Virginia Criminal Sentencing Commission

2012 Annual Report

Virginia Criminal Sentencing Commission

Albermarle County Courthouse

Madison County Courthouse

Hanover County's Original Courthouse

2012 Annual Report

December 1, 2012

Virginia Criminal Sentencing Commission Members

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

Judge F. Bruce Bach
Chairman, Nellysford

Appointments by the Chief Justice of the Supreme Court

Judge Robert J. Humphreys, Vice Chairman, Virginia Beach
Judge J. Martin Bass, Stafford County
Judge Bradley B. Cavedo, Richmond City
Judge Lisa Bondareff Kemler, Alexandria
Judge Michael Lee Moore, Lebanon
Judge Malfourd W. Trumbo, Alleghany County

Attorney General

The Honorable Kenneth T. Cuccinelli, II
(John F. Childrey, Attorney General's Representative)

Senate Appointments

Eric J. Finkbeiner, Chesterfield
Senator Thomas K. Norment, Williamsburg

House of Delegates Appointments

The Honorable Linda D. Curtis, Hampton
Delegate Benjamin L. Cline, Amherst
Esther J. Windmueller, Richmond City

Governor's Appointments

Debbie H. Smith, Williamsburg
Robert C. Hagan, Jr., Daleville
The Honorable Marsha L. Garst, Rockingham
The Honorable Harvey L. Bryant, Virginia Beach

Commonwealth of Virginia

Hon. F. Bruce Bach
Chairman

Meredith Farrar-Owens
Director

100 North Ninth Street
Richmond, Virginia 23219
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Supreme Court of Virginia
Virginia Criminal Sentencing Commission

December 1, 2012

To: The Honorable Cynthia D. Kinser, 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 *2012 Annual Report* of the Criminal Sentencing Commission.

This report summarizes 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 2012. The Commission's recommendations to the 2013 Session of the Virginia General Assembly also are contained in this report.

I would like to use this opportunity to express our utmost gratitude to two Commission members who have completed their full terms and are not eligible for re-appointment. They are Judge Robert J. Humphreys, of Virginia Beach, and Mr. Robert C. Hagan, of Daleville. These individuals have performed their duties in an exemplary fashion and our work is far better because of their insights and valuable contributions.

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

Sincerely,

F. Bruce Bach
Chairman

The Staff of the Commission

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Introduction

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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 five chapters. The remainder of the Introduction chapter provides a general profile of the Commission and an overview of its various activities and projects during 2012. The Guidelines Compliance chapter that follows contains a comprehensive analysis of compliance with the sentencing guidelines during fiscal year (FY) 2012. The third chapter presents the results of the Commission's recent study to update and refine the risk assessment instrument applied to nonviolent offenders sentenced in circuit court. The fourth chapter describes the Immediate Sanction Probation program, which the General Assembly has directed the Commission to implement in select pilot sites. 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 § 17.1-802 of the *Code of Virginia*. 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 makes 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 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.

Commission Meetings

The full membership of the Commission met four times during 2012. These meetings were held on March 19, June 11, September 10, and November 7. Minutes for each of these meetings are available on the Commission's website (www.vcsc.virginia.gov).

Throughout the year, staff compiles information, analyzes data, and drafts recommendations for action by the full Commission. The Commission's Chairman appoints subcommittees, when needed, to allow more extensive discussion on special topics.

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 "hotline" 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 2012, the Commission offered 30 training seminars across the Commonwealth for more than 650 criminal justice professionals. 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 were 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 was conducted in conjunction with the Virginia State Bar. The Virginia State Bar approved this class for one hour of Continuing Legal Education Ethics credit. The Commission introduced a refresher course to address regional issues identified by staff. This seminar, approved for three Continuing Legal Education credits, reinforced the rules for scoring guidelines accurately based on the needs of the participants. Finally, the Commission conducted 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 guidelines 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, and criminal justice academies. Many sites 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, upon request, to any group of criminal justice professionals. The Commission also is willing to provide an education program on the guidelines and the no-parole sentencing system to any interested group or organization. Interested individuals can contact the Commission and place their names on a waiting list. Once a sufficient number of people have expressed 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 "hotline" 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 "hotline" 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 hotline 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 also must include an analysis of the impact on local and regional jails, as well as state and local community corrections programs.

During the 2012 General Assembly session, the Commission prepared 287 impact statements on proposed legislation. The Commission prepared more impact statements in 2012 than in any year since the 2008 session. 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 is notified of the proposed legislation. When requested, the Commission provides pertinent oral testimony to accompany the impact analysis. Additional impact analyses may be conducted at the request of House Appropriations Committee staff, Senate Finance Committee staff, the Secretary of Public Safety, or staff of the Department of Planning and Budget.

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 comprised 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 then are 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. At the request of the Secretary of Public Safety, the Commission's Director or Deputy Director has chaired the Technical Advisory Committee since 2006. The Secretary presented the most recent prisoner forecasts to the General Assembly in a report submitted in October 2012.

Assistance to the Virginia State Crime Commission

The Virginia State Crime Commission, a legislative branch agency, is charged by the General Assembly with several studies each year. The Crime Commission often requests assistance from a variety of other agencies, including the Virginia Criminal Sentencing Commission.

During the course of 2012, the Sentencing Commission was asked to provide data and analysis on several different topics, including cigarette trafficking and texting while driving.

Update to 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 offender 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 second study with a more recent cohort of felony cases to test and refine the risk assessment 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 updating its risk assessment tool based on more recent felony cases from Virginia's circuit courts. This complex, multi-stage project was completed in 2012. The third chapter of this report describes the analysis and presents the findings of this important study.

Immediate Sanction Probation Pilot Program

In 2012, the Virginia General Assembly adopted budget language to extend the provisions of § 19.2-303.5 of the *Code of Virginia* and to authorize the creation of up to four Immediate Sanction Probation programs (Chapter 3 of the 2012 *Acts of Assembly*, Special Session I). The Immediate Sanction Probation program is designed to target nonviolent offenders who violate the conditions of probation while under supervision in the community but are not charged with a new crime. These violations are often referred to as "technical probation violations."

The General Assembly directed the Commission to select up to four jurisdictions to serve as pilot sites, with the concurrence of the Chief Judge and the Commonwealth's Attorney in each locality. It also charged the Commission with developing guidelines and procedures for the programs, administering the programs, and evaluating the results.

In responding to the legislative mandate, the Commission has been engaged in a variety of activities. These efforts will continue into 2013. Additional details regarding the Commission's activities to date, and plans for the coming year, can be found in the fourth chapter of this report.

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 goals are: to identify crimes witnessed by children, to describe the nature of such crimes, and to determine how courts respond to and use information concerning the presence of children during the commission of the crime in sentencing decisions. 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 required 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 were 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. This significantly increased reporting of such cases to the Commission.

Over the course of 2012, Commission staff have examined a large number of cases in detail and reviewed approximately 1,000 pre-sentence reports. Pertinent information was recorded for each case, 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, the data collection phase has been lengthy. A sufficient number of cases have been identified to proceed with the analysis phase, which will go forward in 2013.

Guidelines Compliance

2

Introduction

On January 1, 2013, Virginia's truth-in-sentencing system will reach its eighteenth anniversary. On 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. The most sentence credits they may earn is 15% , regardless of whether their sentence is served in a state facility or a local jail. The Commission was established to develop and administer guidelines and 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 that was served by similar offenders 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. Nearly 390,000 felony cases have been sentenced under truth-in-sentencing laws. Judges have agreed with guidelines recommendations in more than three out of four cases. This report focuses on cases sentenced from the most recent fiscal year of available data, FY2012 (July 1, 2011, through June 30, 2012). Compliance is examined in a variety of ways in this report, and variations in data over the years are highlighted throughout.

Figure 1

Number and Percentage of Cases Received by Circuit - FY2012

Circuit	Number	Percent	Rank
1	874	3.8%	10
2	1,085	4.7%	7
3	460	2.0%	25
4	1,130	4.9%	5
5	514	2.2%	22
6	380	1.6%	29
7	710	3.1%	
8	394	1.7%	28
9	496	2.1%	24
10	629	2.7%	17
11	433	1.9%	26
12	1,036	4.5%	8
13	1,140	4.9%	4
14	848	3.6%	11
15	1,639	7.1%	1
16	543	2.3%	21
17	360	1.5%	30
18	285	1.2%	31
19	1,124	4.8%	6
20	556	2.4%	20
21	409	1.8%	27
22	745	3.2%	14
23	821	3.5%	12
24	1,024	4.4%	9
25	818	3.5%	13
26	1,290	5.5%	2
27	1,152	5.0%	3
28	591	2.5%	18
29	695	3.0%	16
30	504	2.2%	23
31	561	2.4%	19

Case Characteristics

In FY2012, nine 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), Harrisonburg area (Circuit 26), the Radford area (Circuit 27), Richmond City (Circuit 13), Norfolk (Circuit 4), Fairfax County (Circuit 19), Virginia Beach (Circuit 2), Chesterfield County (Circuit 12) and the Lynchburg area (Circuit 24), comprised nearly forty-six percent (46%) of all worksheets received in FY2012 (Figure 1).

During FY2012, the Commission received 23,908 sentencing guideline worksheets. Of these, 640 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 FY2012, the remaining sections of this chapter pertaining to judicial concurrence with guidelines recommendations focus only on those 23,268 cases for which guidelines recommendations were completed and calculated correctly.

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. When judges sentence outside of the guidelines recommendations, the *Code of Virginia* (§ 19.2-298.01) requires that a written reason for departure be recorded 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 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 also is 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

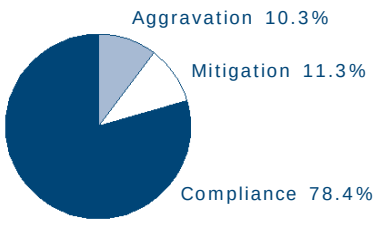
The overall compliance rate summarizes the extent to which Virginia's judges concur with recommendations provided by the sentencing guidelines, both in type of disposition and in length of incarceration. Between FY1995 and FY1998, the overall compliance rate remained around 75%, increased steadily between FY1999 and FY2001, and then decreased slightly in FY2002. For the past nine fiscal years, the compliance rate has hovered around 80%. During FY2012, judges continued to agree with the sentencing guidelines recommendations in over 78% of the cases (Figure 2).

In addition to compliance, the Commission 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 10.3% for FY2012. 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 FY2012 departures, 47.6% were cases of aggravation while 52.4% were cases of mitigation.

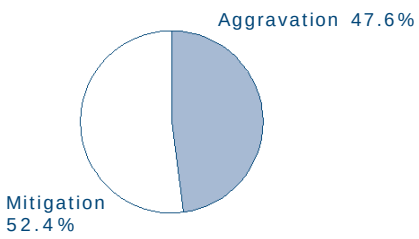
Figure 2

Overall Guidelines Compliance and Direction of Departures - FY2012

Overall Compliance



Direction of Departures



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 FY2012 by the type of disposition recommended by the guidelines. For instance, of all felony offenders recommended for more than six months of incarceration during FY2012, judges sentenced over 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.

Also, judges typically have agreed with guidelines recommendations for other types of dispositions. In FY2012, 76% 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, 71% 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 and Actual Dispositions - FY2012

	Actual Disposition		
Recommended Disposition	**Probation**	**Incarceration 1 day-6 mos.**	**Incarceration >6 mos.**
Probation	71.2%	23.4%	5.5%
Incarceration 1 day-6 mos	12.8%	75.7%	11.4%
Incarceration > 6 months	5.9%	8.0%	86.1%

Durational Compliance

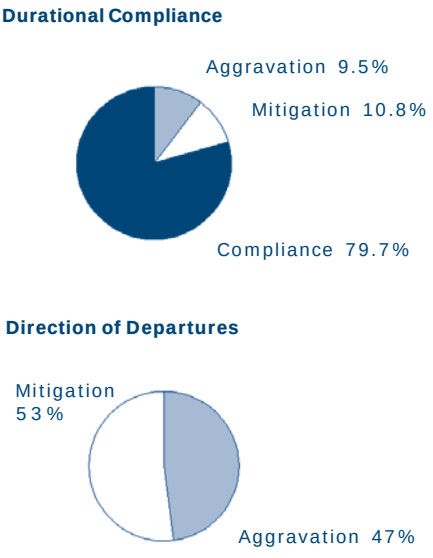
In addition to examining the degree to which judges concur with the type of disposition recommended by the guidelines, the Commission also studies durational compliance, which is defined as the rate at which judges sentence offenders to terms of incarceration that fall within the recommended guidelines 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 FY2012 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 FY2012 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 use 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 incarceration, and judges sentenced within the recommended range, only a small share (14% of offenders in FY2012) were given prison terms exactly equal to the midpoint recommendation (Figure 5). Most of the cases (68%) 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 incarceration, 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 10 months.

Figure 4

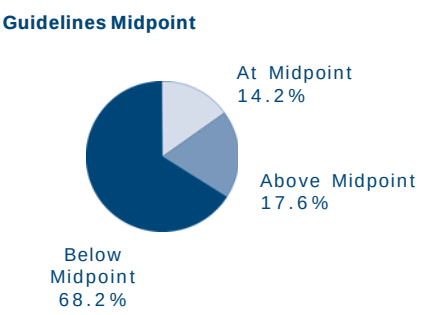
Durational Compliance and Direction of Departures - FY2012*



*Cases recommended for and receiving an active jail or prison sentence.

Figure 5

Distribution of Sentences within Guidelines Range - FY2012**



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

Figure 6

Median Length of Durational Departures - FY2012***

***Cases recommended for and receiving an active jail or prison sentence.

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 FY2012, 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, judicial discretion, the defendant's cooperation with law enforcement, a sentence to an alternative sanction other than the recommended incarceration period, mitigating facts of the case and a sentence recommendation provided by the Commonwealth's Attorney. Although other reasons for mitigation were reported to the Commission in FY2012, only the most frequently cited reasons are noted here. For 580 of the 2,612 mitigating cases, a departure reason could not be discerned.

Judges sentenced 10.3% of the FY2012 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 number of counts in the sentencing event, a sentence recommended by a jury, and the defendant's poor potential for being rehabilitated. For 519 of the 2,387 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.

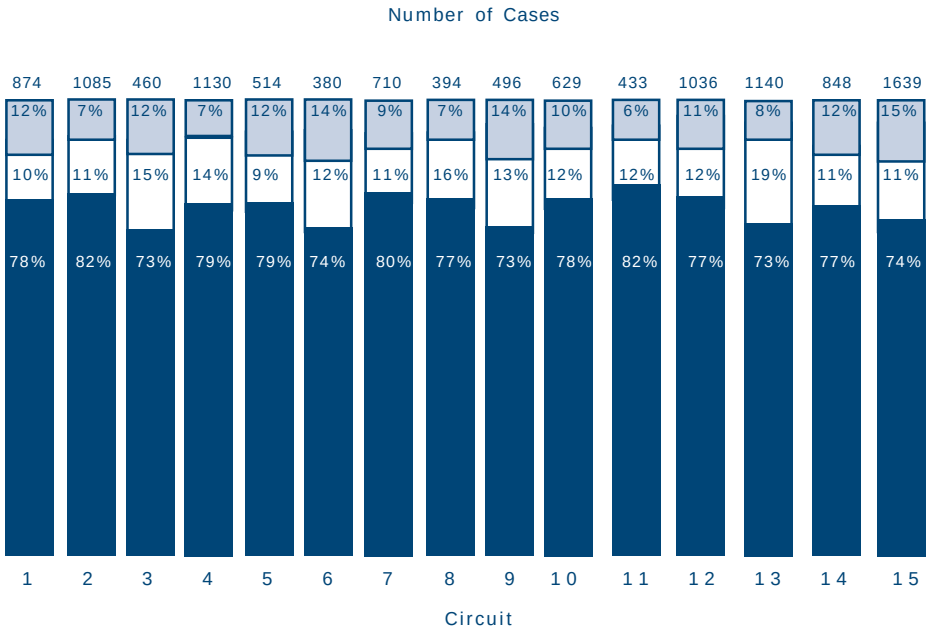
Compliance by Circuit

Since the onset of truth-in-sentencing, compliance rates and departure patterns have varied across Virginia's 31 judicial circuits. FY2012 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 FY2012, over half (58%) of the state's 31 circuits exhibited compliance rates at or above 78%, while the remaining 48% reported compliance rates between 73% and 77%. There are likely many reasons for the variations in compliance across circuits. Certain jurisdictions may see atypical cases not reflected in statewide

Figure 7

Compliance by Circuit - FY2012



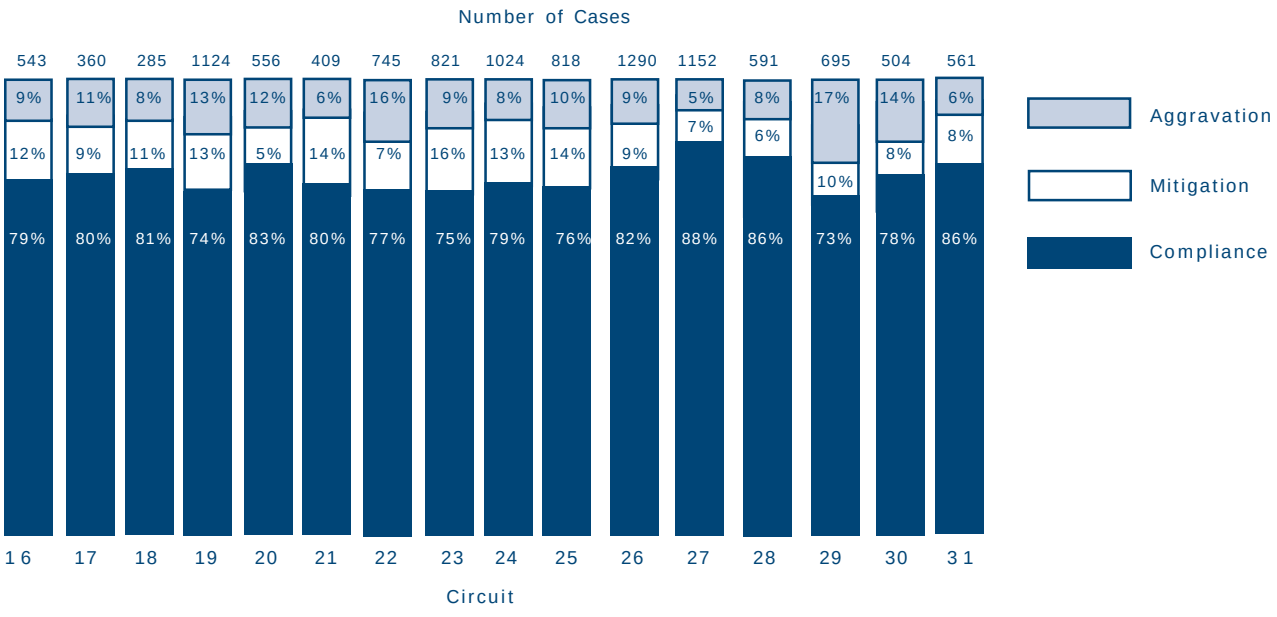
averages. In addition, the availability of alternative or community-based programs currently differs from locality to locality. The degree to which judges agree with guidelines recommendations does not seem to be related primarily to geography. The circuits with the lowest compliance rates are scattered across the state, and both high and low compliance circuits can be found in close geographic proximity.

In FY2012, the highest rate of judicial agreement with the sentencing guidelines (88%) was in Circuit 27 (Radford area). Concurrence rates of 85% or higher were also found in Circuit 28 (Bristol area) and Circuit 31 (Prince William County area). The lowest compliance rates among judicial circuits in FY2012 were reported in Circuit 9 (Williamsburg area) and Circuit 3 (Portsmouth).

In FY2012, the highest mitigation rates were found in Circuit 13 (Richmond City), Circuit 8 (Hampton), Circuit 23 (Roanoke area), and Circuit 3 (Portsmouth). Circuit 13 (Richmond City) had a mitigation rate of 18.5% for the fiscal year; Hampton, Roanoke and Portsmouth recorded mitigation rates between 15% and 16%. 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.

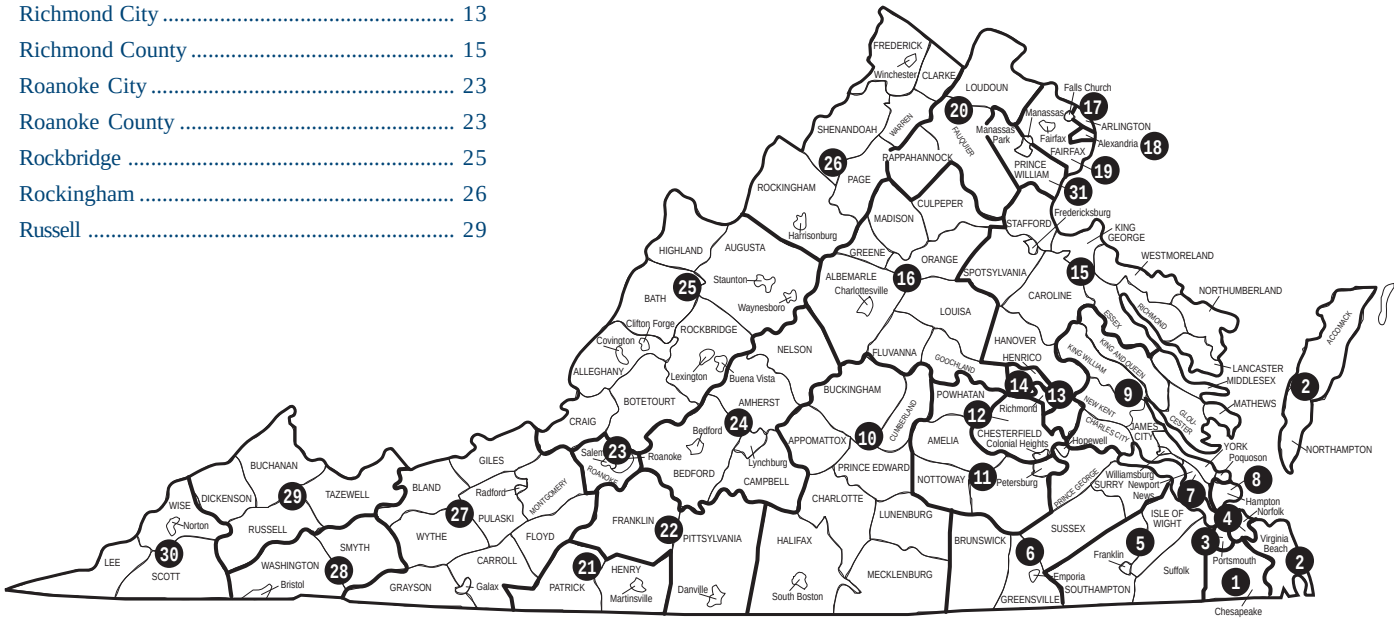
Inspecting aggravation rates reveals that Circuit 29 (Buchanan area) had the highest aggravation rate at 17%, followed by Circuit 22 (Danville area) at 16%. Lower compliance rates in these latter circuits are a reflection of the relatively high aggravation rates.

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



Virginia Localities and Judicial Circuits

Virginia Judicial Circuits



Compliance by Sentencing Guidelines Offense Group

In FY2012, as in previous years, judicial agreement with the guidelines varied when comparing the 15 offense groups (Figure 8). For FY2012, compliance rates ranged from a high of 85% in the fraud offense group to a low of 60% in murder 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 74%, whereas many of the property and drug offense categories had compliance rates above 81%.

During the past fiscal year, judicial concurrence with guidelines recommendations remained relatively stable, fluctuating three percent or less from the previous fiscal year for most offense groups. Compliance increased by four percentage points for the offense group covering burglary of other (non-dwelling) structures. During the previous year (FY2011), compliance was 73% with 16% mitigation and 11% aggravation. Compliance in FY2012 increased to 77% with an almost even distribution between mitigation and aggravation.

New offenses for failing to register with the Sex Offender and Crimes Against Minors Registry were added to the miscellaneous/other guidelines effective July 1, 2011. The compliance rate is 77% for guidelines applicable to offenders convicted of a sexually violent offense, as defined by § 9.1-902, who failed to register as required. Guidelines for a second or subsequent failure of a sexually violent offender to register resulted in a 79% compliance rate. When judges disagreed with the guidelines recommendation for both offenses, they were more likely to go

Figure 8
Guidelines Compliance by Offense - FY2012

	Number of Cases	Compliance	Mitigation	Aggravation
Fraud	2,098	84.8%	9.7%	5.5%
Drug Schedule I/II	6,078	81.9%	9.8%	8.3%
Larceny	5,409	81.3%	10.4%	8.3%
Assault	1,402	73.9%	15.2%	10.9%
Robbery	792	60.0%	28.7%	11.4%
Drug/Other	1,508	82.0%	6.2%	11.8%
Rape	169	66.3%	21.9%	11.8%
Burglary/Other	555	77.1%	11.0%	11.9%
Weapon	602	75.2%	12.8%	12.0%
Traffic	1,786	81.1%	6.8%	12.2%
Kidnapping	133	64.7%	21.1%	14.3%
Miscellaneous	788	71.7%	13.5%	14.8%
Burglary/Dwelling	1,163	64.9%	17.0%	18.1%
Other Sexual Assault	548	64.8%	13.3%	21.9%
Murder/Homicide	237	59.5%	16.5%	24.1%
Total	23,268	78.4%	11.3%	10.3%

below the guidelines recommendation. Judges complied with the guidelines recommendation in 79% of the cases for sex offenders, not designated as violent, who failed to register a second or subsequent time. When judges sentenced outside the recommendation, for this offense, they always went above the guidelines recommendation.

Since 1995, departure patterns have differed across offense groups, and FY2012 was no exception. In FY2012, the robbery, rape and kidnapping offense groups showed the highest mitigation rates, with 29% of the robbery cases and 22% of the rape cases resulting in sentences below the guidelines. This mitigation pattern has been consistent for both rape and robbery offenses since the abolition of parole in 1995. This past fiscal year, the kidnapping mitigation rate of 21% is slightly higher than the previous year, but the compliance rate remains the same. The most frequently cited mitigation reasons provided by judges in robbery cases include: the involvement of a plea agreement, defendant's cooperation with law enforcement, issues related to the judge's discretion to structure a sentence, no serious prior record, the recommendation of the Commonwealth's Attorney, 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 victim's ability to testify or the victim's request, the recommendation of a jury, or the defendant's minimal prior record. Plea agreement was the most frequently cited mitigation reason for kidnapping cases, followed by issues related to the judge's discretion to structure a sentence and mitigating facts of the case.

In FY2012, the offense groups with the highest aggravation rates were murder/homicide (24%) and sexual assault (22%). The most frequently cited aggravating departure reasons in murder/homicide cases included: the flagrancy of the offense, a jury recommendation, the defendant's poor rehabilitation potential, or the acceptance of the plea agreement. The most frequently cited aggravating departure reasons in sexual assault cases in FY2012 included: the acceptance of a plea agreement, the flagrancy of the offense, or the type of victim involved (such as a child).

Compliance under Midpoint Enhancements

Section 17.1-805 of the *Code of Virginia* describes the framework for what are known as "midpoint enhancements." These are significant increases in guidelines scores for violent offenders that elevate the overall guidelines sentence recommendation. 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, robbery, most assaults and sexual assaults, and certain burglaries, when any one of these offenses is the current most serious "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 their criminal histories. 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 FY2012 cases, 78% of the cases did not involve midpoint enhancements of any kind (Figure 9). Only 22% 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.

Of the FY2012 cases in which midpoint enhancements applied, the most common midpoint enhancement was for a Category II prior record. Approximately 47% 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 FY2012, 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 25% of the midpoint enhancements in FY2012. The most substantial midpoint enhancements

Figure 9

Application of Midpoint Enhancements - FY2012

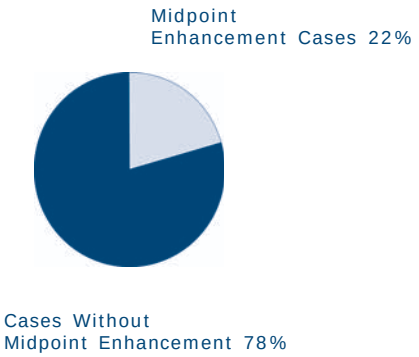


Figure 10

Type of Midpoint Enhancements Received - FY2012

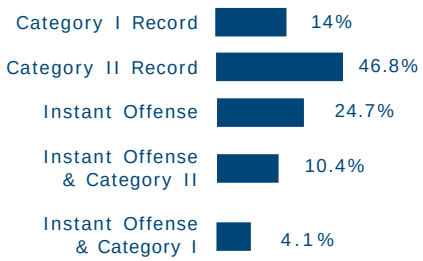
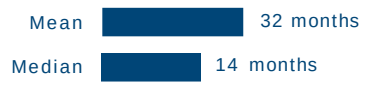


Figure 11

Length of Mitigation Departures in Midpoint Enhancement Cases - FY2012



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 (4%) 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 FY2012, compliance was 68% when enhancements applied, which is significantly lower than compliance in all other cases (78.4%). Thus, compliance in midpoint enhancement cases decreases the overall compliance rate. When departing from enhanced guidelines recommendations, judges choose to mitigate in three out of every four departures.

Among FY2012 midpoint enhancement cases resulting in incarceration, judges departed from the low end of the guidelines range by an average of 32 months (Figure 11). The median departure (the middle value, where half of the values are lower and half are higher) was 14 months.

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 FY2012, as in previous years, enhancements for a Category II prior record generated the highest rate of compliance of all midpoint enhancements (72%). 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 67%. 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 54%.

Because of 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, mitigating offense circumstances, the defendant's cooperation with law enforcement, and the imposition of an alternative sentence.

Figure 12

Compliance by Type of Midpoint Enhancement - FY2012

Midpoint Enhancement	Number of Cases	Compliance	Mitigation	Aggravation
None	18,041	81.5%	7.3%	11.2%
Category I Prior Record	732	59.7%	35.9%	4.4%
Category II Prior Record	2,445	72.0%	22.3%	5.7%
Instant Offense	1,293	67.4%	22.0%	10.6%
Instant & Category I	215	53.5%	38.1%	8.4%
Instant & Category II	542	65.3%	25.5%	9.2%
Total	23,268	78.4%	11.3%	10.3%

Juries and the Sentencing Guidelines

There are three 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, 89% 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 FY2012, 1.3% 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. 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.

Among the early cases subjected to the new truth-in-sentencing provisions, implemented during the last six months of FY1995, jury adjudications decreased 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. The implementation 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%.

Figure 13

Percentage of Cases Received by Method of Adjudication, FY2012

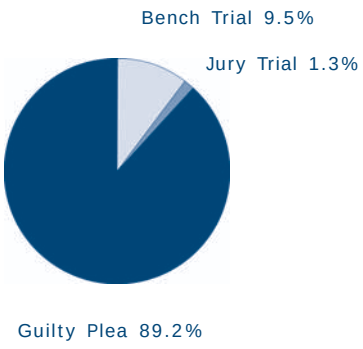
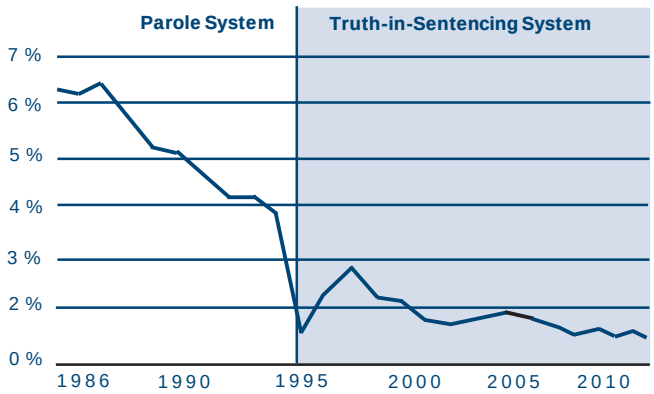


Figure 14

Percent of Felony Convictions Adjudicated by Juries FY1986-FY2012 Parole System v. Truth-in-Sentencing (No Parole) System

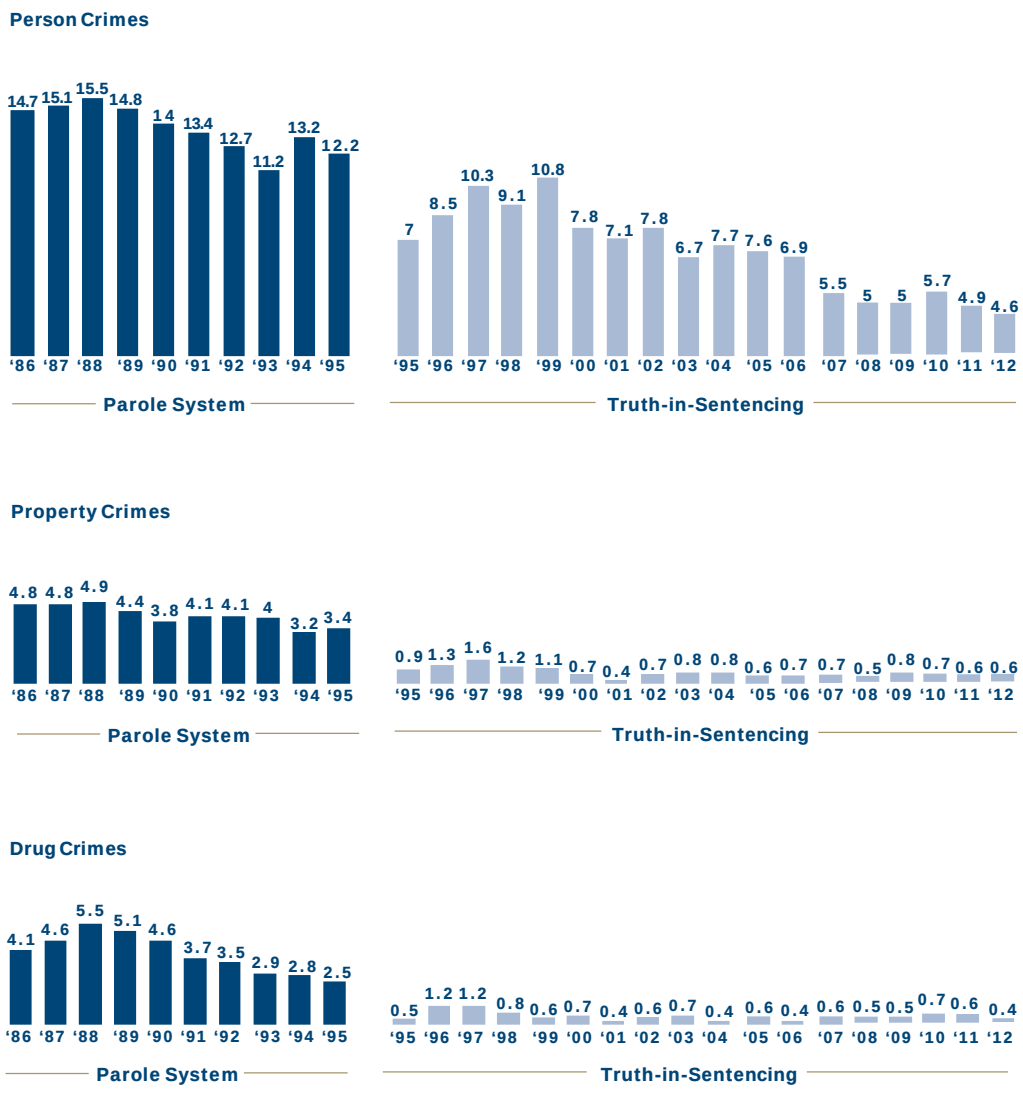


Inspecting jury data by offense type reveals very divergent patterns for person, property and drug crimes. Under the parole system, jury cases comprised 11% to 16% of felony convictions for person crimes. This rate was typically three to four times the rate of jury trials for property and drug crimes (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 4.5% 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-FY2012
Parole System v. Truth-in-Sentencing (No Parole) System



In FY2012, the Commission received 286 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 45% of the time (Figure 16). In fact, jury sentences were more likely to fall above the guidelines than within the recommended range (50%). This pattern of jury sentencing exceeding 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 14 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 slightly more than four years (50 months).

In FY2012, thirteen 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 FY2012, judges modified 22% of jury sentences.

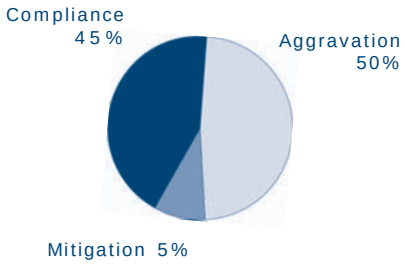
Figure 17

Median Length of Durational Departures in Jury Cases, FY2012

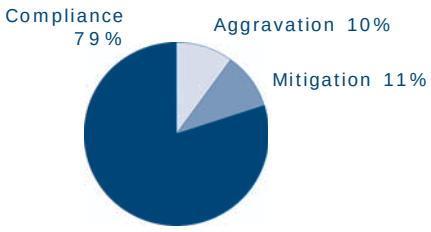
Figure 16

Sentencing Guidelines Compliance in Jury and Non-Jury Cases, FY2012

Jury Cases*



Non-Jury Cases



** The jury case compliance rate is calculated based on the sentence recommended by the jury. in 8.6% of these cases, the judge subsequently brought the jury recommendation into compliance with the guidelines.*

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 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 FY2012 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 2,532 nonviolent offense cases for which a risk assessment instrument was not completed and submitted to the Commission.

Among the FY2012 eligible offenders for whom a risk assessment form was received (5.920 cases), 52% were recommended for an alternative sanction by the risk assessment instrument (Figure 18). In FY2012, 42% of offenders recommended for an alternative sanction through risk assessment were given some form of alternative punishment by the judge.

Among offenders recommended for and receiving an alternative sanction through risk assessment, judges used 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

Figure 18

Percentage of Eligible Nonviolent Risk Assessment Cases Recommended for Alternatives, FY2012 (5,920 cases)

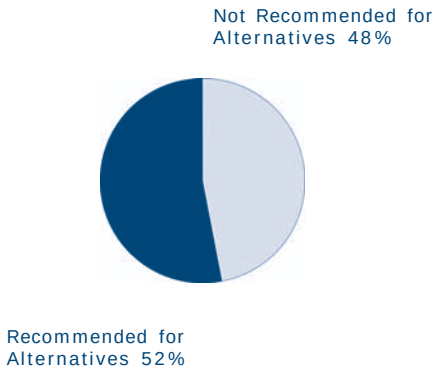
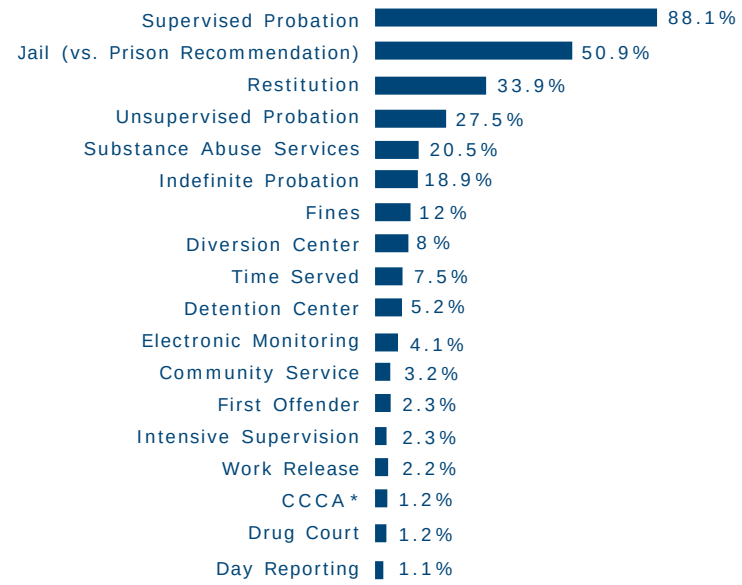


Figure 19

Types of Alternative Sanctions Imposed - FY2012



** Any program established through the Comprehensive Community Corrections Act*

These percentages do not sum to 100% because multiple sanctions may be imposed in each case.

traditional guidelines range. Other frequent sanctions utilized were: restitution (34%), unsupervised probation (28%), indefinite probation (19%) and fines (12%). The Department of Corrections' Diversion and Detention Center programs were cited in 8% and 5% of the cases, respectively. Other alternatives/sanctions included: time served, electronic monitoring, community service, first offender status under §18.2-251, intensive supervision, work release, programs under the Comprehensive Community Corrections Act (CCCA), drug court and day reporting.

When a nonviolent offender is recommended for an alternative sanction using 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 86%. However, part of this compliance reflects the use of an alternative punishment option, as recommended by the risk assessment tool (Figure 20). In 26% 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 89%. In 37% 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 86%. Judges used an alternative, as recommended by the risk assessment tool, in 10% of larceny cases. The lower use of alternatives for larceny offenders is primarily because 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 - FY2012

	Mitigation	Compliance: Traditional Range	Compliance: Adjusted Range	Aggravation	Number of Cases	Overall Compliance
Drug	6.5%	60.0%	25.7%	7.8%	2,899	85.7%
Fraud	8.2%	52.5%	36.8%	2.5%	877	89.3%
Larceny	9.2%	73.6%	10.3%	6.9%	2,144	83.9%
Overall	7.8%	63.8%	21.8%	6.7%	5,920	85.6%

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 produces overall 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.

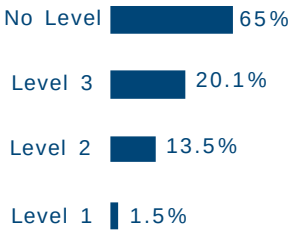
The risk assessment instrument was incorporated into the sentencing guidelines for sex offenders beginning July 1, 2001. For each sex offender identified as a comparatively high risk (those scoring 28 points or more on the risk tool), the sentencing guidelines have been revised such that a prison term 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 comply 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, FY2012



During FY2012, there were 548 offenders convicted of an offense covered by the sexual assault guidelines (this group excludes 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 (214 of the 548 cases in FY2012). Of the remaining 334 sexual assault cases for which the risk assessment was applicable, the majority (65%) were not assigned a level of risk by the sex offender risk assessment instrument (Figure 21). Approximately 20% of applicable sexual assault guidelines cases resulted in a Level 3 risk classification, with an additional 14% assigned to Level 2. Less than 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 five sexual assault offenders reaching Level 1 risk during this fiscal year, four of them were given sentences within the traditional guidelines range (Figure 22). Judges used the extended guidelines range in 15% of Level 2 cases and 15% 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 (62% compliance rate) and were more likely to receive a sentence that was an upward departure from the guidelines (30% aggravation rate).

Figure 22

Other Sexual Assault Compliance Rates By Risk Assessment Level, FY2012

		Compliance				
	Mitigation	Traditional Range	Adjusted Range	Aggravation	Number of Cases	Overall Compliance
Level 1	0%	80.0%	20.0%	0.0%	5	100%
Level 2	6.5%	71.7%	15.2%	6.5%	46	86.9%
Level 3	13.4%	64.2%	14.9%	7.5%	67	79.1%
No Level	8.8%	61.6%	---	29.6%	216	61.6%
Overall	9.3%	63.8%	5.4%	21.6%	334	69.2%

In FY2012, there were 168 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 (61%) 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 15% received a Level 2 adjustment (100% increase). The most extreme adjustment (300%) affected 2% of rape guidelines cases.

One of the three rape offenders reaching the Level 1 risk group were sentenced within the extended high end of the range (Figure 24). As shown below, 32% of offenders with a Level 2 risk classification and 16% 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 will occasionally sentence Level 1, 2 or 3 offenders above the expanded guidelines range.

Figure 23

Sex Offender Risk Assessment Levels for Rape Offenders, FY2012

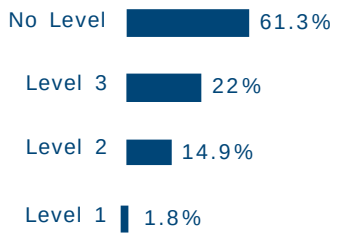


Figure 24

Rape Compliance Rates By Risk Assessment Level, FY2012

		Compliance				
	Mitigation	Traditional Range	Adjusted Range	Aggravation	Number of Cases	Overall Compliance
Level 1	0%	33.3%	33.3%	33.3%	3	66.6%
Level 2	12.0%	48.0%	32.0%	8.0%	25	80%
Level 3	27.0%	48.6%	16.2%	8.1%	37	64.8%
No Level	23.3%	63.1%	---	13.6%	103	63.1%
Overall	22.0%	57.1%	8.9%	11.9%	168	66%

Nonviolent Offender Risk Assessment Study: Findings

3

Introduction

In 1994, as part of the reform legislation that instituted truth-in-sentencing, the General Assembly required 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 as candidates for placement in alternative (non-prison) sanctions. By 1996, the Commission developed such an instrument and implementation began in pilot sites in 1997. The National Center for State Courts (NCSC) conducted an evaluation of the nonviolent offender risk assessment instrument used in the pilot sites 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. Upon conclusion of the validation study, the Commission reviewed the nonviolent risk assessment instrument and concluded that the refined nonviolent risk assessment tool should be implemented statewide. In July 2002, the nonviolent risk assessment instrument was implemented across the Commonwealth for all eligible felony larceny, fraud, and drug cases. In 2010, the Commission embarked upon an extensive re-validation study to evaluate the validity of the current nonviolent offender risk assessment instrument and potentially revise the existing instrument based upon more recent data.

Development of the Risk Assessment Instrument

To develop the original risk assessment instrument for nonviolent offenders, the Commission studied a random sample of over 1,500 drug and property offenders who had been released from incarceration between July 1, 1991, and December 31, 1992. The use of a release cohort was necessary because the early stages of the original analysis included offenders convicted of burglary, who traditionally receive longer sentences than fraud, larceny, and drug offenders. To use an actual sentence group, the Commission would have had to limit the amount of time burglary offenders were tracked for recidivism following release. The Commission later decided to exclude burglary offenders from nonviolent risk assessment. A stratified sampling technique was used to increase the chance of including offenders with juvenile criminal records, since juvenile criminal behavior has been shown to be a common precursor to later adult crime. The sample was also stratified to draw equal numbers of drug, larceny, and fraud cases.

Recidivism was defined as reconviction for a felony offense within three years of release from incarceration. Sample cases were matched to data from the Pre/Post-Sentence Investigation (PSI) database to determine which offenders had been reconvicted of a felony crime during the three-year follow-up period.

Construction of the risk assessment instrument was based on statistical analysis of the characteristics, criminal histories, and patterns of recidivism of the fraud, larceny, and drug offenders in the sample. The factors proving statistically significant in predicting recidivism were assembled on a risk assessment worksheet, with scores determined by the relative importance of the factors in the statistical model. The Commission, however, chose to remove the race of the offender from the risk assessment instrument. Although it emerged as a statistically significant factor in the analysis, the Commission viewed race as a proxy for social and economic disadvantage and, therefore, decided to exclude it from the final risk assessment worksheet.

The risk assessment worksheet is completed for fraud, larceny, and drug offenders who are recommended for some period of incarceration by the guidelines and who satisfy the eligibility criteria established by the Commission. Offenders with any current or prior convictions for violent felonies (defined in § 17.1-803), offenders who sell an ounce or more of cocaine, and offenders whose current offenses require a mandatory term of incarceration are excluded from risk assessment consideration.

The total score on the risk assessment worksheet represents the likelihood that an offender will be reconvicted of a felony within three years. Offenders who score few points on the worksheet are less likely to be reconvicted of a felony than offenders who have a higher total score. For the original worksheet, the Commission adopted a scoring threshold of nine points. In the analysis used to construct the scale, offenders who scored nine points or less on the risk assessment instrument had a one in eight chance of being reconvicted for a felony crime within three years. Moreover, the Commission's analysis suggested that a threshold of nine points would satisfy the legislative goal of diverting 25% of nonviolent offenders from incarceration in a state prison facility to other types of sanctions.

When the risk assessment instrument is completed, offenders scoring at or below the selected threshold are recommended for sanctions other than traditional incarceration. The instrument itself does not recommend any specific type or form of alternative punishment. That decision is left to the discretion of the judge and may depend on program availability. In cases where a defendant is recommended for an alternative sanction, judges are seen as concurring with the guidelines recommendation if they sentence within the recommended incarceration range or if they impose any less restrictive sanction. For offenders scoring over the selected threshold, the original recommendation for incarceration remains unchanged.

The intent of the nonviolent offender risk assessment instrument is to identify offenders who are, at the time of sentencing, a low risk for re-offending and can therefore be diverted to less restrictive sanctions with due regard for public safety. It does not assess potential therapeutic needs of offenders and does not identify offenders who may be suitable for treatment. Instead, it is a predictive tool that measures an eligible offender's likelihood of reoffending to assist judges in identifying offenders who may be safely diverted to a less restrictive sanction, such as probation.

Pilot Program

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

NCSC Evaluation

The National Center for State Courts (NCSC), with funding from the National Institute of Justice, conducted an independent evaluation of the development and impact of the original risk assessment instrument. During the summer of 2000, investigators visited the pilot sites to interview judges, Commonwealth's attorneys, defense counsel, and probation officers about the design and use of the risk assessment instrument. Although responses and recommendations varied by locality and occupation, some common themes emerged.

Specifically, judges and probation officers generally supported the idea of offender risk assessment, but expressed concern about the inclusion of demographic factors on the risk scale. They noted that unemployed, unmarried males under the age of 20 began with a score right at the recommendation threshold, and any additional scoring made them ineligible for a diversion recommendation. While aware that past research shows this profile to be associated with higher recidivism rates, respondents felt this was the group most in need of services. Since the statewide implementation of the nonviolent offender risk assessment instrument, the Commission has incorporated the instrument into the training seminar curriculum, which covers the purpose and use of the nonviolent offender risk assessment instrument. Consistent with the directive from the General Assembly, the risk assessment instrument is intended to identify incarceration-bound offenders who are a low risk for being convicted of a new felony offense within three years and, therefore, may be relatively good candidates for diversion to a less restrictive sanction. It does not assess potential therapeutic needs of offenders and does not identify offenders who may be suitable for treatment or services.

Although most judges supported statewide expansion with qualifications, many probation officers were not supportive of expansion unless the demographic factors were reassessed. Defense attorneys supported the greater use of alternative sanctions and generally favored expansion of the risk assessment program to other circuits. Prosecutors, however, did not generally support programs intended to divert offenders recommended for incarceration under the sentencing guidelines. They believed that alternative sanctions were best suited for offenders guilty of a first nonviolent felony conviction.

The NCSC evaluation study also identified and tracked a group of diverted offenders for at least one year following their sentence to an alternative punishment program. A sample of offenders was drawn from 5,158 drug, fraud, and larceny cases resolved in the six pilot sites between December 1997 and September 1999. Of these, 40% were determined to be potentially eligible for screening with the risk assessment instrument. Offenders who received a diversion sanction were identified and offenders who received a prison sentence, offenders with missing files, and offenders with incomplete information were removed. The final sample for evaluation consisted of 555 offenders eligible for risk assessment who received an alternative punishment.

A statistical technique called survival analysis was used to investigate the possible relationships between risk assessment factors and the length of time the offender spent in the community before recidivating. For the primary analysis, recidivism was defined as re-arrest for any misdemeanor or felony. A secondary analysis was conducted with recidivism defined as re-arrest resulting in a misdemeanor or felony conviction.

The primary analysis showed larceny offenders were more likely to recidivate over time than drug or fraud offenders. In addition, gender was the only demographic factor with a statistically significant effect on recidivism, with males being 55% more likely to be re-arrested than females. Prior criminal record factors were also identified as important predictors of recidivism. The NCSC researchers noted that more offenders would be recommended for alternatives if the threshold value for a diversion recommendation were increased. There would be an accompanying increase, however, in the number of offenders scoring below the threshold who would subsequently recidivate. In the secondary analysis, specific prior record factors such as prior arrest/confinement in the past 12 months and the number of prior adult incarcerations were significantly related to recidivism.

The evaluation concluded that the risk assessment instrument is an effective tool for predicting recidivism. However, the NCSC suggested that the instrument may be streamlined by modifying or removing some demographic factors, while noting that the factors associated with adult prior record were the strongest predictors. It is important to understand why these findings differ from those produced by the Commission's original research. First, there were significant methodological differences between the two studies. The evaluation study used re-arrest and re-arrest resulting in conviction as outcome measures, while the Commission's original study relied upon felony convictions as the recidivism measure. Second, the original study examined a release cohort of all convicted larceny, fraud, and drug felons, while the NCSC evaluation study used only larceny, fraud, and drug felons from pilot sites who were actually diverted to alternative punishment. These differences in research methodology could account for the differences in the studies' findings.

The NCSC evaluation included a benefit-cost analysis of the risk assessment instrument. Estimates of the monetary value of all significant benefits and costs associated with the diversion of non-violent felons from traditional incarceration were calculated. The benefits of reduced prison (363 offenders diverted) and jail (192 offenders diverted) populations saved the Commonwealth an estimated $8.7 million dollars. Beyond these reduced incarceration costs, additional benefits accruing from the diverted population could include an increased number of offenders becoming productive citizens, decreased recidivism, and enhanced quality of life for offenders. Since it is very difficult to place a monetary value on these benefits, no amount was assigned to them. The cost of alternative sanction programs for the diverted offenders was $6.2 million. An

additional $1 million in costs were incurred when offenders failed in the assigned alternatives and became recidivists. The total savings of $8.7 million were compared to the total diversion costs of $7.2 million to produce a net benefit of $1.5 million due to the diversion of nonviolent felons through risk assessment. If the risk assessment instrument had been used statewide during 2000, the NCSC estimated the net benefit would have been between $3.7 and $4.5 million in reduced costs. The NCSC evaluation concluded that the risk assessment instrument is an effective tool for predicting recidivism as well as a cost-saving benefit for the Commonwealth. Evaluators recommended that the instrument be refined based on more recent cases and then expanded statewide.

Commission Pilot Site Review

In its own analysis of pilot program data, the Commission focused on two specific features of the nonviolent risk assessment program: the rate at which offenders eligible for risk assessment were diverted to alternative sanctions and whether information necessary to accurately complete the risk instrument was available. It was important to determine whether nonviolent risk assessment in the pilot sites actually led to increased utilization of alternative sanctions and other beneficial changes. Accordingly, the Commission compared data from the pilot and non-pilot sites.

Evidence from the pilot sites indicated that diversion of larceny, fraud, and drug offenders who met the Commission's eligibility criteria increased under the risk assessment program. Before the risk assessment pilot program was implemented in fiscal year (FY) 1998, pilot circuits were less likely than non-pilot circuits to utilize alternative punishments for larceny, fraud, and drug offenders when the sentencing guidelines recommended a term of incarceration in prison or jail. Between FY1996 and FY2001, however, the rate at which eligible offenders were diverted from incarceration to alternative sanctions increased by nearly 30% in the risk assessment pilot sites, compared to only 4% in non-pilot circuits. It seemed, therefore, that the risk assessment program was meeting its goal of diverting low risk nonviolent offenders to alternative sanctions while reserving traditional incarceration for high risk and violent offenders.

Some of the pertinent information on the risk assessment instrument is taken from the PSI report, particularly information relating to employment history and marital status. It can be more difficult to adequately ascertain information about the offender's characteristics and criminal history without a detailed PSI. The Commission encouraged completion and use of the PSI in the pilot sites. Nearly half of the pilot site cases had a PSI completed prior to sentencing, versus a corresponding rate of approximately 39% for the non-pilot sites. Thus, pilot sites were more likely to possess information crucial to the accurate scoring of the risk instrument.

2001 Validation Study

In 2001, the Commission conducted a validation study to test and refine the model used to create the original nonviolent offender risk assessment instrument for possible implementation statewide. The population of offenders examined for the original analysis and validation study differed from that of the NCSC evaluation. The Commission's original analysis in 1996 used a sample of drug and property offenders released over an 18-month period who were selected to model a group of offenders that was sentenced within the same time period. Since burglary offenders were excluded, it was possible to utilize an actual sentence group for the Commission's validation study. The Commission's original analysis and validation study included offenders from throughout the Commonwealth who were eligible for nonviolent risk assessment. This approach differs from the evaluation study conducted by NCSC because the evaluation study only observed offenders from pilot sites who were diverted to alternative sanctions.

For the validation study, the Commission merged the PSI data system with the sentencing guidelines database and selected a sample of 800 fraud, larceny, and drug offenders sentenced in calendar year 1996. Of the entire sample, 54 offenders were eliminated for various reasons, including missing files and the discovery of a violent prior conviction, which made an offender ineligible for risk assessment. Recidivism, as defined in the original nonviolent risk assessment model and the validation model, was any arrest within three years of release that resulted in a felony conviction. A different definition of recidivism, re-arrest for any misdemeanor or felony, was utilized for the NCSC evaluation study.

Pre-sentence report data, Virginia criminal history reports, and national criminal history reports from the FBI were utilized in all phases of the analysis. The original analysis utilized information from the Juvenile and Domestic Relations Courts; however, this information did not prove fruitful to the analysis and, therefore, was not pursued for the validation study. The NCSC evaluation study also relied on information obtained from pilot site interviews to draw conclusions. For the validation study, rap sheets from other states were available, allowing additional information on recidivist activity to be uncovered.

Two types of analysis were used in the original and validation studies. First, survival analysis, which is useful in instances where researchers want to identify factors that significantly impact how long it takes for a particular event to occur, was utilized for the original analysis, the NCSC evaluation study, and the validation study. Logistic regression, which is commonly used when the event of interest is dichotomous, in this case whether an offender recidivated or did not recidivate within three years, was used for both the original and validation studies. Logistic regression requires a consistent follow-up for all offenders under study and looks for characteristics of offenders who recidivate within that time period. Statistical tests revealed that the second type of analysis (logistic regression) provided the most accurate predictive power and was most closely associated with recidivism in nonviolent risk assessment; consequently, the original nonviolent risk assessment model and the final model developed through the validation study were based on the second type of analysis.

In the original study, all offenders were tracked for a minimum of three years; thus, all cases were available for both methods of analysis. The validation study sample contained 746 cases with follow-up times ranging from 44 days to nearly five and one-half years. All cases were examined using survival analysis, as that technique permits varying follow-up intervals; 668 of the 746 cases had a follow-up period of at least three years and could be examined using logistic regression, which requires a consistent follow-up interval for all cases. The NCSC evaluation study relied on a more limited follow-up of offenders, which ranged from a minimum of 11 months to a maximum of three years.

In the original analysis and the validation study, the Commission selected the group of offenders to recommend for alternative punishment based on legislative mandate. Under its directive, the General Assembly requested that 25% of the eligible prison-bound offenders be recommended for alternative punishment. In accordance with the General Assembly's directive, the Commission chose a score threshold that would result in 25% of the lowest risk offenders being recommended for alternative sanctions. On the other hand, the NCSC evaluation suggested score thresholds that were based on experimentation using a sample of diverted offenders and recommendations from practitioners in the field, without regard to the General Assembly's directive.

The goal of nonviolent risk assessment is to accurately predict which nonviolent offenders are at the lowest risk of recidivating so that they can be recommended for alternative sanctions. The 2001 validation study produced a refinement of the original model, which had served as the basis for the risk assessment instrument used in the pilot sites. The validation model included some common factors with the original model, although some of the factors in the original model (offender acted alone, prior felony drug offense, and prior juvenile commitment) were not identified as statistically significant in the validation model. In addition, one factor, offense type, which distinguishes among larceny, fraud, or drug offenses, was part of the validation model but not part of the original model. Three factors that were in the original model were modified for use in the validation model. Finally, the original model included a combination of prior felonies and misdemeanors. While the validation model used prior felonies, the focus in this model was on a combination of adult and juvenile felonies, rather than a combination of felonies and misdemeanors. The validation model also contained versions of four demographic factors (age, gender, marital status, and employment). Variables representing these demographic factors were found to be statistically significant in predicting recidivism among larceny, fraud, and drug offenders in both the Commission's original analysis and the validation study.

In response to concerns expressed by some of the respondents interviewed by NCSC during its evaluation of the risk assessment pilot program, the Commission tested alternative models that excluded some or all of the demographic factors. Although all four demographic factors were statistically significant in the validation model, the demographic factors were forcibly removed from the model one at a time, and in combination, so that the impact of removing each factor could be assessed. With only one exception, the elimination of the individual demographic factors or a combination of factors compromised the power of the statistical model.

For the validation study, the predictive power of the original risk assessment model was improved by refining the measures used for the demographic factors. In the original risk assessment model, age was divided into four groups: younger than 20 years, 20 to 27 years, 28 to 33 years, and 34 years or older. The validation model also divided age into four groups: younger than 30 years, 30 to 40 years, 41 to 46 years, and 47 years or older. While both the original model and the validation model added points based on age, the validation model covered a broader spectrum of ages. A version of the marital status factor found in the original model was also included in the validation model. In the original model, points were awarded if the offender was never married. In the validation model, points were added if the offender was never married and was at least 26 years of age. Finally, the

original model included unemployment at the time of offense. The validation model included a modified factor that was scored if the offender was not regularly employed during the two years preceding the arrest for the instant offense.

The use of demographic factors is sensitive because demographic factors are believed by some to stand in for other socio-economic factors that are not easily defined or measured, a concern raised during interviews conducted for the NCSC evaluation. Nevertheless, the demographic factors used in the validation model were statistically significant and had the capability of predicting recidivism/non-recidivism in a manner that is consistent with the goal of nonviolent risk assessment.

Pursuant to the General Assembly's directive, the concern of nonviolent offender risk assessment was to accurately predict which offenders would be non-recidivists so that the 25% of offenders with the lowest risk of recidivism could be recommended for alternative (non-prison) sanctions. The validation model predicted non-recidivists with 75.7% accuracy and resulted in a 12.4% recidivism rate for offenders who were recommended for alternative sanctions.

Discussion of the nonviolent offender risk assessment program was a significant component of the Commission's agenda during 2001. After careful consideration of the findings of the Commission's original analysis, its validation study, and the independent NCSC evaluation, the Commission concluded that a risk assessment instrument would be a useful tool for judges throughout the state. Based on the validation study conducted in 2001, the Commission approved a risk assessment instrument that was a modified version of the instrument that served as the pilot prototype. The Commission recommended that the revised tool be implemented statewide the following year, and the General Assembly accepted the Commission's recommendation. In July 2002, the revised nonviolent risk assessment instrument was implemented statewide for all eligible felony larceny, fraud, and drug offenders.

In 2003, the General Assembly directed the Commission to examine the feasibility of using the nonviolent risk assessment instrument to identify additional offenders who were not recommended for alternative punishment options by the existing assessment instrument and who, nonetheless, posed little risk to public safety. Data revealed that the threshold of 35 points, the maximum score for an offender to be recommended for an alternative sanction, could be adjusted to the score of 38 without a significant increase in the risk to public safety. Adjusting the threshold increased the number of offenders recommended by the risk assessment instrument for alternative punishment in lieu of traditional incarceration.

2010-2012 Re-Validation Study

The purpose of the re-validation study is to review and refine the nonviolent offender risk assessment instrument based on more recent felony cases from Virginia's circuit courts. For both the original analysis and the 2001 validation study, the Commission relied primarily on PSI data because an insufficient amount of sentencing guidelines data had accumulated for it to be the primary data source for these studies. Use of the PSI as the principal data source for the original and validation studies provided several advantages. First, the PSI contains the most complete account of the offender's prior criminal record and major portions of the PSI are automated. In addition, the PSI contains information relating to several areas of the offender's life, including social/family history and employment history. The information contained on the PSI is also considered to be highly reliable, since its accuracy can be challenged in court.

Although PSI data provide numerous benefits, several drawbacks have arisen in recent years. For one, the Department of Corrections now uses a shortened version of the PSI form that contains less information than the original. The detailed information typically contained in a PSI report can be difficult to obtain if a pre-sentence report is not ordered or certain portions of the PSI are blank. In addition, the proportion of sentencing guidelines cases in which a PSI was completed has declined over the past decade. Statewide, pre-sentence reports are ordered in fewer cases and post-sentence reports (which are to be completed when a pre-sentence report is not ordered) often cannot be found. Offenders for whom a pre-sentence report is not completed may be considerably different from those for whom a PSI is ordered. Selecting a sample based on offenders for whom a PSI is completed, therefore, may result in a sample that is not representative of the entire population of offenders sentenced for felonies in Virginia. Since the sentencing guidelines and the nonviolent offender risk assessment instrument have been in the full implementation stage for several years, the Commission was able to use sentencing guidelines data as the starting point for the 2010-2012 re-validation study.

Figure 25 illustrates the similarities and differences in methodologies for each of the phases of the risk assessment project. For the re-validation study, the Commission selected a sample from 12,442 offenders sentenced in FY2005 and FY2006 whose primary offense on the guidelines was a felony fraud, larceny, or drug offense and whose case had been scored out on the nonviolent offender risk assessment instrument. Cases with obvious worksheet scoring errors were excluded from the sampling frame. A stratified sampling technique was used to increase the chance of including offenders with juvenile criminal records, since criminological studies have shown that a juvenile record is often correlated with subsequent offense behavior as an adult. The sample was also stratified to draw equal numbers of drug, larceny, and fraud cases. This step was necessary to ensure that each offense group was represented with a similar degree of precision and that an adequate number of offenders for each type of offense were selected for inclusion in the study. The sampled cases were then weighted to reflect their actual proportions in the universe of felony drug, fraud, and larceny sentencing events.

Figure 25
Methodologies of the Analysis, Evaluation, and Validation Phases of Nonviolent Risk Assessment

	Original Analysis (1995-1996)	NCSC Evaluation (1999-2000)	Commission Validation (2001)	Commission Re-Validation (2010-2012)
Measure of Recidivism	Felony Conviction	Any Arrest	Felony Conviction	Felony Conviction
Recidivism Rate	28%	33.2%	31.7%	Drug: 23.8%, Larceny/Fraud: 30.3%, Total: 27.1%
Sample Size	1,513	555	668	1,509
Sample Cases	Larceny, Fraud, Drug Offenders, Released 7/1/91-12/31/92 (Release group selected to model sentence group)	Larceny, Fraud, Drug Offenders, diverted in pilot sites	Larceny, Fraud, Drug Offenders, Sentenced in 1996 (Actual sentence group)	Larceny, Fraud, Drug Offenders, Sentenced in FY2005/FY2006 (Actual sentence group)
Methods of Analysis	Logistic Regression, Survival Analysis	Survival Analysis	Logistic Regression, Survival Analysis	Logistic Regression, Survival Analysis
Final Model Analytical Method	Logistic Regression	Survival Analysis and Interviews	Logistic Regression	Logistic Regression
Length of Follow-up	3 + years	11 months - 3 years	3 + years	3 + years
Sources of Follow-up	VA Rap Sheets, FBI Rap Sheets, PSI - including narratives, Juvenile Court information	VA Rap Sheets, FBI Rap Sheets, PSI, File Reviews	VA Rap Sheets, FBI Rap Sheets, Other States' Rap Sheets, PSI data, Guidelines data	VA Rap Sheets, FBI Rap Sheets, Other States' Rap Sheets, PSI data, Guidelines data, Court data, Inmate data
Selection of Risk Threshold	General Assembly directive to divert 25% of qualified felons	Suggestions from field, Experimentation	General Assembly directive to divert 25% of qualified felons	Recommend same proportion of offenders for alternative sanctions as are recommended under current model

While the size of the sample varied in each stage of the analysis, each was adequate to produce statistically significant results. For the re-validation study, the Commission initially intended to select 1,800 felony fraud, larceny, and drug offenders sentenced in FY2005 and FY2006, with 600 cases in each offense group and each offense group divided equally among offenders with juvenile records and those without juvenile records. However, only 299 fraud offenders convicted in FY2005 and FY2006 had juvenile records, so all 299 of these offenders were included in the sample. A stratified random sampling technique was used to select 1,799 eligible offenders for inclusion in the re-validation sample. Of the sample, 137 cases were excluded for the following reasons: the offender was still in prison, files had been purged or were unavailable, the discovery of a violent conviction made an offender ineligible for risk assessment, or the felony conviction was reduced to a misdemeanor (Figure 26).

Recidivism, as defined in the Commission's previous nonviolent offender risk assessment studies, was measured as any arrest within three years of release to the community that resulted in a felony conviction.

Data from the sentencing guidelines, pre/post-sentence reports, general district and circuit courts, and inmate datasets, as well as state and federal criminal history reports (rap sheets), were utilized in the re-validation analysis. Unlike in the original and validation studies, the sentencing guidelines data used for the re-validation study included information collected from the current nonviolent offender risk assessment instrument, which allowed the Commission to test how well the existing factors are being utilized and how well the instrument performs in the field.

Two main types of multivariate analysis were used in the original, validation, and re-validation analyses. The first type of analysis, survival analysis, looks at characteristics of offenders who recidivate after various time intervals following release into the community. This type of analysis was utilized in every phase of the risk assessment project, including the original analysis, the NCSC evaluation study, the validation study, and the re-validation study. Survival analysis is especially useful in situations where the focus of the analysis is the amount of time until a specific event occurs. For this study, survival analysis was used to identify factors that affected the length of time until an offender recidivated.

The second type of analysis, logistic regression, is a particularly powerful tool when the event of interest is dichotomous, in this case whether an offender recidivated or did not recidivate within three years. Unlike survival analysis, logistic regression requires a consistent follow-up time for all offenders under study, which gives each offender an equal time period in which to reoffend. The standard length of study for recidivism analysis is three years

Figure 26

Reasons for Excluding Cases from Revalidation Study

Reason	Number	Percent
Offender Has Prior Violent Felony	65	47.4%
Offender Has Current Violent Felony	17	12.4%
Offender Still in Prison	53	38.7%
Rap Sheet Could Not Be Located	1	0.7%
Other	1	0.7%
Total	137	100.0%

after release into the community. This type of analysis was utilized in the original analysis, the validation study, and the re-validation study. In the Commission's studies, the results of survival analysis and logistic regression were compared and statistical tests indicated that logistic regression provided the most accurate predictive power; as a result, the final models are based on logistic regression analysis.

The final re-validation study sample contained 1,662 cases, with follow-up times from 5 days to 6.8 years. Of the 1,662 cases, 1,509 offenders had a follow-up period of at least three years and could be examined using logistic regression, the type of analysis that requires a consistent follow-up interval for all cases.

In the original analysis and the 2001 validation study, the Commission selected the proportion of offenders to recommend for alternative punishment based on legislative mandate. Under its original directive, the General Assembly requested that 25% of the eligible prison-bound offenders be recommended for alternative punishment. In accordance with the General Assembly's directive, the Commission selected a score threshold that would result in 25% of the lowest risk offenders being recommended for alternative sanctions.

In 2003, the General Assembly asked that the Commission conduct further analyses to determine if additional offenders could be recommended for an alternative sanction without jeopardizing public safety. In response, the Commission determined that the score threshold could be raised to recommend more offenders for a less-restrictive sanction. Sentencing guidelines data for FY2011 show that, of the eligible offenders for whom a risk assessment form was received, 53% were recommended for an alternative sanction by the current risk assessment instrument.

Pursuant to the directive of the General Assembly, the goal of the nonviolent offender risk assessment instrument is to accurately predict which nonviolent offenders are at the lowest risk of recidivating so they can be recommended for alternative sanctions. Since several years of data have been collected from the existing nonviolent offender risk assessment instrument, the Commission can evaluate its performance in the field. In recent years, guidelines users have identified a few areas of concern relating to the current nonviolent risk assessment instrument. Specifically, users have stated that certain information that is required by the nonviolent offender risk assessment instrument, particularly employment history and marital status, has become increasingly difficult to obtain, especially if a pre-sentence report is not completed for the offender.

In order to gauge the extent to which information that is necessary to complete the current nonviolent risk assessment is missing, the Commission recently added a box to the risk assessment worksheet that allows users to identify such cases. In addition, data entry procedures were modified to track instances where scores were missing in certain data fields. Among eligible offenders sentenced in FY2011 for whom a risk assessment form was received, the box was checked or information relating to unemployment or marital status was missing in over 900 (14.2%) of the cases. It has always been the Commission's policy that the guidelines preparer err on behalf of the defendant if a particular piece of information is unknown. In the context of the nonviolent offender risk assessment instrument, preparers should not assign points for the factors indicating that an offender was not regularly employed or was never married and is over the age of 25 if that information is not available. As a result, some offenders who otherwise would not be recommended for an alternative may be recommended on the current worksheet because preparers are unable to gather certain information.

In cases where information necessary to score the risk assessment instrument is unknown, the precision of the instrument is reduced. The additive nature of the risk assessment instrument requires that all factors be scored properly so that the predicted level of risk accurately reflects an offender's actual level of risk. Consequently, part of the 2010-2012 re-validation analysis focused upon the possibility of simplifying the model so that the marital status and employment history factors could be removed.

Re-Validation Models

As with previous analyses, Commission staff tested numerous potential models in order to identify factors that are significantly related to offender recidivism. Commission staff also focused on the degree to which factors contained in the models enhanced predictive accuracy relative to the current risk assessment instrument. Careful analysis revealed that separating the sample into two groups, with one group comprised of drug offenders and one group for larceny and fraud offenders, would provide the strongest predictive accuracy. Logistic regression and survival analysis were used to create refined two models. Data indicate that the factors that are significant predictors of recidivism vary based upon the type of primary (most serious) offense. While some overlap exists between the factors in each model, the degree of importance of the shared factors varies across offense groups. As a result, Commission staff developed one model per analytic method for each offense group.

Figure 27 summarizes the performance of the models developed through the re-validation study relative to the current risk assessment instrument. The predictive ability of the models is a test of how accurately the models predict recidivism. Pursuant to the original legislative directive, the primary focus of the nonviolent offender risk assessment instrument is to accurately predict which offenders will not recidivate, so that a certain proportion of offenders with the lowest risk of recidivating can be recommended for alternative (non-prison) sanctions. For drug offenders, the model based on logistic regression (Drug Model 1) predicts non-recidivists with 84.0% accuracy. The current risk assessment instrument, as scored, predicts non-recidivists among drug offenders with 82.6% accuracy. The logistic regression model for larceny/

Figure 27

Comparison of Models

	Drug Offenders			Larceny/Fraud Offenders		
	Current Model	**Drug Model 1**	**Drug Model 2**	**Current Model**	**Larceny/ Fraud Model 1**	**Larceny/ Fraud Model 2**
Methods of Analysis	Logistic Regression	Logistic Regression	Survival Analysis	Logistic Regression	Logistic Regression	Survival Analysis
Sample Size	327	513	571	341	996	1,091
Length of Follow-Up	3 years	3 years	5 days-6.7 years	3 years	3 years	12 days-6.8 years
Non-Recidivists Accurately Predicted	82.6%	84.0%	60.8%	76.3%	79.3%	54.6%
Recidivism Rate for Offenders Recommended for Alternative Sanctions	19.1%*	11.7%	Not included in final analysis	21.8%*	18.8%	Not included in final analysis

**Based on scores assigned on the current risk assessment form. Some offenders would not have been recommended for an alternative sanction if unemployment or marital status had not been missing.*

fraud offenders (Larceny/Fraud Model 1) predicts non-recidivists with 79.3% accuracy, while the current instrument predicts non-recidivists among larceny/ fraud offenders with 76.3% accuracy.

The two models developed using survival analysis (Drug Model 2 and Larceny/Fraud Model 2) did not perform as well as the current model or the two new models developed using logistic regression. Therefore, the models developed using survival analysis were rejected. While the current risk assessment instrument is performing well, the new logistic regression models have a higher degree of predictive accuracy than the risk assessment instrument currently in use. In addition, the new logistic regression models provide the additional advantage of removing marital status and employment history, which are not reliably scored in the field.

Bootstrapping, a validation technique, was used to assess the stability of the new models' predictive accuracy across several hundred sub-samples. The percent of non-recidivating offenders who were accurately predicted in the original sample was found to be stable across sub-samples, with only a slight decrease during repeated sub-sampling. Bootstrapping was also used to further assess the inclusion of variables in the models. The Technical Appendix contains additional information relating to the bootstrapping procedure.

Both of the re-validation models include factors that are similar to those on the current model (Figure 28). For instance, gender, age, prior adult felony convictions, and prior adult incarcerations are present in some form on the current and new models. In contrast, some of the factors in the current model (additional offenses, never married by age 26, and not regularly employed) are not part of either of the new models. Dividing the cases by offense group revealed interesting interaction effects relating to gender for

Figure 28

Comparison of Current Risk Assessment Instrument and Preliminary Re-Validation Models

Current Model Factors	Drug Model 1 Factors	Larceny / Fraud 1 Model Factors
Gender Combination	Gender/Prior Juvenile Adjudication Combination	Gender/ Offense Type Combination
Age	Age	Age
Prior Adult/ Juvenile Felony Combination	Prior Adult Felony Convictions	Prior Adult Felony Convictions
Prior Adult Incarcerations	Prior Adult Incarcerations	Prior Adult Incarcerations
Prior Arrest/ Commitment within 18 mos.	Prior Arrest/ Commitment within 12 mos.	
		Legally Restrained at Time of Offense
Not Regularly Employed		
Never Married by Age 26		
Additional Offenses - yes/no		
Offense Type	Separate models by offense type	Separate models by offense type

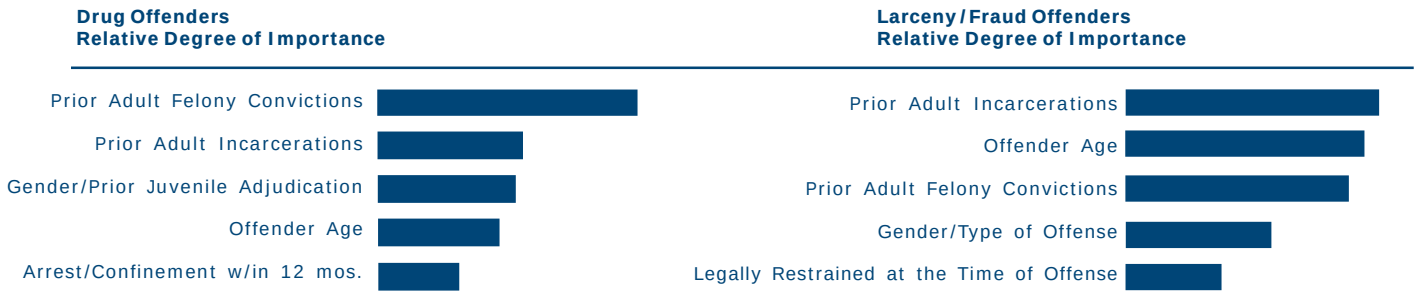
the different groups. Specifically, among offenders whose primary offense was a drug crime, male offenders with a prior juvenile adjudication were significantly more likely to recidivate than female offenders with a prior juvenile adjudication. Gender also played a significant role for larceny and fraud offenders. In particular, male offenders whose primary offense was a fraud offense were significantly more likely to recidivate than female offenders whose primary offense was a fraud offense. Conversely, females whose primary offense was larceny were more likely to recidivate than males whose primary offense was a larceny offense.

For the 2010-2012 re-validation study, the predictive power of the current risk assessment model was improved by splitting the sample by offense group and creating factors that are fine-tuned to the separate sub-groups. For drug offenders, the most important factor is prior adult felony convictions, followed by the number of prior adult incarceration events (Figure 29). The gender/prior juvenile adjudication factor is the third most important factor for drug offenders. For larceny and fraud offenders, the number of prior adult incarcerations is the most important factor, followed by the offender's age.

While the age factor for the drug model is divided into the same categories as the age factor for the larceny and fraud model (younger than 21 years, 21 to 29 years, 30 to 43 years, and over 43 years old), the relative degree of importance of this factor is higher for larceny and fraud offenders than it is for drug offenders.

Figure 29

Significant Factors in Assessing Risk



Note: The larger the bar on the chart, the more important the factor is, relative to the other factors in the model.

Figure 30 illustrates the worksheet scores for each of the models. Since the age factor is the second most important factor for larceny and fraud offenders, the age group that demonstrated the highest risk of recidivism (younger than 21 years old) is assigned the second-highest point value on the larceny/fraud risk assessment worksheet.

Careful deliberation is involved in the construction and selection of models. Particular attention is paid to the type of variables utilized and statistical considerations, including the predictive ability of the models and the composition of the resultant target group. The use of demographic factors is sensitive because demographic factors are believed by some to stand in for other socio-economic factors that are not easily defined, a concern raised during interviews conducted for the NCSC evaluation. Commission staff tested the possibility of removing gender and age from both models. However, the demographic factors used in the re-validation models are statistically significant and removing them can decrease the power of models.

Both of the models exclude employment history and marital status factors yet provide slightly greater predictive accuracy than the current instrument. Guidelines preparers using the new risk assessment instruments will likely find that they are easier to fill out because nearly all of the information necessary for the new risk assessment instruments is also necessary for completing the other sentencing guidelines worksheets. This will likely increase the reliability of the instruments when they are completed by users in the field, since the information is more readily available.

Figure 30

Scoring Significant Risk Assessment Factors - Worksheets

Drug Offenders

◆ **Offender Age at Time of Offense**

	Points
Younger than 21	9
21 to 29 years	6
30 to 43 years	3
Over 43 years	1

◆ **Gender**

	Points
Offender is Male	2

◆ **Prior Juvenile Adjudication**

	Points
Female with prior juvenile adjudication	1
Male with prior juvenile adjudication	7

◆ **Prior Adult Felony Convictions**

Number:	Points
0	0
1 - 2	1
3	5
4 or more	15

◆ **Prior Adult Incarcerations**

Number:	Points
0	0
1 - 3	1
4 or more	8

◆ **Prior Arrest or Confinement Within Past 12 Months (Prior to Offense)**

	Points
If Yes, add	3

☐ 15 or less, check Recommended for Alternative Punishment.
☐ 16 or more, check NOT Recommended for Alternative Punishment.

Go to **Cover Sheet** and fill out **Nonviolent Risk Assessment Recommendations**.

Larceny/Fraud Offenders

◆ **Offender Age at Time of Offense**

	Points
Younger than 21	22
21 to 29 years	16
30 to 43 years	7
Over 43 years	1

◆ **Gender**

Primary Offense is Fraud

	Points
Offender is Female	1
Offender is Male	10

Primary Offense is Larceny

	Points
Offender is Female	13
Offender is Male	9

◆ **Prior Adult Felony Adjudication**

Number:	Points
0	0
1 - 2	5
3 or more	15

◆ **Prior Adult Incarcerations**

Number:	Points
0	0
1 - 9	4
10 or more	32

◆ **Legally Restrained at Time of Offense**

	Points
If Yes, add	6

☐ 31 or less, check Recommended for Alternative Punishment.
☐ 32 or more, check NOT Recommended for Alternative Punishment.

Go to **Cover Sheet** and fill out **Nonviolent Risk Assessment Recommendations**.

In addition to predictive accuracy, another consideration when comparing competing models is the recidivism rate of offenders recommended for alternative sanctions. This is of particular concern since the Commission was originally instructed by the General Assembly to proceed with due regard for public safety needs. For this test, the recidivism rate of offenders who would be recommended for an alternative sanction must be examined. The re-validation study indicates that the recidivism rate for drug offenders who are recommended for an alternative sanction on the current worksheet is 19.1%. The recidivism rate for larceny and fraud offenders recommended for an alternative on the current worksheet is 21.8%. This may be due, in part, to the fact that certain factors on the existing worksheet, namely those relating to marital status and employment history, are not reliably scored in all cases.

After considering numerous potential thresholds for the new instruments, the Commission voted to select the thresholds based on the percentage of offenders who are currently recommended for a less restrictive sanction. For drug offenders, this was 61.3%. Selecting a threshold of 15 on the new drug risk assessment instrument, where offenders receiving a score of 15 or less would be recommended for an alternative sanction, would recommend 63.2% of drug offenders for an alternative sanction. The recidivism rate for offenders recommended for an alternative on the new drug risk assessment instrument is 11.7%. For larceny and fraud offenders, 42.6% of offenders are recommended for an alternative on the current instrument. A threshold of 31 on the new larceny/fraud risk assessment instrument would recommend 41.6% of offenders for an alternative sanction, with a projected recidivism rate of 18.8%. For each offense group, the recidivism rate for offenders recommended for an alternative under the new risk assessment instrument is lower than the recidivism rate for offenders recommended for an alternative under the current risk assessment instrument.

The overall recidivism rate for the 2010-2012 re-validation study sample was 27.1%. The decrease from the recidivism rate observed in the 2001 validation study (31.7%) may be related to a general decline in crime rates and recidivism that has been observed in the Commonwealth over the past several years. As expected, recidivism rates among the entire sample used for logistic regression analysis are higher among offenders with characteristics that result in points scored on the new nonviolent offender risk assessment instruments. For instance, of the offenders studied, 32.4% of larceny offenders recidivated, followed by fraud (26.9%) and drug (23.8%) offenders. However, as discussed above, the recidivism rates varied across offense types based on gender. Specifically, among larceny and fraud offenders, female larceny offenders were the most likely to recidivate, followed by male offenders. Female fraud offenders were the least likely to recidivate among larceny and fraud offenders. Overall, nearly 29% of male offenders recidivated, compared to 23% of females.

Offender age groups showed considerably different recidivism rates, with 31.7% of offenders younger than 21 years of age recidivating, around 29% of those 21 to 29 years of age recidivating, slightly more than 25% of offenders 30 to 43 years of age recidivating, and 22.7% of offenders over the age of 43 recidivating. While nearly 36% of offenders with a prior juvenile record recidivated, slightly more than 25% of offenders without a prior juvenile record recidivated. Offenders with no prior adult incarcerations recidivated at a rate of 17.6%, compared to 31.1% of offenders with at least one prior adult incarceration. Approximately 21% of offenders with no prior adult felonies recidivated, 22.5% of those with one or two prior adult felonies recidivated, 31% of those with three prior adult felonies recidivated, and 43.8% of offenders with four or more adult felonies recidivated.

Future of Nonviolent Risk Assessment

The current nonviolent risk assessment instrument has been in use statewide for over 10 years. Over the last decade, the Commission has gathered valuable information from the sentencing guidelines worksheets, as well as judges and guidelines users, that has facilitated the execution of a thorough re-validation study. After careful consideration of the findings of the Commission's original analysis, its validation study, the NCSC independent evaluation, and the 2010-2012 re-validation study, the Commission concluded that the two new risk assessment models would serve as an improvement upon the risk assessment instrument currently in use across the Commonwealth.

The Commission's formal recommendation is contained in the chapter of this report entitled Recommendations of the Commission (see Recommendation 1). Per § 17.1-806 of the *Code of Virginia*, any modifications to the sentencing guidelines adopted by the commission and contained in its annual report shall, unless otherwise provided by law, become effective on the following July 1.

Technical Appendix

The proposed nonviolent offender risk assessment instruments are based on historical data and are designed to predict the likelihood that certain offenders will not recidivate. Validation of a model gives confidence that the factors and scores that characterize historical data will accurately predict outcomes for current and future offenders who will be sentenced in Virginia.

When time and resources are unlimited, data from another location or group can be collected and analyzed to help validate a model. When this is not an option, research has shown that other steps may be taken to gauge the validity of a statistical model.

Internal Validation Methods. When the accuracy of a predictive model is assessed using the same sample from which it is developed, the estimates of accuracy can be overly optimistic. Several methods exist for assessing the degree of optimism and extent to which the observed results of a predictive model may be applicable to a different sample of individuals. The simplest way to test internal validity is the split-sample method, where one portion of a sample is used to develop a model and the remaining portion of the sample is used to test the model. While this method is the most straightforward technique, it also tends to produce overly pessimistic results and reduces the number of cases that may be used for model development (Brunelli & Rocco, 2006; Harrell, Lee, & Mark, 1996; Steyerberg et al., 2001; Steyerberg et al., 2003). Cross-validation, another technique, can be viewed as an extension of the split sample technique. In its simplest form, cross-validation involves randomly splitting the sample into two groups, developing the model on one group, testing it on the other, and vice versa. A third alternative for estimating internal validity is bootstrapping. This technique allows for the use of the entire sample for model construction. Once a prospective model has been determined, it is tested by measuring the performance of the model on numerous random samples, drawn with replacement, from the existing data set. This results in more robust and stable models.

Enhanced Methodology. Commission staff incorporated an additional step into the bootstrapping procedure used to test the predictive accuracy of the models across different samples of offenders. In a logistic regression model, a case is predicted to recidivate when its predicted probability is at or above a specified percentage, or cut point. By default, a value of .5 (or 50%) is used, allowing for an equal probability of success (non-recidivism) or failure (recidivism).

Among drug offenders in the validation sample, the actual recidivism rate was 23.8%, which is substantially lower than the default cut point of 50%. While larceny and fraud offenders had a higher recidivism rate at 30.3%, it still was well below the default rate/cut point. Therefore, the analysis was refined to incorporate the percentage of sampled offenders who did not recidivate into the process of determining the appropriate cut point for classifying cases as successes (non-recidivists) or failures (recidivists).

For each sample drawn using the bootstrap procedure, predicted values vary based on the number of valid cases selected for inclusion in the bootstrap sample. To improve the precision in model testing, Commission staff first completed the bootstrapping procedure to identify the percentage of offenders selected for inclusion in each bootstrap sample who did not recidivate. For each sample, this percentage was saved and then used as the cut point for the logistic regression model that was applied to the specific bootstrap sample. This ensured that the model for each sample used in the validation procedure classified successes and failures according to the actual recidivism/non-recidivism rate for offenders selected in each bootstrap sample.

Model Performance. This enhanced bootstrap method was used to assess internal validity for the two final models developed during the re-validation study. The percent of non-recidivating offenders who were accurately predicted by the drug and larceny/fraud models was found to be only slightly optimistic for both groups of offenders. Specifically, 84% of non-recidivating drug offenders were accurately predicted in the original sample. The model for drug offenders was tested on 750 bootstrap samples. The average (mean) percent of non-recidivists accurately predicted across these samples was 83.9%. For larceny and fraud offenders, the final model accurately predicted 79.3% of non-recidivists in the original sample. Due to limited computing capacity and a larger number of cases in each bootstrap sample, 650 bootstrap samples were constructed to test the larceny/fraud model. The average (mean) percent of non-recidivists among larceny and fraud offenders who were accurately predicted across these samples was 77.5%.

Bootstrapping also was used to evaluate the variables selected for inclusion in the models. The use of bootstrapping in this manner allows researchers to determine if variables identified in a model based on a specific sample of subjects are likely to be important predictors in the population (Karkouti et al., 2005). All of the variables contained in the drug and larceny/fraud models were significant in more than 50% of the bootstrap samples, which supports the assertion that each variable's inclusion in the models developed using the original sample was not due to chance.

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Immediate Sanction Probation Pilot Program

4

Legislative Directive to Implement a Pilot Project

In 2012, the Virginia General Assembly adopted budget language to extend the provisions of § 19.2-303.5 of the *Code of Virginia* and to authorize the creation of up to four immediate sanction probation programs (see Chapter 3 of the *2012 Acts of Assembly*, Special Session I). These immediate sanction probation programs are designed to target nonviolent offenders who violate the conditions of probation while under supervision in the community but have not been charged with a new crime. These violations are often referred to as "technical probation violations." Chapter 3 of the *2012 Acts of Assembly*, Special Session I, directs the Virginia Criminal Sentencing Commission to select up to four jurisdictions to serve as pilot sites, with the concurrence of the Chief Judge and the Commonwealth's Attorney in each locality. It further charges the Sentencing Commission to develop guidelines and procedures for implementing the programs, administer the programs and evaluate the results.

The pilot program will last until July 1, 2014. The Commission will report preliminary findings on program implementation and recidivism, to the Chief Justice, Governor, and the Chairmen of the House and Senate Courts of Justice Committees, the House Appropriations Committee, and the Senate Finance Committee by October 1, 2013.

CHAPTER 3 of the 2012 Acts of Assembly
(Special Session I)
Item 50

Virginia Criminal Sentencing Commission

B.1. Notwithstanding the provisions of § 19.2-303.5, Code of Virginia, the provisions of that section shall not expire on July 1, 2012, but shall continue in effect until July 1, 2014, and may be implemented in up to four sites.

2. The Virginia Criminal Sentencing Commission, with the concurrence of the chief judge of the circuit court and the Commonwealth's attorney of the locality, shall designate each immediate sanction probation program site. The Virginia Criminal Sentencing Commission shall develop guidelines and procedures for implementing the program, administer the program, and evaluate the results of the program. As part of its administration of the program, the commission shall designate a standard, validated substance abuse assessment instrument to be used by probation and parole districts to assess probationers subject to the immediate sanction probation program. The commission shall also determine outcome measures and collect data for evaluation of the results of the program at the designated sites. The commission shall present a report on the implementation of the immediate sanction probation program, including preliminary recidivism results to the Chief Justice, Governor, and the Chairmen of the House and Senate Courts of Justice Committees, the House Appropriations Committee, and the Senate Finance Committee by October 1, 2013

Hawaii's Opportunity Probation with Enforcement (HOPE) Program

Many key elements of Virginia's Immediate Sanction Probation program are modeled after the Hawaii Opportunity Probation with Enforcement (HOPE) program, established in 2004 by Judge Steven Alm of Hawaii's First Circuit. The HOPE program was created with the goal of enhancing public safety and improving compliance with probation supervision conditions. The approach is based on the notion that swift and certain punishment for bad behavior has a greater deterrent effect than punishment that is delayed and uncertain.

In Hawaii, offenders who are at-risk for failing probation are identified for potential participation in the program. The judge conducts warning hearings for new participants to tell them that probation terms will be strictly enforced. Hawaii's program includes frequent, unannounced drug testing. An expedited process for dealing with violations was established in the court and offenders who violate the terms of probation are immediately arrested and brought before the judge (usually within 48 to 72 hours). The sentence for a violation is modest (usually only a few days in jail) but virtually certain and served immediately. Thus, the judge applies sanctions in a certain, swift, and consistent manner for every violation. A recent federally-funded evaluation of the HOPE program found a reduction in recidivism rates, technical violations, and drug use among the participating probationers.

Interest in Immediate Sanction Probation Programs in Virginia

Lawmakers in Virginia became interested in Hawaii's approach to dealing with technical probation violators in 2009. In 2010, the General Assembly adopted legislation authorizing the creation of up to two immediate sanction probation programs with key elements modeled after Hawaii's HOPE program (see § 19.2-303.5 of the *Code of Virginia*).

Despite the 2010 legislation, an immediate sanction probation program had not been formally established in Virginia. Nonetheless, many Virginia officials remained interested in launching an immediate sanction program in the Commonwealth.

Continued interest resulted in the 2012 legislative directive to the Commission.

Theory Behind "Swift and Certain" Punishment

The theory behind "swift and certain" punishment programs, like Immediate Sanction Probation, began in early criminological literature. Criminologist Cesare Beccaria argued that the certainty of a punishment, even if it is moderate, has a stronger deterrent effect than the fear of another that is more severe where there is hope of avoiding the punishment altogether. In addition, he maintained that deterrence is maximized if punishment is delivered swiftly. Essentially, moderate punishment that is swift and certain has a greater deterrent effect than severe punishment that is unpredictable and applied irregularly. Hawken and Kleiman (2009) recently found that the HOPE model, which also draws heavily from this concept, significantly reduced recidivism, drug use, and missed appointments among participating probationers.

Key Stakeholders

There are several key stakeholders in implementing a program such as Immediate Sanction Probation. Since the program requires a swift response from probation officers, law enforcement officers, jail administrators, clerks, prosecutors, defense counsel, and judges, cooperation from each stakeholder is necessary. As of December 3, 2012, Commission staff have conducted several meetings in potential pilot sites to discuss elements of the Immediate Sanction Probation program and gauge interest and willingness to participate. Key stakeholders in attendance at these meetings included circuit court judges, the Commonwealth's attorney, probation officers, the Public Defender or court-appointed attorneys, the Sheriff and Police Chief, and the Clerk of the Circuit Court.

Immediate Sanction Probation Policies and Procedures

In accordance with the legislative directive, the Commission has developed the necessary policies and procedures to provide a framework for the Immediate Sanction Probation program. These policies and procedures include offender eligibility criteria, determination of offender risk, identification of candidates for the program, program placement, monitoring of program participants, establishment of expedited hearings for program violations, offender access to defense counsel, sanctions for program violations, and removal of offenders from the program.

Offender Eligibility Criteria. To be considered for the Immediate Sanction Probation program, offenders must meet certain criteria. Under the criteria set by the Commission, the offender must:

- Be 18 years of age or older (excludes juveniles tried as adults in circuit court),
- Be on supervised probation for a felony conviction (not given a deferred disposition),
- Not have any current or prior adult convictions or juvenile adjudications for a violent offense (as defined by § 17.1-805),
- Have a recent COMPAS Risk/ Needs assessment on file,
- Not have been diagnosed with a severe mental health issue, and
- Be supervised in the same jurisdiction where the offender was originally sentenced.

Since the Immediate Sanction Probation program is only being implemented in three pilot sites, the last eligibility criteria was necessary to ensure that judges in the pilot locality would have jurisdiction over a participant's case.

For evaluation purposes, it is preferable to identify offenders for the program who are starting a new period of supervised probation (either directly from the court or after serving an incarceration term). New probation cases, for the purposes of the pilot program, consist of offenders who were received as new probation cases on or after November 1, 2012.

It is not clear how current probationers, who have been supervised under the existing policies and practices, might respond to a change in the standards to which they will be held. Although it is preferred that these offenders not be placed in the immediate sanction program, if judges feel that such offenders would benefit from the program, they may place them in the program, as long as they meet all other eligibility criteria. For the evaluation study, the results of these offenders will be analyzed separately.

Finally, to be eligible for the program, an offender must be identified as being at-risk for recidivating or failing probation. To measure recidivism risk, Department of Corrections (DOC) probation officers will administer the COMPAS risk/needs assessment instrument. The COMPAS tool measures critical risk, needs areas, and has some configurations to develop integrated case plans. COMPAS is currently used by probation officers to determine the most appropriate supervision level for an offender in the community. The two COMPAS risk scales that are used to determine supervision level, namely the violent recidivism and general recidivism scales, will also be used to determine an offender's risk for recidivating for the purposes of the Immediate Sanction Probation program. Risk for recidivating will be used in conjunction with risk for failing probation (measured by alleged violations of the terms and conditions of probation) as part of the eligibility criteria for offenders who may be considered for placement in the Immediate Sanction Probation program.

Selecting offenders who are likely to recidivate and/or fail on probation is an important component of many programs, since resources are most efficiently utilized on offenders who would probably reoffend or fail probation without an intervention. Criminological research has shown that placing low-risk offenders in programs designed for high-risk offenders may actually increase their likelihood to recidivate (see, e.g., Andrews & Bonta, 2007; Lowenkamp & Latessa, 2004; Lowenkamp, Latessa, & Holsinger, 2006).

Identifying Candidates for the Program. Candidates for the Immediate Sanction Probation program will be identified based on risk for recidivating and risk for failing probation (measured by the number of technical violations the offender is alleged to have committed). Specifically, eligible offenders who have been identified as high risk or medium risk with override consideration by COMPAS may be placed on the docket to be reviewed as a candidate for the program upon the first alleged technical violation.

Eligible probationers identified as medium (without an override) or low risk by COMPAS will be treated as low risk for failing probation until their second and third alleged violations, respectively. Although the COMPAS identified the offender as relatively low risk for recidivating, having two or three technical violations suggests that the probationer is at-risk for failing probation.

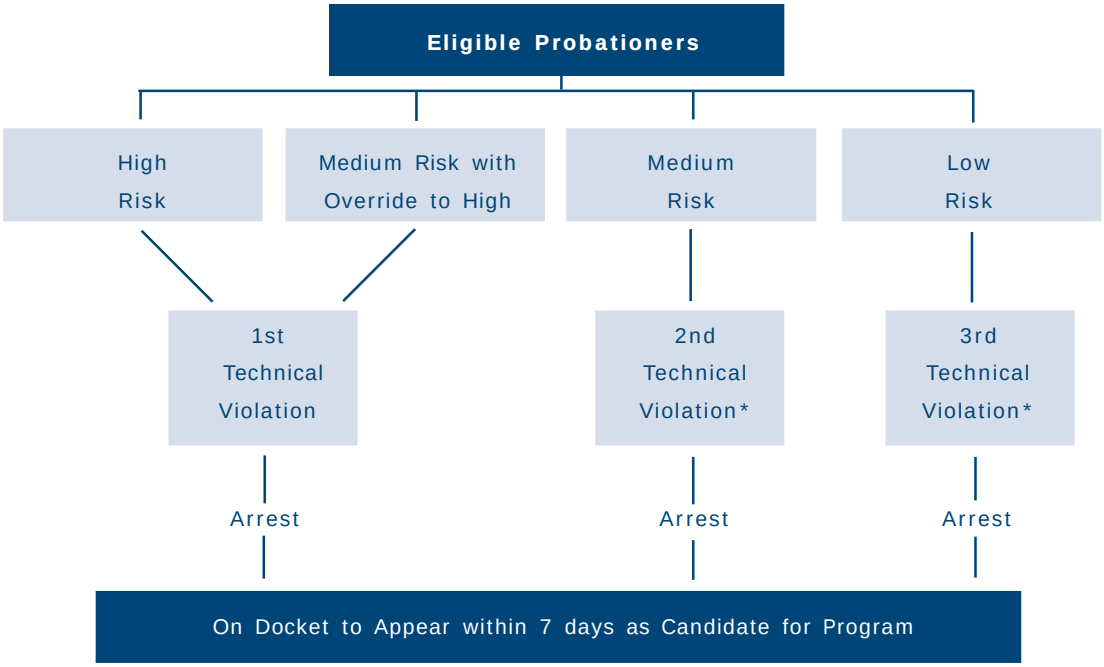
As noted above, offenders with a current or prior violent felony conviction (per § 17.1-805) are not eligible for the program and, therefore, would be excluded from this process. The candidate identification process is described in Figure 31. At this stage, the offender is not in the Immediate Sanction Probation program, but he or she will be reviewed by the judge as a candidate for the program.

Candidate Review Hearings. Once identified as a candidate for the program, the offender should appear before the judge within seven (7) days of arrest for a review hearing. Ideally, a public defender, court-appointed attorney, or private attorney will be present when review hearings are conducted. When possible, the attorney should meet with the offender prior to the review hearing.

At the review hearing, the judge may decide to place the offender in the program or continue the hearing on the violation so it may be handled under existing practice. If the judge determines that an eligible offender is a good candidate for the program and there is sufficient evidence to find that the offender violated a condition or term of supervised probation, the judge will order that the show cause be continued and the terms of the suspended sentence be modified to include a condition that the defendant participate in the immediate sanction probation program. If the judge places the offender in the program, the judge may also mandate that the offender serve 3 to 7 days in jail as a condition of the suspended sentence or sentence the offender to time served.

Figure 31

Identifying Candidates for the Immediate Sanction Probation Program



**Violations occuring on different dates*

The judge may give the probationer the official warning immediately after placing the probationer in the program or the judge may schedule a formal warning hearing with other probationers being placed into the program.

Official Warning. The official warning can be given immediately after placing the probationer into the program or may be given to offenders in a group (within a week of being placed in the program). It is important that judges use the same language and communicate a consistent message to each probationer who is placed in the program. For this reason, the Sentencing Commission has developed a standardized script for the judges' use. It is intended to communicate the standards to which the probationer will be held going forward in a clear and easily understandable way. The warning script also serves to emphasize the link between the probationer's choices and the sanctions that will be imposed.

Monitoring. Program participants will be closely monitored to ensure compliance with all terms and conditions of probation. Participants will be frequently drug tested when first entering the program. For the first month, the offender will be randomly tested four to six times. Handheld testing units will be used because immediate results are necessary to achieve the "swift" aspect of this program. For offenders testing negative, frequency of testing will gradually be reduced.

Violations while Participating in the Program. When a violation is detected, the probation officer will immediately issue a PB-15 authorizing the offender's arrest. The swiftness aspect to this program means that an arrest should occur as soon as possible. Once the offender is arrested, he should remain in jail to await the expedited hearing.

Expedited Hearings for Violations. Pursuant to § 19.2-303.5, when a participating offender is arrested for an alleged violation, the court must conduct an immediate sanction hearing unless:

- It is alleged that the offender committed a new crime or infraction,
- It is alleged that the offender absconded more than 7 days, or
- The offender, the Commonwealth's Attorney, or the court objects to the hearing.

If an immediate sanction hearing is not held, the violation will be handled through the normal process. This means the offender may sit in jail for days or weeks until a violation hearing can be held and the offender may receive a substantially longer sentence than he or she would receive during an expedited hearing.

Ideally, the expedited hearings will be conducted multiple days of the week to ensure that an offender does not wait in jail more than 48 to 72 hours before appearing (unless arrested on a Friday or holiday). Expedited hearings should be brief (likely to average about 7 minutes each).

Access to Defense Counsel. A public defender (if an office exists in the site) will be assigned to each session in which the court will hold expedited hearings. If no public defender office in a pilot site, a cadre of court-appointed attorneys will be assigned to cover these sessions. The offender can call a private attorney if he or she chooses. The offender can also waive counsel.

Mandatory Jail Time for Violations. Technical violations committed by offenders participating in the program will result in mandatory jail time. This is to address the certainty of punishment. If the court determines that there is sufficient evidence to find that the offender violated a condition of supervised probation, the judge will continue the show cause and modify the conditions of the suspended sentence to include a specified number of days in jail, based on the graduated sanctions shown in Figure 32. The offender's probation will not be revoked during the expedited hearing. The mandatory incarceration ranges provide judges with some discretion based on the violation and circumstances surrounding it. This mandatory incarceration should be served in addition to time served in jail awaiting the expedited hearing. The offender's probation will not be revoked. The Commission's probation violation guidelines, which apply to technical violations, will not be used for expedited hearings.

Substance Abuse Treatment. A "behavioral triage" approach will be used to identify participating offenders who may be suitable for substance abuse treatment. An evaluation of a similar program found that the use of swift and certain sanctions resulted in a significant decrease in drug use among participants (Hawken & Kleiman, 2009). In essence, the program was able to stop drug use among recreational users while also identifying offenders who would benefit the most from substance abuse treatment programs. As discussed in the "Offender Eligibility Criteria" section, the effectiveness of treatment programs is maximized when high-risk offenders are targeted for treatment and low-risk offenders are not.

For participants in the immediate sanction probation program who do not desist from drug or alcohol use in response to the frequent random drug tests and repeated jail sanctions, the court may order a full substance abuse assessment. If addicted, the defendant may be referred to substance abuse treatment (if suitable) or drug court (if available in the pilot jurisdiction). If accepted into a drug court program, the offender is to be removed from the Immediate Sanction Probation program.

Figure 32

Mandatory Terms of Incarceration for Program Participants

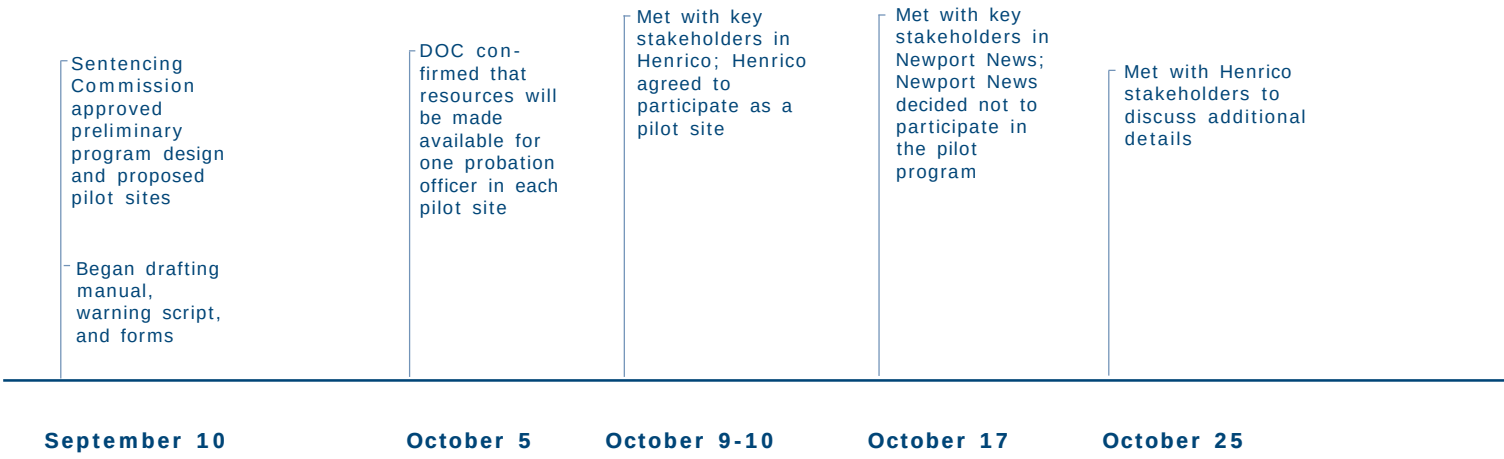
Program Violation	Mandatory Incarceration
1st violation	3-7 days
2nd violation	5-10 days
3rd violation	7-14 days
4th violation	10-20 days
5th violation	15-25 days
6th violation and subsequent	20-30 days

Removal from Program. The court may remove the offender from the program at any time. If a participant is convicted of a new crime, he or she is to be removed from the program and the violation will be handled through the normal process. In these circumstances, sanctioning of the offender is left to the discretion of the court.

Successful Completion. If an offender has gone 12 months since his or her last violation, the offender will be considered as having "successfully completed" the program. The probationer may be returned to the regular caseload, be placed on a less-restrictive level of supervision, or be released from supervision at the judge's discretion.

Activities to Date

In the summer and fall of 2012, Commission staff worked closely with other state agencies, the Governor's office, and stakeholders in various localities to identify potential pilot sites. On September 10, 2012, the Commission approved the staff's plan to approach the key stakeholders in Henrico, Lynchburg, and Newport News to request their participation as pilot sites. Henrico and Lynchburg agreed to participate, with start dates of November 1, 2012, and January 1, 2013, respectively. The stakeholders in Newport News elected not to participate in the program at this time. Additional detail regarding the Commission's activities to date is contained in the timeline below.

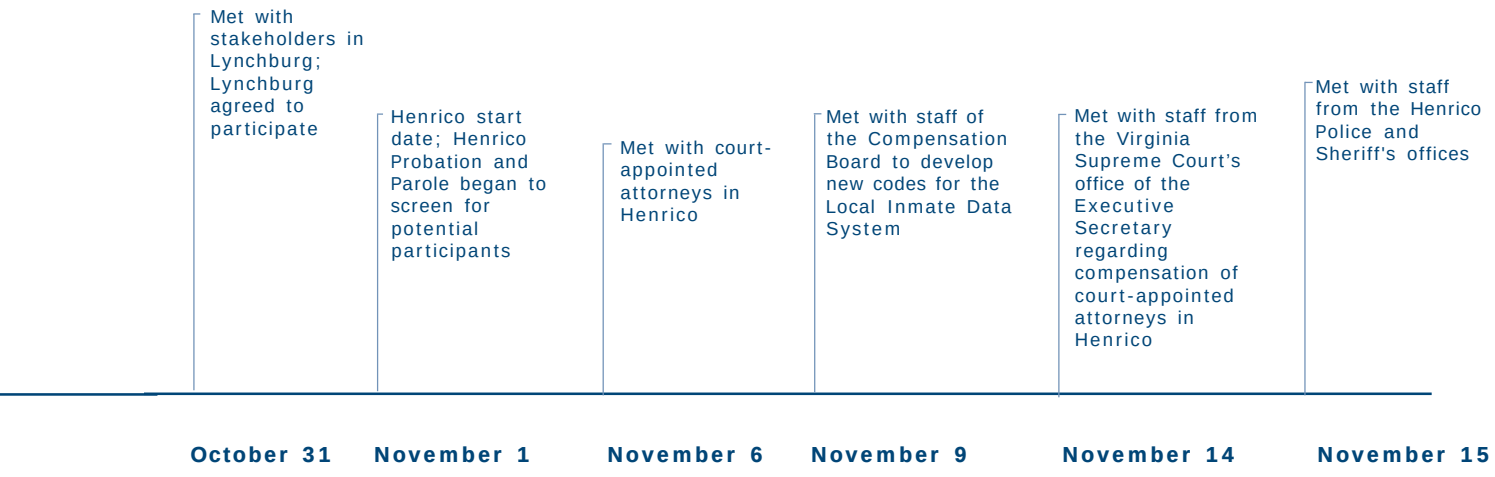


Upcoming Activities

In the coming months, Commission staff will conduct additional meetings in Henrico and Lynchburg and meet with stakeholders from a third potential pilot site. In addition, Sentencing Commission staff will organize monthly meetings with practitioners in pilot sites to review the procedures, examine the progress of the program, and identify and resolve any problems or concerns. However, practitioners are encouraged to call the Sentencing Commission hotline to discuss emergent issues at any time between the monthly meetings.

The meetings also will address the administration of the candidate review and participant violation hearings, the implementation of the key elements, the length of time it takes for warrants to be issued and served, the drug testing procedures, the use of sanctions, and statistics on the number of probationers who entered the program during the last month and their progress.

The Commission will submit a report on the implementation of the immediate sanction probation program, including preliminary recidivism results, to the Chief Justice, Governor, and the Chairmen of the House and Senate Courts of Justice Committees, the House Appropriations Committee, and the Senate Finance Committee by October 1, 2013.



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Lowenkamp, C. T., Latessa, E. J., & Holsinger, A. M. (2006). The risk principle in action: What have we learned from 13,676 offenders and 97 correctional programs? *Crime and Delinquency, 52*, 77-93.

Recommendations of the Commission

5

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.

On an annual basis, the Commission examines crimes that are 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 guideline 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 seven recommendations this year.

Recommendation Relating to Nonviolent Risk Assessment

▼ Recommendation 1

Replace the current nonviolent offender risk assessment instrument, used in conjunction with the guidelines for fraud, larceny, and drug offenses, with risk assessment instruments developed based on the results of the Commission's newest study of felony recidivism.

Issue

In its 1994 directive, the General Assembly instructed the Commission to develop a risk assessment instrument for nonviolent offenders and to determine if 25% of the lowest risk offenders could be diverted from prison to an alternative sanction "with due regard for public safety" (§ 17-235 of the *Code of Virginia*). This mandate was made in conjunction with other changes in the Commonwealth's sentencing structure that were designed to substantially increase the amount of time served in prison by offenders convicted of violent crimes and offenders with a record of prior violent offenses. The combined plan reserved expensive prison beds for violent and higher-risk offenders, while identifying the lowest-risk offenders for alternative punishment options. Since 2002, risk assessment has been integrated into the sentencing guidelines for fraud, larceny, and drug offenders.

Between 2010 and 2012, the Commission conducted an extensive study of recidivism among nonviolent felons in Virginia in order to re-evaluate the current risk assessment instrument and potentially revise the instrument based upon more recent data.

Discussion

Because it had been a number of years since the nonviolent offender risk assessment instrument was last examined, the Commission, in 2010, directed staff to begin a new recidivism study to evaluate the current instrument and potentially update the instrument based on more recent felony cases from Virginia's circuit courts. This complex, multi-stage project was completed in 2012. A detailed discussion of the study is contained in the chapter of this report entitled *Nonviolent Offender Risk Assessment Study: Findings.*

The Commission contemplated several factors in its decision to recommend that the current nonviolent offender risk assessment instrument, which is integrated into the guidelines for fraud, larceny, and drug offenders, be replaced with two instruments developed using more recent data. In addition to eliminating two factors that have not been scored reliably in the field, the predictive accuracy of the two newly-developed instruments is slightly higher than the current instrument (Figure 33).

Figure 33

Comparison of Nonviolent Offender Risk Assessment Models

	Drug Offenders		Larceny/Fraud Offenders	
	Current Model	Recommended Drug Model	Current Model	Recommended Larceny/Fraud Model
Methods of Analysis	Logistic Regression	Logistic Regression	Logistic Regression	Logistic Regression
Sample Size	327	513	341	996
Length of Follow-Up	3 years	3 years	3 years	3 years
Non-Recidivists Accurately Predicted	82.6%	84.0%	76.3%	79.3%
Recidivism Rate for Offenders Recommended for Alternative Sanctions	19.1%*	11.7%	21.8%*	18.8%

**Based on scores assigned on the current risk assessment form. Some offenders would not have been recommended for an alternative sanction if unemployment or marital status had not been missing.*

Moreover, the recidivism rate for offenders who are recommended for alternative sanctions based on the new instruments is expected to be lower than for offenders recommended for alternatives on the current instrument.

Based on the results of the 2010-2012 study, the Commission recommends replacing the current risk assessment instrument with two instruments, one applicable to larceny and fraud offenders and the other specific to drug offenders (Figure 34). The Commission's study revealed that predictive accuracy was improved using two distinct instruments.

Under the proposal, the new risk assessment instruments will recommend roughly the same proportion of offenders for alternative sanctions as the current instrument. As a result, no impact on correctional bed space is anticipated.

Figure 34

Proposed Nonviolent Offender Risk Assessment Instruments

Drug Offenders

◆ **Offender Age at Time of Offense**

	Points
Younger than 21	9
21 to 29 years	6
30 to 43 years	3
Over 43 years	1

◆ **Gender**

Offender is Male	2

◆ **Prior Juvenile Adjudication**

Female with prior juvenile adjudication	1
Male with prior juvenile adjudication	7

◆ **Prior Adult Felony Convictions**

Number:	Points
0	0
1 - 2	1
3	5
4 or more	15

◆ **Prior Adult Incarcerations**

Number:	Points
0	0
1 - 3	1
4 or more	8

◆ **Prior Arrest or Confinement Within Past 12 Months (Prior to Offense)**

If Yes, add	3

☐ 15 or less, check Recommended for Alternative Punishment.
☐ 16 or more, check NOT Recommended for Alternative Punishment.

Go to **Cover Sheet** and fill out **Nonviolent Risk Assessment Recommendations**.

Larceny/Fraud Offenders

◆ **Offender Age at Time of Offense**

	Points
Younger than 21	22
21 to 29 years	16
30 to 43 years	7
Over 43 years	1

◆ **Gender**

Primary Offense is Fraud

Offender is Female	1
Offender is Male	10

Primary Offense is Larceny

Offender is Female	13
Offender is Male	9

◆ **Prior Adult Felony Adjudication**

Number:	Points
0	0
1 - 2	5
3 or more	15

◆ **Prior Adult Incarcerations**

Number:	Points
0	0
1 - 9	4
10 or more	32

◆ **Legally Restrained at Time of Offense**

If Yes, add	6

☐ 31 or less, check Recommended for Alternative Punishment.
☐ 32 or more, check NOT Recommended for Alternative Punishment.

Go to **Cover Sheet** and fill out **Nonviolent Risk Assessment Recommendations**.

Recommendation Relating to Mandatory Minimum Penalties

▼ Recommendation 2

Revise several guidelines worksheets to ensure that the recommended sentence exceeds six months of incarceration when the primary offense is accompanied by an offense that requires a mandatory minimum sentence of at least six months.

Issue

Currently, Section A of the guidelines for Burglary/Dwelling, Burglary/Other, Drug/Other, Murder/Homicide, Miscellaneous/Person and Property, Miscellaneous/Other, and Weapon offenses contains a factor to add points if the offender has been convicted of a firearm offense that carries a mandatory minimum sentence, such as using a firearm in the commission of certain felonies. Scoring of this factor increases the likelihood that an offender will be recommended for incarceration that is greater than six months. There are numerous other crimes defined in the *Code of Virginia* that require a mandatory minimum sentence of six months or more; however, non-weapon offenses with mandatory minimum sentences are not currently scored on this factor. As a result, in some cases, the guidelines recommend probation or no incarceration, or a term of incarceration that is less than the mandatory minimum sentence required by law.

Discussion

The sentencing guidelines are based on historical sentencing practices. However, there are instances in which the guidelines were developed prior to the implementation of current mandatory minimum penalties. Thus, the guidelines may produce sentence recommendations that fall below the mandatory minimum sentence required by law in some cases. Since mandatory minimum sentences take precedence over the guidelines recommendation, the Sentencing Guidelines Manual instructs guidelines preparers to enter the mandatory minimum penalty for any part of the recommended sentence range (low, midpoint or high) that falls below the mandatory minimum. This adjustment is then noted on the guidelines Cover Sheet.

Section A of the sentencing guidelines worksheets determines if an offender will be recommended for probation or jail up to six months (Section B) or a prison term of more than six months (Section C). Section A of the Burglary/Dwelling, Burglary/Other, Drug/Other, Murder/Homicide, Miscellaneous/Person and Property, Miscellaneous/Other, and Weapon/Firearm worksheets currently includes a factor that adds points if the offender has been convicted of a firearm offense requiring a mandatory minimum sentence. This factor ("Mandatory Firearm Conviction for Current Event") increases the likelihood that the offender will be recommended for a term of incarceration of more than six months.

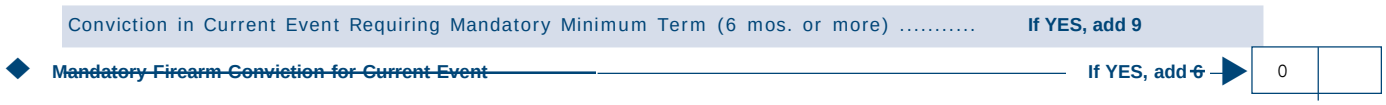
In addition to certain firearm offenses, there are numerous other crimes defined in the *Code of Virginia* that require a judge to impose a mandatory minimum sentence of six months or more. Under the current guidelines, however, non-firearm offenses with mandatory minimum sentences of six months or more are not scored on the "Mandatory Firearm Conviction for Current Event" factor. These offenses include assault of a law enforcement officer, habitual traffic violations, and fourth or subsequent convictions for driving while intoxicated.

To address this, the Commission recommends expanding the "Mandatory Firearm Conviction for Current Event" factor to include any offense requiring a mandatory minimum sentence of six months or more. In addition, the points on the revised factor, "Conviction in Current Event Requiring Mandatory Minimum Term (6 months or more)," would be set at a value that is high enough to ensure that offenders subject to a mandatory minimum sentence of six months or more would be recommended for a sentence that is greater than six months. Specifically, offenders would receive 13 points for this factor on Section A of the Burglary worksheets, 9 points on the Drug/Other worksheet, 7 points on the Murder/Homicide worksheet, and 8 points on the Miscellaneous and Weapon/Firearm worksheets. An example of the recommended change is shown below (Figure 35).

As the Commission's proposal is designed to integrate existing mandatory minimum penalties and current judicial sanctioning practices into the guidelines, no impact on correctional bed space is anticipated.

Figure 35

Proposed Change to Section A of the Drug/Other Worksheet



Recommendation Relating to Larceny Offenses

▼ Recommendation 3

Amend the Larceny sentencing guidelines to add larceny of property with a value of $200 or more with the intent to sell or distribute, as defined in § 18.2-108.01(A).

Issue

Currently, larceny of property with a value of $200 or more with the intent to sell or distribute is not covered by the sentencing guidelines when it is the most serious offense at sentencing. Section 18.2-108.01(A), which defines this offense, was enacted by the General Assembly in 2003. Since that time, the Commission has received numerous requests from users to add this offense to the guidelines. With five years of historical sentencing data available, the Commission conducted a thorough analysis and has developed a proposal to integrate this offense into the Larceny guidelines.

Discussion

Under § 18.2-108.01(A), any person who commits larceny of property with a value of $200 or more with the intent to sell or distribute such property is guilty of a felony punishable by confinement in a state correctional facility for not less than two years nor more than 20 years. The larceny of more than one item of the same product is prima facie evidence of intent to sell or intent to distribute for sale.

For the current analysis, historical sentencing data from the Supreme Court of Virginia's Circuit Court Automated Information System (CAIS) database for FY2008 through FY2012 were obtained. This approach provided a sufficient number of cases for analysis; there were a total of 206 cases in which larceny of property with the intent to sell or distribute would be the primary, or most serious, offense in the sentencing event. Commission staff obtained criminal history reports, or "rap sheets," on these offenders from the Virginia State Police so that the offender's prior record could be computed and used in scoring the various factors on the guidelines worksheets. Four of the 206 offenders were excluded from the analysis because a rap sheet could not be located.

As shown in Figure 36, nearly one-third (31.2%) of the offenders studied were sentenced to a term of incarceration exceeding six months, with a median effective sentence (imposed sentence less any suspended time) of 1.2 years. Approximately one-fourth (26.7%) of the offenders received a jail term of up to six months, with a median sentence of three months. The remaining 42.1% of offenders were given probation without an active term of incarceration.

Figure 36

Larceny with Intent to Sell, $200 or More (§ 18.2-108.01(A))
FY2008 – FY2012
202 Cases

Disposition	Percent	Median Sentence
No Incarceration	42.1%	N/A
Incarceration up to 6 months	26.7%	3 Months
Incarceration more than 6 months	31.2%	1.2 Year

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

For offenders receiving more than six months of incarceration, the sentences were further analyzed. Sentences in these cases ranged from seven months to seven years. Virginia's sentencing guidelines are grounded in historical practices among judges and ranges are developed from the middle 50% of actual sentences, thus removing the extreme high and low sentences. The middle 50% of sentences for this offense encompasses one to two years (Figure 37).

To develop guidelines for this offense, the Commission examined historical sentencing practices for this crime for the period from FY2008 through FY2012. The proposed guidelines are based on 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 and compared to ensure the proposed guidelines are closely aligned with judicial sentencing practices in these cases.

After a thorough examination of the data, the Commission recommends adding larceny of property with a value of $200 or more with the intent to sell or distribute as defined in § 18.2-108.01(A) to the Larceny guidelines as described below.

On Section A of the Larceny guidelines, offenders convicted of this offense as their primary offense at sentencing will be scored under Primary Offense Group H; this is the same Primary Offense Group where several other larceny crimes with statutory maximums of 20 years are scored. Offenders will receive two points if convicted of one count, four points if convicted of two or three counts, or six points if convicted of four counts (Figure 38). Any remaining counts will be scored under the "Primary Offense Additional Counts" factor. The remaining factors on Section A will be scored as they currently appear on the worksheet.

Figure 37

Larceny with Intent to Sell, $200 or More, (§ 18.2-108.01(A))
Offenders Sentenced to Incarceration of More than 6 Months
FY2008 – FY2012
63 Cases

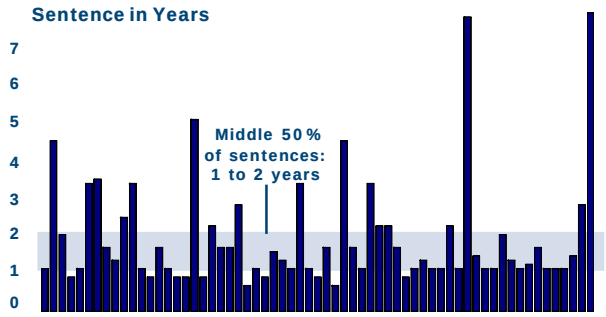


Figure 38

Proposed Changes to the Larceny Sentencing Guidelines
Section A

◆ **Primary Offense**

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

An offender who scores a total of 15 points or less on Section A of the Larceny guidelines is then scored on Section B, which will determine if he or she will be recommended for probation/ no incarceration or a jail term of up to six months. Offenders whose primary offense is larceny with intent to sell or distribute who are scored on Section B will again be scored under Primary Offense Group H, the group where several larceny offenses with 20-year maximums are scored. These offenders will receive three points for one count, four points for two counts, or seven points for three counts of the primary offense (Figure 39). Again, any remaining counts will be scored under the "Primary Offense Additional Counts" factor. No modifications to the Section B worksheet are necessary.

Figure 39

Proposed Changes to the Larceny Sentencing Guidelines Section B

◆ **Primary Offense**

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

Figure 40

Proposed Changes to the Larceny Sentencing Guidelines Section C

◆ **Primary Offense**

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

An offender who scores 16 points or more on Section A of the Larceny guidelines is then scored on Section C, which determines the sentence length recommendation for a term of imprisonment. Primary Offense points on Section C are assigned based on the classification of an offender's prior record. An offender is scored under the Other category if he does not have a prior conviction for a violent felony defined in § 17.1-805(C). An offender is scored under 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, offenders whose primary offense is larceny with intent to sell or distribute will again be scored under Primary Offense Group H. An offender convicted of one count of the primary offense will receive seven points for the "Primary Offense" factor if his prior record is classified as Other, 14 points if he is a Category II offender, or 28 points if he is a Category I offender (Figure 40).

Offenders convicted of two or three counts of the primary offense will receive primary offense points corresponding to their prior record classification as listed on Figure 40. Any remaining counts will be scored under the "Primary Offense Additional Counts" factor. No modifications to the Section C worksheet are necessary. Thus, offenders convicted of this offense will receive recommendations comparable to offenders convicted of other larceny crimes with a statutory maximum of 20 years.

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 of more than six months. It is important to note that not all of the offenders who historically received such a sentence will be recommended for that type of sentence under the proposed guidelines; this is because of the inconsistencies in past sentencing practices for these offenses. The guidelines are designed to bring about more consistency in sentencing decisions.

As Figure 41 shows, the proposed guidelines are expected to recommend 24.8% of offenders convicted of this crime for a term of incarceration in excess of six months. In actual practice, 31.2% of offenders were sentenced to a term of incarceration greater than six months. Thus, the recommended and actual historical rates of incarceration are relatively close. Moreover, for offenders convicted of this crime who received a term of incarceration greater than six months, the median sentence was 1.2 years. Under the proposed guidelines, for cases recommended for a term of incarceration greater than six months, the median recommended sentence was 1.4 years. Thus, the recommended and actual sentences are closely aligned.

The Commission will monitor judicial response to these new guidelines and will recommend adjustments, if necessary, based on judicial practice after the guidelines take effect.

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

Figure 41

Larceny with Intent to Sell, $200 or More (§ 18.2-108.01(A))
FY2008 – FY2012
202 Cases

Sentencing Guidelines	Recommendations under Sentencing Guidelines		Actual Practices Prior to Sentencing Guidelines	
Section A Score	Recommendation	Percent	NO PRISON Percent	PRISON Percent
Up to 15	No Prison	75.2%	81.6%	18.4%
16 or More	Prison	24.8%	30.0%	70.0%
		100.0%	68.8% **OVERALL**	31.2%

Recommendation Relating to Larceny Offenses

▼ Recommendation 4

Amend the Larceny sentencing guidelines to add possession, etc., of stolen property with an aggregate value of $200 or more with the intent to sell or distribute as defined in § 18.2-108.01(B).

Issue

Currently, possession, etc., of stolen property with an aggregate value of $200 or more with the intent to sell or distribute is not covered by the sentencing guidelines when it is the most serious offense at sentencing. Section 18.2-108.01(B), which defines this offense, was enacted by the General Assembly in 2003. Since that time, the Commission has received numerous requests from users to add this offense to the guidelines. The Commission has conducted a thorough analysis of the available data and has developed a proposal to integrate this offense into the Larceny guidelines.

Discussion

Possession, etc., of stolen property with an aggregate value of $200 or more with the intent to sell or distribute is a Class 5 felony punishable by confinement in a state correctional facility for one to 10 years. After examining the Circuit Court CAIS database for FY2008 through FY2012, the Commission identified 125 cases in which possession, etc., of stolen property with an aggregate value of $200 or more with the intent to sell or distribute was the primary (most serious) offense. Commission staff also obtained criminal history reports, or "rap sheets," on these offenders from the Virginia State Police so that the offender's prior record could be computed and used in scoring the various factors on the guidelines worksheets. Three of the 125 offenders were excluded from the analysis because a rap sheet could not be located.

Figure 42 presents the sentencing dispositions for the 122 cases that were eligible for analysis. Approximately one-fourth (24.6%) of the offenders studied were sentenced to a term of incarceration exceeding six months, with a median effective sentence of one year. Another 27.9% received a jail term of up to six months, with a median sentence of 3.5 months. Nearly half (47.5%) of the offenders did not receive an active term of incarceration to serve after sentencing.

Figure 42

Possess, etc., Stolen Property with Intent to Sell, Aggregate Value $200 or More (§ 18.2-108.01(B))
FY2008 – FY2012
122 Cases

Disposition	Percent	Median Sentence
No Incarceration	47.5%	N/A
Incarceration up to 6 months	27.9%	3.5 Months
Incarceration more than 6 months	24.6%	1 Year

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

Thirty offenders were sentenced to incarceration of more than six months. Sentences in these cases ranged from 8 months to 6 years. Further analysis revealed that the middle 50% of sentences for these cases ranged from one to two years (Figure 43).

To develop guidelines for this offense, the Commission examined historical sentencing practices for this crime for the period from FY2008 through FY2012.

The proposed guidelines are based on 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 and compared to ensure the proposed guidelines are closely aligned with judicial sentencing practices in these cases.

After a thorough examination of the data, the Commission recommends adding possession, etc., of stolen property with the intent to sell or distribute under § 18.2-108.01(B) to the Larceny guidelines as described below.

For Section A, the analysis indicated that scoring offenders whose primary offense is a violation of § 18.2-108.01(B) the same as other larceny offenses with a statutory maximum of 10 years would yield the best fit to actual sentencing practices. Specifically, on Section A of the Larceny guidelines, offenders convicted of this offense as their primary offense at sentencing will be scored under Primary Offense Group C (statutory maximum penalty equals 10 years). They will receive three points for one count of the primary offense (Figure 44). Any remaining counts will be scored under the "Primary Offense Additional Counts" factor. The remaining factors on Section A will be scored as they currently appear on the worksheet.

Figure 43

Possess, etc., Stolen Property with Intent to Sell, Aggregate Value $200 or More (§ 18.2-108.01(B))
Offenders Sentenced to Incarceration of More than 6 Months
FY2008 – FY2012
30 Cases

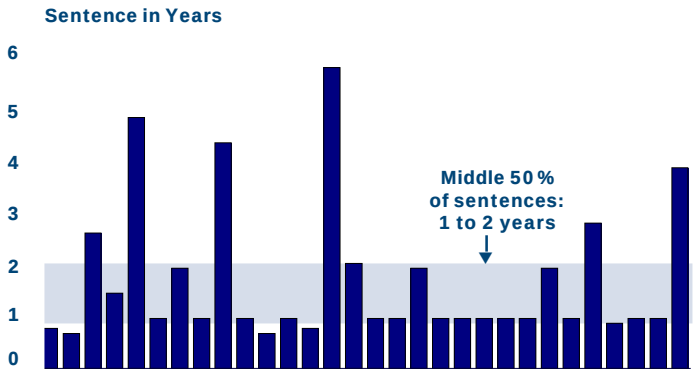


Figure 44

Proposed Changes to the Larceny Sentencing Guidelines
Section A

◆ **Primary Offense**

A.	Attempted or conspired larceny (1 count)	1
B.	Statutory maximum penalty equals 5 years	
	1 count	1
	2 counts	4
	3 counts	6
C.	Statutory maximum penalty equals 10 years (1 count)	3
D.	Grand larceny auto	
	1 count	5
	2 counts	7
	3 counts	10
E.	Grand larceny from person	
	1 count	4
	2 counts	11
F.	Grand larceny of a firearm (1 count)	1
G.	Failure of bailee to return animal, aircraft, vehicle or boat (1 count)	4
H.	Larceny of bank notes, checks or any book of accounts; Larceny with Intent to Sell, $200 or More Any other larceny offense with maximum penalty of 20 years	
	1 count	2
	2 - 3 counts	4
	4 counts	6

An offender who scores a total of 15 points or less on Section A of the Larceny guidelines is then scored on Section B, which will determine if he will be recommended for probation/no incarceration or incarceration from one day to six months. Offenders whose primary offense is a violation of § 18.2-108.01(B) who are scored on Section B will be scored under Primary Offense Group B (statutory maximum penalty equals 5 or 10 years). They will receive three points for one count, four points for two counts, or seven points for three counts of the primary offense (Figure 45). Again, any remaining counts will be scored under the "Primary Offense Additional Counts" factor. No modifications to the Section B worksheet are necessary.

An offender who scores 16 points or more on Section A is then scored on Section C of the Larceny guidelines, which determines the sentence length recommendation for a term of imprisonment. Offenders whose primary offense is a violation of § 18.2-108.01(B) who are scored on Section C will be scored under Primary Offense Group B (statutory maximum penalty equals 5 or 10 years). An offender convicted of one count of the primary offense will receive five points for the "Primary Offense" factor if his prior record is classified as Other, 10 points if he is a Category II offender, or 20 points if he is a Category I offender (Figure 46). Offenders convicted of two or three counts of the primary offense will receive the primary offense points corresponding to their prior record classification shown in Figure 46. Any remaining counts will be scored under the "Primary Offense Additional Counts" factor. No modifications to the Section C worksheet are necessary.

Figure 45

Proposed Changes to the Larceny Sentencing Guidelines
Section B

◆ **Primary Offense**

A.	Any attempted or conspired larceny (1 count)	1
B.	Maximum penalty equals 5 or 10 years	
	1 count	3
	2 counts	4
	3 counts	7
C.	Grand larceny auto	
	1 count	3
	2 counts	4
	3 counts	7
D.	Grand larceny from person (1 count)	6
E.	Grand larceny of a firearm (1 count)	1
F.	Failure of bailee to return animal, aircraft, vehicle or boat (1 count)	1
G.	Larceny of bank notes, checks, etc. or any book of accounts	
	1 count	3
	2 counts	4
	3 counts	7
H.	Any other grand larceny offense with a maximum penalty of 20 years, Larceny with Intent to Sell, $200 or More	
	1 count	3
	2 counts	4
	3 counts	7

Figure 46

Proposed Changes to the Larceny Sentencing Guidelines
Section C

◆ **Primary Offense**

		Category I	Category II	Other
A.	Attempted or conspired larceny (1 count)	8	4	2
B.	Statutory maximum penalty equals 5 or 10 years			
	1 count	20	10	5
	2 counts	28	14	7
	3 counts	40	20	10
C.	Grand larceny auto			
	1 count	32	16	8
	2 - 3 counts	56	28	14
	4 counts	72	36	18
D.	Grand larceny from person			
	1 count	40	20	10
	2 counts	56	28	14
	3 counts	68	34	17
E.	Grand larceny of a firearm (1 count)	68	34	17
F.	Failure of bailee to return animal, aircraft, vehicle or boat (1 count)	28	14	7
G.	Larceny of bank notes, checks, etc. or any book of accounts			
	1 - 2 counts	32	16	8
	3 counts	96	48	24
H.	Any other larceny offense with a maximum penalty of 20 years, Larceny with Intent to Sell, $200 or More			
	1 count	28	14	7
	2 counts	44	22	11
	3 counts	56	28	14

The Commission's proposal is designed to recommend approximately the same proportion of offenders for a sentence greater than six months as historically received a sentence of more than six months. Figure 47 shows that the proposed guidelines for possession with intent to sell stolen property cases are expected to recommend 22.1% of offenders convicted of this crime to a term of incarceration in excess of six months. In actual practice, 24.6% of offenders were sentenced to a term of incarceration greater than six months.

Thus, the recommended and actual historical rates of incarceration are nearly equal. Moreover, for offenders convicted of this crime currently receiving a term of incarceration of more than six months, the median sentence is one year. For cases recommended for a term of incarceration greater than six months, the median recommended sentence was 1.3 years. Thus, the recommended and actual sentences are closely aligned.

The Commission will monitor judicial response to these new guidelines and will recommend adjustments, if necessary, based on judicial practice after the guidelines take effect.

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

Figure 47

Possess, etc., Stolen Property with Intent to Sell, Aggregate Value $200 or More (§ 18.2-108.01(B))
FY2008 – FY2012
122 Cases

Sentencing Guidelines	Recommendations under Sentencing Guidelines		Actual Practices Prior to Sentencing Guidelines	
Section A Score	Recommendation	Percent	NO PRISON Percent	PRISON Percent
Up to 15	No Prison	77.9%	82.1%	17.9%
16 or More	Prison	22.1%	51.9%	48.1%
		100.0%	75.4% **OVERALL**	24.6%

Recommendation Relating to Murder/Homicide Offenses

▼ Recommendation 5

Amend the Murder/Homicide sentencing guidelines for vehicular involuntary manslaughter associated with driving under the influence (§ 18.2-36.1(A)) to more closely reflect judicial sentencing practices for this offense.

Issue

According to Sentencing Guidelines data for FY2008 through FY2012, the compliance rate for offenders convicted of vehicular involuntary manslaughter associated with driving under the influence (DUI) under § 18.2-36.1(A) as the primary, or most serious, offense was 62.2%. However, when judges depart from the recommendation, they are much more likely to give the offender a sentence above the guidelines range than below it. This suggests that the guidelines could be refined to bring them more in sync with judicial thinking in these cases.

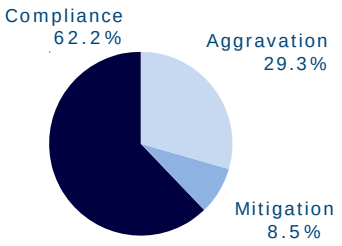
Discussion

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. From FY2008 through FY2012, compliance with the guidelines for vehicular involuntary manslaughter associated with DUI (§ 18.2-36.1(A)) was 62%. Nearly all of the departures were aggravations, or sentences above the guidelines (Figure 48).

Sentencing Guidelines data for FY2008 through FY2012 indicate that more than 86% of offenders who were sentenced for vehicular involuntary manslaughter associated with DUI under § 18.2-36.1(A) as the primary offense were sentenced to a term of incarceration greater than six months. The current guidelines for this offense recommended 81% of the offenders that type of disposition. The remaining 19% of offenders were recommended for no incarceration or incarceration up to six months; in more than half of those cases, however, judges sentenced the offender to a term of incarceration greater than the recommendation. Upon thorough analysis of these cases, the Commission found that judicial compliance with the guidelines can be improved by modifying the guidelines to ensure that offenders convicted of this offense are always recommended for incarceration greater than six months. Currently, vehicular involuntary manslaughter associated with DUI under § 18.2-36.1(A), receives the same number of primary offense points as involuntary manslaughter (§ 18.2-36) on Section A of the Murder/ Homicide worksheet. Under the proposal, vehicular involuntary manslaughter associated with DUI will be assigned eight points on the "Primary Offense" factor, which is sufficient to ensure that all offenders convicted of this offense will be recommended for incarceration of more than six months. This change is presented in Figure 49.

Figure 48

Vehicular Involuntary Manslaughter (§ 18.2-36.1(A)) FY2008 – FY2012 82 Sentencing Events*



** Worksheets with scoring errors were excluded from the analysis.*

Figure 49

Proposed Changes to the Murder/Homicide Sentencing Guidelines Section A

◆ **Primary Offense**

Vehicular involuntary manslaughter (§ 18.2-36.1(A))

1 count 8

Commission staff also evaluated the scores on Section C, which determines the length of the guidelines sentence recommendation. This portion of the analysis indicated that compliance could be maximized by adding 23 points for vehicular involuntary manslaughter cases associated with DUI where the offender was also sentenced for a felony hit and run offense. Consequently, the Commission recommends adding a new factor to Section C of the Murder/ Homicide guidelines, as shown in Figure 50. This factor will be scored only in cases in which the primary offense was vehicular involuntary manslaughter cases associated with DUI under § 18.2-36.1(A) and will increase the prison sentence recommendation if the offender was also convicted of felony hit and run.

Figure 50

Proposed Vehicular Involuntary Manslaughter Factor
Murder/Homicide - Section C

◆ **Score only if the Primary Offense is Vehicular involuntary manslaughter (§ 18.2-36.1(A))**

Additional Offense of Felony Hit and Run (§ 46.2-894)
If YES, add.....23

Based on offenders sentenced from FY2008 through FY2012, these recommended revisions to the Murder/ Homicide sentencing guidelines are expected to increase compliance for vehicular involuntary manslaughter associated with DUI to 65.9%, with the mitigation rate and aggravation rate balanced at 17.1% each (Figure 51). The reduction in aggravating sentences would bring recommendations more in line with current judicial sentencing practices for this offense.

Figure 51

Vehicular Involuntary Manslaughter (§ 18.2-36.1(A))
FY2008 – FY2012
82 Sentencing Events*

	Current	Proposed
Compliance	62.2%	65.9%
Mitigation	8.5%	17.1%
Aggravation	29.3%	17.1%

** Worksheets with scoring errors were excluded from the analysis.*

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

Recommendation Relating to Burglary Offenses

▼ Recommendation 6

Revise the sentencing guidelines for a completed act of burglary with a deadly weapon to increase the prison sentence recommendation for offenders who have an accompanying offense of murder or malicious wounding.

Issue

For scoring the sentencing guidelines, the primary (most serious) offense is selected based on the statutory maximum penalty as defined in the *Code of Virginia*. A completed act of burglary with a deadly weapon (as defined in §§ 18.2-89, 18.2-90, 18.2-91, 18.2-92, and 18.2-93) carries a statutory maximum penalty of life in prison. Offenses such as attempted or conspired first-degree murder, any second-degree or felony murder, or malicious wounding have statutory maximum penalties ranging from 10 to 40 years. If an offender is convicted of completed burglary with a deadly weapon and one of these offenses, the burglary is selected as the primary offense on the guidelines because it has the higher maximum penalty. Scoring this case on the Burglary sentencing guidelines, however, can yield a lower recommendation than if the case were scored on the Murder/Homicide or Assault guidelines.

In addition, Sentencing Guidelines data for FY2008 through FY2012 indicate that the compliance rate for cases where the primary offense was a completed act of burglary with a deadly weapon accompanied by murder or malicious wounding was only 43.8%. In half the cases, the judge sentenced the offender to a term above the recommended guidelines range. This suggests that the guidelines could be refined to more closely reflect judicial thinking in these cases.

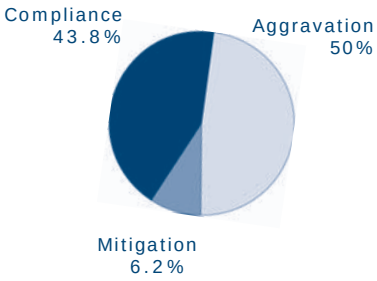
Discussion

Sections 18.2-89, 18.2-90, 18.2-91, 18.2-92, and 18.2-93 of the *Code of Virginia* establish enhanced penalties for burglaries that are committed while the offender is armed with a deadly weapon. In each statute, burglary with a deadly weapon is a Class 2 felony, with a statutory maximum penalty of life. This exceeds the statutory maximum penalties of 40 years for completed second-degree (§ 18.2-32) or felony (§ 18.2-33) murder offenses, 20 years for malicious wounding (§ 18.2-51), or 10 years for any attempted or conspired first-degree murder (§§ 18.2-22 and 18.2-26). Hence, burglary with a deadly weapon is the primary offense for sentencing events that include an additional offense of murder or malicious wounding as listed above.

From FY2008 through FY2012, the compliance rate of sentences for burglary with a deadly weapon with an additional offense of murder or malicious wounding was 43.8%. When departing from the guidelines recommendation, judges nearly always give the offender a sentence above the guidelines recommendation (Figure 52).

Figure 52

Compliance for Completed Burglary with a Deadly Weapon (§§ 18.2-89, 18.2-90, 18.2-91, 18.2-92, 18.2-93) with Additional Offense of Murder or Malicious Wounding FY2008 – FY2012 64 Sentencing Events



To address the disproportionate rate of aggravating sentences, the Commission recommends amending the Burglary/Dwelling and Burglary/Other sentencing guidelines.

Section A of the sentencing guidelines worksheets determines if an offender will be recommended for probation or jail up to six months (Section B) or a prison term of more than six months (Section C). Since all of the offenders whose primary offense was completed burglary with a deadly weapon who had an additional offense of murder or malicious wounding received a sentence of more than six months, the Commission recommends adding a new factor to Section A to ensure that all of these offenders are recommended for that type of disposition. Specifically, a factor would be added to Section A of the Burglary/Dwelling and Burglary/Other worksheets to assign ten points in cases involving an additional offense of murder or malicious wounding. As shown in Figure 53, this factor would only be scored if the primary offense is a completed burglary with a deadly weapon.

Commission staff also evaluated the scores on Section C, which determines the length of the prison sentence recommendation. Based on a detailed analysis of historical sentencing practices, the Commission recommends adding a new factor to Section C of the Burglary/Dwelling and Burglary/Other worksheets. This factor, which would be scored only if the primary offense is a completed burglary with a deadly weapon, adds 140 points in cases involving an additional offense of murder, 35 points for a completed malicious wounding, or 8 points for an attempted or conspired malicious wounding (Figure 54). This will increase the prison sentence recommended for offenders convicted of this combination of offenses.

Amending the Burglary/Dwelling and Burglary/Other guidelines in this way is expected to improve the compliance rate in these cases, while providing a more balanced split between aggravation and mitigation departures (Figure 55). Given judicial sentencing practices from FY2008 through FY2012, compliance with the sentencing guidelines is anticipated to increase from 44% to 50%. Aggravation departures are expected to decline from 50% to 25%. The increase in compliance would bring recommendations more in line with current judicial sentencing practices for this offense.

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

Figure 53

Proposed Completed Burglary with a Deadly Weapon Factor Burglary/Dwelling - Section A

◆ **Score the following factor only if Primary Offense is Completed Burglary with a Deadly Weapon**

Additional Offense with VCC Prefix of "MUR" or Malicious Wounding

If YES, add 10

Figure 54

Proposed Completed Burglary with a Deadly Weapon Factor Burglary/Dwelling - Section C

◆ **Score the following factor only if Primary Offense is Completed Burglary with a Deadly Weapon**

Additional Offense

VCC Prefix of "MUR"
If YES ..... add 140

Completed Malicious Wounding
If YES ..... add 35

Attempted/Conspired Malicious Wounding
If YES ..... add 8

Figure 55

Completed Burglary with a Deadly Weapon with Additional Offense of Murder or Malicious Wounding FY2008 – FY2012 64 Sentencing Events

	Current	Proposed
Compliance	43.8%	50.0%
Mitigation	6.2%	25.0%
Aggravation	50.0%	25.0%

Recommendation Relating to Factor Labels

▼ Recommendation 7

Modify the labeling of two guidelines factors on the worksheets and the wording of instructions in the guidelines manual in order to clarify the scoring of those factors.

Issue

Confusion sometimes arises among sentencing guidelines users as to how to properly score the "Primary Offense Additional Counts" factor and the "Victim Injury" factor. In order to promote better understanding of these factors and accurate scoring of the sentencing guidelines, the labels used to denote these two factors on the worksheets can be modified and the wording of instructions in the manual can be revised. The recommended changes are not intended to modify how the guidelines should be scored, but rather improve the degree to which the guidelines are scored accurately under existing rules.

Discussion

For scoring the sentencing guidelines, the primary (most serious) offense is selected based on the statutory maximum penalty as defined in the *Code of Virginia*. After identifying the primary offense and selecting the appropriate offense worksheet, the guidelines user will determine the number of points to score on the "Primary Offense" factor. On most guidelines worksheets, the "Primary Offense" score will also depend on the number of counts of the offense. In some cases, the offender has been convicted of more counts than can be scored on the "Primary Offense" factor. When this occurs, the user moves to the next factor on the worksheet, called "Primary Offense Additional Counts," and scores any counts of the primary offense that were not scored on the "Primary Offense" factor. Next, the user will determine if the offender has been convicted of any other offenses; these are scored on the factor called "Additional Offenses." Guidelines users have reported some confusion about how to score these factors correctly.

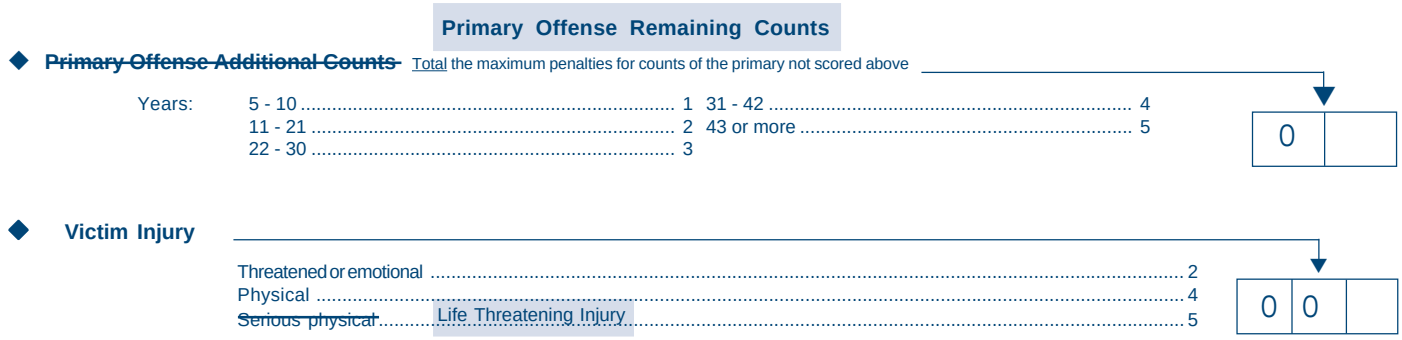
The Commission recommends a change in the labeling of the "Primary Offense Additional Counts" factor. The factor will now be called "Primary Offense Remaining Counts (counts not scored above)." An example of this change is shown in Figure 56. Instructions in the guidelines manual will be modified to correspond to the labeling change on the worksheets. The recommended change is expected to clarify where to score the remaining counts of the primary offense that are not scored in the "Primary Offense" factor.

The Commission also recommends a change to the labeling of the "Victim Injury" factor in order to further clarify guidelines scoring rules. Many of the guidelines worksheets include a factor in which the user must score the nature of the injury to the victim. On the current worksheets, the "Victim Injury" categories are: threatened injury, emotional injury, physical injury, and serious physical injury. Based on the guidelines scoring rules, serious physical injury is intended to capture circumstances in which the victim died, suffered life-threatening injuries where he could have died without extensive intervention of medical treatment, suffered significant permanent physical disability, became HIV positive, or became pregnant. If the victim was physically injured but the injury does not fit any of the circumstances above, the user should score it under the physical injury category. Many physical injuries appear to be serious, yet will not meet the criteria to be scored as serious physical injuries. The scoring rules can be found in the guidelines manual; nonetheless, confusion arises as to how to properly score the "Victim Injury" factor.

In order to clarify the scoring of this factor, the Commission recommends a change to the labeling of the "Victim Injury" categories. The label for "Serious Physical Injury" will change to "Life Threatening Injury." The scoring rules and manual instructions for scoring this type of injury will not change; however, changing the label for this category to "Life Threatening Injury" will emphasize the seriousness of the types of injuries necessary to score the highest number of points on the "Victim Injury" factor. An example of this change is shown in Figure 56.

Figure 56

Proposed Wording Changes for Existing Factors



Appendices

Appendix 1

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

Reasons for MITIGATION	Burg. of Dwelling (N=198)	Burg. Other Structure (N=61)	Sch. I/II Drugs (N=587)	Other Drugs (N=92)	Fraud (N=203)	Larceny (N=558)	Misc (N=104)	Traffic (N=121)	Weapon (N=77)
Plea Agreement	54	12	232	40	76	176	40	45	25
No reason given	36	20	124	20	43	153	21	36	11
Judicial discretion	26	8	48	11	32	57	12	6	10
Offender cooperated with authorities	10	3	55	6	19	31	7	0	5
Offender is sentenced to an alt. punishment to incarceration	25	9	56	1	15	57	2	3	1
Minimal circumstances/facts of the case	13	2	26	3	10	25	10	12	11
Sentence recommended by Commonwealth Attorney	10	5	33	4	9	20	6	5	3
Offender has minimal/no prior record	12	4	24	1	4	17	5	11	7
Mitigating court circumstances/proceedings	5	2	35	7	4	19	7	2	3
Offender health (mental, physical, emotional, etc.)	4	4	21	9	13	19	3	7	4
Offender has good potential for rehabilitation	11	3	15	2	2	21	4	9	7
Offender issues (age of offender, homeless, family issues, etc.)	15	3	9	1	5	10	2	3	4
Offender has made progress in rehabilitating him/herself	6	1	19	4	4	9	2	1	1
Victim request	7	2	1	0	3	7	0	1	1
Offender not the leader	3	1	9	1	1	5	1	0	1
Financial obligations (court costs, restitution, child support, etc.)	3	1	4	0	13	7	0	2	1
Victim cannot/will not testify	3	0	0	0	3	2	2	0	0
Jury sentence	1	0	0	1	1	6	0	0	3
Sentencing guidelines incorrect/missing	2	0	12	0	2	5	1	2	1
Offender's substance abuse issues	2	1	9	0	2	3	0	0	1
Offender needs rehabilitation	2	0	6	0	3	3	2	2	0
Victim circumstances (facts of the case, etc.)	1	0	0	0	2	5	0	0	0
Sentenced to Department of Juvenile Justice	0	0	0	0	0	0	0	0	0
Guidelines recommendation is too harsh	1	1	2	0	3	3	1	0	1
Behavior positive since commission of the offense	0	1	5	0	2	4	1	2	2
Minimal property or monetary loss	0	0	0	0	3	14	0	0	0
Current offense involves drugs/alcohol (small amount, etc.)	1	0	10	1	0	1	1	0	0
Little or no injury/offender did not intend to harm	1	0	0	0	0	1	1	3	1
Victim's role in the offense	0	0	0	0	0	1	0	1	1
Multiple charges/events are being treated as one event	0	1	0	0	2	3	0	0	0
Sentencing guidelines recommendation not appropriate	0	0	2	0	1	3	0	2	0
Illegible written reason	2	0	0	1	1	2	0	0	0
Sentence recommended by Probation Officer	2	0	1	0	0	3	1	0	0
Minimal circumstances involved with supervision violation	0	0	1	0	0	1	3	0	1
Judge thought sentence was in compliance	0	0	1	1	0	0	1	0	0
Concealed weapon, but was not a firearm	1	0	0	0	0	0	0	0	2
Facts of the case (not specific)	0	0	1	0	0	0	0	0	0
Victim circumstances (facts of the case, etc.)	0	0	0	0	0	0	0	0	0
Judge had an issue scoring one of the risk assessment factors	0	0	0	0	1	0	0	0	0
Judge rounded guidelines minimum to nearest whole year	0	1	0	0	0	0	0	0	0
Total Reasons	259	85	761	114	279	693	136	155	108

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=209)	Burg. Other Structure (N=66)	Sch. I/II Drugs (N=506)	Other Drugs (N=178)	Fraud (N=116)	Larceny (N=449)	Misc (N=115)	Traffic (N=217)	Weapon (N=72)
Plea agreement	44	17	133	64	39	118	29	35	33
No reason given	45	10	135	42	26	100	26	42	13
Offender has extensive prior record/same type of prior offense	22	10	66	19	16	81	13	62	3
Aggravating circumstances/flagrancy of offense	39	13	25	7	10	51	17	36	8
Number of violations/counts in the event	11	4	33	14	2	25	7	5	4
Jury sentence	6	5	13	1	4	14	7	14	1
Guidelines recommendation is too low	11	5	27	10	6	16	14	7	0
Offender has poor rehabilitation potential	11	3	17	6	3	17	6	22	1
Degree of victim injury (physical, emotional, etc.)	5	0	2	0	1	6	2	17	4
Current offense involves drugs/alcohol (large amount of drugs)	0	0	28	9	0	2	4	26	2
Offender is sentenced to an alt. punishment to incarceration	9	4	22	8	3	22	0	5	2
Type of victim (child, etc.)	1	0	0	1	6	8	4	2	1
Judicial discretion (time served, shock incarceration, etc.)	13	5	10	6	2	8	3	3	1
Offense involved a high degree of planning/violation of trust	2	2	3	1	7	18	1	1	1
Offender's substance abuse issues	4	2	17	4	0	5	0	6	0
Victim circumstances (facts of the case, etc.)	24	1	0	0	1	1	1	2	0
Poor conduct since commission of offense	2	1	14	3	0	5	0	4	0
True offense behavior/more serious than offenses at conv.	1	0	9	3	2	4	0	2	0
Extreme property or monetary loss	2	1	0	0	4	20	2	0	0
Aggravating court circumstances/proceedings	1	0	4	1	3	6	2	0	2
Offender used a weapon in commission of the offense	3	0	2	0	0	4	0	0	4
Offender failed alternative sanction program	0	0	18	4	1	1	0	0	0
Degree of violence toward victim	1	0	0	0	0	0	1	0	0
Offender needs rehabilitation offered by jail/prison	2	0	8	2	1	2	1	3	0
Mandatory minimum involved in event	1	0	5	1	1	0	0	5	3
New offenses were committed while on probation	1	0	10	2	0	4	1	1	0
Aggravating facts involving the breaking and entering	15	0	0	0	0	3	0	0	0
Sentencing guidelines not appropriate	1	0	2	0	0	0	2	3	0
Victim request	2	0	0	0	0	4	0	0	1
Sentence recommended by Commonwealth Attorney	2	2	4	2	0	1	0	1	1
Offender issues (age of offender, homeless, lacks support, etc.)	1	1	5	0	3	1	0	1	0
Child present at time of offense	0	0	3	1	0	0	3	1	1
Offender failed to cooperate with authorities	0	1	5	0	0	1	1	1	0
Current offense involves accident/reckless driving	0	0	2	0	0	0	0	10	0
Seriousness of offense	2	0	1	2	0	3	0	1	0
Prior record not adequately weighed by guidelines	1	1	6	0	0	1	0	0	0
Failed to follow instructions while on probation	0	0	4	0	0	2	0	1	0
Gang-related offense	0	0	2	0	0	0	1	0	1
Financial obligations (court costs, restitution, child support, etc.)	0	0	0	0	2	6	0	0	0
Absconded from probation supervision	0	0	2	1	3	1	0	0	1
Offender was the leader	1	0	2	0	0	2	0	0	0
Violent/disruptive behavior in custody	0	0	1	0	1	2	0	1	0
Illegible written reason	1	0	2	0	0	2	0	0	0
Judge thought sentence was in compliance	0	0	2	0	1	1	0	2	0
Offender violated protective order or was stalking	0	0	0	0	0	0	0	0	1
Used, etc., drugs/alcohol while on probation	0	0	2	0	0	1	0	0	0
Facts of sex offense involved	0	0	0	0	0	0	0	0	0
Sentenced to an alternative	0	0	0	0	1	2	0	0	0
Total Reasons	287	88	646	214	149	571	148	322	89

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=212)	Homicide (N=37)	Kidnapping (N=28)	Robbery (N=227)	Rape (N=36)	Sexual Assault (N=71)
Plea Agreement	86	5	16	59	14	16
No reason given	41	6	6	46	4	13
Judicial discretion (time served, other sentence to serve, etc.)	19	4	4	23	1	7
Offender cooperated with authorities	3	4	2	35	0	4
Offender is sentenced to an alternative punishment to incarceration	3	0	0	3	0	0
Minimal circumstances/facts of the case	12	4	3	9	6	9
Sentence recommended by Commonwealth Attorney	10	1	0	18	2	3
Offender has minimal/no prior record	5	2	1	19	3	5
Mitigating court circumstances/proceedings	13	5	1	11	2	3
Offender health (mental, physical, emotional, etc.)	19	4	0	6	1	5
Offender has good potential for rehabilitation	1	5	1	14	2	2
Offender issues (age of offender, homeless, family issues, etc.)	8	0	1	10	1	4
Offender has made progress in rehabilitating him/herself	6	1	2	3	0	1
Victim request	16	2	4	3	3	3
Offender not the leader	2	0	2	15	0	0
Financial obligations (court costs, restitution, child support, etc.)	5	0	0	2	0	0
Victim cannot/will not testify	6	1	0	7	4	2
Jury sentence	2	4	0	8	5	4
Sentencing guidelines incorrect/missing	1	2	0	3	0	0
Offender's substance abuse issues	0	1	0	2	0	0
Offender needs rehabilitation	1	1	0	1	0	0
Victim circumstances (facts of the case, etc.)	8	3	0	1	1	0
Sentenced to Department of Juvenile Justice	2	1	0	15	0	3
Guidelines recommendation is too harsh	2	0	1	2	0	2
Behavior positive since commission of the offense	0	0	0	1	0	0
Minimal property or monetary loss	0	0	0	0	0	0
Current offense involves drugs/alcohol (small amount of drugs)	0	0	0	2	0	0
Little or no injury/offender did not intend to harm	7	1	0	0	0	1
Victim's role in the offense	6	2	0	1	1	0
Multiple charges/events are being treated as one criminal event	1	0	0	3	0	0
Sentencing guidelines recommendation not appropriate	1	0	0	0	0	1
Illegible written reason	1	0	0	0	0	1
Sentence recommended by Probation Officer	0	0	0	0	0	0
Minimal circumstances involved with supervision violation	0	0	0	0	0	0
Judge thought sentence was in compliance	1	0	0	0	0	0
Concealed weapon, but was not a firearm	0	0	0	1	0	0
Facts of the case (not specific)	0	0	0	1	0	0
Victim circumstances (facts of the case, etc.)	0	0	2	0	0	0
Judge had an issue scoring one of the risk assessment factors	0	0	0	0	0	0
Judge rounded guidelines minimum to nearest whole year	0	0	0	0	0	0
Total Reasons	288	59	46	324	50	89

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=153)	Homicide (N=57)	Kidnapping (N=19)	Robbery (N=90)	Rape (N=20)	Sexual Assault (N=120)
Plea agreement	23	6	2	16	2	34
No reason given	25	7	4	19	3	22
Offender has extensive prior record or same type of prior offense	22	4	2	12	1	7
Aggravating circumstances/flagrancy of offense	20	21	4	20	2	26
Number of violations/counts in the event	6	4	1	2	0	4
Jury sentence	18	10	4	13	3	5
Guidelines recommendation is too low	6	2	0	6	1	2
Offender has poor rehabilitation potential	9	6	0	4	5	3
Degree of victim injury (physical, emotional, etc.)	39	3	0	3	1	4
Current offense involves drugs/alcohol (large amount,etc.)	3	2	0	1	0	0
Offender is sentenced to an alt. punishment to incarceration	1	0	0	0	0	0
Type of victim (child, etc.)	5	3	0	2	8	23
Judicial discretion (time served, shock incarceration, etc.)	2	2	0	2	0	1
Offense involved a high degree of planning/violation of trust	1	2	0	3	2	10
Offender's substance abuse issues	0	2	0	0	0	0
Victim circumstances (facts of the case, etc.)	3	1	0	0	0	2
Poor conduct since commission of offense	1	0	0	1	0	1
True offense behavior/more serious than offenses at conviction	6	1	0	0	0	2
Extreme property or monetary loss	0	0	0	0	0	0
Aggravating court circumstances/proceedings	0	4	1	0	0	1
Offender used a weapon in commission of the offense	5	1	1	5	0	0
Offender failed alternative sanction program	0	0	0	0	0	0
Degree of violence toward victim	14	2	0	4	1	0
Offender needs rehabilitation offered by jail/prison	0	2	0	0	0	0
Mandatory minimum involved in event	2	0	1	0	0	1
New offenses were committed while on probation	0	0	0	0	0	0
Aggravating facts involving the breaking and entering	0	0	0	1	0	0
Sentencing guidelines not appropriate	8	0	2	0	0	0
Victim request	1	1	0	0	1	7
Sentence recommended by Commonwealth Attorney	0	0	1	1	0	1
Offender issues (age of offender, lacks family support, etc.)	0	1	0	0	0	2
Child present at time of offense	3	1	0	0	0	0
Offender failed to cooperate with authorities	0	1	0	2	0	0
Current offense involves accident/reckless driving	0	0	0	0	0	0
Seriousness of offense	1	0	0	1	0	0
Prior record not adequately weighed by guidelines	0	0	1	0	0	0
Failed to follow instructions while on probation	1	1	0	0	0	0
Gang-related offense	2	1	0	2	0	0
Financial obligations (court costs, restitution, child support, etc.)	1	0	0	0	0	0
Absconded from probation supervision	0	0	0	0	0	0
Offender was the leader	0	0	0	3	0	0
Violent/disruptive behavior in custody	0	0	0	0	1	1
Total Reasons	228	91	24	123	31	159

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	65.2%	28.3%	6.5%	46
2	66.7	28.3	5.0	60
3	80.0	8.6	11.4	35
4	63.8	22.4	13.8	58
5	64.9	13.5	21.6	37
6	53.1	18.8	28.1	32
7	65.9	13.6	20.5	44
8	56.3	25.0	18.8	32
9	53.3	10.0	36.7	30
10	70.8	16.7	12.5	48
11	77.3	18.2	4.5	22
12	52.3	25.0	22.7	44
13	48.6	27.0	24.3	37
14	69.0	14.3	16.7	42
15	58.7	12.0	29.3	75
16	81.3	12.5	6.3	16
17	77.8	0.0	22.2	9
18	83.3	0.0	16.7	6
19	68.0	8.0	24.0	25
20	52.9	11.8	35.3	17
21	75.0	25.0	0.0	28
22	66.0	8.5	25.5	47
23	50.0	30.6	19.4	36
24	67.9	20.8	11.3	53
25	76.9	11.5	11.5	52
26	72.9	8.5	18.6	59
27	78.5	15.4	6.2	65
28	61.5	11.5	26.9	26
29	46.5	11.6	41.9	43
30	40.0	32.0	28.0	25
31	100.0	0.0	0.0	14
Total	64.9	17.0	18.1	1,163

BURGLARY/OTHER

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	76.9%	7.7%	15.4%	26
2	81.8	13.6	4.5	22
3	76.5	17.6	5.9	17
4	76.9	19.2	3.8	26
5	76.2	9.5	14.3	21
6	60.0	20.0	20.0	10
7	73.3	20.0	6.7	15
8	77.8	22.2	0.0	9
9	81.3	12.5	6.3	16
10	90.0	5.0	5.0	20
11	80.0	20.0	0.0	10
12	66.7	13.3	20.0	15
13	100.0	0.0	0.0	15
14	76.9	0.0	23.1	13
15	71.7	13.0	15.2	46
16	76.5	11.8	11.8	17
17	88.9	11.1	0.0	9
18	75.0	0.0	25.0	4
19	73.7	21.1	5.3	19
20	87.5	0.0	12.5	8
21	84.2	10.5	5.3	19
22	57.1	19.0	23.8	21
23	92.3	0.0	7.7	13
24	65.4	19.2	15.4	26
25	90.0	0.0	10.0	20
26	63.6	13.6	22.7	22
27	96.6	0.0	3.4	29
28	61.1	0.0	38.9	18
29	71.0	12.9	16.1	31
30	85.7	7.1	7.1	14
31	75.0	0.0	25.0	4
Total	77.1	11.0	11.9	555

DRUG/OTHER

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	79.5%	7.7%	12.8 %	39
2	92.5	3.0	4.5	67
3	69.2	15.4	15.4	13
4	86.2	6.9	6.9	58
5	76.9	7.7	15.4	26
6	61.5	3.8	34.6	26
7	85.7	7.1	7.1	28
8	100.0	0.0	0.0	17
9	58.3	12.5	29.2	24
10	78.8	9.1	12.1	33
11	90.0	6.7	3.3	30
12	77.2	3.8	19.0	79
13	77.8	8.3	13.9	36
14	80.4	4.3	15.2	46
15	70.7	11.1	18.2	99
16	69.6	8.7	21.7	23
17	100.0	0.0	0.0	10
18	92.3	0.0	7.7	13
19	86.0	6.2	7.8	129
20	88.4	4.7	7.0	43
21	86.7	13.3	0.0	15
22	96.0	0.0	4.0	25
23	81.8	9.1	9.1	33
24	86.0	8.8	5.3	57
25	69.0	15.5	15.5	71
26	89.2	4.6	6.2	65
27	88.8	3.4	7.9	89
28	94.0	2.4	3.6	84
29	75.7	1.4	22.9	70
30	72.0	7.0	21.0	100
31	93.1	1.7	5.2	58
Total	82.0	6.2	11.8	1506

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

SCHEDULE I/II DRUGS

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	81.3%	6.7%	12%	208
2	86.1	8.3	5.7	230
3	71.1	15.5	13.4	142
4	83.7	11.7	4.6	282
5	81.2	5.9	12.9	101
6	85.0	12.0	3.0	100
7	88.1	7.4	4.5	243
8	83.1	14.5	2.4	83
9	74.7	15.8	9.5	95
10	78.5	12.8	8.7	149
11	85.6	8.1	6.3	111
12	82.1	8.4	9.5	263
13	76.4	17.5	6.1	538
14	84.5	7.1	8.4	155
15	77.7	6.4	15.8	373
16	80.4	14.9	4.7	148
17	79.3	6.1	14.6	82
18	83.7	11.6	4.7	86
19	80.3	12.9	6.8	279
20	84.5	4.6	10.9	174
21	77.4	9.4	13.2	53
22	83.7	3.2	13.2	190
23	77.4	14.6	8.0	199
24	78.9	12.3	8.8	284
25	74.3	16.6	9.1	187
26	86.8	7.9	5.3	394
27	88.9	5.7	5.4	351
28	92.0	3.7	4.3	162
29	76.0	4.5	19.5	154
30	87.9	3.0	9.1	132
31	86.9	6.6	6.6	122
Total	81.9	9.8	8.3	6070

FRAUD

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	83.9%	9.7%	6.5%	62
2	88.8	8.2	3.1	98
3	96.3	0.0	3.7	27
4	78.8	16.3	5.0	80
5	94.6	3.6	1.8	56
6	80.0	10.0	10.0	30
7	90.9	4.5	4.5	44
8	90.6	9.4	0.0	32
9	84.8	6.5	8.7	46
10	82.0	13.1	4.9	61
11	85.7	11.4	2.9	35
12	85.3	4.9	9.8	102
13	80.9	12.8	6.4	47
14	73.8	15.5	10.7	84
15	81.6	10.5	7.9	152
16	91.3	6.5	2.2	46
17	91.4	5.2	3.4	58
18	85.7	10.7	3.6	28
19	86.3	7.3	6.5	124
20	89.6	7.8	2.6	77
21	82.9	17.1	0.0	41
22	77.9	10.3	11.8	68
23	72.3	21.7	6.0	83
24	82.1	17.9	0.0	78
25	82.1	10.7	7.1	84
26	83.6	9.0	7.4	122
27	92.5	3.8	3.8	106
28	90.7	9.3	0.0	54
29	85.5	5.8	8.7	69
30	86.9	9.8	3.3	61
31	90.5	4.8	4.8	42
Total	84.8	9.7	5.5	2097

LARCENY

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	78.9%	9.8%	11.3%	275
2	84.2	9.0	6.8	278
3	77.8	14.8	7.4	81
4	86.6	8.9	4.5	224
5	81.6	10.4	8.0	125
6	73.3	8.3	18.3	60
7	80.0	12.2	7.8	115
8	85.1	12.8	2.1	94
9	78.0	14.6	7.3	123
10	82.9	9.4	7.7	117
11	76.9	15.4	7.7	78
12	75.7	12.7	11.6	268
13	80.5	16.4	3.1	128
14	79.8	10.1	10.1	277
15	77.6	11.0	11.5	410
16	83.7	10.6	5.8	104
17	79.4	10.3	10.3	126
18	79.8	10.7	9.5	84
19	74.5	14.5	11.0	255
20	86.4	2.9	10.7	103
21	80.3	14.1	5.6	142
22	75.4	5.9	18.7	187
23	83.3	11.2	5.6	233
24	80.1	12.7	7.2	221
25	83.0	11.0	6.0	182
26	88.7	7.0	4.3	328
27	88.1	8.1	3.7	270
28	85.8	6.7	7.5	134
29	79.4	8.8	11.9	160
30	77.7	9.6	12.8	94
31	90.6	6.3	3.1	128
Total	81.3	10.4	8.3	5404

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

TRAFFIC

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	78.4%	3.4%	18.2%	88
2	81.5	7.4	11.1	108
3	80.0	8.0	12.0	25
4	87.4	5.7	6.9	87
5	75.0	5.6	19.4	36
6	78.3	0.0	21.7	23
7	83.0	5.7	11.3	53
8	80.0	10.0	10.0	30
9	75.4	3.3	21.3	61
10	85.5	9.7	4.8	62
11	92.3	0.0	7.7	39
12	84.9	9.7	5.4	93
13	81.1	8.1	10.8	37
14	72.2	3.7	24.1	54
15	80.3	6.1	13.6	132
16	73.1	11.5	15.4	52
17	79.2	12.5	8.3	24
18	88.2	5.9	5.9	17
19	63.0	9.9	27.2	81
20	79.7	0.0	20.3	59
21	87.9	12.1	0.0	33
22	78.8	6.1	15.2	66
23	80.0	14.5	5.5	55
24	89.8	5.7	4.5	88
25	79.2	6.9	13.9	72
26	80.2	10.4	9.4	106
27	92.5	1.9	5.7	53
28	87.5	3.1	9.4	32
29	75.6	12.2	12.2	41
30	87.5	6.3	6.3	16
31	86.9	3.3	9.8	61
Total	81.1	6.8	12.2	1784

MISCELLANEOUS

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	87.0%	8.7%	4.3%	23
2	74.2	19.4	6.5	31
3	80.0	6.7	13.3	15
4	87.8	8.2	4.1	49
5	70.6	17.6	11.8	17
6	62.5	18.8	18.8	16
7	66.7	9.5	23.8	21
8	58.3	41.7	0.0	12
9	64.7	17.6	17.6	17
10	73.9	4.3	21.7	23
11	76.2	23.8	0.0	21
12	79.3	17.2	3.4	29
13	63.2	13.2	23.7	38
14	71.4	23.8	4.8	21
15	63.3	14.4	22.2	90
16	84.0	12.0	4.0	25
17	77.8	11.1	11.1	9
18	85.7	0.0	14.3	7
19	61.3	16.1	22.6	31
20	85.7	0.0	14.3	14
21	80.0	10.0	10.0	10
22	64.0	12.0	24.0	25
23	69.2	19.2	11.5	26
24	63.3	16.7	20.0	30
25	71.4	7.1	21.4	28
26	69.2	7.7	23.1	26
27	85.7	6.1	8.2	49
28	63.6	9.1	27.3	11
29	54.8	21.4	23.8	42
30	76.9	7.7	15.4	13
31	75.0	12.5	12.5	16
Total	71.7	13.5	14.8	785

WEAPONS

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	77.3%	18.2%	4.5%	22
2	72.0	20.0	8.0	25
3	64.3	7.1	28.6	14
4	80.0	8.6	11.4	35
5	73.3	13.3	13.3	15
6	71.4	28.6	0.0	14
7	87.0	8.7	4.3	23
8	71.4	14.3	14.3	7
9	81.8	18.2	0.0	11
10	65.2	0.0	34.8	23
11	60.0	30.0	10.0	10
12	79.2	4.2	16.7	24
13	76.1	8.7	15.2	46
14	75.0	14.3	10.7	28
15	84.2	5.3	10.5	38
16	69.2	15.4	15.4	13
17	100.0	0.0	0.0	1
18	50.0	0.0	50.0	2
19	85.7	0.0	14.3	7
20	50.0	50.0	0.0	4
21	93.3	6.7	0.0	15
22	71.4	19.0	9.5	21
23	81.3	0.0	18.8	16
24	76.3	18.4	5.3	38
25	68.2	22.7	9.1	22
26	62.9	17.1	20.0	35
27	83.8	13.5	2.7	37
28	87.5	6.3	6.3	16
29	58.8	23.5	17.6	17
30	62.5	6.3	31.3	16
31	85.7	14.3	0.0	7
Total	75.2	12.8	12.0	602

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

ASSAULT

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	72.7%	18.2%	9.1%	44
2	85.0	8.3	6.7	60
3	78.0	14.6	7.3	41
4	68.8	15.6	15.6	77
5	75.8	12.1	12.1	33
6	69.4	16.7	13.9	36
7	67.9	12.5	19.6	56
8	63.0	11.1	25.9	27
9	64.7	20.6	14.7	34
10	77.6	12.2	10.2	49
11	83.3	16.7	0.0	42
12	83.8	13.5	2.7	37
13	68.5	28.1	3.4	89
14	71.1	11.1	17.8	45
15	77.2	12.0	10.9	92
16	76.9	7.7	15.4	39
17	77.8	11.1	11.1	9
18	84.2	10.5	5.3	19
19	53.2	22.6	24.2	62
20	86.7	6.7	6.7	15
21	80.0	10.0	10.0	20
22	82.9	9.8	7.3	41
23	66.1	22.0	11.9	59
24	80.5	15.6	3.9	77
25	65.3	30.6	4.1	49
26	73.0	12.7	14.3	63
27	78.9	17.5	3.5	57
28	79.3	10.3	10.3	29
29	79.2	8.3	12.5	48
30	72.7	4.5	22.7	22
31	73.3	10.0	16.7	30
Total	73.9	15.2	10.9	1401

KIDNAPPING

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	0.0%	0.0%	100%	2
2	50.0	0.0	50.0	2
3	0.0	25.0	75.0	4
4	33.3	50.0	16.7	6
5	100.0	0.0	0.0	2
6	100.0	0.0	0.0	4
7	0.0	100.0	0.0	3
8	100.0	0.0	0.0	3
9	50.0	50.0	0.0	2
10	77.8	11.1	11.1	9
11	66.7	0.0	33.3	3
12	100.0	0.0	0.0	3
13	85.7	14.3	0.0	7
14	0.0	50.0	50.0	2
15	57.1	14.3	28.6	7
16	71.4	28.6	0.0	7
17	33.3	0.0	66.7	3
18	100.0	0.0	0.0	1
19	66.7	16.7	16.7	6
20	100.0	0.0	0.0	1
21	100.0	0.0	0.0	2
22	100.0	0.0	0.0	2
23	33.3	50.0	16.7	6
24	70.0	30.0	0.0	10
25	100.0	0.0	0.0	7
26	71.4	14.3	14.3	7
27	100.0	0.0	0.0	3
28	57.1	28.6	14.3	7
29	33.3	66.7	0.0	3
30	50.0	0.0	50.0	2
31	71.4	28.6	0.0	7
Total	64.7	21.1	14.3	133

HOMICIDE

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	66.7%	16.7%	16.7%	6
2	53.8	30.8	15.4	13
3	100.0	0.0	0.0	1
4	65.0	25.0	10.0	20
5	60.0	20.0	20.0	5
6	50.0	33.3	16.7	6
7	58.3	0.0	41.7	12
8	81.8	18.2	0.0	11
9	50.0	50.0	0.0	2
10	50.0	50.0	0.0	4
11	75.0	25.0	0.0	8
12	0.0	50.0	50.0	2
13	63.2	10.5	26.3	19
14	50.0	25.0	25.0	8
15	50.0	10.0	40.0	20
16	50.0	16.7	33.3	12
17	0.0	0.0	100.0	1
18	100.0	0.0	0.0	1
19	58.3	16.7	25.0	12
20	100.0	0.0	0.0	4
21	16.7	16.7	66.7	6
22	58.3	8.3	33.3	12
23	46.2	7.7	46.2	13
24	100.0	0.0	0.0	8
25	80.0	0.0	20.0	5
26	37.5	25.0	37.5	8
27	66.7	0.0	33.3	3
28	50.0	0.0	50.0	2
29	40.0	60.0	0.0	5
30	100.0	0.0	0.0	1
31	85.7	0.0	14.3	7
Total	59.5	16.5	24.1	237

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

ROBBERY

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	69.2%	3.8%	26.9%	26
2	81.8	9.1	9.1	55
3	39.1	39.1	21.7	23
4	59.4	30.2	10.4	106
5	64.7	23.5	11.8	17
6	54.5	18.2	27.3	11
7	61.5	28.2	10.3	39
8	44.0	40.0	16.0	25
9	53.3	20.0	26.7	15
10	23.1	53.8	23.1	13
11	71.4	14.3	14.3	7
12	52.2	39.1	8.7	46
13	53.3	36.7	10.0	90
14	69.2	21.2	9.6	52
15	59.6	34.6	5.8	52
16	58.3	33.3	8.3	12
17	36.4	45.5	18.2	11
18	42.9	35.7	21.4	14
19	60.7	32.1	7.1	28
20	50.0	16.7	33.3	12
21	66.7	25.0	8.3	12
22	57.1	35.7	7.1	14
23	72.0	16.0	12.0	25
24	72.7	22.7	4.5	22
25	60.0	40.0	0.0	10
26	65.0	30.0	5.0	20
27	100.0	0.0	0.0	5
28	100.0	0.0	0.0	6
29	0.0	0.0	0.0	0
30	0.0	0.0	0.0	0
31	54.2	41.7	4.2	24
Total	60.0	28.7	11.4	792

RAPE

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	50.0%	0.0%	50.0%	4
2	53.8	30.8	15.4	13
3	57.1	42.9	0.0	7
4	40.0	40.0	20.0	10
5	71.4	14.3	14.3	7
6	100.0	0.0	0.0	2
7	100.0	0.0	0.0	7
8	71.4	28.6	0.0	7
9	66.7	16.7	16.7	6
10	75.0	25.0	0.0	4
11	100.0	0.0	0.0	3
12	60.0	20.0	20.0	5
13	60.0	40.0	0.0	5
14	100.0	0.0	0.0	2
15	85.7	14.3	0.0	7
16	50.0	0.0	50.0	2
17	66.7	0.0	33.3	3
18	100.0	0.0	0.0	1
19	50.0	20.0	30.0	10
20	75.0	25.0	0.0	4
21	100.0	0.0	0.0	2
22	55.6	11.1	33.3	9
23	70.0	20.0	10.0	10
24	80.0	20.0	0.0	5
25	60.0	20.0	20.0	5
26	50.0	33.3	16.7	6
27	83.3	16.7	0.0	6
28	100.0	0.0	0.0	1
29	0.0	100.0	0.0	1
30	100.0	0.0	0.0	2
31	61.5	38.5	0.0	13
Total	66.3	21.9	11.8	169

OTHER SEXUAL ASSAULT

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	66.7%	0.0%	33.3%	3
2	56.5	26.1	17.4	23
3	46.7	26.7	26.7	15
4	83.3	8.3	8.3	12
5	68.8	6.3	25.0	16
6	100.0	0.0	0.0	10
7	85.7	14.3	0.0	7
8	60.0	20.0	20.0	5
9	64.3	0.0	35.7	14
10	78.6	7.1	14.3	14
11	64.3	14.3	21.4	14
12	69.2	19.2	11.5	26
13	62.5	25.0	12.5	8
14	57.9	10.5	31.6	19
15	45.7	17.4	37.0	46
16	77.8	3.7	18.5	27
17	60.0	0.0	40.0	5
18	50.0	50.0	0.0	2
19	57.1	8.9	33.9	56
20	71.4	9.5	19.0	21
21	63.6	18.2	18.2	11
22	76.5	5.9	17.6	17
23	50.0	28.6	21.4	14
24	48.1	18.5	33.3	27
25	62.5	29.2	8.3	24
26	62.1	10.3	27.6	29
27	72.4	13.8	13.8	29
28	88.9	0.0	11.1	9
29	63.6	18.2	18.2	11
30	50.0	16.7	33.3	6
31	89.3	3.6	7.1	28
Total	64.8	13.3	21.9	548