

VIRGINIA CRIMINAL  
SENTENCING COMMISSION



2016 ANNUAL REPORT



# Virginia Criminal Sentencing Commission



## **2016 Annual Report**

December 1, 2016

# Virginia Criminal Sentencing Commission Members

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

**Judge Edward L. Hogshire**  
Chairman, Charlottesville

**Appointments by the Chief Justice of the Supreme Court**

**Judge Rossie D. Alston, Jr., Vice Chair**, Manassas  
**Judge Bradley B. Cavedo**, Richmond City  
**Judge Dennis L. Hupp**, Woodstock  
**Judge Lisa Bondareff Kemler**, Alexandria  
**Judge Michael Lee Moore**, Russell  
**Judge Charles S. Sharp**, Stafford

**Attorney General**

**The Honorable Mark R. Herring**  
(Richard Vorhis, Attorney General's Representative)

**Senate Appointments**

**Senator Bryce E. Reeves**, Spotsylvania  
**Judge James S. Yoffy**, Henrico

**House of Delegates Appointments**

**Delegate Benjamin L. Cline**, Rockbridge  
**The Honorable James E. Plowman**, Loudoun  
**Esther J. Windmueller**, Richmond City

**Governor's Appointments**

**The Honorable H.F. Haymore Jr.**, Pittsylvania  
**Kyanna Perkins**, Chesterfield  
**Kemba Smith Pradia**, Virginia Beach  
**The Honorable Shannon Taylor**, Henrico

Commonwealth of Virginia

HON. EDWARD L. HOGSHIRE (RET.)  
CHAIRMAN



MEREDITH FARRAR-OWENS  
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Supreme Court of Virginia  
Virginia Criminal Sentencing Commission

December 1, 2016

To: The Honorable Donald W. Lemons, Chief Justice of Virginia  
The Honorable Terence R. 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 2016 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 2016. The Commission's recommendations to the 2017 Session of the Virginia General Assembly are also contained in this report.

I would like to use this opportunity to express our utmost gratitude to one Commission member who has completed her full term and is not eligible for re-appointment. Esther Windmueller has performed her duties in an exemplary fashion and the work of the Commission is far better because of her insights and valuable contributions.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Edward L. Hogshire".

Edward L. Hogshire  
Chairman

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# Introduction

## 1

### 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 six chapters. The remainder of the Introduction chapter provides a general profile of the Commission and an overview of its various activities and projects. The Guidelines Compliance chapter that follows contains a comprehensive analysis of compliance with the sentencing guidelines during fiscal year (FY) 2016. The third chapter describes the Immediate Sanction Probation program, which the General Assembly directed the Commission to implement in select pilot sites, and presents the findings of the Commission's recently-completed evaluation of the pilot program. At the direction of the 2016 General Assembly, the Commission reviewed the sentencing guidelines for heroin distribution offenses, the results of which are detailed in the fourth chapter. In response to another 2016 legislative directive, the Commission explored recidivism among released federal offenders and this work is described in the fifth chapter. In the report's final chapter, the Commission presents its recommendations for revisions to the felony sentencing guidelines system.

### Commission Profile

An agency of the judicial branch of government, 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 2016. These meetings were held on April 4, June 6, September 12, and November 2. Minutes for each of these meetings are available on the Commission's website ([www.vcsc.virginia.gov](http://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.

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

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

## Training, Education and Other Assistance

The Commission provides sentencing guidelines assistance in a variety of forms: training and education seminars, training materials and publications, a website, and assistance via the "hotline" phone system. Training and education are ongoing activities of the Commission. The Commission offers training and educational opportunities in an effort to promote the accurate completion of sentencing guidelines. Training seminars are designed to appeal to the needs of attorneys for the Commonwealth and probation officers, the two groups authorized by statute to complete the official guidelines for the court. The seminars also provide defense attorneys with a knowledge base to challenge the accuracy of guidelines submitted to the court. In addition, the Commission conducts sentencing guidelines seminars for new members of the judiciary and other criminal justice system professionals. Having all sides equally versed in the completion of guidelines worksheets is essential to a system of checks and balances that ensures the accuracy of sentencing guidelines.

In FY2016, the Commission offered 20 training seminars across the Commonwealth for more than 320 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. Each of 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. 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, a "hotline" phone, and a 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 have indicated that this option is helpful, particularly when they are at the courthouse or otherwise away from the office.

By visiting the Commission's website, a user can learn about upcoming training sessions, access Commission reports, look up Virginia Crime Codes (VCCs), and utilize online versions of the sentencing guidelines forms. Another resource is the Commission's mobile website and electronic guidelines manual. This mobile version is formatted for smartphones and provides a quick resource for guidelines users.

## Automation Project

In 2012, staff launched a project to automate the sentencing guidelines completion and submission process. 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. When complete, the application 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 (data) format.

An early prototype of the application was demonstrated for the Commission in 2013 and staff has sought input from court clerks, probation officers, Commonwealth's attorneys, and defense attorneys. In 2014, the Commission began pilot testing the application in Norfolk and then expanded the pilot testing in 2015 to include Henrico County. While the pilot phase continues, additional components of the application are being designed. Statewide implementation could begin as early as the fall of 2017.

## 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 2016 General Assembly, the Commission prepared 291 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 and Homeland Security, 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 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. At the Secretary’s request, the Commission’s Director or Deputy Director has chaired the Technical Advisory Committee since 2006.

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 approved 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.

The Secretary presented the most recent offender forecasts to the General Assembly in a report submitted in October 2016.

## Assistance to Other Agencies

When requested, the Commission provides technical assistance, in the form of data and analysis, to other state agencies. During 2016, the Commission assisted agencies such as the Virginia State Crime Commission, a legislative branch agency, and the Virginia Department of Juvenile Justice. In addition, the Commission’s Director was asked by the Secretary of Public Safety and Homeland Security to serve on the state policy team for the launch of Virginia’s Evidence-Based Decision Making (EBDM) initiative.

### 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 50 of Chapter 806 of the 2013 Acts of Assembly). 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 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 2016 General Assembly extended the pilot period to July 1, 2017, in order to allow the pilot sites to continue the program until the General Assembly has reviewed the findings of the Commission’s evaluation and determined whether to continue the program in the future. An overview of the Commission’s recently-completed evaluation can be found in the third chapter of this report.

### Review of Sentencing Guidelines for Heroin Offenses

The 2016 General Assembly adopted House Bill 1059, which directed the Commission to evaluate judge-sentencing and jury-sentencing patterns and practices in cases of manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell, give, or distribute heroin in the Commonwealth. Based on this evaluation, the Commission was to make recommendations for adjustments to the sentencing guidelines for these offenses. The results of the Commission’s study are presented in the fourth chapter of this report.

### Federal Offender Recidivism Study

During its 2016 Session, the General Assembly also adopted House Bill 1105. This legislation directed the Commission to examine recidivism among federal inmates whose sentences were retroactively reduced pursuant to Amendments 782 and 788 of the US Sentencing Commission’s Guidelines Manual. The legislative mandate directed the Commission to focus on acts of recidivism committed by such offenders in the Commonwealth. The Commission’s exploration of recidivism among federal inmates is described in the fifth chapter in this report.

# Guidelines Compliance

## 2

### Introduction

Beginning January 1, 1995, the practice of discretionary parole release was abolished in Virginia 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 Virginia Criminal Sentencing 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 non-violent 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 490,000 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) 2016 (July 1, 2015, through June 30, 2016). 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 - FY2016**

<b>Circuit</b>	<b>Number</b>	<b>Percent</b>	<b>Rank</b>
1	789	3.3%	14
2	1,242	5.2%	4
3	432	1.8%	25
4	1,034	4.4%	8
5	528	2.2%	24
6	354	1.5%	28
7	556	2.3%	22
8	367	1.5%	27
9	548	2.3%	23
10	670	2.8%	17
11	281	1.2%	30
12	1,292	5.5%	3
13	972	4.1%	9
14	1,121	4.7%	5
15	1,801	7.6%	1
16	843	3.6%	12
17	376	1.6%	26
18	213	0.9%	31
19	867	3.7%	11
20	617	2.6%	19
21	336	1.4%	29
22	604	2.5%	20
23	679	2.9%	16
24	891	3.8%	10
25	1,096	4.6%	6
26	1,446	6.1%	2
27	1,060	4.5%	7
28	579	2.4%	21
29	796	3.4%	13
30	625	2.6%	18
31	690	2.9%	15

In FY2016, 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), Chesterfield County (Circuit 12), Virginia Beach (Circuit 2), Henrico County (Circuit 14), the Botetourt County area (Circuit 25), the Radford area (Circuit 27), Norfolk (Circuit 4), Richmond City (Circuit 13), and the Lynchburg area (Circuit 24) comprised half (50%) of all worksheets received in FY2016 (Figure 1). See Appendix 3 for a breakdown of guidelines received by jurisdiction.

During FY2016, the Commission received 23,713 sentencing guideline worksheets. Of these, 764 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 FY2016, the remaining sections of this chapter pertaining to judicial concurrence with guidelines recommendations focus only on those 22,949 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 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 jail when the guidelines call for a short jail term. Even though the judge does not sentence an offender to serve incarceration time after sentencing, 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 period of incarceration 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.

In addition to compliance, the Commission also studies departures from the guidelines. The rate at which judges sentence offenders to sanctions more severe than the guidelines recommendation, known as the “aggravation” rate, was 9.5% for FY2016. The “mitigation” rate, or the rate at which judges sentence offenders to sanctions considered less severe than the guidelines recommendation, was 9.8% for the fiscal year. Thus, of the FY2016 departures, 49.1% were cases of aggravation while 50.9% were cases of mitigation.

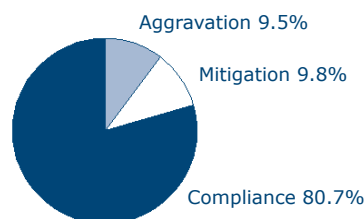
### Overall Compliance with the Sentencing Guidelines

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. For the past eleven fiscal years, the compliance rate has hovered around 80%. During FY2016, judges continued to agree with the sentencing guidelines recommendations in approximately 81% of the cases (Figure 2).

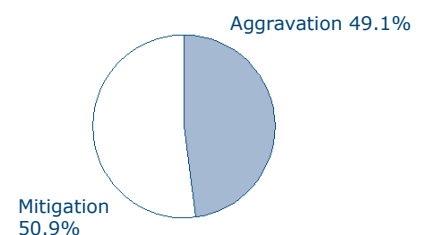
**Figure 2**

**Overall Guidelines Compliance and Direction of Departures - FY2016**

#### Overall Compliance



#### Direction of Departures



### Dispositional Compliance

Since the inception of truth-in-sentencing in 1995, the correspondence between dispositions recommended by the guidelines and the actual dispositions imposed in Virginia’s circuit courts has been quite high. Figure 3 illustrates judicial concurrence in FY2016 with the type of disposition recommended by the guidelines. For instance, of all felony offenders recommended for more than six months of incarceration during FY2016, 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) or probation with no active incarceration, but the percentage of offenders receiving such dispositions was small.

Judges have also typically agreed with guidelines recommendations for other types of dispositions. In FY2016, 79% of offenders received a sentence resulting in confinement of six months or less when such a sanction was recommended. In some cases, judges felt probation to be a more appropriate sanction than the recommended jail term and, in other cases, offenders recommended for short-term incarceration received a sentence of more than six months. Finally, 73% of offenders whose guidelines recommendation called for no incarceration were given probation and no post-dispositional confinement. Some offenders with a “no incarceration” recommendation received a short jail term, but rarely did these offenders receive an incarceration term of more than six months.

Since July 1, 1997, sentences to the state’s former Boot Camp and the current Detention Center and Diversion Center programs have been defined as incarceration sanctions for the purposes of the sentencing guidelines. Although the state’s Boot Camp program was discontinued in 2002, the Detention and Diversion Center programs have continued as sentencing options for judges. The Commission recognized that these programs are more restrictive than probation supervision in the community. In 2005, the Virginia Supreme Court concluded that participation in the Detention Center program is a form of incarceration (*Charles v. Commonwealth*). Because the Diversion Center program also involves a period of confinement, the Commission defines both the Detention Center and the Diversion Center programs as incarceration terms under the sentencing guidelines. Between 1997 and 2007, the Detention and Diversion Center programs were 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 guidelines purposes.

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

**Figure 3**

**Recommended and Actual Dispositions - FY2016**

Recommended Disposition	Actual Disposition		
	Probation	Incarceration 1 day-6 mos.	Incarceration >6 mos.
Probation	73.3%	22.9%	3.8%
Incarceration 1 day-6 mos	12.2%	78.5%	9.3%
Incarceration > 6 months	6.1%	7.3%	86.7%

### 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.

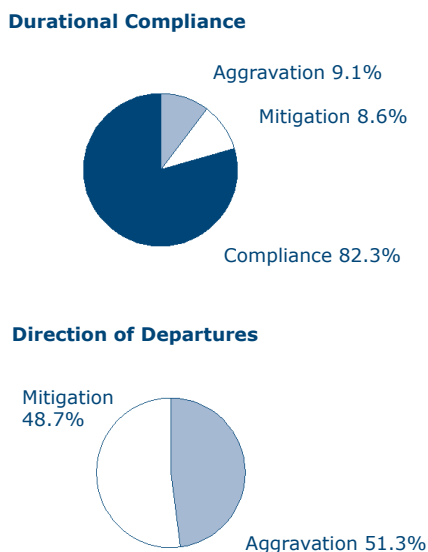
Durational compliance among FY2016 cases was over 82%, indicating that judges, more often than not, agree with the length of incarceration recommended by the guidelines in jail and prison cases (Figure 4). Among FY2016 cases not in durational compliance, departures tended slightly more toward aggravation than mitigation.

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 FY2016) were given prison terms exactly equal to the midpoint recommendation (Figure 5). Most of the cases (70%) in durational compliance with recommendations over six months resulted in sentences below the recommended midpoint. For the remaining 16% 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.

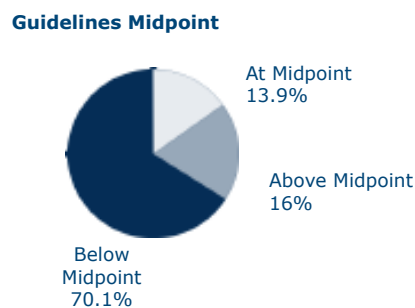
Overall, durational departures from the guidelines are typically no more than one year above or below the recommended range, indicating that disagreement with the guidelines recommendation, in most cases, is not extreme. Offenders receiving incarceration, but less than the recommended term, were given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

**Figure 4**  
**Durational Compliance and Direction of Departures - FY2016\***



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

**Figure 5**  
**Distribution of Sentences within Guidelines Range - FY2016\*\***



\*\* Analysis includes only cases that were recommended for more than six months of incarceration and resulted in a sentence within the guidelines range.

**Figure 6**  
**Median Length of Durational Departures - FY2016\*\*\***



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

## Reasons for Departure from the Guidelines

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

In FY2016, 9.8% of guidelines cases resulted in sanctions below the guidelines recommended range. The most frequently cited reasons for sentencing below the guidelines recommendation were: the acceptance of a plea agreement, a sentence to a less-restrictive sanction, judicial discretion, the defendant's cooperation with law enforcement, the defendant's lack of or minimal prior record, court procedural issues such as a sentence recommendation provided by the attorneys, and mitigating offense circumstances. Although other reasons for mitigation were reported to the Commission in FY2016, only the most frequently cited reasons are noted here. For 339 of the 2,257 mitigating cases, a departure reason could not be discerned.

Judges sentenced 9.5% of the FY2016 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 flagrancy of the offense, the severity or degree of prior record, the number of counts in the sentencing event, jury recommendation, the defendant's poor potential for being rehabilitated, and the involvement of drugs in the offense. For 287 of the 2,173 cases sentenced above the guidelines recommendation, the Commission could not ascertain a departure reason.

*Appendices 1 present detailed tables of the reasons for departure from guidelines recommendations for each of the 17 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. FY2016 continues to show differences among judicial circuits in the degree to which judges concur with guidelines recommendations (Figure 7). The map on the following pages identifies the location of each judicial circuit in the Commonwealth.

In FY2016, two thirds of the state's 31 circuits exhibited compliance rates at or above 80%, while the remaining 32% reported compliance rates between 63% and 79%. There are likely many reasons for the variations in compliance across circuits. Certain jurisdictions may see atypical cases not reflected in statewide averages. In addition, the availability of alternative or community-based programs currently differs from locality to locality. The degree to which judges concur 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 FY2016, the highest rate of judicial agreement with the sentencing guidelines (88%) was in Circuit 28 (Bristol area). Concurrence rates of 86% were found in Circuit 26 (Harrisonburg area), Circuit 27 (Radford area), Circuit 7 (Newport News), and Circuit 2 (Virginia Beach). Circuit 13 (Richmond City) reported the lowest compliance rate (63%) among the judicial circuits in FY2016. However, all other concurrence rates were 76% or higher.

In FY2016, the highest mitigation rates were found in Circuit 13 (Richmond City), Circuit 3 (Portsmouth), Circuit 25 (Staunton Area), Circuit 23 (Roanoke Valley), Circuit 8 (Hampton), Circuit 19 (Fairfax), Circuit 21 (Martinsville area). Circuit 13 (Richmond City) had a mitigation rate of 29% while Circuit 3 (Portsmouth) had a mitigation rate of 16% for the fiscal year; Circuit 25 (Staunton area) recorded a mitigation rate of 15% followed by Circuit 23 (Roanoke area) and Circuit 8 (Hampton) with rates of 13%. 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 5 (Suffolk area) had the highest aggravation rate (15.2%), followed by Circuit 15 (Fredericksburg) and Circuit 22 (Danville area) with rates between 14.7% and 15.1%. Lower compliance rates in these latter circuits are a reflection of the relatively high aggravation rates.

*Appendix 2 presents compliance figures for judicial circuits by each of the 17 sentencing guidelines offense groups.*

**Figure 7**

**Compliance by Circuit - FY2016**

Circuit Name	Circuit	Compliance	Mitigation	Aggravation	Total
Bristol Area	28	87.8%	4.8%	7.4%	567
Harrisonburg Area	26	86.4	6.8	6.8	1,422
Radford Area	27	86.3	6.7	6.9	907
Newport News	7	86.3	6.2	7.5	546
Virginia Beach	2	85.7	6.8	7.5	1,228
Martinsville Area	21	84.4	10.8	4.8	334
Chesterfield Area	12	84.4	7.4	8.2	1,270
Loudoun	20	84.3	5.7	10.0	617
Charlottesville Area	16	84.2	7.6	8.2	814
Petersburg Area	11	84.1	9.4	6.5	277
Prince William Area	31	83.4	9.1	7.5	680
South Boston Area	10	83.0	7.6	9.4	658
Lee Area	30	82.9	8.3	8.8	589
Norfolk	4	82.4	10.1	7.6	1,004
Lynchburg Area	24	81.7	9.8	8.5	874
Alexandria	18	81.4	9.5	9.0	210
Hampton	8	81.2	13.3	5.5	361
Sussex Area	6	80.7	9.2	10.1	348
Arlington Area	17	80.5	9.1	10.4	375
Chesapeake	1	80.3	10.1	9.6	770
Portsmouth	3	79.9	15.9	4.2	428
Williamsburg Area	9	78.9	9.1	12.0	483
Roanoke Area	23	77.7	13.3	8.9	660
Henrico	14	77.2	9.6	13.2	1,101
Staunton Area	25	77.1	14.7	8.3	1,064
Suffolk Area	5	77.0	7.8	15.2	513
Fredericksburg	15	76.8	8.1	15.1	1,748
Buchanan Area	29	76.7	8.9	14.4	765
Fairfax	19	76.7	11.7	11.6	786
Danville Area	22	75.5	9.8	14.7	593
Richmond City	13	63.2	29.2	7.6	949

- Two-thirds of the state's 31 circuits exhibited compliance rates at or above 80.3%.

- Ten circuits reported compliance rates between 75% and 80%. Only one circuit had a compliance rate below 65%.

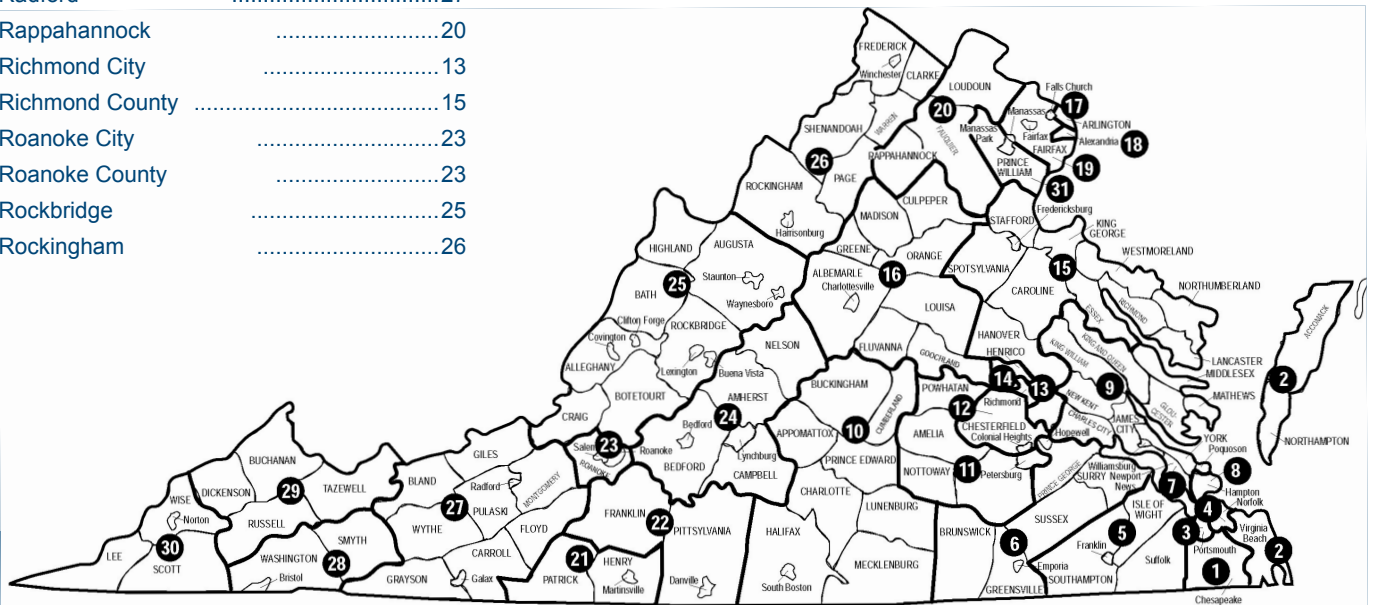
## Virginia Localities and Judicial Circuits

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

Madison	16	Russell	29
Manassas	31	Salem	23
Martinsville	21	Scott	30
Mathews	9	Shenandoah	26
Mecklenburg	10	Smyth	28
Middlesex	9	Southampton	5
Montgomery	27	Spotsylvania	15
Nelson	24	Stafford	15
New Kent	9	Staunton	25
Newport News	7	Suffolk	5
Norfolk	4	Surry	6
Northampton	2	Sussex	6
Northumberland	15	Tazewell	29
Norton	30	Virginia Beach	2
Nottoway	11	Warren	26
Orange	16	Washington	28
Page	26	Waynesboro	25
Patrick	21	Westmoreland	15
Petersburg	11	Williamsburg	9
Pittsylvania	22	Winchester	26
Poquoson	9	Wise	30
Portsmouth	3	Wythe	27
Powhatan	11	York	9
Prince Edward	10		
Prince George	6		
Prince William	31		
Pulaski	27		

Virginia  
Judicial Circuits

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



### Compliance by Sentencing Guidelines Offense Group

In FY2016, as in previous years, judicial agreement with the guidelines varied when comparing the 17 offense groups (Figure 8). For FY2016, compliance rates ranged from a high of 85% in the Fraud offense group to a low of 61% in Murder/Homicide cases. In general, property and drug offenses exhibit higher rates of compliance than the violent offense categories. Several violent offense groups (Murder/Homicide, Sexual Assault, Robbery, and Burglary of a Dwelling) had compliance rates at or below 69%, 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 less than five percent for most offense groups. Compliance rates are much more susceptible to year-to-year fluctuations for offense groups with small number of sentencing events in a given year. Compliance with the Kidnapping worksheets (124 cases) increased by 19 percentage points from FY2015 to FY2016 because of significant decrease in both mitigation and aggravation. During the same time, compliance on the Sexual Assault worksheets (338 cases) decreased this year by 4.9 percentage points because judges were more likely to go above the guidelines recommendation when not concurring with the recommendation.

A number of changes went into effect beginning July 1, 2015. Three new felony offenses (sell, distribute, etc., Schedule IV drug, second or subsequent offense of obtaining identifying information with intent to defraud and receiving stolen credit card or credit card number with intent to use or sell) were added to the sentencing guidelines system. A new factor was added to the Fraud worksheet and an existing factor was modified to more accurately reflect historical sentencing patterns for the new offenses. In FY2016, there were 23 sentencing events with second or subsequent offense of obtaining identifying information with intent to defraud as the primary, or most serious, offense. Concurrence with the guidelines recommendation for this newly added offense was 74% with 17% of the sentences below the guidelines recommendation and 9% above. There were no guidelines submitted in FY2016 for the other two offenses.

**Figure 8**  
**Guidelines Compliance by Offense - FY2016**

	Compliance	Mitigation	Aggravation	Number of Cases
Assault	76.5%	12.9%	10.6%	1,233
Burglary Dwelling	67.4%	15.4%	17.2%	766
Burglary Other	79.4%	10.6%	10.0%	349
Drug Other	82.0%	9.2%	8.8%	7,451
Drug Schedule I/II	84.7%	6.3%	9.1%	1,199
Fraud	85.3%	9.4%	5.4%	1,882
Kidnapping	78.2%	4.8%	16.9%	124
Larceny	84.3%	9.2%	6.5%	5,670
Miscellaneous Other	74.5%	16.7%	8.8%	318
Miscellaneous Person/Prop	70.3%	8.6%	21.1%	431
Murder	60.9%	9.3%	29.8%	225
Obscenity	75.5%	11.7%	12.9%	163
Rape	71.9%	9.6%	18.5%	146
Robbery	68.5%	22.4%	9.0%	531
Sexual Assault	63.3%	6.8%	29.9%	338
Traffic	80.9%	8.1%	11.0%	1,451
Weapon	77.4%	11.0%	11.6%	672
Total	80.7%	9.8%	9.5%	22,949



Since 1995, departure patterns have differed across offense groups, and FY2016 was no exception. In most cases, judges are sentencing within the recommendation, but for the offense groups of Robbery, Miscellaneous-Other (e.g., perjury, failure to appear, etc.), Assault, Burglary Other Structure, Weapon/Firearm, Fraud, Drug-Other and Larceny, judges, when not in compliance, sentence below the recommendation. In fact, the Robbery offense group showed the highest mitigation rates with nearly one-quarter of the robbery cases (22.4%), resulting in sentences below the guidelines. The most frequently cited mitigation reasons provided by judges in robbery cases included: the acceptance of a plea agreement, the defendant cooperated with authorities, facts of the case, a sentence to the Department of Juvenile Justice, and the lack of an extensive prior record.

In the remaining offense groups, judges are more likely to sentence above the recommendation when not in compliance. In FY2016, the offense groups with the highest aggravation rates were Sexual Assault and Murder/Homicide at 30% and Miscellaneous Person/Property at 21%. These offense groups shared similar departure reasons. The most frequently cited aggravating departure reasons were: facts of the case, plea agreement, the type of victim involved (such as a child), guidelines recommendation was too low and the defendant's poor rehabilitation potential. Judges also frequently cited a sentence recommendation from a jury as the reason for the upward departure, especially in Murder/Homicide cases.

### 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 Virginia's 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.

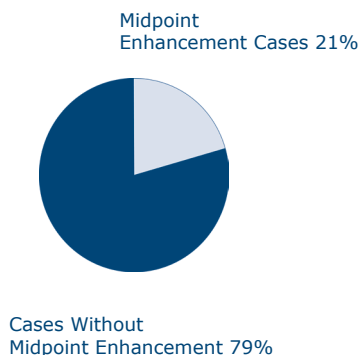
Because midpoint enhancements are designed to target only violent offenders for longer sentences, enhancements do not affect the sentence recommendation for the majority of guidelines cases. Among the FY2016 cases, 79% of the cases did not involve midpoint enhancements of any kind (Figure 9). Only 21% 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.

Cases of offenders with a violent instant offense but no prior record of violence represented 20% of the midpoint enhancements in FY2016. The most substantial midpoint enhancements target offenders with a combination of instant and prior violent offenses. Roughly 9% qualified for enhancements for both a current violent offense and a Category II prior record. A very small percentage of cases (3%) were targeted for the most extreme midpoint enhancements triggered by a combination of a current violent offense and a Category I prior record.

Of the FY2016 cases in which midpoint enhancements applied, the most common midpoint enhancement was for a Category II prior record. Approximately 52% 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 FY2016, another 17% of midpoint enhancements were attributable to offenders with a more serious Category I prior record.

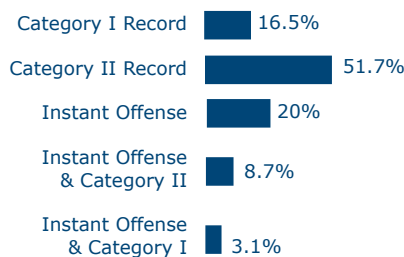
**Figure 9**

**Application of Midpoint Enhancements - FY2016**



**Figure 10**

**Type of Midpoint Enhancements Received - FY2016**



**Figure 11**

**Length of Mitigation Departures in Midpoint Enhancement Cases - FY2016\***



\* Analysis includes only cases that were recommended for more than six months of incarceration and resulted in a sentence below the guidelines range.

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 FY2016, compliance was 72% when enhancements applied, which is significantly lower than compliance in all other cases (83%). Thus, compliance in midpoint enhancement cases is suppressing the overall compliance rate. When departing from enhanced guidelines recommendations, judges are choosing to mitigate in three out of every four departures.

Among FY2016 midpoint enhancement cases resulting in incarceration, judges departed from the low end of the guidelines range by an average of 19 months (Figure 11). The median departure (the middle value, where half of the values are lower and half are higher) was 12 months.

Compliance, while generally lower in midpoint enhancement cases than in other cases, varies across the different types and combinations of midpoint enhancements (Figure 12). In FY2016, as in previous years, enhancements for a Category II prior record generated the highest rate of compliance of all midpoint enhancements (75%). Compliance in cases receiving enhancements for a Category I prior record was significantly lower (65%). 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 70%, while those with the most significant midpoint enhancements, for both a violent instant offense and a Category I prior record, generated the lowest compliance rate (62%).

Because of the high rate of mitigation departures, analysis of departure reasons in midpoint enhancement cases focuses on downward departures from the guidelines. Judges sentence below the guidelines recommendation in nearly one out of every four midpoint enhancement cases. The most frequently cited reasons for departure include the acceptance of a plea agreement, the length of time since the prior violent offense, type of prior offense, judicial discretion, the defendant's cooperation with law enforcement and court procedural issues.

**Figure 12**

**Compliance by Type of Midpoint Enhancement - FY2016**

<b>Midpoint Enhancement</b>	<b>Compliance</b>	<b>Mitigation</b>	<b>Aggravation</b>	<b>Number of Cases</b>
None	83.1%	6.8%	10.1%	18,159
Category I Prior Record	64.8	32.2	2.9	788
Category II Prior Record	75.2	19.3	5.5	2,475
Instant Offense	70.4	16.3	13.3	960
Instant & Category I	62.4	30.2	7.4	149
Instant & Category II	69.9	19.6	10.5	418
Total	80.7	9.8	9.5	22,949

### Juries and the Sentencing Guidelines

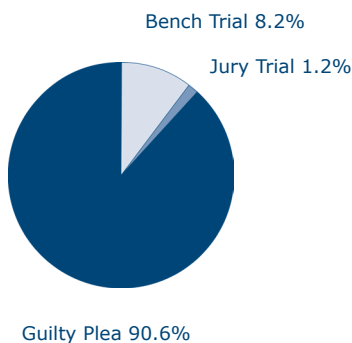
There are three methods by which Virginia’s criminal cases are adjudicated: guilty pleas, bench trials, and jury trials. Felony cases in circuit courts are overwhelmingly resolved through guilty pleas from defendants, or plea agreements between defendants and the Commonwealth. During the last fiscal year, 91% of guideline cases were sentenced following guilty pleas (Figure 13). Adjudication by a judge in a bench trial accounted for 8% of all felony guidelines cases sentenced. During FY2016, 1.2% of cases involved jury trials.

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

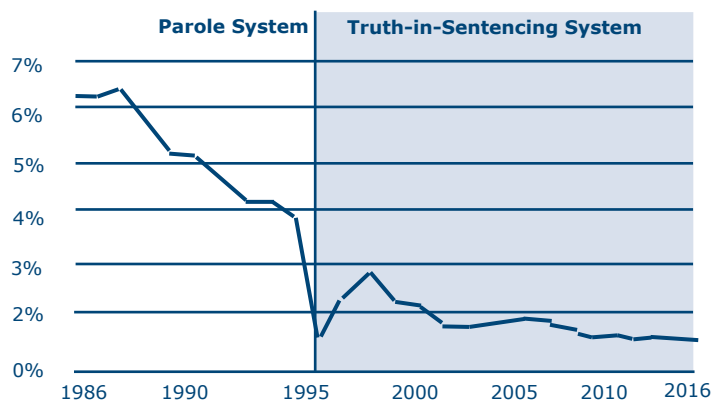
them in making a sentencing decision. During the first year of the bifurcated trial process, jury convictions dropped slightly, to fewer than 4% of all felony convictions. This was the lowest rate recorded up to that time.

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 implementation of a bifurcated jury trial system, appears to have contributed to the reduction in jury trials. Since FY2000, the percentage of jury convictions has remained less than 2%.

**Figure 13**  
Percentage of Cases Received by Method of Adjudication - FY2016



**Figure 14**  
Percent of Felony Convictions Adjudicated by Juries - FY1986-FY2016  
Parole System v. Truth-in-Sentencing (No Parole) System



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

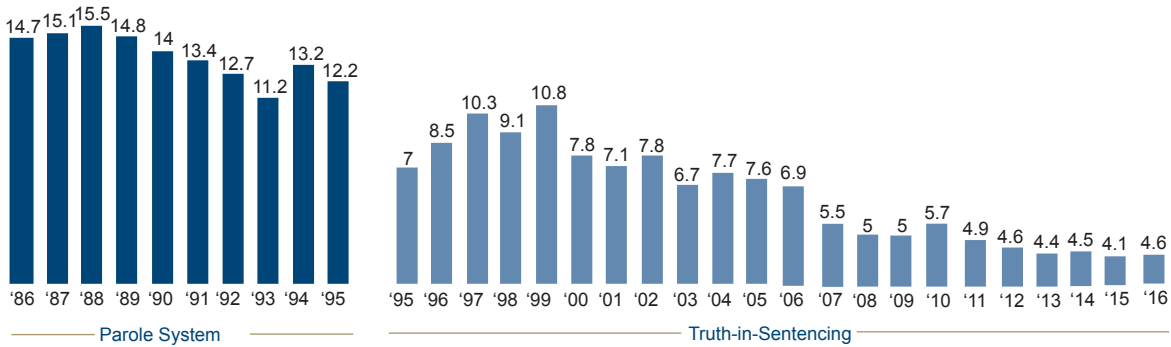
rate of jury trials for property and drug crimes (Figure 15). However, with the institution of bifurcated trials and truth-in-sentencing provisions, the percent of convictions decided by juries dropped dramatically for all crime types. Since FY2007, the rate of jury adjudications

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.

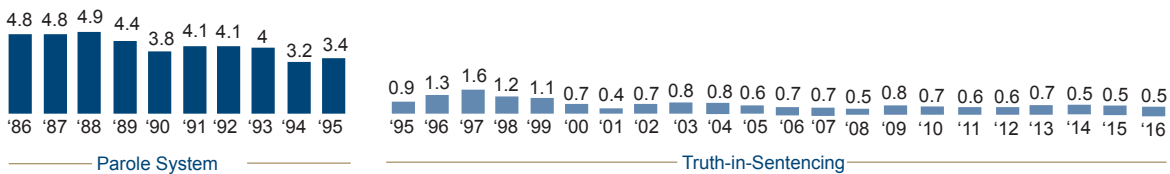
Figure 15

Percent of Felony Convictions Adjudicated by Juries - FY1986-FY2016  
Parole System v. Truth-in-Sentencing (No Parole) System

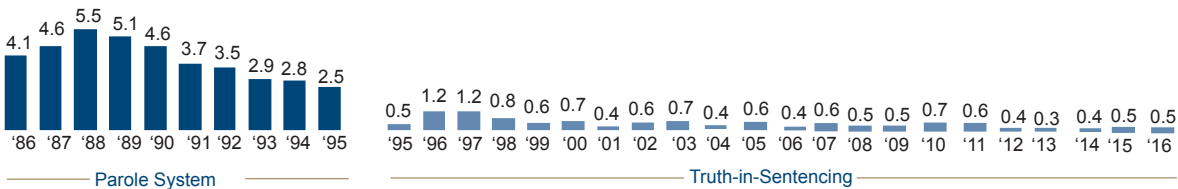
Person Crimes



Property Crimes



Drug Crimes



In FY2016, the Commission received 281 cases adjudicated by juries. While the compliance rate for cases adjudicated by a judge or resolved by a guilty plea was at 81% during the fiscal year, sentences handed down by juries concurred with the guidelines only 43% of the time (Figure 16). In fact, jury sentences were more likely to fall above the guidelines than within the recommended range. 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

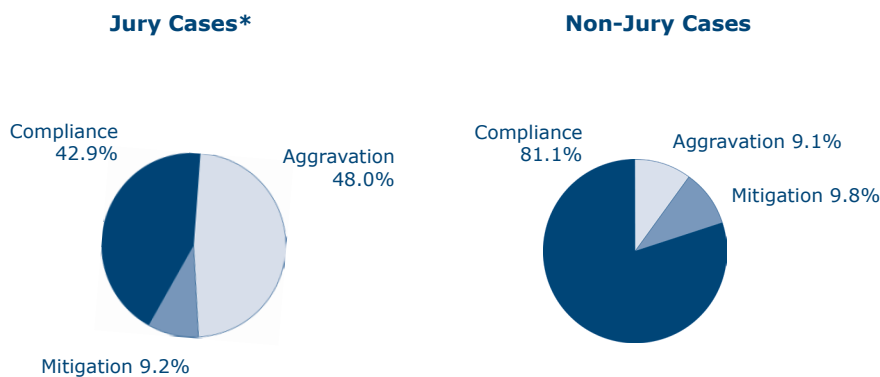
fell short of the guidelines, it did so by a median value of nine months (Figure 17). In cases where the ultimate sentence resulted in a sanction more severe than the guidelines recommendation, the sentence exceeded the guidelines maximum recommendation by a median value of 37 months.

In FY2016, six 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 judge without the intervention of a jury. Thus, juries are not permitted to recommend

sentences 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 FY2016, judges modified 16% of jury sentences.

**Figure 16**  
**Sentencing Guidelines Compliance in Jury and Non-Jury Cases - FY2016\***



**Figure 17**  
**Median Length of Durational Departures in Jury Cases - FY2016**



\* The jury case compliance rate is calculated based on the sentence recommended by the jury. Judges modified jury sentences in 42 of 264 cases or 16% (Analysis excludes 6 juvenile guilt determined by a jury and 11 fine only jury recommendations)

### 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 the use of 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.

Between 2010 and 2012, the Commission conducted an extensive study of recidivism among nonviolent felons in Virginia in order to re-evaluate the 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 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.

Over two-thirds of all guidelines received by the Commission for FY2016 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, a risk assessment instrument was not completed and submitted to the Commission for 1,297 nonviolent offense cases.

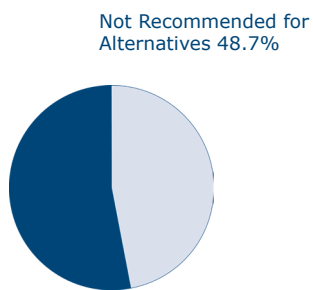
Among the eligible offenders in FY2016 for whom a risk assessment form was received (6,787 cases), 49% were recommended for an alternative sanction by the risk assessment instrument (Figure 18). Many offenders recommended for an alternative sanction through risk assessment were given some form of alternative punishment by the judge. In FY2016, 42% 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 slightly less than half of the cases in which an alternative was recommended, judges sentenced the offender to a 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 (34%), unsupervised probation or good behavior (22%), substance abuse services (20%), indefinite probation (17%), fines (13%), and time served (11%). The Department of Corrections' Diversion and Detention Center

programs were used in 8% and 5% of the cases, respectively. Other alternatives/sanctions included: programs under the Comprehensive Community Corrections Act (CCCA), first offender status under § 18.2-251, community service, electronic monitoring, day reporting, litter control, intensive supervision, drug court, and work release.

**Figure 18**

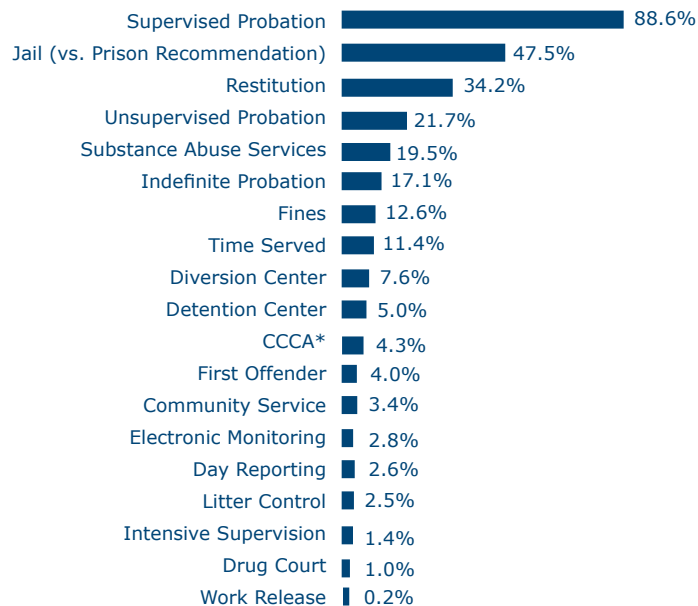
**Percentage of Eligible Nonviolent Risk Assessment Cases Recommended for Alternatives - FY2016 (6,787 cases)**



Recommended for Alternatives 51.3%

**Figure 19**

**Types of Alternative Sanctions Imposed - FY2016**



\* Any program established through the Comprehensive Community Corrections Act. These percentages do not sum to 100% because multiple sanctions may be imposed in each case.







When a nonviolent offender is recommended for an alternative sanction based on 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 87%, but a portion of this compliance reflects the use of an alternative punishment option as recommended by the risk assessment tool (Figure 20). In 28% 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 87%. In 31% 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 87%. Judges used an alternative, as recommended by the risk assessment tool, in 7% 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**

**Guidelines Compliance Rates for Nonviolent Offenders Eligible for Risk Assessment - FY2016**

	Mitigation	Compliance		Aggravation	Number of Cases	Overall Compliance
		Adjusted Range	Traditional Range			
Drug	6.7%	27.7%	59.1%	6.5%	3,395	 86.8%
Fraud	9.8%	31.4%	55.4%	3.4%	847	 86.8%
Larceny	8.5%	7.0%	79.7%	4.8%	2,545	 86.7%
Overall	7.7%	20.4%	66.4%	5.5%	6,787	 86.8%

## Compliance and Sex Offender Risk Assessment

In 1999, the Virginia General Assembly requested that the 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.

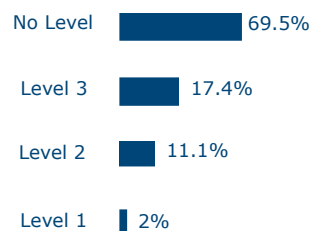
-For offenders scoring 44 or more, the upper end of the guidelines range is increased by 300%

-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 FY2016**



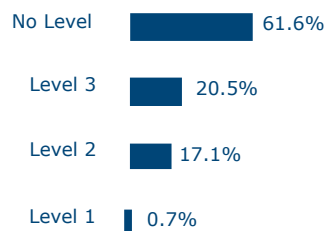
During FY2016, there were 338 offenders convicted of an offense covered by the Sexual Assault guidelines (this group excludes offenders convicted of rape, forcible sodomy, object penetration and obscenity offenses). As of July 1, 2014, solicitation of a minor and child pornography were removed from the Sexual Assault worksheet and a new Obscenity worksheet was created. In addition, the sex offender risk assessment instrument does not apply to certain guideline offenses, such as bestiality, bigamy, non-forcible sodomy, and prostitution (33 of the 338 cases in FY2016). Another seven cases were missing information and were excluded from the analysis. Of the remaining 298 sexual assault cases for which the risk assessment was applicable, the majority (70%) were not assigned a level of risk by the sex offender risk assessment instrument (Figure 21). Approximately 17% of applicable Sexual Assault guidelines cases resulted in a Level 3 risk classification, with an additional 11% assigned to Level 2. Just 2% of offenders reached the highest risk category of Level 1.

Under the sex offender risk assessment, the upper end of the guidelines range is extended by 300%, 100% or 50% for offenders assigned to Level 1, 2 or 3, respectively. Data suggest that judges utilize these extended ranges when sentencing some sex offenders. For the six sexual assault offenders reaching Level 1 risk during the past fiscal year, four of them were given sentences within the traditional guidelines range and one was sentenced within the extended guidelines range (Figure 22). Judges used the extended guidelines range in 15% of Level 2 cases and 18% 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 (52% compliance rate) and were more likely to receive a sentence that was an upward departure from the guidelines (42% aggravation rate). In FY2016, there were 146 offenders

**Figure 22**  
**Other Sexual Assault Compliance Rates By Risk Assessment Level - FY2016**

	Mitigation	Compliance		Aggravation	Number of Cases	Overall Compliance
		Traditional Range	Adjusted Range			
Level 1	16.7%	66.7%	16.7%	0.0%	6	83.3%
Level 2	11.8%	73.5%	14.7%	0.0%	34	88.2%
Level 3	3.9%	70.6%	17.6%	7.8%	51	88.2%
No Level	6.3%	52.2%	---	41.5%	207	52.2%
Overall	6.7%	58.1%	5.0%	21.6%	298	63.1%

**Figure 23**  
**Sex Offender Risk Assessment Levels for Rape Offenders - FY2016**



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 two-thirds (62%) were not assigned a risk level by the Commission’s risk assessment instrument (Figure 23). Approximately 21% of these cases resulted in a Level 3 adjustment. An additional 17% received a Level 2 adjustment. The most extreme adjustment affected less than 1% of the rape guidelines cases. The one rape offender reaching Level 1 risk group was sentenced within the traditional guidelines range (Figure 24). As shown

below, 28% of offenders with a Level 2 risk classification and 30% 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 continue to only occasionally sentence Level 1, 2 or 3 offenders above the expanded guidelines range.

**Figure 24**  
**Rape Compliance Rates By Risk Assessment Level - FY2016**

	Mitigation	Compliance		Aggravation	Number of Cases	Overall Compliance
		Traditional Range	Adjusted Range			
Level 1	0.0%	100.0%	0.0%	0.0%	1	100%
Level 2	4.0%	56.0%	28.0%	12.0%	25	84%
Level 3	13.3%	46.7%	30.0%	10.0%	30	76.7%
No Level	10.0%	66.7%	---	23.3%	90	66.7%
Overall	9.6%	61.0%	11.0%	18.5%	146	71.9%

### Sentencing Revocation Reports (SRRs)

One of the most comprehensive resources regarding revocations of community supervision in Virginia is the 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.

In FY2016, there were 12,820 alleged felony violations of probation, suspended sentences, or good behavior for which an (SRR) was submitted to the Commission (as of October 2016). 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 26 (Harrisonburg area) and Circuit 15 (Fredericksburg area). Circuit 18 (Alexandria), Circuit 6 (Sussex County area), and Circuit 17 (Arlington area) submitted the fewest SRRs during the time period (Figure 25).

**Figure 25**

#### Number and Percent of Sentencing Revocation Reports Received by Circuit - FY2016

Circuit	Circuit Name	Number	Percent
1	Chesapeake	672	5.2%
2	Virginia Beach	777	6.1%
3	Portsmouth	376	2.9%
4	Norfolk	688	5.4%
5	Suffolk Area	356	2.8%
6	Sussex Area	54	0.4%
7	Newport News	227	1.8%
8	Hampton	225	1.8%
9	Williamsburg Area	386	3.0%
10	South Boston Area	395	3.1%
11	Petersburg Area	106	0.8%
12	Chesterfield Area	444	3.5%
13	Richmond City	235	1.8%
14	Henrico	470	3.7%
15	Fredericksburg	834	6.5%
16	Charlottesville Area	344	2.7%
17	Arlington Area	82	0.6%
18	Alexandria	40	0.3%
19	Fairfax	423	3.3%
20	Loudoun	265	2.1%
21	Martinsville Area	279	2.2%
22	Danville Area	710	5.5%
23	Roanoke Area	343	2.7%
24	Lynchburg Area	384	3.0%
25	Staunton Area	485	3.8%
26	Harrisonburg Area	896	7.0%
27	Radford Area	512	4.0%
28	Bristol Area	401	3.1%
29	Buchanan Area	755	5.9%
30	Lee Area	220	1.7%
31	Prince William Area	436	3.4%
		12,820	

For FY2016, the Commission received 12,820 SRRs. Of the total, 5,942 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 6,569 cases, the offender was found in violation of other conditions not related to a new law violation. In a number of cases, the offender was not found in violation of any condition (215 cases) or the type of violation was not identified on the SRR form (94 cases).

Figure 26 compares new law violations with "technical violations" in FY2016 with previous years. Since FY2009 the number of revocations based on new law violations has exceeded the number of 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. In FY2014, the number of technical violations reviewed by the court began to increase in number. In that year, new law violations exceeded the number of technical violations by 160

cases. However, by FY2015 the number of technical violations once again exceeded the new law violations. In FY2016, technical violations exceed new law violations by over 600 cases.

**Figure 26**

**Sentencing Revocation Reports Received for Technical and New Law Violations  
FY1998 - FY2016**

<b>Fiscal Year</b>	<b>Technical Violations</b>	<b>New Law Violations</b>	<b>Number</b>
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	5,509	3,672	9,181
FY07	6,670	4,755	11,425
FY08	6,269	5,182	11,451
FY09	5,000	5,133	10,133
FY10	4,668	5,225	9,893
FY11	5,234	6,056	11,290
FY12	5,140	5,754	10,894
FY13	5,440	6,011	11,451
FY14	5,761	5,926	11,687
FY15	6,496	6,387	12,883
FY16	6,569	5,942	12,511

*Note: Excludes cases with missing data that were incomplete or had other guidelines issues. Data from past fiscal years are continuously monitored and modified to better reflect the events for that time period.*

### 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 2003 Acts of Assembly). Often, these offenders are referred to as “technical violators.” In developing 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 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 FY2006.

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 rate than previous versions of the guidelines. Figure 27 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 FY2016.

**Figure 27**

#### Probation Violations Guidelines Compliance by Year, FY2005 - FY2016

Fiscal Year	Compliance	Mitigation	Aggravation	Total
FY05	37.4%	27.3%	35.4%	3,140
FY06	48.4%	30.0%	21.6%	4,793
FY07	47.1%	31.7%	21.2%	5,929
FY08	53.9%	25.0%	21.0%	5,028
FY09	53.3%	25.8%	21.0%	4,488
FY10	52.7%	25.6%	21.7%	4,231
FY11	54.0%	24.2%	21.9%	4,770
FY12	50.2%	25.9%	23.9%	4,503
FY13	51.9%	23.3%	24.8%	4,790
FY14	53.3%	22.5%	24.3%	4,969
FY15	53.6%	24.2%	22.2%	5,707
FY16	55.9%	25.3%	18.9%	5,733

*Note: Excludes cases with missing data that were incomplete or had other guidelines issues. Data from past fiscal years are continuously monitored and modified to better reflect the events for that time period.*

For FY2016, 6,569 of the 12,820 SRRs involved technical violations only. Upon further examination, it was found that 836 could not be included in the more detailed 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. Cases in which the judge did not find the probationer in violation were also removed from the analysis.

Of the 5,733 cases examined in which offenders were found to be in violation of their probation for reasons other than a new law violation, approximately 43% were under supervision for a felony property offense (Figure 28). This represents the most serious offense for which the offender was on probation. Another 34% 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 (15%) of those found in violation during FY2016.

Examining the 5,733 technical violation cases reveals that over half (61%) 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 (55%) 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 (16%) and failing to report to the probation officer in person or by telephone when instructed (14%). In more than one-fourth of the violation cases (27%), offenders were cited for failing to follow special conditions imposed by the court, including failure to pay court costs and restitution, failure to comply with court-ordered substance abuse treatment, or failure to successfully complete alternatives such as a Detention Center or Diversion Center program. It is important to note that defendants may be, and typically are, cited for violating more than one condition of their probation (Figure 29).

**Figure 28**

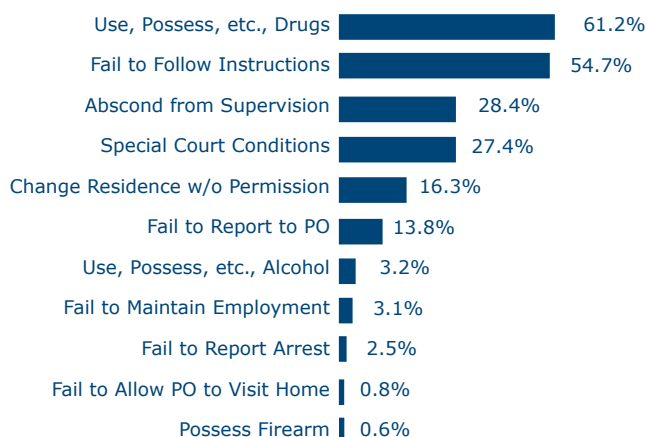
**Probation Violation Worksheets Received by Type of Most Serious Original Offense - FY2016\***

Original Offense Type	Percent Received
Property	43.4%
Drug	33.9%
Person	15.3%
Traffic	3.9%
Other	3.4%

*\*Includes FY2016 cases found to be in violation that were completed accurately on current guideline forms.*

**Figure 29**

**Violation Conditions Cited by Probation Officers, Excluding New Law Violations - FY2016\***



*\*Includes FY2016 cases found to be in violation that were completed accurately on current guideline forms.*

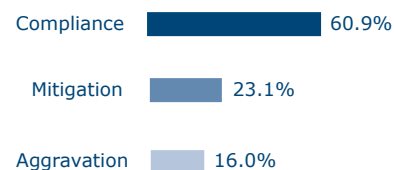


The overall compliance rate summarizes the extent to which Virginia’s judges concur with recommendations provided by the probation violation guidelines, both in type of disposition and in length of incarceration. In FY2016, the overall rate of compliance with the Probation Violation Guidelines was 56%, which is comparable to compliance rates since FY2008 (Figure 30). The aggravation rate, or the rate at which judges sentence offenders to sanctions more severe than the guidelines recommend, was 19% during FY2016. The mitigation rate, or the rate at which judges sentence offenders to sanctions considered less severe than the guidelines recommendation, was 25%.

Figure 31 illustrates judicial concurrence with the type of disposition recommended by the Probation Violation Guidelines for FY2016. 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 61% of the cases. When departing from the dispositional recommendation, judges were more likely to sentence below the guidelines recommendation than above it. Consistent with the traditional sentencing guidelines, sentences to the Detention Center and Diversion Center programs are defined as incarceration sanctions under the Probation Violation Guidelines and are counted as seven months of confinement (per changes to the program effective July 1, 2007).

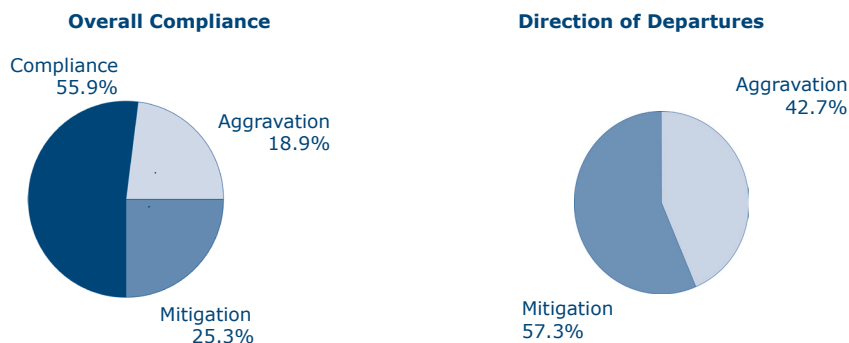
**Figure 31**

**Probation Violation Guidelines Dispositional Compliance - FY2016**



**Figure 30**

**Probation Violation Guidelines Overall Compliance and Direction of Departures - FY2016 (5,733 Cases)\***

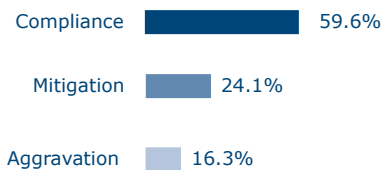


\*Includes FY2016 cases found to be in violation that were completed accurately on current guideline forms.

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 FY2016 was approximately 60% (Figure 32). For cases not in durational compliance, aggravations were less likely than mitigations.

**Figure 32**

**Probation Violation Guidelines  
Durational Compliance -  
FY2016\***



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

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 six months. For offenders receiving longer than recommended incarceration sentences, the effective sentence exceeded the guidelines range by a median value of nearly eight months. Thus, durational departures from the guidelines are typically less than one year above or below the recommended range.

Prior to July 1, 2010, completion of the Probation Violation Guidelines was not required by statute or other any provision of law. However, the 2010-2012 biennium budget passed by the General Assembly specified 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 780 of the 2016 Acts of Assembly. Similar to the traditional felony sentencing guidelines, sentencing in accordance with the recommendations of the Probation Violation Guidelines is voluntary. The approved budget language states, however, that in cases in which the Probation Violation Guidelines are required and the judge imposes a sentence greater than or less than the guidelines recommendation, the court must file with the record of the case a written explanation for the departure. The requirements pertaining to the

Probation Violation Guidelines spelled out in the latest budget parallel existing statutory provisions governing the use of sentencing guidelines for felony offenses.

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 FY2016, 44% 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 1,448 mitigation cases revealed that 66% included a departure reason. A significant increase from past years. 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), the recommendation of the attorney for the Commonwealth, judicial discretion based on issues related to the case, the offender's health, progress in rehabilitation, or the potential for rehabilitation.

Examining the 1,081 aggravation cases, the Commission found that the majority (55%) included a departure reason. When a reason was provided in upward departures, judges were most likely to cite multiple revocations in the defendant's prior record, the defendant's failure to follow instructions, absconding from supervision, the need for rehabilitation or substance abuse issues.

FY2016 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.



# Immediate Sanction Probation Pilot Program Evaluation

## 3

This chapter of the *2016 Annual Report* presents an overview of the Commission's evaluation of the Immediate Sanction Probation pilot program. A complete description of the program and detailed discussion of the Commission's findings can be found in the full evaluation report, which is available on the Commission's website at: <http://www.vcsc.virginia.gov/reports.html>.

The Hawaii Opportunity Probation with Enforcement (HOPE) program was established in 2004 with the goal of enhancing public safety and improving compliance with the rules and conditions of probation among offenders being supervised in the community. HOPE targets higher risk probationers and requires that each violation of the conditions of supervision is met with a swift and certain, but mild, sanction. A rigorous evaluation of HOPE completed in 2009 found a significant reduction in technical violations (such as drug use and missed appointments), lower recidivism rates, fewer probation revocations, and reduced use of prison beds among HOPE participants compared to similar offenders supervised on regular probation. Interest in Hawaii's swift-and-certain sanctions model spread. As of July 2015, there were swift-and-certain sanctions programs operating in at least 29 states across the country.

The 2010 General Assembly passed legislation which established the basic parameters for swift-and-certain sanctions programs in Virginia (§ 19.2-303.5). 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 charged the Virginia Criminal Sentencing Commission with selecting the pilot sites, developing guidelines and procedures for the program, administering program activities, and evaluating the results. As no additional funding was appropriated for this purpose, the pilot project was implemented within existing agency budgets and local resources. The General Assembly has since extended the sunset date to July 1, 2017, which enabled the pilot sites to continue the program until the 2017 General Assembly has reviewed the Commission's evaluation and determined whether to continue the program in the future.

Since the 2009 HOPE evaluation, a number of programs based on the HOPE model have been evaluated. Results of these studies have been mixed. A longer term evaluation of HOPE completed in 2016, as well as evaluations in Washington State, Arkansas, Michigan, and Kentucky found that the HOPE approach yielded positive results, such as lower recidivism rates and reduced use of incarceration. However, a recent large-scale evaluation of a four-site replication of the HOPE model, funded by the Bureau of Justice Assistance (BJA) and the National Institute of Justice (NIJ), did not produce similar results. According to this evaluation, there were no statistically significant differences, overall, between the HOPE and probation-as-usual groups in the likelihood of arrest, new conviction, or probation revocation. Similarly, an evaluation of a Delaware program based on the HOPE model found that the program was not successful in reducing substance use or new crimes among probationers.

The Commission designed Virginia's Immediate Sanction Probation Program based on the 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 as much fidelity as possible to the swift-and-certain sanctions model provided the best opportunity to determine if the positive results observed in HOPE and other programs would emerge in Virginia. Thus, the Immediate Sanction Program targets offenders who are at risk for recidivating or failing probation. Working with the Secretary of Public Safety and Homeland Security and the Department of Corrections, the Commission identified four pilot sites (Henrico County, the City of Lynchburg, City of Harrisonburg/Rockingham County, and Arlington County), which became operational between November 2012 and January 2014. The Commission developed policies and procedures to provide a framework for the program, including eligibility criteria and a mechanism for expedited hearings for program violations. In each site, Commission staff organized and participated in multiple meetings to facilitate and support local implementation of the program.

As of October 1, 2016, 288 probationers across the four pilot sites had been placed into the Immediate Sanction Probation Program. In order to allow for a sufficient follow-up period to track participants for recidivism, the 200 eligible participants who were placed into the program before July 1, 2015, were selected for the evaluation cohort. The majority (76%) were at medium to high risk of recidivating and all had a history of technical violations prior to program placement. Low risk probationers were only placed in the program after committing at least three violations while on regular supervision, indicating a higher risk for revocation. More than 80% of participants violated at least once after program placement, committing an average of 2.7 violations each. The most common violation during program participation was drug use. As of October 1, 2016, 39% of the evaluation cohort had completed the program. Nearly all of the program completers had been violation-free for 12 months, the measure established by the Commission for "successful completion." Judges allowed seven participants who had not reached the 12-month violation-free mark to complete the program, due to individual circumstances of these participants.

The Commission used standards established in the 2016 evaluation of the BJA/NIJ-funded HOPE replication project to measure the swiftness and certainty of sanctions imposed during Virginia's pilot program. For swiftness, pilot sites were assessed based on the percentage of violations heard by the court within three days. Approximately half (47%) of program violations in Virginia's pilot sites were heard by the court within the three-day window. This is below the minimum of 60% established by the evaluators of the HOPE replication project. Regarding the certainty of sanctions, Immediate Sanction judges responded to violations by imposing a jail sanction for 100% of the violations brought to court, per the program's design. Judges utilized jail sanctions as envisioned by the Commission, with more than 94% of sanctions falling within the recommended range. Nearly 93% of the jail sanctions imposed were at or below the maximum sanction of 19 days used by evaluators of the HOPE replication project.

The Commission tracked the evaluation cohort for one year following placement into the Immediate Sanction Program. At the one-year mark, 9.7% of the participants in the evaluation cohort had been arrested for a new felony. Only 6.2% had a new felony conviction based on an offense committed during the follow-up period. Participants whose primary drug of use was opiates (including heroin) recidivated at a higher rate than other participants.

For the evaluation, the Commission developed a quasi-experimental design, often used in evaluations of criminal justice programs. Quasi-experimental designs identify a comparison group that is as similar as possible to the program or treatment group in terms of baseline (pre-intervention) characteristics. To reduce the risk of bias (i.e., the possibility that participants are systematically different from nonparticipants), the Commission used commonly accepted statistical techniques to create a valid comparison group. Constructing the comparison group for this evaluation was a two-stage process. In the first stage, the Commission identified jurisdictions that were similar to the pilot sites across a number of community-level characteristics, such as crime rates, demographics, and judicial practices in sanctioning technical probation violators. In the second stage, the Commission developed a pool of potential comparison offenders from within the selected comparison jurisdictions. Using tightly controlled matching procedures, the final sample included 63 participants in the evaluation cohort matched to 63 comparison probationers, for a total of 126 subjects. Participants for whom no matched comparison probationer could be found were not included in the subsequent analyses.

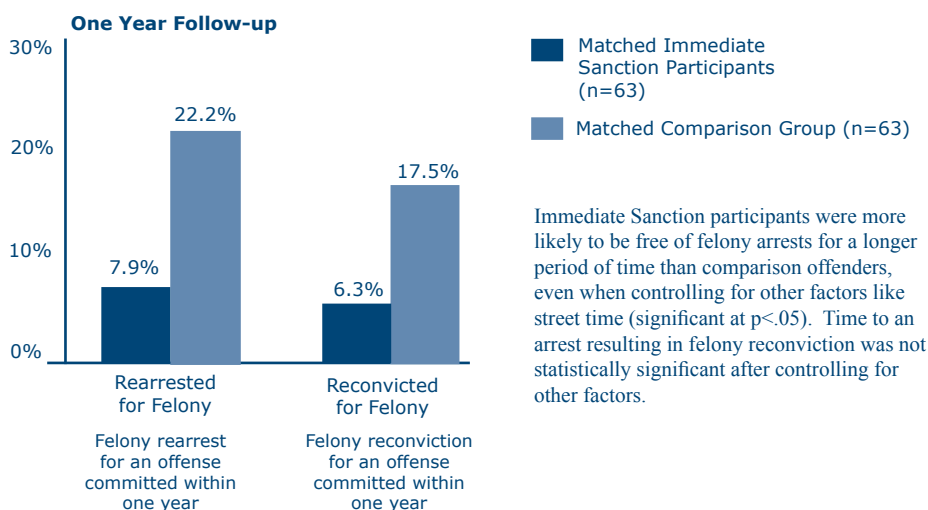
At one year from program placement or, in the case of the comparison group, one year from the date the probationer would have become eligible for placement, 7.9% of the 63 participants in the matched sample had been rearrested for a felony offense versus 22.2% of the comparison group. Thus, Immediate Sanction participants were less likely than comparison probationers to be rearrested for a felony during the one-year follow-up. Immediate Sanction participants were also less likely than comparison probationers to be reconvicted of a felony following the arrest (6.3% for participants versus 17.5% for the comparison group). The Commission conducted survival analysis, which measures the time until a recidivist event occurs, to determine if these differences were statistically significant. The results of the survival analysis are mixed. This analysis revealed that Immediate Sanction participants were less likely to be rearrested for a felony over time than those in the comparison group and were free of felony arrests for a longer period of time. When controlling for relevant factors, including street time (i.e., the time that the individual was not in jail serving sanctions, etc., and, thus, was in the community with the opportunity to recidivate), this finding remained statistically significant ( $p < .05$ ). However, when examining the time until rearrest for an offense that resulted in a felony conviction, the differences between participants and the comparison group were not statistically significant after controlling for other factors.

Due to the small sample size and relatively low occurrence of recidivism, the results of the Commission's analyses are not generalizable to the population.

The Commission also compared probation revocation rates. Immediate Sanction participants in the matched evaluation cohort had their probation revoked at a higher rate than comparison offenders (30.2% compared to 23.8%). Not only were participants more likely to be revoked, sentences imposed for revocations were more severe for program participants. Immediate

Sanction participants in the matched evaluation cohort were much more likely to receive a prison term when revoked than offenders in the comparison group. The stark differences in the outcomes for revocations had a considerable impact on the cost analysis, which revealed that Immediate Sanction Probation in Virginia costs more than traditional probation. This finding suggests that differences in probation and judicial practices or differences in the amenability of certain offender populations may influence the outcomes and costs of implementing programs based on the HOPE model (Lattimore et al., 2016).

**Figure 33**  
**Recidivism Rates for the Immediate Sanction Probation**  
**Evaluation Cohort and Matched Comparison Group**





Implementing and maintaining a new program that diverges substantially from existing practice is very challenging. Over the course of the pilot program, the Commission noted a number of successes but also some difficulties that were not entirely overcome. Successes are listed below.

- Ensuring that violations are addressed immediately and cases are handled swiftly requires extensive collaboration and coordination among many criminal justice agencies and offices. The majority of stakeholders in the pilot sites demonstrated a commitment to working with each other, and the Commission, to give the pilot program the best opportunity to succeed despite the lack of funding.
- Local stakeholders executed an entirely new structure for handling violations in an expedited fashion, where such a process had not existed previously.

- Virginia’s Immediate Sanction Probation pilot program achieved a number of the key targets of the HOPE model:

- The majority of the individuals placed in the program had scored medium to high on the COMPAS recidivism risk scale. Low risk probationers placed in the program had committed numerous violations while on regular supervision, placing them at higher risk for revocation.
- For participants who violated program rules, 100% of the violations resulted in a jail sanction and these sanctions were served immediately following the hearing. Nearly all were within the range recommended by the Commission and were at or below the maximum sanction established in the evaluation of the BJA/NIJ-funded HOPE replication project.
- The vast majority of participants who completed the program were released from any remaining supervised probation obligation. Release from supervision for successful completers serves as an incentive for participants in the program.

The successes of the pilot sites should not be overlooked. They are a testament to the dedication and extensive collaboration of the more than 100 stakeholders in the local pilot sites. A number of challenges remained, however, and some key targets were not reached. These are described below.

- The number of program candidates referred by probation staff was lower than expected. This may be due, in part, to the eligibility criteria, which excluded those with obligations to courts outside of the pilot jurisdictions and, by statute, those on probation for an offense defined as violent in § 17.1-805. Also, the Commission had no ability to ensure that all eligible probationers in the pilot sites were referred to the program. The lower-than-expected number of referrals posed a challenge for the evaluation.
- Other evaluators have found that strong local leadership is very important to the successful implementation and continued fidelity to the HOPE model. While the Commission met with local stakeholders regularly from program implementation through June 2015 to provide guidance and assistance in addressing obstacles, the pilot program likely would have benefitted from the leadership of a highly-involved local stakeholder serving as a champion in each of the pilot sites.

While not possible given the Commission's budget constraints, having an on-site project coordinator in each location, such as that provided to sites participating in the BJA/NIJ-funded HOPE replication, would have been beneficial for program fidelity and data collection.

- Arguably the most significant difference between Virginia's Immediate Sanction Probation Program and Hawaii's HOPE program (and the recent four-site replication of HOPE) has been the lack of resources for substance abuse services, particularly residential/inpatient options. Moreover, the availability of treatment resources varies considerably across jurisdictions in Virginia and, in at least one pilot site, very few treatment services are available for probationers under supervision in the community.

- Limited staff resources presented additional challenges at times. The intense supervision of new participants, in conjunction with immediate arrests, hearings, and jail time for violations, meant that existing resources were stretched thin. Relatively high turnover, particularly in the probation offices, at times made it difficult to maintain an experienced corps of program personnel.

- The Commission observed some inconsistencies across the pilot sites in the supervision practices of Immediate Sanction probation officers, for example, the extent to which the results of handheld urinalyses were sent to the centralized laboratory for confirmation prior to effecting an arrest.

- Similar to the findings of the HOPE replication project, Virginia's pilot sites had difficulty bringing participants to a violation hearing within three days, in large part because of participants who failed to show up at scheduled appointments or who absconded. Although the pilot sites were successful in implementing a much faster process to bring a violation before the court, none of the sites achieved the minimum 60% target for the percentage of violations handled within three days recommended by the evaluators of the HOPE replication project. Examining the data further revealed that while roughly half (47.3%) of violation hearings occurred within three days of the violation, the vast majority (92.5%) of hearings were held within three business days following arrest. This ranged from 84.7% of violations in Lynchburg to 100% in Henrico. Whether the stakeholders had selected set days and times to conduct these hearings (e.g., every Monday, Wednesday, and Friday at 1:00 p.m.) as well as judicial caseload and other factors may have played a role in this variation across pilot sites.

Maintaining fidelity to the model over the long term is particularly challenging for a program of this kind. Given that the Immediate Sanction Program is a significant departure from current practice and the need for buy-in from a large number of stakeholders, strict adherence to program protocols may be difficult to maintain over time. Current policies of the Department of Corrections allow for discretion of the probation officer in the supervision of his or her caseload and, in some respects, encourage Virginia's 43 probation districts to develop localized practices. A program like HOPE, which requires strict adherence to uniform protocols and removes discretion from the officer in the handling of violations, may be difficult to implement and sustain in the context of traditional probation in Virginia.

While evaluations of Hawaii's HOPE program and others have found lower recidivism rates and reduced use of incarceration for probationers, the Commission's analysis of Virginia's pilot program yielded mixed results. The analysis suggested that Immediate Sanction participants were more likely to be free of felony arrests for a longer period of time than comparison offenders ( $p < .05$ ). While Immediate Sanction participants were also less likely than comparison probationers to be reconvicted for a new felony, the relationship between program participation and subsequent felony reconviction was not statistically significant when controlling for other factors. Moreover, participants in the Immediate Sanction Program were more likely to have their probation revoked than comparison probationers and, when revoked, were much more likely to receive a prison term than those in the comparison group. Cost analysis

indicated that Immediate Sanction Probation costs more than traditional probation in Virginia. The Commission's evaluation is limited by the small sample size and the relatively low occurrence of recidivism and, therefore, the results are not generalizable to the population. Data limitations, most notably for individuals on traditional probation, meant that certain aspects of the program, such as utilization of treatment services, could not be included in the recidivism or cost analysis.

At the close of 2016, a growing number of swift-and-certain sanctions programs have been evaluated and, while this has greatly contributed to the body of research on this model of community supervision, mixed results have emerged. Several studies found positive program effects, while at least two recent studies (including the large-scale HOPE replication project) did not. Additional research is needed to determine why some swift-and-certain sanctions programs are effective at lowering recidivism and reducing the use of incarceration and others are not and, in particular, for which offender populations this approach is most effective.

The full evaluation report is available on the Commission's website at: <http://www.vsc.virginia.gov/reports.html>

### Reference

Lattimore, P., Dawes, D., Tueller, S., MacKenzie, D., Zajac, G., & Arsenault, E. (2016). *Summary Findings from the National Evaluation of the Honest Opportunity Probation with Enforcement Demonstration Field Experiment*. Retrieved from <http://justicecenter.psu.edu/research/projects/files/hope20DFE%20Findings%20Summary%202016%2009%2007.pdf>

# Review Of Sentencing Guidelines For Heroin Offenses

## 4

### Introduction

Heroin is an opioid drug that is synthesized from morphine, a naturally occurring substance extracted from the seed pod of the Asian opium poppy plant. Heroin can be injected, inhaled by snorting or sniffing, or smoked. All three routes of administration deliver the drug to the brain very rapidly, which contributes to its health risks and to its high potential for addiction (National Institute on Drug Abuse, 2014). Heroin is about twice as potent, by weight, as morphine and converts to morphine upon injection into the bloodstream. According to the National Institute on Drug Abuse, the long-term effects of opioid addiction on the brain include tolerance, in which more of the drug is needed to achieve the same intensity of effect. Another result is dependence, resulting in the need to continue use of the drug to avoid withdrawal symptoms. Heroin overdoses can involve a suppression of breathing, which can affect the amount of oxygen that reaches the brain, a condition called hypoxia.

Because of the high potential for abuse and the lack of accepted medical uses in the U.S., heroin is listed as a Schedule I drug under the Controlled Substances Act, Title II, of the Comprehensive Drug Abuse Prevention and Control Act of 1970. In addition to the effects of the drug itself, street heroin often contains toxic contaminants or additives that can clog blood vessels leading to the lungs, liver, kidneys, or brain, causing permanent damage to vital organs (National Institute on Drug Abuse, 2014).

Amid concern over heroin use and heroin-related crime in the Commonwealth, the 2016 General Assembly adopted legislation directing the Virginia Criminal Sentencing Commission to study specific offenses involving heroin and make recommendations for adjustments to the sentencing guidelines. Specifically, House Bill 1059 directed the Commission to examine sentencing patterns and practices in cases of manufacturing, selling, giving, distributing, or possessing with intent to sell, give, or distribute heroin in the Commonwealth and, based on the analysis of such cases, recommend adjustments to the current sentencing guidelines applicable to those crimes.

As background, the Commission reviewed recent trends related the use of heroin in Virginia, arrests by law enforcement agencies, and forensic analysis of heroin seized during arrests. To respond to the legislative mandate, the Commission identified convictions for manufacturing, selling, etc., heroin and conducted a thorough analysis of sentencing patterns and practices in those cases. In particular, the Commission examined the relationship between the quantity of heroin and sentencing outcomes. The results of the Commission's analysis are presented in the pages that follow.

2016 SESSION  
CHAPTER 398

Approved March 11, 2016

[H 1059]

**Be it enacted by the General Assembly of Virginia:**

1. § 1. *The Virginia Criminal Sentencing Commission (the Commission) under its powers and duties shall evaluate judge-sentencing and jury-sentencing patterns and practices in cases of manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell, give, or distribute heroin across the Commonwealth and recommend adjustments in the sentencing guidelines previously adopted by the Commission.*

## Virginia's Sentencing Guidelines for Drug Offenses

In 1994, the General Assembly abolished parole, established truth-in-sentencing in Virginia, and targeted violent offenders for longer terms of incarceration than previously served under the parole system. Virginia's truth-in-sentencing system requires felons to serve at least 85% of the prison or jail sentence ordered by the court. These laws became effective for felony offenses committed on or after January 1, 1995.

The General Assembly also created the Virginia Criminal Sentencing Commission and, in § 17.1-803, charged the Commission with developing, maintaining and modifying, as may be deemed necessary, discretionary sentencing guidelines for use in all felony cases that take into account historical data, when available, concerning time actually served for various felony offenses committed prior to January 1, 1995, and sentences imposed for various felony offenses committed on or after January 1, 1995, and such other factors as may be deemed relevant to sentencing.

Pursuant to § 17.1-805, the Commission first developed sentencing guidelines worksheets reflecting historical practice between 1988 and 1992. A series of enhancements, mandated by § 17.1-805, were then layered the historically-based guidelines. These enhancements were formulated to target violent offenders for periods of incarceration that are longer than terms served under the parole system. Offenders with a current or prior conviction for a

violent felony are subject to enhanced sentence recommendations under the guidelines. More specifically, sentence recommendations for these offenders can be up to six times longer than the time served by offenders fitting the same profile before 1995. Guidelines recommendations for nonviolent offenders (individuals who have never been convicted of a violent crime) are designed such that time served is approximately the same, on average, as that served by nonviolent offenders prior to the abolition of parole in Virginia.

Virginia's sentencing guidelines automatically recommend a prison term for all defendants for whom the most serious offense at sentencing is a conviction for manufacturing, selling, giving, distributing, possessing with intent to sell, give or distribute a Schedule I/II drug (§§ 18.2-248(C) or 18.2-255(A)). For the purposes of sentencing guidelines, the primary, or most serious, offense is identified based on the offense that carries the highest statutory maximum penalty in the *Code of Virginia*.

For offenders recommended for a prison term, Section C of the guidelines is completed to determine the length of the sentence that will be recommended. Section C of the Schedule I/II drug guidelines is shown in Figure 34.

An offender convicted of one count of selling, etc., a Schedule I or II drug under § 18.2-248(C) who does not have a violent prior record receives a score of 12 on the Primary Offense factor on the Section C worksheet. Scores on this worksheet are equivalent to months of imprisonment. An offender with a prior conviction for a violent felony that carries a statutory maximum penalty of less than 40 years is classified as a Category II offender. For an individual with a Category II prior record, the score for this factor is increased to 36. Category I offenders, individuals with a prior conviction for a violent felony carrying a statutory maximum penalty of 40 years or more, receive a score of 60 for this factor. Offenders with prior drug convictions under § 18.2-248(C) start with higher primary offense scores. The remaining factors on the Section C worksheet (the number of counts resulting in conviction, the quantity of cocaine seized, additional offenses, possession of a firearm, and multiple factors relating to prior record) are scored and those points are added to the Primary Offense score to determine the final sentence recommendation. Prior record factors account for the seriousness of the offender's prior adult convictions and juvenile adjudications, as well as the number of prior felony convictions and juvenile adjudications for drug, person, and property offenses.

**Figure 34**  
Section C of the Schedule I/II Drug Sentencing Guidelines

## Drug/Schedule I/II Section C

Offender Name: \_\_\_\_\_

**Primary Offense** Prior Record Classification  
 Category I    Category II    Other  
(scores for attempted/conspired offenses are in parentheses)

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

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

**B. Sell, Distribute, Possession with intent, etc., Schedule I or II drug**  
Completed (Attempted or Conspired):

1 count	60 (48)	36 (24)	12 (12)
2 counts	80 (64)	48 (32)	16 (16)
3 counts	95 (76)	57 (38)	19 (19)
4 counts	130 (104)	78 (52)	26 (26)

**C. Sell, etc., Schedule I or II drug, second offense**  
Completed (Attempted or Conspired):

1 count	110 (88)	66 (44)	22 (22)
2 counts	310 (248)	186 (124)	62 (62)

**D. Sell, etc., Schedule I or II drug - third or subsequent offense**  
Attempted, conspired or completed:

1 count	175	105	35
2 counts	390	234	78

**E. Manufacture Methamphetamine, first or second offense, § 18.2-248(C1)**  
Attempted, conspired or completed:

1 count	145	87	29
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**F. Sell, etc., Schedule I or II drug to minor**  
Attempted, conspired or completed:

1 count	60	30	15
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**G. Accommodation-Sell, etc., Schedule I or II drug**  
Attempted, conspired or completed:

1 count	32	16	8
2 counts	40	20	10

**H. Sell, etc., imitation Schedule I or II drug**  
Attempted, conspired or completed:

1 count	12	6	3
2 counts	20	10	5

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

Maximum Penalty (years)	5, 10	1	40 or more	5
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**Additional Offenses** Assign points to each additional offense (including counts) and total the points

**Primary offense D: Sell, etc., Sch. I/II 3rd or Subsequent**

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

**Primary offense: All other offenses**

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

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

2 Year Mandatory Minimum	13	5 Year Mandatory Minimum	32
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**Firearm in Possession at Time of Offense** If YES, add 5

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

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

**Prior Felony Drug Convictions/Adjudications**

**Primary offense D: Sell, etc., Sch. I/II 3rd or Subsequent**

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

**Primary offense: All other offenses**

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

**Prior Felony Convictions/Adjudications Against Person**

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

**Prior Felony Property Convictions/Adjudications**

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

**Prior Juvenile Record** If YES, add 1

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

0	0
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**Type of Additional Offense** (Score if primary offense is E: Manufacture Methamphetamine § 18.2-248 (C1))  
Additional offense of child present during manufacture of methamphetamine If YES, add 14

0	
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**Sale/Quantity of Cocaine** (Score if primary offense is B, C, D, or F: § 18.2-248(C) or § 18.2-255(A))

Quantity of Cocaine:	Less than 28.35 grams	0	28.35 g to less than 226.8 grams	36	226.8 grams or more	60
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**Total Score**

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

Drug Schedule I or II/Section C

Most felony offenses involving a Schedule I or II drug are covered by Virginia's sentencing guidelines. With the exception of certain offenses involving cocaine, the quantity of the drug seized does not affect the guidelines recommendation.

It is important to note that Virginia's General Assembly has established numerous mandatory minimum penalties for offenses involving Schedule I or II drugs, including heroin. These laws take precedence over the discretionary guidelines system when the guidelines recommendation is lower than the mandatory minimum. Consequently, in cases where mandatory minimum penalties apply, the guidelines recommendations are adjusted to coincide with legislative mandates.

### Previous Commission Studies Related to Drug Type and Quantity

In 1996, the Commission undertook a study of cases involving the sale or distribution of cocaine. The purpose was to examine the possible relationship between the quantity of cocaine seized and sentencing outcomes. The Commission had received feedback from judges, prosecutors and other criminal justice professionals who suggested that drug sales involving larger quantities should receive longer prison recommendations and that the guidelines should be modified to address this. Therefore, the Commission identified and analyzed 2,351 sentencing events in fiscal year (FY) 1995 in which manufacturing, selling, giving, distributing, or possessing with intent to sell, give or distribute a Schedule I or II drug under § 18.2-248(C) was the most serious offense. At that time, cocaine represented approximately 90% of all Schedule I or II drug convictions in Virginia's circuit courts.

As a result of the 1996 study, the Commission recommended an adjustment to the sentencing guidelines for Schedule I/II drug offenses in order to account for the quantity of cocaine involved in the case. Specifically, the Commission recommended adding a new factor to Section C of the Schedule I/II Drug guidelines. This factor increases the guidelines recommendation by three years in cases involving 28.35 grams (one ounce) to less than 226.8 grams of cocaine and by five years in cases involving 226.8 grams (½ pound) or more of cocaine. The 1997 General Assembly accepted the Commission's recommendation and the new factor was added to the guidelines beginning July 1, 1997. The factor was subsequently expanded to include cases in which the sale or distribution of cocaine to minors under § 18.2-255(A) was the primary offense in the case.



The 2001 General Assembly directed the Commission to examine the sentencing guidelines applicable to methamphetamine offenses (Chapters 352 and 375 of the 2001 Acts of Assembly). The Commission was directed to examine the quantity of methamphetamine seized in manufacture and distribution related cases and its impact on sentencing outcomes in Virginia's circuit courts. The Commission found that although the number of cases involving methamphetamine in Virginia had increased since the early 1990s, these cases remained a small percentage of drug cases in state and federal courts in the Commonwealth. The Commission's analysis showed that sentencing in circuit courts was primarily driven by an offender's prior criminal record rather than the quantity of methamphetamine involved. As part of its investigation, the Commission thoroughly examined the sentencing guidelines, including the factors that account for the offender's criminal record and the built-in enhancements that increase the sentence recommendation for offenders with prior convictions for violent offenses. Analysis did not reveal statistical evidence that judges consistently base sentences on the amount of methamphetamine involved in a case. Therefore, the Commission concluded that Virginia's historically-based sentencing guidelines should not be adjusted to include methamphetamine quantity at that time (Virginia Criminal Sentencing Commission, 2001).

In 2004, the Commission revisited the methamphetamine issue and repeated the study using the most recent data available. The Commission observed a continuing increase in the number of methamphetamine cases in the Commonwealth but the proportion of these cases, relative to other Schedule I or II drugs, remained low. The Commission found that the nature of an offender's prior record and the number of charges resulting in a conviction were the most important factors in determining the sentencing outcome. The amount of methamphetamine seized was still not a significant factor in sentencing decisions in Virginia's circuit courts. Because the sentencing guidelines already accounted for the number of counts and the offender's prior record, the Commission did not make any recommendations for revisions to the Schedule I/II Drug sentencing guidelines in 2004 (Virginia Criminal Sentencing Commission, 2004).

The Commission conducted a third detailed study of methamphetamine crime in 2007. The Commission's examination of sentencing patterns in Virginia's circuit courts once again revealed that, for individuals convicted of manufacturing, selling, giving, distributing or possessing with the intent to sell, give or distribute methamphetamine, the amount of the drug did not play a significant role in the sentencing decision. As in prior studies, the Commission did not observe a consistent relationship between larger quantities of methamphetamine and sentence length. Rigorous testing, using the same methodology and statistical techniques employed during the development of Virginia's historically-based guidelines, yielded no empirical evidence that circuit court judges based sentences on the amount of methamphetamine seized in a case. Sanctioning in methamphetamine cases was largely driven by the nature of the offender's criminal history, whether the offender was in possession of a firearm at the time of the offense, and the number of charges resulting in a conviction. Virginia's sentencing guidelines specifically account for each of those factors. Thus, the Commission did not recommend revisions to the Schedule I/II Drug guidelines to account for quantity of methamphetamine (Virginia Criminal Sentencing Commission, 2007).

### Recent Trends in Virginia

Since 2010, Virginia has recorded significant increases in morbidity and mortality associated with heroin. Data from the Virginia Department of Health (VDH) indicates that the number of hospital discharges (nonfatal overdoses) involving heroin grew from 72 in 2011 to an estimated 304 in 2015, an increase of more than 300% during the time period (Figure 35). Fatal overdoses, which since 2010 have outnumbered nonfatal overdoses, grew steadily from 101 in 2011 to 239 in 2014 and then jumped to 342 in 2015. This represents an increase of 239% over the five-year period. According to the Office of the Chief Medical Examiner, heroin was associated with more than one-third of the fatal overdoses in the Commonwealth during 2015 (Virginia Department of Health, 2016). Preliminary VDH data indicate that the number of fatal overdoses involving heroin reported during the first quarter of 2016 exceeds the number reported during the same period in 2015.

Treatment data indicate that the rate of admissions to substance abuse treatment programs has increased for heroin vis-à-vis other drugs. Based on data from the U.S. Department of Health and Human Services’ Substance Abuse and Mental Health Services Administration (SAMHSA), the rate of admission (per 100,000 population) to treatment for individuals whose primary drug of abuse is heroin increased from 29 in 2011 to 39 in 2014 (Figure 36).

During the same time period, the rate of treatment admissions for marijuana, cocaine, methamphetamine/ amphetamines, and non-heroin opiates decreased or remained level. In Virginia, the rate of substance abuse treatment admissions associated with heroin has

surpassed the rate for cocaine admissions and, in 2014, admissions for non-heroin opiates (which includes prescription drugs such as hydrocodone and oxycodone).

**Figure 35**

**Hospital Discharges and Fatal Overdoses Associated with Heroin  
CY2007 – CY2015**



*Note: Hospital discharges for 2015 are estimated based on actual data available through September 2015 and a projection for October through December 2015. Sources: Office of the Chief Medical Examiner. (2016, July). Fatal Drug Overdose Quarterly Report. Department of Criminal Justice Services analysis of hospitalization data provided by Virginia Department of Health’s Office of Family and Health Services*

**Figure 36**

**Rate of Substance Abuse Treatment Admissions in Virginia  
(Admissions per 100,000 Population)  
By Primary Drug Type  
CY2007 - CY2014**

Year	Marijuana	Heroin	Cocaine	Methamphetamine/ Amphetamine	Non-Heroin Opiates
2007	88	32	79	6	25
2008	94	37	73	4	29
2009	94	36	52	4	35
2010	85	29	40	4	41
2011	92	29	38	5	43
2012	91	34	33	6	43
2013	79	34	27	6	38
2014	76	39	25	6	37

*Note: Rate of admissions is based on admissions to treatment for persons aged 12 and older per 100,000 population aged 12 and older. Source: Substance Abuse and Mental Health Services Administration. (2016). Treatment Episode Data Set (TEDS), 2004-2014.*

Examining Virginia arrest data also indicates significant shifts in the prevalence of certain drugs in the Commonwealth. According to Virginia State Police data analyzed by the Department of Criminal Justice Services (DCJS), overall, the number of adults arrested for drug offenses grew from the early 2000s through 2007. In 2008 and 2009, Virginia experienced a decline in the number of adult drug arrests. These decreases were largely attributable to substantial reductions in persons arrested for cocaine offenses. Federal data suggest reduced availability of cocaine in the United States during that time. Law enforcement efforts (e.g., seizures, crop eradication, and border security) and the drug war in Mexico appear to have impacted the ability of traffickers to deliver drugs to the U.S. During 2010 through 2013, however, the rate of decline in cocaine arrests slowed and the total number of drug arrests rose once again. Much of the increase during this period was associated with larger numbers of marijuana arrests (Figure 37 upper panel). While cocaine arrests continued to fall, arrests for other Schedule I or II drugs increased between 2010 and 2013 (Figure 37 lower panel). Since 2013, arrests have decreased for many drug types, while arrests associated with heroin continue to rise. In 2015, arrests dropped for all drugs except heroin and methamphetamine/other stimulants.

**Figure 37****Number of Adult Arrests for Drug Crimes in Virginia  
CY2006 - CY2015****Total Drug Arrests: Marijuana versus All Other Drugs**

<b>Year</b>	<b>Other than Marijuana</b>	<b>Marijuana</b>
2006	15,431	16,569
2007	15,590	19,606
2008	13,018	19,911
2009	12,571	19,739
2010	12,819	21,349
2011	13,861	22,547
2012	14,257	23,663
2013	15,009	24,776
2014	14,423	22,948
2015	14,180	20,881

**Arrests for Cocaine, Heroin, Other Narcotics and Methamphetamine/Other Stimulants**

<b>Year</b>	<b>Cocaine</b>	<b>Other Narcotics</b>	<b>Heroin</b>	<b>Methamphetamine and Other Stimulants</b>
2006	8,894	804	678	652
2007	8,298	1,185	692	485
2008	6,223	1,238	771	393
2009	4,980	1,468	1,012	534
2010	4,690	1,868	941	561
2011	4,372	2,053	926	755
2012	4,239	2,002	1,141	844
2013	3,840	2,202	1,778	977
2014	3,356	2,001	1,912	963
2015	3,054	1,807	2,210	1,246

*Note: Other Narcotics include opiates other than heroin, along with morphine and other drugs that dull the senses and may become addictive after prolonged use.*

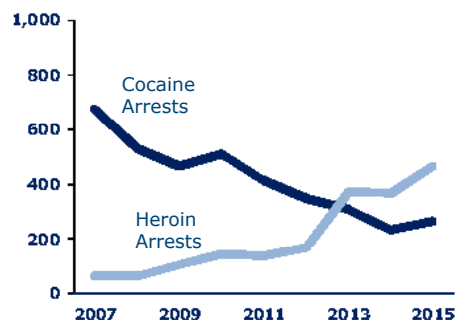
*Source: Virginia State Police Incident-Based Crime Reporting Repository System as analyzed by the Virginia Department of Criminal Justice Services Research Center (July 2016)*

While cocaine arrests continue to outnumber heroin arrests statewide, the gap has narrowed. Moreover, in one area of the state, cocaine is no longer the predominant Schedule I or II drug. Examining arrest data by operational divisions of the Virginia State Police reveals that heroin arrests now outnumber cocaine arrests in State Police Division 2, which includes the upper-Shenandoah Valley, Fauquier and Rappahannock Counties, and the Fredericksburg area (Figure 38).

Information provided by Virginia’s Department of Forensic Science (DFS) also indicates an increase in criminal activity associated with heroin. The DFS provides forensic laboratory services to state and local law enforcement agencies, medical examiners, Commonwealth’s

Attorneys, fire departments, and state agencies in the investigation of criminal matters. DFS maintains detailed data regarding substances submitted to the agency for analysis, including the type of drug identified in each sample and other features such as purity and quantity. Statewide, the number of heroin submissions to DFS has more than tripled during the last decade (Figure 39). The increase in the rate of submissions (per 100,000 population) is particularly striking in State Police Divisions 1 (east-central Virginia, including the City of Richmond) and 2 (upper-Shenandoah Valley, Fauquier and Rappahannock Counties, and the Fredericksburg area).

**Figure 38**  
**Cocaine and Heroin Arrests in Virginia State Police Division 2**  
**CY2007 - CY2015**



Source: Virginia State Police Incident-Based Crime Reporting Repository System as analyzed by the Virginia Department of Criminal Justice Services Research Center (July 2016)

**Virginia State Police Divisions**



**Division 1**

- Amelia County
- Caroline County
- Charles City County
- Chesterfield County
- Dinwiddie County
- Essex County
- Goochland County
- Hanover County
- Henrico County
- King and Queen County
- King George County
- King Williams County
- Lancaster County
- Louisa County
- New Kent County
- Northumberland County
- Nottoway County
- Powhatan County
- Prince George County
- Richmond County
- Westmoreland County
- Colonial Heights City
- Hopewell City
- Petersburg City
- Richmond City

**Division 2**

- Clarke County
- Culpeper County
- Fauquier County
- Frederick County
- Madison County
- Orange County
- Page County
- Rappahannock County
- Rockingham County
- Shenandoah County
- Spotsylvania County
- Stafford County
- Warren County
- Fredericksburg City
- Harrisonburg City
- Winchester City

**Division 3**

- Albemarle County
- Amherst County
- Appomattox County
- Augusta County
- Buckingham County
- Campbell County
- Charlotte County
- Cumberland County
- Fluvanna County
- Greene County
- Halifax County
- Lunenburg County
- Mecklenburg County
- Nelson County
- Prince Edward County
- Charlottesville City
- Lynchburg City
- Staunton City
- Waynesboro City

**Division 4**

- Bland County
- Buchanan County
- Carroll County
- Dickenson County
- Giles County
- Grayson County
- Lee County
- Pulaski County
- Russell County
- Scott County
- Smyth County
- Lunenburg County
- Washington County
- Wise County
- Wythe County
- Bristol City
- Galax City
- Norton City

**Division 5**

- Accomack County
- Brunswick County
- Gloucester County
- Greensville County
- Isle of Wight County
- James City County
- Mathews County
- Middlesex County
- Northampton County
- Southampton County
- Surry County
- Sussex County
- York County
- Chesapeake City
- Emporia City
- Franklin City
- Hampton City
- Newport News City
- Norfolk City
- Poquoson City
- Portsmouth City
- Suffolk City
- Virginia Beach City
- Williamsburg City

**Division 6**

- Alleghany County
- Bath County
- Bedford County
- Botetourt County
- Craig County
- Floyd County
- Franklin County
- Henry County
- Highland County
- Montgomery County
- Patrick County
- Pittsylvania County
- Roanoke County
- Rockbridge County
- Bedford City
- Buena Vista City
- Danville City
- Lexington City
- Martinsville City
- Radford City
- Roanoke City
- Salem City

**Division 7**

- Arlington County
- Fairfax County
- Loudoun County
- Prince William County
- Alexandria City
- Fairfax City
- Falls Church City
- Manassas City
- Manassas Park City

Figure 39

**Rate of Heroin Submissions to the Virginia Department of Forensic Science  
Submissions per 100,000  
CY2005-CY2015**

	State Police Division 1	State Police Division 2	State Police Division 3	State Police Division 4	State Police Division 5	State Police Division 6	State Police Division 7
2005	47.80	11.30	2.60	3.10	29.40	5.10	12.60
2006	48.17	16.74	3.37	0.89	28.97	6.47	8.95
2007	46.47	14.45	5.60	2.00	32.85	7.80	8.41
2008	54.12	20.22	6.46	0.66	34.24	17.75	9.62
2009	56.92	29.49	4.84	2.19	40.13	23.02	9.95
2010	46.22	32.64	6.21	1.76	41.09	27.97	8.43
2011	53.80	36.90	3.90	3.10	36.40	29.30	11.20
2012	61.74	52.03	5.22	3.53	41.24	30.08	17.50
2013	84.40	95.43	14.81	6.21	49.25	54.63	21.37
2014	110.19	103.02	20.17	8.40	55.89	49.77	22.52
2015	116.40	116.20	32.40	10.60	64.00	47.30	30.60

**Number of Heroin Submissions to the Virginia Department of Forensic Science  
CY2001-CY2015**

	State Police Division 1	State Police Division 2	State Police Division 3	State Police Division 4	State Police Division 5	State Police Division 6	State Police Division 7	Total
2001	590	77	25	9	700	17	247	1,665
2002	586	113	22	10	692	32	234	1,689
2003	638	94	14	10	569	16	283	1,624
2004	634	94	21	9	612	40	234	1,644
2005	600	83	16	14	515	38	259	1,525
2006	613	125	21	4	509	49	186	1,507
2007	600	110	35	9	579	59	177	1,569
2008	710	156	41	3	607	136	206	1,859
2009	751	229	31	10	713	177	218	2,129
2010	620	259	40	8	732	215	189	2,063
2011	726	295	25	14	652	226	255	2,193
2012	841	420	34	16	747	233	407	2,698
2013	1,159	779	97	28	897	424	506	3,890
2014	1,524	850	133	38	1,022	388	540	4,495
2015	1,624	964	214	47	1,176	368	746	5,139

Source: Virginia Department of Forensic Science monthly submissions to NFLIS analyzed by the Virginia Department of Criminal Justice Services Research Center (July 2016)

## Methodology for Current Study

For the current study, Commission staff began by examining the Sentencing Guidelines Database System. This system captures all of the sentencing guidelines worksheets that are prepared for felony cases in Virginia's circuit courts and, following disposition, submitted to Commission. The sentencing guidelines worksheets are reviewed by Commission staff as they are received to ensure that the guidelines forms are 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, the information from each worksheet is keyed into the automated system.

According to fiscal year (FY) 2011 through FY2015 Sentencing Guidelines data, there were 13,227 sentencing events during the five-year period in which a conviction for manufacturing, selling, giving, distributing, or possessing with intent to sell, give, or distribute a Schedule I or II drug under §§ 18.2-248(C), 18.2-248(D), or 18.2-255(A) was the most serious offense in the sentencing event.

In order to identify sentencing events involving heroin, the Commission supplemented Sentencing Guidelines data with information from two other sources: the Pre-Sentence Investigation (PSI) Report System and the Virginia Department of Forensic Science's Laboratory Information Management System (LIMS). PSI reports are standardized reports prepared for the court by Department of Corrections' probation and parole officers. PSIs capture details regarding the circumstances of the offense, background on the defendant's education, family environment, military service, drug use and mental health status, as well as his or her complete criminal history. For drug offenses, PSIs also frequently include the type of drug and the quantity of the drug involved in the case. While the preparation of sentencing guidelines is required by statute, the completion of a PSI is not mandatory in all felony cases. The Commission found that, of the 13,227 sentencing events identified in Sentencing Guidelines data, 5,840 had corresponding PSIs. Of the matched records, 932 (16%) involved heroin.

For cases in which a PSI was not prepared or where the quantity of heroin was unknown, the Commission next examined the LIMS data provided by DFS. The data set made available to the Commission contained information on heroin submissions to DFS, along with the suspect's name, offense date, locality name, and the submitting law enforcement agency. By matching Sentencing Guidelines data to LIMS data, the Commission identified another 767 sentencing events involving heroin.

Utilizing PSI and LIMS data, the Commission identified a total of 1,699 sentencing events associated with heroin manufacture, sale, distribution, etc., during FY2011 through FY2015. This represents 12.8% of the 13,227 sentencing events involving some type of Schedule I or II drug. Of the 1,699 sentencing events found, the vast majority were recorded as having a conviction under § 18.2-248(C) as the most serious offense. Distribution as an accommodation (§ 18.2-248(D)) was the most serious offense in only 90 sentencing events. The Commission did not find any sentencing events under § 18.2-255(A) involving distribution of heroin to a minor during this time period. Approximately two-thirds of the identified sentencing events listed heroin as the only drug type; about one-third of the cases involved multiple counts of manufacture, sale, distribution, etc., of a Schedule I or II drug (which may involve other drugs in addition to heroin).

### Sentencing Outcomes and Compliance with the Guidelines

Comparing heroin sentencing events with those involving other Schedule I/II drugs, the Commission found a difference in sentencing patterns. As shown in Figure 40, offenders convicted of manufacturing, selling, distributing, etc., heroin were more likely to receive a prison sentence (i.e., a sentence of one year or more) than offenders convicted of similar offenses with other Schedule I or II drugs (Figure 41). While nearly 71% of offenders convicted of offenses involving heroin were given prison terms, 60% of offenders whose convictions were associated with other Schedule I or II drugs were sentenced to prison. Moreover, for offenders who received prison terms, those convicted of offenses involving heroin received slightly longer sentences than other Schedule I/II drug offenders (median sentence of 2.8 years versus 2.2 years).

The Commission also examined whether concurrence with the recommendations provided by the sentencing guidelines

also varied based on the type of drug involved. For purposes of compliance analysis, guidelines cases with scoring errors and other types of errors that could not be resolved by staff were excluded from the Commission’s study. In this instance, 24 of the 1,699 heroin cases identified contained an error and were therefore not used for compliance analysis. During FY2011 to FY2015, the rate at which the sentences ordered by the court concurred with the sentencing guidelines recommendations differed somewhat based on the type of drug. For manufacture, sale, distribution, etc., offenses, concurrence with the guidelines was lower for heroin-related cases than for cases involving other Schedule I or II drugs (Figure 41). For heroin, compliance with the sentencing guidelines recommendations was 73.9%, compared to 78.7% for other drugs. When the sentence ordered by the court was outside of the guidelines range in heroin cases, the sentences were more likely to fall below the guidelines (15.5%) than above them (10.6%).

Section 19.2-298.01 of the *Code* requires judges to provide a written reason when sentencing outside of the guidelines recommended range. For FY2011-FY2015, when judges sentenced a heroin-related case below the guidelines recommendation, the most frequently cited departure reasons were the existence of a plea agreement, the defendant’s cooperation with authorities, and use of an alternative sanction (such as treatment). When judges sentenced above the guidelines recommendation, the departure reasons most often cited were the offender’s prior record, the existence of a plea agreement, and the nature of the drug offense.

**Figure 41**  
**Compliance with Sentencing Guidelines for Manufacture, Sale, Distribution, etc., of a Schedule I/II Drug\***  
**FY2011 – FY2015**

	Heroin	Other Schedule I/II Drug
Compliance	73.9%	78.7%
Mitigation	15.5%	14.3%
Aggravation	10.6%	7.0%

\* Most serious offense at sentencing under § 18.2-248 (C), § 18.2-248(D) or § 18.2-255(A).  
Sources: Sentencing Guidelines Database, FY2011-FY2015; Pre/Post-Sentence Investigation (PSI) Report System, FY2011-FY2015; Virginia Department of Forensic Science Laboratory Information Management System (LIMS)

**Figure 40**  
**Sentencing Outcomes for Manufacture, Sale, Distribution, etc., of a Schedule I/II Drug\***  
**FY2011 – FY2015**

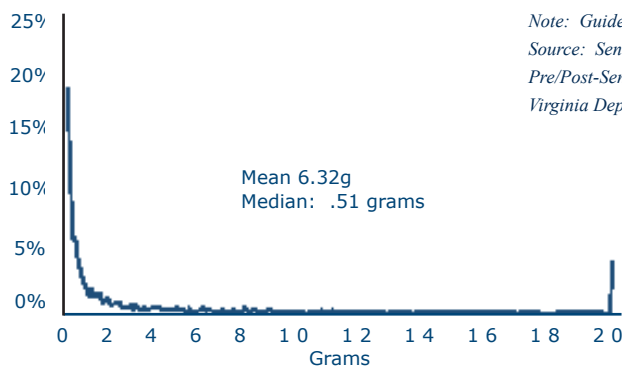
Disposition	Heroin		Other Schedule I/II Drug	
	Percent	Median	Percent	Median
Probation	9.9%	N/A	13.6%	N/A
Jail up to 12 months	19.4%	8 Months	26.1%	8 Mos.
Prison 1 year or more	70.7%	2.8 Years	60.3%	2.2 Years
	1,699 Sentencing Events		11,528 Sentencing Events	

\* Most serious offense at sentencing under § 18.2-248 (C), § 18.2-248(D) or § 18.2-255(A).  
Sources: Sentencing Guidelines Database, FY2011-FY2015; Pre/Post-Sentence Investigation (PSI) Report System, FY2011-FY2015; Virginia Department of Forensic Science Laboratory Information Management System (LIMS)

## Quantity of Heroin and Sentencing Outcomes

Of the 1,699 heroin sentencing events, approximately 96% had drug quantity recorded in either PSI or LIMS. The mean seizure amount for heroin cases in the study was 6.32 grams. The mean, however, is sometimes not an accurate representation of the typical case, in that a few large seizure amounts can inflate the average significantly. In the current analysis, the amount of heroin was above 9.31 grams in only 10% of the cases and 90% of the cases were associated with amounts lower than 9.31 grams. In fact, 70% of heroin sentencing events involved 1.78 grams or less. The median amount is very useful in this instance, since it is not heavily affected by extreme values. The median identifies the center value in a range of numbers, where half of the cases fall above the value and half of the cases fall below the value. For the sentencing events studied, the median quantity of heroin per sentencing event was 0.51 grams.

**Figure 42**  
**Quantity of Heroin in Manufacture, Sale, Distribution, etc., Sentencing Events\***  
**FY2011 - FY2015**

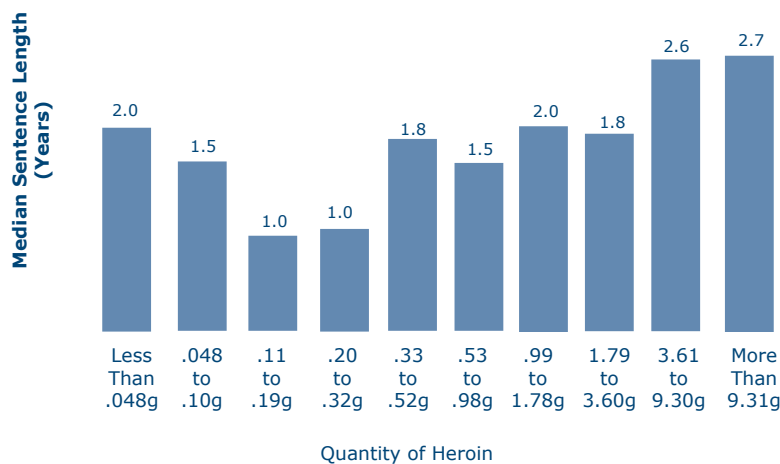


\* Most serious offense at sentencing under § 18.2-248 (C), § 18.2-248(D) or § 18.2-255(A).  
 Sources: Sentencing Guidelines Database, FY2011-FY2015  
 Pre/Post-Sentence Investigation (PSI) Report System, FY2011-FY2015  
 Virginia Department of Forensic Science Laboratory Information Management System (LIMS)

The Commission carefully explored whether a relationship between quantity of heroin and sentencing outcomes in circuit courts exists. Amounts of heroin were categorized in various ways in order to examine drug quantity vis-à-vis sentence outcomes. As part of the analysis, the Commission created ten equally-sized groups of cases based upon the drug amount. Cases where the drug amount was unknown were excluded from the analysis. Each group represented one-tenth of the heroin sentencing events under study. The

median prison sentence for each group is shown in Figure 43. No consistent relationship between drug quantity and sentence length was apparent, although the longest median sentences were observed in the last two deciles, associated with amounts exceeding 3.6 grams of heroin. When the quantity of heroin seized exceeded 3.6 grams, the median sentence was approximately 2.6 years. When the quantity of heroin seized was 3.6 grams or less, the median sentence did not rise above 2.0 years.

**Figure 43**  
**Median Prison Sentence (in years) for Manufacture, Sale, Distribution, etc., of Heroin\* by Quantity Level (in grams)**  
**FY2011 - FY2015**



\* Most serious offense at sentencing under § 18.2-248 (C)

Note: Guidelines cases with scoring errors and other types of errors were excluded from the analysis.  
 Source: Sentencing Guidelines Database, FY2011-FY2015  
 Pre/Post-Sentence Investigation (PSI) Report System, FY2011-FY2015  
 Virginia Department of Forensic Science Laboratory Information Management System (LIMS)



Figure 44 presents the rate of compliance with the sentencing guidelines, as well as mitigation and aggravation rates, by quantity of heroin for offenders convicted under § 18.2-248(C). Although compliance rates were relatively stable for most quantities, the compliance rate slipped below 70% when large amounts of heroin (over 9.3 grams) were involved. This was also the only group where the aggravation rate exceeded the mitigation rate by more than a two percentage point margin (23% aggravation versus 9% mitigation).

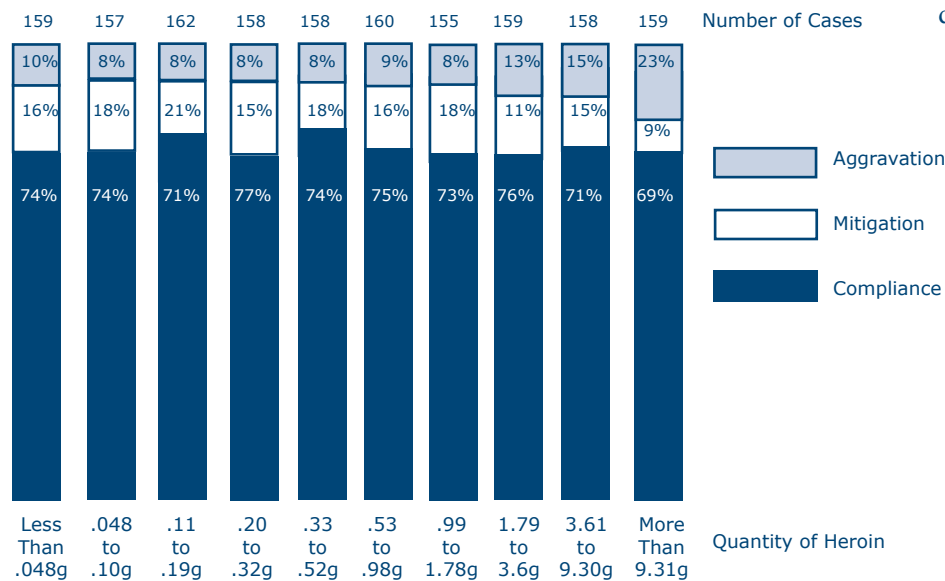
The sentencing decision occurs within the context of many factors and, consequently, the next stage of the analysis took into consideration all of the factors that are currently scored on Section C of the Schedule I/II Drug guidelines. The current guidelines

specifically account for the number of counts resulting in conviction, additional offenses, possession of a firearm, whether or not the offender was under some form legal restraint at the time of the offense (such as probation), and the offender’s prior record, including the number and nature of prior offenses and the degree of seriousness. The Commission explored numerous categorizations and permutations of the amount of heroin in order to identify any points at which the quantity may have affected the length of effective sentence, controlling for other factors on Section C of the Schedule I/II Drug guidelines. A number of scenarios were tested to see if compliance in cases involving the manufacture, sale, distribution, etc., of heroin could be improved by adding a factor corresponding to the quantity of heroin to the Section C

worksheet, similar to that currently in place for cocaine. In general, however, a better balance between mitigation and aggravation could only be achieved at the expense of a loss in overall compliance with the guidelines. Additional analysis revealed that many of the offenders were sentenced at or near the low end of the recommended guidelines range, much more so than at the high end. For example, 287 offenders were sentenced exactly at the low end of their recommended range, but only 100 offenders were sentenced exactly at the high end. Consequently, any increase in the points on the Section C worksheet moved more cases into non-compliance (mitigation) at the low end than it reduced non-compliance (aggravation) at the high end. Under the various scenarios tested, the compliance rate decreased by one to five percentage points. When taking into consideration all relevant factors available in the data, the empirical evidence did not support the addition of a factor to the sentencing guidelines in heroin cases to account for drug quantity.

**Figure 44**

**Compliance with Sentencing Guidelines for Manufacture, Sale, Distribution, etc., of Heroin § 18.2-248(C) by Quantity of Heroin (in grams) FY2011 – FY2015**



Note: Guidelines cases with scoring errors and other types of errors were excluded from the analysis.  
 Sources: Sentencing Guidelines Database, FY2011-FY2015; Pre/Post-Sentence Investigation (PSI) Report System; FY2011-FY2015, Virginia Department of Forensic Science Laboratory Information Management System (LIMS)

## Commission Deliberations

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. Section § 17.1-803 of the *Code of Virginia* directs the Commission to develop, maintain and modify discretionary sentencing guidelines that take into account historical data, when available, concerning time actually served for various felony offenses committed prior to January 1, 1995, and sentences imposed for various felony offenses committed on or after January 1, 1995, as well as such other factors as may be deemed relevant to sentencing. 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.

This year, in response to House Bill 1059, the Commission examined the sentencing guidelines in relation to heroin offenses. The Commission found that there is no empirical evidence to support revisions to the sentencing guidelines applicable to the manufacture,

sale, distribution, etc., of heroin. Further, available data indicate that the quantity of heroin involved in a case is not a significant factor in judicial sentencing decisions, after controlling for other offense characteristics, such as the number of counts resulting in conviction, possession of a firearm, and the offender's criminal history.

While the Commission has not observed sufficient empirical evidence to recommend changes to the sentencing guidelines for heroin offenses at this time, the Commission will continue to monitor these cases and will periodically examine patterns in the sentencing of heroin cases and the potential impact of drug quantity.

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# Recidivism Among Federal Prisoners

## 5

### Introduction

During its 2016 Session, the General Assembly adopted legislation directing the Virginia Criminal Sentencing Commission to conduct a special study of recidivism among certain released federal inmates. Specifically, House Bill 1105 (Chapter 394 of the 2016 Acts of Assembly) directed the Commission to examine recidivism among released federal inmates whose sentences had been retroactively reduced pursuant to Amendments 782 and 788 of the US Sentencing Commission's Guidelines Manual and to calculate the recidivism rate of these offenders for crimes committed in the Commonwealth. The provisions of House Bill 1105 are in effect until January 1, 2018. The legislation requires the Commission to report to the Chairmen of the House and Senate Courts of Justice Committees by December 31 of each year until the directive expires.

As background for the study, the Commission reviewed the federal sentencing guidelines system, with particular focus on Amendments 782 and 788 of the US Sentencing Commission's Guidelines Manual. The Commission also examined recidivism studies completed by the US Sentencing Commission on other federal offender populations. To respond to the legislative mandate, the Commission must have a list of federal inmates who received retroactive sentence reductions under Amendments 782 and 788, along with personal identifiers for those individuals. The Commission has taken a number of steps in an attempt to acquire the necessary information. To date, however, the Commission has been denied access to the information needed to complete study.

This chapter of the *2016 Annual Report* documents the Commission's activities in relation to House Bill 1105. The information contained herein will also be submitted to the General Assembly in a separate report in order to satisfy the reporting requirements of the legislative mandate.

#### 2016 SESSION CHAPTER 394

*An Act to direct the Virginia Criminal Sentencing Commission to calculate and report the recidivism rate for certain released federal prisoners.*

[H 1105]

Approved March 11, 2016

#### **Be it enacted by the General Assembly of Virginia:**

*1. § 1. That the Virginia Criminal Sentencing Commission shall calculate annually the recidivism rate of federal prisoners released by the U.S. Bureau of Prisons whose sentences were retroactively reduced pursuant to Amendments 782 and 788 of the U.S. Sentencing Commission's Guidelines Manual for crimes committed in the Commonwealth. The Commission shall make a reasonable attempt to acquire the information necessary to complete the calculation from any available source, including any state or federal entity that has access to such information. The Commission shall report annually to the Chairmen of the House and Senate Committees for Courts of Justice (i) such recidivism rate no later than December 31 for the preceding 12-month period complete through the last day of October or (ii) if the Commission is unable to complete the calculation, any information regarding the recidivism rate of such prisoners as the Commission was able to acquire.*

**2. That the provisions of this act shall expire on January 1, 2018.**

## Background

The Anti-Drug Abuse Act of 1986 enacted by Congress established the basic framework of statutory mandatory minimum penalties applicable to federal drug trafficking offenses. The quantities of drugs triggering the mandatory minimum penalties differed for various drugs and, in some cases, for different forms of the same drug (United States Sentencing Commission, 2007). As a result of the 1986 Act, federal law required a five-year mandatory minimum sentence for a first-time trafficking offense involving five grams or more of crack cocaine or 500 grams or more of powder cocaine. A ten-year mandatory minimum sentence applied for first-time traffickers who sold 50 grams or more of crack or 5,000 grams or more of powder cocaine. Because it took 100 times more powder cocaine than crack cocaine to trigger the five-year and ten-year mandatory penalties, this structure was referred to as the “100-to-1 drug quantity ratio” (United States Sentencing Commission, 2007). The United States Sentencing Commission (USSC), which was in the process of developing the initial federal sentencing guidelines in 1986, incorporated the mandatory minimum penalty structure into the guidelines. The USSC also set the guidelines based on the same 100-to-1 ratio for cocaine quantities above and below the mandatory minimum penalty thresholds. As a result, the federal sentencing guidelines were significantly higher for certain offenses involving crack cocaine compared to powder cocaine.

After nearly 20 years of mandatory federal sentencing guidelines, the US Supreme Court, in 2005, issued an opinion that rendered the federal guidelines advisory. This decision led to a series of court cases focused on the 100-to-1 crack-to-powder drug quantity ratio. The US Supreme Court ultimately held that a judge may consider the disparity between the guidelines’ treatment of crack and powder cocaine when determining a sentencing range and that the sentencing judge has the authority to substitute a crack-to-powder drug quantity ratio different than 100-to-1 to avoid that disparity (United States Sentencing Commission, 2015). In 2007, due to ongoing concern about the 100-to-1 crack-to-powder ratio, the USSC lowered the guidelines for crack cocaine offenses processed in federal courts. The USSC subsequently made the reduction applicable retroactively. Incarcerated

federal offenders could then submit an application for a sentence reduction and federal courts had the authority to grant reductions in the sentences for federal inmates who had been sentenced under the higher crack cocaine guidelines. The USSC also recommended that Congress revise the mandatory minimum terms required by federal statutes for certain cocaine offenses.

In 2010, Congress enacted the Federal Fair Sentencing Act (FSA), which effectively reduced the 100-to-1 crack-to-powder ratio to 18-to-1. This legislation also removed the mandatory minimum penalty for simple possession of crack cocaine. The USSC incorporated the new 18-to-1 structure into the federal sentencing guidelines and approved the application of the change retroactively. The USSC also revised the guidelines in 2010 to better account for certain aggravating factors and the defendant's role in the offense, as directed by Congress.

In 2014, following full implementation of the FSA, the USSC took additional steps by reducing the federal sentencing guidelines for all drug types, including crack cocaine, by two levels (Amendment 782 to the Sentencing Guidelines Manual). This change was also approved for retroactive application to federal offenders who had been sentenced under the prior guidelines structure (Amendment 788). Congress did not act to modify or countermand the change, and the amendment became effective on November 1,

2014. Amendment 782 was projected to reduce penalties for new drug cases by an average of 11 months for 70% of drug trafficking offenders (United States Sentencing Commission, Policy Profile, Sensible Sentencing Reform: The 2014 Reduction of Drug Sentences). The USSC also estimated that approximately 40,000 prisoners may be eligible to have their sentences reduced under Amendment 788 by an average of 2.1 years (18.8%). Amendments 782 and 788 are the focus of the directive outlined in House Bill 1105 adopted by the 2016 General Assembly.

Procedures were established for incarcerated federal inmates to apply for a retroactive sentence reduction under Amendments 782/788. In order to receive a reduction in sentence, eligible inmates must submit an application to the appropriate federal court. After considering all relevant factors, including the revised sentencing guidelines, the court determines whether a reduction in the term of imprisonment is warranted and, if so, the length of the sentence reduction that should be given.

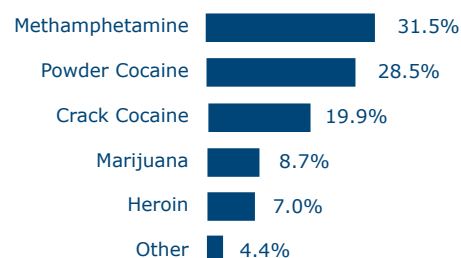
Courts began hearing motions for retroactive sentence reductions as of November 1, 2014, but no inmates were to be released for a year after the effective date of the amendment. This delay in release provided federal courts time to hear the large number applications that were expected and carefully consider each case. It also allowed the federal probation system time to prepare for additional offenders to be released to community supervision. Releases of individuals whose sentences were reduced retroactively under Amendments 782/788 began on October 30, 2015.

## Applications for Retroactive Sentence Reductions under Amendments 782/788

According to the USSC, as of September 30, 2016, 43,491 federal inmates had submitted applications for a sentence reduction associated with Amendments 782/788 of the US Sentencing Commission's Sentencing Guidelines Manual. Of those, federal courts have granted sentence reductions in approximately two-thirds of the applications (Figure 45). The remaining one-third were denied. Courts in the Fourth Circuit (which encompasses Maryland, North Carolina, South Carolina, Virginia and West Virginia) heard 6,598 of the total number of applications, granting roughly the same proportion as were approved nationally. In Virginia, federal judges approved a slightly higher proportion of the applications for sentence reductions (70.5%).

Amendments 782/788 reduced the federal sentencing guidelines for all drug types by two levels. Of the federal inmates granted retroactive sentence reductions under Amendments 782/788, approximately one-third (31.5%) had been convicted of offenses involving methamphetamine (Figure 46). Offenders convicted of offenses involving powder cocaine and crack cocaine accounted for 28.5% and 19.9% of the granted applications, respectively. Marijuana, heroin, and other types of drugs were associated with smaller proportions of the offenders for whom a sentence reduction was granted.

**Figure 46**  
Federal Inmates Granted Retroactive Sentence Reductions under Amendments 782/788 of the US Sentencing Commission's Sentencing Guidelines Manual by Drug Type  
November 1, 2014 - September 30, 2016



Source: United States Sentencing Commission. (2016, October). US Sentencing Commission 2014 Drug Guidelines Amendment Retroactivity Data Report.

**Figure 45**  
Applications for Retroactive Sentence Reductions under Amendments 782/788 of the US Sentencing Commission's Sentencing Guidelines Manual  
November 1, 2014 - September 30, 2016

State	Number of Applications	Granted	Denied
Maryland	560	78.8%	21.3%
North Carolina	2,564	60.7%	39.3%
South Carolina	1,041	72.3%	27.7%
Virginia	1,975	70.5%	29.5%
West Virginia	458	83.4%	16.6%
Fourth Circuit	6,598	68.6%	31.4%
US Total	43,491	67.6%	32.4%

Note: Figures only include applications resolved by the court as of September 30, 2016.

Source: United States Sentencing Commission (2016, October). US Sentencing Commission 2014 Drug Guidelines Amendment Retroactivity Data Report.

Nationally, for federal offenders granted a sentence reduction, the average sentence originally imposed (based on guidelines in place prior to Amendments 782 /788) was 11.9 years (Figure 47). When federal courts granted a sentence reduction, the average reduction was 2.1 years. This is equivalent to a 17.2% reduction of the original sentence. For applications handled in the Fourth Circuit, the offenders had been originally sentenced to a slightly longer prison term on average (13.1 years); however, judges in the Fourth Circuit approved

sentence reductions averaging 2.3 years, resulting in a 17.1% reduction of the original sentence, on average. Thus, the percentage reduction in the Fourth Circuit is very close to the national average. In Virginia, federal judges have approved sentence reductions of 16.8% on average.

**Figure 47**  
**Retroactive Sentence Reductions Granted under Amendments 782/788**  
**of the US Sentencing Commission’s Sentencing Guidelines Manual**  
**November 1, 2014 - September 30, 2016**

<b>State</b>	<b>Applications Granted</b>	<b>Avg. Existing Sentence (Years)</b>	<b>Avg. Sentence Reduction (Years)</b>	<b>Avg. Sentence Reduction (Percent)</b>
Maryland	437	11.3	2.0	17.0%
North Carolina	1,488	13.5	2.3	16.9%
South Carolina	718	13.4	2.5	17.9%
Virginia	1,336	13.9	2.3	16.8%
West Virginia	381	9.7	1.8	18.0%
Fourth Circuit	4,360	13.1	2.3	17.1%
<b>US Total</b>	<b>28,544</b>	<b>11.9</b>	<b>2.1</b>	<b>17.2%</b>

*Note: Figures only include applications resolved by the court as of September 30, 2016. Analysis excludes cases that could not be matched back to the original case in the US Sentencing Commission’s records and cases in which the length of imprisonment after the reduction could not be determined.*

*Source: United States Sentencing Commission (2016, October). U.S. Sentencing Commission 2014 Drug Guidelines Amendment Retroactivity Data Report.*

### Federal Inmates Released based on Retroactive Sentence Reductions Granted under Amendments 782/788

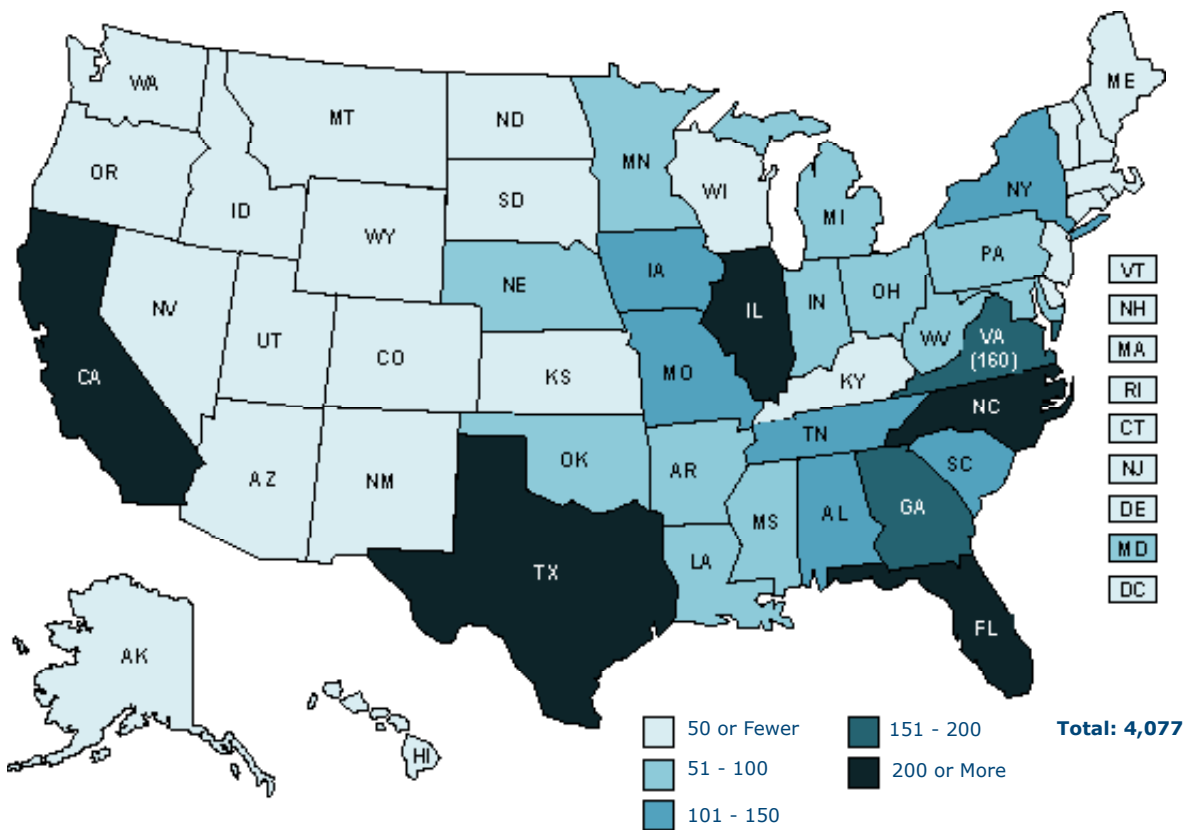
Approximately 6,000 federal offenders granted sentence reductions under Amendments 782/788 were released between October 30, 2015, and November 2, 2015. This represented the first wave of federal inmates to be released based on retroactive application of these Amendments. According to information provided by the Federal Bureau of Prisons to the Washington Post, approximately one-third of the 6,000 inmates granted reduced

sentences were released to Immigration and Customs Enforcement (ICE) for deportation hearings (Horwitz, 2015). The states receiving the largest numbers of federal offenders in this first wave were Texas (578), Florida (295), Illinois (253), and California (229). However, nearly as many (218) were released to the state of North Carolina. Of the federal inmates released in the first wave, 160 were reportedly released to Virginia. Another 150 were discharged to Tennessee. Fewer than 100 inmates were

released to each of the remaining states that share a border with Virginia. Figure 48 provides a visual comparison by state. Offenders are not necessarily released to the state in which they apply for a sentence reduction.

After the first wave of federal inmates in 2015, the USSC estimated that an additional 8,550 federal inmates would be released by November 1, 2016 (Figure 49). Decreasing numbers of inmates were expected to be released in each subsequent year through November 1, 2020. However, a large number of inmates are not expected to be released until after November 1, 2020.

**Figure 48**  
**Federal Inmates Released based on Retroactive Sentence Reductions under Amendments 782/788**  
**(First Wave: October 31, 2015 through November 1, 2015)**  
**By State**



Source: The Washington Post (October 7, 2015). Retrieved from <https://www.washingtonpost.com/news/post-nation/wp/2015/10/07/the-u-s-is-set-to-release-thousands-of-prisoners-early-heres-where-theyre-headed>



**Previous Studies of Federal Offender Recidivism by the United States Sentencing Commission**

The USSC has conducted multiple studies of recidivism among federal offenders. In May 2014, the USSC published a report on recidivism rates of crack cocaine offenders who had been released based on retroactive application of the 2007 amendment to

the US Sentencing Guidelines Manual. As described above, the 2007 change lowered the guidelines for crack cocaine offenses to address concerns about the 100-to-1 crack-to-powder ratio. In conjunction with this change, the USSC made the reduction applicable retroactively. In order to study the impact of retroactive sentence reductions on recidivism rates, the USSC analyzed the recidivism rate for a group of crack cocaine offenders whose sentences were reduced pursuant to retroactive application of the 2007 crack cocaine amendment. The results were compared

to the rate of recidivism for a group of offenders who would have been eligible to seek a reduced sentence under the 2007 crack cocaine amendment but were released before the amendment took effect and, thus, served their full prison terms, less good time and other earned credits (US Sentencing Commission, May 2014). Released federal offenders were tracked for five years following discharge. Recidivism was defined as re-conviction for any new offense, re-arrest without case disposition information available, or revocation of probation/parole.

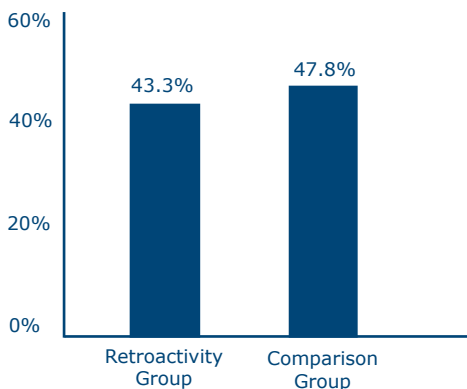
**Figure 49**  
**Estimated Number of Federal Inmates Expected To Be Released Based on Retroactive Sentence Reductions under Amendments 782/788**

<b>Estimated Number of Inmates</b>	<b>Projected Release Date (if Application Granted)</b>
8,550	Nov. 1, 2015 - Nov. 1, 2016
6,938	Nov. 1, 2016 - Nov. 1, 2017
5,473	Nov. 1, 2017 - Nov. 1, 2018
4,177	Nov. 1, 2018 - Nov. 1, 2019
2,909	Nov. 1, 2019 - Nov. 1, 2020
9,350	After Nov. 1, 2020

*Source: United States Sentencing Commission (2014, July 25). Summary of key data regarding retroactive application of the 2014 drug guidelines amendment.*

As of June 29, 2011, the federal courts had granted 16,511 motions (64.2% of the applications) for reduced sentences under the 2007 crack cocaine amendment. The recidivism rate for offenders released under the retroactively-applied guidelines change was 43.3%, while the recidivism rate for the comparison group offenders was 47.8% (Figure 50). The difference in recidivism rates was not statistically significant. Differences in the type of recidivism (new arrest versus revocation) were also not statistically significant. The USSC concluded that there was no evidence that offenders whose sentence lengths were reduced pursuant to retroactive application of the 2007 crack cocaine amendment recidivated at higher rates than the comparison group of crack cocaine offenders released before the effective date of the 2007 amendment (United States Sentencing Commission, May 2014).

**Figure 50**  
**Recidivism Rates among Released Federal Offenders:**  
**Offenders Who Received Retroactive Sentence Reductions under 2007 Crack Cocaine Amendment versus Offenders Released Prior to 2007 Amendment**



Note: Difference is not statistically significant.

Source: United States Sentencing Commission. (2014, May). *Recidivism Among Offenders Receiving Retroactive Sentence Reductions: The 2007 Crack Cocaine Amendments*.

In March 2016, the USSC released a broader study of recidivism among federal inmates. This research expanded on the scope of previous USSC recidivism projects. In this study, the USSC examined 25,431 federal offenders released in 2005 and tracked these offenders for eight years post-release. The USSC examined three measures of recidivism: re-arrest (for a new crime or violation of supervised release), reconviction, and re-incarceration. It is important to note that none of these measures are equivalent to the measure of recidivism used for the 2014 study discussed above. Based on the 2016 study, the recidivism rate of federal offenders, as measured by re-arrest, was 42.1% after a five-year follow-up period and 49.3% after the full eight-year follow-up period (United States Sentencing Commission, March 2016). After tracking offenders for eight years, individuals whose federal offense involved firearms were most likely to be re-arrested (68.3%), followed by those whose original offense involved robbery (67.3%), immigration (55.7%), drug trafficking (49.9%), larceny (44.4%), and fraud (34.2%).

### Study Mandated by House Bill 1105

To respond to the legislative mandate established by House Bill 1105 (Chapter 394 of the 2016 Acts of Assembly), the Commission requires a list, in electronic format, of federal inmates who received retroactive sentence reductions under Amendments 782/788 of the US Sentencing Guidelines Manual. This list must include not only the names and release dates of the inmates but also personal identifiers, such as birthdate and social security number. This information is necessary in order to match the records to Virginia's criminal history information system maintained by the Virginia State Police. By matching records to the criminal history information (or "rap sheet") system, the Commission has the ability to identify new arrests and convictions associated with federal inmates who were granted reduced sentences under Amendments 782/788.


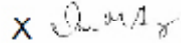
The Commission has taken a number of steps in an attempt to acquire the necessary information. An initial request submitted to the Federal Bureau of Prisons was denied. A Freedom of Information Act (FOIA) request was submitted to the Federal Bureau of Prisons in August 2016.

The Commission’s FOIA request was also denied. The response from the Bureau of Prisons is shown in Figure 51. In rejecting the Commission’s FOIA request, the Bureau of Prisons stated that lists or rosters of federal inmates cannot be provided as they would disclose personal information concerning federal inmates and that “disclosure of such lists could threaten the safety and well-being of these individuals.” According to the Bureau of Prisons, release of rosters and lists has been

determined to be exempt from disclosure pursuant to 5 U.S.C. §§ 552(b)(6), (b)(7)(C) and/or (b)(7)(F). As described in the Bureau’s letter, exemption (b)(6) concerns material the release of which would constitute a clearly unwarranted invasion of the personal privacy of third parties. Exemption (b)(7)(C) concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to constitute an unwarranted invasion of the personal privacy of third parties.

Exemption (b)(7)(F) concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to endanger the life or personal safety of an individual. Finally, the Bureau of Prisons determined that birthdates, social security numbers, and release dates are maintained in a system of records protected by the Privacy Act.

**Figure 51**  
**Response of the Federal Bureau of Prisons to the Freedom of Information Act (FOIA) Request Submitted by the Virginia Criminal Sentencing Commission**

 <p style="text-align: right;">U.S. Department of Justice Federal Bureau of Prisons</p> <hr/> <p style="text-align: right;">UCentral Office 320 First St., NW Washington, DC 20534</p> <p>September 16, 2016</p> <p>The Honorable Edward Hogshire (Ret.) 100 North Ninth Street Richmond, VA 23219</p> <p style="text-align: right;">Request Number: 2016-06729</p> <p>Dear Judge Hogshire:</p> <p>This is in response to the above referenced Freedom of Information Act (FOIA) request in which you seek information about individuals released from federal prisons pursuant to Amendments 782 and 788 of the U.S. Sentencing Commission’s Guideline Manuals. Specifically, you requested the full name, birthdate, social security number, and release date of all individuals released.</p> <p><b>Lists or rosters of federal inmates cannot be provided as they would disclose personal information concerning federal inmates. Likewise, disclosure of such lists could threaten the safety and well-being of these individuals. Pursuant to 28 C.F.R. 513.34(b), “Lists of Bureau of Prisons inmates shall not be disclosed.” Release of rosters and lists has been determined to be exempt from disclosure pursuant to 5 U.S.C. §§ 552(b)(6), (b)(7)(C) and/or (b)(7)(F). Exemption (b)(6) concerns material the release of which would constitute a clearly unwarranted invasion of the personal privacy of third parties. Exemption (b)(7)(C) concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to constitute an unwarranted invasion of the personal privacy of third parties. Exemption (b)(7)(F) concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to endanger the life or personal safety of an individual.</b></p> <p><b>Insofar as you are requesting the birthdate, social security number, and release date of individuals released, or scheduled to be released, pursuant to Amendments 782 and 788, we have determined that this information is maintained in a Privacy Act protected system of records and requires written authorization from the subject of the record before it can be released. Further, this information would be exempt from disclosure pursuant to 5 U.S.C. §§ 552(b)(6), (b)(7)(C) and/or (b)(7)(F). The written authorization must meet the requirements of 28 C.F.R. §16.41(d). Please resubmit your request, and provide the information identified below. Until such time as this information is received, your request is considered closed.</b></p> <p>Please be advised, we considered your request under the Privacy Act and applicable BOP System of Records Notices, however, we have determined that your request does not meet one of the routine use exceptions provided in the relevant notices.</p> <p>Exemption (b)(6) concerns material the release of which would constitute a clearly unwarranted invasion of the personal privacy of third parties. Exemption (b)(7)(C) concerns records or information compiled for law enforcement purposes the release of which could reasonably be</p>	<p>expected to constitute an unwarranted invasion of the personal privacy of third parties. Finally, exemption (b)(7)(F) concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to endanger the life or personal safety of an individual.</p> <p>If you have any questions, you have the right to seek assistance from the undersigned or BOP’s FOIA Public Liaison, Mr. C. Darnell Stroble ((202) 616-7750).</p> <p><b>If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP’s FOIAonline portal by creating an account at: <a href="https://foiaonline.regulations.gov/foia/action/public/home">https://foiaonline.regulations.gov/foia/action/public/home</a>. Your appeal must be post-marked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked “Freedom of Information Act Appeal.” Additionally, you have the right to seek dispute resolution services from BOP’s FOIA Public Liaison, Mr. C. Darnell Stroble ((202) 616-7750) or the Office of Government Information Services (OGIS). OGIS offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. The contact information for OGIS is as follows: Office of Government Information, Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; e-mail at <a href="mailto:ogis@nara.gov">ogis@nara.gov</a>; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.</b></p> <p>Sincerely,</p>  <p>_____          Ian M. Guy, Supervisory Attorney-Advisor          for, Ronald Rodgers, Senior Counsel          Signed by: IAN GUY</p>
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Information subject to the Privacy Act requires written authorization from the subject of the record before it can be released. The Commission determined that obtaining authorization from the thousands of federal inmates released pursuant to Amendments 782/788 is unfeasible.

The Commission's Director contacted two local law enforcement agencies to determine if either agency had any relevant information about federal offenders released to the community after being granted a reduced sentence under Amendments 782/788. Neither agency had the information needed by the Commission.

The Commission subsequently submitted a request to the US Probation and Pretrial Services division of the federal court system. Nearly all federal offenders released from incarceration who are not subject to deportation must satisfy a period of supervision under a federal probation officer. Therefore, the Commission requested records on federal inmates whose sentences were retroactively reduced under Amendments 782/788 who have entered federal probation supervision. If the request is approved, the Commission will use these

records to track offenders for recidivist activity. As of November 18, 2016, the Commission had not received a response from the US Probation and Pretrial Services agency.

Despite the efforts described above, the Commission has not been given access to the information needed to complete study mandated by House Bill 1105. In the coming year, the Commission will consider other options for acquiring the necessary data. If the data can be obtained, the Commission will conduct the recidivism analysis described in House Bill 1105 and submit its report to the General Assembly by December 31, 2017.

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# Recommendations of the Commission

## 6

### 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.

Unlike many other states, Virginia's sentencing guidelines are based on analysis of actual sentencing practices and are designed to provide judges with a benchmark that represents the typical, or average, case. Recommendations for revisions to the guidelines are based on the best fit of the available data. Moreover, recommendations are designed to closely match the rate at which offenders are sentenced to prison and jail, meaning that offenders will be recommended for incarceration in approximately the same proportions as offenders who received incarceration sanctions historically.

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. The ability to create historically-based guidelines depends, in large part, on the number of 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**

*Modify the sentencing guidelines for maliciously discharging a firearm or missile in or at an occupied building (§ 18.2-279) to more closely reflect judicial sentencing practices for this offense.*

**Issue**

Pursuant to § 18.2-279, maliciously discharging a firearm or missile in or at an occupied building is a Class 4 felony, which is punishable by two to ten years in a state correctional facility. According to fiscal year (FY) 2012 through FY2016 Sentencing Guidelines data, the rate of compliance with the sentencing guidelines for this offense was 67.7%. This is well below the overall average compliance of 79.1% during this five-year period. When judges departed from the guidelines recommendation, they most often gave the offender a sentence above the guidelines recommendation. This suggests that the guidelines could be refined to more closely reflect judicial thinking in these cases. As a result, the Commission conducted a thorough analysis and has developed a proposal to increase compliance and better balance upward and downward departures in these cases.

**Discussion**

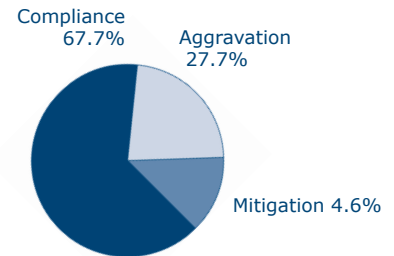
According to FY2012 through FY2016 Sentencing Guidelines data, there were 130 sentencing events in which the primary, or most serious, offense was maliciously discharging a firearm or missile in or at an occupied building (§ 18.2-279). As shown in Figure 52,

the compliance rate for this offense is relatively low (67.7%). Furthermore, when judges departed from the guidelines recommendation, they were much more likely to give the offender a sentence above the guidelines (27.7% aggravation rate) than below it (4.6% mitigation rate). Judges most often cited aggravating circumstances/facts of the case, acceptance of a plea agreement, and multiple counts/number of violations committed by the offender as reasons for departing above the guidelines.

Further analysis of FY2012-FY2016 Sentencing Guidelines data indicate that half (50.0%) of offenders convicted of maliciously discharging a firearm or missile in or at an occupied building were sentenced to more than six months of incarceration; however, the current guidelines for this offense only recommended 36.2% of the offenders for that type of disposition (Figure 53). That is to say, during FY2012-FY2016, judges ordered offenders to serve terms of incarceration of greater than six months more often than recommended by the current guidelines.

**Figure 52**

**Compliance with Guidelines for Maliciously Discharging a Firearm/Missile in/ at an Occupied Building ( § 18.2-279) FY2012 – FY2016  
130 Sentencing Events\***



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

**Figure 53  
Actual versus Recommended Sentences for Maliciously Discharging a Firearm/Missile in/at an Occupied Building ( § 18.2-279) FY2012 – FY2016**

	<b>Actual Practice</b>	<b>Recommended under Current Sentencing Guidelines</b>
Probation or Incarceration up to 6 Months	50.0%	63.8%
Incarceration More than 6 Months (Range includes prison)	50.0%	36.2%

To improve compliance and address the disproportionate rate of aggravating sentences, the Commission recommends amending the guidelines for maliciously discharging a firearm or missile in or at an occupied building. This offense is covered by the Weapon/Firearm worksheets. To bring the guidelines for this offense more in line with the historical rate of incarceration, the Commission first recommends modifying Section A. Section A determines if an offender will be recommended for probation or jail up to six months (Section B) or incarceration of more than six months (Section C). As shown in Figure 54, the Commission recommends modifying the factor for Primary Offense Remaining Counts. If an offender is convicted of more than one count of the primary offense, those counts are scored on the Primary Offense Remaining Counts factor. The Commission recommends splitting this factor to assign higher points when the primary offense is maliciously discharging a firearm or missile in or at an occupied building. For all other offenses, the number of points assigned on this factor would remain the same as shown on the current worksheet.

The Commission also recommends splitting the factor for the scoring of Additional Offenses and increasing the points assigned to offenders whose primary offense is maliciously discharging a firearm or missile in or at an occupied building. Points will remain unchanged for all other primary offenses. This modification is also shown in Figure 54.

Next, the Commission recommends splitting the Section A factor for legal restraint. Specifically, the Legally Restrained at the Time of the Offense factor will be split and offenders convicted of maliciously discharging a firearm or missile in or at an occupied building will receive higher points than other offenders scored on this worksheet. See Figure 54.

Based on the Commission's analysis of offenders whose primary offense is maliciously discharging a firearm or missile in or at an occupied building, offenders who have additional convictions for weapon or assault offenses are more likely to receive a prison sentence than offenders who do not have such additional offenses. Thus, the Commission recommends adding a new factor to the Section A worksheet that would be scored only for offenders whose primary offense is maliciously discharging a firearm or missile in or at an occupied building. As displayed in Figure 54, individuals with additional convictions for weapon or assault offenses will receive two points on this new factor.

Other Section A factors would be scored as they currently appear on the worksheet.



**Figure 54**  
**Proposed Weapon/Firearm Worksheet**  
**Section A**

<b>◆ Primary Offense</b> _____		<b>Score</b> <input style="width: 40px; height: 20px;" type="text"/>																												
A. Maliciously discharge firearm, etc., in/at occupied building (1 count).....2 B. Discharge firearm from vehicle (1 count).....1 C. Possess firearm on school property (1 count).....1 D. Possession of sawed-off shotgun (1 count).....2 E. False statement on firearm consent form (1 count).....1 F. Possession of firearm, other weapon, explosives or ammunition by convicted felon 1 count .....3 2 counts .....4																														
<b>◆ Primary Offense Remaining Counts</b> <u>Total</u> the maximum penalties for counts of the primary not scored above																														
<b>Primary offense:</b> <b>A. Maliciously discharge firearm, etc., in/at occupied building</b> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Maximum Penalty (years)</th> <th style="text-align: right;">Points</th> </tr> </thead> <tbody> <tr><td>5 - 7 .....</td><td style="text-align: right;">2</td></tr> <tr><td>8 - 18 .....</td><td style="text-align: right;">3</td></tr> <tr><td>19 - 28 .....</td><td style="text-align: right;">4</td></tr> <tr><td>29 - 38 .....</td><td style="text-align: right;">5</td></tr> <tr><td>39 or more .....</td><td style="text-align: right;">6</td></tr> </tbody> </table>	Maximum Penalty (years)	Points	5 - 7 .....	2	8 - 18 .....	3	19 - 28 .....	4	29 - 38 .....	5	39 or more .....	6	<b>Primary offense: All other offenses</b> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Maximum Penalty (years)</th> <th style="text-align: right;">Points</th> </tr> </thead> <tbody> <tr><td>5 - 7 .....</td><td style="text-align: right;">1</td></tr> <tr><td>8 - 18 .....</td><td style="text-align: right;">2</td></tr> <tr><td>19 - 28 .....</td><td style="text-align: right;">3</td></tr> <tr><td>29 - 38 .....</td><td style="text-align: right;">4</td></tr> <tr><td>39 or more .....</td><td style="text-align: right;">5</td></tr> </tbody> </table>	Maximum Penalty (years)	Points	5 - 7 .....	1	8 - 18 .....	2	19 - 28 .....	3	29 - 38 .....	4	39 or more .....	5	<input style="width: 40px; height: 20px;" type="text"/>				
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29 - 38 .....	4																													
39 or more .....	5																													
<b>◆ Victim Injury</b> _____																														
Threatened, emotional or physical.....1 Life threatening .....2																														
<b>◆ Conviction in Current Event Requiring Mandatory Minimum Term (6 mos or more)</b> _____ <b>If YES, add 8</b> →																														
<b>◆ Prior Convictions/Adjudications</b> <u>Total</u> the maximum penalties for the 5 most recent and serious prior record events																														
Years: Less than 2 .....0 2 - 38 .....1 39 or more .....2																														
<b>◆ Prior Incarcerations/Commitments</b> _____ <b>If YES, add 4</b> →																														
<b>◆ Legally Restrained at Time of Offense</b> _____																														
<b>Primary offense:</b> <b>A. Maliciously discharge firearm, etc., in/at occupied building</b> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Points</th> </tr> </thead> <tbody> <tr><td>None .....</td><td style="text-align: right;">0</td></tr> <tr><td>Other than post-incarceration supervision.....</td><td style="text-align: right;">3</td></tr> <tr><td>Post-incarceration supervision (supervision after incarceration) .....</td><td style="text-align: right;">6</td></tr> </tbody> </table>	Points	None .....	0	Other than post-incarceration supervision.....	3	Post-incarceration supervision (supervision after incarceration) .....	6	<b>Primary offense: All other offenses</b> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Points</th> </tr> </thead> <tbody> <tr><td>None .....</td><td style="text-align: right;">0</td></tr> <tr><td>Other than post-incarceration supervision.....</td><td style="text-align: right;">2</td></tr> <tr><td>Post-incarceration supervision (supervision after incarceration) .....</td><td style="text-align: right;">5</td></tr> </tbody> </table>	Points	None .....	0	Other than post-incarceration supervision.....	2	Post-incarceration supervision (supervision after incarceration) .....	5	<input style="width: 40px; height: 20px;" type="text"/>														
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Post-incarceration supervision (supervision after incarceration) .....	5																													
<b>SCORE THE FOLLOWING ONLY IF PRIMARY OFFENSE AT CONVICTION IS</b> <b>A: MALICIOUSLY DISCHARGE FIREARM, ETC., IN/AT OCCUPIED BUILDING (§ 18.2-279)</b>																														
<b>◆ Type of Additional Offense(s)</b> _____																														
Additional offense with VCC prefix of WPN or ASL.....2		<input style="width: 40px; height: 20px;" type="text"/>																												
<b>SCORE THE FOLLOWING ONLY IF PRIMARY OFFENSE AT CONVICTION IS</b> <b>E: FALSE STATEMENT ON A FIREARM CONSENT FORM (§ 18.2-308.2:2(K))</b>																														
<b>◆ Basis of False Statement on Consent Form (listed below)</b> _____ <b>If YES, add 3</b> →																														
Prior felony conviction/juvenile adjudication for crime against person Other prior felony conviction/juvenile adjudication within 4 years of current offense Prior domestic assault misdemeanor conviction Subject to protective order at time of offense		<input style="width: 40px; height: 20px;" type="text"/>																												

With the recommended changes on Section A, offenders with a primary offense of maliciously discharging a firearm or missile in or at an occupied building are more likely to receive a total score that will refer the preparer to Section C. That is to say, the changes increase the percentage of offenders recommended for a prison term. As shown in Figure 55, the guidelines for this offense are expected to be more closely aligned with the actual incarceration rate.

An offender who scores a total of eight points or less on Section A of the Weapon/Firearm 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. In order to more closely match the historical sentencing patterns for offenders scored on Section B, the Commission recommends splitting the Victim Injury factor, as shown in Figure 56. When maliciously discharging a firearm in or at an occupied building is the primary offense, offenders will receive higher points on the Victim Injury factor. The recommendation will not affect the scoring for other primary offenses. As a result of this change, offenders scored on Section B with this primary offense whose acts result in any type of victim injury will automatically be recommended for a jail term. No other changes are recommended for Section B.

Offenders who score nine points or more on Section A of the Weapon/Firearm 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 as 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.

The Commission recommends multiple changes to Section C in order to address the relatively high rate of upward departures from the guidelines. Under the Commission’s recommendation, the Primary Offense scores for maliciously discharging a firearm or missile in or at an occupied building will increase from 14 to 15 points if the offender’s prior record is classified as Other, 28 to 30 points if he or she is a Category II offender, and 56 to 60 points if he or she is a Category I offender. This change is shown in Figure 57. Next, the Commission recommends changes

**Figure 55**

**Actual versus Proposed Sentences for Maliciously Discharging a Firearm/Missile in/at an Occupied Building ( § 18.2-279) FY2012 – FY2016**

	Actual Practice	Recommended under Proposed Sentencing Guidelines
Probation or Incarceration up to 6 Months	50.0%	51.5%
Incarceration More than 6 Months (Range includes prison)	50.0%	48.5%

**Figure 56**

**Proposed Victim Injury Factor Weapon/Firearm Worksheet Section B**

◆ **Victim Injury**

**Primary offense:**  
**A. Maliciously discharge firearm, etc., in/at occupied building**

	Points
Threatened, emotional or physical .....	3
Life threatening .....	4

**Primary offense: All other offenses**

	Points
Threatened, emotional or physical .....	2
Life threatening .....	3

Figure 57

**Proposed Weapon/Firearm Worksheet  
Section C**

— Prior Record Classification —  
 Category I    Category II    Other  
(scores for attempted/conspired offenses are in parentheses)

◆ **Primary Offense** \_\_\_\_\_

A. Maliciously discharge firearm, etc. in/at occupied building  
 Attempted or conspired: 1 count ..... (32) ..... (16) ..... (8)  
 Completed: 1 count ..... **56** **60** ..... **28** **30** ..... **14** **15**

B. Discharge firearm from vehicle (1 count) ..... 48 ..... 24 ..... 12  
 C. Possess firearm on school property (1 count) ..... 32 ..... 16 ..... 8  
 D. Possession of sawed-off shotgun (1 count) ..... 36 ..... 18 ..... 9  
 E. False statement on consent form (1 count) ..... 32 ..... 16 ..... 8  
 F. Possession of firearm, other weapon, explosives or ammunition by convicted felon (1 count) 32 ..... 16 ..... 8

**Score**  
 ▼

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

Maximum Penalty: 5,10 ..... 1  
 (years)

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

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

◆ **Firearm Used or Brandished** \_\_\_\_\_ **If YES, add 2** →

◆ **Victim Injury** \_\_\_\_\_

Threatened or emotional ..... 2  
 Physical ..... 4  
 Life threatening ..... 5

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

Primary offense: A. Maliciously discharge firearm, etc., in/at occupied building		Primary offense: All other offenses	
Maximum Penalty (years)	Points	Maximum Penalty (years)	Points
Less than 20	0	Less than 20	0
20, 30, 40 or more	5	20, 30, 40 or more	1

◆ **Prior Felony Convictions/Adjudications Against Person** \_\_\_\_\_

Primary offense: A. Maliciously discharge firearm, etc., in/at occupied building		Primary offense: All other offenses	
Number of Counts	Points	Number of Counts	Points
1	5	1	1
2	6	2	2
3	7	3	3
4	8	4	4
5 or more	9	5 or more	5

◆ **Prior Felony Convictions/Adjudications with the Same VCC Prefix as Primary Offense** \_\_\_\_\_

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

◆ **Legally Restrained at Time of Offense** \_\_\_\_\_ **If YES, add 2** →

to two prior record factors on Section C. The factor for Prior Convictions/Adjudications will be split and offenders with the primary offense of maliciously discharging a firearm or missile in or at an occupied building will receive higher points than those currently assigned. Scores for other offenses will not change under this recommendation. The factor for scoring Prior Felony Convictions/Adjudications against a Person will also be split, and for offenders convicted of maliciously discharging a firearm or missile in or at an occupied building who have a prior record that includes crimes committed against a person, higher points will be assigned. Figure 57 displays the recommended changes for Section C.

The changes proposed for Section C will increase the length of the prison sentence recommendation for offenders

whose primary offense is maliciously discharging a firearm or missile in or at an occupied building, with further increases in recommended sentences based on the offender’s prior record. As noted above, the guidelines are designed to provide judges with a benchmark of the typical, or average, case. It is important, then, that the guidelines yield prison sentence recommendations that are aligned with actual practice. Currently, the median prison sentence for those convicted of this offense is 2.0 years. Under the proposed changes, the guidelines recommend a median prison sentence of 2.2 years. No impact on correctional bed space is anticipated, since the Commission’s proposal is designed to integrate current judicial sanctioning practices into the guidelines. Thus, the proposed guidelines are closely aligned with judicial sentencing practices for this offense.

By amending the Weapon/Firearm guidelines as proposed, compliance with the sentencing guidelines for maliciously discharging a firearm or missile in or at an occupied building is expected to increase. Moreover, the proposed changes are expected to yield balanced aggravation and mitigation rates for this offense. Dispositional compliance, which measures the degree to which judges agree with the type of disposition recommended by the sentencing guidelines, is expected to increase from 69.2% to 72.3%, with disposition departures that are more evenly split above and below the guidelines recommendation (Figure 58). Overall compliance with the guidelines for this offense is also expected to increase slightly (from 67.7% to 69.2%) and result in much more balanced mitigation and aggravation departure rates (Figure 58). Thus, the proposed modifications to the Weapon/Firearm guidelines are expected to bring recommendations more into line with current judicial sentencing practices for this offense.

**Figure 58**  
**Compliance with Sentencing Guidelines for**  
**Maliciously Discharging a Firearm/Missile in/at an Occupied Building ( § 18.2-279)**  
**FY2012 – FY2016**  
**130 Sentencing Events**

	Dispositional Compliance			Overall Compliance	
	Current	Proposed		Current	Proposed
Compliance	69.2%	72.3%	Compliance	67.7%	69.2%
Mitigation	3.1%	14.6%	Mitigation	4.6%	14.6%
Aggravation	27.7%	13.1%	Aggravation	27.7%	16.2%

## Recommendation 2

*Amend the Weapon/Firearm sentencing guidelines to add carrying a concealed weapon as defined in § 18.2-308.*

### Issue

While a first-conviction for carrying a concealed weapon (§ 18.2-308) is a Class 1 misdemeanor, a second conviction under this provision is a Class 6 felony. A third conviction is further elevated to a Class 5 felony. Currently, carrying a concealed weapon is not covered by the sentencing guidelines when it is the primary (or most serious) offense in a sentencing event. The Commission conducted a thorough analysis and has developed a proposal to integrate carrying a concealed weapon (second and third violations) into the Weapon/Firearm guidelines.

### Discussion

To develop guidelines for this offense, the Commission carefully examined sentencing practices for felony violations of § 18.2-308 for the period FY2012 through FY2016. Data from the Circuit Court Case Management System (CMS) yielded a total of 113 offenders for whom a second conviction for carrying a concealed weapon was the primary, or most serious offense, at sentencing. For another 18 offenders, the primary offense was a third conviction for carrying a concealed weapon. Offenders convicted of carrying a concealed weapon along with an additional conviction for being a felon in possession of a firearm (§ 18.2-308.2(A)) were excluded from the analysis, as convictions under § 18.2-308.2(A) are already covered by the sentencing guidelines and many offenders convicted under that section are subject to mandatory minimum sentences. For the offenders convicted of carrying a concealed weapon without a conviction for being a felon in possession of a firearm, Commission staff obtained criminal history reports, or “rap sheets,” 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. The Commission’s analysis excludes four cases because prior record information could not be obtained.

Sentencing patterns are summarized in Figure 59. When convicted of a second violation for carrying a concealed weapon as the primary offense, 24.8% of offenders were given an incarceration term of more than six months. For these offenders, the median sentence length was one year. Another 35% received an incarceration term up to six months and the median sentence for offenders receiving this type of sanction was three months. Nearly 40% of the offenders did not receive an active term of incarceration. Offenders convicted of a third violation for carrying a concealed weapon were more likely to receive an incarceration term of greater than six months, with more than 44% of these offenders receiving that type of disposition. The median sentence in such cases was one year. When convicted of a third violation, 22% received a jail term up to six months, with a median sentence of three months. One-third of the

**Figure 59**  
**Sentences for**  
**Carrying a Concealed Weapon ( § 18.2-308)**  
**FY2012 – FY2016**

Concealed Weapon, 2nd offense 113 Sentencing Events			Concealed Weapon, 3rd offense 18 Sentencing Events		
Disposition	Percent	Median Sentence	Disposition	Percent	Median Sentence
No Incarceration	39.8%	N/A	No Incarceration	33.3%	N/A
Incarceration up to 6 months	35.4%	3 Months	Incarceration up to 6 months	22.2%	3 Months
Incarceration more than 6 months	24.8%	1.0 Year	Incarceration more than 6 months	44.4%	1.0 Year

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

offenders convicted of a third violation of carrying a concealed weapon were not given an active term of incarceration to serve.

For offenders receiving more than six months of incarceration, the sentences were further analyzed. Virginia’s sentencing guidelines are grounded in historical practices among judges and ranges are developed from the middle 50% of actual incarceration sentences, thus removing the extreme high and low sentences. For example, for second convictions of carrying a concealed weapon, the middle 50% of sentences for this offense encompasses 1.0 to 1.3 years.

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 are rigorously tested and compared to ensure the proposed guidelines are closely aligned with judicial sentencing practices in these cases. Based on this analysis, the Commission recommends adding felony violations of carrying a concealed weapon as defined in § 18.2-308 to the Weapon/Firearm guidelines, as described below.

Section A of the sentencing guidelines determines if an offender will be recommended for probation or jail up to six months (Section B) or incarceration of more than six months (Section C). Recommendations for incarceration of more than six months nearly always yield a recommended range that would include a prison term.

On Section A of the Weapon/Firearm guidelines, offenders convicted of carrying a concealed weapon as their primary offense will receive two points on the Primary Offense factor (Figure 60). The remaining factors on Section A would be scored as they currently appear on the worksheet. The Commission also recommends adding a new factor to Section A that would only be scored for offenders whose primary offense is carrying a concealed weapon, as displayed in Figure 60. This factor will score the offender’s prior criminal misdemeanor convictions. Many of the offenders convicted of carrying a concealed weapon as the primary offense had prior criminal misdemeanor convictions. For example, some of these individuals had prior weapon violations and/or assault convictions. Analysis revealed that prior misdemeanor convictions increased the likelihood that the judge would order the offender to serve a term of incarceration in excess of six months. Few offenders included

Figure 60

**Proposed Primary Offense and Prior Criminal Misdemeanor Factors  
Weapon/Firearm Worksheet  
Section A**

<b>◆ Primary Offense</b>	
A. Maliciously discharge firearm, etc., in/at occupied building (1 count).....	2
B. Discharge firearm from vehicle (1 count).....	1
C. Possess firearm on school property (1 count).....	1
D. Possession of sawed-off shotgun (1 count).....	2
E. False statement on firearm consent form (1 count).....	1
F. Possession of firearm, other weapon, explosives or ammunition by convicted felon	
1 count .....	3
2 counts .....	4
<b>G. Carry concealed weapon, 2nd or 3rd offense (1 count).....</b>	<b>2</b>

<b>New Factor</b>	
<b>SCORE THE FOLLOWING ONLY IF PRIMARY OFFENSE AT CONVICTION IS G: CARRY CONCEALED WEAPON 2ND OR 3RD OFFENSE (§ 18.2-308)</b>	
<b>◆ Prior Criminal Misdemeanor Convictions</b>	
Number	1 - 6.....
of Counts:	7 or more.....
	1
	2

in the analysis who were convicted of a second violation for carrying a concealed weapon had a prior felony record. For those individuals who do, prior felony convictions are scored on the Prior Convictions/Adjudications factor. With this approach, the proposed guidelines are expected to be closely aligned to the actual prison incarceration rate during FY2012 through FY2016.

An offender who scores a total of eight points or less on Section A of the Weapon/Firearm 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. Under the Commission’s recommendation, an offender convicted of carrying a concealed weapon will receive seven points on the Primary Offense factor (Figure 61). In order to most closely match the historical jail incarceration rate, the Commission also recommends adding a factor to Section B to account for prior criminal misdemeanors, as shown in Figure 61.

The proposed modifications ensure that the guidelines recommendations will be closely aligned to the jail incarceration rate observed in the analysis of judicial sentencing practices.

Offenders who score nine points or more on Section A of the Weapon/Firearm 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

**Figure 61**  
**Proposed Primary Offense and Prior Criminal Misdemeanor Factors**  
**Weapon/Firearm Worksheet**  
**Section B**

<b>◆ Primary Offense</b>	
A. Maliciously discharge firearm, etc., in/at occupied building (1 count).....	7
B. Discharge firearm from vehicle (1 count).....	8
C. Possess firearm on school property (1 count).....	7
D. Possession of sawed-off shotgun (1 count).....	6
E. False statement on firearm consent form (1 count).....	1
F. Possession of firearm, other weapon, explosives or ammunition by convicted felon (1 count).....	7
G. Carry concealed weapon, 2nd or 3rd offense (1 count).....	7

<b>New Factor</b>	<b>SCORE THE FOLLOWING ONLY IF PRIMARY OFFENSE AT CONVICTION IS G: CARRY CONCEALED WEAPON 2ND OR 3RD OFFENSE (§ 18.2-308)</b>	
<b>◆ Prior Criminal Misdemeanor Convictions</b>		
Number	1 - 2.....	1
of Counts:	3.....	2
	4 or more.....	3

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 convicted of carrying a concealed weapon will receive eight points for the Primary Offense factor if the offender’s prior record is classified as Other, 16 points if he or she is a Category II offender, or 32 points if he or she is a Category I offender (Figure 62). No other modifications to Section C are necessary to ensure that the sentences recommended by the guidelines accurately reflect historical sentencing practices for this 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.

Figure 62

**Proposed Primary Offense Factor  
Weapon/Firearm Worksheet  
Section C**

◆ Primary Offense	Prior Record Classification		
	<input type="checkbox"/> Category I	<input type="checkbox"/> Category II	<input type="checkbox"/> Other
<small>(scores for attempted/conspired offenses are in parentheses)</small>			
A. Maliciously discharge firearm, etc. in/at occupied building			
Attempted or conspired: 1 count.....	(32).....	(16).....	(8)
Completed: 1 count.....	56.....	28.....	14
B. Discharge firearm from vehicle (1 count).....	48.....	24.....	12
C. Possess firearm on school property (1 count).....	32.....	16.....	8
D. Possession of sawed-off shotgun (1 count).....	36.....	18.....	9
E. False statement on consent form (1 count).....	32.....	16.....	8
F. Possession of firearm, other weapon, explosives or ammunition by convicted felon (1 count).....	32.....	16.....	8
G. Carry concealed weapon, 2nd or 3rd offense (1 count).....	32.....	16.....	8



As Figure 63 illustrates, the proposed guidelines for carrying a concealed weapon are expected to result in guidelines recommendations that closely reflect actual dispositions for offenders convicted of carrying a concealed weapon. For example, when sentencing offenders convicted of a second violation for carrying a concealed weapon, judges order 24.8% of the individuals to terms of incarceration greater than six months. The proposed guidelines are expected to recommend 25.7% of these offenders for such a disposition. Thus, the recommended incarceration rate will approximate the actual incarceration rate observed during FY2012-FY2016.

The Commission also anticipates that the proposed guidelines will yield sentence length recommendations that approximate judicial sentencing practices for these offenses. For offenders convicted of carrying a concealed weapon who received a term of incarceration greater than six months, the median sentence was one year (Figure 64). Under the proposed guidelines, for a second conviction of carrying a concealed weapon, the median recommended sentence is estimated to be 0.8 years with a recommended range of .6 years to 1.0 years. For a third conviction of carrying a concealed weapon, the median recommended sentence is estimated to be 1.1 years. Thus, the recommended and actual sentences are 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 63**

**Actual versus Proposed Sentences for Carrying a Concealed Weapon ( § 18.2-308) FY2012 – FY2016**

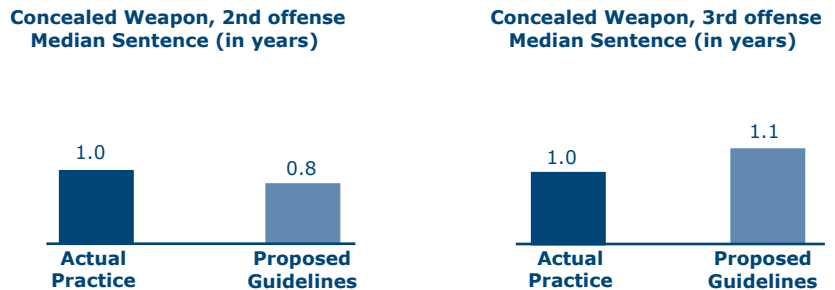
<b>Concealed Weapon, 2nd offense</b>		
	<b>Actual Practice</b>	<b>Recommended under Proposed Sentencing Guidelines</b>
Probation or Incarceration up to 6 Months	75.2%	74.3%
Incarceration More than 6 Months (Range includes prison)	24.8%	25.7%

**Actual versus Proposed Sentences for Carrying a Concealed Weapon ( § 18.2-308) FY2012 – FY2016**

<b>Concealed Weapon, 3rd offense</b>		
	<b>Actual Practice</b>	<b>Recommended under Proposed Sentencing Guidelines</b>
Probation or Incarceration up to 6 Months	55.6%	61.1%
Incarceration More than 6 Months (Range includes prison)	44.4%	38.9%

**Figure 64**

**Actual versus Proposed Sentences for Carrying a Concealed Weapon ( § 18.2-308) Offenders Sentenced to Incarceration of More Than Six Months FY2012 – FY2016**



### Recommendation 3

*Revise the Schedule I/II Drug and Other Drug guidelines by expanding the factor Mandatory Minimum for Weapon Conviction(s) in Current Event to include convictions under § 18.2-53.1.*

#### Issue

In 2007, the Commission recommended the addition of a factor to Section C of the sentencing guidelines for Schedule I/II Drugs and Other Drugs to increase the prison sentence recommendation for offenders who have an accompanying weapons offense requiring a mandatory minimum term. The Commission’s analysis indicated that this change would improve the compliance rate in these cases, while providing a more balanced split between aggravation and mitigation departures. This recommendation, submitted in the Commission’s 2007 Annual Report, was accepted by the 2008 General Assembly.

Per the current Sentencing Guidelines manual, the factor Mandatory Minimum for Weapon Conviction(s) in Current Event scores only additional offenses that have a Virginia Crime Code (VCC) prefix of “WPN” and a mandatory minimum term of two years or five years. The factor does not currently include convictions for the use of a firearm in the commission of a felony under § 18.2-53.1, which also carry a mandatory minimum term. Specifically, the court must impose a mandatory sentence of three years for the first conviction for this offense (VCC of ASL-1319-F9) and five years for a second or subsequent conviction (VCC

of ASL-1323-F9). While it is uncommon for offenders whose primary (or most serious) offense is a drug offense to have an additional conviction under § 18.2-53.1, this combination of offenses does occur. Currently, convictions under § 18.2-53.1 are not scored on the factor Mandatory Minimum for Weapon Conviction(s) in Current Event, meaning that Section C of the guidelines does not adequately address judicial sentencing practices for this combination of offenses. Accordingly, the Commission has analyzed sentencing data for these cases to determine if this factor could be expanded to include convictions for the use of a firearm in the commission of a felony as defined in § 18.2-53.1.

#### Discussion

The Commission’s 2007 analysis of sentencing practices in drug cases indicated that judges often give offenders some additional time to serve for the drug conviction, beyond the statutorily-prescribed mandatory minimum term for the accompanying weapons charge. Inclusion of the Mandatory Minimum for Weapon Conviction(s) in Current Event factor on Section C of the Schedule I/II Drug and Other Drug guidelines provides an adjustment to more accurately reflect judicial sentencing practices in these specific circumstances. As shown in Figure 65, the factor adds 13 points for each count if the weapons charge carries

a two-year mandatory minimum sentence (as, for example, possession of a firearm by a convicted nonviolent felon, § 18.2-308.2(A)), and 32 points for each count if the weapons charge carries a five-year mandatory minimum sentence (such as possession of a firearm by a convicted violent felon, § 18.2-308(A)).

**Figure 65**  
**Current Schedule I/II Drug Worksheet**  
**Section C Factor**

◆ **Mandatory Minimum for Weapon Conviction(s) in Current Event**

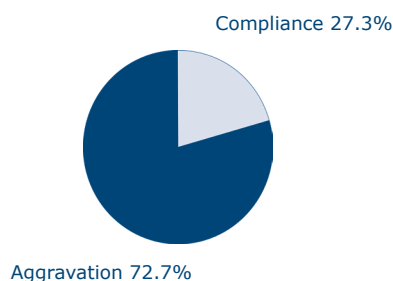
Assign points to each additional offense with a mandatory minimum and total the points

5 Year Mandatory Minimum.....	32
2 Year Mandatory Minimum.....	13

An analysis of FY2009 through FY2016 Sentencing Guidelines data yielded 11 sentencing events with a primary offense related to drugs and an additional offense of using a firearm in the commission of a felony (§ 18.2-53.1). In each case, the primary offense was associated with Schedule I or II drugs. Judges sentenced above the guidelines recommendation in 8 of the 11 cases, for an aggravation rate of 72.7% (Figure 66).

**Figure 66**

**Compliance with Guidelines for Schedule I/II Drug Offenses with an Additional Offense under § 18.2-53.1 FY2009 – FY2016  
11 Sentencing Events**



Commission staff tested numerous scenarios for expanding the Mandatory Minimum for Weapon Conviction(s) in Current Event factor. The Commission recommends modifying this factor to include instances in which an additional offense carries a mandatory minimum term under § 18.2-53.1. The Commission also recommends adjusting the existing factor so that 25 points are added for each count if the weapons charge carries a three-year mandatory minimum sentence; the existing point values for offenses carrying two-year and five-year mandatory minimum terms would not change (Figure 67). Given the judicial sentencing practices from FY2009 through FY2016, compliance with the guidelines in these cases is anticipated to increase to approximately 73%, while the aggravation rate would decline to 27%. The reduction in aggravating sentences

would bring recommendations more in line with judicial sentencing practices for this offense.

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

**Figure 67  
Proposed Schedule I/II Drug Worksheet  
Section C Factor**

◆ Mandatory Minimum for Weapon Conviction(s) in Current Event	
<u>Assign</u> points to <u>each</u> additional offense with a mandatory minimum and total the points	
5 Year Mandatory Minimum.....	32
3 Year Mandatory Minimum.....	25
2 Year Mandatory Minimum.....	13



# Appendices

## Appendix 1

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

#### Reasons for MITIGATION

<b>Burglary of Dwelling (167 Cases)</b>	<b>Number</b>	<b>Percent</b>
Plea Agreement	33	27.9%
No Reason Given	21	17.8%
Offender cooperated with authorities	13	11.0%
Judicial discretion (time served, other sentence to serve, consistent with codefendant, etc.)	12	10.1%
Offender is sentenced to an alternative punishment to incarceration	10	8.5%
Facts of the case (not specific)	10	8.4%
Sentence recommended by Commonwealth's Attorney	8	6.8%
Offender has good potential for rehabilitation	8	6.8%
Victim's request	6	5.1%
Offender has minimal/no prior record	6	5.1%
Court Circumstances or Procedural Issues	5	4.2%
Offender's health (mental, physical, emotional, etc.)	5	4.2%
Financial obligations (court costs, restitution, child support, etc.)	4	3.4%
Offender has made progress in rehabilitating him/herself	4	3.4%
Offender issues (age of offender, homeless, family issues, etc.)	3	2.5%
Judge had an issue scoring guidelines factors	3	2.5%
Behavior positive since commission of the offense	3	2.5%
Property was recovered or was of little value	3	2.5%
Offender not the leader	2	1.7%
Sentenced to the Department of Juvenile Justice	2	1.7%
Offender needs rehabilitation	2	1.7%
Victim circumstances (drug dealer, etc.)	1	.8%
Sentencing guidelines recommendation not appropriate (non-specific)	1	.8%
Victim cannot/will not testify	1	.8%
Jury Sentence	1	.8%

<b>Burglary of Other Structure (57 Cases)</b>	<b>Number</b>	<b>Percent</b>
Plea Agreement	14	37.8%
Offender is sentenced to an alternative punishment to incarceration	8	21.6%
No Reason Given	7	18.9%
Facts of the case (not specific)	4	10.8%
Court Circumstances or Procedural Issues	3	8.1%
Judicial discretion (time served, other sentence to serve, consistent with codefendant, etc.)	3	8.1%
Offender cooperated with authorities	3	8.1%
Guidelines recommendation is too harsh	2	5.4%
Offender has good potential for rehabilitation	2	5.4%
Offender has minimal/no prior record	2	5.4%
Offender health (mental, physical, emotional, etc.)	2	5.4%
Financial obligations (court costs, restitution, child support, etc.)	1	2.7%
Offender has made progress in rehabilitating him/herself	1	2.7%
Offender issues (age of offender, homeless, family issues, etc.)	1	2.7%
Offender not the leader	1	2.7%
Sentence recommended by Commonwealth's Attorney	1	2.7%
Sequence of events, impact on recommendation	1	2.7%
Victim's request	1	2.7%

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**

<b>Burglary of Dwelling (209 Cases)</b>	<b>Number</b>	<b>Percent</b>
Aggravating circumstances/flagrancy of offense	45	34.1%
Plea agreement	32	24.2%
Aggravating facts involving the breaking and entering	18	13.6%
No reason given	13	9.8%
Number of violations/counts in the event	10	7.6%
Offender has extensive prior record or same type of prior offense	9	6.8%
Offender has poor rehabilitation potential	9	6.8%
Guidelines recommendation is too low	8	6.1%
Judicial discretion (time served, shock incarceration, etc.)	8	6.1%
Victim's request	8	6.1%
Type of victim (child, etc.)	7	5.3%
Degree of victim injury (physical, emotional, etc.)	6	4.5%
Extreme property or monetary loss	6	4.5%
Jury sentence	6	4.5%
Offender used a weapon in commission of the offense	5	3.8%
Offense involved a high degree of planning/violation of trust	5	3.8%
Gang related offense	3	2.3%
Poor conduct since commission of offense	2	1.5%
Aggravating court circumstances/proceedings	1	0.8%
Failed to follow instructions while on probation	1	0.8%
Illegible written reason	1	0.8%
Offender failed to cooperate with authorities	1	0.8%
Offender needs rehabilitation offered by jail/prison	1	0.8%
Offender was leader	1	0.8%
Sentence recommended by Commonwealth's Attorney	1	0.8%
Sentencing guidelines recommendation is not appropriate	1	0.8%
Violent/disruptive behavior in custody	1	0.8%

<b>Burglary of Other Structure (47 Cases)</b>	<b>Number</b>	<b>Percent</b>
Plea agreement	10	28.6%
Aggravating circumstances/flagrancy of offense	6	17.1%
Offense involved a high degree of planning/violation of trust	5	14.3%
Offender has extensive prior record or same type of prior offense	4	11.4%
Extreme property or monetary loss	3	8.6%
No reason given	3	8.6%
Offender needs rehabilitation offered by jail/prison	3	8.6%
Guidelines recommendation is too low	2	5.7%
Jury sentence	2	5.7%
Number of violations/counts in the event	2	5.7%
Offender has poor rehabilitation potential	2	5.7%
Aggravating court circumstances/proceedings	1	2.9%
Child present at time of offense	1	2.9%
Offender issues (age of offender, lacks family support, etc.)	1	2.9%
Rounding by judge	1	2.9%
Type of victim (child, etc.)	1	2.9%

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 MITIGATION**

<b>Drugs/Schedule I/II (954 Cases)</b>	<b>Number</b>	<b>Percent</b>
Plea Agreement	255	37.2%
No Reason Given	108	15.7%
Offender is sentenced to an alternative punishment to incarceration	93	13.6%
Court Circumstances or Procedural Issues	72	10.5%
Offender cooperated with authorities	68	9.9%
Judicial discretion (time served, other sentence to serve, etc.)	64	9.3%
Offender has minimal/no prior record	56	8.2%
Sentence recommended by Commonwealth's Attorney	42	6.1%
Offender has made progress in rehabilitating him/herself	29	4.2%
Facts of the case (not specific)	24	3.5%
Behavior positive since commission of the offense	21	3.1%
Offender's health	20	2.9%
Offender has good potential for rehabilitation	17	2.5%
Current offense involves drugs/alcohol (small amount of drugs)	15	2.2%
Offender issues (age of offender, homeless, family issues, etc.)	12	1.7%
Offender not the leader	9	1.3%
Judge had an issue scoring guidelines factors	8	1.2%
Offender needs rehabilitation	7	1.0%
Offender's substance abuse issues	6	0.9%
Issue scoring risk assessment	4	0.6%
Financial obligations (court costs, restitution, child support, etc.)	3	0.4%
Sentencing guidelines recommendation not appropriate (non-specific)	3	0.4%
Guidelines recommendation is too harsh	3	0.4%
Recommendation of the probation officer	2	0.3%
Sentencing guidelines incorrect/missing	2	0.3%
Probation violation issue	4	0.5%
Property was recovered	1	0.1%
Sequence of events, impact on recommendation	1	0.1%
Jury sentence	1	0.1%
Rounding by judge	1	0.1%
Victim cannot/will not testify	1	0.1%
Victim circumstances (facts of the case, etc.)	1	0.1%
Sentenced to the Department of Juvenile Justice	1	0.1%

<b>Drugs/Other (94 Cases)</b>	<b>Number</b>	<b>Percent</b>
Plea Agreement	30	40.0%
Offender cooperated with authorities	13	17.3%
No Reason Given	11	14.7%
Court Circumstances or Procedural Issues	9	12.0%
Offender's health (mental, physical, emotional, etc.)	5	6.7%
Sentence recommended by Commonwealth's Attorney	4	5.3%
Offender is sentenced to an alternative punishment to incarceration	4	5.3%
Judicial discretion (time served, other sentence to serve, etc.)	3	4.0%
Offender has made progress in rehabilitating him/herself	3	4.0%
Facts of the case (not specific)	2	2.7%
Offender has minimal/no prior record	2	2.7%
Offender has good potential for rehabilitation	1	1.3%
Issues scoring risk assessment	1	1.3%
Judge thought sentence was in compliance	1	1.3%
Offender needs rehabilitation	1	1.3%
Violation of probation was for a nonviolent offense	1	1.3%
Sentenced to the Department of Juvenile Justice	1	1.3%
Sequence of events, impact on recommendation	1	1.3%
Guidelines recommendation is too harsh	1	1.3%

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**

<b>Drugs/Schedule I/II (851 Cases)</b>	<b>Number</b>	<b>Percent</b>
Plea agreement	194	30.0%
No reason given	115	17.8%
Offender has extensive prior record or same type of prior offense	80	12.4%
Number of violations/counts in the event	76	11.8%
Current offense involves drugs/alcohol (large amount, etc.)	44	6.8%
Offender failed alternative sanction program	44	6.8%
Aggravating circumstances/flagrancy of offense	41	6.3%
Sentenced to an alternative	32	5.0%
Judicial discretion (time served, shock incarceration, etc.)	27	4.2%
Jury sentence	24	3.7%
Offender's substance abuse issues	23	3.6%
Offender has poor rehabilitation potential	18	2.8%
Poor conduct since commission of offense	15	2.3%
Aggravating court circumstances/proceedings	14	2.2%
Guidelines recommendation is too low	14	2.2%
Used, etc., drugs/alcohol while on probation	14	2.2%
Sentence recommended by Commonwealth's Attorney	10	1.5%
Failed to follow instructions while on probation	7	1.1%
Child present at time of offense	6	0.9%
New offenses were committed while on probation	6	0.9%
Offender needs rehabilitation offered by jail/prison	6	0.9%
Sentencing guidelines recommendation is not appropriate	6	0.9%
Absconded from probation supervision	4	0.6%
Offender failed to cooperate with authorities	4	0.6%
Type of victim (child, etc.)	4	0.6%
Illegible written reason	4	0.6%
Offender used a weapon in commission of the offense	3	0.5%
On probation for a serious offense	3	0.5%
Prior record not adequately weighed by guidelines	3	0.5%
No reason given	2	0.3%
Offense involved a high degree of planning/violation of trust	2	0.3%
Violent/disruptive behavior in custody	2	0.3%
Degree of victim injury (physical, emotional, etc.)	1	0.2%
Extreme property or monetary loss	1	0.2%
Financial obligations (court costs, restitution, child support, etc.)	1	0.2%
Mandatory minimum involved in the event	1	0.2%

<b>Drugs/Other (150 Cases)</b>	<b>Number</b>	<b>Percent</b>
Plea agreement	32	29.4%
Current offense involves drugs/alcohol (large amount, etc.)	16	14.7%
Offender has extensive prior record or same type of prior offense	14	12.8%
No reason given	12	11.0%
Aggravating circumstances/flagrancy of offense	11	10.1%
Number of violations/counts in the event	11	10.1%
Guidelines recommendation is too low	7	6.4%
Jury sentence	6	5.5%
Offender failed alternative sanction program	5	4.6%
Poor conduct since commission of offense	4	3.7%
Used, etc., drugs/alcohol while on probation	4	3.7%
Child present at time of offense	2	1.8%
Degree of victim injury (physical, emotional, etc.)	2	1.8%
Judicial discretion (time served, shock incarceration, etc..)	2	1.8%
Offender has poor rehabilitation potential	2	1.8%
Offender needs rehabilitation offered by jail/prison	2	1.8%
Offense involved a traffic accident or reckless driving	2	1.8%
Prior record not adequately weighed by guidelines	2	1.8%
Sentence recommended by Commonwealth's Attorney	2	1.8%
Sentenced to an alternative	2	1.8%
Violent/disruptive behavior in custody	2	1.8%
Failed to follow instructions while on probation	2	1.8%
Absconded from probation supervision	1	0.9%
Offender used a weapon in commission of the offense	1	0.9%
Offender's substance abuse issues	1	0.9%
Offense involved a high degree of planning/violation of trust	1	0.9%
On probation for a serious offense	1	0.9%
Sentencing guidelines recommendation is not appropriate	1	0.9%

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 MITIGATION

<b>Fraud (269 Cases)</b>	<b>Number</b>	<b>Percent</b>
Plea Agreement	57	32.4%
Judicial discretion (time served, other sentence to serve, consistent with codefendant, etc.)	27	15.3%
No Reason Given	22	12.5%
Facts of the case (not specific)	21	11.9%
Financial obligations (court costs, restitution, child support, etc.)	20	11.4%
Offender cooperated with authorities	16	9.1%
Offender is sentenced to an alternative punishment to incarceration	16	9.1%
Sentence recommended by Commonwealth's Attorney	12	6.8%
Offender has minimal/no prior record	11	6.3%
Offender's health (mental, physical, emotional, etc.)	8	4.5%
Court Circumstances or Procedural Issues	7	4.0%
Offender has good potential for rehabilitation	7	4.0%
Offender issues (age of offender, homeless, family issues, etc.)	6	3.4%
Guidelines recommendation is too harsh	5	2.8%
Victim's request	5	2.8%
Offender has made progress in rehabilitating him/herself	4	2.3%
Offender's substance abuse issues	3	1.7%
Sequence of events, impact on recommendation	3	1.7%
Victim cannot/will not testify	3	1.7%
Sentencing guidelines recommendation not appropriate (non-specific)	3	1.7%
Victim circumstances (drug dealer, etc.)	3	1.7%
Jury sentence	2	1.1%
Offender needs rehabilitation	2	1.1%
Offender not the leader	2	1.1%
Behavior positive since commission of the offense	2	1.1%
Issue scoring risk assessment	1	0.6%
Property was recovered	1	0.6%

<b>Larceny (730 Cases)</b>	<b>Number</b>	<b>Percent</b>
Plea Agreement	188	36.1%
No Reason Given	88	16.9%
Offender is sentenced to an alternative punishment to incarceration	77	14.8%
Judicial discretion (time served, other sentence to serve, consistent with codefendant, etc.)	44	8.4%
Offender has minimal/no prior record	38	7.3%
Offender cooperated with authorities	37	7.1%
Offender health (mental, physical, emotional, etc.)	36	6.9%
Sentence recommended by Commonwealth's Attorney	34	6.5%
Facts of the case (not specific)	27	5.2%
Financial obligations (court costs, restitution, child support, etc.)	22	4.2%
Property was recovered	20	3.8%
Court Circumstances or Procedural Issues	17	3.3%
Behavior positive since commission of the offense	12	2.3%
Offender has good potential for rehabilitation	12	2.3%
Victim's request	12	2.3%
Offender has made progress in rehabilitating him/herself	11	2.1%
Offender issues (age of offender, homeless, family issues, etc.)	6	1.2%
Judge had an issue scoring guidelines factors	5	1.0%
Offender's substance abuse issues	5	1.0%
Sequence of events, impact on recommendation	5	1.0%
Guidelines recommendation is too harsh	4	0.8%
Offender needs rehabilitation	4	0.8%
Sentencing guidelines recommendation not appropriate (non-specific)	3	0.6%
Current offense involves drugs/alcohol (small amount of drugs)	3	0.6%
Offender not the leader	3	0.6%
Victim circumstances (drug dealer, etc.)	3	0.6%
Illegible written reason	2	0.4%
Judge rounded guidelines minimum to nearest whole year	2	0.4%
Jury sentence	2	0.4%
Sentence recommended by Probation Officer	2	0.4%
Sentenced to the Department of Juvenile Justice	2	0.4%
Victim cannot/will not testify	2	0.4%
Sentencing guidelines incorrect/missing	1	0.2%
Split trial/sentence (combination jury and bench trial)	1	0.2%

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

<b>Fraud (133 Cases)</b>	<b>Number</b>	<b>Percent</b>
Plea agreement	21	21.0%
No reason given	17	17.0%
Aggravating circumstances/flagrancy of offense	15	15.0%
Offender has extensive prior record or same type of prior offense	13	13.0%
Number of violations/counts in the event	9	9.0%
Offense involved a high degree of planning/violation of trust	9	9.0%
Type of victim (child, etc.)	7	7.0%
Guidelines recommendation is too low	6	6.0%
Extreme property or monetary loss	4	4.0%
Judicial discretion (time served, shock incarceration, consistent with codefendant, etc.)	4	4.0%
Jury sentence	4	4.0%
Absconded from probation supervision	3	3.0%
Degree of victim injury (physical, emotional, etc.)	3	3.0%
Prior record not adequately weighed by guidelines	3	3.0%
Offender failed alternative sanction program	2	2.0%
Offender failed to cooperate with authorities	2	2.0%
Offender has poor rehabilitation potential	2	2.0%
Victim circumstances (facts of the case, etc.)	2	2.0%
Aggravating court circumstances/proceedings (will resentence if alternative completed, etc.)	1	1.0%
Current offense involves drugs/alcohol (large amount, etc.)	1	1.0%
Financial obligations (court costs, restitution, child support, etc.)	1	1.0%
Offender issues (age of offender, lacks family support, health, etc.)	1	1.0%
Offender used a weapon in commission of the offense	1	1.0%
Sentenced to an alternative	1	1.0%
Sentencing guidelines recommendations not appropriate	1	1.0%

<b>Larceny (507 Cases)</b>	<b>Number</b>	<b>Percent</b>
Plea agreement	92	24.9%
Aggravating circumstances/flagrancy of offense	61	16.5%
Offender has extensive prior record or same type of prior offense	57	15.4%
No reason given	55	14.9%
Number of violations/counts in the event	29	7.8%
Extreme property or monetary loss	23	6.2%
Offense involved a high degree of planning/violation of trust	22	5.9%
Sentenced to an alternative	19	5.1%
Judicial discretion (time served, shock incarceration, consistent with codefendant, etc.)	13	3.5%
Aggravating court circumstances/proceedings (will resentence if alternative completed, etc.)	12	3.2%
Poor conduct since commission of offense	12	3.2%
Guidelines recommendation is too low	10	2.7%
Offender has poor rehabilitation potential	9	2.4%
Degree of victim injury (physical, emotional, etc.)	8	2.2%
Offender used a weapon in commission of the offense	8	2.2%
Type of victim (child, etc.)	8	2.2%
Jury sentence	7	1.9%
New offenses were committed while on probation	5	1.4%
Victim's request	5	1.4%
Current offense involves drugs/alcohol (large amount, etc.)	4	1.1%
Financial obligations (court costs, restitution, child support, etc.)	4	1.1%
Offender failed alternative sanction program	4	1.1%
Sentence recommended by Commonwealth's Attorney	4	1.1%
Absconded from probation supervision	3	0.8%
Prior record not adequately weighed by guidelines	3	0.8%
Sentenced to an alternative	3	0.8%
Violent/disruptive behavior in custody	3	0.8%
2nd/subsequent revocation of defendant's probation	2	0.5%
Child present at time of offense	2	0.5%
Failed to follow instructions while on probation	2	0.5%
Never reported to or removed from probation	2	0.5%
Offender failed to cooperate with authorities	2	0.5%
Offender issues (age of offender, lacks family support, health, etc.)	2	0.5%
Offender's substance abuse issues	2	0.5%
On probation for a serious offense	2	0.5%
Aggravating facts involving the breaking and entering	1	0.3%
Degree of violence toward victim	1	0.3%
Illegible written reason	1	0.3%
Mandatory minimum involved in the event	1	0.3%
Offender violated protective order or was stalking	1	0.3%
Offense involved a traffic accident or reckless driving	1	0.3%
Sentence recommended by Probation Officer	1	0.3%
Victim circumstances (facts of the case, etc.)	1	0.3%

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 MITIGATION

Miscellaneous/Other (75 Cases)	Number	Percent
Plea Agreement	24	62.4%
No Reason Given	12	22.6%
Facts of the case (not specific)	12	22.6%
Sentence recommended by Commonwealth's Attorney	6	11.3%
Offender issues (age of offender, homeless, family issues, etc.)	4	7.5%
Judicial discretion (time served, other sentence to serve, consistent with codefendant, etc.)	3	5.7%
Offender's health (mental, physical, emotional, etc.)	3	5.7%
Financial obligations (court costs, restitution, child support, etc.)	2	3.8%
Offender has made progress in rehabilitating him/herself	2	3.8%
Behavior positive since commission of the offense	1	1.9%
Court Circumstances or Procedural Issues	1	1.9%
Offender cooperated with authorities	1	1.9%
Offender is sentenced to an alternative punishment to incarceration	1	1.9%
Offender needs rehabilitation	1	1.9%
Sentence recommended by Probation Officer	1	1.9%
Sentenced to Department of Juvenile Justice	1	1.9%

Miscellaneous/Person & Property (58 Cases)	Number	Percent
Plea Agreement	13	35.1%
Facts of the case (not specific)	7	18.9%
Judicial discretion (time served, other sentence to serve, consistent with codefendant, etc.)	5	13.5%
No Reason Given	5	13.5%
Offender's health (mental, physical, emotional, etc.)	5	13.5%
Sentence recommended by Commonwealth's Attorney	5	13.5%
Offender has good potential for rehabilitation	4	10.8%
Offender has minimal/no prior record	3	8.1%
Little or no injury/offender did not intend to harm	2	5.4%
Offender has made progress in rehabilitating him/herself	2	5.4%
Offender cooperated with authorities	1	2.7%
Financial obligations (court costs, restitution, child support, etc.)	1	2.7%
Court Circumstances or Procedural Issues	1	2.7%
Offender needs rehabilitation	1	2.7%
Offender issues (age of offender, homeless, family issues, etc.)	1	2.7%
Offender is sentenced to an alternative punishment to incarceration	1	2.7%
Victim's Request	1	2.7%

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**

<b>Miscellaneous/Other (38 Cases)</b>	<b>Number</b>	<b>Percent</b>
Plea agreement	9	32.1%
Offender has extensive prior record or same type of prior offense	7	25.0%
Aggravating circumstances/flagrancy of offense	4	14.3%
No reason given	4	14.3%
Gang related offense	2	7.1%
Guidelines recommendation is too low	2	7.1%
Number of violations/counts in the event	2	7.1%
Offender failed to cooperate with authorities	2	7.1%
Offender has poor rehabilitation potential	2	7.1%
Absconded from probation supervision	1	3.6%
Aggravating court circumstances/proceedings (will resentence if alternative completed, etc.)	1	3.6%
Jury sentence	1	3.6%
Sentenced to an alternative	1	3.6%

<b>Miscellaneous/Person &amp; Property (140 Cases)</b>	<b>Number</b>	<b>Percent</b>
Aggravating circumstances/flagrancy of offense	35	38.9%
Plea agreement	20	22.2%
Type of victim (child, etc.)	14	15.6%
Degree of victim injury (physical, emotional, etc.)	12	13.3%
No reason given	10	11.1%
Guidelines recommendation is too low	7	7.8%
Child present at time of offense	5	5.6%
Current offense involves drugs/alcohol (large amount, etc.)	5	5.6%
Number of violations/counts in the event	5	5.6%
Offender has extensive prior record or same type of prior offense	5	5.6%
Jury sentence	4	4.4%
Sentencing guidelines recommendation is not appropriate	4	4.4%
Offender has poor rehabilitation potential	3	3.3%
Sentence recommended by Commonwealth's Attorney	2	2.2%
Violent/disruptive behavior in custody	2	2.2%
Degree of violence toward victim	1	1.1%
Financial obligations (court costs, restitution, child support, etc.)	1	1.1%
Illegible written reason	1	1.1%
Offender issues (age of offender, lacks family support, health, etc.)	1	1.1%
Offense involved a traffic accident or reckless driving	1	1.1%
Sentenced to an alternative	1	1.1%
Victim circumstances (facts of the case, etc.)	1	1.1%

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 1

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

#### Reasons for MITIGATION

<b>Traffic (157 Cases)</b>	<b>Number</b>	<b>Percent</b>
Plea Agreement	42	35.6%
No Reason Given	22	18.6%
Facts of the case (not specific)	14	11.9%
Offender has minimal/no prior record	10	8.5%
Offender is sentenced to an alternative punishment to incarceration	9	7.6%
Judicial discretion (time served, other sentence to serve, consistent with codefendant, etc.)	8	6.8%
Offender's health (mental, physical, emotional, etc.)	8	6.8%
Court Circumstances or Procedural Issues	7	5.9%
Offender needs rehabilitation	6	5.1%
Offender cooperated with authorities	5	4.2%
Offender has made progress in rehabilitating him/herself	5	4.2%
Sentence recommended by Commonwealth's Attorney	5	4.2%
Guidelines recommendation is too harsh	3	2.5%
Offender has good potential for rehabilitation	3	2.5%
Little or no injury/offender did not intend to harm	2	1.7%
Jury sentence	2	1.7%
Offender issues (age of offender, homeless, family issues, etc.)	2	1.7%
Illegible written reason	1	0.8%
Sentencing guidelines incorrect/missing	1	0.8%
Victim cannot/will not testify	1	0.8%
Victim's Request	1	0.8%

<b>Weapons (107 Cases)</b>	<b>Number</b>	<b>Percent</b>
Plea Agreement	28	37.9%
Offender's health (mental, physical, emotional, etc.)	12	16.2%
Offender has minimal/no prior record	11	14.9%
Offender cooperated with authorities	9	12.2%
Court Circumstances or Procedural Issues	8	10.8%
Facts of the case (not specific)	8	10.8%
No Reason Given	7	9.5%
Sentence recommended by Commonwealth's Attorney	5	6.8%
Judicial discretion (time served, other sentence to serve, consistent with codefendant, etc.)	3	4.1%
Jury sentence	2	2.7%
Offender is sentenced to an alternative punishment to incarceration	2	2.7%
Offender issues (age of offender, homeless, family issues, etc.)	2	2.7%
Weapon was not a firearm	2	2.7%
Illegible written reason	1	2.7%
Financial obligations (court costs, restitution, child support, etc.)	1	1.4%
Guidelines recommendation is too harsh	1	1.4%
Offender has good potential for rehabilitation	1	1.4%
Offender's substance abuse issues	1	1.4%
Sentence recommended by Probation Officer	1	1.4%
Victim circumstances (facts of the case, etc.)	1	1.4%

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**

<b>Traffic (255 Cases)</b>	<b>Number</b>	<b>Percent</b>
Offender has extensive prior record or same type of prior offense	38	23.9%
Aggravating circumstances/flagrancy of offense	34	21.4%
Plea Agreement	27	17.0%
Current offense involves drugs/alcohol (large amount, etc.)	26	16.4%
Offender's substance abuse issues	25	15.7%
No reason given	17	10.7%
Offender has poor rehabilitation potential	14	8.8%
Offense involved a traffic accident or reckless driving	14	8.8%
Degree of victim injury (physical, emotional, etc.)	10	6.3%
Jury sentence	8	5.0%
Number of violations/counts in the event	7	4.4%
Guidelines recommendation is too low	5	3.1%
Sentenced to an alternative	5	3.1%
Aggravating court circumstances/proceedings (will resentence if alternative completed, etc.)	3	1.9%
Offender issues (age of offender, lacks family support, health, etc.)	2	1.3%
New offenses were committed while on probation	2	1.3%
Prior record not adequately weighed by guidelines	2	1.3%
Sentence recommended by Commonwealth's Attorney	2	1.3%
Victim circumstances (facts of the case, etc.)	2	1.3%
Absconded from probation supervision	1	0.6%
Child present at time of offense	1	0.6%
Failed to follow instructions while on probation	1	0.6%
Illegible written reason	1	0.6%
Judicial discretion (time served, shock incarceration, consistent with codefendant, etc.)	1	0.6%
Mandatory minimum involved in the event	1	0.6%
Offender failed alternative sanction program	1	0.6%
Offender failed to cooperate with authorities	1	0.6%
On probation for a serious offense	1	0.6%
Poor conduct since commission of offense	1	0.6%
Sentence recommended by Probation Officer	1	0.6%
Sentencing guidelines recommendation is not appropriate	1	0.6%

<b>Weapons (109 Cases)</b>	<b>Number</b>	<b>Percent</b>
Plea Agreement	36	46.2%
Number of violations/counts in the event	17	21.8%
Aggravating court circumstances/proceedings (will resentence if alternative completed, etc.)	15	19.2%
No reason given	11	14.1%
Offender has extensive prior record or same type of prior offense	6	7.7%
Offender used a weapon in commission of the offense	4	5.1%
Jury sentence	3	3.8%
Mandatory minimum involved in the event	2	2.6%
Guidelines recommendation is too low	2	2.6%
Judicial discretion (time served, shock incarceration, consistent with codefendant, etc.)	2	2.6%
Sentence recommended by Commonwealth's Attorney	2	2.6%
Victim circumstances (facts of the case, etc.)	2	2.6%
Current offense involves drugs/alcohol (large amount, etc.)	1	1.3%
Failed to follow instructions while on probation	1	1.3%
Offender has poor rehabilitation potential	1	1.3%
Offense involved a traffic accident or reckless driving	1	1.3%
On probation for a serious offense	1	1.3%
Sentencing guidelines recommendation is not appropriate	1	1.3%
Type of victim (child, etc.)	1	1.3%

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

<b>Assault (238 Cases)</b>	<b>Number</b>	<b>Percent</b>
Plea Agreement	56	35.2%
Victim's request	28	17.6%
No reason given	20	12.6%
Judicial discretion (time served, other sentence to serve, consistent with codefendant, etc.)	15	9.4%
Court circumstances or procedural issues	15	9.4%
Facts of the case (not specific)	15	9.4%
Offender has minimal/no prior record	13	8.2%
Sentence recommended by Commonwealth's Attorney	11	6.9%
Victim cannot/will not testify	10	6.3%
Little or no injury/offender did not intend to harm	7	4.4%
Offender's health (mental, physical, emotional, etc.)	6	3.8%
Offender issues (age of offender, homeless, family issues, etc.)	5	3.1%
Sentenced to Department of Juvenile Justice	5	3.1%
Victim circumstances (drug dealer, etc.)	5	3.1%
Jury sentence	4	2.5%
Behavior positive since commission of the offense	3	1.9%
Offender has good potential for rehabilitation	3	1.9%
Offender cooperated with authorities	2	1.3%
Offender not the leader	2	1.3%
Offender has made progress in rehabilitating him/herself	2	1.3%
Guidelines recommendation is too harsh	2	1.3%
Victim circumstances (facts of the case, etc.)	2	1.3%
Victim's role in the offense	2	1.3%
Behavior was positive while in custody	1	0.6%
Current offense involves drugs/alcohol (small amount of drugs)	1	0.6%
Property was recovered	1	0.6%
Offender is sentenced to an alternative punishment to incarceration	1	0.6%
Sequence of events, impact on recommendation	1	0.6%

<b>Kidnapping (11 Cases)</b>	<b>Number</b>	<b>Percent</b>
Plea Agreement	3	50.0%
Court Circumstances or Procedural Issues	2	33.3%
Judicial discretion (time served, other sentence to serve, consistent with codefendant, etc.)	1	16.7%
No Reason Given	1	16.7%
Offender health (mental, physical, emotional, etc.)	1	16.7%
Sentence recommended by Commonwealth Attorney	1	16.7%
Offender is sentenced to an alternative punishment to incarceration	1	16.7%
Victim request	1	16.7%

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

<b>Assault (219 Cases)</b>	<b>Number</b>	<b>Percent</b>
Aggravating circumstances/flagrancy of offense	36	27.7%
Plea agreement	25	19.2%
Degree of victim injury (physical, emotional, etc.)	19	14.6%
No reason given	17	13.1%
Sentencing guidelines not appropriate	15	11.5%
Number of violations/counts in the event	14	10.8%
Offender has poor rehabilitation potential	14	10.8%
Jury sentence	12	9.2%
Offender has extensive prior record or same type of prior offense	12	9.2%
Type of victim (child, etc.)	11	8.5%
Degree of violence toward victim	8	6.2%
Victim's request	6	4.6%
Guidelines recommendation is too low	5	3.8%
Current offense involves drugs/alcohol (large amount, etc.)	3	2.3%
Poor conduct since commission of offense	3	2.3%
Child present at time of offense	2	1.5%
Offender violated protective order or was stalking	2	1.5%
Offender's substance abuse issues	2	1.5%
Prior record not adequately weighed by guidelines	2	1.5%
Victim circumstances (facts of the case, etc.)	2	1.5%
Offender issues (age of offender, lacks family support, health, etc.)	2	1.5%
Behavior while on probation	1	0.8%
Gang-related offense	1	0.8%
Judicial discretion (time served, shock incarceration, consistent with codefendant, etc.)	1	0.8%
Offender needs rehabilitation offered by jail/prison	1	0.8%
On probation for a serious offense	1	0.8%
True offense behavior was more serious than offenses at conviction	1	0.8%
Used, etc., drugs/alcohol while on probation	1	0.8%

<b>Kidnapping (37 Cases)</b>	<b>Number</b>	<b>Percent</b>
Aggravating circumstances/flagrancy of offense	9	42.9%
Degree of victim injury (physical, emotional, etc.)	7	33.3%
Jury sentence	5	23.8%
Sentencing guidelines recommendation is not appropriate	3	14.3%
Aggravating court circumstances/proceedings (will resentence if alternative completed, etc.)	2	9.5%
Type of victim (child, etc.)	2	9.5%
Degree of violence toward victim	1	4.8%
Guidelines recommendation is too low	1	4.8%
Number of violations/counts in the event	1	4.8%
Offender failed to cooperate with authorities	1	4.8%
Offender has extensive prior record or same type of prior offense	1	4.8%
Offender violated protective order or was stalking	1	4.8%
Plea agreement	1	4.8%
Victim circumstances (facts of the case, etc.)	1	4.8%
Victim's request	1	4.8%

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

<b>Homicide (29 Cases)</b>	<b>Number</b>	<b>Percent</b>
Court circumstances or procedural issues	5	23.80%
Jury sentence	6	28.60%
Plea Agreement	4	19.00%
Facts of the case (not specific)	3	14.30%
Offender cooperated with authorities	2	9.50%
No reason given	2	9.50%
Offender's health (mental, physical, emotional, etc.)	2	9.50%
Victim cannot/will not testify	2	9.50%
Victim's request	2	9.50%
Judicial discretion (time served, other sentence to serve, consistent with codefendant, etc.)	1	4.80%

<b>Robbery (195 Cases)</b>	<b>Number</b>	<b>Percent</b>
Plea Agreement	36	30.3%
Offender cooperated with authorities	18	15.1%
Offender has minimal/no prior record	16	13.4%
No Reason Given	15	12.6%
Judicial discretion (time served, other sentence to serve, consistent with codefendant, etc.)	13	10.9%
Facts of the case (not specific)	12	10.1%
Sentenced to Department of Juvenile Justice	12	10.1%
Offender has good potential for rehabilitation	10	8.4%
Court Circumstances or Procedural Issues	8	6.7%
Offender issues (age of offender, homeless, family issues, etc.)	7	5.9%
Sentence recommended by Commonwealth's Attorney	7	5.9%
Weapon was not a firearm	5	4.2%
Offender not the leader	5	4.2%
Offender is sentenced to an alternative punishment to incarceration	5	4.2%
Victim's request	4	3.4%
Judge had an issue scoring guidelines factors	3	2.5%
Offender's health (mental, physical, emotional, etc.)	3	2.5%
Jury sentence	3	2.5%
Split trial/sentence (combination jury and bench trial)	3	2.5%
Behavior positive since commission of the offense	2	1.7%
Victim's role in the offense	2	1.7%
Illegible written reason	1	0.8%
Rounding by judge	1	0.8%
Sentence recommended by Probation Officer	1	0.8%
Sequence of events, impact on recommendation	1	0.8%
Sentencing guidelines incorrect/missing	1	0.8%
Sentencing guidelines recommendation not appropriate (non-specific)	1	0.8%

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**

<b>Homicide (111 Cases)</b>	<b>Number</b>	<b>Percent</b>
Aggravating circumstances/flagrancy of offense	30	44.8%
Jury sentence	16	23.9%
Plea agreement	8	11.9%
Offender has extensive prior record or same type of prior offense	8	11.9%
Number of violations/counts in the event	6	9.0%
Offender has poor rehabilitation potential	6	9.0%
Degree of violence toward victim	5	7.5%
Current offense involves drugs/alcohol (large amount of drugs, school zone, etc.)	4	6.0%
Guidelines recommendation is too low	4	6.0%
Victim circumstances (facts of the case, etc.)	4	6.0%
Type of victim (child, etc.)	3	4.5%
Offense involved a traffic accident or reckless driving	2	3.0%
Degree of victim injury (physical, emotional, etc.)	2	3.0%
Judicial discretion (time served, shock incarceration, consistent with codefendant, etc.)	2	3.0%
No reason given	2	3.0%
Victim's request	2	3.0%
Child present at time of offense	1	1.5%
Offender failed to cooperate with authorities	1	1.5%
Gang related offense	1	1.5%
Offender's substance abuse issues	1	1.5%
Poor conduct since commission of offense	1	1.5%
True offense behavior was more serious than offenses at conviction	1	1.5%
Sentence recommended by Commonwealth's Attorney	1	1.5%
<b>Robbery (82 Cases)</b>	<b>Number</b>	<b>Percent</b>
Aggravating circumstances/flagrancy of offense	12	25.0%
Degree of victim injury (physical, emotional, etc.)	11	22.9%
Plea agreement	10	20.8%
Jury sentence	7	14.6%
Number of violations/counts in the event	5	10.4%
Offender has poor rehabilitation potential	5	10.4%
Victim's request	5	10.4%
Type of victim (child, etc.)	4	8.3%
Offender has extensive prior record or same type of prior offense	3	6.3%
Offender used a weapon in commission of the offense	3	6.3%
Offense involved a high degree of planning/violation of trust	3	6.3%
Current offense involves drugs/alcohol (large amount, etc.)	2	4.2%
Degree of violence toward victim	2	4.2%
Victim circumstances (facts of the case, etc.)	2	4.2%
Gang-related offense	1	2.1%
Guidelines recommendation is too low	1	2.1%
Judicial discretion (time served, shock incarceration, consistent with codefendant, etc.)	1	2.1%
Mandatory minimum involved in event	1	2.1%
No reason given	1	2.1%
Offender issues (age of offender, lacks family support, health, etc.)	1	2.1%
Prior record not adequately weighed by guidelines	1	2.1%
Sentence recommended by Commonwealth's Attorney	1	2.1%

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 2

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

#### Reasons for MITIGATION

##### Rape (28 Cases)

	Number	Percent
Plea Agreement	6	42.9%
Victim cannot/will not testify	4	28.6%
Victim's request	4	28.6%
Offender issues (age of offender, homeless, family issues, etc.)	3	21.4%
Facts of the case (not specific)	2	14.3%
Jury sentence	2	14.3%
Offender has good potential for rehabilitation	1	7.1%
Issue scoring risk assessment	1	7.1%
Judicial discretion (time served, other sentence to serve, consistent with codefendant, etc.)	1	7.1%
Offender needs treatment/rehabilitation	1	7.1%
Court Circumstances or Procedural Issues	1	7.1%
Split trial/sentence (combination jury and bench trial)	1	7.1%
Victim circumstances (drug dealer, etc.)	1	7.1%

##### Other Sexual Assault (37 Cases)

	Number	Percent
Plea Agreement	9	39.1%
Facts of the case (not specific)	5	21.7%
Sentence recommended by Commonwealth Attorney	4	17.4%
Victim cannot/will not testify	4	17.4%
Offender issues (age of offender, homeless, family issues, etc.)	3	13.0%
Victim's request	3	13.0%
Court Circumstances or Procedural Issues	2	8.7%
Judicial discretion (time served, other sentence to serve, consistent with codefendant, etc.)	2	8.7%
Offender has minimal/no prior record	2	8.7%
Jury sentence	1	4.3%
No reason given	1	4.3%
Offender's health (mental, physical, emotional, etc.)	1	4.3%

##### Other Sexual Assault/Obscenity (33 Cases)

	Number	Percent
Offender has good potential for rehabilitation	5	26.3%
Issue scoring risk assessment	4	21.1%
Offender health (mental, physical, emotional, etc.)	4	21.1%
Facts of the case (not specific)	3	15.8%
Offender issues (age of offender, homeless, family issues, etc.)	3	15.8%
Judicial discretion (time served, other sentence to serve, consistent with codefendant, etc.)	2	10.5%
Plea Agreement	2	10.5%
Sentenced to the Department of Juvenile Justice	2	10.5%
Behavior positive since commission of the offense	1	5.3%
Offender cooperated with authorities	1	5.3%
Offender needs treatment/rehabilitation	1	5.3%
No reason given	1	5.3%
Offender has minimal/no prior record	1	5.3%
Offender has made progress in rehabilitating him/herself	1	5.3%
Sentence recommended by Commonwealth's Attorney	1	5.3%
Sentencing guidelines incorrect/missing	1	5.3%

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

<b>Rape (55 Cases)</b>	<b>Number</b>	<b>Percent</b>
Aggravating circumstances/flagrancy of offense	14	51.8%
Type of victim (child, etc.)	9	33.3%
Offender has poor rehabilitation potential	8	29.6%
Jury sentence	5	18.5%
Degree of violence toward victim	3	11.1%
Offense involved a high degree of planning/violation of trust	3	11.1%
Guidelines recommendation is too low	2	7.4%
No reason given	2	7.4%
Number of violations/counts in the event	2	7.4%
Plea agreement	2	7.4%
Mandatory minimum involved in the event	1	3.7%
Offender has extensive prior record or same type of prior offense	1	3.7%
Sentencing guidelines recommendation is not appropriate	1	3.7%
Victim circumstances (facts of the case, etc.)	1	3.7%
Victim's request	1	3.7%

<b>Other Sexual Assault (172 Cases)</b>	<b>Number</b>	<b>Percent</b>
Aggravating circumstances/flagrancy of offense	39	39.0%
Type of victim (child, etc.)	22	22.0%
Plea agreement	20	20.0%
Degree of victim injury (physical, emotional, etc.)	15	15.0%
Offender has poor rehabilitation potential	11	11.0%
Guidelines recommendation is too low	10	10.0%
Victim's request	9	9.0%
No reason given	7	7.0%
Victim circumstances (facts of the case, etc.)	7	7.0%
Number of violations/counts in the event	6	6.0%
Offense involved a high degree of planning/violation of trust	6	6.0%
Sentence recommended by Commonwealth's Attorney	5	5.0%
Jury sentence	3	3.0%
Offender issues (age of offender, lacks family support, etc.)	2	2.0%
Violent/disruptive behavior in custody	2	2.0%
Aggravating court circumstances/proceedings (will resentence if alternative completed, etc.)	1	1.0%
Child present at time of offense	1	1.0%
New offenses were committed while on probation	1	1.0%
Offender has extensive prior record or same type of prior offense	1	1.0%
On probation for a serious offense	1	1.0%
Prior record not adequately weighed by guidelines	1	1.0%
Sentencing guidelines not appropriate	1	1.0%
Violated sex offender restrictions	1	1.0%

<b>Other Sexual Assault/Obscenity (32 Cases)</b>	<b>Number</b>	<b>Percent</b>
Aggravating circumstances/flagrancy of offense	13	61.9%
Plea agreement	7	33.3%
Number of violations/counts in the event	2	9.5%
Offender has poor rehabilitation potential	2	9.5%
Type of victim (child, etc.)	2	9.5%
Offender issues (age of offender, lacks family support, health, etc.)	2	9.5%
Judicial discretion (time served, shock incarceration, consistent with codefendant, etc.)	1	4.8%
No reason given	1	4.8%
Jury sentence	1	4.8%
Guidelines recommendation is too low	1	4.8%

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	62.5%	18.8%	18.8%	32
2	75.0	5.6	19.4	36
3	75.0	16.7	8.3	24
4	66.0	14.9	19.1	47
5	52.0	8.0	40.0	25
6	80.0	15.0	5.0	20
7	52.6	0.0	47.4	19
8	76.0	16.0	8.0	25
9	66.7	23.8	9.5	21
10	53.3	30.0	16.7	30
11	100.0	0.0	0.0	3
12	69.2	19.2	11.5	26
13	69.6	26.1	4.3	23
14	58.3	12.5	29.2	24
15	63.3	18.4	18.4	49
16	73.1	15.4	11.5	26
17	56.3	31.3	12.5	16
18	75.0	12.5	12.5	8
19	56.3	18.8	25.0	16
20	78.6	7.1	14.3	14
21	63.6	9.1	27.3	11
22	61.8	14.7	23.5	34
23	56.0	32.0	12.0	25
24	71.9	12.5	15.6	32
25	74.2	12.9	12.9	31
26	78.1	3.1	18.8	32
27	66.7	11.1	22.2	36
28	83.3	0.0	16.7	18
29	66.7	23.8	9.5	21
30	61.9	23.8	14.3	21
31	81.0	9.5	9.5	21
Total	67.4	15.4	17.2	766

**BURGLARY - OTHER**

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	72.7%	18.2%	9.1%	11
2	87.5	6.3	6.3	16
3	66.7	33.3	0.0	15
4	94.1	5.9	0.0	17
5	71.4	7.1	21.4	14
6	83.3	0.0	16.7	6
7	90.9	9.1	0.0	11
8	100.0	0.0	0.0	6
9	77.8	22.2	0.0	9
10	89.5	10.5	0.0	19
11	71.4	28.6	0.0	7
12	71.4	9.5	19.0	21
13	75.0	16.7	8.3	12
14	55.6	11.1	33.3	9
15	57.1	14.3	28.6	21
16	85.7	14.3	0.0	7
17	80.0	20.0	0.0	5
18	60.0	20.0	20.0	5
19	80.0	0.0	20.0	5
20	87.5	0.0	12.5	8
21	50.0	50.0	0.0	4
22	100.0	0.0	0.0	12
23	66.7	16.7	16.7	6
24	90.0	5.0	5.0	20
25	65.0	15.0	20.0	20
26	88.2	5.9	5.9	17
27	100.0	0.0	0.0	13
28	50.0	0.0	50.0	2
29	83.3	0.0	16.7	18
30	90.0	0.0	10.0	10
31	66.7	33.3	0.0	3
Total	79.4	10.6	10.0	349

**DRUG/OTHER**

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	82.9%	7.3%	9.8%	41
2	85.9	7.7	6.4	78
3	100.0	0.0	0.0	9
4	84.8	6.1	9.1	33
5	82.4	5.9	11.8	17
6	90.9	0.0	9.1	11
7	96.0	4.0	0.0	25
8	66.7	11.1	22.2	9
9	94.4	5.6	0.0	18
10	80.0	8.0	12.0	50
11	92.9	0.0	7.1	14
12	84.4	0.0	15.6	45
13	70.8	25.0	4.2	24
14	79.1	2.3	18.6	43
15	78.1	7.8	14.1	64
16	87.5	4.2	8.3	24
17	93.8	6.3	0.0	16
18	85.7	7.1	7.1	14
19	96.7	0.0	3.3	60
20	77.3	9.1	13.6	22
21	100.0	0.0	0.0	6
22	68.0	12.0	20.0	25
23	81.3	6.3	12.5	16
24	84.0	10.0	6.0	50
25	71.4	20.6	7.9	63
26	92.9	0.0	7.1	42
27	94.5	1.8	3.6	55
28	91.9	0.0	8.1	37
29	80.4	6.5	13.0	138
30	88.4	4.5	7.1	112
31	86.8	5.3	7.9	38
Total	84.7	6.3	9.1	1,199

Appendix 3

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

**SCHEDULE I/II DRUGS**

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	79.8 %	8.7%	11.6%	173
2	92.9	4.1	3.0	366
3	81.4	14.9	3.7	161
4	83.4	8.3	8.3	337
5	79.8	5.4	14.7	129
6	84.5	3.4	12.1	116
7	94.3	2.1	3.6	140
8	83.5	14.3	2.2	91
9	79.3	9.8	11.0	82
10	83.9	7.0	9.1	186
11	80.0	10.9	9.1	55
12	87.3	5.6	7.1	448
13	62.5	31.1	6.4	483
14	79.6	9.1	11.3	496
15	74.6	7.3	18.2	523
16	83.8	7.3	8.9	259
17	75.7	10.4	13.9	115
18	85.7	7.1	7.1	42
19	87.6	8.6	3.8	186
20	87.6	5.2	7.2	194
21	89.2	8.4	2.4	83
22	71.9	12.9	15.2	171
23	84.0	6.5	9.5	169
24	79.9	10.4	9.7	259
25	75.3	15.9	8.8	434
26	89.1	4.7	6.2	579
27	90.3	4.3	5.4	371
28	90.0	2.7	7.3	220
29	76.7	6.7	16.7	210
30	82.7	7.3	10.0	150
31	85.3	9.6	5.0	218
Total	82.0	9.2	8.8	7,451

**FRAUD**

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	85.7 %	10.7%	3.6%	112
2	88.2	5.3	6.6	76
3	91.3	8.7	0.0	23
4	91.7	8.3	0.0	60
5	84.2	5.3	10.5	57
6	84.6	7.7	7.7	26
7	85.3	11.8	2.9	34
8	82.1	10.7	7.1	28
9	90.0	2.0	8.0	50
10	93.5	4.3	2.2	46
11	84.0	16.0	0.0	25
12	86.7	6.1	7.1	98
13	70.7	29.3	0.0	41
14	79.0	11.3	9.7	62
15	80.8	7.7	11.5	156
16	85.1	9.5	5.4	74
17	91.1	2.2	6.7	45
18	94.1	5.9	0.0	17
19	80.4	16.7	2.9	102
20	84.1	8.7	7.2	69
21	87.5	9.4	3.1	32
22	83.0	9.4	7.5	53
23	73.9	23.9	2.2	46
24	89.8	8.2	2.0	49
25	85.1	13.2	1.8	114
26	91.0	4.9	4.1	122
27	85.5	12.9	1.6	62
28	91.9	5.4	2.7	37
29	75.0	10.3	14.7	68
30	88.4	4.7	7.0	43
31	94.5	3.6	1.8	55
Total	85.3	9.4	5.4	1,882

**LARCENY**

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	82.5%	8.5%	8.9%	246
2	85.9	7.7	6.4	298
3	82.3	15.6	2.1	96
4	82.6	10.1	7.4	258
5	80.0	8.5	11.5	130
6	86.0	8.8	5.3	57
7	85.6	11.0	3.4	146
8	79.0	17.0	4.0	100
9	76.4	9.9	13.7	161
10	88.0	6.0	6.0	133
11	87.3	9.1	3.6	55
12	89.4	4.5	6.1	379
13	56.5	40.2	3.3	92
14	84.1	9.7	6.1	277
15	82.2	6.8	11.0	529
16	88.2	7.0	4.8	187
17	89.3	6.6	4.1	122
18	85.2	9.8	4.9	61
19	77.5	13.7	8.8	204
20	87.2	6.0	6.7	149
21	89.8	9.3	0.9	108
22	80.7	6.9	12.4	145
23	81.6	13.2	5.3	228
24	88.4	6.3	5.3	207
25	82.5	10.7	6.8	177
26	88.6	8.5	2.8	352
27	90.7	6.6	2.7	182
28	88.2	8.3	3.5	144
29	80.7	9.9	9.3	161
30	85.5	8.3	6.2	145
31	86.4	9.3	4.3	140
Total	84.3	9.2	6.5	5,670

Appendix 3

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

TRAFFIC				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	81.1%	3.8%	15.1%	53
2	81.7	8.3	10.1	109
3	81.8	18.2	0.0	22
4	90.7	7.0	2.3	43
5	74.4	12.8	12.8	39
6	84.6	7.7	7.7	26
7	79.3	10.3	10.3	29
8	88.5	7.7	3.8	26
9	73.2	9.8	17.1	41
10	84.4	0.0	15.6	64
11	91.7	4.2	4.2	24
12	93.8	2.5	3.7	81
13	74.2	19.4	6.5	31
14	52.4	9.5	38.1	42
15	76.7	7.8	15.5	129
16	90.9	1.5	7.6	66
17	60.0	6.7	33.3	15
18	62.5	12.5	25.0	8
19	71.7	11.3	17.0	53
20	85.2	3.7	11.1	54
21	75.0	20.8	4.2	24
22	88.6	4.5	6.8	44
23	72.1	16.3	11.6	43
24	84.4	7.8	7.8	64
25	85.0	10.0	5.0	60
26	82.7	11.1	6.2	81
27	85.0	7.5	7.5	40
28	96.9	3.1	0.0	32
29	63.0	22.2	14.8	27
30	64.0	12.0	24.0	25
31	81.8	5.5	12.7	55
Total	80.9	8.1	11.0	1,451

MISCELLANEOUS/OTHER				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	62.5%	12.5%	25.0%	8
2	100.0	0.0	0.0	7
3	66.7	0.0	33.3	3
4	86.7	13.3	0.0	15
5	83.3	0.0	16.7	6
6	100.0	0.0	0.0	4
7	100.0	0.0	0.0	11
8	80.0	20.0	0.0	5
9	33.3	66.7	0.0	3
10	60.0	30.0	10.0	10
11	66.7	33.3	0.0	6
12	45.5	51.5	3.0	33
13	78.3	8.7	13.0	23
14	85.0	5.0	10.0	20
15	70.8	16.7	12.5	24
16	100.0	0.0	0.0	10
17	0.0	25.0	75.0	4
18	0.0	100.0	0.0	1
19	50.0	20.0	30.0	10
20	66.7	16.7	16.7	6
21	100.0	0.0	0.0	2
22	85.7	4.8	9.5	21
23	100.0	0.0	0.0	7
24	72.7	18.2	9.1	11
25	71.4	21.4	7.1	14
26	73.3	20.0	6.7	15
27	83.3	16.7	0.0	6
28	77.8	11.1	11.1	9
29	81.8	9.1	9.1	11
30	80.0	20.0	0.0	5
31	100.0	0.0	0.0	7
Total	74.5	16.7	8.8	318

MISCELLANEOUS/P&P				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	72.7%	9.1%	18.2%	11
2	73.9	0.0	26.1	23
3	66.7	33.3	0.0	3
4	58.8	5.9	35.3	17
5	62.5	25.0	12.5	8
6	66.7	0.0	33.3	12
7	66.7	8.3	25.0	12
8	70.0	20.0	10.0	10
9	100.0	0.0	0.0	7
10	72.7	0.0	27.3	11
11	88.9	0.0	11.1	9
12	61.1	16.7	22.2	18
13	100.0	0.0	0.0	6
14	55.6	0.0	44.4	9
15	66.7	0.0	33.3	24
16	70.8	8.3	20.8	24
17	100.0	0.0	0.0	2
18	75.0	0.0	25.0	4
19	20.0	20.0	60.0	5
20	88.2	0.0	11.8	17
21	42.9	28.6	28.6	7
22	62.5	12.5	25.0	8
23	93.3	6.7	0.0	15
24	70.6	11.8	17.6	17
25	80.0	13.3	6.7	15
26	63.0	22.2	14.8	27
27	83.9	0.0	16.1	31
28	71.4	7.1	21.4	14
29	54.5	12.1	33.3	33
30	80.0	6.7	13.3	15
31	58.8	17.6	23.5	17
Total	70.3	8.6	21.1	431



Appendix 3

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

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WEAPONS				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	85.7 %	9.5 %	4.8 %	21
2	78.3	10.9	10.9	46
3	85.7	7.1	7.1	14
4	85.3	8.8	5.9	34
5	83.3	5.6	11.1	18
6	78.6	14.3	7.1	14
7	90.0	10.0	0.0	20
8	100.0	0.0	0.0	10
9	83.3	5.6	11.1	18
10	80.8	7.7	11.5	26
11	81.3	6.3	12.5	16
12	66.7	16.7	16.7	18
13	58.5	20.8	20.8	53
14	68.8	15.6	15.6	32
15	65.8	13.2	21.1	38
16	84.2	10.5	5.3	19
17	57.1	42.9	0.0	7
18	66.7	0.0	33.3	3
19	100.0	0.0	0.0	9
20	90.0	10.0	0.0	10
21	71.4	14.3	14.3	14
22	61.9	28.6	9.5	21
23	70.4	7.4	22.2	27
24	74.1	11.1	14.8	27
25	79.2	8.3	12.5	24
26	82.8	3.4	13.8	29
27	87.5	8.3	4.2	24
28	85.0	5.0	10.0	20
29	73.7	15.8	10.5	19
30	100.0	0.0	0.0	15
31	76.9	7.7	15.4	26
Total	77.4	11.0	11.6	672

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

**ASSAULT**

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	87.0%	8.7%	4.3%	23
2	83.1	10.8	6.2	65
3	72.0	24.0	4.0	25
4	81.5	16.9	1.5	65
5	81.4	2.3	16.3	43
6	61.5	34.6	3.8	26
7	86.4	4.5	9.1	44
8	68.8	6.3	25.0	16
9	71.4	10.7	17.9	28
10	85.1	8.5	6.4	47
11	86.1	11.1	2.8	36
12	78.8	9.6	11.5	52
13	72.1	18.0	9.8	61
14	61.8	20.6	17.6	34
15	81.0	12.7	6.3	79
16	78.6	12.5	8.9	56
17	71.4	0.0	28.6	7
18	87.0	4.3	8.7	23
19	68.8	9.4	21.9	32
20	82.6	0.0	17.4	23
21	85.2	11.1	3.7	27
22	75.0	8.3	16.7	24
23	66.7	23.5	9.8	51
24	74.6	16.4	9.0	67
25	66.7	24.1	9.3	54
26	77.6	8.6	13.8	58
27	62.3	13.2	24.5	53
28	81.8	9.1	9.1	22
29	80.6	3.2	16.1	31
30	60.7	25.0	14.3	28
31	84.8	6.1	9.1	33
Total	76.5	12.9	10.6	1,233

**KIDNAPPING**

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	80%	20%	0%	5
2	62.5	0.0	37.5	8
3	100.0	0.0	0.0	2
4	100.0	0.0	0.0	5
5	100.0	0.0	0.0	4
6	33.3	0.0	66.7	3
7	100.0	0.0	0.0	5
8	0.0	0.0	0.0	0
9	100.0	0.0	0.0	5
10	71.4	0.0	28.6	7
11	100.0	0.0	0.0	4
12	50.0	50.0	0.0	2
13	100.0	0.0	0.0	1
14	60.0	0.0	40.0	5
15	33.3	0.0	66.7	6
16	80.0	20.0	0.0	5
17	100.0	0.0	0.0	3
18	100.0	0.0	0.0	2
19	40.0	0.0	60.0	5
20	66.7	0.0	33.3	3
21	100.0	0.0	0.0	1
22	0.0	0.0	0.0	0
23	50.0	50.0	0.0	2
24	85.7	14.3	0.0	7
25	100.0	0.0	0.0	6
26	80.0	0.0	20.0	10
27	100.0	0.0	0.0	3
28	100.0	0.0	0.0	2
29	66.7	16.7	16.7	6
30	100.0	0.0	0.0	2
31	80.0	0.0	20.0	5
Total	78.2	4.8	16.9	124

**HOMICIDE**

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	55.6%	33.3%	11.1%	9
2	44.4	11.1	44.4	9
3	75.0	12.5	12.5	8
4	83.3	0.0	16.7	18
5	50.0	16.7	33.3	6
6	66.7	16.7	16.7	6
7	64.3	0.0	35.7	14
8	100.0	0.0	0.0	5
9	87.5	0.0	12.5	8
10	66.7	0.0	33.3	3
11	60.0	0.0	40.0	5
12	66.7	0.0	33.3	6
13	40.9	27.3	31.8	22
14	40.0	0.0	60.0	5
15	70.0	0.0	30.0	20
16	50.0	10.0	40.0	10
17	0.0	0.0	0.0	0
18	100.0	0.0	0.0	1
19	0.0	0.0	100.0	2
20	50.0	0.0	50.0	4
21	66.7	0.0	33.3	3
22	50.0	0.0	50.0	14
23	62.5	0.0	37.5	8
24	66.7	22.2	11.1	9
25	50.0	12.5	37.5	8
26	60.0	0.0	40.0	5
27	50.0	33.3	16.7	6
28	0.0	50.0	50.0	2
29	100.0	0.0	0.0	3
30	100.0	0.0	0.0	1
31	60.0	20.0	20.0	5
Total	60.9	9.3	29.8	225

Appendix 4

Sentencing Guidelines Compliance by Judicial Circuit: Offenses Against the Person

**ROBBERY**

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	50.0%	50.0 %	0.0 %	12
2	79.2	18.9	1.9	53
3	68.4	21.1	10.5	19
4	66.7	27.8	5.6	36
5	30.0	50.0	20.0	10
6	58.3	33.3	8.3	12
7	78.3	4.3	17.4	23
8	80.0	15.0	5.0	20
9	87.5	12.5	0.0	8
10	66.7	0.0	33.3	3
11	100.0	0.0	0.0	6
12	61.9	23.8	14.3	21
13	53.3	43.3	3.3	60
14	71.4	17.9	10.7	28
15	62.5	15.6	21.9	32
16	87.5	12.5	0.0	8
17	88.9	11.1	0.0	9
18	54.5	27.3	18.2	11
19	75.8	21.2	3.0	33
20	63.2	10.5	26.3	19
21	83.3	0.0	16.7	6
22	55.6	11.1	33.3	9
23	57.1	42.9	0.0	7
24	88.9	5.6	5.6	18
25	69.2	15.4	15.4	13
26	59.1	22.7	18.2	22
27	60.0	40.0	0.0	5
28	100.0	0.0	0.0	1
29	100.0	0.0	0.0	2
30	87.5	12.5	0.0	8
31	70.6	29.4	0.0	17
Total	68.5	22.4	9.0	531

**RAPE**

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	100.0 %	0.0%	0.0 %	4
2	70.0	0.0	30.0	10
3	0.0	0.0	100	1
4	88.9	11.1	0.0	9
5	50.0	0.0	50.0	4
6	0.0	0.0	0.0	0
7	71.4	0.0	28.6	7
8	100.0	0.0	0.0	1
9	100.0	0.0	0.0	5
10	83.3	0.0	16.7	6
11	75.0	0.0	25.0	4
12	28.6	28.6	42.9	7
13	100.0	0.0	0.0	3
14	66.7	0.0	33.3	3
15	76.5	17.6	5.9	17
16	100.0	0.0	0.0	7
17	50.0	0.0	50.0	2
18	50.0	0.0	50.0	2
19	46.2	15.4	38.5	13
20	100.0	0.0	0.0	3
21	0.0	0.0	100	1
22	33.3	0.0	66.7	3
23	100.0	0.0	0.0	1
24	83.3	16.7	0.0	6
25	60.0	20.0	20.0	5
26	66.7	33.3	0.0	3
27	80.0	20.0	0.0	5
28	0.0	0.0	0.0	0
29	100.0	0.0	0.0	5
30	66.7	33.3	0.0	3
31	66.7	16.7	16.7	6
Total	71.9	9.6	18.5	146

**OTHER SEXUAL ASSAULT**

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	75.0 %	0.0 %	25.0 %	4
2	66.7	4.2	29.2	24
3	33.3	33.3	33.3	3
4	70.0	10.0	20.0	10
5	66.7	0.0	33.3	3
6	85.7	0.0	14.3	7
7	100.0	0.0	0.0	5
8	77.8	11.1	11.1	9
9	61.5	0.0	38.5	13
10	80.0	20.0	0.0	15
11	66.7	0.0	33.3	6
12	69.2	7.7	23.1	13
13	45.5	18.2	36.4	11
14	40.0	0.0	60.0	10
15	73.1	3.8	23.1	26
16	60.0	0.0	40.0	15
17	33.3	0.0	66.7	3
18	83.3	0.0	16.7	6
19	25.0	5.0	70.0	20
20	50.0	0.0	50.0	10
21	66.7	33.3	0.0	3
22	100.0	0.0	0.0	6
23	42.9	0.0	57.1	7
24	62.5	12.5	25.0	24
25	58.3	16.7	25.0	12
26	76.5	0.0	23.5	17
27	57.1	14.3	28.6	14
28	33.3	0.0	66.7	6
29	60.0	10.0	30.0	10
30	100.0	0.0	0.0	3
31	69.6	8.7	21.7	23
Total	63.3	6.8	29.9	338

Appendix 4

Sentencing Guidelines Compliance by Judicial Circuit: Offenses Against the Person

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OBSCENITY				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	60.0 %	20.0 %	20.0 %	5
2	100.0	0.0	0.0	4
3	0.0	0.0	0.0	0
4	0.0	0.0	0.0	0
5	0.0	0.0	0.0	0
6	100.0	0.0	0.0	2
7	100.0	0.0	0.0	1
8	0.0	0.0	0.0	0
9	83.3	0.0	16.7	6
10	100.0	0.0	0.0	2
11	50.0	50.0	0.0	2
12	100.0	0.0	0.0	2
13	100.0	0.0	0.0	3
14	100.0	0.0	0.0	2
15	81.8	9.1	9.1	11
16	88.2	11.8	0.0	17
17	100.0	0.0	0.0	4
18	50.0	50.0	0.0	2
19	51.6	19.4	29.0	31
20	83.3	8.3	8.3	12
21	100.0	0.0	0.0	2
22	66.7	0.0	33.3	3
23	50.0	0.0	50.0	2
24	71.4	14.3	14.3	7
25	85.7	7.1	7.1	14
26	72.7	18.2	9.1	11
27	100.0	0.0	0.0	1
28	100.0	0.0	0.0	1
29	100.0	0.0	0.0	2
30	66.7	0.0	33.3	3
31	63.6	18.2	18.2	11
Total	75.5	11.7	12.9	163

Appendix 5

Sentencing Guidelines Received by Jurisdiction

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**COUNTIES**

ACCOMACK.....	64
ALBEMARLE.....	218
ALLEGHANY.....	185
AMELIA.....	41
AMHERST.....	127
APPOMATTOX.....	376
ARLINGTON.....	376
AUGUSTA.....	209
BATH.....	24
BEDFORD.....	166
BLAND.....	8
BOTETOURT.....	149
BRUNSWICK.....	35
BUCHANAN.....	105
BUCKINGHAM.....	38
CAMPBELL.....	191
CAROLINE.....	71
CARROLL.....	166
CHARLES CITY.....	12
CHARLOTTE.....	31
CHESTERFIELD.....	1118
CLARKE.....	58
CRAIG.....	1
CULPEPER.....	190
CUMBERLAND.....	29
DICKENSON.....	106
DINWIDDIE.....	88
ESSEX.....	39
FAIRFAX COUNTY.....	867
FAUQUIER.....	210
FLOYD.....	44
FLUVANNA.....	33
FRANKLIN COUNTY.....	127
FREDERICK.....	297
GILES.....	86
GLOUCESTER.....	116
GOOCHLAND.....	24
GRAYSON.....	91
GREENE.....	33
GREENSVILLE.....	121
HALIFAX.....	159
HANOVER.....	371
HENRICO.....	1121
HENRY.....	188
HIGHLAND.....	4
ISLE OF WIGHT.....	81
JAMES CITY.....	78
KING & QUEEN.....	22
KING GEORGE.....	68
KING WILLIAM.....	31

LANCASTER.....	26
LEE.....	102
LOUDOUN.....	394
LOUISA.....	121
LUNENBURG.....	54
MADISON.....	27
MATHEWS.....	18
MECKLENBURG.....	200
MIDDLESEX.....	42
MONTGOMERY.....	262
NELSON.....	37
NEW KENT.....	41
NORTHAMPTON.....	45
NORTHUMBERLAND.....	28
NOTTOWAY.....	69
ORANGE.....	90
PAGE.....	139
PATRICK.....	40
PITTSYLVANIA.....	176
POWHATAN.....	60
PRINCE EDWARD.....	112
PRINCE GEORGE.....	67
PRINCE WILLIAM.....	690
PULASKI.....	176
RAPPAHANNOCK.....	13
RICHMOND COUNTY.....	18
ROANOKE COUNTY.....	244
ROCKBRIDGE.....	159
ROCKINGHAM.....	286
RUSSELL.....	170
SCOTT.....	253
SHENANDOAH.....	32
SMYTH.....	153
SOUTHAMPTON.....	125
SPOTSYLVANIA.....	302
STAFFORD.....	511
SURRY.....	6
SUSSEX.....	34
TAZEWELL.....	415
WARREN.....	184
WASHINGTON.....	219
WESTMORELAND.....	68
WISE.....	270
WYTHE.....	171
YORK.....	126

**CITIES**

ALEXANDRIA.....	213
BRISTOL.....	207
BUENA VISTA.....	38
CHARLOTTESVILLE.....	107
CHESAPEAKE.....	789
COLONIAL HEIGHTS.....	174
DANVILLE.....	301
FREDERICKSBURG.....	299
HAMPTON.....	367
HARRISONBURG.....	178
HOPEWELL.....	91
LEXINGTON.....	5
LYNCHBURG.....	370
MARTINSVILLE.....	108
NEWPORT NEWS.....	556
NORFOLK.....	1034
PETERSBURG.....	23
PORTSMOUTH.....	432
RADFORD.....	56
RICHMOND CITY.....	972
ROANOKE CITY.....	414
SALEM.....	21
STAUNTON.....	155
SUFFOLK.....	322
VIRGINIA BEACH.....	1133
WAYNESBORO.....	167
WILLIAMSBURG.....	62
WINCHESTER.....	272