

Virginia Criminal Sentencing Commission



ANNUAL REPORT | 2018



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Virginia Criminal Sentencing Commission



2018 ANNUAL REPORT
DECEMBER 1, 2018

VIRGINIA CRIMINAL SENTENCING COMMISSION MEMBERS

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

Judge Edward L. Hogshire, Circuit Judge (Ret.)
Chairman, Charlottesville

Appointments by the
Chief Justice of the Supreme Court

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Judge Bradley B. Cavedo, Richmond City
Judge Lisa Bondareff Kemler, Alexandria
Judge W. Revell Lewis, III, Accomack
Judge Michael Lee Moore, Russell
Judge Charles S. Sharp, Stafford

Attorney
General

The Honorable Mark R. Herring
(**Diane Abato**, Attorney General's Representative)

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Appointments

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Judge James S. Yoffy, Henrico

House of Delegates
Appointments

Delegate Leslie R. Adams, Pittsylvania
The Honorable James Fisher, Fauquier
The Honorable James E. Plowman, Loudoun

Governor's
Appointments

Timothy S. Coyne, Winchester
Kyanna Perkins, Chesterfield
Kemba Smith Pradia, Richmond City
The Honorable Shannon Taylor, Henrico

Commonwealth of Virginia

HON. EDWARD L. HOGSHIRE (RET.)
CHAIRMAN



MEREDITH FARRAR-OWENS
DIRECTOR

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Supreme Court of Virginia
Virginia Criminal Sentencing Commission

December 1, 2018

To: The Honorable Donald W. Lemons, Chief Justice of Virginia
The Honorable Ralph S. Northam, 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 *2018 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 2018. The Commission's recommendations to the 2019 Virginia General Assembly are also contained in this report.

I would like to use this opportunity to express our utmost gratitude to members who have departed the Commission in 2018: Judge Dennis L. Hupp, of Woodstock, and Delegate Ben Cline, of Rockbridge. Both have performed their duties in an exemplary fashion and our work is far better because of their insights and valuable contributions.

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

Sincerely,

A handwritten signature in blue ink, appearing to read "Edward L. Hogshire", written over a light blue horizontal line.

Edward L. Hogshire
Chairman

VIRGINIA CRIMINAL

SENTENCING COMMISSION **STAFF**

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INTRODUCTION

OVERVIEW

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

The report is organized into four chapters. The remainder of the Introduction chapter provides a general profile of the Commission and an overview of its various activities and projects. The Guidelines Compliance chapter that follows contains a comprehensive analysis of compliance with the sentencing guidelines during fiscal year (FY) 2018. The third chapter describes the Commission's most recent findings related to juveniles convicted in Virginia's circuit courts. In the report's final chapter, the Commission presents its recommendations for revisions to the felony sentencing guidelines system.

COMMISSION PROFILE

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 2018. These meetings were held on April 9, June 4, September 10, and November 7. Minutes for each of these meetings are available on the Commission's website (www.vcsc.virginia.gov/meetings.html).

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

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

While compliance with the guidelines is discretionary, a judge must file a written explanation whenever the sentence given the defendant is outside the range recommended by the guidelines. Commission staff have been working with circuit court judges in a variety of ways to promote the timely submission of departure reasons in all cases for which submission is required. For example, the Commission is emphasizing the importance of departure reasons during pre-bench orientation programs for new judges and at mandatory judicial conferences. For defendants sentenced prior to July 1, 2018, upon a judge's request, the Commission will compile a list of guidelines forms previously submitted without a departure explanation. A judge may submit departure explanations in such cases, and the Commission will update its automated records. Because completed guidelines forms become part of the record of the case and are open for public inspection at the court, the Commission recommends that a judge, when returning a departure reason to the Commission as described above, also contact the Circuit Court Clerk and instruct the Clerk to update

the court records accordingly. In 2018, the Commission approved a new procedure to notify a judge whenever a sentencing guidelines form is submitted without a required departure explanation. Under this new procedure, for defendants sentenced on or after July 1, 2018, the Commission will send an e-mail notification to the judge when a guidelines form is received without a discernible departure reason. The judge may submit a departure explanation for the case by responding electronically. The Commission will update its automated records to reflect any departure explanation submitted in this manner. Also, when fully developed, the Commission's automated guidelines application (called SWIFT) will prompt judges using the system whenever a departure reason is needed.

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.

TRAINING, EDUCATION AND OTHER ASSISTANCE

In FY2018, the Commission offered 45 training seminars across the Commonwealth for more than 900 criminal justice professionals. As in previous years, Commission staff conducted training for attorneys and probation officers new to Virginia's sentencing guidelines system. The six-hour seminar introduced participants to the sentencing guidelines and provided instruction on correct scoring of the guidelines worksheets. The seminar also introduced new users to the probation violation guidelines and the two offender risk assessment instruments that are incorporated into Virginia's guidelines system. In addition, seminars for experienced guidelines users were provided during the year. These courses were approved by the Virginia State Bar, enabling participating attorneys to earn Continuing Legal Education credits. The Commission continued to provide a guidelines-related ethics class for attorneys, which was conducted in conjunction with the Virginia State Bar. The Virginia State Bar approved this class for one hour of Continuing Legal

Education Ethics credit. A three-hour course on the development and use of sentencing guidelines, led by Judge David Carson from the 23rd Circuit and Commission staff, was conducted for newly-elected judges. The Commission also conducted sentencing guidelines seminars at the Department of Corrections' Training Academy, as part of the curriculum for new probation officers and traveled to district offices when training was needed. Finally, the Commission often offers refresher courses to Bar Associations across the Commonwealth and in-house training for attorneys for the Commonwealth and Public Defenders.

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

The Commission will continue to place a priority on providing sentencing guidelines training to any group of criminal justice professionals. The Commission is also willing to provide an education program on the guidelines and the no-parole sentencing system to any interested group or organization. Interested individuals can contact the Commission and place their names on a waiting list. Once a sufficient number of people have expressed interest, a seminar is presented in a locality convenient to the majority of individuals on the list.

In addition to providing training and education programs, the Commission maintains a website and a "hotline" phone and texting system. The "hotline" phone (804.225.4398) is staffed from 7:30 a.m. to 5:00 p.m., Monday through Friday, to respond quickly to any questions or concerns regarding the sentencing guidelines or their preparation. The hotline continues to be an important resource for guidelines users around the Commonwealth. Guidelines users also have the option of texting their questions to staff (804.393.9588). Guidelines users indicated that this option was helpful, particularly when they were at the courthouse or otherwise away from the office.

By visiting the Commission's website, a user can learn about upcoming training sessions, access Commission reports, look up Virginia Crime Codes (VCCs), and view on-line versions of the sentencing guidelines forms. Another resource is the Commission's mobile website and electronic guidelines manual. This resource is formatted for use on a smartphone and provides a quick resource when a guidelines manual is not available.

AUTOMATION PROJECT - SWIFT!

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. The application is called SWIFT (Sentencing Worksheets and Integrated File Transfer).

The Commission pilot tested features of the application in Norfolk and Henrico County before expanding the pilot statewide. The Commission is most appreciative of the 107 Circuit Court Clerks who allowed the Commission and the sentencing guidelines users access to publicly available court data. This access to information allowed over 2,000 registered users the ability to streamline preparing sentencing guidelines before the application went statewide. On July 1, 2018, SWIFT was implemented statewide and was designated as the required process for completing sentencing guidelines. As full implementation of SWIFT moves forward, the next phase is to use the application to transfer sentencing guidelines between preparers, attorneys, clerks, judges and the Commission.

A focus group of Circuit Court Clerks and judges was established to help develop the protocol for the next phase of SWIFT. Preparers and users of sentencing guidelines are encouraged to let the Commission know about their concerns, issues or suggestions. Staff can be reached by phone (804.225.4398), email (swift@vacourts.gov) or text (804.393.9588) to discuss SWIFT or any sentencing guidelines topic.

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 2018 General Assembly, the Commission prepared more than 240 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 accepted by the Work Group then are presented to the Policy Committee. Chaired by the Secretary of Public Safety and Homeland Security, this committee reviews the various forecasts, making any adjustments deemed necessary to account for emerging trends or recent policy changes, and selects the official forecast for each offender population. The Policy Committee is made up of agency directors, lawmakers and other top-level officials from Virginia's executive, legislative and judicial branches, as well as representatives of Virginia's law enforcement, prosecutor, sheriff, and jail associations.

The Secretary presented the most recent offender forecasts to the General Assembly in a report submitted in October 2018.

STUDY OF JUVENILES CONVICTED IN CIRCUIT COURT

In 2017, the Commission received two requests to update its analysis of juveniles convicted in circuit court, which the Commission had completed in 2010. In the previous studies, staff determined that the Commission had not received sentencing guidelines forms for all juveniles convicted in circuit court. To ensure that complete data were available for the analysis, staff supplemented sentencing guidelines data with data from other sources. Results of the study, which was completed in 2018, are presented in the third chapter of this report.

PROBATION VIOLATION GUIDELINES REVISION

In 2003, the General Assembly directed the Commission to develop discretionary sentencing guidelines for probation violators returned to court for reasons other than a new criminal conviction (“technical violations”). To develop these guidelines, the Commission examined historical judicial sanctioning practices in revocation hearings. In its 2003 Annual Report, the Commission recommended that the probation violation guidelines be implemented statewide and the recommendation was accepted by 2004 General Assembly. Statewide use began July 1, 2004. Since July 1, 2010, the Appropriation Act has specified that a Sentencing Revocation Report 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.

Although past amendments to the probation violation guidelines have increased compliance, the compliance rate remains relatively low (58% in FY2018). This suggests that many judges are dissatisfied with the probation violation guidelines. Numerous criminal justice practitioners have requested that the Commission revise these guidelines. In 2016, the Commission approved a new study that will provide the foundation needed to revise the guidelines used in revocation cases. The goal is to improve the utility of the probation violation guidelines for Virginia’s judges.

As a critical first step in revising the guidelines, the Commission sought input and guidance from circuit court judges through a survey. The survey was administered in September-October 2018. Judges had the option of taking the survey online or on paper. Overall, 89.7% of active circuit court judges responded. The results of the survey have proven to be a rich source of information for the Commission. This information will be used for planning subsequent stages of the project, especially data collection. Work on the project will continue into 2019. Once completed, any recommendations adopted by the Commission will be presented in a subsequent Annual Report.

ASSISTANCE TO OTHER AGENCIES

When requested, the Commission provides technical assistance, in the form of data and analysis, to other state agencies. During 2018, 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 Department of Criminal Justice Services to serve on the Virginia Pretrial Services Stakeholder Group, which convened several times in 2018.

2

SENTENCING GUIDELINES CONCURRENCE

OVERVIEW

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 nonviolent offenders with no prior record of violence are tied to the amount of time they served during a period prior to the abolition of parole. In contrast, offenders convicted of violent crimes, and those with prior convictions for violent felonies, are subject to guidelines recommendations up to six times longer than the historical time served in prison by similar offenders. In over a half-million 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) 2018 (July 1, 2017, through June 30, 2018). Concurrence 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 - FY2018*

Circuit	Number	Percent
1	756	3.1%
2	1356	5.5%
3	320	1.3%
4	886	3.6%
5	449	1.8%
6	404	1.6%
7	606	2.5%
8	394	1.6%
9	681	2.8%
10	747	3.0%
11	271	1.1%
12	1,172	4.8%
13	814	3.3%
14	1,202	4.9%
15	2,192	8.9%
16	917	3.7%
17	389	1.6%
18	190	0.8%
19	941	3.8%
20	469	1.9%
21	450	1.8%
22	607	2.5%
23	796	3.2%
24	915	3.7%
25	1,369	5.6%
26	1,461	6.0%
27	1,242	5.1%
28	644	2.6%
29	761	3.1%
30	522	2.1%
31	561	2.3%
Total	24,484	100.0%

*15 cases were missing a circuit number

In FY2018, 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), Botetourt County area (Circuit 25), Virginia Beach (Circuit 2), the Radford area (Circuit 27), Henrico County (Circuit 14), Chesterfield County (Circuit 12), Fairfax County (Circuit 19), Albemarle area (Circuit 16), and the Lynchburg area (Circuit 24) comprised over half (52%) of all worksheets received in FY2018 (Figure 1). See Appendix 4 for a breakdown of guidelines received by jurisdiction.

During FY2018, the Commission received 24,499 sentencing guideline worksheets. Of these, 852 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 FY2018, the remaining sections of this chapter pertaining to judicial concurrence with guidelines recommendations focus only on those 23,647 cases for which guidelines recommendations were completed and calculated correctly.

CONCURRENCE 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 concurrence: strict and general. Together, they comprise the overall concurrence rate. For a case to be in strict concurrence, 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 concurrence. 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.

Concurrence 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 concurrence 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 concurrence 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 concurrence. Conversely, a judge who sentences an offender to time served when the guidelines call for probation also is regarded as being in concurrence with the guidelines because the offender was not ordered to serve any period of incarceration after sentencing.

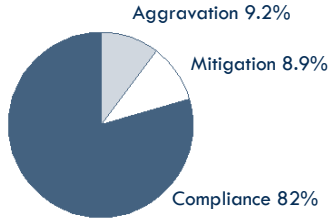
Concurrence through the use of diversion options in habitual traffic cases resulted from amendments to § 46.2-357(B2 and B3) of the *Code of Virginia*, effective July 1, 1997. The amendment allows judges to suspend the mandatory minimum 12-month incarceration term required in felony habitual traffic cases if they sentence the offender to a Detention Center or Diversion Center Incarceration Program. In 2017, the Department of Corrections started referring to Detention and Diversion as the Community Corrections Alternative Program (CCAP). For cases sentenced since the effective date of the legislation, the Commission considers either mode of sanctioning of these offenders to be in concurrence with the sentencing guidelines.

OVERALL CONCURRENCE WITH THE SENTENCING GUIDELINES

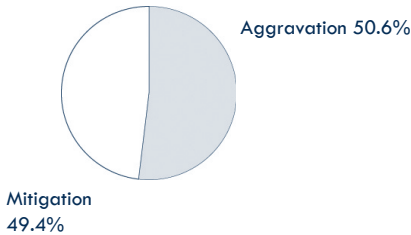
Figure 2

Overall Guidelines Compliance and Direction of Departures - FY2018

Overall Compliance



Direction of Departures



The overall concurrence 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 twelve fiscal years, the concurrence rate has hovered around 80%. During FY2018, judges continued to agree with the sentencing guidelines recommendations in approximately 82% of the cases (Figure 2).

In addition to concurrence, the Commission also studies departures from the guidelines. The rate at which judges sentence offenders to sanctions more severe than the guidelines recommendation, known as the “aggravation” rate, was 9.2% for FY2018. The “mitigation” rate, or the rate at which judges sentence offenders to sanctions considered less severe than the guidelines recommendation, was 8.9% for the fiscal year. Thus, of the FY2018 departures, 50.6% were cases of aggravation while 49.4% were cases of mitigation.

DISPOSITIONAL CONCURRENCE

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 FY2018 with the type of disposition recommended by the guidelines. For instance, of all felony offenders recommended for more than six months of incarceration during FY2018, judges sentenced 86% to terms in excess of six months (Figure 3). Some offenders recommended for incarceration of more than six months received a shorter term of incarceration (one day to six months) or probation with no active incarceration, but the percentage of offenders receiving such dispositions were small.

Figure 3

Recommended and Actual Dispositions - FY2018

Recommended Disposition	Actual Disposition		
	Probation	Incarceration 1 day - 6 mos.	Incarceration > 6 mos.
Probation	73.7%	22.1%	4.2%
Incarceration 1 day - 6 months	11.4%	80.4%	8.2%
Incarceration > 6 months	5.8%	7.7%	86.4%

Judges have also typically agreed with guidelines recommendations for other types of dispositions. In FY2018, 80% 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, 74% 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.

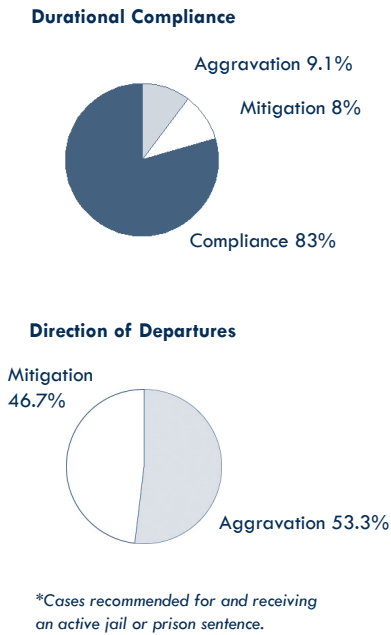
Since July 1, 1997, sentences to the state’s former Boot Camp and Detention and Diversion Centers have been defined as incarceration sanctions for the purposes of the sentencing guidelines. Although the state’s Boot Camp program was discontinued in 2002, the Detention and Diversion Center programs have 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 2003, 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 guideline purposes. Towards the end of FY2017, the Department of Corrections again modified the two programs. Without a specific sentence to a Detention or Diversion Center, the amount of time counted for a sentence to the Community Corrections Alternative Programs is a minimum of seven months to a maximum of 12 months.

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.

DURATIONAL CONCURRENCE

Figure 4

Durational Compliance and Direction of Departures - FY2018*



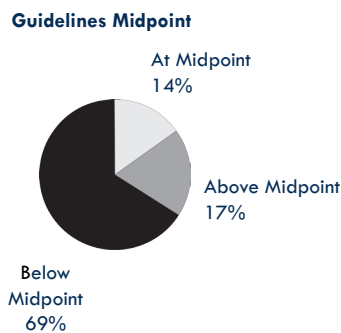
In addition to examining the degree to which judges concur with the type of disposition recommended by the guidelines, the Commission also studies durational concurrence, which is defined as the rate at which judges sentence offenders to terms of incarceration that fall within the recommended guidelines range. Durational concurrence 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 concurrence among FY2018 cases was at 83%, 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 FY2018 cases not in durational concurrence, 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 concurrence 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 FY2018) were given prison terms exactly equal to the midpoint recommendation (Figure 5). Most of the cases (69%) in durational concurrence with recommendations over six months resulted in sentences below the recommended midpoint. For the remaining 17% of these incarceration cases sentenced within the guidelines range, the sentence exceeded the midpoint recommendation. This pattern of sentencing within the range has been consistent since the truth-in-sentencing guidelines took effect in 1995, indicating that judges, overall, have favored the lower portion of the recommended range.

Figure 5

Distribution of Sentences within Guidelines Range - FY2018**



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

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 eleven months.

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 FY2018, 8.9% 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, mitigating offense circumstances, defendant's lack of or minimal prior record, and the defendant's cooperation with law enforcement. Although other reasons for mitigation were reported to the Commission in FY2018, only the most frequently cited reasons are noted here. For 248 of the 2,113 mitigating cases, a departure reason could not be discerned.

Judges sentenced 9.1% of the FY2018 cases to terms that were more severe than the sentencing guidelines recommendation, resulting in "aggravation" sentences. The most frequently cited reasons for sentencing above the guidelines recommendation were: the acceptance of a plea agreement, aggravating offense circumstances, the number of counts in the sentencing event, the severity or degree of prior record, the involvement of drugs in the offense, the defendant's poor potential for being rehabilitated, and jury recommendation was higher. For 223 of the 2,163 cases sentenced above the guidelines recommendation, the Commission could not ascertain a departure reason.

Appendices 1 and 2 present detailed tables of the reasons for departure from guidelines recommendations for each of the 17 guidelines offense groups.

Figure 6

Median Length of Duration Departures - FY2018*



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

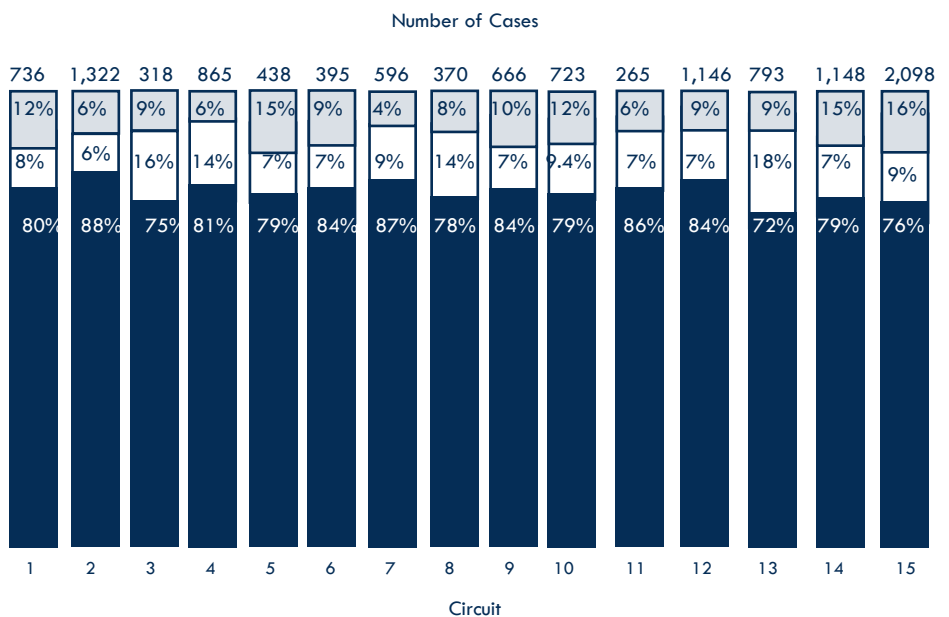
CONCURRENCE BY CIRCUIT

Since the onset of truth-in-sentencing, concurrence rates and departure patterns have varied across Virginia’s 31 judicial circuits. FY2018 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 FY2018, 42% of the state’s 31 circuits exhibited concurrence rates above 81.9%, while the remaining 58% reported concurrence rates between 72.4% and 81.8%. There are likely many reasons for the variations in concurrence 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 concurrence rates are scattered across the state, and both high and low concurrence circuits can be found in close geographic proximity.

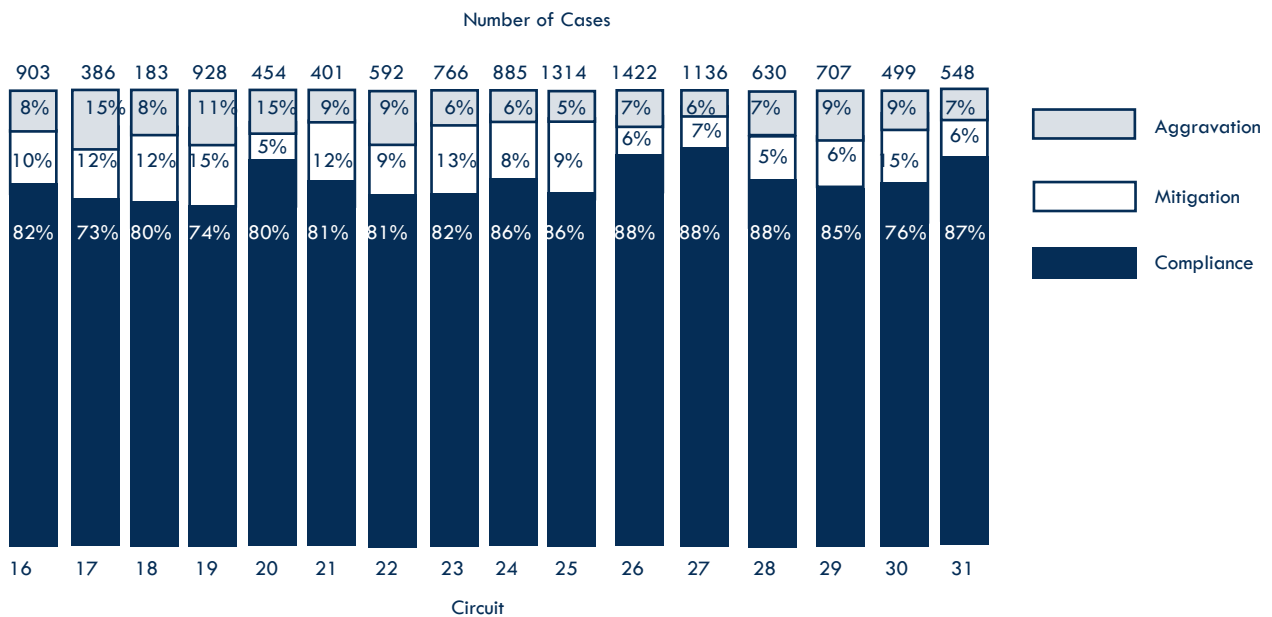
In FY2018, the highest rate of judicial agreement with the sentencing guidelines (89%) was in Circuit 28 (Bristol Area). Concurrence rates of 88% were found in Circuit 27 (Radford Area) , Circuit 2 (Virginia Beach) and Circuit 26 (Harrisonburg area). Circuit 13 (Richmond City) and Circuit 17 (Arlington) reported the lowest concurrence rate among the judicial circuits in FY2018. However, all other concurrence rates were 74% or higher.

Figure 7
Compliance by Circuit - FY2018



In FY2018, the highest mitigation rates were found in Circuit 13 (Richmond City), Circuit 3 (Portsmouth), Circuit 30 (Lee Area), Circuit 19 (Fairfax), Circuit 8 (Hampton), and Circuit 4 (Norfolk). Circuit 13 (Richmond City) had a mitigation rate of 19% which is a decrease from previous years. Circuit 3 (Portsmouth) recorded a mitigation rate of 16%. Circuits from different parts of the state, Circuit 30 (Lee Area) and Circuit 19 (Fairfax), had mitigation rates of 15% for the fiscal year. In the Tidewater Area, Circuit 8 (Hampton) and Circuit 4 (Norfolk) had mitigation rates around 14%. With regard to high mitigation rates, it would be too simplistic to assume that this reflects areas with lenient sentencing habits. Intermediate punishment programs are not uniformly available throughout the Commonwealth, and jurisdictions with better access to these sentencing options may be using them as intended by the General Assembly. These sentences generally would appear as mitigations from the guidelines. Inspecting aggravation rates reveals that Circuit 15 (Fredericksburg area) had the highest aggravation rate (15.8%), followed by Circuit 17 (Arlington), Circuit 20 (Loudoun County), Circuit 5 (Suffolk Area) and Circuit 14 (Henrico) with rates between 15.8% and 14.5%.

Appendix 3 presents concurrence figures for judicial circuits by each of the 17 sentencing guidelines offense groups.



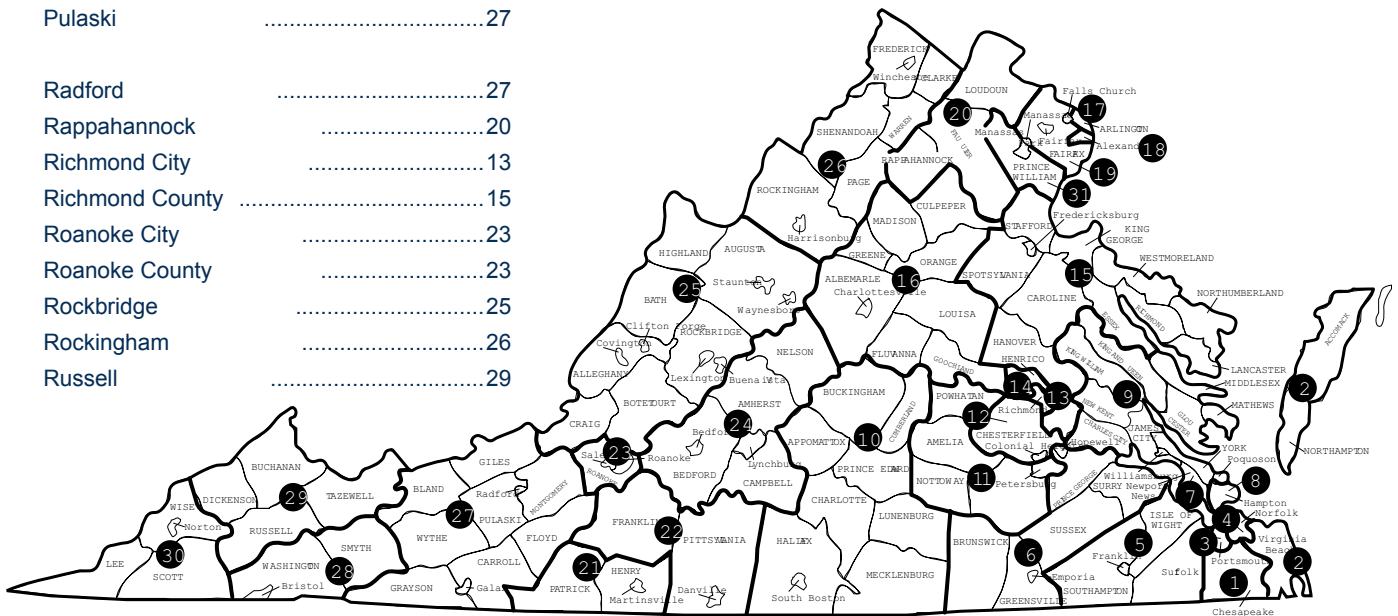
Virginia Localities and Judicial Circuits

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		
Bedford County	24	Galax	27
Bland	27	Giles	27
Botetourt	25	Gloucester	9
Bristol	28	Goochland	16
Brunswick	6	Grayson	27
Buchanan	29	Greene	16
Buckingham	10	Greensville	6
Buena Vista	25		
		Halifax	10
Campbell	24	Hampton	8
Caroline	15	Hanover	15
Carroll	27	Harrisonburg	26
Charles City	9	Henrico	14
Charlotte	10	Henry	21
Charlottesville	16	Highland	25
Chesapeake	1	Hopewell	6
Chesterfield	12		
Clarke	26	Isle of Wight	5
Colonial Heights	12		
Covington	25	James City	9
Craig	25		
Culpeper	16	King and Queen	9
Cumberland	10	King George	15
		King William	9
Danville	22		
Dickenson	29	Lancaster	15
Dinwiddie	11	Lee	30
		Lexington	25
Emporia	6	Loudoun	20
Essex	15	Louisa	16
		Lunenburg	10
		Lynchburg	24

Madison	16
Manassas	31
Martinsville	21
Mathews	9
Mecklenburg	10
Middlesex	9
Montgomery	27
Nelson	24
New Kent	9
Newport News	7
Norfolk	4
Northampton	2
Northumberland	15
Norton	30
Nottoway	11
Orange	16
Page	26
Patrick	21
Petersburg	11
Pittsylvania	22
Poquoson	9
Portsmouth	3
Powhatan	11
Prince Edward	10
Prince George	6
Prince William	31
Pulaski	27

Salem	23
Scott	30
Shenandoah	26
Smyth	28
Southampton	5
Spotsylvania	15
Stafford	15
Staunton	25
Suffolk	5
Surry	6
Sussex	6
Tazewell	29
Virginia Beach	2
Warren	26
Washington	28
Waynesboro	25
Westmoreland	15
Williamsburg	9
Winchester	26
Wise	30
Wythe	27
York	9

**Virginia
Judicial Circuits**



CONCURRENCE BY SENTENCING GUIDELINES OFFENSE GROUP

In FY2018, as in previous years, judicial agreement with the guidelines varied when comparing the 17 offense groups (Figure 8). For FY2018, concurrence rates ranged from a high of 86% in the Drug Other offense group to a low of 64% in Sexual Assault cases. In general, property and drug offenses exhibit higher rates of concurrence than the violent offense categories. Several violent offense groups (i.e., Sexual Assault, Murder/Homicide, Rape and Obscenity) had concurrence rates at or below 69%, whereas many of the property and drug offense categories had concurrence rates above 84%.

During the past fiscal year, judicial concurrence with guidelines recommendations remained relatively stable, fluctuating less than three percent for most offense groups. Concurrence rates are much more susceptible to year-to-year fluctuations for offense groups with small number of sentencing events in a given year. Concurrence with the Obscenity worksheets (223 cases) decreased by 8 percentage points from FY2017 to FY2018 because of tendency to sentence above the guidelines recommendation. During the same time, concurrence on the Kidnapping worksheets (118 cases) increased this year by 7 percentage points because judges, although still more likely to go above the guidelines recommendation when not concurring with the recommendation, concurred with the guidelines recommendations at a higher rate.

Figure 8

Guidelines Compliance by Offense - FY2018

	Compliance	Mitigation	Aggravation	Number of Cases
Assault	77.5%	11.0%	11.5%	1,572
BurgDwel	72.8%	11.9%	15.3%	640
BurgOth	80.1%	13.0%	6.9%	346
DrugI/II	84.6%	7.7%	7.7%	9,005
DrugOth	86.0%	6.0%	8.0%	965
Fraud	84.2%	10.0%	5.8%	1,688
Kidnap	73.7%	6.8%	19.5%	118
Larceny	84.4%	9.3%	6.3%	4,774
MiscOth	83.1%	10.5%	6.4%	421
MiscPP	74.9%	8.5%	16.5%	411
Murder	65.7%	9.1%	25.2%	242
Obscene	68.6%	8.5%	22.9%	223
Rape	66.7%	13.5%	19.9%	156
Robbery	71.5%	18.2%	10.3%	533
SexAssau	64.0%	8.0%	28.0%	311
Traffic	80.3%	7.7%	12.0%	1,454
Weapon	77.0%	8.8%	14.2%	788
Total	81.9%	8.9%	9.1%	23,647

Concurrence on the Robbery worksheets (533 cases) increased by 6 percentage points due to a significant decrease in the number of cases sentenced below the guidelines recommendations.

Several changes went into effect beginning July 1, 2017. Two new felony offenses defined by §18.2-308, carrying a concealed weapon, second and third offenses, were added to the sentencing guidelines system. An existing factor on the Drug Schedule I/II and Drug Other worksheet was modified to increase the points when a conviction for use of a firearm in the commission of a felony under §18.2-53.1 accompanied a drug conviction in the same sentencing event. Factors and scores were also adjusted for maliciously discharging a firearm or missile in or at an occupied building in violation of § 18.2-279.

In FY2018, there were 22 sentencing events with carrying a concealed weapon, second offense. Concurrence with the guidelines recommendation for this newly added offense was 82% with equal distribution between aggravation and mitigation. There was only one guideline form submitted in FY2018 for carrying a concealed weapon, third offense and the sentence was in concurrence with the guidelines.

It is uncommon to have a conviction under § 18.2-53.1, for use of a firearm in the commission of a felony when the primary offense or most serious offense in the event is a drug offense. This combination of offenses does occur, and the guidelines were modified to reflect the possibility. However, in FY2018, there were no convictions on the Drug Schedule I/II or Drug Other worksheet that contained an additional offense for the use of a firearm in the commission of a felony.

The revisions made to the Weapons/Firearm worksheets improved concurrence for maliciously discharging a firearm or missile in or at an occupied building by nearly 10%. There were 21 guidelines submitted in FY2018 and the concurrence rate was 76%. Of the five cases not in concurrence, 3 defendants were sentenced above and 2 below the guidelines recommendation.

Since 1995, departure patterns have differed across offense groups, and FY2018 was no exception. In most cases, judges are sentencing within the recommendation, but for the offense groups of Robbery, Burglary Other Structure, Miscellaneous Other (e.g., perjury, failure to appear, etc.), Fraud, and Larceny, judges, when not in concurrence, sentenced below the recommendation. In fact, the Robbery offense group showed the highest mitigation rates with 18% of the robbery cases 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, judicial discretion, recommended by the attorney for the Commonwealth, and the lack of an extensive prior record.

Concurrence rates for Drug Schedule I/II are comparatively high. When judges impose sentences outside the recommendation, the departure pattern is evenly split between mitigation and aggravation. Judges were just as likely to sentence above the guidelines recommendation as below in these cases.

A similar pattern exists for the Assault group. Although concurrence is not as high as it is for drug offenses, the departure pattern is almost evenly split with just a slight tendency to sentence above the recommendation than below.

In the remaining offense groups, judges are more likely to sentence above the recommendation when not in concurrence. In FY2018, the offense groups with the highest aggravation rates were Sexual Assault at 28%, Murder/Homicide at 25%, and Obscenity at 23% and Rape and Kidnapping at 20%. These offense groups shared similar departure reasons. The most frequently cited aggravating departure reasons were, facts of the case, and plea agreement. Judges also frequently cited recommendation from a jury as the reason for the upward departure, especially in Murder/Homicide cases.

CONCURRENCE 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 FY2018 cases, 80% of the cases did not involve midpoint enhancements of any kind (Figure 9). Only 20% of the cases qualified for a midpoint enhancement because of a current or prior conviction for a felony defined as violent under § 17.1-805. The proportion of cases receiving midpoint enhancements has fluctuated very little since the institution of truth-in-sentencing guidelines in 1995.

Of the FY2018 cases in which midpoint enhancements applied, the most common midpoint enhancement was for a Category II prior record. Approximately 53% 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 FY2018, another 16% of midpoint enhancements were attributable to offenders with a more serious Category I prior record. Cases of offenders with a violent instant offense but no prior record of violence represented 21% of the midpoint enhancements in FY2018. The most substantial midpoint enhancements target offenders with a combination of instant and prior violent offenses. Roughly 7% 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.

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 FY2018, concurrence was 73% when enhancements applied, which is significantly lower than concurrence in all other cases (84%). Thus, concurrence in midpoint enhancement cases is suppressing the overall concurrence rate. When departing from enhanced guidelines recommendations, judges are choosing to mitigate in three out of every four departures.

Figure 9

Application of Midpoint Enhancements - FY2018

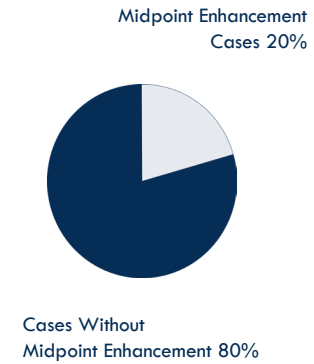


Figure 10

Type of Midpoint Enhancements Received - FY2018

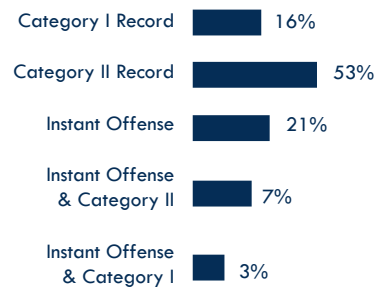


Figure 11

**Length of Mitigation Departures
in Midpoint Enhancement Cases - FY2018**



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

Among FY2018 midpoint enhancement cases resulting in incarceration, judges departed from the low end of the guidelines range by an average of 20 months (Figure 11). The median departure (the middle value, where half of the values are lower, and half are higher) was 12 months.

Concurrence, while generally lower in midpoint enhancement cases than in other cases, varies across the different types and combinations of midpoint enhancements (Figure 12). In FY2018, as in previous years, enhancements for a Category II prior record generated the highest rate of concurrence of all midpoint enhancements (75%). Concurrence in cases receiving enhancements for a Category I prior record generated the lowest concurrence (69%). Concurrence for enhancement cases involving a current violent offense, but no prior record of violence, was 74%. Cases involving a combination of a current violent offense and a Category II prior record yielded a concurrence rate of 72%, while those with the most significant midpoint enhancements, for both a violent instant offense and a Category I prior record, had a lower concurrence rate (68%).

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 five midpoint enhancement cases. The most frequently cited reasons for departure include the acceptance of a plea agreement, judicial discretion (time served, other sentence to serve, consistent with codefendant, etc.), offender has minimal to no prior record, type of prior record, mitigated facts of the offense, sentenced to alternative punishment and court procedural issues.

Figure 12

Compliance by Type of Midpoint Enhancement - FY2018

Midpoint Enhancement	Compliance	Mitigation	Aggravation	Number of Cases
None	84.0%	6.4%	9.6%	19,012
Category I	69.4%	27.4%	3.2%	720
Category II	74.9%	19.3%	5.8%	2,448
Instant Offense	73.7%	13.5%	12.8%	978
Instant and Category I	68.2%	24.3%	7.5%	148
Instant and Category II	71.6%	17.5%	10.9%	341
Total	81.9%	9.0%	9.1%	23,647

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 FY2018 1.2% of cases involved jury trials. In a small number of cases, some of the charges were adjudicated by a judge, while others were adjudicated by a jury, after which the charges were combined into a single sentencing hearing.

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

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, FY2018

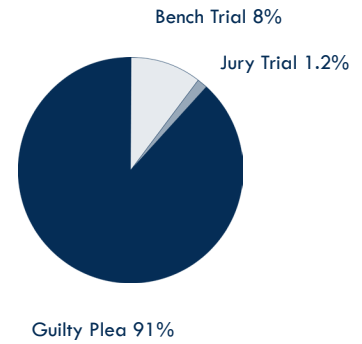
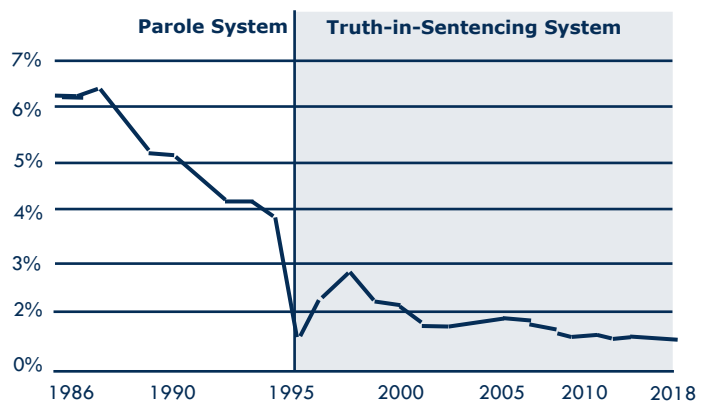


Figure 14

Percent of Felony Convictions Adjudicated by Juries FY1986-FY2018 Parole System v. Truth-in-Sentencing (No Parole) System

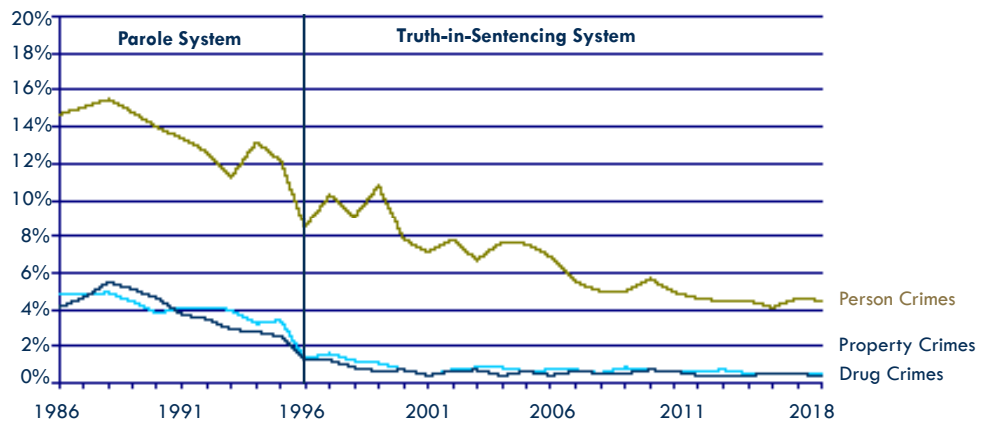


Inspecting jury data by offense type reveals very divergent patterns for person, property, and drug crimes. Under the parole system, jury cases comprised 11% to 16% of felony convictions for person crimes. This rate was typically three to four times the rate of jury trials for property and drug crimes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

In FY2018, the Commission received 270 cases adjudicated by juries. While the concurrence rate for cases adjudicated by a judge or resolved by a guilty plea was at 82% during the fiscal year, sentences handed down by juries concurred with the guidelines only 39% 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.

Figure 15

**Percent of Felony Convictions Adjudicated by Juries FY1986-FY2018
Parole System v. Truth-in-Sentencing (No Parole) System**



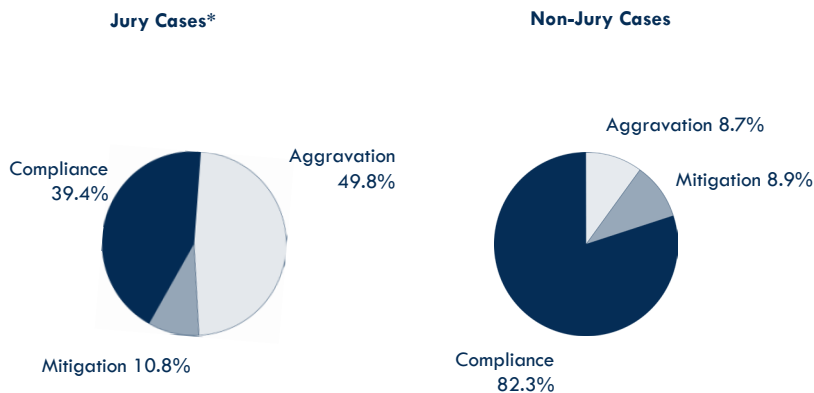
In jury cases in which the final sentence fell short of the guidelines, it did so by a median value of six months (Figure 17). In cases where the ultimate sentence resulted in a sanction more severe than the guidelines recommendation, the sentence exceeded the guidelines maximum recommendation by a median value of 49 months.

In FY2018, four 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 FY2018, judges modified 16% of jury sentences.

Figure 16

Sentencing Guidelines Compliance in Jury and Non-Jury Cases, FY2018



* The jury case compliance rate is calculated based on the sentence recommended by the jury. Judges modified jury sentences in 35 of 256 cases, or 14%. (Analysis excludes 5 juveniles whose guilt was determined by a jury and 6 fine-only jury recommendations).

Figure 17

Median Length of Durational Departures in Jury Cases, FY2018



CONCURRENCE 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 FY2018 were for nonviolent offenses. However, only 41% 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 1,900 nonviolent offense cases. In many of the cases missing a risk assessment, defendants had agreed to sentences specified in plea agreements. In other cases, the preparer did not indicate on the worksheet that the risk assessment was not applicable.

Among the eligible offenders in FY2018 for whom a risk assessment form was received (6,801 cases), 52% were recommended for an alternative sanction by the risk assessment instrument (Figure 18). Less than half of the offenders recommended for an alternative sanction through risk assessment were given some form of alternative punishment by the judge. In FY2018, 40% 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: substance abuse services (51%), unsupervised probation or good behavior (49%), restitution (32%), time served (14%) and fines (12%). The Department of Corrections' Community Corrections Alternative Program was used in a small percentage (4%) of the cases. Other alternatives/sanctions included: first offender status under § 18.2-251, programs under the Comprehensive Community Corrections Act (CCCA), day reporting, electronic monitoring, intensive supervision, drug court, community service, litter control, and work release.

Figure 18

Percentage of Eligible Nonviolent Risk Assessment Cases Recommended for Alternatives, FY2018 (6,803 cases)

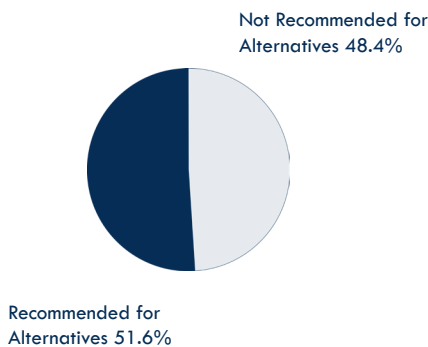
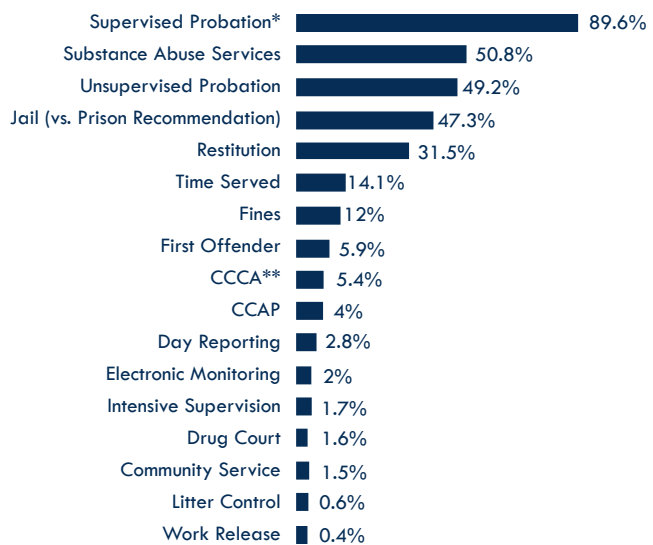


Figure 19

Types of Alternative Sanctions Imposed - FY2018



* Includes indefinite supervised probation (19%)

** 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 in concurrence 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 concurrence rate is 87%, but a portion of this concurrence reflects the use of an alternative punishment option as recommended by the risk assessment tool (Figure 20). In 26% of these drug cases, judges have complied with the recommendation for an alternative sanction. Similarly, in fraud cases, with offenders eligible for risk assessment, the overall concurrence rate is 86%. In 30% of these fraud cases, judges have complied by utilizing alternative punishment when it was recommended. Finally, among larceny offenders eligible for risk assessment, the concurrence rate is 87%. Judges used an alternative, as recommended by the risk assessment tool, in 8% of larceny cases. The lower use of alternatives for larceny offenders is primarily because larceny offenders are recommended for alternatives at a lower rate than drug and fraud offenders. The National Center for State Courts, in its evaluation of Virginia’s risk assessment tool, and the Commission, during its validation study, found that larceny offenders are the most likely to recidivate among nonviolent offenders.

Figure 20

Compliance Rates for Nonviolent Offenders Eligible for Risk Assessment - FY2018

	Mitigation	Compliance		Aggravation	Number of Cases	Overall Compliance
		Adjusted Range	Traditional Range			
Drug	7.0%	26.1%	60.4%	6.5%	3,825	86.5%
Fraud	9.7%	29.5%	56.8%	4.0%	742	86.3%
Larceny	8.5%	8.1%	78.5%	4.9%	2,234	86.6%
Overall	7.8%	20.6%	65.9%	5.7%	6,801	86.5%

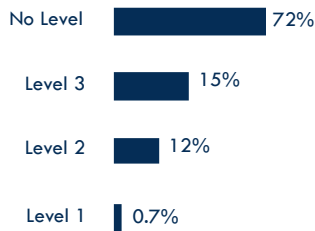
CONCURRENCE AND SEX OFFENDER RISK ASSESSMENT

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.

Figure 21

Sex Offender Risk Assessment Levels for Sexual Assault Offenders, FY2018



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 concurrence 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.

During FY2018, there were 311 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, and prostitution (23 of the 311 cases in FY2018). Another fourteen cases were missing information for calculating concurrence and were excluded. Of the remaining 274 sexual assault cases for which the risk assessment was applicable, the majority (72%) were not assigned a level of risk by the sex offender risk assessment instrument (Figure 21). Approximately 15% of applicable Sexual Assault guidelines cases resulted in a Level 3 risk classification, with an additional 12% assigned to Level 2. Less than 1% 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 judges utilize these extended ranges when sentencing some sex offenders. For the two sexual assault offenders reaching Level 1 risk during the past fiscal year, both were given a sentence within the traditional guidelines range. (Figure 22). Judges used the extended guidelines range in 31% of Level 2 cases and 21% 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) had similar concurrence rates with the traditional guidelines recommendations as Levels 2 and 3 offenders (58% concurrence rate), but were more likely to receive a sentence that was an upward departure from the guidelines (34% aggravation rate).

Figure 22

Other Sexual Assault Compliance Rates By Risk Assessment Level, FY2018

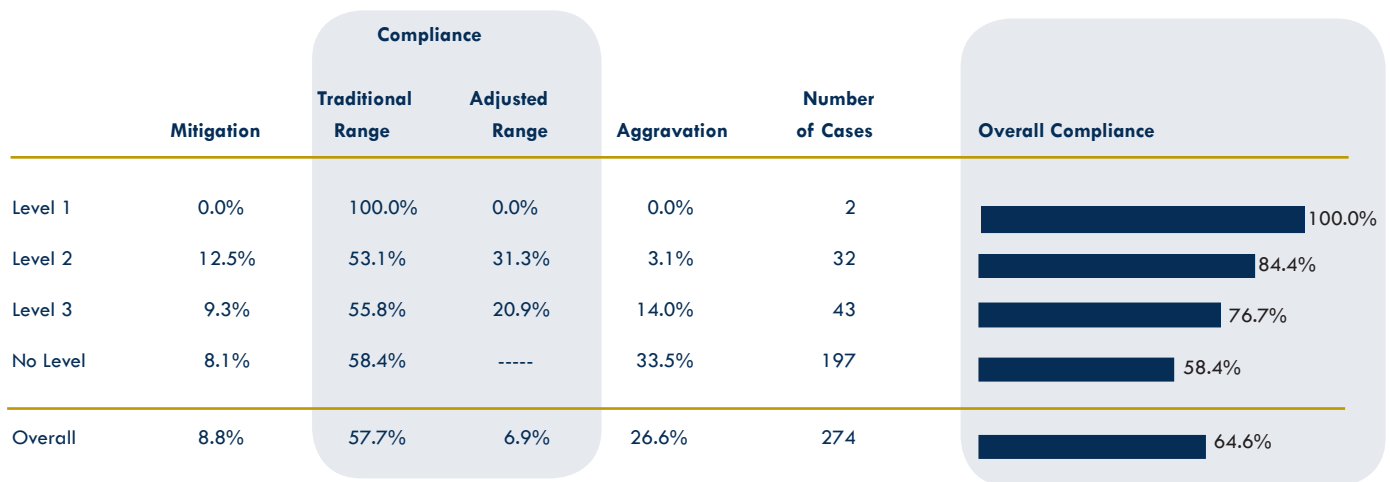
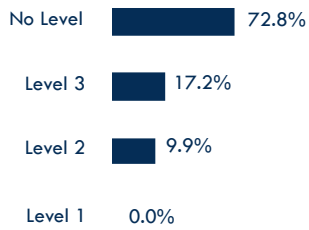


Figure 23

Sex Offender Risk Assessment Levels for Rape Offenders, FY2018



In FY2018, there were 151 offenders convicted of offenses covered by the Rape guidelines (which cover the crimes of rape, forcible sodomy, and object penetration). Among offenders convicted of these crimes, nearly three-fourths (73%) were not assigned a risk level by the Commission’s risk assessment instrument (Figure 23). Approximately 17% of these cases resulted in a Level 3 adjustment. An additional 10% received a Level 2 adjustment. As shown below, 33% of offenders with a Level 2 risk classification and 15% of offenders with a Level 3 risk classification were given prison sentences within the adjusted range of the guidelines (Figure 24). 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, FY2018

	Mitigation	Compliance		Aggravation	Number of Cases	Overall Compliance
		Traditional Range	Adjusted Range			
Level 1	0.0%	0.0%	0.0%	0.0%	0	0.0%
Level 2	6.7%	60.0%	33.3%	0.0%	15	93.3%
Level 3	11.5%	57.7%	15.4%	15.4%	26	73.1%
No Level	15.5%	60.9%	---	23.6%	110	60.9%
Overall	13.9%	60.3%	6.0%	19.9%	151	66.2%

SPECIFIC TYPE OF DRUG

In 2017, at the request of Charles Slem, the Commonwealth's Attorney for Wise County, and Brian Patton, the Commonwealth's Attorney from Russell County, the Commission began identifying the type of Schedule I, II and III substances on the sentencing guidelines cover sheet. As proposed, identifying the specific type of drug would enable policy makers to better track drug trends by locality and/or geographic region within the Commonwealth. In return, localities would be in a better position to respond with appropriate treatment options. The purpose of the recommendation was not to encourage changes in sentencing based on drug type.

The Commission modified the cover sheets and began to collect the specific type of drug on July 1, 2017 when a drug offense was the primary or most serious offense in the sentencing event. In FY 2018 there were 10,169 drug worksheets submitted to the Commission. In over 6,900 of these worksheets, a drug type was identified and on 721 worksheets multiple drugs were identified.

Figure 25 identifies the specific type of drug identified on the drug sentencing guidelines. When all the opioids (i.e, heroin, fentanyl, oxycodone, morphine, codeine, and methadone) are grouped together, opioids were the most commonly identified drugs in FY2018. Opioids were identified in 27.4% of the sentencing events, when a drug was identified. Other than the broad category of opioids, cocaine was identified the most, followed by heroin and then methamphetamines.

Concurrence rates are not significantly different based on the type of drug involved. Judges are likely to concur with the guidelines recommendation in over 83% of the cases regardless of the specific type of drug. Rates of concurrence are slightly higher in methamphetamine cases and in other types of drugs (e.g., amphetamines, LSD, PCP, marijuana, etc.). In the case of methamphetamines, the sentencing guidelines take into consideration when the drug is being manufactured versus distributed and if a child was present during the manufacturing process. These factors are not available on sentencing guidelines for other drug types. The other category includes some other types of Schedule I/II drugs, but more often Schedule III drugs, prescription drugs and marijuana. These specific types of drugs have slightly higher concurrence rates. See Figure 26 for details.

Figure 25
Number and Percentage of Cases Received by Specific Type of Drug Identified - FY2018*

Drug	Percentage	Cases
Opioids*	27.4%	2,783
Cocaine	24.1%	2,452
Heroin	17.2%	1,753
Methamphetamine	16.8%	1,708
Other	6.8%	691
Fentanyl	4.7%	477
Oxycodone	4.3%	441
Hydrocodone	2.3%	229
Morphine	1.6%	164
Codeine	0.4%	45
Methylphenidate	0.4%	37
Methadone	0.3%	35

**Opioids includes the drugs heroin, fentanyl, oxycodone, morphine, codeine and methadone (listed separately in this table)*

Of the 10,169 drug offenses, a drug type was identified in over 6,900 sentencing events. Multiple drugs were identified in 721 of these sentencing events.

One of the reasons the Commission was asked to collect the type(s) of drug on the drug sentencing guidelines was to provide information on drug trends by locality and/or geographic region within the Commonwealth. Representatives from several localities wanted information on drug convictions so they would be in a better position to respond with appropriate treatment options or to take other measures to address drug issues in their communities. Figure 27 lists the types of drugs by circuit. Convictions listed in Figure 27 are not adjusted to reflect a standard measure based

Figure 26

Guidelines Compliance by Type of Drug - FY2018

Drug Type	Compliance	Mitigation	Aggravation	Total
Opioid Case	83.4%	8.0%	8.6%	2,776
Cocaine Case	83.1%	8.8%	8.1%	2,444
Methamphetamine Case	88.5%	6.0%	5.6%	1,693
Other	87.3%	4.8%	7.9%	723

Cases that include multiple types of drugs are included in each category. No drug is weighted more serious than another

on the population of each locality, but simply to provide the localities the information requested. Some general conclusions are: more convictions for methamphetamines occur in Circuits 23 through Circuit 28 (Roanoke area, Lynchburg area, Staunton area, Radford area and Bristol area) than other areas of the state. Cocaine and heroin convictions are significant in Circuit 2 (Virginia Beach), Circuit 12 (Chesterfield), Circuit 13 (Richmond), Circuit 14 (Henrico), Circuit 15 (Fredericksburg area), and Circuit 16 (Charlottesville area). Circuit 26 (Harrisonburg) has a substantial number of convictions not only for methamphetamines, but for heroin and cocaine as well.

The number of convictions may not be the best approach to gaging drug problems in communities across the Commonwealth. In some cases, the number of convictions may better reflect the success of law enforcement in arresting and securing convictions for drug violations. Other measures, such as drug overdoses, demands on treatment providers and arrests for drug crimes that do not result in convictions or that have convictions deferred for treatment may be better measures. Also, defendants with substance abuse issues may not be convicted of drug offenses and this information is not directly collected on the sentencing guidelines.

The Commission will continuously monitor sentencing in drug cases. If the sentencing pattern of judges change, so will the guidelines. As indicated by the concurrence rates, there is no need at this time to adjust guidelines based on the type of drug involved.

Figure 27

Type of Drug by Circuit - FY2018

Circuit		Cocaine	Codeine	Fentanyl	Heroin	Hydrocodone	Methadone	Methamphetamines	Methylphenidate	Morphine	Oxycodone	Other
1	Chesapeake	88	2	22	75	3	0	13	0	1	7	23
2	Virginia Beach	202	3	34	102	8	2	60	3	5	29	60
3	Portsmouth	40	1	12	54	0	1	0	0	1	2	2
4	Norfolk	147	3	25	84	4	0	21	0	0	4	14
5	Suffolk Area	25	1	14	23	1	0	6	0	1	1	3
6	Sussex Area	70	1	2	17	1	0	7	0	0	8	9
7	Newport News	87	0	6	28	3	0	2	0	1	6	5
8	Hampton	36	1	3	19	2	0	2	0	1	3	6
9	Williamsburg Area	69	3	9	33	5	0	6	1	3	10	22
10	South Boston Area	82	0	6	33	5	2	38	0	3	25	14
11	Petersburg Area	12	0	1	7	2	0	5	0	1	5	3
12	Chesterfield Area	160	6	39	143	3	3	18	2	5	24	30
13	Richmond City	196	0	23	110	1	3	4	0	3	8	15
14	Henrico	190	3	60	221	7	2	14	1	1	31	16
15	Fredericksburg	198	4	65	201	6	3	39	4	20	41	65
16	Charlottesville Area	99	3	27	104	5	2	19	2	12	15	21
17	Arlington Area	49	1	3	27	0	0	9	0	1	6	18
18	Alexandria	5	0	0	1	0	0	3	0	1	0	11
19	Fairfax	110	6	23	90	1	0	20	5	4	14	58
20	Loudoun	36	1	18	46	4	0	10	0	2	10	21
21	Martinsville Area	36	1	1	8	20	2	53	0	5	22	12
22	Danville Area	80	0	2	10	2	1	28	0	5	4	22
23	Roanoke Area	50	2	7	59	2	0	108	0	5	1	12
24	Lynchburg Area	80	0	4	26	11	0	139	3	1	23	29
25	Staunton Area	29	0	5	25	18	3	249	2	5	16	28
26	Harrisonburg Area	99	1	40	123	9	5	209	4	24	20	47
27	Radford Area	64	0	5	8	27	4	259	4	20	34	36
28	Bristol Area	9	0	1	1	24	0	238	2	3	13	8
29	Buchanan Area	20	0	4	12	37	2	68	2	24	37	33
30	Lee Area	7	0	0	0	18	0	56	2	5	13	14
31	Prince William Area	76	2	17	63	0	0	5	0	1	9	34
Total	Statewide	2,451	45	478	1,753	229	35	1,708	37	164	441	691

One sentencing event may involve more than one type of drug

Figure 28

Number and Percentage of SRRs Received by Circuit - FY 2018*

Circuit	Number	Percent
1	678	4.8
2	782	5.5
3	338	2.4
4	496	3.5
5	424	3.0
6	57	0.4
7	274	1.9
8	212	1.5
9	548	3.9
10	265	1.9
11	147	1.0
12	867	6.1
13	328	2.3
14	536	3.8
15	1254	8.8
16	445	3.1
17	202	1.4
18	91	0.6
19	267	1.9
20	283	2.0
21	262	1.8
22	750	5.3
23	440	3.1
24	391	2.7
25	423	3.0
26	824	5.8
27	669	4.7
28	401	2.8
29	899	6.3
30	370	2.6
31	303	2.1
	14,226	100.0

*1 case was missing a circuit number

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 FY2018, there were 14,227 alleged felony violations of probation, suspended sentences, or good behavior for which a (SRR) was submitted to the Commission (as of November 8, 2018). 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 15 (Fredericksburg area), Circuit 29 (Buchanan County area), Circuit 12 (Chesterfield County) and Circuit 26 (Harrisonburg). Circuit 6 (Sussex County area), Circuit 18 (Alexandria), and Circuit 11 (Petersburg area) submitted the fewest SRRs during the time period (Figure 28).

For FY2018, the Commission received 14,227 SRRs. Of the total, 7,634 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 6,287 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 (199 cases) or the type of violation was not identified on the SRR form (107 cases).

Figure 29 compares new law violations with “technical violations” in FY 2018 with previous years. Between FY2009 and FY2014 the number of revocations based on new law violations 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 161 cases. However, since FY2015 the number of technical violations once again exceed the new law violations. In FY 2018, technical violations exceed new law violations by 1,347 cases.

Figure 29

**Sentencing Revocation Reports Received for Technical and New Law Violations
FY1998 - FY2018**

Fiscal Year	Technical Violations	New Law Violations	Number
FY1998	2,886	2,278	5,164
FY1999	3,643	2,630	6,273
FY2000	3,490	2,183	5,673
FY2001	5,511	3,228	8,739
FY2002	5,783	3,332	9,115
FY2003	5,078	3,173	8,251
FY2004	5,370	3,361	8,731
FY2005	5,320	3,948	9,268
FY2006	5,509	3,672	9,181
FY2007	6,670	4,755	11,425
FY2008	6,269	5,182	11,451
FY2009	5,000	5,133	10,133
FY2010	4,670	5,225	9,895
FY2011	5,238	6,056	11,294
FY2012	5,141	5,756	10,897
FY2013	5,442	6,011	11,453
FY2014	5,765	5,926	11,691
FY2015	6,504	6,392	12,896
FY2016	6,634	5,985	12,619
FY2017	6,494	5,512	12,006
FY2018	6,287	7,634	13,921

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 current judicial sentencing patterns in the punishment of supervision violators. Judicial concurrence 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 concurrence rate of 48% for FY2006.

Concurrence 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 concurrence rates than previous versions of the guidelines. Figure 30 illustrates concurrence patterns over the years and the impact revisions to the guidelines had on concurrence rates. Concurrence has hovered above 50% since FY2008 and this pattern continues in FY2018.

For FY2018, 6,287 of the 14,227 SRRs involved technical violations only. Upon further examination, it was found that 979 could not be included in 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.

Figure 30

Probation Violations Guidelines Concurrence by Year, FY2005 - FY2018

Fiscal Year	Compliance	Mitigation	Aggravation	Total
FY2005	37.4%	27.3%	35.4%	3,140
FY2006	48.4%	30.0%	21.6%	4,793
FY2007	47.1%	31.7%	21.2%	5,929
FY2008	53.9%	25.0%	21.0%	5,028
FY2009	53.3%	25.8%	21.0%	4,488
FY2010	52.7%	25.6%	21.7%	4,233
FY2011	54.0%	24.1%	21.9%	4,773
FY2012	50.2%	25.9%	23.9%	4,504
FY2013	51.9%	23.3%	24.8%	4,792
FY2014	53.3%	22.5%	24.2%	4,973
FY2015	53.6%	24.2%	22.2%	5,713
FY2016	55.9%	25.3%	18.8%	5,791
FY2017	55.4%	25.8%	18.8%	5,683
FY2018	57.0%	27.9%	15.1%	6,643

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.

Figure 31

**Probation Violation
Guidelines Worksheets Received by
Type of Most Serious
Original Offense - FY2018*
N=6,655**

Original Offense Type	Percent Received
Property	40.2%
Drug	38.6%
Person	14.3%
Traffic	3.6%
Other	3.3%

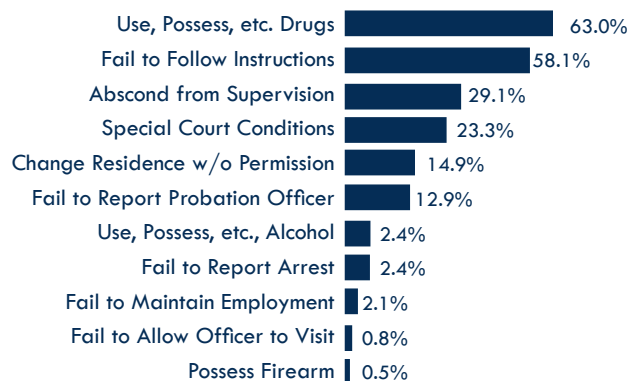
**Includes FY2018 cases found to be in violation that were completed accurately on current guideline forms.*

Of the 6,655 cases examined in which offenders were found to be in violation of their probation for reasons other than a new law violation, approximately 40% were under supervision for a felony property offense (Figure 31). This represents the most serious offense for which the offender was on probation. Another 39% 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 (14%) of those found in violation during FY2018.

Examining the 6,655 technical violation cases reveals that over half (63%) 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 (58%) of the offenders were cited for failing to follow instructions given by the probation officer. Other frequently cited violations included absconding from supervision (29%), changing residence or traveling outside of designated areas without permission (15%) and failing to report to the probation officer in person or by telephone when instructed (13%). In approximately one-fourth of the violation cases (23%) offenders were often cited for failing to follow special conditions imposed by the court, including: failing to pay court costs and restitution, failing to comply with court-ordered substance abuse treatment, or failing to successfully complete alternatives, such as a Detention Center or Diversion Center program. It is important to note that defendants may be, and typically are, cited for violating more than one condition of their probation (Figure 32).

Figure 32

**Violation Conditions Cited by Probation Officers,
Excluding New Law Violations - FY2018***



**Includes FY2018 cases found to be in violation that were completed accurately on current guideline forms.*

The overall concurrence 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 FY2018, the overall rate of concurrence with the Probation Violation Guidelines was 57%, which is slightly higher than concurrence rates since FY 2008 (Figure 33). The aggravation rate, or the rate at which judges sentence offenders to sanctions more severe than the guidelines recommend, was 15% during FY2018. The mitigation rate, or the rate at which judges sentence offenders to sanctions considered less severe than the guidelines recommendation, was 28%.

Figure 34 illustrates judicial concurrence with the type of disposition recommended by the Probation Violation Guidelines for FY2018. 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, Diversion Center and Community Corrections Alternative Program (CCAP) are defined as incarceration sanctions under the Probation Violation Guidelines.

Figure 33

Overall Probation Violation Guidelines Compliance and Direction of Departures - FY2018
N=6,643

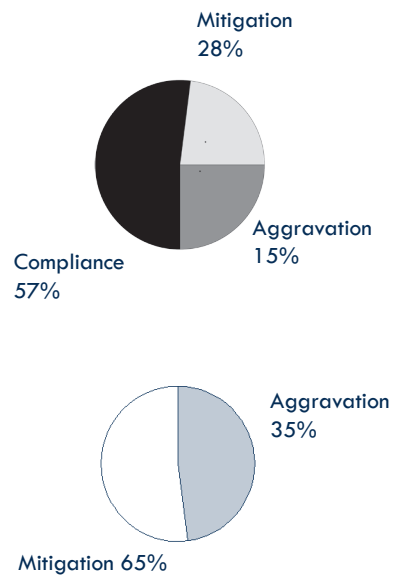


Figure 34

Probation Violation Guidelines Dispositional Compliance
FY2018

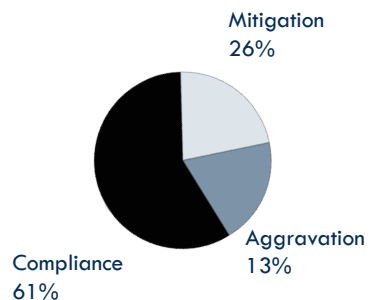
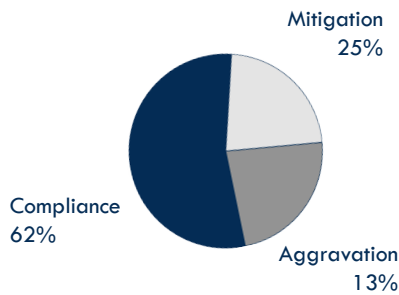


Figure 35

**Probation Violation Guidelines
Durational Compliance* FY2018**



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

Another facet of concurrence is durational concurrence. Durational concurrence is defined as the rate at which judges sentence offenders to terms of incarceration that fall within the recommended guidelines range. Durational concurrence 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 concurrence for FY2018 was approximately 62% (Figure 35). For cases not in durational concurrence, aggravations were less likely than mitigations.

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

Prior to July 1, 2010, completion of the Probation Violation Guidelines was not required by statute or 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 continues to be in the budget and can be found in Item 40 of Chapter 780 of the 2018 Acts of Assembly Act. 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 reflect judicial sentencing practices across the Commonwealth more closely are largely dependent upon the judges' written reasons for departure.

According to Probation Violation Guidelines data for FY2018, 43% 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 1,854 mitigation cases revealed that 72% included a departure reason, slightly higher than the percentage reported last year. 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), progress in rehabilitation, the recommendation of the attorney for the Commonwealth, the offender's health, judicial discretion based on issues related to the case, the potential for rehabilitation or plea agreement.

Examining the 1001 aggravation cases, the Commission found that the majority (74%) included a departure reason. When a departure 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, substance abuse issues, the recommendation of the attorney for the Commonwealth or aggravating facts of the case.

FY2018 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. Please refer to chapter four in this report on the Commission's plans to update the probation guidelines.

3

JUVENILES CONVICTED IN CIRCUIT COURT

INTRODUCTION

The 2006 General Assembly directed the Virginia State Crime Commission, a legislative branch agency, to study Virginia's juvenile justice system and the provisions in the *Code of Virginia* pertaining to juvenile delinquency. During the course of its multi-year study, the State Crime Commission has requested assistance from a variety of other agencies, including the Virginia Sentencing Commission. In 2006 and again in 2009, the Sentencing Commission was asked to provide information on a particular aspect of the juvenile justice system: juveniles transferred to the circuit court to be tried as adults. Information was compiled and presented to the full membership of the State Crime Commission during meetings in October 2006 and June 2009. In 2010, the Crime Commission asked the Sentencing Commission to update its analysis in order to add the most recent data available, and the work was completed in November of that year.

In 2017, the Sentencing Commission received two new requests to update its analysis of juveniles transferred to circuit court. The first request was made by staff of the General Assembly's Senate Finance Committee. The second request was made by one of Virginia's circuit court judges who indicated that the results of the Commission's analysis would be incorporated into the pre-bench orientation program for new circuit court judges.

PROVISIONS RELATED TO JUVENILE TRANSFER

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

The juvenile court is required (per § 16.1-269.1(B)) to hold a preliminary hearing in every case in which a juvenile 14 years of age or older is charged with murder (under §§ 18.2-31, 18.2-32 or 18.2-40) or aggravated malicious wounding (§ 18.2-51.2) and, upon finding probable cause, must certify the charge (and all ancillary charges) to the grand jury, which divests the juvenile court of jurisdiction. In addition, the court must hold a preliminary hearing (per § 16.1-269.1(C)) when a juvenile is charged with certain other offenses (such as robbery, rape, specified assaults, and, under certain circumstances, distribution of Schedule I or II drugs) if the Commonwealth's attorney gives notice that he or she intends to pursue transfer; upon finding probable cause in such cases, the court must certify the charge and all ancillary charges to the grand jury. In any hearing required by § 16.1-269.1(B) or (C), if the court does not find probable cause that the juvenile committed the offense charged or if the petition or warrant is dismissed by the court, the Commonwealth's attorney may seek a direct indictment in the circuit court.

Per § 16.1-271, any juvenile who is tried and convicted in a circuit court as an adult must be treated as an adult in any criminal proceeding resulting from any subsequent criminal acts and in any pending allegations of delinquency that have not been disposed of by the juvenile court at the time of the circuit court conviction. Prior to FY2008, the trial or treatment of a juvenile as an adult, regardless of whether the prosecution resulted in a conviction, was sufficient to prosecute the defendant as an adult for all subsequent offenses. However, the 2007 General Assembly limited the applicability of this requirement to only offenders whose charges have resulted in a conviction in circuit court. Under § 16.1-242, if an offender commits a crime as a juvenile and prosecution has not been commenced against him by the time he reaches the age of 21, he shall be proceeded against as an adult.

METHODOLOGY AND DATA SOURCES

For the purposes of the Sentencing Commission's study, the term "juveniles" refers to persons who were under the age of 18 at the time of the offense (or who were under the age of 18 for at least one offense in the case). For this analysis, as in previous studies, a case was defined as a sentencing event. A sentencing event consists of all offenses (and counts) for which the offender is sentenced before the same court at the same time. A few juveniles had more than one sentencing event in circuit court. Each distinct sentencing event was counted for this analysis. The analysis focuses on original felony convictions and excludes subsequent adult probation violation hearings for that offense. However, if an offender, while on supervised probation for a previous offense, was convicted and sentenced for a new felony offense committed while under the age of 18, the second sentencing event was included in this study, even if the offender's probation was also revoked. In addition, the analysis excludes offenders who were 21 years or older at the time of arrest or case filing, since they must be prosecuted in circuit court pursuant to § 16.1-242. For each case in the study, the Commission identified the most serious offense resulting in conviction.

The Code of Virginia (§ 19.2-298.01) requires the preparation of sentencing guidelines worksheets in nearly all felony cases tried in circuit court. The guidelines cover approximately 95% of felony cases in Virginia's circuit courts and, therefore, should account for nearly all felony offenders. Using its own sentencing guidelines data, the Commission identified offenders who were under the age of 18 at the time the offense was committed and who were convicted in circuit court of a felony covered by the guidelines. Previous studies revealed that the Commission had not been receiving sentencing guidelines forms for all juveniles convicted of felonies in circuit courts across the Commonwealth. For instance, for FY2001 through FY2010, the Commission had received guidelines forms for only 61% of these cases. There appeared to be a misconception among some judges, prosecutors, and/or court clerks that the guidelines do not apply in these circumstances. By statute, sentencing guidelines apply in such cases and there are no exceptions for juvenile offenders who are tried and convicted as adults. The Commission has attempted to address this misconception in its training of judges and prosecutors. As a result of this effort, there has been some improvement. For FY2010 through FY2017, the Sentencing Commission received guidelines forms in 71% of the juvenile cases.

Since 2006, when examining juveniles convicted in circuit court, the Sentencing Commission has supplemented its own guidelines data with data from other sources. Data from the Circuit Court Case Management System (CMS), Virginia Department of Corrections (DOC), and Virginia Department of Juvenile Justice (DJJ) were incorporated. The Commission's 2009 study and the 2010 update also included data from the automated Pre/Post-Sentence Investigation (PSI) system and the Local Inmate (Jail) Data System (LIDS). However, the Commission's latest study does not use PSI records and data from LIDS. Due to the implementation of a new data system, the DOC is no longer able to provide automated PSI records that capture sentencing outcomes. Moreover, data maintained by local and regional jails in LIDS include juveniles who are ultimately adjudicated delinquent in Juvenile and Domestic Relations (JDR) court. Since the court of conviction (juvenile court versus circuit court) cannot be determined from LIDS data, these data were not included in the 2018 study. Because the inclusion of these data was not feasible, the Commission's 2018 study yielded lower numbers of juveniles convicted in circuit court than the 2010 study.

On the other hand, this new study made some significant progress in validating juvenile convictions across different data sources. First, there was an improvement in the identification and exclusion of juvenile sentencing events that only include probation violations. With this improvement, the study avoids counting the original felony and a subsequent probation violation stemming from that felony. Second, several advanced matching techniques have recently become available, helping to identify the same and new sentencing events across different data sources in a more efficient manner. These improvements helped to overcome many of the difficulties working with the various data resources that sometimes contain related, but different, information for the same sentencing event. The lower number of the cases also reflects these improvements.

Overall, while there were both limitations and improvements in data collection efforts, the fairly large number of the juvenile cases identified over the years should capture the overall trend in juveniles convicted in circuit court from FY2010 through FY2017. The Commission's strategy continues to represent the most comprehensive approach to examining juveniles convicted in circuit courts across the Commonwealth.

LIMITATIONS

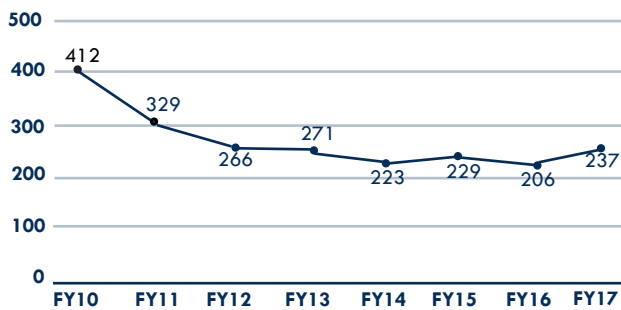
Despite this substantial data collection effort, the analysis is limited in two ways. First, these data do not distinguish between the three main types of cases: 1) juveniles who have been transferred to circuit court to be tried as adults, 2) juvenile cases where the Commonwealth’s attorney chooses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

FINDINGS

Between FY2010 and FY2017, there was an overall decline in the number of cases in which a juvenile was convicted of a felony in circuit court (Figure 36). The number of juvenile cases fell from 412 in FY2010 to 266 in FY2012, a decrease of more than 35%. Between FY2014 and FY2016, juvenile cases in circuit court fluctuated between 206 and 229. In FY2017, the number of juvenile cases increased to 237, the highest number recorded since FY2013. Despite the increase observed in FY2017, the data indicate an overall downward trend.

Figure 36

Juveniles Convicted of Felonies in Circuit Court, FY2010 - FY2017



Note: For purposes of this analysis, “juveniles” refers to persons who were under the age of 18 at the time of at least one felony offense that resulted in conviction.

The downward trend in the number of juveniles convicted of a felony in circuit court is consistent with other recent trends in Virginia’s juvenile justice system. According to DJJ, the number of juvenile intake cases at the agency’s Court Service Units dropped from 56,763 in FY2010 to 39,164 in FY2017, a decrease of 31% over this time period (Figure 37). This downward trend is also apparent in the juvenile detention center and direct care populations (Figure 38). The average daily population of juveniles in detention centers across the state decreased from 804 in FY2010 to 644 in FY2017. The decline in DJJ’s direct care population (juveniles committed to the state who are in correctional centers or in alternative commitment placements) has been far steeper. Between FY2010 and FY2017, the average daily population in direct care in Virginia fell from 859 to 338, a 61% decrease.

Figure 37

Juveniles Intakes Cases, FY2010 - FY2017

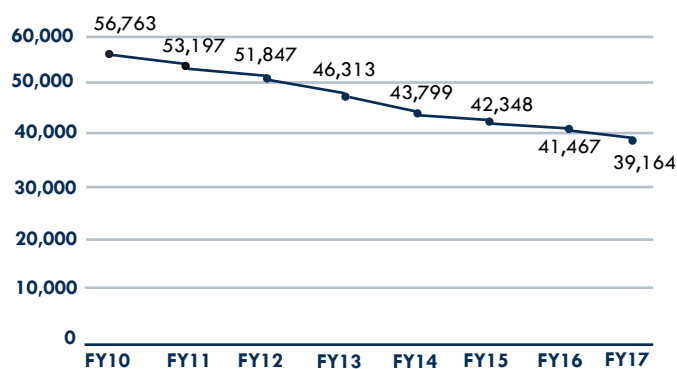


Figure 38

Juveniles Intakes, FY2010 - FY2017

	Detention Center	Direct Care
FY2010	804	859
FY2011	756	816
FY2012	749	758
FY2013	727	695
FY2014	735	599
FY2015	708	509
FY2016	643	406
FY2017	644	338

Source: Virginia Department of Juvenile Justice (August 2, 2017)

The Sentencing Commission further analyzed the cases of juveniles convicted in circuit court. Examining the data by age reveals that relatively few of the cases involved juveniles who were age 14 at the time of the offense. During the eight-year period examined (FY2010-FY2017), 119 of the 2,173 juveniles convicted of felonies in circuit court were 14 years of age when the offense was committed (Figure 39). This represents 5% of the total number of cases. The largest share of cases involved juveniles who were 17 when they committed the crime. Because felony case processing time exceeds 10 months on average, many of the juveniles who were 17 at the time of the offense had turned 18 by the time they were sentenced. This age distribution is consistent with the Commission’s previous studies.

Figure 39

Juveniles Convicted of Felonies in Circuit Court, FY2010 – FY2017 by Age at Offense

Age at Offense	Number	Percent
14	119	5%
15	263	12%
16	566	27%
17	1,225	56%
TOTAL	2,173	100%

For each case in the study, the Sentencing Commission identified the most serious felony resulting in conviction. The most serious offense was selected based on the crime with the highest statutory maximum penalty as defined in the Code of Virginia. If two or more offenses had the same statutory maximum penalty, sentencing guidelines rules were applied to determine the most serious offense in the case. Among juveniles convicted of felonies in circuit court, the most common offense was robbery. Robbery was the most serious offense in more than one-third of these cases (Figure 40). The next most common offense was felony assault, which comprised 17% of the cases examined. In 11% of the cases, a felony larceny or fraud conviction was the most serious offense in the sentencing event. Approximately 8% of the juvenile offenders in the study had been convicted of burglary of a dwelling. For 5% of the juveniles, the most serious offense was rape, forcible sodomy, or object sexual penetration. Murder/ manslaughter convictions accounted for another 5% of the cases. Other offenses were less common, each representing less than 5% of the cases. Felony traffic offenses, which include eluding police and felony DUI, comprised 1% of the cases. The miscellaneous category includes offenses such as arson and felony vandalism. For juveniles convicted in circuit court, the Code of Virginia permits judges to utilize

Figure 40

Juveniles Convicted of Felonies in Circuit Court, FY2010 – FY2017 by Most Serious Offense

Offense	Number	Percentage
Robbery	738	34.0%
Assault	375	17.3%
Larceny/Fraud	247	11.4%
Burglary of Dwelling	179	8.2%
Rape/Forcible Sodomy/ Obj. Penetration	115	5.3%
Murder/Manslaughter	111	5.1%
Miscellaneous/Other	90	4.1%
Schedule I/II Drugs	80	3.7%
Other Sex Offense	65	3.0%
Weapon	59	2.7%
Burglary of Non-Dwelling	43	2.0%
Kidnapping	32	1.5%
Felony Traffic	22	1.0%
Other Drugs	17	0.8%
TOTAL	2,173	100.0%

a variety of sanctions, both in the juvenile system and the adult corrections system. Sanctions in the juvenile system include juvenile probation, treatment or rehabilitation programs of some kind, post-disposition detention, or commitment to Virginia's Department of Juvenile Justice (DJJ). Should the circuit court judge opt to commit the juvenile to DJJ, there are three types of commitment available: indeterminate commitment, determinate commitment, and blended sentence. For a juvenile with an indeterminate commitment, DJJ determines how long the juvenile will remain in a facility, up to a maximum of 36 months. These juveniles are assigned a length-of-stay range based on guidelines that consider the offender's current offenses, prior offenses, and length of prior record. Failure to complete a mandatory treatment program, such as substance abuse or sex offender treatment, or the commission of institutional offenses, could prolong the actual length of stay beyond the assigned range. For a juvenile given a determinate commitment to DJJ, the judge sets the commitment period to be served (up to age 21), although the juvenile can be released at the judge's discretion prior to serving the entire term. Nonetheless, determinately-committed juveniles remain in DJJ facilities longer, on average, than juveniles with indeterminate commitments to the Department. The average sentence for all juveniles given a determinate commitment to DJJ is approximately 40 months. Finally, a juvenile given a blended sentence will serve up to age 21 at a DJJ facility, after which he will be transferred to the Department of Corrections (DOC) to serve the remainder of his term in an adult facility. However, judges may review the juvenile's progress prior to transfer to the Department of Corrections and may reconsider the sentence at that time. Punishment options in the adult system range from probation or other community-based programs, to a jail sentence (up to 12 months) or a prison term (one year or more).

By compiling data from multiple sources, the Sentencing Commission obtained detailed sentence information for each case. This analysis is by far the most comprehensive picture of outcomes for juveniles convicted in circuit court. For juveniles convicted of felonies in circuit courts in the Commonwealth, the most common disposition was an adult prison sentence. During the eight-year period studied, 43% of the juvenile offenders were ordered to serve a prison term of at least one year (Figure 41). The median sentence length for these offenders was four years.

Other adult sanctions were also frequently used. More than one-quarter (28%) of the juveniles received a sentence of up to 12 months in jail or a term of probation under the supervision of adult community corrections officers. More specifically, roughly 11% of the sentencing events resulted in a jail sentence, while 17% of the defendants received adult probation. Altogether, then, 71% of juvenile cases in circuit court resulted in an adult sanction. However, another 7% of these offenders received a blended DJJ/DOC sentence (described above). These juveniles will serve the first part of their sentence, up to age 21, in a juvenile correctional facility prior to being transferred to DOC to serve the balance of the sentence.

Figure 41

**Juveniles Convicted of Felonies in Circuit Court,
FY2010 – FY2017 by Type of Disposition
Sentencing Events = 2,173**

Disposition	Percent
Prison	43%
Jail/Probation (Adult)	28%
DJJ Determinate	11%
Blended DOC/DJJ	7%
DJJ Probation/Other	7%
DJJ Indeterminate	5%

Sanctions in the juvenile system were used less often. Approximately 11% of the juveniles convicted of felonies in circuit court were sentenced to DJJ with a determinate commitment, whereby the judge specifies the period of time the juvenile is to serve. Another 5% were sentenced to DJJ with an indeterminate commitment, meaning that DJJ will determine the juvenile’s length-of-stay. A small percentage of offenders (7%) were given juvenile probation or some other juvenile sanction.

Outcomes, however, differed by offense. For the most common offense, robbery, roughly half (45%) of the juveniles convicted in circuit court ultimately received a prison term, while another 16% were given a jail sentence or adult probation. (Figure 42). Approximately 27% of the robbery offenders were committed to DJJ or received some other juvenile sanction. The pattern is very different in larceny and fraud cases. Less than 24% of larceny and fraud offenders were sentenced to prison, but 56% received a jail sentence or adult probation term; only 20% were committed to DJJ or were given a juvenile punishment of some kind. In Schedule I or II drug cases, 34% of the juvenile offenders were sentenced to prison, with slightly

Figure 42

**Juveniles Convicted of Felonies in Circuit Court, FY2010 – FY2017
by Most Serious Offense and Type of Disposition**

Offense	Prison	Jail/Probation (Adult)	Blended Adult/Juvenile Sanction	DJJ/ Juvenile	Total
Robbery	45%	16%	12%	27%	738
Assault	45%	28%	6%	22%	375
Larceny/Fraud	24%	56%	0%	20%	247
Burglary of Dwelling	41%	34%	3%	22%	179
Rape/Forcible Sodomy/ Obj. Penetration	41%	13%	11%	35%	115
Murder/Manslaughter	76%	3%	13%	9%	111
Miscellaneous/Other	38%	34%	1%	27%	90
Schedule I/II Drugs	34%	56%	0%	10%	80
Other Sex Offense	31%	34%	0%	35%	65
Weapon	59%	27%	0%	14%	59
Burglary of Non-Dwelling	47%	35%	5%	14%	43
Kidnapping	44%	31%	6%	19%	32
Felony Traffic	27%	55%	0%	18%	22
Other Drugs	29%	41%	6%	24%	17
TOTAL	43%	27%	7%	23%	2,173

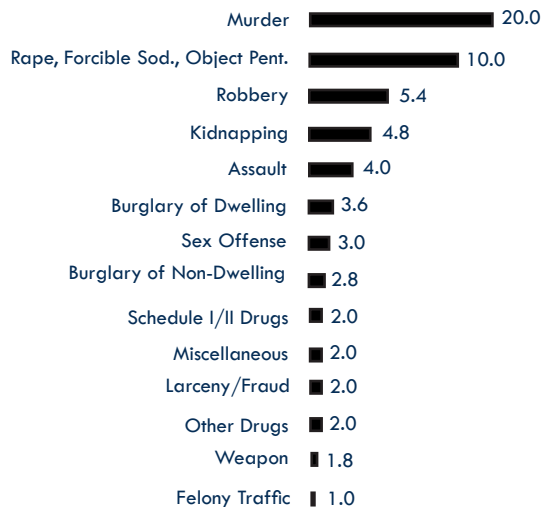
more than half (56%) getting a jail term or period of adult probation. Only 10% of the Schedule I or II drug offenders were punished with a juvenile sanction. Of the Schedule I/II offenders who were sentenced to prison, the vast majority (82%) had been convicted of a distribution-related offense.

The juveniles convicted of murder or manslaughter in circuit court were the most likely to receive a prison sentence (76%). A small number of these offenders received a jail term or a blended DJJ/DOC sentence. Only 9% were committed to DJJ. For juveniles convicted of rape, forcible sodomy or object sexual penetration, 41% received a prison sentence (compared to 35% in the 2010 study). In the previous study, close to 42% were committed to DJJ or other juvenile punishment for this type of offense; however, the latest study found that only 35% of those convicted of this type of offense received a juvenile disposition. Nonetheless, juveniles convicted of sex offenses were the most likely to be committed to DJJ. One possible reason is that DJJ has a three-year sex offender treatment program specifically designed for juvenile offenders. Judges may wish to take advantage of that treatment option for juvenile offenders who have been convicted of sex offenses.

As noted, a prison sentence was the most common disposition for juveniles convicted of felonies in circuit court. Figure 43 shows median prison sentences for juveniles given a prison term. For murder, the median prison sentence was 20 years, while the median prison sentence for rape, forcible sodomy or object sexual penetration was 10 years. Juveniles convicted of robbery were given a median sentence of 5.4 years. Larceny and fraud offenses netted a median sentence of just 2 years.

Figure 43

**Juveniles Convicted of Felonies in Circuit Court, FY2010-FY2017
Median Prison Sentences (in Years)**



A number of academic studies have examined the extent to which juveniles convicted in circuit court are treated similarly to adults convicted of comparable offenses. According to some of the academic literature, juveniles tried as adults are more likely to be sentenced to longer terms of imprisonment than their adult counterparts.

The literature suggests three main considerations regarding the harsher punishment of juvenile offenders: blameworthiness, protection of the community, and practical implications of sentencing decisions. In general, transferred juveniles are perceived as blameworthy and a danger to the community. Those are tried in circuit court because they committed more serious or violent crimes, not to mention that they often have extensive prior criminal records. Those selected offenders are also often older than the other youth in a juvenile court processing. Therefore, juveniles in circuit court are viewed as culpable of a crime. Moreover, when judges consider these juveniles' future possibility of criminal behaviors, their already long criminal history record raises the concern for recidivism and community risk. There are also the practical constraints for these juveniles. The availability of alternative facilities to meet these juveniles needs as well as their mental and physical health also affects the sentencing decision. If all of these considerations work negatively for these juvenile offenders, a chance of receiving severe sentencing becomes higher than their adult counterparts.

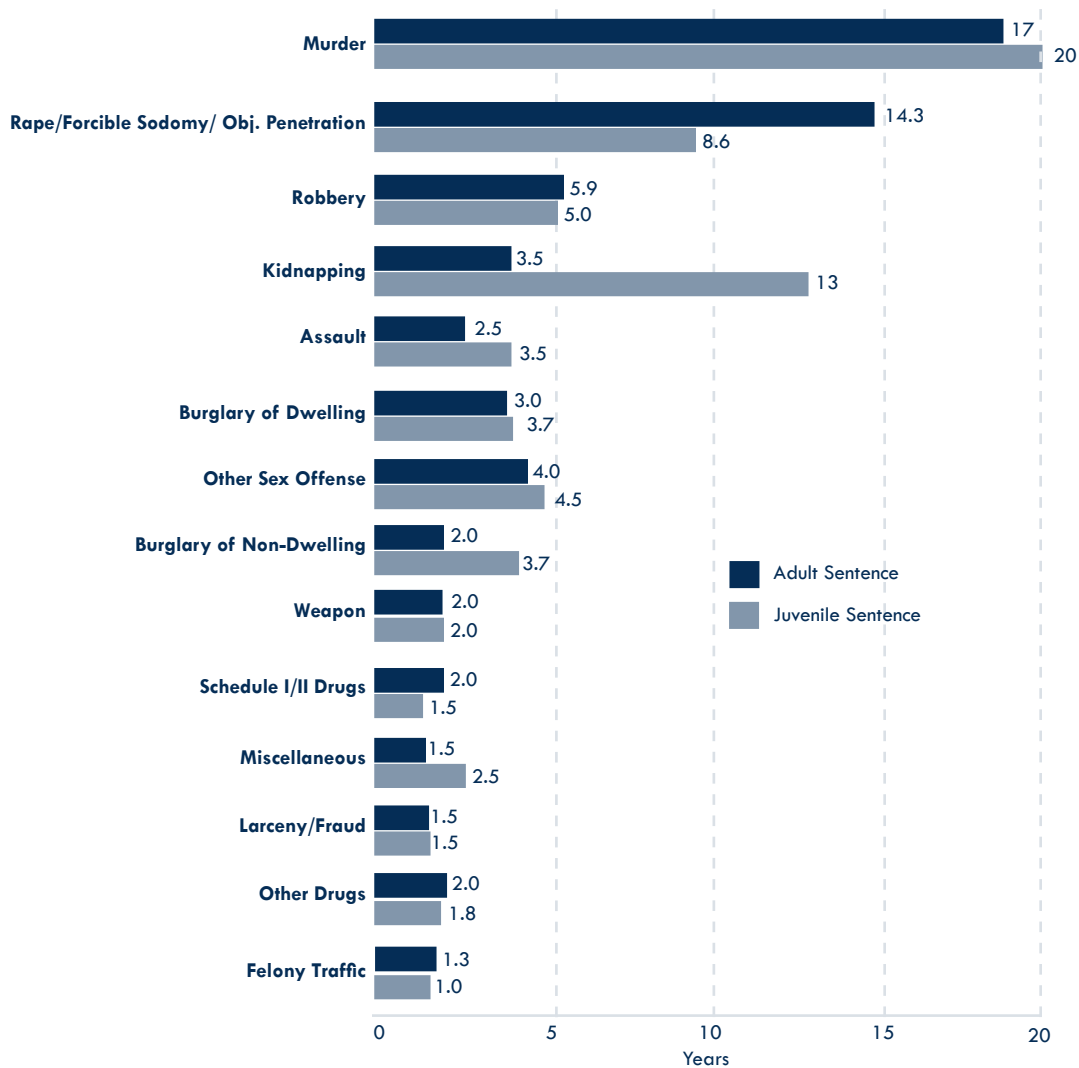
On the other hand, other studies show contrasting results. These studies indicate that juvenile offenders in circuit court are often perceived as incapable of understanding the consequence of their criminal behaviors. Because they are still young, they are more likely to be given the opportunity to remain in community for the successful rehabilitation. With regard to the practical concerns, previous research also shows that juveniles need to be placed in specialized programming to avoid being victimized in adult correctional facilities. Given these considerations, therefore, it is plausible to expect that juveniles tried in circuit court get less severe sentencing than the adult offenders.

The Commission compared the sentences given to juveniles convicted in Virginia's circuit courts to sentences received by adults convicted of similar crimes. Figure 44 presents the median prison sentence (in years) assigned to juveniles convicted in circuit court and the median prison sentence for their adult counterparts during the period FY2012-2017. The findings are mixed. For instance, for murder, the median prison sentence for juvenile offenders was three years longer than for adult offenders. However, the median sentence for rape, forcible sodomy, or object sexual penetration was higher for adult offenders by 5.7 years.

It is important to note that juveniles in a particular offense category may be convicted of more serious crimes relative to the adults in that offense category. As a result of such differences, the median sentence for category as a whole may appear longer for juveniles. For example, among juveniles convicted of kidnaping, nearly two-thirds (65.2%) were convicted of abduction with intent to gain pecuniary benefit. This offense a Class 2 felony punishable by 20 years to life in prison. Adult offenders in the kidnaping category are much more likely to be convicted of other types of offenses, such as abduction by force without justification, a Class 5 felony punishable by up to 10 years in prison. These differences resulted in a median sentence of 13 years for this particular offense category for juveniles compared to 3.5 years for adults.

Figure 44

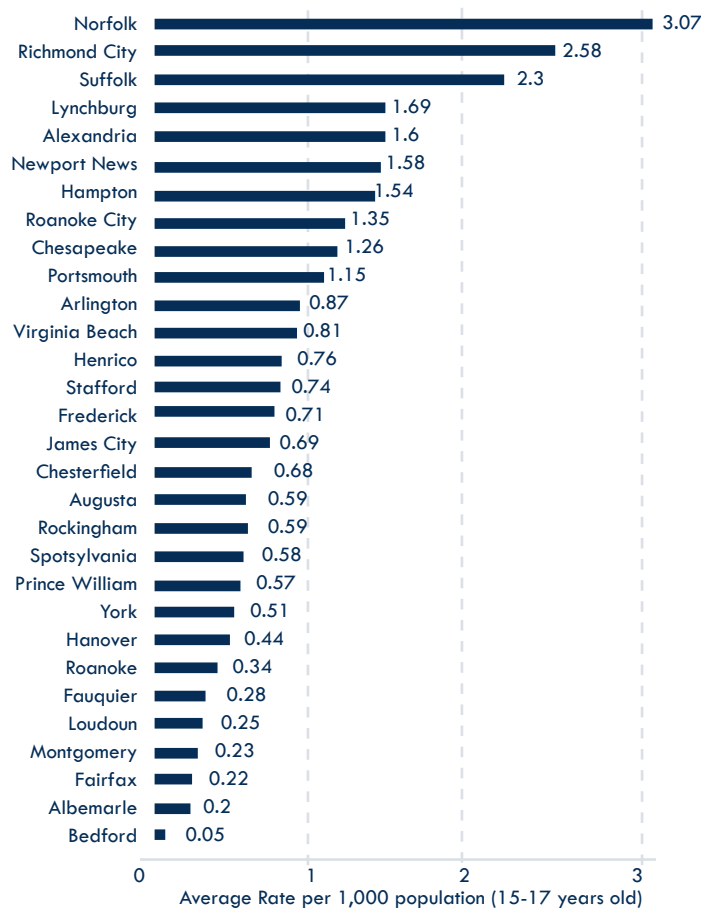
Median Prison Sentences (in Years) For Juveniles and Adults Convicted in Circuit Court FY2012-FY2017



The Commission also examined the number of juveniles convicted in Virginia’s circuit court by locality. In order to make the comparison more meaningful, the Commission calculated the rate of juveniles convicted in circuit court per 1,000 juvenile population in each locality. The data for the juvenile population for each jurisdiction was obtained from the American Community Survey (ACS), which is conducted by the U.S. Census Bureau. Given the limitations of the ACS data, the study data was restricted to most populous jurisdictions in Virginia and the cases in which the juvenile was 15 to 17 years of age at the time the offense was committed. Figure 45 shows the average juvenile conviction rate (per 1,000 juvenile population) during CY2010 to CY2016 for the 30 Virginia localities with the highest rates. These jurisdictions accounted for 73% of all juveniles convicted in Virginia’s circuit courts during this time period. The cities of Norfolk, Richmond, and Suffolk had the highest rates of juveniles convicted of a felony in circuit court in the Commonwealth.

Figure 45

Juveniles (15-17 years old) Convicted in Circuit Court per 1,000 population (15-17 years old) FY2010-FY2016



The Sentencing Commission next examined judicial compliance with Virginia's sentencing guidelines. In 1994, the General Assembly passed legislation to revamp the adult correctional system in the Commonwealth. This legislation abolished discretionary parole release and implemented a system known as "truth-in-sentencing." Felony offenders must now serve at least 85% of their prison or jail terms. New sentencing guidelines were implemented in 1995. Under these guidelines, variation in sentencing related to the offender's personal characteristics or the geographic location of the court has been reduced. The recommendations for nonviolent offenders with no prior record of violence are tied to the amount of time those offenders historically served prior to the abolition of parole. In contrast, for offenders with current or prior convictions for violent crimes (about one in five offenders), built-in guidelines enhancements trigger sentence recommendations that are significantly longer than historical time served in prison under the parole system. Thus, for violent offenders, the length-of-stay in prison is longer today than prior to the enactment of truth-in-sentencing.

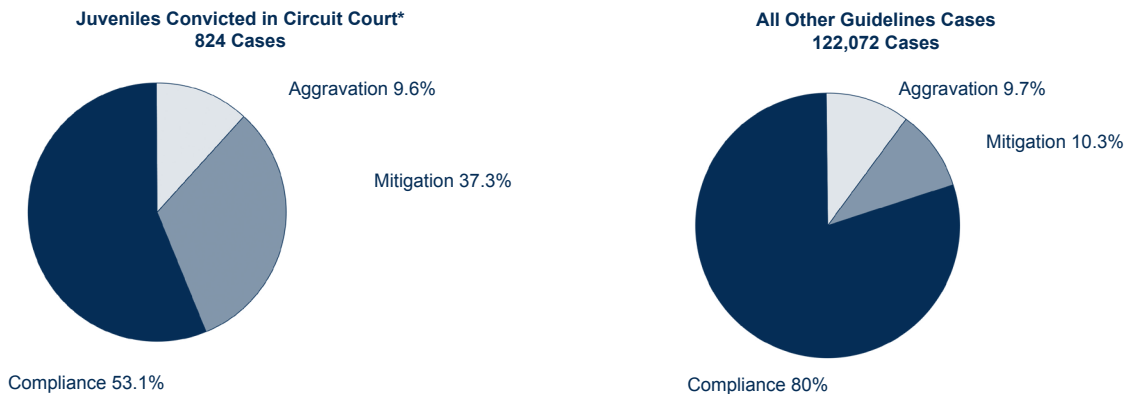
As noted above, the Sentencing Commission is not receiving all sentencing guidelines forms for juveniles convicted in circuit court. The Commission received sentencing guidelines forms for approximately 71% of the juveniles convicted of felonies in circuit court from FY2010 through FY2017. The compliance information shown below reflects just the subset of cases for which guidelines forms were submitted.

For juveniles convicted of felonies in circuit court, compliance with the sentencing guidelines was considerably lower than compliance in cases involving offenders who committed the offense as an adult. Compliance among juvenile offenders was 53.1%, compared to 80% for all other guidelines cases (Figure 46). Part of this divergence in compliance may be related to the larger proportion of juvenile offenders whose most serious offense was a violent crime, whereas the overall number of guidelines cases for adults includes a much larger percentage of drug and property offenders, for which compliance historically has been quite high.

Departure patterns were also significantly different. When departing from the guidelines, circuit court judges were much more likely to sentence a juvenile offender to a term that was less than the recommended guidelines range than above it. In more than one-third (37.3%) of the juvenile cases, the judge ordered a sentence below the guidelines recommendation. This is nearly four times the rate at which judges opted to exceed the guidelines recommendation (9.6%). In guidelines cases involving adult offenders, departures were evenly split above and below the guidelines recommendation.

Figure 46

**Juveniles Convicted of Felonies in Circuit Court, FY2013 - FY2017
Judicial Compliance with Sentencing Guidelines**



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

CONCLUSION

The study of juveniles convicted of felonies in circuit court, completed by the Sentencing Commission in 2018, provides an update to the Commission's previous studies completed in 2006, 2009 and 2010. The methodology and data collection approaches used for the 2018 study were similar to those applied in the prior studies. Most of the findings of the 2018 study were comparable to those of earlier research conducted by the Commission. However, the 2018 study revealed an overall decline since FY2010 in the number of cases of juveniles convicted of felonies in circuit court. This decline is consistent with other trends in the juvenile justice system, such as Court Service Unit intakes.

The complexity of the data collection required for this analysis serves to highlight the limitations of individual data systems with regard to this particular population of offenders. Nevertheless, during the course of its study, the Commission made some significant progress in collecting and validating juvenile convictions across different data sources. Thus, this latest study provides the most reliable and valid information to policymakers and members of the public who want to gain insight into the current state of juvenile felony convictions in the Commonwealth.

References

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4

RECOMMENDATIONS

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 five recommendations this year. Each of these is described in detail on the pages that follow.

RECOMMENDATION

1

Revise the sentencing guidelines for a second or subsequent failure to register with the Sex Offender and Crimes against Minors Registry by an individual who is not categorized as sexually violent (§ 18.2-472.1(A)).

ISSUE

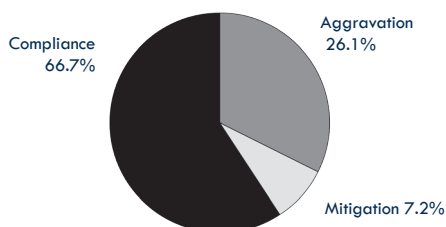
Currently, Virginia’s sentencing guidelines cover violations for failing to register with the Sex Offender and Crimes against Minors Registry as required. A second or subsequent failure to register by someone who is not categorized as sexually violent (§ 18.2-472.1(A)) is a Class 6 felony with a statutory penalty range of one to five years in prison. The overall compliance rate for this offense has been relatively low, with the majority of the departures exceeding the guidelines recommendation. This suggests that the guidelines for this offense need to be refined to better reflect actual judicial sentencing practices.

DISCUSSION

Figure 47 presents compliance and departure rates for sentencing events from FY2013-FY2017 Sentencing Guidelines data where the primary offense at sentencing was a second or subsequent failure to register by an offender not categorized as sexually violent. It shows a relatively low rate of compliance with the guidelines recommendations (66.7%). The aggravation rate (26.1%) is much higher than the mitigation rate (7.2%) in these cases. Compliance with the current guidelines for this offense is below the overall compliance rate and, when judges depart, they are significantly more likely to sentence above the guidelines than below. After extensive analysis of the available data, the Commission has developed a proposal to better sync the guidelines with actual practice in these cases.

Figure 47

**Compliance with Guidelines for
Sex Offender Registry Violation - Not Violent Category, 2nd or Subsequent
(§ 18.2-472.1(A))
FY2013 – FY2017
N=153**



* Worksheets with scoring errors were excluded from the analysis.

Violation of Registry requirements, when the offense is the primary (or most serious) offense at sentencing, is covered by the Miscellaneous/Other guidelines. If an offender has a total score of nine points or more on the Miscellaneous/Other Section A worksheet, he or she will then be scored on the Section C worksheet to determine the appropriate sentence length recommendation for a term of imprisonment. If the total score on Section A is less than nine points, Section B will be completed and the guidelines will recommend probation or incarceration up to six months. It is important to note that every offender convicted of violating Registry requirements will automatically receive points on the guidelines factor for “Legally Restrained at the Time of the Offense,” due to the court-ordered requirement to register.

Analysis of the sentencing guidelines data for FY2013-FY2018 revealed a high degree of compliance in cases in which the Section A worksheet refers the offender to Section C. When the guidelines recommended a disposition on Section C, nearly 81% of offenders actually received that type of disposition. Furthermore, the extent to which judges concurred with the sentence length recommendation from Section C was also quite high. Judges concurred with Section C sentence length recommendations in 74% of the cases, and departures were roughly evenly split above and below the guidelines range. Further analysis revealed, however, that judges were more likely to depart from the guidelines in cases in which the guidelines recommendation was determined on the Section B worksheet. Thus, the Commission does not propose any changes to the existing Section A or Section C worksheets of the Miscellaneous/Other guidelines. The proposed revisions to the guidelines for this offense apply only to the Section B worksheet.

Section B of the sentencing guidelines determines if an offender will be recommended for either probation or jail up to six months. A total score of ten or more points on the Miscellaneous/Other Section B worksheet means the offender will be recommended for incarceration from one day to six months.

Offenders not categorized as sexually violent who are convicted of a second or subsequent Registry violation as their primary offense receive seven points for one count on the Primary Offense factor on the Miscellaneous/Other Section B worksheet (Figure 48). As noted above, any person convicted of a Registry violation is automatically scored for being legally restrained at the time of the violation. A detailed analysis of Section B shows that 55% of the offenders recommended for probation instead received an active term of incarceration to serve after sentencing. Modifications to the Section B worksheet are necessary to bring the guidelines recommendations more in line with actual judicial sentencing practices.

Figure 48 presents the proposed changes to the Miscellaneous/Other Section B worksheet. The Commission proposes to improve compliance and reduce the aggravation rate by adding a new factor that would only be scored if the

Figure 48

Proposed Miscellaneous/Other Worksheet
Section B

<p>◆ Primary Offense _____</p>													
A. Perjury, falsely swear an oath (1 count).....	7												
B. Nonviolent sex offender, fail to register, etc., 2nd/subsequent (1 count).....	7												
C. Violent sex offender, fail to register or provide false information (1 count).....	8												
D. Violent sex offender, fail to register, etc., 2nd/subsequent (1 count).....	9												
E. Failure to appear in court for felony offense (1 count).....	10												
F. Escape from correctional facility (1 count).....	10												
G. Possession or sale of Schedule III drug or marijuana by prisoner (1 count).....	7												
H. Participation in offense by/for gang (1 count).....	7												
I. Participation in offense by/for gang with juvenile member (1 count).....	8												
J. Provide wireless device to or possession of wireless device by prisoner	8												
<p>◆ Primary Offense Remaining Counts <u>Total</u> the maximum penalties for counts of the primary not scored above _____</p>													
Years: 5 - 9.....	2												
10 - 19.....	3												
20 - 29.....	4												
30 - 39.....	5												
40 or more.....	6												
<p>◆ Additional Offenses <u>Total</u> the maximum penalties for additional offenses, including counts _____</p>													
Years: Less than 1	0												
1 - 9.....	2												
10 - 19.....	3												
20 - 29.....	4												
30 - 39.....	5												
40 or more.....	6												
<p>◆ Victim Injury</p>													
Threatened, emotional or physical	2												
Life threatening.....	3												
<p>◆ Legally Restrained at Time of Offense _____ If YES, add 1</p>													
<p>◆ Prior Incarcerations/Commitments _____</p>													
<p>Primary offense: B, C, or D: Sex offender registry violation or J: Provide wireless device to or possession of device by prisoner If YES, Add 1</p>	<p>Primary offense: All other offenses Do Not Score</p>												
<p>◆ Prior Convictions/Adjudications _____</p>													
<p>Do Not Score Primary Offense: A, E, F, G or H</p>													
<p>Primary offense: B, C, or D: Sex offender registry violation</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Prior Sex Offender Registry Violations</th> <th style="text-align: right;">Points</th> </tr> </thead> <tbody> <tr> <td>2+ misdemeanors violations</td> <td style="text-align: right;">1</td> </tr> <tr> <td>1 + Felony violations.....</td> <td style="text-align: right;">2</td> </tr> </tbody> </table>	Prior Sex Offender Registry Violations	Points	2+ misdemeanors violations	1	1 + Felony violations.....	2	<p>Primary offense: J: Provide wireless device to or possession of wireless device by prisoner</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Prior Felony Conv/Adj Against a Person</th> <th style="text-align: right;">Points</th> </tr> </thead> <tbody> <tr> <td>0 or 1 count</td> <td style="text-align: right;">0</td> </tr> <tr> <td>2 or more counts</td> <td style="text-align: right;">1</td> </tr> </tbody> </table>	Prior Felony Conv/Adj Against a Person	Points	0 or 1 count	0	2 or more counts	1
Prior Sex Offender Registry Violations	Points												
2+ misdemeanors violations	1												
1 + Felony violations.....	2												
Prior Felony Conv/Adj Against a Person	Points												
0 or 1 count	0												
2 or more counts	1												
<p>SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE IS H OR I: GANG OFFENSE (§18.2-46.2)</p>													
A. Additional Offense of Assault (Felony or Misdemeanor)	1 <input style="width: 30px;" type="text"/>												
	+												
B. Prior Juvenile Felony Person Adjudication	1 <input style="width: 30px;" type="text"/>												
	=												
	Enter A + B Total												

Figure 49

**Dispositional Compliance with Guidelines for Sex Offender Registry Violation - Not Violent Category, 2nd or Subsequent (§ 18.2-472.1(A))
FY2013 – FY2018
N=169**

	Dispositional Compliance/ Departure Rates	
	Current	Proposed
Compliance	61.1%	66.3%
Mitigation	8.9%	14.8%
Aggravation	29.0%	18.9%

primary offense is a Registry violation. With this new factor, these offenders will score additional points based on the number of prior Registry violations they have committed. A Registry violator will receive one additional point if he has two or more prior misdemeanor Registry violations or two additional points if he has a prior felony Registry violation. With these changes, offenders not categorized as sexually violent who are convicted of a second or subsequent Registry violation and who have at least one prior felony Registry violation will always be recommended for a jail term by the guidelines.

Figure 49 compares dispositional compliance and departure rates between the current and proposed scoring methodologies for offenders not categorized as sexually violent who are convicted of a second or subsequent Registry violation. The Commission’s proposal increases dispositional compliance from 61.1% to 66.3% and reduces the aggravation rate from 29.0% to 18.9%. Furthermore, the Commission’s proposal increases the overall compliance rate from 66.9% to 69.2% and reduces the overall aggravation rate from 24.9% to 17.2% (Figure 50). As a result, departures will be more evenly split above and below the guidelines range. The proposed changes will bring the guidelines more in line with current sentencing practices; however the Commission will closely monitor judicial response to the revised guidelines to determine if further amendments are needed.

Figure 50

**Compliance with Guidelines for Sex Offender Registry Violation - Not Violent Category, 2nd or Subsequent (§ 18.2-472.1(A))
FY2013 – FY2018
N=169**

	Overall Compliance	
	Current	Proposed
Compliance	66.9%	69.2%
Mitigation	8.3%	13.6%
Aggravation	24.9%	17.2%

The new factor proposed for Section B will also be scored for other types of Registry violators (i.e., offenders defined as sexually violent who are convicted of Registry violations under § 18.2-472.1(B)). Analysis suggests, however, that the revision would have next to no impact on the recommendations for these other offenders. For instance, guidelines data indicate that offenders categorized as violent who are convicted under § 18.2-472.1(B) for a second or subsequent Registry violation are always recommended by the current guidelines for an active term of incarceration; the proposed change will not affect the recommendation in those cases. Similarly, if properly scored on current guidelines, the same type of offender convicted under § 18.2-472.1(B) for a first Registry violation will be recommended for an active term of incarceration in 97.5% of the cases.

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

RECOMMENDATION

2

Amend the Schedule I or II Drug guidelines to add the possession of methamphetamine precursors (§ 18.2-248(J)) as a guidelines offense.

ISSUE

Currently, Virginia’s sentencing guidelines do not cover felony offenses defined in § 18.2-248(J) relating to the possession of methamphetamine precursor substances. This crime is a Class 6 felony with a statutory penalty range of one to five years. The Commission found that the number of convictions for the possession of methamphetamine precursors as a primary offense has significantly increased in recent years. Therefore, Commission staff recommended analysis of this crime to determine if it is now feasible to add it as a guidelines offense. Based on a thorough analysis of Circuit Court Case Management System (CMS) data from fiscal year (FY) 2013 through FY2017, the Commission has developed a proposal to incorporate this offense into the sentencing guidelines.

DISCUSSION

Figure 51 presents the distribution of actual sentencing dispositions for 213 sentencing events from the FY2013-FY2017 CMS data where the primary offense was a felony under § 18.2-248(J). It shows that the most common disposition for this offense, accounting for 39.9% of the sentencing events, was probation/no incarceration. Another 32.4% of the cases were sentenced to a short term of incarceration lasting up to six months (median sentence of four months). The remaining 27.7% of the cases were sentenced to a term of incarceration of more than six months; the median sentence for these offenders was one year. For these offenders, Commission staff obtained criminal history reports, or “rap sheets,” from the Virginia State Police so that the offender’s prior record could be scored appropriately on the guidelines worksheets.

Figure 51

**Sentences for Possess Methamphetamine Precursors
(§ 18.2-248 (J))
FY2013 - FY2017
N=213**

Disposition	Percent	Median Sentence
No Incarceration	39.9%	N/A
Incarceration up to 6 months	32.4%	4 Months
Incarceration more than 6 months	27.7%	1 Year

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

Based on this analysis, the Commission recommends adding the offense defined in § 18.2-248(J) to the guidelines, as described below. 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, including criminal history information, various scoring scenarios were rigorously tested and compared to ensure the proposed guidelines are closely aligned with judicial sentencing practices in these cases.

With regard to the Schedule I/II drug worksheets, a total score of 10 or fewer points on the Section A worksheet means that the offender will then be scored on the Section B worksheet to determine if he or she will be recommended for either probation/no incarceration or jail up to six months. A total score of 11 or more points on Section A means that the offender will then be scored on the Section C worksheet to determine the appropriate prison length recommendation.

On Section A of the Schedule I or II drug guidelines, offenders convicted of possessing methamphetamine precursors as their primary offense at sentencing will receive six points for one count of the primary offense. Any remaining counts of the primary offense would be scored under the Primary Offense Remaining Counts factor. Next, the Commission recommends splitting the Section A factor for Prior Felony Drug Convictions/Adjudications. Specifically, the Prior Felony Drug Convictions/Adjudications factor will be split and offenders convicted of possessing methamphetamine precursors will receive higher points than other offenders scored on this worksheet. See Figure 52. The remaining factors on the worksheet would be

Figure 52

Proposed Changes to
Drug/Schedule I/II Worksheet
Section A

<p>◆ Primary Offense _____</p>	
<p>A. Possess Schedule I or II drug or First offender violation</p>	
1 count.....	1
2 counts.....	3
3 counts.....	8
<p>B. Sell, distribute, possession with intent, etc., Schedule I or II drug</p>	
1 count.....	12
2 counts.....	13
3 counts.....	14
4 counts.....	15
<p>C. Manufacture Methamphetamine (1st or 2nd conviction)</p>	
1 count.....	12
2 counts.....	13
3 counts.....	14
4 counts.....	15
<p>D. Accommodation - Sell, distribute, possession with intent Schedule I or II drug</p>	
1 count.....	5
2 counts.....	7
<p>E. Sell, etc., imitation Schedule I or II drug (1 count).....</p>	
	4
<p>F. Sell, etc., Schedule I or II drug to minor (1 count).....</p>	
	11
<p>G. Possession of methamphetamine precursors (1 count).....</p>	
	6
<p>◆ Prior Felony Drug Convictions/Adjudications _____</p>	
<p>Primary offense: _____</p>	
<p>G: Possession of Methamphetamine precursors _____</p>	
Number of Counts	Points
1.....	3
2 or more.....	6
<p>Primary offense: _____</p>	
<p>All other offenses _____</p>	
Number of Counts	Points
1 - 2.....	1
3 - 4.....	2
5.....	3
6 or more.....	4

scored as they currently appear on Section A. With this approach, the proposed guidelines are expected to be closely aligned to the actual proportion of cases resulting in a prison disposition.

As mentioned above, an offender who scores a total of 10 points or less on Section A of the Schedule I/II drug guidelines is then scored on Section B, which will determine if he or she will be recommended for probation/no incarceration or a jail term of up to six months. The Commission recommends assigning six points for one count of the primary offense (Figure 53). Any remaining counts of the primary offense would be scored under the Primary Offense Remaining Counts factor. In addition, in order to most closely match the historical jail incarceration rate, the Commission also recommends that offenders convicted of possessing methamphetamine precursors as a primary offense will receive two points for having any prior incarcerations/commitments. The proposed modifications to Section B of the Schedule I/II drug worksheets will ensure that nearly the same proportion of offenders who historically received a jail sentence of six months or less would be recommended for this type of sentence by the guidelines for this offense.

Offenders who score 11 points or more on Section A of the Schedule I or II guidelines

Figure 53

**Proposed Changes to
Drug/Schedule I/II Worksheet
Section B**

◆ Primary Offense _____	
A. Possess Schedule I or II drug or First offender violation	
1 count	3
2 counts.....	6
B. Accommodation - Sell, distribute, possession with intent Schedule I or II drug	
1 count	8
2 counts.....	9
C. Sell, etc., imitation Schedule I or II drug (1 count)	4
D. Possession of methamphetamine precursors (1 count).....	6
◆ Prior Incarcerations/Commitments _____	
Primary offense: D: Possession of Methamphetamine precursors	Primary offense: All other offenses
If YES, Add 2	If YES, Add 1

are scored on Section C, which determines the sentence length recommendation for a term of imprisonment. Primary Offense points on Section C are assigned based on the classification of an offender’s prior record. An offender is scored under the Other category if he or she does not have a prior conviction for a violent felony defined in § 17.1-805(C). An offender is scored under Category II if he or she has a prior conviction for a violent felony that has a statutory maximum penalty of less than 40 years. Offenders are classified as Category I if they have a prior conviction for a violent felony with a statutory maximum of 40 years or more.

Under the Commission’s proposal, offenders convicted of possessing methamphetamine precursors as a primary offense will be scored the same as those convicted of distributing, selling, etc., an imitation Schedule I or II drug (Figure 54). More specifically, an offender convicted of one count of possessing methamphetamine precursors would receive three points for the Primary Offense factor if the offender’s prior record is classified as Other, six points if he or she is a Category II offender, or 12 points if he or she is a Category I offender. If an offender is convicted of two counts of the same crime, he or she would receive five points for the Primary Offense factor on Section C if the offender’s prior record is classified as Other, 10 points if he is a Category II offender, or 20 points if he is a Category I offender (Figure 54). Any remaining counts will be scored under the Primary Offense Remaining Counts factor. No other modifications to the Section C worksheet are necessary to ensure that the sentence recommended by the guidelines is closely aligned with historical sentencing practices for this offense.

Figure 54

Proposed Changes to Drug/Schedule I/II Worksheet Section C

Primary Offense	Category I	Category II	Other
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
F. Sell, etc., Schedule I or II drug to minor			
Attempted, conspired or completed:			
1 count.....	60.....	30.....	15
G. Accomodation—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; Possession of methamphetamine precursors			
Attempted, conspired or completed:			
1 count.....	12.....	6.....	3
2 counts.....	20.....	10.....	5

When developing sentencing guidelines, the Commission’s goal is to match, or come very close to, the historical prison incarceration rate. The proposed guidelines are designed to recommend the same proportion of offenders for a sentence greater than six months as historically received a sentence of more than six months. It is important to note that not all of the same offenders who historically received such a sentence will be recommended for that type of sentence under the proposed guidelines; this is because of the inconsistencies in past sentencing practices for these offenses. The guidelines are designed to bring about more consistency in sentencing decisions for these offenses.

As Figure 55 illustrates, the proposed guidelines for the possession of methamphetamine precursors is expected to result in guidelines recommendations that closely reflect the distribution of actual dispositions. Moreover, for offenders convicted of this crime who received a term of incarceration greater than six months, the median sentence was one year. Under the proposed guidelines, for cases recommended for a term of incarceration greater than six months, the median recommended sentence was also exactly one year. Thus, the recommended and actual sentences are very closely aligned.

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

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

Figure 55

Actual versus Proposed Prison Incarceration Rates Possess Methamphetamine Precursors (§ 18.2-248 (J)) FY2013 - FY2017

	Actual Practice	Recommended under Proposed Guidelines
Probation/No Incarceration	39.9%	39.0%
Incarceration up to 6 months	32.4%	34.3%
Incarceration more than 6 months (Range includes prison)	27.7%	26.8%

RECOMMENDATION

3

Revise the sentencing guidelines for child abuse and neglect resulting in serious injury (§ 18.2-371.1(A)) to more closely reflect judicial sentencing practices for this offense.

ISSUE

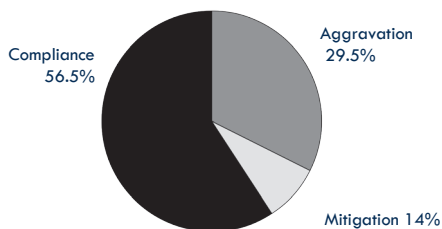
Currently, Virginia's sentencing guidelines cover the crime of child abuse and neglect resulting in serious injury (§ 18.2-371.1(A)). This offense is a Class 4 felony, with a statutory penalty range of two to ten years in prison. It is also a Category II offense for characterizing an offender's prior record on the sentencing guidelines. The overall compliance rate for this offense has been relatively low, with a significant amount of departures exceeding the guidelines recommendation. This suggests that the guidelines for this offense need to be refined to better reflect actual judicial sentencing practices.

DISCUSSION

Figure 56 presents compliance and departure rates for 214 sentencing events from FY2013 through FY2017 Sentencing Guidelines data where the primary offense at sentencing was child abuse and neglect resulting in serious injury. It shows a relatively low rate of compliance with the guidelines recommendations (56.5%). The aggravation rate (29.5%) is more than twice the mitigation rate (14.0%) in these cases. Compliance with the current guidelines for this offense is substantially below the overall compliance rate and, when judges depart, they are significantly more likely to sentence above the guidelines than below. After extensive analysis of five years of sentencing guidelines data, the Commission has developed a proposal to improve

Figure 56

**Compliance with Guidelines for
Child Abuse and Neglect Resulting in Serious Injury
(§ 18.2-371.1(A))
FY2013 – FY2017
N=214**



* Worksheets with scoring errors were excluded from the analysis.

compliance with the guidelines in these cases.

Child abuse and neglect resulting in serious injury, when it is the primary offense at sentencing, is covered on the Miscellaneous/Person & Property guidelines. If an offender has a total score of eight points or less on the Miscellaneous/Person & Property Section A worksheet, he will then be scored on the Section B worksheet to determine if the offender will receive a sentence of probation/no incarceration or confinement in jail for a period up to six months. If the total score on Section A is nine points or greater, the offender will then be scored on the Section C worksheet to determine the appropriate sentence length recommendation for a term of imprisonment. If the guidelines are correctly filled out, an offender convicted of child abuse and neglect resulting in serious injury will always be recommended for a jail or prison term. Analysis revealed that dispositional compliance, or the degree to which judges concur with the type of sanction recommended by the guidelines, is quite high (72.8%) and dispositional departures are evenly split above and below the guidelines. Therefore, the Commission does not propose any changes to the existing Section A and Section B worksheets of the Miscellaneous/Person & Property guidelines. For offenders recommended for Section C, compliance is much lower (57.4%) and nearly all of the departures are above the guidelines recommendation. Thus, the proposed changes apply only to the Section C worksheet.

Offenders recommended for a prison sanction on Section A are scored on the corresponding Section C worksheet to determine the appropriate sentence length recommendation. Primary Offense points on Section C are assigned based on the classification of an offender's prior record. An offender is scored under Category II if he has a prior conviction for a violent felony that has a statutory maximum penalty of less than 40 years. Offenders are classified as Category I if they have a prior conviction for a violent felony with a statutory maximum of 40 years or more.

Figure 57 presents the proposed changes to the Miscellaneous/Person & Property Section C worksheet. The Commission proposes to improve compliance and reduce the aggravation rate by splitting the Victim Injury factor in order to assign higher points when the primary offense is child neglect and abuse resulting in serious injury. With the proposed changes, offenders convicted of this offense would receive six points for threatened or emotional victim injury, 12 points for physical or serious physical injury, and 13 points for life threatening injury.

Furthermore, the Commission proposes splitting the Legally Restrained at Time of Offense factor. Currently, an offender who was legally restrained at the time of the offense receives two points on this factor. With the proposed changes, an offender convicted of child neglect and abuse resulting in serious injury as the primary offense who was under post-incarceration supervision would receive nine points on this factor, while an offender who was legally restrained but not under post-incarceration supervision would receive six points. No other modifications to Section C are recommended. As a result of the proposed changes, some offenders will receive

Figure 57

Proposed Changes to Miscellaneous/Person & Property Worksheet Section C

◆ Primary Offense	Prior Record Classification		
	Category I	Category II	Other
A. Burn unoccupied dwelling/church (1 count).....	68	34	17
B. Burn occupied dwelling/church			
Completed: 1 count.....	108	54	27
2 counts.....	200	100	50
Attempted or conspired: 1 count.....	(68)	(34)	(17)
2 counts.....	(72)	(36)	(18)
C. Burning of personal property, standing grain, etc., value \$500 or more (1 count).....	32	16	8
D. Threatening to burn, bomb or explode (1 count).....	32	16	8
E. Threat by letter, communication or electronic message (1 count).....	40	20	10
F. Child neglect/abuse, serious injury (1 count).....	32	16	9
G. Gross, reckless care of child (1 count).....	28	14	7
H. Cruelty and injury to child (1 count).....	28	14	7
I. Maliciously shoot, throw missile at train, car, etc. (1 count).....	32	16	8
J. Damage/destroy any property or monument \$1,000 or more (1 count).....	32	16	8

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

Maximum Penalty: 5, 10, 20, 30, 40..... 1
 (years) Life..... 5

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

Primary offense: B: Burn occupied dwelling/church	Primary offense: All other offenses
Years	Years
Less than 5..... 0	Less than 5..... 0
5,10..... 3	5,10..... 1
20..... 6	20..... 2
30..... 9	30..... 3
40 or more..... 12	40 or more..... 5

◆ Firearm Used or Brandished _____ If YES, add 2

◆ Victim Injury _____

Primary offense: G or H: Reckless Care/Cruelty Child	Primary offense: F: Child Neglect/Abuse	Primary offense: All other offenses A, B, C, D, E, I and
Points	Points	Points
Threatened or emotional 6	Threatened or emotional 6	Threatened or emotional 2
Physical 7	Physical or Serious Physical 12	Physical 4
Life threatening 10	Life threatening 13	Life threatening 5

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

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

◆ Prior Felony Convictions/Adjudications Against Person _____

Primary offense: B: Burn occupied dwelling/church	Primary offense: All other offenses
Number of Counts	Number of Counts
1..... 3	1..... 1
2..... 4	2..... 2
3..... 6	3..... 3
4 or more..... 8	4..... 4
	5 or more..... 5

◆ Prior Felony Convictions/Adjudications with the Same VCC Prefix as Primary Offense _____

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

◆ Legally Restrained at Time of Offense _____

Primary offense: F: Child neglect/abuse	Primary offense: All other offenses
Points	Points
None..... 0	Any legal restraint..... 2
Other than post-incarceration supervision..... 6	
Post-incarceration supervision 9	

◆ Type of Additional Offense _____

Additional offense with VCC Prefix "MUR"..... 133

longer prison term recommendations than under the current guidelines. Figure 58 compares compliance and departure rates between the current and proposed scoring methodologies for the cases of child abuse and neglect resulting in serious injury. The Commission’s proposal increases compliance from 56.5% to 59.3% and reduces the aggravation rate from 29.5% to 24.8%. The Commission will closely monitor judicial response to this change in the guidelines and will recommend adjustments, if necessary, based on judicial practice after the change takes effect.

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

Figure 58
Compliance with Guidelines for
Child Abuse and Neglect Resulting in Serious Injury
(§ 18.2-371.1(A))
FY2013 – FY2017
N=214

Overall Compliance		
	Current	Proposed
Compliance	56.5%	59.3%
Mitigation	14.0%	15.9%
Aggravation	29.5%	24.8%

RECOMMENDATION

4

Amend Felony Traffic sentencing guidelines to add driving under the influence (DUI) after a prior felony DUI, manslaughter, or maiming conviction (§ 18.2-266 / § 18.2-270(C,2)) as a guidelines offense.

ISSUE

Currently, Virginia's sentencing guidelines do not cover the offense of DUI after a prior felony DUI, manslaughter, or maiming conviction, as defined in § 18.2-270(C,2). This offense is a Class 6 felony, punishable by imprisonment of one to five years, and carries a mandatory minimum sentence of one year. The offense was added to the *Code of Virginia* by the 2013 General Assembly. Commission staff recommended analysis of this crime to determine if it is feasible to add it as a guidelines offense. Based on analysis of Circuit Court Case Management System (CMS) data from FY2013 through FY2017, the Commission has developed a proposal to add this offense to the sentencing guidelines.

DISCUSSION

Figure 59 presents the distribution of actual sentencing dispositions for 139 sentencing events from the FY2013-FY2017 CMS data where the primary offense was a felony under § 18.2-270(C,2). It shows that all of the offenders received a period of incarceration that was greater than six months with a median prison sentence of one year.

Figure 59

**Sentences for DUI after Prior Felony DUI, Manslaughter or Maiming Conviction
(§ 18.2-266 / § 18.2-270 (C,2))
FY2013 - FY2017
N=139**

Disposition	Percent	Median Sentence
No Incarceration	0.0%	N/A
Incarceration up to 6 months	0.0%	N/A
Incarceration more than 6 months	100%	1 Year

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

This felony DUI offense has the same statutory penalty structure and same mandatory prison term as a fourth or subsequent DUI offense committed within 10 years. On the Section A worksheet, a total score of nine or more points means that the offender will then be scored on the Section C worksheet to determine the appropriate prison length recommendation. Under the proposal, offenders convicted of a felony DUI who have a prior felony DUI, manslaughter, or maiming conviction would receive a score of nine on the Primary Offense section and, therefore, would automatically be recommended for Section C (Figure 60).

Figure 60

Proposed Changes to Traffic/Felony Worksheet Section A

◆ Primary Offense	
A. DWI - Third conviction within 5 years (1 count).....	1
B. DWI - Third conviction within 10 years (1 count).....	1
C. DWI - Fourth or subsequent conviction within 10 years or DWI after prior felony DWI (1 count).....	9
D. Habitual Offender: endangerment, second or subsequent, or DWI and declared habitual offender for DWI, involuntary manslaughter (1 count).....	9
E. Drive on revoked license after DWI, involuntary manslaughter, or DWI victim permanently impaired (maiming) - endangerment (1 count).....	9
F. Drive on revoked license after DWI, involuntary manslaughter, or DWI victim permanently impaired (maiming) and DWI, etc., violation (1 count).....	9
G. Drive on revoked license after DWI, involuntary manslaughter, or DWI victim permanently impaired (maiming) - second or subsequent (1 count).....	9
H. Hit and run, driver fails to stop and aid victim or hit and run, property damage \$1,000 or more	
1 count.....	1
2 counts.....	4
I. Disregard police command to stop, endangerment (1 count).....	5
J. Driving after forfeiture of license, etc., 3rd offense within 10 Years (1 count).....	1

Section B of the sentencing guidelines determines if an offender will be recommended for either probation/no incarceration or jail up to six months. Because offenders convicted of this offense will automatically be recommended for Section C, the Commission recommends no changes for Section B of the Felony Traffic guidelines.

As previously mentioned, a total score of nine or more points on the Felony Traffic Section A worksheet means that the offender will then be scored on the Section C worksheet to determine 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. Under the Commission’s proposed amendments to Section C, offenders convicted of a felony DUI after a prior felony DUI, manslaughter, or maiming conviction will be scored on the Primary Offense

factor in the same manner as offenders convicted of a fourth or subsequent DUI offense. Such an offender will receive 10 points for one count if he is classified as Other, 20 points if he is a Category II offender, or 40 points if he is a Category I offender (Figure 61). For two counts, he will receive 12 points if he is classified as Other, 24 points if he is Category II, or 48 points if he is Category I. Finally, for three counts, the offender will receive 17 points if he is Other, 34 points if he is Category II, and 68 points if he is Category I. The Commission's proposal also modifies the Section C factor DWI Convictions for Current Event (Figure 61). The factor will be expanded so that an offender convicted of a felony DUI who has a prior felony DUI, manslaughter, or maiming conviction will receive three points (this is one point higher than an offender convicted of a fourth or subsequent DUI). No other modifications to the Section C worksheet are necessary to ensure that the sentences recommended by the guidelines accurately reflect historical sentencing practices for these crimes.

Figure 61

Proposed Changes to Traffic/Felony Worksheet Section C

Primary Offense	Prior Record Classification		
	Category I	Category II	Other
<i>(scores for attempted/conspired offenses are in parentheses)</i>			
A. DWI - Third conviction within 5 years (1 count).....	20	10	5
B. DWI - Third conviction within 10 years (1 count).....	20	10	5
C. DWI - Fourth or subsequent conviction within 10 years, DWI after prior felony DWI			
1 count.....	40	20	10
2 counts.....	48	24	12
3 counts.....	68	34	17
D. Habitual offender: endangerment, second or subsequent, or DWI and declared habitual offender for DWI, involuntary manslaughter			
1 count.....	40	20	10
2 counts.....	48	24	12
3 counts.....	68	34	17
E. Drive on revoked license after DWI, involuntary manslaughter, or DWI victim permanently impaired (maiming) - endangerment			
1 count.....	40	20	10
2 counts.....	48	24	12
3 counts.....	68	34	17
F. Drive on revoked license after DWI, involuntary manslaughter, or DWI victim permanently impaired (maiming) and DWI, etc., violation			
1 count.....	40	20	10
2 counts.....	48	24	12
3 counts.....	68	34	17
G. Drive on revoked license after DWI, involuntary manslaughter, or DWI victim permanently impaired (maiming) - second or subsequent			
1 count.....	40	20	10
2 counts.....	48	24	12
3 counts.....	68	34	17
H. Hit and run, driver fails to stop and aid victim or hit and run, property damage \$1,000 or more (1 count).....	20	10	5
I. Disregard police command to stop, endangerment (1 count).....	40	20	10
J. Driving after forfeiture of license, etc., 3rd offense within 10 yrs (1 count).....	32	16	8

DUI Convictions for Current Event	
Primary Offense:	Habitual offender or Drive on a revoked license with DWI as additional offense..... 11
	DWI after prior felony DWI, manslaughter, maiming..... 3
	DWI fourth offense, Driving after forfeiture of license, etc., 3rd offense within 10 yrs..... 2
	DWI third offense, Hit and run or Disregard command to stop (with DWI as additional offense)..... 0

Based on these scoring modifications, Figure 62 compares the proposed sentencing recommendations for offenders sentenced for the primary offense under § 18.2-270(C,2) to the actual sentencing dispositions observed for these cases. The proposed guidelines recommend that 100% of the offenders receive an incarceration sanction of more than six months, which agrees with actual judicial sentencing practices. The proposed guidelines, therefore, are aligned with the actual prison incarceration rate.

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 this offense who received a term of incarceration greater than six months, the median sentence was one year (Figure 63). Under the proposed guidelines, the median recommended sentence is estimated to be 1.4 years, with a median recommended range of one year up to one year and seven months. Thus, the recommended and actual sentences are closely aligned.

The Commission will closely monitor judicial response to this change in the guidelines and will recommend adjustments, if necessary, based on judicial practice after the change takes effect.

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

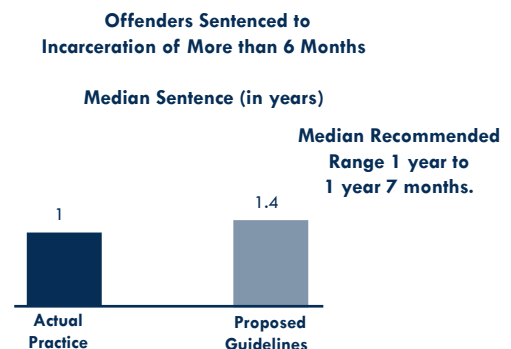
Figure 62

Actual versus Proposed Incarceration Rates for DUI after Prior Felony DUI, Manslaughter or Maiming Conviction (§ 18.2-266 / § 18.2-270 (C,2))
FY2013 - FY2017
N=139

Disposition	Actual Practice	Recommended under Proposed Guidelines
Incarceration up to 6 months	0.0%	0.0%
Incarceration more than 6 months (Range includes prison)	100%	100%

Figure 63

Actual versus Proposed Sentences for DUI after Prior Felony DUI, Manslaughter or Maiming Conviction (§ 18.2-266 / § 18.2-270 (C,2))
FY2013 - FY2017



RECOMMENDATION

5

Direct guidelines preparers to no longer complete probation violation guidelines when a probationer is removed from the Community Corrections Alternative Program (CCAP) for administrative or medical reasons only.

ISSUE

According to the Department of Corrections (DOC), if a probationer must be removed from the CCAP program for medical reasons or other administrative reasons, at no fault of his or her own, DOC staff must initiate a probation violation procedure to get the probationer back to court for resentencing. A violation procedure must be initiated under these circumstances, even though the probationer has not violated any requirements of the CCAP program. When completing the Sentencing Revocation Report for such individuals, probation officers have indicated that it is difficult to determine which probation condition has been violated - if any. Because the probationer has not violated any of the terms or conditions of the program, the probation violation guidelines recommendation is not appropriate. In other types of resentencing cases, the judge reviews the original or updated guidelines for the underlying offense and not the probation violation guidelines, as they currently do for administrative removals from CCAP.

DISCUSSION

Per legislative mandate, the probation violation guidelines are to be based on historical judicial sanctioning practices in revocation hearings. However, CCAP is a relatively new DOC program and minimal data are available regarding defendants removed from the program. To accurately reflect historically-based sentence recommendations, the Commission must identify defendants who were removed from CCAP and determine why they were terminated from the program. Once sufficient information is available, the Commission will be able to develop appropriate guidelines recommendations. Thus, the Commission proposes that, until such time as sufficient data are available, guidelines preparers should be instructed not to prepare probation violation guidelines for probationers removed from CCAP for administrative or medical reasons only. Only the Sentencing Revocation Report should be submitted in such instances. The Commission recommends modifying the Sentencing Revocation Report by adding a check box to indicate if the probationer has been removed from CCAP for administrative or medical reasons (Figure 64).

Even with the proposed modifications to the Commission’s Sentencing Revocation Report and probation violation guidelines, DOC has indicated that a probation violation procedure must be initiated in order to bring an individual removed from CCAP for medical reasons back to court for resentencing. As a result, a probation revocation would appear in the offender’s record, and the revocation would be scored against him or her on any future guidelines forms. The Commission’s members concluded that legislation would likely be needed in order to change the court process for probationers who must be removed from CCAP for administrative or medical reasons.

Figure 64

Proposed Changes to Sentencing Revocation Report Cover sheet

◆ VIOLATION GUIDELINES RECOMMENDATION		_____																
<input type="checkbox"/>	Probation/No Incarceration																	
<input type="checkbox"/>	Incarceration <i>(Enter Range Below)</i>																	
Range	<table border="1"> <tr> <td> </td><td> </td><td> </td> <td>to</td> <td> </td><td> </td><td> </td> <td>Days</td> </tr> <tr> <td>Years</td><td>Months</td><td>Days</td> <td></td> <td>Years</td><td>Months</td><td>Days</td> <td></td> </tr> </table>				to				Days	Years	Months	Days		Years	Months	Days		<ul style="list-style-type: none"> _____ Condition 1 Violation _____ Deferred Finding/Sentence _____ Parole Eligible Case _____ Revocation Other Than Probation _____ Administrative Removal from CCAP
			to				Days											
Years	Months	Days		Years	Months	Days												
<input type="checkbox"/>	Recommendation Exceeds Revocable Time of	<table border="1"> <tr> <td> </td><td> </td><td> </td> <td> </td><td> </td><td> </td> </tr> <tr> <td>Years</td><td>Months</td><td>Days</td> <td></td><td></td><td></td> </tr> </table>							Years	Months	Days							
Years	Months	Days																



APPENDICES

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

Reasons for MITIGATION

Burglary of Dwelling (76 Cases)	Number	Percent
Plea Agreement	28	36.8%
Cooperated with authorities	12	15.8%
No mitigating reason given	10	13.2%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	10	13.2%
Offender has minimal or no prior record	9	11.8%
Mitigated facts of the offense	7	9.2%
Sentenced to alternative punishment	6	7.9%
Offender has health issues	5	6.6%
Recommended by the attorney for the Commonwealth	4	5.3%
Offender has good potential for rehabilitation	4	5.3%
Request of the victim	4	5.3%
Sequence of events had impact on recommendation	3	3.9%
Offender issues, general (e.g., age, family support, impact on community, etc.)	3	3.9%
Offender has made progress in rehabilitating himself or herself	3	3.9%
Offender has substance abuse issues	2	2.6%
Financial obligations (child support, restitution, court costs, etc.)	2	2.6%
Sentencing guidelines scoring issue (e.g., prior conviction not scored correctly, etc.)	2	2.6%
Offender was not the leader	2	2.6%
Behavior positive since commission of the offense	1	1.3%
Mitigated court circumstances or proceedings (e.g., will resentence)	1	1.3%
Recommended by the probation officer	1	1.3%
Victim cannot or will not testify	1	1.3%
Victim circumstances (drug dealer, etc.)	1	1.3%
Sentenced as a juvenile to DJJ	1	1.3%

Burglary of Other Structure (46 Cases)	Number	Percent
Plea Agreement	16	34.8%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	9	19.6%
Mitigated facts of the offense	8	17.4%
Offender issues, general (e.g., age, family support, impact on community, etc.)	5	10.9%
Sentenced to alternative punishment	4	8.7%
Cooperated with authorities	4	8.7%
Offender has minimal or no prior record	4	8.7%
Request of the victim	4	8.7%
Recommended by the attorney for the Commonwealth	3	6.5%
Offender has good potential for rehabilitation	3	6.5%
No mitigating reason given	2	4.3%
Sequence of events had impact on recommendation	2	4.3%
Offender has substance abuse issues	2	4.3%
Sentenced as a juvenile to DJJ	2	4.3%
Behavior positive since commission of the offense	1	2.2%
Property was recovered or was of little value	1	2.2%
Mitigated court circumstances or proceedings (e.g., will resentence)	1	2.2%
Recommended by the jury	1	2.2%
Sentencing guidelines were missing or incorrect	1	2.2%
Sentencing guidelines scoring issue (e.g., prior conviction not scored correctly, etc.)	1	2.2%
Offender was not the leader	1	2.2%
Offender has health issues	1	2.2%
Offender has made progress in rehabilitating himself or herself	1	2.2%
Victim cannot or will not testify	1	2.2%
Role of victim in the offense	1	2.2%

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

Burglary of Dwelling (98 Cases)	Number	Percent
Aggravating circumstances/flagrancy of offense	31	30.1%
Aggravated facts of the offense	30	30.6%
Plea agreement	30	30.6%
Multiple counts, offenses or violations in the event (prosecuted or not)	11	11.2%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	11	11.2%
No aggravating reason given	10	10.2%
Offender has poor rehabilitation potential	9	9.2%
Offender has extensive prior record or same type of prior offense	8	8.2%
Victim circumstances (facts of the case, vulnerability, etc.)	8	8.2%
Sentencing guidelines recommendation was too low	7	7.1%
Degree of victim injury (physical, emotional, etc.)	5	5.1%
Poor conduct since commission of the offense	4	4.1%
Aggravated facts of the offense, specific to breaking and entering	4	4.1%
Type of victim (child, weak, etc.)	4	4.1%
Offense involved a high degree of planning or a violation of trust	3	3.1%
Recommended by the jury	3	3.1%
Offense involved possession or use of a weapon	3	3.1%
Sentenced to alternative punishment	2	2.0%
Violent or disruptive behavior while in custody	2	2.0%
Aggravated court circumstances or proceedings (e.g., will resentence)	2	2.0%
Illegible written aggravating reason	2	2.0%
Absconded from supervision	1	1.0%
Did not exercise due caution while driving, excessive speeding, etc.	1	1.0%
Gang-related offense	1	1.0%
Child present at time of the offense	1	1.0%
Recommended by the probation officer	1	1.0%
Offender was the leader	1	1.0%
Seriousness of the original offense	1	1.0%
Offender failed alternative program	1	1.0%
Offender violated a restraining order or stalked victim	1	1.0%
Victim requested aggravating sentence	1	1.0%
Degree of violence directed at victim	1	1.0%
Missing information	1	1.0%

Burglary of Other Structure (24 Cases)	Number	Percent
Plea agreement	10	41.7%
Aggravated facts of the offense	7	29.2%
Multiple counts, offenses or violations in the event (prosecuted or not)	3	12.5%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	3	12.5%
Sentenced to alternative punishment	2	8.3%
Recommended by the jury	2	8.3%
No aggravating reason given	1	4.2%
Aggravated facts of the offense, specific to breaking and entering	1	4.2%
Aggravated court circumstances or proceedings (e.g., will resentence)	1	4.2%
Offender has substance abuse issues	1	4.2%
Sentence was rounded up	1	4.2%
Sentencing guidelines recommendation was too low	1	4.2%
Offender has extensive prior record or same type of prior offense	1	4.2%
Degree of victim injury (physical, emotional, etc.)	1	4.2%
Sentenced to alternative punishment	1	4.2%

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 MITIGATION

Drugs/Schedule I/II (697 Cases)	Number	Percent
Plea Agreement	273	39.2%
Sentenced to alternative punishment	112	16.1%
No mitigating reason given	98	14.1%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	78	11.2%
Cooperated with authorities	54	7.7%
Mitigated facts of the offense	51	7.3%
Recommended by the attorney for the Commonwealth	50	7.2%
Offender has minimal or no prior record	50	7.2%
Offender has made progress in rehabilitating himself or herself	36	5.2%
Mitigated court circumstances or proceedings (e.g., will resentence)	35	5.0%
Offender has health issues	28	4.0%
Behavior positive since commission of the offense	20	2.9%
Offender issues, general (e.g., age, family support, impact on community, etc.)	18	2.6%
Current offense involves drugs or alcohol (e.g., small amount)	11	1.6%
Offender has good potential for rehabilitation	10	1.4%
Offender has substance abuse issues	7	1.0%
Sentencing guidelines scoring issue (e.g., prior conviction not scored correctly, etc.)	7	1.0%
Offender was not the leader	7	1.0%
Offender needs rehabilitation	7	1.0%
Sequence of events had impact on recommendation	4	0.6%
Financial obligations (child support, restitution, court costs, etc.)	4	0.6%
Sentencing guidelines recommendation was too high	4	0.6%
Sentencing guidelines recommendation not appropriate (non-specific)	3	0.4%
Aggravated facts of the offense	2	0.3%
Subsequent violation of probation or suspended sentence	2	0.3%
Victim cannot or will not testify	2	0.3%
Request of the victim	2	0.3%
Illegible written mitigating reason	1	0.1%
Aggravated court circumstances or proceedings (e.g., will resentence)	1	0.1%
Recommended by the jury	1	0.1%
Recommended by the probation officer	1	0.1%
Sentencing guidelines were missing or incorrect	1	0.1%
Sentence was rounded down	1	0.1%
Victim circumstances (facts of the case, credibility issues, etc.)	1	0.1%
Victim circumstances (drug dealer, etc.)	1	0.1%

Drugs/Other (58 Cases)	Number	Percent
Plea Agreement	27	46.6%
Sentenced to alternative punishment	9	15.5%
Cooperated with authorities	9	15.5%
Offender has minimal or no prior record	7	12.1%
No mitigating reason given	5	8.6%
Offender has good potential for rehabilitation	5	8.6%
Recommended by the attorney for the Commonwealth	4	6.9%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	4	6.9%
Offender has health issues	4	6.9%
Behavior positive since commission of the offense	3	5.2%
Offender has made progress in rehabilitating himself or herself	3	5.2%
Mitigated facts of the offense	2	3.4%
Illegible written mitigating reason	1	1.7%
Mitigated court circumstances or proceedings (e.g., will resentence)	1	1.7%
Financial obligations (child support, restitution, court costs, etc.)	1	1.7%
Sentencing guidelines scoring issue (e.g., prior conviction not scored correctly, etc.)	1	1.7%
Sentencing guidelines recommendation not appropriate (non-specific)	1	1.7%
Sentencing guidelines recommendation was too high	1	1.7%
Offender was not the leader	1	1.7%

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

Drugs/Schedule I/II (695 Cases)	Number	Percent
Plea agreement	222	32.2%
Multiple counts, offenses or violations in the event (prosecuted or not)	117	17.0%
Offender has extensive prior record or same type of prior offense	84	12.2%
No aggravating reason given	83	12.0%
Aggravated facts of the offense	68	9.9%
Current offense involved drugs or alcohol (e.g., large amount, location, etc.)	63	9.1%
Offender failed alternative program	55	8.0%
Sentenced to alternative punishment	36	5.2%
Offender has poor rehabilitation potential	33	4.8%
Recommended by the jury	21	3.0%
Offender has substance abuse issues	20	2.9%
Sentencing guidelines recommendation was too low	20	2.9%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	20	2.9%
Poor conduct since commission of the offense	18	2.6%
Aggravated court circumstances or proceedings (e.g., will resentence)	14	2.0%
Recommended by the attorney for the Commonwealth	14	2.0%
Used, etc., drugs or alcohol while on probation	12	1.7%
Degree of victim injury (physical, emotional, etc.)	11	1.6%
Failed to follow instructions while on probation	10	1.4%
Offender needs rehabilitation offered by jail or prison	10	1.4%
Child present at time of the offense	9	1.3%
Other reason for aggravation	9	1.3%
Absconded from supervision	8	1.2%
New offenses were committed while on probation	8	1.2%
Mandatory minimum was involved in the event	6	0.9%
Sentencing guidelines recommendation is not appropriate	6	0.9%
Prior record not adequately weighed by guidelines	6	0.9%
Offense involved a high degree of planning or a violation of trust	5	0.7%
Offense involved possession or use of a weapon	5	0.7%
Sentenced to alternative punishment	4	0.6%
Did not exercise due caution while driving, excessive speeding, etc.	3	0.4%
Judge believed sentence was in concurrence with recommendation	3	0.4%
Offender issues, general (e.g., age, family support, impact on community, etc.)	3	0.4%
Type of victim (child, weak, etc.)	3	0.4%
Illegible written aggravating reason	3	0.4%
Failed to cooperate with authorities	2	0.3%
Gang-related offense	2	0.3%
Multiple trial types (i.e., jury, bench, plea)	2	0.3%
Sentencing guidelines scoring issue (e.g., recommendation not adjusted for mandatory time)	2	0.3%
Seriousness of the original offense	2	0.3%
Violent or disruptive behavior while in custody	1	0.1%

Drugs/Other (77 Cases)	Number	Percent
Plea agreement	28	36.4%
Multiple counts, offenses or violations in the event (prosecuted or not)	19	24.7%
Current offense involved drugs or alcohol (e.g., large amount, location, etc.)	17	22.1%
Aggravated facts of the offense	11	14.3%
Offender has extensive prior record or same type of prior offense	10	13.0%
Sentenced to alternative punishment	4	5.2%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	4	5.2%
Offender has poor rehabilitation potential	4	5.2%
No aggravating reason given	3	3.9%
Offender failed alternative program	3	3.9%
Failed to cooperate with authorities	2	2.6%
Offense involved a high degree of planning or a violation of trust	2	2.6%
Offender has substance abuse issues	2	2.6%
Judge believed sentence was in concurrence with recommendation	2	2.6%
Sentencing guidelines recommendation was too low	2	2.6%
Illegible written aggravating reason	1	1.3%
New offenses were committed while on probation	1	1.3%
Extreme property or monetary loss	1	1.3%
True offense behavior was more serious than offenses at conviction	1	1.3%
Aggravated court circumstances or proceedings (e.g., will resentence)	1	1.3%
Recommended by the attorney for the Commonwealth	1	1.3%
Sentencing guidelines recommendation is not appropriate	1	1.3%
Offender has health issues	1	1.3%
Aggravated facts of the offense, specific to sex offenses	1	1.3%
Victim circumstances (facts of the case, vulnerability, etc.)	1	1.3%
Victim requested aggravating sentence	1	1.3%
Offense involved possession or use of a weapon	1	1.3%

Appendix 1

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

Reasons for MITIGATION

Fraud (169 Cases)	Number	Percent
Plea Agreement	57	33.7%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	23	13.6%
Sentenced to alternative punishment	19	11.2%
Mitigated facts of the offense	19	11.2%
No mitigating reason given	14	8.3%
Financial obligations (child support, restitution, court costs, etc.)	14	8.3%
Mitigated court circumstances or proceedings (e.g., will resentence)	12	7.1%
Offender has health issues	12	7.1%
Cooperated with authorities	11	6.5%
Offender has minimal or no prior record	9	5.3%
Request of the victim	9	5.3%
Offender has good potential for rehabilitation	8	4.7%
Sequence of events had impact on recommendation	7	4.1%
Offender issues, general (e.g., age, family support, impact on community, etc.)	7	4.1%
Recommended by the attorney for the Commonwealth	6	3.6%
Offender has made progress in rehabilitating himself or herself	6	3.6%
Property was recovered or was of little value	5	3.0%
Offender needs rehabilitation	5	3.0%
Behavior positive since commission of the offense	4	2.4%
Offender has substance abuse issues	3	1.8%
Sentencing guidelines scoring issue (e.g., prior conviction not scored correctly, etc.)	3	1.8%
Sentencing guidelines recommendation was too high	3	1.8%
Offender was not the leader	3	1.8%
Victim circumstances (drug dealer, etc.)	2	1.2%
Absconding from supervision in question	1	0.6%
Probation violation based on minor new offense	1	0.6%
Multiple trial types (i.e., jury, bench, plea)	1	0.6%
Current offense involves drugs or alcohol (e.g., small amount)	1	0.6%
Sentencing guidelines recommendation not appropriate (non-specific)	1	0.6%

Larceny (454 Cases)	Number	Percent
Plea Agreement	173	38.1%
Sentenced to alternative punishment	64	14.1%
No mitigating reason given	63	13.9%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	46	10.1%
Recommended by the attorney for the Commonwealth	34	7.5%
Mitigated facts of the offense	30	6.6%
Mitigated court circumstances or proceedings (e.g., will resentence)	26	5.7%
Offender has minimal or no prior record	26	5.7%
Offender has health issues	25	5.5%
Cooperated with authorities	22	4.8%
Offender has made progress in rehabilitating himself or herself	21	4.6%
Property was recovered or was of little value	20	4.4%
Financial obligations (child support, restitution, court costs, etc.)	17	3.7%
Offender has good potential for rehabilitation	12	2.6%
Request of the victim	12	2.6%
Offender issues, general (e.g., age, family support, impact on community, etc.)	11	2.4%
Offender needs rehabilitation	8	1.8%
Behavior positive since commission of the offense	7	1.5%
Recommended by the jury	6	1.3%
Offender has substance abuse issues	6	1.3%
Sentencing guidelines were missing or incorrect	6	1.3%
Sentencing guidelines recommendation was too high	6	1.3%
Judge believed sentence was in concurrence with recommendation	5	1.1%
Sentencing guidelines recommendation not appropriate (non-specific)	5	1.1%
Victim circumstances (drug dealer, etc.)	5	1.1%
Other reason for mitigation	4	0.9%
Victim cannot or will not testify	4	0.9%
Recommended by the probation officer	3	0.7%
Sentencing guidelines scoring issue (e.g., prior conviction not scored correctly, etc.)	3	0.7%
Offender was not the leader	3	0.7%
Illegible written mitigating reason	2	0.4%
Sequence of events had impact on recommendation	2	0.4%
Offender has poor rehabilitation potential	1	0.2%
Probation violation based on minimal circumstances involving drugs or alcohol	1	0.2%
Current offense involves drugs or alcohol (e.g., small amount)	1	0.2%
Sentence was rounded down	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

Fraud (98 Cases)	Number	Percent
Plea agreement	20	20.4%
Offender has extensive prior record or same type of prior offense	16	16.3%
Aggravated facts of the offense	15	15.3%
No aggravating reason given	10	10.2%
Extreme property or monetary loss	9	9.2%
Multiple counts, offenses or violations in the event (prosecuted or not)	9	9.2%
Type of victim (child, weak, etc.)	9	9.2%
Offense involved a high degree of planning or a violation of trust	7	7.1%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	7	7.1%
Sentenced to alternative punishment	6	6.1%
Prior record not adequately weighed by guidelines	5	5.1%
Failed to cooperate with authorities	4	4.1%
Recommended by the jury	4	4.1%
Financial obligations (child support, restitution, court costs, etc.)	4	4.1%
Sentencing guidelines recommendation was too low	4	4.1%
Offender has poor rehabilitation potential	4	4.1%
Other reason for aggravation	4	4.1%
Used, etc., drugs or alcohol while on probation	3	3.1%
Poor conduct since commission of the offense	3	3.1%
Victim circumstances (facts of the case, vulnerability, etc.)	3	3.1%
Degree of victim injury (physical, emotional, etc.)	3	3.1%
Failed to follow instructions while on probation	2	2.0%
Offender issues, general (e.g., age, family support, impact on community, etc.)	2	2.0%
Offender failed alternative program	2	2.0%
Violent or disruptive behavior while in custody	1	1.0%
Absconded from supervision	1	1.0%
Recommended by the attorney for the Commonwealth	1	1.0%
Offender was the leader	1	1.0%
Offender needs rehabilitation offered by jail or prison	1	1.0%
Never reported for probation or signed conditions	1	1.0%
Offender violated a restraining order or stalked victim	1	1.0%

Larceny (300 Cases)	Number	Percent
Plea agreement	75	25.0%
Offender has extensive prior record or same type of prior offense	60	20.0%
Aggravated facts of the offense	53	17.7%
No aggravating reason given	39	13.0%
Multiple counts, offenses or violations in the event (prosecuted or not)	34	11.3%
Offense involved a high degree of planning or a violation of trust	21	7.0%
Sentenced to alternative punishment	17	5.7%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	17	5.7%
Recommended by the jury	11	3.7%
Sentencing guidelines recommendation was too low	11	3.7%
Offender has poor rehabilitation potential	11	3.7%
Extreme property or monetary loss	10	3.3%
Offense involved possession or use of a weapon	9	3.0%
Aggravated facts of the offense, specific to breaking and entering	8	2.7%
Type of victim (child, weak, etc.)	7	2.3%
Aggravated court circumstances or proceedings (e.g., will resentence)	6	2.0%
Offender has substance abuse issues	6	2.0%
Sentencing guidelines recommendation is not appropriate	5	1.7%
Other reason for aggravation	5	1.7%
New offenses were committed while on probation	4	1.3%
Poor conduct since commission of the offense	4	1.3%
Recommended by the attorney for the Commonwealth	4	1.3%
Current offense involved drugs or alcohol (e.g., large amount, location, etc.)	4	1.3%
Offender needs rehabilitation offered by jail or prison	4	1.3%
Degree of victim injury (physical, emotional, etc.)	4	1.3%
Victim requested aggravating sentence	4	1.3%
Did not exercise due caution while driving, excessive speeding, etc.	3	1.0%
Prior record not adequately weighed by guidelines	3	1.0%
Failed to cooperate with authorities	2	0.7%
Violent or disruptive behavior while in custody	2	0.7%
Financial obligations (child support, restitution, court costs, etc.)	2	0.7%
Offender issues, general (e.g., age, family support, impact on community, etc.)	2	0.7%
Offender failed alternative program	2	0.7%
Child present at time of the offense	1	0.3%
Judge believed sentence was in concurrence with recommendation	1	0.3%
Mandatory minimum was involved in the event	1	0.3%
Sentencing guidelines scoring issue (e.g., recommendation not adjusted for mandatory time)	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 (46 Cases)	Number	Percent
Plea Agreement	14	30.4%
No mitigating reason given	9	19.6%
Mitigated facts of the offense	9	19.6%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	8	17.4%
Offender has minimal or no prior record	6	13.0%
Offender has good potential for rehabilitation	4	8.7%
Sentenced to alternative punishment	3	6.5%
Offender has made progress in rehabilitating himself or herself	3	6.5%
Mitigated court circumstances or proceedings (e.g., will resentence)	2	4.3%
Sentencing guidelines were missing or incorrect	2	4.3%
Offender has health issues	2	4.3%
Offender issues, general (e.g., age, family support, impact on community, etc.)	2	4.3%
Offender needs rehabilitation	2	4.3%
Cooperated with authorities	1	2.2%
Probation violation based on minimal facts of the case	1	2.2%
Sequence of events had impact on recommendation	1	2.2%
Current offense involves drugs or alcohol (e.g., small amount)	1	2.2%
Offender has substance abuse issues	1	2.2%
Financial obligations (child support, restitution, court costs, etc.)	1	2.2%
Sentence was rounded down	1	2.2%
Mitigating court probation circumstances or proceedings (e.g., extend probation)	1	2.2%
Victim cannot or will not testify	1	2.2%
Request of the victim	1	2.2%
Sentenced as a juvenile to DJJ	1	2.2%

Miscellaneous/Person & Property (36 Cases)	Number	Percent
Plea Agreement	19	52.8%
Offender has minimal or no prior record	7	19.4%
Sentenced to alternative punishment	4	11.1%
Mitigated facts of the offense	4	11.1%
No mitigating reason given	3	8.3%
Recommended by the attorney for the Commonwealth	3	8.3%
Financial obligations (child support, restitution, court costs, etc.)	3	8.3%
Offender has health issues	3	8.3%
Offender has good potential for rehabilitation	3	8.3%
Cooperated with authorities	2	5.6%
Request of the victim	2	5.6%
Behavior positive since commission of the offense	1	2.8%
Mitigated court circumstances or proceedings (e.g., will resentence)	1	2.8%
Sentencing guidelines were missing or incorrect	1	2.8%
Sentencing guidelines recommendation not appropriate (non-specific)	1	2.8%
Sentencing guidelines recommendation was too high	1	2.8%
Original offense was nonviolent	1	2.8%
Offender has made progress in rehabilitating himself or herself	1	2.8%
Victim cannot or will not testify	1	2.8%
Victim circumstances (drug dealer, etc.)	1	2.8%

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 1

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

Reasons for AGGRAVATION

Miscellaneous/Other (27 Cases)	Number	Percent
Offender has extensive prior record or same type of prior offense	10	37.0%
Plea agreement	6	22.2%
Aggravated facts of the offense	4	14.8%
No aggravating reason given	3	11.1%
Absconded from supervision	3	11.1%
Sentencing guidelines recommendation was too low	3	11.1%
Multiple counts, offenses or violations in the event (prosecuted or not)	2	7.4%
Missing information	1	3.7%
Illegible written aggravating reason	1	3.7%
Gang-related offense	1	3.7%
Aggravated court circumstances or proceedings (e.g., will resentence)	1	3.7%
Offender violated sex offender restrictions	1	3.7%
Degree of victim injury (physical, emotional, etc.)	1	3.7%
Sentenced as a juvenile to DJJ	1	3.7%
Absconding from supervision in question	1	3.7%
Sentencing guidelines recommendation was too high	1	3.7%

Miscellaneous/Person & Property (69 Cases)	Number	Percent
Aggravating circumstances/flagrancy of offense	28	36.8%
Aggravated facts of the offense	26	37.7%
Plea agreement	22	31.9%
Offender has extensive prior record or same type of prior offense	10	14.5%
Degree of victim injury (physical, emotional, etc.)	8	11.6%
Multiple counts, offenses or violations in the event (prosecuted or not)	7	10.1%
Type of victim (child, weak, etc.)	7	10.1%
No aggravating reason given	6	8.7%
Recommended by the jury	6	8.7%
Offender has poor rehabilitation potential	5	7.2%
Offender has substance abuse issues	3	4.3%
Sentenced to alternative punishment	2	2.9%
Failed to follow instructions while on probation	2	2.9%
Aggravated facts of the offense, specific to breaking and entering	2	2.9%
Sentencing guidelines recommendation is not appropriate	2	2.9%
Sentencing guidelines recommendation was too low	2	2.9%
Violent or disruptive behavior while in custody	1	1.4%
Absconded from supervision	1	1.4%
Poor conduct since commission of the offense	1	1.4%
Child present at time of the offense	1	1.4%
Multiple trial types (i.e., jury, bench, plea)	1	1.4%
Offender was the leader	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 MITIGATION

Traffic (115 Cases)	Number	Percent
Plea Agreement	41	35.7%
Mitigated facts of the offense	21	18.3%
No mitigating reason given	14	12.2%
Offender has minimal or no prior record	13	11.3%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	9	7.8%
Sentenced to alternative punishment	8	7.0%
Offender has health issues	7	6.1%
Offender has good potential for rehabilitation	7	6.1%
Offender has made progress in rehabilitating himself or herself	6	5.2%
Recommended by the attorney for the Commonwealth	5	4.3%
Offender issues, general (e.g., age, family support, impact on community, etc.)	5	4.3%
Offender needs rehabilitation	5	4.3%
Cooperated with authorities	4	3.5%
Sentencing guidelines scoring issue (e.g., prior conviction not scored correctly, etc.)	4	3.5%
Mitigated court circumstances or proceedings (e.g., will resentence)	3	2.6%
Financial obligations (child support, restitution, court costs, etc.)	3	2.6%
Sequence of events had impact on recommendation	2	1.7%
Sentencing guidelines were missing or incorrect	2	1.7%
Request of the victim	2	1.7%
Behavior positive since commission of the offense	1	0.9%
Recommended by the jury	1	0.9%
Judge believed sentence was in concurrence with recommendation	1	0.9%
Offender was not the leader	1	0.9%
Mitigating facts of the offense, specific to sex offenses	1	0.9%
Victim circumstances (facts or the case, credibility issues, etc.)	1	0.9%

Weapons (71 Cases)	Number	Percent
Plea Agreement	33	46.5%
Mitigated court circumstances or proceedings (e.g., will resentence)	11	15.5%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	9	12.7%
Offender has minimal or no prior record	9	12.7%
Mitigated facts of the offense	8	11.3%
No mitigating reason given	7	9.9%
Cooperated with authorities	7	9.9%
Recommended by the attorney for the Commonwealth	7	9.9%
Offender has health issues	5	7.0%
Sentenced to alternative punishment	4	5.6%
Offender issues, general (e.g., age, family support, impact on community, etc.)	3	4.2%
Sequence of events had impact on recommendation	2	2.8%
Offender has made progress in rehabilitating himself or herself	2	2.8%
Financial obligations (child support, restitution, court costs, etc.)	1	1.4%
Sentencing guidelines were missing or incorrect	1	1.4%
Sentencing guidelines scoring issue (e.g., prior conviction not scored correctly, etc.)	1	1.4%
Sentencing guidelines recommendation was too high	1	1.4%
Offender was not the leader	1	1.4%
Offender has good potential for rehabilitation	1	1.4%
Victim cannot or will not testify	1	1.4%
Request of the victim	1	1.4%
Role of victim in the offense	1	1.4%
Weapon was not a firearm	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

Traffic (175 Cases)	Number	Percent
Offender has extensive prior record or same type of prior offense	49	28.0%
Aggravated facts of the offense	37	21.1%
No aggravating reason given	30	17.1%
Current offense involved drugs or alcohol (e.g., large amount, location, etc.)	25	14.3%
Plea agreement	23	13.1%
Offender has substance abuse issues	22	12.6%
Did not exercise due caution while driving, excessive speeding, etc.	18	10.3%
Offender has poor rehabilitation potential	15	8.6%
Degree of victim injury (physical, emotional, etc.)	11	6.3%
Multiple counts, offenses or violations in the event (prosecuted or not)	9	5.1%
Recommended by the jury	9	5.2%
Sentencing guidelines recommendation was too low	8	4.6%
Sentenced to alternative punishment	5	2.9%
Sentencing guidelines recommendation is not appropriate	4	2.3%
Poor conduct since commission of the offense	3	1.7%
Prior record not adequately weighed by guidelines	3	1.7%
Violent or disruptive behavior while in custody	2	1.1%
Aggravated court circumstances or proceedings (e.g., will resentence)	2	1.1%
Judicial discretion (e.g., time served, shock incarceration, consistent with codef., etc.)	2	1.1%
Victim requested aggravating sentence	2	1.1%
Failed to cooperate with authorities	1	0.6%
New offenses were committed while on probation	1	0.6%
Extreme property or monetary loss	1	0.6%
Recommended by the attorney for the Commonwealth	1	0.6%
Judge believed sentence was in concurrence with recommendation	1	0.6%
Offender needs rehabilitation offered by jail or prison	1	0.6%
Offender failed alternative program	1	0.6%
Sex offender has poor rehabilitation potential	1	0.6%
Offender violated a restraining order or stalked victim	1	0.6%
Type of victim (child, weak, etc.)	1	0.6%
Degree of violence directed at victim	1	0.6%

Weapons (112 Cases)	Number	Percent
Plea agreement	63	56.3%
Multiple counts, offenses or violations in the event (prosecuted or not)	43	38.4%
Aggravated facts of the offense	13	11.6%
No aggravating reason given	11	9.8%
Offender has extensive prior record or same type of prior offense	9	8.0%
Sentenced to alternative punishment	3	2.7%
Aggravated court circumstances or proceedings (e.g., will resentence)	2	1.8%
Recommended by the jury	2	1.8%
Mandatory minimum was involved in the event	2	1.8%
Sentencing guidelines recommendation is not appropriate	2	1.8%
Sentencing guidelines recommendation was too low	2	1.8%
Judicial discretion (e.g., time served, shock incarceration, consistent with codef., etc.)	2	1.8%
New offenses were committed while on probation	1	0.9%
Poor conduct since commission of the offense	1	0.9%
Offender has substance abuse issues	1	0.9%
Prior record not adequately weighed by guidelines	1	0.9%
Offender has health issues	1	0.9%
Seriousness of the original offense	1	0.9%
Offender failed alternative program	1	0.9%
Offender violated sex offender restrictions	1	0.9%
Victim circumstances (facts of the case, vulnerability, etc.)	1	0.9%
Type of victim (child, weak, etc.)	1	0.9%
Victim requested aggravating sentence	1	0.9%
Degree of violence directed at victim	1	0.9%
Offense involved possession or use of a weapon	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 2

Judicial Reasons for Departure from Sentencing Guidelines Offenses Against the Person

Reasons for MITIGATION

Assault (176 Cases)

	Number	Percent
Plea Agreement	87	49.4%
Request of the victim	26	14.8%
Mitigated facts of the offense	25	14.2%
Mitigated court circumstances or proceedings (e.g., will resentence)	18	10.2%
Victim cannot or will not testify	16	9.1%
Offender has health issues	15	8.5%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	14	8.0%
Offender has good potential for rehabilitation	12	6.8%
Little or no injury, offender did not intend to harm victim	11	6.3%
No mitigating reason given	10	5.7%
Recommended by the attorney for the Commonwealth	10	5.7%
Offender issues, general (e.g., age, family support, impact on community, etc.)	8	4.5%
Victim circumstances (drug dealer, etc.)	8	4.5%
Sentencing guidelines scoring issue (e.g., prior conviction not scored correctly, etc.)	6	3.4%
Offender has minimal or no prior record	6	3.4%
Other reason for mitigation	6	3.4%
Sentenced to alternative punishment	5	2.8%
Recommended by the jury	5	2.8%
Offender has made progress in rehabilitating himself or herself	5	2.8%
Role of victim in the offense	4	2.3%
Financial obligations (child support, restitution, court costs, etc.)	3	1.7%
Offender was not the leader	3	1.7%
Cooperated with authorities	2	1.1%
Behavior positive since commission of the offense	2	1.1%
Aggravated facts of the offense	1	0.6%
Offense involved possession or use of a weapon	1	0.6%
Current offense involves drugs or alcohol (e.g., small amount)	1	0.6%
Offender has substance abuse issues	1	0.6%

Kidnapping (8 Cases)

	Number	Percent
Plea Agreement	3	37.5%
Mitigated facts of the offense	2	25.0%
Offender has good potential for rehabilitation	2	25.0%
Mitigated court circumstances or proceedings (e.g., will resentence)	1	12.5%
Recommended by the attorney for the Commonwealth	1	12.5%
Recommended by the jury	1	12.5%
Offender has substance abuse issues	1	12.5%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	1	12.5%
Offender has health issues	1	12.5%
Offender issues, general (e.g., age, family support, impact on community, etc.)	1	12.5%
Victim cannot or will not testify	1	12.5%
Little or no injury, offender did not intend to harm victim	1	12.5%
Victim circumstances (drug dealer, etc.)	1	12.5%

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

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

Appendix 2

Judicial Reasons for Departure from Sentencing Guidelines Offenses Against the Person

Reasons for AGGRAVATION

Assault (181 Cases)	Number	Percent
Aggravated facts of the offense	63	34.8%
Plea agreement	35	19.3%
Degree of victim injury (physical, emotional, etc.)	28	15.5%
Recommended by the jury	22	12.2%
Type of victim (child, weak, etc.)	18	9.9%
Multiple counts, offenses or violations in the event (prosecuted or not)	15	8.3%
No aggravating reason given	13	7.2%
Sentencing guidelines recommendation is not appropriate	13	7.2%
Offender has extensive prior record or same type of prior offense	13	7.2%
Degree of violence directed at victim	12	6.6%
Offender has poor rehabilitation potential	10	5.5%
Sentencing guidelines recommendation was too low	8	4.4%
Current offense involved drugs or alcohol (e.g., large amount, location, etc.)	7	3.9%
Offender has substance abuse issues	6	3.3%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	4	2.2%
Victim requested aggravating sentence	4	2.2%
Offense involved possession or use of a weapon	4	2.2%
Other reason for aggravation	4	2.2%
Gang-related offense	3	1.7%
Recommended by the attorney for the Commonwealth	3	1.7%
Sentenced to alternative punishment	2	1.1%
Did not exercise due caution while driving, excessive speeding, etc.	2	1.1%
Child present at time of the offense	2	1.1%
Judge believed sentence was in concurrence with recommendation	2	1.1%
Violent or disruptive behavior while in custody	1	0.6%
Failed to follow instructions while on probation	1	0.6%
New offenses were committed while on probation	1	0.6%
Offense involved a high degree of planning or a violation of trust	1	0.6%
Offender has health issues	1	0.6%
Offender needs rehabilitation offered by jail or prison	1	0.6%

Kidnapping (23 Cases)	Number	Percent
Aggravated facts of the offense	10	43.5%
Degree of victim injury (physical, emotional, etc.)	6	26.1%
Recommended by the jury	3	13.0%
Plea agreement	3	13.0%
Offender has poor rehabilitation potential	3	13.0%
Offense involved a high degree of planning or a violation of trust	2	8.7%
Multiple counts, offenses or violations in the event (prosecuted or not)	2	8.7%
Sentencing guidelines recommendation is not appropriate	2	8.7%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	2	8.7%
Offender has extensive prior record or same type of prior offense	2	8.7%
Victim circumstances (facts or the case, vulnerability, etc.)	2	8.7%
Degree of violence directed at victim	2	8.7%
No aggravating reason given	1	4.3%
Absconded from supervision	1	4.3%
Gang-related offense	1	4.3%

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

Homicide (23 Cases)	Number	Percent
Plea Agreement	12	52.2%
Recommended by the jury	5	21.7%
Cooperated with authorities	4	17.4%
Mitigated court circumstances or proceedings (e.g., will resentence)	3	13.0%
Role of victim in the offense	3	13.0%
Request of the victim	2	8.7%
No mitigating reason given	1	4.3%
Recommended by the jury	1	4.3%
Offender has poor rehabilitation potential	1	4.3%
Mitigated facts of the offense	1	4.3%
Current offense involves drugs or alcohol (e.g., small amount)	1	4.3%
Sentencing guidelines were missing or incorrect	1	4.3%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	1	4.3%
Offender has health issues	1	4.3%
Offender has minimal or no prior record	1	4.3%
Offender has good potential for rehabilitation	1	4.3%
Sentenced as a juvenile to DJJ	1	4.3%

Robbery (97 Cases)	Number	Percent
Plea Agreement	33	34.0%
Cooperated with authorities	14	14.4%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	13	13.4%
No mitigating reason given	12	12.4%
Recommended by the attorney for the Commonwealth	11	11.3%
Offender has minimal or no prior record	10	10.3%
Mitigated facts of the offense	7	7.2%
Sentenced to alternative punishment	6	6.2%
Sentenced as a juvenile to DJJ	6	6.2%
Offender has health issues	5	5.2%
Offender has good potential for rehabilitation	5	5.2%
Mitigated court circumstances or proceedings (e.g., will resentence)	4	4.1%
Offender was not the leader	4	4.1%
Sequence of events had impact on recommendation	3	3.1%
Sentencing guidelines scoring issue (e.g., prior conviction not scored correctly, etc.)	3	3.1%
Judge had issues with risk assessment	3	3.1%
Offender issues, general (e.g., age, family support, impact on community, etc.)	3	3.1%
Offender has made progress in rehabilitating himself or herself	3	3.1%
Behavior positive since commission of the offense	2	2.1%
Recommended by the jury	2	2.1%
Multiple trial types (i.e., jury, bench, plea)	2	2.1%
Victim circumstances (drug dealer, etc.)	2	2.1%
Request of the victim	2	2.1%
Weapon was not a firearm	2	2.1%
Aggravated facts of the offense	1	1.0%
Victim cannot or will not testify	1	1.0%
Victim circumstances (facts of the case, credibility issues, etc.)	1	1.0%
Role of victim in the offense	1	1.0%

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

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

Appendix 2

Judicial Reasons for Departure from Sentencing Guidelines Offenses Against the Person

Reasons for AGGRAVATION

Homicide (61 Cases)

	Number	Percent
Aggravated facts of the offense	26	42.6%
Recommended by the jury	12	19.7%
Sentencing guidelines recommendation was too low	10	16.4%
Degree of victim injury (physical, emotional, etc.)	10	16.4%
Plea agreement	9	14.8%
Offender has poor rehabilitation potential	7	11.5%
Offender has extensive prior record or same type of prior offense	6	9.8%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	4	6.6%
Degree of violence directed at victim	3	4.9%
No aggravating reason given	2	3.3%
Did not exercise due caution while driving, excessive speeding, etc.	2	3.3%
Gang-related offense	2	3.3%
Current offense involved drugs or alcohol (e.g., large amount, location, etc.)	2	3.3%
Offender has substance abuse issues	2	3.3%
Type of victim (child, weak, etc.)	2	3.3%
Victim requested aggravating sentence	2	3.3%
Failed to cooperate with authorities	1	1.6%
Child present at time of the offense	1	1.6%
Offense involved a high degree of planning or a violation of trust	1	1.6%
Multiple counts, offenses or violations in the event (prosecuted or not)	1	1.6%
Sentencing guidelines recommendation is not appropriate	1	1.6%
Offender failed alternative program	1	1.6%
Offense involved possession or use of a weapon	1	1.6%

Robbery (55 Cases)

	Number	Percent
Aggravated facts of the offense	22	40.0%
Recommended by the jury	10	18.2%
No aggravating reason given	8	14.5%
Plea agreement	6	10.9%
Multiple counts, offenses or violations in the event (prosecuted or not)	4	7.3%
Type of victim (child, weak, etc.)	4	7.3%
Gang-related offense	3	5.5%
Sentencing guidelines recommendation is not appropriate	3	5.5%
Offense involved a high degree of planning or a violation of trust	2	3.6%
Offender has extensive prior record or same type of prior offense	2	3.6%
Offender has poor rehabilitation potential	2	3.6%
Victim circumstances (facts of the case, vulnerability, etc.)	2	3.6%
Degree of victim injury (physical, emotional, etc.)	2	3.6%
Used, etc., drugs or alcohol while on probation	1	1.8%
Child present at time of the offense	1	1.8%
Current offense involved drugs or alcohol (e.g., large amount, location, etc.)	1	1.8%
Judge believed sentence was in concurrence with recommendation	1	1.8%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	1	1.8%
Offender was the leader	1	1.8%
Victim requested aggravating sentence	1	1.8%
Offense involved possession or use of a weapon	1	1.8%
Sentenced to alternative punishment	1	1.8%

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

Rape (21 Cases)

	Number	Percent
Request of the victim	8	38.1%
Plea Agreement	5	23.8%
Offender issues, general (e.g., age, family support, impact on community, etc.)	4	19.0%
Victim cannot or will not testify	4	19.0%
Mitigated facts of the offense	3	14.3%
Mitigated court circumstances or proceedings (e.g., will resentence)	3	14.3%
Recommended by the jury	3	14.3%
Sentenced as a juvenile to DJJ	2	9.5%
No mitigating reason given	1	4.8%
Cooperated with authorities	1	4.8%
Sentencing guidelines scoring issue (e.g., prior conviction not scored correctly, etc.)	1	4.8%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	1	4.8%
Offender has health issues	1	4.8%
Offender has minimal or no prior record	1	4.8%
Offender has made progress in rehabilitating himself or herself	1	4.8%
Mitigating facts of the offense, specific to sex offenses	1	4.8%
Victim circumstances (drug dealer, etc.)	1	4.8%

Other Sexual Assault (26 Cases)

	Number	Percent
Plea Agreement	13	50.0%
Mitigated facts of the offense	5	19.2%
Recommended by the jury	4	15.4%
Victim cannot or will not testify	4	15.4%
Mitigated court circumstances or proceedings (e.g., will resentence)	3	11.5%
Recommended by the attorney for the Commonwealth	3	11.5%
Offender has health issues	3	11.5%
No mitigating reason given	2	7.7%
Sentenced as a juvenile to DJJ	2	7.7%
Sentenced to alternative punishment	1	3.8%
Sentencing guidelines were missing or incorrect	1	3.8%
Sentencing guidelines recommendation was too high	1	3.8%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	1	3.8%
Offender has minimal or no prior record	1	3.8%
Victim circumstances (facts or the case, credibility issues, etc.)	1	3.8%
Victim circumstances (drug dealer, etc.)	1	3.8%
Request of the victim	1	3.8%

Other Sexual Assault/Obscenity (20 Cases)

	Number	Percent
Plea Agreement	7	35.0%
Mitigated facts of the offense	5	25.0%
Offender has health issues	5	25.0%
Recommended by the attorney for the Commonwealth	3	15.0%
Offender has good potential for rehabilitation	3	15.0%
Judge had issues with risk assessment	2	10.0%
Offender issues, general (e.g., age, family support, impact on community, etc.)	2	10.0%
Other reason for mitigation	2	10.0%
Offense involved a high degree of planning or a violation of trust	1	5.0%
Cooperated with authorities	1	5.0%
Mitigated court circumstances or proceedings (e.g., will resentence)	1	5.0%
Recommended by the jury	1	5.0%
Financial obligations (child support, restitution, court costs, etc.)	1	5.0%
Sentencing guidelines were missing or incorrect	1	5.0%
Sentencing guidelines recommendation not appropriate (non-specific)	1	5.0%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	1	5.0%
Offender has minimal or no prior record	1	5.0%
Offender has made progress in rehabilitating himself or herself	1	5.0%

Judicial Reasons for Departure from Sentencing Guidelines Offenses Against the Person

Reasons for AGGRAVATION

Rape (31 Cases)

	Number	Percent
Type of victim (child, weak, etc.)	14	45.2%
Aggravated facts of the offense	14	45.2%
Plea agreement	8	25.8%
Recommended by the jury	6	19.4%
Degree of victim injury (physical, emotional, etc.)	4	12.9%
Multiple counts, offenses or violations in the event (prosecuted or not)	3	9.7%
Offender issues, general (e.g., age, family support, impact on community, etc.)	2	6.5%
Offender has poor rehabilitation potential	2	6.5%
Offense involved a high degree of planning or a violation of trust	1	3.2%
Recommended by the attorney for the Commonwealth	1	3.2%
Judge believed sentence was in concurrence with recommendation	1	3.2%
Sentencing guidelines recommendation was too low	1	3.2%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	1	3.2%
Offender has health issues	1	3.2%
Offender has extensive prior record or same type of prior offense	1	3.2%
Offender needs rehabilitation offered by jail or prison	1	3.2%
Sex offender has poor rehabilitation potential	1	3.2%

Other Sexual Assault (87 Cases)

	Number	Percent
Aggravated facts of the offense	34	39.5%
Type of victim (child, weak, etc.)	28	32.6%
Plea agreement	25	29.1%
Degree of victim injury (physical, emotional, etc.)	10	11.6%
Sentencing guidelines recommendation was too low	9	10.5%
Offender has poor rehabilitation potential	9	10.5%
Multiple counts, offenses or violations in the event (prosecuted or not)	8	9.3%
Offense involved a high degree of planning or a violation of trust	7	8.1%
Recommended by the jury	6	7.0%
Aggravated facts of the offense, specific to sex offenses	5	5.8%
Victim requested aggravating sentence	4	4.7%
No aggravating reason given	3	3.5%
Current offense involved drugs or alcohol (e.g., large amount, location, etc.)	3	3.5%
Offender has extensive prior record or same type of prior offense	3	3.5%
Victim circumstances (facts of the case, vulnerability, etc.)	2	2.3%
Absconded from supervision	1	1.2%
Aggravated court circumstances or proceedings (e.g., will resentence)	1	1.2%
Recommended by the attorney for the Commonwealth, Probation Officer	2	2.3%
Prior record not adequately weighed by guidelines	1	1.2%
Offender has health issues	1	1.2%
Offender issues, general (e.g., age, family support, impact on community, etc.)	1	1.2%
Sex offender has poor rehabilitation potential	1	1.2%
Degree of violence directed at victim	1	1.2%

Other Sexual Assault/Obscenity (51 Cases)

	Number	Percent
Plea agreement	30	58.8%
Multiple counts, offenses or violations in the event (prosecuted or not)	17	33.3%
Aggravated facts of the offense	10	19.6%
Offender has poor rehabilitation potential	7	13.7%
Type of victim (child, weak, etc.)	7	13.7%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	4	7.8%
Other reason for aggravation	4	7.8%
Offender has extensive prior record or same type of prior offense	2	3.9%
Aggravated facts of the offense, specific to sex offenses	2	3.9%
Recommended by the attorney for the Commonwealth	1	2.0%
Recommended by the jury	1	2.0%
Mandatory minimum was involved in the event	1	2.0%

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

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

Appendix 3

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

BURGLARY OF DWELLING

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	77.8%	5.6 %	16.7 %	18
2	76.3	10.5	13.2	38
3	86.7	6.7	6.7	15
4	68.2	22.7	9.1	22
5	64.3	14.3	21.4	28
6	66.7	6.7	26.7	15
7	81.8	13.6	4.5	22
8	50.0	35.0	15.0	20
9	73.9	13.0	13.0	23
10	53.6	17.9	28.6	28
11	70.0	0.0	30.0	10
12	71.4	9.5	19.0	21
13	82.4	11.8	5.9	17
14	68.0	8.0	24.0	25
15	68.6	14.3	17.1	35
16	57.9	26.3	15.8	19
17	83.3	0.0	16.7	6
18	100.0	0.0	0.0	6
19	37.5	18.8	43.8	16
20	77.8	0.0	22.2	18
21	84.6	7.7	7.7	13
22	80.0	11.4	8.6	35
23	91.7	8.3	0.0	12
24	78.3	8.7	13.0	23
25	85.3	11.8	2.9	34
26	66.7	16.7	16.7	30
27	77.5	2.5	20.0	40
28	80.0	0.0	20.0	10
29	66.7	11.1	22.2	9
30	78.9	15.8	5.3	19
31	87.5	6.3	6.3	16
Total	72.9	11.8	15.2	643

BURGLARY/OTHER

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	100.0 %	0.0 %	0.0%	3
2	84.2	15.8	0.0	19
3	75.0	25.0	0.0	4
4	61.9	23.8	14.3	21
5	88.9	11.1	0.0	9
6	75.0	25.0	0.0	8
7	100.0	0.0	0.0	8
8	70.6	29.4	0.0	17
9	81.3	12.5	6.3	16
10	81.8	9.1	9.1	22
11	100.0	0.0	0.0	6
12	76.9	0.0	23.1	13
13	90.0	10.0	0.0	10
14	86.4	0.0	13.6	22
15	76.9	7.7	15.4	26
16	72.7	9.1	18.2	11
17	66.7	33.3	0.0	9
18	100.0	0.0	0.0	2
19	66.7	33.3	0.0	9
20	87.5	0.0	12.5	8
21	100.0	0.0	0.0	9
22	72.7	18.2	9.1	11
23	100.0	0.0	0.0	8
24	66.7	22.2	11.1	9
25	78.9	21.1	0.0	19
26	71.4	14.3	14.3	7
27	92.9	7.1	0.0	14
28	66.7	16.7	16.7	6
29	100.0	0.0	0.0	9
30	50.0	50.0	0.0	6
31	66.7	16.7	16.7	6
Total	79.8	13.3	6.9	347

DRUG/OTHER

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	84.0 %	4.0%	12.0%	25
2	90.4	1.9	7.7	52
3	50.0	50.0	0.0	2
4	88.5	7.7	3.8	26
5	75.0	0.0	25.0	16
6	72.7	0.0	27.3	11
7	100.0	0.0	0.0	29
8	75.0	25.0	0.0	8
9	78.3	8.7	13.0	23
10	76.9	5.1	17.9	39
11	87.5	12.5	0.0	8
12	95.5	4.5	0.0	44
13	79.2	12.5	8.3	24
14	66.7	0.0	33.3	18
15	79.7	1.7	18.6	59
16	93.3	0.0	6.7	15
17	92.9	7.1	0.0	14
18	71.4	28.6	0.0	7
19	94.4	5.6	0.0	72
20	87.0	4.3	8.7	23
21	92.3	7.7	0.0	13
22	82.6	8.7	8.7	23
23	69.2	23.1	7.7	13
24	84.6	7.7	7.7	26
25	86.6	6.0	7.5	67
26	81.8	7.3	10.9	55
27	86.2	10.3	3.4	58
28	87.0	8.7	4.3	23
29	90.7	3.5	5.8	86
30	82.4	7.8	9.8	51
31	94.1	2.9	2.9	34
Total	86.0	6.0	8.0	964

Appendix 3

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

SCHEDULE I/II DRUGS

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	75.9%	7.5%	16.5%	212
2	91.8	6.0	2.3	486
3	72.6	17.8	9.6	135
4	86.1	11.6	2.4	337
5	81.0	7.0	12.0	100
6	90.8	3.5	5.6	142
7	89.9	5.9	4.1	169
8	88.1	4.8	7.1	84
9	83.6	5.1	11.3	177
10	86.9	7.0	6.1	214
11	87.5	5.0	7.5	40
12	85.4	5.7	8.9	437
13	74.5	19.4	6.1	377
14	82.8	6.1	11.1	603
15	73.4	6.2	20.3	801
16	84.8	10.0	5.2	329
17	79.8	9.7	10.5	124
18	84.9	11.3	3.8	53
19	81.1	13.5	5.4	333
20	83.5	5.5	11.0	127
21	78.4	12.2	9.5	148
22	83.1	9.1	7.8	154
23	88.3	7.7	4.0	248
24	87.4	6.9	5.7	350
25	89.0	6.6	4.4	637
26	89.3	6.3	4.4	703
27	90.7	5.3	4.0	526
28	90.2	3.4	6.5	356
29	88.5	4.6	6.9	262
30	76.0	14.0	10.1	179
31	89.7	6.3	4.0	175
Total	84.6	7.7	7.7	9,018

FRAUD

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	89.3%	6.8%	3.9%	103
2	85.7	6.6	7.7	91
3	82.4	17.6	0.0	17
4	73.5	22.4	4.1	49
5	90.2	2.4	7.3	41
6	80.0	16.0	4.0	25
7	96.6	3.4	0.0	29
8	78.6	17.9	3.6	28
9	80.0	9.1	10.9	55
10	91.3	4.3	4.3	46
11	86.4	13.6	0.0	22
12	91.7	0.0	8.3	72
13	71.1	23.7	5.3	38
14	81.1	9.4	9.4	53
15	80.6	10.0	9.4	170
16	81.6	11.8	6.6	76
17	80.4	7.1	12.5	56
18	100.0	0.0	0.0	10
19	83.6	13.7	2.7	73
20	84.2	2.6	13.2	38
21	76.9	23.1	0.0	26
22	88.1	10.2	1.7	59
23	65.5	29.3	5.2	58
24	89.6	6.3	4.2	48
25	90.8	6.9	2.3	87
26	88.5	8.0	3.5	113
27	88.2	8.8	2.9	68
28	91.5	4.3	4.3	47
29	77.8	15.6	6.7	45
30	79.2	12.5	8.3	24
31	88.5	3.8	7.7	26
Total	84.2	10.0	5.8	1,693

LARCENY

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	84.5%	7.5%	8.0%	200
2	91.4	4.7	3.9	257
3	72.7	20.0	7.3	55
4	75.0	17.6	7.4	148
5	80.6	7.4	12.0	108
6	85.5	4.8	9.7	62
7	86.5	12.3	1.2	163
8	80.7	14.5	4.8	83
9	88.8	6.7	4.5	178
10	81.8	9.9	8.3	121
11	91.5	6.8	1.7	59
12	84.4	8.0	7.6	314
13	63.5	27.0	9.5	63
14	86.9	5.5	7.5	199
15	81.9	8.3	9.7	504
16	88.0	8.2	3.8	158
17	75.8	14.1	10.1	99
18	72.7	21.2	6.1	33
19	71.9	20.3	7.8	192
20	76.6	9.6	13.8	94
21	86.7	5.1	8.2	98
22	85.9	8.9	5.2	135
23	82.2	14.5	3.3	242
24	85.2	9.9	4.9	182
25	82.9	12.6	4.5	199
26	93.6	4.1	2.3	220
27	90.3	5.6	4.1	196
28	96.0	2.7	1.3	75
29	87.4	4.2	8.4	143
30	83.3	13.0	3.7	108
31	91.6	4.7	3.7	107
Total	84.3	9.5	6.3	4795

Appendix 3

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

TRAFFIC				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	73.2 %	11.3 %	15.5 %	71
2	81.0	3.4	15.5	116
3	75.0	12.5	12.5	8
4	100.0	0.0	0.0	38
5	79.6	2.0	18.4	49
6	92.6	3.7	3.7	27
7	89.3	7.1	3.6	28
8	65.2	26.1	8.7	23
9	84.0	6.0	10.0	50
10	78.7	6.4	14.9	47
11	86.4	9.1	4.5	22
12	80.9	8.8	10.3	68
13	77.8	16.7	5.6	18
14	43.2	9.1	47.7	44
15	80.3	8.0	11.7	137
16	78.6	9.5	11.9	84
17	44.4	5.6	50.0	18
18	60.0	0.0	40.0	5
19	75.0	13.2	11.8	68
20	78.3	0.0	21.7	46
21	72.0	16.0	12.0	25
22	75.8	15.2	9.1	33
23	82.4	11.8	5.9	34
24	93.9	3.0	3.0	66
25	79.7	11.6	8.7	69
26	88.4	3.2	8.4	95
27	88.0	10.0	2.0	50
28	82.9	11.4	5.7	35
29	84.0	12.0	4.0	25
30	77.3	9.1	13.6	22
31	83.8	5.4	10.8	37
Total	80.1	7.9	12.0	1,458

MISCELLANEOUS/OTHER				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	66.7 %	0.0 %	33.3 %	9
2	92.3	7.7	0.0	13
3	100.0	0.0	0.0	5
4	84.6	7.7	7.7	26
5	85.7	0.0	14.3	7
6	71.4	14.3	14.3	7
7	88.2	11.8	0.0	17
8	100.0	0.0	0.0	13
9	80.0	0.0	20.0	10
10	61.9	14.3	23.8	21
11	85.7	14.3	0.0	21
12	81.8	18.2	0.0	33
13	83.3	0.0	16.7	12
14	90.5	9.5	0.0	21
15	77.1	14.3	8.6	35
16	83.3	11.1	5.6	18
17	66.7	33.3	0.0	6
18	25.0	50.0	25.0	4
19	50.0	50.0	0.0	4
20	66.7	0.0	33.3	6
21	100.0	0.0	0.0	3
22	92.3	7.7	0.0	13
23	76.5	17.6	5.9	17
24	93.3	6.7	0.0	15
25	91.3	8.7	0.0	23
26	100.0	0.0	0.0	17
27	100.0	0.0	0.0	6
28	90.0	10.0	0.0	10
29	84.6	7.7	7.7	13
30	58.3	25.0	16.7	12
31	100.0	0.0	0.0	5
Total	82.7	10.9	6.4	422

MISCELLANEOUS/P&P				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	80.0 %	0.0 %	20.0 %	5
2	100.0	0.0	0.0	23
3	100.0	0.0	0.0	1
4	25.0	37.5	37.5	8
5	44.4	11.1	44.4	9
6	63.6	18.2	18.2	11
7	71.4	28.6	0.0	7
8	75.0	0.0	25.0	12
9	94.7	0.0	5.3	19
10	68.2	4.5	27.3	22
11	100.0	0.0	0.0	3
12	75.0	12.5	12.5	8
13	85.7	14.3	0.0	7
14	44.4	5.6	50.0	18
15	76.7	4.7	18.6	43
16	57.7	19.2	23.1	26
17	50.0	0.0	50.0	4
18	40.0	20.0	40.0	5
19	62.5	12.5	25.0	8
20	90.9	0.0	9.1	11
21	42.9	28.6	28.6	7
22	57.1	14.3	28.6	7
23	84.6	15.4	0.0	13
24	94.4	0.0	5.6	18
25	95.2	0.0	4.8	21
26	93.3	0.0	6.7	15
27	87.0	8.7	4.3	23
28	76.9	7.7	15.4	13
29	66.7	11.1	22.2	18
30	64.7	23.5	11.8	17
31	76.9	7.7	15.4	13
Total	74.7	8.7	16.6	415

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

WEAPONS

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	76.5%	11.8 %	11.8%	17
2	86.7	6.7	6.7	45
3	80.8	11.5	7.7	26
4	83.8	5.4	10.8	37
5	92.9	0.0	7.1	14
6	83.3	0.0	16.7	24
7	92.0	0.0	8.0	25
8	70.6	17.6	11.8	17
9	80.0	8.0	12.0	25
10	73.5	8.8	17.6	34
11	83.3	0.0	16.7	12
12	56.0	12.0	32.0	25
13	60.3	11.0	28.8	73
14	72.0	8.0	20.0	25
15	67.2	18.0	14.8	61
16	80.5	7.3	12.2	41
17	83.3	16.7	0.0	6
18	75.0	0.0	25.0	4
19	80.0	10.0	10.0	10
20	88.9	11.1	0.0	9
21	73.3	13.3	13.3	15
22	81.3	9.4	9.4	32
23	74.1	3.7	22.2	27
24	85.7	3.6	10.7	28
25	68.4	18.4	13.2	38
26	76.9	0.0	23.1	26
27	86.1	13.9	0.0	36
28	70.6	11.8	17.6	17
29	92.3	3.8	3.8	26
30	84.6	7.7	7.7	13
31	66.7	0.0	33.3	3
Total	76.9	9.0	14.2	791

Appendix 4

**Sentencing Guidelines Compliance by Judicial Circuit:
Offenses Against the Person**

ASSAULT				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	75.6 %	9.8 %	14.6 %	41
2	83.3	6.0	10.7	84
3	82.1	7.1	10.7	28
4	75.7	12.2	12.2	74
5	60.7	14.3	25.0	28
6	77.5	7.5	15.0	40
7	82.4	11.8	5.9	51
8	79.5	12.8	7.7	39
9	80.8	3.8	15.4	52
10	72.0	14.6	13.4	82
11	87.9	3.0	9.1	33
12	86.4	6.8	6.8	44
13	70.1	23.9	6.0	67
14	72.7	9.1	18.2	44
15	78.9	11.0	10.1	109
16	79.2	11.7	9.1	77
17	66.7	0.0	33.3	15
18	91.7	4.2	4.2	24
19	60.5	11.6	27.9	43
20	78.1	3.1	18.8	32
21	82.1	10.7	7.1	28
22	80.9	2.1	17.0	47
23	78.3	13.0	8.7	69
24	80.0	12.9	7.1	70
25	76.5	17.6	5.9	68
26	82.0	8.2	9.8	61
27	73.6	13.9	12.5	72
28	82.6	13.0	4.3	23
29	72.7	12.7	14.5	55
30	61.1	27.8	11.1	36
31	84.2	7.9	7.9	38
Total	77.3	11.2	11.5	1,574

KIDNAPPING				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	100.0%	0.0%	0.0 %	2
2	66.7	16.7	16.7	6
3	50.0	0.0	50.0	2
4	100.0	0.0	0.0	2
5	66.7	33.3	0.0	3
6	100.0	0.0	0.0	1
7	50.0	25.0	25.0	4
8	75.0	12.5	12.5	8
9	100.0	0.0	0.0	1
10	66.7	0.0	33.3	3
11	100.0	0.0	0.0	4
12	80.0	0.0	20.0	5
13	55.6	0.0	44.4	9
14	100.0	0.0	0.0	3
15	55.6	22.2	22.2	9
16	80.0	0.0	20.0	5
17	0.0	50.0	50.0	2
18	100.0	0.0	0.0	1
19	25.0	0.0	75.0	4
20	66.7	0.0	33.3	6
21	100.0	0.0	0.0	1
22	66.7	33.3	0.0	3
23	100.0	0.0	0.0	3
24	85.7	0.0	14.3	7
25	83.3	0.0	16.7	6
26	100.0	0.0	0.0	5
27	83.3	0.0	16.7	6
28	0.0	0.0	0.0	0
29	66.7	0.0	33.3	3
30	0.0	0.0	0.0	0
31	100.0	0.0	0.0	44
Total	73.7	6.8	19.5	118

HOMICIDE				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	0.0 %	0.0 %	100.0 %	2
2	61.1	11.1	27.8	18
3	42.9	14.3	42.9	7
4	71.4	14.3	14.3	14
5	75.0	0.0	25.0	4
6	50.0	50.0	0.0	2
7	20.0	0.0	80.0	5
8	75.0	0.0	25.0	8
9	71.4	0.0	28.6	7
10	87.5	0.0	12.5	8
11	66.7	33.3	0.0	3
12	66.7	8.3	25.0	12
13	66.7	16.7	16.7	24
14	62.5	18.8	18.8	16
15	65.0	10.0	25.0	20
16	75.0	12.5	12.5	8
17	0.0	50.0	50.0	2
18	85.7	0.0	14.3	7
19	75.0	0.0	25.0	8
20	75.0	0.0	25.0	4
21	0.0	0.0	100.0	1
22	71.4	0.0	28.6	7
23	100.0	0.0	0.0	7
24	75.0	0.0	25.0	4
25	85.7	0.0	14.3	7
26	71.4	7.1	21.4	14
27	20.0	20.0	60.0	5
28	0.0	50.0	50.0	2
29	50.0	0.0	50.0	4
30	50.0	0.0	50.0	2
31	63.6	9.1	27.3	11
Total	65.4	9.5	25.1	243

Appendix 4

Sentencing Guidelines Compliance by Judicial Circuit: Offenses Against the Person

ROBBERY				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	85.7 %	14.3 %	0.0 %	14
2	69.2	15.4	15.4	39
3	77.8	22.2	0.0	9
4	63.4	29.3	7.3	41
5	73.3	13.3	13.3	15
6	64.3	28.6	7.1	14
7	84.6	3.8	11.5	26
8	56.3	31.3	12.5	16
9	80.0	20.0	0.0	15
10	68.8	25.0	6.3	16
11	77.8	11.1	11.1	9
12	85.2	11.1	3.7	27
13	71.4	23.8	4.8	42
14	75.8	9.1	15.2	33
15	46.9	37.5	15.6	32
16	78.9	10.5	10.5	19
17	58.3	33.3	8.3	12
18	71.4	21.4	7.1	14
19	62.5	25.0	12.5	32
20	100.0	0.0	0.0	3
21	75.0	0.0	25.0	4
22	53.3	6.7	40.0	15
23	53.8	23.1	23.1	13
24	92.9	0.0	7.1	14
25	80.0	20.0	0.0	5
26	83.3	8.3	8.3	12
27	88.9	0.0	11.1	9
28	100.0	0.0	0.0	3
29	100.0	0.0	0.0	3
30	0.0	0.0	0.0	0
31	76.9	15.4	7.7	26
Total	71.5	18.2	10.3	532

RAPE				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	100.0 %	0.0 %	0.0 %	5
2	85.7	7.1	7.1	14
3	50.0	0.0	50.0	2
4	75.0	0.0	25.0	4
5	100.0	0.0	0.0	1
6	100.0	0.0	0.0	1
7	60.0	20.0	20.0	5
8	100.0	0.0	0.0	2
9	66.7	33.3	0.0	3
10	100.0	0.0	0.0	5
11	66.7	0.0	33.3	6
12	70.0	10.0	20.0	10
13	100.0	0.0	0.0	2
14	40.0	20.0	40.0	5
15	50.0	25.0	25.0	16
16	75.0	0.0	25.0	4
17	20.0	20.0	60.0	5
18	100.0	0.0	0.0	2
19	50.0	0.0	50.0	12
20	100.0	0.0	0.0	1
21	33.3	66.7	0.0	3
22	66.7	0.0	33.3	3
23	50.0	33.3	16.7	6
24	33.3	33.3	33.3	3
25	85.7	14.3	0.0	7
26	55.6	22.2	22.2	9
27	66.7	33.3	0.0	6
28	100.0	0.0	0.0	4
29	50.0	0.0	50.0	2
30	0.0	100.0	0.0	1
31	83.3	0.0	16.7	6
Total	66.7	13.5	19.9	155

OTHER SEXUAL ASSAULT				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	75.0 %	0.0 %	25.0 %	8
2	88.9	0.0	11.1	18
3	100.0	0.0	0.0	2
4	88.9	11.1	0.0	18
5	80.0	0.0	20.0	5
6	100.0	0.0	0.0	3
7	77.8	22.2	0.0	9
8	66.7	0.0	33.3	3
9	50.0	25.0	25.0	8
10	41.7	33.3	25.0	12
11	66.7	16.7	16.7	6
12	55.6	0.0	44.4	9
13	66.7	33.3	0.0	6
14	36.8	5.3	57.9	19
15	61.5	3.8	34.6	26
16	50.0	0.0	50.0	6
17	25.0	0.0	75.0	4
18	75.0	0.0	25.0	4
19	28.6	9.5	61.9	21
20	55.6	0.0	44.4	9
21	40.0	40.0	20.0	5
22	66.7	8.3	25.0	12
23	66.7	0.0	33.3	3
24	88.9	0.0	11.1	9
25	62.5	18.8	18.8	16
26	71.4	0.0	28.6	14
27	81.3	0.0	18.8	16
28	50.0	0.0	50.0	4
29	33.3	0.0	66.7	3
30	57.1	28.6	14.3	7
31	74.1	3.7	22.2	27
Total	63.8	8.3	27.9	312

Appendix 4

**Sentencing Guidelines Compliance by Judicial Circuit:
Offenses Against the Person**

OBSCENITY				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	100.0%	0.0%	0.0%	1
2	100.0	0.0	0.0	3
3	0.0	0.0	100.0	1
4	100.0	0.0	0.0	4
5	100.0	0.0	0.0	1
6	100.0	0.0	0.0	3
7	100.0	0.0	0.0	2
8	0.0	0.0	0.0	0
9	100.0	0.0	0.0	4
10	57.1	28.6	14.3	7
11	100.0	0.0	0.0	1
12	80.0	0.0	20.0	5
13	100.0	0.0	0.0	7
14	100.0	0.0	0.0	1
15	33.3	11.1	55.6	18
16	66.7	33.3	0.0	9
17	50.0	0.0	50.0	4
18	100.0	0.0	0.0	2
19	37.5	25.0	37.5	24
20	78.9	10.5	10.5	19
21	75.0	0.0	25.0	4
22	33.3	33.3	33.3	3
23	66.7	0.0	33.3	3
24	85.7	7.1	7.1	14
25	75.0	6.3	18.8	16
26	60.0	0.0	40.0	30
27	83.3	0.0	16.7	12
28	60.0	0.0	40.0	5
29	50.0	25.0	25.0	4
30	66.7	33.3	0.0	3
31	92.9	0.0	7.1	14
Total	68.3	8.9	22.8	224

Appendix 5 Sentencing Guidelines Received by Jurisdiction

COUNTIES				CITIES	
ACCOMACK	77	LEE	132	ALEXANDRIA	190
ALBEMARLE	189	LOUDOUN	303	BRISTOL	199
ALLEGHANY	220	LOUISA	111	BUENA VISTA	37
AMELIA	48	LUNENBURG	47	CHARLOTTESVILLE	138
AMHERST	180	MADISON	29	CHESAPEAKE	756
APPOMATTOX	81	MATHEWS	16	COLONIAL HEIGHTS	173
ARLINGTON	390	MECKLENBURG	236	DANVILLE	313
AUGUSTA	360	MIDDLESEX	34	FAIRFAX CITY	2
BATH	26	MONTGOMERY	272	FREDERICKSBURG	259
BEDFORD	138	NELSON	91	GALAX	1
BLAND	21	NEW KENT	55	HAMPTON	394
BOTETOURT	148	NORTHAMPTON	60	HARRISONBURG	187
BRUNSWICK	25	NORTHUMBERLAND	24	HOPEWELL	118
BUCHANAN	122	NOTTOWAY	61	LEXINGTON	3
BUCKINGHAM	70	ORANGE	63	LYNCHBURG	343
CAMPBELL	163	PAGE	191	MARTINSVILLE	69
CAROLINE	81	PATRICK	124	NEWPORT NEWS	606
CARROLL	229	PITTSYLVANIA	168	NORFOLK	888
CHARLES CITY	13	POWHATAN	42	PETERSBURG	44
CHARLOTTE	36	PRINCE EDWARD	94	POQUOSON	1
CHESTERFIELD	999	PRINCE GEORGE	106	PORTSMOUTH	320
CLARKE	29	PRINCE WILLIAM	561	RADFORD	67
CRAIG	4	PULASKI	171	RICHMOND CITY	814
CULPEPER	239	RAPPAHANNOCK	13	ROANOKE CITY	408
CUMBERLAND	31	RICHMOND COUNTY	25	SALEM	39
DICKENSON	79	ROANOKE COUNTY	349	SOUTH BOSTON	1
DINWIDDIE	76	ROCKBRIDGE	162	STAUNTON	252
ESSEX	52	ROCKINGHAM	274	SUFFOLK	254
FAIRFAX COUNTY	939	RUSSELL	164	VIRGINIA BEACH	1,219
FAUQUIER	153	SCOTT	185	WAYNESBORO	158
FLOYD	44	SHENANDOAH	124	WILLIAMSBURG	73
FLUVANNA	47	SMYTH	86	WINCHESTER	245
FRANKLIN COUNTY	126	SOUTHAMPTON	119	OUT OF STATE	1
FREDERICK	284	SPOTSYLVANIA	564	MISSING	8
GILES	116	STAFFORD	607	Total	24,499
GLOUCESTER	141	SURRY	11		
GOOCHLAND	38	SUSSEX	32		
GRAYSON	133	TAZEWELL	396		
GREENE	64	WARREN	129		
GREENSVILLE	111	WASHINGTON	359		
HALIFAX	150	WESTMORELAND	55		
HANOVER	442	WISE	205		
HENRICO	1,202	WYTHE	188		
HENRY	257	YORK	163		
ISLE OF WIGHT	76				
JAMES CITY	120				
KING & QUEEN	31				
KING GEORGE	66				
KING WILLIAM	34				
LANCASTER	18				