Annual Report ~ 1999

Virginia Criminal Sentencing Commission

"Justice is justly represented blind, because she sees no difference in the parties concerned. She has but one scale and weight, for rich and poor, great and small. Her sentence is not guided by the person, but the cause . . . Impartiality is the life of justice, as that is of government."

Virginia Criminal Sentencing Commission

Washington, D.C.

Kyrgyz Republic

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Brasilia, Brazil

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1999 Annual Report

December 1, 1999

Virginia Criminal Sentencing Commission Members

Appointed by the Chief Justice of the Supreme Court and Confirmed by the General Assembly

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Chairman, Chesterfield County

Appointments by the Chief Justice of the Supreme Court
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Judge F. Bruce Bach, Fairfax County
Judge George E. Honts, III, Fincastle
Judge J. Samuel Johnston, Rustburg
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Mark C. Christie, Richmond

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Governor's Appointments
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Jo Ann Bruce, Madison
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Meredith Farrar-Owens, Associate Director

Thomas Y. Barnes, Research Associate
Tama S. Celi, Research Associate
James C. Creech, Ph.D., Research Unit Manager
Jody T. Fridley, Training/Data Processing Unit Manager
Angela S. Kepus, Training Associate
Shirley F. Shepperson, Data Processing Specialist
Carolyn A. Williamson, Data Quality Control Associate

The design and layout of the 1999 Annual Report of the Virginia Criminal Sentencing Commission was created by Judith Ann Sullivan. Digital photos by Judith Ann Sullivan.

Commonwealth of Virginia

Hon. Ernest P. Gates
Chairman

Richard P. Kern, Ph.D.
Director

100 North Ninth Street
Richmond, Virginia 23219
Tel. (804) 225-4398
Fax (804) 786-3934

Supreme Court of Virginia
Virginia Criminal Sentencing Commission

December 1, 1999

To: The Honorable Harry L. Carrico, Chief Justice of Virginia
The Honorable James S. Gilmore III, Governor of Virginia
The Honorable Members of the General Assembly of Virginia
The Citizens of Virginia

§17.1-803 of the Code of Virginia requires the Virginia Criminal Sentencing Commission to report annually upon its work and recommendations. Pursuant to this statutory obligation, we respectfully submit for your review the 1999 Annual Report of the Criminal Sentencing Commission.

This report details the work of the Commission over the past year and outlines the ambitious schedule of activities that lies ahead. The report provides a comprehensive examination of judicial compliance with the felony sentencing guidelines for fiscal year 1999. This report also provides an interim report on the research to determine if a sex offender risk assessment instrument can be developed and applied to the guidelines. The Commission's recommendations to the 1999 session of the Virginia General Assembly are also contained in this report.

January 1, 2000 marks the fifth anniversary of the Commission's implementation of Virginia's no-parole, truth-in-sentencing system. At this milestone, the Commission's report takes a close look at the performance of the new sentencing system in meeting specific objectives set forth by its designers.

The Commission wishes to sincerely thank those of you in the field whose diligent work with the guidelines enables us to produce this report.

Respectfully submitted,

Ernest P. Gates

Ernest P. Gates, Chairman

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INTRODUCTION

Overview

This is the fifth annual report of the Virginia Criminal Sentencing Commission. The report is organized into six chapters. Chapter One provides a general profile of the Commission and its various activities and projects undertaken during 1999. Chapter Two includes the results of a detailed analysis of judicial compliance with the discretionary sentencing guidelines system as well as other related sentencing trend data. Chapter Three contains the Commission's report on its work to develop a sex offender risk of recidivism assessment instrument and to implement it within the sentencing guidelines system. Chapter Four provides an update on the Commission's pilot project involving an offender risk assessment instrument for use with non-violent felons. Chapter Five presents a look at the impact of the no-parole/truth in sentencing system that has been in effect for any felony committed on or after January 1, 1995. Finally, Chapter Six presents the Commission's recommendations for 1999.

Commission Profile

The Virginia Criminal Sentencing Commission is comprised of 17 members as authorized in Code of Virginia §17.1-802. The Chairman of the Commission is appointed by the Chief Justice of the Supreme Court of Virginia, must not be an active member of the judiciary and must be confirmed by the General Assembly. The Chief Justice also appoints six judges or justices to serve on the Commission. Five members of the Commission are appointed by the General Assembly: the Speaker of the House of Delegates designates three members and the Senate Committee on Privileges and Elections selects two members. Four members, at least one of whom must be a victim of crime, are appointed by the Governor. The final member is Virginia's Attorney General, who serves by virtue of his office. In the past year, Virginia's Attorney General, Mark Earley, designated Deputy Attorney General Frank Ferguson, as his representative at Commission meetings.

The Virginia Criminal Sentencing Commission is an agency of the Supreme Court of Virginia. The Commission's offices and staff are located on the Fifth Floor of the Supreme Court Building at 100 North Ninth Street in downtown Richmond.

The origin of Lady Justice or Lady of Justice, who has become a legal icon pertaining to justice, law, fairness and order, is drawn from the ancient Greeks.

The Temple of Themis

Themis, in Greek mythology, is known as the goddess of divine justice and law. Themis was one of the 12 children of Uranus and Gaia (Heaven and Earth) known as the Titans. Often referred to as the Elder Gods, the Titans were characterized by enormous size and strength. Preceding the Gods of Olympus, the Titans reigned as the supreme rulers of the universe for many ages.

Activities of the Commission

The full membership of the Commission met four times in 1999: April 19, June 7, September 13 and November 8. The following discussion provides an overview of some of the Commission actions and initiatives during the past year.

Monitoring and Oversight

§19.2-298.01 of the Code of Virginia requires that sentencing guidelines worksheets be completed in all felony cases for which there are guidelines and specifies that judges must announce during court proceedings that review of the forms has been completed. After sentencing, the guidelines worksheets must be signed by the judge and then become a part of the official record of each case. The clerk of the circuit court is responsible for sending the completed and signed worksheets to the Commission.

The Commission staff reviews the guidelines worksheets as they are received. The Commission staff performs this check to ensure that the guidelines forms are being completed accurately and properly. When problems are detected on a submitted form, it is sent back to the sentencing judge for corrective action. Since the conversion to the new truth-in-sentencing system involves newly designed forms and new procedural requirements, previous Annual Reports documented a variety of worksheet completion problems. These problems included missing judicial departure explanations, confusion over the post-release term and supervision period, missing work sheets, and lack of judicial signatures. However, as a result of the Commission's review process and the fact that users and preparers of the guidelines are more accustomed to the new system, very few errors have been detected during the past year.

Once the guidelines worksheets are reviewed and determined to be complete, they are automated and analyzed. The principal analysis performed on the automated worksheets concerns judicial compliance with sentencing guidelines recommendations. This analysis is performed and presented to the Commission on a quarterly basis. The most recent study of judicial compliance with the sentencing guidelines is presented in Chapter Two.

Training and Education

The Commission continuously offers training and educational opportunities in an effort to promote the accurate completion of sentencing guidelines. Training seminars are designed to appeal to the needs of attorneys for the Commonwealth and probation officers, the two groups authorized by statute to complete the official guidelines for the court. The seminars also provide defense attorneys with a knowledge base to challenge the accuracy of guidelines submitted to the court. Having all sides equally trained in the completion of guidelines worksheets is essential to a system of checks and balances that ensures the accuracy of sentencing guidelines.

In 1999, the Commission provided sentencing guidelines assistance in a variety of forms: training and education seminars, assistance via hot line phone system, and publications and training materials. The Commission offered 40 training seminars in 23 different locations across the state. One seminar presented this year was designed for the experienced guidelines user who only needed to be updated on the most recent changes to the guidelines and another seminar was developed for new users who required a detailed introduction to the guidelines system.

The Commission attempted to offer seminars in sites convenient to the majority of guidelines users. The sites for these seminars included: Williamsburg Circuit Court, Petersburg Circuit Court, Rappahannock Community College, Norfolk Circuit Court, Richmond Circuit Court, Virginia Beach Fire Training Center, Department of Corrections' Training Academy and Central Regional Office, Cardinal Criminal Justice Academy, Lynchburg Circuit Court, Washington Circuit Court, Mountain Empire Community College, Danville Circuit Court, Arlington Circuit Court, Winchester Circuit Court, Harrisonburg Circuit Court and the Supreme Court of Virginia. By special request, seminars were also held in specific locations for probation officers, Commonwealth's Attorneys and public defenders. In addition, the Commission provided training on the guidelines system to newly elected judges during their pre-bench training program. During 1999, the Commission provided two seminars at Radford University as part of a collaborative effort between the University, the Department of Corrections and the local bar associations in the New River Valley.

The Commission will continue to place a priority on providing sentencing guidelines training on request to any group of criminal justice professionals. The Commission regularly conducts sentencing guidelines training at the Department of Corrections' Training Academy as part of the curriculum for new probation officers. The Commission is also willing to provide an education program on guidelines and the no-parole sentencing system to any interested group or organization.

It is said that Themis introduced the ordinances concerning the gods and instructed men in obedience to laws and peace. She was also regarded as the guardian of men's oaths, thus called the goddess of oaths. Themis delivered oracles at Delphi, only second to her mother, Gaia, to hold such a high honor.

In addition to providing training and education programs, the Commission staff maintains a "hot line" phone system (804.225.4398). The phone line is staffed from 7:45 a.m. to 5:15 p.m., Monday through Friday, to respond quickly to any questions or concerns regarding the sentencing guidelines. The hot line continues to be an important resource for guidelines users around the Commonwealth. In 1999, the staff of the Commission has responded to thousands of calls through the hot line service.

This year the sentencing guidelines manual was completely redesigned to make the manual more "user friendly." The new manual utilizes a loose-leaf notebook that can easily be updated. Tables were combined to simplify the classification of prior record, and additional tabs were added to identify pertinent tables. Changes made this year will enhance the Commission's ability to issue updates to the guidelines manual in a more efficient manner. Many other changes incorporated into the manual were based on user suggestions and comments. As a result, additional instructions were added to clarify users' concerns on a variety of topics relating to completing guideline worksheets. In addition to these, there were several substantive changes to guidelines factors and instructions based on recommendations presented in the Commission's previous annual report and approved by the General Assembly.

The Commission also distributes a brochure to citizens and criminal justice professionals explaining Virginia's truth-in-sentencing system. Additionally, the Commission distributes a yearly progress report that provides a brief overview of judicial compliance with the truth-in-sentencing guidelines and average sentences served for specific offenses.

Community Corrections Revocation Data System

Under §17.1-803(7) of the Code of Virginia, it is the responsibility of the Commission to monitor sentencing practices in felony cases throughout the Commonwealth. While the Commission maintains a wide array of sentencing information on felons at the time they are initially sentenced in circuit court, information on the re-imposition of suspended prison time for felons returned to court for violation of the conditions of community supervision has been largely unavailable and its impact difficult to assess. Among other uses, information on cases involving re-imposition of suspended prison time is critically important to accurately forecast future correctional bed space needs.

With the recent sentencing reforms that abolished parole, circuit court judges now handle a wider array of supervision violation cases. Judges now handle violations of post-release supervision terms following release from incarceration, formerly dealt with by the Parole Board in the form of parole violations. Furthermore, the significant expansion of alternative sanction options available to judges means that the judiciary are also dealing with offenders who violate the conditions of these new programs.

In the fall of 1996, the Commission endorsed the implementation of a simple one-page form to succinctly capture a few pieces of critical information on the reasons for and the outcome of community supervision violation proceedings. Early in 1997, the Commission teamed with the Department of Corrections to implement the data collection form. Procedures were established for the completion and submission of the forms to the Commission. The state's probation officers are responsible for completing the top section of the form each time they request a capias or a violation hearing with the circuit court judge responsible for an offender's supervision. The top half of the form contains the offender's identifying information and the reasons the probation officer feels there has been a violation of the conditions of supervision. In a few jurisdictions, the Commonwealth's Attorney's office has requested that prosecutors actively involved in the initiation of violation hearings also be allowed to complete the top section of the form for the court. The Commission has approved this variation on the normal form completion process.

The sentencing revocation form is then submitted to the judge. The judge completes the lower section of the form with his findings in the case and, if the offender is found to be in violation, the specific sanction imposed. The sentencing revocation form also provides a space for the judge to submit any additional comments regarding his or her decision in the case. The clerk of the circuit court

Themis was the constant companion of Zeus, the god of the sky, and she lived in Olympus close to him. Zeus has been described as "the real all-seeing as he whispers words of wisdom to Themis when she sits leaning towards him. But some say that Zeus, thanks to Themis, rules in the sky."

is responsible for submitting the completed and signed original form to the Commission. The form has been designed to take advantage of advanced scanning technology, which enables the Commission to quickly and efficiently automate the information.

The Commission now includes training on the sentencing revocation form as part of the standard training provided to new probation officers at the Department of Corrections' Academy for Staff Development.

The sentencing revocation data collection form was instituted for all violation hearings held on or after July 1, 1997. The Commission believes that the reimposition of suspended time is a vital facet in the punishment of offenders, and that data in this area has, in the past, been scant at best. The community corrections revocation data system, developed under the auspices of the Commission, will serve as an important link in our knowledge of the sanctioning of offenders from initial sentencing through release from community supervision.

Civil Commitment of Violent Sexual Predators

During the 1999 session, the General Assembly passed legislation that would allow for the civil commitment of violent sexual predators that would follow the offender's term of incarceration for persons released on or after January 1, 2001. The new law applies to persons convicted of rape, forcible sodomy, inanimate object penetration, or aggravated sexual battery, who are found to be either (a) unrestorably incompetent to stand trial or (b) suffering from a mental abnormality or personality disorder.

Part of the reason for a delayed date of implementation was to provide additional time to study implementation problems, as well as the impact and costs associated with a civil commitment law. To facilitate the study of civil commitment of violent sexual predators, the General Assembly passed Senate Joint Resolution No. 332 (SJR 332) requesting that the Virginia State Crime Commission continue its study of the previous year. The Executive Director of the Sentencing Commission served on the study resolution's workgroup, and a Commission staff member provided additional support to the SJR 332 study.

Substance Abuse Screening and Assessment for Offenders

During its 1998 session, the General Assembly passed sweeping legislation that requires many offenders, both adult and juvenile, to undergo screening and assessment for substance abuse problems related to drugs or alcohol. The new law targets all adult felons convicted in circuit court and adults convicted in general district court of any drug crime classified as a Class 1 misdemeanor. The law also targets all juvenile offenders adjudicated for a felony or any Class 1 or 2 misdemeanor. A goal of this legislation is to provide judges with as much information as possible about the substance abuse problems of offenders they sentence, so that sanctions can be tailored to address both public safety issues and the treatment needs of the offender. To defray the cost of screening and assessment, the new law increased court fees charged to drug offenders. Effective July 1, 1998, fees assessed for drug crimes increased from $100 to $150 for felony convictions and from $50 to $75 for misdemeanor convictions. The fees are paid into the new Drug Offender Assessment Fund. The 1999 General Assembly authorized a six-month period (July through December 1999) to pilot test the implementation of the screening and assessment provisions, with statewide implementation scheduled for January 1, 2000.

The Interagency Drug Offender Screening and Assessment Committee was created to oversee the implementation and subsequent administration of this program. The Interagency Committee is composed of representatives of the Department of Corrections, the Department of Criminal Justice Services, the Department of Juvenile Justice, the Sentencing Commission, the Virginia Alcohol Safety Action Program, and the Department of Mental Health, Mental Retardation and Substance Abuse Services. A Sentencing Commission staff member also serves on the committee. In 1998, an interagency work group, the forerunner to the Interagency Committee, selected screening and assessment instruments, developed recommendations for implementing the screening and assessment provisions, assessed the current and the optimum substance abuse treatment continuums, and began to frame a blueprint for short- and long-term evaluations of the legislation's provisions. The work group presented its recommendations to the 1999 General Assembly. Among the recommendations, the work group felt that pilot testing procedures prior to statewide implementation would provide valuable experience and this proposal was adopted by the legislature.

As an earth goddess, she ordained the marriage of earth and sky by mating with Zeus and giving birth to not only the Seasons but the three Fates or Moeraes (the three sisters who decide on human fate).

There are many depictions of Themis which have given way to the various representations of Lady Justice. She will most often carry both the scales of justice in one hand and a sword in the other. Themis's daughter Dice, or Dike (one of the Seasons), is also referred to as a goddess of justice, however, not divine justice. She carries a sword without a scale of justice.

Screening and assessment is an important link in the identification, diagnosis and treatment of substance abusing offenders. Screening is a preliminary evaluation that attempts to measure whether key or critical features of a target problem are present in an individual. A screening instrument does not enable a clinical diagnosis to be made, but merely indicates whether there is a probability that the condition looked for is present. A screening instrument is used to identify individuals likely to benefit from a comprehensive assessment. On the other hand, assessment is a thorough evaluation whose purpose is to establish definitively the presence or absence of a diagnosable disorder or disease. Results of comprehensive assessment are used for developing treatment plans and assessing needs for services. Different screening and assessment instruments were selected for the adult and juvenile populations. For adult felons, screening and assessment is to be conducted by the probation and parole office, while local offices of the Virginia Alcohol Safety Action Program will perform the screening and assessment for adult misdemeanants (pursuant to an agreement with the local community corrections program). Juvenile offenders are to be screened and assessed by the court service unit serving the Juvenile and Domestic Relations Court. A goal of the legislation is to provide a certified substance abuse counselor in each probation district of the Department of Corrections and each court service unit receiving funding from the Department of Juvenile Justice.

Between July 1 and December 31, 1999, procedures for screening and assessing offenders are being pilot tested in several courts. Over the pilot period, nine circuit courts, eight general district courts and eight juvenile and domestic relations courts are participating in the pilot project. In Alexandria, the circuit court, general district court and the juvenile and domestic relations courts are all part of the pilot program. In four other localities, two courts are participating in pilot testing. The pilot sites represent large and small jurisdictions, urban and rural areas and different geographic regions of the state. In the circuit courts, three different procedural formats are being tested in order to assist the Interagency Committee in identifying the set of procedures likely to be the most efficient when implementation moves statewide.

Throughout the spring and summer, the Interagency Committee has worked diligently to educate judges, prosecutors, public defenders and defense attorneys about the screening and assessment legislation. Members of the Interagency Committee participated in the Judicial Conference held in Virginia Beach in October and made presentations at regional meetings of circuit court judges held annually in each

of the six judicial regions in the state. The Department of Juvenile Justice has worked to inform judges of the Juvenile and Domestic Relations Court of the legislative mandates. At the request of the Secretary of Public Safety, a component of the Sentencing Commission's training seminars conducted during the summer and fall of 1999 included instruction on the drug screening and assessment statute. In addition, the Interagency Committee distributed educational material at the annual meetings of the Virginia State Bar, the Public Defenders Commission, and the Commonwealth's Attorneys Association. The Interagency Committee will continue to educate Virginia's criminal justice professionals about the screening and assessment provisions and, during the upcoming year, will oversee the expansion of substance abuse screening and assessment for offenders from the pilot sites to localities throughout the Commonwealth.

Projecting Prison Bed Space Impact of Proposed Legislation

§30-19.1:5 of the Code of Virginia requires the Commission to prepare impact statements for any proposed legislation which might result in a net increase in periods of imprisonment in state correctional facilities. Such statements must include details as to any increase or decrease in adult offender populations and any necessary adjustments in guideline midpoint recommendations.

During the 1999 legislative session, the Commission prepared over 125 separate impact analyses on proposed bills. These proposed bills fell into four categories: 1) bills to increase the felony penalty class of a specific crime; 2) proposals to add a new mandatory minimum penalty for a specific crime; 3) legislation that would create a new criminal offense; and 4) bills that increase the penalty class of a specific crime from a misdemeanor to a felony.

The Commission utilized its computer simulation forecasting program to estimate the projected impact of these proposals on the prison system. In most instances, the projected impact and accompanying analysis of the various bills was presented to the General Assembly within 48 hours of our notification of the bill's introduction. When requested, the Commission provided pertinent oral testimony to accompany the impact analysis.

In antiquity, the goddess Themis was not blindfolded. In Western tradition, Lady Justice sometimes appears blindfolded, but more often she is without. However, the blindfold is common in Europe. In Roman myth, Lady Justice is derived from Justitia, a Roman goddess of Justice, who settles a dispute among the gods wearing a blindfold. Justitia also has been depicted with sword and scales, but, not always. Most all Lady Justice representations show her draped in flowing robes. She has become the symbol of fair and equal administration of the law, without corruption, avarice, prejudice or favor.

Various depictions of Lady Justice in sculpture, carving, drawing, and glass are presented throughout the remainder of this report.

Local Inmate Data System

In December 1996, the Compensation Board began to collect information regarding persons detained in local jails through the Local Inmate Data System (LIDS). During the 1999 legislative session, the General Assembly required that information about an offender's crime be reported on LIDS using Virginia Crime Codes (VCC). Commission staff members worked with the Compensation Board to make the transition from an offense-coding scheme that did not reflect the Code of Virginia well, to VCC, which is explicitly developed from the Code. A Commission staff member has also been included on the LIDS Advisory Committee.

Prison and Jail Population Forecasting

Since 1987, Virginia has projected the size of its future prison and jail populations through a process known as "consensus forecasting." This approach combines technical forecasting expertise with the valuable judgment and experience of professionals working in all areas of the criminal justice system.

While the Commission is not responsible for generating the prison or jail population forecast, it is included in the consensus forecasting process. During the past year, a Commission staff member served on the Technical Advisory Committee that provided methodological and statistical review of the forecasting work. Also, the Commission Executive Director served on the Policy Advisory Committee.

Juvenile Sentencing Study

House Joint Resolution 131 requests the Commission to study sentencing of juveniles. This study is to examine juvenile sentencing by the circuit courts when sentencing juveniles as adults and by the juvenile courts when sentencing serious juvenile offenders and delinquents.

While Virginia is second to none in terms of the ability to study the adult felon population, the same cannot be said for offenders processed through the juvenile justice system. Given the lack of a reliable and comprehensive data system in the juvenile justice system, as well as very recent changes to statutes governing juvenile criminal cases, the Commission's position is that the first step to collecting quality, reliable data would be in constructing an information system to support studies and inquiries.

Presently, the Department of Juvenile Justice (DJJ) is in the process of constructing a parallel data collection system as is maintained by the Department of Corrections (DOC) on adult felons. In this system, called the Juvenile Tracking System (JTS), several modules (individual databases) are combined to keep various records on all juveniles entering the system, from initial intake to final release or termination of jurisdiction over the juvenile by DJJ. The objective is to collect and store comprehensive information on all juveniles within the justice system, according to the juvenile's level and extent of involvement with the juvenile justice system. However, this system was only recently implemented, is still being constructed in some cases, and automation around the Commonwealth has been a gradual process, with some areas still not fully automated and linked with all modules of the JTS.

Previously, a Commission Advisory Committee on this project met and discussed the advantages and disadvantages of developing and implementing the type of data system requested by the Commission. Among the issues discussed were defining how broad the data collection should be (e.g., all juveniles, all felonies and/or misdemeanors, etc.), deciding how information will be collected, defining the specific information to be collected, and how to fund an effort of this magnitude.

In 1998, a survey instrument was designed and distributed to juvenile and domestic relations court judges, Commonwealth's attorneys, public defenders, and court service unit (CSU) regional administrators and directors. The purpose of the survey was to determine judicial perception of the current sentencing system for juveniles. The survey results showed that collectively, respondents were most concerned with sentencing and rehabilitative service options available under statute and through DJJ. The results from this survey may serve as a springboard for the Commission to examine particular areas of interest in the juvenile justice system, as seen through the eyes of its practitioners, once a database system is in place.

During the intervening period (1999), the project experienced personnel changes, and the Commission moved to convene the Advisory Committee only as required in the future.

Additionally, the legislature passed HJR 688 that mandated DJJ, in cooperation with the Commission and the Supreme Court, to produce a standardized and automated juvenile social history. This history would ostensibly share some similarity with the Pre-sentence Investigation report as used for adult felons in that the structure and format of the data would be consistent, regardless of which court service unit produced the document. Presently, CSUs produce narrative

social histories in which data could be presented in any order, and which varies greatly in content and quality from jurisdiction to jurisdiction. The project has focused on assisting the Uniform Social History workgroup, comprised of representatives from DJJ, the Supreme Court, and juvenile probation officers to construct a multi-user document which will serve the interests of the juvenile, judges, CSU staff, DJJ and the Commission. The objective is to parallel the adult Pre-/Post-Sentence Investigation (PSI) and collect data in a quantitative form where possible, while retaining descriptive and useful narrative segments to properly represent the juvenile's current situation.

The project also focuses on the efforts to draw available and existing data from the three JTS modules: the intake module, the direct care module, and the court-hearing module. The demographic, adjudication and disposition data contained within these three modules is at present somewhat limited, as these modules came on-line in 1996 and later and contain records from that time period forward, as each CSU was automated. However, these data would be sufficient to establish a database system required by the Commission for juvenile justice studies. With the anticipated automation of the uniform juvenile social history and the combined information in the JTS modules, it is expected that the Commission will secure the necessary data with which to carry out future studies.

The project is now engaged in working with DJJ and the CSU's to collect information about the number of juvenile felonies for which social histories are prepared (to estimate the availability of these data combined with JTS module holdings) for planning purposes. Project staff will be trained in appropriate software in order to establish database fields and set up an information framework for the Commission. Project staff are working closely with DJJ Information Systems personnel to develop a data collection and transmission mode.

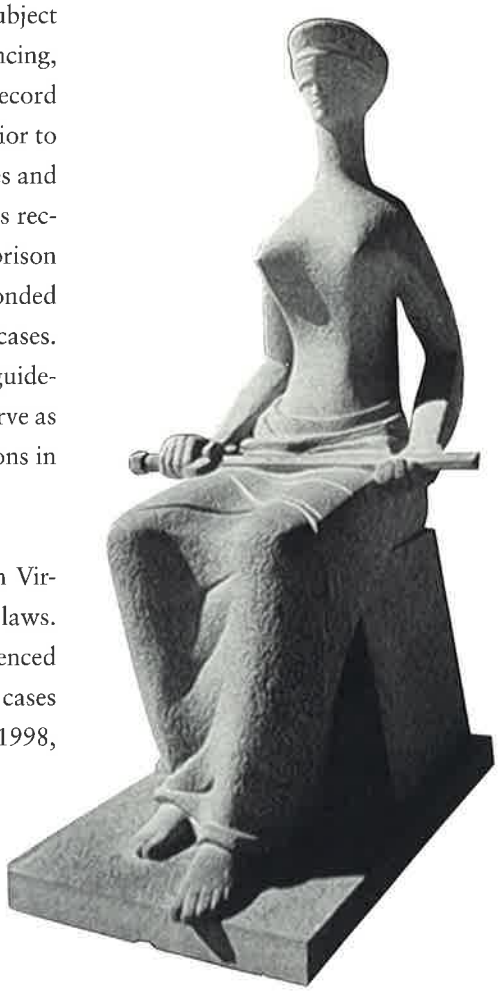
GUIDELINES COMPLIANCE

Introduction

Virginia's truth-in-sentencing system is approaching its five-year anniversary. In 1995, the practice of discretionary parole release from prison was abolished for felons who committed their crimes on or after January 1st of that year, and the existing system of awarding inmates sentence credits for good behavior was eliminated. Virginia's truth-in-sentencing laws dictate that convicted felons must serve at least 85% of the pronounced sentence. The Commission was established to develop and administer guidelines to provide Virginia's judiciary with sentencing recommendations in felony cases subject to the Commonwealth's truth-in-sentencing laws. Under truth-in-sentencing, the guidelines recommendations for nonviolent offenders with no prior record of violence are tied to the amount of time they served during a period prior to the abolition of parole. In contrast, offenders convicted of violent crimes and those with prior convictions for violent felonies are subject to guidelines recommendations up to six times longer than the historical time served in prison by those offenders. Since the inception of guidelines, judges have responded to them by complying with recommendations in three out of every four cases. In fact, the most recent data indicate that judges are complying with the guidelines at rates higher than ever before. Thus, the guidelines continue to serve as a valuable tool for Virginia's judges as they formulate sentencing decisions in circuit courts around the Commonwealth.

In the nearly five years since the introduction of truth-in-sentencing in Virginia, over 75,000 cases have been processed under truth-in-sentencing laws. The Commission's last annual report presented an analysis of cases sentenced during fiscal year (FY) 1998. The analysis in this report will focus on cases sentenced during the most recent year of available data, FY1999 (July 1, 1998, through June 30, 1999).

At the Federal Supreme Court of Brazil, a contemporary statue of Justice sits on the Plaza of Three Powers (Praza de Tres Poderes) in Brasilia. This modernistic city was conceived by Lucio Costa, a student of Le Corbusier. The sculptor is Alfredo Ceschiatti.



Case Characteristics

Throughout the truth-in-sentencing era in Virginia, five urban circuits have contributed more sentencing guidelines cases to the Commission each year than any of the other judicial circuits in the Commonwealth. These circuits follow Virginia's "Golden Crescent" of the most populous areas of the state. Virginia Beach (Circuit 2), Norfolk (Circuit 4), Newport News (Circuit 7), the City of Richmond, (Circuit 13) and Fairfax (Circuit 19) submitted at least 1,000 sentencing guidelines cases each during FY1999, and together they represent one-third of all cases sentenced during the year (Figure 1). Another 14 circuits sentenced between 500 and 1,000 felony offenders, totaling 46% of the FY1999 cases. Most of the circuits, including four of the five largest circuits, reported fewer cases in FY1999 than in FY1998. Of the largest circuits, only the City of Richmond showed an increase in the number of guidelines cases. Overall, the number of cases received by the Commission has declined from 20,482 in FY1998 to 19,658 in FY1999.

There are three general methods by which Virginia's criminal cases are resolved. Felony cases in the Commonwealth's circuit courts overwhelmingly are resolved as the result of guilty pleas from defendants or plea agreements between defendants and the Commonwealth. In fact, in FY1999, more than eight out of ten guidelines cases (85%) were concluded in this manner (Figure 2). More than 13% of the felony cases were adjudi-

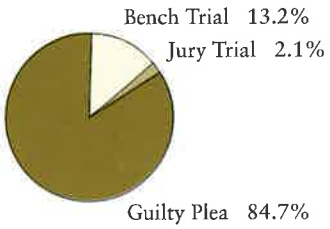
FIGURE 1

Number and Percentage of Cases Received by Circuit – FY1999

Circuit	Number	Percent
1	691	3.5%
2	1324	6.7
3	725	3.7
4	1665	8.5
5	481	2.5
6	310	1.6
7	1031	5.3
8	527	2.7
9	497	2.5
10	409	2.1
11	399	2
12	535	2.7
13	1342	6.8
14	867	4.4
15	807	4.1
16	501	2.6
17	634	3.2
18	426	2.2
19	1089	5.5
20	341	1.7
21	303	1.5
22	554	2.8
23	753	3.8
24	782	4
25	516	2.6
26	539	2.8
27	547	2.8
28	205	1
29	297	1.5
30	130	0.7
31	432	2.2
Total	19658	100

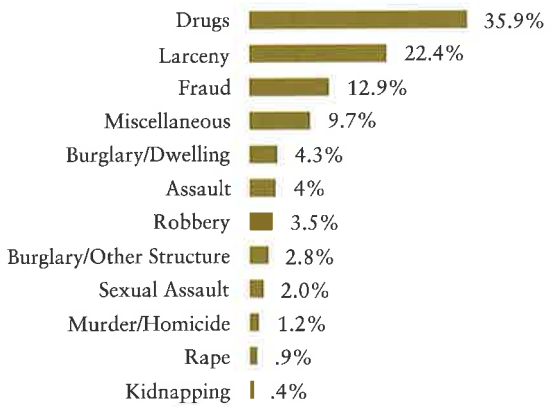
cated by a judge in a bench trial, while only 2% were determined by juries composed of Virginia citizens. For the last two fiscal years, the overall rate of jury trials has been approximately half of the jury trial rate that existed under the last year of the parole system. See *Juries and the Sentencing Guidelines* in this chapter for more information on jury trials.

FIGURE 2
Percentage of Cases Received by Method of Adjudication – FY1999



The system of sentencing guidelines in effect during FY1999 was comprised of guidelines for 12 distinct offense groups. The offense groupings are based on the primary, or most serious, offense at conviction. As in previous years, the Commission received more cases for drug crimes in FY1999 than any of the other 11 guidelines offense groups. Drug offenses represented, by far, the largest share (36%) of the cases sentenced in Virginia's circuit courts during the fiscal year (Figure 3). More than half of the drug offenses were for one crime alone – possession of a Schedule I/II drug (e.g., cocaine). Overall, one out of every five cases received by the Commission in FY1999 was a conviction for this offense. This pattern, however, has persisted since the truth-in-sentencing guidelines were introduced in 1995. Property offenses also represent a significant share of the cases submitted to the Commission in FY1999. Over 22% of the FY1999 guidelines cases were for larceny crimes, while the fraud group accounted for another 13% of these sentencing events. Nearly 10% of the FY1999 cases are captured in the miscellaneous offense group, which is comprised mostly of habitual traffic offenders and felons convicted of illegally possessing firearms.

FIGURE 3
Number of Cases Received by Primary Offense Group – FY1999



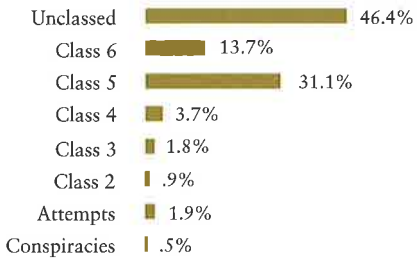
The female figure shown above is titled "Contemplation of Justice." It is one of two massive statues located outside the United States Supreme Court in Washington, D.C. She sits with her left hand resting on a book of laws and in her right hand is a small model of a figure of Justice.

The violent crimes of assault, robbery, homicide, kidnapping, rape and other sex crimes represent a much smaller share of the FY1999 cases. Assaults and robberies were the most common of the person offenses (around 4% each). The murder and rape offense groups each accounted for approximately 1% of the cases, while kidnappings made up only one-half of one percent of the cases sentenced during the year. The distribution of offenses among guidelines cases has changed very little since FY1998.

The sentencing guidelines cover a wide range of felonies across many statutory penalty ranges. Penalties for felony crimes are specified by the Code of Virginia. A felony may be assigned to one of the existing six classes of felony penalty ranges, or the Code may specify a penalty which does not fall into one of the established penalty classes. Class 1 felonies, the most serious, are capital murder crimes and are not covered by the sentencing guidelines. Felonies with penalty structures different from the Class 1 through Class 6 penalty ranges are called unclassed felonies, and their penalties vary widely, with maximum penalties ranging from three years to life. In FY1999, nearly one-half of guidelines cases (46%) involved unclassed felonies, mainly due to the overwhelming number of unclassed drug offenses, particularly relating to the sale of a Schedule I/II drug and grand larceny offenses (Figure 4). Because possession of a Schedule I/II drug was the single most frequently occurring offense, Class 5 was the most common of the classed felonies (31%). The Commission received cases for the more serious classed felonies (Classes 2, 3, and 4) much less frequently. Convictions for attempted and conspired crimes, typically attempted possession of a Schedule I/II drug or attempted grand larceny, were rare and together accounted for less than 3% of the cases.

FIGURE 4

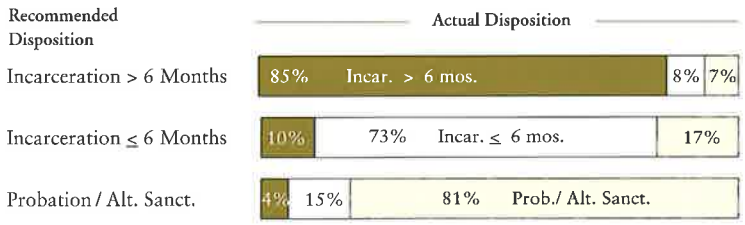
Percentage of Cases Received by Felony Class of Primary Offense - FY1999



Since the guidelines were introduced in 1995, the correspondence between dispositions recommended by the guidelines and the actual dispositions imposed in Virginia's circuit courts has been quite high. For instance, in FY1999, of all felony offenders recommended for more than six months of incarceration, judges sentenced 85% to terms in excess of six months (Figure 5). Some offenders recommended for incarceration of more than six months received a shorter term of incarceration (one day to six months), but hardly any of these offenders went without an incarceration sanction.

FIGURE 5

Recommended Dispositions and Actual Dispositions - FY1999



Judges have also typically agreed with guidelines recommendations for shorter terms of incarceration. In FY1999, 73% of offenders received a sentence resulting in confinement of six months or less when such a penalty was recommended. In a small portion of cases, judges felt probation to be a more appropriate sanction than the recommended jail term, but very few offenders recommended for short-term incarceration received a sentence of more than six months. Finally, more than 81% of offenders whose guidelines recommendation called for no incarceration were given probation and no post-dispositional confinement. Although some offenders with a "no incarceration" recommendation ended up with a short jail term, only rarely did offenders recommended for no incarceration receive jail or prison terms of more than six months. Overall, the vast majority of offenders has received the type of sanction recommended by the guidelines.

Since July 1, 1997, sentences to the state's Boot Camp Incarceration, Detention Center Incarceration and Diversion Center Incarceration programs have been defined as incarceration sanctions for the purposes of the sentencing guidelines. While these programs continue to be defined as "probation" programs in their enactment clauses in the Code of Virginia, the Commission recognizes that the programs are more restrictive than probation supervision in the community. The Commission, therefore, defines them as incarceration terms under the sentencing guidelines. The Boot Camp program is considered to be four months of confinement (since January 1, 1999), while the Detention and Diversion Center programs are counted as six months of confinement. In the previous discussion of recommended and actual dispositions, imposition of any one of these programs is categorized as incarceration of six months or less.

Sculptor James Earle Fraser works on his "Contemplation of Justice," also shown on a prior page. She has, according to Fraser, "an attitude . . . of meditation." This marble statue was carved in Maryland and placed on the steps of the United States Supreme Court in November 1935.

Compliance Defined

Judicial compliance with the truth-in-sentencing guidelines is voluntary. A judge may depart from the guidelines recommendation and sentence an offender either to a punishment more severe or less stringent than called for by the guidelines. However, as stipulated in §19.2-298.01 of the Code of Virginia, a judge who has elected to sentence outside the guidelines recommendation must submit to the Commission the reason for departure.

The Commission measures compliance with the sentencing guidelines using two distinct classes of compliance: strict and general. Together, they comprise the overall compliance rate. For a case to be in strict compliance, the offender must be sentenced to the same type of sanction (probation, incarceration up to six months, incarceration more than six months) as the guidelines recommend and to a term of incarceration which falls exactly within the sentence range recommended by the guidelines. Three types of compliance together make up general compliance: compliance by rounding, time served compliance, and compliance by special exception in habitual traffic offender cases. General compliance results from the Commission's attempt to understand judicial thinking in the sentencing process, and is also meant to accommodate special sentencing circumstances.

Compliance by rounding provides for a very modest rounding allowance in instances when the active sentence handed down by a judge or jury is very close to the range recommended by the guidelines. For example, a judge would be considered in compliance with the guidelines if he sentenced an offender to a two-year sentence based on a guidelines recommendation that goes up to 1 year 11 months. In general, the Commission allows for rounding of a sentence that is within 5% of the guidelines recommendation.

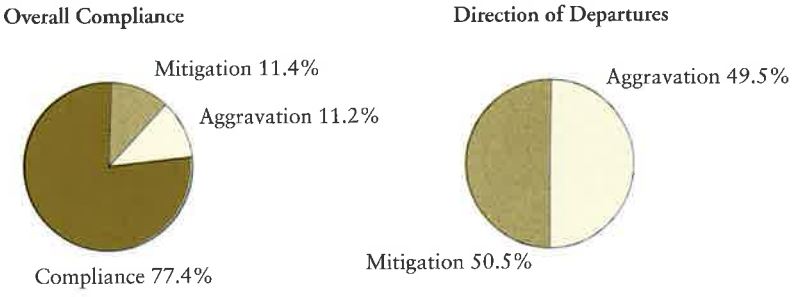
Time served compliance is intended to accommodate judicial discretion and the complexity of the criminal justice system at the local level. A judge may sentence an offender to the amount of pre-sentence incarceration time served in a local jail when the guidelines call for a short jail term. Even though the judge does not sentence an offender to post-sentence incarceration time, the Commission typically considers this type of case to be in compliance. Conversely, a judge who sentences an offender to time served when the guidelines call for probation is also regarded as being in compliance with the guidelines because the offender was not ordered to serve any incarceration time after sentencing.

Compliance by special exception arises in habitual traffic cases as the result of amendments to §46.2-357(B2 and B3) of the Code of Virginia, effective July 1, 1997. The amendment allows judges, at their discretion, to suspend the mandatory, minimum 12 month incarceration term required in habitual traffic felonies and sentence these offenders to a Boot Camp Incarceration, Detention Center Incarceration or Diversion Center Incarceration program. For cases sentenced since the effective date of the legislation, the Commission considers either mode of sanctioning of these offenders to be in compliance with the sentencing guidelines.

Overall Compliance with the Sentencing Guidelines

The overall compliance rate summarizes the extent to which Virginia's judges concur with the recommendations of the sentencing guidelines, both in type of disposition and in length of incarceration. Since the inception of the truth-in-sentencing guidelines in 1995, the overall compliance rate has hovered around 75%. Last year, the Commission reported a compliance rate of 74.7% for FY1998. Although the overall compliance rate fluctuated very little during prior years, the Commission observed a significant change in compliance during FY1999. For guidelines cases sentenced during FY1999, the overall compliance rate was 77.4%, an increase of nearly three percentage points from the previous year (Figure 6). This rise in overall compliance is reflected in the many measures by which the Commission examines compliance, and this emerging pattern will be highlighted throughout the chapter.

FIGURE 6
Overall Guidelines Compliance and Direction of Departures – FY1999



In addition to compliance, the Commission also studies departures from the guidelines. The rate at which judges sentence offenders more severely than the sentencing guidelines recommend, known as the "aggravation" rate, was 11% for FY1999. The "mitigation" rate, or the rate at which judges sentence offenders to sanctions considered less severe than the sentencing guidelines recommendation, was also 11% for the fiscal year. Isolating cases that resulted in departures from the guidelines does not reveal a strong bias toward sentencing above or below guidelines recommendations. Of the FY1999 departures, 49.5% were cases of aggravation while 50.5% were cases of mitigation. Although the overall compliance rate has increased significantly, the pattern of departures from the guidelines has remained stable from FY1998 to FY1999.

Compliance by Sentencing Guidelines Offense Group

Overall compliance with the sentencing guidelines among FY1999 cases is high and departures from the guidelines do not favor aggravation or mitigation. As in previous years, compliance was not uniform across the 12 offense groups that comprised the guidelines system in FY1999, nor was the departure pattern consistent across offense categories (Figure 7). Despite the variation in compliance and departures across offense groups, one pattern does emerge. Between FY1998 and FY1999, compliance has increased for every offense group but one.

For FY1999, compliance rates ranged from a high of 82% in the larceny offense group to a low of 65% among kidnapping offenses. In general, property and drug offenses exhibit rates of compliance higher than the violent offense categories. Since 1995, larceny and fraud offenses have consistently demonstrated the highest compliance rates of all guidelines offense groups. In FY1999, larceny, fraud, drugs, burglary (other than dwelling), and the miscellaneous offense group all had compliance rates above 70%. The violent offense groups (assault, rape, sexual assault, robbery, homicide and kidnapping) all had compliance rates below 70%. Burglary of a dwelling reflected a compliance rate comparable to the person crimes.

For 11 of the 12 offense categories, compliance was higher in FY1999 than in FY1998. Only kidnapping registered a lower compliance rate this year than last. The drug, rape, robbery and sexual assault offense groups recorded the largest increases in compliance (Figure 8). Compliance among drug offenses rose three and a half percentage points between the two fiscal years. Because the Commission receives more drug cases than any other type of offense, the increase in compliance for drug crimes is driving up the overall compliance rate to a greater extent than the increases recorded for other offense groups. In rape

FIGURE 7

Guidelines Compliance by Offense – FY1999

	Compliance	Mitigation	Aggravation	Number of Cases
Assault	69.2%	14.9%	15.9%	791
Burglary/Dwelling	67.6	19.0	13.4	852
Burg./Other Structure	75.3	12.8	11.9	546
Drugs	77.4	10.5	12.1	7,047
Fraud	81.5	14.3	4.2	2,529
Kidnapping	64.9	18.2	16.9	77
Larceny	81.6	8.4	10.0	4,405
Miscellaneous	79.9	7.3	12.8	1,907
Murder/Homicide	65.5	13.2	21.3	235
Rape	68.7	23.2	8.1	185
Robbery	66.6	18.1	15.3	686
Sexual Assault	66.6	16.3	17.1	398

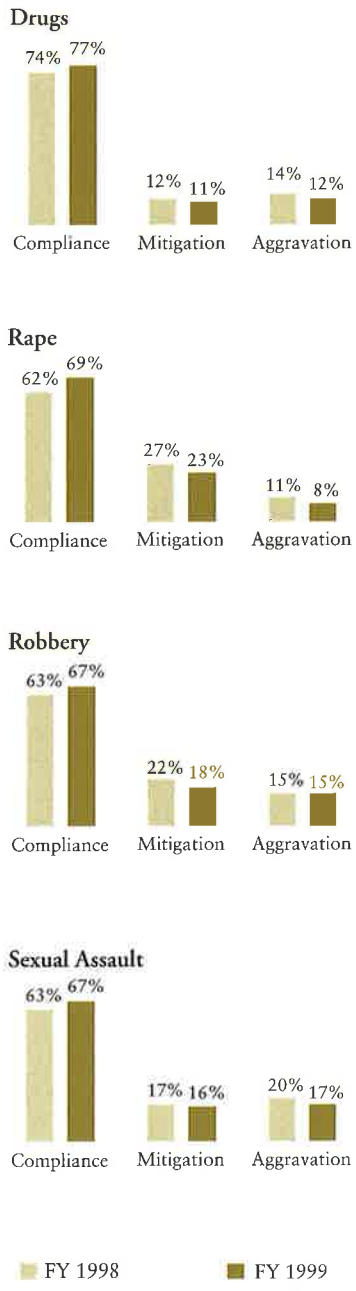
cases, compliance jumped more than six percentage points from FY1998 to FY1999. The improvement in compliance was derived largely from a decrease in the rate of mitigation for this offense. The sexual assault group also displayed a significant increase in compliance this last fiscal year, rising four percentage points. Unlike the rape offense group, the improvement in compliance among sexual assault cases corresponds to a decline in the aggravation rate. Finally, a drop in the mitigation rate for robbery crimes fed a four-percentage point increase in the compliance rate for the offense group.

Since 1995, departure patterns have differed significantly across the offense groups, and FY1999 was no exception. Among the property crimes, fraud offenses and burglaries of dwellings exhibited a marked mitigation pattern among the departures, while departures in larceny cases favor aggravation and departures among burglaries of non-dwellings are relatively balanced. In fact, departures from the burglary of dwelling guidelines resulted in a mitigation rate much higher than the other property offenses and similar to the rates of mitigation among several of the person crime categories. As in earlier years, sentences in rape cases demonstrated a strong mitigation pattern in FY1999. In fact, in approximately one-fourth of the rape cases, judges sentenced below the guidelines recommendation. For robbery offense, judges gave mitigation sentences somewhat more often than aggravation sentences. In contrast, the homicide and sexual assault groups displayed stronger aggravation rates than any other crime category. To a certain degree, the aggravation patterns for homicide and sexual assault offenses may reflect judicial sentencing for "true" offense behavior in cases in which, due to plea agreement, the offense at conviction is less serious than the actual offense or the offense for which the offender was originally indicted.

Under the guidelines, offenses in the violent offense groups, along with burglaries of dwellings and burglaries with weapons, receive statutorily mandated midpoint enhancements which increase the sentencing guidelines recommendation (§17.1-805 of Code of Virginia). Further midpoint enhancements are applied in cases in which the offender has a violent prior record, resulting in a sentence recommendation in some cases that is up to six times longer than historical time served by violent offenders convicted of similar crimes under the old parole laws. Midpoint enhancements most likely impact compliance rates in very complex ways, and the effect is unlikely to be uniform across guidelines offense groups.

FIGURE 8

Guidelines Compliance for Selected Offenses – FY1998 and FY1999



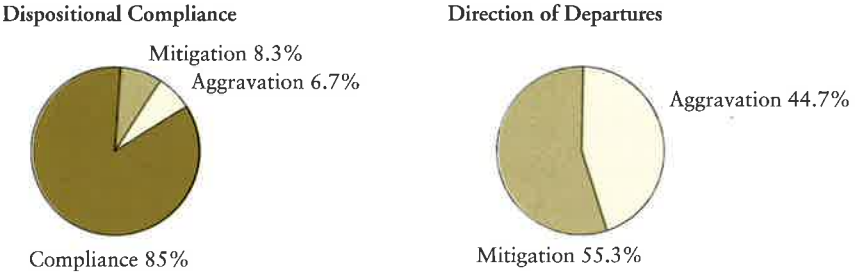
Dispositional Compliance

Since the introduction of the truth-in-sentencing guidelines in 1995, the Commission has studied compliance with Virginia's sentencing guidelines in a variety of ways. Through this type of detailed analysis, the Commission is able to gain perspective on which elements of the guidelines are functioning well and which are less accepted among members of the judiciary. One important component of overall compliance is dispositional compliance. Dispositional compliance is defined as the rate at which judges sentence offenders to the same type of disposition that is recommended by the guidelines. The Commission examines dispositional compliance closely, because the recommendation for type of disposition is the foundation of the sentencing guidelines system.

In FY1999, the dispositional compliance rate was 85% (Figure 9). Such a high rate of dispositional compliance indicates that, for more than eight out of every ten cases, judges agreed with the type of sanction recommended by the guidelines (probation/no incarceration, incarceration up to six months, or incarceration in excess of six months). The vast majority of offenders are sentenced to the type of disposition recommended by the guidelines. While the rate of dispositional compliance remained largely stable through FY1998, dispositional compliance in FY1999 was a full two percentage points higher than in the previous year.

FIGURE 9

Dispositional Compliance and Direction of Departures – FY1999



Of the relatively few cases not in dispositional compliance in FY1999, mitigations outnumbered aggravations 55% to 45%. Although dispositional compliance increased in FY1999, the pattern of departures remained little changed.

Since 1995, dispositional compliance has been high across all guidelines offense groups. Among FY1999 cases, dispositional compliance rates ranged from a high of 97% in rape cases to a low of 76% for sexual assault (Figure 10). Dispositional compliance rates for all offense groups were 80% or better, with the exception of the sexual assault category, which historically has recorded low dispositional compliance. Except for fraud, dispositional departures within guidelines offense groups are relatively balanced between mitigation and aggravation. When sentencing outside of the guidelines in fraud cases, judges overwhelmingly choose to impose a sanction less severe than the guidelines recommend.

FIGURE 10

Dispositional Compliance by Offense – FY1999

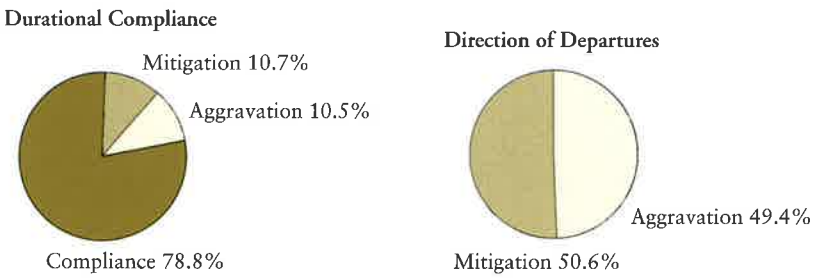
	Compliance	Mitigation	Aggravation	Number of Cases
Assault	83.8%	9.7%	6.5%	791
Burglary/Dwelling	81.4	9.0	9.6	852
Burg./Other Structure	85.0	7.1	7.9	546
Drug	83.8	8.3	7.9	7,047
Fraud	84.3	12.9	2.8	2,529
Kidnapping	84.4	9.1	6.5	77
Larceny	84.5	7.1	8.4	4,405
Miscellaneous	90.1	6.5	3.4	1,907
Murder/Homicide	91.1	4.7	4.2	235
Rape	97.3	2.7	0.0	185
Robbery	94.5	2.6	2.9	686
Sexual Assault	76.4	11.0	12.6	398

Durational Compliance

In addition to examining the degree to which judges concur with the type of disposition recommended by the guidelines, the Commission also studies the degree to which judges concur with the sentence length recommendation when the guidelines call for an offender to serve an active term of incarceration. This is known as durational compliance, and the Commission defines it as the rate at which judges sentence offenders to terms of incarceration that fall within the recommended guidelines range. For the analysis presented here, durational compliance considers only those cases for which the guidelines recommended an active term of incarceration and the offender received an incarceration sanction consisting of at least one day in jail.

FIGURE 11

Durational Compliance and Direction of Departures – FY1999*



* Cases recommended for and receiving more than six months incarceration.

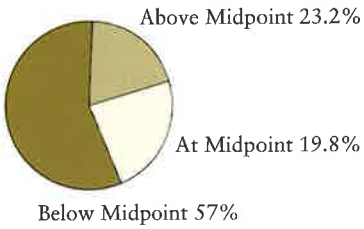
Durational compliance among FY1999 cases was 79% (Figure 11). The rate of durational compliance is somewhat lower than the rate of dispositional compliance reported above. This result indicates that judges agree with the type of sentence recommended by the guidelines more often than they agree with the recommended sentence length in incarceration cases. As with the dispositional compliance rate, durational compliance has improved since FY1998, when a durational compliance rate of 76% was reported. For FY1999 cases not in durational compliance, those resulting in sanctions more severe than the guidelines recommendation for the case were nearly equal in number to those receiving sanctions less severe than what was recommended. This balanced departure pattern also appeared in FY1998.

The sentencing ranges recommended by the guidelines are relatively broad, allowing judges to utilize their discretion in sentencing offenders to different incarceration terms while still remaining in compliance with the guidelines. For cases recommended for incarceration of more than six months, the sentence length recommendation derived from the guidelines (known as the midpoint) is accompanied by a high-end and low-end recommendation. The Commission remains interested in understanding how judges sentence within the range provided by the guidelines.

Analysis of FY1999 cases receiving incarceration in excess of six months that were in durational compliance reveals that almost one-fifth were sentenced to prison terms equivalent to the midpoint recommendation (Figure 12). Overall, nearly 77% of cases in durational compliance were sentenced at or below the sentencing guidelines midpoint recommendation. Only 23% of the cases receiving incarceration over six months that were in durational compliance with the guidelines were sentenced above the midpoint, in the upper portion of the recommended range. This pattern of sentencing within the range has been consistent since the truth-in-sentencing guidelines took effect in 1995, indicating that judges have favored the lower portion of the recommended range. The distribution of sentences within the guidelines range varies somewhat by offense group. Among cases sentenced within the guidelines, sentences for murder and burglary of dwelling crimes are more likely to fall in the upper end of the recommended range than other types of offenses (47% and 38%, respectively, were given upper-end sentences), while more than eight out of every ten rape offenders received a sentence at or below the guidelines midpoint. Nearly 84% of drug offenders, meeting the durational compliance criterias were sentenced at the middle or lower portion of the guidelines range.

FIGURE 12

Distribution of Sentences within Guidelines Range – FY1999



A 79% durational compliance rate means that when incarceration is recommended by the guidelines, judges chose an incarceration term outside of the guidelines range in one out of five cases. Offenders receiving more than six months of incarceration, but less than the recommended time, were given "effective" sentences (sentences less any suspended time) short of the guidelines range by a median value of eight months (Figure 13). For offenders receiving longer than recommended incarceration sentences, the effective sentence exceeded the guidelines range by a median value of 10 months. Thus, durational departures from the guidelines in these cases are typically short, indicating that disagreement with the guidelines recommendation is, in most cases, not of a dramatic nature. While the median length of durational departures above the guidelines remained unchanged from FY1998 to FY1999, the median length of departures below the guidelines increased by a month from last fiscal year to this.

FIGURE 13

Median Length of Durational Departures – FY1999

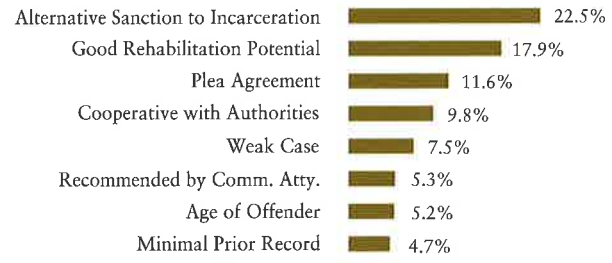
Reasons for Departure from the Guidelines

Compliance with the truth-in-sentencing guidelines is voluntary. Although not obligated to sentence within guidelines recommendations, judges are required by §19.2-298.01 of the Code of Virginia to articulate and submit to the Commission their reason(s) for sentencing outside the guidelines range. Each year, as the Commission deliberates upon recommendations for revisions to the guidelines, which must be submitted to the General Assembly each December 1 in the Commission's annual report, the opinions of the judiciary, reflected in their departure reasons, are an important part of the Commission's discussions. Virginia's judges are not limited by any standardized or prescribed reasons for departure and may cite multiple reasons for departure in each guidelines case.

In FY1999, 11% of 19,658 cases sentenced during the fiscal year received sanctions that fell below the guidelines recommendation for the case. These are defined as "mitigation" sentences. Isolating the FY1999 mitigation cases reveals that, most often, judges reported the decision to utilize an alternative sanction program to punish the offender instead of imposing a traditional term of incarceration (Figure 14). Detention Center Incarceration, Diversion Center Incarceration, Boot Camp Incarceration, intensive supervised probation, day reporting and the drug court programs are examples of alternative sanctions available to judges in Virginia. The types and availability of programs, however, vary considerably from locality to locality. Often, these mitigations cases represent diversions from a recommended incarceration term in those cases in which the judge felt the offender was amenable to such a program.

FIGURE 14

Most Frequently Cited Reasons for Mitigation – FY1999



Note: Represents most frequently cited reasons only. Multiple reasons may be cited in each case.

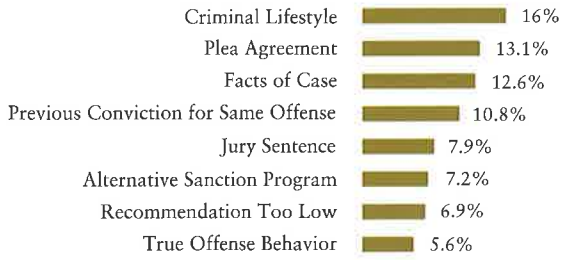
Although use of alternative sanctions was the most popular reason for mitigation recorded by judges, factors related to rehabilitation of the offender were cited in nearly one out of every five cases sentenced below the guidelines. For instance, judges may cite the offender's general rehabilitation potential or they may cite more specific reasons such as the offender's excellent progress in a drug rehabilitation program, an excellent work record, the offender's remorse, a strong family background, or restitution made by the offender. An offender's potential for rehabilitation is often cited in conjunction with the use of an alternative sanction. Alternative sanctions and rehabilitation potential were the most frequently cited reasons for mitigation cited in both FY1998 and FY1999.

Other mitigation reasons were prevalent as well. For instance, in 12% of the low departures, judges indicated only that they sentenced in accordance with a plea agreement. Judges referred to the offender's cooperation with authorities, such as aiding in the apprehension or prosecution of others, in 10% of the mitigation cases. Judges noted in 8% of the cases that the evidence against the defendant was weak or that a relevant witness refused to testify in the case. Somewhat less often (5%), judges recorded that the Commonwealth's attorney recommended the sentence. In nearly as many cases (5%), consideration of the offender's age was the reason for the departure. Judges specified the lack of a prior criminal record, or at least the lack of any serious prior record offenses, as the reason for sentencing below the guidelines recommendation in just under 5% of mitigation cases. Seven of the top eight reasons for mitigation in FY1999 were also among the top eight reasons in FY1998 and in nearly the same proportions. Although other reasons for mitigation were reported to the Commission in FY1999, only the most frequently cited reasons are discussed here.

Judges sentenced just over 11% of the FY1999 cases to terms more severe than the sentencing guidelines recommendation, resulting in "aggravation" sentences. Examining only the FY1999 aggravation cases, the Commission found that the most common reason for sentencing above the guidelines recommendation, cited in 16% of the aggravations, was that the offender's criminal lifestyle or history of criminality far exceeds the contents of his formal criminal record of convictions or juvenile adjudications of delinquency (Figure 15). Second only to criminal lifestyle, judges referred to a plea agreement as the reason for giving a sentence above the recommendation of the guidelines (13%).

FIGURE 15

Most Frequently Cited Reasons for Aggravation – FY1999



Note: Represents most frequently cited reasons only. Multiple reasons may be cited in each case.

The Greek Goddess Themis, who has become the symbol of fairness and equality, can be found in two places outside the United States Supreme Court building. She is represented by the small figure held in the right hand of Fraser's "Contemplation of Justice" (see page 22) and in the bas-relief on one of the plaza lampposts. The lampposts were modeled in plaster by John Donnelly, Jr. in April 1934. In September of that year marble shafts were set in place for the carvers, who worked throughout the winter.

Often felony cases involve complex sets of events or extreme circumstances for which judges feel a harsher than recommended sentence should be imposed. In nearly 13% of the aggravation departures this year, judges noted only that the "facts of the case" warranted a higher sentence, without identifying the specific circumstances associated with the case. Only slightly less often, however, judges reported the offender's prior convictions for the same or a very similar offense as the current case was the reason for the harsher sanction. Almost 8% of the upward departures were the result of jury trials. In some cases (7%), judges sentenced above the guidelines by imposing an alternative sanction program, such as a Boot Camp, Detention Center or Diversion Center program, instead of straight probation as recommended by the guidelines. Since July 1, 1997, these programs have been counted as incarceration sanctions under the sentencing guidelines. For another 7% of the FY1999 aggravation cases, judges commented that they felt the guidelines recommendation was too low. Finally, judges said they sentenced more harshly in 6% of the cases because of the offender's true offense behavior or the actual offense was more serious than the offenses for which the offender was ultimately convicted. Many other reasons were cited by judges to explain aggravation sentences, but with much less frequency than the reasons discussed here.

Appendices 1 and 2 contain detailed analysis of the reasons for departure from guidelines recommendations for each of the 12 guidelines offense groups.

Specific Offense Compliance

Studying compliance by specific felony crime assists the Commission in detecting and pinpointing those crimes where judges disagree with the sentencing guidelines most often. For convenience, the guidelines are assembled into 12 offense groups, but crimes which exhibit very high guidelines compliance may be collected into the same offense group with those experiencing a much lower rate of compliance. Analyzing compliance by crime unmasks the underlying compliance and departure patterns that are of interest to the Commission.

The guidelines in effect during FY1999 covered 162 distinct felony crimes defined in the Code of Virginia, representing about 95% of all felony sentencing events in Virginia's circuit courts. Figure 16 presents compliance results for those offenses that served as the primary offense in at least 100 cases during the most recent fiscal year. These 33 crimes accounted for nearly all (90%) of the FY1999 guidelines cases.

FIGURE 16

Compliance for Specific Felony Crimes – FY1999

	Compliance	Mitigation	Aggravation	Number of Cases
Person				
Malicious Injury	66.6%	20.2%	13.2%	287
Unlawful Injury	72.2	11.1	16.7	407
1st Degree Murder	84.5	8.7	6.8	103
Aggravated Sexual Battery, Victim Less than 13 years old	67.7	22.6	9.7	124
Robbery of Business with Gun or Simulated Gun	63.2	21.4	15.4	182
Robbery in Street with Gun or Simulated Gun	65.9	18.9	15.2	132
Robbery in Street, No Gun or Simulated Gun	68.1	15.0	16.9	160
Grand Larceny from a Person	76.7	10.3	13.0	223
Property				
Burglary of Dwelling with Intent to Commmit Larceny, No Deadly Weapon	68.0	19.8	12.2	727
Burglary of Other Structure with Intent to Commmit Larceny, No Deadly Weapon	74.6	13.3	12.1	481
Credit Card Theft	87.6	9.9	2.5	282
Forgery of Public Record	82.9	12.6	4.5	467
Forgery	78.4	18.0	3.6	726
Uttering	79.7	16.3	4.0	251
Bad Check, Valued $200 or More	78.9	15.4	5.7	175
Obtain Money by False Pretenses, Value $200 or More	81.3	12.3	6.4	267
Shoplifting Goods Valued Less than $200 (3rd conviction)	81.4	11.2	7.4	161
Shoplifting Goods Valued $200 or More	76.9	8.3	14.8	108
Grand Larceny, Not from Person	82.5	7.3	10.2	1985
Petit Larceny (3rd conviction)	81.4	10.3	8.3	682
Grand Larceny Auto	78.8	10.0	11.2	260
Unauthorized Use of Vehicle Valued $200 or More	83.7	10.6	5.7	245
Embezzlement of $200 or More	82.1	4.3	13.6	447
Receive Stolen Goods Valued $200 or More	80.9	13.5	5.6	215
Drug				
Obtain Drugs by Fraud	84.5	2.4	13.1	207
Possession of Schedule I/II Drug	81.0	5.4	13.6	4268
Sale of .5 oz - 5 lb of Marijuana	77.5	8.6	13.9	396
Sale of Schedule I/II Drug for Accomodation	70.3	18.7	11.0	155
Sale, etc. of Schedule I/II Drug	69.7	22.8	7.5	1902
Other				
Hit and Run with Victim Injury	79.8	9.7	10.5	114
Habitual Traffic Offense with Endangerment to Others	83.6	1.2	15.2	402
Habitual Traffic Offense - 2nd Offense, No Endangerment to Others	85.0	2.2	12.8	712
Possession of Firearm or Concealed Weapon by Convicted Felon	71.0	22.5	6.5	369

The other three sides of the same lamppost are decorated with depictions of Themis's daughters, the three Fates, known in Greek mythology as the Moerae. It is said that at birth they give men their fair share of good and evil and they punish the transgressions of men and gods. The bas-relief carvings on the lamppost show the daughters weaving the Thread of Life.

The compliance rates for the crimes listed in Figure 16 range from a high of 88% for credit card theft to a low of 63% for offenders convicted of robbery of a business with a gun. The single most common offense, simple possession of a Schedule I/II drug, comprised one out of every five guidelines cases and registered a compliance rate of 81%. Compliance for this offense increased three percentage points in FY1999 over the previous fiscal year. In fact, compliance rates for 24 of the 33 crimes listed in Figure 16 have risen between FY1998 and FY1999.

Among crimes against the person, eight offenses surpassed the 100 case mark. Two assaults, malicious injury, a Class 3 felony, and unlawful injury, a Class 6 felony, appear on the crime list. Compliance in unlawful injury cases historically has been higher than compliance for malicious injury, and this was again true in FY1999. When departing from the guidelines, judges are more likely to exceed the guidelines in unlawful injury cases but more likely to sentence below them for malicious injury. Person crimes typically exhibit lower compliance than property and drug crimes, but the compliance rate for first-degree murder was 85%, one of the highest of all offenses. Only about two-thirds of aggravated sexual battery (victim less than 13 years old) cases were sentenced within the guidelines, while one in four was sentenced below them. All of the robberies on the list yielded below average compliance. Grand larceny from a person yielded a much higher compliance rate (77%) than the robbery crimes.

Half of the offenses listed in Figure 16 are property crimes, including two burglaries. Burglary of an other structure (non-dwelling) with intent to commit larceny (no weapon) demonstrated a higher compliance rate than the same burglary committed in a dwelling (75% vs. 68%). Every fraud and larceny offense listed in the table had a compliance rate at or above the overall compliance rate in FY1999, with many reaching into the 80%-89% range. The most common of these, grand larceny (not from person), registered a compliance rate of 83%, an increase from 81% in FY1998.

Although simple possession of a Schedule I/II drug was the most common offense among FY1999 guidelines cases, four other drug offenses are listed in Figure 16. The offense of obtaining drugs by fraud had a compliance rate even higher than that for possession, reaching nearly 85%. In FY1999, sentences for the sale or distribution of a Schedule I/II drug (including possession of a Schedule I/II drug with intent to distribute) comply with guidelines only 70% of the time, but this is a significant improvement from the 65% compliance rate reported in FY1998. In these sales-related cases involving Schedule I/II drugs, nearly a quarter of offenders received a sentence below the guidelines recommendation. In many of these mitigation cases, judges have deemed the offender amenable for placement in an alternative punishment such as Boot Camp Incarceration or Detention Center Incarceration, programs the General Assembly intended to be used for nonviolent offenders who otherwise would be incarcerated for short jail or prison terms.

The last group of offenses listed in Figure 16 falls into the sentencing guidelines miscellaneous offense group: hit and run, both types of felony habitual traffic offender violations and possession of a gun by a convicted felon. Habitual traffic offenders almost always receive a sentence within the guidelines recommendation (84% and 85%). Hit and run also had a very high compliance rate (80%). For felons possessing a firearm or concealed weapon, judges complied with the guidelines at a lower rate (71%) and handed down sentences short of the guidelines recommendation in nearly all of the remaining cases. This offense was one of the few offenses listed in Figure 16 to have dropped in compliance from FY1998 to FY1999. The mitigation rate for this offense jumped substantially during the same period.

Compliance by Circuit

Since the inception of the truth-in-sentencing guidelines in 1995, compliance rates and departure patterns have varied significantly across Virginia's 31 judicial circuits. FY1999 was no exception (Figure 17). The map and accompanying table on the following pages identify the location of each judicial circuit in the Commonwealth.

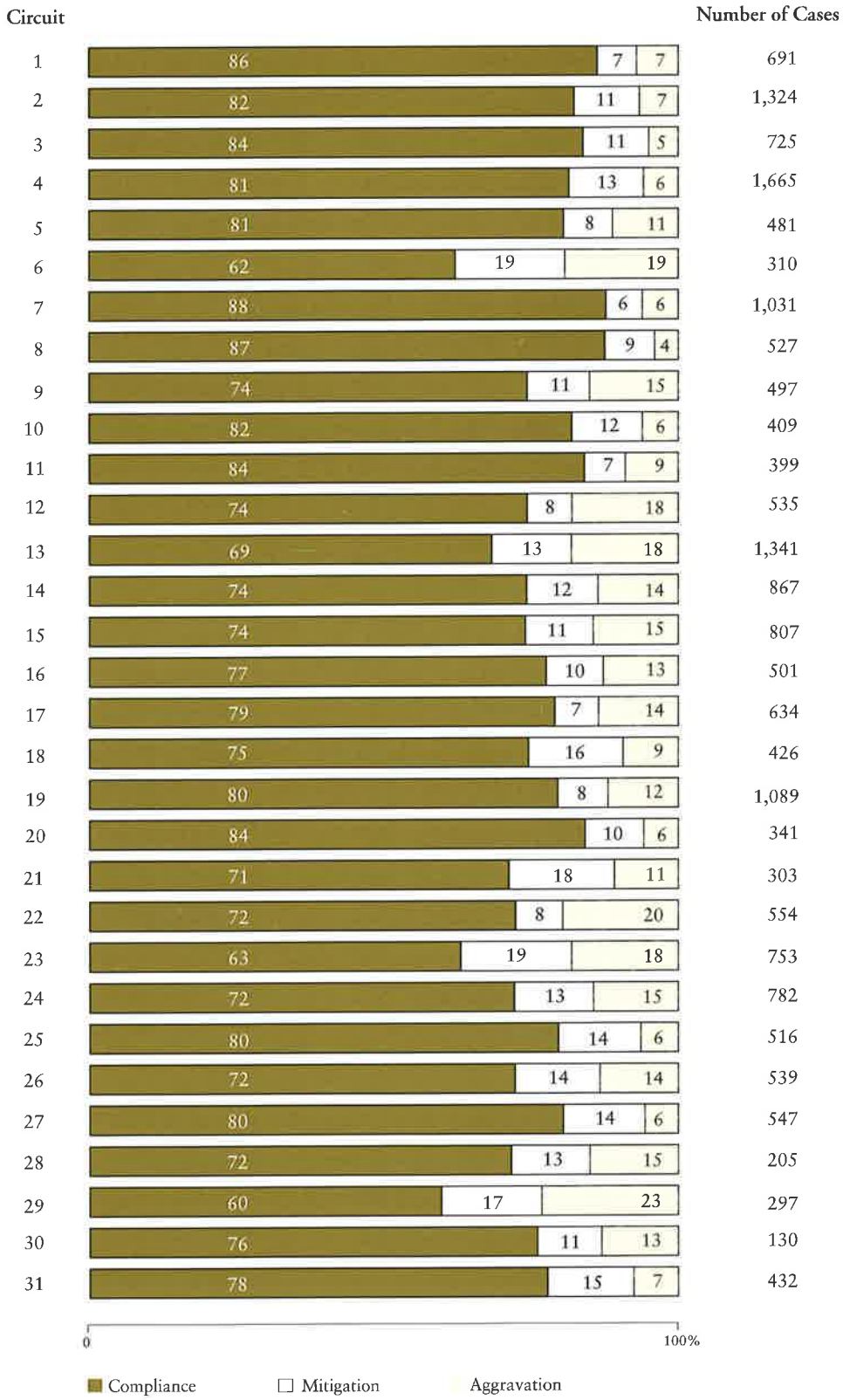
Overall, in FY1999, 16 of the state's 31 circuits exhibited compliance rates in the 70% to 79% range, with an additional 11 circuits reporting compliance rates better than 80%. Only four circuits had compliance rates below 70%. This distribution has changed somewhat since the previous fiscal year, when only seven circuits were at 80% or better and six circuits fell below 70%. Of the 31 judicial circuits, 24 had higher compliance rates in FY1999 than in FY1998. In five circuits (Circuits 1, 4, 12, 13 and 16), compliance rates jumped by more than five percentage points.

There are likely many reasons for the variations in compliance across circuits. Certain jurisdictions may see atypical cases not reflected in statewide averages. In addition, the availability of alternative or community-based programs currently differs from locality to locality. The degree to which judges follow guidelines recommendations does not seem to be primarily related to geography. The circuits with the lowest compliance rates are scattered across the state and are not concentrated in one region. Both high and low compliance circuits can be found in close geographic proximity. However, the circuits in the Tidewater area of Virginia typically have maintained compliance rates above the statewide average for several years. Chesapeake (Circuit 1), Virginia Beach (Circuit 2), Portsmouth (Circuit 3), Norfolk (Circuit 4), the Suffolk area (Circuit 5), Newport News (Circuit 7) and Hampton (Circuit 8) all reported compliance rates over 80% in FY1999.

In FY1999, the highest compliance rate with the sentencing guidelines, 88%, was found in Newport News (Circuit 7). Newport News has registered the highest compliance rate of all Virginia circuits every year since 1996. Newport News is one of the five jurisdictions that submitted more than 1,000 truth-in-sentencing guidelines cases to the Commission in FY1999. The others, Virginia Beach (Circuit 2), Norfolk (Circuit 4), the City of Richmond (Circuit 13) and Fairfax (Circuit 19), returned compliance rates between 79% and 82%, except for the City of Richmond, which had a compliance rate of only 69%.

FIGURE 17

Compliance by Circuit – FY1999



Virginia Localities and Judicial Circuits

Montgomery 27
Nelson 24
New Kent 9
Newport News 7
Norfolk 4
Northampton 2
Northumberland 15
Norton 30
Nottoway 11
Orange 16
Page 26
Patrick 21
Petersburg 11
Pittsylvania 22
Poquoson 9
Portsmouth 3
Powhatan 11
Prince Edward 10
Prince George 6
Prince William 31
Pulaski 27
Radford 27
Rappahannock 20
Richmond City 13
Richmond County 15
Roanoke City 23
Roanoke County 23
Rockbridge 25
Rockingham 26
Russell 29
Salem 23
Scott 30
Shenandoah 26
Smyth 28
South Boston 10
Southampton 5
Spotsylvania 15
Stafford 15
Staunton 25
Suffolk 5
Surry 6
Sussex 6
Tazewell 29
Virginia Beach 2
Warren 26
Washington 28
Waynesboro 25
Westmoreland 15
Williamsburg 9
Winchester 26
Wise 30
Wythe 27
York 9

Virginia Judicial Circuits

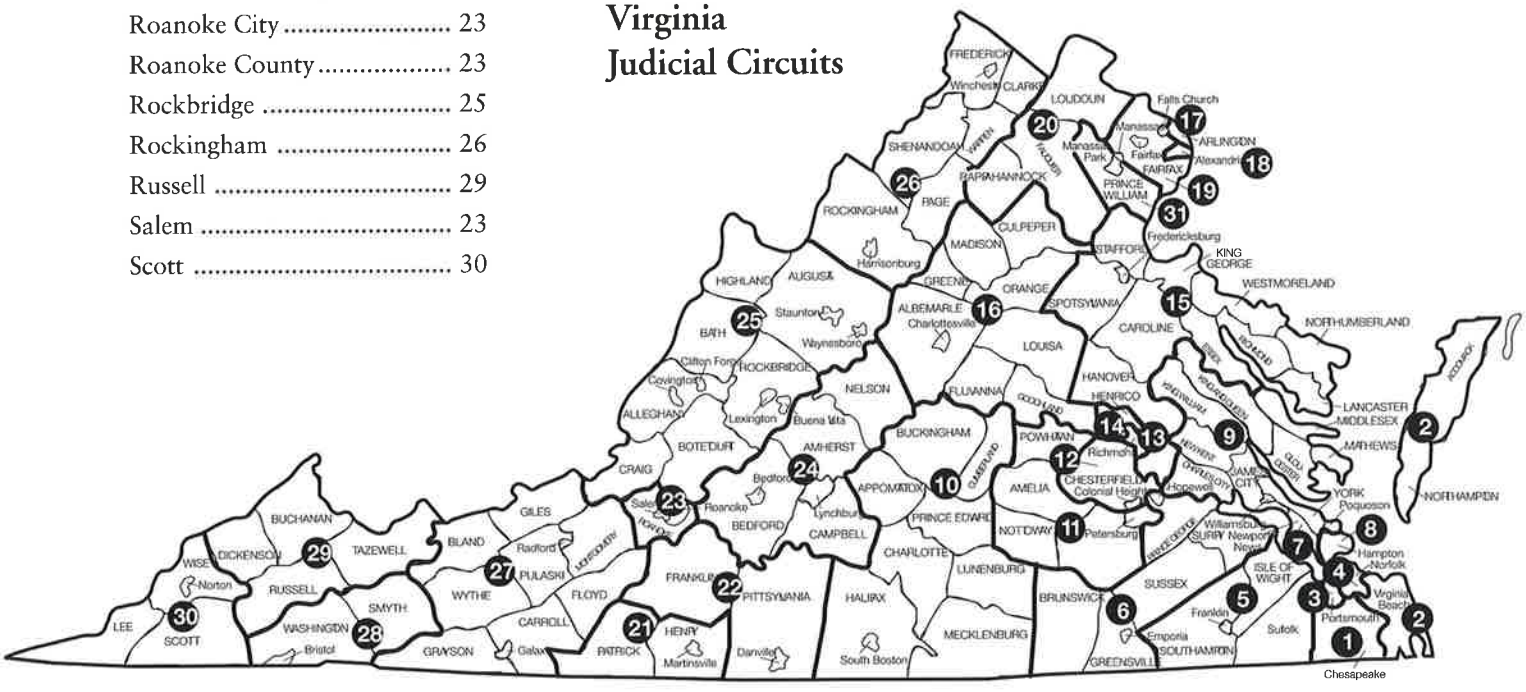
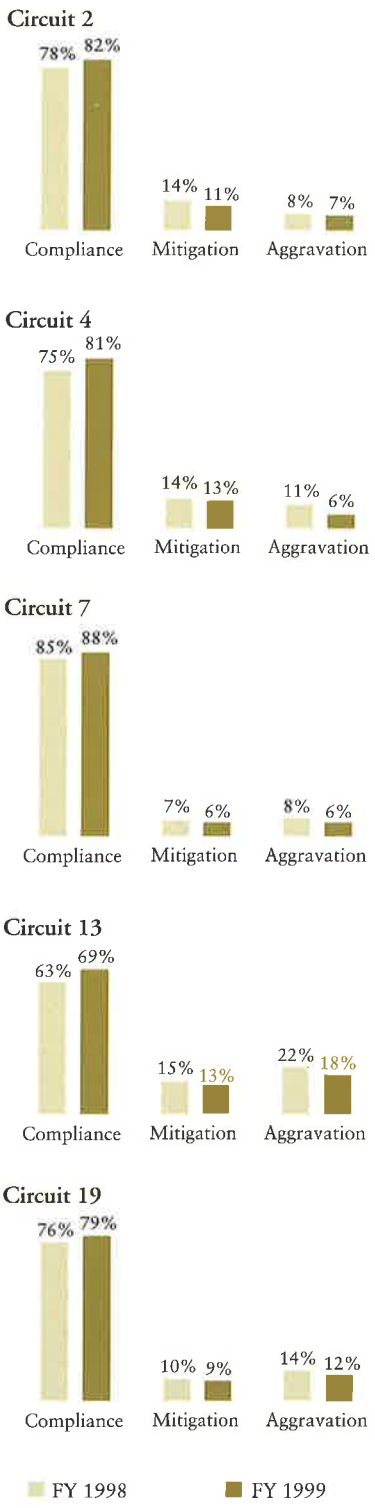


FIGURE 18

Compliance in Circuits Submitting 1,000 or More Guidelines Cases – FY1998 and FY1999



In each of the five circuits submitting 1,000 or more guidelines cases during FY1999, compliance was higher this fiscal year than in the previous year. Compliance in cases sentenced in Norfolk (Circuit 4) surged nearly six percentage points during FY1999, the biggest increase recorded among these large circuits (Figure 18). In the City of Richmond (Circuit 13), compliance improved by more than five percentage points, while Fairfax (Circuit 19) and Virginia Beach (Circuit 2) both reported a jump in compliance of four percentage points. Even Newport News (Circuit 7), which already had the highest compliance rate of any circuit, posted an increase in compliance.

The lowest compliance rates among guidelines cases in FY1999 were reported in Circuit 29 (Buchanan, Dickenson, Russell and Tazewell counties), Circuit 6 (Sussex, Surry, Brunswick and Greensville counties), and Circuit 23 in Roanoke. These circuits registered compliance rates of 60%, 62% and 63%, respectively. These circuits also had the lowest guidelines compliance in FY1998. In fact, compliance in Circuit 29 dropped by more than three percentage points between FY1998 and FY1999. Circuit 29 was one of only two circuits whose compliance rate dropped by more than a single percentage point during the last fiscal year.

Of all Virginia's circuits, Roanoke (Circuit 23) yielded the highest rate of mitigation in FY1999, 19%. Roanoke traditionally has reported low compliance with the truth-in-sentencing guidelines, and mitigations from the guidelines are nearly equal in number to aggravation sentences in the circuit. Of the five circuits with 1,000 or more cases in FY1999, Norfolk (Circuit 4) and Richmond (Circuit 13) had the highest rate of mitigation, around 13% in each locality.

With regard to high mitigation rates, it would be too simplistic to assume that this reflects an area with lenient sentencing habits. Intermediate punishment programs are not uniformly available throughout the Commonwealth. Those jurisdictions with better access to these sentencing options may be using them as intended by the General Assembly: for nonviolent offenders who otherwise would be incarcerated for short periods of time. Such sentences would appear as mitigations from the guidelines.

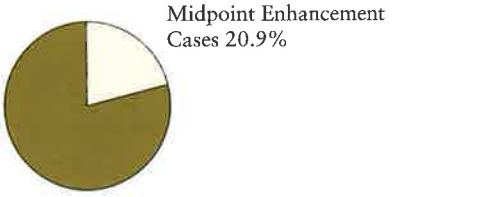
Inspecting aggravation rates reveals that Circuit 29, in addition to having the lowest compliance rate of all the circuits, reported the highest aggravation rate (23%) in FY1999. Among the five circuits with 1,000 or more cases, Richmond's aggravation rate (18%) far exceeded the aggravation rates in the other large circuits.

Appendices 3 and 4 present compliance figures for judicial circuits by each of the 12 sentencing guidelines offense groups.

Compliance under Midpoint Enhancements

Section 17.1-805, formerly §17-237, of the Code of Virginia describes the framework for what are known as "midpoint enhancements," which raise the score on the sentencing guidelines worksheets in cases involving violent offenders, thereby increasing the guidelines sentencing recommendation in those cases. Midpoint enhancements are an integral part of the design of the truth-in-sentencing guidelines. The objective of midpoint enhancements is to provide sentence recommendations for violent offenders that are significantly greater than the time that was served by offenders convicted of such crimes prior to the enactment of truth-in-sentencing laws. Offenders who are convicted of a violent crime or who have been previously convicted of a violent crime are recommended for incarceration terms up to six times longer than offenders fitting similar profiles served under the parole system during the period prior to its abolition. Midpoint enhancements are triggered for homicide, rape, or robbery offenses, most assaults and sexual assaults, and certain burglaries, when any one of these offenses is the current most serious offense, also called the "instant offense." Offenders with a prior record containing at least one conviction for a violent crime are subject to degrees of midpoint enhancements based on the nature and seriousness of the offender's criminal history. The most serious prior record receives the most extreme enhancement. A prior record labeled "Category II" contains at least one violent prior felony carrying a statutory maximum penalty of less than 40 years, whereas a "Category I" prior record includes at least one violent offense with a statutory maximum penalty of 40 years or more.

FIGURE 19
Application of Midpoint Enhancements – FY1999



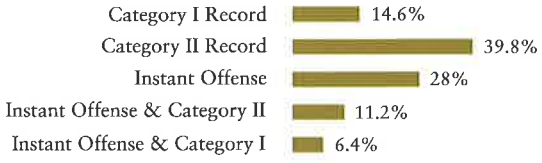
Because midpoint enhancements are designed to target only violent offenders for longer sentences, enhancements do not affect the sentence recommendation for the majority of guidelines cases. Among the FY1999 cases, 79% of the cases did not involve midpoint enhancements of any kind (Figure 19). Only 21% of the cases qualified for a midpoint enhancement because of a current or prior conviction for a felony defined as violent. The proportion of cases receiving midpoint enhancements has not fluctuated greatly since the institution of truth-in-sentencing guidelines in 1995. It has remained between 19% and 21% over the last five years.

Of the FY1999 cases in which midpoint enhancements applied, the most common midpoint enhancement was that for a Category II prior record. Nearly 40% of the midpoint enhancements in FY1999 were of this type, applicable to offenders with a nonviolent instant offense but a violent prior record categorized as Category II (Figure 20). Another 15% of midpoint enhancements were attributable to offenders with a more serious prior record, known as a Category I record. Cases of offenders with a violent instant offense but no prior record of violence represented 28% of the midpoint enhancements in FY1999. The most substantial midpoint enhancements target offenders with a combination of instant and prior violent offenses. Over 11% qualified for enhancements for both a current violent offense and a Category II prior record. Only a minority of cases (6%) were targeted for the most extreme midpoint enhancements triggered by a combination of a current offense of violence and a Category I prior record. Compared to FY1998, a larger share of midpoint enhancements was related to Category I and Category II records in FY1999 (49% vs. 54%), while a smaller share could be associated with any of the midpoint enhancement involving a violent instant offense.

Since the inception of the truth-in-sentencing guidelines, judges have departed from the sentencing guidelines more often in midpoint enhancement cases than in cases without enhancements. In FY1999, compliance was only 70% when enhancements applied, significantly lower than compliance in all other cases (79%). Although compliance in midpoint enhancement cases was relatively low in FY1999, it was even lower in the previous fiscal year, when it was only 66%. Despite the increase in compliance over the last year, compliance in midpoint enhancement cases is suppressing the overall compliance rate. When departing from enhanced guidelines recommendations, judges are choosing to mitigate in three out of every four departures.

FIGURE 20

Type of Midpoint Enhancement Received – FY1999



The sentencing recommendations produced by the guidelines come in the form of ranges which allow judges to exercise certain discretion in sentencing and still be in compliance with guidelines. Despite this, when sentencing in midpoint enhancement cases in FY1999, judges departed from the low end of the guidelines range by an average of more than two years (25 months), with the median mitigation departure at 14 months (Figure 21). Given the lower than average compliance rate and overwhelming mitigation pattern, this is evidence that judges feel the midpoint enhancements are too extreme in certain cases.

Compliance, while generally lower in midpoint enhancement cases than in other cases, varies across the different types and combinations of midpoint enhancements (Figure 22). In FY1999, as with FY1998, enhancements for a Category II prior record generated the highest rate of compliance of all the midpoint enhancements (73%). Compliance in cases receiving enhancements for a Category I prior record was slightly lower (70%). FY1999 marked the first year that compliance in Category I cases reached 70% or better. The most severe midpoint enhancements, that for a combination of a current violent offense and a Category I or Category II prior record, yielded compliance rates in the mid to upper 60% range (68% and 65%, respectively). Between FY1998 and FY1999, compliance improved across all types of midpoint enhancements. Enhancements for a current violent offense exhibited the largest increase in compliance, jumping from 60% in FY1998 to 67% in the most recent fiscal year. During the same period, enhancements for a current violent offense and enhancements for a combination of a current violent offense and Category I prior record also yielded higher compliance rates in FY1999 than in FY1998 (up by four percentage points each). In each category of midpoint enhancements,

FIGURE 21

Length of Mitigation Departures in Midpoint Enhancement Cases – FY1999

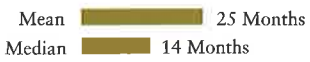


FIGURE 22

Compliance by Type of Midpoint Enhancement – FY1999*

	Compliance	Mitigation	Aggravation	Number of Cases
None	79.4%	8.6%	12.0%	15,552
Category II Record	73.2	20.6	6.2	1,635
Category I Record	70.2	25.7	4.1	600
Instant Offense	67.2	20.6	12.2	1,149
Instant Offense & Category II	64.9	25.3	9.8	459
Instant Offense & Category I	68.4	25.9	5.7	263

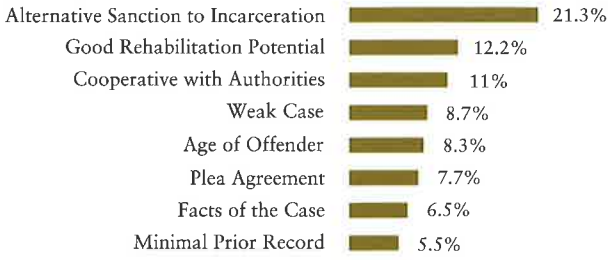
* Midpoint enhancements prescribe prison sentence recommendations for violent offenders which are significantly greater than historical time served under the parole system during the period 1988 to 1992.

mitigation departures far exceed aggravation departures. In FY1999, however, the mitigation rate for each type of enhancement declined from FY1998 levels.

The tendency for judges to impose sentences below the sentencing guidelines recommendation in midpoint enhancement cases is readily apparent. Analysis of departure reasons in cases involving midpoint enhancements, therefore, is focused on downward departures from the guidelines (Figure 23). Such analysis reveals that in FY1999 the most frequent reason for mitigation in these cases was based on the judge's decision to use alternative sanctions to traditional incarceration (21%). This reason for mitigation includes alternative sanctions ranging from the Boot Camp, Detention Center, and Diversion Center Incarceration programs to substance abuse treatment, intensive supervised probation or a day reporting program. In over 12% of the mitigation cases, the judge sentenced based on the perceived potential for rehabilitation of the offender. In more than one out of every ten cases, judges cited the defendant's cooperation with authorities in the current or other prosecutions. In about 9% of these cases, judges indicated that the evidence against the defendant was weak or that a key witness refused to testify. In both FY1998 and FY1999, these four reasons for mitigation were used more often than any other in midpoint enhancement cases.

FIGURE 23

Most Frequently Cited Reasons for Mitigation in Midpoint Enhancement Cases – FY1999



Sentencing and the 1997 Guidelines Revisions

In its 1996 Annual Report, the Commission presented several specific recommendations regarding revisions to the sentencing guidelines. Under §17.1-803, formerly §17-238, of the Code of Virginia, any such recommendations adopted by the Commission becomes effective the following July 1, unless otherwise acted upon by the General Assembly. Since the General Assembly did not revise any of the Commission's recommendations during its 1997 session, the changes were incorporated into the guidelines as of July 1, 1997. This section will address the impact of some of these changes on sentencing and compliance. The

new guidelines elements presented in the 1998 Annual Report and incorporated into the guidelines system beginning July 1, 1999, are not examined in this report, since little data is available to date.

Cocaine Sales Offenses

In 1996, based on specific departure reasons cited by judges in drug cases, together with input from other criminal justice professionals, the Commission launched efforts to address concerns relating to the drug guidelines. Critics had argued that drug sales of larger amounts deserve longer prison term recommendations. Moreover, the reason most frequently cited by judges for imposing a term above the guidelines in drug cases was the quantity of the drug sold. Responding to input of guidelines users, the Commission examined drug quantity and its impact on sentencing. After careful review of the steps taken by the Federal system and other states in this area, the Commission proposed a tiered system to specifically account for drug quantity in cocaine sales-related offenses.

Beginning July 1, 1997, the drug guidelines were revised to increase the midpoint recommendation by three years in cases involving the sale (§18.2-248(C)) of 28.35 grams (1 ounce) up to 226.7 grams of cocaine, and by five years if 226.8 grams (1/2 pound) or more were seized. Concurrently, the Commission expanded the sentencing recommendation for cases of offenders convicted of selling small amounts of cocaine (1 gram or less) who have no prior felony record. In the cases of first-time felons selling 1 gram or less of cocaine, the Commission created a dual sentencing recommendation. In FY1998 and FY1999, the guidelines recommended two sanctioning options in these cases. Judges could sentence such an offender to the traditional term of incarceration recommended for him or the judge could sentence the offender to one of the state's Detention Center Incarceration programs in lieu of traditional incarceration. The judge is considered in compliance with the guidelines he if chose either one of these options. Detention Center Incarceration involves confinement in a secure facility from four to six months and requires participation in a 20-week substance abuse treatment program. Beginning July 1, 1999, the Commission expanded this dual recommendation so that judges could also utilize the state's Boot Camp Incarceration Program as another option in sentencing first-time felons convicted of selling small amounts of cocaine. Because this report focuses on guidelines cases sentenced during the fiscal year ending June 30, 1999, the impact of this latest change is not included in this analysis.

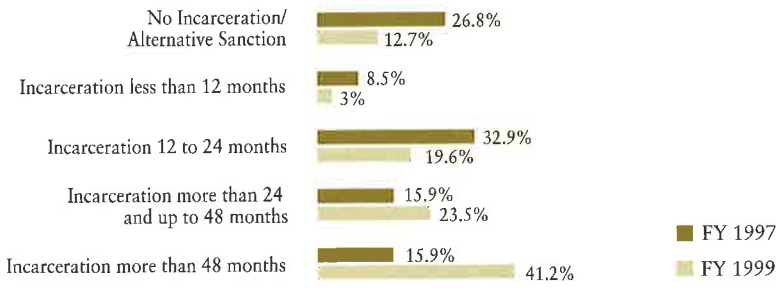
In Vienna, a statue of Justice holding her scales looks over the grounds of the Austrian Constitutional Court and the Administrative Court. From 1710 to 1714, Fisher von Erlach built the Bohemian Court Chancellery which now houses the Austrian courts.

In FY1999, the Commission received 102 cases that qualified for the three or five year increase in recommendation for the sale of large quantities of cocaine. Judges elected to sentence just over half (52%) of these offenders within the new range recommended by the guidelines, and departed below the guidelines in nearly all remaining cases. When sentencing below the new drug guidelines, judges indicated in more than one-third of these large quantity cases that the offender was sentenced to an alternative sanction and in one-fifth that the offender cooperated with authorities and/or aided in the prosecution of others. Use of alternative sanction programs in these cases increased between FY1998 and FY1999.

While compliance with new drug guidelines is relatively low and mitigation is high, the addition of a drug quantity factor to the guidelines has had an effect on sentencing outcomes in these cases. The proportion of offenders selling larger quantities of cocaine who receive an effective sentence (imposed less any suspended time) in excess of four years has increased dramatically, from 16% in FY1997 to 41% in FY1999 (Figure 24). At the same time, the proportion of these offenders sentenced to a short prison term (12 to 24 months) dropped significantly (33% to 20%). The median prison sentence in large quantity cocaine cases has doubled, increasing from two years to four years. Moreover, the proportion of offenders given an alternative sanction program or no incarceration at all has declined from 27% to 13% during the same period. Although compliance with the drug guidelines has been lower for cases receiving the increased recommendations for large quantity than for other cocaine sales cases, the modification has had an impact on sentencing, resulting in harsher sanctions for some offenders.

FIGURE 24

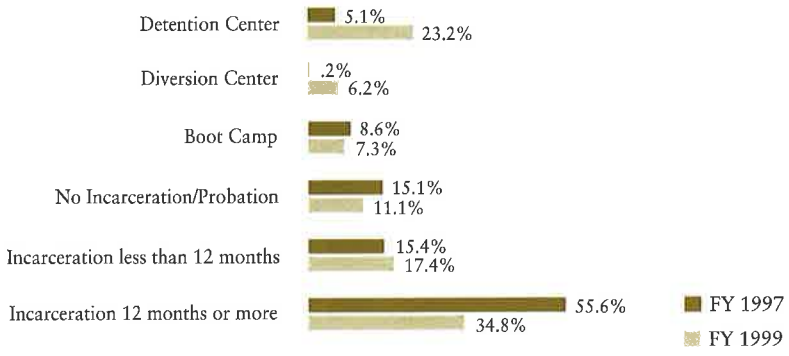
Sentences for Felons Selling 28.35 Grams or More of Cocaine – FY1997 and FY1999



The other modification to the drug guidelines, targeting first-time felons convicted of selling a gram or less of cocaine, has also had an impact on sentencing outcomes. The guidelines in effect during FY1999 provided a dual option recommendation in these low-level sale cases: either a traditional prison term (typically seven to 16 months) or Detention Center Incarceration. In FY1999, the Commission received 259 drug cases in which the dual option recommendation was applicable. Compared to FY1997, judges utilized the Detention Center Incarceration program nearly five times more often in FY1999, 5% vs. 23% (Figure 25). Moreover, use of the Diversion Center program has increased (0% to 6%). The Diversion Center program, like Detention Center, is a four to six month program that has a drug treatment component. Diversion Center operates as a work release program, allowing inmates to leave the center for jobs during the daytime. The gradual expansion of available beds and program sites for Detention Centers and Diversion Centers around the state between 1995 and 1999 has allowed judges to take advantage of alternative sentencing options for offenders deemed amenable to such programs. Clearly, the proportion of offenders receiving an incarceration term of 12 months or more has declined from FY1997 to FY1999 from 56% to 35%. The intent of this modification was to afford judges the opportunity to sentence first-time felons convicted of selling a gram or less of cocaine to an alternative sanction program, such as the Detention Center, and still be in compliance with guidelines. It appears that, in many cases, judges have taken advantage of this new option.

FIGURE 25

Sentences for First-time Felons Selling 1 Gram or Less of Cocaine – FY1997 and FY1999*



* Cases recommended for prison or detention center incarceration.

Sex Offenses Against Children

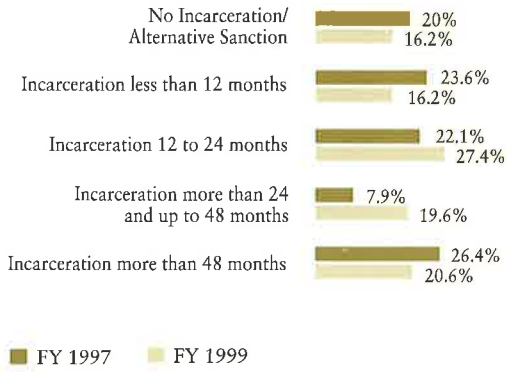
After the truth-in-sentencing guidelines became effective in 1995, sexual assault offenses consistently exhibited one of the lowest compliance rates of all the guidelines offense groups. From January 1, 1995, through October 22, 1996, judges elected to impose a sentence more severe than that recommended by the guidelines in nearly a third of sexual assault cases. At that time, the sentencing guidelines did not consider victim age in the guidelines computations. In 1996, the

Commission conducted a detailed analysis of sexual assault cases which revealed that when the sex crime victimized a young person under the age of 13, judges sentenced the offender to prison more frequently than recommended by guidelines. The Commission responded by modifying the sexual assault guidelines to include a factor for victim age.

With the modification to the guidelines, sexual assault crimes committed against victims under the age of 13 receive additional points on the guidelines worksheets such that it is much more likely that the offender will be recommended for incarceration, particularly a prison term. The Commission received 177 sexual assault cases sentenced in FY1999 involving victims less than 13 and, in 67% of them, judges complied with the new penalties recommended by guidelines. About one-fourth (24%) of the offenders affected by the modification were given sentences below the guidelines recommendation in the case. Instead of a pattern of aggravation, the guidelines for sex offenses involving children under age 13 now yield mitigation sentencing patterns.

FIGURE 26

Sentences for Sexual Assaults Against Victims Under Age 13 – FY1997 and FY1999



Notwithstanding the emerging mitigation pattern in sexual assault cases with young victims, the addition of the victim age factor to the sexual assault guidelines has had an impact on sentencing outcomes. The proportion of offenders receiving a non-incarceration sanction dropped from 20% in FY1997 to 16% in FY1999, while those receiving a short term of incarceration (less than 12 months) declined from 24% to 16% (Figure 26). Conversely, the proportion of offenders receiving sentences of more than 24 months up to 48 months has risen dramatically (from 8% to 20%). The intent of this modification was to recommend more offenders convicted of sexual assault crimes against young victims for terms of incarceration, particularly prison terms. It appears, given sentencing outcomes in FY1999, that the change has resulted in some shift in sentencing patterns for these offenses.

Habitual Traffic Offenses

Changes in the sentencing of habitual traffic offenders are not the result of any changes to the sentencing guidelines directly but, instead, have resulted from amendments to the Code of Virginia during the 1997 session of the General Assembly. Revision of §46.2-357(B2 and B3) allows judges, at their discretion, to suspend the 12-month mandatory minimum incarceration term for habitual traffic crimes, and instead sentence offenders to one of the Detention Center, Diversion Center or Boot Camp Incarceration programs.

The change in the Code gives judges the opportunity to suspend the mandatory minimum penalty for those offenders they consider amenable to one of the alternative sanction programs. Of the 1,114 habitual traffic cases sentenced in FY1999, almost 13% were sentenced to one of the alternative sanction programs allowed in the Code (Figure 27). Since the modification, a smaller proportion of offenders received a sentence equivalent to the 12-month mandatory minimum penalty (67% down to 57%). The results indicate that judges are being selective in utilizing the new sentencing options for habitual traffic offenders, sentencing whom they believe are the most appropriate candidates to those programs.

FIGURE 27

Sentences in Habitual Traffic Cases – FY1997 and FY1999

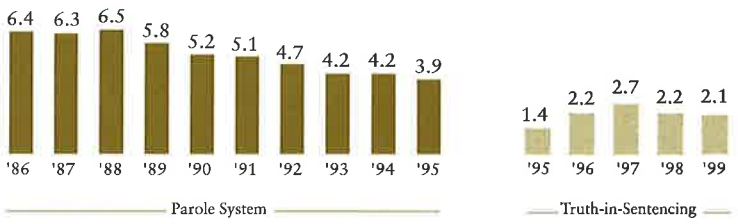
Juries and the Sentencing Guidelines

Virginia is one of only six states that allow juries to determine sentence length in non-capital offenses. Since 1995 and implementation of the truth-in-sentencing system, Virginia's juries have typically handed down sentences more severe than the recommendations of the sentencing guidelines. In fact, in FY1999, as in previous years, a jury sentence was more likely to exceed the guidelines than fall within the guidelines range. Some have speculated that many citizens may be unaware of the abolition of parole and Virginia's conversion to truth-in-sentencing, with its 85% minimum time served requirement. As a result, jurors may be inflating sentences, under the assumption that only a portion of the term will be served because of parole release. Moreover, juries are not allowed, by law, to receive any information regarding the sentencing guidelines to assist them in their sentencing decisions.

The Commission has monitored trends in the rate of jury trials in Virginia's circuit courts. Since FY1986, the overall rate at which cases in the Commonwealth are adjudicated by a jury has been declining (Figure 28). Between FY1986 and FY1988, the overall rate of jury trials was above 6%. Starting in 1989, however, the rate began a subtle decline. According to available data, the rate of jury trials was just over 4% in FY1994. In 1994, the General Assembly enacted provisions for a system of bifurcated jury trials. In bifurcated trials, the jury establishes the guilt or innocence of the defendant in the first phase of the trial, and then, in a second phase, the jury makes its sentencing decision. When the bifurcated trials became effective on July 1, 1994 (FY1995), jurors in Virginia, for the first time, were presented with information on the offender's prior criminal record to assist them in making a sentencing decision. During the first year of the bifurcated trial process, the overall rate of jury trials dropped slightly to just under 4%, the lowest rate since the data series began.

FIGURE 28

Percentage of Jury Trials FY1986 – FY1999
Parole System v. Truth-in-Sentencing (No Parole) System



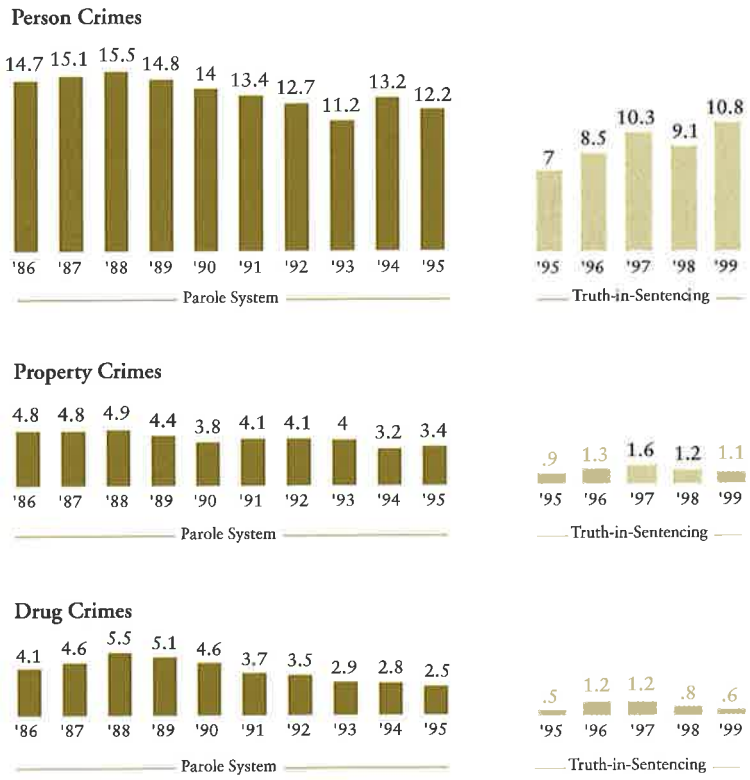
More recently, parole was abolished and truth-in-sentencing was instituted for felony offenses committed on or after January 1, 1995. Among the early cases subject to truth-in-sentencing provisions (FY1995), the overall rate of jury trials sank to just over 1%. Truth-in-sentencing laws, however, were only in effect during the last six months of FY1995, limiting the time for conclusion of jury trials during that fiscal year. During the first complete fiscal year of truth-in-sentencing (FY1996), just over 2% of the cases were resolved by jury trials, half the rate of the last year before the abolition of parole. The introduction of truth-in-sentencing appears to have resulted in a dramatic reduction in jury trials. The rate of jury trials rose in FY1997 to nearly 3%, but in FY1998 and FY1999, the rate has stabilized at just over 2%.

Inspecting jury trial rates by offense type reveals very divergent trends for person, property and drug crimes. From FY1986 through FY1995 parole system cases, the jury trial rate for crimes against the person (homicide, robbery, assault, kidnapping, rape and sex assault) was typically three to four times the rates for property and drug crimes, which were roughly equivalent to one another (Figure 29). However, Virginia has witnessed a slow decline in the rates of jury trials across all offense types since the late 1980s. With the implementation of truth-in-sentencing, jury trial rates for all crime types dropped dramatically, particularly for property and drug crimes. Since the FY1995 truth-in-sentencing cases, the jury trial rate for crimes against the person has rebounded somewhat from 7%, to 10% in FY1997 and 11% in FY1999. Rates for property and drug crimes, on the contrary, have not exhibited that kind of rebound. The jury trial rate for property crimes in FY1999 was still only 1%. For FY1999 cases, less than 1% of drug crimes in Virginia were adjudicated by juries.

Of the 19,658 FY1999 cases under analysis for this report, the Commission received 391 cases tried by juries. While

FIGURE 29

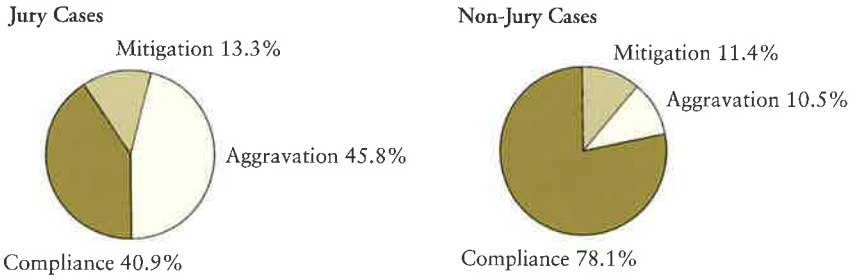
Percentage of Jury Trials by Offense Type FY1986 – FY1999
Parole System v. Truth-in-Sentencing (No Parole) System



the compliance rate for cases adjudicated by a judge or resolved by a guilty plea exceeded 78% during the fiscal year, sentences handed down by juries fell into compliance with the guidelines in only 41% of the cases they heard (Figure 30). In fact, jury sentences were more likely to fall above the guidelines (46%) than within the guidelines (41%). Additionally, the rate of aggravation, or sentencing above the guidelines recommendation, was four times that of non-jury cases. This pattern of sentencing outcomes in jury trial cases has been consistent since the truth-in-sentencing guidelines became effective in 1995.

FIGURE 30

Sentencing Guidelines Compliance in Jury Cases and Non-Jury Cases – FY1999



Judges, although permitted by law to lower a jury sentence, typically do not amend sanctions imposed by juries. Judges modified jury sentences in less than one-fourth of the FY1999 cases in which juries found the defendant guilty. Of the cases in which the judge modified the jury sentence, judges brought a high jury sentence into compliance with the guidelines recommendation in only four out of ten modifications. In another four out of ten modification cases, judges lowered the jury sentence but not enough to bring the final sentence into compliance.

In those jury cases in which the final sentence fell short of the guidelines, it did so by a median value of almost two years (Figure 31). In cases where the ultimate sentence resulted in a sanction more severe than the guidelines recommendation, the sentence exceeded the guidelines maximum recommendation by a median value of more than three years. Although juries sentenced offenders to terms which far exceeded the guidelines recommendation in many cases, the median length of aggravation departure dropped by nearly a year between FY1998 and FY1999.

FIGURE 31

Median Length of Durational Departures in Jury Cases – FY1999

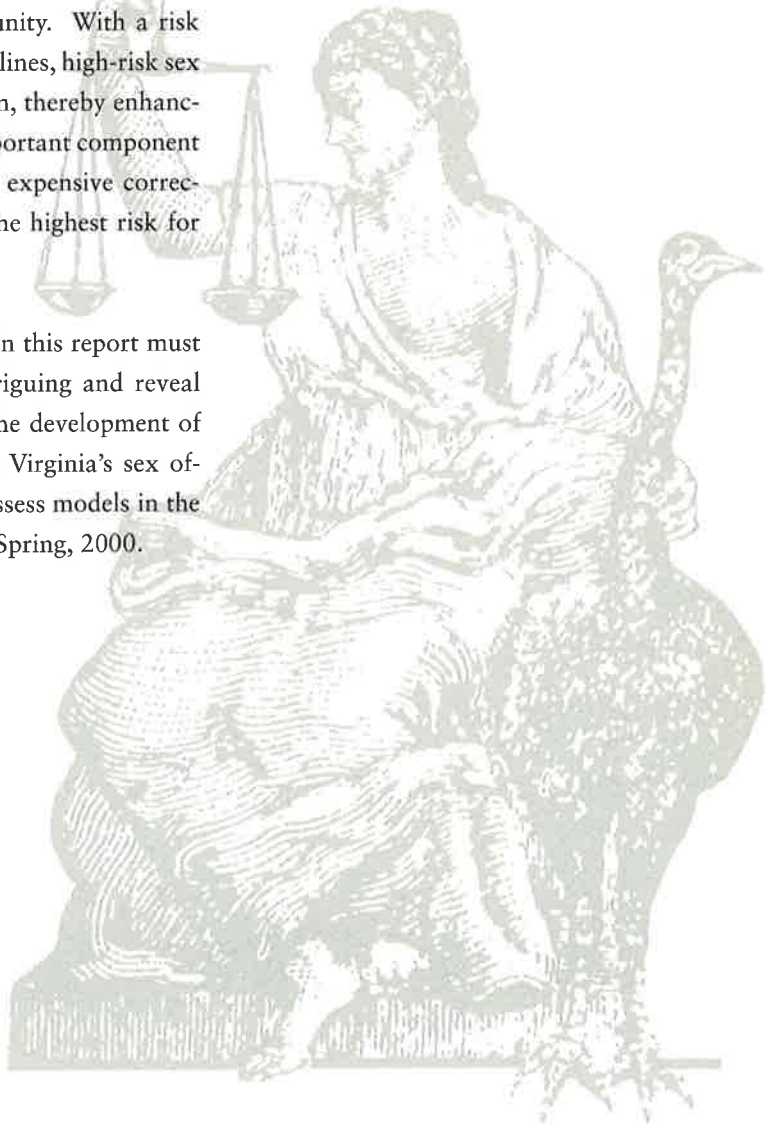
SEX OFFENDER RISK ASSESSMENT

This Virginia Supreme Court seal is taken from a fresco (method of painting on wet plaster with watercolors) entitled "Justice" by Raphael, in the Vatican. It shows the Roman goddess Justitia holding the scales of justice and an Ibis.

Introduction

During its 1999 session, the General Assembly passed Senate Joint Resolution (SJR) 333 requesting the Commission to develop a risk assessment instrument for utilization in the sentencing guidelines for sex offenses. Such an instrument can be used to identify those offenders who are likely to present the greatest risk to public safety. An empirically-based risk assessment instrument can identify sex offenders who have the highest probability of recidivating once they are released back into the community. With a risk assessment instrument integrated into the sentencing guidelines, high-risk sex offenders can be targeted for longer terms of incarceration, thereby enhancing public safety. Risk assessment can be viewed as an important component to help maximize public safety while reserving the most expensive correctional space for convicted sex offenders who represent the highest risk for repeat criminal behavior.

The Commission's study is ongoing. Analysis presented in this report must be considered preliminary. Preliminary models are intriguing and reveal additional paths for analysis that may prove fruitful in the development of a statistical model to estimate risk of recidivism among Virginia's sex offenders. The Commission will continue to explore and assess models in the coming months. Analysis is scheduled for completion in Spring, 2000.



The official seal of the Virginia Supreme Court was adopted in October 1935. The long necked bird is an Ibis which symbolizes wisdom in Egyptian mythology.

SENATE JOINT RESOLUTION NO. 333

Requesting the Virginia Criminal Sentencing Commission to develop a risk assessment instrument for utilization in the sentencing guidelines for sex offenses.

WHEREAS, research indicates that certain sex offenders are at high risk for reoffense; and

WHEREAS, such sex offenders typically prey on vulnerable populations, such as children; and

WHEREAS, it is important to identify and incapacitate, to the extent possible, these predatory sex offenders; and

WHEREAS, the Sentencing Commission has developed and piloted a risk assessment instrument for certain offenses for purposes of providing alternatives to incarceration; and

WHEREAS, a similar assessment instrument could be used to determine the range of sentences which should be imposed upon a convicted sex offender based upon the risk for reoffending; now, therefore, be it

WHEREAS by the Senate, the House of Delegates concurring, that the Virginia Criminal Sentencing Commission be requested to develop a risk assessment instrument for utilization in the sentencing guidelines for sex offenses. In developing the risk assessment instrument, the Commission shall consider the impact of treatment interventions on the reduction of sex offenses. The Commission shall collaborate with the Department of Corrections in the development of such instrument. All agencies of the Commonwealth shall provide assistance to the Commission, upon request.

The Commission shall complete its work in time to submit its findings and recommendations to the Governor and the 2000 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems.

The Nature of Risk Assessment

In essence, criminal risk assessment is the estimation of an individual's likelihood of repeat criminal behavior and classification of offenders in terms of their relative risk of such behavior. Typically, risk assessment is practiced at an informal level throughout the criminal justice system (e.g., judges at sentencing, prosecutors when charging). Empirically-based risk assessment, however, is a formal process. Based on statistical analysis of the characteristics, criminal histories and patterns of recidivism among offenders, an instrument is developed from factors with a known level of success in predicting recidivism. The factors proving statistically significant in predicting recidivism can be assembled on a risk assessment worksheet, with scores determined by the relative importance of the factors in the statistical model. The instrument then can be applied to an offender to determine that individual's relative risk of continued criminal involvement.

Effectively, risk assessment means developing profiles or composites based on overall group outcomes. Groups are defined by having a number of factors in common that are statistically relevant to predicting the likelihood of repeat offending. Those groups exhibiting a high probability of re-offending are labeled high risk. This methodological approach to studying criminal behavior is an outgrowth from life-table analysis used by demographers and actuaries and in many scientific disciplines.

A useful analogy can be drawn from medicine. In medical studies, individuals grouped by specific characteristics are studied in an attempt to identify the correlates of the development or progression of certain diseases. The risk profiles for medical purposes, however, do not always fit every individual. For example, some very heavy smokers may never develop lung cancer. Similarly, not every offender that fits the lower risk profile will refrain from criminal activity. No risk assessment research can ever predict a given outcome with 100% accuracy. Rather, the goal is to produce an instrument that is broadly accurate and provides useful additional information to decision makers. The standard used to judge the success of risk classification is not perfect prediction. It is, instead, the degree to which decisions made with a risk-assessment tool improve upon decisions made without the tool.

A bas-relief of Lady Justice faces the Bench in the Supreme Court Chamber of the United States Capitol building. This room was originally the Senate Chamber and later reconstructed for the Supreme Court's use from 1810 to 1860. The umbrella vault ceiling, designed and constructed by Latrobe, is considered a masterpiece. Lady Justice appears in the lunette. It is said that in this chamber Chief Justice John Marshall established the foundations of American constitutional law.

Failure, for the criminal justice system, is typically measured by a recidivist event. Offender recidivism, however, can be measured in several ways. Potential measures vary by the act defined as recidivism and by the level of criminal justice response. For instance, recidivism can be defined as any new offense, a new felony offense, a new offense for a specific type of crime (e.g., a new sex offense), or any number of other acts. The true rate at which offenders commit new crimes likely will never be known, since not all crimes come to the attention of the criminal justice system. Recidivism, therefore, is usually measured in terms of a criminal justice response to a detected act. Recidivism measures range from re-arrest to reconviction or even recommitment to prison.

The Commission considered very carefully how recidivism should be defined for the study requested by SJR 333. To assist the Commission in its deliberations, Commission staff conducted a thorough review of criminological literature on recidivism among sex offenders. Several recidivism studies have found that a portion of sex offenders (particularly those convicted of rape crimes) are subsequently charged with or convicted of a person crime, such as domestic assault, robbery or kidnapping, but not necessarily a sex offense. The Commission felt that it was important to define any crime against a person, not just a new sex offense, as a recidivist act. In addition, several authors prominent in the field emphasized the difficulty in measuring sex offense recidivism. Detection of sex offense recidivism is adversely affected by several factors, including the reluctance of victims to report the crime. Moreover, measuring recidivism based on reconviction can be problematic. In sexual assault cases, victims and witnesses may refuse to come forward to testify and, often, evidentiary problems exist, particularly when the victim is very young. The difficulty in prosecuting sexual assault cases often means that charges must be dropped or, in order to achieve a conviction, reduced in a plea agreement. With the obstacles faced by the criminal justice system in prosecuting sex offenders, the Commission felt that measuring recidivism by a new conviction would drastically underestimate the true rate of recidivism among sex offenders.

The Commission wanted to select a measure of recidivism that reflected its concern for public safety. The Commission believed that measuring recidivism by a new arrest would more accurately reflect the true rate of repeat criminal behavior among convicted sex offenders. Consequently, the Commission decided that its operational definition of recidivism would be a new arrest for any crime against a person, including any new sex offense.

Research Methodology

SJR 333 requests the Commission to develop a risk assessment instrument for sex offenders that can be integrated into the sentencing guidelines. The results of the recidivism study, therefore, must reflect the characteristics of offenders at the time of sentencing. Studying sentenced offenders, however, is problematic in conducting research on recidivism, particularly if the population of interest is convicted sex offenders. In any given year, many sex offenders are sentenced to serve long prison terms. Researchers would have to wait until offenders served out their prison sentences and were released from incarceration in order to track the offenders and study re-offense patterns. The Commission felt that studying a group of sex offenders sentenced many years in the past would be prohibitive due to the difficulty in obtaining detailed offense information from the distant past. In addition, the Commission felt that such a group may not adequately represent contemporary offense patterns and sentencing practices. Most recidivism studies examine offenders released from incarceration during a particular time period. However, the Commission could not use this method exclusively because sex offenders released from incarceration during a given period differ in many ways from sex offenders sentenced during the same period. Any risk assessment instrument developed as the result of the study is to be applied to offenders at the point of sentencing, not at release from incarceration. The Commission had to develop an alternative approach.

To begin, 600 felony sex offenders convicted and sentenced during 1996 and 1997 were selected at random from the Pre-/Post-Sentence Investigation (PSI) database. The PSI database contains a vast amount of offense and offender information for nearly all felony cases sentenced in circuit courts around the Commonwealth. The Commission did not include offenders convicted of misdemeanor sex crimes, any felony prostitution, adultery, or fornication crimes (except incest). The Commission also excluded offenses of nonforcible sodomy between two adults when there was no victim injury. Because females comprise less than 2% of Virginia's convicted sex offender population, female offenders were excluded from the study as well.

A sample size of 400 is usually adequate to achieve the level of statistical accuracy sought by the Commission. The Commission, however, wanted to be sure that enough recidivists would be captured in the sample to support detailed analysis of the characteristics most associated with recidivist behavior. The Commission estimated that approximately 20% of sex offenders in the sample would be recidivists. This estimate was based on two recidivism studies. A 1989 Virginia

Justice is depicted here leaning on her sword in the early 1930's sculpture by Adolph Weinman. The horizontal band of carvings (frieze) surrounds the courtroom in the United States Supreme Court building in Washington D.C. Justice appears with Divine Inspiration on the West wall frieze directly opposite the Bench. The theme of this wall is good versus evil.

Department of Criminal Justice Services report found that 28% of rapists released from the state's prisons were rearrested and 26% were reconvicted for a violent felony. More recently, the state of Washington, based on an eight-year follow-up of sex offenders, reported that 19% of released prisoners and 11% of adults placed on community supervision were convicted for a new person felony.

Guided by this information, it was estimated that approximately 20% of sex offenders in the study would recidivate with a new arrest for a person or sex offense. The Commission used this estimate to decide on the appropriate sample size for the study. The Commission was also aware that it would be difficult to obtain detailed offense and offender information on all the cases in the study. Some information would simply be missing and some offender files would be unavailable. In order to ensure a sufficient number of recidivists would be captured by the study, the Commission increased the sample size from 400 to 600. Because the sampled cases closely reflect the characteristics of all sex offenders convicted and sentenced in 1996 and 1997, the Commission will be able to generalize the results of the study to the population of these offenders.

In the next step, the Commission used the PSI database and the Department of Corrections' Offender Based State Correctional Information System (OBSCIS) to identify offenders who were released from incarceration (or sentenced to probation without an accompanying incarceration term) during fiscal years (FY) 1990 through 1993. Using a sophisticated statistical technique, every case in the sample of sentenced sex offenders was carefully matched to a similar case for an offender released during FY1990-93. The technique matched offenders according to a variety of offense and offender characteristics available on the automated data files. The objective was to match the sample of sentenced offenders to cases of released offenders that most closely resembled the characteristics of the sentenced offenders. The result was a group of released offenders who reflected the characteristics of the offenders sentenced in 1996 and 1997. It is the released offenders who were then tracked for recidivism.

The Commission chose to examine cases of offenders released in FY1990 to 1993 in order to provide at least a five-year follow-up for all offenders in the study. Whereas a three-year follow-up may be adequate for general studies of recidivism, more than one study reviewed by Commission staff suggested that a longer follow-up period is needed to track recidivism among sex offenders. These studies found that a significant portion of sex offenders recidivate after the three year window utilized by many recidivism studies.

Automated data was supplemented in two ways. First, hard copies of the PSI reports for the study cases were obtained in order to tease out rich offense detail from the report's narrative sections. The Commission was particularly interested in details relating to the circumstances of the offense, the offender's relationship with the victim, victim injury and the offender's criminal and family history. Many of these details sought by the Commission are not maintained on the automated data systems. Next, prior criminal history was supplemented by examination of each offender's criminal history "rap" sheet. Rap sheets from the Central Criminal Records Exchange (CCRE) system maintained by the Virginia State Police and rap sheets from the FBI's interstate CCRE system were also used to track each offender for recidivism. Supplemental information was coded and entered into a database for analysis. As anticipated, the Commission was not able to obtain supplemental information for all cases in the study. In some instances, the PSI had been purged or the Department of Corrections' file containing the PSI was being microfiched and was unavailable for review. In a few cases, although the PSI was located, the narrative portions did not provide the level of detail the Commission desired. Nineteen cases had to be excluded because a rap sheet could not be located or because manual review of the case suggested that the match between the sentenced case and the released case was inappropriate. In all, 581 cases were included in the recidivism analysis.

The Commission is utilizing three different statistical techniques to analyze the recidivism data. The three methods are performed independently by different analysts. The preliminary models generated by each method will be compared. Differences will be identified, assessed and tested. In this way, the Commission can be assured that the final model does not reflect spurious results associated with a particular technique or with the style of any individual analyst. The factors proving statistically significant in predicting recidivism can be assembled on a risk assessment worksheet, with scores determined by the relative importance of the factors in the statistical model.

Analysis presented in this report must be considered preliminary. The Commission's work is ongoing. Preliminary models are intriguing and reveal additional paths for analysis. The Commission will continue to explore and assess models in the coming months. In addition, the Commission is obtaining FBI rap sheets for all offenders in the study. The FBI rap sheets are vital to the Commission's study because they are the best way of identifying crimes committed outside of the Commonwealth. The Commission feels that it is very important for the study to include both prior criminal record and recidivist activity occurring outside Virginia. Data coded to date reflects only crimes committed within the state.

Offender and Offense Characteristics

In order to study recidivism among sex offenders in Virginia, the Commission tracked 581 sex offenders released from incarceration (or given probation without incarceration) from FY1990 to FY1993. Commission staff examined a variety of offender and offense characteristics in order to gain a better understanding of the circumstances surrounding sex offenses committed in Virginia and the individuals convicted for these crimes.

Study cases can be categorized based on the most serious sex crime for which the offender was convicted, sentenced and subsequently released (or given probation) between FY1990 and FY1993. This offense, the basis for inclusion in the Commission's study, is referred to as the "instant" offense. Of the 581 study cases, the most common instant offense was aggravated sexual battery (Figure 32). Nearly one-third of the offenders in the study had been convicted of this crime, which carries a 20-year statutory maximum penalty. More than 28% of offenders had been convicted of a forcible rape or inanimate object penetration, but another 13% were convicted of forcible sodomy. Forcible rape, forcible sodomy, and inanimate object penetration offenses carry a maximum penalty of life in prison. Over 14% of the study cases were based on a conviction for indecent liberties with a child, a Class 6 felony with a five-year maximum penalty. Carnal knowledge of a child, a Class 4 felony if the offender is an adult and a Class 6 felony if the offender is a minor at least three years older than the victim, appeared as the instant offense in 12% of the study cases.

FIGURE 32
Number and Percentage of Cases by Offense

	Cases	Percent
Forcible Rape/Inanimate Object Penetration	165	28.4%
Forcible Sodomy	77	13.2
Aggravated Sexual Battery	177	30.5
Carnal Knowledge	69	11.9
Indecent Liberties	83	14.3
Other Sex Offenses	10	1.7

Sex offenders in the study received a broad array of punishments for the instant offenses they committed, and the punishments varied by the type of instant offense. Nearly all forcible rape and forcible sodomy offenders were sentenced to incarceration of one year or more (Figure 33). While just over half of the aggravated sexual battery offenders were given terms of one year or more, less than half (40%) of offenders convicted of indecent liberties with a child were given such a sanction. In fact, one-third of indecent liberties offenders were given probation without an accompanying term of incarceration. Of those convicted of carnal knowledge, less than one-third were sentenced to prison and nearly half were given probation without any incarceration.

FIGURE 33

Type of Disposition by Offense

Offense	Probation	Incarceration Up to 12 Months	Incarceration 1 Year or More
Forcible Rape/Inanimate Object Penetration	4.3%	3.6%	92.1%
Forcible Sodomy	3.9	6.5	89.6
Aggravated Sexual Battery	23.7	22.0	54.3
Carnal Knowledge	46.4	21.7	31.9
Indecent Liberties	33.7	27.7	38.6
Other Sex Offenses	50.0	20.0	30.0

Among offenders in the study given an incarceration term of one year or more, sentences varied considerably by offense. For offenders whose most serious sex offense was forcible rape or object penetration, the median sentence (the middle value, where half the sentences fall above and half below) was eight years (Figure 34). Offenders in the study group served time under the parole system and were eligible for discretionary parole release. In general, the length of time served by these offenders was considerably less than the sentence pronounced in the courtroom. Rapists in the study typically served less than five years. Offenders convicted of forcible sodomy were sentenced, typically, to eight years in prison, but served a little over four years before being released on parole. The median time served for aggravated sexual battery offenders was less than 2½ years, despite a median sentence of five years. The median prison sentence for both the carnal knowledge and indecent liberties offense categories was three years, but these offenders typically served only 15 months.

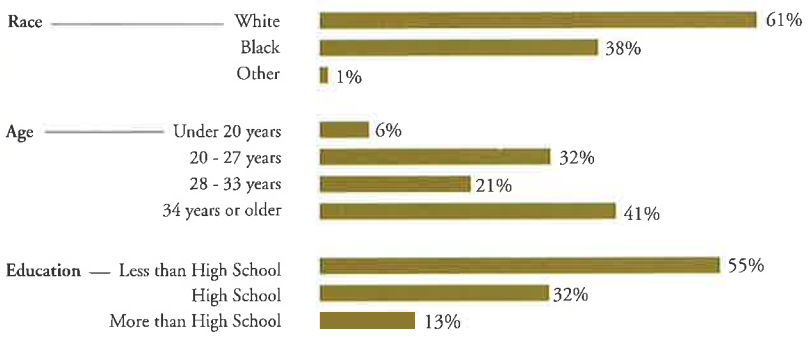
FIGURE 34

Median Prison Sentence Length and Time Served by Offense (in years)

Offense	Sentence	Time Served
Forcible Rape/Inanimate Object Penetration	8	4.9
Forcible Sodomy	8	4.1
Aggravated Sexual Battery	5	2.4
Carnal Knowledge	3	1.3
Indecent Liberties	3	1.3
Other Sex Offenses	3	1.0

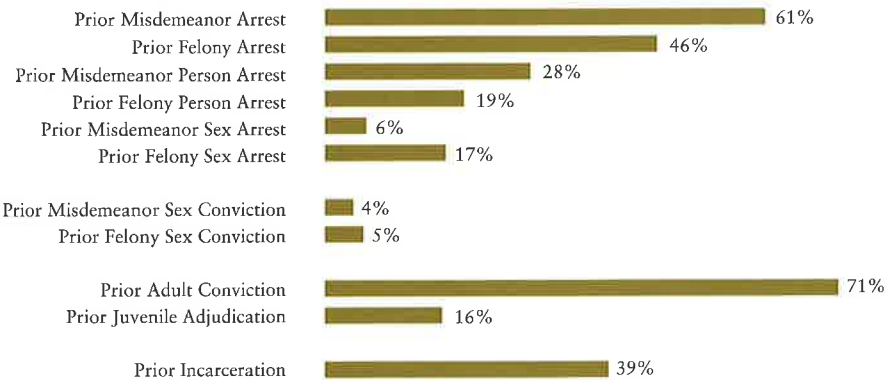
Of the 581 offenders in the Commission's study, nearly two-thirds were white. More than 40% of the offenders were 34 years of age or older when they were convicted of the instant offense (Figure 35). Fewer offenders fell into the younger age categories. Only 21% of these offenders were ages 28 through 33, and 32% were ages 20 to 27. Only 6% of sex offenders in the study were under age 20 at the time of conviction. Despite the fact that the largest share of offenders were in oldest age group, nearly 40% of the offenders had never been married at the time they were convicted of the instant offense. Several recidivism studies reviewed by Commission staff found that single offenders recidivated at higher rates than offenders who were or had been married. Commission staff will continue to explore this factor and its association with recidivism among offenders in the study group.

FIGURE 35
Offender Characteristics



Of the sex offenders being studied, over half (55%) had not completed high school (Figure 35). At the time of the instant offense, nearly two-thirds (62%) of the offenders held a full-time job and about 20% were unemployed. A court-appointed attorney represented about three of five offenders in the study. This is generally indicative of the offender's income level. In 1996, an offender living alone must have had less than $9,675 in average annual funds in order to qualify for an attorney appointed by the court.

FIGURE 36
Type of Prior Criminal Record



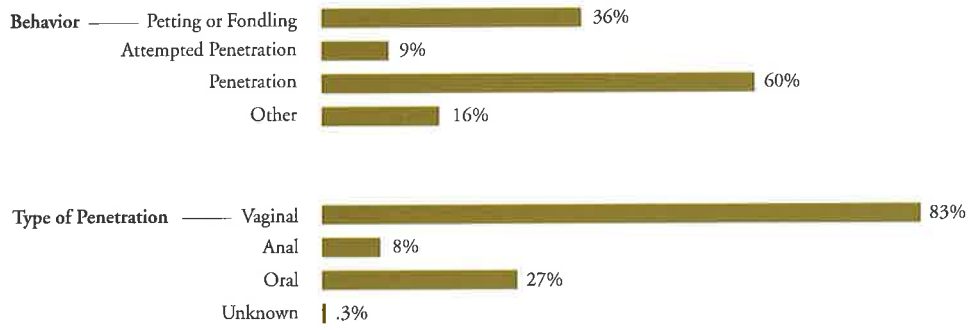
The majority of sex offenders in the study had some type of prior criminal record at the time they were convicted of the instant offense. Most of the offenders (71%) had at least one prior adult conviction and approximately 16% had known juvenile delinquency adjudications (Figure 36). Almost half (46%) of the sampled

offenders had previously been arrested for a felony, and 61% had a prior arrest for a misdemeanor. Although 17% of the offenders had been arrested previously for a felony sex offense, only 5% had been convicted of a felony sex offense. That less than a third of those previously arrested for a felony sex offense had been convicted reveals the prosecutorial challenges related to many sex offender cases. Nearly 40% of the sex offenders being studied had served an incarceration term prior to the instant offense.

The Commission obtained hard copies of the PSI reports for the study cases and extracted rich offense detail from each report's narrative sections. The Commission was particularly interested in details relating to the offense behavior and the victim not available on the automated data systems. For the 581 sex offenders in the study, the Commission was able to identify 673 victims related to the instant offenses. However, PSI narratives provided sufficient detail for only 650 victims. The data reveal that nearly two-thirds (60%) of the victims experienced some kind of sexual penetration during the assault (Figure 37). When penetration was reported, it most often related to vaginal penetration (83%), although more than one-quarter of the penetrations were committed orally. Multiple types of penetration were recorded in some cases. For 9% of the victims, penetration was attempted by the offender but not achieved. Well over one-third of the victims (36%) were petted or fondled by the offender. For nearly 16% of the victims, the offense involved some other form of behavior, such as exposure. The Commission attempted to collect data on as many types of sex offense behaviors as could be identified in the PSI narrative.

FIGURE 37

Type of Sex Offense Behavior*



* Analysis is based on the number of victims for which supplemental data is available (N=650). These percentages do not sum to 100% because offenders could have committed multiple assaults against the same victim.

The majority of victims of the sexual assaults committed by offenders in the study were minors. About 81% of the victims were under age 18 at the time of the assault (Figure 38). When the age of a minor victim was identified, the median age was 11 years. The median age for an adult victim was 24 years.

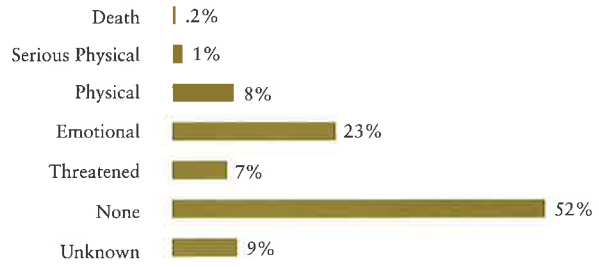
FIGURE 38
Age of Victims*

	Percent	Median Age
Adult Victim	19.2%	24 years
Minor Victim	80.8%	11 years

* Analysis is based on the number of victims for which supplemental data is available (N=650).

The Commission is very interested in the types of injuries sustained by the victims of the sexual assaults under study. According to PSI information, half of the victims were not injured by the assault (Figure 39). The probation officer, however, must complete the PSI based on knowledge of victim injury documented at the time the PSI report was prepared. The probation officer writing the report may not be aware of certain types of injuries, particularly emotional injury, sustained by the victim. Based on PSI data, nearly one-fourth of the victims were reported as having sustained emotional injury. Emotional injury is recorded by the probation officer if the officer is aware that the victim met with some type of counselor or psychiatrist as the result of the assault. Also, probation officers often record emotional injury if the parents, guardians or other person with knowledge of the victim reports some type of continuing trauma in the victim's life (e.g., bad dreams, behavioral problems, anxiety attacks), even if formal counseling is not pursued. Seven percent of the victims reported having been threatened with injury and 8% of the victims sustained physical injury (injury leaving visible bruising or abrasions or requiring first-aid). For about 1% of the victims, the assault resulted in serious physical injury (injury was life-threatening or resulted in the loss or impairment of any limb or organ) or death.

FIGURE 39
Most Serious Type of Victim Injury Sustained*

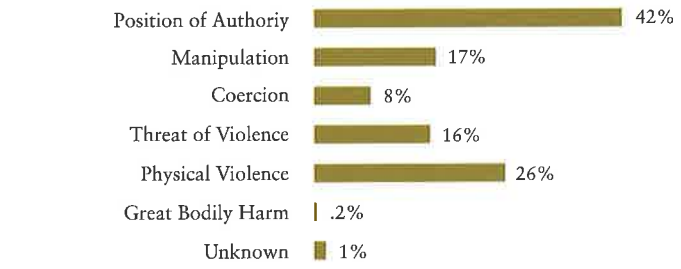


* Analysis is based on the number of victims for which supplemental data is available (N=650). These percentages do not sum to 100% due to rounding.

Through its supplemental data collection efforts, the Commission attempted to discover the mode or approach used by the offender to commit the sex offense. The Commission's supplemental data reveal that offenders in the study sample were most likely to use a position of authority as the mode of committing the sex offense (Figure 40). Forty-two percent of the victims in the study were assaulted by offenders in a position of authority. This mode was recorded if the offender did not use or threaten to use physical force, but the offender was responsible for the health, welfare or supervision of the victim at the time of the offense. Offenses committed through a position of authority typically involved a young child and a step-parent or other relative. Seventeen percent of the victims were manipulated by the offender. Manipulation was coded in the supplemental data if the offender engaged in sexual activity while the victim was impaired, if the offender used some type of deception, trickery or bribe (such as video games or candy), or if the offender threatened to withdraw love and affection. Only 8% of the victims were coerced by the offender into the sex offense. For this study, coercion was defined as forcing the victim to act in a given manner by pressure, non-physical threats, intimidation or domination without physical force. More than one-fourth of the victims experienced physical violence during the assault, but another 16% were threatened with physical violence if they did not submit to the assault.

FIGURE 40

Mode of Offense*

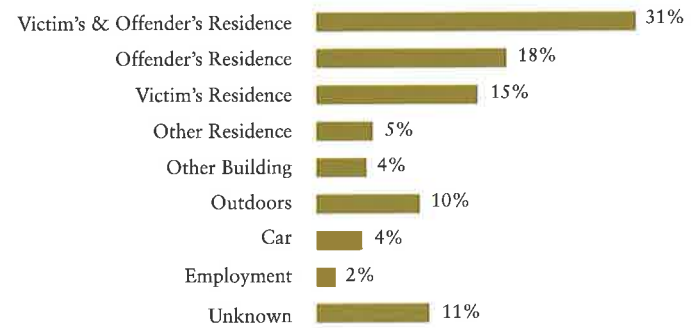


* Analysis is based on the number of victims for which supplemental data is available (N=650). These percentages do not sum to 100% because offenders could have committed multiple assaults against the same victim.

The Commission recorded information relating to the location of each sex offense. Of the offenses for which location could be identified, only about one in five were committed in a public place. One study of sex offender recidivism reviewed by Commission staff associated sexual assaults committed in public places with higher rates of recidivism. Overall, more than two-thirds of the victims were assaulted in a residence (Figure 41). Nearly a third of the victims were assaulted in a residence that they shared with the offender. For 18% of the victims, the assault took place

FIGURE 41

Location of Sex Offense*

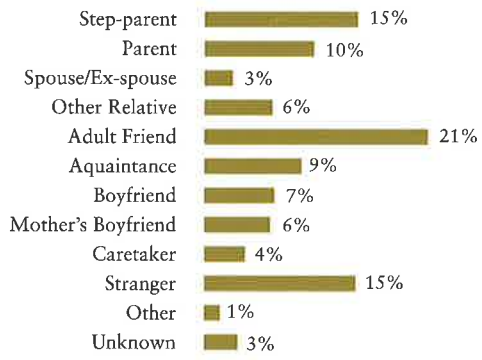


* Analysis is based on the number of victims for which supplemental data is available (N=650). These percentages do not sum to 100% because offenders could have committed multiple assaults against the same victim.

at the home of the offender. Fifteen percent of the victims were assaulted in their own homes by an offender who did not live there. Fourteen percent of the crimes were committed outdoors or in a car.

The supplemental data collection revealed that only 15% of the victims did not know the offender at the time of the assault. For over 80% of the victims, the offender was known to the victim at the time of the offense (Figure 42). In fact, for over one-third of the victims, the offender was a member of the family, such as a step-parent. Twenty-one percent of the victims were minors assaulted by an adult friend of the family, but another 6% of the victims were assaulted by their mother's boyfriend.

FIGURE 42
Offender's Relationship to Victim*



* Analysis is based on the number of victims for which supplemental data is available (N=650).

SJR 333 requests the Commission to consider the impact of treatment intervention on the reduction of sex offenses. Unfortunately, after discussions with the Department of Corrections, the Commission found that little formalized sex offender treatment was available in Virginia's prison system during the time period the study group was incarcerated. Furthermore, using PSI reports, the Commission documented that only 12% of offenders in the study group had received some type of sex offender treatment in the community prior to the instant offense.

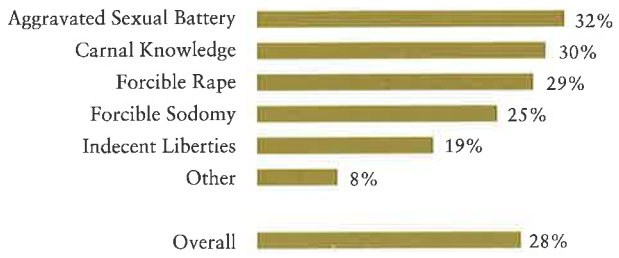
Rates of Recidivism

The Commission's study of recidivism examines offenders released from incarceration (or given probation without incarceration) between FY1990 and FY1993. All offenders in the study were followed-up for at least five years. Offenders who were released in FY1990 could be tracked for up to nine years in effort to identify recidivist offense behavior. For this study, the operational definition of recidivism is a new arrest for a person or sex crime (felony or misdemeanor). Based on this measure, about one in three sex offenders in the study group recidivated over the entire study period. Using a uniform five-year follow-up for all offenders, the rate of recidivism for the study group was 28%. The following analysis reports recidivism measured with a five-year follow-up period.

The Commission's analysis reveals that recidivism rates vary somewhat by the type of instant offense (Figure 43). Those offenders whose instant offense was aggravated sexual battery were the most likely to re-offend within a five-year time frame (32%). Offenders convicted of carnal knowledge or forcible rape/object penetration recidivated at nearly the same rate (30% and 29%, respectively). Of those convicted of forcible sodomy, one in four were found to have recidivated within five years. However, less than 20% of those convicted of indecent liberties were rearrested during the five-year follow-up period.

FIGURE 43

Rate of Recidivism by Offense (Five Year Follow-up)



The Commission's data indicate that younger offenders were more likely to recidivate than older offenders. More than one-third (36%) of the offenders under age 20 when convicted of the instant offense were re-arrested for a new person or sex crime within five years after release (Figure 44).

Almost 40% of those convicted between the ages of 20 and 27 were re-arrested for such an offense. This contrasts with the much lower recidivism rates for the older age groups. Sex offenders convicted for the instant offense between the ages of 28 to 33 recidivated at a rate of 23%. Only 20% of offenders 34 and older at conviction were re-arrested within the five-year time frame. Thus, offenders in the oldest age category recidivated at the lowest rate overall.

Low levels of education attainment also appear to be correlated with higher rates of recidivism. More than one in three (34%) offenders in the study group who did not finish high school were arrested for a new person or sex offense within five years following release, compared to about one in four (23%) of those with a high school diploma, and about one in eight (13%) with more than high school education (Figure 44).

In addition, the Commission found that offenders who had experienced a prior mental health commitment (voluntary or involuntary) were less likely to recidivate than those who had never been committed (19% vs. 30%). This may indicate a willingness to seek treatment on the part of the offender or some benefit derived from mental health treatment. This result is intriguing and warrants further analysis.

FIGURE 44

Rate of Recidivism by Offender Characteristics (Five Year Follow-up)

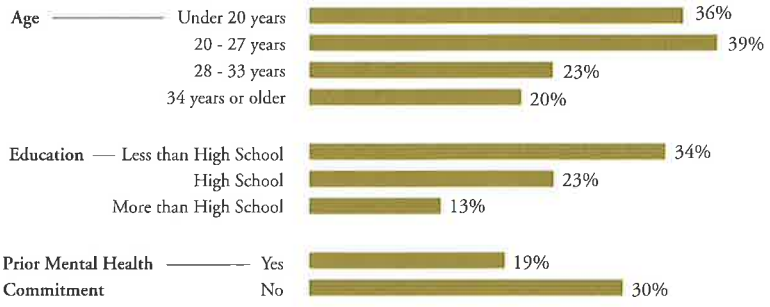
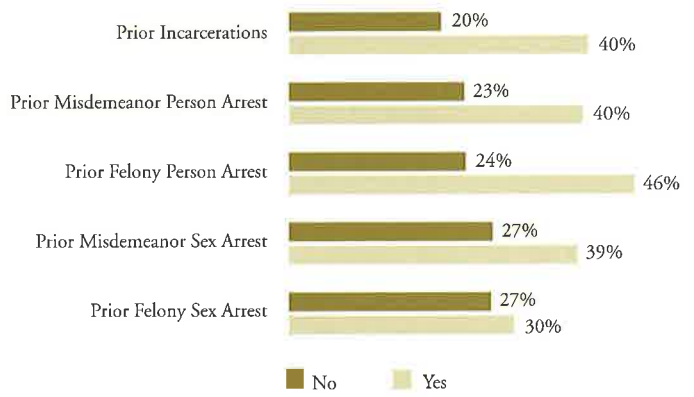


FIGURE 45

Rate of Recidivism by Prior Record Characteristics (Five Year Follow-up)

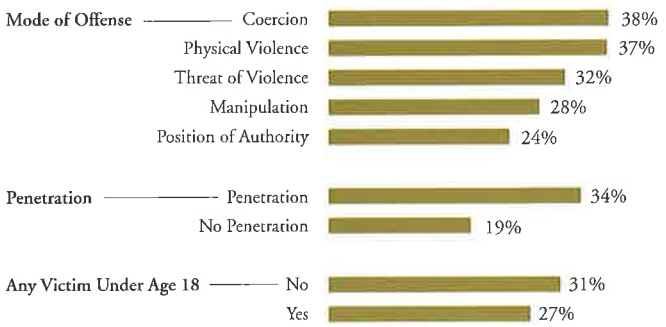


The five-year rate of recidivism is also associated with an offender's prior record at the time of conviction for the instant offense (Figure 45). Offenders in the study sample with a prior incarceration were twice as likely to recidivate as those who had not been previously incarcerated (40% vs. 20%). Offenders with at least one prior arrest for a person offense (whether a felony or a misdemeanor) were also nearly twice as likely to have recidivated than those who did not have such an arrest. It is interesting to note that offenders having a prior arrest for a felony sex offense did not recidivate at a substantially higher rate than those who had never been arrested for a felony sex offense prior to the instant offense. While 30% of those with a prior felony sex arrest did recidivate, 27% of offenders with no such prior arrest also recidivated.

The Commission's supplemental data revealed that offenders who committed their assaults through coercion or physical force recidivated at higher rates than offenders who used other modes in their sexual assaults. More than one of every three offenders using one of these offense modes were re-arrested for a new person or sex offense within five years (Figure 46). For those who threatened violence in order to commit their sex offense, the recidivism rate was 32%. Offenders who used manipulation or their position of authority recidivated at somewhat lower rates. Twenty-eight percent of offenders who used manipulation, and 24% of those using their position of authority to facilitate a sex offense were rearrested for a person or sex crime.

FIGURE 46

Rate of Recidivism by Offense Characteristics (Five Year Follow-up)



For offenders whose sex crime included penetration, 34% were rearrested during the five-year follow up period (Figure 46). This compared to a recidivism rate of only 19% for those with a sex crime committed without the element of penetration. Offenders who victimized a minor were somewhat less likely to re-offend than offenders who victimized only adults (31% vs. 27%).

Preliminary Models

The Commission's study is ongoing. The Commission will continue to explore and assess models in the coming months. In addition, the Commission has requested FBI criminal history "rap" sheets for all offenders in the study group. The FBI rap sheets are important for identifying crimes committed by these sex offenders outside of the Commonwealth. Commission staff will code and analyze information provided by the FBI rap sheets as soon as they are received. Thus, the models presented here must be considered preliminary.

To analyze this recidivism data, the Commission is using three sophisticated statistical methods. The three methods are performed independently by different analysts. The preliminary models generated by each method will be compared. Differences will be identified, assessed and tested. In this way, the Commission can be assured that the final model does not reflect spurious results associated with a particular technique or with the style of any individual analyst.

One of the statistical methods used by the Commission requires that all offenders be tracked for the same length of time after release. When applying this method, the Commission is using a five-year follow-up period in determining recidivism. Any offender re-arrested for a person or sex crime within five years of release is defined as a recidivist. Another method often used in recidivism studies allows researchers to utilize varying follow-up periods. This means that Commission staff can utilize the entire study period (through June 1999) to look for recidivist behavior, even if some offenders are tracked for only five years while others are tracked for as long as nine years. Both statistical methods allow multiple factors to be included in the model simultaneously as predictors. As a result, an offender's re-arrest probability can be determined using the unique contribution of several factors to that offender's overall likelihood of recidivism.

Using the method requiring a uniform five-year follow-up period, a model with eight significant factors emerged from the preliminary analysis. Figure 47 displays these eight factors according to their relative importance in the statistical model. In this model, the age of the offender at conviction is the single most important factor in predicting recidivism. Within the study group, younger offenders recidivated at higher rates. The mode of the offense is also very important in predicting recidivism. The form of this variable and its significance in the model reveal that offenders who used physical force to commit the instant offense were more likely to recidivate than those who did not. Furthermore, offenders who committed the instant offense through coercion, threat of violence

or manipulation were more likely to recidivate than offenders who committed the instant offense through a position of authority. Having a prior record with at least one misdemeanor arrest for a person or sex crime (e.g., assault and battery, indecent exposure, etc.) is also highly predictive of recidivism in this model.

The preliminary model produced by the method with a uniform five-year follow-up also includes other factors. Having less than a high school education is statistically significant in predicting recidivism, although it is only about half as important as age in the model. Assaulting a victim under the age of 14 also significantly contributes to the prediction of recidivism among sex offenders in the study group. Almost as important as victim age is the factor relating to penetration or attempted penetration of the victim. In the study group, offenders whose sex offense involved penetration or attempted penetration of at least one of their victims recidivated at higher rates than those whose offense did not involve this element. In addition, a factor relating to mental health commitments emerged in this model. The Commission's data reveal that offenders who had experienced a prior mental health commitment (voluntary or involuntary) were less likely to recidivate than those who had never been committed. This may indicate a willingness to seek treatment on the part of the offender or some benefit derived from mental health treatment. This result is intriguing and warrants further analysis. Finally, having served an incarceration term prior to the instant offense is also associated with higher recidivism rates in this model.

FIGURE 47

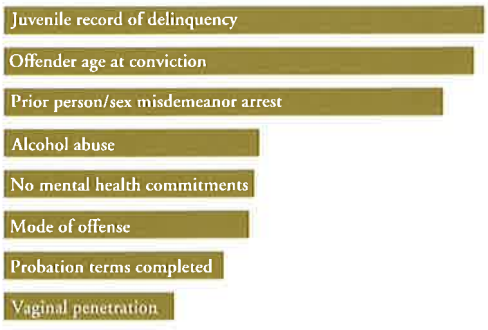
Preliminary Model Using Five Year Recidivism Measure:
Significant Factors in Assessing Risk by Relative Degree of Importance

The method allowing for varying follow-up periods yielded a slightly different preliminary model. Figure 48 displays the significant factors according to their relative importance in the statistical model. Both models contain eight factors, only four of which are the same. Using this alternative method, having a juvenile record of delinquency is the most important factor in predicting recidivism among offenders in the study group. Almost as important in this model, however, is the offender's age at conviction, which appeared as the strongest predictive factor in the previous method. Having a prior record with at least one misdemeanor arrest for a person or sex crime is also highly predictive of recidivism, an outcome consistent with the model produced through the other statistical method.

The preliminary model developed with the method allowing for varying lengths of follow-up includes other factors as well. Using this method, alcohol abuse is statistically significant in predicting recidivism, although it is only about half as important as juvenile record and age in the model. As with the previous preliminary model, offenders who had experienced a prior mental health commitment (voluntary or involuntary) were less likely to recidivate than those who had never been committed. Analyzing the data with this method reveals the same relationship between the mode used by the offender to commit the offense and subsequent recidivism that was found using the previous method. However, two factors emerged in this preliminary model that did not appear in the model based on the previous method. Using this method, the model includes a factor measuring the number of prior probation terms completed by the offender. This prior record factor captures the number of terms of probation the offender has successfully completed prior to the instant offense. It can be used as a measure both

FIGURE 48

Preliminary Model Using Five to Nine Year Recidivism Measure: Significant Factors in Assessing Risk by Relative Degree of Importance



of contact with the criminal justice system and of successful supervision outcome. Finally, in this preliminary model, vaginal penetration of the victim is found to be a significant predictor of recidivism among offenders in the study group.

The results of the Commission's preliminary work are intriguing and suggest new paths for analysis that may prove fruitful in the development of a statistical model to estimate risk of recidivism among Virginia's sex offenders. The Commission will continue its study over the coming months. Additional models of recidivism will be explored and assessed. Developing a model with statistically significant factors does not mean, however, that such a model is substantively meaningful or useful in a practical way. The Commission must assess whether an empirically-based risk assessment instrument developed as the result of the current study can serve to improve judicial decision making that is conducted without such a risk assessment instrument. It is important to the Commission that any risk assessment instrument integrated into the sentencing guidelines be a useful and viable tool for judges as they make sentencing decisions for offenders convicted of sex offenses in Virginia's circuit courts.

The Commission's plan for completing the study is tentative and depends on the results of the recidivism analysis. Final Commission review of this research will take place in the spring. If the Commission determines that a useful sex offender risk assessment instrument can be developed, it will be integrated into the sentencing guidelines that become effective July 1, 2000.

NONVIOLENT OFFENDER RISK ASSESSMENT

Introduction

In 1994, as part of the reform legislation which instituted truth-in-sentencing, the General Assembly charged the Commission to study the feasibility of using an empirically-based risk assessment instrument to select 25% of property and drug offenders for alternative (non-prison) sanctions (§17.1-803). Such an instrument can be used to identify those offenders who are likely to present the lowest risk to public safety. After analyzing the characteristics and historical patterns of recidivism of larceny, fraud and drug offenders, the Commission developed a risk assessment tool for integration into the existing sentencing guidelines system. The risk assessment instrument identifies those offenders recommended by the sentencing guidelines for a term of incarceration who have the lowest probability of being reconvicted of a felony crime. These offenders are then recommended for sanctions other than traditional incarceration in prison. Risk assessment can be viewed as an important component to help maximize the utilization of alternative punishments for nonviolent offenders while minimizing threat to public safety and reserving the most expensive correctional space for the state's violent offenders. The risk assessment component of the guidelines system is currently being pilot tested in several circuits around the Commonwealth.

This representation of Lady Justice is a wood carving found on an ornately carved wooden grandfather clock at Cornell University in Ithaca, New York.

The wood carving of Lady Justice is located on the lower right corner of the ornately carved clock, which is housed in the Rare Books Room of the Myran Taylor Law School Library.

Development of the Risk Assessment Instrument

To develop the risk assessment instrument for nonviolent offenders, the Commission studied a random sample of over 2,000 fraud, larceny and drug offenders who had been released from incarceration between July 1, 1991 and December 31, 1992. Recidivism was defined as reconviction for a felony within three years of release from incarceration. Sample cases were matched to data from the pre-/post-sentence investigation (PSI) database to determine which offenders had been reconvicted of a felony crime during the three-year follow-up period.

Construction of the risk assessment instrument was based on statistical analysis of the characteristics, criminal histories and patterns of recidivism of the fraud, larceny and drug offenders in the sample. The factors proving statistically significant in predicting recidivism were assembled on a risk assessment worksheet, with scores determined by the relative importance of the factors in the statistical model. The Commission, however, chose to remove the race of the offender from the risk assessment instrument. Although it emerged as a statistically significant factor in the analysis, the Commission viewed race as a proxy for social and economic disadvantage and, therefore, decided to exclude it from the final risk assessment worksheet. The total score on the risk assessment worksheet represents the likelihood that an offender will be reconvicted of a felony within three years. Offenders who score the lowest number of points on the worksheet are less likely to be reconvicted of a felony than offenders who have a higher total score.

The Commission adopted a scoring threshold of nine points on the risk assessment scale. In the analysis used to construct the scale, offenders who scored nine points or less on the risk assessment instrument had a one in eight chance of being reconvicted for a felony crime within three years. Moreover, the Commission's analysis suggested that a threshold of nine points would satisfy the legislative goal of diverting 25% of nonviolent offenders from incarceration in a state prison facility to other types of sanctions.

The risk assessment worksheet is completed for fraud, larceny and drug offenders who are recommended for some period of incarceration by the guidelines and who satisfy the eligibility criteria established by the Commission. Offenders with any current or prior convictions for violent felonies (defined in §17.1-803) and offenders who sell an ounce or more of cocaine are excluded from risk assessment consideration. When the risk assessment instrument is completed, offenders scoring nine points or less on the scale are recommended for sanctions other than traditional incarceration. The instrument itself does not recommend any specific type or form of alternative punishment. That decision is left to the discretion of the judge and may depend on program availability. In these cases, judges are considered in compliance if they sentence within the recommended incarceration range or if they follow the recommendation for alternative punishment. For offenders scoring over nine points, the original recommendation for incarceration remains unchanged.

Implementation of Risk Assessment

The risk assessment instrument has been implemented in six judicial circuits that have agreed to participate as pilot sites. On December 1, 1997, Circuit 5 (cities of Franklin and Suffolk and the counties of Southampton and Isle of Wight), Circuit 14 (Henrico), and Circuit 19 (Fairfax) became the first circuits to use the risk assessment instrument. Three months later, Circuit 22 (city of Danville and counties of Franklin and Pittsylvania) joined the pilot project. In the spring of 1999, Circuit 4 (Norfolk) and Circuit 7 (Newport News) began using the instrument, bringing the number of pilot sites to six. The circuits pilot testing risk assessment represent large and small jurisdictions, urban and rural areas and different geographic regions of the state.

During the pilot phase, application of the risk assessment instrument is being closely monitored. The Commission will be interested in gauging the instrument's impact on judicial decision-making, sentencing outcomes and criminal justice system resources.

Sentencing and Risk Assessment

Between December 1, 1997, and September 30, 1999, the Commission received 4,019 fraud, larceny and drug guidelines cases from the six pilot circuits (Figure 49). Over one-third of the cases have come from Circuit 19 (Fairfax) and more than one-fourth from Circuit 14 (Henrico). Of the two newest pilot jurisdictions, Circuit 4 (Norfolk) has submitted nearly twice as many cases as Circuit 7 (Newport News). Of the three offense groups, drug cases represent the largest share, more than 44% (Figure 50). Nearly 37% of the cases are for larceny crimes. The remainder, 19%, are fraud cases.

FIGURE 49

Number and Percentage of Cases Received by Circuit

Circuit	Cases	Percent
4	426	10.6%
5	475	11.8
7	223	5.5
14	1,048	26.1
19	1,402	34.9
22	445	11.1

FIGURE 50

Number and Percentage of Cases Received by Primary Offense

Offense	Cases	Percent
Drug	1,776	44.2%
Fraud	763	19.0
Larceny	1,480	36.8

Not all fraud, larceny and drug offenders are eligible for risk assessment. Offenders recommended by the guidelines for probation with no active incarceration term are excluded, since the instrument was designed to assess the risk of offenders recommended for confinement. Of the fraud, larceny and drug cases received, 2,458 out of the 4,019 (61%) were recommended for some period of incarceration by the guidelines. Offenders who do not satisfy the Commission's eligibility criteria are also excluded. Offenders who have current or prior convictions for violent felonies or whose current offense involves the sale of an ounce or more of cocaine are not eligible for risk assessment. Between December 1, 1997, and September 30, 1999, 1,919 offenders satisfied the Commission's eligibility criteria and were deemed eligible for risk assessment screening. It should be noted that for 339 of the eligible offenders the risk assessment worksheet was not completed, despite the offenders' eligibility to participate in the assessment project.

Offenders scoring nine points or less on the risk assessment worksheet are recommended for sanctions other than traditional incarceration. Among the offenders screened with the risk assessment instrument to date, 24% have scored at or below the nine-point threshold and, therefore, have been recommended for alternative punishments. The average risk score for screened offenders was 12 points.

Risk assessment cases can be categorized into four groups based upon whether the offender was recommended for an alternative sanction by the risk assessment instrument and whether the judge subsequently sentenced the offender to some form of alternative punishment. Of the offenders screened with the risk assessment instrument, 12% were recommended for, and were sentenced to, an alternative punishment (Figure 51). Another 12% were sentenced to a traditional term of incarceration despite being recommended for an alternative sanction by the risk assessment instrument. In 15% of the screened cases, the offender was not recommended for an alternative punishment but was sentenced to one. Half of the cases that fell into this category, however, scored just over the nine-point threshold (10 to 12 points). This indicates that judges felt a portion of offenders scoring just over the threshold were also good candidates for alternative sanctions. Nearly 61% of the screened offenders were not recommended for an alternative and judges concurred in these cases by utilizing traditional incarceration.

FIGURE 51

Recommended and Actual Dispositions to Alternative Sanctions

Risk Recommendation	Distribution	
	Received Alternative	Did Not Receive Alternative
Recommended for Alternative	12.2%	11.6%
Not Recommended for Alternative	15.4%	60.8%

Judges are not obligated to follow the recommendation of the risk assessment instrument. When offenders are recommended for an alternative but not sentenced to one, judges are asked to communicate their reasons for not choosing an alternative punishment. The reasons cited by judges may help the Commission to identify circumstances in which judges disagree with the risk assessment recommendation most often. This information may be useful in improving the instrument as a sentencing tool. In nearly two-thirds of these cases, however, judges do not cite a reason for choosing traditional incarceration instead of an alternative sanction. Where a reason was cited, judges most often questioned the offender's medical or psychological suitability or referred to the offender's refusal to participate in alternative punishment programming (9% of the cases). Virginia law permits offenders to refuse certain programs. Other reasons for sentencing offenders to incarceration included the offender's criminal lifestyle or history of criminality, or that the offender had previous convictions for the same crime as the instant offense (7%). In other cases, judges perceived the quantity or purity of the drug involved in the case to warrant traditional incarceration (4%).

Independent Evaluation of Risk Assessment

The National Institute of Justice, an agency of the United States Justice Department, has awarded the National Center for State Courts in Williamsburg, Virginia, a grant to evaluate the development and impact of the risk assessment instrument. The project will be the first comprehensive evaluation that examines how risk assessment and alternative sanctions are integrated into a sentencing guidelines structure, and the effect this has on the criminal justice system. The evaluation results should have considerable implications for policymakers and practitioners, since no other structured sentencing system in the nation utilizes an empirically-based risk assessment tool to identify offenders with the lowest probability of recidivating for diversion into sanctions other than traditional incarceration.

The evaluation has three goals: 1) to evaluate the development of the risk assessment instrument; 2) to evaluate the implementation, use and effectiveness of the instrument; and 3) to establish a database and methodology for a complete follow-up study on recidivism for offenders recommended for alternative sanctions as the result of risk assessment.

IMPACT OF TRUTH IN SENTENCING

Introduction

In the five years since the inception of Virginia's truth-in-sentencing system, the Commission has continually examined the impact of truth-in-sentencing laws on the criminal justice system in the Commonwealth. Legislation passed by the General Assembly in 1994 radically altered the way felons are sentenced and serve incarceration time in Virginia. The practice of discretionary parole release from prison was abolished, and the existing system of awarding inmates sentence credits for good behavior was eliminated. Virginia's truth-in-sentencing laws mandate sentencing guidelines recommendations for violent offenders (those with current or prior convictions for violent crimes) that are significantly longer than the terms violent felons typically served under the parole system, and the laws require felony offenders, once convicted, to serve at least 85% of their incarceration sentences. Since 1995, the Commission has carefully monitored the impact of these dramatic changes on the state's criminal justice system. Overall, judges have responded to the sentencing guidelines by complying with recommendations in three out of every four cases, inmates are serving a larger proportion of their sentences than they did under the parole system, violent offenders are serving longer terms than before the abolition of parole, the inmate population is not growing at the record rate of the early 1990s, and the numbers and types of alternative sanction programs have been expanded to provide judges with numerous sentencing options. Five years after the enactment of truth-in-sentencing laws in Virginia, there is substantial evidence that the system is achieving what its designers intended.

This Lady of Justice is etched in the wall of the South lobby of the Thurgood Marshall Federal Judiciary Building in Washington D.C. Built in 1992, it houses the United States Sentencing Commission offices.

The Supreme Court building in Singapore is shown with a tympanum sculpture of Justice by Italian artist Cavalori Rudolfo Nolli. The building, located on the site of the former Grand Hotel de L'Europe, was completed in August 1939.

Impact on Percentage of Sentence Served for Felonies

The reform legislation that became effective January 1, 1995, was designed to accomplish several goals. One of the goals of the reform was to reduce drastically the gap between the sentence pronounced in the courtroom and the time actually served by a convicted felon in prison. Prior to 1995, extensive good conduct credits combined with the granting of parole resulted in many inmates serving as little as one-fourth of the sentence imposed by a judge or a jury. Today, under the truth-in-sentencing system, parole release has been eliminated and each inmate is required to serve at least 85% of his sentence. The system of earned sentence credits in place since 1995 limits the amount of time a felon can earn off his sentence to 15%.

The Department of Corrections (DOC) policy for the application of earned sentence credits specifies four different rates at which inmates can earn credits: 4½ days for every 30 served (Level 1), three days for every 30 served (Level 2), 1½ days for every 30 served (Level 3) and zero days (Level 4). Inmates are automatically placed in Level 2 upon admission into DOC, and an annual review is performed to determine if the level of earning should be adjusted based on the inmate's conduct and program participation in the preceding 12 months.

Analysis of earned sentenced credits being accrued by inmates sentenced under truth-in-sentencing provisions and confined in Virginia's prisons on December 31, 1998, reveals that more than half (55%) are earning at Level 2, or three days for every 30 served (Figure 52). Only 28% of inmates are earning at the highest level, Level 1, gaining 4½ days for every 30 served. A much smaller proportion of inmates are earning at Levels 3 and 4. About 7% are earning 1½ days for 30 served (Level 3), while 10% are earning no sentence credits at all (Level 4). Based on this one-day "snapshot" of the prison population, inmates sentenced under the truth-in-sentencing system are, on average, serving just under 91% of the sentences imposed in Virginia's courtrooms. The rates of earned sentence

FIGURE 52

Levels of Earned Sentence Credits among Prison Inmates, (December 31, 1998)

Level	Days Earned	Percent
Level 1	4.5 days per 30 served	28.0%
Level 2	3.0 days per 30 served	54.9
Level 3	1.5 days per 30 served	7.1
Level 4	0 days	10.0

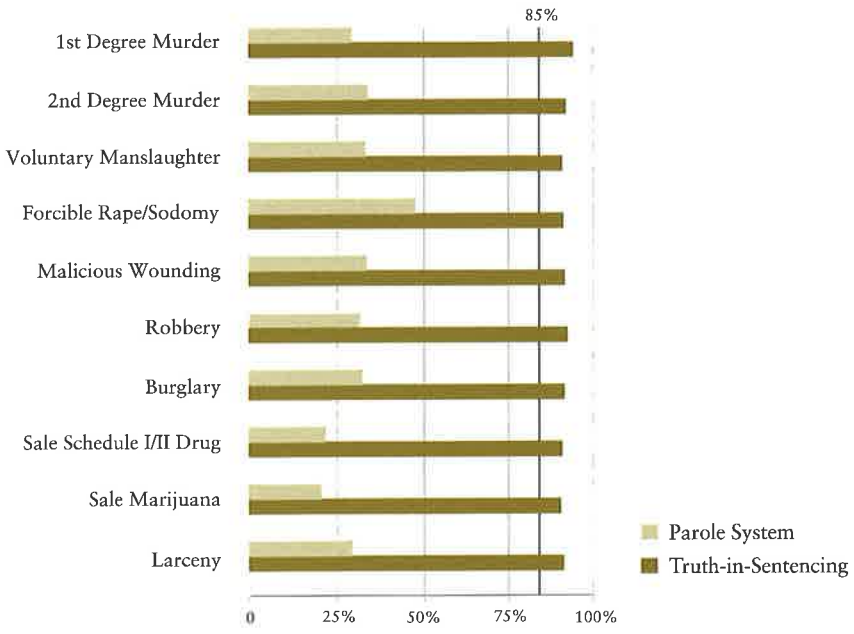
credits do not vary significantly across major offense groupings. For instance, larceny and fraud offenders, on average, are earning credits such that they are serving almost 91% of their sentences, while inmates convicted of robbery are serving about 92% of their sentences. Inmates incarcerated for drug crimes are serving 90%. The rates at which inmates were earning sentence credits at the end of 1998 closely reflect those recorded at the end of 1997.

Under truth-in-sentencing, with no parole and limited sentence credits, inmates in Virginia's prisons are serving a much larger proportion of their sentences in incarceration than they did under the parole system. For instance, offenders convicted of first-degree murder under the parole system, on average, served less than one-third of the effective sentence (imposed sentence less any suspended time). Under the truth-in-sentencing system, first-degree murderers typically are serving more than 93% of their sentences in prison (Figure 53). Robbers, who on average spent less than one-third of their sentences in prison before being released under the parole system, are now serving nearly 92% of the sentences pronounced in Virginia's courtrooms. Property and drug offenders are also serving a larger share of their prison sentences. Although the average length of stay in prison under the parole system was less than 30% of the sentence, larceny offenders convicted under truth-in-sentencing provisions are serving almost 91% of their sentences. For selling a Schedule I/II drug like cocaine, offenders typically served only about one-fifth of their sentences when parole was in effect. Under truth-in-sentencing, offenders convicted of selling a Schedule I/II drug, on average, are serving 90% of the sentences handed down by judges and juries in the Commonwealth. The impact of truth-in-sentencing on the percentage of sentence served by prison inmates has been to reduce dramatically the gap between the sentence ordered by the court and the time actually served by a convicted felon in prison.

Parole system data represents FY1993 prison releases; truth-in-sentencing data is derived from rate of sentence credits earned among prison inmates as of December 31, 1998.

FIGURE 53

Average Percent of Sentence Served – Parole System v. Truth-in-Sentencing



Cavalori Rudolfo Nolli's sculpture is described as follows: "The central figure is Justice. To the left is a person begging for mercy, and next are the legislators of the law. On the other side of Justice is a figure showing gratitude, then a man and a bull, two children holding a stack of wheat, all representing prosperity and abundance where there is law and justice."

Impact on Incarceration Periods Served by Violent Offenders

Eliminating the practice of discretionary parole release and restructuring the system of sentence credits created a system of truth-in-sentencing in the Commonwealth and diminished the gap between sentence length and time served, but this was not the only goal of sentencing reform. Targeting violent felons for longer prison terms than they had served in the past was also a priority of the designers of the truth-in-sentencing system. The truth-in-sentencing guidelines were carefully crafted with a system of scoring enhancements designed to yield longer sentence recommendations for offenders with current or prior convictions for violent crimes, without increasing the proportion of convicted offenders sentenced to the state's prison system. When the truth-in-sentencing system was implemented in 1995, a prison sentence was defined as any sentence over six months. With scoring enhancements, whenever the truth-in-sentencing guidelines call for an incarceration term exceeding six months, the sentences recommended for violent felons are significantly longer than the time they typically served in prison under the parole system. Offenders convicted of nonviolent crimes with no history of violence are not subject to any scoring enhancements and the guidelines recommendations reflect the average incarceration time served by offenders convicted of similar crimes during a period governed by parole laws, prior to the implementation of truth-in-sentencing.

The truth-in-sentencing guidelines were designed to recommend longer sentences for violent offenders without increasing the proportion of felons sentenced to prison, and judges have responded to the guidelines by complying with recommendations at very high rates, particularly in terms of the type of disposition recommended by the guidelines. Overall, since the introduction of truth-in-sentencing, offenders have been sentenced to incarceration in excess of six months slightly less often than recommended by the guidelines. For the years FY1997 through FY1999, the guidelines recommended that 79% of offenders convicted

of crimes against the person serve more than six months, while 76% received such a sanction (Figure 54). The difference between recommended and actual rates of incarceration over six months has been larger in property and drug cases than for person crimes. Over the last three fiscal years (FY1997-FY1999), the guidelines recommended 42% of property offenders for terms over six months and 36% of them were sentenced accordingly. For drug crimes, offenders were recommended for and sentenced to terms exceeding six months in 34% and 30% of the cases, respectively. Many property and drug offenders recommended by the guidelines to more than six months of incarceration in a traditional correctional setting have been placed in state and local alternative sanction programs instead. See *Impact on Alternative Punishment Options* in this chapter for information regarding alternative sanction programs under truth-in-sentencing.

FIGURE 54

Recommended and Actual Incarceration Rates for Terms Exceeding 6 Months by Offense Type, FY1997- FY1999

Type of Offense	Recommended	Received
Person	78.6%	76.0%
Property	41.7	36.4
Drug	34.4	30.3
Other	73.9	69.0

Overall, there is considerable evidence that the truth-in-sentencing system is achieving the goal of longer prison terms for violent offenders. In the vast majority of cases, sentences imposed for violent offenders under truth-in-sentencing provisions are resulting in substantially longer lengths of stay than those seen prior to sentencing reform. In fact, a large number of violent offenders are serving two, three or four times longer under truth-in-sentencing than criminals who committed similar offenses did under the parole system.

The crime of first-degree murder illustrates the impact of truth-in-sentencing on prison terms served by violent offenders. Under the parole system (1988-1992), offenders convicted of first-degree murder who had no prior convictions for violent crimes were released typically after serving twelve and a half years in prison, based on the time served median (the middle value, where half of the time served values are higher and half are lower). Under the truth-in-sentencing system (FY1997-FY1999), however, first-degree murderers having no prior

convictions for violent crimes have been receiving sentences with a median time to serve of 35 years (Figure 55). In these cases, time served in prison has tripled under truth-in-sentencing.

Virginia's truth-in-sentencing system has had an even larger impact on prison terms for violent offenders who have previous convictions for violent crimes. Offenders with prior convictions for violent felonies receive guidelines recommendations substantially longer than those without a violent prior record, and the size of the increased penalty recommendation is linked to the seriousness of the prior crimes, measured by statutory maximum penalty. The truth-in-sentencing guidelines specify two degrees of violent criminal records. A previous conviction for a violent felony with a maximum penalty of less than 40 years is a Category II prior record, while a past conviction for a violent felony carrying a maximum penalty of 40 years or more is a Category I record. The crime of first-degree murder can be used to demonstrate the impact of these prior record enhancements. First degree murderers with a less serious violent record (Category II), who served a median of 14 years when parole was in effect (1988-1992), have been receiving terms under truth-in-sentencing (FY1997-1999) with a median time to serve of nearly 62 years. Offenders convicted of first-degree murder who had a previous conviction for a serious violent felony (Category I record) currently are serving terms with a median of 96 years under truth-in-sentencing, compared to the 15 years typically served during the parole era.

The crime of second-degree murder also provides an example of the impact of Virginia's truth-in-sentencing system on lengthening prison stays for violent offenders. Second-degree murderers historically served five to seven years under the parole system (1988-1992) (Figure 56). Since the implementation of truth-in-

This discussion reports values of actual incarceration time served under parole laws (1988-1992) and expected time to be served under truth-in-sentencing provisions for cases sentenced in FY1997-FY1999. Time served values are represented by the median (the middle value, where half of the time served values are higher and half are lower). Truth-in-sentencing data includes only cases recommended for, and sentenced to, more than six months of incarceration.

Prison Time Served: Parole System v. Truth-in-Sentencing (in years)

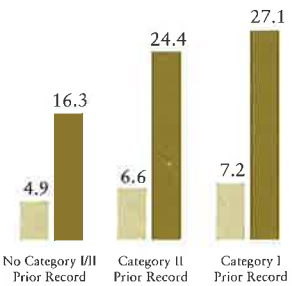
FIGURE 55

First Degree Murder

Figure 55 is not to scale with the following displays.

FIGURE 56

Second Degree Murder



sentencing (FY1997-FY1999), offenders convicted of second-degree murder who have no record of violence have received sentences producing a median time to be served of over 16 years. For second-degree murderers with prior convictions for violent crimes (Category I and Category II records), the impact of truth-in-sentencing is even more pronounced. Under truth-in-sentencing, these offenders are serving a median between 24 and 27 years, or nearly four times the historical time served.

The impact of sentencing reform on time served for rape and other sex crimes has been profound. Offenders convicted of forcible rape under the parole system were released after serving, typically, five and a half to six and a half years in prison (1988-1992). Having a prior record of violence increased the rapist's median time served by only one year (Figure 57). Since sentencing reform (FY1997-FY1999), rapists with no previous record of violence are being sentenced to terms with a median nearly twice the historical time served. In contrast to the parole system, offenders with a violent prior record will serve substantially longer terms than those without violent priors. Based on the median, rapists with a less serious violent record (Category II) are being given terms to serve twice as long as the seven years they served prior to sentencing reform. For those with a more serious violent prior record (Category I), such as a prior rape, the sentences imposed under truth-in-sentencing are equivalent to time to be served of 32 years, which is approximately five times longer than the prison term served by these offenders historically.

The impact of truth-in-sentencing on forcible sodomy cases exhibits a pattern very similar to rape cases. Historically, under the parole system, offenders convicted of forcible sodomy served a median of four and a half to five and a half years in prison, even if they had a prior conviction for a serious violent felony (Figure 58). Recommendations of the truth-in-sentencing guidelines have led to

FIGURE 57
Forcible Rape

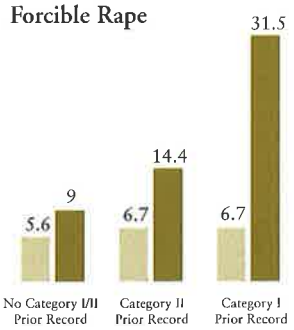
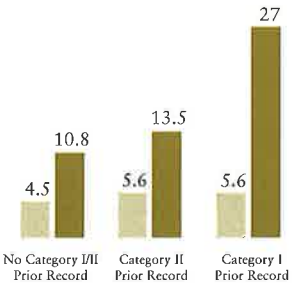


FIGURE 58
Forcible Sodomy



Category II is defined as any prior conviction or juvenile adjudication for a violent crime with a statutory maximum penalty less than 40 years.

Category I is defined as any prior conviction or juvenile adjudication for a violent crime with a statutory maximum penalty of 40 years or more.

Parole System
Truth-in-Sentencing

a significant increase in the median time to serve for this crime. Once convicted of forcible sodomy, offenders can expect to serve terms typically ranging from 11 years, if they have no violent prior convictions, up to a median of 27 years if they have a Category I violent prior record.

The tougher penalties specified by the truth-in-sentencing guidelines for offenders convicted of aggravated malicious injury, which results in the permanent injury or impairment of the victim, have yielded substantially longer prison terms for this crime. Offenders convicted of aggravated malicious injury with no prior violent convictions, served, typically, less than four years in prison under the parole system (1988-1992), but sentencing reform (FY1997-FY1999) has resulted in a median term of eight years for these offenders (Figure 59). Likewise, the median length of stay for a conviction of aggravated malicious injury when an offender has a violent prior record has increased from four and a half years to 18 years for offenders with a Category II record and to 26 years when a Category I record is present.

An examination of prison terms for offenders convicted of robbery reveals considerably longer lengths of stay after sentencing reform. Robbers who committed their crimes with firearms, but who had no previous record of violence, typically spent less than three years in prison under the parole system (Figure 60). Even robbers with the most serious type of violent prior record (Category I) only served a little more than four years in prison, based on the median, prior to the sentencing reform and the introduction of the truth-in-sentencing guidelines. Today, however, offenders who commit robbery with a firearm are receiving prison terms that will result in a median time to serve of over six years, even in cases in which the offender has no prior violent convictions. This is more than

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Prison Time Served: Parole System v. Truth-in-Sentencing (in years)

FIGURE 59

Aggravated Malicious Injury

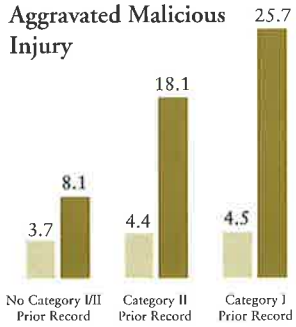
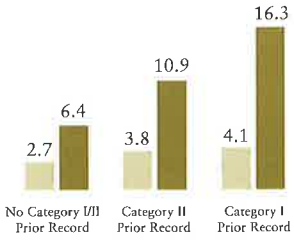


FIGURE 60

Robbery with Firearm



double the typical time served by these offenders under the parole system. For robbers with the more serious violent prior record (Category I), such as a prior conviction for robbery, the expected time served in prison is now 16 years, or four times the historical time served for offenders fitting this profile.

The impact of truth-in-sentencing is also evident in cases of voluntary manslaughter. For voluntary manslaughter, offenders sentenced to prison typically served two to three years under the parole system (1988-1992), regardless of the nature of their prior record (Figure 61). Persons with no violent prior record convicted of voluntary manslaughter under truth-in-sentencing (FY1997-FY1999) are serving more than twice as long as these offenders served historically. For those who do have previous convictions for violent crimes, median expected lengths of stay have risen to six and nine years under truth-in-sentencing, depending on the seriousness of the offender's prior record. Offenders convicted of voluntary manslaughter today are serving prison terms two to three times longer than those served when parole was in effect.

Sentencing in malicious injury cases demonstrates a similar pattern (Figure 62). Sentencing reform has more than doubled time served for those convicted of malicious injury who have no prior violent record or a less serious violent record (Category II), and more than tripled time served for those with the most serious violent record (Category I).

Lengths of stay for the crime of aggravated sexual battery have also increased as the result of sentencing reform. Aggravated sexual battery convictions under the parole system (1988-1992) yielded typical prison stays of one to two years. In contrast, sentences handed down under truth-in-sentencing (FY1997-FY1999)

FIGURE 61
Voluntary Manslaughter

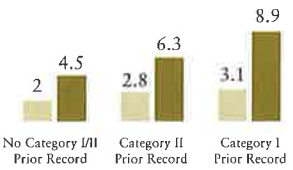
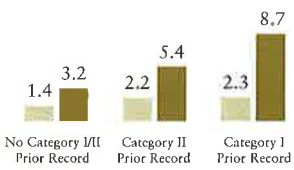


FIGURE 62
Malicious Injury



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Category I is defined as any prior conviction or juvenile adjudication for a violent crime with a statutory maximum penalty of 40 years or more.

Parole System
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are producing a median time to serve ranging from just under three years for offenders never before convicted of a violent crime, to over six years for batterers who have committed violent felonies in the past. In aggravated sexual battery cases, time served has more than doubled under truth-in-sentencing (Figure 63).

The truth-in-sentencing guidelines were formulated to target violent offenders for incarceration terms longer than those served under the parole system. The designers of sentencing reform defined a violent offender not just in terms of the current offense for which the person has been convicted but in terms of the offender's entire criminal history. Any offender with a current or prior conviction for a violent felony is subject to enhanced penalty recommendations under the truth-in-sentencing guidelines. Only offenders who have never been convicted of a violent crime are recommended by the guidelines to serve terms equivalent to the average time served historically by similar offenders prior to the abolition of parole.

Sentencing reform and the truth-in-sentencing guidelines have been successful in increasing terms for violent felons, including offenders whose current offense is nonviolent but who have a prior record of criminal violence. For example, for the sale of a Schedule I/II drug such as cocaine, the truth-in-sentencing guidelines recommend an incarceration term of one year (the midpoint of the recommended range) in the absence of a violent record, the same as what offenders convicted of this offense served on average prior to sentencing reform (1988-1992). In the truth-in-sentencing period (FY1997-FY1999), these drug offenders, in fact, are serving a median of just over one year (Figure 64). The sentencing recommendations increase dramatically, however, if the offender has a violent criminal background. Although drug sellers with violent criminal histories typically served only a year and a half under the parole system, the truth-in-sentencing guidelines

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Prison Time Served: Parole System v. Truth-in-Sentencing (in years)

FIGURE 63

Aggravated Sexual Battery

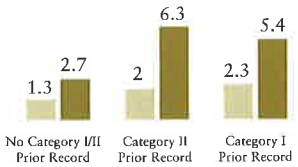
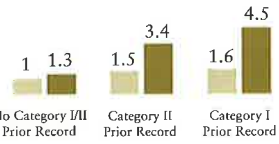


FIGURE 64

Sale of a Schedule I/II Drug



recommend sentences which are producing prison stays of three and a half to four and a half years (at the median), depending on the seriousness of prior record. Offenders convicted of selling a Schedule I/II drug who have a history of violence are serving two to three times longer under truth-in-sentencing than they did under the parole system.

In most cases of the sale of marijuana (more than ½ ounce and less than five pounds), the sentencing guidelines do not recommend incarceration over six months, particularly if the offender has a minimal prior record, and judges typically utilize sentencing options other than prison when sanctioning these offenders, reserving prison for those believed to be least amenable to alternative punishment programs. Under truth-in-sentencing, offenders convicted of selling marijuana who receive sentences in excess of six months (the definition of a prison sentence when the guidelines were implemented in 1995), despite having a nonviolent criminal record, have been given terms which, at the median, slightly exceed the historical time served during the parole era (Figure 65). For offenders who sold marijuana and have a prior violent record, the truth-in-sentencing guidelines have served to increase the time to be served. When sellers of marijuana have the most serious violent criminal history (Category I), judges have responded by handing down sentences which will yield a median prison term of over two years.

Similarly, in grand larceny cases, the sentencing guidelines do not recommend a sanction of incarceration over six months unless the offender has a fairly lengthy criminal history. When the guidelines recommend such a term and the judge chooses to impose such a sanction, grand larceny offenders with no violent prior record are being sentenced to a median term of just over one year (Figure 66). Offenders whose current offense is grand larceny but who have a prior record

FIGURE 65

Sale of Marijuana (More than ½ oz and less than 5 lbs)

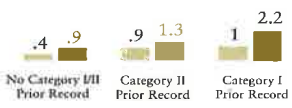
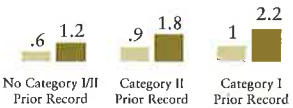


FIGURE 66

Grand Larceny



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Parole System
Truth-in-Sentencing

Surrounded with a halo of white lilies, this blindfolded Lady of Justice holds both scales and sword. This predominately red and white stained glass window is located by a staircase at the Constitutional Court of Kyrgyz Republic in the capital city of Bishkek.

with a less serious violent crime (Category II) are serving twice as long after sentencing reform, with terms increasing from just under a year to just under two years. Their counterparts with the more serious violent prior records (Category I) are now serving terms of more than two years instead of the one year they had in the past.

The impact of Virginia's truth-in-sentencing system on the incarceration periods of violent offenders has been significant. The truth-in-sentencing data presented in this section provide unequivocal evidence that the sentences imposed on violent offenders after sentencing reform are producing lengths of stay dramatically longer than those seen historically. Moreover, in contrast to the parole system, offenders with the most violent criminal records will be incarcerated much longer than those with less serious criminal histories.

Impact on Projected Prison Bed Space Needs

During the development of sentencing reform legislation, much consideration was given as to how to balance the goals of truth-in-sentencing and longer incarceration terms for violent offenders with demand for expensive correctional resources. Under the truth-in-sentencing system, the sentencing guidelines recommend prison terms for violent offenders that are up to six times longer than those served prior to sentencing reform, while recommendations for nonviolent offenders are roughly equivalent to the time actually served by nonviolent offenders under the parole system. Moreover, the truth-in-sentencing guidelines were formulated to preserve the proportions and types of offenders sentenced to prison. At the same time, reform legislation established a network of local and state-run community corrections programs for nonviolent offenders. In other words, reform measures were carefully crafted with consideration of Virginia's current and planned prison capacity and with an eye towards using that capacity to house the state's most violent felons.

Truth-in-sentencing is expected to have an impact on the composition of Virginia's prison (i.e., state responsible) inmate population. Because violent offenders are serving significantly longer terms under truth-in-sentencing provisions than under the parole system and time served by nonviolent offenders has been held relatively constant, the proportion of the prison population composed of violent offenders relative to nonviolent offenders should increase over time. Violent offenders will remain in the state's prisons due to longer lengths of stay, while nonviolent of-

fenders will continue to be released after serving approximately the same terms of incarceration as they did in the past. Over the next decade, the percentage of Virginia's prison population defined as violent, that is, the proportion of offenders with a current or previous conviction for a violent felony, should continue to grow.

In addition to affecting the composition of the prison population, truth-in-sentencing may have some impact on the size of the prison population since violent offenders are serving longer terms than they did prior to truth-in-sentencing reforms. Because sentencing reforms target violent offenders, who were already serving longer than average sentences, the full impact of longer lengths of stay for these offenders likely will not be realized until after the year 2000. To date, however, sentencing reform has not had the dramatic impact on the prison population that some critics had once feared when the reforms were first enacted. Despite double-digit increases in the inmate population in the late 1980s and early 1990s, the number of state prisoners has grown much more slowly in recent years. As such, Virginia's official state responsible (i.e., prison) forecast for the year 2002 has been revised downward for the fifth consecutive year. Where the state once expected nearly 45,000 inmates in June 2002, the current projection for that date is 32,791, with a small increase to 32,992 by June of 2004. The forecast for state prisoners developed in 1999 projects average annual growth of only 1.5% over the next five years, with the largest single-year growth projected for FY2000 (Figure 67). Unanticipated drops in the number of admissions to prison in FY1994 and FY1995 fueled progressively lower forecasts starting in the mid-1990s. From FY1998 to FY1999, prison admissions grew by less than 2%. Some critics of sentencing reform had been concerned that significantly longer prison terms for violent offenders, a major component of sentencing reform, might result in tremendous increases in the state's inmate population. Although violent offenders are serving much longer terms as the result of truth-in-sentencing reform, the prison population has not experienced sizeable growth in the late 1990s.

FIGURE 67

Historical and Projected State Responsible (Prison) Population, 1993-2004

	Date*	Inmates	Percent Change
Historical	1993	20,760	
	1994	23,648	13.9%
	1995	27,364	15.7
	1996	28,743	5.0
	1997	28,743	0.0
	1998	29,442	2.4
	1999	30,676	4.2
Projected	2000	32,077	4.6
	2001	32,607	1.7
	2002	32,791	0.6
	2003	32,839	0.1
	2004	32,992	0.5

* June figures are used for each year.

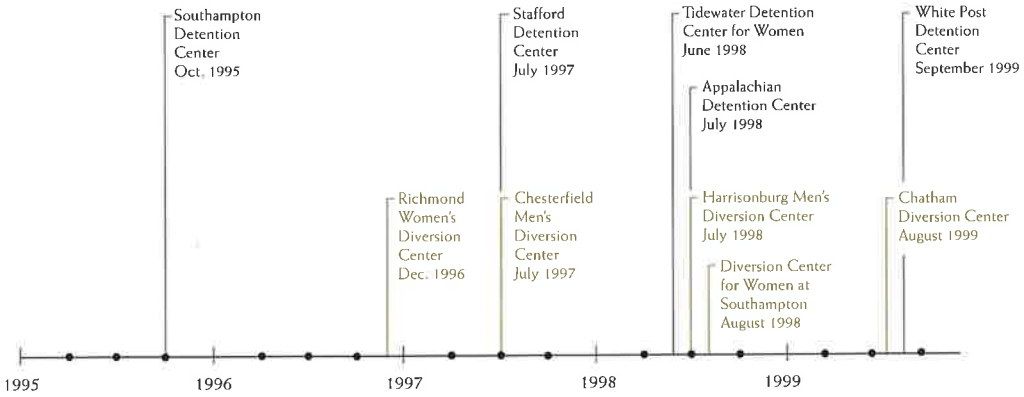
Impact on Alternative Punishment Options

When the truth-in-sentencing system was created, the General Assembly established a two level community-based corrections system. Reform legislation created a network of local and state-run community corrections programs for nonviolent offenders. This system was implemented to provide judges with additional sentencing options as alternatives to traditional incarceration for nonviolent offenders, enabling them to reserve costly correctional institution beds for the state's violent offenders. Although the Commonwealth already operated some community corrections programs at the time truth-in-sentencing laws were enacted, a more comprehensive system was enabled through this legislation.

As part of the state community-based corrections network, two new cornerstone programs, the diversion center incarceration program and the detention center incarceration program, were authorized. The new programs, while they involve confinement, differ from traditional incarceration in jail or prison since they include more structured services designed to address problems associated with recidivism. These centers involve highly structured, short-term incarceration for felons deemed suitable by the courts and Department of Corrections. Offenders accepted in these programs are considered probationers while participating in the program, this allows the sentencing judge to retain authority over the case should the offender fail the conditions of the program or subsequent community supervision requirements. The detention center program features military-style management and supervision, physical labor in organized public works projects

FIGURE 68

Opening Date for Currently Operating Detention Centers and Diversion Centers, 1995-1999



and such services as remedial education and substance abuse services. The diversion center program emphasizes assistance to the offender in securing and maintaining employment while also providing education and substance abuse services. In the five years since the new sentencing system became effective, the Department of Corrections (DOC) has gradually established detention and diversion centers around the state as part of the community-based corrections system for state-responsible offenders. As of September 1999, DOC is operating five detention centers and five diversion centers throughout the Commonwealth (Figure 68). Given current bed space, detention centers collectively can handle 1,459 felony offenders annually, while diversion programs can serve 955 felons over the course of a year.

These two alternative punishment incarceration programs supplement the boot camp program which has been in operation since 1991. This program for young adult offenders is a military-style program focusing on drill and ceremony, physical labor, remedial education, and a drug education program. Young male offenders are received into the program once a month in platoons averaging about 30 each. Beginning January 1, 1998, the program was lengthened from three to four months making it more comparable in length to the detention and diversion center programs. With space for 100 young men in each platoon, the boot camp program can graduate 300 felons annually. The few women referred and accepted to the program are sent to a women's boot camp facility in Michigan.

On June 30, 1999, 824 probationers were in the detention center, diversion center, and boot camp programs, compared to around 500 offenders on the same date in 1998 and 300 offenders in June of 1997. The diversion center programs have been operating at full capacity while the detention center programs are functioning at near full capacity. In October of this year, 239 offenders had been accepted into one of these programs and were on waiting lists until openings could be made available.

In addition to the alternative incarceration programs described above, the DOC operates a host of non-incarceration programs as part of its community-based corrections system. Programs such as regular and intensive probation supervision, home electronic monitoring, day reporting centers, and adult residential centers are an integral part of the system. Regular probation services have been available since the 1940's; intensive supervision, characterized by smaller caseloads and closer monitoring of offenders, was pilot tested in the mid 1980's. Intensive

Cast in bronze, this plaque found in Bogota, Columbia dates back to December 19, 1907. It commemorates the High Court of Justice which preceded Columbia's Supreme Court of Justice (Corte Suprema de Justicia). Justice with her sword is depicted next to the national crest of Columbia.

supervision is now an alternative in most of the state's 42 probation districts, serving up to 2,888 felons in a given year. Home electronic monitoring, piloted in 1990-1992, is now available in all probation districts, and is used in conjunction with intensive and conventional supervision for up to 440 offenders annually. In addition, the Department currently operates nine day reporting centers, with a tenth in the planning stage. With current capacity, day reporting programs can supervise up to 1,360 felons over the course of a year. These centers feature daily offender contact and monitoring as well as structured services, such as educational and life skills training programs. Offenders report each day to the center and are directed to any combination of education or treatment programs, to a community center work project, or a job. Day reporting centers are considered a more viable option in urban rather than rural areas since offenders must have transportation to the center. In addition to day reporting centers DOC also operates 10 adult residential centers around the state for inmates transitioning back to the community, which together can serve 800 offenders a year.

Day reporting centers in Richmond, Newport News/Hampton, Norfolk, Roanoke, Charlottesville and Fredericksburg are providing interactive services with their respective circuit courts to support "Drug Court" programs. Of the six Drug Court programs operating in circuit courts, two (Richmond and Norfolk) are post-adjudication programs. In exchange for participating in and completing the drug court program (treatment, drug screens, employment or school, etc.), a convicted offender can receive a reduced sentence. In the four Drug Court programs that are designed for pre-adjudication intervention (Newport News, Roanoke, Charlottesville, and the Rappahannock region), no conviction is entered into record and the charge can be dismissed or reduced upon successful completion of the program.

In addition to expanding the network of state-run community corrections programs, the General Assembly also established a more intricate network of local community corrections programming as an integral part of reform legislation. In 1994, the General Assembly created the Comprehensive Community Corrections Act for Local-Responsible Offenders (CCCA) and the Pre-Trial Services Act (PSA). These two acts gave localities authority to provide supervision and services for defendants awaiting trial and for offenders convicted of low-level felonies (Class 5 and Class 6) or misdemeanors that carry jail time. In order to participate, localities were required, by legislative mandate, to create Community Criminal Justice Boards (CCJBs) comprised of representatives of the courts (circuit court, general district court and juvenile and domestic relations court),

the Commonwealth's Attorney's office, the police department, the sheriff's and magistrate's offices, the education system, the Department of Mental Health, Mental Retardation and Substance Abuse Services, and other organizations. The CCJBs oversee the local CCCA and PSA programs, facilitate exchange among criminal justice agencies and serve as an important local policy board for criminal justice matters. The Virginia Department of Criminal Justice Services provides technical assistance, coordinating services and, often, grant funding for local CCCA and PSA programs.

Impact on Incarceration of Nonviolent Offenders

With the 1994 reform legislation, the General Assembly expanded the system of local and state community corrections programs in Virginia. At the same time, the General Assembly charged the Commission to study the feasibility of placing 25% of property and drug offenders in alternative (non-prison) sanctions by using an empirically-based risk assessment instrument. Such an instrument is used to identify those offenders who are likely to present the lowest risk to public safety. After analyzing the characteristics and historical patterns of recidivism of larceny, fraud and drug offenders, the Commission developed a risk assessment tool for integration into the existing sentencing guidelines system which identifies those offenders recommended for a term of incarceration who have the lowest probability of being reconvicted of a felony crime within three years. These offenders are then recommended for sanctions other than traditional incarceration in prison. Risk assessment can be viewed as an important component to help maximize the utilization of alternative punishments for nonviolent offenders while, at the same time, minimizing threat to public safety and reserving the most expensive correctional space for the state's violent offenders.

The risk assessment component of the guidelines system is currently being pilot tested in six circuits around the Commonwealth and is not yet operational statewide. It is expected that full implementation would result in increased numbers of nonviolent offenders being sentenced to alternative incarceration programs as well as to other alternative punishment programs referred to in this chapter. See the chapter on *Nonviolent Offender Risk Assessment* in this report for more information on this project.

Impact on Crime

FIGURE 69

Index Crimes in Virginia (including Arson), 1993-1998

	Rate per 100,000 Residents	Percent Change
1993	4,210	
1994	4,108	-2.4%
1995	4,063	-1.1
1996	3,971	-2.3
1997	3,870	-2.5
1998	3,576	-7.6

While the sentencing reforms passed in 1994 appear to be fulfilling many of the intended goals (truth-in-sentencing, longer incarceration terms for violent offenders and expansion of alternative sanctions for nonviolent offenders), the impact of the reforms on crime in Virginia is difficult to ascertain. Between 1993 and 1998, reported crime in Virginia declined. The overall rate of "index crimes" (murder/non-negligent manslaughter, forcible rape, robbery, aggravated assaults, burglary, larceny, motor vehicle theft and arson) in Virginia (per 100,000 residents) dropped from 4,210 in 1993 to 3,576 in 1998, or more than 15% (Figure 69). The biggest annual drop in total index crimes came in 1998. Reported rape, burglary and larceny offenses have declined every year since 1993. While four of the index crimes rose slightly from 1996 to 1997, every index crime rate exhibited a drop in 1998 and the rates of all eight index crimes yielded a net decline for the six year period (1993-1998) (Figure 70). Sentencing reform created a truth-in-sentencing system in Virginia and radically altered the way felons are sentenced and serve incarceration time in the Commonwealth. The issue of whether the drop in crime rates seen in the Commonwealth is largely attributable to the sentencing reforms or some other combination of initiatives is extremely complex.

One way for Virginia's truth-in-sentencing to have an impact on crime in the state is by having a deterrence effect. If sentencing reform has had an effect on crime, some persons who would otherwise have broken the law may be deterred from committing crime, or at least certain types of crime, because of the

FIGURE 70

Index Crime in Virginia by Crime Type, 1993-1998

	Rate per 100,000 Residents						Percent Change
	1993	1994	1995	1996	1997	1998	'93 - '98
Murder/Non-Negligent Manslaughter	8.4	8.8	7.7	7.4	7.2	6.0	-28.8%
Forcible Rape	32.6	28.7	27.4	26.4	26.3	24.7	-24.2
Robbery	144.1	133.7	133.1	122.0	123.8	103.4	-28.3
Aggravated Assaults	192.7	192.0	197.2	183.2	185.0	181.5	-5.8
Burglary	677.7	645.0	601.8	582.1	562.4	537.2	-20.7
Larceny	2,832.1	2,785.4	2,767.3	2,744.1	2,656.6	2,433.6	-14.1
Motor Vehicle Theft	289.8	280.5	295.6	276.4	277.2	261.7	-9.7
Arson	32.8	34.4	33.1	29.3	31.2	27.6	-15.8
Total Index Crimes, Including Arson	4,210	4,108	4,063	3,971	3,870	3,576	-15.1

knowledge of the tough penalties associated with the truth-in-sentencing system. The criminological literature refers to two types of deterrence: specific deterrence and general deterrence. Specific deterrence relates to an individual who has committed a crime and the degree to which the threat or actual application of punishment will deter him from engaging in crime again. General deterrence is the degree to which knowledge of criminal penalties deters members of the general population, not just those convicted of crimes, from engaging in criminal behavior. General deterrence effects are difficult to assess since it is very hard to measure the depth of knowledge people have of criminal punishments, and what, if any, impact this knowledge has in preventing them from committing crime.

Virginia's truth-in-sentencing system, and its tougher penalties for violent offenders, also could have an impact on crime through incapacitation effects. The designers of sentencing reform targeted violent offenders, particularly repeat violent offenders, for significantly longer terms in prison than those typically served under the parole system. By incarcerating violent offenders longer than in the past, any new crimes they might have committed, had they been released into the community earlier, are prevented. This is known as the incapacitation of offenders since people who are incarcerated are not at liberty to commit crimes against the general public.

Unfortunately, at this time, the incapacitation effect of the truth-in-sentencing system on crime is difficult to measure. Since the new sentencing system has been in effect for only five years, some of the violent offenders would still be in prison if sentenced under parole laws and the old system of good conduct credits. The incapacitation effect of longer sentences can only begin to be measured when a period of time has elapsed that exceeds the historical length of time served in prison by violent offenders. Further complicating a study of incapacitation effects is the fact that parole grant rates have declined dramatically (from 42% in the early 1990s to 6.5% in FY1999) for inmates incarcerated prior to sentencing reform who are still serving out sentences under the parole system, and this has resulted in significantly longer prison stays for felons completing punishment under the parole system. The incapacitation effect of just truth-in-sentencing provisions would be difficult to assess in this context. Clearly, however, both the decline in parole grant rates for parole-eligible offenders and the enactment of tougher penalties under Vir-ginia's truth-in-sentencing laws are serving to incapacitate offenders well beyond historical lengths of stay.

Impact on Recidivism

Soon after the enactment of truth-in-sentencing laws in Virginia, the Department of Corrections initiated a new program called the Offender Notification Program. One of the goals of the program is to reduce the rates of recidivism, particularly violent recidivism, among inmates released from the state's prisons. Under the program, correctional personnel inform each inmate about the truth-in-sentencing system prior to release, and describe to the offender the tough penalties for violent offenders associated with the truth-in-sentencing system. By telling offenders about the harsher penalties that may be incurred if convicted of a new felony, the Offender Notification Program may foster a specific deterrent effect, which occurs when the threat or actual application of punishment deters an offender from engaging in crime again. Theoretically, the deterrent value of a specific punishment is optimized when the targeted person or population is adequately informed of the sanction.

Virginia's offender notification program is the first of its kind in the nation. The Commission has entered into a partnership with the National Center for State Courts in Williamsburg, Virginia, to evaluate the Offender Notification Program and to examine the program's impact on recidivism rates among offenders released from prison. When complete, the evaluation will find an audience among legislators, criminal justice agencies, and others around the nation interested in sentencing reform of this kind.

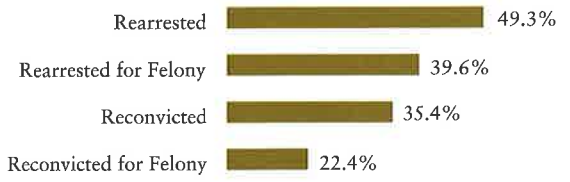
The evaluation is designed to compare the recidivism rates of released inmates during a period prior to the implementation of the Offender Notification Program and the recidivism rates of inmates released under notification policies. The first stage of the evaluation is complete. The research team has produced recidivism rates for inmates released from the state's prisons during FY1993, prior to the introduction of the Offender Notification Program. This data represents the most recent statistics on inmate recidivism available in Virginia.

Researchers with the Commission and the National Center for State Courts tracked a group of nearly 1,000 inmates released in FY1993 for a period of three years in order to examine patterns of recidivism among this offender population. The sample of inmates used in the study was selected in such a way that the

results can be generalized to all inmates released from prison (excluding inmates who had been previously released on parole and subsequently returned to prison as parole violators). The study revealed that nearly half of all released prison inmates are rearrested within three years of release (Figure 71). Nearly 40% of released inmates were rearrested for a felony crime. More than one-third of released inmates were convicted of a new crime (felony or misdemeanor) within three years. Overall, one-fifth of released inmates were reconvicted for a felony within the follow-up period. For inmates who were rearrested, the average time from release to arrest was just over one year.

FIGURE 71

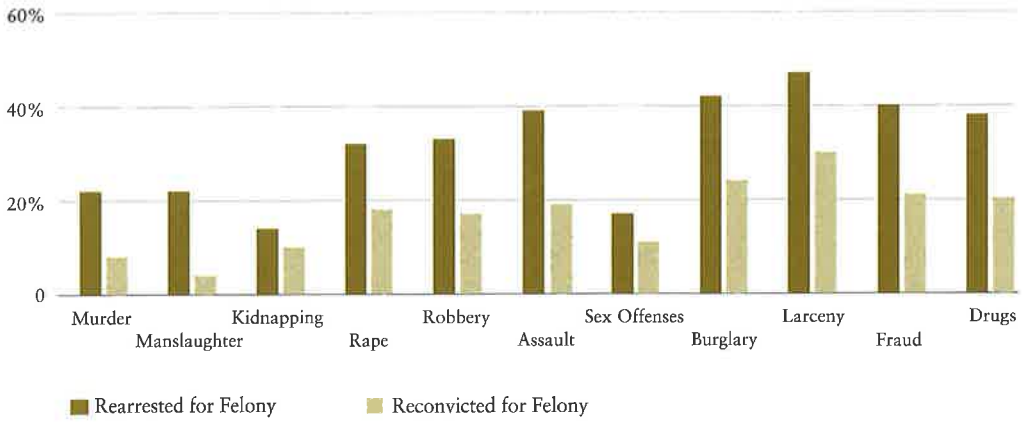
Recidivism Rates for Prison Inmates Released in FY1993



Recidivism rates varied by the type of offense for which the inmate was originally incarcerated. The highest recidivism rates (as measured by both new felony arrest and new felony conviction) were among larceny offenders (Figure 72). Nearly half of inmates imprisoned for larceny offenses were arrested for a new felony and nearly one-third were convicted for a new felony crime. The lowest rate of new felony arrest (14%) was found among those inmates incarcerated for kidnapping offenses, while inmates who had served time for manslaughter had the lowest felony reconviction rate (4%). In general, offenders who had been incarcerated for property and drug crimes exhibited higher recidivism rates than offenders imprisoned for crimes against the person, although inmates who had been incarcerated for assault were rearrested for felony offenses about as often as fraud and drug offenders.

FIGURE 72

Recidivism Rates by Offense for Prison Inmates Released in FY1993*

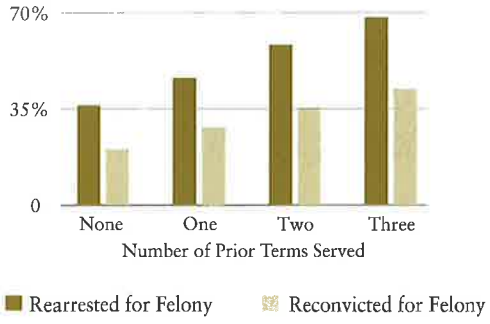


* Offense for which the inmate was originally incarcerated

Inmates who had served multiple incarceration terms for felony crimes were significantly more likely to recidivate after release from prison than inmates who had just completed their first felony term. Inmates with three felony incarcerations prior to term most recently served were rearrested for a new felony twice as often as inmates who had no felony incarcerations prior to the one for which they were just released (Figure 73). Inmates with three previous felony incarcerations were also twice as likely to be reconvicted for a new felony offense as inmates with no such priors.

FIGURE 73

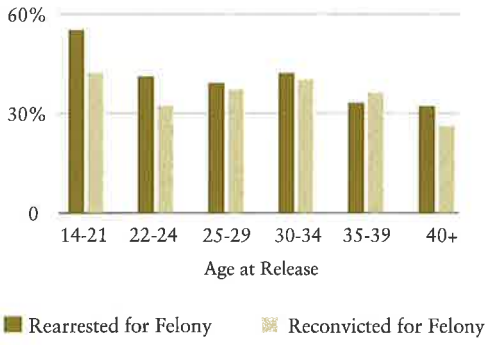
Recidivism Rates by Prior Felony Incarceration Terms Served for Prison Inmates Released in FY1993



In addition to prior incarcerations, the study also found the offender's age to be significant predictor of recidivism. The youngest inmates recidivated the most often, while the oldest inmates recidivated the least (Figure 74). Well over half (55%) of inmates who were between the ages of 14 and 21 when they were released from prison were rearrested for a felony within three years of release, but only one-third of inmates who were 40 or older had a subsequent felony arrest. Similarly, 42% of 14 to 21 year old prisoners were reconvicted of a felony offense, while just one-quarter of the inmates in the oldest age group were found to have had a felony reconviction during the study period.

FIGURE 74

Recidivism Rates by Age for Prison Inmates Released in FY1993



The evaluation of the Offender Notification Program is not yet complete. The data discussed here represent only the first half of the study examining recidivism rates among inmates released from state prison facilities. To evaluate the impact of the Offender Notification Program on recidivism, the Commission, in partnership with the National Center for State Courts, plans to repeat the recidivism analysis for a sample of inmates who were subject to the Offender Notification Program and told of the tougher penalties associated with the truth-in-sentencing system prior to their release from the Department of Corrections.

Summary

Virginia's comprehensive felony sentencing reform legislation marks its fifth anniversary on January 1, 2000. By all measures, this sweeping overhaul of the felony sanctioning system has, to date, been a resounding and unequivocal success.

Truth-in-sentencing has been achieved and approximately 90% of imposed incarceration time is actually being served. Sentences for violent felons are significantly longer than those historically served and are arguably among the longest in the nation.

Virginia's prison population growth has now stabilized and become more predictable and manageable. Our prison population grew over 160% from 1986-96, an annualized rate of growth of over 16%. Since 1996, our prison population has grown a total of only 6.7%, an annualized rate of growth of only 2.2%. Furthermore, the recently approved prison population forecast projects a growth rate of only 1.5% over the next five years.

Contributing greatly to the diminished demand for expensive prison beds has been the welcome expansion of new intermediate punishment/treatment programs designed for felons. Since 1994, new intermediate sanction programs have been funded with the capacity to handle approximately 8,200 felons annually. Some of these intermediate sanction programs have already been integrated into the sentencing guidelines recommendations. Judges have enthusiastically embraced these new sentencing options that are designed for non-violent offenders who pose minimal risk to public safety. Consequently, Virginia's expensive prison beds have been prioritized to house violent felons and those who pose a significant risk of recidivism.

Violent crime and serious property crime rates have decreased since the adoption of sentencing reforms. Since 1994, Virginia's murder rate has plummeted 32%, the robbery rate has decreased 23%, the rape rate has declined 14%, and the burglary and larceny rates have dropped 17% and 13% respectively.

The issue of whether the drop in crime rates is largely attributable to the sentencing reforms or some other combination of events and/or initiatives is complex. Over the observed time period, Virginia has enjoyed a booming economy and record low unemployment rates – factors that also favor lower crime rates. Also, since 1994, Virginia has adopted other crime fighting initiatives such as the sex

offender registry and the Virginia Exile Program (mandatory prison terms for certain firearm-related crimes). However, no criminal justice reform implemented in Virginia over the past decade has had as pervasive an impact on the criminal offender population as the sentencing reform law of 1994. Since its inception, over 75,000 felons have been sentenced under no-parole. Of those, over 15,000 were violent felons who received prison terms dramatically longer than those historically served. Clearly, many violent felons who likely would have been back on the streets under Virginia's old sentencing system have remained in prison and are unable to commit new crimes.

Thus, five years after the enactment of the sentencing reform legislation in Virginia, there is substantial evidence that the system is achieving what its designers intended. Much work, however, remains to be done. The Commission is close to completion on its sex offender recidivism study and possible adoption of a risk assessment instrument for Virginia's judges to assist in the sentencing of these felons. The Commission is also working in conjunction with the National Center for State Courts to evaluate the non-violent offender risk assessment instrument in current use in six judicial circuits. If expanded statewide, the use of this instrument may re-direct even more non-violent offenders away from a traditional prison term and into alternative punishment/treatment programs without any concurrent increased risk to public safety. If successful, this program would free up significantly more prison beds to house the violent felons who, over the next decade, will continue to queue up in our correctional facilities due to their very long terms. Also in the coming year, the Commission will continue its study of offender recidivism patterns, initiate new studies of larceny felons and post-release sentencing revocations, and work with judges and other criminal justice system professionals to ensure that Virginia's sentencing guidelines system continues to serve the best interests of the Commonwealth's citizenry.

RECOMMENDATIONS OF THE COMMISSION

Introduction

The Commission closely monitors the sentencing guidelines system and, each year, deliberates upon possible modifications to enhance the usefulness of the guidelines as a tool for judges in making their sentencing decisions. Under §17.1-806 of the Code of Virginia, any modifications adopted by the Commission must be presented in its Annual Report, due to the General Assembly each December 1. Unless otherwise provided by law, the changes recommended by the Commission become effective on the following July 1.

The Commission draws on several sources of information to guide its discussions about modifications to the guidelines system. Commission staff meet with circuit court judges and Commonwealth's Attorneys at various times throughout the year, and these meetings provide an important forum for input from these two groups. In addition, the Commission operates a "hot line" phone system, staffed Monday through Friday, to assist users with any questions or concerns regarding the preparation of the guidelines. While the hot line has proven to be an important resource for guidelines users, it has also been a rich source of input and feedback from criminal justice professionals around the Commonwealth. Moreover, the Commission conducts many training sessions over the course of a year and, often, these sessions provide information useful to the Commission. Finally, the Commission closely examines compliance with the guidelines and departure patterns in order to pinpoint specific areas where the guidelines may be out of sync with judicial thinking. The opinions of the judiciary, as expressed in the written departure reasons, are very important in directing the Commission to those areas of most concern to judges.

In 1998, utilizing the wealth of information available from a variety of sources, the Commission adopted 24 recommendations, 18 of which involved modifications to the guidelines worksheets. All 18 worksheet amendments became effective July 1, 1999, and are included in the Commission's 1999 manual. This year, the Commission has adopted six recommendations to modify the sentencing guidelines system.

The drawing below of Justice was done by Ireland's Edward Smyth. It illustrates one of the many sculptures originally designed for the rotunda of The Four Courts building in Dublin, Ireland.

RECOMMENDATION 1

Amend the miscellaneous offense sentencing guidelines to increase the scores for violation of habitual traffic offender statutes

Issue

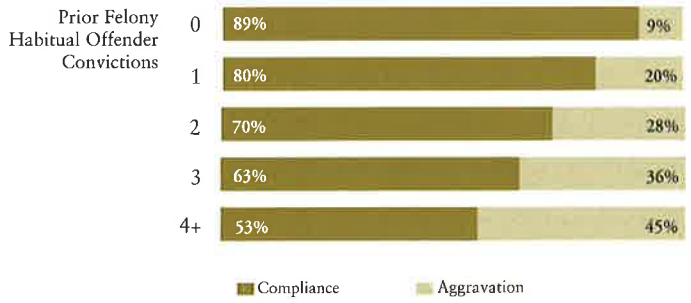
Currently, under existing guidelines, offenders convicted of felony habitual traffic violations under §46.2-357(B2,3) of the Code of Virginia typically are recommended for the mandatory minimum sentence (with a range of 12 to 14 months) even when the offender has prior convictions for felony habitual traffic violations.

Analysis

An analysis of truth-in-sentencing cases received during fiscal year (FY) 1998 and FY1999 reveals that compliance with the guidelines recommendation reaches 89% in cases of offenders with no prior felony habitual traffic violations, but is only 53% when the offender's record includes four or more of these prior convictions. The rate at which judges sentence above the guidelines recommendation (the aggravation rate) rises dramatically as the number of prior convictions for felony habitual traffic violations increases (Figure 75). According to the sentencing guidelines database, the average sentence jumps from 13 months when there are no prior convictions of this nature to nearly two years when the offender has four or more such convictions. Although the average sentence for offenders with an extensive prior record of this kind is close to two years, the average guidelines midpoint recommendation in these cases is less than 17 months.

FIGURE 75

Sentencing Guidelines Compliance in Habitual Traffic Offender Cases By Number of Prior Felony Habitual Traffic Convictions



The source of this incongruity lies in the scores for the Primary Offense factor on Section C of the miscellaneous offense guidelines. Section C of the guidelines is designed such that the total score on the worksheet represents the midpoint sentence recommendation (in months) for the case. In the Commission's 1999 manual, the Primary Offense score for one count of a habitual traffic violation (no prior violent record) is seven points. Yet, habitual traffic violations are subject to a 12-month mandatory minimum penalty, which a judge can suspend only if he places the offender in one of the state's detention center, diversion center or boot camp incarceration programs, or if he finds that the offender drove in a situation of extreme emergency. Because the score for the Primary Offense factor is less than the mandatory minimum penalty, the total score on Section C often falls below the minimum penalty, even if the offender has a prior conviction for a felony habitual traffic violation. In fact, in nearly half of all habitual traffic cases, the total score on Section C is less than the 12-month mandatory minimum sentence. Whenever the guidelines recommendation falls below the mandatory minimum sentence, the guidelines preparer is instructed to replace any part of the recommended sentence range (low recommendation, midpoint recommendation, and high recommendation) with the mandatory minimum penalty when completing the coversheet of the guidelines.

The discrepancy between Primary Offense score and the mandatory minimum penalty for this offense arose when the truth-in-sentencing guidelines were developed in 1994. The truth-in-sentencing guidelines in use today are based on sentencing guidelines used prior to the abolition of parole. Under the parole system, the sentencing guidelines were rooted in historical sentencing patterns. To develop the truth-in-sentencing guidelines, the parole-era guidelines were converted to reflect time actually served by offenders during the years 1988 to 1992, as required by §17.1-805 of the Code of Virginia. Once the guidelines reflected historical time served and a small percentage had been added to allow inmates to earn limited sentence credits, scoring enhancements were built into the guidelines to increase the sentence recommendations for offenders with current or prior convictions for violent crimes, according to the format specified in the Code. For offenders convicted of nonviolent crimes with no record of violent convictions, the sentencing guidelines recommendations represent historical time served. Thus, a base score of less than 12 points for habitual traffic offenders reflects the fact that these offenders served significantly less than 12 months (typically around three months) during the parole era, prior to the abolition of parole.

To address this incongruity, the Commission proposes to increase the Primary Offense score on Section C of the miscellaneous guidelines for one count of habitual traffic violation (no prior violent record) to 10 points (Figure 76). Based on §17.1-805, the guidelines scores are increased for offenders with prior convictions for violent felonies according to the seriousness of those prior crimes (prior records are classified as Category I or Category II). In addition, on Section C of the miscellaneous guidelines, habitual traffic offenders must be assigned two additional points on the Legal Restraint factor, since these offenders drove a vehicle while they were restricted from doing so. By having a primary offense score of 10, with an additional two points for legal restraint, habitual offenders will always be recommended for at least the 12-month mandatory minimum. Figure 76 displays the current and proposed Primary Offense factor for habitual traffic offenders. The Commission's proposal would change only the score for one count of this offense. The scores for multiple counts would remain unchanged.

FIGURE 76

Current and Proposed Primary Offense Factor for Habitual Traffic Cases
Miscellaneous Guidelines – Section C

Habitual offender operate vehicle, endangerment; Habitual offender, no endangerment / 2nd offense

	Current			Proposed		
	Category I	Category II	Other	Category I	Category II	Other
1 count	28	14	7	40	20	10
2 count	48	24	12	48	24	12
3 or more	68	34	17	68	34	17

Establishing a base score that, when combined with the score for legal restraint, meets the 12-month mandatory minimum penalty addresses another concern brought to the Commission's attention this year. The guidelines have received criticism for not making a higher sentence recommendation for habitual traffic offenders who have prior convictions for felony habitual traffic violations. Under existing guidelines, an offender with one prior felony habitual traffic conviction receives a total score of 11 points on Section C of the miscellaneous guidelines. Because this score is less than the 12-month mandatory minimum and the guidelines preparer must replace the guidelines score with the mandatory minimum sentence when completing the coversheet, repeat habitual traffic offenders receive the same sentence recommendation as first-time violators of the habitual traffic statute (12 to 14 months). Even if an offender has two prior convictions for felony habitual traffic violations, the guidelines produce a total score of only 13 points, a value only one month higher than the mandatory minimum the judge must impose. Because the base score for this offense is less than the mandatory minimum penalty, points scored on the worksheet for prior convictions often fail to augment the ultimate sentence that is recommended. Establishing a base score that, when combined with the Legal Restraint factor, meets the 12-month mandatory minimum penalty ensures that points added for prior felony habitual traffic convictions will serve to increase the recommended sentence above the mandatory minimum penalty.

Each sentence recommended by the guidelines is presented on the coversheet with an accompanying sentence range. The total score on Section C of the guidelines becomes the midpoint recommendation and a table in the guidelines manual provides the low recommendation and high recommendation (i.e., the range) associated with the particular guidelines score. In addition to raising the base score for habitual traffic violations so that the total score on Section C (the midpoint recommendation) meets the mandatory minimum penalty, the Commission also recommends adjusting the Section C range table to ensure that the low end of the recommended sentence range also meets the mandatory minimum sentence. To achieve this, the Commission proposes creating a new offense chapter of the guidelines manual which covers just felony traffic offenses, such as habitual offender violations and hit and run. Currently, these offenses are covered by the miscellaneous guidelines. By creating a separate offense chapter for felony traffic offenses, the Commission can adjust the low end of sentence ranges without impacting the ranges established for non-traffic offenses.

Because this recommendation proposes raising the base score for habitual traffic violations from seven to ten points, the Commission may also need to adjust the high end of the sentence ranges for this offense so that the recommended ranges continue to reflect the middle 50% of effective sentences (i.e., imposed sentence less any suspended time). The range tables are designed to provide low and high recommendations that capture the middle 50% of sentencing outcomes, eliminating the 25% at the extreme high and the 25% at the extreme low. The Commission may need to adjust the range table for habitual traffic offenses, particularly at the high end of the recommended ranges, to ensure that the range table for felony traffic offenses continues to capture the middle 50% of sentencing outcomes. Once felony traffic offenses are removed from the miscellaneous offense guidelines, the Commission also may need to adjust the miscellaneous range table to make certain it captures the middle 50% of sentences for the non-traffic offenses remaining on the miscellaneous worksheet.

RECOMMENDATION 2

Amend the miscellaneous offense sentencing guidelines to add violations of habitual traffic statutes (§46.2-357(B2)) not currently covered by the guidelines

Issue

Currently, only two of three acts delineated in §46.2-357(B2,3) relating to habitual traffic offenders are covered by the guidelines.

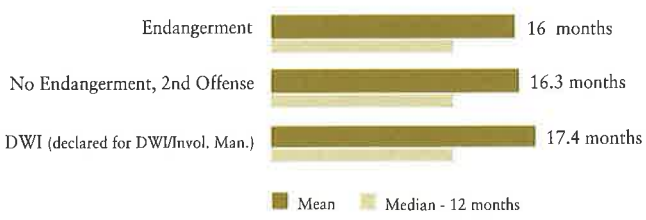
Analysis

During its 1997 session, the General Assembly revised the habitual traffic offender statute (§46.2-357(B2,3)). Prior to the change, the Code section delineated two acts which constitute felony violation of the habitual traffic offender law: driving with a revoked license after being declared a habitual traffic offender in a manner that endangers the safety of others and driving with a revoked license after being declared a habitual traffic offender without endangerment to others (second or subsequent offense). Both acts are punishable as a felony with a five-year maximum penalty and carry a 12-month mandatory minimum penalty. The 1997 legislation attached a similar punishment to driving on a revoked license after being declared a habitual offender if the current offense involved a Driving while Intoxicated (DWI) violation when one of the underlying convictions which led to the person being declared a habitual traffic offender was a DWI or involuntary manslaughter. This offense also carries a 12-month minimum sentence. Although the miscellaneous offense guidelines cover the first two offenses, the latter offense is not covered by the guidelines.

Analysis of the Pre-/Post-Sentence Investigation (PSI) database reveals that only 29 offenders have been convicted of this newest type of habitual traffic offender violation in fiscal year (FY) 1997 and FY1998. The data indicate that judges sentence offenders convicted of this violation very similarly to other habitual traffic offenders (Figure 77). The mean sentences for all three types of habitual offender violations are close in range (16 to 17 months), and the median sentence (the middle value, with half the sentences falling above and half below) is exactly 12 months for all three offense behaviors.

FIGURE 77

Sentencing in Habitual Traffic Offender Cases by Type of Violation Behavior



The Commission recommends adding the newest habitual traffic offense behavior, described in §46.2-357(B2), to the guidelines. Under the Commission's proposal, offenders convicted under this statute will be recommended automatically for Section C (worksheet for incarceration greater than six months). On Section C, the scores for the Primary Offense factor would be set equivalent to the scores for those habitual traffic violations already covered by the guidelines. The Commission proposes points for the Primary Offense factor as shown in Figure 78. These are identical to the points proposed in Recommendation 1 for habitual traffic offender violations.

FIGURE 78
Proposed Primary Offense Factor
Miscellaneous Guidelines – Section C

Habitual offender with DWI (declared Habitual for DWI or Involuntary Manslaughter)

	Proposed		
	Category I	Category II	Other
1 count	40	20	10
2 count	48	24	12
3 or more	68	34	17

RECOMMENDATION 3

Amend the miscellaneous offense sentencing guidelines to add violations of §§18.2-36.1(F2,3), 18.2-51.4(D2,3), and 46.2-391(D2,3)

Issue

Currently, offenses described in §§18.2-36.1(F2,3), 18.2-51.4(D2,3), and 46.2-391(D2,3) are not covered by the sentencing guidelines.

Analysis

During its 1999 session, the General Assembly adopted legislation changing how Virginia will sentence Driving while Intoxicated (DWI) offenders who operate a vehicle after the revocation of their driver's licenses. Under §§18.2-36.1(F2,3), 18.2-51.4(D2,3), and 46.2-391(D2,3), the legislature made it unlawful to operate a motor vehicle during a period when an offender's driver's license has been revoked due to a conviction for vehicular manslaughter, a conviction for maiming while drunk driving, or a subsequent conviction for DWI. The three new Code sections carry an identical penalty structure. Under the new statutes, the first violation is a misdemeanor as long as the driving behavior did not endanger the safety of others. If, however, the driving behavior endangered the safety of others or if the offender commits a second driving violation without endangerment, the act is punishable with a sentence of one to five years. Felony violation of these statutes carries a 12-month mandatory minimum term of incarceration.

These new crimes target DWI offenders who operate a vehicle while under a revoked driver's license. The punishments for these offenders are the same as those imposed under the habitual traffic offender statute (§46.2-357(B2,3)). The new Code sections, while providing the same punishment for repeat traffic offenders who have been convicted of DWI-related offenses, do not impose any administrative or procedural requirements before the penalties can be applied. Under the habitual traffic offender statutes (§46.2-357(B2,3) and the former §§46.2-351 through 46.2-355), penalties could be applied only after a person had been convicted of three qualifying offenses listed in the Code and the Commonwealth had completed an administrative procedure to have the person declared a habitual traffic offender by the court. The 1999 General Assembly repealed §§46.2-351 through 46.2-355 of the Code containing the procedural requirements for declaring a habitual traffic offender. As a result, no new habitual offenders can be declared after July 1, 1999. Habitual offenders declared prior to that date are still subject to the penalties described in §46.2-357(B2,3). Unlike the habitual offender statutes, penalties can be applied under

§§18.2-36.1(F2,3), 18.2-51.4(D2,3), and 46.2-391(D2,3) if an offender drives with revoked license after a single conviction for vehicular manslaughter or maiming while drunk driving or a subsequent DWI conviction. Statutes requiring three prior convictions for qualifying traffic offenses and administrative action by the Commonwealth have been eliminated.

Because §§18.2-36.1(F2,3), 18.2-51.4(D2,3), and 46.2-391(D2,3) are new sections in the Code of Virginia, the databases maintained by the Commission are insufficient to provide useful data on future sentencing practices for these crimes. Due to the lag time in processing Pre-/Post-Sentence Investigation (PSI) data, it is unlikely that significant conviction and sentencing data for these crimes will available before 2001. The Commission anticipates, however, that sentencing practices for these crimes will follow closely the historical sentencing patterns for habitual traffic violations under the existing §46.2-357(B2,3).

The Commission recommends adding §§18.2-36.1(F2,3), 18.2-51.4(D2,3), and 46.2-391(D2,3) to the miscellaneous guidelines. Under the Commission's proposal, offenders convicted under these statutes would be recommended automatically for Section C (worksheet for incarceration greater than six months). On Section C, the scores for the Primary Offense factor would be set equal to the scores for those habitual traffic violations already covered by the guidelines. The Commission proposes points for the Primary Offense factor as shown in Figure 79. These are identical to the points proposed in Recommendation 1 for habitual traffic violations.

FIGURE 79

Proposed Primary Offense Factor
Miscellaneous Guidelines – Section C

Habitual offender with DWI (declared Habitual for DWI or Involuntary Manslaughter)

	Proposed		
	Category I	Category II	Other
1 count	40	20	10
2 count	48	24	12
3 or more	68	34	17

RECOMMENDATION 4

Amend the miscellaneous offense sentencing guidelines to add felony driving while intoxicated

Issue

Currently, driving while intoxicated (§18.2-266/§18.2-270 of the Code of Virginia) is not covered by the sentencing guidelines.

Analysis

On July 1, 1999, two driving while intoxicated (DWI) offenses specified in the Code of Virginia were redefined as felonies. Prior to that date, a third or subsequent DWI conviction was punishable by an incarceration term of two months to one year, with a 30 day mandatory minimum penalty if the offense occurred within five years of the first and a ten day mandatory minimum penalty if the offense occurred within five to ten years of the initial DWI conviction. After July 1, 1999, a third conviction for DWI within ten years became a Class 6 felony. Although the Code of Virginia had not previously differentiated between a third and a fourth DWI conviction, after July 1, a fourth DWI conviction within ten years became a Class 6 felony with a one year mandatory minimum sentence. Because DWI was not classified as a felony prior to July 1, 1999, the databases maintained by the Commission are insufficient to provide useful data on historical sentencing practices for these crimes. Future sentencing practices for these crimes, however, may depart significantly from historical patterns since the statutory maximum has increased dramatically and because the fourth DWI conviction requires a one year minimum sentence.

The Commission has developed guidelines scores for these crimes. Under the Commission's proposal, for the third DWI conviction, the score for the Primary Offense factor on Section A of the miscellaneous offense guidelines would be one point. With this primary offense score, most offenders convicted of this offense will be scored out on Section B (worksheet for probation and incarceration up to six months). On Section B, offenders convicted of their third DWI will be automatically recommended for incarceration up to six months. However, some third-DWI offenders will score enough points on Section A to be recommended for Section C (worksheet for incarceration greater than six months). Third-DWI offenders with a prior incarceration or commitment, who were legally restrained at the time of the offense and who have an additional offense will accumulate enough points so that Section C must be completed. On Section C, the base

score for the Primary Offense factor would be 5 points. Based on §17.1-805, the guidelines scores are increased for offenders with prior convictions for violent felonies. For an offender with a prior conviction for a violent felony carrying a statutory maximum penalty of less than 40 years (classified as a category II record), the score for the Primary Offense factor would increase to 10 points. For an offender with a prior conviction for a violent felony with a maximum penalty of 40 years or more (a category I record), the score for the Primary Offense factor would rise to 20 points. These point values are equivalent to those assigned for the crime of hit and run (with victim injury).

For the fourth DWI conviction, the Commission is proposing guidelines recommendations which mirror recommendations for violations of habitual traffic offender statutes (§46.2-357(B2,3)). Both habitual traffic violations and fourth-DWI convictions carry a mandatory minimum penalty of one year. Offenders convicted of a fourth DWI within ten years will be recommended automatically for Section C. On Section C, the Commission proposes points for the Primary Offense factor as shown in Figure 80. These are identical to the points proposed in Recommendation 1 for habitual traffic violations.

FIGURE 80

Proposed Primary Offense Factor
Miscellaneous Guidelines – Section C

DWI (4th conviction)

	Proposed		
	Category I	Category II	Other
1 count	40	20	10
2 count	48	24	12
3 or more	68	34	17

RECOMMENDATION 5

Amend the murder/homicide guidelines to remove felony homicide under §18.2-33 of the Code of Virginia as a separate offense heading and instruct guidelines users to score felony homicide (§18.2-33) as second-degree murder

Issue

Currently, guidelines recommendations for felony homicide under §18.2-33 of the Code of Virginia are far less than recommendations for second-degree murder.

Analysis

Prior to July 1, 1999, felony homicide was a Class 3 felony, carrying a penalty range of five to twenty years. During its 1999 session, the General Assembly increased the maximum penalty for this crime to 40 years. The maximum penalty for second-degree murder had been raised from 20 to 40 years in 1993. §18.2-33 of the Code defines felony homicide as "the killing of one accidentally, contrary to the intentions of the parties, while in prosecution of some felonious act other than those specified in §§18.2-31 and 18.2-32, is murder of the second degree." However, since 1993, the maximum penalty for felony homicide has been restricted to 20 years while the maximum penalty for second-degree murder under §18.2-32 was 40 years. As a result of this latest change, the current penalty for felony homicide reflects the same penalty structure as second-degree murder.

Because §18.2-33 of the Code defines felony homicide as second-degree murder and the penalty structures are now the same, the Commission proposes to revise the murder/homicide guidelines by removing felony homicide (§18.2-33) as a separate offense heading and instruct guidelines users to score felony homicide offenses convicted under §18.2-33 as second-degree murder (Figure 81). This has the effect of increasing the Primary Offense scores for felony homicide on the Primary Offense factor on Section C of the Murder/Homicide guidelines. An analysis of cases received during fiscal year (FY) 1998 and FY 1999, reveals only seven offenders have been convicted for felony homicide in the two year period.

FIGURE 81

Proposed Primary Offense Scores for Second Degree Murder
Murder/Homicide Guidelines – Section C

Second degree murder

	Proposed		
	Category I	Category II	Other
Completed: (all counts)	354	236	133
Attempted or conspired: (all counts)	120	118	59

RECOMMENDATION 6

Amend the larceny guidelines to increase the likelihood that larceny offenders with a prior record for misdemeanors are recommended for a term of incarceration

Issue

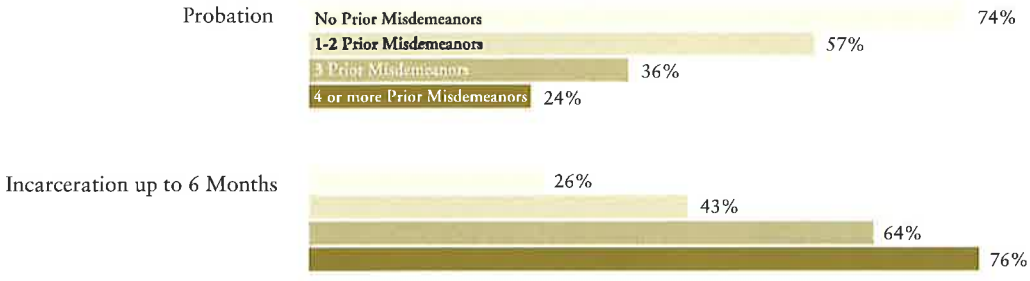
An offender convicted of grand larceny (not from person) who has a prior misdemeanor conviction for which he received a prison or jail sentence (or a term of commitment as a juvenile) is not recommended for a term of incarceration under the current larceny guidelines. The guidelines have received criticism for not recommending these offenders for incarceration.

Analysis

According to the sentencing guidelines database, during fiscal year (FY) 1998 and FY1999, 2,731 offenders convicted of grand larceny (not from person) were sentenced either to probation without incarceration or incarceration up to six months (this excludes cases sentenced to more than six months of incarceration). The data reveal that the rate at which judges give offenders convicted of grand larceny (not from person) a probation sanction without an accompanying term of incarceration declines as the number of prior misdemeanor convictions increases (Figure 82). Nearly three-fourths of larceny offenders with no prior misdemeanor convictions were sentenced to probation, while less than one-fourth of larceny offenders with four or more misdemeanor convictions were given

FIGURE 82

Sentencing in Grand Larceny (Not from Person) Cases By Number of Prior Misdemeanor Convictions/Adjudications and Type of Sanction (Probation or Incarceration up to Six Months)*



probation. The majority of offenders with four or more prior misdemeanor convictions received incarceration (ranging from one day to six months). The guidelines recommend 37% of grand larceny (not from person) offenders who have one or two prior misdemeanor convictions/adjudications for incarceration up to six months, but more than 43% receive such a sanction. Moreover, with no felony record, an offender convicted of grand larceny (not from person) who has a prior misdemeanor conviction which resulted in a jail term or commitment as a juvenile is not recommended for incarceration under the current larceny guidelines. The guidelines have received some criticism for not recommending incarceration time for an offender fitting this profile.

The Commission proposes increasing the scores for prior misdemeanor convictions/adjudications on Section B of the larceny guidelines. Figure 83 displays the current and proposed scores for this factor. At each level, the Commission recommends increasing the number of points assigned by one. Although a subtle change, increasing the scores in this way ensures that offenders convicted of grand larceny who have served time for a prior misdemeanor conviction or adjudication will be recommended for a short term of incarceration (incarceration up to six months) by the sentencing guidelines. In addition, this change increases the likelihood that other larceny offenders with a prior record for misdemeanors are recommended for a term of incarceration.

FIGURE 83

Increase Scores for Prior Misdemeanor Convictions/Adjudications
Larceny Guidelines - Section B

Prior Misdemeanor Convictions/Adjudications

		Current	Proposed
Number:	1-2	1	2
	3	2	3
	4 or more	3	4

APPENDICES

APPENDIX 1

Judicial Reasons for Departure from Sentencing Guidelines: Property, Drug and Miscellaneous Offenses

Reasons for MITIGATION	Burglary of Dwelling	Burglary of Other Structure	Drugs	Fraud	Larceny	Misc
No reason given	1.9%	0%	4.3%	3.3%	4.3%	4.3%
Minimal property or monetary loss	1.9	0	0.1	1.7	5.1	0
Minimal circumstances/facts of the case	2.5	1.4	2	2.8	1.9	21
Small amount of drugs involved in the case	0	0	2.6	0	0	0.7
Offender and victims are friends	1.9	0	0	1.9	2.2	2.9
Little or no injury/offender did not intend to harm; victim requested lenient sentence	2.5	0	0	2.2	3	2.2
Offender has no prior record	0	0	0.8	0.3	0	0.7
Offender has minimal prior record	3.1	0	4.3	4.7	2.2	9.4
Offender's criminal record overstates his degree of criminal orientation	1.9	1.4	1.5	0.6	0.8	2.2
Offender cooperated with authorities	15.4	17.1	12.4	5.8	5.9	6.5
Offender is mentally or physically impaired	0	0	3.1	4.1	2.2	7.2
Offender has emotional or psychiatric problems	3.7	1.4	1.2	4.1	2.7	4.3
Offender has drug or alcohol problems	0	0	0.7	0.8	0.8	0.7
Offender has good potential for rehabilitation	13	11.4	17.8	28.9	16.4	16.7
Offender shows remorse	1.2	0	0.5	1.4	0.3	1.4
Age of Offender	13	8.6	4.3	2.5	3	7.2
Multiple charges are being treated as one criminal event	0	0	0	0.3	0.3	0
Sentence recommended by Commonwealth Attorney or probation officer	2.5	11.4	4.6	4.7	5.1	7.2
Weak evidence or weak case	4.3	5.7	5.3	5.2	6.5	5.1
Plea agreement	4.9	7.1	11.9	12.9	18.5	8
Sentencing Consistency with co-defendant or with similar cases in the jurisdiction	1.9	0	0.3	0	0	0.7
Offender already sentenced by another court or in previous proceeding for other offenses	4.3	7.1	2.2	8.8	3.2	1.4
Offender will likely have his probation revoked	0.6	1	1.1	0.8	0.8	0
Offender is sentenced to an alternative punishment to incarceration	39.5	51.4	31.1	16.3	23.1	5.1
Guidelines recommendation is too harsh	0.6	0	0.4	2.5	0.5	2.9
Judge rounded guidelines minimum to nearest whole year	3.1	1.4	0.5	0.6	1.3	1.4
Other mitigating factors	7.9	8.5	6.5	7.7	7.5	3.6

Note: Percentages indicate the percent of mitigation cases in which the judge cites a particular reason for the mitigation departure. The percentages will not add to 100% since more than one departure reason may be cited in each case.

Reasons for AGGRAVATION	Burglary of Dwelling	Burglary of Other Structure	Drugs	Fraud	Larceny	Misc
No reason given	0.9%	3.1%	2.3%	1.9%	2.3%	2.4%
Extreme property or monetary loss	0.9	3.1	0	8.5	8.2	0
The offense involved a high degree of planning	0	0	0	1.9	1.4	0
Aggravating circumstances/flagrancy of offense	30.7	16.9	4.2	10.4	12.8	13.1
Offender used a weapon in commission of the offense	0.9	1.5	1.4	0	0.7	0.8
Offender's true offense behavior was more serious than offenses at conviction	5.3	6.2	6	10.4	6.6	0.4
Extraordinary amount of drugs or purity of drugs involved in the case	0	1.5	6.3	0	0	
Aggravating circumstances relating to sale of drugs	0	0	0.5	0	0	0
Offender immersed in drug culture	0	0	3.9	0	0	0
Victim injury	1.8	0	0	0	0.2	0.4
Previous punishment of offender has been ineffective	0	1.5	2.6	0	2.3	1.2
Offender was under some form of legal restraint at time of offense	0.9	1.5	8	1.9	5.2	2.9
Offender's criminal record understates the degree of his criminal orientation	9.6	16.9	14.1	21.7	19.6	26.9
Offender has previous conviction(s) or other charges for the same type of offense	3.5	3.1	10.1	9.4	13.9	25.7
Offender failed to cooperate with authorities	1.8	1.5	2.1	4.7	5.2	6.1
Offender has drug or alcohol problems	0	3.1	3.2	0.9	1.1	3.7
Offender has poor rehabilitation potential	1.8	4.6	2.6	5.7	3.2	11
Offender shows no remorse	0.9	0	0.8	1.9	3	1.2
Jury sentence	9.6	10.8	3.6	3.8	5.2	6.5
Plea agreement	16.7	13.8	19.1	7.5	11.6	8.2
Community sentiment	1.8	4.6	2.5	2.8	1.4	0
Sentencing consistency with codefendant or with other similar cases in the jurisdiction	0.9	1.5	0.7	0.9	0.5	1.2
Judge wanted to teach offender a lesson	0.9	1.5	0	0	0.7	0
The offender was sentenced to boot camp, detention center or diversion center	19.3	7.7	9.8	3.8	5.7	3.7
Guidelines recommendation is too low	8.8	6.2	4.2	6.6	5.5	9
Mandatory minimum penalty is required in the case	0.9	0	1.5	7.5	0.2	1.2
Other reason for aggravation	9.7	9.2	7.7	4.7	7.6	6.4

Note: Percentages indicate the percent of aggravation cases in which the judge cites a particular reason for the aggravation departure. The percentages will not add to 100% since more than one departure reason may be cited in each case.

APPENDIX 2

Judicial Reasons for Departure from Sentencing Guidelines: Offenses Against the Person

Reasons for MITIGATION	Assault	Kidnapping	Homicide	Robbery	Rape	Sexual Assault
No reason given	0.8%	0%	0%	0.8%	0%	3.1%
Minimal circumstances/facts of the case	5.9	7.1	3.2	5.6	7	9.2
Offender was not the leader or active participant in offense	1.7	0	3.2	10.5	0	0
Offender and victim are related or friends	7.6	28.6	6.5	1.6	0	6.2
Little or no victim injury/offender did not intend to harm; victim requested lenient sentence	5.9	14.3	0	0	7	6.2
Victim was a willing participant or provoked the offense	2.5	0	6.5	1.6	4.7	6.2
Offender has no prior record	2.5	0	0	0	0	1.5
Offender has minimal prior criminal record	7.6	0	3.2	8.9	16.3	3.1
Offender's criminal record overstates his degree of criminal orientation	0.8	0	0	0.8	2.3	0
Offender cooperated with authorities or aided law enforcement	3.4	7.1	19.4	19.4	2.3	3.1
Offender has emotional or psychiatric problems	5.9	0	0	4	4.7	3.1
Offender is mentally or physically impaired	2.5	0	3.2	0	7	1.5
Offender has drug or alcohol problems	0.8	0	0	0	0	1.5
Offender has good potential for rehabilitation	21.2	7.1	0	8.9	9.3	16.9
Offender shows remorse	2.5	0	3.2	3.2	0	3.1
Age of offender	5.9	0	9.7	10.5	9.3	1.5
Jury sentence	1.7	14.3	32.3	9.7	16.3	0
Sentence was recommended by Commonwealth's attorney or probation officer	5.1	7.1	9.7	8.9	2.3	6.2
Weak evidence or weak case against the offender	18.6	14.3	9.7	8.9	25.6	29.2
Plea agreement	13.6	7.1	0	5.6	4.7	7.7
Sentencing consistency with codefendant or with other similar cases in the jurisdiction	0	0	6.5	0.8	0	1.5
Offender already sentenced by another court or in previous proceeding for other offenses	0	0	0	9.7	0	3.1
Offender will likely have his probation revoked	0	7.1	0	0	0	0
Offender is sentenced to an alternative punishment to incarceration	5.9	0	3.2	7.3	2.3	4.6
Guidelines recommendation is too harsh	0.8	0	0	3.2	2.3	0
Judge rounded guidelines minimum to nearest whole year	2.5	7.1	3.2	4	0	4.6
Other reasons for mitigation	9.3	0	0	4	2.3	4.4

Note: Percentages indicate the percent of mitigation cases in which the judge cites a particular reason for the mitigation departure. The percentages will not add to 100% since more than one departure reason may be cited in each case.

Reasons for AGGRAVATION	Assault	Kidnapping	Homicide	Robbery	Rape	Sexual Assault
No reason given	1.6%	0%	0%	0%	0%	0%
The offense involved a high degree of planning	0	0	0	2.9	0	0
Aggravating circumstances/flagrancy of offense	15.9	53.8	22	29.5	40	32.4
Offender used a weapon in commission of the offense	2.4	15.4	2	4.8	0	0
Offender's true offense behavior was more serious than offenses at conviction	4	7.7	2	2.9	0	16.2
Offender is related to or is the caretaker of the victim	0.8	0	0	0	0	2.9
Offense was an unprovoked attack	4.8	7.7	2	0	6.7	0
Offender knew of victim's vulnerability	2.4	23.1	8	1	33.3	20.6
The victim(s) wanted a harsh sentence	3.2	7.7	0	1.9	13.3	1.5
Extreme violence or severe victim injury	20.6	0	10	7.6	6.7	0
Previous punishment of offender has been ineffective	0.8	0	0	1	0	0
Offender was under some form of legal restraint at time of offense	1.6	0	2	2.9	0	1.5
Offender's record understates the degree of his criminal orientation	11.9	7.7	10	10.5	13.3	1.5
Offender has previous conviction(s) or other charges for the same offense	4.8	0	0	1	0	5.9
Offender failed to cooperate with authorities	2.4	0	2	1	0	1.5
Offender has drug or alcohol problems	1.6	0	0	1	0	2.9
Offender has poor rehabilitation potential	11.9	15.4	0	4.8	0	5.9
Offender shows no remorse	1.6	0	2	1.9	0	2.9
Jury sentence	15.9	7.7	46	25.7	46.7	4.4
Plea agreement	2.4	0	8	2.9	0	13.2
Guidelines recommendation is too low	16.7	7.7	6	13.3	20	10.3
Mandatory minimum penalty is required in the case	0.8	0	0	5.7	0	0
Other reasons for aggravation	7.2	0	4	11.6	0	5.9

Note: Percentages indicate the percent of aggravation cases in which the judge cites a particular reason for the aggravation departure. The percentages will not add to 100% since more than one departure reason may be cited in each case.

APPENDIX 3

Sentencing Guidelines Compliance by Judicial Circuit: Property, Drugs, and Miscellaneous Offenses

Burglary of Dwelling

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	75.8%	15.2%	9.1%	33
2	71.1	21.1	7.9	76
3	92.9	7.1	0.0	14
4	75.9	13.0	11.1	54
5	65.7	20.0	14.3	35
6	54.5	36.4	9.1	11
7	83.3	12.5	4.2	24
8	81.8	13.6	4.5	22
9	67.9	10.7	21.4	28
10	61.5	38.5	0.0	26
11	88.9	11.1	0.0	9
12	61.5	23.1	15.4	26
13	69.4	8.2	22.4	49
14	55.0	32.5	12.5	40
15	67.7	22.6	9.7	31
16	62.1	17.2	20.7	29
17	83.3	16.7	0.0	12
18	72.7	9.1	18.2	11
19	59.5	18.9	21.6	37
20	82.6	17.4	0.0	23
21	59.1	36.4	4.5	22
22	67.4	11.6	20.9	43
23	42.9	28.6	28.6	28
24	62.1	27.6	10.3	29
25	81.0	19.0	0.0	21
26	52.6	15.8	31.6	19
27	62.5	34.4	3.1	32
28	71.4	0.0	28.6	14
29	45.5	9.1	45.5	22
30	61.5	23.1	15.4	13
31	84.2	5.3	10.5	19
Total	67.6%	19.0%	13.4%	852

Burglary of Other Structure

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	100.0%	0.0%	0.0%	9
2	87.1	12.9	0.0	31
3	93.8	6.3	0.0	16
4	82.8	13.8	3.4	29
5	69.2	15.4	15.4	13
6	63.6	0.0	36.4	11
7	63.6	9.1	27.3	11
8	100.0	0.0	0.0	5
9	61.9	28.6	9.5	21
10	85.7	9.5	4.8	21
11	71.4	14.3	14.3	7
12	70.8	12.5	16.7	24
13	71.4	19.0	9.5	21
14	78.9	10.5	10.5	19
15	70.0	5.0	25.0	20
16	57.1	33.3	9.5	21
17	76.5	0.0	23.5	17
18	68.8	12.5	18.8	16
19	85.0	10.0	5.0	20
20	92.3	0.0	7.7	13
21	61.5	30.8	7.7	13
22	72.7	9.1	18.2	11
23	73.1	15.4	11.5	26
24	71.9	15.6	12.5	32
25	75.0	18.8	6.3	16
26	78.6	7.1	14.3	14
27	87.9	12.1	0.0	33
28	63.6	18.2	18.2	11
29	46.7	6.7	46.7	15
30	66.7	0.0	33.3	9
31	76.2	14.3	9.5	21
Total	75.3%	12.8%	11.9%	546

Drugs

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	84.6%	3.0%	12.4%	169
2	83.5	9.1	7.4	430
3	84.7	11.1	4.2	450
4	80.1	12.7	7.2	694
5	79.4	5.9	14.7	136
6	54.3	22.1	23.6	140
7	88.9	4.5	6.6	620
8	86.2	7.2	6.7	195
9	75.6	12.6	11.9	135
10	77.9	17.2	4.9	122
11	83.9	7.6	8.5	211
12	68.9	8.1	23.0	135
13	67.8	12.1	20.1	733
14	71.5	13.2	15.3	242
15	73.6	8.3	18.1	288
16	80.5	6.7	12.8	149
17	78.9	8.8	12.4	194
18	76.4	15.7	7.9	178
19	82.0	10.0	8.0	339
20	86.1	6.9	6.9	72
21	68.1	19.1	12.8	47
22	70.7	5.4	23.8	147
23	60.7	17.3	22.1	272
24	72.1	7.6	20.3	251
25	76.6	16.1	7.3	137
26	68.6	16.5	14.9	121
27	83.8	6.6	9.6	136
28	71.4	16.9	11.7	77
29	68.6	7.0	24.4	86
30	95.0	0.0	5.0	20
31	79.3	17.4	3.3	121
Total	77.4%	10.5%	12.1%	7047

Fraud

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	88.0%	10.0%	2.0%	100
2	80.7	15.7	3.6	166
3	80.0	16.0	4.0	25
4	84.3	13.7	2.0	197
5	87.3	9.1	3.6	55
6	79.5	12.8	7.7	39
7	91.2	5.9	2.9	68
8	89.3	10.7	0.0	75
9	75.0	15.0	10.0	60
10	93.5	6.5	0.0	31
11	86.1	8.3	5.6	36
12	85.5	8.7	5.8	69
13	74.6	19.5	5.9	118
14	79.5	14.3	6.3	112
15	75.5	19.1	5.3	94
16	90.5	7.4	2.1	95
17	87.9	7.1	5.1	99
18	75.5	18.9	5.7	53
19	86.6	8.4	5.0	202
20	87.2	10.6	2.1	47
21	75.6	22.2	2.2	45
22	77.8	13.9	8.3	72
23	67.6	28.7	3.7	108
24	80.6	15.7	3.7	108
25	79.4	17.8	2.8	107
26	73.1	20.4	6.5	93
27	83.0	17.0	0.0	100
28	77.8	14.8	7.4	27
29	65.2	23.9	10.9	46
30	68.4	21.1	10.5	19
31	84.1	14.3	1.6	63
Total	81.5%	14.4%	4.2%	2529

Larceny

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	87.9%	7.7%	4.5%	247
2	86.5	9.2	4.3	325
3	88.6	8.6	2.9	105
4	87.6	9.0	3.4	411
5	86.4	4.2	9.3	118
6	61.4	9.1	29.5	44
7	86.6	9.2	4.2	142
8	93.6	4.8	1.6	125
9	85.0	3.3	11.7	120
10	88.9	5.6	5.6	72
11	82.1	7.1	10.7	28
12	77.9	4.3	17.8	163
13	68.0	13.6	18.3	169
14	77.9	7.3	14.9	289
15	77.9	10.4	11.7	163
16	78.6	8.3	13.1	84
17	80.9	5.2	13.9	230
18	78.6	12.8	8.5	117
19	80.8	4.9	14.3	287
20	89.2	8.6	2.2	93
21	83.1	12.4	4.5	89
22	70.4	4.1	25.5	98
23	70.8	11.0	18.2	154
24	75.4	15.4	9.2	130
25	86.5	8.7	4.8	104
26	83.3	11.1	5.6	144
27	87.8	10.4	1.7	115
28	72.2	5.6	22.2	36
29	43.3	21.7	35.0	60
30	82.8	6.9	10.3	29
31	83.3	7.9	8.8	114
Total	81.6%	8.4%	10.0%	4405

Miscellaneous

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	95.2%	0.0%	4.8%	63
2	91.1	4.1	4.9	123
3	88.2	11.8	0.0	17
4	87.0	7.6	5.4	92
5	83.0	7.5	9.4	53
6	66.7	22.2	11.1	27
7	91.9	3.2	4.8	62
8	84.6	15.4	0.0	26
9	74.3	2.7	23.0	74
10	80.4	7.1	12.5	56
11	81.0	2.4	16.7	42
12	78.6	1.8	19.6	56
13	84.9	6.5	8.6	93
14	80.3	6.1	13.6	66
15	80.0	7.6	12.4	105
16	78.7	4.0	17.3	75
17	68.4	2.6	28.9	38
18	58.3	41.7	0.0	12
19	82.9	2.4	14.6	82
20	79.6	11.1	9.3	54
21	72.1	14.0	14.0	43
22	74.5	7.8	17.6	102
23	68.1	10.6	21.3	94
24	76.9	7.7	15.4	130
25	78.3	11.6	10.1	69
26	72.1	8.1	19.8	86
27	76.1	12.7	11.3	71
28	70.6	11.8	17.6	17
29	88.9	8.3	2.8	36
30	76.5	5.9	17.6	17
31	76.9	7.7	15.4	26
Total	79.9%	7.3%	12.8%	1907

APPENDIX 4

Sentencing Guidelines Compliance by Judicial Circuit: Offenses Against the Person

Assault

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	70.6%	11.8%	17.6%	17
2	71.2	17.3	11.5	52
3	73.1	13.5	13.5	52
4	68.1	23.4	8.5	47
5	77.8	7.4	14.8	27
6	77.8	22.2	0.0	18
7	89.7	6.9	3.4	29
8	68.2	13.6	18.2	22
9	61.9	23.8	14.3	21
10	90.3	6.5	3.2	31
11	86.2	10.3	3.4	29
12	60.0	0.0	40.0	15
13	53.3	21.7	25.0	60
14	76.2	14.3	9.5	21
15	81.1	5.4	13.5	37
16	66.7	20.0	13.3	15
17	68.8	12.5	18.8	16
18	70.0	0.0	30.0	10
19	61.5	15.4	23.1	26
20	70.0	30.0	0.0	10
21	68.8	6.3	25.0	16
22	80.0	2.9	17.1	35
23	46.7	20.0	33.3	15
24	57.4	14.9	27.7	47
25	77.3	4.5	18.2	22
26	56.5	21.7	21.7	23
27	50.0	35.0	15.0	20
28	70.0	10.0	20.0	10
29	58.8	29.4	11.8	17
30	66.7	22.2	11.1	9
31	54.5	22.7	22.7	22
Total	69.2%	14.9%	15.9%	791

Kidnapping

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	100.0%	0.0%	0.0%	1
2	83.3	16.7	0.0	6
3	0.0	100.0	0.0	1
4	50.0	33.3	16.7	6
5	0.0	0.0	0.0	0
6	50.0	0.0	50.0	2
7	25.0	50.0	25.0	4
8	100.0	0.0	0.0	2
9	0.0	0.0	0.0	0
10	100.0	0.0	0.0	3
11	100.0	0.0	0.0	2
12	100.0	0.0	0.0	1
13	66.7	0.0	33.3	3
14	70.0	0.0	30.0	10
15	100.0	0.0	0.0	1
16	100.0	0.0	0.0	1
17	100.0	0.0	0.0	1
18	60.0	20.0	20.0	5
19	71.4	14.3	14.3	7
20	50.0	0.0	50.0	2
21	100.0	0.0	0.0	2
22	50.0	50.0	0.0	2
23	33.3	0.0	66.7	3
24	50.0	50.0	0.0	2
25	0.0	0.0	0.0	0
26	33.3	33.3	33.3	3
27	100.0	0.0	0.0	2
28	0.0	100.0	0.0	1
29	0.0	100.0	0.0	1
30	0.0	0.0	0.0	0
31	66.7	33.3	0.0	3
Total	64.9%	18.2%	16.9%	77

Homicide

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	62.5%	0.0%	37.5%	8
2	71.4	14.3	14.3	14
3	64.3	0.0	35.7	14
4	58.3	16.7	25.0	24
5	50.0	50.0	0.0	4
6	75.0	0.0	25.0	4
7	90.9	0.0	9.1	11
8	87.5	12.5	0.0	8
9	42.9	28.6	28.6	7
10	71.4	14.3	14.3	7
11	77.8	0.0	22.2	9
12	60.0	20.0	20.0	5
13	69.2	15.4	15.4	26
14	100.0	0.0	0.0	6
15	50.0	40.0	10.0	10
16	50.0	50.0	0.0	2
17	100.0	0.0	0.0	2
18	75.0	0.0	25.0	4
19	70.0	20.0	10.0	10
20	71.4	0.0	28.6	7
21	22.2	22.2	55.6	9
22	60.0	20.0	20.0	10
23	50.0	16.7	33.3	6
24	0.0	0.0	100.0	1
25	57.1	14.3	28.6	7
26	60.0	0.0	40.0	5
27	66.7	0.0	33.3	6
28	100.0	0.0	0.0	1
29	0.0	100.0	0.0	1
30	100.0	0.0	0.0	2
31	80.0	0.0	20.0	5
Total	65.5%	13.2%	21.3%	235

Robbery

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	82.9%	8.6%	8.6%	35
2	68.1	13.9	18.1	72
3	73.1	23.1	3.8	26
4	69.1	23.5	7.4	68
5	71.4	4.8	23.8	21
6	83.3	0.0	16.7	6
7	73.0	16.2	10.8	37
8	85.7	11.4	2.9	35
9	58.8	11.8	29.4	17
10	89.5	10.5	0.0	19
11	92.3	0.0	7.7	13
12	76.5	5.9	17.6	17
13	50.0	20.5	29.5	44
14	79.3	13.8	6.9	29
15	50.0	30.8	19.2	26
16	41.7	25.0	33.3	12
17	61.1	11.1	27.8	18
18	54.5	18.2	27.3	11
19	50.0	16.7	33.3	30
20	85.7	14.3	0.0	7
21	45.5	9.1	45.5	11
22	62.5	12.5	25.0	24
23	47.6	38.1	14.3	21
24	48.1	48.1	3.7	27
25	75.0	12.5	12.5	8
26	72.7	9.1	18.2	11
27	80.0	13.3	6.7	15
28	100.0	0.0	0.0	2
29	0.0	100.0	0.0	3
30	100.0	0.0	0.0	2
31	52.6	36.8	10.5	19
Total	66.6%	18.1%	15.3%	686

Rape

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	100.0%	0.0%	0.0%	3
2	75.0	25.0	0.0	12
3	100.0	0.0	0.0	1
4	84.6	15.4	0.0	13
5	100.0	0.0	0.0	3
6	66.7	33.3	0.0	3
7	62.5	37.5	0.0	8
8	100.0	0.0	0.0	5
9	66.7	33.3	0.0	3
10	71.4	14.3	14.3	7
11	100.0	0.0	0.0	1
12	72.7	9.1	18.2	11
13	100.0	0.0	0.0	9
14	41.7	33.3	25.0	12
15	57.1	28.6	14.3	7
16	75.0	25.0	0.0	8
17	16.7	66.7	16.7	6
18	50.0	50.0	0.0	4
19	71.4	21.4	7.1	14
20	33.3	33.3	33.3	3
21	0.0	100.0	0.0	1
22	83.3	16.7	0.0	6
23	55.6	44.4	0.0	9
24	66.7	22.2	11.1	9
25	66.7	33.3	0.0	6
26	57.1	14.3	28.6	7
27	0.0	100.0	0.0	1
28	100.0	0.0	0.0	3
29	75.0	0.0	25.0	4
30	50.0	50.0	0.0	2
31	75.0	0.0	25.0	4
Total	68.6%	23.2%	8.1%	185

Sexual Assault

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	66.7%	33.3%	0.0%	6
2	76.5	11.8	11.8	17
3	100.0	0.0	0.0	4
4	76.7	16.7	6.7	30
5	75.0	25.0	0.0	16
6	60.0	40.0	0.0	5
7	100.0	0.0	0.0	15
8	71.4	28.6	0.0	7
9	54.5	9.1	36.4	11
10	71.4	0.0	28.6	14
11	83.3	8.3	8.3	12
12	61.5	23.1	15.4	13
13	50.0	18.8	31.3	16
14	47.6	23.8	28.6	21
15	64.0	4.0	32.0	25
16	50.0	0.0	50.0	10
17	100.0	0.0	0.0	1
18	60.0	40.0	0.0	5
19	60.0	2.9	37.1	35
20	70.0	10.0	20.0	10
21	80.0	20.0	0.0	5
22	100.0	0.0	0.0	4
23	47.1	41.2	11.8	17
24	68.8	12.5	18.8	16
25	89.5	10.5	0.0	19
26	53.8	23.1	23.1	13
27	75.0	18.8	6.3	16
28	50.0	33.3	16.7	6
29	16.7	66.7	16.7	6
30	62.5	12.5	25.0	8
31	60.0	33.3	6.7	15
Total	66.6%	16.3%	17.1%	398

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Many photographs of the various representations of Lady Justice were taken from the Exhibition Hall in the United States Supreme Court in Washington, D.C.

Virginia Criminal Sentencing Commission

Sentencing Guidelines Hotline

804-225-4398