
**VIRGINIA CRIMINAL
SENTENCING
COMMISSION**

2010 ANNUAL REPORT

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SUPREME COURT OF VIRGINIA
VIRGINIA CRIMINAL SENTENCING COMMISSION

December 1, 2010

To: The Honorable Leroy Rountree Hassell, Sr., Chief Justice of Virginia
The Honorable Robert F. McDonnell, Governor of Virginia
The Honorable Members of the General Assembly of Virginia
The Citizens of Virginia

Section 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 *2010 Annual Report* of the Criminal Sentencing Commission.

This report details the work of the Criminal Sentencing Commission over the past year. The report presents a comprehensive examination of judicial compliance with the felony sentencing guidelines for fiscal year 2010. Additionally, this chapter includes some analysis of use of the sentencing revocation reports and probation violation sentencing guidelines. A separate chapter is dedicated to the results of the Commission's most recent study of juveniles who are convicted in circuit courts that was initiated at the request of the Virginia Crime Commission. The Commission's recommendations to the 2011 Session of the Virginia General Assembly are also contained in this report.

I would like to use this opportunity to express our utmost gratitude to a few Commission members who have completed their full terms and are not eligible for re-appointment. They are Judge Lee A. Harris, Jr., of Henrico County, Judge Dennis L. Hupp of Woodstock and Andrew M. Sacks of Norfolk. These individuals have performed their duties in an exemplary fashion and our work is far better due to their insights and valuable contributions.

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

Sincerely,

A handwritten signature in black ink, appearing to read "F. Bruce Bach".

F. Bruce Bach
Chairman

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1

Introduction

Virginia's approach has proven to be one of the most successful and effective avenues for reform.

Overview

The Virginia Criminal Sentencing Commission is required by § 17.1-803 of the *Code of Virginia* to report annually to the General Assembly, the Governor and the Chief Justice of the Supreme Court of Virginia. To fulfill its statutory obligation, the Commission respectfully submits this report.

The report is organized into four chapters. The remainder of the Introduction chapter provides a general profile of the Commission and an overview of its various activities and projects during 2010. The Guidelines Compliance chapter that follows provides a comprehensive analysis of compliance with the sentencing guidelines during fiscal year (FY) 2010. The third chapter describes the Commission's most recent findings related to juveniles convicted in Virginia's circuit courts. In the report's final chapter, the Commission presents its recommendations for revisions to the felony sentencing guidelines system.

Commission Profile

The Virginia Criminal Sentencing Commission is comprised of 17 members as authorized in the *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. The Governor appoints four members, at least one of whom must be a victim of crime or a representative of a crime victim's organization. In the original legislation, five members of the Commission were to be appointed by the General Assembly, with the Speaker of the House of Delegates designating three members and the Senate Committee on Privileges and Elections selecting two members. The 2005 General Assembly modified this provision. Now, the Speaker of the House of Delegates has two appointments, while the Chairman of the House Courts of Justice Committee, or another member of the Courts Committee appointed by the chairman, must serve as the third House appointment. Similarly, the Senate Committee on Rules makes only one appointment and the other appointment must be filled by the Chairman of the Senate Courts of Justice Committee or a designee

● Commission Meetings

The full membership of the Commission met four times during 2010. These meetings, held in the Supreme Court of Virginia, were held on March 22, June 14, September 20 and November 15. Minutes for each of these meetings are available on the Commission's website (www.vcsc.virginia.gov).

from that committee. The 2005 amendment did not affect existing members whose appointed terms had not expired; instead, this provision became effective when the terms of two legislative appointees expired on December 31, 2006. The Chairman of the Senate Courts of Justice Committee joined the Commission in 2007, as did a member of the House Courts of Justice Committee. The final member of the Commission, Virginia's Attorney General, serves by virtue of his office.

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.

Monitoring and Oversight

Section 19.2-298.01 of the *Code of Virginia* requires that sentencing guidelines worksheets be completed in all felony cases covered by the guidelines. The guidelines cover approximately 95% of felony sentencing events in Virginia. This section of the *Code* also requires judges to announce during court proceedings for each case that the guidelines forms have been reviewed. After sentencing, the guidelines worksheets are signed by the judge and 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 sentencing guidelines worksheets are reviewed by the Commission staff as they are received. The Commission staff performs this check to ensure that the guidelines forms are being completed accurately. As a result of the review process, errors or omissions are detected and resolved.

Once the guidelines worksheets are reviewed and determined to be complete, they are automated and analyzed. The principal analysis performed with the automated guidelines database relates to judicial compliance with sentencing guidelines recommendations. This analysis is conducted and presented to the Commission on a semiannual basis. The most recent study of judicial concurrence with the sentencing guidelines is presented in the next chapter.

Training, Education and Other Assistance

The Commission provides sentencing guidelines assistance in a variety of forms: training and education seminars, training materials and publications, a website, and assistance via the "hot line" phone system. Training and education are ongoing activities of the Commission. The Commission 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. In addition, the Commission conducts sentencing guidelines seminars for new members of the judiciary and other criminal justice system professionals. Having all sides equally versed in the completion of guidelines worksheets is essential to a system of checks and balances that ensures the accuracy of sentencing guidelines.

In 2010, the Commission offered 15 training seminars across the Commonwealth. As in previous years, Commission staff conducted training for attorneys and probation officers new to Virginia's sentencing guidelines system. The six-hour seminar introduced participants to the sentencing guidelines and provided instruction on correct scoring of the guidelines worksheets. The seminar also introduced new users to the probation violation guidelines and the two offender risk assessment instruments that are incorporated into Virginia's guidelines system. Seminars for experienced guidelines users were also provided. These courses are approved by the Virginia State Bar, enabling participating attorneys to earn Continuing Legal Education credits. The Commission continued to provide a guidelines-related ethics class for attorneys, which is conducted in conjunction with the Virginia State Bar. The Virginia State Bar has approved this class for one hour of Continuing Legal Education Ethics credit. Finally, the Commission regularly conducts sentencing guidelines training at the Department of Corrections' Training Academy as part of the curriculum for new probation officers.

Commission staff traveled throughout Virginia in an attempt to offer training that was convenient to most guideline users. Staff continues to seek out facilities that are designed for training, forgoing the typical courtroom environment for the Commission's training programs. The sites for these seminars included a combination of colleges and universities, libraries, state and local facilities, a jury assembly room, a museum and criminal justice academies. Many sites, such as the Roanoke Higher Education Center, were selected in an effort to provide comfortable and convenient locations at little or no cost to the Commission.

The Commission will continue to place a priority on providing sentencing guidelines training on request to any group of criminal justice professionals. The Commission is also willing to provide an education program on guidelines and the no-parole sentencing system to any interested group or organization. If an individual is interested in training, he or she can contact the Commission and place his or her name on a waiting list. Once there is enough interest, a seminar is presented in a locality convenient to the majority of individuals on the list.

In addition to providing training and education programs, the Commission maintains a website and a "hot line" phone system. By visiting the website, a user can learn about upcoming training sessions, access Commission reports, look up Virginia Crime Codes (VCCs), and utilize on-line versions of the sentencing guidelines forms. The "hot line" phone (804.225.4398) 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.

Projecting the Impact of Proposed Legislation

Section 30-19.1:4 of the *Code of Virginia* requires the Commission to prepare fiscal impact statements for any proposed legislation that may result in a net increase in periods of imprisonment in state correctional facilities. These impact statements must include details as to the impact on adult, as well as juvenile, offender populations and any necessary adjustments to sentencing guideline recommendations. Any impact statement required under § 30-19.1:4 must also include an analysis of the impact on local and regional jails as well as state and local community corrections programs.

During the 2010 General Assembly session, the Commission prepared 207 impact statements on proposed legislation. These proposals fell into five categories: 1) legislation to increase the felony penalty class of a specific crime; 2) legislation to increase the penalty class of a specific crime from a misdemeanor to a felony; 3) legislation to add a new mandatory minimum penalty for a specific crime; 4) legislation to expand or clarify an existing crime; and 5) legislation that would create a new criminal offense. The Commission utilizes its computer simulation forecasting program to estimate the projected impact of these proposals on the prison system. The estimated impact on the juvenile offender population is provided by Virginia's Department of Juvenile Justice. In most instances, the projected impact and accompanying analysis of a bill is presented to the General Assembly within 24 to 48 hours after the Commission was notified of the proposed legislation. When requested, the Commission provides pertinent oral testimony to accompany the impact analysis.

Prison and Jail Population Forecasting

Forecasts of offenders confined in state and local correctional facilities are essential for criminal justice budgeting and planning in Virginia. The forecasts are used to estimate operating expenses and future capital needs and to assess the impact of current and proposed criminal justice policies. Since 1987, the Secretary of Public Safety has utilized an approach known as "consensus forecasting" to develop the offender population forecasts. This process brings together policy makers, administrators and technical experts from all branches of state government. The process is structured through committees. The Technical Advisory Committee is composed of experts in statistical and quantitative methods from several agencies. While individual members of this Committee generate the various prisoner forecasts, the Committee as a whole carefully scrutinizes each forecast according to the highest statistical standards. Select forecasts are presented to the Secretary's Liaison Work Group, which evaluates the forecasts and provides guidance and oversight for the Technical Advisory Committee. It includes deputy directors and senior managers of criminal justice and budget agencies, as well as staff of the House

Appropriations and Senate Finance Committees. Forecasts accepted by the Work Group are then presented to the Policy Advisory Committee. Led by the Secretary of Public Safety, this committee reviews the various forecasts, making any adjustments deemed necessary to account for emerging trends or recent policy changes, and selects the official forecast for each prisoner population. The Policy Committee is made up of agency directors, lawmakers and other top-level officials from Virginia's executive, legislative, and judicial branches, as well as representatives of Virginia's law enforcement, prosecutor, sheriff, and jail associations.

While the Commission is not responsible for generating the prison or jail population forecast, it participates in the consensus forecasting process. In years past, Commission staff members have served on the Technical Advisory Committee and the Commission's Deputy Director has served on the Policy Advisory Committee. Since 2006, the Commission's Deputy Director has chaired the Technical Advisory Committee at the request of the Secretary of Public Safety. The Secretary presented the most recent prisoner forecasts to the General Assembly in a report submitted in October 2010.

Study of Crimes Committed in the Presence of Children

In 2008, the Commission embarked upon a multi-year research project likely to be one of the first of its kind in the nation. Members of the Commission approved a comprehensive study of crimes committed in the presence of children, noting that crimes can have a profound effect on the health and welfare of the children who witness them, even when they are not the direct victims. The goal is to identify crimes witnessed by children, to describe the nature of such crimes, and to determine how courts respond to and utilize information concerning the presence of children during the commission of the crime when sentencing the offender. This project will entail unique and groundbreaking research. Based on analysis of the data, the Commission may consider revising the sentencing guidelines to account for the presence of children during the commission of an offense.

Because criminal justice databases available in the Commonwealth lack sufficient detail to identify offenses witnessed by children, this research requires a special data collection process. In 2009, the Commission contacted Commonwealth's Attorneys around the state for help in identifying cases that meet the study's criteria. By going to the Commission's website, prosecutors are able to enter the offender's identifying information and electronically transmit it to Commission staff for data storage and analysis. In 2010, the Commission modified the sentencing guidelines cover sheet by adding a check box for individuals preparing the guidelines forms to indicate if a case involved a child witness. It is hoped that this will increase reporting of such cases to the Commission.

Commission staff will examine each case in detail and record pertinent information for each, including the number of witnesses, the age of the witness, the relationship between the witness and the offender, the location of the offense, the most serious injury sustained by the victim, if applicable, and the location of the witness relative to the offense.

Because of the uniqueness of this study, it is not certain how long the data collection phase must last to ensure that a sufficient number of cases for analysis will be achieved. Data collection is proceeding and will extend into 2011.

Re-validation of the Nonviolent Offender Risk Assessment Instrument

In 1994, as part of the reform legislation that instituted truth-in-sentencing, the General Assembly directed the Commission to study the feasibility of using an empirically-based risk assessment instrument to select 25% of the lowest risk, incarceration-bound, drug and property offenders for placement in alternative (non-prison) sanctions. By 1996, the Commission had developed such an instrument and implementation of the instrument began in pilot sites in 1997. The National Center for State Courts conducted an independent evaluation of nonviolent risk assessment in the pilot sites for the period from 1998 to 2001. Evaluators concluded that the risk assessment instrument is an effective tool for predicting recidivism. Further, cost-benefit analysis conducted by the National Center for State Courts suggested that the risk assessment instrument produced a cost-savings for the Commonwealth through the reduced use of prison and jail. In 2001, the Commission conducted a validation study of the original risk assessment instrument to test and refine the instrument for possible use statewide. In July 2002, the nonviolent risk assessment instrument was implemented statewide for all felony larceny, fraud, and drug cases.

Because it had been a number of years since the risk assessment instrument was last examined, the Commission, in 2010, directed staff to begin the process of re-validating its risk assessment tool. This will be a complex, multi-stage project. The first phase of the project is data collection. During 2010, Commission staff have acquired data from several different criminal justice data systems and have prepared this data for analysis. Data collection is expected to be complete in early 2011. Analysis is planned for spring and summer of 2011. Staff expect to present a refined risk assessment instrument to the Commission in September 2011. If the Commission approves the new instrument and recommends its adoption, it will be included in the 2011 Annual Report.

Assistance to the Virginia State Crime Commission

The 2006 General Assembly directed the Virginia State Crime Commission, a legislative branch agency, to study Virginia's juvenile justice system and the provisions in the *Code of Virginia* pertaining to juvenile delinquency. During the course of its multi-year study, the State Crime Commission has requested assistance from a variety of other agencies, including the Virginia Criminal Sentencing Commission.

In 2006 and again in 2009, the Sentencing Commission was asked to provide information on a particular aspect of the juvenile justice system: juveniles transferred to the circuit court to be tried as adults. Each year, a certain number of juveniles are certified to be tried as adults in Virginia's circuit courts. However, information on juveniles transferred to circuit court is not readily available due to limitations in existing databases. Given the challenging nature of this aspect of the study, the Crime Commission requested assistance from the Sentencing Commission. With extensive knowledge of the state's criminal justice databases and considerable research expertise, Sentencing Commission staff were able to compile information to provide the Crime Commission with an overview of juveniles convicted of felonies in circuit courts across the Commonwealth. Results were presented to the full membership of the State Crime Commission during meetings in October 2006 and June 2009.

2

Guidelines Compliance

Introduction

On January 1, 2011, Virginia's truth-in-sentencing system will reach its sixteenth anniversary. Beginning January 1, 1995, the practice of discretionary parole release from prison was abolished and the existing system of sentence credits awarded to inmates for good behavior was eliminated. Under Virginia's truth-in-sentencing laws, convicted felons must serve at least 85% of the pronounced sentence and they may earn, at most, 15% off in sentence credits, regardless of whether their sentence is served in a state facility or a local jail. The Commission was established to develop and administer guidelines in an effort to provide Virginia's judiciary with sentencing recommendations for felony cases under the new truth-in-sentencing

laws. Under the current no-parole system, 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 similar offenders. In more than 300,000 felony cases sentenced under truth-in-sentencing laws, judges have agreed with guidelines recommendations in more than three out of every four cases.

This report will focus on cases sentenced from the most recent year of available data, FY2010 (July 1, 2009, through June 30, 2010). Compliance is examined in a variety of ways in this report, and variations in data over the years are highlighted throughout.

In the Commonwealth, judicial compliance with the truth-in-sentencing guidelines is voluntary.

Case Characteristics

In FY2010, six judicial circuits contributed more guidelines cases than any of the other judicial circuits in the Commonwealth. Those circuits, which include the Fredericksburg area (Circuit 15), Fairfax County (Circuit 19), the Radford area (Circuit 27), Richmond City (Circuit 13), the Harrisonburg area (Circuit 26), and Norfolk (Circuit 4) comprised nearly one-third (32%) of all worksheets received in FY2010 (Figure 1). In addition, three other

circuits submitted over 1,000 guideline forms during the year: Virginia Beach (Circuit 2), Henrico County (Circuit 14), and Chesterfield County (Circuit 12).

During FY2010, the Commission received a total of 24,837 sentencing guideline worksheets. Of the total, however, 823 worksheets contained errors or omissions that affect the analysis of the case. For the purposes of conducting a clear evaluation of sentencing guidelines in effect for FY2010, the remaining sections of this chapter pertaining to judicial concurrence with guidelines recommendations focus only on those 24,014 cases for which guidelines recommendations were completed and calculated correctly.

Figure 1
Number and Percentage of Cases Received by Circuit, FY2010

| Judicial Circuit | Cases | Percentage | Rank |
|------------------|---------------|------------|------|
| 15 | 1,598 | 6.4% | 1 |
| 19 | 1,387 | 5.6 | 2 |
| 27 | 1,245 | 5.0 | 3 |
| 13 | 1,223 | 4.9 | 4 |
| 26 | 1,216 | 4.9 | 5 |
| 4 | 1,210 | 4.9 | 6 |
| 2 | 1,171 | 4.7 | 7 |
| 14 | 1,094 | 4.4 | 8 |
| 12 | 1,089 | 4.4 | 9 |
| 23 | 987 | 4.0 | 10 |
| 1 | 954 | 3.8 | 11 |
| 24 | 939 | 3.8 | 12 |
| 25 | 895 | 3.6 | 13 |
| 16 | 750 | 3.0 | 14 |
| 31 | 733 | 3.0 | 15 |
| 7 | 707 | 2.8 | 16 |
| 29 | 652 | 2.6 | 17 |
| 22 | 642 | 2.6 | 18 |
| 9 | 621 | 2.5 | 19 |
| 3 | 614 | 2.5 | 20 |
| 5 | 605 | 2.4 | 21 |
| 10 | 604 | 2.4 | 22 |
| 28 | 602 | 2.4 | 23 |
| 20 | 596 | 2.4 | 24 |
| 17 | 476 | 1.9 | 25 |
| 6 | 468 | 1.9 | 26 |
| 8 | 460 | 1.9 | 27 |
| 30 | 345 | 1.4 | 28 |
| 21 | 331 | 1.3 | 29 |
| 11 | 327 | 1.3 | 30 |
| 18 | 277 | 1.1 | 31 |
| TOTAL | 24,837 | | |

Compliance Defined

In the Commonwealth, 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. In cases in which the judge has elected to sentence outside of the guidelines recommendation, he or she must, as stipulated in § 19.2-298.01 of the *Code of Virginia*, provide a written reason for departure on the guidelines worksheet.

The Commission measures judicial agreement with the sentencing guidelines using two 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 that the guidelines recommend (probation, incarceration for up to six months, incarceration for more than six months) and to a term of incarceration that falls exactly within the sentence range recommended by the guidelines. When risk assessment for nonviolent offenders is applicable, a judge may sentence a recommended offender to an alternative punishment program or to a term of incarceration within the traditional guidelines range and be considered in strict compliance. A judicial sentence would also be considered in general agreement with the guidelines recommendation if the sentence 1) meets modest criteria for rounding, 2) involves time already served (in certain instances), or 3) complies with statutorily-permitted diversion options in habitual traffic offender cases.

Compliance by rounding provides for a 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 or she 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 through the use of diversion options in habitual traffic cases resulted from amendments to §46.2-357(B2 and B3) of the *Code of Virginia*, effective July 1, 1997. The amendment allows judges to suspend the mandatory minimum 12-month incarceration term required in felony habitual traffic cases if they sentence the offender to a Detention Center 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

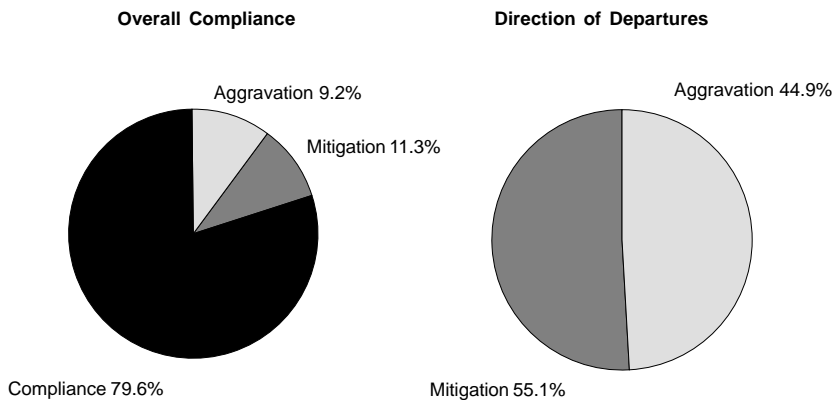
The overall compliance rate summarizes the extent to which Virginia's judges concur with recommendations provided by the sentencing guidelines, both in type of disposition and in length of incarceration. Between FY1995 and FY1998, the overall compliance rate remained around 75%, increased steadily between FY1999 and FY2001, and then decreased slightly in FY2002. For the past eight fiscal years, the compliance rate has hovered at 80%. During FY2010, judges continued to agree with the sentencing guidelines recommendations in approximately 80% of the cases (Figure 2).

In addition to compliance, the Commission also studies departures from the guidelines. The rate at which judges sentence offenders to sanctions more severe than the guidelines recommendation, known as the "aggravation" rate, was 9.2% for FY2010. The "mitigation" rate, or the rate at which judges sentence offenders to sanctions considered less severe than the guidelines recommendation, was 11.3% for the fiscal year. Thus, of the FY2010 departures, 44.9% were cases of aggravation while 55.1% were cases of mitigation.

Dispositional Compliance

Since the inception of truth-in-sentencing in 1995, the correspondence between dispositions recommended by the guidelines and the actual dispositions imposed in Virginia's circuit courts has been quite high. Figure 3 illustrates judicial concurrence in FY2010 with the type of disposition recommended by the guidelines. For instance, of all felony offenders recommended for more than six months of incarceration during FY2010, judges sentenced nearly 86% to terms in excess of six months (Figure 3). Some offenders recommended for incarceration of more than six months received a shorter term of incarceration (one day to six months), but very few of these offenders received probation with no active incarceration.

Figure 2
Overall Guidelines Compliance and Direction of Departures, FY2010
N=24,014



Judges have also typically agreed with guidelines recommendations for other types of dispositions. In FY2010, 77% of offenders received a sentence resulting in confinement of six months or less when such a penalty was recommended. In some cases, judges felt probation to be a more appropriate sanction than the recommended jail term and, in other cases, offenders recommended for short-term incarceration received a sentence of more than six months. Finally, 73% of offenders whose guidelines recommendation called for no incarceration were given probation and no post-dispositional confinement. Some offenders with a "no incarceration" recommendation received a short jail term, but rarely did these offenders receive an incarceration term of more than six months.

Since July 1, 1997, sentences to the state's former Boot Camp and the current Detention Center and Diversion Center programs have been defined as incarceration sanctions for the purposes of the sentencing guidelines. Although the state's Boot Camp program was discontinued in 2002, the Detention and Diversion Center programs have continued as sentencing options for judges. The Commission recognized that these programs are more restrictive than probation supervision in the community. In 2005, the Virginia Supreme Court concluded that participation in the Detention Center program is a form of incarceration (Charles v. Commonwealth). Because the Diversion Center program also involves a period of confinement, the Commission defines both the Detention Center and the Diversion Center programs as incarceration terms under the sentencing guidelines. Since 1997, the

Detention and Diversion Center programs have been counted as six months of confinement. However, effective July 1, 2007, the Department of Corrections extended these programs by an additional four weeks. Therefore, beginning in FY2008, a sentence to either the Detention or Diversion Center program counted as seven months of confinement for sentencing guideline purposes.

Finally, youthful offenders sentenced under the provisions of § 19.2-311 and given an indeterminate commitment to the Department of Corrections are considered as having a four-year incarceration term for the purposes of sentencing guidelines. Under § 19.2-311, a first-time offender who was less than 21 years of age at the time of the offense may be given an indeterminate commitment to the Department of Corrections with a maximum length-of-stay of four years. Offenders convicted of capital murder, first-degree or second-degree murder, forcible rape (§ 18.2-61), forcible sodomy (§ 18.2-67.1), object sexual penetration (§ 18.2-67.2) or aggravated sexual battery of a victim less than age 13 (§ 18.2-67.3(A,1)) are not eligible for the program. For sentencing guidelines purposes, offenders sentenced solely as youthful offenders under § 19.2-311 are considered as having a four-year sentence.

Figure 3
Recommended Dispositions and Actual Dispositions, FY2010

| Recommended Disposition | Actual Disposition | | |
|--------------------------------|--------------------|----------------------------|-----------------------|
| | Probation | Incarceration 1 day-6 mos. | Incarceration >6 mos. |
| Probation | 73.4% | 21.9% | 4.7% |
| Incarceration 1 day - 6 months | 12.9% | 76.6% | 10.5% |
| Incarceration > 6 months | 5.7% | 8.2% | 86.1% |

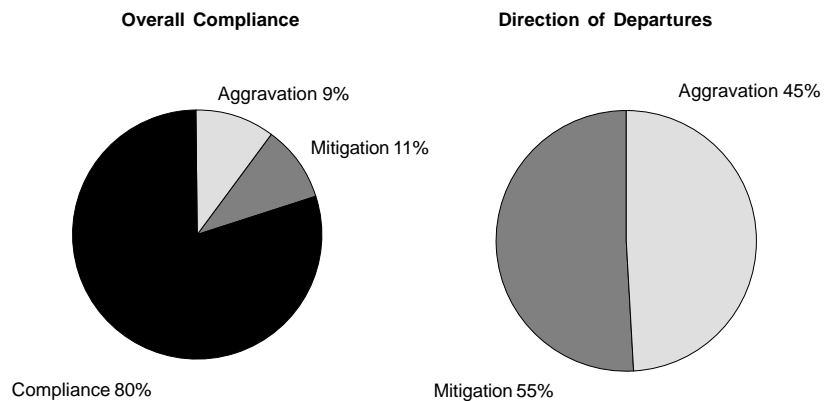
Durational Compliance

In addition to examining the degree to which judges concur with the type of disposition recommended by the guidelines, the Commission also studies durational compliance, which is defined as the rate at which judges sentence offenders to terms of incarceration that fall within the recommended guidelines range. Durational compliance analysis only considers 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.

Durational compliance among FY2010 cases was approximately 80%, indicating that judges, more often than not, agree with the length of incarceration recommended by the guidelines in jail and prison cases (Figure 4). Among FY2010 cases not in durational compliance, departures tended slightly more toward mitigation than aggravation.

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 sentence 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. When the guidelines recommended more than six months of

Figure 4
Durational Compliance and Direction of Departures,
FY2010*



* Analysis only includes cases recommended for and receiving an active term of incarceration.

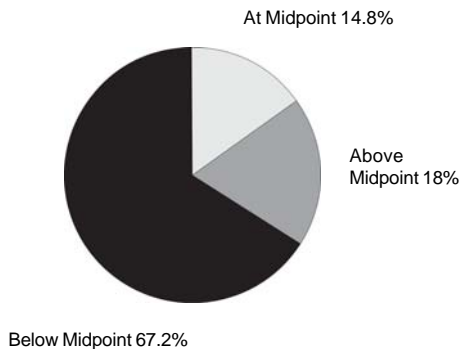
incarceration and judges sentenced within the recommended range, only a small share (15% of offenders in FY2010) were given prison terms exactly equal to the midpoint recommendation (Figure 5). Most of the cases (67%) in durational compliance with recommendations over six months resulted in sentences below the recommended midpoint. For the remaining 18% of these incarceration cases sentenced within the guidelines range, the sentence exceeded the midpoint recommendation. This pattern of sentencing within the range has been consistent since the truth-in-sentencing guidelines took effect in 1995, indicating that judges, overall, have favored the lower portion of the recommended range.

Overall, durational departures from the guidelines are typically no more than one year above or below the recommended range, indicating that disagreement with the guidelines recommendation, in most cases, is not extreme. Offenders receiving longer than recommended incarceration sentences, but less than the recommended term, were given effective sentences (sentences less any suspended time) short of the guidelines by a median value of 10 months (Figure 6). For offenders receiving longer than recommended incarceration sentences, the effective sentence exceeded the guidelines range by a median value of 12 months.

Figure 6
Median Length of
Durational Departures, FY2010



Figure 5
Distribution of Sentences within Guidelines Range,
FY2010*



* Analysis only includes cases recommended for more than six months of incarceration.

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 submit to the Commission their written reason(s) for sentencing outside the guidelines range. Each year, as the Commission deliberates upon recommendations for revisions to the guidelines, the opinions of the judiciary, as reflected in their departure reasons, are an important part of the analysis. 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 FY2010, 11.3% of guidelines cases resulted in sanctions below the guidelines recommendation. The most frequently cited reasons for sentencing below the guidelines recommendation were: the acceptance of a plea agreement, the defendant's cooperation with law enforcement, mitigating offense circumstances, the defendant's minimal prior record, a sentence to an alternative sanction other than the recommended incarceration period, and a sentence recommendation provided by the Commonwealth's Attorney. Although other reasons for mitigation were reported to the Commission in FY2010, only the most frequently cited reasons are noted here. For 548 of the 2,704 mitigating cases, a departure reason could not be discerned.

Judges sentenced 9.2% of the FY2010 cases to terms that were more severe than the sentencing guidelines recommendation, resulting in "aggravation" sentences. The most frequently cited reasons for sentencing above the guidelines recommendation were: the acceptance of a plea agreement, the severity or degree of prior record, the flagrancy of the offense, the defendant's poor potential for being rehabilitated, a sentence recommended by a jury, and the number of counts in the sentencing event. Many other reasons were cited by judges to explain aggravation sentences but with much less frequency than the reasons listed here. For 450 of the 2,205 cases sentenced above the guidelines recommendation, the Commission could not ascertain a departure reason.

Appendices 1 and 2 contain detailed summaries of the reasons for departure from guidelines recommendations for each of the 15 guidelines offense groups.

Compliance by Circuit

Since the onset of truth-in-sentencing, compliance rates and departure patterns have varied across Virginia's 31 judicial circuits. FY2010 continues to show differences among judicial circuits in the degree to which judges concur with guidelines recommendations (Figure 7). The map and accompanying table on the following pages identify the location of each judicial circuit in the Commonwealth.

In FY2010, just over half (52%) of the state's 31 circuits exhibited compliance rates at or above 80%, while the remaining 48% reported compliance rates between 73% and 79%. 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 agree with guidelines

Figure 7
Compliance by Circuit - FY2010*
N=23,996

| Circuit Name | Circuit | Compliance | Mitigation | Aggravation | Total |
|----------------------|---------|------------|------------|-------------|-------|
| Radford Area | 27 | 90.6% | 6.1% | 3.2% | 1,187 |
| Bristol Area | 28 | 89.1 | 4.8 | 6.1 | 586 |
| Prince William Area | 31 | 89.1 | 6.9 | 4.0 | 728 |
| Loudoun Area | 20 | 86.3 | 5.6 | 8.2 | 576 |
| Newport News | 7 | 82.1 | 8.3 | 9.6 | 687 |
| Harrisonburg Area | 26 | 82.1 | 11.6 | 6.3 | 1,188 |
| Virginia Beach | 2 | 81.9 | 11.4 | 6.8 | 1,154 |
| Petersburg Area | 11 | 81.5 | 9.4 | 9.1 | 319 |
| Alexandria | 18 | 81.0 | 11.2 | 7.8 | 268 |
| Hampton | 8 | 80.9 | 13.8 | 5.3 | 450 |
| Henrico | 14 | 80.7 | 10.3 | 8.9 | 1,054 |
| Sussex Area | 6 | 80.4 | 9.5 | 10.1 | 454 |
| Arlington Area | 17 | 79.7 | 6.4 | 13.9 | 467 |
| Lee Area | 30 | 79.6 | 10.8 | 9.6 | 333 |
| Suffolk Area | 5 | 79.5 | 8.3 | 12.2 | 567 |
| Fairfax | 19 | 79.5 | 11.4 | 9.1 | 1,292 |
| Buchanan Area | 29 | 79.1 | 5.6 | 15.3 | 628 |
| Chesapeake | 1 | 79.0 | 9.4 | 11.7 | 941 |
| Staunton Area | 25 | 78.4 | 14.2 | 7.4 | 857 |
| Norfolk | 4 | 78.2 | 16.5 | 5.3 | 1,184 |
| South Boston Area | 10 | 77.6 | 16.8 | 5.5 | 595 |
| Martinsville Area | 21 | 77.5 | 16.0 | 6.5 | 324 |
| Chesterfield Area | 12 | 77.0 | 9.1 | 14.0 | 1,046 |
| Fredericksburg Area | 15 | 76.4 | 9.4 | 14.2 | 1,525 |
| Lynchburg Area | 24 | 76.1 | 17.2 | 6.8 | 915 |
| Williamsburg Area | 9 | 75.8 | 10.0 | 14.2 | 562 |
| Portsmouth | 3 | 75.4 | 12.4 | 12.2 | 582 |
| Richmond City | 13 | 74.6 | 17.6 | 7.8 | 1,201 |
| Roanoke Area | 23 | 74.5 | 17.6 | 7.9 | 960 |
| Danville Area | 22 | 73.2 | 8.8 | 18.0 | 635 |
| Charlottesville Area | 16 | 72.8 | 14.8 | 12.4 | 731 |

● Fifty-two percent of the state's 31 circuits exhibited compliance rates at or above 80%.

● Forty-eight percent reported compliance rates between 73% and 79%.

*Excludes cases submitted on outdated guidelines forms and cases with missing information and errors.

Virginia Localities and Judicial Circuits

| | | | |
|------------------------|----|-----------------------|----|
| Accomack | 2 | Fairfax City | 19 |
| Albemarle | 16 | Fairfax County | 19 |
| Alexandria | 18 | Falls Church | 17 |
| Alleghany | 25 | Fauquier | 20 |
| Amelia | 11 | Floyd | 27 |
| Amherst | 24 | Fluvanna | 16 |
| Appomattox | 10 | Franklin City | 5 |
| Arlington | 17 | Franklin County | 22 |
| Augusta | 25 | Frederick | 26 |
| Bath | 25 | Fredericksburg | 15 |
| Bedford City | 24 | Galax | 27 |
| Bedford County | 24 | Giles | 27 |
| Bland | 27 | Gloucester | 9 |
| Botetourt | 25 | Goochland | 16 |
| Bristol | 28 | Grayson | 27 |
| Brunswick | 6 | Greene | 16 |
| Buchanan | 29 | Greensville | 6 |
| Buckingham | 10 | Halifax | 10 |
| Buena Vista | 25 | Hampton | 8 |
| Campbell | 24 | Hanover | 15 |
| Caroline | 15 | Harrisonburg | 26 |
| Carroll | 27 | Henrico | 14 |
| Charles City | 9 | Henry | 21 |
| Charlotte | 10 | Highland | 25 |
| Charlottesville | 16 | Hopewell | 6 |
| Chesapeake | 1 | Isle of Wight | 5 |
| Chesterfield | 12 | James City | 9 |
| Clarke | 26 | King and Queen | 9 |
| Clifton Forge | 25 | King George | 15 |
| Colonial Heights | 12 | King William | 9 |
| Covington | 25 | Lancaster | 15 |
| Craig | 25 | Lee | 30 |
| Culpeper | 16 | Lexington | 25 |
| Cumberland | 10 | Loudoun | 20 |
| Danville | 22 | Louisa | 16 |
| Dickenson | 29 | Lunenburg | 10 |
| Dinwiddie | 11 | Lynchburg | 24 |
| Emporia | 6 | | |
| Essex | 15 | | |

Madison 16
 Manassas 31
 Martinsville 21
 Mathews 9
 Mecklenburg 10
 Middlesex 9
 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

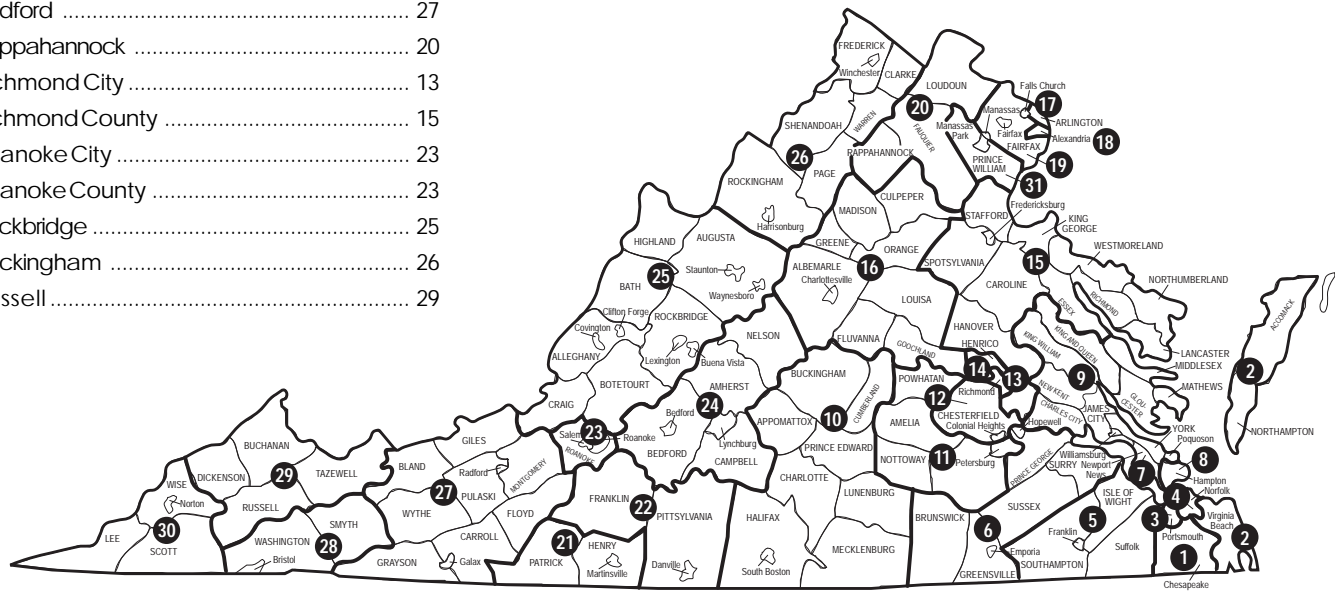
Salem 23
 Scott 30
 Shenandoah 26
 Smyth 28
 South Boston 10
 Southampton 5
 Spotsylvania 15
 Stafford 15
 Staunton 25
 Suffolk 5
 Surry 6
 Sussex 6

 Tazewell 29

 Virginia Beach 2

 Warren 26
 Washington 28
 Waynesboro 25
 Westmoreland 15
 Williamsburg 9
 Winchester 26
 Wise 30
 Wythe 27

 York 9



recommendations does not seem to be primarily related to geography. The circuits with the lowest compliance rates are scattered across the state, and both high and low compliance circuits can be found in close geographic proximity.

In FY2010, the highest rate of judicial agreement with the sentencing guidelines (91%) was in Circuit 27 (Radford area). Concurrence rates of 86% or higher were also found in Circuit 28 (Bristol area), Circuit 31 (Prince William County area), and Circuit 20 (Loudoun area). The lowest compliance rates among judicial circuits in FY2010 were reported in Circuit 16 (Charlottesville area) and Circuit 22 (Danville area).

In FY2010, the highest mitigation rates were found in Circuit 13 (Richmond City), Circuit 23 (Roanoke area), Circuit 24 (Lynchburg area), and Circuit 10 (South Boston area). Both Circuit 13 (Richmond City) and Circuit 23 (Roanoke area) had a mitigation rate of 18% for the fiscal year; both Lynchburg and South Boston area circuits recorded mitigation rates around 17%. With regard to high mitigation rates, it would be too simplistic to assume that this reflects areas with lenient sentencing habits. Intermediate punishment programs are not uniformly available throughout the Commonwealth, and jurisdictions with better access to these sentencing options may be using them as intended by the General Assembly. These sentences generally would appear as mitigations from the guidelines. Inspecting aggravation rates reveals that Circuit 22 (Danville area) had the highest aggravation rate at 18%, followed by Circuit 29 (Buchanan County area) at 15%. Lower compliance rates in these latter circuits are a reflection of the relatively high aggravation rates.

Appendices 3 and 4 present compliance figures for judicial circuits by each of the 15 sentencing guidelines offense groups.

Compliance by Sentencing Guidelines Offense Group

In FY2010, as in previous years, judicial agreement with the guidelines varied when comparing the 15 offense groups (Figure 8). For FY2010, compliance rates ranged from a high of 86% in the fraud offense group to a low of 57% in kidnapping cases. In general, property and drug offenses exhibit higher rates of compliance than the violent offense categories. The violent offense groups (assault, rape, sexual assault, robbery, homicide and kidnapping) had compliance rates at or below 72%, whereas many of the property and drug offense categories had compliance rates above 82%.

During the last fiscal year, judicial concurrence with guidelines recommendations remained relatively stable, fluctuating two percent or less for most offense groups. However, compliance on the kidnapping worksheet decreased by 10 percentage points, due to increases in both mitigation and aggravation. In FY2010, compliance for this offense was at 56.7%, with a mitigation rate of 18.7% and an aggravation rate of 24.6%. In the 15 years since sentencing guidelines were introduced, compliance in kidnapping cases has been as low as 52% (FY2003) and as high as 75% (FY2001). Because of the small number of kidnapping sentencing events in a given year (134 in FY2010), compliance rates are much more susceptible to year-to-year fluctuations. In addition, compliance for the offense

Figure 8
Compliance by Offense - FY2010

| Offense | Compliance | Mitigation | Aggravation | Total |
|-----------------------|--------------|--------------|-------------|---------------|
| Fraud | 86.2% | 8.7% | 5.1% | 2,645 |
| Drug/Other | 83.7 | 6.6 | 9.7 | 1,188 |
| Larceny | 83.6 | 9.0 | 7.4 | 5,295 |
| Traffic | 81.8 | 6.8 | 11.4 | 1,989 |
| Drug/Schedule I/II | 81.7 | 11.1 | 7.2 | 6,470 |
| Weapon | 76.1 | 13.2 | 10.7 | 620 |
| Miscellaneous | 75.1 | 11.0 | 13.9 | 482 |
| Burg./Other Structure | 74.4 | 13.8 | 11.8 | 559 |
| Assault | 71.6 | 16.9 | 11.5 | 1,493 |
| Sexual Assault | 70.1 | 12.3 | 17.6 | 551 |
| Murder/Homicide | 67.2 | 14.9 | 17.9 | 274 |
| Rape | 66.8 | 23.4 | 9.8 | 214 |
| Burglary/Dwelling | 65.8 | 17.4 | 16.8 | 1,100 |
| Robbery | 65.6 | 22.5 | 11.9 | 1,000 |
| Kidnapping | 56.7 | 18.7 | 24.6 | 134 |
| Total | 79.6% | 11.3% | 9.2% | 24,014 |

group covering burglary of other (non-dwelling) structures dropped by four percentage points in FY2010. During the previous year (FY2009), compliance for this offense group increased significantly; the FY2010 compliance rate is more typical for this offense group.

One new offense was added to the miscellaneous guidelines effective July 1, 2009: felony vandalism involving intentional damage to property valued at \$1,000 or more. The compliance rate for this offense during FY2010 was 82%, with a mitigation rate of 10% and an aggravation rate of approximately 8%. The high compliance rate for this new offense helped to increase overall compliance for the miscellaneous offense group from 72% in FY2009 to 75% in FY2010.

In FY2010, compliance in the sexual assault offense group increased roughly four percentage points, primarily due to a decrease in the aggravation rate. This is due, in part, to the addition of several offenses to the sexual assault guidelines in FY2008. Offenses related to child pornography and online solicitation of minors were added at that time. For the three years of available data (FY2008-FY2010), there has been a relatively high mitigation rate (30%) in cases in which

possession of child pornography (§ 18.2-374.1:1(A,B)) was the primary offense in the case. When judges sentenced below the recommended range in these cases, they were most likely to cite the involvement of a plea agreement, the defendant's minimal prior record, mitigating facts of the case, and the defendant's cooperation with authorities. Data reveal that judges were more likely to mitigate in cases involving multiple counts of possession of child pornography than they were in cases involving only one count. In some cases, prosecutors treat each image of child pornography possessed by the defendant as an individual count. For offenders recommended for more than six months of incarceration, each additional count increases the length of the sentence recommendation by several months.

In cases in which online solicitation of a minor (§ 18.2-374.3) was the primary offense, judges have been more likely to sentence above the guidelines range, with the aggravation rate approaching 35% during FY2008-FY2010. When judges sentenced above the guidelines recommendation in these cases, they were most likely to cite the involvement of a plea agreement, the flagrancy of the offense, the recommendation of a jury, the defendant's poor rehabilitation potential, and the type of victim involved.

Guidelines data show that defendants sentenced for solicitation of a minor typically have little to no prior record and are likely to have been recommended for probation without an active term of incarceration; when this occurs, judges have disagreed with the guidelines recommendation and ordered an active incarceration term in two out of every three cases. The Commission will continue to monitor these offenses and, as additional cases accumulate, determine if the guidelines could be adjusted to more closely reflect judicial sentencing practices.

Since 1995, departure patterns have differed across offense groups, and FY2010 was no exception. During this time period, the robbery and rape offense groups showed the highest mitigation rates with approximately one-quarter of cases (23%) resulting in sentences below the guidelines. This mitigation pattern has been consistent with both rape and robbery offenses since the abolition of parole in 1995. The most frequently cited

mitigation reasons provided by judges in robbery cases include the involvement of a plea agreement, the defendant's cooperation with law enforcement, the recommendation of the Commonwealth's Attorney, that the defendant would be serving a sentence in another jurisdiction or (because of the defendant's age) a commitment to the Department of Juvenile Justice. The most frequently cited mitigation reasons provided by judges in rape cases include the acceptance of a plea agreement, mitigating facts of the case, the recommendation of a jury, the defendant's health, or the defendant's minimal prior record.

In FY2010, the offense groups with the highest aggravation rates were kidnapping, at 25%, and murder/homicide and sexual assault, each at 18%. The most frequently cited aggravating departure reasons in kidnapping cases included the flagrancy of the offense, a jury recommendation, the defendant's extensive prior record, and the type of victim involved (such as a child). In murder/homicide cases, the influence of jury trials and extreme case circumstances have historically contributed to higher aggravation rates. The most frequently cited aggravating departure reasons in sexual assault cases in FY2010 included the acceptance of a plea agreement, the flagrancy of the offense, the type of victim involved (such as a child), the poor rehabilitation potential of the offender, and the recommendation of a jury.

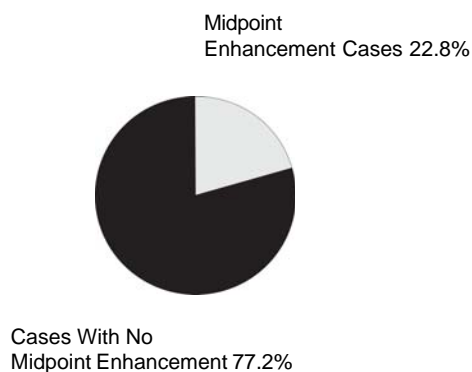
Compliance under Midpoint Enhancements

Section 17.1-805, formerly § 17-237, of the *Code of Virginia* describes the framework for what are known as "midpoint enhancements," significant increases in guidelines scores for violent offenders that elevate the overall guidelines sentence recommendation in those cases. Midpoint enhancements are an integral part of the design of the truth-in-sentencing guidelines. By design, midpoint enhancements produce 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 the terms served by offenders fitting similar profiles under the parole system. 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 prior violent felony conviction carrying a statutory maximum penalty of less than 40 years, whereas a "Category I" prior record includes at least one violent felony conviction with a statutory maximum penalty of 40 years or more. Category I and II offenses are defined in §17.1-805.

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 FY2010 cases, 77% of the cases did not involve midpoint enhancements of any kind (Figure 9). Only 23% of the cases qualified for a midpoint enhancement because of a current or prior conviction for a felony defined as violent under § 17.1-805. The proportion of cases receiving midpoint enhancements has fluctuated very little since the institution of truth-in-sentencing guidelines in 1995. There was a slight increase (2%) in the proportion of cases with a midpoint enhancement in FY2010, most likely due to the smaller proportion of drug cases in the overall number of sentencing guidelines cases for the fiscal year.

Figure 9
Application of Midpoint Enhancements, FY2010



Of the FY2010 cases in which midpoint enhancements applied, the most common midpoint enhancement was for a Category II prior record. Approximately 44% of the midpoint enhancements were of this type and were applicable to offenders with a nonviolent instant offense but a violent prior record defined as Category II (Figure 10). In FY2010, another 14% of midpoint enhancements were attributable to offenders with a more serious Category I prior record. Cases of offenders with a violent instant offense but no prior record of violence represented 28% of the midpoint enhancements in FY2010. The most substantial midpoint enhancements target offenders with a combination of instant and prior violent offenses. About 10% qualified for enhancements for both a current violent offense and a Category II prior record. Only a small percentage of cases (5%) were targeted for the most extreme midpoint enhancements triggered by a combination of a current violent offense and a Category I prior record.

Since the inception of the truth-in-sentencing guidelines, judges have departed from the guidelines recommendation more often in midpoint enhancement cases than in cases without enhancements. In FY2010, compliance was 69% when enhancements applied, which is significantly lower than compliance in all other cases (83%). Thus, 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.

Among FY2010 midpoint enhancement cases resulting in incarceration, judges departed from the low end of the guidelines range by an average of 27 months (Figure 11). The median departure (the middle value, where half of the values are lower and half are higher) was 16 months.

Figure 10
Type of Midpoint Enhancements Received, FY2010

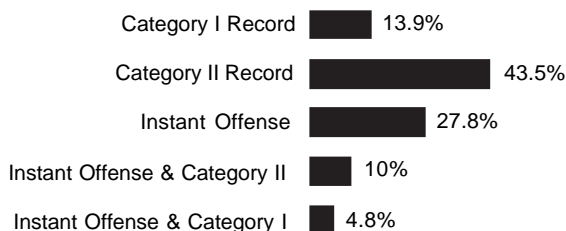


Figure 11
Length of Mitigation Departures in Midpoint Enhancement Cases, FY2010



Compliance, while generally lower in midpoint enhancement cases than in other cases, varies across the different types and combinations of midpoint enhancements (Figure 12). In FY2010, as in previous years, enhancements for a Category II prior record generated the highest rate of compliance of all midpoint enhancements (74%). Compliance in cases receiving enhancements for a Category I prior record was significantly lower (60%). Compliance for enhancement cases involving a current violent offense, but no prior record of violence, was 68%. Cases involving a combination of a current violent offense and a Category II prior record yielded a compliance rate of 65%, while those with the most significant midpoint enhancements, for both a violent instant offense and a Category I prior record, yielded a lower compliance rate of 58%.

Due to the high rate of mitigation departures, analysis of departure reasons in midpoint enhancement cases focuses on downward departures from the guidelines. Judges sentence below the guidelines recommendation in one out of every four midpoint enhancement cases. The most frequently cited reasons for departure include the acceptance of a plea agreement, the defendant's cooperation with law enforcement, mitigating offense circumstances, and the defendant's minimal prior record.

Figure 12
Compliance by Type of Midpoint Enhancement, FY2010

| | Compliance | Mitigation | Aggravation | Number of Cases |
|-------------------------------|--------------|--------------|-------------|-----------------|
| None | 82.8% | 7.5% | 9.7% | 18,534 |
| Category I Record | 59.9 | 35.7 | 4.3 | 759 |
| Category II Record | 74.1 | 21.0 | 4.9 | 2,384 |
| Instant Offense | 67.6 | 20.6 | 11.8 | 1,523 |
| Instant Offense & Category I | 57.6 | 32.2 | 10.2 | 264 |
| Instant Offense & Category II | 64.9 | 25.1 | 10.0 | 550 |
| Total | 79.6% | 11.3% | 9.2% | 24,014 |

● Overall, judges sentence below the guidelines recommendation in one out of every four midpoint enhancement cases.

Juries and the Sentencing Guidelines

There are three general methods by which Virginia's criminal cases are adjudicated: guilty pleas, bench trials, and jury trials. Felony cases in circuit courts are overwhelmingly resolved through guilty pleas from defendants or plea agreements between defendants and the Commonwealth. During the last fiscal year, 88% of guideline cases were sentenced following guilty pleas (Figure 13). Adjudication by a judge in a bench trial accounted for 10% of all felony guidelines cases sentenced. During FY2010, 1.7% of cases involved jury trials. In a small number of cases, some of the charges were adjudicated by a judge while others were adjudicated by a jury, after which the charges were combined into a single sentencing hearing.

Since FY1986, there has been a generally declining trend in the percentage of jury trials among felony convictions in circuit courts (Figure 14). Under the parole system in the late 1980s, the percent of jury convictions of all felony convictions was as high as 6.5% before starting to decline in FY1989. 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, jury convictions dropped slightly, to fewer than 4% of all felony convictions. This was the lowest rate recorded up to that time.

Figure 13
Percentage of Cases Received by Method of Adjudication, FY2010

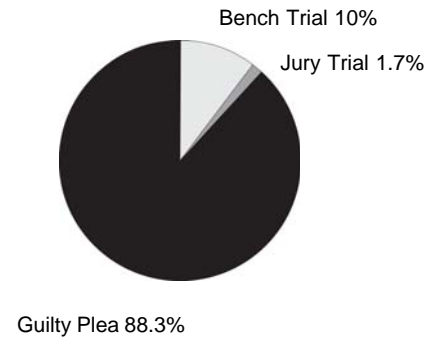
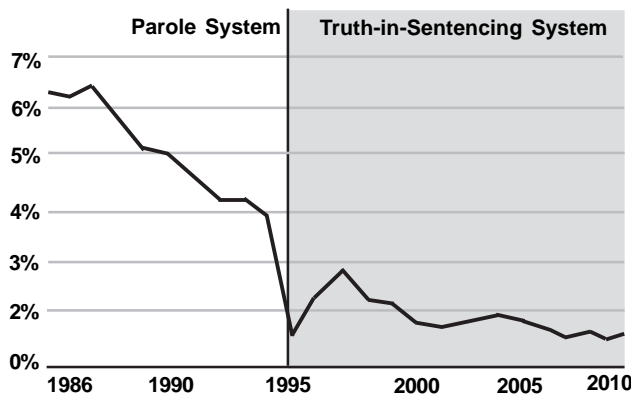


Figure 14
Percent of Felony Convictions Adjudicated by Juries FY1986-FY2010
Parole System v. Truth-in-Sentencing (No Parole) System

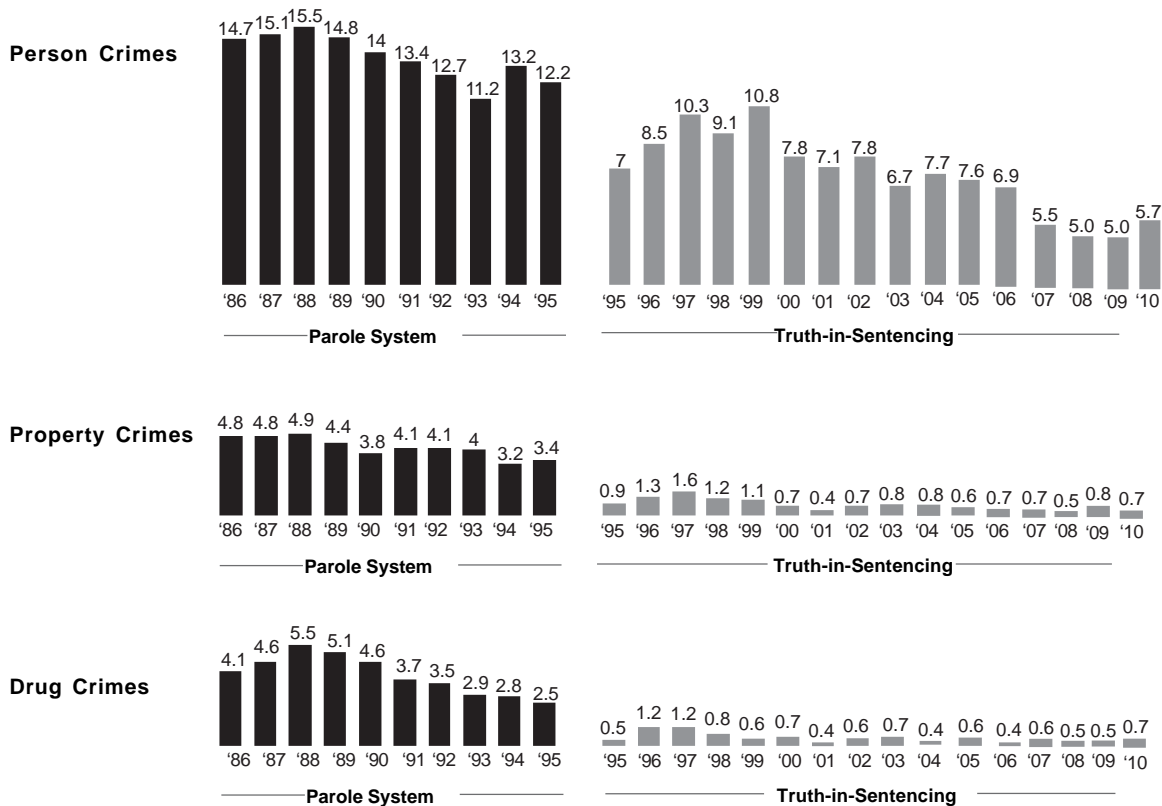


- Since FY1986, there has been a generally declining trend in the percentage of jury trials among felony convictions in circuit courts.
- When the bifurcated trials became effective on July 1, 1994 (FY1995), jurors in Virginia, for the first time, were presented with information on the offender's prior criminal record to assist them in making a sentencing decision.

Among the early cases subjected to the new truth-in-sentencing provisions, implemented during the last six months of FY1995, jury adjudications sank to just over 1%. During the first complete fiscal year of truth-in-sentencing (FY1996), just over 2% of the cases were resolved by jury trials, which was half the rate of the last year before the abolition of parole. Seemingly, the introduction of truth-in-sentencing, as well as the introduction of a bifurcated jury trial system, appears to have contributed to the reduction in jury trials. Since FY2000, the percentage of jury convictions has remained less than 2%.

Inspecting jury data by offense type reveals very divergent patterns for person, property and drug crimes. Under the parole system, jury cases comprised 11% to 16% of felony convictions for person crimes. This rate was typically three to four times the rate of jury trials for property and drug crimes (Figure 15). However, with the implementation of bifurcated trials and truth-in-sentencing provisions, the percent of convictions decided by juries dropped dramatically for all crime types. Since FY2007, the rate of jury convictions for person crimes has been between 5% and 6%, the lowest rates since truth-in-sentencing was enacted. The percent of felony convictions resulting from jury trials for property and drug crimes has declined to less than 1% under truth-in-sentencing.

Figure 15
Percent of Felony Convictions Adjudicated by Juries FY1986-FY2010
Parole System v. Truth-in-Sentencing (No Parole) System



In FY2010, the Commission received 393 cases adjudicated by juries. While the compliance rate for cases adjudicated by a judge or resolved by a guilty plea was at 80% during the fiscal year, sentences handed down by juries concurred with the guidelines only 41% of the time (Figure 16). In fact, jury sentences were more likely to fall above the guidelines than within the recommended range (52%). This pattern of jury sentencing vis-à-vis the guidelines has been consistent since the truth-in-sentencing guidelines became effective in 1995. By law, however, juries are not allowed to receive any information regarding the sentencing guidelines.

In jury cases in which the final sentence fell short of the guidelines, it did so by a median value of 21 months (Figure 17). 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 four years.

In FY2010, nine of the jury cases involved a juvenile offender tried as an adult in circuit court. According to § 16.1-272 of the *Code of Virginia*, juveniles may be adjudicated by a jury in circuit court; however, any sentence must be handed down by the court without the intervention of a jury. Therefore, juries are not permitted to recommend sentences for juvenile offenders. Rather, circuit court judges are responsible for formulating sanctions for juvenile offenders. There are many options for sentencing these juveniles, including commitment to the Department of Juvenile Justice. Because judges, and not juries, must sentence in these cases, they are excluded from the previous analysis.

In cases of adults adjudicated by a jury, judges are permitted by law to lower a jury sentence. Typically, however, judges have chosen not to amend sanctions imposed by juries. In FY2010, judges modified only 25% of jury sentences.

Figure 16
Sentencing Guidelines Compliance in Jury and Non-Jury Cases, FY2010

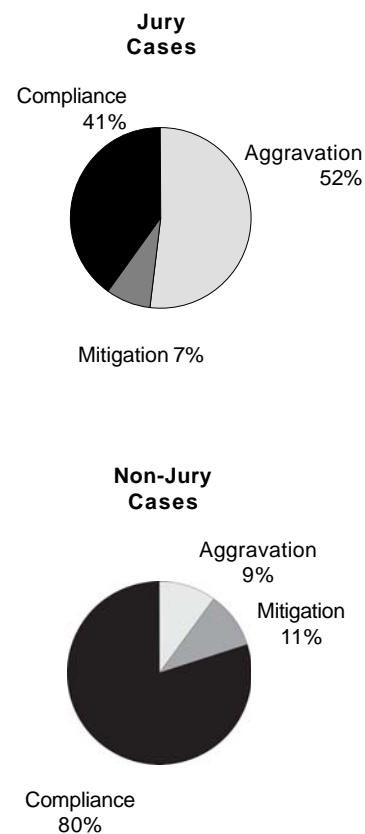


Figure 17
Median Length of Durational Departures in Jury Cases, FY2010

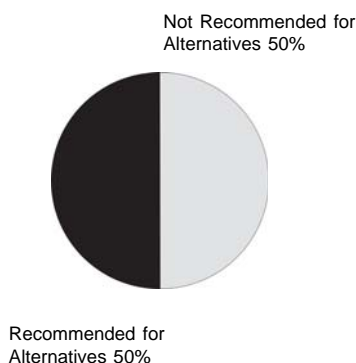


Compliance and Nonviolent Offender Risk Assessment

In 1994, as part of the reform legislation that instituted truth-in-sentencing, the General Assembly directed the Commission to study the feasibility of using an empirically-based risk assessment instrument to select 25% of the lowest risk, incarceration-bound, drug and property offenders for placement in alternative (non-prison) sanctions. By 1996, the Commission developed such an instrument and implementation of the instrument began in pilot sites in 1997. The National Center for State Courts (NCSC) conducted an independent evaluation of nonviolent risk assessment in the pilot sites for the period from 1998 to 2001. In 2001, the Commission conducted a validation study of the original risk assessment instrument to test and refine the instrument for possible use statewide. In July 2002, the nonviolent risk assessment instrument was implemented statewide for all felony larceny, fraud, and drug cases.

Nearly two-thirds of all guidelines received by the Commission for FY2010 were for nonviolent offenses. However, only 40% of these nonviolent offenders were eligible to be assessed for an alternative sanction recommendation. The goal of the nonviolent risk assessment instrument is to divert low-risk offenders who are recommended for incarceration on the guidelines to an alternative sanction other than prison or jail. Therefore, nonviolent offenders who are recommended for probation/no incarceration on the guidelines are not eligible for the assessment. Furthermore, the instrument is not to be applied to offenders convicted of distributing one ounce or more of cocaine, those who have a current or prior violent felony conviction, or those who must be sentenced to a mandatory minimum term of incarceration required by law. In addition to those not eligible for risk assessment, there were 2,960 nonviolent offense cases for which a risk assessment instrument was not completed and submitted to the Commission.

Figure 18
Percentage of Eligible Nonviolent Offenders Recommended for Alternatives through Risk Assessment, FY2010 (6,204 cases)

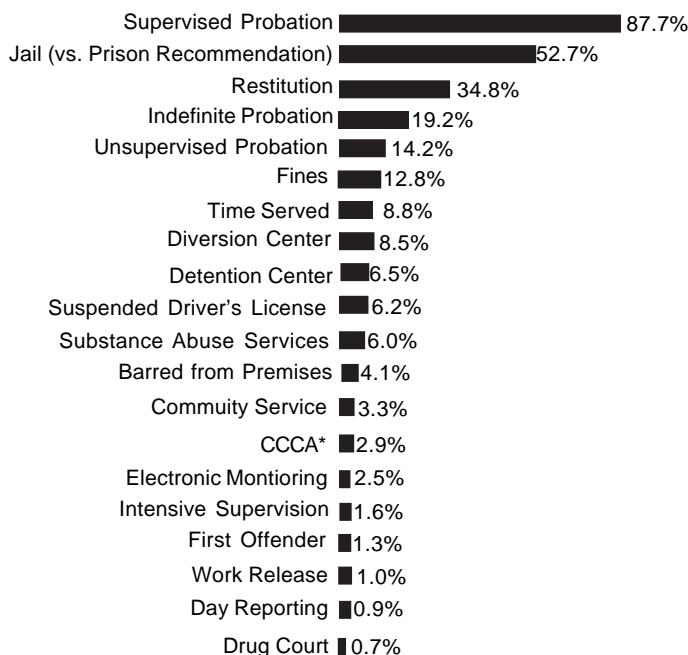


Among the FY2010 eligible offenders for whom a risk assessment form was received (6,204 cases), 50% were recommended for an alternative sanction by the risk assessment instrument (Figure 18). A large portion of offenders recommended for an alternative sanction through risk assessment were given some form of alternative punishment by the judge. In FY2010, 43% of offenders recommended for an alternative were sentenced to an alternative punishment option.

Among offenders recommended for and receiving an alternative sanction through risk assessment, judges utilized supervised probation more often than any other option (Figure 19). In addition, in just over half of the cases in which an alternative was recommended, judges sentenced the offender to a shorter term of incarceration in jail (less than twelve months) rather than the prison sentence recommended by the traditional guidelines range. Other frequent sanctions utilized were: restitution (35%), indefinite probation (19%), unsupervised

probation (14%), and fines (13%). The Department of Corrections' Diversion and Detention Center programs were cited in 9% and 7% of the cases, respectively. Other alternatives/sanctions included: time served, suspension of driver's license, substance abuse services, restrictions barring the defendant from certain premises, community service, programs under the Comprehensive Community Corrections Act (CCCA), electronic monitoring, intensive supervision, first offender status under §18.2-251, work release, day reporting, and drug court.

Figure 19
Types of Alternative Sanctions Imposed, FY2010

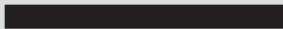





* Any program established through the Comprehensive Community Corrections Act

When a nonviolent offender is recommended for an alternative sanction via the risk assessment instrument, a judge is considered to be in compliance with the guidelines if he or she chooses to sentence the defendant to a term within the traditional incarceration period recommended by the guidelines or if he chooses to sentence the offender to an alternative form of punishment. For drug offenders eligible for risk assessment, the overall guidelines compliance rate is 85%, but a portion of this compliance reflects the use of an alternative punishment option as recommended by the risk assessment tool (Figure 20). In 25% of these drug cases, judges have complied with the recommendation for an alternative sanction. Similarly, in fraud cases with offenders eligible for risk assessment, the overall compliance rate is 88%. In 36% of these fraud cases, judges have complied by utilizing

alternative punishment when it was recommended. Finally, among larceny offenders eligible for risk assessment, the compliance rate is 84%. Judges utilized an alternative, as recommended by the risk assessment tool, in 9% of larceny cases. The lower usage of alternatives for larceny offenders is due primarily to the fact that larceny offenders are recommended for alternatives at a lower rate than drug and fraud offenders. The National Center for State Courts, in its evaluation of Virginia's risk assessment tool, and the Commission, during the course of its validation study, found that larceny offenders are the most likely to recidivate among nonviolent offenders.

Figure 20
Compliance Rates for Nonviolent Offenders Eligible for Risk Assessment, FY2010

| | Mitigation | Compliance | | Aggravation | Number of Cases | Overall Compliance |
|---------|------------|-------------------|----------------|-------------|-----------------|---|
| | | Traditional Range | Adjusted Range | | | |
| Drug | 7% | 60% | 25% | 8% | 2,960 |  85% |
| Fraud | 7% | 52% | 36% | 5% | 1,171 |  88% |
| Larceny | 10% | 75% | 9% | 6% | 2,073 |  84% |
| Overall | 8% | 64% | 21% | 7% | 6,204 |  85% |

Compliance and Sex Offender Risk Assessment

In 1999, the Virginia General Assembly requested that the Virginia Criminal Sentencing Commission develop a sex offender risk assessment instrument, based on the risk of re-offense, that could be integrated into the state's sentencing guidelines system. Such a risk assessment instrument could be used as a tool to identify offenders who, as a group, represent the greatest risk for committing a new offense once released back into the community. The Commission conducted an extensive study of felony sex offenders convicted in Virginia's circuit courts and developed an empirical risk assessment tool based on the risk that an offender would be re-arrested for a new sex offense or other crime against a person.

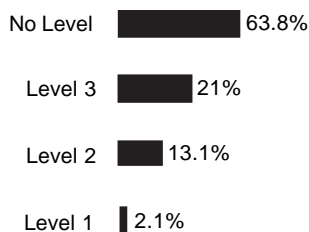
Effectively, risk assessment means developing profiles or composites based on overall group outcomes. Groups are defined by having a number of factors in common that are statistically relevant to predicting repeat offending. Groups exhibiting a high degree of re-offending are labeled high risk. Although no risk assessment model can ever predict a given outcome with perfect accuracy, the risk instrument, overall, produces higher scores for the groups of offenders who exhibited higher recidivism rates during the course of the Commission's study. In this way, the instrument developed by the Commission is indicative of offender risk.

The risk assessment instrument was incorporated into the sentencing guidelines for sex offenders beginning July 1, 2001. For each sex offender identified as a comparatively high risk (those scoring 28 points or more on the risk tool), the sentencing guidelines have been revised such that a prison term will always be recommended. In addition, the guidelines recommendation range (which comes in the form of a low end, a midpoint and a high end) is adjusted. For offenders scoring 28 points or more, the high end of the guidelines range is increased based on the offender's risk score, as summarized below.

- For offenders scoring 44 or more, the upper end of the guidelines range is increased by 300%.
- For offenders scoring 34 through 43 points, the upper end of the guidelines range is increased by 100%.
- For offenders scoring 28 through 33 points, the upper end of the guidelines range is increased by 50%.

The low end and the midpoint remain unchanged. Increasing the upper end of the recommended range provides judges the flexibility to sentence higher risk sex offenders to terms above the traditional guidelines range and still be in compliance with the guidelines. This approach allows the judge to incorporate sex offender risk assessment into the sentencing decision while providing the judge with the flexibility to evaluate the circumstances of each case.

Figure 21
Sex Offender Risk Assessment
Levels for Sexual Assault Offenders,
FY2010*
N=434



**Excludes cases missing the sex offender risk assessment portion of the Other Sexual Assault worksheet.*

During FY2010, there were 551 offenders convicted of an offense covered by the sexual assault guidelines (this group does not include offenders convicted of rape, forcible sodomy, or object penetration). However, the sex offender risk assessment instrument does not apply to certain guideline offenses, such as bestiality, bigamy, non-forcible sodomy, prostitution, child pornography, and online solicitation of a minor (these comprised 117 of the 551 cases in FY2010). Of the remaining 434 sexual assault cases for which the risk assessment was applicable, the majority (64%) were not assigned a level of risk by the sex offender risk assessment instrument (Figure 21). Approximately 21% of applicable sexual assault guidelines cases resulted in a Level 3 risk classification, with an additional 13% assigned to Level 2. Just over 2% of offenders reached the highest risk category of Level 1.

Under the sex offender risk assessment, the upper end of the guidelines range is extended by 300%, 100% or 50% for offenders assigned to Level 1, 2 or 3, respectively. Judges have begun to utilize these extended ranges when sentencing sex offenders. For the nine sexual assault offenders reaching Level 1 risk during this fiscal year, seven of them were given sentences within the traditional guidelines range (Figure 22). Judges used the extended guidelines range in 16% of Level 2 cases and 12% of Level 3 risk cases. Judges rarely sentenced Level 1, 2 or 3 offenders to terms above the extended guidelines range provided in these cases. However, offenders who scored less than 28 points on the risk assessment instrument (who are not assigned a risk category and receive no guidelines adjustment) were less likely to be sentenced in compliance with the guidelines (66% compliance rate) and were more likely to receive a sentence that was an upward departure from the guidelines (24% aggravation rate).

Figure 22
Other Sexual Assault Compliance Rates By Risk Assessment Level, FY2010*

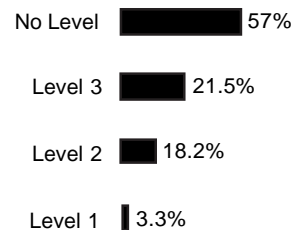
| | Mitigation | Compliance | | Aggravation | Number of Cases | Overall Compliance |
|----------------|------------|-------------------|----------------|-------------|-----------------|--------------------|
| | | Traditional Range | Adjusted Range | | | |
| Level 1 | 22% | 78% | 0% | 0% | 9 | 78% |
| Level 2 | 12% | 65% | 16% | 7% | 57 | 81% |
| Level 3 | 14% | 73% | 12% | 1% | 91 | 85% |
| No Level | 10% | 66% | 0% | 24% | 277 | 66% |
| Overall | 11% | 68% | 5% | 16% | 434 | 72% |

**Excludes cases missing the sex offender risk assessment portion of the Other Sexual Assault worksheet.*

In FY2010, there were 214 offenders convicted of offenses covered by the rape guidelines (which cover the crimes of rape, forcible sodomy, and object penetration). Among offenders convicted of these crimes, over one-half (57%) were not assigned a risk level by the Commission's risk assessment instrument (Figure 23). Approximately 22% of these cases resulted in a Level 3 adjustment - a 50% increase in the upper end of the traditional guidelines range recommendation. An additional 18% received a Level 2 adjustment (100% increase). The most extreme adjustment (300%) affected 3% of rape guidelines cases.

Three of the seven rape offenders reaching the Level 1 risk group were sentenced within the extended high end of the range (Figure 24). As shown below, 33% of offenders with a Level 2 risk classification and 22% of offenders with a Level 3 risk classification were given prison sentences within the adjusted range of the guidelines. With extended guidelines ranges available for higher risk sex offenders, judges rarely sentenced Level 1, 2 or 3 offenders above the expanded guidelines range.

Figure 23
Sex Offender Risk Assessment Levels for Rape Offenders, FY2010*
N=214



*Excludes cases missing the sex offender risk assessment portion of the Rape worksheet.

Figure 24
Rape Compliance Rates By Risk Assessment Level, FY2010*

| | Mitigation | Compliance | | Aggravation | Number of Cases | Overall Compliance |
|----------------|------------|-------------------|----------------|-------------|-----------------|--------------------|
| | | Traditional Range | Adjusted Range | | | |
| Level 1 | 43% | 14% | 43% | 0% | 7 | 57% |
| Level 2 | 26% | 36% | 33% | 5% | 39 | 69% |
| Level 3 | 20% | 48% | 22% | 11% | 46 | 70% |
| No Level | 23% | 66% | 0% | 12% | 122 | 66% |
| Overall | 23% | 55% | 12% | 10% | 214 | 67% |

*Excludes cases missing the sex offender risk assessment portion of the Rape worksheet.

Sentencing Revocation Reports (SRRs)

The most complete resource regarding revocations of community supervision in Virginia is the Sentencing Commission's Community Corrections Revocations Data System, also known as the Sentencing Revocation Report (SRR) database. First implemented in 1997 with assistance from the Department of Corrections (DOC), the SRR is a simple

form designed to capture the reasons for, and the outcomes of, community supervision violation hearings. The probation officer (or Commonwealth's attorney) completes the first part of the form, which includes the offender's identifying information and checkboxes indicating the reasons why a show cause or revocation hearing has been requested. The checkboxes are based on the list of eleven conditions for community supervision established for every offender, but special supervision conditions imposed by the court can also be recorded. Following the violation hearing, the judge completes the remainder of the form with the revocation decision and any sanction ordered in the case. The completed form is submitted to the Commission, where the information is automated. A revised SRR form was developed and implemented in 2004 to serve as a companion to the new probation violation sentencing guidelines introduced that year.

For the first six months of FY2010 (July through December 2009), the most recent information available on revocation hearings, there were 4,902 felony violations of probation, suspended sentence, or good behavior for which a Sentencing Revocation Report (SRR) was submitted to the Commission. These SRRs include cases in which the court found the defendant in violation, cases that the court decided to take under advisement until a later date, and cases in which the court did not find the defendant in violation. The circuits submitting the largest number of SRRs during the time period were Circuit 4 (Norfolk), Circuit 26 (Harrisonburg area), Circuit 15 (Fredericksburg area), Circuit 19 (Fairfax), and Circuit 1 (Chesapeake). Circuit 17 (Arlington area), Circuit 6 (Sussex County area), Circuit 11 (Petersburg area) and Circuit 30 (Lee County area) submitted the fewest SRRs during the time period (Figure 25).

Figure 25
Number and Percent of Sentencing Revocation Reports
Received by Circuit, July-December 2009*

| Circuit | Circuit Name | Number | Percent |
|----------------|----------------------|---------------|----------------|
| 4 | Norfolk | 397 | 8.1% |
| 26 | Harrisonburg Area | 273 | 5.6 |
| 15 | Fredericksburg Area | 266 | 5.4 |
| 19 | Fairfax | 260 | 5.3 |
| 1 | Chesapeake | 236 | 4.8 |
| 27 | Radford Area | 223 | 4.5 |
| 14 | Henrico | 210 | 4.3 |
| 13 | Richmond City | 205 | 4.2 |
| 24 | Lynchburg Area | 194 | 4.0 |
| 23 | Roanoke Area | 181 | 3.7 |
| 8 | Hampton | 175 | 3.6 |
| 5 | Suffolk Area | 165 | 3.4 |
| 29 | Buchanan Area | 161 | 3.3 |
| 7 | Newport News | 160 | 3.3 |
| 9 | Williamsburg Area | 148 | 3.0 |
| 25 | Staunton Area | 145 | 3.0 |
| 22 | Danville Area | 142 | 2.9 |
| 3 | Portsmouth | 141 | 2.9 |
| 16 | Charlottesville Area | 138 | 2.8 |
| 31 | Prince William Area | 137 | 2.8 |
| 28 | Bristol Area | 130 | 2.7 |
| 20 | Loudoun Area | 125 | 2.5 |
| 18 | Alexandria | 116 | 2.4 |
| 12 | Chesterfield Area | 110 | 2.2 |
| 10 | South Boston Area | 108 | 2.2 |
| 2 | Virginia Beach | 90 | 1.8 |
| 21 | Martinsville Area | 83 | 1.7 |
| 30 | Lee County Area | 60 | 1.2 |
| 11 | Petersburg Area | 43 | 0.9 |
| 6 | Sussex Area | 41 | 0.8 |
| 17 | Arlington Area | 39 | 0.8 |
| | | 4,902 | 100.0% |

*Includes all felony violations of probation, suspended sentence, good behavior, and community-based programs for July-Dec 2009

Probation Violation Guidelines

In 2003, the General Assembly directed the Commission to develop, with due regard for public safety, discretionary sentencing guidelines for felony offenders who are determined by the court to be in violation of their probation supervision for reasons other than a new criminal conviction (Chapter 1042 of the Acts of Assembly 2003). Often, these offenders are referred to as "technical violators." In determining the guidelines, the Commission was to examine historical judicial sanctioning practices in revocation hearings.

Early use of the probation violation guidelines, which took effect on July 1, 2004, indicated that the guidelines needed further refinement to better reflect current judicial sentencing patterns in the punishment of supervision violators. Judicial compliance with the first edition of the probation violation guidelines was lower than expected, with only 38% of the violators being sentenced within the range recommended by the new guidelines. Therefore, the Commission's 2004 Annual Report recommended several adjustments to the probation violation guidelines. The proposed changes were accepted by the General Assembly and the second edition of the probation violation guidelines took effect on July 1, 2005. These changes yielded an improved compliance rate of 48% for fiscal years (FY) 2006 and 2007.

Compliance with the revised guidelines and ongoing feedback from judges suggested that further refinement could improve their utility as a benchmark for judges. Therefore, the Commission's 2006 Annual Report recommended additional adjustments to the probation violation guidelines. The majority of the changes proposed in the 2006 Annual Report affected the Section A worksheet. The score on Section A of the probation violation guidelines determines whether an offender will be recommended for probation with no active term of incarceration to serve or the offender will be referred to the Section C worksheet for a jail or prison recommendation. Changes to the Section A worksheet included revising scores for existing factors, deleting certain factors and replacing them with others (e.g., "Previous Adult Probation Violation Events" replaced "Previous Capias/Revocation Requests"), and adding new factors (e.g., "Original Disposition was Incarceration"). The only change to the Section C worksheet (the sentence length recommendation) was an adjustment to the point value assigned to offenders who violated their sex offender restrictions. The proposed changes outlined in the 2006 Annual Report were accepted by the General Assembly and became effective for technical probation violators sentenced on July 1, 2007 and after. This third edition of the probation violation guidelines has resulted in a higher compliance rate than previous versions of the guidelines.

Violation cases heard and submitted for the first six months of FY2010 (July-December 2009) are examined below.

For the first six months of FY2010, the Commission received 4,902 SRRs. Of the total, 2,502 cases involved a new law violation. In these cases, the judge found the defendant guilty of violating Condition 1 of the Department of Corrections' Conditions of Probation (obey all federal, state, local laws and ordinances). In 2,288 cases, the offender was found in violation of other conditions not related to a new law violation. For these "technical violators," the Probation Violation Guidelines should be completed and submitted to the court. In a small number of cases, the offender was not found in violation of any condition (80 cases) or the type of violation was not identified on the SRR form (32 cases).

Upon further examination of the 2,288 technical violator cases, it was found that 213 could not be included in the analysis

of judicial compliance with the Probation Violation Guidelines. There were several reasons for excluding these cases from compliance analysis. Cases were excluded if the guidelines were not applicable (the case involved a parole-eligible offense, a first-offender violation, a misdemeanor original offense, or an offender who was not on supervised probation), if the guidelines forms were incomplete, or if outdated forms were prepared. The following analysis of compliance with the Probation Violation Guidelines will focus on the remaining 2,075 technical violator cases heard in Virginia's circuit courts between July and December 2009.

Of the 2,075 cases in which offenders were found to be in violation of their probation for reasons other than a new law violation, approximately 42% were being supervised for a felony property offense (Figure 26). This represents the most serious offense for which the offender was on probation. Another 37% were being supervised as a result of a felony drug conviction. Offenders who were on probation for a crime against a person (most serious original offense) made up a smaller portion (14%) of those found in violation during the six-month time period.

Figure 26
Probation Violation Worksheets Received
by Type of Most Serious Original Offense, July-December 2009*
N=2,075

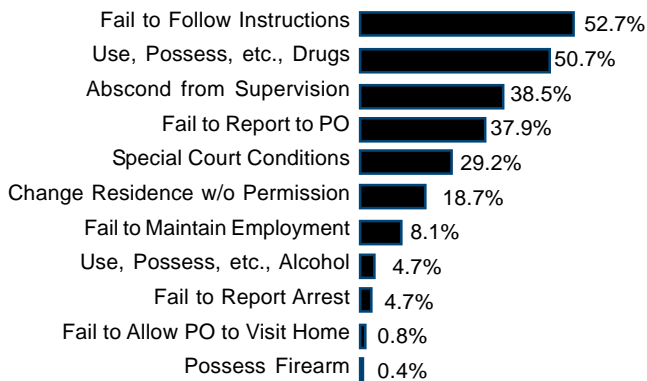
| Original Offense Type | Percent Received |
|-----------------------|------------------|
| Property | 41.8% |
| Drug | 36.8% |
| Person | 14.4% |
| Traffic | 5.0% |
| Other | 2.0% |
| Total | 100.0% |

*Only includes technical violators included in the compliance analysis.

Examining the 2,075 violation cases (excluding those with a new law violation) reveals that over half (53%) of the offenders were cited for failing to follow instructions given by the probation officer (Figure 27). More than half (51%) of the offenders were cited for using, possessing, or distributing a controlled substance (Condition 8 of the DOC Conditions of Probation). Violations of Condition 8 may include a positive test (urinalysis, etc.) for a controlled substance or a signed admission. Other frequently cited violations included absconding from supervision (39%) or failing to report to the probation officer

in person or by telephone when instructed (38%). In more than one-quarter of the violation cases (29%), offenders were cited for failing to follow special conditions imposed by the court, such as failing to pay court costs and restitution, failing to comply with court-ordered substance abuse treatment, or failing to successfully complete alternatives, such as a Detention Center or Diversion Center program. It is important to note that defendants may be, and typically are, cited for violating more than one condition of their probation.

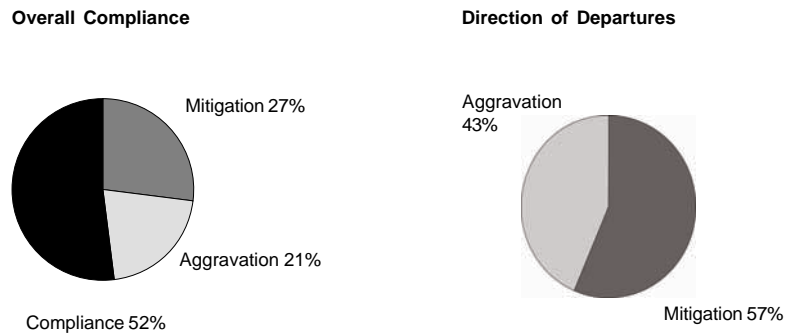
Figure 27
Violation Conditions Cited by Probation Officers, Excluding New
Law Violations, July-December 2009
N=2,075



The overall compliance rate summarizes the extent to which Virginia's judges concur with recommendations provided by the probation violation guidelines, both in type of disposition and in length of incarceration. Between July and December 2009, the overall rate of compliance with the Probation Violation Guidelines was 52%, which is slightly higher than the 48% compliance rate for the previous edition of these guidelines and significantly higher than the compliance rate of 35% for the first edition of the guidelines (Figure 28). The aggravation rate, or the rate at which judges sentence offenders to sanctions more severe than the guidelines recommend, was 21% during the first six months of FY2010. The mitigation rate, or the rate at which judges sentence offenders to sanctions considered less severe than the guidelines recommendation, was 27%.

Figure 29 illustrates judicial concurrence with the type of disposition recommended by the Probation Violation Guidelines for the first six months of FY2010 (July-December 2009). There are three general categories of sanctions recommended by the probation violation guidelines: probation/no incarceration, a jail sentence up to twelve months, or a prison sentence of one year or more. Data for the time period reveal that judges agree with the type of sanction recommended by the probation violation guidelines in 57% of the cases. When departing from the dispositional recommendation, judges were more likely to sentence below the guidelines recommendation than above it. Consistent with the traditional sentencing guidelines, sentences to the Detention Center and Diversion Center programs are defined as incarceration sanctions under the Probation Violation Guidelines and are counted as seven months of confinement (per changes to the program effective July 1, 2007).

Figure 28
Probation Violation Guidelines Overall Compliance and
Direction of Departures, July-December 2009
N=2,075



Another facet of compliance is durational compliance. Durational compliance is defined as the rate at which judges sentence offenders to terms of incarceration that fall within the recommended guidelines range. Durational compliance analysis only considers 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. Data reveal that durational compliance for the first six months of FY2010 was approximately 56% (Figure 30). For cases not in durational compliance, mitigations were more prevalent (26%) than aggravations (18%).

When judges sentenced offenders to incarceration, but to an amount less than the recommended time, offenders were given "effective" sentences (imposed sentences less any suspended time) short of the guidelines range by a median value of nine months. For offenders receiving longer than recommended incarceration sentences, the effective sentence exceeded the guidelines range by a median value of seven months. Thus, durational departures from the guidelines are typically less than one year above or below the recommended range.

Prior to July 1, 2010, completion of the Probation Violation Guidelines was not required by statute or other any provision of law. However, the 2010-2012 biennium budget passed by the General Assembly specifies that, as of July 1, 2010, a sentencing revocation report (SRR) and, if applicable, the Probation Violation Guidelines, must be presented to the court and reviewed by the judge for any violation hearing conducted pursuant to § 19.2-306 (this requirement can be found in Item 41 of Chapter 874 of the 2010 Acts of Assembly). Similar to the traditional felony sentencing guidelines, sentencing in accordance with the recommendations of the Probation Violation Guidelines is voluntary. The approved budget language states, however, that in cases in which the Probation Violation Guidelines are required and the judge imposes a sentence greater than or less than the guidelines recommendation, the court must file with the record of the case a written explanation for the departure. The requirements pertaining to the Probation Violation Guidelines spelled out in the latest budget parallel existing statutory provisions governing the use of sentencing guidelines for felony offenses.

Figure 29
Probation Violation Guidelines
Dispositional Compliance,
July-December 2009
N=2,075

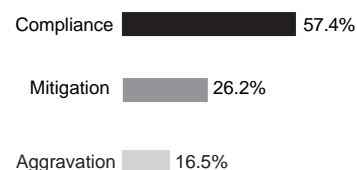
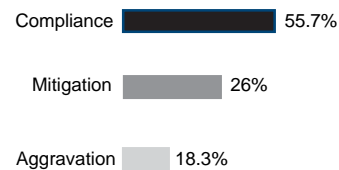


Figure 30
Probation Violation Guidelines
Durational Compliance,
July-December 2009



**Compliance in cases that are recommended for, and receive, an active jail or prison sentence.*

Before July 1, 2010, circuit court judges were not required to provide a written reason for departing from the Probation Violation Guidelines. Because the opinions of the judiciary, as reflected in their departure reasons, are of critical importance when revisions to the guidelines are considered, the Commission had requested that judges enter departure reasons on the Probation Violation Guidelines form. Many judges responded to the Commission's request. Ultimately, the types of adjustments to the Probation Violation Guidelines that would allow the guidelines to more closely reflect judicial sentencing practices across the Commonwealth are largely dependent upon the judges' written reasons for departure.

According to Probation Violation Guidelines data for July through December 2009, 52% of the cases resulted in sentences that fell within the recommended guidelines range. With judges departing from these guidelines at such a high rate, written departure reasons are an integral part of understanding judicial sentencing decisions. An analysis of the 565 mitigation cases revealed that nearly half (49%) included a departure reason. For the mitigation cases in which departure reasons were provided, judges were most likely to cite the utilization of an alternative punishment option (e.g., Detention or Diversion Center programs), the defendant's progress in rehabilitation, the offender's personal issues (e.g., homelessness, lack of transportation, or dependent children to support), minimal circumstances involving the violation, the involvement of a plea agreement, or the offender's poor health.

Examining the 425 aggravation cases, the Commission found that more than half (53%) included a departure reason. When a departure reason was provided in aggravation cases, judges were most likely to cite the defendant's poor potential for rehabilitation, multiple revocations in the defendant's prior record, the defendant absconding from supervision, the defendant's failure to follow instructions, or the involvement of a plea agreement.

Early FY2010 data suggest that judicial concurrence with Probation Violation Guidelines recommendations is continuing to improve with changes implemented July 1, 2007. As with the felony sentencing guidelines first implemented in 1991, the development of useful sentencing tools for judges to deal with probation violators will be an iterative process, with improvements made over several years. Feedback from judges, especially through written departure reasons, is of critical importance to the process of continuing to improve the guidelines, thereby making them a more useful tool for judges in formulating sanctions in probation violation hearings.

3

Juvenile Transfer Study

The 2006 General Assembly directed the Virginia State Crime Commission, a legislative branch agency, to study Virginia's juvenile justice system.

Introduction

The 2006 General Assembly directed the Virginia State Crime Commission, a legislative branch agency, to study Virginia's juvenile justice system and the provisions in the *Code of Virginia* pertaining to juvenile delinquency. During the course of its multi-year study, the State Crime Commission has requested assistance from a variety of other agencies, including the Virginia Criminal Sentencing Commission.

In 2006 and again in 2009, the Sentencing Commission was asked to provide information on a particular aspect of the juvenile justice system: juveniles transferred to the circuit court to be tried as adults. Information was compiled and presented to the full membership of the State Crime Commission during meetings in October 2006 and June 2009. In 2010, the Crime Commission asked the Sentencing Commission to update its analysis in order to add the most recent data available. The results of this analysis were provided to the State Crime Commission staff in November 2010.

Provisions Related to Juvenile Transfers

Section 16.1-269.1 of the *Code of Virginia* outlines the criteria and procedures for transferring juveniles to circuit court for trial as adults. The youngest age at which a juvenile can be transferred to circuit court is 14. For any offense that would be a felony if committed by an adult, the Commonwealth's attorney has the discretion to request a transfer hearing. The juvenile court may retain jurisdiction or, if certain conditions are satisfied, approve the transfer of the juvenile to circuit court.

The juvenile court is required (per § 16.1-269.1(B)) to hold a preliminary hearing in every case in which a juvenile 14 years of age or older is charged with murder (under §§ 18.2-31, 18.2-32 or 18.2-40) or aggravated malicious wounding (§ 18.2-51.2) and, upon finding probable cause, must certify the charge (and all ancillary charges) to the grand jury, which divests the juvenile court of jurisdiction. In addition, the court must hold a preliminary hearing (per § 16.1-269.1(C)) when a juvenile is charged with certain other violent offenses (such as felony murder, malicious wounding, robbery, and rape) if the Commonwealth's attorney gives notice that he or she intends to pursue transfer; upon finding probable cause in such cases, the court must certify the charge and all ancillary

charges to the grand jury. In any hearing required by § 16.1-269.1(B) or (C), if the court does not find probable cause that the juvenile committed the offense charged or if the petition or warrant is dismissed by the court, the Commonwealth's attorney may seek a direct indictment in the circuit court.

Per § 16.1-271, any juvenile who is tried and convicted in a circuit court as an adult must be treated as an adult in any criminal proceeding resulting from any subsequent criminal acts and in any pending allegations of delinquency that have not been disposed of by the juvenile court at the time of the circuit court conviction. Prior to FY2008, the trial or treatment of a juvenile as an adult, regardless of whether the prosecution resulted in a conviction, was sufficient to prosecute the defendant as an adult for all subsequent offenses. However, the 2007 General Assembly limited the applicability of this requirement to only offenders whose charges have resulted in a conviction in circuit court.

Under § 16.1-242, if an offender commits a crime as a juvenile and prosecution has not been commenced against him by the time he reaches the age of 21, he shall be proceeded against as an adult.

Data Sources

The *Code of Virginia* (§ 19.2-298.01) requires the preparation of sentencing guidelines worksheets in nearly all felony cases tried in circuit court. The guidelines worksheets must be presented to the court and the judge is required to review and consider the suitability of the guidelines recommendation before imposing a sentence. Judicial compliance with Virginia's sentencing guidelines is discretionary. The guidelines cover approximately 95% of felony cases in Virginia's circuit courts and, therefore, should account for nearly all felony offenders.

For the analysis completed in 2006, the Sentencing Commission utilized data contained in its own sentencing guidelines information system. Using guidelines data, the Sentencing Commission identified offenders who were under the age of 18 at the time the offense was committed and who were convicted in circuit court of a felony covered by the guidelines. The package of information presented to the State Crime Commission included the number of juvenile offenders convicted of a felony in circuit court for fiscal year (FY) 2001 through FY2005 and the types of offenses committed by these juveniles. Using information recorded by circuit court judges on the sentencing guidelines forms, disposition information was also reported.

Subsequent to the 2006 analysis, the Sentencing Commission worked with Virginia's Department of Juvenile Justice (DJJ) to gather additional detail regarding dispositions for juveniles convicted in circuit court. This work revealed that the Sentencing Commission had not been receiving sentencing guidelines forms for all juveniles convicted of felonies in circuit courts across the Commonwealth. For FY2001 through FY2010, the Sentencing Commission had received guidelines forms for only 61% of these cases.

By statute, sentencing guidelines apply in such cases and there are no exceptions for juvenile offenders who are tried and convicted as adults. There appears to be a misconception among some judges, prosecutors, or court clerks that the guidelines do not apply in these cases. The forms are either not being prepared for the court or, if they are prepared, they are not being forwarded to the Sentencing Commission upon conclusion of the case. The Sentencing Commission is attempting to address this misconception through training.

For the 2009 analysis and the 2010 update, the Sentencing Commission supplemented its own guidelines data with data from other sources, particularly the Department of Juvenile Justice. Data from the Department of Corrections, the Virginia Supreme Court, Pre/Post-Sentence Investigation (PSI) reports, and local and regional jails were also included. Therefore, the 2010 study greatly expands upon the 2006 analysis and is more comprehensive.

Despite this substantial data collection effort, the analysis is limited in two ways. First, these data do not distinguish between the three main types of cases: 1) juveniles who have been transferred to circuit court to be tried as adults, 2) juvenile cases where the Commonwealth's attorney chooses to directly indict the juvenile in circuit court (per § 16.1-269.1), and 3) juveniles automatically treated as adults in circuit court because they have previously been convicted as an adult (pursuant to § 16.1-271). At present, the three types of cases cannot be differentiated. Second, these data only capture felony convictions. Data are incomplete for cases in which the juvenile was found not guilty or the charge was reduced to a misdemeanor; therefore, these cases were excluded from the study. Nonetheless, the analysis provided to the State Crime Commission in 2009 and 2010 is by far the most comprehensive look to date at juveniles convicted in circuit courts across the Commonwealth.

Because the focus of the State Crime Commission is juveniles transferred from juvenile to circuit court, the current analysis focuses on original felony convictions and excludes subsequent adult probation violation hearings for that offense. In addition, the analysis excludes offenders who were 21 years or older at the time of arrest or case filing, since they must be prosecuted in circuit court pursuant to § 16.1-242.

Although the general methodology of the 2010 update is the same as the 2009 study, a few changes in the data required slight modifications for this year's analysis. First, in addition to providing data for FY2009 and FY2010, the Department of Corrections provided replacement data for FY2001 through FY2008. Therefore, the figures previously provided for FY2001 through FY2008 have been revised.

Second, due to the implementation of a new data system, the Department of Corrections was unable to provide automated Pre/Post-Sentence Investigation (PSI) records for cases sentenced after October 2008. The Department of Corrections provided other data in an attempt to substitute for PSI data, to the extent possible. Third, data maintained by local and regional jails in the Local Inmate Data System (LIDS) include juveniles who are ultimately adjudicated delinquent in Juvenile and Domestic Relations (JDR) court. Since the court of conviction cannot be determined from this data source, cases that could not be verified by another source were dropped from the analysis, reducing previous figures by less than 10 juveniles per year on average. Overall, these modifications resulted in a slight decrease in previously-reported statistics concerning juveniles convicted in circuit court. Due to lag times in data processing, data for FY 2010 are preliminary.

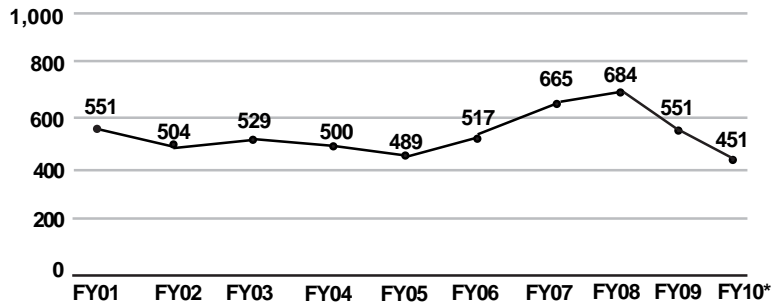
Findings

For the purposes of this analysis, the term “juveniles” refers to persons who were under the age of 18 at the time of the offense (or who were under the age of 18 for at least one offense in the case). For this study, as well as the 2006 and 2009 studies, a case was defined as a sentencing event. A sentencing event consists of all offenses (and counts) for which the offender is sentenced before the same court at the same time. A few juveniles (roughly one in ten) had more than one sentencing event in circuit court. Each distinct sentencing event was counted for this analysis.

Between FY2001 and FY2006, the number of cases in which a juvenile was convicted of a felony in circuit court fluctuated between 489 and 551 per year (Figure 31). This includes all cases that could be identified across multiple data sources. The number of juvenile sentencing events in circuit court rose to 665 and 684 in FY2007 and FY2008, respectively. However, since FY2008, the number of juvenile cases has declined. In FY2009, there were 551 cases of juveniles convicted in circuit court. In FY2010, this figure dropped to 451. While the FY2010 data are still preliminary, the numbers are not expected to increase substantially.

This decrease is consistent with a general decline in reported crime and court cases observed across the criminal justice system in recent years. For instance, according to the Virginia Department of Juvenile Justice, the number of juvenile intake cases decreased from 61,942 in FY2008 to 54,304 in FY2010 (Figure 32). This trend is also apparent in the number of new misdemeanor and felony cases in general district court and circuit court, respectively. While the number of felony defendants in circuit court

Figure 31
Juveniles Convicted of Felonies in Circuit Court, FY2001 - FY2010
N=5,441 Cases



*Note: For purposes of this analysis, “juveniles” refers to persons who were under the age of 18 at the time of the offense.
 Data for FY2010 are preliminary

Figure 32
Juvenile Intake Cases at Court Service Units, FY2006 – FY2010

| Intake Type | FY2006 | FY2007 | FY2008 | FY2009 | FY2010 |
|---------------------|---------------|---------------|---------------|---------------|---------------|
| Person Felonies | 4,040 | 3,873 | 3,508 | 3,170 | 2,735 |
| Other Felonies | 7,762 | 7,671 | 7,366 | 7,035 | 5,708 |
| Class 1 Misdemeanor | 27,333 | 26,490 | 26,248 | 26,642 | 23,908 |
| Other | 26,235 | 25,816 | 24,820 | 24,488 | 21,953 |
| Total | 65,370 | 63,850 | 61,942 | 61,335 | 54,304 |

Source: Virginia Department of Juvenile Justice (July 21, 2010)

increased steadily from calendar year (CY) 2004 to CY2007, this number declined by 6.2% in CY2008 and decreased another 6.6% in CY2009. Likewise, the number of new misdemeanor cases in general district court decreased in CY2009, albeit not as dramatically. The reduction in new misdemeanor cases between CY2008 and CY2009 represents a decrease of 1.9% during this time period. Similarly, local jails and state prisons have experienced an overall reduction in inmates in the past few years as well (Figure 33). While the

state-responsible prison population continued to rise through May 2008, the local-responsible jail population peaked in September 2006. Between June 2008 and June 2010, the local-responsible jail population declined 5.8%. During this same time period, the prison population decreased by 2.8%, to 37,724 inmates in June 2010.

The Sentencing Commission further analyzed the cases of juveniles convicted in circuit court. Examining the data by age reveals that only a few of the cases involved juveniles who were age 14 at the time of the offense. During the ten-year period examined (FY2001-FY2010), 209 of the 5,441 juveniles convicted of felonies in circuit court were 14 years of age when the offense was committed (Figure 34).

Figure 33
Trends in Local-Responsible Jail and State-Responsible Prison Populations, FY1999 – FY2010

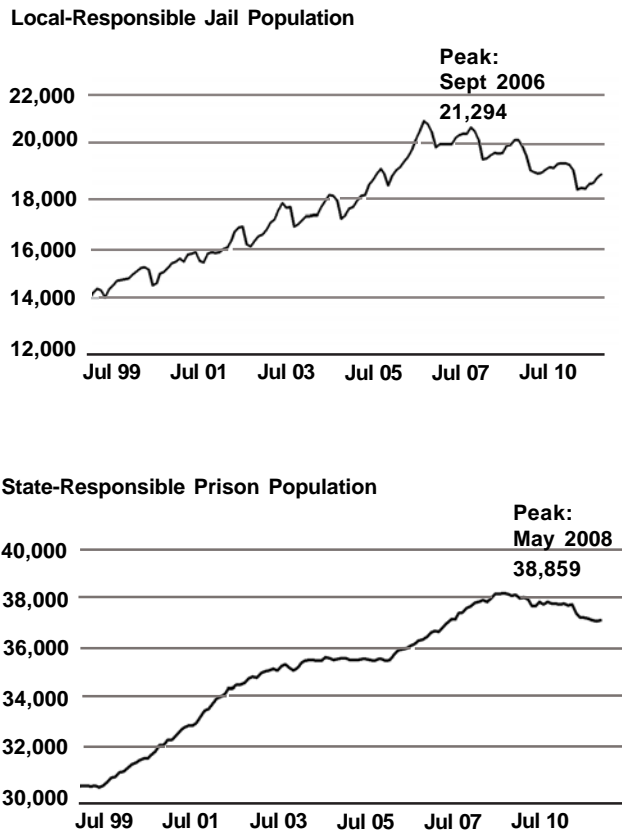


Figure 34
Juveniles Convicted of Felonies in Circuit Court, FY2001 – FY2010* by Age at Offense

| Age at Offense | Number | Percent |
|----------------|--------------|---------------|
| 14 | 209 | 3.8% |
| 15 | 731 | 13.4% |
| 16 | 1,435 | 26.4% |
| 17 | 3,066 | 56.3% |
| TOTAL | 5,441 | 100.0% |

*Data for FY2010 are preliminary

This represents slightly less than 4% of the total number of cases. The largest share of cases involved juveniles who were 17 when they committed the crime. Because felony case processing time averages approximately 10 months, many of the juveniles who were 17 at the time of the offense had turned 18 by the time they were sentenced.

For each case in the study, the Sentencing Commission identified the most serious offense resulting in conviction. The most serious offense was selected based on the offense with the highest statutory maximum penalty as defined in the *Code of Virginia*. If two or more offenses had the same statutory maximum penalty, sentencing guidelines rules were applied to determine the most serious offense in the case. Among juveniles convicted of felonies in circuit court, the most common offense was robbery. Robbery was the most serious

offense in more than one-third of these cases (Figure 35). The next most common offense was felony assault, which comprised 15% of the cases examined. In 12% of the cases, a felony larceny or fraud conviction was the most serious offense in the sentencing event. Approximately 8% of the juvenile offenders in the study had been convicted of offenses involving Schedule I or II drugs, such as cocaine, heroin, or methamphetamine. Murder/manslaughter convictions accounted for 6% of the cases. Another 6% of the juveniles had been convicted of burglary of a dwelling as the most serious offense. For 5% of the juveniles, the most serious offense was rape, forcible sodomy, or object sexual penetration. Other offenses were less common, each representing less than 5% of the cases. Felony traffic offenses, which include eluding police and felony DUI, comprised 1% of the cases. The miscellaneous category includes offenses such as arson and felony vandalism.

Figure 35
Juveniles Convicted of Felonies in Circuit Court, FY2001 – FY2010*
by Most Serious Offense

| Offense | Number | Percentage |
|---------------------------------------|--------------|-------------|
| Robbery | 1,879 | 35% |
| Assault | 826 | 15% |
| Larceny/Fraud | 644 | 12% |
| Schedule I or II Drugs | 428 | 8% |
| Murder/Manslaughter | 337 | 6% |
| Burglary of Dwelling | 319 | 6% |
| Rape/Forcible Sodomy/Obj. Penetration | 295 | 5% |
| Other Sex Offense | 146 | 3% |
| Burglary of Non-Dwelling | 135 | 2% |
| Weapon | 123 | 2% |
| Kidnapping | 65 | 1% |
| Other Drugs | 53 | 1% |
| Felony Traffic | 40 | 1% |
| Miscellaneous | 151 | 3% |
| TOTAL | 5,441 | 100% |

* Data for FY2010 are preliminary

By compiling data from multiple data sources, the Sentencing Commission obtained detailed sentence information for each case. The 2009 and 2010 analyses are by far the most comprehensive picture to date of outcomes for juveniles convicted in circuit court.

For juveniles convicted in circuit court, the *Code of Virginia* permits judges to utilize a variety of sanctions, both in the juvenile system and the adult corrections system. Sanctions in the juvenile system include juvenile probation, treatment or rehabilitation programs of some kind, post-disposition detention, or commitment to Virginia's Department of Juvenile Justice (DJJ). Should the circuit court judge opt to commit the juvenile to DJJ, there are three types of commitment available: indeterminate commitment, determinate commitment, and blended sentence. For a juvenile with an indeterminate commitment, DJJ determines how long the juvenile will remain in a facility, up to a maximum of 36 months. These juveniles are assigned a

length-of-stay range based on guidelines that consider the offender's current offenses, prior offenses, and length of prior record. Failure to complete a mandatory treatment program, such as substance abuse or sex offender treatment, or the commission of institutional offenses, could prolong the actual length of stay beyond the assigned range. For a juvenile given a determinate commitment to DJJ, the judge sets the commitment period to be served (up to age 21), although the juvenile can be released at the judge's discretion prior to serving the entire term. Nonetheless, determinately-committed juveniles remain in DJJ facilities longer, on average, than juveniles with indeterminate commitments to the Department. The average sentence for all juveniles given a determinate commitment to DJJ is approximately 40 months. Finally, a juvenile given a blended sentence will serve up to age 21 at a DJJ facility, after which he will be transferred to the Department of Corrections (DOC) to serve the remainder of his term in an adult facility. However, judges may review the juvenile's progress prior to transfer to the

Department of Corrections and may reconsider the sentence at that time. Punishment options in the adult system range from probation or other community-based programs, to a jail sentence (up to 12 months) or a prison term (one year or more).

For juveniles convicted of felonies in circuit courts in the Commonwealth, the most common disposition was an adult prison sentence. During the ten-year period studied, slightly less than half (46%) of the juvenile offenders were ordered to serve a prison term of at least one year (Figure 36). The median sentence length for these offenders was five years.

Other adult sanctions were also frequently used. More than one-quarter (26%) of the juveniles received a sentence of up to 12 months in jail or a term of probation under the supervision of adult community corrections officers. More specifically, roughly 8% of the sentencing

events resulted in a jail sentence, while 18% of the defendants received adult probation. Altogether, then, 72% of juvenile cases in circuit court resulted in an adult sanction. However, another 3% of these offenders received a blended DJJ/DOC sentence (described above). These juveniles will serve the first part of their sentence, up to age 21, in a juvenile correctional facility prior to being transferred to DOC to serve the balance of the sentence.

Sanctions in the juvenile system were used less often. Approximately 11% of the juveniles convicted of felonies in circuit court were sentenced to DJJ with a determinate commitment, whereby the judge specifies the period of time the

Figure 36
Juveniles Convicted of Felonies in Circuit Court, FY2001 – FY2010 * by Type of Disposition

| Disposition | Number | Percent |
|------------------------|---------------|----------------|
| Prison | 2,481 | 46% |
| Jail/Probation (Adult) | 1,440 | 26% |
| Blended DOC/DJJ | 152 | 3% |
| DJJ Determinate | 588 | 11% |
| DJJ Indeterminate | 400 | 7% |
| DJJ Prob/Other | 380 | 7% |
| TOTAL | 5,441 | 100% |

* Data for FY2010 are preliminary

juvenile is to serve. Another 7% were sentenced to DJJ with an indeterminate commitment, meaning that DJJ will determine the juvenile's length-of-stay. A small percentage of offenders (7%) were given juvenile probation or some other juvenile sanction.

Outcomes, however, differed by offense. For the most common offense, robbery, roughly half (49%) of the juveniles convicted in circuit court ultimately received a prison term, while another 15% were given a jail sentence or adult probation (Figure 37). Approximately 32% of the robbery offenders were committed to DJJ or received some other juvenile sanction. The pattern is very different in larceny and fraud cases. Less than 32%

of larceny and fraud offenders were sentenced to prison, but 49% received a jail sentence or adult probation term; only 20% were committed to DJJ or were given a juvenile punishment of some kind. In Schedule I or II drug cases, 40% of the juvenile offenders were sentenced to prison, with slightly less than half (49%) getting a jail term or period of adult probation. Only 11% of the Schedule I or II drug offenders were punished with a juvenile sanction. Of the Schedule I/II offenders who were sentenced to prison, the vast majority (86%) had been convicted of a distribution-related offense. The majority (81%) of offenders whose most serious offense at sentencing was simple possession of a Schedule I/II drug received probation, jail, or a sentence to DJJ.

Figure 37
Juveniles Convicted of Felonies in Circuit Court, FY2001 – FY2010*
by Most Serious Offense and Type of Disposition

| Offense | Prison | Jail/Probation (Adult) | Blended Adult/Juvenile Sanction | DJJ/ Juvenile | Total |
|---------------------------------------|------------|---------------------------|---------------------------------------|------------------|--------------|
| Robbery | 49% | 15% | 4% | 32% | 1,879 |
| Assault | 49% | 25% | 3% | 23% | 826 |
| Larceny/Fraud | 31% | 49% | 0% | 20% | 644 |
| Schedule I or II Drugs | 40% | 49% | 0% | 11% | 428 |
| Murder/Manslaughter | 75% | 7% | 6% | 12% | 337 |
| Burglary of Dwelling | 40% | 32% | 2% | 26% | 319 |
| Rape/Forcible Sodomy/Obj. Penetration | 35% | 19% | 4% | 42% | 295 |
| Miscellaneous | 36% | 34% | 0% | 30% | 151 |
| Other Sex Offense | 41% | 33% | 0% | 26% | 146 |
| Burglary of Non-Dwelling | 36% | 42% | 1% | 21% | 135 |
| Weapon | 54% | 19% | 1% | 26% | 123 |
| Kidnapping | 60% | 12% | 6% | 22% | 65 |
| Other Drugs | 26% | 64% | 0% | 10% | 53 |
| Felony Traffic | 37% | 48% | 0% | 15% | 40 |
| TOTAL | 46% | 26% | 3% | 25% | 5,441 |

* Data for FY2010 are preliminary

In contrast, the majority (75%) of the juveniles convicted of murder or manslaughter in circuit court were sentenced to adult prison. A small number of these offenders received a jail term or a blended DJJ/DOC sentence. Roughly 12% were committed to DJJ.

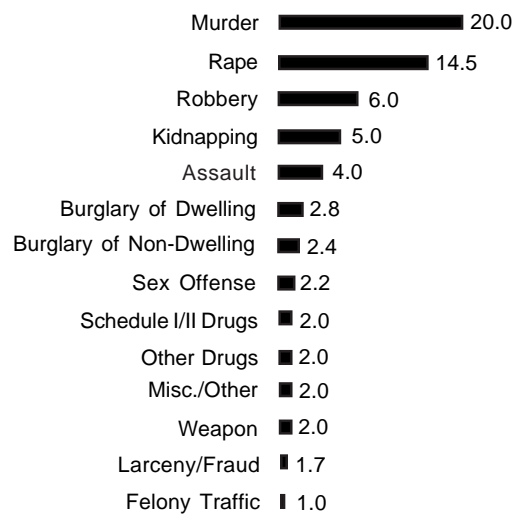
For juveniles convicted of rape, forcible sodomy or object sexual penetration, 35% received a prison sentence. Close to 42% were committed to DJJ or received a different punishment as a juvenile. This offense category had the highest rate of sentences to DJJ. One possible reason is that DJJ has a three-year sex offender treatment program specifically designed for juvenile offenders. Judges may wish to take advantage of that treatment option for juvenile offenders who have been convicted of sex offenses.

As noted, a prison sentence was the most common disposition for juveniles convicted of felonies in circuit court. Figure 38 shows median prison sentences for juveniles given a prison term. For murder, the median prison sentence was 20 years, while the median prison sentence for rape, forcible sodomy or object sexual penetration was 14.5 years. Juveniles convicted of robbery were given a median sentence of 6 years.

Larceny and fraud offenses netted a median sentence of just over a year and a half. In general, prison sentences for juveniles convicted in circuit court were roughly comparable to prison sentences given to adult offenders for similar offenses.

The Sentencing Commission next examined judicial compliance with Virginia’s sentencing guidelines. In 1994, the General Assembly passed legislation to revamp the adult correctional system in the Commonwealth. This legislation abolished discretionary parole release and implemented a system known as “truth-in-sentencing.” Felony offenders must now serve at least 85% of their prison or jail terms. New sentencing guidelines were implemented in 1995. Under these guidelines, variation in sentencing related, for example, to the offender’s personal characteristics or the geographic location

Figure 38
Juveniles Convicted of Felonies in Circuit Court, FY2001-FY2010*
Median Prison Sentences (in Years)



* Data for FY2010 are preliminary

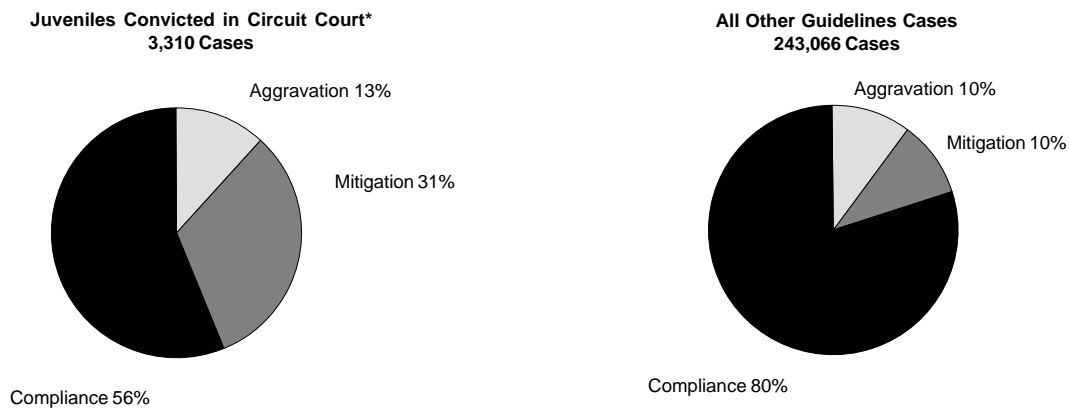
of the court has been reduced. The recommendations for nonviolent offenders with no prior record of violence are tied to the amount of time those offenders historically served prior to the abolition of parole. In contrast, for offenders with current or prior convictions for violent crimes (about one in five offenders), built-in guidelines enhancements trigger sentence recommendations that are significantly longer than historical time served in prison under the parole system. Thus, for violent offenders, the length-of-stay in prison is longer today than prior to the enactment of truth-in-sentencing.

For juveniles convicted of felonies in circuit court, compliance with the sentencing guidelines was considerably lower than compliance in cases involving offenders who committed the offense as an adult. Compliance among juvenile offenders was 56%, compared to 80% for all other guidelines cases (Figure 39). Part of this divergence in compliance may be related to the larger proportion of juvenile offenders whose most serious offense was a violent crime, whereas the overall number of guidelines cases for adults includes a much larger percentage of drug and property offenders, for which compliance is historically quite high.

As noted above, the Sentencing Commission is not receiving all sentencing guidelines forms for juveniles convicted in circuit court. Roughly 61% of the FY2001 through FY2010 cases included sentencing guidelines forms. The compliance information shown here reflects just the subset of cases for which guidelines forms were received.

Departure patterns were also significantly different. When departing from the guidelines, circuit court judges were much more likely to sentence a juvenile offender to a term that is less than the recommended guidelines range than above it. In nearly one-third (31.6%) of the juvenile cases, the judge ordered a sentence below the guidelines recommendation. This is nearly three

Figure 39
Juveniles Convicted of Felonies in Circuit Court, FY2001 - FY2010*
Judicial Compliance with Sentencing Guidelines



*Note: The compliance information shown is based on juvenile circuit court cases for which guidelines forms were received.
 * Data for FY2010 are preliminary*

times the rate at which judges opted to exceed the guidelines recommendation (12.6%). In guidelines cases involving adult offenders, departures were evenly split above and below the guidelines recommendation.

For the 2009 and 2010 analyses, special attention was paid to juveniles who were convicted in circuit court but committed to the Department of Juvenile Justice. Through supplemental data collection, the Sentencing Commission was able to determine the length of the determinate commitment for each juvenile given such a term. If the term of commitment to DJJ (for example, a determinate commitment of three years) fell within the range recommended by the guidelines, the case was categorized as being in compliance with the guidelines. It is more difficult to categorize cases in which the judge committed the juvenile offender to DJJ for an indeterminate period of time. In those cases, DJJ will ultimately determine how long the offender will remain confined. However, the length of stay for offenders who receive an indeterminate commitment to DJJ cannot exceed three years. While DJJ utilizes length-of-stay guidelines to guide such decisions, an offender may stay longer than the suggested range due to institutional violations or infractions or the failure to complete a mandatory treatment program. DJJ provided the Sentencing Commission with the length-of-stay ranges for each offender, which were then used to approximate compliance in these cases. For roughly 35% of the cases resulting in an indeterminate sentence to DJJ, the recommended guidelines range exceeded the 36-month maximum length-of-stay for indeterminate commitments. In these

cases, the indeterminate commitment to DJJ was clearly a departure below the guidelines recommendation. It is more difficult to compare an indeterminate commitment to the guidelines recommendation in the other 65% of cases with this type of sanction.

Analysis of FY2001 through FY2010 cases revealed that guidelines compliance rates vary by the age of the juvenile at the time the offense was committed (Figure 40). Compliance was lowest for juveniles who were 14 at the time of the offense (45.6%). Compliance increased as age increased, reaching 58.5% for 17-year olds. Conversely, mitigation rates were highest for 14-year olds and lowest for 17-year olds. Aggravation rates were level across all ages.

Since there is such a high rate of mitigation sentences in juvenile cases, the Sentencing Commission examined the reasons that judges cite when sentencing below the guidelines recommendation.

Figure 40
Juveniles Convicted of Felonies in Circuit Court, FY2001 – FY2010*
Judicial Compliance with Sentencing Guidelines by Age at Offense

| Age at Offense | Compliance | Mitigation | Aggravation |
|----------------|------------|------------|-------------|
| 14 | 45.6% | 41.8% | 12.7% |
| 15 | 49.3 | 38.3 | 12.3 |
| 16 | 53.1 | 33.9 | 13.0 |
| 17 | 58.5 | 29.0 | 12.5 |

* Data for FY2010 are preliminary

The *Code of Virginia* (§ 19.2-298.01) requires judges to provide a written reason whenever they give a sentence outside of the recommended guidelines range. The most frequently cited reasons for mitigation in juvenile cases are shown in Figure 41.

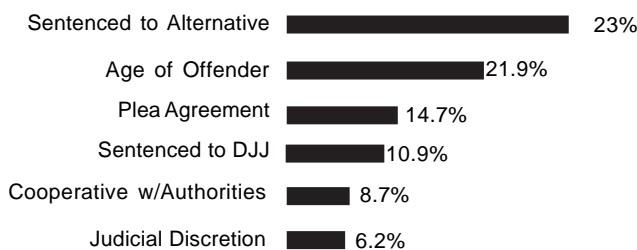
In one in five mitigation cases (23%), the judge indicated that the offender was sentenced to an alternative form of punishment other than that recommended by the guidelines. For example, giving the offender a jail or probation sentence in lieu of a recommended prison sentence is considered an alternative punishment. Ordering an offender to complete drug treatment instead of the recommended term of incarceration is also considered an alternative sanction. The second most common reason cited for a mitigation sentence was the young age of the offender (21.9% of mitigation cases). This was followed by the acceptance of a plea agreement (14.7%). In 10.9% of the mitigations, the judge noted the decision to commit the offender to DJJ in lieu of adult punishment. The term “judicial

discretion” was used to categorize several other reasons for mitigation, including situations where the offender will serve a sentence in another jurisdiction or case, the offender was sentenced consistently with a codefendant, or the judge sentenced the defendant to time served. Judges can cite multiple reasons for departing from the guidelines. Only the most frequently cited reasons are shown here. For guidelines cases overall, including adult offenders, the most common reasons cited for mitigation are typically: the acceptance of a plea agreement, the defendant’s cooperation with authorities, minimal offense circumstances, the defendant’s minimal prior record, use of an alternative sanction, or a sentence recommendation from the Commonwealth’s attorney or probation officer.

Conclusion

The study of juveniles convicted of felonies in circuit court, completed by the Sentencing Commission in 2009, and updated in 2010, was unquestionably the most comprehensive to date. The complexity of the data collection required for this analysis serves to highlight the limitations of individual data systems with regard to this particular population of offenders. Trial and conviction of juvenile offenders in circuit court is one aspect of the overall juvenile justice process. During the course of its multi-year study, the Virginia State Crime Commission has reviewed a wide array of juvenile justice issues, including the areas addressed in the Sentencing Commission’s study. It is expected that the State Crime Commission will submit its report to the 2011 General Assembly.

Figure 41
Juveniles Convicted in Circuit Court, FY2001 – FY2010*
Reasons for Sentencing Guidelines Mitigations



Note: Judges can cite multiple reasons for departing from the guidelines. Only the most frequently cited reasons are shown here.
 * Data FY2010 are preliminary.

4

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 "hotline" phone system, staffed Monday through Friday, to assist users with any questions or concerns regarding the preparation of the guidelines. While the hotline 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 these sessions often provide information that is 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 need adjustment to better reflect current judicial thinking. The opinions of the judiciary, as expressed in the reasons they write for departing from the guidelines, are very important in directing the Commission's attention to areas of the guidelines that may require amendment.

Unless otherwise provided by law, the changes recommended by the Commission become effective on the following July 1.

On an annual basis, the Commission examines that are crimes not yet covered by the guidelines. Currently, the guidelines cover approximately 95% of felony cases in Virginia's circuit courts. Over the years, the General Assembly has created new crimes and raised other offenses from misdemeanors to felonies. The Commission keeps track of all of the changes to the *Code of Virginia* in order to identify new felonies that may be added to the guidelines system in the future. Unlike many other states, Virginia's guidelines are based on historical practices among its judges. The ability to

create guidelines depends, in large part, on the number of historical cases that can be used to identify past judicial sentencing patterns. Of the felonies not currently covered by the guidelines, many do not occur frequently enough for there to be a sufficient number of cases upon which to develop historically-based guidelines ranges. Through this process, however, the Commission can identify offenses and analyze data to determine if it is feasible to add particular crimes to the guidelines system.

The Commission has adopted four recommendations this year. Each of these is described in detail on the pages that follow.

RECOMMENDATION 1

Revise the sentencing guidelines manual to instruct preparers to adjust the sentence range recommended by the guidelines such that the low, midpoint, and high recommendations are at least equal to the sentence needed to run all mandatory minimum sentences consecutively.

Issue

Currently, there are 109 felony and 46 non-felony mandatory minimum sentences defined in the *Code of Virginia*. Many mandatory minimum penalty statutes specify that a sentence under that particular provision must be run consecutively to the sentences for all other charges; however, not all statutes clearly state this. Because mandatory minimum statutes are not uniform in this regard, the instructions in the sentencing guidelines manual state that, if a sentencing event contains multiple counts of an offense carrying a mandatory minimum or multiple offenses with mandatory minimum penalties, the individual preparing the guidelines must adjust the sentence range recommended by the guidelines to reflect the possibility that the court may set the mandatory minimum sentences to run concurrently or consecutively to each other. The judge will interpret the language in each individual *Code* section and impose a sentence accordingly. Analysis reveals, however, that judges rarely set mandatory minimum sentences to run concurrently. Because the guidelines are designed to reflect historical sentencing practices, modifying the guidelines instruction to ensure that guidelines recommendations reflect consecutive mandatory minimum sentences will more closely match current judicial practice in these cases.

Discussion

The sentencing guidelines manual contains instructions pertaining to guidelines recommendations and mandatory minimum penalties. The guidelines recommendation is presented to the judge in the form of a range with a low-end recommendation, a midpoint, and a high-end recommendation. When the guidelines recommendation is less than the mandatory minimum penalty required by law, the individual preparing the guidelines is directed to enter the mandatory minimum sentence in place of any part of the recommended sentence range (low, midpoint or high) that falls below the mandatory minimum sentence. If the guidelines recommendation exceeds the mandatory minimum sentence, no adjustment is made.

In some cases, the offender has been convicted of multiple counts of an offense requiring a mandatory minimum sentence or he has been convicted of multiple offenses carrying mandatory minimum penalties. Many of the mandatory minimum penalties defined in the *Code of Virginia* include language to specify that the mandatory sentence must run consecutively to the sentences for all other charges. Other statutes, however, do not explicitly state this. The judge must interpret the language in each statute and sentence accordingly.

Because the judge will interpret the statutory requirements, the individual preparing the guidelines is instructed to adjust the guidelines recommendation to reflect both possibilities - that multiple mandatory minimums may be run concurrently or consecutive to each other. The current manual states that the low recommendation and midpoint

must be at least equal to the sentence necessary should the court run the mandatory sentences concurrently. The high recommendation must be at least equal to the sentence necessary should the court run the mandatory sentences consecutively. No adjustment is made if the guidelines recommendation already exceeds the specified mandatory minimum sentence.

For example, if an offender is convicted of two counts of malicious injury to a law enforcement officer under § 18.2-51.1, each count requires a two-year mandatory minimum sentence. If the low recommendation and midpoint do not equal or exceed two years (the sentence necessary to run the mandatory minimum penalties concurrently to one another), the guidelines preparer would record the low recommendation and the midpoint as two years. Likewise, if the high recommendation does not equal or exceed four years (the sentence necessary to run the mandatory minimums consecutively), the high recommendation would be adjusted accordingly. The judge will determine the appropriate sentence based on the statutory provisions.

Commission staff examined sentencing guidelines data from fiscal year (FY) 2006 through FY2010. The vast majority (85.7%) of felony cases in Virginia's circuit courts do not involve a conviction for any offense that carries a mandatory minimum penalty (Figure 42). During this five-year period, 11.8% of sentencing events involved a single conviction for a crime with a mandatory minimum. A much smaller percentage (2.5%) involved two or more convictions requiring the imposition of a mandatory minimum sentence. These latter cases were examined in greater detail.

Figure 42
Felony Sentencing Events, FY2006 – FY2010
Number of Convictions in the Sentencing Event
Requiring a Mandatory Minimum Sentence

| Number of Convictions | Percent | Sentencing Events |
|------------------------------|----------------|--------------------------|
| None | 85.7% | 111,872 |
| One | 11.8% | 15,434 |
| Two or More | 2.5% | 3,225 |

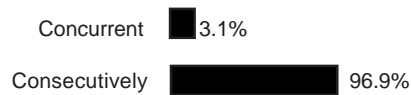
The subsequent analysis revealed that circuit court judges rarely set multiple mandatory minimum sentences to run concurrently. This occurred in only 3.1% of felony sentencing events in the study (Figure 43). In nearly all cases, judges are setting mandatory minimum sentences to run consecutively.

Virginia's sentencing guidelines, by design, are grounded in historical sanctioning practices. Modifying the instructions in the guidelines manual to ensure that guidelines recommendations reflect consecutive mandatory minimum sentences will bring the guidelines system in line with judicial practice in these cases.

Since the Commission's proposal is designed to integrate current judicial sanctioning practices into the guidelines, no impact on correctional bed space is anticipated.

Figure 43
Felony Sentencing Events with Two or More Convictions Requiring a Mandatory Minimum Sentence, FY2006 – FY2010
N=3,225

Concurrent versus Consecutive Sentences



RECOMMENDATION 2

Amend the Miscellaneous sentencing guidelines to add violations of registration requirements associated with Virginia's Sex Offender and Crimes Against Minors Registry (as defined in § 18.2-472.1).

Issue

Currently, Virginia's sentencing guidelines do not cover violations of registration requirements associated with the Sex Offender and Crimes Against Minors Registry. Penalties for violations of registration procedures are defined in § 18.2-472.1 of the Code of Virginia. There are more felony convictions for Registry violations than for any other felony not currently covered by the guidelines. After thorough analysis, the Commission has developed a proposal to incorporate Registry violations into the Miscellaneous guidelines.

Discussion

The General Assembly has revisited Chapter 9 of Title 9.1 (Sex Offender and Crimes Against Minors Registry Act) several times in recent years. In 2006, the General Assembly added to the list of offenses requiring registration and increased the penalties for second or subsequent Registry violations. In addition, the *Code* was changed to allow Juvenile and Domestic Relations court judges to require a juvenile who has been adjudicated delinquent for a Registry offense to register. During the 2007 session, the information required of registrants was expanded and the list of crimes requiring registration was expanded and reorganized. In the 2008 session, the crimes requiring registration were again restructured.

Offenders who are required to register with the Sex Offender and Crimes Against Minors Registry are assigned to one of two categories based on the offense for which they have been convicted. Offenders who have been convicted of a sexually violent offense as defined in § 9.1-902 comprise the majority of offenders who must register. Sexually violent offenders are required to register more frequently and, per § 18.2-472.1, are subject to higher penalties for violating registration procedures. For a sexually violent offender, it is a Class 6 felony to violate Registry requirements, while any second or subsequent violation is elevated to a Class 5 felony. Other sex offenders make up a smaller portion of those on the Registry. For these offenders, it is a Class 1 misdemeanor to violate Registry procedures, but a second or subsequent violation becomes a Class 6 felony. Thus, there are three felonies defined in the *Code* for violating Registry provisions.

Because the penalties associated with second or subsequent Registry violations were increased effective July 1, 2006, the Commission delayed analysis of Registry violations until sufficient data had accumulated under the higher penalty scheme. Virginia's guidelines are based on historical sentencing practices. The development of new guidelines depends, in large part, on the number of cases that can be used to identify judicial sentencing patterns. Once a sufficient number of Registry violators had been sentenced under the higher penalty structure, the Commission initiated its analysis.

Commission staff analyzed FY2008 through FY2009 data from the Supreme Court of Virginia's Circuit Court Automated Information System (CAIS) to identify cases involving Registry violations under § 18.2-472.1. According to the CAIS database, there were 646 cases in which a felony conviction for a Registry violation was the most serious offense. As shown in Figure 44, approximately one-third (34%) of these offenders received probation without an active term of incarceration. More than one-third (39%) were given an incarceration term of up to six months in jail, for which the median sentence was four months. Roughly one-fourth of the offenders (27%) were sentenced to more than six months of incarceration. The median sentence in such cases was one year.

Figure 44
Sex Offender Registry Violations (§ 18.2-472.1)
Sentencing Outcomes
FY2008 - FY2009
N=646

| Disposition | Percent | Median Sentence |
|----------------------------------|----------------|------------------------|
| No Incarceration | 34% | N/A |
| Incarceration up to 6 months | 39% | 4 Months |
| Incarceration more than 6 months | 27% | 1 Year |

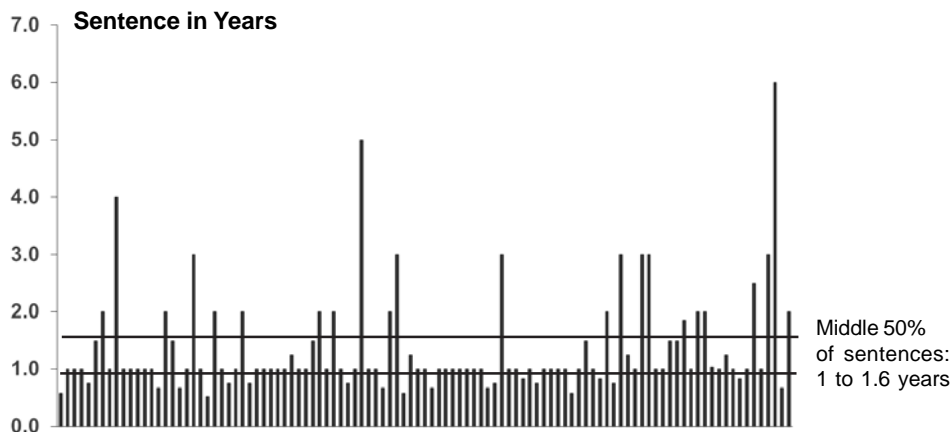
Data reflect cases in which this offense was the primary (or most serious) offense at sentencing.

The Commission's analysis of historical sentencing practices revealed considerable variation in sentencing for these offenses in both type of disposition and sentence length. For offenders given a term in excess of six months, the sentences ranged from seven months to six years (Figure 45). To develop the sentencing guidelines ranges for prison recommendations, the Commission focuses on the middle 50% of sentences. This removes the 25% of sentences at the high end and the 25% of sentences at the low end, which represent the more atypical sentences. For felony Registry violations, the middle 50% of sentences fell between 1.0 and 1.6 years.

Several steps were employed in the development of sentencing guidelines for these offenses. The Commission examined judicial sentencing practices for these crimes for the period FY2008 through FY2009. The proposed guidelines are based an analysis of actual sentencing patterns, including the historical rate of incarceration in prison and jail. Current guidelines worksheets serve as the starting point for scoring historical cases. Using historical sentencing data, various scoring scenarios were rigorously tested. Individual factors on the worksheets were assessed and new factors were considered to ensure the proposed guidelines closely reflect judicial sentencing practices in these cases.

After a thorough analysis of the data, the Commission recommends adding felony Registry violations under § 18.2-472.1 to the Miscellaneous sentencing guidelines. The Miscellaneous guidelines encompass a variety of offenses, such as arson, child abuse, felony vandalism, failure to appear, prisoner escape, and perjury.

Figure 45
Sex Offender Registry Violations (§ 18.2-472.1)
FY2008 - FY2009
Offenders Sentenced to Incarceration of More than 6 Months
N=177



The proposal for integrating Registry violations into the Miscellaneous worksheets is presented in Figures 46, 47, and 48. On Section A of the proposed guidelines (Figure 46), offenders convicted of this offense will receive two points. To model actual sentencing practices for this crime most accurately, the Commission found it necessary to revise one of the other factors on Section A: Prior Convictions/Adjudications. Under the proposal, this factor is split. As shown in Figure 46, offenders convicted of Registry violations will be scored differently from all other offenders. The scoring of this factor will not change for offenders convicted of other crimes covered by the Miscellaneous guidelines. This modification of an existing factor was necessary in order to more clearly distinguish between Registry violators who historically received more than six months of incarceration and those who did not. All Registry violators will be assigned one point on the factor called "Legally Restrained at the Time of the Offense." Registry violators are considered to have been legally restrained because they were under legal obligation to register and they failed to do so.

Figure 46
Proposed Changes to Drug/Other Section A Worksheet

| | <p>◆ Primary Offense</p> <p>A. Burn unoccupied dwelling/church (1 count) 6</p> <p>B. Burn occupied dwelling/church (1 count) 6</p> <p>C. Burning of personal property, standing grain, etc., value \$200 or more 1 count 2 2 counts 6</p> <p>D. Threatening to bomb, burn or explode (1 count) 1</p> <p>E. Threat by letter, communication or electronic message (1 count) 3</p> <p>F. Child neglect/abuse, serious injury 1 count 3 2 counts 7</p> <p>G. Gross, reckless care of child (1 count) 1</p> <p>H. Cruelty and injury to child (1 count) 2</p> <p>I. Failure to appear in court for felony offense 1 count 1 2 counts 4</p> <p>J. Perjury, falsely swear an oath (1 count) 1</p> <p>K. Possession or sale of Schedule III drug or marijuana by prisoner (1 count) 3</p> <p>L. Escape from correctional facility (1 count) 7</p> <p>M. Maliciously shoot, throw missile at train, car, etc. (1 count) 1</p> <p>N. Damage/destroy any property or monument \$1,000 or more (1 count) 2</p> <p>O. Participation in offense by/for gang (1 count) 5</p> <p>P. Participation in offense by/for gang with juvenile member (1 count) 6</p> <p>Q. Sex Offender Registry violation (1 count) 2</p> | | | | | | | | | | | | | | | | | | | | |
|--|---|---|--------|---|--|-------|--------|-------|--------|---------------------|---|-------------|---|------|---|---|---|------------|---|--------------------------------|---|
| New Offense Added | | | | | | | | | | | | | | | | | | | | | |
| | <p>◆ Prior Convictions/Adjudications <u>Total</u> the maximum penalties for the 5 most recent and serious prior record events</p> <table border="1" style="width: 100%;"> <tr> <th colspan="2">Primary offense Sex Offender Registry Violation</th> <th colspan="2">Primary offense OTHER THAN Sex Offender Registry Violation</th> </tr> <tr> <th>Years</th> <th>Points</th> <th>Years</th> <th>Points</th> </tr> <tr> <td>Less than 6</td> <td>0</td> <td>Less than 2</td> <td>0</td> </tr> <tr> <td>6-64</td> <td>1</td> <td>2-38</td> <td>1</td> </tr> <tr> <td>65 or more</td> <td>2</td> <td>39 or more</td> <td>2</td> </tr> </table> | Primary offense Sex Offender Registry Violation | | Primary offense OTHER THAN Sex Offender Registry Violation | | Years | Points | Years | Points | Less than 6 | 0 | Less than 2 | 0 | 6-64 | 1 | 2-38 | 1 | 65 or more | 2 | 39 or more | 2 |
| Primary offense Sex Offender Registry Violation | | Primary offense OTHER THAN Sex Offender Registry Violation | | | | | | | | | | | | | | | | | | | |
| Years | Points | Years | Points | | | | | | | | | | | | | | | | | | |
| Less than 6 | 0 | Less than 2 | 0 | | | | | | | | | | | | | | | | | | |
| 6-64 | 1 | 2-38 | 1 | | | | | | | | | | | | | | | | | | |
| 65 or more | 2 | 39 or more | 2 | | | | | | | | | | | | | | | | | | |
| Revised Factor | | | | | | | | | | | | | | | | | | | | | |
| | <p>◆ Legally Restrained at Time of Offense</p> <table border="1" style="width: 100%;"> <tr> <th colspan="2">Primary offense felony vandalism-damage to property \$1,000 or more or sex offender registry violation</th> <th colspan="2">Primary offense OTHER THAN felony vandalism-damage to property \$1,000 or more or sex offender registry violation</th> </tr> <tr> <th></th> <th>Points</th> <th></th> <th>Points</th> </tr> <tr> <td>Any legal restraint</td> <td>1</td> <td>None</td> <td>0</td> </tr> <tr> <td></td> <td></td> <td>Other than post-incarceration supervision</td> <td>2</td> </tr> <tr> <td></td> <td></td> <td>Post-incarceration supervision</td> <td>5</td> </tr> </table> | Primary offense felony vandalism-damage to property \$1,000 or more or sex offender registry violation | | Primary offense OTHER THAN felony vandalism-damage to property \$1,000 or more or sex offender registry violation | | | Points | | Points | Any legal restraint | 1 | None | 0 | | | Other than post-incarceration supervision | 2 | | | Post-incarceration supervision | 5 |
| Primary offense felony vandalism-damage to property \$1,000 or more or sex offender registry violation | | Primary offense OTHER THAN felony vandalism-damage to property \$1,000 or more or sex offender registry violation | | | | | | | | | | | | | | | | | | | |
| | Points | | Points | | | | | | | | | | | | | | | | | | |
| Any legal restraint | 1 | None | 0 | | | | | | | | | | | | | | | | | | |
| | | Other than post-incarceration supervision | 2 | | | | | | | | | | | | | | | | | | |
| | | Post-incarceration supervision | 5 | | | | | | | | | | | | | | | | | | |
| Revised Factor | | | | | | | | | | | | | | | | | | | | | |

An offender who scores eight points or less on Section A is then scored on Section B of the guidelines, which will determine if he will be recommended for probation without an active term of incarceration or a jail term of up to six months. On Section B of the proposed guidelines (Figure 47), offenders convicted of Registry violations will be assigned points for the Primary Offense factor based on the specific Registry violation for which they were convicted. An offender not defined as sexually violent per § 9.1-902 who is convicted of a second or subsequent Registry violation will receive seven points. However, an offender defined as sexually violent per § 9.1-902 who is convicted of a Registry violation for the first time will receive eight points. A sexually violent offender convicted of a second or subsequent Registry violation will receive nine points. Because Registry violators will always be given a point on Section B for being legally restrained, sexually violent offenders convicted of a second or subsequent Registry violation will accumulate enough points such that they will always be recommended for a jail term of up to six months, regardless of any other points scored on the worksheet. The remaining factors on Section B, with the exception of the last factor, will be scored as they currently appear on the Worksheet. The last factor on Section B, which is currently scored only if the primary offense is felony vandalism with damage to property of \$1,000 or more, will be expanded so that Registry violators will also be scored on this factor. Here, Registry violators who have a prior adult incarceration or juvenile commitment will receive one point.

Figure 47
Proposed Changes to Drug/Other Section B Worksheet

| | | |
|--|---|-----------------------|
| ◆ Primary Offense | | |
| A. | Burn unoccupied dwelling/church (1 count) | 6 |
| B. | Burn occupied dwelling/church (1 count) | 7 |
| C. | Burning of personal property, standing grain, etc., value \$200 or more (1 count) | 6 |
| D. | Threatening to bomb, burn or explode (1 count) | 6 |
| E. | Threat by letter, communication or electronic message (1 count) | 7 |
| F. | Child neglect/abuse, serious injury (1 count) | 3 |
| G. | Gross, reckless care of child (1 count) | 2 |
| H. | Cruelty and injury to child (1 count) | 2 |
| I. | Failure to appear in court for felony offense (1 count) | 10 |
| J. | Perjury, falsely swear an oath (1 count) | 7 |
| K. | Possession or sale of Schedule III drug or marijuana by prisoner (1 count) | 7 |
| L. | Escape from correctional facility (1 count) | 10 |
| M. | Maliciously shoot, throw missile at train, car, etc. (1 count) | 7 |
| N. | Damage/destroy any property or monument \$1,000 or more (1 count) | 8 |
| O. | Participation in offense by/for gang (1 count) | 7 |
| P. | Participation in offense by/for gang with juvenile member (1 count) | 8 |
| Q. | Sex Offender Registry violation Nonviolent offender per § 9.1-902 - 2nd or sub. (1 count) | 7 |
| R. | Sex Offender Registry violation Violent offender per § 9.1-902 - 1st conviction (1 count) | 8 |
| S. | Sex Offender Registry violation Violent offender per § 9.1-902 - 2nd or sub. (1 count) | 9 |
| ◆ Score Only if Primary Offense is: Damage to Property \$1,000 or more (§ 18.2-137 (B,ii)) or Sex Offender Registry Violation | | Revised Factor |
| | Prior Incarcerations/Commitments | 1 |

Finally, an offender who scores nine points or more on Section A is scored on Section C, which will produce a sentence length recommendation for a longer term of incarceration. Primary Offense points on Section C are assigned based on the classification of an offender's prior record. An offender is assigned to the Other category if he does not have a prior conviction for a violent felony defined in § 17.1-805. An offender is assigned to Category II if he has a prior conviction for a violent felony that has a statutory maximum penalty of less than 40 years. Offenders are classified as Category I if they have a prior conviction for a violent felony with a statutory maximum of 40 years or more.

On Section C of the proposed guidelines, Registry violators will receive points based on the specific type of violation for which they were convicted (Figure 48). An offender not defined as sexually violent per § 9.1-902 who is convicted of a second or subsequent Registry violation will receive two points if his prior record is classified as Other, four points if he is a Category II offender, and eight points if he is a Category I offender. An offender defined as sexually violent per § 9.1-902 who is convicted of a first-time Registry violation will receive the same number of points as the offender just described. A sexually violent offender convicted of a second or subsequent Registry violation will receive four points if his prior record is classified as Other, eight points if he is a Category II offender, and 16 points if he is a Category I offender. All other factors on Section C will be scored as they currently appear on the worksheet.

Figure 48
Proposed Changes to Miscellaneous Section C Worksheet

| ◆ Primary Offense | Category I | Category II | Other |
|---|------------|-------------|-------|
| A. Burn unoccupied dwelling/church (1 count) | 68 | 34 | 17 |
| B. Burn occupied dwelling/church | | | |
| Completed: (1 count) | 108 | 54 | 27 |
| (2 counts) | 200 | 100 | 50 |
| Attempted or conspired: (1 count) | 68 | 34 | 17 |
| (2 counts) | 72 | 36 | 18 |
| C. Burning of personal property, standing grain, etc., value \$200 or more (1 count) | 32 | 16 | 8 |
| D. Threatening to burn, bomb or explode (1 count) | 32 | 16 | 8 |
| E. Threat by letter, communication or electronic message (1 count) | 40 | 20 | 10 |
| F. Child neglect/abuse, serious injury (1 count) | 32 | 16 | 9 |
| G. Gross, reckless care of child (1 count) | 28 | 14 | 7 |
| H. Cruelty and injury to child (1 count) | 28 | 14 | 7 |
| I. Failure to appear in court for felony offense (1 count) | 32 | 16 | 8 |
| J. Perjury, falsely swear an oath (1 count) | 12 | 6 | 3 |
| K. Possession or sale of Schedule III drug or marijuana by prisoner (1 count) | 32 | 16 | 8 |
| L. Escape from correctional facility (1 count) | 40 | 20 | 10 |
| M. Maliciously shoot, throw missile at train, car, etc. (1 count) | 32 | 16 | 8 |
| N. Damage/destroy any property or monument \$1,000 or more (1 count) | 32 | 16 | 8 |
| O. Participation in offense by/for gang (1 count) | 84 | 42 | 21 |
| P. Participation in offense by/for gang with juvenile member (1 count) | 104 | 52 | 26 |
| Q. Sex Offender Registry violation Nonviolent offender per § 9.1-902-2nd or sub. (1 count) .. | 8 | 4 | 2 |
| R. Sex Offender Registry violation Violent offender per § 9.1-902-1st conviction (1 count) .. | 8 | 4 | 2 |
| S. Sex Offender Registry violation Violent offender per § 9.1-902-2nd or sub. (1 count) | 16 | 8 | 4 |

**New
Offenses
Added**

The proposal is based on the actual practices of Virginia's circuit court judges for the period studied. When developing sentencing guidelines, the Commission's goal is to match, or come very close to, the historical prison incarceration rate. The proposed guidelines are designed to recommend the same proportion of offenders for a sentence greater than six months as historically received a sentence greater than six months. Due to the wide variation in past sentencing practices for this offense, not all of the offenders who historically received such a sentence will be recommended for that type of sentence under the proposed guidelines. The guidelines are designed to bring about more consistency in sentencing decisions. The Commission will monitor judicial concurrence and departure patterns after the guidelines are in place for Registry violations and recommend changes to the guidelines as needed. As Figure 49 demonstrates, the proposed guidelines are expected to recommend 27.6% of offenders convicted of this offense for a sentence of more than six months. Actual practice has resulted in 27.4% of offenders being sentenced to such a term of incarceration. Thus, the recommended and actual historical rates of incarceration are very close. Moreover, for Registry violators currently receiving a term of incarceration in excess of six months, the median sentence is one year. For the cases studied, the guidelines proposed here produce a recommended sentence with a median value of 1.2 years. Again, the recommended and actual sentences are closely aligned.

Since the Commission's proposal is designed to integrate current judicial sanctioning practices into the guidelines, no impact on correctional bed space is anticipated.

Figure 49
Sex Offender Registry Violations (§ 18.2-472.1)
 FY2008 – FY2009
 N=646

| Sentencing Guidelines Section A Score | Recommendations under Sentencing Guidelines | | Actual Practices Prior to Sentencing Guidelines | |
|--|---|---------|---|----------------|
| | Recommendation | Percent | NO PRISON Percent | PRISON Percent |
| Up to 8 | No Prison | 72.4% | 79.3% | 20.7% |
| 9 or More | Prison | 27.6% | 55.1% | 44.9% |
| | | 100.0% | 72.6% OVERALL | 27.4% |

RECOMMENDATION 3

Amend the Miscellaneous guidelines by splitting the existing guidelines into two offense groups: 1) miscellaneous person and property offenses and 2) miscellaneous court, prisoner, and other offenses.

Issue

A large number of offenses are currently covered by the Miscellaneous sentencing guidelines. These crimes vary considerably in nature, ranging from child abuse with serious injury and arson of an occupied dwelling to perjury and failure to appear. Splitting the miscellaneous guidelines into two offense groups will allow for more refined analysis in the future, which could result in improvements to the guidelines for particular offenses. The current proposal does not modify the guidelines scores and will not change the sentence recommendation for any offender whose case is currently covered by the Miscellaneous guidelines.

Discussion

The Miscellaneous guidelines currently cover a wide array of offenses and the nature of these crimes varies considerably. The Miscellaneous guidelines cover child abuse resulting in serious injury, arson of an occupied dwelling, as well as perjury and failure to appear. Other crimes, including escape from a correctional facility and felony vandalism, are also included in the Miscellaneous guidelines. Two gang offenses defined in § 18.2-46.2 were added to the Miscellaneous guidelines beginning July 1, 2010.

The number and variety of offenses currently covered by the Miscellaneous guidelines has resulted in worksheets that are very tightly-spaced and rather complex to score.

Virginia's sentencing guidelines are grounded in actual sentencing practices among circuit court judges. The Commission closely monitors guidelines compliance by offense to determine if, based on judicial concurrence and departure patterns, any adjustments are needed to bring the guidelines more in line with current practice. Given the current worksheets for the Miscellaneous guidelines, there is little room to add any new factors or expand existing factors. Thus, the current state of the worksheet, particularly Section C, largely precludes further refinement of the guidelines for these offenses. Nor can new guidelines offenses (such as violations of Sex Offender and Crimes Against Minors Registry requirements as proposed in Recommendation 2) be easily fit onto existing worksheets.

To allow for future refinement and improvement of the guidelines for offenses in the Miscellaneous offense group, the Commission recommends splitting the existing guidelines into two offense groups: 1) miscellaneous person and property offenses and 2) miscellaneous court, prisoner, and other offenses. The Commission is not recommending any other revisions to guidelines recommendations at this time. The proposed split will not affect the sentence recommendation for any offender whose case is currently covered by the Miscellaneous guidelines. The proposed split is shown in Figure 50.

Figure 50
Proposed Changes to Miscellaneous Prisoner and Other Offenses Section A Worksheet

| | |
|---|---|
| ◆ Primary Offense | |
| A. Failure to appear in court for felony offense | |
| 1 count | 1 |
| 2 counts | 4 |
| B. Perjury, falsely swear an oath (1 count) | 1 |
| C. Possession or sale of Schedule III drug or marijuana by prisoner (1 count) | 3 |
| D. Escape from correctional facility (1 count) | 7 |

Proposed Changes to Miscellaneous Person and Property Offenses Section A Worksheet

| | |
|--|---|
| ◆ Primary Offense | |
| A. Burn unoccupied dwelling/church (1 count) | 6 |
| Burn occupied dwelling/church (1 count) | 6 |
| B. Burning of personal property, standing grain, etc., value \$200 or more | |
| 1 count | 2 |
| 2 counts | 6 |
| C. Threatening to bomb, burn or explode (1 count) | 1 |
| D. Threat by letter, communication or electronic message (1 count) | 3 |
| E. Child neglect/abuse, serious injury | |
| 1 count | 3 |
| 2 counts | 7 |
| F. Gross, reckless care of child (1 count) | 1 |
| G. Cruelty and injury to child (1 count) | 2 |
| H. Maliciously shoot, throw missile at train, car, etc. (1 count) | 1 |
| I. Damage/destroy any property or monument \$1,000 or more (1 count) | 2 |
| J. Participation in offense by/for gang (1 count) | 5 |
| K. Participation in offense by/for gang with juvenile member (1 count) | 6 |

RECOMMENDATION 4

Revise the sentencing guidelines manual to state that the amount or value in embezzlement cases is to be scored based on the amount determined by the trial court.

Issue

Felony embezzlement (§ 18.2-111) is covered by the Larceny sentencing guidelines. The Larceny sentencing guidelines include a factor to account for the amount of money or value of goods involved in embezzlement cases. Currently, the sentencing guidelines manual instructs individuals preparing the guidelines to score the embezzlement amount based on the amount for which the offender was convicted. In some cases, however, the indictment is prepared without reference to a specific dollar amount and, upon conviction, it can be difficult to determine the appropriate amount or value to score on the guidelines. Also, there are cases in which official reports are inconsistent as to the amount involved in an embezzlement case. Therefore, the Commission recommends revising the guidelines manual to state that the trial court will determine the amount embezzled for the purposes of the sentencing guidelines.

Discussion

The crime of embezzlement is defined in § 18.2-111 of the *Code of Virginia*. Under § 18.2-111, embezzlement is deemed larceny and is subject to the same penalties as a larceny offense. Embezzlement of \$200 or more is a felony punishable by imprisonment of 1 to 20 years. Embezzlement of less than \$200 is a Class 1 misdemeanor punishable by up to 12 months in jail.

Felony embezzlement is covered by the Larceny sentencing guidelines. The Larceny guidelines include a factor that is scored only in embezzlement cases. This factor takes into account the amount of money or value of goods involved in an embezzlement case. This factor appears on each section (Section A, B, and C) of the Larceny guidelines, although the exact dollar amounts scored on each worksheet differ somewhat. The embezzlement factor that appears on each section of the Larceny guidelines is displayed in Figure 51. This factor was added to the guidelines in 1999. The dollar amounts for the factor were selected based on a special study of actual embezzlement cases from Virginia's circuit courts.

Currently, the sentencing guidelines manual instructs individuals preparing the guidelines to score the embezzlement amount based on the amount for which the offender was convicted. The manual further instructs preparers to determine the amount embezzled from official documents, such as police reports.

In some cases, however, the indictment is prepared without reference to a specific dollar amount and, upon conviction, it can be difficult to determine the appropriate amount or value to score on the guidelines. Also, there are cases in which official reports differ as to the amount involved in an embezzlement case. Finally, determining the amount embezzled based on the offenses at conviction is subject to a finding of guilt beyond a reasonable doubt. In contrast, restitution in such a case can be determined by the court in a separate hearing and only requires proof beyond a preponderance of the evidence, a lesser standard.

For these reasons, the Commission recommends revising the guidelines manual to state that the trial court will determine the amount embezzled for guidelines purposes whenever the amount has not been established or there is a dispute over the amount to be scored. If the court finds that the defendant embezzled an amount different than that scored on the guidelines as submitted, the judge should modify the guidelines forms in court and revise the guidelines recommendation accordingly.

Figure 51
Embezzlement Factor on Sections A, B and C on the Larceny Guidelines Worksheet

| | |
|---|----|
| ◆ Amount of Embezzlement - Section A | |
| Amount: Less than \$10,000 | 0 |
| \$10,000 - \$19,999 | 3 |
| \$20,000 - \$74,999 | 6 |
| \$75,000 or more | 9 |
| ◆ Amount of Embezzlement - Section B | |
| Amount: Less than \$15,000 | 0 |
| \$15,000 or more | 3 |
| ◆ Amount of Embezzlement - Section C | |
| Amount: Less than \$28,000 | 0 |
| \$28,000 - \$89,999 | 24 |
| \$90,000 or more | 30 |

Appendices

Appendix 1

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

| Reasons for MITIGATION | Burg. of Dwelling (N=191) | Burg. Other Structure (N=77) | Sch. I/II Drugs (N=714) | Other Drugs (N=79) | Fraud (N=231) | Larceny (N=478) | Misc (N=53) | Traffic (N=136) | Weapon (N=82) |
|--|----------------------------------|-------------------------------------|--------------------------------|---------------------------|----------------------|------------------------|--------------------|------------------------|----------------------|
| Plea agreement | 49 | 21 | 246 | 30 | 90 | 145 | 24 | 39 | 23 |
| No reason given | 40 | 20 | 147 | 16 | 32 | 122 | 7 | 37 | 17 |
| Offender cooperated with authorities | 20 | 13 | 82 | 6 | 12 | 28 | 5 | 4 | 5 |
| Judicial discretion (time served, other sentence to serve, etc.) | 19 | 6 | 64 | 7 | 22 | 28 | 6 | 8 | 0 |
| Offender is sentenced to an alt. punishment to incarceration | 28 | 7 | 46 | 3 | 20 | 39 | 0 | 4 | 1 |
| Minimal circumstances/facts of the case | 12 | 6 | 28 | 1 | 27 | 31 | 7 | 9 | 17 |
| Offender has minimal/no prior record | 10 | 4 | 51 | 7 | 15 | 19 | 3 | 10 | 11 |
| Mitigating court circumstances(plead guilty, weak evid., etc.) | 11 | 2 | 63 | 5 | 10 | 24 | 1 | 5 | 5 |
| Sentence recommended by Commonwealth Attorney | 12 | 4 | 44 | 9 | 14 | 22 | 1 | 4 | 2 |
| Offender health (mental, physical, emotional, etc.) | 6 | 4 | 21 | 3 | 12 | 25 | 3 | 8 | 9 |
| Offender's progress in rehabilitation | 4 | 5 | 27 | 1 | 6 | 21 | 0 | 10 | 3 |
| Offender has good potential for rehabilitation | 7 | 1 | 23 | 4 | 4 | 11 | 2 | 6 | 4 |
| Offender issues (age of offender, homeless, family issues, etc.) | 13 | 3 | 15 | 1 | 6 | 15 | 0 | 4 | 4 |
| Financial obligations (court costs, restitution, support, etc.) | 2 | 0 | 4 | 2 | 16 | 20 | 0 | 5 | 1 |
| Offender needs rehabilitation | 6 | 0 | 8 | 6 | 4 | 12 | 1 | 4 | 2 |
| Offender not the leader | 5 | 1 | 12 | 0 | 1 | 5 | 0 | 0 | 0 |
| Offender's substance abuse issues | 2 | 2 | 8 | 0 | 2 | 3 | 1 | 1 | 0 |
| Victim request | 3 | 0 | 0 | 0 | 7 | 7 | 0 | 0 | 0 |
| Behavior positive since commission of the offense | 1 | 1 | 6 | 1 | 4 | 3 | 0 | 0 | 0 |
| Current offense involves drugs/alcohol (small amount of drugs) | 0 | 0 | 14 | 1 | 0 | 0 | 0 | 0 | 1 |
| Multiple charges/events are being treated as one event | 2 | 0 | 3 | 1 | 6 | 3 | 0 | 0 | 0 |
| Minimal property or monetary loss | 0 | 0 | 1 | 0 | 1 | 9 | 1 | 0 | 0 |
| Jury sentence | 1 | 0 | 4 | 1 | 1 | 3 | 2 | 0 | 0 |
| Victim cannot/will not testify | 1 | 0 | 1 | 0 | 4 | 5 | 1 | 0 | 0 |
| Type of victim (drug dealer, relative, friend, etc.) | 1 | 0 | 1 | 0 | 5 | 2 | 0 | 1 | 0 |
| Judge had an issue scoring one of the guidelines factors | 1 | 0 | 5 | 1 | 0 | 2 | 0 | 0 | 0 |
| Sentencing guidelines recommendation not appropriate | 2 | 0 | 4 | 0 | 2 | 0 | 0 | 0 | 0 |
| Sentencing guidelines incorrect/missing | 0 | 0 | 2 | 0 | 0 | 3 | 0 | 2 | 0 |
| Illegible written reason | 2 | 0 | 1 | 0 | 1 | 1 | 0 | 1 | 0 |
| Judge thought sentence was in compliance | 1 | 0 | 2 | 0 | 0 | 2 | 0 | 0 | 0 |
| Guidelines recommendation is too harsh | 1 | 0 | 1 | 0 | 0 | 2 | 1 | 0 | 0 |
| Concealed weapon, but was not a firearm | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 4 |
| Sentenced to Department of Juvenile Justice | 2 | 0 | 0 | 0 | 0 | 2 | 1 | 0 | 0 |
| Sentence recommended by Probation Officer | 1 | 0 | 1 | 0 | 0 | 2 | 0 | 0 | 0 |
| Judge had an issue scoring one of the risk assessment factors | 0 | 0 | 3 | 0 | 0 | 0 | 0 | 0 | 0 |
| Judge rounded guidelines minimum to nearest whole year | 0 | 0 | 0 | 1 | 0 | 1 | 0 | 0 | 0 |
| Original offense is nonviolent | 0 | 1 | 0 | 0 | 1 | 0 | 0 | 0 | 0 |
| Little or no injury/offender did not intend to harm | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 0 |
| Victim's role in the offense | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 1 |
| Minimal circumstances involved with supervision violation | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 |
| Split trial (guilty plea/bench trial and jury trial combined) | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Probation procedural issue (probation extended, etc.) | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 |
| Victim circumstances (facts of the case, etc.) | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

Note: Figures indicate the number of times a departure reason was cited.

Because multiple reasons may be cited in each case, figures will not total the number of cases in each offense group.

Appendix 1

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

| Reasons for AGGRAVATION | Burg. of Dwelling (N=185) | Burg. Other Structure (N=66) | Sch. I/II Drugs (N=466) | Other Drugs (N=115) | Fraud (N=134) | Larceny (N=389) | Misc (N=67) | Traffic (N=226) | Weapon (N=66) |
|---|---------------------------|------------------------------|-------------------------|---------------------|---------------|-----------------|-------------|-----------------|---------------|
| Plea agreement | 39 | 14 | 95 | 26 | 35 | 92 | 14 | 33 | 37 |
| No reason given | 34 | 12 | 111 | 32 | 22 | 83 | 9 | 47 | 12 |
| Offender has extensive prior record or same type prior | 36 | 10 | 84 | 16 | 18 | 66 | 5 | 76 | 3 |
| Aggravating circumstances/flagrancy of offense | 28 | 13 | 21 | 5 | 8 | 43 | 20 | 17 | 8 |
| Offender has poor rehabilitation potential | 12 | 3 | 21 | 2 | 12 | 17 | 5 | 33 | 3 |
| Offender is sentenced to an alt. punishment to incarceration | 10 | 3 | 25 | 6 | 4 | 26 | 2 | 5 | 0 |
| Number of violations/counts in the event | 6 | 2 | 23 | 6 | 12 | 16 | 2 | 4 | 6 |
| Jury sentence | 10 | 5 | 22 | 4 | 6 | 8 | 3 | 19 | 0 |
| Current offense involves drugs/alcohol (large amount, etc.) | 0 | 0 | 45 | 11 | 0 | 1 | 1 | 16 | 1 |
| Offense involved a high degree of planning/violation of trust | 8 | 0 | 3 | 0 | 11 | 30 | 2 | 1 | 0 |
| Degree of victim injury (physical, emotional, etc.) | 6 | 0 | 6 | 1 | 0 | 10 | 8 | 14 | 1 |
| Extreme property or monetary loss | 5 | 3 | 1 | 0 | 4 | 30 | 1 | 1 | 0 |
| Aggravating court circumstances/proceedings | 0 | 1 | 11 | 5 | 6 | 8 | 1 | 5 | 3 |
| Guidelines recommendation is too low | 6 | 2 | 11 | 2 | 3 | 8 | 3 | 5 | 0 |
| Judicial discretion (time served, shock incarceration, etc.) | 6 | 3 | 10 | 4 | 3 | 13 | 0 | 1 | 0 |
| Offender needs rehabilitation offered by jail/prison | 2 | 1 | 14 | 2 | 2 | 5 | 0 | 7 | 0 |
| Type of victim (child, etc.) | 6 | 3 | 4 | 0 | 7 | 4 | 6 | 2 | 1 |
| Poor conduct since commission of offense | 1 | 1 | 13 | 2 | 5 | 6 | 0 | 4 | 0 |
| Offender failed alternative sanction program | 0 | 0 | 19 | 2 | 2 | 1 | 0 | 0 | 0 |
| Offender's substance abuse issues | 2 | 0 | 11 | 0 | 1 | 3 | 0 | 5 | 0 |
| True offense behavior was more serious than offenses at conv. | 0 | 0 | 7 | 2 | 0 | 8 | 0 | 0 | 2 |
| Aggravating facts involving the breaking and entering | 15 | 1 | 0 | 0 | 0 | 2 | 0 | 0 | 0 |
| Current offense involves accident/reckless driving | 0 | 0 | 1 | 0 | 0 | 2 | 0 | 13 | 0 |
| Offender used a weapon in commission of the offense | 5 | 2 | 3 | 1 | 0 | 2 | 0 | 0 | 3 |
| Failed to follow instructions while on probation | 1 | 1 | 5 | 0 | 2 | 1 | 1 | 3 | 0 |
| Financial obligations (court costs, restitution, support, etc.) | 0 | 0 | 2 | 0 | 3 | 8 | 0 | 1 | 0 |
| Offender failed to cooperate with authorities | 2 | 0 | 2 | 0 | 0 | 4 | 2 | 1 | 0 |
| New offenses were committed while on probation | 1 | 0 | 2 | 4 | 1 | 0 | 0 | 2 | 0 |
| Sentencing guidelines recommendation not appropriate | 0 | 0 | 2 | 0 | 1 | 2 | 3 | 2 | 0 |
| Victim circumstances (facts of the case, etc.) | 5 | 0 | 0 | 0 | 0 | 3 | 0 | 1 | 0 |
| Prior record not adequately weighed by guidelines | 1 | 0 | 1 | 0 | 0 | 4 | 1 | 1 | 0 |
| Degree of violence toward victim | 3 | 1 | 1 | 0 | 0 | 2 | 0 | 1 | 0 |
| Absconded from probation supervision | 1 | 0 | 3 | 0 | 2 | 1 | 0 | 0 | 0 |
| Judge thought sentence was in compliance | 2 | 1 | 2 | 0 | 1 | 1 | 0 | 0 | 0 |
| Violent/disruptive behavior in custody | 2 | 0 | 1 | 0 | 1 | 0 | 2 | 0 | 0 |
| Used, etc., drugs/alcohol while on probation | 0 | 0 | 5 | 0 | 0 | 1 | 0 | 0 | 0 |
| Child present at time of offense | 1 | 0 | 0 | 3 | 0 | 1 | 1 | 0 | 0 |
| Offender issues (age of offender, lacks family support, etc.) | 3 | 0 | 1 | 0 | 0 | 2 | 0 | 0 | 0 |
| Sentence recommended by Commonwealth Attorney | 0 | 0 | 3 | 0 | 0 | 0 | 1 | 0 | 0 |
| Mandatory minimum involved in event | 2 | 0 | 0 | 0 | 0 | 1 | 0 | 1 | 0 |
| Judge rounded guidelines minimum to nearest whole year | 1 | 0 | 1 | 0 | 1 | 1 | 0 | 0 | 0 |
| Offender was the leader | 1 | 0 | 0 | 0 | 1 | 2 | 0 | 0 | 0 |
| Offender violated protective order or was stalking | 3 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 |
| Gang-related offense | 0 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 |
| Sentence recommended by Probation Officer | 0 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 0 |
| Sentencing guidelines incorrect/missing | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 1 | 0 |
| 2nd/subsequent revocation of defendant's probation | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 0 |

Note: Figures indicate the number of times a departure reason was cited.

Because multiple reasons may be cited in each case, figures will not total the number of cases in each offense group.

Appendix 2

Judicial Reasons for Departure from Sentencing Guidelines Offenses Against the Person

| Reasons for MITIGATION | Assault (N=252) | Homicide (N=41) | Kidnapping (N=25) | Robbery (N=225) | Rape (N=50) | Sexual Assault (N=68) |
|--|----------------------------|----------------------------|------------------------------|----------------------------|------------------------|----------------------------------|
| Plea agreement | 86 | 7 | 12 | 45 | 17 | 31 |
| No reason given | 54 | 6 | 3 | 38 | 4 | 5 |
| Judicial discretion (time served, other sentence to serve, etc.) | 16 | 3 | 2 | 32 | 3 | 6 |
| Mitigating court circumstances/proceedings | 24 | 9 | 1 | 11 | 5 | 10 |
| Minimal circumstances/facts of the case | 20 | 4 | 2 | 9 | 10 | 9 |
| Offender cooperated with authorities | 2 | 1 | 2 | 40 | 0 | 5 |
| Offender has minimal/no prior record | 15 | 0 | 0 | 18 | 4 | 5 |
| Sentenced to Department of Juvenile Justice | 11 | 0 | 0 | 26 | 2 | 2 |
| Victim request | 18 | 0 | 8 | 2 | 2 | 10 |
| Sentence recommended by Commonwealth Attorney | 10 | 2 | 0 | 21 | 0 | 4 |
| Offender health (mental, physical, emotional, etc.) | 13 | 2 | 0 | 8 | 4 | 3 |
| Offender has good potential for rehabilitation | 10 | 0 | 1 | 14 | 3 | 2 |
| Offender issues (age of offender, homeless, family issues, etc.) | 9 | 2 | 0 | 11 | 3 | 4 |
| Offender not the leader | 5 | 1 | 0 | 21 | 0 | 0 |
| Jury sentence | 3 | 11 | 1 | 2 | 5 | 1 |
| Victim cannot/will not testify | 6 | 0 | 2 | 4 | 2 | 2 |
| Victim's role in the offense | 9 | 2 | 1 | 1 | 0 | 1 |
| Little or no injury/offender did not intend to harm | 9 | 0 | 1 | 1 | 2 | 0 |
| Type of victim (drug dealer, relative, friend, etc.) | 5 | 0 | 1 | 2 | 3 | 2 |
| Offender is sentenced to an alt. punishment to incarceration | 4 | 0 | 0 | 6 | 0 | 0 |
| Offender's progress in rehabilitation | 3 | 0 | 0 | 5 | 0 | 1 |
| Multiple charges/sequence of events are being treated as one | 0 | 0 | 0 | 6 | 0 | 1 |
| Current offense involves drugs/alcohol (small amount of drugs) | 5 | 0 | 0 | 2 | 0 | 0 |
| Judge had an issue scoring one of the risk assessment factors | 0 | 0 | 0 | 0 | 2 | 4 |
| Offender needs rehabilitation | 1 | 0 | 0 | 5 | 0 | 0 |
| Behavior positive since commission of the offense | 4 | 0 | 0 | 1 | 0 | 0 |
| Judge had an issue scoring one of the guidelines factors | 0 | 0 | 0 | 3 | 1 | 0 |
| Guidelines recommendation is too harsh | 2 | 0 | 0 | 0 | 1 | 0 |
| Victim circumstances (facts of the case, etc.) | 2 | 0 | 0 | 0 | 1 | 0 |
| Illegible written reason | 2 | 0 | 0 | 0 | 0 | 0 |
| Split trial/sentence (combination jury and bench trial) | 0 | 0 | 0 | 2 | 0 | 0 |
| Financial obligations (court costs, restitution, support, etc.) | 2 | 0 | 0 | 0 | 0 | 0 |
| Sentencing guidelines recommendation not appropriate | 1 | 0 | 0 | 1 | 0 | 0 |
| Concealed weapon was not a firearm | 0 | 0 | 0 | 2 | 0 | 0 |
| Minimal property or monetary loss | 0 | 0 | 0 | 1 | 0 | 0 |
| Sentence recommended by Probation Officer | 0 | 0 | 0 | 1 | 0 | 0 |
| Offender's substance abuse issues | 1 | 0 | 0 | 0 | 0 | 0 |
| Sentencing guidelines incorrect/missing | 0 | 0 | 0 | 0 | 0 | 1 |
| Judge thought sentence was in compliance | 0 | 0 | 0 | 1 | 0 | 0 |
| Mitigating circumstances of sex offense | 0 | 0 | 0 | 0 | 1 | 0 |

Note: Figures indicate the number of times a departure reason was cited.

Because multiple reasons may be cited in each case, figures will not total the number of cases in each offense group.

Appendix 2

Judicial Reasons for Departure from Sentencing Guidelines Offenses Against the Person

| Reasons for AGGRAVATION | Assault (N=172) | Homicide (N=49) | Kidnapping (N=25) | Robbery (N=119) | Rape (N=21) | Sexual Assault (N=97) |
|--|----------------------------|----------------------------|------------------------------|----------------------------|------------------------|----------------------------------|
| Aggravating circumstances/flagrancy of offense | 27 | 11 | 9 | 19 | 4 | 19 |
| No reason given | 32 | 10 | 8 | 20 | 3 | 15 |
| Plea agreement | 33 | 8 | 4 | 8 | 0 | 20 |
| Jury sentence | 19 | 10 | 5 | 21 | 4 | 8 |
| Offender has extensive prior record or same type of prior | 15 | 4 | 5 | 25 | 1 | 4 |
| Offender has poor rehabilitation potential | 14 | 5 | 1 | 17 | 4 | 8 |
| Degree of victim injury (physical, emotional, etc.) | 29 | 4 | 1 | 8 | 0 | 3 |
| Degree of violence toward victim | 25 | 4 | 1 | 11 | 1 | 0 |
| Type of victim (child, etc.) | 5 | 1 | 5 | 6 | 9 | 14 |
| Number of violations/counts in the event | 12 | 2 | 2 | 5 | 1 | 5 |
| Guidelines recommendation is too low | 3 | 4 | 1 | 6 | 1 | 6 |
| Sentencing guidelines recommendation not appropriate | 8 | 0 | 1 | 4 | 0 | 0 |
| Offense involved a high degree of planning/violation of trust | 2 | 0 | 0 | 6 | 1 | 3 |
| Offender used a weapon in commission of the offense | 3 | 3 | 0 | 4 | 0 | 0 |
| True offense behavior was more serious than offenses at conv. | 6 | 0 | 1 | 0 | 0 | 1 |
| Judicial discretion (time served, shock incarceration, etc.) | 4 | 0 | 0 | 2 | 0 | 1 |
| Gang-related offense | 1 | 1 | 0 | 4 | 0 | 0 |
| Mandatory minimum involved in event | 2 | 0 | 1 | 1 | 0 | 2 |
| Facts of sex offense involved | 0 | 0 | 1 | 0 | 0 | 5 |
| Victim circumstances (facts of the case, etc.) | 2 | 0 | 0 | 1 | 2 | 1 |
| Victim request | 1 | 0 | 1 | 1 | 0 | 2 |
| Aggravating court circumstances/proceedings | 2 | 0 | 0 | 1 | 0 | 1 |
| Current offense involves drugs/alcohol (large amount of drugs) | 0 | 3 | 0 | 1 | 0 | 0 |
| Offender was the leader | 1 | 0 | 0 | 1 | 0 | 2 |
| Seriousness of offense | 0 | 0 | 0 | 4 | 0 | 0 |
| Current offense involves accident/reckless driving | 0 | 2 | 1 | 0 | 0 | 0 |
| Offender issues (age of offender, lacks family support, etc.) | 2 | 0 | 0 | 0 | 0 | 1 |
| Offender needs rehabilitation offered by jail/prison | 0 | 0 | 0 | 2 | 0 | 1 |
| Offender failed to cooperate with authorities | 0 | 1 | 0 | 0 | 0 | 1 |
| Prior record not adequately weighed by guidelines | 0 | 0 | 0 | 2 | 0 | 0 |
| Offender violated protective order or was stalking | 1 | 0 | 1 | 0 | 0 | 0 |
| Illegible written reason | 0 | 0 | 0 | 0 | 0 | 1 |
| Offender is sentenced to an alt. punishment to incarceration | 1 | 0 | 0 | 0 | 0 | 0 |
| Absconded from probation supervision | 0 | 0 | 0 | 0 | 0 | 1 |
| Extreme property or monetary loss | 0 | 0 | 0 | 1 | 0 | 0 |
| Offender's substance abuse issues | 0 | 0 | 1 | 0 | 0 | 0 |
| Sentencing guidelines incorrect/missing | 0 | 0 | 0 | 0 | 0 | 1 |
| Judge had an issue scoring one of the risk assessment factors | 0 | 0 | 0 | 0 | 0 | 1 |
| Judge rounded guidelines minimum to nearest whole year | 0 | 0 | 0 | 0 | 0 | 1 |
| Sentencing guidelines recommendation issue | 0 | 0 | 0 | 1 | 0 | 0 |

Note: Figures indicate the number of times a departure reason was cited.

Because multiple reasons may be cited in each case, figures will not total the number of cases in each offense group.

Appendix 3

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

BURGLARY OF DWELLING

| Circuit | Compliance | Mitigation | Aggravation | # of Cases |
|---------|------------|------------|-------------|------------|
| 1 | 52.9% | 17.6% | 29.4% | 34 |
| 2 | 67.5 | 20.8 | 11.7 | 77 |
| 3 | 78.8 | 3.0 | 18.2 | 33 |
| 4 | 54.3 | 15.2 | 30.4 | 46 |
| 5 | 61.8 | 14.7 | 23.5 | 34 |
| 6 | 59.3 | 18.5 | 22.2 | 27 |
| 7 | 69.7 | 12.1 | 18.2 | 33 |
| 8 | 69.6 | 17.4 | 13.0 | 23 |
| 9 | 48.0 | 36.0 | 16.0 | 25 |
| 10 | 69.7 | 21.2 | 9.1 | 33 |
| 11 | 87.0 | 13.0 | 0.0 | 23 |
| 12 | 50.0 | 14.3 | 35.7 | 42 |
| 13 | 61.9 | 33.3 | 4.8 | 21 |
| 14 | 61.8 | 11.8 | 26.5 | 34 |
| 15 | 55.6 | 13.9 | 30.6 | 72 |
| 16 | 58.1 | 29.0 | 12.9 | 31 |
| 17 | 66.7 | 0.0 | 33.3 | 6 |
| 18 | 62.5 | 0.0 | 37.5 | 8 |
| 19 | 58.2 | 18.2 | 23.6 | 55 |
| 20 | 100 | 0.0 | 0.0 | 11 |
| 21 | 81.0 | 19.0 | 0.0 | 21 |
| 22 | 54.8 | 21.4 | 23.8 | 42 |
| 23 | 65.9 | 19.5 | 14.6 | 41 |
| 24 | 64.2 | 32.1 | 3.8 | 53 |
| 25 | 82.9 | 12.2 | 4.9 | 41 |
| 26 | 62.5 | 20.8 | 16.7 | 48 |
| 27 | 82.0 | 9.8 | 8.2 | 61 |
| 28 | 74.3 | 14.3 | 11.4 | 35 |
| 29 | 57.6 | 15.2 | 27.3 | 33 |
| 30 | 82.6 | 17.4 | 0.0 | 23 |
| 31 | 81.8 | 15.2 | 3.0 | 33 |
| Total | 65.8 | 17.4 | 16.8 | 1100 |

BURGLARY/OTHER

| Circuit | Compliance | Mitigation | Aggravation | # of Cases |
|---------|------------|------------|-------------|------------|
| 1 | 77.3% | 13.6% | 9.1% | 22 |
| 2 | 86.4 | 9.1 | 4.5 | 22 |
| 3 | 100.0 | 0.0 | 0.0 | 9 |
| 4 | 70.0 | 25.0 | 5.0 | 20 |
| 5 | 81.8 | 18.2 | 0.0 | 11 |
| 6 | 85.7 | 0.0 | 14.3 | 14 |
| 7 | 75.0 | 8.3 | 16.7 | 12 |
| 8 | 50.0 | 33.3 | 16.7 | 6 |
| 9 | 66.7 | 22.2 | 11.1 | 9 |
| 10 | 58.8 | 38.2 | 2.9 | 34 |
| 11 | 83.3 | 16.7 | 0.0 | 6 |
| 12 | 83.3 | 8.3 | 8.3 | 24 |
| 13 | 87.5 | 6.3 | 6.3 | 16 |
| 14 | 90.5 | 0.0 | 9.5 | 21 |
| 15 | 71.0 | 9.7 | 19.4 | 31 |
| 16 | 66.7 | 33.3 | 0.0 | 15 |
| 17 | 83.3 | 0.0 | 16.7 | 12 |
| 18 | 55.6 | 33.3 | 11.1 | 9 |
| 19 | 45.5 | 18.2 | 36.4 | 11 |
| 20 | 92.3 | 0.0 | 7.7 | 13 |
| 21 | 84.6 | 0.0 | 15.4 | 13 |
| 22 | 55.3 | 18.4 | 26.3 | 38 |
| 23 | 73.9 | 8.7 | 17.4 | 23 |
| 24 | 81.5 | 11.1 | 7.4 | 27 |
| 25 | 69.8 | 16.3 | 14.0 | 43 |
| 26 | 78.3 | 17.4 | 4.3 | 23 |
| 27 | 83.3 | 13.3 | 3.3 | 30 |
| 28 | 78.6 | 7.1 | 14.3 | 14 |
| 29 | 56.3 | 6.3 | 37.5 | 16 |
| 30 | 66.7 | 11.1 | 22.2 | 9 |
| 31 | 100.0 | 0.0 | 0.0 | 5 |
| Total | 74.4 | 13.8 | 11.8 | 559 |

DRUG/OTHER

| Circuit | Compliance | Mitigation | Aggravation | # of Cases |
|---------|------------|------------|-------------|------------|
| 1 | 86.8% | 0% | 13.2% | 38 |
| 2 | 93.3 | 3.3 | 3.3 | 60 |
| 3 | 73.5 | 11.8 | 14.7 | 34 |
| 4 | 84.4 | 6.3 | 9.4 | 32 |
| 5 | 90.9 | 0.0 | 9.1 | 22 |
| 6 | 83.3 | 0.0 | 16.7 | 24 |
| 7 | 79.3 | 6.9 | 13.8 | 29 |
| 8 | 87.0 | 8.7 | 4.3 | 23 |
| 9 | 70.8 | 8.3 | 20.8 | 24 |
| 10 | 85.2 | 3.7 | 11.1 | 27 |
| 11 | 93.3 | 6.7 | 0.0 | 15 |
| 12 | 84.0 | 4.0 | 12.0 | 50 |
| 13 | 83.3 | 4.8 | 11.9 | 42 |
| 14 | 74.5 | 14.9 | 10.6 | 47 |
| 15 | 76.6 | 4.7 | 18.8 | 64 |
| 16 | 81.8 | 9.1 | 9.1 | 33 |
| 17 | 87.0 | 4.3 | 8.7 | 23 |
| 18 | 92.3 | 7.7 | 0.0 | 13 |
| 19 | 88.9 | 8.9 | 2.2 | 90 |
| 20 | 91.9 | 2.7 | 5.4 | 37 |
| 21 | 83.3 | 8.3 | 8.3 | 12 |
| 22 | 72.2 | 11.1 | 16.7 | 18 |
| 23 | 76.6 | 6.3 | 17.2 | 64 |
| 24 | 79.2 | 13.2 | 7.5 | 53 |
| 25 | 77.4 | 17.0 | 5.7 | 53 |
| 26 | 93.1 | 2.8 | 4.2 | 72 |
| 27 | 93.7 | 1.6 | 4.8 | 63 |
| 28 | 91.9 | 5.4 | 2.7 | 37 |
| 29 | 80.0 | 0.0 | 20.0 | 30 |
| 30 | 58.3 | 12.5 | 29.2 | 24 |
| 31 | 82.9 | 11.4 | 5.7 | 35 |
| Total | 83.7 | 6.6 | 9.7 | 1188 |

Appendix 3 Sentencing Guidelines Compliance by Judicial Circuit: Property, Drug, and Miscellaneous Offenses

SCHEDULE VI/DRUGS

| Circuit | Compliance | Mitigation | Aggravation | # of Cases |
|---------|------------|------------|-------------|------------|
| 1 | 81.9% | 7.0% | 11.0% | 227 |
| 2 | 83.3 | 10.8 | 5.9 | 288 |
| 3 | 73.5 | 14.2 | 12.4 | 226 |
| 4 | 78.6 | 17.9 | 3.4 | 290 |
| 5 | 85.0 | 3.5 | 11.5 | 113 |
| 6 | 84.7 | 7.3 | 8.0 | 137 |
| 7 | 91.2 | 4.2 | 4.6 | 260 |
| 8 | 85.2 | 12.1 | 2.7 | 149 |
| 9 | 85.7 | 8.4 | 5.9 | 119 |
| 10 | 72.9 | 22.9 | 4.2 | 144 |
| 11 | 80.6 | 9.0 | 10.4 | 67 |
| 12 | 78.5 | 7.3 | 14.1 | 205 |
| 13 | 74.5 | 19.8 | 5.7 | 627 |
| 14 | 80.9 | 9.1 | 10.0 | 241 |
| 15 | 77.0 | 11.0 | 11.9 | 335 |
| 16 | 72.8 | 18.9 | 8.3 | 169 |
| 17 | 75.5 | 8.5 | 16.0 | 94 |
| 18 | 85.5 | 11.6 | 2.9 | 69 |
| 19 | 88.3 | 8.6 | 3.1 | 290 |
| 20 | 88.6 | 3.6 | 7.8 | 166 |
| 21 | 73.7 | 19.7 | 6.6 | 76 |
| 22 | 77.1 | 5.7 | 17.2 | 157 |
| 23 | 79.9 | 14.8 | 5.3 | 209 |
| 24 | 76.3 | 15.4 | 8.2 | 279 |
| 25 | 78.9 | 15.8 | 5.3 | 228 |
| 26 | 82.9 | 10.9 | 6.2 | 322 |
| 27 | 93.1 | 5.8 | 1.1 | 361 |
| 28 | 93.2 | 3.1 | 3.6 | 192 |
| 29 | 83.9 | 0.7 | 15.3 | 137 |
| 30 | 80.2 | 9.9 | 9.9 | 81 |
| 31 | 91.8 | 5.3 | 2.9 | 208 |
| Total | 81.7 | 11.1 | 7.2 | 6470 |

FRAUD

| Circuit | Compliance | Mitigation | Aggravation | # of Cases |
|---------|------------|------------|-------------|------------|
| 1 | 89.2% | 4.9% | 5.9% | 102 |
| 2 | 83.8 | 9.0 | 7.2 | 111 |
| 3 | 85.0 | 5.0 | 10.0 | 40 |
| 4 | 85.4 | 11.7 | 2.9 | 103 |
| 5 | 90.8 | 9.2 | 0.0 | 65 |
| 6 | 89.1 | 8.7 | 2.2 | 46 |
| 7 | 89.4 | 6.4 | 4.3 | 47 |
| 8 | 88.6 | 11.4 | 0.0 | 35 |
| 9 | 80.4 | 3.9 | 15.7 | 51 |
| 10 | 86.4 | 8.5 | 5.1 | 59 |
| 11 | 94.7 | 2.6 | 2.6 | 38 |
| 12 | 83.5 | 5.5 | 11.0 | 127 |
| 13 | 76.1 | 23.9 | 0.0 | 46 |
| 14 | 84.6 | 9.2 | 6.2 | 130 |
| 15 | 80.7 | 7.9 | 11.4 | 228 |
| 16 | 78.8 | 12.1 | 9.1 | 99 |
| 17 | 84.8 | 7.6 | 7.6 | 66 |
| 18 | 89.1 | 6.5 | 4.3 | 46 |
| 19 | 86.5 | 8.8 | 4.7 | 170 |
| 20 | 94.5 | 3.3 | 2.2 | 91 |
| 21 | 86.1 | 13.9 | 0.0 | 36 |
| 22 | 84.5 | 6.9 | 8.6 | 58 |
| 23 | 78.9 | 17.4 | 3.7 | 109 |
| 24 | 82.3 | 17.7 | 0.0 | 96 |
| 25 | 86.7 | 10.6 | 2.7 | 113 |
| 26 | 88.3 | 9.9 | 1.8 | 111 |
| 27 | 95.8 | 2.8 | 1.4 | 142 |
| 28 | 93.1 | 6.9 | 0.0 | 58 |
| 29 | 85.9 | 6.5 | 7.6 | 92 |
| 30 | 89.3 | 8.9 | 1.8 | 56 |
| 31 | 94.5 | 5.5 | 0.0 | 73 |
| Total | 86.2 | 8.7 | 5.1 | 2645 |

LARCENY

| Circuit | Compliance | Mitigation | Aggravation | # of Cases |
|---------|------------|------------|-------------|------------|
| 1 | 83.4% | 6.6% | 10% | 241 |
| 2 | 84.5 | 11.8 | 3.7 | 245 |
| 3 | 75.3 | 13.6 | 11.1 | 81 |
| 4 | 84.9 | 12.5 | 2.6 | 271 |
| 5 | 81.7 | 7.9 | 10.3 | 126 |
| 6 | 89.5 | 0.0 | 10.5 | 57 |
| 7 | 77.2 | 15.2 | 7.6 | 79 |
| 8 | 84.9 | 11.6 | 3.5 | 86 |
| 9 | 73.6 | 8.6 | 17.9 | 140 |
| 10 | 86.3 | 6.9 | 6.9 | 102 |
| 11 | 84.5 | 1.7 | 13.8 | 58 |
| 12 | 78.5 | 6.7 | 14.8 | 297 |
| 13 | 83.0 | 13.1 | 3.9 | 153 |
| 14 | 86.3 | 9.0 | 4.7 | 344 |
| 15 | 79.4 | 9.9 | 10.8 | 344 |
| 16 | 80.8 | 11.2 | 8.0 | 125 |
| 17 | 87.0 | 4.0 | 9.0 | 177 |
| 18 | 82.3 | 9.7 | 8.1 | 62 |
| 19 | 84.1 | 10.3 | 5.6 | 340 |
| 20 | 91.3 | 4.9 | 3.9 | 103 |
| 21 | 81.5 | 16.0 | 2.5 | 81 |
| 22 | 77.6 | 7.7 | 14.7 | 156 |
| 23 | 83.0 | 12.5 | 4.5 | 264 |
| 24 | 87.4 | 10.6 | 2.0 | 151 |
| 25 | 78.8 | 11.5 | 9.7 | 165 |
| 26 | 83.2 | 11.0 | 5.9 | 273 |
| 27 | 92.4 | 4.7 | 3.0 | 236 |
| 28 | 93.5 | 4.6 | 1.9 | 108 |
| 29 | 82.8 | 5.0 | 12.2 | 180 |
| 30 | 87.5 | 5.0 | 7.5 | 80 |
| 31 | 89.8 | 6.6 | 3.6 | 166 |
| Total | 83.6 | 9.0 | 7.3 | 5295 |

Appendix 3

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

| TRAFFIC | | | | |
|---------|------------|------------|-------------|------------|
| Circuit | Compliance | Mitigation | Aggravation | # of Cases |
| 1 | 76.2% | 7.6% | 16.2% | 105 |
| 2 | 85.3 | 6.9 | 7.8 | 116 |
| 3 | 67.9 | 17.9 | 14.3 | 28 |
| 4 | 81.6 | 15.3 | 3.1 | 98 |
| 5 | 84.2 | 5.3 | 10.5 | 57 |
| 6 | 83.3 | 7.1 | 9.5 | 42 |
| 7 | 76.5 | 3.9 | 19.6 | 51 |
| 8 | 77.3 | 9.1 | 13.6 | 22 |
| 9 | 84.0 | 0.0 | 16.0 | 81 |
| 10 | 83.3 | 13.0 | 3.7 | 54 |
| 11 | 78.8 | 3.0 | 18.2 | 33 |
| 12 | 83.2 | 10.9 | 5.9 | 101 |
| 13 | 85.7 | 5.7 | 8.6 | 35 |
| 14 | 88.0 | 0.0 | 12.0 | 50 |
| 15 | 82.4 | 5.4 | 12.2 | 148 |
| 16 | 75.0 | 6.3 | 18.8 | 96 |
| 17 | 69.0 | 6.9 | 24.1 | 29 |
| 18 | 83.3 | 0.0 | 16.7 | 12 |
| 19 | 70.3 | 8.9 | 20.8 | 101 |
| 20 | 78.7 | 1.3 | 20.0 | 75 |
| 21 | 79.3 | 13.8 | 6.9 | 29 |
| 22 | 83.7 | 2.0 | 14.3 | 49 |
| 23 | 79.4 | 10.3 | 10.3 | 68 |
| 24 | 85.0 | 8.8 | 6.3 | 80 |
| 25 | 80.0 | 7.7 | 12.3 | 65 |
| 26 | 88.1 | 4.6 | 7.3 | 109 |
| 27 | 87.3 | 9.9 | 2.8 | 71 |
| 28 | 91.2 | 1.8 | 7.0 | 57 |
| 29 | 76.9 | 7.7 | 15.4 | 39 |
| 30 | 81.3 | 12.5 | 6.3 | 16 |
| 31 | 95.7 | 1.4 | 2.9 | 70 |
| Total | 81.8 | 6.8 | 11.4 | 1989 |

| MISCELLANEOUS | | | | |
|---------------|------------|------------|-------------|------------|
| Circuit | Compliance | Mitigation | Aggravation | # of Cases |
| 1 | 66.7% | 11.1% | 22% | 9 |
| 2 | 76.2 | 9.5 | 14.3 | 21 |
| 3 | 100.0 | 0.0 | 0.0 | 4 |
| 4 | 70.0 | 20.0 | 10.0 | 20 |
| 5 | 77.8 | 0.0 | 22.2 | 9 |
| 6 | 47.4 | 36.8 | 15.8 | 19 |
| 7 | 61.5 | 7.7 | 30.8 | 13 |
| 8 | 90.0 | 10.0 | 0.0 | 10 |
| 9 | 100.0 | 0.0 | 0.0 | 13 |
| 10 | 66.7 | 11.1 | 22.2 | 9 |
| 11 | 72.7 | 18.2 | 9.1 | 11 |
| 12 | 75.0 | 15.0 | 10.0 | 20 |
| 13 | 18.2 | 45.5 | 36.4 | 11 |
| 14 | 66.7 | 8.3 | 25.0 | 12 |
| 15 | 73.2 | 9.8 | 17.1 | 41 |
| 16 | 81.3 | 6.3 | 12.5 | 16 |
| 17 | 0.0 | 100.0 | 0.0 | 1 |
| 18 | 100.0 | 0.0 | 0.0 | 1 |
| 19 | 72.2 | 11.1 | 16.7 | 18 |
| 20 | 88.9 | 0.0 | 11.1 | 9 |
| 21 | 50.0 | 25.0 | 25.0 | 4 |
| 22 | 70.8 | 4.2 | 25.0 | 24 |
| 23 | 90.9 | 0.0 | 9.1 | 11 |
| 24 | 65.0 | 35.0 | 0.0 | 20 |
| 25 | 74.1 | 11.1 | 14.8 | 27 |
| 26 | 91.2 | 2.9 | 5.9 | 34 |
| 27 | 94.6 | 2.7 | 2.7 | 37 |
| 28 | 78.9 | 0.0 | 21.1 | 19 |
| 29 | 71.4 | 9.5 | 19.0 | 21 |
| 30 | 75.0 | 0.0 | 25.0 | 8 |
| 31 | 80.0 | 10.0 | 10.0 | 10 |
| Total | 75.1 | 11.0 | 13.9 | 482 |

| WEAPONS | | | | |
|---------|------------|------------|-------------|------------|
| Circuit | Compliance | Mitigation | Aggravation | # of Cases |
| 1 | 78.3% | 13.0% | 8.7% | 23 |
| 2 | 75.9 | 20.7 | 3.4 | 29 |
| 3 | 80.0 | 10.0 | 10.0 | 20 |
| 4 | 87.2 | 10.6 | 2.1 | 47 |
| 5 | 72.0 | 16.0 | 12.0 | 25 |
| 6 | 100.0 | 0.0 | 0.0 | 12 |
| 7 | 76.0 | 8.0 | 16.0 | 25 |
| 8 | 87.5 | 12.5 | 0.0 | 8 |
| 9 | 66.7 | 16.7 | 16.7 | 6 |
| 10 | 88.9 | 7.4 | 3.7 | 27 |
| 11 | 57.1 | 14.3 | 28.6 | 7 |
| 12 | 76.5 | 17.6 | 5.9 | 17 |
| 13 | 62.8 | 11.6 | 25.6 | 43 |
| 14 | 81.0 | 0.0 | 19.0 | 21 |
| 15 | 80.6 | 11.1 | 8.3 | 36 |
| 16 | 63.6 | 13.6 | 22.7 | 22 |
| 17 | 0.0 | 0.0 | 100.0 | 2 |
| 18 | 100.0 | 0.0 | 0.0 | 1 |
| 19 | 85.7 | 14.3 | 0.0 | 7 |
| 20 | 77.8 | 22.2 | 0.0 | 9 |
| 21 | 64.7 | 17.6 | 17.6 | 17 |
| 22 | 50.0 | 30.0 | 20.0 | 20 |
| 23 | 70.0 | 15.0 | 15.0 | 20 |
| 24 | 60.0 | 28.6 | 11.4 | 35 |
| 25 | 89.5 | 10.5 | 0.0 | 19 |
| 26 | 76.7 | 20.0 | 3.3 | 30 |
| 27 | 82.2 | 6.7 | 11.1 | 45 |
| 28 | 83.3 | 11.1 | 5.6 | 18 |
| 29 | 78.6 | 7.1 | 14.3 | 14 |
| 30 | 90.0 | 10.0 | 0.0 | 10 |
| 31 | 100.0 | 0.0 | 0.0 | 4 |
| Total | 76.1 | 13.2 | 10.6 | 620 |

Appendix 4 Sentencing Guidelines Compliance by Judicial Circuit: Offenses Against the Person

| ASSAULT | | | | |
|---------|------------|------------|-------------|------------|
| Circuit | Compliance | Mitigation | Aggravation | # of Cases |
| 1 | 71% | 17.7% | 11.3% | 62 |
| 2 | 77.0 | 11.5 | 11.5 | 61 |
| 3 | 76.7 | 14.0 | 9.3 | 43 |
| 4 | 73.2 | 18.6 | 8.2 | 97 |
| 5 | 67.9 | 12.5 | 19.6 | 56 |
| 6 | 71.4 | 16.7 | 11.9 | 42 |
| 7 | 76.3 | 13.6 | 10.2 | 59 |
| 8 | 71.4 | 14.3 | 14.3 | 35 |
| 9 | 71.1 | 17.8 | 11.1 | 45 |
| 10 | 67.4 | 28.3 | 4.3 | 46 |
| 11 | 81.3 | 15.6 | 3.1 | 32 |
| 12 | 72.0 | 16.0 | 12.0 | 50 |
| 13 | 70.7 | 12.1 | 17.2 | 58 |
| 14 | 86.0 | 6.0 | 8.0 | 50 |
| 15 | 67.0 | 12.0 | 21.0 | 100 |
| 16 | 70.0 | 11.7 | 18.3 | 60 |
| 17 | 72.7 | 18.2 | 9.1 | 11 |
| 18 | 69.2 | 23.1 | 7.7 | 13 |
| 19 | 67.7 | 19.4 | 12.9 | 93 |
| 20 | 68.8 | 12.5 | 18.8 | 16 |
| 21 | 73.3 | 20.0 | 6.7 | 15 |
| 22 | 79.5 | 5.1 | 15.4 | 39 |
| 23 | 62.3 | 27.5 | 10.1 | 69 |
| 24 | 61.1 | 26.4 | 12.5 | 72 |
| 25 | 55.9 | 41.2 | 2.9 | 34 |
| 26 | 76.4 | 19.4 | 4.2 | 72 |
| 27 | 78.9 | 14.1 | 7.0 | 71 |
| 28 | 88.2 | 5.9 | 5.9 | 17 |
| 29 | 65.5 | 17.2 | 17.2 | 29 |
| 30 | 46.2 | 53.8 | 0.0 | 13 |
| 31 | 86.7 | 3.3 | 10.0 | 30 |
| Total | 71.6 | 16.9 | 11.5 | 1493 |

| KIDNAPPING | | | | |
|------------|------------|------------|-------------|------------|
| Circuit | Compliance | Mitigation | Aggravation | # of Cases |
| 1 | 62.5% | 25% | 12.5% | 8 |
| 2 | 50.0 | 50.0 | 0.0 | 6 |
| 3 | 0.0 | 100.0 | 0.0 | 1 |
| 4 | 33.3 | 33.3 | 33.3 | 3 |
| 5 | 100.0 | 0.0 | 0.0 | 1 |
| 6 | 0.0 | 0.0 | 0.0 | 0 |
| 7 | 50.0 | 16.7 | 33.3 | 6 |
| 8 | 100.0 | 0.0 | 0.0 | 2 |
| 9 | 100.0 | 0.0 | 0.0 | 3 |
| 10 | 40.0 | 20.0 | 40.0 | 5 |
| 11 | 100.0 | 0.0 | 0.0 | 1 |
| 12 | 80.0 | 20.0 | 0.0 | 5 |
| 13 | 50.0 | 12.5 | 37.5 | 8 |
| 14 | 44.4 | 33.3 | 22.2 | 9 |
| 15 | 53.8 | 7.7 | 38.5 | 13 |
| 16 | 0.0 | 33.3 | 66.7 | 3 |
| 17 | 60.0 | 0.0 | 40.0 | 5 |
| 18 | 0.0 | 0.0 | 0.0 | 0 |
| 19 | 41.7 | 8.3 | 50.0 | 12 |
| 20 | 33.3 | 33.3 | 33.3 | 3 |
| 21 | 100.0 | 0.0 | 0.0 | 3 |
| 22 | 0.0 | 0.0 | 100.0 | 2 |
| 23 | 57.1 | 28.6 | 14.3 | 7 |
| 24 | 57.1 | 14.3 | 28.6 | 7 |
| 25 | 100.0 | 0.0 | 0.0 | 5 |
| 26 | 57.1 | 42.9 | 0.0 | 7 |
| 27 | 33.3 | 33.3 | 33.3 | 3 |
| 28 | 0.0 | 0.0 | 0.0 | 0 |
| 29 | 100.0 | 0.0 | 0.0 | 4 |
| 30 | 0.0 | 0.0 | 0.0 | 0 |
| 31 | 100.0 | 0.0 | 0.0 | 2 |
| Total | 56.7 | 18.7 | 24.6 | 134 |

| HOMICIDE | | | | |
|----------|------------|------------|-------------|------------|
| Circuit | Compliance | Mitigation | Aggravation | # of Cases |
| 1 | 77.8% | 11.1% | 11.1% | 9 |
| 2 | 90.0 | 0.0 | 10.0 | 10 |
| 3 | 80.0 | 10.0 | 10.0 | 10 |
| 4 | 62.5 | 25.0 | 12.5 | 24 |
| 5 | 50.0 | 20.0 | 30.0 | 10 |
| 6 | 75.0 | 0.0 | 25.0 | 4 |
| 7 | 45.5 | 18.2 | 36.4 | 11 |
| 8 | 100.0 | 0.0 | 0.0 | 3 |
| 9 | 66.7 | 0.0 | 33.3 | 3 |
| 10 | 66.7 | 33.3 | 0.0 | 6 |
| 11 | 40.0 | 20.0 | 40.0 | 5 |
| 12 | 83.3 | 8.3 | 8.3 | 12 |
| 13 | 61.9 | 19.0 | 19.0 | 21 |
| 14 | 57.1 | 21.4 | 21.4 | 14 |
| 15 | 73.3 | 6.7 | 20.0 | 15 |
| 16 | 66.7 | 33.3 | 0.0 | 12 |
| 17 | 100.0 | 0.0 | 0.0 | 2 |
| 18 | 100.0 | 0.0 | 0.0 | 4 |
| 19 | 80.0 | 0.0 | 20.0 | 10 |
| 20 | 66.7 | 16.7 | 16.7 | 6 |
| 21 | 66.7 | 0.0 | 33.3 | 3 |
| 22 | 66.7 | 0.0 | 33.3 | 9 |
| 23 | 12.5 | 75.0 | 12.5 | 8 |
| 24 | 66.7 | 0.0 | 33.3 | 3 |
| 25 | 75.0 | 12.5 | 12.5 | 8 |
| 26 | 63.6 | 18.2 | 18.2 | 11 |
| 27 | 100.0 | 0.0 | 0.0 | 9 |
| 28 | 25.0 | 0.0 | 75.0 | 4 |
| 29 | 66.7 | 11.1 | 22.2 | 9 |
| 30 | 75.0 | 0.0 | 25.0 | 4 |
| 31 | 66.7 | 13.3 | 20.0 | 15 |
| Total | 67.2 | 15.0 | 17.9 | 274 |

Appendix 4

Sentencing Guidelines Compliance by Judicial Circuit: Offenses Against the Person

| ROBBERY | | | | | RAPE | | | | | OTHER SEXUAL ASSAULT | | | | |
|---------|------------|------------|-------------|------------|---------|------------|------------|-------------|------------|----------------------|------------|------------|-------------|------------|
| Circuit | Compliance | Mitigation | Aggravation | # of Cases | Circuit | Compliance | Mitigation | Aggravation | # of Cases | Circuit | Compliance | Mitigation | Aggravation | # of Cases |
| 1 | 57.1% | 26.5% | 16.3% | 49 | 1 | 62.5% | 37.5% | 0% | 8 | 1 | 100% | 0% | 0% | 4 |
| 2 | 76.4 | 13.9 | 9.7 | 72 | 2 | 77.8 | 11.1 | 11.1 | 9 | 2 | 74.1 | 14.8 | 11.1 | 27 |
| 3 | 67.4 | 16.3 | 16.3 | 43 | 3 | 100.0 | 0.0 | 0.0 | 7 | 3 | 66.7 | 0.0 | 33.3 | 3 |
| 4 | 65.8 | 28.8 | 5.4 | 111 | 4 | 80.0 | 20.0 | 0.0 | 10 | 4 | 91.7 | 0.0 | 8.3 | 12 |
| 5 | 73.7 | 5.3 | 21.1 | 19 | 5 | 100.0 | 0.0 | 0.0 | 8 | 5 | 36.4 | 27.3 | 36.4 | 11 |
| 6 | 52.6 | 31.6 | 15.8 | 19 | 6 | 66.7 | 33.3 | 0.0 | 3 | 6 | 100.0 | 0.0 | 0.0 | 8 |
| 7 | 75.6 | 17.1 | 7.3 | 41 | 7 | 100.0 | 0.0 | 0.0 | 10 | 7 | 81.8 | 9.1 | 9.1 | 11 |
| 8 | 61.8 | 29.4 | 8.8 | 34 | 8 | 50.0 | 33.3 | 16.7 | 6 | 8 | 87.5 | 12.5 | 0.0 | 8 |
| 9 | 52.4 | 19.0 | 28.6 | 21 | 9 | 40.0 | 60.0 | 0.0 | 5 | 9 | 58.8 | 17.6 | 23.5 | 17 |
| 10 | 76.0 | 24.0 | 0.0 | 25 | 10 | 90.9 | 0.0 | 9.1 | 11 | 10 | 84.6 | 15.4 | 0.0 | 13 |
| 11 | 66.7 | 33.3 | 0.0 | 12 | 11 | 0.0 | 50.0 | 50.0 | 2 | 11 | 77.8 | 22.2 | 0.0 | 9 |
| 12 | 64.3 | 15.7 | 20.0 | 70 | 12 | 66.7 | 0.0 | 33.3 | 3 | 12 | 56.5 | 21.7 | 21.7 | 23 |
| 13 | 73.5 | 20.4 | 6.1 | 98 | 13 | 77.8 | 22.2 | 0.0 | 9 | 13 | 69.2 | 0.0 | 30.8 | 13 |
| 14 | 64.3 | 25.0 | 10.7 | 56 | 14 | 11.1 | 88.9 | 0.0 | 9 | 14 | 81.3 | 6.3 | 12.5 | 16 |
| 15 | 75.0 | 11.1 | 13.9 | 36 | 15 | 81.3 | 6.3 | 12.5 | 16 | 15 | 71.7 | 8.7 | 19.6 | 46 |
| 16 | 55.0 | 30.0 | 15.0 | 20 | 16 | 60.0 | 40.0 | 0.0 | 5 | 16 | 48.0 | 12.0 | 40.0 | 25 |
| 17 | 70.6 | 17.6 | 11.8 | 17 | 17 | 75.0 | 0.0 | 25.0 | 8 | 17 | 42.9 | 7.1 | 50.0 | 14 |
| 18 | 57.9 | 26.3 | 15.8 | 19 | 18 | 80.0 | 0.0 | 20.0 | 5 | 18 | 66.7 | 16.7 | 16.7 | 6 |
| 19 | 57.4 | 23.4 | 19.1 | 47 | 19 | 38.5 | 46.2 | 15.4 | 13 | 19 | 65.7 | 11.4 | 22.9 | 35 |
| 20 | 41.2 | 52.9 | 5.9 | 17 | 20 | 50.0 | 50.0 | 0.0 | 2 | 20 | 83.3 | 0.0 | 16.7 | 18 |
| 21 | 75.0 | 12.5 | 12.5 | 8 | 21 | 0.0 | 0.0 | 0.0 | 0 | 21 | 33.3 | 33.3 | 33.3 | 6 |
| 22 | 41.7 | 16.7 | 41.7 | 12 | 22 | 71.4 | 14.3 | 14.3 | 7 | 22 | 50.0 | 0.0 | 50.0 | 4 |
| 23 | 37.1 | 48.6 | 14.3 | 35 | 23 | 10.0 | 80.0 | 10.0 | 10 | 23 | 45.5 | 45.5 | 9.1 | 22 |
| 24 | 50.0 | 33.3 | 16.7 | 18 | 24 | 66.7 | 33.3 | 0.0 | 9 | 24 | 58.3 | 8.3 | 33.3 | 12 |
| 25 | 83.3 | 11.1 | 5.6 | 18 | 25 | 71.4 | 14.3 | 14.3 | 14 | 25 | 62.5 | 20.8 | 16.7 | 24 |
| 26 | 69.2 | 26.9 | 3.8 | 26 | 26 | 33.3 | 33.3 | 33.3 | 3 | 26 | 70.2 | 14.9 | 14.9 | 47 |
| 27 | 93.8 | 6.3 | 0.0 | 16 | 27 | 75.0 | 25.0 | 0.0 | 4 | 27 | 89.5 | 5.3 | 5.3 | 38 |
| 28 | 80.0 | 0.0 | 20.0 | 5 | 28 | 66.7 | 0.0 | 33.3 | 3 | 28 | 68.4 | 5.3 | 26.3 | 19 |
| 29 | 57.1 | 0.0 | 42.9 | 7 | 29 | 50.0 | 0.0 | 50.0 | 4 | 29 | 84.6 | 7.7 | 7.7 | 13 |
| 30 | 50.0 | 0.0 | 50.0 | 2 | 30 | 50.0 | 0.0 | 50.0 | 2 | 30 | 40.0 | 20.0 | 40.0 | 5 |
| 31 | 70.4 | 22.2 | 7.4 | 27 | 31 | 88.9 | 11.1 | 0.0 | 9 | 31 | 85.4 | 7.3 | 7.3 | 41 |
| Total | 65.6 | 22.5 | 11.9 | 1000 | Total | 66.8 | 23.4 | 9.8 | 214 | Total | 70.1 | 12.3 | 17.6 | 551 |