2014 Annual Report

Virginia Criminal Sentencing Commission

20 Years of Truth-in-Sentencing

Virginia Criminal Sentencing Commission

2014 ANNUAL REPORT

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SUPREME COURT OF VIRGINIA
VIRGINIA CRIMINAL SENTENCING COMMISSION

December 1, 2014

To: The Honorable Cynthia D. Kinser, Chief Justice of Virginia
The Honorable Terry McAuliffe, 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 *2014 Annual Report* of the Criminal Sentencing Commission.

This report details the work of the Commission over the past year. The report includes a detailed analysis of judicial compliance with the felony sentencing guidelines during fiscal year 2014. The Commission's recommendations to the 2015 session of the Virginia General Assembly are also contained in this report.

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

Sincerely,

F. Bruce Bach
Chairman

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1 Introduction

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

Overview

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

The report is organized into 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 2014. The Guidelines Compliance chapter that follows contains a comprehensive analysis of compliance with the sentencing guidelines during fiscal year (FY) 2014. The third chapter describes the Immediate Sanction Probation program, which the General Assembly has directed the Commission to implement in select pilot sites. With Virginia's truth-in-sentencing system nearing its twentieth anniversary, the effects of the 1995 reforms are examined in the fourth chapter. 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. 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 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 final member of the Commission, Virginia's Attorney General, serves by virtue of his office.

Commission Meetings

The full membership of the Commission met four times during 2014. These meetings, held in the Supreme Court of Virginia, were held on April 14, June 9, September 8 and November 5. 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 for more extensive discussion on special topics.

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

Monitoring and Oversight

Section 19.2-298.01 of the *Code of Virginia* requires that sentencing guidelines worksheets be completed in all felony cases covered by the guidelines. The guidelines cover approximately 95% of felony sentencing events in Virginia. This section of the *Code* also requires judges to announce, during court proceedings for each case, that the guidelines forms have been reviewed. After sentencing, the guidelines worksheets are signed by the judge and become a part of the official record of each case. The clerk of the circuit court is responsible for sending the completed and signed worksheets to the Commission.

The sentencing guidelines worksheets are reviewed by the Commission staff as they are received. The Commission staff performs this check to ensure that the guidelines forms are being completed accurately. As a result of the review process, errors or omissions are detected and resolved.

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

Training, Education and Other Assistance

The Commission provides sentencing guidelines assistance in a variety of forms: training and education seminars, training materials and publications, a website, and assistance via the "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 the sentencing guidelines.

In FY2014, the Commission offered 21 training seminars across the Commonwealth for more than 600 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. In addition, seminars for experienced guidelines users were provided during the year. 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 prepared and conducted 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. A one-hour course was developed and conducted for judges based on frequently asked questions. Finally, the Commission conducted sentencing guidelines seminars 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 have 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 to any group of criminal justice professionals. The Commission is also 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 and texting system. The "hotline" phone (804.225.4398) is staffed from 7:30 a.m. to 5:00 p.m., Monday through Friday, to respond quickly to any questions or concerns regarding the sentencing guidelines or their preparation. The hotline continues to be an important resource for guidelines users around the Commonwealth. Guidelines users also have the option of texting their questions to staff (804.393.9588). Guidelines users indicated that this option was helpful, particularly when they were at the courthouse or otherwise away from the office.

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.

Automation Project

In 2012, staff launched an automation project with two goals in mind: to update the Sentencing Commission's website and to automate the sentencing guidelines completion and submission process. The new website was completed in the fall of 2012. Since then, the Commission has been collaborating with the Supreme Court's Department of Judicial Information Technology (DJIT) to design a web-based application for automating the sentencing guidelines. DJIT has agreed to develop an application that will allow users to complete guidelines forms online, give users the ability to save guidelines information and recall it later, provide a way for users to submit the guidelines to the court electronically, and permit Clerk's Offices to send the guidelines forms to the Commission in electronic format.

An early prototype of the application was demonstrated for the Commission in 2013 and staff has sought input from court clerks, probation officers, a Commonwealth's attorney, and a defense attorney. In 2014, the Commission began pilot testing the application in Norfolk. While the pilot phase continues, additional components of the application are being designed. Statewide implementation could begin as early as the fall of 2015.

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.

For the 2014 General Assembly, the Commission prepared 251 impact statements on proposed legislation. These proposals included: 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; 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 (now the Secretary of Public Safety and Homeland Security) 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 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 Committee. Chaired by the Secretary of Public Safety and Homeland Security, 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 offender 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 Director has served on the Policy Advisory Committee. At the Secretary's request, the Commission's Director or Deputy Director has chaired the Technical Advisory Committee since 2006. The Secretary presented the most recent offender forecasts to the General Assembly in a report submitted in October 2014.

Assistance to Other Agencies

The Virginia State Crime Commission, a legislative branch agency, is charged by the General Assembly with several studies each year. The Crime Commission may request assistance from a variety of other agencies, including the Virginia Criminal Sentencing Commission. During the course of 2014, the Sentencing Commission was asked to provide data and analysis on charges and convictions for cigarette trafficking.

Assistance to other agencies or entities included:

- Development of offender comparison groups for a Department of Corrections recidivism study;
- Tracking of recidivist activity among former juvenile offenders (now adults) for the Department of Juvenile Justice;
- Analyses of certain drug offenses and firearm convictions for the Department of Criminal Justice Services; and
- Examination of data for the Court of Appeals of Virginia.

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 (now Item 47 of Chapter 2 of the 2014 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 budget provision directs 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 further charges the Commission with developing guidelines and procedures for the program, administering the program, and evaluating the results. The 2014 General Assembly extended the pilot period to July 1, 2015, in order to allow the two newest pilot sites sufficient time to pilot test the program model.

In responding to the legislative mandate, the Commission has been engaged in a variety of activities. Details regarding the Commission's activities to date, and plans for the coming year, can be found in the third chapter of this report.

2 Guidelines Compliance

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

Introduction

On January 1, 2015, Virginia's truth-in-sentencing system will reach its twentieth anniversary. Beginning January 1, 1995, the practice of discretionary parole release from prison was abolished and the existing system of sentence credits awarded to inmates for good behavior was eliminated. Under Virginia's truth-in-sentencing laws, convicted felons must serve at least 85% of the pronounced sentence and they may earn, at most, 15% off in sentence credits, regardless of whether their sentence is served in a state facility or a local jail. The Commission was established to develop and administer guidelines in an effort to provide Virginia's judiciary with sentencing recommendations for felony cases under the new truth-in-sentencing laws. Under the current no-parole system, guidelines recommendations for nonviolent offenders with no prior record of violence are tied to the amount of time they served during a period prior to the abolition of parole. In contrast, offenders convicted of violent crimes, and those with prior convictions for violent felonies, are subject to guidelines recommendations up to six times longer than the historical time served in prison by similar offenders.

In over 444,000 felony cases 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 year of available data, fiscal year (FY) 2014 (July 1, 2013, through June 30, 2014). 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, FY2014

Circuit	Total	Percent
1	882	3.5%
2	1,368	5.4%
3	531	2.1%
4	1,256	4.9%
5	543	2.1%
6	361	1.4%
7	668	2.6%
8	402	1.6%
9	573	2.3%
10	762	3.0%
11	402	1.6%
12	1,178	4.6%
13	1,213	4.8%
14	905	3.6%
15	1,860	7.3%
16	672	2.6%
17	252	1.0%
18	217	0.9%
19	1,058	4.2%
20	720	2.8%
21	428	1.7%
22	751	3.0%
23	1,072	4.2%
24	888	3.5%
25	854	3.4%
26	1,424	5.6%
27	1,220	4.8%
28	561	2.2%
29	981	3.9%
30	639	2.5%
31	766	3.0%
Total	25,407	

21 cases missing circuit information

In FY2014, ten 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), the Harrisonburg area (Circuit 26), Virginia Beach (Circuit 2), Norfolk (Circuit 4), the Radford area (Circuit 27), Richmond City (Circuit 13), Chesterfield County (Circuit 12), Roanoke Valley (Circuit 23), Fairfax County (Circuit 19) and Buchanan area (Circuit 29) comprised nearly half (49%) of all worksheets received in FY2014 (Figure 1).

During FY2014, the Commission received 25,428 sentencing guideline worksheets. Of these, 686 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 FY2014, the remaining sections of this chapter pertaining to judicial concurrence with guidelines recommendations focus only on those 24,742 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. In cases in which the judge has elected to sentence outside of the guidelines recommendation, he or she must, as stipulated in § 19.2-298.01 of the *Code of Virginia*, provide a written reason for departure on the guidelines worksheet.

The Commission measures judicial agreement with the sentencing guidelines using two classes of compliance: strict and general. Together, they comprise the overall compliance rate. For a case to be in strict compliance, the offender must be sentenced to the same type of sanction that the guidelines recommend (probation, incarceration for up to six months, incarceration for more than six months) and to a term of incarceration that falls exactly within the sentence range recommended by the guidelines. When risk assessment for nonviolent offenders is applicable, a judge may sentence a recommended offender to an alternative punishment program or to a term of incarceration within the traditional guidelines range and be considered in strict compliance. A judicial sentence also 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.

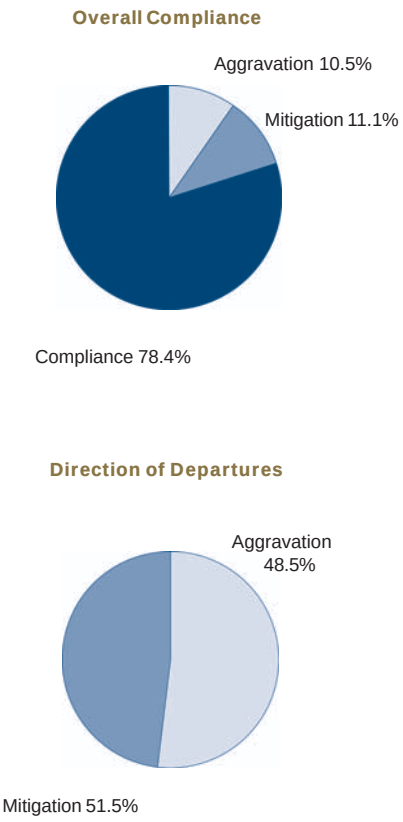
Compliance by rounding provides for a modest rounding allowance in instances when the active sentence handed down by a judge or jury is very close to the range recommended by the guidelines. For example, a judge would be considered in compliance with the guidelines if he or she sentenced an offender 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.

Figure 2

Overall Guidelines Compliance and Direction of Departures FY2014 (24,709 cases)



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 ten fiscal years, the compliance rate has hovered around 80%. During FY2014, judges continued to agree with the sentencing guidelines recommendations in approximately 78% of the cases (Figure 2).

In addition to compliance, the Commission also studies departures from the guidelines. The rate at which judges sentence offenders to sanctions more severe than the guidelines recommendation, known as the "aggravation" rate, was 10.5% for FY2014. The "mitigation" rate, or the rate at which judges sentence offenders to sanctions considered less severe than the guidelines recommendation, was 11.1% for the fiscal year. Thus, of the FY2014 departures, 48.5% were cases of aggravation while 51.5% were cases of mitigation.

Dispositional Compliance

Since the inception of truth-in-sentencing in 1995, the correspondence between dispositions recommended by the guidelines, and the actual dispositions imposed in Virginia's circuit courts, has been quite high. Figure 3 illustrates judicial concurrence in FY2014 with the type of disposition recommended by the guidelines. For instance, of all felony offenders recommended for more than six months of incarceration during FY2014, judges sentenced 87% 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.

Judges have also typically agreed with guidelines recommendations for other types of dispositions. In FY2014, 78% 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, 70% 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.

Figure 3

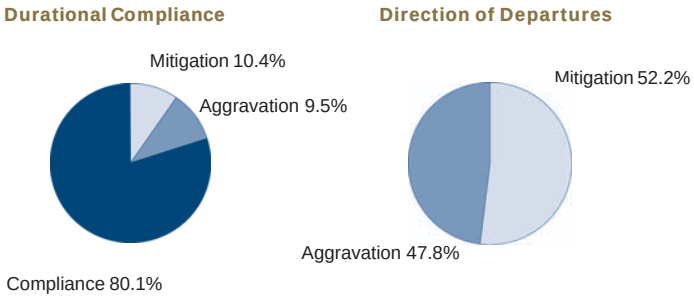
Recommended Dispositions and Actual Dispositions, FY2014

	Actual Disposition		
Recommended Disposition	Probation	Incarceration 1 day-6 mos.	Incarceration >6 mos.
Probation	69.7%	25.0%	5.3%
Incarceration 1 day - 6 months	11.2%	78.1%	10.7%
Incarceration > 6 months	5.1%	7.9%	87.0%

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 4

Durational Compliance and Direction of Departures, FY2014*



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

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 FY2014 cases was over 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 FY2014 cases not in durational compliance, departures tended slightly more toward mitigation than aggravation.

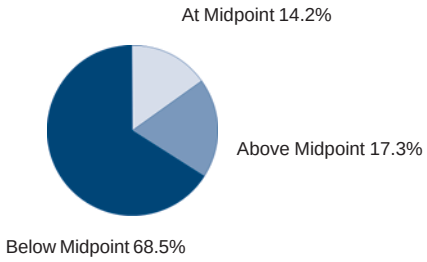
For cases recommended for incarceration of more than six months, the sentence length recommendation derived from the guidelines (known as the midpoint) is accompanied by a high-end and low-end recommendation. The sentence ranges recommended by the guidelines are relatively broad, allowing judges to use 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 FY2014) were given prison terms exactly equal to the midpoint recommendation (Figure 5). Most of the cases (69%) in durational compliance with recommendations over six months resulted in sentences below the recommended midpoint. For the remaining 17% 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 9 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 5

Distribution of Sentences within Guidelines Range, FY2014*



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

Figure 6

Median Length of Durational Departures, FY2014

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 FY2014, 11.1% 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, a sentence to a less-restrictive sanction, the defendant's cooperation with law enforcement, mitigating offense circumstances, and court procedural issues such as a sentence recommendation provided by the attorneys. Although other reasons for mitigation were reported to the Commission in FY2014, only the most frequently cited reasons are noted here. For 443 of the 2,745 mitigating cases, a departure reason could not be discerned.

Judges sentenced 10.5% of the FY2014 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 flagrancy of the offense, the severity or degree of prior record, the number of counts in the sentencing event, the defendant's poor potential for being rehabilitated, and jury recommendation was higher. For 541 of the 2,583 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 16 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. FY2014 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 FY2014, over half (52%) of the state's 31 circuits exhibited compliance rates of nearly 79% or above, while the remaining 48% reported compliance rates between

Figure 7

Compliance by Circuit - FY2014

Circuit Name	Circuit	Compliance	Mitigation	Aggravation	Total
Prince William Area	31	85.9%	8.0%	6.1%	753
Loudoun	20	85.9	4.9	9.2	708
Radford Area	27	84.2	6.5	9.3	1,183
Bristol Area	28	83.8	8.2	8.0	549
Virginia Beach	2	83.7	9.7	6.7	1,347
Harrisonburg Area	26	82.9	9.3	7.9	1,394
Sussex Area	6	82.4	6.9	10.7	346
Petersburg Area	11	81.6	12.3	6.1	391
Hampton	8	81.4	12.1	6.5	387
Newport News	7	81.0	10.5	8.5	648
Chesterfield Area	12	80.0	11.1	8.9	1,163
Norfolk	4	79.6	12.3	8.1	1,225
Charlottesville Area	16	79.6	10.2	10.2	658
Lynchburg Area	24	79.1	14.2	6.7	880
Martinsville Area	21	78.9	13.0	8.1	422
Williamsburg Area	9	78.7	8.4	12.9	521
Suffolk Area	5	78.4	7.8	13.8	513
Danville Area	22	77.5	5.5	16.9	739
Staunton Area	25	77.2	14.6	8.2	820
Arlington Area	17	77.1	9.0	13.9	245
Roanoke Area	23	77.0	14.7	8.3	1,047
Chesapeake	1	76.7	8.3	14.9	864
Alexandria	18	76.4	13.7	9.9	212
Portsmouth	3	76.3	13.5	10.2	489
Lee Area	30	76.3	7.5	16.2	617
South Boston Area	10	76.0	12.3	11.6	747
Fredericksburg	15	75.6	11.4	13.0	1,809
Buchanan Area	29	74.6	9.1	16.3	940
Henrico	14	73.7	10.4	15.9	885
Fairfax	19	69.8	16.2	14.0	993
Richmond City	13	68.1	23.6	8.2	1,193

- Over half (52%) of the state's 31 circuits exhibited compliance rates at or above 79%.
- Thirteen circuits reported compliance rates between 70% and 78%. Only two circuits had a compliance rate below 70%.

Virginia Localities and Judicial Circuits

Madison 16
Manassas 31
Martinsville 21
Mathews 9
Mecklenburg 10
Middlesex 9
Montgomery 27

Nelson 24
New Kent 9
Newport News 7
Norfolk 4
Northampton 2
Northumberland 15
Norton 30
Nottoway 11

Orange 16

Page 26
Patrick 21
Petersburg 11
Pittsylvania 22
Poquoson 9
Portsmouth 3
Powhatan 11
Prince Edward 10
Prince George 6
Prince William 31
Pulaski 27

Radford 27
Rappahannock 20
Richmond City 13
Richmond County 15
Roanoke City 23
Roanoke County 23
Rockbridge 25
Rockingham 26
Russell 29

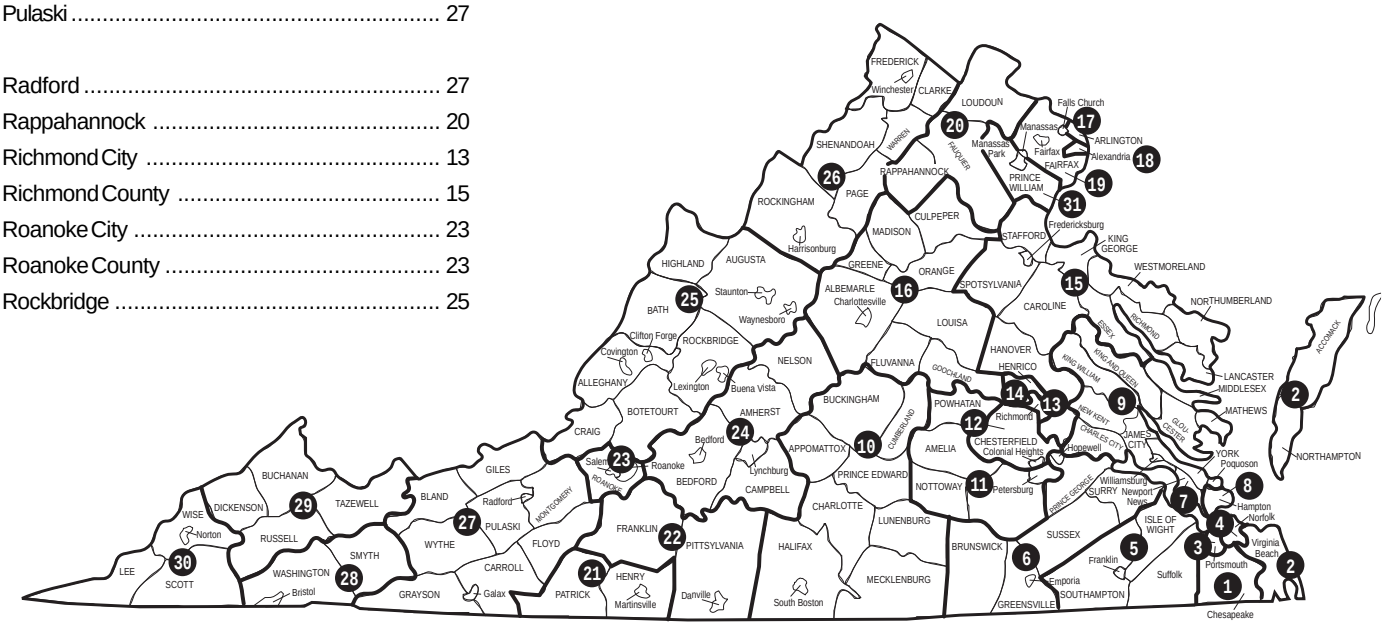
Salem 23
Scott 30
Shenandoah 26
Smyth 28
Southampton 5
Spotsylvania 15
Stafford 15
Staunton 25
Suffolk 5
Surry 6
Sussex 6

Tazewell 29

Virginia Beach 2

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

York 9



68% and 78%. There are likely many reasons for the variations in compliance across circuits. Certain jurisdictions may see atypical cases not reflected in statewide averages. In addition, the availability of alternative or community-based programs currently differs from locality to locality. The degree to which judges agree with guidelines 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 FY2014, the highest rate of judicial agreement with the sentencing guidelines (86%) was in Circuit 31 (Prince William area) and Circuit 20 (Loudoun area). Concurrence rates of 84% or higher were found in Circuit 27 (Radford area), Circuit 28 (Bristol area) and Circuit 2 (Virginia Beach). The lowest compliance rates among judicial circuits in FY2014 were reported in Circuit 13 (Richmond City), Circuit 19 (Fairfax) and Circuit 14 (Henrico).

In FY2014, the highest mitigation rates were found in Circuit 13 (Richmond City), Circuit 19 (Fairfax), Circuit 23 (Roanoke Valley), Circuit 25 (Staunton area) and Circuit 24 (Lynchburg area). Circuit 13 (Richmond City) had a mitigation rate of nearly 24% while Circuit 19 (Fairfax) had a mitigation rate of 16% for the fiscal year; Circuit 23 (Roanoke Valley) and Circuit 25 (Staunton area) recorded mitigation rates of 15% followed by Circuit 24 (Lynchburg area) with a rate of 14%. With regard to high mitigation rates, it would be too simplistic to assume that this reflects areas with lenient sentencing habits. Intermediate punishment programs are not uniformly available throughout the Commonwealth, and jurisdictions with better access to these sentencing options may be using them as intended by the General Assembly. These sentences generally would appear as mitigations from the guidelines. Inspecting aggravation rates reveals that Circuit 22 (Danville area) had the highest aggravation rate (nearly 17%), followed by Circuits 29 (Buchanan County area), 30 (Lee County area) and 14 (Henrico) at 16%. Lower compliance rates in these latter circuits are a reflection of the relatively high aggravation rates.

Appendix 3 presents compliance figures for judicial circuits by each of the 16 sentencing guidelines offense groups.

Compliance by Sentencing Guidelines Offense Group

In FY2014, as in previous years, judicial agreement with the guidelines varied when comparing the 16 offense groups (Figure 8). For FY2014, compliance rates ranged from a high of 82% in the larceny offense group to a low of 56% in murder cases. In general, property and drug offenses exhibit higher rates of compliance than the violent offense categories. The violent offense groups (i.e., rape, sexual assault, robbery, homicide, and kidnapping) had compliance rates at or below 70%, whereas many of the property and drug offense categories had compliance rates above 80%.

During the past fiscal year, judicial concurrence with guidelines recommendations remained relatively stable, fluctuating three percent or less for most offense groups. Compliance rates are much more susceptible to year-to-year fluctuations for offense groups with small numbers of sentencing events in a given year. Compliance with the murder worksheets (211 cases) decreased by 10.5 percentage points from FY2013 to FY2014 because of significant changes in both mitigation and aggravation. During the same time, compliance on the rape worksheets (187 cases) increased by 8.2 percentage points because of a decrease in mitigation.

Figure 8

Compliance by Offense - FY2014

Offense	Compliance	Mititgation	Aggravation	Total
Larceny	82.4%	9.2%	8.4%	6,153
Drug/Other	81.3%	6.9%	11.9%	1,459
Fraud	81.2%	12.4%	6.4%	2,064
Traffic	80.3%	8.8%	10.9%	1,711
Drug/Schedule I/II	80.2%	10.6%	9.1%	6,875
Assault	75.8%	11.4%	12.8%	1,410
Misc/Other	75.8%	13.7%	10.5%	446
Weapon	75.6%	13.2%	11.2%	698
Burglary/Other	72.8%	14.4%	12.9%	459
Misc/Person	72.2%	11.7%	16.1%	478
Rape	70.1%	17.1%	12.8%	187
Kidnapping	69.1%	15.5%	15.5%	110
Other Sexual Assault	67.1%	11.1%	21.8%	605
Burglary/Dwelling	66.7%	16.0%	17.2%	1,085
Robbery	64.5%	25.1%	10.4%	758
Murder	55.9%	13.3%	30.8%	211
Total	78.4%	11.1%	10.5%	24,709

A number of changes went into effect beginning July 1, 2013. Two new offenses were added to the larceny guidelines: larceny of property with a value of $200 or more with the intent to sell or distribute (as defined by § 18.2-108.01(A)) and possession, etc., of stolen property with an aggregate value of $200 or more with the intent to sell or distribute (as defined by § 18.2-108.01(B)). Several worksheets were revised to ensure that the recommended sentence would exceed any mandatory minimum sentence of at least six months. The guidelines for vehicular manslaughter associated with driving under the influence were revised to better reflect judicial sentencing practices. Scores were increased for any completed act of burglary with a deadly weapon with an accompanying offense of murder or malicious wounding. In addition, the nonviolent risk assessment instrument was replaced with instruments developed from a study of more recent felony cases. A discussion on that change appears under the Nonviolent Risk Assessment section of this chapter.

The two added larceny offenses have compliance rates of 78% for larceny of property with a value of $200 or more with the intent to sell or distribute and 74% for possession, etc., of stolen property with an aggregate value of $200 or more with the intent to sell or distribute. In the few cases when judges did not follow the guidelines, they were more likely to sentence above the recommendation.

Adjustments to the Burglary, Drug/Other, Murder, Weapon and Miscellaneous worksheets resulted in an overall compliance rate of 77% for these offenses as a group. The adjustments were made to better reflect mandatory minimums that the court must impose. Compliance rates for FY2014 indicate that guidelines in these cases are more reflective of judicial sentencing.

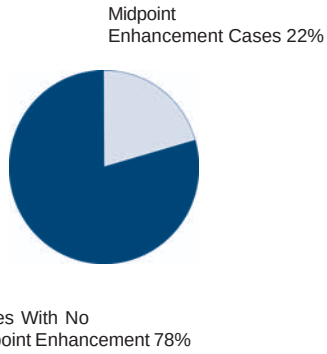
Compliance in the first year for the newly revised scores for vehicular manslaughter associated with driving under the influence was 35%, with a greater tendency to go above the guidelines recommendation (53% aggravation) than below (12% mitigation). The compliance rate for this crime was much lower than predicted. The lower compliance rate, in part, may be due to the low number of convictions, only 17 in FY2014. The Commission will continue to monitor sentencing patterns for these offenses and recommend modifications, if needed.

Since 1995, departure patterns have differed across offense groups, and FY2014 was no exception. During this time period, the robbery and rape offense groups showed the highest mitigation rates with over one-quarter of the robbery cases (25.1%), and nearly one-sixth of the rape cases (17.1%) resulting in sentences below the guidelines. This mitigation pattern has been consistent with rape offenses since the abolition of parole in 1995. The most frequently cited mitigation reasons provided by judges in rape cases include facts of the case, plea agreement, judicial discretion, victim cannot testify or given an alternative sentence. The most frequently cited mitigation reasons provided by judges in robbery cases included: the acceptance of a plea agreement, defendant cooperated with authorities, judicial discretion and lack of an extensive prior record.

In FY2014, the offense groups with the highest aggravation rates were murder/homicide, at 31% and sexual assault, at 22%. As the most frequently cited aggravating departure reasons in murder/homicide cases, the influence of jury trials, facts of the case, plea agreement and the defendant's poor rehabilitation potential have historically contributed to higher aggravation rates. The most frequently cited aggravating departure reasons in sexual assault cases in FY2014 included the flagrancy of the offense, the acceptance of a plea agreement, and the type of victim involved (such as a child).

Figure 9

Application of Midpoint Enhancements, FY2014



Compliance Under Midpoint Enhancements

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

Because midpoint enhancements are designed to target only violent offenders for longer sentences, enhancements do not affect the sentence recommendation for the majority of guidelines cases. Among the FY2014 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 FY2014 cases in which midpoint enhancements applied, the most common midpoint enhancement was for a Category II prior record. Approximately 48% 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 FY2014, another 15% 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 23% of the midpoint enhancements in FY2014. The most substantial midpoint enhancements target offenders with a combination of instant and prior violent offenses. A few more than 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 FY2014, compliance was 70% when enhancements applied, which is significantly lower than compliance in all other cases (78%). Thus, compliance in midpoint enhancement cases is suppressing the overall compliance rate. When departing from enhanced guidelines recommendations, judges are choosing to mitigate in three out of every four departures.

Among FY2014 midpoint enhancement cases resulting in incarceration, judges departed from the low end of the guidelines range by an average of 27 months (Figure 11). The median departure (the middle value, where half of the values are lower and half are higher) was 14 months.

Figure 10

Type of Midpoint Enhancements Received, FY2014

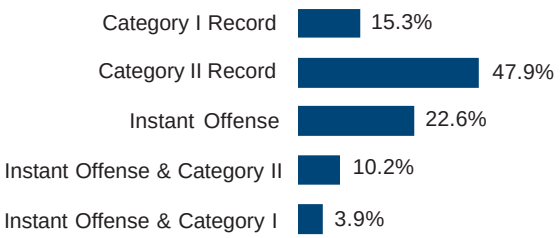
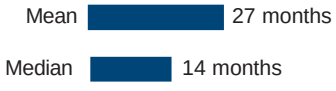


Figure 11

Length of Mitigation Departures in Midpoint Enhancement Cases, FY2014



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 FY2014, as in previous years, enhancements for a Category II prior record generated the highest rate of compliance of all midpoint enhancements (74%). Compliance in cases receiving enhancements for a Category I prior record was significantly lower (64%). Compliance for enhancement cases involving a current violent offense, but no prior record of violence, was 70%. 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 57%.

Because of the high rate of mitigation departures, analysis of departure reasons in midpoint enhancement cases focuses on downward departures from the guidelines. When judges depart from the guidelines in midpoint enhancement cases, the vast majority (three out of every four) sentence below the recommended range. The most frequently cited reasons for departure include the acceptance of a plea agreement, judicial discretion, the defendant's cooperation with law enforcement, facts of the case, the defendant's minimal prior record and utilization of sentencing alternatives.

Figure 12

Compliance by Type of Midpoint Enhancement*, FY2014

	Compliance	Mitigation	Aggravation	Number of Cases
None	80.8%	7.8%	11.3%	19,197
Category I Record	63.9%	31.9%	4.2%	843
Category II Record	74.1%	20.5%	5.4%	2,641
Instant Offense	70.1%	18.2%	11.7%	1,249
Instant Offense & Category I	56.5%	36.1%	7.4%	216
Instant Offense & Category II	65.0%	22.2%	12.8%	563
Total	78.4%	11.1%	10.5%	**24,709**

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

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, 90% of guideline cases were sentenced following guilty pleas (Figure 13). Adjudication by a judge in a bench trial accounted for 9% of all felony guidelines cases sentenced. During FY2014, 1.2% of cases involved jury trials. In a small number of cases, some of the charges were adjudicated by a judge, while others were adjudicated by a jury, after which the charges were combined into a single sentencing hearing.

Since FY1986, there has been a generally declining trend in the percentage of jury trials among felony convictions in circuit courts (Figure 14). Under the parole system in the late 1980s, the percent of jury convictions of all felony convictions was as high as 6.5% before starting to decline in FY1989. In 1994, the General Assembly enacted provisions for a system of bifurcated jury trials. In bifurcated trials, the jury establishes the guilt or innocence of the defendant in the first phase of the trial and then, in a second phase, the jury makes its sentencing decision. When the bifurcated trials became effective on July 1, 1994 (FY1995), jurors in Virginia, for the first time, were presented with information on the offender's prior criminal record, to assist them in making a sentencing decision. During the first year of the bifurcated trial process, jury convictions dropped slightly, to fewer than 4% of all felony convictions. This was the lowest rate recorded up to that time.

Figure 13

Percentage of Cases Received by Method of Adjudication, FY2014

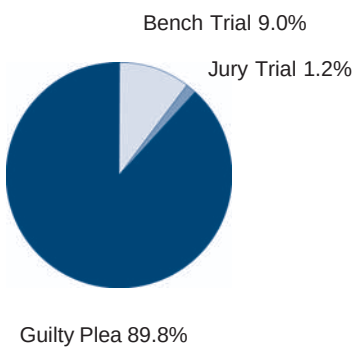
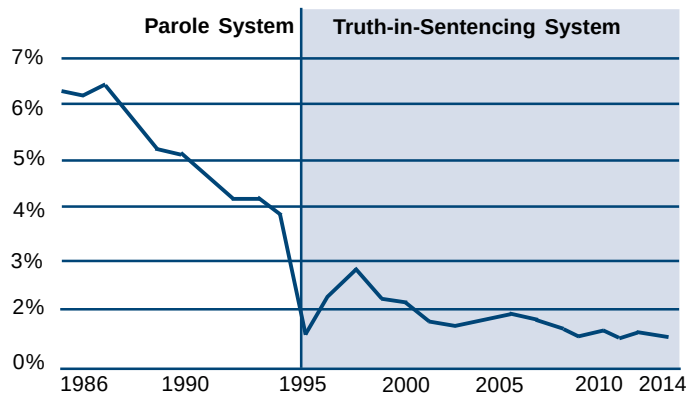


Figure 14

Percent of Felony Convictions Adjudicated by Juries FY1986-FY2014 Parole System v. Truth-in-Sentencing (No Parole) System

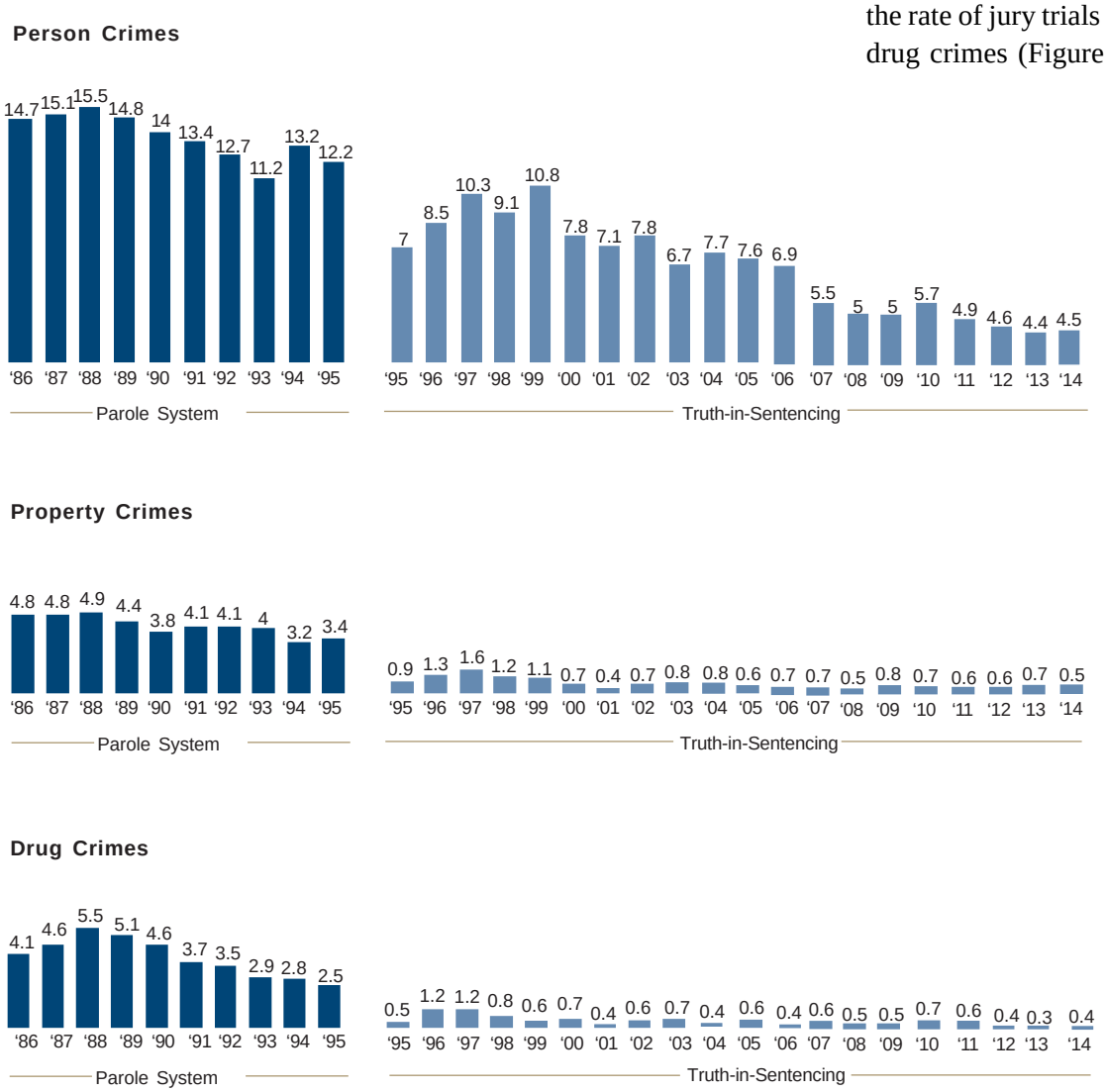


Among the early cases subjected to the new truth-in-sentencing provisions, implemented during the last six months of FY1995, jury adjudications sank to just over 1%. During the first complete fiscal year of truth-in-sentencing (FY1996), just over 2% of the cases were resolved by jury trials, which was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

Inspecting jury data by offense type reveals very divergent patterns for person, property, and drug crimes. Under the parole system, jury cases comprised 11% to 16% of felony convictions for person crimes. This rate was typically three to four times the rate of jury trials for property and drug crimes (Figure 15). However,

Figure 15

Percent of Felony Convictions Adjudicated by Juries
FY1986-FY2014
Parole System v. Truth-in-Sentencing (No Parole) System



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% 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.

In FY2014, the Commission received 296 cases adjudicated by juries. While the compliance rate for cases adjudicated by a judge or resolved by a guilty plea was at 79% during the fiscal year, sentences handed down by juries concurred with the guidelines only 32% of the time (Figure 16). In fact, jury sentences were more likely to fall above the guidelines than within the recommended range (53%). This pattern of jury sentencing vis-à-vis the guidelines has been consistent since the truth-in-sentencing guidelines became effective in 1995. By law, however, juries are not allowed to receive any information regarding the sentencing guidelines.

In jury cases in which the final sentence fell short of the guidelines, it did so by a median value of 25 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 41 months.

In FY2014, three 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 FY2014, judges modified 20% of jury sentences.

Figure 16

Sentencing Guidelines Compliance in Jury and Non-Jury Cases, FY2014

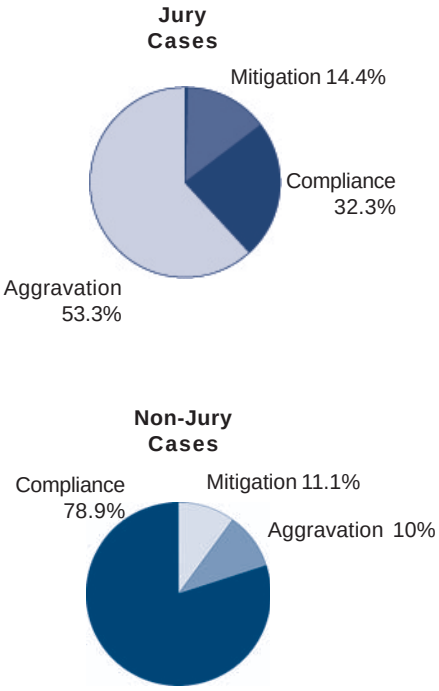
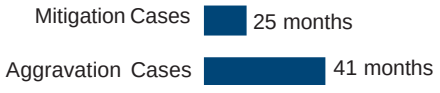


Figure 17

Median Length of Durational Departures in Jury Cases, FY2014

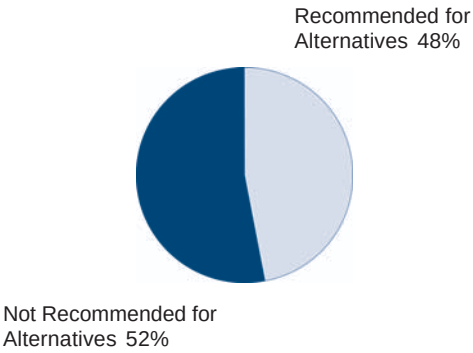


Compliance and Nonviolent Offender Risk Assessment

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

Figure 18

Percentage of Eligible Nonviolent Risk Assessment Cases Recommended for Alternatives, FY2014 (6,143 cases)



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

Nearly two-thirds of all guidelines received by the Commission for FY2014 were for nonviolent offenses. However, only 42% 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 2,146

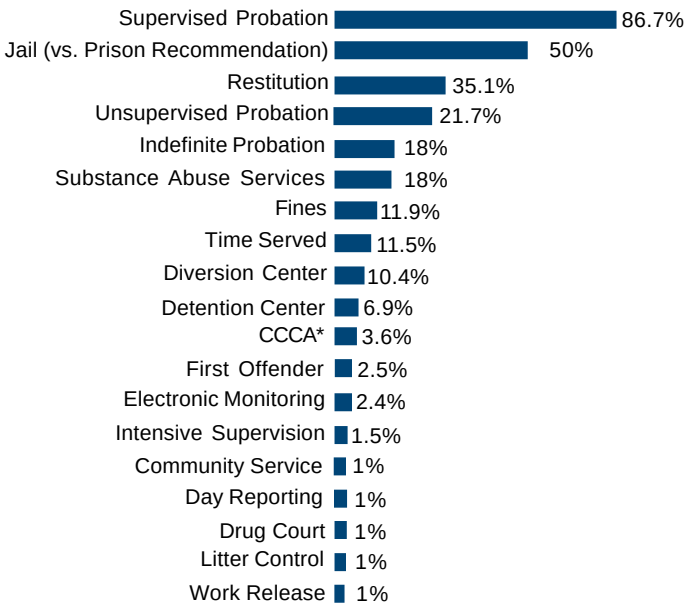
nonviolent offense cases for which a risk assessment instrument was not completed and submitted to the Commission.

Among the eligible offenders in FY2014 for whom a risk assessment form was received (6,143 cases), 48% were recommended for an alternative sanction by the risk assessment instrument (Figure 18). A portion of offenders recommended for an alternative sanction through risk assessment was given some form of alternative punishment by the judge. In FY2014, 38% of offenders recommended for an alternative were sentenced to an alternative punishment option.

Among offenders recommended for and receiving an alternative sanction through risk assessment, judges used supervised probation more often than any other option (Figure 19). In addition, in over half of the cases in which an alternative was recommended, judges sentenced the offender to a shorter term of incarceration in jail (less than twelve months) rather than the prison sentence recommended by the traditional guidelines range. Other frequent sanctions utilized were: restitution (35%), unsupervised probation (22%), substance abuse services (18%), and indefinite probation (18%), fines (12%), and time served (12%). The Department of Corrections' Diversion and Detention Center programs were used in 10% and 7% of the cases, respectively. Other alternatives/ sanctions included: programs under the Comprehensive Community Corrections Act (CCCA), first offender status under § 18.2-251, electronic monitoring, intensive supervision, community service, day reporting, drug court, litter control, and work release.

Figure 19

Types of Alternative Sanctions Imposed, FY2014



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

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 or she chooses to sentence the offender to an alternative form of punishment. For drug offenders eligible for risk assessment, the overall guidelines compliance rate is 84%, but a portion of this compliance reflects the use of an alternative punishment option as recommended by the risk assessment tool (Figure 20). In 25% of these drug cases, judges have complied with the recommendation for an alternative sanction. Similarly, in fraud cases, with offenders eligible for risk assessment, the overall compliance rate is 84%. In 22% 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 85%. Judges used an alternative, as recommended by the risk assessment tool, in 8% 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, FY2014

	Compliance					
	Mitigation	Adjusted Range	Traditional Range	Aggravation	Number of Cases	Overall Compliance
Drug	6.9%	25.2%	58.7%	9.2%	2,923	83.9%
Fraud	11.7%	22.4%	61.3%	4.6%	802	83.7%
Larceny	8.3%	7.6%	77.8%	6.2%	2,418	85.4%
Overall	8.1%	17.9%	66.6%	7.4%	6,143	84.5%

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 rearrested 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.

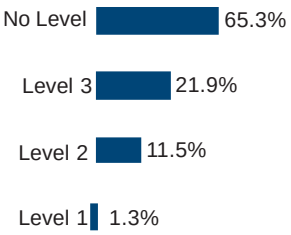
The risk assessment instrument was incorporated into the sentencing guidelines for sex offenders beginning July 1, 2001. For each sex offender identified as a comparatively high risk (those scoring 28 points or more on the risk tool), the sentencing guidelines have been revised such that a prison term 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 be in compliance with the guidelines. This approach allows the judge to incorporate sex offender risk assessment into the sentencing decision, while providing the judge with the flexibility to evaluate the circumstances of each case.

Figure 21

Sex Offender Risk Assessment Levels for Sexual Assault Offenders, FY2014*



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

During FY2014, there were 605 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 (211 of the 605 cases in FY2014). Of the remaining 394 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 22% of applicable sexual assault guidelines cases resulted in a Level 3 risk classification, with an additional 12% assigned to Level 2. Just 1.3% 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 utilize these extended ranges when sentencing sex offenders. As shown in Figure 22, for the five sexual assault

Figure 22

Other Sexual Assault Compliance Rates By Risk Assessment Level, FY2014*

		Compliance				
	Mitigation	Traditional Range	Adjusted Range	Aggravation	Number of Cases	Overall Compliance
Level 1	0.0%	80.0%	----	20.0%	5	80%
Level 2	11.4%	59.1%	25.0%	4.5%	44	84.1%
Level 3	15.7%	65.1%	15.7%	3.6%	83	80.8%
No Level	10.4%	59.0%	----	30.7%	251	59%
Overall	11.5%	60.6%	6.3%	21.7%	383	66.9%

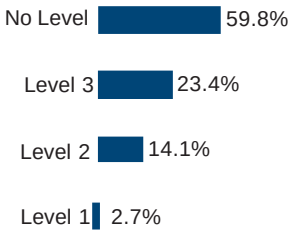
**Excludes cases missing the sex offender risk assessment portion of the Other Sexual Assault worksheet.*

offenders reaching Level 1 risk during the past fiscal year, four of them were given sentences within the traditional guidelines range and one above. Judges used the extended guidelines range in 25% of Level 2 cases and 16% 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 (59% compliance rate) and were more likely to receive a sentence that was an upward departure from the guidelines (31% aggravation rate).

In FY2014, there were 184 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, nearly 60% were not assigned a risk level by the Commission's risk assessment instrument (Figure 23). Approximately 23% of these cases resulted in a Level 3 adjustment - a 50% increase in the upper end of the traditional guidelines range recommendation. An additional 14% received a Level 2 adjustment (100% increase). The most extreme adjustment (300%) affected approximately 3% of the rape guidelines cases. None of the five rape offenders reaching the Level 1 risk group were sentenced within the extended high end of the range (Figure 24). As shown below, 19% of offenders with a Level 2 risk classification and 19% 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 only occasionally sentenced Level 1, 2 or 3 offenders above the expanded guidelines range.

Figure 23

Sex Offender Risk Assessment Levels for Rape Offenders, FY2014*



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

Figure 24

Rape Compliance Rates By Risk Assessment Level, FY2014*

	Compliance				
	Mitigation	Traditional Range	Adjusted Range	Aggravation	Number of Cases	Overall Compliance
Level 1	80.0%	20%	---	0%	5	20%
Level 2	3.8%	69.2%	19.2%	7.7%	25	88.4%
Level 3	16.3%	55.8%	18.6%	9.3%	43	74.4%
No Level	17.3%	66.4%	---	16.4%	110	66.4%
Overall	16.8%	63%	7.1%	13.0%	184	70.1%

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

Sentencing Revocation Reports (SRRs)

One of the most comprehensive resources regarding revocations of community supervision in Virginia is the Sentencing Commission's Community Corrections Revocations Data System, also known as the Sentencing Revocation Report (SRR) database. First implemented in 1997 with assistance from the Department of Corrections (DOC), the SRR is a simple form designed to capture the reasons for, and the outcomes of, community supervision violation hearings. The probation officer (or Commonwealth's attorney) completes the first part of the form, which includes the offender's identifying information and checkboxes indicating the reasons why a show cause or revocation hearing has been requested. The checkboxes are based on the list of eleven conditions for community supervision established for every offender, but special supervision conditions imposed by the court also can be recorded. Following the violation hearing, the judge completes the remainder of the form with the revocation decision and any sanction ordered in the case. The completed form is submitted to the Commission, where the information is automated. A revised SRR form was developed and implemented in 2004 to serve as a companion to the new probation violation sentencing guidelines introduced that year.

Figure 25

Number and Percent of Sentencing Revocation Reports Received by Circuit, FY2014

Circuit	Circuit Name	Number	Percent
1	Chesapeake	666	5.6
2	Virginia Beach	248	2.1
3	Portsmouth	377	3.2
4	Norfolk	888	7.5
5	Suffolk Area	383	3.2
6	Sussex Area	61	0.5
7	Newport News	224	1.9
8	Hampton	333	2.8
9	Williamsburg Area	300	2.5
10	South Boston Area	243	2.1
11	Petersburg Area	77	0.7
12	Chesterfield Area	236	2.0
13	Richmond City	300	2.5
14	Henrico	443	3.7
15	Fredericksburg	697	5.9
16	Charlottesville Area	287	2.4
17	Arlington Area	94	0.8
18	Alexandria	140	1.2
19	Fairfax	497	4.2
20	Loudoun	236	2.0
21	Martinsville Area	217	1.8
22	Danville Area	651	5.5
23	Roanoke Area	369	3.1
24	Lynchburg Area	441	3.7
25	Staunton Area	424	3.6
26	Harrisonburg Area	790	6.7
27	Radford Area	628	5.3
28	Bristol Area	310	2.6
29	Buchanan Area	765	6.5
30	Lee Area	193	1.6
31	Prince William Area	307	2.6

In FY2014, there were 11,825 felony violations of probation, suspended sentences, or good behavior for which a Sentencing Revocation Report (SRR) was submitted to the Commission by October of this year. The SRRs received include cases in which the court found the defendant in violation, cases that the court decided to take under advisement until a later date, and cases in which the court did not find the defendant in violation. The circuits submitting the largest number of SRRs during the time period were Circuit 4 (Norfolk), Circuit 26 (Harrisonburg area), Circuit 29 (Buchanan area), and Circuit 15 (Fredericksburg area). Circuit 6 (Sussex County area), Circuit 11 (Petersburg area), and Circuit 17 (Arlington area) submitted the fewest SRRs during the time period (Figure 25).

Probation Violation Guidelines

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

Early use of the probation violation guidelines, which took effect on July 1, 2004, indicated that the guidelines needed further refinement to better reflect current judicial sentencing patterns in the punishment of supervision violators. Judicial compliance with the first edition of the probation violation guidelines was lower than expected, with only 37% of the violators being sentenced within the range recommended by the new guidelines. Therefore, the Commission's 2004 Annual Report recommended several adjustments to the probation violation guidelines. The proposed changes were accepted by the General Assembly and the second edition of the probation violation guidelines took effect on July 1, 2005. These changes yielded an improved compliance rate of 48% for fiscal year (FY) 2006.

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

Figure 26 illustrates compliance patterns over the years and the impact revisions to the guidelines had on compliance rates. Compliance has hovered above 50% since FY2008 and this pattern continues in FY2014. The remainder of this section will focus on violation cases for offenders sentenced between July 1, 2013 and June 30, 2014, fiscal year 2014.

For FY2014, the Commission received 11,825 SRRs. Of the total, 5,832 cases involved a new law violation. In these cases, the judge found the defendant guilty of violating Condition 1 of the Department of Corrections' Conditions of Probation (obey all federal, state, and local laws and ordinances). In 5,689 cases, the offender was found in violation of other conditions not related to a new law violation. For these "technical violators," the Probation Violation Guidelines should be completed and submitted to the court. In a number of cases, the offender was not found in violation of any condition (188 cases) or the type of violation was not identified on the SRR form (116 cases).

Figure 26

Probation Violations Guidelines
Compliance by Year, FY2005 - FY2014

Offense	Compliance	Mititgation	Aggravation	Total
FY05	37.4%	27.3%	35.4%	3,140
FY06	48.4%	29.8%	21.8%	4,905
FY07	47.1%	31.7%	21.2%	5,930
FY08	53.9%	25.0%	21.0%	5,027
FY09	53.3%	25.8%	21.0%	4,487
FY10	52.7%	25.6%	21.7%	4,231
FY11	54.0%	24.1%	21.9%	4,766
FY12	50.2%	26.0%	23.8%	4,500
FY13	51.9%	23.3%	24.8%	4,782
FY14	53.3%	22.4%	24.3%	4,907

Note: Excludes cases missing data, incomplete or other guidelines issues
Updated using revised FY2007-FY2014 data

Figure 27 compares new law violations with "technical violations" in FY2014 with previous years. Since FY2009 the number of revocations based on new law violations has exceeded the number revocations based on violations of other conditions. Changes in policies for supervising offenders who violate conditions of probation that do not result in new convictions and procedures that require judges to receive and review the SRRs and Probation Violation Guidelines have impacted the number and types of revocations submitted to the court. This trend continues in FY2014 with the number of new law violations exceeding, by fewer than 150 cases, the number of technical violations reviewed by the court.

Upon further examination of the 5,689 technical violator cases, it was found that 782 could not be included in the analysis of judicial compliance with the Probation Violation Guidelines. There were several reasons for excluding these cases from compliance analysis. Cases were excluded if the guidelines were not applicable (the case involved a parole-eligible offense, a first-offender violation, a misdemeanor original offense, or an offender who was not on supervised probation), if the guidelines forms were incomplete, or if outdated forms were prepared. The following analysis of compliance with the Probation Violation Guidelines will focus on the remaining 4,907 technical violator cases heard in Virginia's circuit courts between July 2013 and June 2014.

Figure 27

Sentencing Revocation Reports Received for Technical and New Law Violations FY1998 - FY2014

Fiscal Year	Technical Violations	New Law Violations	Number
FY98	2,886	2,278	5,164
FY99	3,643	2,630	6,273
FY00	3,490	2,183	5,673
FY01	5,511	3,228	8,739
FY02	5,783	3,332	9,115
FY03	5,078	3,173	8,251
FY04	5,370	3,361	8,731
FY05	5,320	3,948	9,268
FY06	6,126	4,393	10,519
FY07	6,670	4,755	11,425
FY08	6,268	5,181	11,449
FY09	4,999	5,133	10,132
FY10	4,668	5,225	9,893
FY11	5,230	6,052	11,282
FY12	5,137	5,750	10,887
FY13	5,431	6,001	11,432
FY14	5,689	5,832	11,521

Note: Excludes cases missing data, incomplete or other guidelines issues
Updated using revised FY2007-FY2014 data

Of the 4,907 cases in which offenders were found to be in violation of their probation for reasons other than a new law violation, approximately 45% were under supervision for a felony property offense (Figure 28). This represents the most serious offense for which the offender was on probation. Another 32% were under supervision for a felony drug conviction. Offenders who were on probation for a crime against a person (most serious original offense) made up a smaller portion (16%) of those found in violation during FY2014.

Figure 28

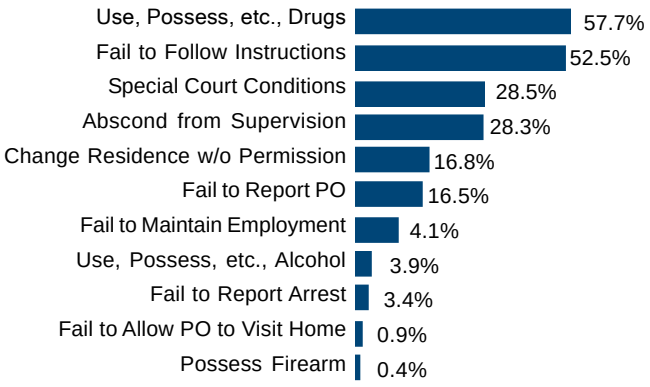
Probation Violation Worksheets Received by Type of Most Serious Original Offense, FY2014*

Original Offense Type	Percent Received
Property	44.3%
Drug	32.1
Person	16.0
Traffic	4.7
Other	2.9
Total	100.0

**Includes FY2014 worksheets received regardless of disposition.*

Figure 29

Violation Conditions Cited by Probation Officers, Excluding New Law Violations, FY2014*



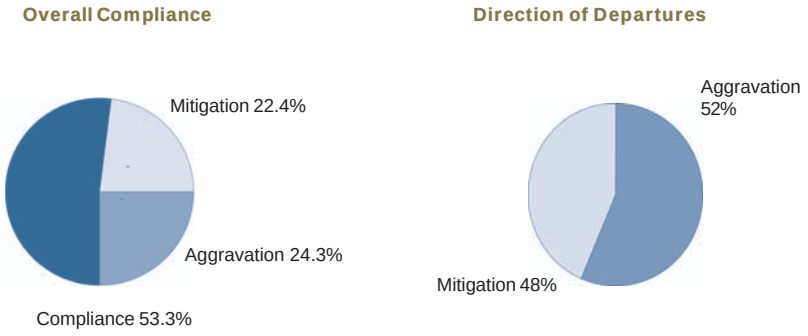
**Includes worksheets received in FY2014 regardless of disposition (not in violation, etc).*

Examining the 4,907 violation cases (excluding those with a new law violation) reveals that over half (58%) of the offenders were cited for using, possessing, or distributing a controlled substance (Condition 8 of the DOC Conditions of Probation). Violations of Condition 8 may include a positive test (urinalysis, etc.) for a controlled substance or a signed admission. More than half (53%) of the offenders were cited for failing to follow instructions given by the probation officer. Other frequently cited violations included absconding from supervision (28%), changing residence or traveling outside of designated areas without permission (17%) and failing to report to the probation officer in person or by telephone when instructed (17%). Offenders were cited for failing to follow special conditions imposed by the court, including: failing to pay court costs and restitution, failing to comply with court-ordered substance abuse treatment, or failing to successfully complete alternatives, such as a Detention Center or Diversion Center program in more than one-fourth of the violation cases (29%). It is important to note that defendants may be, and typically are, cited for violating more than one condition of their probation (Figure 29).

The overall compliance rate summarizes the extent to which Virginia's judges concur with recommendations provided by the probation violation guidelines, both in type of disposition and in length of incarceration. In FY2014, the overall rate of compliance with the Probation Violation Guidelines was 53%, which is comparable to compliance rates since FY2008 and significantly higher than the compliance rate of 37% for the first edition of the guidelines (Figure 26). The aggravation rate, or the rate at which judges sentence offenders to sanctions more severe than the guidelines recommend, was 24% during FY2014. The mitigation rate, or the rate at which judges sentence offenders to sanctions considered less severe than the guidelines recommendation, was 22% (Figure 30).

Figure 30

Probation Violation Guidelines Overall Compliance and Direction of Departures, FY2014 (4,907 Cases)*



**Includes FY2014 cases found to be in violation that were completed accurately on current guideline forms*

Figure 31

Probation Violation Guidelines Dispositional Compliance, FY2014

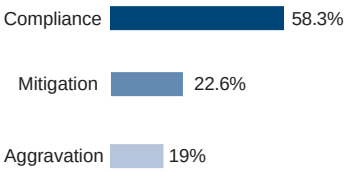
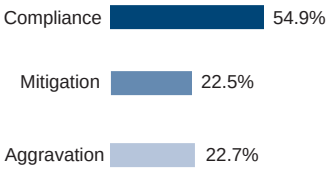


Figure 32

Probation Violation Guidelines Durational Compliance, FY2014*



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

Figure 31 illustrates judicial concurrence with the type of disposition recommended by the Probation Violation Guidelines for FY2014. There are three general categories of sanctions recommended by the probation violation guidelines: probation/no incarceration, a jail sentence up to twelve months, or a prison sentence of one year or more. Data for the time period reveal that judges agree with the type of sanction recommended by the Probation Violation Guidelines in 58% of the cases. When departing from the dispositional recommendation, judges were more likely to sentence below the guidelines recommendation than above it. Consistent with the traditional sentencing guidelines, sentences to the Detention Center and Diversion Center programs are defined as incarceration sanctions under the Probation Violation Guidelines and are counted as seven months of confinement (per changes to the program effective July 1, 2007).

Another facet of compliance is durational compliance. Durational compliance is defined as the rate at which judges sentence offenders to terms of incarceration that fall within the recommended guidelines range. Durational compliance analysis only considers cases for which the guidelines recommended an active term of incarceration and the offender received an incarceration sanction consisting of at least one day in jail. Data reveal that durational compliance for FY2014 was approximately 55% (Figure 32). For cases not in durational compliance, aggravations were just as likely as mitigations.

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

Prior to July 1, 2010, completion of the Probation Violation Guidelines was not required by statute or any other provision of law. However, the 2010-2012 biennium budget passed by the General Assembly specifies that, as of July 1, 2010, a sentencing revocation report (SRR) and, if applicable, the Probation Violation Guidelines, must be presented to the court and reviewed by the judge for any violation hearing conducted pursuant to § 19.2-306 (this requirement can be found in Item 42 of Chapter 806 of the 2013 Acts of Assembly as amended and reenacted, April 1, 2014). Similar to the traditional felony sentencing guidelines, sentencing in accordance with the recommendations of the Probation Violation Guidelines is voluntary. The approved budget language states, however, that in cases in which the Probation Violation Guidelines are required and the judge imposes a sentence greater than or less than the guidelines recommendation, the court must file with the record of the case a written explanation for the departure. The requirements pertaining to the Probation Violation Guidelines spelled out in the latest budget parallel existing statutory provisions governing the use of sentencing guidelines for felony offenses.

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

According to Probation Violation Guidelines data for FY2014, 47% of the cases resulted in sentences that fell outside the recommended guidelines range. With judges departing from these guidelines at such a high rate, written departure reasons are an integral part of understanding judicial sentencing decisions. An analysis of the 1,099 mitigation cases revealed that over half (55%) included a departure reason. For the mitigation cases in which departure reasons were provided, judges were most likely to cite the utilization of an alternative punishment option (e.g., Detention or Diversion Center programs, treatment options), judicial discretion based on the facts of the case, the involvement of a plea agreement, the offender's health or the recommendation of the attorney for the Commonwealth.

Examining the 1,178 aggravation cases, the Commission found that the majority (60%) included a departure reason. When a departure reason was provided in aggravation cases, judges were most likely to cite multiple revocations in the defendant's prior record, the defendant's failure to follow instructions or absconding from supervision, substance abuse issues and the need for rehabilitation or judicial discretion based on the facts of the case.

FY2014 data suggest that judicial concurrence with Probation Violation Guidelines recommendations remains above 50% since the changes implemented July 1, 2007. As with the felony sentencing guidelines first implemented in 1991, the development of useful sentencing tools for judges to deal with probation violators will be an iterative process, with improvements made over several years. Feedback from judges, especially through written departure reasons, is of critical importance to the process of continuing to improve the guidelines, thereby making them a more useful tool for judges in formulating sanctions in probation violation hearings.

3 Immediate Sanction Probation Program

Introduction

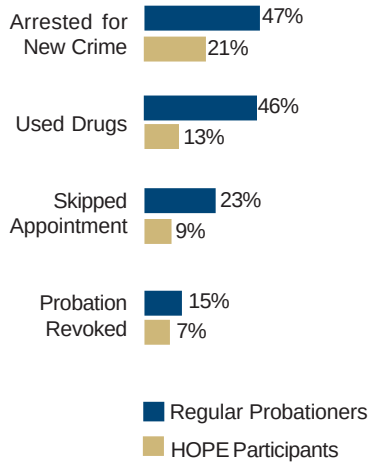
In 2004, Judge Steven Alm of Hawaii's First Circuit established the Hawaii Opportunity Probation with Enforcement (HOPE) program. The HOPE program was created with the goal of enhancing public safety and improving compliance with the rules and conditions of probation among offenders being supervised in the community. Targeting higher risk probationers under supervision in the community, the HOPE program applies swift and certain, but mild, sanctions for each violation of probation. The approach was markedly different from probation as it was being conducted in Hawaii at that time.

According to the National Institute of Justice, the HOPE approach is grounded in research which suggests that deferred and low-probability threats of severe punishment are less effective in changing behavior than immediate and high-probability threats of mild punishment (see, e.g., Grasmick & Bryjak, 1980; Nichols & Ross, 1990; Paternoster, 1989). In other words, the certainty of a punishment, even if it is moderate, has a stronger deterrent effect than the fear of a more severe penalty if there is a possibility of avoiding the punishment altogether. Furthermore, punishment that is both swiftly and consistently applied sends a strong message to probationers about personal responsibility and accountability, and the immediacy is a vital tool in shaping behavior.

The Immediate Sanction Probation program is designed to target nonviolent offenders who violate the conditions of supervised probation but have not been charged with a new crime.

Figure 33

Hawaii Opportunity Probation with Enforcement (HOPE) Program Evaluation Outcomes One Year Follow Up



Source: Hawken, A. & Kleiman, M. (2009). Managing Drug Involved Probationers with Swift and Certain Sanctions: Evaluating Hawaii's HOPE. www.ncjrs.govpdffiles1/nij/grants/229023.pdf

In 2009, a federally-funded evaluation of HOPE was completed using a randomized control trial, which is considered to be the most rigorous form of evaluation (this method is frequently used in clinical trials in medicine). After a one-year follow up period, evaluators found a significant reduction in technical violations and drug use among HOPE participants, as well as lower recidivism rates, compared to similar offenders supervised on regular probation (Figure 33). In a separate study, researchers found that HOPE participants and regular probationers served about the same number of jail days for violations, but HOPE participants used significantly fewer prison beds than regular probationers. Evaluators observed that most HOPE participants successfully changed their behavior, leading to increased compliance and lower recidivism.

After the release of the HOPE evaluation in 2009, interest in Hawaii's swift and certain sanctions model spread. In 2011, the Bureau of Justice Assistance and the National Institute of Justice partnered to provide grant funding to four jurisdictions to replicate and evaluate Hawaii's program model. As of November 2014, there were swift and certain sanctions programs operating in 19 states across the country. While many are still in the implementation or evaluation phase, preliminary reports from a number of programs are showing results similar to HOPE (see, e.g., Hawken & Kleiman, 2012; Carns & Martin, 2011; Loudenburg et al., 2012).

Policymakers in Virginia also became interested in Hawaii's approach to dealing with probation violators. In 2010, the General Assembly adopted legislation authorizing the creation of up to two Immediate Sanction Probation programs with key elements modeled after the HOPE program (see § 19.2-303.5 of the *Code of Virginia*). The 2010 legislation did not designate a particular agency to lead or coordinate the effort. Although supporting legislation existed, an Immediate Sanction Probation program had not been formally established by 2012. Nonetheless, many Virginia officials remained interested in launching such a program in the Commonwealth.

In May 2012, the General Assembly adopted budget language to extend the provisions of § 19.2-303.5 and to authorize the creation of up to four Immediate Sanction Probation programs (Item 50 of Chapter 3 of the 2012 Acts of Assembly, Special Session I). This provision directed 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 charged the Sentencing Commission with developing guidelines and procedures for the program, administering the program, and evaluating the results. As no additional funding was appropriated for this purpose, the pilot project has been implemented within existing agency budgets and local resources. Although the legislation was slated to expire on July 1, 2014, the 2014 General Assembly adopted budget language to extend the provisions until July 1, 2015 to allow the two newest pilot sites sufficient time to test the program (Item 47 of Chapter 2 of the 2014 Acts of Assembly, Special Session I).[1]

CHAPTER 2 of the 2014 Acts of Assembly (Special Session I)
Item 47

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, 2015, 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 November 1, 2016.

(Passed by the 2014 General Assembly)

[1]The 2014 General Assembly also passed HB232, which extended the pilot period to July 1, 2016. However, since budget language overrides statutory language, the end date of the pilot is July 1, 2015.

Per § 19.2-303.5, the Immediate Sanction Probation program is designed to target nonviolent offenders who violate the conditions of supervised probation but have not been charged with a new crime. These violations, often referred to as "technical violations," include using illicit drugs, failing to report as required, and failing to follow the probation officer's instructions. As in Hawaii, the goal is to reduce recidivism and improve compliance with the conditions of probation by applying swift and certain, but mild, sanctions for each violation. Improving compliance with probation rules and lowering recidivism rates reduces the likelihood that offenders ultimately will be sentenced to prison or lengthy jail terms. The Department of Corrections (DOC) reports that, as of June 30, 2014, the state inmate population included 1,251 technical probation violators. In addition, DOC reports that 40% of the offenders sentenced to prison in FY2013 had been on probation at the time they committed a new offense. Reducing the number of probation violators who ultimately end up in prison, at a cost of over $30,000 a year, reserves the most expensive correctional resources for violent and dangerous offenders. According to DOC, the average cost of supervising an offender in the community is $1,355 per year. While the cost of Immediate Sanction Probation will exceed the average cost of regular probation, due to the intensive nature of monitoring and drug testing of participants when they enter the program, the cost is still considerably less than the cost of prison.

Key Features and Stakeholders in the Swift and Certain Sanctions Model

The swift and certain sanctions model has several key features. Operational details may vary from program to program, but certain components are central to the swift and certain sanctions formula. These are:

- Higher risk probationers under supervision in the community are identified for participation in the program.
- The judge gives an official warning that probation terms will be strictly enforced and that each violation will result in jail time.
- Program participants are closely monitored to ensure that there are no violations.
- New participants undergo frequent, unannounced drug testing (4 to 6 times per month for at least the first month). For offenders testing negative, frequency of testing is gradually reduced.
- Participants who violate the rules or conditions of probation are immediately arrested and brought to jail.
- The court establishes an expedited process for dealing with violations (usually within three business days).
- For each violation, the judge orders a short jail term. The sentence for a violation is modest (usually only a few days in jail) but virtually certain and served immediately.

Successful implementation of a swift and certain sanctions program requires a significant amount of collaboration and coordination across numerous stakeholders representing multiple agencies and offices. Each stakeholder must be engaged, informed, and willing to participate. Critical stakeholders include:

- Judges,
- Prosecutors,
- Probation officers and the Department of Corrections,
- Defense attorneys,
- Law enforcement,
- Jail officials,
- Court clerks, and
- Treatment providers.

Without buy-in and continued cooperation from all stakeholders, a swift and certain sanctions program can be almost impossible to implement and sustain.

Design of Virginia's Immediate Sanction Probation Program

The Sentencing Commission designed Virginia's Immediate Sanction Probation program in compliance with parameters established by the General Assembly's statutory and budgetary language and the key elements of the swift and certain sanctions model pioneered in Hawaii. Implementing Virginia's program with fidelity to the basic tenets of the swift and certain sanctions model provides the best opportunity to determine if the positive results observed in other states will emerge in Virginia as well. A full discussion of the design of the Immediate Sanction Probation Program is contained in the Commission's *2013 Annual Report*.

Program Implementation Update

In September 2012, the Sentencing Commission approved the design for Virginia's Immediate Sanction Probation pilot program. Sentencing Commission staff then moved forward with implementation, which began with identifying potential pilot sites.

Selection of Pilot Sites

Sentencing Commission staff worked closely with the Office of the Secretary of Public Safety and Homeland Security and the Department of Corrections to identify potential pilot sites for the Immediate Sanction Probation program. The Sentencing Commission wished to pilot test the program in jurisdictions in different regions of the state and in a mix of urban/suburban/rural localities. The size of the probation population in each jurisdiction was also important, as small probation populations may not

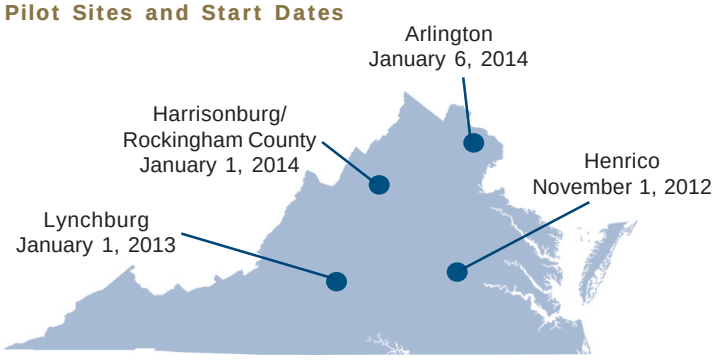
yield a sufficient number of eligible candidates to conduct a thorough evaluation of the program. In several localities, one or more officials had expressed interest to the Secretary or to the Sentencing Commission's director. Such local interest was highly desired. In addition, the Sentencing Commission hoped to test the program in various settings and therefore considered if potential sites had a Public Defender's Office or a drug court. After consideration of these factors, Sentencing Commission staff and the Deputy Secretary of Public Safety and Homeland Security approached stakeholders in Henrico, Lynchburg, and Newport News to discuss their possible participation in the pilot project. 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 pilot project. Subsequent meetings were held in Hampton and Chesapeake, but neither locality elected to move forward with a pilot program. Finding pilot sites has been one of the challenges to implementing the Immediate Sanction Probation program. These challenges are discussed in the next section of this chapter. In July 2013, Arlington agreed to participate as the third pilot site and, in September 2013, Harrisonburg/Rockingham County agreed to become the fourth pilot site. Pilot programs in both Arlington and Harrisonburg/Rockingham became operational in January 2014. Start dates were set by local stakeholders.

In each site, Sentencing Commission staff organized and participated in multiple meetings prior to the start date to brief officials and staff on the program and to facilitate decisions about operational details.

The stakeholders in each of the selected pilot sites continue to foster excellent working relationships, which has been essential to successfully implementing the program.

Figure 34

Immediate Sanction Probation Program Pilot Sites and Start Dates



Implementation Support

To support and facilitate the implementation of the program in each pilot site, the Sentencing Commission has:

- Developed guidelines and procedures and prepared an implementation manual;
- Written a warning script for judges to use when placing offenders into the program;
- Created forms to help stakeholders with administrative processes and to gather data for the evaluation;
- Assisted with development of template court orders for the program;
- Ensured a point-of-contact was identified for each office/agency involved in the locality's pilot program and produced a contact list for each pilot site;
- Identified a payment process for court-appointed attorneys working with the program in Henrico, Harrisonburg/Rockingham, and Arlington;
- Collaborated with DOC, the Compensation Board, and Circuit Court Clerks to add new codes in automated systems so that program participants can be tracked;
- Met with all probation officers in Lynchburg, Henrico, Arlington, and Harrisonburg/Rockingham to explain the program and encourage the identification and referral of candidates; and
- Trained dozens of defense attorneys on the program's target population, purposes, and procedures.

Sentencing Commission staff have organized regular meetings with stakeholders in all four pilot sites. These meetings are very beneficial to review and refine procedures, examine the progress of the participants, and identify and resolve any issues or concerns as they arise. In this way, stakeholders work together to develop solutions that are satisfactory to everyone. Commission staff speak with local stakeholders, particularly the Immediate Sanction Probation Officers, on an ongoing basis. These calls provide an opportunity to address questions from probation staff and to receive valuable feedback on the program from probation officers. Practitioners are also encouraged to call the Sentencing Commission to discuss emergent issues at any time. Sentencing Commission staff will continue to hold regular meetings in the pilot sites to encourage fidelity to the model and assist stakeholders in refining protocols, as needed.

Supervision and Drug Testing

During the planning phase, the Sentencing Commission emphasized the need for uniformity in the supervision of program participants and in responses to violations. As a result, DOC has assigned a seasoned probation officer currently working in each pilot site as the Immediate Sanction Probation officer. This officer is dedicated to the supervision of the offenders participating in the pilot program. DOC is using existing resources to provide one new probation officer for each pilot site. In all of the pilot sites, the probation officers selected to supervise Immediate Sanction Probation offenders have demonstrated a strong competency and willingness to innovate to overcome potential challenges that have arisen. Their extensive experience and training continue to prove invaluable not only to those in their respective jurisdictions, but also to the program as a whole.

Implementing a swift and certain sanctions program is resource-intensive up front, largely due to the intense monitoring and frequent drug testing required by probation staff. Potential cost savings occur later through fewer revocations, lower recidivism rates, and reduced use of jail and prison. The Commission's formal report on the implementation of the Immediate Sanction Probation program, including preliminary recidivism results, which is due to the General Assembly on November 1, 2016, will assist in determining if the results from other states with similar programs are replicated in Virginia as well.

Defense Counsel

In Lynchburg, defense counsel is provided by the Public Defender's Office. Since Henrico and Harrisonburg/Rockingham do not have a Public Defender's Office, defense counsel is provided by numerous court-appointed attorneys who have agreed to work with the Immediate Sanction Program. The Arlington stakeholders are utilizing a blended approach, with the Public Defender's office representing individuals who were represented by their office on the underlying offenses or in instances in which the original attorney no longer wishes to represent the offender. Otherwise, the private or court-appointed attorney who represented the participant on the underlying felony charge is given the opportunity to represent the probationer.

Court Processes

The pilot sites have established an expedited court process for dealing with program candidates and violations. Immediate Sanction Probation hearings are held on multiple days of the week so that offenders will not spend long in jail before being considered for placement in the program or having a violation heard by the court. Hearings for violations occur swiftly (usually within three business days following arrest). This expedited process diverges significantly from the normal probation violation process in Virginia, which can take weeks or even months in some jurisdictions.

Court hearings associated with the Immediate Sanction Probation program tend to be brief. Based on a sample of court hearings conducted in Henrico and Lynchburg, the candidate review hearings (when judges consider placing an offender into the program) last, on average, ten minutes each. Program violations have been handled in an average of seven minutes. This is comparable to the length of hearings in Hawaii's HOPE program.

Law Enforcement

The law enforcement stakeholders continue to be enthusiastic partners in piloting the Immediate Sanction Probation program. By quickly executing arrests, law enforcement officers are integral to ensuring that program violations are met with swift and certain sanctions. Police officers and Sherriff's deputies in the pilot sites have demonstrated a high degree of commitment to upholding the tenets of the program.

Jail staff have also assisted by ensuring the quick transport of candidates and program participants between jail and court. In particular, the cooperation of the five jails that comprise the Blue Ridge Regional Jail Authority has been essential to the Lynchburg pilot program.

Treatment Providers

Based on experiences in the two oldest pilot sites (Henrico and Lynchburg), the Sentencing Commission began to include treatment providers as integral stakeholders in Virginia's pilot program in 2014. Staff of the Sentencing Commission have spoken with treatment providers in three of the pilot jurisdictions to explain the purposes of the pilot program as well as to request their assistance with offenders who request treatment or who demonstrate, by their behavior, that they need treatment. In the near future, Sentencing Commission staff will reach out to the treatment providers in the fourth site. Treatment providers have been supportive of the program and have used it to support and enhance the services they provide to certain participants.

Implementation Challenges

Establishing and successfully implementing a pilot program that diverges substantially from existing practices can be a difficult process and is not without challenges. Considerable groundwork must be laid prior to placing the first offender in the program. Once the program is operational, obstacles may be encountered and need to be addressed as quickly as possible.

Ensuring that violations are addressed immediately and cases are handled swiftly requires extensive collaboration and coordination among many criminal justice agencies and offices. Breakdowns in communication or commitment to the program within any office can hinder the ability of the program to operate in a swift and certain manner. Although achieving such seamless communication can pose a significant challenge in some jurisdictions, stakeholders in the pilot sites have demonstrated a continued commitment to working with each other and giving the pilot program the best opportunity to succeed. During the initial stakeholders meetings in each of the pilot sites, new lines of communication, procedures, forms, and template court orders were designed and refined to ensure that the swiftness aspect of the program could be successfully achieved without overwhelming any of the partners. While the pilot sites appear to have reached a point of comfort with the practices developed in their

respective jurisdictions, ongoing stakeholders meetings continue to prove beneficial in updating stakeholders on the progress of participants, addressing emerging challenges, and identifying potential efficiencies in existing practices.

As with most pilot programs, some challenges have been encountered in the implementation of Virginia's Immediate Sanction Probation pilot program. While there is considerable interest in the swift and certain sanctions model, finding localities willing to participate as pilot sites took time. Because no funding was appropriated for Virginia's pilot project, it is being implemented within existing agency budgets and local resources. Since many agencies and offices have recently undergone reductions in staff in recent years and some offices experience a relatively high rate of turnover, taking on the responsibilities of a new program may not be seen as feasible. Three jurisdictions that the Sentencing Commission approached to pilot this program decided not to participate, citing resource limitations as one of the reasons.

For the jurisdictions that have agreed to undertake the challenge of piloting the Immediate Sanction Probation program, the stakeholders have remained dedicated to successfully implementing the program despite the extra workload. However, limited staff resources have presented additional challenges in the pilot sites. Fortunately, the stakeholders in each pilot jurisdiction have demonstrated a clear understanding of the challenges faced by each office and a desire to cooperate and assist one another, where possible. In general, the intense supervision of new participants, in conjunction with immediate arrests, hearings, and jail time for violations, can place stress on stakeholders with limited resources and, if the program grows, existing resources can be stretched thin.

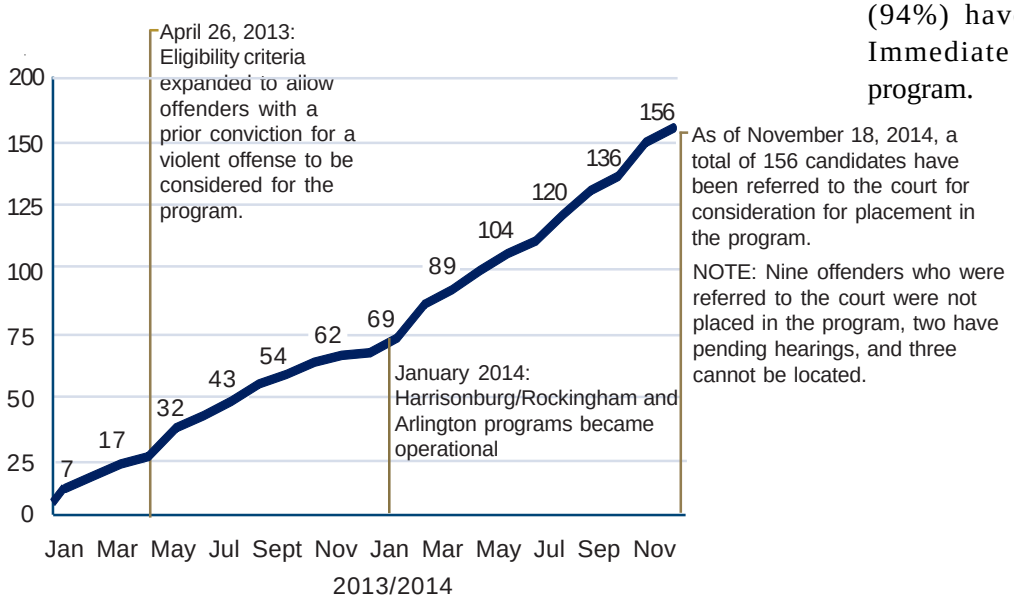
The number of program candidates identified by probation staff has been lower than initially expected. Much of this may be attributable to the eligibility criteria. For instance, stakeholders in two of the pilot sites have indicated that the eligibility criteria excluding offenders who have obligations to courts outside of the pilot jurisdiction significantly reduces the pool of eligible candidates. This eligibility criterion was established for the pilot programs to ensure that judges in the pilot sites have jurisdiction over the cases and can swiftly impose sanctions. To assist the probation officers in identifying eligible candidates in these jurisdictions, DOC provided lists of probationers who, based on available data, might meet the eligibility criteria.

Stakeholders in Lynchburg developed an innovative approach to expand the pool of eligible offenders. The Probation & Parole District there covers several jurisdictions (the City of Lynchburg as well as Amherst, Campbell, and Nelson Counties). Participants in the Lynchburg pilot program must have an obligation to Lynchburg Circuit Court. However, probation staff identified offenders believed to be good candidates for the program who lived just outside the Lynchburg City line. At the suggestion of Lynchburg stakeholders, the Sentencing Commission approached the Sheriffs in the neighboring Amherst and Campbell Counties, who agreed to assist with the pilot program by quickly executing Lynchburg's PB-15 arrest warrants in their respective jurisdictions. As a result, the pool of potential program participants for Lynchburg's pilot program has been expanded to include those living outside the Lynchburg City limits. This is an excellent example of stakeholders innovating and collaborating to improve the implementation of the program in their jurisdiction.

Stakeholders in the pilot sites have indicated that other eligibility criteria further reduce the pool of eligible offenders. For example, per § 19.2-303.5, offenders on probation for a violent crime, as defined in § 17.1-805, are not eligible for the program. As initially designed, the Sentencing Commission also excluded offenders with a prior offense listed in § 17.1-805. During ongoing meetings in the pilot sites, members of multiple stakeholders groups indicated that they had identified probationers who they felt would respond well to the structure of the Immediate Sanction Probation program, but the offenders were ineligible due to a prior violent offense (a prior burglary was frequently cited; burglary is defined as a violent offense in § 17.1-805). Based on feedback from stakeholders in the pilot sites participating at that time (Henrico and Lynchburg), as well as a potential pilot jurisdiction, the Sentencing Commission initiated discussions with the Secretary of Public Safety and Homeland Security, Commonwealth's attorneys, and several others. Sentencing Commission staff also conducted a comprehensive review of eligibility criteria and evaluation findings for similar swift and certain sanctions programs around the country. After careful consideration, the Sentencing Commission expanded the criteria to allow offenders with a prior conviction for an offense listed in § 17.1-805 to be considered for the program. Following the expansion of the eligibility criteria in April 2013, the number of potential candidates referred to the court increased. Figure 35 shows the cumulative number of candidates referred to the court, as of November 18, 2014. Pursuant to § 19.2-303.5, the judge ultimately determines if the offender will be placed into the program. The majority of candidates referred to the court (94%) have been placed in the Immediate Sanction Probation program.

Figure 35

Cumulative Number of Candidates for the Immediate Sanction Probation Program Referred to the Court by Month (as of November 18, 2014)



Several stakeholders have also suggested that some probationers currently being supervised for a violent offense may respond well to the structure provided by the program. However, these offenders are statutorily excluded at this time. Research from the HOPE program in Hawaii and a similar program in Washington State indicates that offenders who are currently on supervision in the community for a violent offense may respond equally well to the close scrutiny and the swiftness and certainty of sanctions imposed in this type of program.

Probation & Parole Districts piloting the Immediate Sanction Probation program have also faced the challenge of ensuring that most, if not all, eligible candidates are referred to the court to be considered for placement in the program. The program relies heavily upon the probation officers in each District to identify offenders on their caseload who meet the eligibility criteria and have committed at least one recent technical violation. Probation officers are asked, once a candidate is identified, to prepare a Major Violation Report quickly detailing the nature of the alleged violations; the Major Violation Report is then submitted to the court as part of the referral process. Achieving a quick turn-around in the preparation of the Major Violation Report has proven to be challenging in Districts that have experienced significant staff reductions in recent years, where probation officers have large caseloads, or where officers prepare a high volume of Pre-Sentence Investigation reports. To encourage referrals and ensure that any questions or concerns expressed by probation officers are addressed, DOC asked the Sentencing Commission to prepare and present materials to all of the probation officers in each of the pilot sites. In addition to the District-wide efforts to encourage referrals for the program, the Immediate Sanction Probation officers also play a significant role in encouraging fellow probation officers to refer potential candidates by assisting in the identification of possible candidates, answering questions regarding the program, and helping other officers complete the necessary paperwork for referrals (e.g., the Major Violation Report).

The pilot sites have also faced challenges relating to certain types of probationers, such as offenders with mental health issues, and limited resources for substance abuse services (for participants who request them or who demonstrate a need based on their behavior). Despite the numerous challenges, stakeholders in the participating pilot sites have demonstrated an ability to develop innovative solutions to overcome as many barriers as possible.

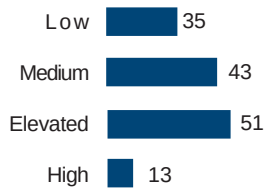
Characteristics of Program Participants, Violations, Sanctions, and Completions to Date

As of November 18, 2014, a total of 142 probationers had been placed into the Immediate Sanction Probation pilot program (47 in Henrico, 47 in Lynchburg, 37 in Harrisonburg/ Rockingham and 11 in Arlington). For current participants (probationers who have not been removed due to non-compliance or successful completion), the length of participation ranges from one day to 1.7 years. Among probationers who have been placed in the program, roughly half (51.3%) are on supervised probation for a felony drug conviction, followed by larceny (31.4%) and fraud (9%). In addition, 15.4% were on supervised probation for other types of felony offenses, such as felony driving while intoxicated and eluding police. These percentages do not add to 100%, since some probationers were on supervision for multiple types of offenses. In addition, over one-quarter (27.6%) have previously had a portion of the originally suspended term revoked because of a prior probation or suspended sentence revocation.

As noted earlier in this chapter, the Immediate Sanction Probation program focuses on higher risk probationers. The largest share of offenders placed into the program (51 of 142) have been identified as elevated risk, based on the COMPAS risk/needs assessment instrument currently used by the Department of Corrections for supervision planning (Figure 36). Treated the same as high risk offenders, these offenders need only one technical violation to become a candidate for the program. On average, however, these offenders had accumulated four technical violations prior to being placed in the program. Offenders identified as elevated risk scored high on either the general recidivism or violent recidivism scales. While the general recidivism scale is designed to predict a wide variety of new offenses, the violent recidivism scale focuses solely on violent acts. Slightly less than 10% of offenders placed in the program were identified as high risk on both the general recidivism and violent recidivism scales. On average, these probationers had four violations prior to being placed in the program. The small number of high risk probationers that have been referred to the program is likely due to the fact that many of the probationers who are classified as high risk by COMPAS are on probation for a violent offense listed in § 17.1-805, which statutorily precludes them from participating in the Immediate Sanction Probation program.

Figure 36

DOC Recidivism Risk Level for Offenders Placed in the Immediate Sanction Probation Program



Risk of recidivism/violent recidivism as determined by the COMPAS risk/needs assessment instrument used by the Department of Corrections

To date, 43 medium risk offenders have been placed into the program. Medium risk offenders qualify for the program after two technical violations. On average, these offenders had five violations prior to program placement. Roughly one quarter (24.6%) of the probationers that have been placed into the program were identified as low risk for recidivating by the COMPAS instrument. Low risk offenders cannot become candidates for the Immediate Sanction Probation Program until they have accumulated at least three technical violations. The accrual of multiple violations increases a probationer's risk of failing probation. Probationers who were identified as low risk by the COMPAS instrument had accumulated an average of four such violations at the time they were placed in the Immediate Sanction Probation program.

As shown in Figure 37, roughly 40% of the participants who had been placed in the program by November 18, 2014, have not committed a violation after entering the program. All of these offenders had a record of technical violations prior to placement in the Immediate Sanction Probation program (the average was four previous technical violations). The remaining 85 participants committed at least one violation after being placed in the program.

Figure 37

Immediate Sanction Probation Program Participants

	Locality				
	Henrico (start date: November 1, 2012)	Lynchburg (start date: January 1, 2013)	Harrisonburg/ Rockingham (start date: January 1, 2014)	Arlington (start date: January 6, 2014)	Total
Offenders Placed into the Program	47	47	37	11	142
Participants who have Violated	35	22	24	4	85
Number of Violations	85	46	57	7	195
Participants Removed	18	7	6	0	31
Current Participants	25	26	31	11	93
Number of Completions	4	14	0	0	18

As of November 18, 2014, 31 participants have been removed from the program. Of these offenders, the majority (87%) were removed from the program for continued non-compliance. More than half (55.6%) of these offenders were sentenced to a jail term, with a median sentence of six months. Nine offenders (33.3%) were given prison sentences ranging from 1.0 to 1.5 years, while an additional offender was ordered to complete the Detention and Diversion Center programs. One is awaiting a review to determine eligibility for drug court and another was ordered to complete a residential drug treatment program. Three additional participants received approval to move out of the jurisdiction and were therefore ineligible to continue in the program. The remaining participant died from injuries sustained in a motorcycle accident.

Figure 38

Number of Violations Committed by Participants in the Immediate Sanction Probation Program

Of the 85 participants who have committed violations in the program, 33 have committed a single violation (Figure 38). Another 22 offenders have committed two violations, while 13 offenders have had three violations in the program. Nine additional offenders have accumulated four violations. Research on the swift and certain sanctions approach in Hawaii and elsewhere indicates that offenders who commit one or more violations can nonetheless change their behavior and begin to comply with the conditions of probation.

In addition to implementing the Immediate Sanction Probation program, the Sentencing Commission has been charged with completing an evaluation of the pilot project. Outcome measures are being developed for the evaluation. Certainly, those outcome measures will include recidivism rates - how many participants were convicted of new offenses - and the use of jail and prison resources. In addition, it is important for the evaluation process to determine if the pilot sites were able to achieve both swiftness and certainty, critical elements of the program model.

To allow the pilot programs in Henrico and Lynchburg sufficient time to test and refine the new procedures, the Sentencing Commission began tracking measures of swiftness on March 8, 2013. On average, the expedited hearings have been conducted by the court within three days following the commission of the violation (Figure 39). If an offender tests positive for drug use, he or she is arrested immediately in the Probation & Parole District office. For offenders who fail to show up for a drug test or an appointment with the supervising officer, a PB-15 is issued immediately and sent to law enforcement officers, who search for the offender in the community (at home, work, and other possible locations). The time that it takes law enforcement to locate and arrest the offender affects the average time between violation and the court hearing. Breaking down the total three days from violation to hearing, the average time between violation and arrest has been less than one day and the average time between arrest and the hearing has been two days. Once a participant is arrested for a violation, courts are conducting hearings within an average of one business day. Based on this data, it appears that the stakeholders in the pilot sites have been able to successfully achieve the swiftness aspect of the program model.

Figure 39

Measures of Swiftness for the Immediate Sanction Probation Program

	Lynchburg	Henrico	Harrisonburg/ Rockingham	Arlington	Total
Percent of violation hearings held within 3 days of violation	44.1%	55.6%	52.8%	71.4%	52.9%
Avg. time between violation and hearing	4 days	2 days	3 days	3 days	3 days
Avg. time between violation and arrest	1 day	1 day	<1 day	<1 day	<1 day
Avg. time between arrest and hearing	2 days	1 day	2 days	2 days	2 days
Avg. time between arrest and hearing – business days	1 day	1 day	2 days	2 days	1 day

These figures are based program violations committed on or after March 8, 2013

Regarding the certainty aspect of the program, 100% of the violations detected in the four pilot sites have been met with jail sanctions, per the program's design (Figure 40). For the first violation in the program, the average sanction has been four days. For the second violation, the average sanction has been seven days, while the average sanction for the third violation has been 13 days. The average sanction for offenders who had a fourth violation is 17 days. For the four offenders who have had a fifth violation and were allowed to remain in the program, the average sanction is 20 days. Certainty has been achieved in the pilot sites and the sanction days are consistently within the ranges recommended by the Sentencing Commission for the program.

If a participant has been violation-free for twelve months, the probationer is considered to have "successfully completed" the Immediate Sanction Probation program. Relative to other states that have implemented similar swift and certain sanction programs, the minimum program length of one year is relatively brief. However, if a participant violates a condition of supervision, the length of time in the program is generally extended to allow for sufficient step down practices and to ensure that the probationer has developed the tools necessary to remain successful in the community long term. Participants who are violation-free for twelve months may be returned to regular probation supervision, placed on a less-restrictive level of supervision or, at the judge's discretion, released from supervision. Sufficient time has now elapsed for Henrico and Lynchburg program participants to reach the one-year minimum for successful program completion.

Figure 40

Measures of Certainty and Consistency for Immediate Sanction Probation Program

	Lynchburg	Henrico	Harrisonburg/ Rockingham	Arlington	Total
Percent of violations resulting in a jail term	100%	100%	100%	100%	100%
Average length of sentence for 1st violation	3 days	4 days	5 days	3.5 days	4 days
Average length of sentence for 2nd violation	5 days	7 day	7 days	10 days	7 days
Average length of sentence for 3rd violation	7.5 days	13 days	14 days	N/A	13 days
Average length of sentence for 4th violation	12.5 days	20 days	17 days	N/A	17 days
Average length of sentence for 5th violation	20 days*	20 days*	19.5 days	N/A	20 days

* represents one case

As of November 18, 2014, judges in Lynchburg and Henrico have released 18 participants from the program following substantial periods of compliance. Although successful participants are not required to attend the final hearing, during which the initial probation violation is dismissed, all but one participant elected to be present. In all of the cases, the judge has also removed the probationer from supervised probation. At the time of publication, two of these former participants have been re-arrested for a new offense. One offender was convicted of trespassing and was sentenced to 30 days with all 30 days suspended. A second offender was arrested for felony strangulation and misdemenaor assault and battery of a family member. Both of these charges were later nolle prossed.

Upcoming Activities

In the coming months, Sentencing Commission staff will continue to assist the stakeholders in the four pilot sites with the implementation of the Immediate Sanction Probation program.

While the formal evaluation has not yet begun, the Sentencing Commission has started planning for the evaluation phase. In addition to the measures of swiftness and certainty described above, the Sentencing Commission will capture data on new arrests and new convictions for offenders who have participated in the program, which will be used to calculate recidivism rates. The Sentencing Commission will also calculate the number of days participants spent in jail serving time on violations, as well as the number of days served in jail or prison by participants who ultimately have their probation revoked (i.e., offenders who do not successfully complete the program). The Sentencing Commission will identify a comparison group of similar offenders under regular probation supervision. Thus, the outcomes of the pilot program will be assessed by comparing the results of participants to those for a like group of offenders on regular probation. As directed by budget language, the Commission will prepare and submit a report on the implementation of the Immediate Sanction Probation program, including preliminary recidivism results, by November 1, 2016.

References

Carns, T. & Martin, S. (2011). *Anchorage PACE probation accountability with certain enforcement: A preliminary evaluation of the Anchorage pilot PACE project.* Retrieved from http://www.ajc.state.ak.us/reports/pace2011.pdf

Grasmick, H. G. & Bryjak, G. J. (1980). The deterrent effect of perceived severity of punishment. *Social Forces,* 59(2), 471-491.

Hawken, A. & Kleiman, M. (2009). Managing Drug Involved Probationers with Swift and Certain Sanctions: Evaluating Hawaii's HOPE. Submitted to the United States Department of Justice, National Institute of Justice. NCJ 229023. www.ncjrs.govpdffiles1/nij/grants/229023.pdf

Hawken, A. & Kleiman, M. (2012, January 25). *Washington Intensive Supervision Program: Evaluation Report.* Retrieved from http://www.leg.state.nv.us/Interim/76th2011/Exhibits/AdminJustice/E060612I.pdf

Loudenburg, R., Drube, G., Leonardson, G., & Bathke, J. (2012, November 9). *South Dakota 24/7 Sobriety Program: Evaluation Supplemental Findings Report.* Retrieved from http://apps.sd.gov/atg/dui247/AnalysisSupplementalSD24.pdf

National Institute of Justice (2012, February 3). *Swift and Certain Sanctions in Probation Are Highly Effective: Evaluation of the HOPE Program.* Retrieved from http://www.nij.gov/topics/corrections/community/drug-offenders/hawaii-hope.htm.

Nichols, J. & Ross, H. L. (1990). Effectiveness of legal sanctions in dealing with drinking drivers. *Alcohol, Drugs, and Driving,* 6(2), 33-55.

Paternoster, R. (1989). Decisions to participate in and desist from four types of common delinquency: Deterrence and the rational choice perspective. *Law and Society Review,* 23, 501-534.

4 Two Decades of Truth-in-Sentencing

The reform of two decades ago dramatically changed the way felons are sentenced and serve time in Virginia.

Introduction

Legislation passed by the General Assembly in 1994 radically altered the way felons are sentenced and serve incarceration time in Virginia. The practice of discretionary parole release from prison was abolished, and the existing system of awarding inmates sentence credits for good behavior was eliminated. Virginia's truth-in-sentencing laws mandate sentencing guideline recommendations for violent offenders (those with current or prior convictions for violent crimes) that are significantly longer than the terms violent felons typically served under the parole system. The laws require felony offenders, once convicted, to serve at least 85% of their incarceration sentences. Since 1995, the Sentencing Commission has monitored the impact of these dramatic changes on the state's criminal justice system. Over 440,000 felons have been sentenced under no-parole laws and, overall, judges have responded to the sentencing guidelines by agreeing with recommendations in four out of every five cases. In addition, inmates are serving a larger proportion of their sentences than they did under the parole system, violent offenders are serving longer terms than before the abolition of parole, and the inmate population has not grown at the record rate seen prior to the abolition of parole. Nearly two decades after the implementation of truth-in-sentencing laws in Virginia, there is substantial evidence that the system is achieving what its designers intended.

Goals of Sentencing Reform

The cornerstone of reform in Virginia was the abolition of discretionary parole release and the adoption of truth-in-sentencing. Under parole eligibility laws, inmates served a fraction of the sentences handed down by a judge or a jury before becoming eligible for parole release. A first-time inmate, for example, became eligible for parole after serving one-fourth of his or her sentence. In addition, inmates could earn as much as 30 days in sentence credits for every 30 days they served. Half of this sentence credit could be applied toward the offender's parole eligibility date, further reducing the portion of the sentence that needed to be served before a prisoner could be granted parole and released. As a result, some inmates served as little as one-fifth of the sentences ordered by the court.

An essential goal of the reform, therefore, was to reduce drastically the gap between the sentence pronounced in the courtroom and the time actually served by a convicted felon in prison. Under Virginia's truth-in-sentencing system, parole was eliminated for any felony committed on or after January 1, 1995, and the system by which prison inmates earn sentence credits was revamped. In contrast to the 30 days an inmate could receive for every 30 days served under the parole system, a felony offender sentenced under truth-in-sentencing provisions may not earn more than 4.5 days off of his or her incarceration sentence for every 30 days served (or 15%). Prior to 1995, felons sentenced to jail served their time under different provisions than felons in state prisons. Under truth-in-sentencing, all felons must serve at least 85% of the incarceration sentence regardless of whether they serve that time in a local jail or in a state facility. The truth-in-sentencing system provides greater consistency and transparency in the percent of sentences that convicted felons will serve.

Abolishing parole and achieving truth-in-sentencing were not the only goals of the reform legislation. Ensuring that violent criminals serve longer terms in prison than in the past was also a priority. New sentencing guidelines were carefully crafted with a system of legislatively-mandated scoring enhancements designed to yield longer sentence recommendations for offenders with current or prior convictions for violent crimes. The enhancements built into the guidelines prescribe prison sentences for violent offenders that are significantly longer than historical time served by these offenders. Unlike other initiatives, which typically categorize an offender based on the current offense alone, Virginia's truth-in-sentencing guidelines define an offender as violent based on the totality of his or her criminal career, including both the current offense and the offender's prior criminal history.

During the development of sentencing reform legislation, much consideration was given as to how to balance the goals of truth-in-sentencing and longer incarceration terms for violent offenders with demand for expensive correctional resources. Reform measures were designed with consideration given to Virginia's current and planned prison capacity and with an eye towards using that capacity to house the state's most violent felons. This prioritization of resources led to an additional reform goal: to safely redirect low-risk nonviolent felons from prison to less costly sanctions. In its 1994 charge to the newly-created Sentencing Commission, the General Assembly instructed the Commission to develop a risk assessment instrument for nonviolent offenders that was designed to be predictive of the relative risk a felon would become a threat to public safety. Such an instrument, based on empirical analysis of recidivism among Virginia's felons, can be used to identify offenders who are likely to present the lowest risk to public safety in the future. In the initial mandate, the Commission was to determine if 25% of incarceration-bound offenders could be safely redirected to alternative punishment options in lieu of prison. Existing sanctioning options were expanded and new programs were authorized by the General Assembly to create a network of local and state-run community corrections programs for nonviolent offenders.

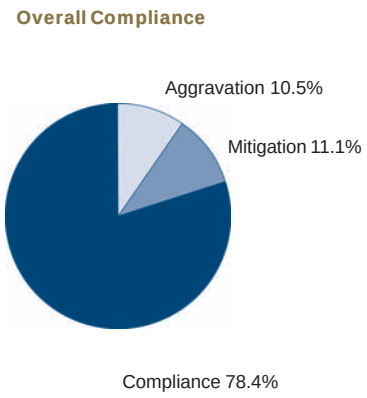
Inherent in Virginia's truth-in-sentencing reform is the goal of reducing unwarranted disparity in the punishment of offenders. Because sentencing guidelines provide a set of objective and consistent standards, use of guidelines can reduce variation in sentencing outcomes for defendants convicted of similar offenses who have similar criminal histories. Objective and consistent sentencing practices foster public confidence in the criminal justice system, an important goal for any criminal justice system.

Sentencing Guidelines Compliance

Judicial compliance with Virginia's 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. 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. Overall compliance, nearly 75% when the guidelines were first implemented, has reached 78% to 80% in recent years. In fiscal year (FY) 2014, the overall compliance rate was 78.4% (Figure 41). Of the state's 31 circuits, 11 circuits had compliance rates of 80% or higher, while 16 circuits had compliance rates between 75% and 79%. The remaining 4 circuits had compliance rates below 75%. This high rate of concurrence with the guidelines indicates that the guidelines serve as a useful tool for judges when sentencing felony offenders. General acceptance of the guidelines by Virginia's judiciary has been crucial in the successful transition from a system in which time served was governed by discretionary parole release to a truth-in-sentencing system in which felons must serve nearly all of the incarceration time ordered by the court.

Figure 41

Overall Guidelines Compliance and Direction of Departures FY2014 (24,709 cases)



Percentage of Sentence Served by Felons

An essential goal of truth-in-sentencing, ensuring that a convicted felon will serve nearly all of the sentence set by the judge or jury, has been universally achieved. Felons, who prior to truth-in-sentencing reform were released on parole after serving a fraction of their sentences, today are serving at least 85% of their incarceration terms. In fact, many felons are serving longer than the minimum 85% required by law.

The system of earned sentence credits in place since 1995 limits the amount of time a felon can earn off his sentence to 15%. The Department of Corrections (DOC) policy for the application of earned sentence credits specifies four different rates at which inmates can earn credits: 4½ days for every 30 served (Level 1), three days for every 30 served (Level 2), 1½ days for every 30 served (Level 3) and zero days (Level 4). Inmates are automatically placed in Level 1 upon admission into DOC, and a review is performed at least annually to determine if the level of earning should be adjusted based on the inmate's conduct and program participation in the preceding 12 months.

Analysis of earned sentence credits being accrued by inmates sentenced under truth-in-sentencing provisions and confined in Virginia's prisons on December 31, 2013, reveals that more than half of the inmates (54.4%) are earning at the highest level, Level 1, gaining 4½ days per 30 days served. Smaller proportions of the population are earning at Levels 2, 3 and 4; approximately 10.8% are earning 3 days for 30 served (Level 2), 19.6% are earning 1½ days for 30 served (Level 3), and 15.2% are earning no sentence credits at all (Level 4). Based on this one-day "snapshot" of the prison population, inmates sentenced under the truth-in-sentencing system, on average, are serving 89% to 90% of the incarceration sentences pronounced in Virginia's courtrooms.

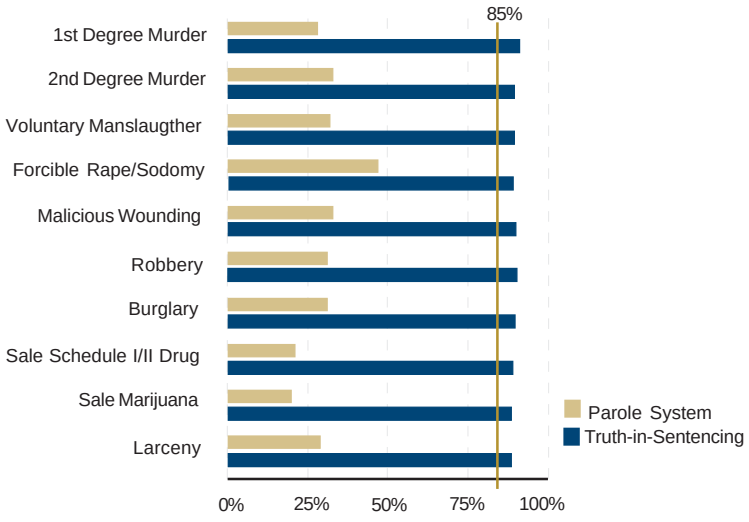
Under truth-in-sentencing, with no parole and limited sentence credits, inmates in Virginia's prisons are serving a much larger proportion of their sentences than they did under the parole system. For instance, offenders convicted of first-degree murder and released under the parole system, on average, served less than one-third of the effective sentence (imposed sentence less any suspended time). In addition, offenders given a life sentence who were eligible for parole could become parole eligible after serving between 12 and 15 years. Under the truth-in-sentencing system, first-degree murderers are earning sentence credits at a rate that would result in them serving approximately 90% of the incarceration terms ordered by the court (Figure 42). An offender given a life sentence under truth-in-sentencing provisions, however, must remain incarcerated for the remainder of his or her natural life unless conditionally released under Virginia's geriatric provision (§ 53.1-40.01) after reaching the age of 60 or 65.

The significant increase in the percent of sentence served as a result of truth-in-sentencing is reflected in other offenses as well. Inmates sentenced to prison for robbery, who on average spent less than one-third of their sentences in prison before being released under the parole system, now earn sentence credits such that they are serving close to 91% of their incarceration terms. Larceny offenders convicted under truth-in-sentencing laws are serving 88% of their sentences, compared to 30% under the parole system. For selling a Schedule I/II drug like cocaine, offenders typically served only about one-fifth of their sentences when parole was in effect. Under truth-in-sentencing, offenders convicted of selling a Schedule I/II drug, on average, are serving close to 89% of the prison sentences handed down by judges and juries in the Commonwealth.

Truth-in-sentencing has reduced significantly the gap between the sentence ordered by the court and the percentage of the sentence actually served in prison by a convicted felon.

Figure 42

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



Parole system data represents FY1993 prison releases; truth-in-sentencing data are derived from rate of sentence credits earned among prison inmates on December 31, 2013.

Length of Incarceration Served by Violent Offenders

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

When the truth-in-sentencing system was implemented in 1995, a prison sentence was defined as any sentence over six months. Whenever the truth-in-sentencing guidelines call for an incarceration term exceeding six months, scoring enhancements ensure that the sentences recommended for violent felons are significantly longer than the time they typically served in prison under the parole system. Offenders convicted of nonviolent crimes with no history of violence are not subject to any scoring enhancements and the guidelines recommendations reflect the average time served by nonviolent offenders prior to the abolition of parole. Approximately one in five felons receives an enhancement on the guidelines either because their current offense is violent or because they have previously been convicted of a violent offense.

The crime of rape illustrates the impact of truth-in-sentencing on prison terms served by violent offenders. Offenders convicted of rape under the parole system typically were released after serving approximately 5½ years in prison (for inmates released during the period from 1988 to 1992). Having a prior record of violence increased the offender's median time served (the middle value, where half of the time-served values are higher and half are lower) by only one year (Figure 43). Under sentencing reform (FY2010-FY2014), the median prison sentence length for rapists with no previous record of violence is twice the historical time served.

Virginia's truth-in-sentencing system has had an even larger impact on prison terms for violent offenders who have previous convictions for violent crimes. Offenders with prior convictions for violent felonies receive guidelines recommendations substantially longer than those without a violent prior record. The extent of the increased penalty recommendation is linked to the seriousness of the prior crimes, as measured by the offense's statutory maximum penalty. The truth-in-sentencing guidelines specify two degrees of violent criminal records. A previous conviction for a violent felony with a maximum penalty of less than 40 years is a Category II prior record, while a past conviction for a violent felony carrying a maximum penalty of 40 years or more is a Category I record.

The crime of rape demonstrates the impact of these prior record enhancements. In stark contrast to the parole system, offenders with a violent prior record serve substantially longer terms than those without violent priors. Based on the median, rapists with a less serious violent record (Category II) will serve terms close to 21 years compared to the roughly seven years they served prior to sentencing reform. Those with a more serious violent record (Category

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

This discussion reports values of actual incarceration time served under the parole laws (1988-1992) and expected time to be served under truth-in-sentencing provisions for cases sentenced in FY2010-FY2014. Time served values are represented by the median (the middle value, where half of the time served values are higher and half are lower). Truth-in-sentencing data includes only cases recommended for, and sentenced to, more than six months of incarceration. Category I is defined as any prior conviction or juvenile adjudication for a violent crime with a statutory maximum penalty of 40 years or more. Category II is defined as any prior conviction or juvenile adjudication for a violent crime with a statutory maximum penalty less than 40 years.

Figure 43
Forcible Rape

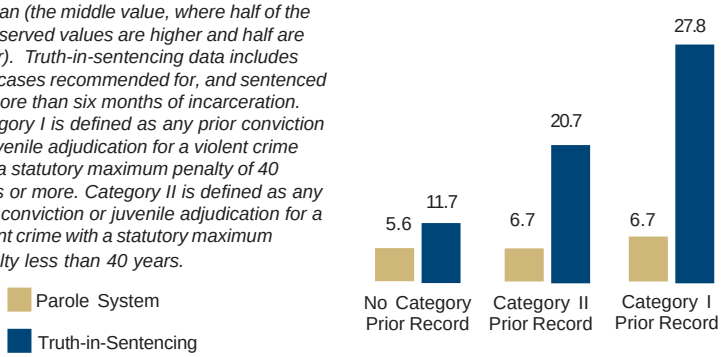
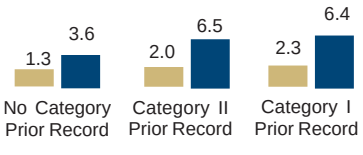


Figure 44
Aggravated Sexual Battery



I), such as a prior rape, are projected to serve a median prison term of nearly 28 years under truth-in-sentencing. This is four times longer than the prison term served by these offenders prior to truth-in-sentencing.

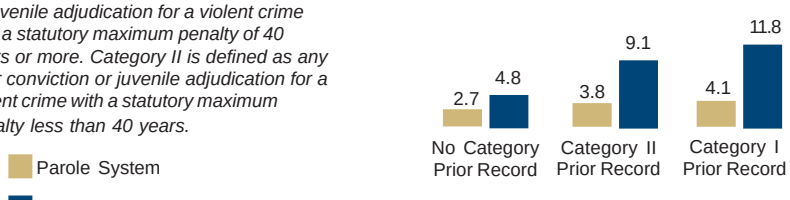
For aggravated sexual battery, the impact of truth-in-sentencing has been equally dramatic. Under the former system, offenders convicted of aggravated sexual battery who were released on parole between 1988 and 1992 had typically served around 1.3 years if they had no prior record of violent crimes (Figure 44). As seen with the crime of rape, having a prior violent felony increased the time served by only a year. Under truth-in-sentencing, however, offenders convicted of aggravated sexual battery who have no prior convictions for violent crimes have been receiving sentences with a median time to serve of 3.6 years, almost triple the time served when parole was in effect. Offenders with a violent record are serving terms between 6.4 and 6.5 years, compared to the typical 2.0 to 2.3 years under the parole system.

Offenders convicted of robbery with a firearm are also serving considerably longer terms under truth-in-sentencing provisions. Robbers who committed their crimes with firearms, but who had no previous record of violence, typically spent less than three years in prison under the parole system (Figure 45). Even robbers with the most serious type of violent prior record (Category I) only served a little more than four years in prison, based on the median, prior to the introduction of truth-in-sentencing. Today, however, offenders who commit robbery with a firearm are receiving prison terms that will result in a median time to serve of nearly five years, even in cases in which the offender has no prior violent convictions. This is an increase of more than 78% in time served. For robbers with the most serious violent prior record (Category I), such as a prior conviction for robbery, the expected time served in prison is now close to 12 years, about three times the historical time served for offenders fitting this profile.

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

This discussion reports values of actual incarceration time served under the parole laws (1988-1992) and expected time to be served under truth-in-sentencing provisions for cases sentenced in FY2010-FY2014. Time served values are represented by the median (the middle value, where half of the time served values are higher and half are lower). Truth-in-sentencing data includes only cases recommended for, and sentenced to, more than six months of incarceration. Category I is defined as any prior conviction or juvenile adjudication for a violent crime with a statutory maximum penalty of 40 years or more. Category II is defined as any prior conviction or juvenile adjudication for a violent crime with a statutory maximum penalty less than 40 years.

Figure 45
Robbery with a Firearm



Sentencing reform has successfully increased terms for violent felons, including offenders whose current offense is nonviolent but who have a prior record of violence. For example, under truth-in-sentencing provisions, offenders convicted of selling a Schedule I/II drug who do not have a prior violent record have been serving approximately 1.0 year (Figure 46). This matches exactly what offenders convicted of this offense served on average prior to sentencing reform (1988-1992). The sentencing recommendations increase, however, if the offender has a violent criminal background. Although drug sellers with violent criminal histories typically served only 1.5 years under the parole system, the truth-in-sentencing guidelines recommend sentences that are producing prison stays of 3.0 to 4.5 years (at the median), depending on the seriousness of prior record. Offenders convicted of selling a Schedule I/II drug who have a record of violence are serving two to three times longer today than they did under the parole system.

In grand larceny cases, the sentencing guidelines do not recommend a sanction of incarceration over six months unless the offender has a fairly lengthy criminal history. When the guidelines recommend such a term and the judge chooses to impose such a sanction, grand larceny offenders with no violent prior record are serving a median term of just over one year (Figure 47). This is slightly higher than the 0.6 years served under the parole system; however, offenders given a prison sentence today (that is, a sentence of one year or more) must serve a minimum of 85% of that sentence and it is not possible for them to serve as little as 0.6 years. Offenders whose current offense is

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

This discussion reports values of actual incarceration time served under the parole laws (1988-1992) and expected time to be served under truth-in-sentencing provisions for cases sentenced in FY2010-FY2014. Time served values are represented by the median (the middle value, where half of the time served values are higher and half are lower). Truth-in-sentencing data includes only cases recommended for, and sentenced to, more than six months of incarceration. Category I is defined as any prior conviction or juvenile adjudication for a violent crime with a statutory maximum penalty of 40 years or more. Category II is defined as any prior conviction or juvenile adjudication for a violent crime with a statutory maximum penalty less than 40 years.

Figure 46
Sale of a Schedule I/II Drug

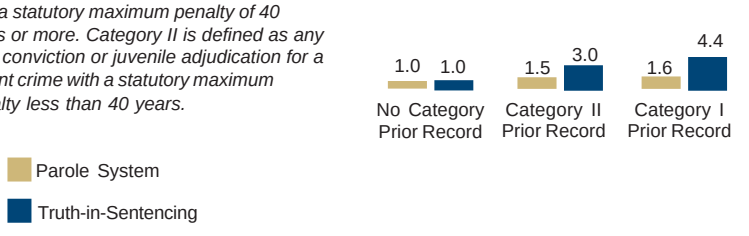
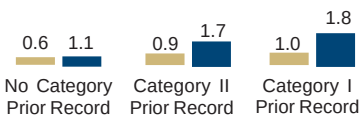


Figure 47
Grand Larceny



grand larceny but who have a prior violent offense (Category I or II) are serving twice as long after sentencing reform, with terms increasing from approximately one to just under two years.

Information presented in this section indicates that, under truth-in-sentencing provisions, the sentences imposed on violent offenders are producing lengths-of-stay significantly longer than those seen historically under parole. Moreover, in contrast to the parole system, offenders with the most serious violent criminal records will be incarcerated longer than those with less serious criminal histories. The impact of Virginia's truth-in-sentencing system on the incarceration periods of violent offenders is the result of legislatively-mandated enhancements to the sentencing guidelines, designed to incapacitate dangerous offenders.

Figure 48

Time Served in Prison for Violent Offenses by State

	Average Time Served (in years)		Rank	
	1990	2009	1990	2009
Michigan	3.9	7.6	10	1
Hawaii	5.5	6.2	2	2
Alabama	4.4	6	6	3
New York	4.9	6	5	3
Virginia	3.6	6	17	3
Pennsylvania	4.1	5.9	8	6
Georgia	4	5.6	9	7
Utah	4.2	5.5	7	8
Louisiana	5.4	5.3	3	9
Texas	3.7	5.3	15	10
Arkansas	3.6	5.1	16	11
Florida	2.1	5	33	12
Oregon	3.8	5	14	13
Wisconsin	3.5	4.8	20	14
Missouri	4.9	4.8	4	15
New Jersey	3.5	4.7	19	16
West Virginia	3	4.7	27	17
California	2.8	4.6	28	18
Colorado	3.1	4.6	24	19
North Carolina	3	4.6	26	20
Oklahoma	3.4	4.5	21	21
Nevada	5.8	4.4	1	22
New Hampshire	3.1	4.4	25	23
Washington	2.6	4.2	30	24
Mississippi	3.9	4	11	25
South Carolina	3.3	4	22	26
Iowa	3.5	3.9	18	27
Illinois	3.8	3.8	13	28
Tennessee	2.6	3.7	29	29
Kentucky	2.5	3.6	31	30
Nebraska	3.9	3.3	12	31
Minnesota	2.4	3.2	32	32
North Dakota	2.1	3	34	33
South Dakota	3.2	2.5	23	34
National	3.7	5.0		

Pew Center on the States, Time Served: the High Cost, Low Return of Longer Prison Terms, 2012. http://www.pewtrusts.org/en/research-and-analysis/reports/0001/01/01/time-served. For Pew's study, offenders were categorized based on the most serious offense for which an individual is currently serving time. Crimes in some of the violent offenses category include but are not limited to: aggravated assault, armed robbery, child endangerment, child molestation, domestic violence, extortion, homicide, kidnapping, manslaughter, rape, reckless endangerment, robbery, and simple assault.

Prison Time Served: a National Perspective

While there is ample evidence that violent offenders in Virginia are serving longer prison terms under truth-in-sentencing than they did previously under the parole system, there is also considerable evidence that Virginia's violent offenders are serving longer prison terms than their counterparts in other states around the nation. A 2012 study by the Pew Center on the States examined prison time served in 34 states. The Pew study revealed that, in 1990, the average prison time served by violent felons in Virginia was close to the national average of 3.7 years. By 2009, Virginia's average time served had increased to an average of 6.0 years, which was higher than the national average of 5.0 years. Among the 34 states examined, Virginia was tied for third in terms of the longest prison stays for violent offenders (Figure 48).

The Pew study suggests that Virginia has also increased time served for drug offenders sentenced to prison. In Virginia, however, drug offenders receive longer sentence recommendations under truth-in-sentencing provisions if they have prior violent felony convictions. Thus, a small subset of drug offenders are serving longer prison terms, as a result of their criminal histories, not the current drug offense. Longer stays

for a small share of drug offenders increased the overall average length-of-stay during the period examined for the Pew study. Nonetheless, in 2009, Virginia tied for 13th of the 34 states examined (i.e., Virginia fell in the middle 50% of states) in terms of the longest prison lengths-of-stay for drug offenders (Figure 49).

Similarly, the Pew study suggests that prison time served by Virginia's property offenders has increased. As noted for drug offenders, a small share of property offenders receive longer sentence recommendations under truth-in-sentencing provisions due to prior violent felony convictions. This has increased the overall average length-of-stay for property offenders in Virginia. In addition, Virginia's provisions define burglary as a violent offense for the purposes of the sentencing guidelines and, as a result, burglary offenders receive enhancements that increase the length of their prison sentence recommendations. Thus, it is very difficult to compare the average time served across states that differ considerably in the classification of offenses.

Examining length-of-stay from a national perspective reveals that the average prison terms for violent offenders in Virginia is now among the longest in the nation. For drug and property crimes, Virginia has selectively incapacitated a subset of offenders with longer prison terms based on the totality of their criminal careers, including current and prior offenses.

Figure 49

Time Served in Prison for Drug Offenses by State

	Average Time Served (in years)		Rank	
	1990	2009	1990	2009
Arkansas	1.4	3	19	1
Hawaii	2.6	2.9	1	2
Michigan	1.7	2.9	11	3
Pennsylvania	2	2.8	6	4
Oklahoma	1.2	2.6	26	5
Colorado	1.8	2.5	7	6
New Hampshire	2	2.3	5	7
Iowa	1.7	2.3	10	8
California	1.6	2.3	12	9
Wisconsin	1.6	2.3	16	10
West Virginia	1.4	2.3	22	11
Florida	0.8	2.3	34	12
New York	2.5	2.2	2	13
South Carolina	1.4	2.2	21	13
Virginia	1.3	2.2	24	13
Minnesota	1.1	2.2	29	13
Louisiana	2	2.1	4	17
New Jersey	1.8	2.1	8	18
Georgia	1.1	2.1	28	19
Utah	1.8	2	9	20
Alabama	1.5	2	17	21
Nevada	2.1	1.8	3	22
Texas	1.6	1.8	15	23
Mississippi	1.2	1.8	25	24
Washington	1.2	1.8	27	25
North Dakota	1	1.8	30	26
North Carolina	1.3	1.7	23	27
Oregon	1	1.7	31	28
Nebraska	1.4	1.6	20	29
Tennessee	1.6	1.5	14	30
Missouri	1.5	1.4	18	31
Illinois	1.6	1.2	13	32
Kentucky	0.9	1.2	33	33
South Dakota	1	1.1	32	34
National	1.6	2.2		

Source: Pew Center on the States, Time Served: the High Cost, Low Return of Longer Prison Terms, 2012.

Risk Assessment for Nonviolent Offenders

Today, offender risk assessment is an integral component of Virginia's sentencing guidelines system. In 1994, the truth-in-sentencing reform legislation charged the Commission with studying the feasibility of using an empirically-based risk assessment instrument to redirect 25% of the lowest risk, incarceration-bound, drug and property offenders to alternative (non-prison) sanctions. After extensive study, the Commission pilot tested a risk assessment tool from 1997 to 2001. In 2001, the National Center for State Courts (NCSC) conducted an independent evaluation of the pilot project and concluded that Virginia's risk assessment instrument provided an objective, reliable, transparent and more accurate alternative for assessing an offender's potential for recidivism than traditional reliance on judicial intuition or perceptual short hand.[1] The Commission refined the instrument and, in July 2002, risk assessment was implemented statewide. At the request of the 2003 General Assembly, the Commission re-examined the risk instrument and began to recommend additional low-risk offenders for alternative punishment options. This change took effect July 1, 2004. In 2012, the nonviolent offender risk assessment instrument was revised to slightly increase the accuracy of the instrument and to ensure that the instrument could be completed accurately by all criminal justice professionals.

Risk assessment applies in felony drug, fraud and larceny cases for offenders who are recommended for incarceration by the sentencing guidelines and who meet the eligibility criteria. In FY2014, more than two-thirds of all guidelines received by the Commission were for these nonviolent offenses. Offenders with a prior felony conviction for a violent offense and offenders convicted of selling one ounce or more of cocaine are excluded from risk assessment consideration. The goal of the nonviolent offender risk assessment instrument is to divert low-risk offenders from prison or jail to alternative punishment options. Therefore, nonviolent offenders who are recommended by the guidelines for probation/no incarceration are not eligible for the assessment.

[1] http://www.ncsc.contentdm.oclc.org/cdm/singleitem/collection/criminal/id/133/rec/22

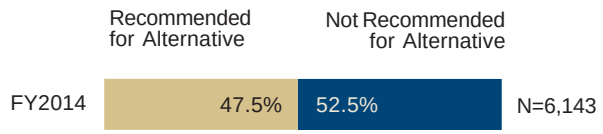
Eligible nonviolent offenders who score below the specified threshold on the risk assessment scale are recommended for alternative sanctions in lieu of a traditional term in prison or jail. Of those eligible for risk assessment, 47.5% were recommended for an alternative sanction (Figure 50). A portion of offenders recommended for an alternative sanction through risk assessment were given some form of alternative punishment by the judge. In FY2014, nearly 38% of offenders recommended for an alternative were sentenced to an alternative punishment option. The most common alternatives given to these low-risk offenders were probation supervision or a short jail term in lieu of prison. The latter group, found to be low-risk through the risk assessment process, were given a short jail sentence to be followed by probation in the community instead of the prison term recommended by the standard guidelines. When a nonviolent offender is recommended for an alternative sanction via the risk assessment instrument, a judge is considered to be in compliance with the guidelines if the judge chooses to sentence the defendant to a term within the traditional incarceration period recommended by the guidelines or if the judge chooses to sentence the offender to an alternative form of punishment.

Not all low-risk offenders recommended for alternative punishment receive such a sanction. Judges have expressed the concern that there are not enough alternative options available for felons in all Virginia localities. Moreover, the capacity of many existing community corrections programs has been reduced by recent significant budget reductions required since FY2008. While many of the community-based corrections programs created by the General Assembly in 1994 (e.g., Detention and Diversion Incarceration Centers) are functioning, the availability and the scope of these programs are subject to change due to budget restrictions.

Risk assessment for nonviolent offenders has proven to be an effective, objective tool for identifying low-risk offenders. Virginia remains at the forefront of states utilizing risk assessment and is one of a handful of states employing risk assessment as a tool for judges at sentencing. A limited array of punishment options, however, may have precluded more extensive use of alternative sanctions for these offenders.

Figure 50

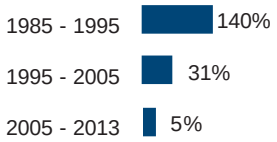
Risk Assessment for Nonviolent Offenders*



**Offenders recommended by the sentencing guidelines for prison or jail incarceration.*

Figure 51

Prison Population Growth



Prison Population Growth

Sentencing reform and the abolition of parole have not had the dramatic impact on the prison population that some critics had once feared when the reforms were first enacted. Despite double-digit increases in the inmate population in the late 1980s and early 1990s, the number of state prisoners grew at a slower rate beginning in 1995. Some critics of sentencing reform had been concerned that significantly longer prison terms for violent offenders, a major component of sentencing reform, might result in tremendous increases in the state's inmate population. This has not occurred. While Virginia's state inmate population grew by 140% from 1985 to 1995, the number of inmates increased by only 31% between 1995 and 2005. Between 2005 and 2014, the number of state inmates grew by just over 5% (Figure 51). Since the implementation of the truth-in-sentencing system, growth in the state inmate population has slowed and become more predictable.

Composition of Virginia's Prison Population

During the development of sentencing reform legislation, policy makers considered how to balance the goals of truth-in-sentencing and longer terms for violent offenders with the demand for expensive correctional resources. As shown above, the sentencing enhancements built into the guidelines prescribe prison sentences for violent offenders that have resulted in significantly longer lengths-of-stay. For nonviolent offenders, the sentencing guidelines recommend terms such that nonviolent offenders serve terms roughly equal to the terms they served prior to the abolition of parole. In addition, the Commission's empirically-based risk assessment instrument identifies the lowest risk, incarceration-bound, property and drug offenders and recommends them for alternative (non-prison) sanctions.

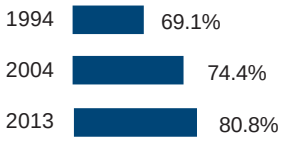
This approach to reform was expected to alter the composition of the state's prison population. Over time, violent offenders were expected to queue up in the system due to longer lengths of stay. Nonviolent offenders sentenced to prison, by design, are serving about the same amount of time on average as they did under the parole system. Moreover, with the use of risk assessment, a portion of nonviolent offenders receive alternative sanctions in lieu of prison. As a result, there has been a dramatic shift in the composition of the prison population over the last two decades.

Using the definition of a violent offender set forth in § 17.1-805, which considers both current and prior record offenses, the prison population is now composed of a larger percentage of violent offenders than in 1994, the year prior to enactment of truth-in-sentencing reforms. Based on available data, in June 1994, 69.1% of the state-responsible (prison) inmates classified by the Department of Corrections (DOC) were violent offenders (Figure 52). At that time, nearly one in three state inmates had never been convicted of a violent felony offense. By May 2004, the percentage of the inmate population defined as violent had increased to 74.4%. According to the most recent DOC data available, 80.8% of the inmate population in June 2013 was defined as violent per § 17.1-805.

A clear shift has taken place. Today, a much larger proportion of Virginia's prison capacity, the state's most expensive correctional resource, is occupied by violent offenders compared to twenty years ago, prior to the implementation of the truth-in-sentencing system.

Figure 52

Percent of State Prison Beds Holding Violent Felons*



* As defined in § 17.1-805

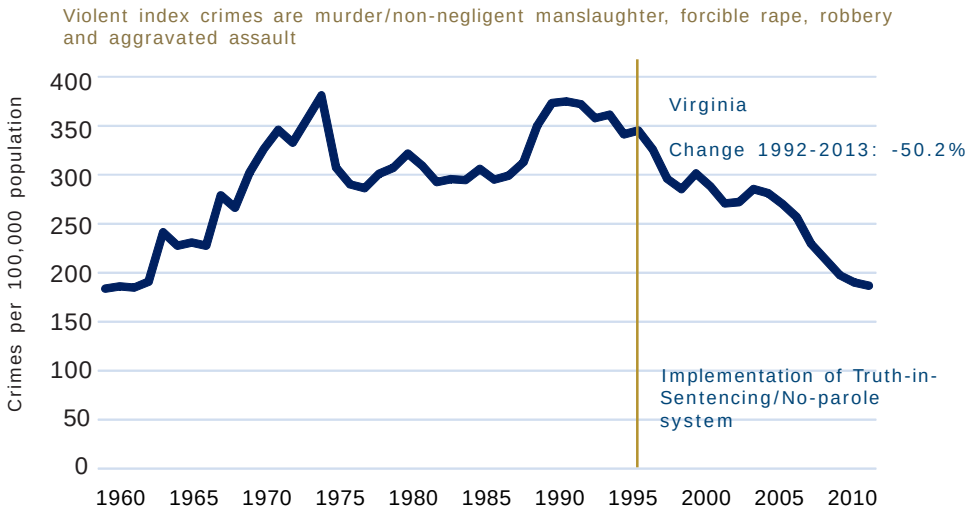
Crime Rates

On the heels of rising crime rates in the late 1970s, crime in Virginia declined somewhat during the early 1980s. A turnaround began in 1986 and crime rates rose steeply into the early 1990s. Since the early to mid-1990s, crime rates in Virginia have declined. The downturn is the longest sustained period of decline in the crime rate during the last 50 years.

Virginia's violent crime rate has declined since the early 1990s and is now lower than any time since the early 1960s (Figure 53). In 2013, Virginia's violent crime rate was the lowest among southern states and the third lowest in the nation, after Vermont and Maine. Likewise, Virginia's property crime rate has fallen since the early 1990s, reaching levels not seen since the late 1960s.

Figure 53

Violent Index Crime Rate in Virginia, 1960 - 2013



Source: Virginia State Police Incident-Based Crime Reporting Repository System as analyzed by the Dept. of Criminal Justice Services Research Center (July 23, 2014)

In 2013, Virginia's property crime rate was the eighth lowest in the nation and the lowest among all southern states (Figure 54).

Moreover, Virginia's ranking relative to other states has improved, particularly since 2004. As shown in Figure 55, in 2004, Virginia had the fourteenth lowest violent crime rate of all 50 states. By 2013, Virginia had reached the third lowest violent crime rate in the country. For the property crime rate, Virginia improved from thirteenth lowest in 2004 to eighth lowest in 2013. Thus, while crime rates have declined in many states over the last 20 years, Virginia has improved in its ranking relative to other states.

Figure 55

Virginia's Crime Ranking Relative to Other States

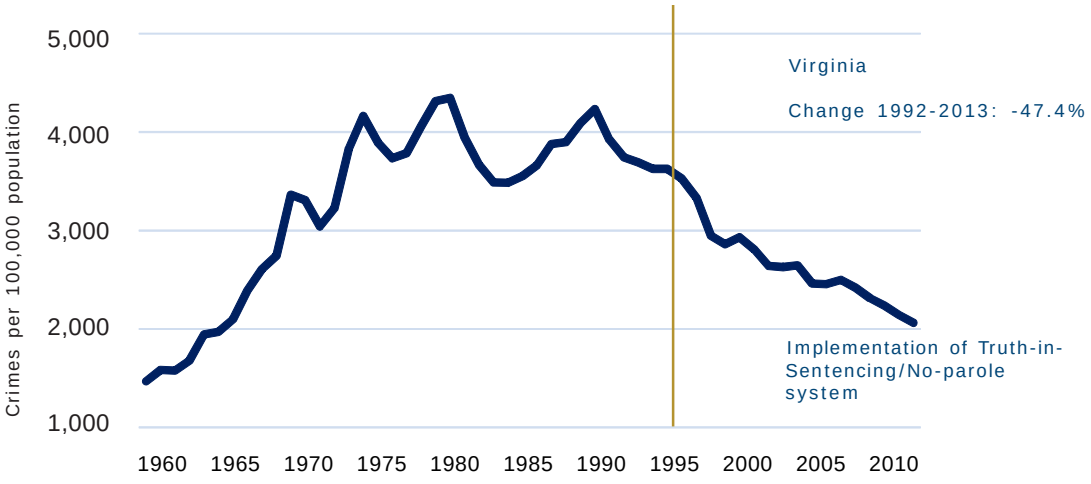
1994, 2004, and 2013

Year	Violent Crime Rate Ranking	Property Crime Rate Ranking
1994	14th lowest	11th lowest
2004	14th lowest	13th lowest
2013	3rd lowest	8th lowest

Figure 54

Property Index Crime Rate in Virginia, 1960 - 2013

Property index crimes are burglary, larceny and motor vehicle theft



Source: Virginia State Police Incident-Based Crime Reporting Repository System as analyzed by the Dept. of Criminal Justice Services Research Center (July 23, 2014)

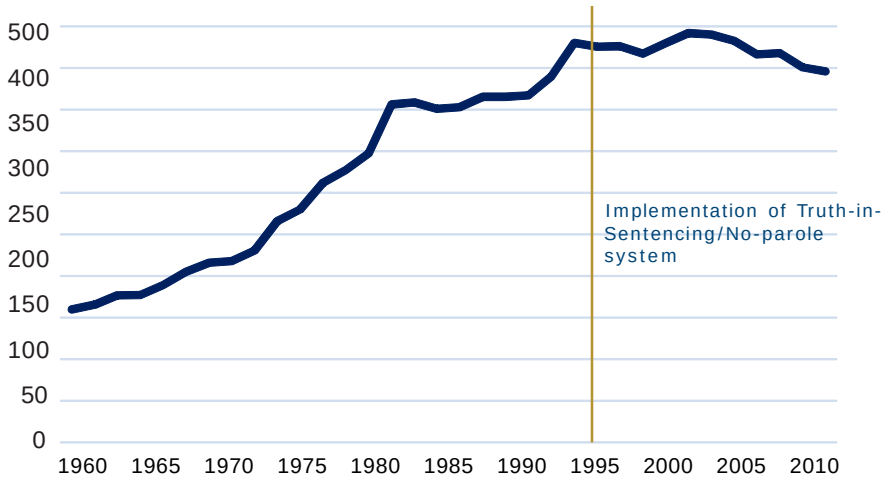
Incarceration Rates in Virginia and Other States

The drop in Virginia's crime rates during the last two decades has been achieved without a significant increase in the state's prison incarceration rate. As shown above, Virginia's crime rates (violent and property crime) have fallen dramatically since the early 1990s. Since truth-in-sentencing provisions took effect in 1995, there has not been a significant increase in Virginia's prison incarceration rate. Between 1984 and 1994, prior to sentencing reform, Virginia's incarceration rate increased by 115% (Figure 56). Since 1994, the incarceration rate has increased by less than 10%. Among the 50 states, Virginia's incarceration rate has dropped from the tenth highest in 1994 to the seventeenth highest in 2013.

Examining crime rates and incarceration rates together, Virginia is among a small group of states that have experienced significant crime rate drops without a corresponding increase in the rate of incarceration. Figure 57 lists the 20 states that have recorded the largest percentage decreases in their overall crime rate between 1994 and 2013, together with the percent change in each state's incarceration rate during the same time period. Only 15 states have had larger drops in crime than Virginia. In eight of those 15 states, the increase in the incarceration rate has been greater than in Virginia. Thus, Virginia is in a select group of seven states that have experienced the greatest declines in crime rates without significant increases in the rate of incarceration.

Figure 56

Virginia's Prison Incarceration Rate (per 100,000 population)



Source: Bureau of Justice Statistics. (Imprisonment rate of sentenced prisoners under the jurisdiction of state or federal correctional authorities per 100,000 U.S. residents, December 31, 1978-2013). Generated using the Corrections Statistical Analysis Tool at www.bjs.gov.

It is interesting to note that the Pew study on prison time served (discussed above) found that, between 1990 and 2009, five of the 34 states studied had decreased the average prison time served by violent offenders. In four of those five states, incarceration rates rose dramatically between 1994 and 2013 (with increases ranging between 53% and 83%) and, in those same states, crime rates did not decline as much as they have in Virginia. By comparison, the seven states (including Virginia) that increased time served for violent offenders by 50% or more experienced greater than average reductions in crime with below average increases in incarceration rates. While many factors may play a role in such outcomes, one factor emphasized in Virginia's sentencing reform effort was the selective incapacitation of the violent offenders. While a handful of states experienced a larger percentage drop in their violent crime rates and at the same time reduced their incarceration rate (these states included New York, New Jersey and Maryland), those states have significantly higher crime rates than Virginia.

Thus, there is considerable evidence that Virginia's focused approach to sanctioning offenders and promoting the use of less costly punishment options for selected nonviolent offenders has been successful in reserving expensive prison beds for violent offenders. At the same time, Virginia has experienced declines in the crime rate that have been among the largest in the nation.

Figure 57

Changes in Crime and Incarceration Rates

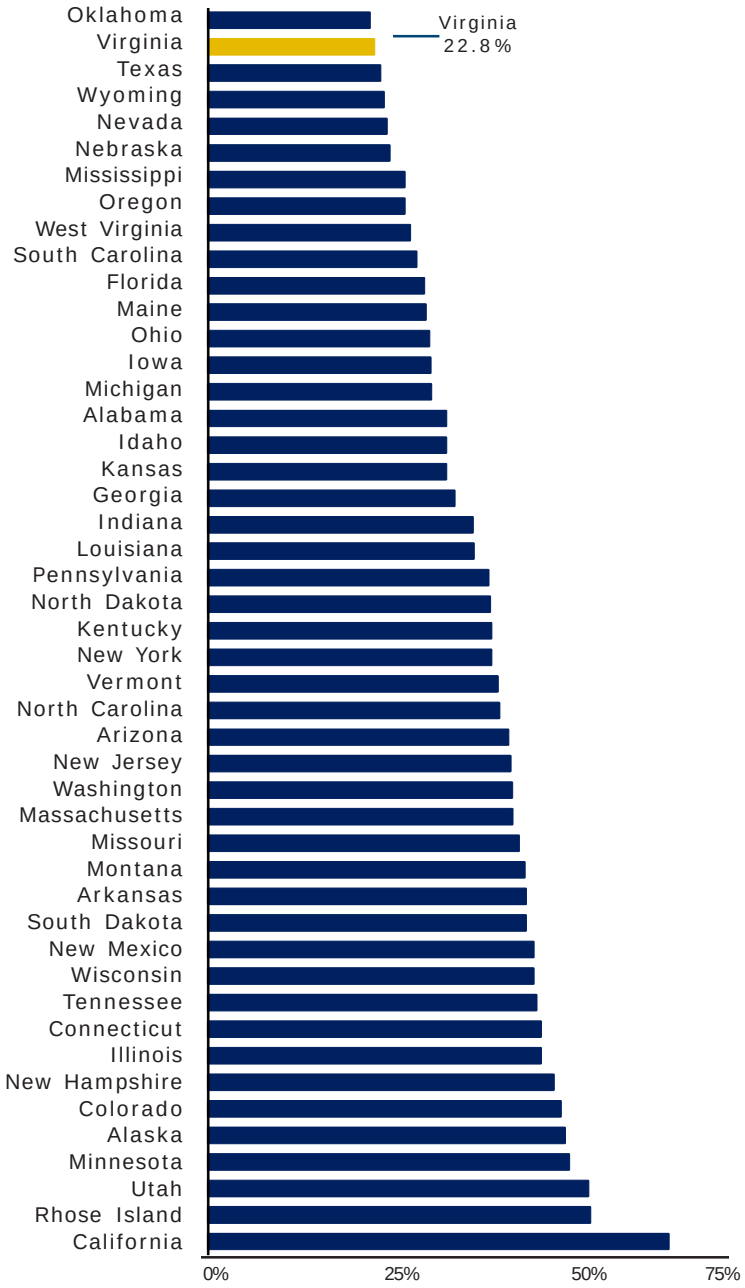
	Change in Crime Rate 1994-2013	Change in Incarceration Rate 1994-2013
Florida	-56.8%	30.5%
New York	-56.3%	-25.0%
New Jersey	-53.5%	-18.1%
Illinois	-53.0%	23.0%
Arizona	-52.0%	31.0%
Connecticut	-51.0%	6.6%
Hawaii	-50.6%	27.4%
California	-50.5%	-8.5%
Michigan	-49.4%	4.2%
Idaho	-49.3%	89.9%
Maryland	-48.9%	-10.7%
Nevada	-48.6%	-1.3%
Oregon	-45.7%	102.5%
Massachusetts	-44.7%	12.6%
Colorado	-44.5%	33.5%
Virginia	-44.3%	9.7%
Montana	-44.3%	74.4%
Wyoming	-44.1%	55.7%
Utah	-40.4%	56.7%
Minnesota	-39.1%	90.6%

Source: FBI Uniform Crime Reporting Data Online at http://www.ucrdatatool.gov/Search/Crime/State/StateCrime.cfm

Bureau of Justice Statistics. (Imprisonment rate of sentenced prisoners under the jurisdiction of state or federal correctional authorities per 100,000 U.S. residents, December 31, 1978-2013). Generated using the Corrections Statistical Analysis Tool at www.bjs.gov.

Figure 58

Recidivism Rate by State (based on the Three-Year Re-Imprisonment Rate)



Source: Virginia Department of Corrections, Summary of FY2008 SR Release Recidivism Rates,2013

Prison Recidivism Rates

Virginia and 46 other states measure inmate recidivism in terms of re-imprisonment within three years of release. According to the Department of Corrections, Virginia's re-imprisonment rate has dropped from 28.0% for offenders released in FY2004 to 22.8% for those released in FY2009. Based on this measure, Virginia now has the second lowest prison recidivism rate among all states that use a comparable measure (Figure 58). Moreover, Virginia's ranking has improved relative to other states. Five years earlier, Virginia had the eighth lowest recidivism rate for offenders released.

In addition to selective incapacitation of violent offenders under Virginia's truth-in-sentencing provisions and the use of risk assessment to determine the suitability of nonviolent felons for alternative sanctions, Virginia's Department of Corrections has added significant resources for reentry programs to assist inmates in making the transition from prison back to the community.

Consistency and Fairness in Sentencing

In 2007, the National Center for State Courts (NCSC) in Williamsburg, Virginia, conducted groundbreaking research to examine the impact of different sentencing guidelines systems on consistency and fairness in judicial sanctioning.[2] The primary goal of the study was to provide a comprehensive assessment of sentencing outcomes in three states that utilize sentencing guidelines to shape judicial discretion. With long-established guidelines systems, Virginia, Michigan, and Minnesota were selected by the NCSC as the subjects of this unique comparative study. These states vary according to the presumptive versus voluntary nature of the respective guidelines systems and differ in basic design and mechanics of the guidelines. Classifying state guidelines systems along a continuum from most voluntary to most mandatory, Virginia ranks the most voluntary of the three systems. Minnesota is considered one of the most mandatory guidelines systems in the nation. Michigan falls in between Virginia and Minnesota on this continuum. Moreover, Minnesota's guidelines generally produce smaller ranges for recommended sentences than the guidelines in Michigan and Virginia. In contrast to the two-dimensional sentencing grids used in Michigan and Minnesota, Virginia employs a worksheet, or list, style scoring system to calculate the recommended punishment.

Funded by the National Institute of Justice (NIJ), the NCSC's study examines the extent to which each state's system promotes consistency and proportionality and minimizes discrimination. The following questions were considered of primary importance:

- To what extent do sentencing guidelines contribute to consistency? Are similar cases treated in a similar manner?

- To what extent do sentencing guidelines contribute to a lack of discrimination? Is there evidence of discrimination that is distinct from inconsistency in sentencing? Are the characteristics of the offender's age, gender, and race significant in determining who goes to prison and for how long?

The NCSC revealed two important findings for the Commonwealth. First, the study showed that consistency in sentencing has largely been achieved in Virginia. The researchers concluded that Virginia's guidelines system is achieving its goal of overall consistency in sanctioning practices. Second, there is no evidence of systematic discrimination in sentences imposed in Virginia in regards to race, gender, or the location of the court. According to the NCSC, virtually no evidence of discrimination arises within the confines of Virginia's criminal sentencing system.

[2] http://ncsc.contentdm.oclc.org/cdm/singleitem/collection/criminal/id/120/rec/2

Summary

Nearly two decades after the implementation of truth-in-sentencing in Virginia, the overhaul of the felony sanctioning system continues to successfully accomplish the original goals, as shown by variety of measures. Currently, felons sentenced to prison serve at least 85% of the effective sentence, compared to those who served a small fraction of their sentence under the parole system. Virginia has also succeeded in achieving longer sentences for violent offenders, as shown by the increase in the percentage of prison inmates categorized as violent and the average sentence length for violent offenders. While some critics of sentencing reform had been concerned that significantly longer prison terms for violent offenders might result in tremendous increases in the state's inmate population this has not occurred. Since 1995, Virginia has also experienced a substantial reduction in the crime rate and the inmate population has not grown at the record rate seen prior to the abolition of parole. In addition, a portion of the lowest-risk nonviolent felons have been diverted into alternative sanctions through the utilization of the nonviolent offender risk assessment. Indeed, there is substantial evidence that the system is continuing to achieve what its designers intended.

5 Recommendations of the Commission

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

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 those crimes not yet covered by the guidelines. Currently, the guidelines cover approximately 95% of felony cases in Virginia's circuit courts. Over the years, the General Assembly has created new crimes and raised other offenses from misdemeanors to felonies. The Commission tracks 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, most 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 three recommendations this year. Each of these is described in detail on the pages that follow.

Recommendation 1

Add distribution, sale, etc. of a Schedule IV controlled substance, as defined in § 18.2-248(E2), to the Drug/Other guidelines.

Issue

Offenses involving Schedule IV drugs have increased in recent years in the Commonwealth. In 2005, the General Assembly increased the penalty for the distribution, sale, or possession with intent to distribute a Schedule IV drug from a Class 1 misdemeanor to a Class 6 felony. Currently, distribution, sale, or possession with intent to distribute a Schedule IV drug is not covered by the sentencing guidelines when it is the most serious offense at sentencing.

With five years of data available for cases sentenced under the felony penalty structure, the Commission conducted a thorough analysis and has developed a proposal to integrate distribution, sale, or possession with intent to distribute a Schedule IV drug into the Drug/Other guidelines.

Discussion

Generally, Schedule IV drugs are thought to have less potential for abuse and dependency than Schedule III drugs. Controlled substances classified as Schedule IV drugs generally include tranquilizers and sedatives, such as Valium, Xanax, and Darvocet, and are often used to treat patients suffering from disorders such as seizures, anxiety, and insomnia.

Data from the Circuit Court Case Management System (CMS) for fiscal year (FY) 2010 through FY2014 yielded a total of 133 cases in which the distribution, sale, or possession with intent to distribute a Schedule IV drug was the primary offense at sentencing. 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. Two cases were excluded because prior record information could not be obtained. Sentencing information for the remaining 131 cases is summarized in Figure 59.

Figure 59

Distribution, etc., of a Schedule IV Controlled Substance (§ 18.2-248(E2))
FY2010 - FY2014
131 Cases

Disposition	Percent	Median Sentence
No Incarceration	40.5%	N/A
Incarceration up to 6 months	40.4%	2.8 Months
Incarceration more than 6 months	19.1%	1 Year

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

Approximately one-fifth of these offenders were sentenced to more than six months of incarceration. For these offenders, the median sentence length was one year. The sentences for the remaining cases were evenly split between offenders who received no active term of incarceration to serve after sentencing and a jail term of six months or less. The median sentence length among offenders sentenced to a term of incarceration of six months or less was 2.8 months.

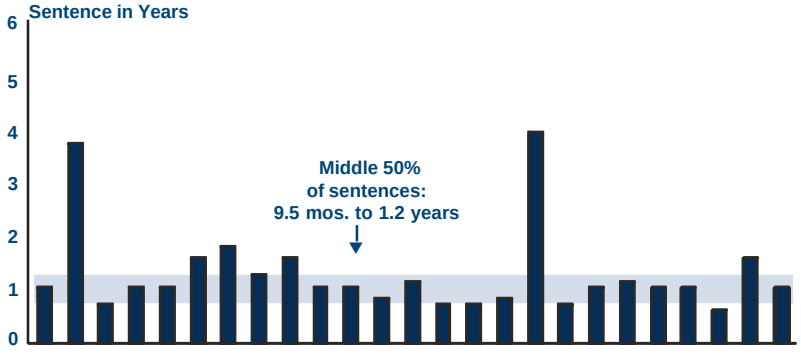
For offenders receiving more than six months of incarceration, the sentences were further analyzed. Sentences in these cases ranged from seven months to 3.7 years. Virginia's sentencing guidelines are grounded in historical practices among judges and ranges are developed from the middle 50% of actual sentences, thus removing the extreme high and low sentences. The middle 50% of sentences for this offense encompasses 9.5 months to 1.2 years (Figure 60).

To develop guidelines for this offense, the Commission examined historical sentencing practices for this crime for the period from FY2010 through FY2014. The proposed guidelines are based on analysis of actual sentencing patterns, including the historical rate of incarceration in prison and jail. In essence, the guidelines are designed to provide the judge with a benchmark of the typical, or average, case given the primary offense and other factors scored. 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 distribution, sale, or possession with intent to distribute a Schedule IV drug, under § 18.2-248(E2), to the Drug/Other guidelines as described below.

Figure 60

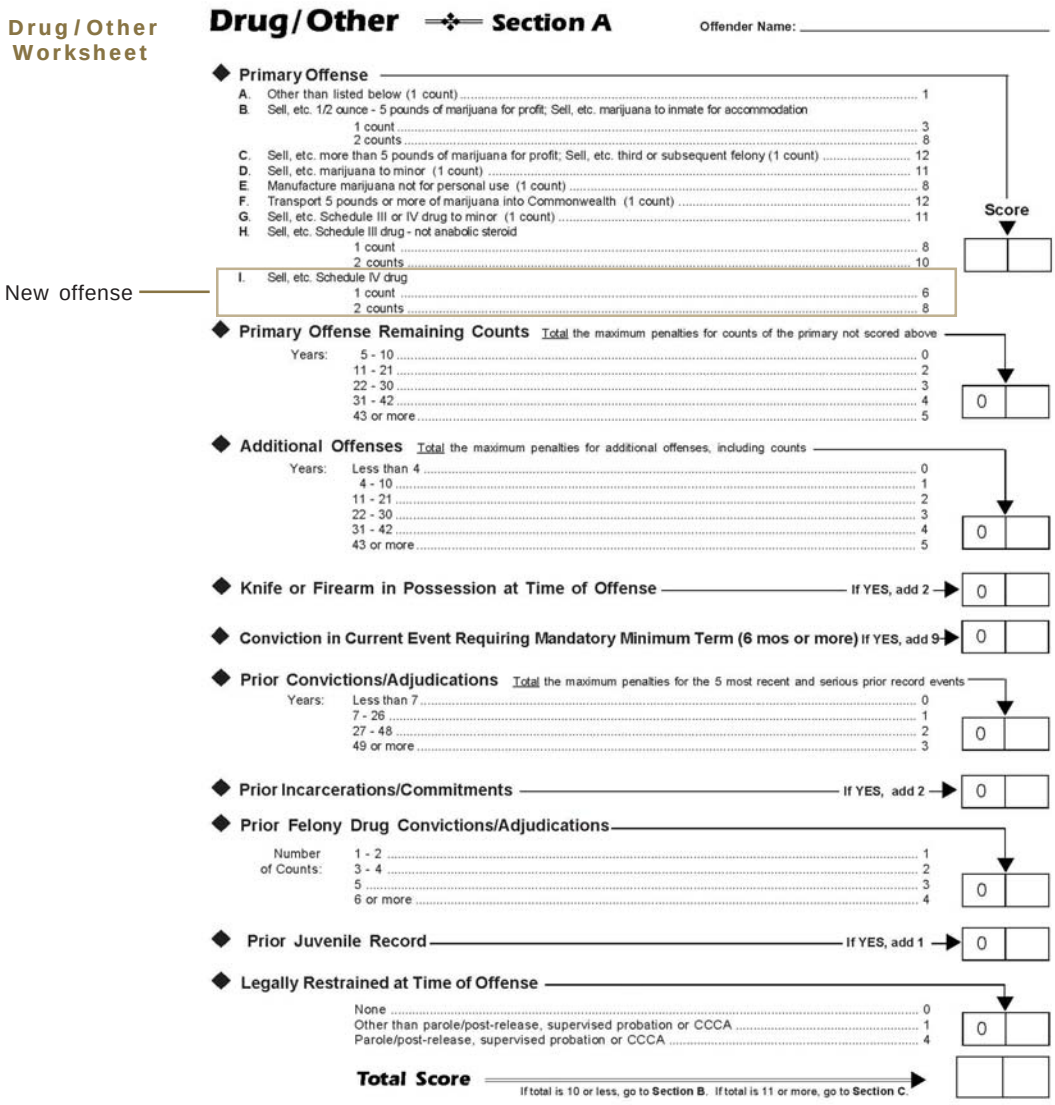
Distribution, etc., of a Schedule IV Controlled Substance (§ 18.2-248(E2)) FY2010 - FY2014 Offenders Sentenced to Incarceration of More than 6 Months 25 Cases



Section A of the guidelines worksheets determines if an offender will be recommended for a term of incarceration greater than six months (such a recommendation nearly always results in a recommended range that includes a prison term). On Section A of the Drug/Other guidelines, offenders convicted of this offense as their primary offense at sentencing will receive six points for one count of the primary offense and eight points for two or more counts. Any remaining counts of the primary offense would be scored under the Primary Offense Remaining Counts factor. The remaining factors on the worksheet would be scored as they currently appear on Section A. With this approach, the proposed guidelines are expected to be closely aligned to the actual prison incarceration rate.

Figure 61

Proposed Drug/Other Section A Worksheet

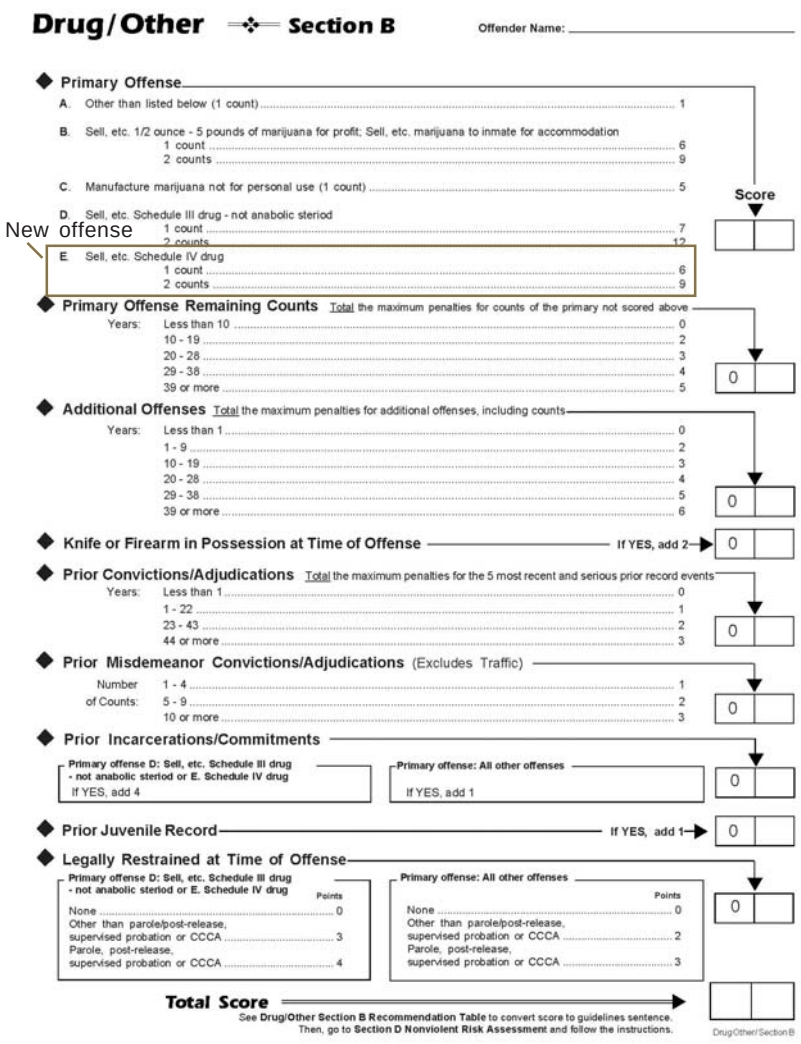


An offender who scores a total of 10 points or less on Section A of the Drug/Other guidelines is then scored on Section B, which will determine if he or she will be recommended for probation/no incarceration or a jail term of up to six months. The Commission recommends assigning six points for one count of the primary offense and nine points for two counts or more. Any remaining counts of the primary offense would be scored under the Primary Offense Remaining Counts factor.

In order to most closely match the historical jail incarceration rate, the Commission also recommends scoring two factors on Section B the same as if the primary offense involved distribution, etc., of a Schedule III controlled substance. Specifically, offenders whose primary offense at sentencing is distribution, sale, or possession with intent to distribute a Schedule IV drug who have previously been incarcerated or committed as the result of a sentence would receive four additional points on Section B. As shown in Figure 62, additional points would also be assigned if the offender was legally restrained at the time of the offense. The proposed modifications to Section B of the Drug/Other worksheets will ensure that nearly the same proportion of offenders who historically received a jail sentence of six months or less would be recommended for this type of sentence by the guidelines for this offense.

Figure 62

Proposed Drug/Other Section B Worksheet

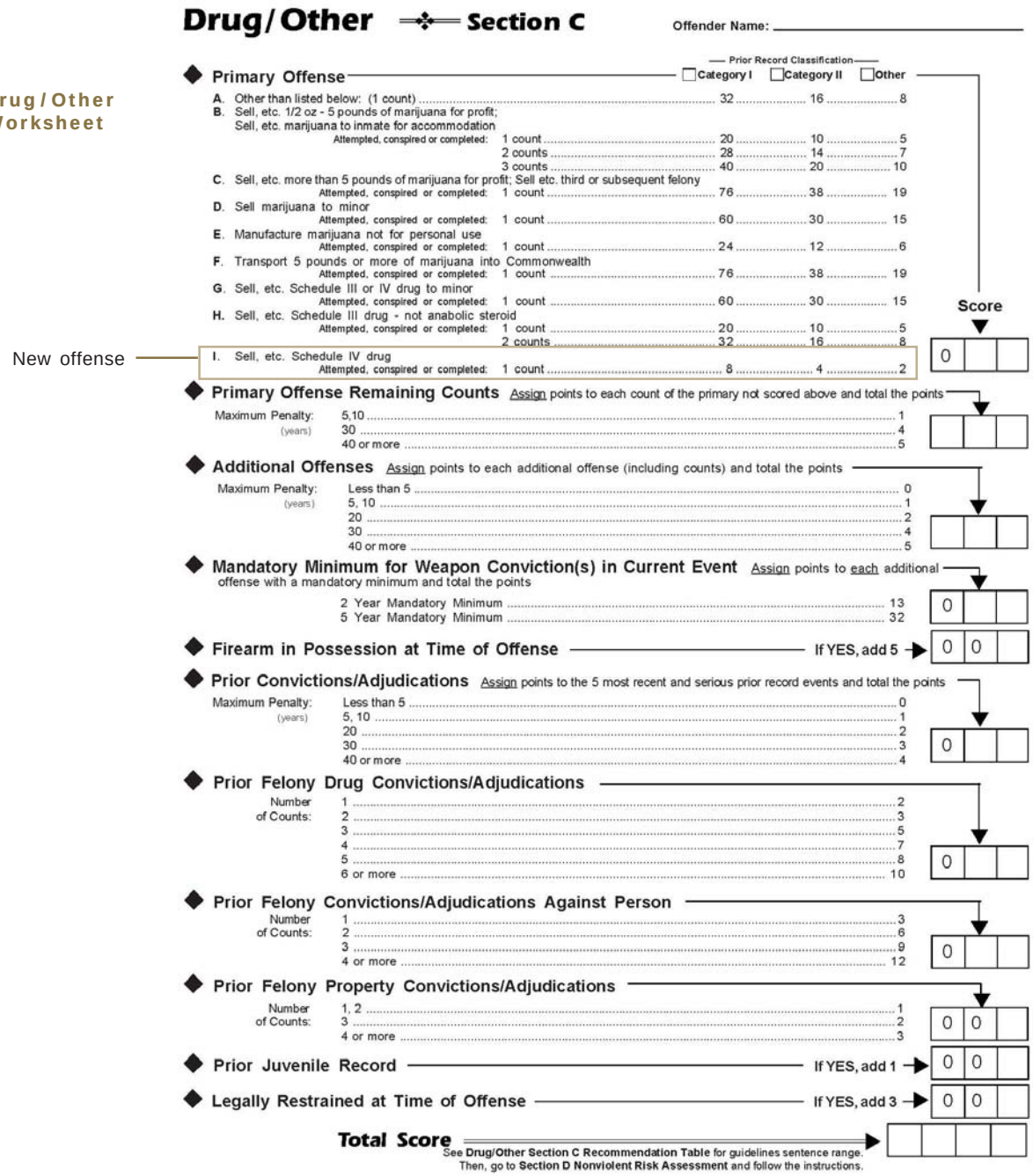


Offenders who score 11 points or more on Section A of the Drug/Other guidelines are scored on Section C, which determines the sentence length recommendation for a term of imprisonment. Primary Offense points on Section C are assigned based on the classification of an offender's prior record. An offender is scored under the Other category if he or she 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 or she 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, an offender whose primary offense is distribution of a Schedule IV drug would receive two points for the Primary Offense factor if the offender's prior record is classified as Other, four points if he or she is a Category II offender, or eight points if he or she is a Category I offender (Figure 63). Any remaining counts will be scored under the Primary Offense Remaining Counts factor. No additional modifications to the Section C worksheets are necessary to ensure that the sentence recommended by the guidelines is closely aligned with historical sentencing practices for this offense.

Figure 63

Proposed Drug/Other Section C Worksheet



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 same 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 for these offenses.

As Figure 64 illustrates, the proposed guidelines for distribution, etc., of a Schedule IV drug are expected to result in guidelines recommendations that closely reflect actual sentencing practices. Moreover, for offenders convicted of this crime who received a term of incarceration greater than six months, the median sentence was one year. Under the proposed guidelines, for cases recommended for a term of incarceration greater than six months, the median recommended sentence was 1.1 years. Thus, the recommended and actual sentences are very closely aligned.

The Commission will closely 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 64

Distribution, etc., of a Schedule IV Controlled Substance (§ 18.2-248(E2))
FY2010 - FY2014
131 Cases

Disposition	Recommended under Proposed Guidelines	Actual Practices Prior to Sentencing Guidelines
No Incarceration	38.9%	40.5%
Incarceration 1 Day to 3 Months	19.8%	20.6%
Incarceration 3 Months to 6 Months	21.5%	19.8%
Incarceration More than 6 Months	19.8%	19.1%

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

Recommendation 2

Amend the Fraud sentencing guidelines to add obtaining identifying information with the intent to defraud, second or subsequent offense (§ 18.2-186.3(D)).

Issue

Section 18.2-186.3, which defines several identity fraud offenses, was added to the *Code of Virginia* in 2000. While five felony identity fraud offenses are specified in § 18.2-186.3(D), only identity fraud resulting in financial loss greater than $200 is currently covered by the sentencing guidelines; this offense was added in 2006. The Commission conducted analyses to determine if sufficient data exists to add the remaining identity theft offenses contained in § 18.2-186.3(D) to the sentencing guidelines. However, only obtaining identifying information to defraud, second or subsequent offense, provided a sufficient number of cases to move forward with a recommendation. With five years of sentencing data available, the Commission conducted a thorough analysis and has developed a proposal to integrate this offense into the Fraud guidelines.

Discussion

Circuit Court Case Management System (CMS) data for fiscal year (FY) 2010 through FY2014 provided 160 cases in which obtaining identifying information with intent to defraud, second or subsequent offense, was the primary offense at sentencing. 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 160 offenders were excluded from the analysis because a rap sheet could not be located.

Figure 65 displays sentencing information for the 156 cases in which obtaining identifying information with intent to defraud, second or subsequent offense, was the primary offense. While 19% of these offenders did not receive an active term of incarceration to serve after sentencing, 42% received a jail term of six months or less. For the offenders sentenced to incarceration up to six months, the median sentence length was four months. The remaining 39% were sentenced to incarceration greater than six months, with a median sentence length of one year.

For offenders receiving more than six months of incarceration, the sentences were further analyzed. Sentences in these cases ranged from seven months to 12 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. As shown in Figure 66, the middle 50% of sentences for this offense encompasses nine months to 1.3 years.

To develop guidelines for this offense, the Commission examined historical sentencing practices for this crime for the period from FY2010 through FY2014. The proposed guidelines are based on analysis of actual sentencing patterns, including the historical rate of incarceration in prison and jail. The

Figure 65

Obtain Identifying Information with Intent to Defraud, 2nd or Subseq.
(§ 18.2-186.3(D))
FY2010 - FY2014
156 Cases

	Percent	Median Sentence
No Incarceration	19.2%	N/A
Incarceration up to 6 months	41.7%	4 Months
Incarceration more than 6 months	39.1%	1 Year

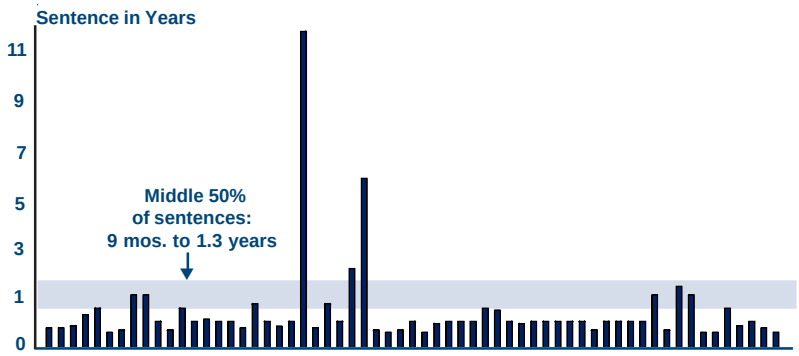
Data reflect cases in which this offense was the primary (or most serious) offense at sentencing.

objective of the guidelines is to provide the judge with a benchmark of the typical, or average, case given the primary offense and other factors scored. 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 that the proposed guidelines are closely aligned with judicial sentencing practices in these cases.

After a thorough examination of the data, the Commission recommends adding obtaining identifying information with intent to defraud, second or subsequent offense, to the Fraud guidelines as described below.

Figure 66

Obtain Identifying Information with Intent to Defraud, 2nd or Subseq.
(§ 18.2-186.3(D))
FY2010 - FY2014
61 Cases



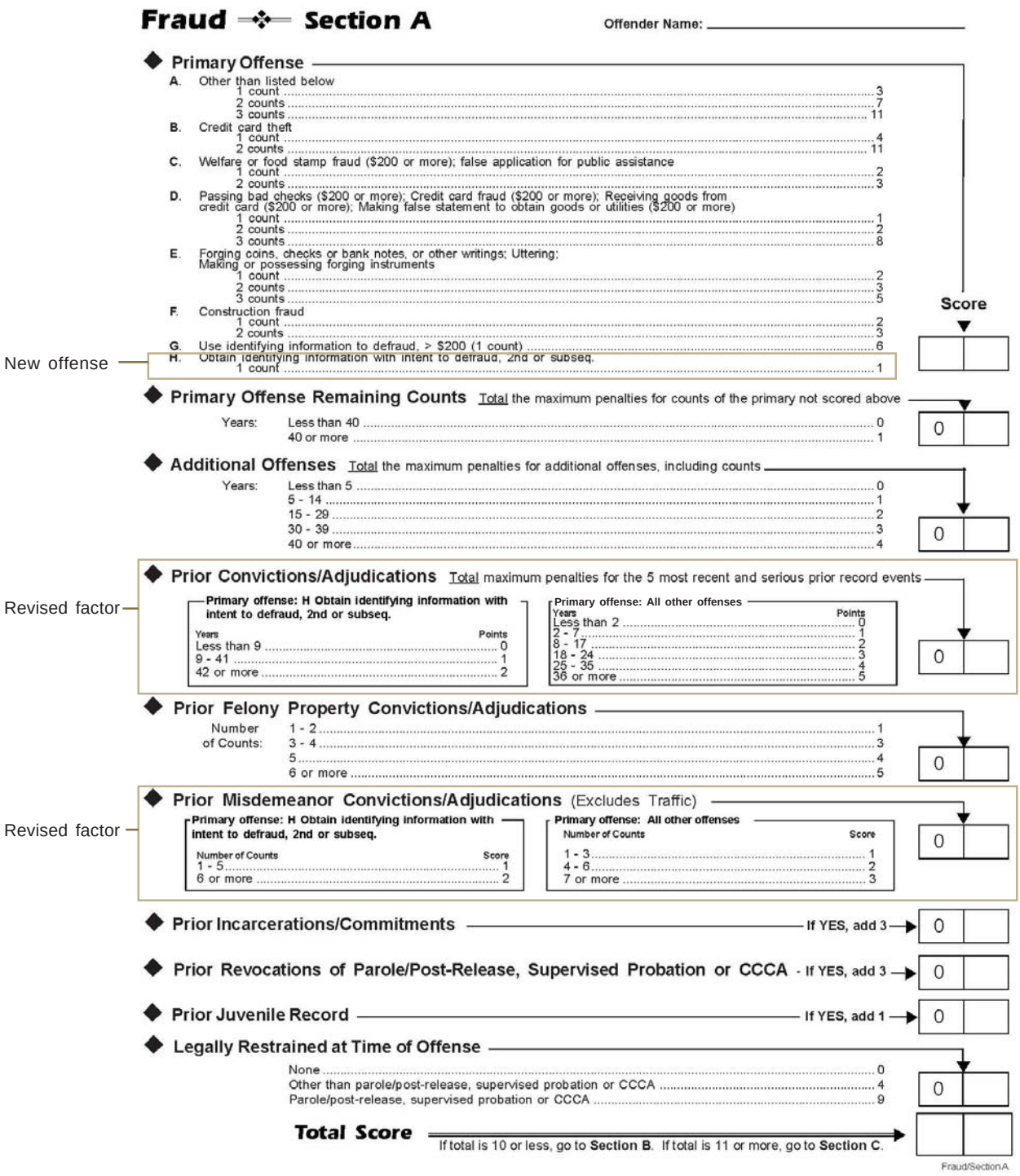
Section A of the guidelines worksheets determines if an offender will be recommended for a term of incarceration greater than six months (such a recommendation nearly always results in a recommended range that includes a prison term). On Section A of the Fraud guidelines, offenders convicted of this offense as their primary offense at sentencing will receive one point for one count of the primary offense (Figure 67). Any remaining counts will be scored under the Primary Offense Remaining Counts factor. Although the proposed Section A primary offense points are relatively low compared to other offenses contained on the Fraud worksheet, analysis revealed that these offenders often have extensive, albeit generally nonviolent, criminal histories and tend to score high on the several prior record factors currently contained on Section A of the Fraud worksheets.

In order to more closely match the historical prison incarceration rate for this offense, the Commission also recommends splitting two existing factors on Section A of the Fraud guidelines. As shown in Figure 67, offenders whose primary offense is a second or subsequent conviction for obtaining identifying information with the intent to defraud would receive different points for the Prior Convictions/Adjudications and Prior Misdemeanor Convictions/Adjudications factors.

These modifications to Section A of the Fraud guidelines will ensure that the guidelines recommendations for obtaining identifying information with intent to defraud, second or subsequent offense, will be closely aligned to the actual prison incarceration rate for this offense.

Figure 67

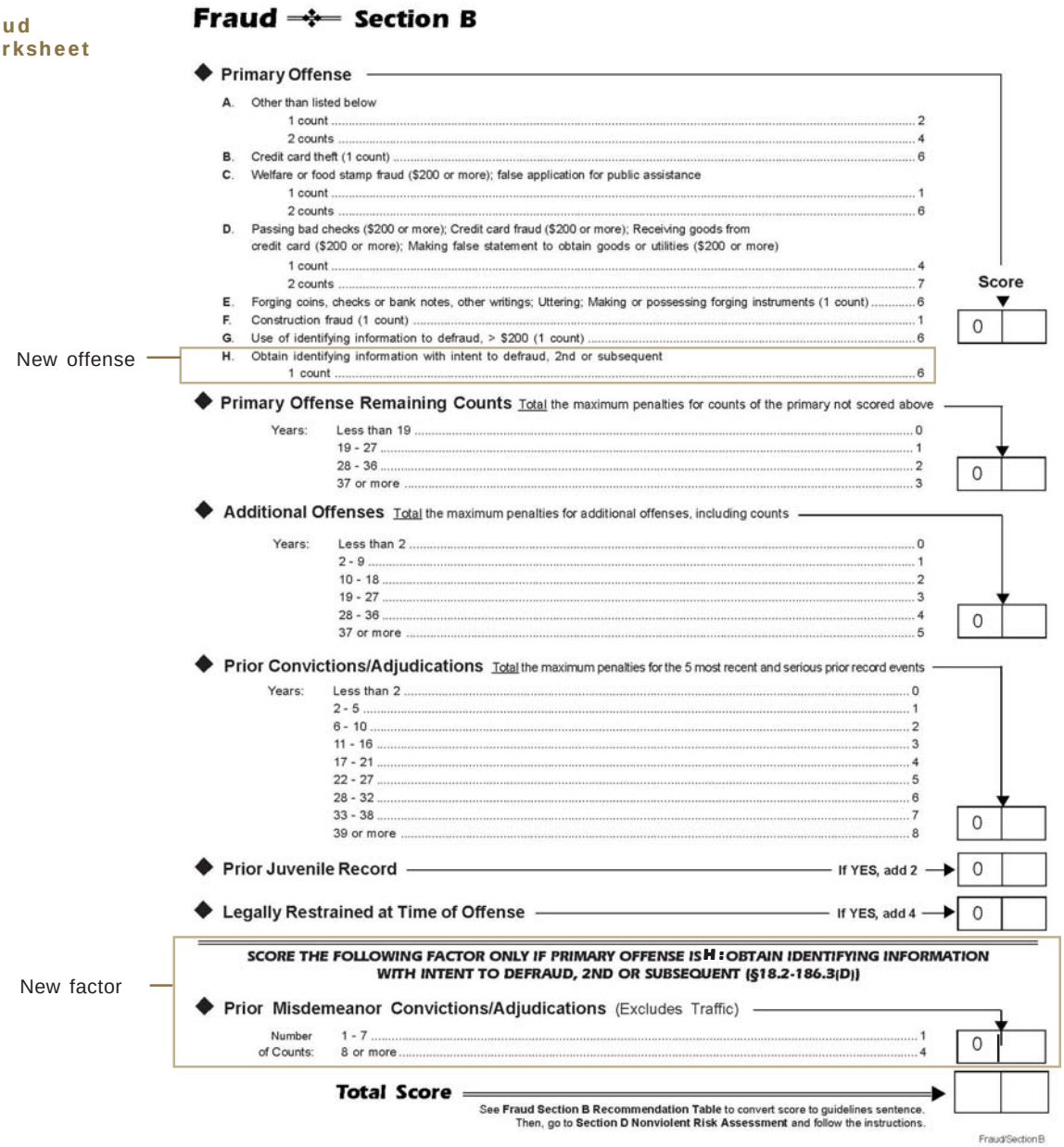
Proposed Fraud Section A Worksheet



An offender who scores a total of 10 points or less on Section A of the Fraud 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 obtaining identifying information with intent to defraud, second or subsequent offense, who are scored on Section B would receive six points for one count of the primary offense (Figure 68). Any remaining counts will be scored under the Primary Offense Remaining Counts factor.

Figure 68

Proposed Fraud Section B Worksheet



Additionally, the Commission recommends adding a separate factor to Section B of the Fraud guidelines, which would be scored only if the primary offense is obtaining identifying information with the intent to defraud, second or subsequent offense. As illustrated in Figure ??, offenders would receive one point if they have between one and seven prior misdemeanor convictions or juvenile adjudications (excluding criminal traffic offenses) and four points if they have eight or more prior misdemeanor convictions or adjudications. Commission staff also explored the possibility of expanding this new factor to apply to other offenses scored on the Fraud guidelines. However, this would reduce compliance for the offenses currently scored on Section B of the Fraud worksheets.

Offenders who score 11 points or more on Section A of the Fraud guidelines are 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 or she 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 or she 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 a second or subsequent conviction for obtaining identifying information with the intent to defraud would receive four points for the Primary Offense factor if the offender's prior record is classified as Other, eight points if he or she is a Category II offender, or 16 points if he or she is a Category I offender (Figure 69). Any remaining counts would be scored under the Primary Offense Remaining Counts factor. No additional modifications to the Section C worksheet are necessary to ensure that the sentence recommended by the guidelines accurately reflects historical sentencing practices for this offense.

Figure 69

Proposed Fraud Section C Worksheet

Fraud — Section C

Primary Offense	Prior Record Classification: Category I	Category II	Other
A. Other than listed below			
1 count	24	12	6
2 counts	28	14	7
3 counts	40	20	10
4 counts	56	28	14
B. Credit card theft (1 count)	36	18	9
C. Welfare fraud or food stamp fraud ($200 or more); false application for public assistance			
1 count	12	6	3
2 counts	20	10	5
D. Forging coins, checks or bank notes, other writings; Uttering; Making or possessing forging instruments			
1 count	28	14	7
2 - 3 counts	32	16	8
4 counts	40	20	10
E. Construction fraud (1 count)	36	18	9
F. Use identifying information to defraud, > $200 (1 count)	36	18	9
G. Obtain identifying information with intent to defraud, 2nd or subsequent			
1 count	16	8	4

Score: 0

New offense

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 same 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 for these offenses.

As shown in Figure 70, the proposed guidelines would recommend the same proportion of offenders for a term of incarceration as were actually sentenced to incarceration. For offenders convicted of this crime who received a term of incarceration greater than six months, the median sentence was one year. Under the proposed guidelines, for cases recommended for a term of incarceration greater than six months, the median recommended sentence was also one year. Thus, the recommended and actual sentences are very closely aligned.

The Commission will closely 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 70

Obtain Identifying Information with Intent to Defraud, 2nd or Subseq. (§ 18.2-186.3(D)) FY2010 - FY2014 156 Cases

Disposition	Recommended under Proposed Guidelines	Actual Practices Prior to Sentencing Guidelines
No Incarceration	19.2%	19.2%
Incarceration 1 Day to 6 Months	41.7%	41.7%
Incarceration More than 6 Months	39.1%	39.1%

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

Recommendation 3

Amend the Fraud sentencing guidelines to add receiving a stolen credit card or credit card number with the intent to use or sell, as defined in § 18.2-192(1,b).

Issue

Currently, receiving a stolen credit card or credit card number with the intent to use or sell it is not covered by the sentencing guidelines when it is the most serious offense at sentencing. Section 18.2-192(1,b), which defines this offense, was last modified by the General Assembly in 1985. 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 Fraud guidelines.

Discussion

Under § 18.2-192(1,b), any person who receives a stolen credit card or credit card number with the intent to use or sell the card or number is guilty of a felony punishable by confinement in a state correctional facility for not less than one year nor more than 20 years.

For the current analysis, historical sentencing data from the Supreme Court of Virginia's Circuit Court Management System (CMS) database for FY2010 through FY2014 were obtained. This approach provided a sufficient number of cases for analysis; there were a total of 78 cases in which receiving a stolen credit card or credit card number with the intent to use or sell 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. One of the 78 offenders was excluded from the analysis because a rap sheet could not be located.

As shown in Figure 71, more than one-third (36.4%) 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 1.1 years. Approximately one-fifth (19.5%) of the offenders received a jail term of up to six months, with a median sentence of three months. The remaining 44.2% of offenders did not receive an active term of incarceration to serve after sentencing.

For offenders receiving more than six months of incarceration, the sentences were further analyzed. Sentences in these cases ranged from seven months to 5.5 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 72).

Figure 71

Receiving a Stolen Credit Card or Number with the Intent to Use or Sell (§ 18.2-192(1,b))
FY2010 - FY2014
77 Cases

Disposition	Percent	Median Sentence
No Incarceration	44.2%	N/A
Incarceration up to 6 months	19.5%	3 Months
Incarceration more than 6 months	36.4%	1.1 Year

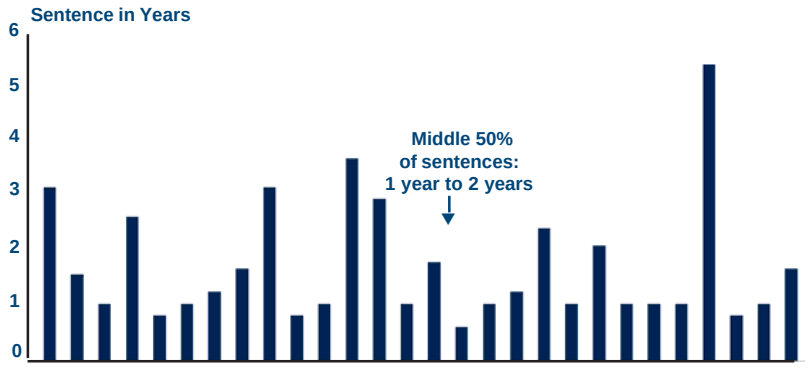
Data reflect cases in which this offense was the primary (or most serious) offense at sentencing.

To develop guidelines for this offense, the Commission examined historical sentencing practices for this crime for the period from FY2010 through FY2014. The proposed guidelines are based on analysis of actual sentencing patterns, including the historical rate of incarceration in prison and jail. Using the historical data, the guidelines are developed to provide the judge with a benchmark of the typical, or average, case given the primary offense and other factors scored. 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 receiving a stolen credit card or credit card number with the intent to use or sell, as defined in § 18.2-192(1,b), to the Fraud guidelines as described below.

Figure 72

Receiving a Stolen Credit Card or Number with the Intent to Use or Sell (§ 18.2-192(1,b)) FY2010 - FY2014 28 Cases



On Section A of the Fraud guidelines, offenders convicted of this offense as their primary offense at sentencing will receive three points for one count of the primary offense and ten points for two or more counts (Figure 73). Any remaining counts will be scored under the Primary Offense Remaining Counts factor. The other factors on Section A will be scored as they currently appear on the worksheets.

An offender who scores a total of 10 points or less on Section A of the Fraud 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 receiving a stolen credit card or credit card number with the intent to use or sell who are scored on Section B would receive seven points for one count of the primary offense (Figure 73). Any remaining counts will be scored under the Primary Offense Remaining Counts factor. No additional modifications to the Section B worksheets are necessary.

Figure 73

Proposed Fraud Section A and B Worksheet

Fraud — Section A

◆ **Primary Offense**

A. Other than listed below
- 1 count 3
- 2 counts 7
- 3 counts 11

B. Credit card theft
- 1 count 4
- 2 counts 11

C. Welfare or food stamp fraud ($200 or more); false application for public assistance
- 1 count 2
- 2 counts 3

D. Passing bad checks ($200 or more); Credit card fraud ($200 or more); Receiving goods from credit card ($200 or more); Making false statement to obtain goods or utilities ($200 or more)
- 1 count 1
- 2 counts 2
- 3 counts 8

E. Forging coins, checks or bank notes, or other writings; Uttering; Making or possessing forging instruments
- 1 count 2
- 2 counts 3
- 3 counts 5

F. Construction fraud
- 1 count 2
- 2 counts 3

G. Use identifying information to defraud, > $200 (1 count) 6

H. Receiving stolen credit card or credit card number with the intent to use or sell
- 1 count 3
- 2 counts 10

New offense

Score

Fraud — Section B

◆ **Primary Offense**

A. Other than listed below
- 1 count 2
- 2 counts 4

B. Credit card theft (1 count) 6

C. Welfare or food stamp fraud ($200 or more); false application for public assistance
- 1 count 1
- 2 counts 6

D. Passing bad checks ($200 or more); Credit card fraud ($200 or more); Receiving goods from credit card ($200 or more); Making false statement to obtain goods or utilities ($200 or more)
- 1 count 4
- 2 counts 7

E. Forging coins, checks or bank notes, other writings; Uttering; (1 count) 6

F. Construction fraud (1 count) 1

G. Use of identifying information to defraud, > $200 (1 count) 6

H. Receiving stolen credit card or credit card number with the intent to use or sell (1 count) 7

New offense

Score

Offenders who score 11 points or more on Section A of the Fraud guidelines are 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 or she 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 or she 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 receiving a stolen credit card or credit card number with the intent to use or sell will receive six points for the Primary Offense factor if the offender's prior record is classified as Other, 12 points if he or she is a Category II offender, or 24 points if he or she is a Category I offender (Figure 74). Any remaining counts will be scored under the Primary Offense Remaining Counts factor. No additional modifications to the Section C worksheets are necessary to ensure that the sentence recommended by the guidelines accurately reflects historical sentencing practices for this offense.

Figure 74

Proposed Fraud Section C Worksheet

Fraud — Section C

◆ Primary Offense	Category I	CategoryII	Other
A. Other than listed below			
1 count	24	12	6
2 counts	28	14	7
3 counts	40	20	10
4 counts	56	28	14
B. Credit card theft (1 count)	36	18	9
C. Welfare fraud or food stamp fraud ($200 or more); false application for public assistance			
1 count	12	6	3
2 counts	20	10	5
D. Forging coins, checks or bank notes, other writings; Uttering; Making or possessing forging instruments			
1 count	28	14	7
2 - 3 counts	32	16	8
4 counts	40	20	10
E. Construction fraud (1 count)	36	18	9
F. Use identifying information to defraud, > $200 (1 count)	36	18	9
New offense — **G.** Receiving stolen credit card or credit card number with the intent to use or sell (1 count)	24	12	6

Score

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 same 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 increase consistency in sentencing decisions for these offenses.

As Figure 75 shows, the proposed guidelines are expected to recommend 36.4% of offenders convicted of this crime for a term of incarceration in excess of six months. In actual practice, the exact same percentage of offenders was sentenced to a term of incarceration greater than six months during the time period examined. Moreover, for offenders convicted of this crime who received a term of incarceration greater than six months, the median sentence was 1.1 years. Under the proposed guidelines, for cases recommended for a term of incarceration greater than six months, the median recommended sentence was 1.1 years. Thus, the recommended and actual sentences are very closely aligned.

The Commission will closely 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 75

Receiving a Stolen Credit Card or Number with the Intent to Use or Sell (§ 18.2-192(1,b))
FY2010 - FY2014
77 Cases

Disposition	Recommended under Proposed Guidelines	Actual Practices Prior to Sentencing Guidelines
No Incarceration	46.8%	44.2%
Incarceration 1 Day to 6 Months	16.9%	19.5%
Incarceration More than 6 Months	36.4%	36.4%

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

6 APPENDICES

Appendix 1

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

Reasons for MITIGATION	Burg. of Dwelling (N=174)	Burg. Other Structure (N=66)	Sch. I/II Drugs (N=725)	Other Drugs (N=99)	Fraud (N=255)	Larceny (N=565)	Misc Oth (N=60)	Misc P&P (N=56)	Traffic (N=148)	Weapon (N=91)
Plea Agreement	53	19	276	42	97	197	22	23	46	30
No Reason Given	31	15	111	20	35	114	14	8	39	22
Judicial discretion (time served, other sentence, etc.)	32	11	68	8	28	46	7	2	17	1
Offender cooperated with authorities	15	9	86	12	15	26	2	0	4	9
Offender is sentenced to an alt. punishment	27	12	63	5	20	63	1	1	10	2
Facts of the case (not specific)	15	3	32	3	17	40	8	6	14	19
Court circumstances or procedural issues	12	4	57	3	11	21	7	4	3	7
Sentence recommended by Commonwealth's Attorney	9	2	42	5	14	33	2	9	12	6
Offender has minimal/no prior record	4	2	46	8	17	20	2	3	14	8
Offender health (mental, physical, emotional, etc.)	5	3	35	4	8	33	3	0	9	5
Offender has good potential for rehabilitation	4	3	19	1	8	16	4	1	7	3
Offender has made progress in rehabilitation	2	1	30	3	6	16	1	3	6	2
Offender issues (age of offender, homeless, etc.)	5	1	19	2	5	10	0	0	3	2
Financial obligations (court costs, restitution, etc.)	2	1	3	1	28	24	0	0	1	2
Victim request	11	0	1	0	4	5	0	4	1	0
Victim cannot/will not testify	0	0	4	0	4	4	0	1	1	1
Current offense involves drugs/alcohol (small amount, etc.)	0	0	32	2	0	2	3	0	0	0
Minimal property or monetary loss	2	2	0	1	2	33	0	0	0	0
Jury sentence	2	0	3	1	2	7	1	0	1	0
Guidelines recommendation is too harsh	3	0	7	2	5	7	0	0	3	1
Offender not the leader	2	0	8	3	1	3	0	1	0	0
Judge had an issue scoring guidelines factors	4	3	13	0	2	3	0	0	0	0
Behavior positive since commission of the offense	0	0	8	1	5	6	2	0	3	0
Victim circumstances (drug dealer, etc.)	3	0	0	0	1	7	0	0	0	1
Little or no injury/offender did not intend to harm	1	0	0	0	0	0	0	1	3	0
Offender needs rehabilitation	2	1	3	0	5	5	0	1	2	1
Sentenced to Department of Juvenile Justice	2	1	1	0	0	0	0	1	0	1
Offender's substance abuse issues	3	1	8	0	3	4	0	0	0	0
Multiple charges are being treated as one criminal event	4	0	1	0	4	4	0	0	2	1
Sentencing guidelines recommendation not appropriate	1	0	3	0	1	1	0	0	0	4
Victim circumstances (facts of the case, etc.)	1	0	0	0	0	2	0	0	0	0
Illegible written reason	0	0	1	0	3	2	0	0	2	1
Concealed weapon, but was not a firearm	0	0	1	0	0	0	0	0	0	3
Sentence recommended by Probation Officer	0	0	2	1	0	1	0	1	0	1
Judge rounded guidelines minimum to nearest whole year	0	0	1	1	0	2	0	1	0	0
Judge thought sentence was in compliance	0	1	0	1	1	3	0	0	0	0
Sentencing guidelines incorrect/missing	0	0	0	0	2	2	0	0	1	0
Judge had an issue scoring probation violation	0	0	1	0	0	1	1	0	1	0
Judge had an issue scoring a risk assessment factor	0	1	2	0	0	0	0	0	0	0
Issue with probation/supervision procedure	0	0	0	0	0	2	0	1	0	0

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

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

Appendix 1

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

Reasons for AGGRAVATION	Burg. of Dwelling (N=186)	Burg. Other Structure (N=59)	Sch. I/II Drugs (N=621)	Other Drugs (N=170)	Fraud (N=130)	Larceny (N=511)	Misc Oth (N=47)	Misc P&P (N=77)	Traffic (N=187)	Weapon (N=78)
Plea agreement	33	12	186	52	46	126	14	16	28	26
Aggravating circumstances/flagrancy of offense	35	14	63	12	13	78	6	26	38	10
No reason given	32	10	112	24	20	93	4	4	39	13
Offender has extensive prior record	22	6	89	25	18	99	11	15	51	6
Number of violations/counts in the event	10	3	71	8	8	17	0	3	11	6
Offender has poor rehabilitation potential	12	5	19	7	10	15	7	6	21	3
Jury sentence	6	5	20	2	2	14	0	3	11	3
Current offense involves drugs/alcohol	0	1	44	24	2	2	0	2	20	0
Guidelines recommendation is too low	13	3	16	5	3	21	1	5	4	3
Degree of victim injury (physical, emotional, etc.)	8	0	2	0	2	2	0	6	6	0
Type of victim (child, etc.)	2	0	4	0	4	17	1	10	1	1
Offender is sentenced to an alt. punishment	5	1	22	8	4	20	2	3	6	1
Judicial discretion (time served, shock incarceration)	6	2	18	7	5	20	2	1	4	0
Offense involved a degree of planning/violation of trust	4	2	2	3	9	37	0	0	0	0
Offender's substance abuse issues	2	0	29	4	3	9	0	0	7	2
Extreme property or monetary loss	6	0	1	0	7	31	0	2	0	0
Sentence recommended by Commonwealth's Attorney	6	2	12	2	1	9	1	1	1	3
Offender failed alternative sanction program	2	0	28	7	2	3	0	0	0	0
Poor conduct since commission of offense	4	0	11	4	1	12	1	1	5	0
Degree of violence toward victim	3	0	1	0	0	1	0	0	0	1
Aggravating court circumstances/proceedings	2	0	11	4	2	4	0	1	0	0
Victim circumstances (facts of the case, etc.)	11	1	0	0	0	4	1	0	0	1
Sentencing guidelines not appropriate	1	0	6	0	0	3	1	1	4	0
Offender failed to cooperate with authorities	1	2	5	1	3	4	2	0	3	0
Offender needs rehabilitation offered by jail/prison	0	1	9	1	1	7	0	1	0	0
Offender used a weapon in commission of the offense	1	0	5	1	0	3	0	0	1	3
Failed to follow instructions while on probation	0	0	7	1	1	5	2	0	1	0
Child present at time of offense	0	0	6	3	1	4	0	4	0	2
Prior record not adequately weighed by guidelines	2	0	4	3	0	5	1	1	1	1
Victim request	3	1	0	0	0	5	0	2	0	0
Committed offense while on probation	0	0	10	0	1	2	2	0	0	0
Aggravating facts involving the breaking and entering	13	3	0	0	0	1	0	0	0	0
Absconded from probation supervision	0	0	6	1	1	3	4	0	0	0
Violent/disruptive behavior in custody	0	0	5	0	3	2	1	1	2	0
Current offense involves accident/reckless driving	0	0	1	0	0	2	0	1	10	0
Offense behavior was more serious than offenses at conv.	0	0	3	1	0	5	0	0	0	2
Offender issues (age of offender, homeless,etc.)	0	1	4	1	1	0	0	1	1	0
Used, etc., drugs/alcohol while on probation	1	0	8	0	1	2	0	0	0	0
Seriousness of offense	2	0	2	0	0	2	0	0	0	0
Mandatory minimum involved in event	0	0	3	0	0	0	0	0	0	3
Financial obligations (court costs, restitution, etc.)	1	1	0	0	0	4	0	0	1	1
Multiple offenses in the sentencing event	3	1	0	2	0	2	0	0	0	0
Gang-related offense	1	0	2	0	0	2	1	0	0	0
Judge thought sentence was in compliance	1	0	1	0	1	0	0	0	0	1
Violation of sex offender restrictions	0	0	0	0	0	0	6	0	0	0
Offender never reported for probation supervision	1	0	4	1	1	1	0	0	1	0
Offender health (mental, physical, emotional, etc.)	0	0	2	0	0	0	0	0	0	0
Second or subsequent probation revocation	0	0	0	1	0	0	0	0	2	2
Offense was a hate crime	0	0	0	0	0	0	0	2	0	0

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

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

Appendix 2

Judicial Reasons for Departure from Sentencing Guidelines
Offenses Against the Person

Reasons for MITIGATION	Assault (N=161)	Homicide (N=28)	Kidnapping (N=17)	Robbery (N=187)	Rape (N=32)	Sexual Assault (N=67)
Plea Agreement	67	7	7	49	6	28
No Reason Given	16	3	0	12	0	2
Judicial discretion (time served, other sentence to serve, etc.)	7	3	0	27	6	8
Offender cooperated with authorities	2	4	1	40	0	1
Offender is sentenced to an alternative punishment to incarceration	5	0	0	11	4	1
Facts of the case (not specific)	20	3	0	17	8	7
Court circumstances or procedural issues	22	4	3	18	2	10
Sentence recommended by Commonwealth's Attorney	10	3	1	19	3	2
Offender has minimal/no prior record	10	0	1	20	3	8
Offender health (mental, physical, emotional, etc.)	12	0	1	7	0	4
Offender has good potential for rehabilitation	4	4	0	7	3	3
Offender has made progress in rehabilitating him/herself	5	0	0	5	1	0
Offender issues (age of offender, homeless, family issues, etc.)	6	1	1	5	1	6
Financial obligations (court costs, restitution, child support, etc.)	3	0	0	1	0	0
Victim request	17	0	1	3	3	9
Victim cannot/will not testify	9	0	2	5	4	10
Current offense involves drugs/alcohol (small amount of drugs, etc.)	2	0	0	0	0	0
Minimal property or monetary loss	0	0	0	0	0	0
Jury sentence	2	5	2	4	5	2
Guidelines recommendation is too harsh	1	1	0	2	0	3
Offender not the leader	0	0	1	12	0	1
Judge had an issue scoring guidelines factors	1	0	0	4	0	0
Behavior positive since commission of the offense	1	0	0	2	0	1
Victim circumstances (drug dealer, etc.)	9	0	0	2	1	0
Little or no injury/offender did not intend to harm	14	0	0	3	0	0
Offender needs rehabilitation	0	0	0	1	0	0
Sentenced to Department of Juvenile Justice	3	0	0	11	1	0
Offender's substance abuse issues	1	0	0	0	0	0
Multiple charges/events are being treated as one criminal event	0	0	0	1	1	0
Sentencing guidelines recommendation not appropriate (non-specific)	0	0	0	0	1	1
Victim circumstances (facts of the case, etc.)	2	0	4	1	0	1
Illegible written reason	0	0	0	0	0	1
Concealed weapon, but was not a firearm	1	1	0	2	1	0
Sentence recommended by Probation Officer	1	0	0	0	0	0
Judge rounded guidelines minimum to nearest whole year	1	0	0	0	0	1
Judge thought sentence was in compliance	0	0	0	0	0	0
Sentencing guidelines incorrect/missing	1	0	0	0	0	0
Judge had an issue scoring probation violation	0	0	0	0	0	0
Judge had an issue scoring one of the risk assessment factors	0	0	0	0	0	1
Offender needs sex offender treatment	0	0	0	0	0	3
Issue with probation/supervision procedure	0	0	0	0	0	0
Victim's role in the offense	1	1	0	1	0	0

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

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

Appendix 2

Judicial Reasons for Departure from Sentencing Guidelines Offenses Against the Person

Reasons for AGGRAVATION	Assault (N=180)	Homicide (N=65)	Kidnapping (N=16)	Robbery (N=79)	Rape (N=24)	Sexual Assault (N=132)
Plea agreement	43	6	5	15	3	35
Aggravating circumstances/flagrancy of offense	53	15	4	23	11	50
No reason given	21	8	1	9	2	11
Offender has extensive prior record or same type of prior offense	17	4	0	8	3	3
Number of violations/counts in the event	15	1	1	3	0	11
Offender has poor rehabilitation potential	14	6	0	7	1	8
Jury sentence	25	18	3	10	5	7
Current offense involves drugs/alcohol (large amount of drugs, etc.)	2	1	0	0	0	0
Guidelines recommendation is too low	4	3	0	2	1	13
Degree of victim injury (physical, emotional, etc.)	29	4	3	7	2	10
Type of victim (child, etc.)	5	2	0	3	5	23
Offender is sentenced to an alternative punishment to incarceration	1	0	0	1	0	0
Judicial discretion (time served, shock incarceration, etc.)	2	1	0	4	0	2
Offense involved a high degree of planning/violation of trust	0	0	0	3	0	8
Offender's substance abuse issues	0	2	0	0	0	0
Extreme property or monetary loss	0	0	0	0	0	0
Sentence recommended by Commonwealth's Attorney	3	3	0	0	0	1
Offender failed alternative sanction program	0	0	0	0	0	0
Poor conduct since commission of offense	0	0	0	1	0	1
Degree of violence toward victim	15	3	0	4	1	1
Aggravating court circumstances/proceedings (will resentence, etc.)	2	1	0	1	0	0
Victim circumstances (facts of the case, etc.)	3	1	0	2	1	2
Sentencing guidelines not appropriate	8	0	0	0	0	1
Offender failed to cooperate with authorities	2	0	0	1	0	0
Offender needs rehabilitation offered by jail/prison	2	1	0	0	0	0
Offender used a weapon in commission of the offense	3	1	0	3	0	0
Failed to follow instructions while on probation	1	0	0	1	0	1
Child present at time of offense	0	0	0	0	0	0
Prior record not adequately weighed by guidelines	0	0	0	0	0	0
Victim request	0	0	1	1	0	5
Committed offense while on probation	1	1	0	0	0	0
Aggravating facts involving the breaking and entering	0	0	0	0	0	0
Absconded from probation supervision	0	0	0	1	0	0
Violent/disruptive behavior in custody	0	0	0	1	0	0
Current offense involves accident/reckless driving	0	1	0	0	0	0
True offense behavior was more serious than offenses at conviction	0	2	0	1	0	1
Offender issues (age of offender, homeless, lacks family support, etc.)	2	1	0	0	0	1
Seriousness of offense	1	1	0	4	0	0
Mandatory minimum involved in event	1	0	0	3	0	1
Gang-related offense	1	0	0	0	0	0
Judge thought sentence was in compliance	0	0	1	1	0	1
Offender never reported for probation supervision	0	0	0	1	1	2
Offender health (mental, physical, emotional, etc.)	1	0	0	0	1	1
Facts of sex offense involved	0	0	0	0	0	5
Illegible written reason	1	0	0	0	0	1

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, Drugs, and Miscellaneous Offenses

BURGLARY OF DWELLING

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	71.0%	9.7%	19.4%	31
2	73.8	18.0	8.2	61
3	76.3	10.5	13.2	38
4	64.9	14.3	20.8	77
5	70.6	5.9	23.5	17
6	87.0	8.7	4.3	23
7	57.9	15.8	26.3	38
8	80.6	12.9	6.5	31
9	72.7	4.5	22.7	22
10	72.0	12.0	16.0	25
11	92.6	3.7	3.7	27
12	67.3	16.3	16.3	49
13	54.1	24.3	21.6	37
14	52.9	20.6	26.5	34
15	67.2	14.1	18.8	64
16	60.9	26.1	13.0	23
17	87.5	0.0	12.5	8
18	77.8	11.1	11.1	9
19	43.3	26.7	30.0	30
20	66.7	26.7	6.7	15
21	80.0	16.0	4.0	25
22	70.8	12.5	16.7	48
23	57.9	26.3	15.8	38
24	66.0	20.8	13.2	53
25	75.0	16.7	8.3	36
26	58.5	22.0	19.5	41
27	67.4	6.5	26.1	46
28	50.0	28.6	21.4	14
29	41.7	28.3	30.0	60
30	63.6	9.1	27.3	33
31	90.3	6.5	3.2	31
Total	66.7	16.0	17.2	1,085

BURGLARY - OTHER

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	83.3%	8.3%	8.3%	12
2	64.7	17.6	17.6	17
3	80.0	0.0	20.0	5
4	53.8	34.6	11.5	26
5	50.0	16.7	33.3	12
6	100	0.0	0.0	11
7	71.4	28.6	0.0	7
8	71.4	28.6	0.0	7
9	71.4	14.3	14.3	14
10	81.5	7.4	11.1	27
11	65.0	25.0	10.0	20
12	53.8	23.1	23.1	13
13	20.0	80.0	0.0	5
14	85.7	0.0	14.3	7
15	70.8	16.7	12.5	24
16	75.0	12.5	12.5	16
17	50.0	25.0	25.0	8
18	100	0.0	0.0	1
19	55.6	22.2	22.2	9
20	100	0.0	0.0	7
21	75.0	12.5	12.5	8
22	87.5	0.0	12.5	24
23	57.9	21.1	21.1	19
24	84.2	5.3	10.5	19
25	83.3	8.3	8.3	24
26	89.7	10.3	0.0	29
27	78.6	7.1	14.3	14
28	72.7	0.0	27.3	11
29	66.7	14.8	18.5	27
30	57.1	23.8	19.0	21
31	92.3	0.0	7.7	13
Total	72.8	14.4	12.9	459

DRUG/OTHER

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	70.0%	3.3%	26.7%	30
2	87.5	7.5	5.0	80
3	80.8	0.0	19.2	26
4	90.3	6.5	3.2	31
5	62.1	3.4	34.5	29
6	70.8	.0	29.2	24
7	87.5	6.3	6.3	32
8	75.0	18.8	6.3	16
9	62.5	6.3	31.3	16
10	77.9	7.4	14.7	68
11	84.2	5.3	10.5	19
12	80.0	12.3	7.7	65
13	67.6	16.2	16.2	37
14	54.8	7.1	38.1	42
15	83.1	4.6	12.3	65
16	83.3	6.7	10.0	30
17	100	0.0	0.0	8
18	87.5	0.0	12.5	8
19	88.0	4.6	7.4	108
20	92.9	3.6	3.6	56
21	88.2	5.9	5.9	17
22	75.9	0.0	24.1	29
23	73.9	10.9	15.2	46
24	84.5	9.9	5.6	71
25	60.0	27.5	12.5	40
26	85.5	10.5	3.9	76
27	85.0	8.3	6.7	60
28	94.5	1.8	3.6	55
29	79.8	4.0	16.2	99
30	82.7	2.4	15.0	127
31	91.5	6.4	2.1	47
Total	81.3	6.9	11.9	1,459

SCHEDULE I/II DRUGS

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	75.6%	7.4 %	17.1 %	217
2	85.9	7.6	6.5	262
3	74.6	12.0	13.4	142
4	81.5	13.4	5.1	314
5	80.6	10.1	9.3	129
6	89.7	3.4	6.9	87
7	88.8	6.8	4.4	206
8	86.7	9.6	3.6	83
9	88.2	4.7	7.1	85
10	80.1	12.7	7.2	181
11	78.2	9.2	12.6	87
12	83.4	5.8	10.9	313
13	71.2	22.3	6.5	555
14	74.2	9.2	16.6	217
15	72.1	10.7	17.1	456
16	81.7	9.2	9.2	142
17	73.8	6.6	19.7	61
18	68.5	22.2	9.3	54
19	77.3	18.0	4.7	256
20	87.0	4.3	8.7	231
21	70.7	17.1	12.2	123
22	74.2	5.5	20.3	182
23	82.1	11.0	6.8	308
24	82.2	12.6	5.2	286
25	82.4	12.2	5.3	262
26	83.6	9.2	7.2	489
27	86.1	5.7	8.2	388
28	84.1	9.0	7.0	201
29	79.8	7.7	12.5	208
30	77.0	9.8	13.1	122
31	88.8	8.5	2.7	224
Total	80.2	10.6	9.1	6,875

FRAUD

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	75.0%	15.5%	9.5%	84
2	81.7	13.4	4.9	142
3	66.7	29.2	4.2	24
4	79.3	14.6	6.1	82
5	87.5	0.0	12.5	40
6	76.9	23.1	0.0	26
7	83.3	13.9	2.8	36
8	96.6	3.4	0.0	29
9	74.5	7.3	18.2	55
10	85.7	10.2	4.1	49
11	84.3	9.8	5.9	51
12	86.0	9.3	4.7	107
13	77.8	20.0	2.2	45
14	79.2	6.3	14.6	48
15	72.3	17.4	10.3	195
16	76.4	18.1	5.6	72
17	78.6	9.5	11.9	42
18	84.2	10.5	5.3	19
19	76.9	15.4	7.7	104
20	91.7	4.2	4.2	48
21	91.7	8.3	0.0	36
22	83.3	9.0	7.7	78
23	70.4	21.1	8.5	71
24	73.9	21.7	4.3	46
25	81.0	15.5	3.6	84
26	88.8	8.4	2.8	107
27	90.7	6.2	3.1	97
28	88.7	9.4	1.9	53
29	80.9	11.7	7.4	94
30	84.0	6.0	10.0	50
31	91.8	6.1	2.0	49
Total	81.2	12.4	6.4	2,064

LARCENY

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	81.8%	3.6 %	14.5%	275
2	87.4	7.5	5.1	333
3	77.1	15.6	7.3	96
4	82.0	12.0	6.0	300
5	80.9	7.6	11.5	131
6	82.8	3.4	13.8	58
7	79.9	11.5	8.6	139
8	82.6	11.6	5.8	121
9	84.1	6.7	9.1	164
10	85.4	7.0	7.6	157
11	85.5	12.0	2.4	83
12	81.0	11.7	7.2	332
13	67.6	27.2	5.1	136
14	78.9	11.4	9.7	289
15	82.4	7.9	9.7	557
16	83.0	6.0	11.0	182
17	83.1	6.7	10.1	89
18	86.8	5.7	7.5	53
19	73.0	15.0	11.9	226
20	89.7	5.7	4.6	175
21	84.4	7.3	8.3	109
22	82.5	2.7	14.8	183
23	81.0	14.2	4.8	331
24	80.8	16.3	2.9	172
25	81.8	13.2	5.0	159
26	87.3	8.9	3.8	338
27	88.7	5.7	5.7	282
28	89.4	6.5	4.1	123
29	78.8	3.0	18.2	264
30	82.2	3.7	14.1	135
31	81.3	8.8	10.0	160
Total	82.4	9.2	8.4	6,153

Appendix 3

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

TRAFFIC

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	81.1%	9.5%	9.5%	74
2	89.9	7.0	3.1	129
3	87.9	9.1	3.0	33
4	75.3	11.0	13.7	73
5	79.6	10.2	10.2	49
6	78.3	4.3	17.4	23
7	82.1	7.7	10.3	39
8	78.6	17.9	3.6	28
9	80.0	2.0	18.0	50
10	73.0	11.1	15.9	63
11	85.0	10.0	5.0	20
12	83.7	10.6	5.8	104
13	64.5	19.4	16.1	31
14	67.3	2.0	30.6	49
15	82.4	8.1	9.5	148
16	81.7	11.7	6.7	60
17	55.6	22.2	22.2	9
18	100	.0	0.0	8
19	54.4	15.2	30.4	79
20	87.1	.0	12.9	62
21	83.3	16.7	0.0	24
22	83.7	.0	16.3	43
23	81.0	12.1	6.9	58
24	76.7	13.3	10.0	60
25	86.4	8.5	5.1	59
26	82.1	8.4	9.5	95
27	87.3	4.2	8.5	71
28	85.0	5.0	10.0	20
29	71.9	12.5	15.6	32
30	77.1	5.7	17.1	35
31	87.8	6.1	6.1	82
Total	80.3	8.8	10.9	1,711

MISCELLANEOUS/OTHER

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	72.7%	.0%	27.3%	11
2	82.8	10.3	6.9	29
3	61.5	15.4	23.1	13
4	96.8	0.0	3.2	31
5	71.4	0.0	28.6	7
6	100	0.0	0.0	11
7	90.0	10.0	0.0	10
8	50.0	25.0	25.0	4
9	100	0.0	0.0	5
10	57.1	35.7	7.1	14
11	53.8	46.2	0.0	13
12	59.3	33.3	7.4	27
13	85.0	10.0	5.0	20
14	87.5	6.3	6.3	16
15	72.0	16.0	12.0	25
16	71.4	14.3	14.3	14
17	50.0	0.0	50.0	2
18	50.0	50.0	0.0	4
19	44.4	22.2	33.3	9
20	90.9	0.0	9.1	11
21	80.0	10.0	10.0	10
22	64.5	16.1	19.4	31
23	65.2	26.1	8.7	23
24	93.3	6.7	0.0	15
25	81.8	18.2	0.0	11
26	100	0.0	0.0	14
27	84.6	0.0	15.4	13
28	71.4	14.3	14.3	7
29	72.7	9.1	18.2	22
30	55.6	11.1	33.3	9
31	80.0	13.3	6.7	15
Total	75.8	13.7	10.5	446

MISCELLANEOUS/P&P

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	62.5%	18.8%	18.8%	16
2	84.0	4.0	12.0	25
3	37.5	62.5	0.0	8
4	75.9	6.9	17.2	29
5	71.4	14.3	14.3	7
6	100	0.0	0.0	7
7	71.4	4.8	23.8	21
8	80.0	0.0	20.0	5
9	92.3	7.7	0.0	13
10	33.3	13.3	53.3	15
11	92.3	7.7	0.0	13
12	75.0	6.3	18.8	16
13	42.9	42.9	14.3	7
14	72.2	16.7	11.1	18
15	77.5	10.0	12.5	40
16	70.0	0.0	30.0	10
17	100	0.0	0.0	1
18	75.0	25.0	0.0	4
19	71.4	28.6	0.0	14
20	66.7	.0	33.3	12
21	58.3	8.3	33.3	12
22	52.9	5.9	41.2	17
23	63.6	27.3	9.1	11
24	85.7	14.3	0.0	21
25	66.7	20.0	13.3	15
26	76.0	4.0	20.0	25
27	70.3	16.2	13.5	37
28	80.0	20.0	0.0	5
29	66.7	5.6	27.8	18
30	88.2	0.0	11.8	17
31	77.8	16.7	5.6	18
Total	72.2	11.7	16.1	478

Appendix 3

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

WEAPONS

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	75.0 %	15.0 %	10.0 %	20
2	81.3	9.4	9.4	32
3	81.0	19.0	0.0	21
4	83.8	8.1	8.1	37
5	72.2	16.7	11.1	18
6	75.0	8.3	16.7	12
7	82.1	10.7	7.1	28
8	90.0	0.0	10.0	10
9	72.2	22.2	5.6	18
10	62.2	24.3	13.5	37
11	71.4	28.6	.0	14
12	81.8	9.1	9.1	22
13	75.8	10.6	13.6	66
14	79.4	8.8	11.8	34
15	62.2	24.3	13.5	37
16	78.9	15.8	5.3	19
17	100	0.0	0.0	2
18	87.5	0.0	12.5	8
19	50.0	37.5	12.5	8
20	85.7	0.0	14.3	14
21	58.3	41.7	0.0	12
22	79.4	8.8	11.8	34
23	82.4	5.9	11.8	34
24	77.3	13.6	9.1	22
25	52.2	8.7	39.1	23
26	72.7	13.6	13.6	22
27	91.4	5.7	2.9	35
28	62.5	6.3	31.3	16
29	79.2	12.5	8.3	24
30	54.5	27.3	18.2	11
31	87.5	12.5	0.0	8
Total	75.6	13.2	11.2	698

Appendix 4

Sentencing Guidelines Compliance by Judicial Circuit: Offenses Against the Person

ASSAULT

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	69.2	13.5	17.3	52
2	82.6	5.8	11.6	86
3	83.3	6.3	10.4	48
4	85.9	3.5	10.6	85
5	88.9	5.6	5.6	36
6	65.6	6.3	28.1	32
7	79.2	11.3	9.4	53
8	77.3	18.2	4.5	22
9	72.7	9.1	18.2	33
10	74.2	16.1	9.7	62
11	79.3	13.8	6.9	29
12	75.0	12.5	12.5	40
13	62.5	24.0	13.5	96
14	78.3	13.0	8.7	46
15	70.5	14.7	14.7	95
16	79.5	11.4	9.1	44
17	80.0	20.0	.0	5
18	73.7	15.8	10.5	19
19	55.8	20.9	23.3	43
20	66.7	4.2	29.2	24
21	100	.0	.0	21
22	82.1	3.6	14.3	28
23	70.8	18.8	10.4	48
24	83.7	10.2	6.1	49
25	63.4	22.0	14.6	41
26	85.3	4.4	10.3	68
27	73.1	9.0	17.9	78
28	78.9	10.5	10.5	19
29	71.1	13.3	15.6	45
30	65.5	6.9	27.6	29
31	93.9	3.0	3.0	33
TOTAL	75.8	11.4	12.8	1410

KIDNAPPING

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	100	.0	.0	1
2	75.0	25.0	.0	4
3	100	.0	.0	2
4	88.9	.0	11.1	9
5	75.0	.0	25.0	4
6	100	.0	.0	2
7	66.7	33.3	.0	3
8	33.3	.0	66.7	3
9	75.0	25.0	.0	4
10	66.7	.0	33.3	6
11	0	0	0	0
12	.0	33.3	66.7	3
13	75.0	25.0	.0	12
14	.0	.0	100	1
15	100	.0	.0	8
16	100	.0	.0	3
17	0	0	0	0
18	0	0	0	0
19	50	30	20	10
20	.0	.0	100	1
21	100	.0	.0	2
22	100	.0	.0	4
23	83.3	.0	16.7	6
24	100	.0	.0	1
25	25.0	75.0	.0	4
26	71.4	14.3	14.3	7
27	.0	.0	100	1
28	.0	.0	100	1
29	100	.0	.0	1
30	.0	100	.0	3
31	75.0	.0	25.0	4
Total	69.1	15.5	15.5	110

HOMICIDE

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	66.7	.0	33.3	3
2	63.2	5.3	31.6	19
3	80.0	20.0	.0	5
4	66.7	.0	33.3	12
5	42.9	.0	57.1	7
6	100	.0	.0	6
7	66.7	.0	33.3	3
8	33.3	33.3	33.3	6
9	33.3	33.3	33.3	6
10	33.3	50.0	16.7	6
11	100	.0	.0	2
12	75.0	.0	25.0	4
13	45.8	37.5	16.7	24
14	80.0	10.0	10.0	10
15	45.5	9.1	45.5	11
16	60.0	.0	40.0	10
17	.0	100.0	.0	2
18	50.0	.0	50.0	2
19	57.1	.0	42.9	7
20	50.0	.0	50.0	6
21	83.3	.0	16.7	6
22	60.0	40.0	.0	5
23	55.6	11.1	33.3	9
24	40.0	20.0	40.0	5
25	25.0	.0	75.0	4
26	50.0	.0	50.0	4
27	42.9	.0	57.1	7
28	66.7	16.7	16.7	6
29	85.7	.0	14.3	7
30	33.3	.0	66.7	3
31	.0	25.0	75.0	4
Total	55.9	13.3	30.8	211

Appendix 4

Sentencing Guidelines Compliance by Judicial Circuit: Offenses Against the Person

ROBBERY

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	59.1	36.4	4.5	22
2	73.2	23.2	3.7	82
3	57.9	26.3	15.8	19
4	71.3	23.0	5.7	87
5	66.7	11.1	22.2	9
6	53.3	46.7	.0	15
7	71.4	19.0	9.5	21
8	78.6	14.3	7.1	14
9	73.3	13.3	13.3	15
10	56.3	25.0	18.8	16
11	100	.0	.0	7
12	81.8	15.2	3.0	33
13	59.8	35.3	4.9	102
14	64.4	17.8	17.8	45
15	56.3	28.1	15.6	32
16	42.9	28.6	28.6	7
17	80.0	20.0	.0	5
18	53.8	30.8	15.4	13
19	45.2	38.7	16.1	31
20	71.4	19.0	9.5	21
21	46.2	46.2	7.7	13
22	50.0	.0	50.0	10
23	64.3	21.4	14.3	28
24	66.7	20.0	13.3	15
25	58.3	41.7	.0	12
26	66.7	19.0	14.3	21
27	53.8	15.4	30.8	13
28	50.0	.0	50.0	6
29	62.5	25.0	12.5	8
30	50.0	37.5	12.5	8
31	70.4	22.2	7.4	27
Total	64.5	25.1	10.4	758

RAPE

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	100	.0	.0	7
2	80.0	10.0	10.0	10
3	100	.0	.0	4
4	90.0	10.0	.0	10
5	100	.0	.0	6
6	100	.0	.0	4
7	50.0	.0	50.0	2
8	40.0	20.0	40.0	5
9	37.5	37.5	25.0	8
10	50.0	16.7	33.3	6
11	0	0	0	0
12	62.5	12.5	25.0	8
13	55.6	33.3	11.1	9
14	100	.0	.0	1
15	70.0	30.0	.0	10
16	70.0	10.0	20.0	10
17	0	0	0	0
18	50.0	50.0	.0	2
19	58.3	25.0	16.7	12
20	50.0	.0	50.0	4
21	100	.0	.0	1
22	88.9	.0	11.1	9
23	0	0	0	0
24	50.0	37.5	12.5	8
25	57.1	14.3	28.6	7
26	83.3	16.7	.0	12
27	75.0	25.0	.0	8
28	33.3	33.3	33.3	3
29	28.6	57.1	14.3	7
30	100	.0	.0	3
31	100	.0	.0	10
Total	70.1	17.1	12.8	187

OTHER SEXUAL ASSAULT

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	66.7	.0	33.3	9
2	77.8	8.3	13.9	36
3	100	.0	.0	5
4	81.8	9.1	9.1	22
5	75.0	8.3	16.7	12
6	100	.0	.0	5
7	50.0	40.0	10.0	10
8	100	.0	.0	3
9	53.8	30.8	15.4	13
10	53.3	13.3	33.3	15
11	83.3	16.7	.0	6
12	66.7	29.6	3.7	27
13	81.8	9.1	9.1	11
14	60.7	10.7	28.6	28
15	61.9	16.7	21.4	42
16	100	.0	.0	16
17	33.3	.0	66.7	3
18	62.5	.0	37.5	8
19	46.8	4.3	48.9	47
20	81.0	9.5	9.5	21
21	100	.0	.0	3
22	71.4	7.1	21.4	14
23	52.9	29.4	17.6	17
24	64.9	13.5	21.6	37
25	69.2	12.8	17.9	39
26	54.3	6.5	39.1	46
27	81.8	6.1	12.1	33
28	88.9	11.1	.0	9
29	54.2	16.7	29.2	24
30	54.5	9.1	36.4	11
31	78.6	.0	21.4	28
Total	67.1	11.1	21.8	605