three violations of this section committed within a 10-year period is guilty of a Class 6 felony.

(Effective July 1, 2006)



Driving on Suspended License after a DWI – 3rd Offense within 10 Years (§ 18.2-272(A))

- **Currently, convictions under § 18.2-272(A) involving Driving on Suspended License after a DWI – 3rd Offense within 10 Years are not covered by the sentencing guidelines**



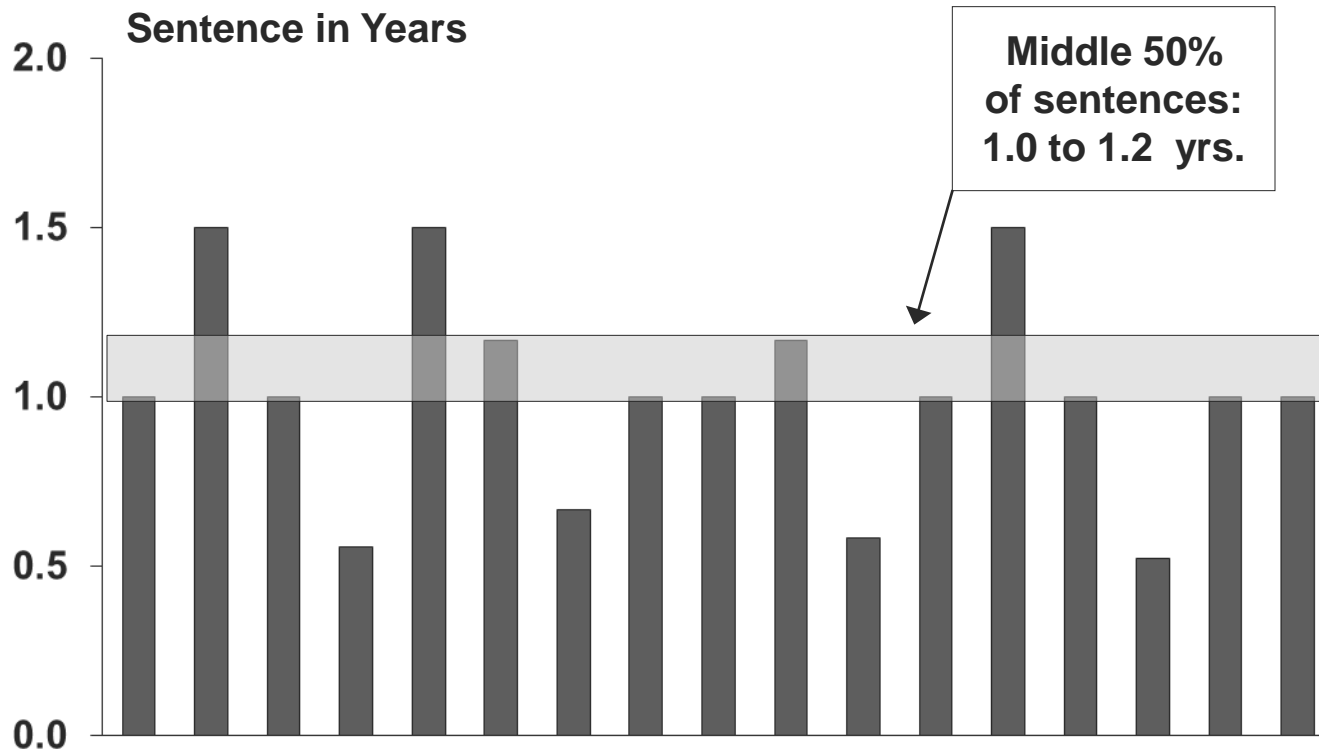
**Driving on Suspended License after a DWI –
3rd Offense within 10 Years (§ 18.2-272(A))
FY2007 – FY2011
55 Cases**

Disposition	Percent	Median Sentence
No Incarceration	27.3%	NA
Incarceration Up to 6 Months	41.8%	3.0 Months
Incarceration More than 6 Months	30.9%	1.0 Years

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)

**Driving on Suspended License after a DWI –
3rd Offense within 10 Years (§ 18.2-272(A))
FY2007 – FY2011**

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



Proposed

Traffic/Felony Section A

Offender Name: _____

◆ **Primary Offense**

- A. DWI - Third conviction within 5 years (1 count) 1
- B. DWI - Third conviction within 10 years (1 count) 1
- C. DWI - Fourth or subsequent conviction within 10 years (1 count) 9
- D. Habitual Offender: endangerment, second or subsequent, or DWI and declared habitual offender for DWI, involuntary manslaughter (1 count) 9
- E. Drive on revoked license after DWI, involuntary manslaughter, or DWI victim permanently impaired (maiming) - endangerment (1 count) 9
- F. Drive on revoked license after DWI, involuntary manslaughter or DWI victim permanently impaired (maiming) and DWI etc. violation (1 count) 9
- G. Drive on revoked license after DWI, involuntary manslaughter or DWI victim permanently impaired (maiming) - second or subsequent (1 count) 9
- H. Hit and run, driver fails to stop and aid victim or hit and run, property damage \$1,000 or more
 - 1 count 1
 - 2 counts 4
- I. Disregard police command to stop, endangerment (1 count) 5

Score
▼
0

J. Driving on Suspended License after DWI – 3rd Offense within 10 Years (1 count) 1

29 - 38 4
39 or more 5

0

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

◆ **Prior Incarceration/Commitments**

<p><u>Primary offense</u> Driving on Susp. License after DWI – 3rd Offense</p> <p style="text-align: center;">Points</p> <p>Number: 1 1 2 or more 4</p>	<p><u>Primary offense OTHER THAN</u> Driving on Susp. License after DWI – 3rd Offense</p> <p style="text-align: center;">If YES, add 4</p>
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◆ **Legally Restrained at Time of Offense**

<p><u>Primary offense</u> Driving on Susp. License after DWI – 3rd Offense</p> <p style="text-align: center;">If YES, add 4</p>	<p><u>Primary offense OTHER THAN</u> Driving on Susp. License after DWI – 3rd Offense</p> <p style="text-align: right;">Points</p> <p>None Other than post-incarceration supervision ... 2 Post-incarceration supervision 5</p>
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1+ prior felony traffic convictions/adjudications 2

Total Score _____

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

Proposed

◆ **Primary Offense** _____

- A. DWI – Third conviction within 5 years (1 count) 10
- B. DWI – Third conviction within 10 years (1 count) 10
- C. Hit and run, driver fails to stop and aid victim (1 count) 10
- D. Hit and run, property damage \$1,000 or more (1 count) 8
- E. Disregard police command to stop, endangerment (1 count) 9

Score

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F. Driving on Suspended License after DWI – 3rd Offense within 10 Years (1 count) 9

- 20 - 29 4
- 30 - 39 5
- 40 or more 6

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

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

0	
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◆ **Victim Injury** _____

- Threatened, emotional, or physical 2
- Serious physical 3

0	
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SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE IS DRIVING ON SUSPENDED LICENSE AFTER DWI – 3RD OFFENSE WITHIN 10 YEARS (§ 18.2-272(A))

◆ **Prior Incarceration/Commitments**

If YES, add 2

Total Score _____

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

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Proposed

Traffic/Felony Section C

Offender Name: _____

Primary Offense

Prior Record Classification
 Category I Category II Other

A. DWI - Third conviction within 5 years (1 count)	20	10	5
B. DWI - Third conviction within 10 years (1 count)	20	10	5
C. DWI - Fourth or subsequent conviction within 10 years			
1 count	40	20	10
2 counts	48	24	12
3 counts	68	34	17
D. Habitual offender: endangerment, second or subsequent, or DWI and declared habitual offender for DWI, involuntary manslaughter			
1 count	40	20	10
2 counts	48	24	12
3 counts	68	34	17
E. Drive on revoked license after DWI, involuntary manslaughter, or DWI victim permanently impaired (maiming) - endangerment			
1 count	40	20	10
2 counts	48	24	12
3 counts	68	34	17
F. Drive on revoked license after DWI, involuntary manslaughter, or DWI victim permanently impaired (maiming) and DWI etc. violation			
1 count	40	20	10
2 counts	48	24	12
3 counts	68	34	17
G. Drive on revoked license after DWI, involuntary manslaughter, or DWI victim permanently impaired (maiming) - second or subsequent			
1 count	40	20	10
2 counts	48	24	12
3 counts	68	34	17
H. Hit and run, driver fails to stop and aid victim or hit and run, property damage \$1,000 or more (1 count)	20	10	5
I. Disregard police command to stop, endangerment (1 count)	40	20	10

Score

0		
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J. Driving on Suspended License after DWI – 3rd Offense within 10 Years

1 count 32 16 8

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

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

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DWI Convictions for Current Event

Primary Offense:	Habitual offender or Drive on a revoked license with DWI as additional offense	11
	DWI fourth offense	2
	DWI third offense, Hit and run or Disregard command to stop (with DWI as additional offense)	0

0		
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Victim Injury

	Threatened or emotional	2
	Physical	4
	Serious physical	5

0	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

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

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

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

0		
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Legally Restrained at Time of Offense

Primary offense hit and run (§ 46.2-894)
 If YES, add 4

Primary offense OTHER THAN hit and run
 If YES, add 2

0	0	
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SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE IS HIT AND RUN (§ 46.2-894)

Prior Criminal Traffic Convictions/Adjudications

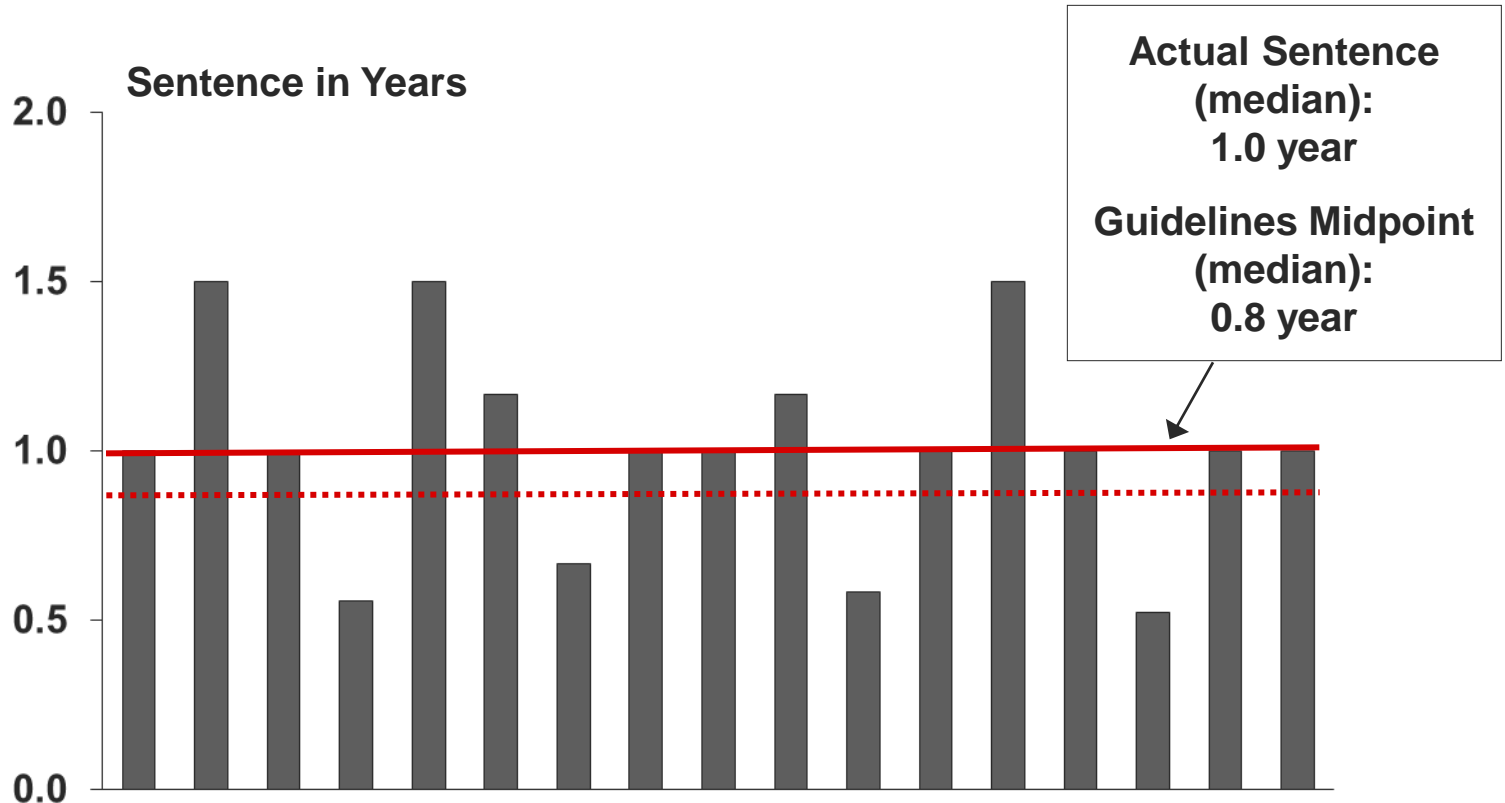
Number:	0 Felonies: 1 - 4 Misdemeanors	4
	5+ Misdemeanors	8
	1+ Felonies: 0 Misdemeanors	4

**Driving on Suspended License after a DWI –
3rd Offense within 10 Years (§ 18.2-272(A))
FY2007 – FY2011
55 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	67.3%	73.0%	27.0%
9 or More	PRISON	32.7%	61.1%	38.9%
			69.1% OVERALL	30.9%

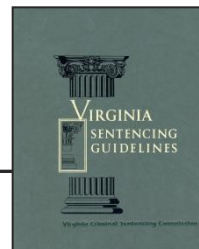
**Driving on Suspended License after a DWI –
3rd Offense within 10 Years (§ 18.2-272(A))
FY2007 – FY2011**

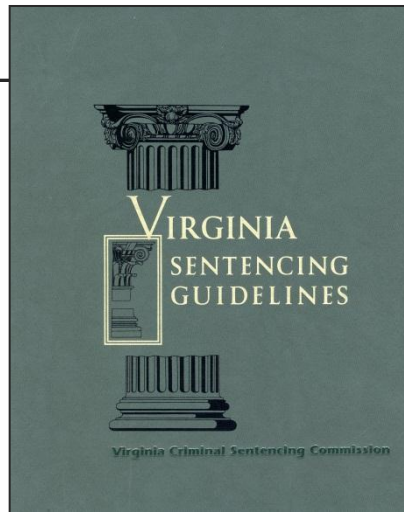
**Offenders Sentenced to Incarceration of More than 6 Months
17 Cases**



Proposed Recommendation 4

**Revise the Felony Traffic Guidelines to add
Driving on Suspended License after a DWI –
3rd Offense within 10 Years (§ 18.2-272(A))
as proposed**





Proposed Recommendation 5:

Revise the Weapon/Firearm Guidelines to increase the likelihood that offenders will receive a recommendation for more than 6 months of incarceration whenever the weapons charge is accompanied by an offense that requires a mandatory minimum sentence of at least 6 months

Proposed

Weapon/Firearm — Section A

Offender Name: _____

◆ Primary Offense

- A. Maliciously discharge firearm, etc., in/at occupied building (1 count)2
- B. Discharge firearm from vehicle (1 count)1
- C. Possess firearm on school property (1 count)1
- D. Possession of sawed-off shotgun (1 count)2
- E. False statement on consent form (1 count)1
- F. Possession of firearm, other weapon, explosives or ammunition by convicted felon
 - 1 count3
 - 2 counts4

Score

0	
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◆ Primary Offense Additional Counts Total the maximum penalties for counts of the primary not scored above

- Years: 5 - 71
- 8 - 182
- 19 - 283
- 29 - 384
- 39 or more5

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

- Years: Less than 10
- 1 - 71
- 8 - 182
- 19 - 283
- 29 - 384
- 39 or more5

0	
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◆ Victim Injury

- Threatened, emotional or physical1
- Serious physical2

0	
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◆ ~~Mandatory Firearm Conviction for Current Event~~

If YES, add 6

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

◆ Legally Restrained at Time of Offense

- None0
- Other than post-incarceration supervision2
- Post-incarceration supervision (supervision after incarceration)5

0	
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SCORE THE FOLLOWING ONLY IF PRIMARY OFFENSE AT CONVICTION IS FALSE STATEMENT ON A FIREARM CONSENT FORM (§ 18.2-308.2:2(K))

◆ Basis of False Statement on Consent Form (listed below)

If YES, add 3

- Prior felony conviction/juvenile adjudication for crime against person
- Other prior felony conviction/juvenile adjudication within 4 years of current offense
- Prior domestic assault misdemeanor conviction
- Subject to protective order at time of offense

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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Drug/Schedule I/II Section A

Offender Name: _____

◆ Primary Offense

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

Score

▼

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◆ 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		

0	
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◆ 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

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

0	
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◆ Conviction in Current Event Requiring Mandatory Minimum Term (6 mos or more) If YES, add 9 →

0	
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◆ Mandatory Firearm Conviction for Current Event _____ If YES, add 7 →

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 7	0
	7 - 26	1
	27 - 48	2
	49 or more	3

0	
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◆ Prior Incarcerations/Commitments _____ If YES, add 2 →

0	
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◆ Prior Felony Drug Convictions/Adjudications

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

0	
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◆ Prior Juvenile Record _____ If YES, add 1 →

0	
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◆ 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

0	
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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

0	
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Proposed change to the Weapon/Firearm guidelines is similar to the change to the Schedule I/II drug guidelines adopted in 2006

Proposed Recommendation 5

Revise the Weapon/Firearm Guidelines to increase the likelihood that offenders will receive a recommendation for more than 6 months of incarceration whenever the weapons charge is accompanied by an offense that requires a mandatory minimum sentence of at least 6 months

