Virginia Criminal Sentencing Commission

2023 ANNUAL REPORT

SENTENCING COMMISSION MEMBERS

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

Judge Edward L. Hogshire (Ret.)
Chair, Charlottesville

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Judge Jack S. Hurley, Jr., Tazewell
Judge Patricia Kelly, Hanover
Judge Stacey W. Moreau, Chatham
Judge Bryant L. Sugg, Newport News
Judge Victoria A.B. Willis, Stafford

Attorney General

The Honorable Jason Miyares
(**Nicole Wittmann,** Attorney General's Representative)

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Marcus Elam, Powhatan

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VIRGINIA CRIMINAL SENTENCING COMMISSION

MESSAGE FROM THE CHAIR

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

To: The Honorable S. Bernard Goodwyn, Chief Justice of Virginia
The Honorable Glenn Youngkin, 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 2023 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 2023. The Commission's recommendations to the 2024 session of the Virginia General Assembly are also contained in this report.

The Commission wishes to sincerely thank circuit court judges, prosecutors, probation officers and other criminal justice practitioners whose diligent work with the Guidelines enables us to produce this report.

Edward L. Hogshire
Circuit Judge (Ret.)
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INTRODUCTION 1

OVERVIEW

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

The report is organized into four chapters. The remainder of this Introduction chapter provides a general profile of the Commission and an overview of its various activities and projects. The Guidelines Concurrence chapter that follows contains a comprehensive analysis of concurrence with the Sentencing Guidelines and Probation Violation Guidelines during fiscal year (FY) 2023. The third chapter provides an overview of the most recent work related to Virginia's Pretrial Data Project. The fourth chapter discusses a number special topics related to the Sentencing Guidelines process. In the report's final chapter, the Commission presents its recommendations for legislation and revisions to the 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 Judiciary Committee or a designee from that committee. The final member of the Commission, Virginia's Attorney General, serves by virtue of their office.

COMMISSION MEETINGS

The full membership of the Commission met four times during 2023. These meetings were held on March 27, June 12, September 11, and November 1. 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. Similar provisions in § 19.2-306.2 require the use of Probation Violation Guidelines in felony revocation cases. 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 most can be resolved.

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

TRAINING, EDUCATION AND OTHER ASSISTANCE

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

In FY2023, the Commission offered 82 training seminars across the Commonwealth for more than 1,300 criminal justice professionals. The Commission continued to offer some virtual question-and-answer sessions and training opportunities in 2023, including training videos, but most seminars were conducted in person in locations around the Commonwealth. In August 2023, as a result of a Zoom security breach during an online session, the training staff halted all virtual interactive training and information sessions.

The Commission's courses have been approved by the Virginia State Bar, enabling participating attorneys to earn Continuing Legal Education credits. During this fiscal year, the Commission did not offer the Guidelines-related ethics classes, understanding rap sheets workshops, and advanced Guidelines topics seminars. 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 circuit court judges.

The Commission will continue to place a priority on providing 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, "hotline" phone, and texting system. The "hotline" (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. On a typical day, staff responds to 25 to 40 phone calls, texts and e-mails related to scoring Guidelines. The number of support calls, after hour requests for assistance and texts increased again in 2023, as Commission staff provided additional support for users working away from their offices.

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 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, the Commission launched a project to automate the Sentencing Guidelines completion and submission process. The Commission collaborated with the Supreme Court's Department of Judicial Information Technology (DJIT) to design a web-based application for automating the Sentencing Guidelines, SWIFT! (Sentencing Worksheets and Integrated File Transfer).

The Commission pilot tested features of the application in Norfolk and Henrico County. On July 1, 2018, SWIFT was implemented statewide and was designated as the required process for completing Sentencing Guidelines. The Commission is most appreciative of the Circuit Court Clerks who allowed the Commission and Sentencing Guidelines users access to publicly available court data. The Commission continues to work with the Clerk in Fairfax County to encourage the release of their public available data for use in SWIFT. This access to court information gives registered users the ability to streamline preparation of the Guidelines worksheets through SWIFT.

A significant amount of time was spent developing the judicial component of SWIFT and establishing an automated process to distribute Guidelines to judges, clerks and

the Commission. As part of this process, and at the request of Circuit Court Clerks and judges, SWIFT was modified to capture all docket numbers in a sentencing event. However, a significant number of clerks and judges across the state have decided not to use the electronic transfer of Sentencing Guidelines in their courtrooms. The application will continue to be refined to fit the needs of judges, clerks, attorneys, and probation officers. The next phase to be implemented will be the electronic transfer of secured Sentencing Guidelines between the preparer (probation officer or attorney for the Commonwealth) and defense attorneys, prosecuting attorneys, and cohorts.

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), e-mail (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, confined offender populations and any necessary adjustments to Sentencing Guidelines 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 2023 General Assembly, the Commission prepared a combined total of 290 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 populations 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. For the 2023 General Assembly, Commission staff also completed more than 10 ad hoc analyses requested by legislators, the Secretary of Public Safety and Homeland Security, the Department of Planning & Budget, and other state agencies.

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.

The Secretary's Office presented updated offender forecasts to the General Assembly in a report submitted in October 2023.

VIRGINIA'S PRETRIAL DATA PROJECT

The Pretrial Data Project was established in 2018 under the direction of the Virginia State Crime Commission. The purpose was to address the significant lack of data available to answer questions regarding various pre-trial release mechanisms, appearance at court proceedings, and public safety. This was an unprecedented, collaborative effort between numerous state and local agencies representing all three branches of government. The 2021 General Assembly passed legislation directing the Sentencing Commission to continue this work on an annual basis.

For the newest pretrial study, the Commission selected individuals with pretrial contact events during CY2019 and CY2020. For individuals with more than one contact event during the period, only the first event was selected. Individuals are tracked for a minimum of 15 months (same as the previous study). Data for the Project was obtained from multiple agencies. Compiling the data requires numerous iterations of data cleaning, merging, and matching to ensure accuracy when linking information from each data system to each defendant in the cohort. This process is staff-intensive and requires meticulous attention to detail. The current study focuses on the 89,433 adult defendants in CY2019 and 73,537 adult defendants in CY2020 whose contact event included a criminal offense punishable by incarceration where a bail determination was made by a judicial officer.

Pursuant to § 19.2-134.1, several deliverables are required. The Commission must submit a report on the Pretrial Data Project and its findings to the General Assembly on December 1 of each year. Also, the final data set (with personal/case identifiers removed) must be made available on the Commission's website by December 1. Finally, an interactive data dashboard tool must be integrated into the Commission's website, and it must be capable of presenting aggregated data based on characteristics or indicators selected by the user.

An overview of the findings from the CY2019 and CY2020 cohorts can be found in the third chapter of this report. The complete Pretrial Data Project report will be submitted on December 1 and will be available on the Commission's website.

ASSISTANCE TO OTHER AGENCIES

When requested, the Commission provides technical assistance, in the form of data and analysis, to other state agencies. During 2023, the Commission assisted agencies such as the Virginia Department of Criminal Justice Services, Virginia Department of Juvenile Justice, and Virginia Department of Planning and Budget.

GUIDELINES CONCURRENCE

2

INTRODUCTION

Beginning January 1, 1995, the practice of discretionary parole release was abolished in Virginia, and the existing system of sentence credits awarded to inmates for good behavior was revamped. During a 2021 Special Session of the General Assembly, § 53.1-202.3 was modified to increase the rate at which offenders convicted of certain non-violent felonies could earn sentence credits. Under the provisions of § 53.1-202.3, effective July 1, 2022, persons serving time for certain nonviolent felonies will be eligible to earn as much as 15 days for every 30 days served, based on their participation in programs and their record of institutional infractions during confinement. If a nonviolent felon earns at the highest rate throughout their sentence, they will serve no less than 67% of the court-ordered sentence. Others will continue to serve a minimum of 85% of the active sentence ordered by the court (felons in this category may earn a maximum of 4 ½ days for every 30 days).

The Virginia Criminal Sentencing Commission was established to develop and administer Guidelines 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 75% of cases.

This report focuses on defendants sentenced during the most recent year of available data, fiscal year (FY) 2023 (July 1, 2022, through June 30, 2023). 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 - FY2023*

Circuit	Number	Percent
1	664	3.6
2	1,194	6.5
3	64	0.4
4	378	2.1
5	317	1.7
6	417	2.3
7	304	1.7
8	162	0.9
9	623	3.4
10	496	2.7
11	220	1.2
12	579	3.2
13	524	2.9
14	989	5.4
15	1,437	7.9
16	523	2.9
17	65	0.4
18	50	0.3
19	475	2.6
20	204	1.1
21	417	2.3
22	594	3.2
23	685	3.7
24	772	4.2
25	1,215	6.6
26	1,652	9.0
27	1,310	7.2
28	579	3.2
29	575	3.1
30	506	2.8
31	271	1.5
Total	18,285	100.0%

**24 cases were missing a circuit number*

In FY2023, eight judicial circuits contributed the majority of Guidelines cases . Those circuits, which include the Harrisonburg area (Circuit 26), Fredericksburg area (Circuit 15), Radford area (Circuit 27), Botetourt County area (Circuit 25), Virginia Beach (Circuit 2), Henrico (Circuit 14), Lynchburg area (Circuit 24) and Roanoke area (Circuit 23) comprised just over half (51%) of all worksheets received in FY2023 (Figure 1).

During FY2023, the Commission received 18,285 Sentencing Guideline worksheets. Of these, 1,404 worksheets contained errors or omissions that affected the analysis of the case. Users are just now becoming acclimated to the Sentencing Guidelines Worksheets Interactive File Transfer system, hereinafter referred to as "SWIFT," which is a system by which worksheets are submitted to the Commission electronically. The Commission continues to receive worksheets electronically, via scan, and via mail, and staff are working to retrieve the remaining worksheets. Furthermore, of the 18,285 worksheets received, staff excluded an additional 1,888 cases from the analysis where the court deferred findings under § 18.2-251/ § 18.2-258.1 (First Offender) and § 19.2-298.2/ § 19.2-303.6 (Deferred Disposition) to accurately capture judicial concurrence with Guidelines. For the purposes of conducting a clear evaluation of Sentencing Guidelines in effect for FY2023, the remaining sections of this chapter pertaining to judicial concurrence with guidelines recommendations focus only on those 14,993 cases for which Guidelines were completed and calculated correctly and did not include a deferred adjudication.

CONCURRENCE DEFINED

In the Commonwealth, judicial concurrence 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, they 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, or 2) involves time already served (in certain instances).

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.

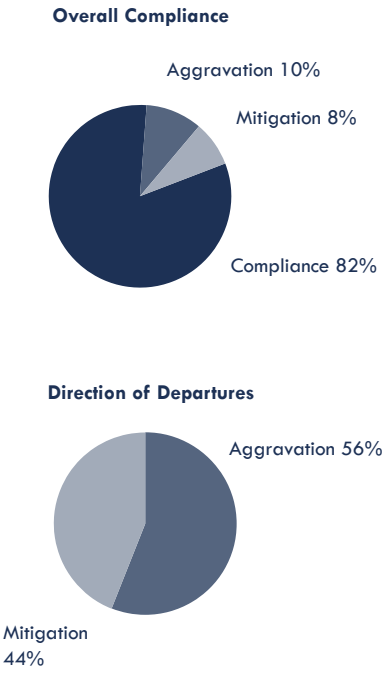
During 2017, the Department of Corrections modified elements of the Detention Center Incarceration Program and the Diversion Center Incarceration Program and referred to the new program as the Community Corrections Alternative Program (CCAP). On July 1, 2019, the changes were codified under § 19.2-316.4. For cases sentenced to these programs on or after July 1, 2019, effective time to serve is calculated as 12 months when calculating concurrence with the Guidelines recommendation.

Effective July 1, 2021, if a judge determines at sentencing that the defendant provided substantial assistance, accepted responsibility, or expressed remorse, the low end of the Guidelines recommended range will be adjusted. If the calculated low end of Guidelines range is three years or less, the low end of the Guidelines range will be reduced to zero. If the calculated low end of the guidelines range is more than three years, the low end of the Guidelines range will be reduced by 50%. The midpoint and the high end of the Sentencing Guidelines range will remain unchanged. The modified recommendation allows the judge the option to consider the defendant's substantial assistance, acceptance of responsibility, or expression of remorse and still be in concurrence with the guidelines. The Modification of Recommendation factor was checked by the sentencing judge in 16.8% of all FY2023 cases. Of those cases, just over half were brought from mitigation into concurrence. In the remaining cases, judges were in concurrence with the Guidelines recommendation without sentencing within the modified low end range.

OVERALL CONCURRENCE WITH THE SENTENCING GUIDELINES

Figure 2

Overall Guidelines Concurrence and Direction of Departures - FY2023



The overall concurrence rate summarizes the extent to which Virginia's judges concur with the Sentencing Guidelines that have been developed by the Commission, both in type of disposition and in length of incarceration. For over a decade, the general concurrence rate of cases throughout the Commonwealth has hovered around 80%, and this year has followed the same pattern. As can be seen in Figure 2, judges continued to agree with the Sentencing Guidelines recommendations in approximately 82% of FY2023 cases.

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 10.4% for FY2023, up from 6.8% for FY2022. This increase in the percentage of aggravation cases may be a result of the expansion of earned sentence credits in § 53.1-202.3 in the beginning of FY2023. The "mitigation" rate, or the rate at which judges sentence offenders to sanctions considered less severe than the Guidelines recommendation, was 7.8% for FY2023, down from 11.0% for the previous fiscal year. This decrease in the percentage of mitigation cases may be a result of the exclusion of cases where the court deferred findings when calculating compliance. A total of 2,680 cases represented departures from Sentencing Guidelines in FY2023, 44% (1,180 cases) of which resulted in a mitigating sentence, while 56% (1,500 cases) resulted in aggravating sentences.

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 FY2023 with the type of disposition recommended by the Guidelines. For instance, of all felony offenders recommended for more than six months of incarceration during FY2023, judges sentenced 79% 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; 11.5%) or probation with no active incarceration (9.6%), but the percentage of offenders receiving such dispositions was small. These sentencing practices correlate closely to sentencing practices in previous fiscal years.

Figure 3

Recommended and Actual Dispositions - FY2023

	Actual Disposition		
Recommended Disposition	**Probation**	**Incarceration 1 day - 6 mos.**	**Incarceration > 6 mos.**
Probation	71.9%	23.5%	4.6%
Incarceration 1 day - 6 months	16.9%	75.6%	7.6%
Incarceration > 6 months	9.6%	11.5%	78.9%

Judges have also typically agreed with Guidelines recommendations for other types of dispositions. In FY2023, 76% 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 (17%) than the recommended jail term and, in other cases, offenders recommended for short-term incarceration received a sentence of more than six months (8%). Finally, 72% 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 of less than six months (24%), but rarely did these offenders receive an incarceration term of more than six months (5%). These results were not impacted by the modified recommendation based on the judge's determination that the defendant provided substantial assistance, accepted responsibility, or expressed remorse.

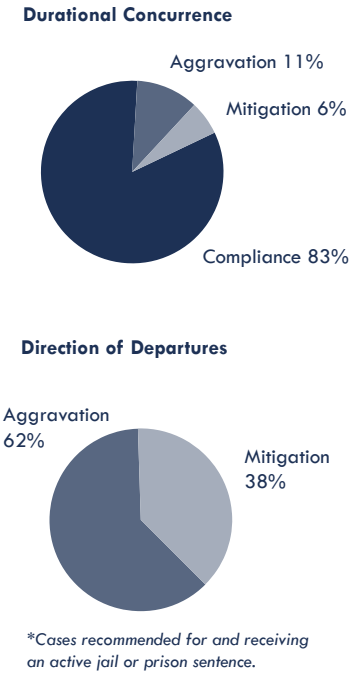
Since July 1, 1997, sentences to the state's former Boot Camp and Detention and Diversion Centers have been defined as incarceration sanctions for the purposes of the Sentencing Guidelines. Although the state's Boot Camp program was discontinued in 2002, the Detention and Diversion Center programs continued as sentencing options for judges until 2019. 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). In turn, because the Diversion Center program also involves a period of confinement, the Commission defined 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. In May 2017, the Department of Corrections merged the two programs and established the Community Corrections Alternative Program (CCAP).

Under CCAP, the court could sentence the defendant to a minimum of seven months for a Short Term commitment to CCAP or to a maximum of 12 months for a Long Term commitment to CCAP. On July 1, 2019, § 19.2-316 was modified to reflect the requirements of CCAP. Beginning January 1, 2021, the Department of Corrections restructured the program based on the needs of the defendant. Based on the adjustment, participation in CCAP will generally last from 22 to 48 weeks based on referrals from the courts and the progress, participation, and adjustment of the defendant. Currently, for the calculation of concurrence with the Sentencing Guidelines recommendation, CCAP sentence is counted as an incarceration period 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 aggravated murder (§ 18.2-31), first-degree or second-degree murder (§ 18.2-32), 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.

Figure 4

Durational Concurrence and Direction of Departures - FY2023*



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

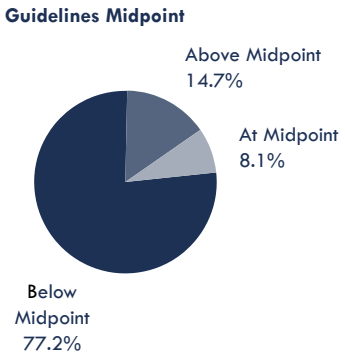
DURATIONAL CONCURRENCE

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 FY2023 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). Of the 17% of cases in which the recommended duration of sentence was departed from, 38% of cases were mitigating in nature and the other 62% were aggravating.

Figure 5

Distribution of Sentences within Guidelines Range - FY2023**



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

In cases in which the recommendation exceeds six months in time, the Sentencing Guidelines provide a midpoint along with a high-end and a low-end recommendation. The sentencing ranges recommended by the Guidelines are relatively broad to allow judges to exercise discretion in sentencing offenders to different incarceration terms, while still remaining in concurrence with the Guidelines and, in turn, keeping aligned with sentencing practices of their colleagues throughout the Commonwealth. When the Guidelines recommended more than six months of incarceration, and judges sentenced within the recommended range, only a small share (8%) were given prison terms exactly equal to the midpoint recommendation (Figure 5). Most of the cases (77%) in durational concurrence with recommendations over six months resulted in sentences below the recommended midpoint. For the remaining 15% of these incarceration cases sentenced within the Guidelines range, the sentence exceeded the midpoint recommendation. These sentencing practices relating to durational concurrence almost mirror sentencing practices of FY2022. 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.

In order to gauge the extent of durational departures from the Sentencing Guidelines, the Commission uses the median length of durational departures. Once again mirroring FY2022, the median departure from the Guidelines is around one-year in either a mitigating or aggravating direction. This indicates to the Commission that the durational departures are, in most cases, not extreme. Offenders receiving incarceration less than the recommended term were given effective sentences (sentences less any suspended time) below the Guidelines by a median of eight months. For offenders receiving longer than recommended incarceration sentences, the effective sentence exceeded the Guidelines by a median of thirteen months (Figure 6).

Figure 6

Median Length of Duration Departures - FY2023*

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

REASONS FOR DEPARTURE FROM THE GUIDELINES

Compliance with the truth-in-sentencing Guidelines is voluntary, reflecting an effort on behalf of the Commonwealth to embrace judicial discretion in sentencing practices. 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. While the Commission has provided a standardized list of reasons for departure via an evaluation of past sentencing departure reasons of judges across the Commonwealth, judges are not limited to any standardized departure reasons. Moreover, judges are free to report more than one departure reason in a sentencing event.

In FY2023, the most frequently cited reasons for sentencing below the Guidelines recommendation were the acceptance of a plea agreement, judicial discretion, sentenced to an alternative punishment, mitigating court circumstances or proceedings, good rehabilitation potential, mitigating facts of the case, offender has health issues, recommended by the Commonwealth, and offender made progress in rehabilitating himself or herself. Although other reasons for mitigation were reported to the Commission in FY2023, only the most frequently cited reasons are noted here. For 154 of the 1,175 mitigating cases, a departure reason could not be discerned.

The most frequently cited reasons for sentencing above the Guidelines recommendation were the acceptance of a plea agreement, aggravating facts of the offense, the number of offenses in the sentencing event, the offender's prior record, the defendant having poor rehabilitation potential, the degree of victim injury, the belief that the sentencing guidelines recommendation was too low, and the type of victim in the offense. For 154 of the 1,616 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.

CONCURRENCE BY CIRCUIT

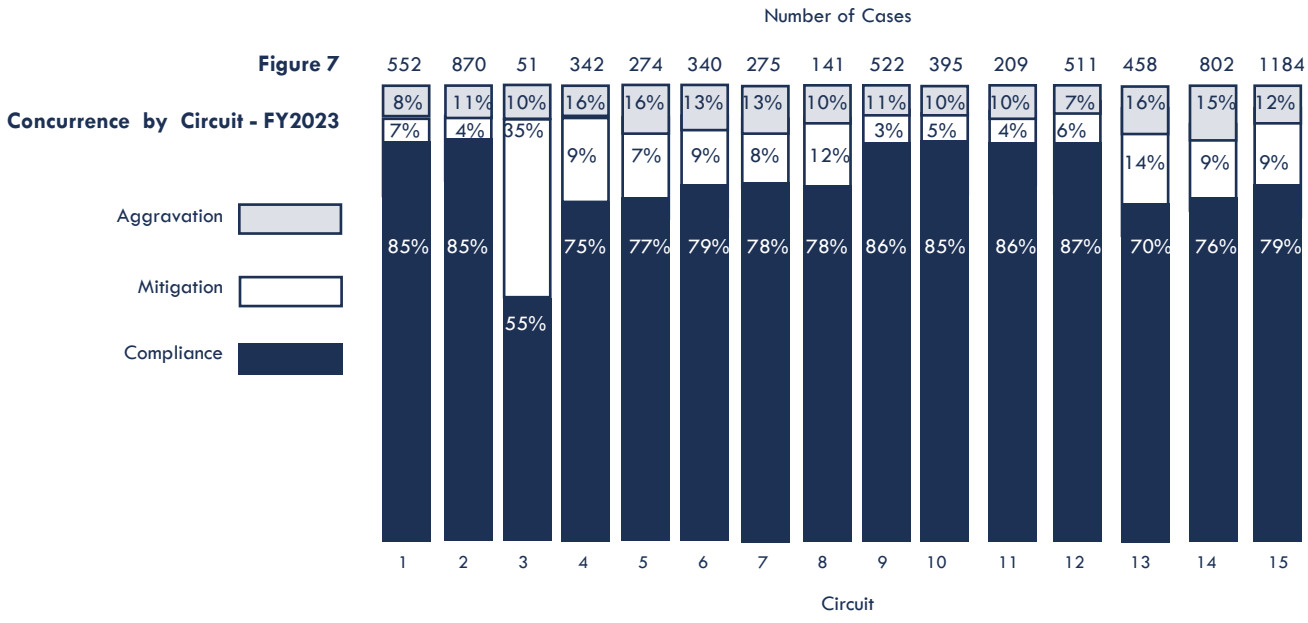
Since the onset of truth-in-sentencing, concurrence rates and departure patterns have varied across Virginia's 31 judicial circuits, and FY2023 continues to show these differences (Figure 7). The map on the following pages identifies the location of each judicial circuit in the Commonwealth.

In FY2023, 48% of the state's 31 circuits exhibited concurrence rates above 80%, while the remaining 52% reported concurrence rates between 54.9% and 79.5%. 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 differs by circuit. 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.

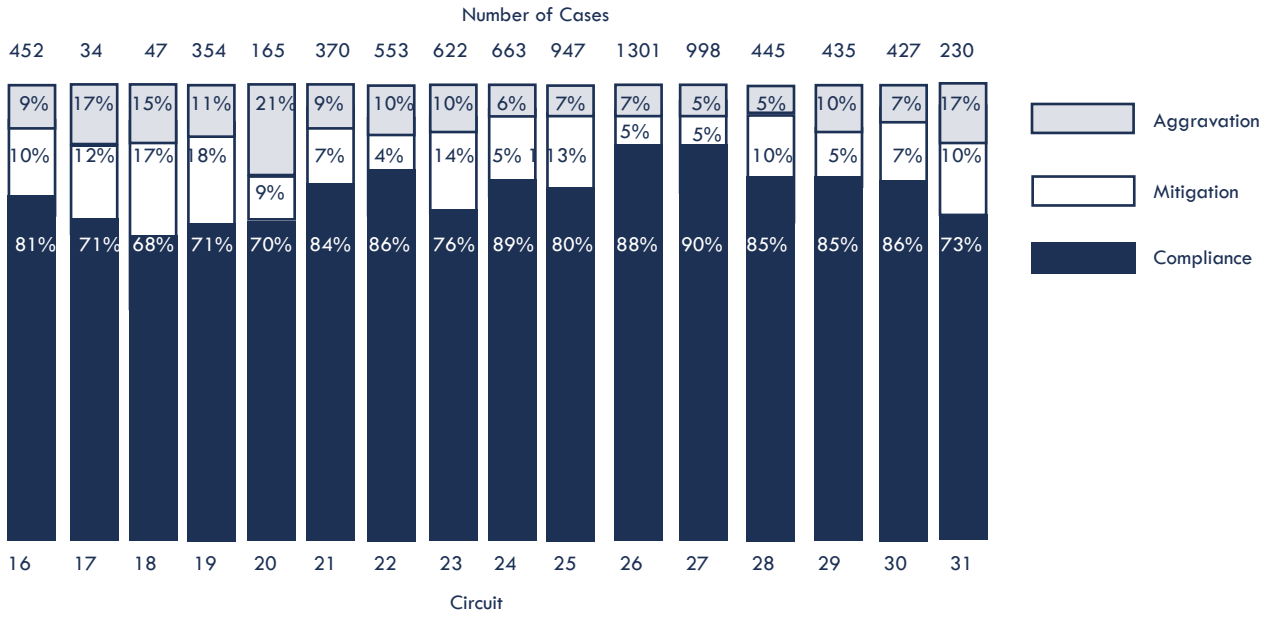
In FY2023, the highest rate of judicial agreement with the Sentencing Guidelines (90%) was in Circuit 27 (Radford area). This was followed by a concurrence rate of 89% in Circuit 24 (Lynchburg Area) and 88% in Circuit 26 (Harrisonburg Area). Circuit 3 (Portsmouth), Circuit 18 (Alexandria), and Circuit 13 (Richmond City) reported the lowest concurrence rates among the judicial circuits in FY2023.

Figure 7

Concurrence by Circuit - FY2023



In FY2023, the highest mitigation rates were found in Circuit 3 (Portsmouth; 35%), Circuit 19 (Fairfax; 18%), Circuit 18 (Alexandria; 17%), Circuit 13 (Richmond City; 14%), Circuit 23 (Roanoke Area; 14%), Circuit 25 (Staunton Area; 13%), and Circuit 8 (Hampton; 12%). Regarding 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 20 (Loudoun) had the highest aggravation rate (around 21%). Circuit 17 (Arlington Area), Circuit 31 (Prince William), Circuit 4 (Norfolk), Circuit 13 (Richmond City), Circuit 5 (Suffolk), Circuit 18 (Alexandria), and Circuit 14 (Henrico) had aggravation rates between 14.5% and 17.6%.



Virginia Localities and Judicial Circuits

Accomack 2
Albemarle 16
Alexandria 18
Alleghany 25
Amelia 11
Amherst 24
Appomattox 10
Arlington 17
Augusta 25

Bath 25
Bedford County 24
Bland 27
Botetourt 25
Bristol 28
Brunswick 6
Buchanan 29
Buckingham 10
Buena Vista 25

Campbell 24
Caroline 15
Carroll 27
Charles City 9
Charlotte 10
Charlottesville 16
Chesapeake 1
Chesterfield 12
Clarke 26
Colonial Heights 12
Covington 25
Craig 25
Culpeper 16
Cumberland 10

Danville 22
Dickenson 29
Dinwiddie 11

Emporia 6
Essex 15

Fairfax City 19
Fairfax County 19
Falls Church 17
Fauquier 20
Floyd 27
Fluvanna 16
Franklin City 5
Franklin County 22
Frederick 26
Fredericksburg 15

Galax 27
Giles 27
Gloucester 9
Goochland 16
Grayson 27
Greene 16
Greensville 6

Halifax 10
Hampton 8
Hanover 15
Harrisonburg 26
Henrico 14
Henry 21
Highland 25
Hopewell 6

Isle of Wight 5

James City 9

King and Queen 9
King George 15
King William 9

Lancaster 15
Lee 30
Lexington 25
Loudoun 20
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

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

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

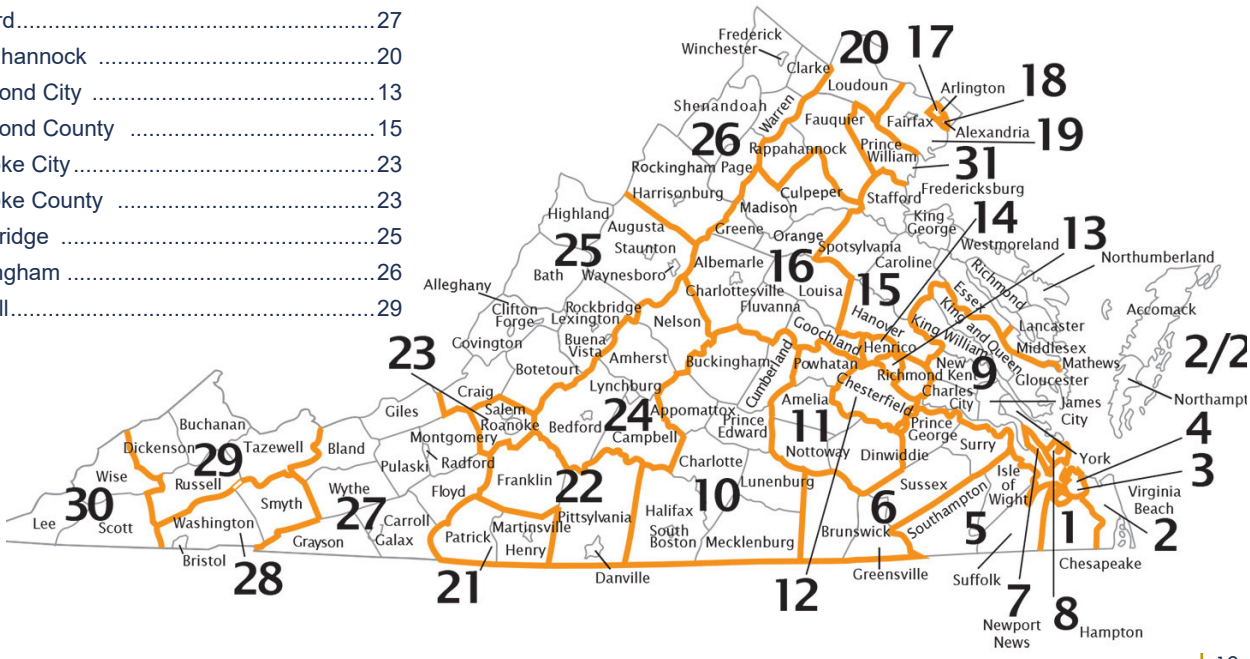
Tazewell 29

Virginia Beach 2

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

York 9

Virginia
Judicial Circuits



CONCURRENCE BY SENTENCING GUIDELINES OFFENSE GROUP

In FY2023, as in previous years, judicial agreement with the Guidelines varied when comparing the 17 offense groups (Figure 8). For FY2023, concurrence rates ranged from a high of 88% in the Fraud offense group to a low of 64% in Weapon cases. In general, property and drug offenses exhibit higher rates of concurrence than the violent offense categories. Several violent offense groups (i.e., Kidnapping, Assault, Rape, Burglary of a Dwelling, and Obscenity) had concurrence rates at or below 82%, whereas many of the property and drug offense categories had concurrence rates above 82%.

Figure 8

Guidelines Concurrence by Offense - FY2023

	Compliance	Mitigation	Aggravation	Number of Cases
Fraud	87.8%	7.6%	4.6%	699
Miscellaneous Other	87.7%	7.3%	5.0%	399
DrugI/II	85.9%	8.0%	6.1%	6,605
Drug Other	85.3%	6.1%	8.7%	231
Larceny	84.8%	7.5%	7.7%	1,424
Traffic	83.4%	7.3%	9.2%	1,201
Burglary Other	82.6%	11.2%	6.2%	276
Kidnapping	82.0%	8.2%	9.8%	122
Assault	79.4%	8.4%	12.2%	1,260
Rape	77.1%	9.8%	13.1%	153
Burglary Dwelling	76.6%	13.0%	10.3%	261
Miscellaneous Person/Property	76.1%	9.0%	14.9%	510
Obscenity	73.7%	6.5%	19.8%	217
Other Sexual Assault	73.5%	5.9%	20.6%	253
Murder	67.0%	4.6%	28.4%	306
Robbery/Carjacking	66.7%	16.7%	16.7%	24
Weapon	63.7%	6.6%	29.8%	1,052
Total	**82.1%**	**7.9%**	**10.0%**	**14,993**

The highest compliance rates are seen in offense groups such as Fraud (88%), Miscellaneous/Other (88%), Drug Schedule I/II (86%), and Drug/Other (85%). Conversely, the highest rates of mitigation are seen across Carjacking cases (17%), Burglary of Dwelling cases (13%), Burglary of Other Structure cases (11%), and Rape cases (10%). Weapon cases (30%), Murder cases (28%), and Sexual Assault cases (21%), had the highest rates of aggravation sentences.

During the past fiscal year, judicial concurrence with Guidelines recommendations remained relatively stable, fluctuating less than five percentage points for most offense groups. The most drastic changes in concurrence rates exhibited from FY2022 to FY2023 was a change in concurrence in Weapon cases. In Weapon cases concurrence was at 64%, down from 79% in FY2022. Furthermore, the aggravation rate was 30%, up from 12% in FY2022. There was only a two percent decrease in the mitigation rate. Additonally, there was a 9 percentage point increase in concurrence for Rape cases in FY2023 compared to FY2022. When offense groups account for a relatively small percentage of overall sentencing events in a fiscal year, they are more susceptible to fluctuations in year-to-year comparisons. For example, both of the aforementioned offense types with elevated fluctuations in comparison to FY2022 (Weapon and Rape) consist of only 7% and 1.0% of all sentencing events in the Commonwealth in FY2023, respectively.

Appendix 3 and 4 presents concurrence figures for judicial circuits by each of the 17 Sentencing Guidelines offense groups.

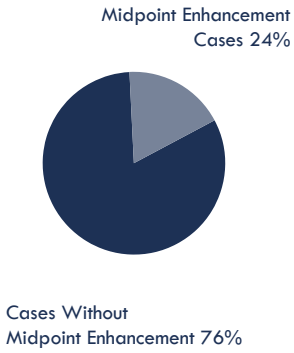
CONCURRENCE UNDER MIDPOINT ENHANCEMENTS

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 is labeled as "Category II" if it 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 most Guidelines cases. Among the FY2023 cases, 76% of the cases did not involve midpoint enhancements of any kind (Figure 9). Only 24% 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.

Figure 9

Application of Midpoint Enhancements - FY2023



Of the FY2023 cases in which midpoint enhancements were applied, the most common midpoint enhancement was for a Category II prior record. Approximately 69% 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). Another 8% of midpoint enhancements were attributable to offenders with a more serious Category I prior record. About 16% of the enhancements were due to the primary offense being a Category I or Category II offense. The most substantial midpoint enhancements target offenders with a combination of primary and prior violent offenses. Roughly 6% qualified for enhancements for both a current violent offense and a Category II prior record. A very small percentage of cases (1%) 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 FY2023, concurrence was 76% when enhancements applied, which is significantly lower than concurrence in all other cases (82%). Thus, concurrence in midpoint enhancement cases is suppressing the overall concurrence rate. When departing from enhanced Guidelines recommendations, judges are choosing to mitigate in about 57% of cases and aggravate in 43% of cases.

Figure 10

Type of Midpoint Enhancements Received - FY2023

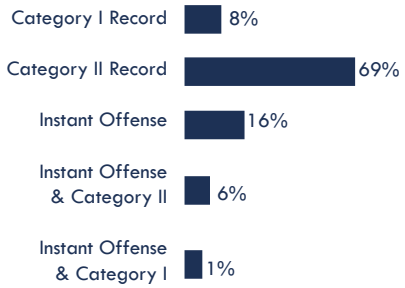


Figure 11

Length of Mitigation Departures in Midpoint Enhancement Cases - FY2023

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

Among FY2023 midpoint enhancement cases resulting in incarceration, judges departed from the low end of the Guidelines range by an average of 21 months (Figure 11). The median departure (the middle value, where half of the values are lower, and half are higher) was 13 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 FY2023, sentencing events involving a current violent offense, but no prior record of violence, generated a concurrence rate of 73%. Concurrence in cases receiving enhancements for a Category I prior record generated a concurrence rate of 69%, while concurrence for enhancement cases with a Category II prior record was 78%. Cases involving a combination of a current violent offense and a Category II prior record yielded a concurrence rate of 77%, 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 (67%).

Figure 12

Concurrence by Type of Midpoint Enhancement - FY2023

Midpoint Enhancement	Concurrence	Mitigation	Aggravation	Number of Cases
NONE	84.0%	6.1%	9.9%	11,369
Category I	68.7%	25.3%	6.1%	297
Category II	78.1%	13.1%	8.8%	2,488
Instant Offense	72.7%	8.3%	19.0%	567
Instant Offense & Category I	67.4%	21.7%	10.9%	46
Instant Offense & Category II	76.5%	13.7%	9.7%	226
Total	82.1%	7.9%	10.0%	14,993

METHOD OF ADJUDICATIONS

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, Alford pleas (pleas of "no contest,") or plea agreements between defendants and the Commonwealth. During FY2023, 92% of Guideline cases were sentenced following guilty pleas or Alford pleas (Figure 13). Adjudication by a judge in a bench trial accounted for 5% of all felony Guidelines cases sentenced.

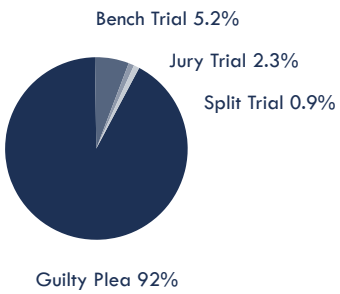
As of July 1, 2021, as the result of changes to §§ 19.2-295 and 19.2-295.1 of the Code of Virginia, juries only decide guilt or innocence. Defendants may still request that the jury sentence in such cases. However, the defendant must notify the court thirty days in advance of the trial to request sentencing by the jury.

During FY2023, a small proportion of cases involved jury trials (2.3%). Based on Sentencing Guidelines received, the attorneys for the Commonwealth or Probation Officers identified 319 sentencing events that involved a jury.

The Commission will continue to monitor the role of juries in sentencing. Unfortunately, criminal justice databases do not reliably identify when scheduled jury trials are ultimately resolved by guilty pleas or bench trials. Furthermore, court databases and orders have not been systematically updated to identify the number of defendants who request that the jury recommend a sentence.

Figure 13

Percentage of Cases Received by Method of Adjudication, FY2023



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 assessments 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 Offender Risk Assessment instrument was implemented statewide for all felony larceny, fraud, and drug cases.

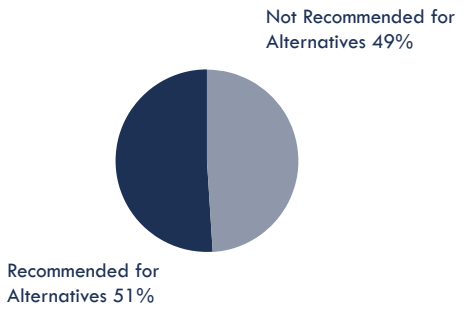
Between 2010 and 2012, the Commission conducted an extensive study of recidivism among nonviolent felons in Virginia to re-evaluate the risk assessment instrument and potentially revise the instrument based upon more recent data. Based on the results of the 2010-2012 study, the Commission recommended 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 59% of all Guidelines received by the Commission for FY2023 were for nonviolent offenses. However, only 42% of these nonviolent offenders were eligible to be assessed for an alternative sanction recommendation. The goal of the nonviolent risk assessment instrument is to divert low-risk offenders who are recommended for incarceration on the Guidelines to an alternative sanction other than prison or jail. Therefore, nonviolent offenders who are recommended for probation/no incarceration on the Guidelines are not eligible for the assessment. Furthermore, the instrument is not to be applied to offenders convicted of distributing one ounce or more of cocaine, those who have a current or prior violent felony conviction, or those who must be sentenced to a mandatory minimum term of incarceration required by law. The NVRA was not completed in approximately 10% of cases where the NVRA would apply.

Among the eligible offenders in FY2023 for whom a risk assessment form was received (3,805 cases), 51% were recommended for an alternative sanction by the risk assessment instrument (Figure 14). Just under half of these offenders (49.2%) recommended for an alternative sanction were actually given some form of alternative punishment by the judge.

Figure 14

Eligible Nonviolent Offender Risk Assessment Cases by Recommendation Type, FY2023
(3,805 cases)

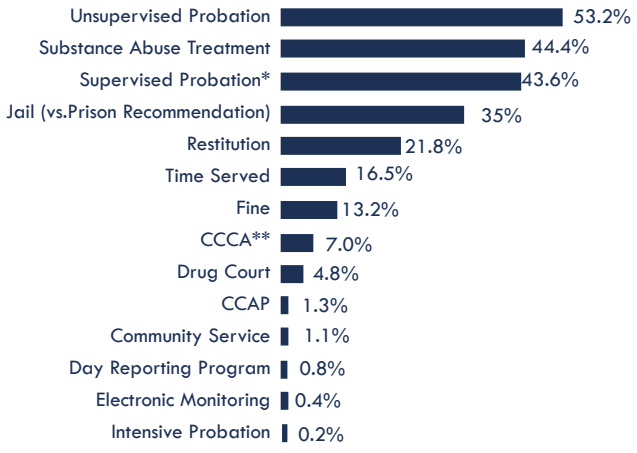


Among offenders recommended for and receiving an alternative sanction through risk assessment, judges used Unsupervised Probation more often than any other option (Figure 15). In addition, in approximately one-third of the cases in which an alternative was recommended, judges sentenced the offender to a term of incarceration in jail (less than twelve months) rather than the prison sentence recommended by the traditional Guidelines range. Other sanctions frequently utilized were Substance Abuse Treatment (44.4%), Supervised Probation (43.6%), Restitution (21.8%), and Time Served (16.5%). The Department of Corrections' Community Corrections Alternative Program (CCAP) was used in a small percentage (1.3%) of the cases. Other alternatives/sanctions included Drug Court (4.8%) and Community Service (1.1%).

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 they choose to sentence the defendant to a term within the traditional incarceration period recommended by the Guidelines or if they choose to sentence the offender to an alternative form of punishment. For drug offenders eligible for risk assessment, the overall Guidelines concurrence rate is 90%, but a portion of this concurrence reflects

Figure 15

Types of Alternative Sanctions Imposed - FY2023



** Includes indeterminate supervised probation (13.8%).*
*** 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.

the use of an alternative punishment option as recommended by the risk assessment instrument (Figure 16). In 27% 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 90%. In 26% 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 was 90%. Judges used an alternative, as recommended by the risk assessment tool, in 14% 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 instrument, and the Commission, during its validation study, found that larceny offenders are the most likely to recidivate among nonviolent offenders.

Figure 16

Concurrence Rates for Nonviolent Offenders Eligible for Risk Assessment - FY2023

	Mitigation	Concurrence: Adjusted Range	Concurrence: Traditional Range	Aggravation	Number of Cases	Overall Concurrence
Drug	5.9%	26.8%	63.1%	4.2%	2,920	89.9%
Fraud	6.4%	26.0%	64.1%	3.5%	312	90.1%
Larceny	6.4%	13.9%	75.6%	4.0%	574	89.5%
Overall	**6.0%**	**24.8%**	**65.1%**	**4.1%**	**3,806**	89.9%

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 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 instrument 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 several 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 assessment instrument produces overall higher scores for the groups of offenders who exhibited higher recidivism rates during the Commission's study. In this way, the instrument developed by the Commission is indicative of offender risk.

The risk assessment instrument was incorporated into the Sentencing Guidelines for sex offenders beginning July 1, 2001. For sex offenders identified as a comparatively high risk (those scoring 28 points or more on the risk assessment), the Sentencing Guidelines were 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.

Level 1:
For offenders scoring 44 or more, the upper end of the Guidelines range is increased by 300%.

Level 2:
For offenders scoring 34 through 43 points, the upper end of the Guidelines range is increased by 100%.

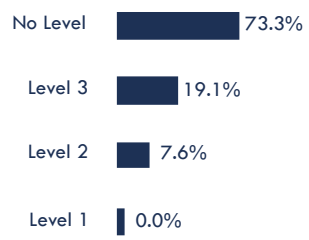
Level 3:
For offenders scoring 28 through 33 points, the upper end of the Guidelines range is increased by 50%.

The low end and the midpoint of the Guidelines recommendation 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 FY2023, there were 253 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 offenses 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. Of the 240 Sexual Assault cases for which the risk assessment was applicable, the majority (73%) were not assigned a level of increased risk by the sex offender risk assessment instrument (Figure 17). Approximately 19% of applicable Sexual Assault Guidelines cases resulted in a Level 3 risk classification, with an additional 8% assigned to Level 2. There were no Sexual Assault Guidelines cases that reached the highest risk category of Level 1in FY2023.

Figure 17

Sex Offender Risk Assessment Levels for Sexual Assault Offenders, FY2023



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 (Figure 18). As noted above, there were no Sexual Assault cases assigned a Level 1 risk category. Judges used the extended Guidelines range in 17% of Level 2 cases, up from 9% in FY2022, and 20% of Level 3 risk cases, up from 4% in FY2022. Judges rarely sentenced Level 2 offenders to terms above the extended Guidelines range provided in these cases. For Level 2 cases, judges sentenced offenders to terms above the extended ranges in 6% of the cases, and 7% were sentenced to a term above the extended ranges in Level 3 cases. 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 a concurrence rate of 69%. These cases also had a higher rate of aggravation (26%) compared to offenders who were assigned a risk level.

Figure 18

Sexual Assault Concurrence Rates By Risk Assessment Level, FY2023

		Concurrence				
	Mitigation	Traditional Range	Adjusted Range	Aggravation	Number of Cases	Overall Concurrence
Level 1	0.0%	0.0%	0.0%	0.0%	0	
Level 2	5.6%	72.2%	16.7%	5.6%	18	88.9%
Level 3	6.7%	66.7%	20.0%	6.7%	45	86.7%
No Level	5.2%	68.8%	0.0%	26.0%	173	68.8%
Overall	5.5%	68.6%	5.1%	18.3%	236	73.7%

There were 152 offenders convicted of offenses covered by the Rape Guidelines (rape, forcible sodomy, and object sexual penetration) in FY2023. According to Figure 19, approximately 70% were not assigned a risk level by the Commission's risk assessment instrument. Approximately 22% of these cases resulted in a Level 3 adjustment. An additional 7% received a Level 2 adjustment. There were two cases in FY2023 that received a Level 1 adjustment for a rape conviction. As shown in Figure 20, no offenders were given prison sentences within the adjusted range of the Guidelines for Level 1, Level 2 and Level 3 adjustments in FY2023. Of the two cases that resulted in a Level 1 adjustment, one case was sentenced within the traditional range and the other was sentenced below the low end of the guidelines recommendation. Defendants who were not assigned a risk category and received no Guidelines adjustment had a concurrence rate of 78%, which was similar to the concurrence rate for cases with a Level 3 adjustment (77%) but higher than cases with a Level 2 adjustment (70%). The highest rate of aggravation for rape cases was for those with a Level 2 adjustment (30%), followed by cases with a Level 3 adjustment (15%) and those with no adjustment (11%). Neither of the two Rape cases that received a Level 1 adjustment received an aggravated sentence.

Figure 19

Sex Offender Risk Assessment Levels for Rape Offenders, FY2023

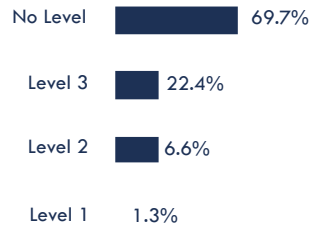


Figure 20

Rape Concurrence Rates By Risk Assessment Level, FY2023

		Concurrence				
	Mitigation	Traditional Range	Adjusted Range	Aggravation	Number of Cases	Overall Concurrence
Level 1	50.0%	50.0%	0.0%	0.0%	2	50%
Level 2	0.0%	70.0%	0.0%	30.0%	10	70%
Level 3	8.8%	76.5%	0.0%	14.7%	34	76.5%
No Level	10.4%	78.3%	0.0%	11.3%	106	78.3%
Overall	9.9%	77.0%	0.0%	13.2%	152	77%

CONCURRENCE AND DRUG TYPE

In 2017, at the request of several Commonwealth's Attorneys, the Commission began capturing the type of Schedule I, II, and III substances on the Sentencing Guidelines Cover Sheet. Identifying the specific type of drug enables 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, but rather be informative for the judiciary and policymakers throughout the state.

As previously noted, the Commission modified the Guidelines 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 FY2023, there were 8,205 Drug Schedule I/II worksheets and 267 Drug Other worksheets submitted to the Commission.

Figure 21 lists the specific type of drug identified on the Drug Sentencing Guidelines. Methamphetamine, measured solely, was the most frequently occurring, appearing in 44.1% of cases. Cases involving cocaine and crack-cocaine comprised 22.1% of the drugs identified. When opioids were grouped together, they were also cited in 22.1%

Figure 21
Number and Percentage of Cases Received by Drug Type - FY2023

Drug	Percentage	Number of Cases
Methamphetamine	44.1%	3,738
Cocaine	22.1%	1,873
Opioids*	22.1%	1,876
Fentanyl	16.0%	1,358
Other	7.2%	610
Heroin	6.9%	581
Oxycodone	2.1%	175
Methylphenidate	0.8%	69
Hydrocodone	0.7%	63
Codeine	0.4%	30
Methadone	0.3%	29
Morphine	0.2%	21

**Opioids includes the drugs heroin, fentanyl, oxycodone, morphine, codeine and methadone (multiple opioids in an event are grouped as one for this measure).*

Data does not exclude deferred cases.

of Drug Guidelines, followed closely by cases involving specific types of opioids such as fentanyl (16%), and heroin (7%.)

Concurrence rates are not significantly different based on the type of drug involved. In FY2023, judges concurred with the Guidelines' recommendation in over 85% of the drug cases (Figure 22). Rates of concurrence were slightly higher in methamphetamine cases (86%), while opioid cases (85%) and cocaine cases (84%) had a slightly lower average concurrence rate. In the cases involving methamphetamine, 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 the 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 cases involving marijuana distribution. These specific types of drugs have similar concurrence rates to cases involving methamphetamine, opioids, and cocaine (85%).

Figure 22
Guidelines Concurrence by Type of Drug - FY2023

	Compliance	Mitigation	Aggravation	Number of Cases
Methamphetamine Case	86.4%	7.4%	6.2%	3,121
Cocaine Case	83.9%	10.6%	5.5%	1,606
Opioid Case	85.1%	7.8%	7.1%	1,638
Other Case	84.5%	8.1%	7.4%	566
Total	85.4%	8.3%	6.3%	7,086*

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

Numbers will differ from totals because of excluding deferred cases.

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 23 lists the types of drugs by circuit.

Convictions listed in Figure 23 are not adjusted for the population of each locality, but simply provide the localities with the requested information. The Radford Area (Circuit 27), the Harrisonburg Area (Circuit 26), and the Staunton Area (Circuit 25) have the highest frequencies of methamphetamine-related sentencing events across the Commonwealth. Cocaine-related sentencing events appear most frequently in Henrico (Circuit 14), Virginia Beach (Circuit 2), and Fredericksburg (Circuit 15) in comparison to the rest of the Commonwealth. Furthermore, fentanyl-related cases appear most frequently in Fredericksburg (Circuit 15), Henrico (Circuit 14), and the Harrisonburg Area (Circuit 26) compared to the rest of the Commonwealth.

The number of convictions may not be the best approach to assessing drug problems in communities across the Commonwealth. To some extent, 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. Most importantly, the drug type is not routinely reported by all jurisdictions and may limit the validity of comparisons across circuits. These topics and limitations of the use of sentencing data for an evaluation of drug prevalence by geographic location ought to be taken into consideration when evaluating Figure 23.

The Commission will continue to monitor sentencing in drug cases, as requested. If the sentencing patterns of judges change, the Commission will recommend revisions to the Guidelines based on analysis of the data. As indicated by the concurrence rates of drug sentences throughout the Commonwealth, there is no need at this time to adjust Guidelines based on the type of drug involved.

Figure 23
Type of Drug by Circuit - FY2023

Circuit		Cocaine	Codeine	Fentanyl	Heroin	Hydrocodone	Methadone	Methamphetamine	Methylphenidate	Morphine	Oxycodone	Other*
1	Chesapeake	125	1	58	40	3	0	100	2	1	6	22
2	Virginia Beach	186	6	81	41	0	3	202	3	0	15	64
3	Portsmouth	5	0	1	0	0	0	0	0	0	0	0
4	Norfolk	25	1	8	7	0	0	14	0	0	2	2
5	Suffolk Area	30	2	14	9	1	0	13	0	1	2	6
6	Sussex Area	46	0	29	11	2	0	34	0	0	0	19
7	Newport News	58	0	12	9	2	0	13	1	0	6	8
8	Hampton	30	0	3	10	1	0	2	0	0	2	3
9	Williamsburg Area	83	0	33	19	1	2	98	2	1	4	18
10	South Boston Area	39	3	26	16	2	1	86	1	0	5	15
11	Petersburg Area	21	1	4	1	0	0	12	0	0	0	1
12	Chesterfield Area	92	0	67	27	2	0	60	1	0	4	14
13	Richmond City	105	0	51	39	0	2	19	1	0	7	12
14	Henrico	266	2	157	77	0	0	63	1	0	8	27
15	Fredericksburg	185	4	180	69	3	3	148	2	2	12	98
16	Charlottesville Area	56	2	53	19	1	1	39	0	1	5	17
17	Arlington Area	8	0	4	1	0	0	2	0	0	0	4
18	Alexandria	4	0	3	0	0	0	0	0	0	0	1
19	Fairfax	47	1	60	5	0	0	18	2	0	4	33
20	Loudoun	19	1	16	2	0	1	14	0	0	1	30
21	Martinsville Area	46	1	47	13	7	1	78	1	1	6	12
22	Danville Area	60	1	45	27	3	0	141	2	2	4	25
23	Roanoke Area	38	0	62	27	0	1	136	3	0	7	4
24	Lynchburg Area	46	0	24	15	1	1	224	5	0	0	16
25	Staunton Area	22	0	30	10	3	2	377	7	1	9	15
26	Harrisonburg Area	141	2	145	33	6	2	484	7	3	17	70
27	Radford Area	31	1	51	22	10	4	652	11	2	15	34
28	Bristol Area	13	0	12	7	5	1	286	6	1	8	7
29	Buchanan Area	6	0	32	11	5	1	218	9	2	11	11
30	Lee Area	4	0	11	3	4	2	195	1	2	9	7
31	Prince William Area	36	1	38	11	1	1	3	1	1	6	15
Total	Statewide	1873	30	1358	581	63	29	3738	69	21	175	610

Note: One sentencing event may involve more than one type of drug
** The other category includes some other types of Schedule I/II drugs, but more often Schedule III drugs, prescription drugs and marijuana.*

Figure 24

Number and Percentage of SRRs Received by Circuit - FY 2023*

Circuit	Number	Percent
01	601	4.9%
02	563	4.6%
03	86	0.7%
04	357	2.9%
05	246	2.0%
06	193	1.6%
07	115	0.9%
08	65	0.5%
09	422	3.4%
10	227	1.8%
11	179	1.4%
12	401	3.2%
13	172	1.4%
14	487	3.9%
15	1,160	9.4%
16	350	2.8%
17	50	0.4%
18	3	0.0%
19	110	0.9%
20	139	1.1%
21	511	4.1%
22	830	6.7%
23	264	2.1%
24	364	2.9%
25	792	6.4%
26	1,066	8.6%
27	740	6.0%
28	563	4.6%
29	642	5.2%
30	463	3.7%
31	210	1.7%
Total	12,371	100%

**4 cases were missing a circuit number*

SENTENCING REVOCATION REPORT (SRR)

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 probationer'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 by the DOC for every felony probationer, but special supervision conditions imposed or authorized by the court can also be recorded. Following the violation hearing, the judge completes the remainder of the form with the revocation decision and any sanction ordered in the case. The completed form is submitted to the Commission, where the information is automated. A revised SRR form was developed and implemented in 2004 to serve as a companion to the new Probation Violation Sentencing Guidelines introduced that year. The SRR was revised again for Fiscal Year (FY) 2022 to reflect new statutory requirements and revised Probation Violation Guidelines. Other fields were added to the SRR that identified other sentencing options that may be available to the court.

At time of publication, additional reports were being submitted and processed using the Sentencing Worksheets and Interactive File Transfer System (SWIFT). FY2023 was the first year SWIFT was the required way to submit Guidelines to the Sentencing Commission. Guidelines prepared outside SWIFT and mailed must be keyed by staff into the system. At this point, in FY2023, there were 12,371 alleged felony violations of probation, suspended sentences, or good behavior for which the SRR was submitted to the Commission. 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 FY2023 were Circuit 15 (Fredericksburg area), Circuit 26 (Winchester, Harrisonburg area), Circuit 22 (Pittsylvania, Danville, Franklin), Circuit 25 (Staunton area), and Circuit 27 (Montgomery County, Wytheville Area). Circuit 18 (Alexandria), Circuit 17 (Arlington), Circuit 8 (Hampton area), and Circuit 3 (Portsmouth) submitted the fewest SRRs during FY2023 (Figure 24).

Of the 12,371 SRRs received by the Commission in FY2023, 5,036 cases involved a new law violation . In these cases, the judge found the defendant guilty of violating Condition 1 of the Department of Corrections' Conditions of Probation (obey all federal, state, and local laws and ordinances). In 5,884 cases, the probationer was found in violation of other conditions not related to a new law violation (Figure 25). Often, these probationers are referred to as "technical violators." A technical violation is defined by § 19.2-306.1 of the *Code of Virginia*. Among the remaining cases, the person was not found in violation of any condition (152 cases), the decision to revoke was taken under advisement (57 cases), the defendant violated the good behavior requirement of a suspended sentence (64 cases), or the type of violation was not identified on the SRR form (458 cases). The other 720 cases were missing relevant information needed for analyzing and classifying the violation of probation.

Extreme caution must be used when comparing FY2023 data to previous years. Changes in statutes, Guidelines and in automation of court records may have influenced the number and type of violations recorded . The COVID-19 pandemic also had a significant impact on the probation system. Figure 25 compares new law violations and technical violations in FY2023 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.

This trend continued until FY2021, when new law violations exceeded technical violations. However, in FY2022, technical violations slightly exceeded new law violations and this trend continues in FY2023. It is too early to determine if changes in the number and types of violations are related to the new statutory provisions of § 19.2-306.1.

Figure 25
Sentencing Revocation Reports Received for Technical and New Law Violations FY1998 - FY2023*

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	5,510	3,672	9,182
FY2007	6,670	4,755	11,425
FY2008	6,269	5,182	11,451
FY2009	5,001	5,134	10,135
FY2010	4,670	5,228	9,898
FY2011	5,239	6,058	11,297
FY2012	5,147	5,760	10,907
FY2013	5,444	6,014	11,458
FY2014	5,772	5,930	11,702
FY2015	6,511	6,397	12,908
FY2016	6,660	6,000	12,660
FY2017	6,655	5,627	12,282
FY2018	7,790	6,426	14,216
FY2019	8,081	7,253	15,334
FY2020	6,877	6,545	13,422
FY2021	5,454	6,420	11,874
FY2022	5,885	5,720	11,605
FY2023	5,884	5,036	10,920

Note: Excludes cases with missing data that were incomplete or had other guidelines issues.
A technical violation is defined as anything other than a new conviction.
**Data from past fiscal years are continuously monitored and modified to better reflect the events for that time period.*

HISTORY OF PROBATION VIOLATION GUIDELINES (PVGs)

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 I 042 of the 2003 Acts of Assembly). Historically, these probationers 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. Most of the changes proposed in the 2006 Annual Report affected the Section A worksheet. The score on Section A of the Probation Violation Guidelines determined whether an offender would be recommended for probation with no active term of incarceration to serve, or whether the offender would 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 resulted in higher concurrence rates than previous versions of the Guidelines. Figure 26 illustrates concurrence patterns over the years and the limited impact revisions to the Guidelines had on concurrence rates. Concurrence hovered just slightly above 50% since FY2008, and this pattern continued through FY2021.

In 2016, the Commission approved a study that would provide the foundation needed to revise the Probation Violation Guidelines. The goal was to improve the utility of these Guidelines for Virginia's judges. As a critical first step in revising the Guidelines, the Commission utilized a survey to seek input from Circuit Court judges. The majority of responding judges felt that the Probation Violation Guidelines should be expanded to cover not only technical violations, but also violations arising out of new felony or new misdemeanor convictions. With that judicial feedback in mind, the Commission conducted a comprehensive analysis of sentencing outcomes in revocation cases handled in Virginia's Circuit Courts. Based on the results of this large-scale multi-year project, the Commission recommended revisions to the Probation Violation Guidelines, including an expansion to cover, for the first time, violations associated with new convictions (see the Commission's 2020 Annual Report).

Figure 26

Probation Violations Guidelines Concurrence by Year, FY2006 - FY2023

Fiscal Year	Concurrence	Mititgation	Aggravation	Total*
2006	47.6%	28.8%	23.5%	5099
2007	46.3%	30.7%	23.0%	6350
2008	52.8%	25.0%	22.2%	5969
2009	52.7%	25.2%	22.1%	4770
2010	52.3%	24.9%	22.8%	4465
2011	53.3%	23.5%	23.2%	5011
2012	49.3%	25.0%	25.7%	4784
2013	51.3%	22.6%	26.1%	5056
2014	51.9%	21.9%	26.2%	5288
2015	52.3%	23.6%	24.1%	6044
2016	54.7%	24.4%	20.9%	6217
2017	54.3%	25.0%	20.7%	6167
2018	55.6%	27.0%	17.4%	7209
2019	54.6%	30.4%	15.0%	7520
2020	52.3%	34.0%	13.7%	6482
2021	50.2%	39.0%	10.8%	5210
2022*	85.5%	10.0%	4.5%	11,605
2023*	88.4%	7.5%	4.0%	10,754

** Significiant changes to statutes and sentencing guidelines were made in FY2022. The inclusion of new law violations in the Probation Violation Guidelines significantly increased the number of cases.*
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.

In summary, the Commission recommended, and the 2021 General Assembly accepted, the Commission's recommendations to:

- Expand the Probation Violation Guidelines to cover violations stemming from new felony and misdemeanor convictions.

- Replace the current instrument with two instruments, one applicable to violators with new felony convictions and the other specific to violators with technical violations or new misdemeanor convictions.

- Adjust the low end of the Probation Violation Guidelines range to "time served" (i.e., zero) when the judge determines that the probationer has a good rehabilitation potential; and

- Revise the Sentencing Revocation Report (SRR) and the Probation Violation Guidelines (PVGs) to standardize the information provided to circuit court judges in revocation cases, particularly information related to new convictions.

Based on analysis of revocation data, the new Probation Violation Guidelines were designed to produce recommendations that provide judges with a more accurate benchmark of the typical, or average, case outcome given the nature of the violation(s), the original most serious offense, the probationer's prior revocations, and any new convictions.

Further modifications to the Probation Violation Guidelines were necessary in order to make them compatible with the requirements of § 19.2-306.1, adopted by the 2021 General Assembly. The historically-based Guidelines were modified so that they would not recommend more incarceration time than that permitted under the provisions of § 19.2-306.1. The new Probation Violation Guidelines that incorporated the statutory requirements took effect on July 1, 2021.

For the first time, the analysis for FY2022 included violations based on new law convictions and technical violations. In FY2023, it was found that 166 of the 10,920 violation cases 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.

Of the 10,754 cases examined in which offenders were found to be in violation of their probation, approximately 45% were under supervision for a felony drug offense (Figure 27). This figure represents the most serious offense for which the offender was on probation. Another 25% were under supervision for a felony property conviction. Offenders who were on probation for a crime against a person (most serious original offense) made up a slightly smaller portion (20%) of those found in violation during FY2023.

Examining both technical and new law violation cases reveals that over half (52%) of the probationers were cited for using, possessing, or distributing a controlled substance (Condition 8 of the DOC Conditions of Probation or § 19.2-306.1 (A,7)). Violations of this condition may include a positive test (urinalysis, etc.) for a controlled substance or a signed admission. Similarly, nearly half of the probationers were cited for failure to follow instructions of the probation officer (48%) and/or for new law convictions (45%) (Figure 28). The use of the condition for failure to follow instructions includes a variety of conduct that may not be considered technical conduct as defined by § 19.2-306.1.

Absconding (Condition 11 of the DOC Conditions of Probation or § 19.2-306.1 (A,10)) is cited by the probation officer after a probationer stops reporting and attempts to locate the probationer have failed. Policies of the Department of Corrections require that an officer check known locations such as the probationer's home, work, or friends, and to verify that the offender is not incarcerated. These efforts must be made before the probation officer may cite absconding in the Major

Figure 27

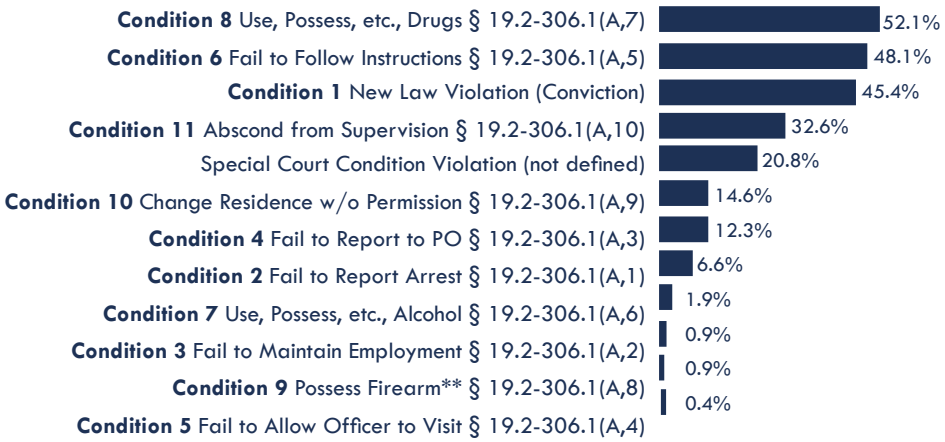
Probation Violation Guidelines Worksheets Received by Type of Most Serious Original Offense - FY2023 N=10,754*

Original Offense Type	Percent Received
Drug	45.2%
Property	25.4%
Person	19.6%
Traffic	4.3%
Other	5.5%

**Includes FY2023 cases found to be in violation that were completed accurately on current guideline forms.*

Figure 28

Violation Conditions Cited by Probation Officers, FY2023



*** Convicted felon in possession of firearms, in most cases, are cited under new law violations. The officer may also cite the same conduct under the firearm condition.*

Violation Report submitted to the court. An interpretation of § 19.2-306.1 includes an unintended advantage to absconding from supervision. As strictly interpreted, the first time that a probationer absconds, the statute limits the amount of active time to 14 days with the presumption that no time should be imposed. Absconding was cited in about one-third (32.6%) of the FY2023 probation violation cases.

Historically, special conditions were any conditions that were more specific than the traditional conditions of probation. Special conditions included instructions imposed by the court or additional requirements imposed by the probation officer that were authorized by the court. The Commission, for analysis purposes, always classified Sex Offender Special Instructions or Special Instructions of Confirmed Gang and Security Threat Group (STG) members as special conditions. However, § 19.2- 306.1, effective July 1, 2021, did not specifically identify how the court should respond to behavior that was in direct violation of a court order or in violation of a specific requirement authorized by the court. Recent Virginia Court of Appeals decisions have limited technical violations to conduct specifically identified in § 19.2-306.1. Conduct previously included as a failure to follow an officer's instructions may now be classified as special or not defined by § 19.2-306.1. Special conditions was cited in about 21% of the probation violation cases.

Interpretations of the statue have varied across jurisdications. The result is inconsistent policies across the Commonwealth.

Probationers who were supervised for sex offenses illustrate the potential impact of classifying or not classifying a violation as a special condition. In FY2023, out of 329 violators previously convicted of sex offenses or possession of child pornography, 230 were not identified on Sentencing Guidelines as in violation of special conditions or for new law convictions. In most of the cases, the violation was cited as a failure to follow the probation officer's instruction. In those cases, listed as technical violations only, the court was statutorily limited to no time for the first technical violation and no more than 14 days for a second. In FY2023, there were 52 cases for defendants on probation for a sex offense that were restricted by § 19.2-306.1. For the remaining cases, Guidelines would apply, but judges could sentence up to the total amount of revocable time. The full impact of individual policies cannot be accurately reflected here.

Probationers were also cited for changing their residence without permission in 15% of cases. This violation is different from absconding because the probation officer knew the whereabouts of the probationer. Other frequently cited violations included the failure to report to the probation officer (12%) and failure to report an arrest (7%). It is important to note that defendants may be, and typically are, cited for violating more than one condition of their probation.

OVERALL CONCURRENCE WITH THE PROBATION VIOLATIONS GUIDELINES

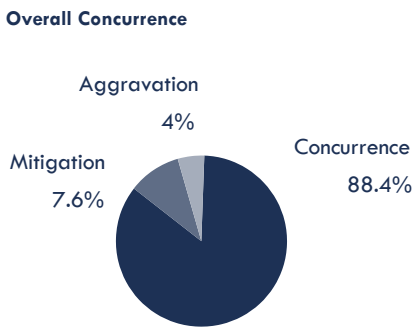
The overall concurrence rate summarizes the extent to which Virginia's judges concur with recommendations provided by the Probation Violation Guidelines, both in type of disposition and in length of incarceration. In FY2023, the overall rate of concurrence with the Probation Violation Guidelines was 88.4%. However, that percentage is misleading because of the influence of statutory limits and requirements on sentences for probation violations. Instead of referring to one measure, it is more realistic to discuss concurrence based on the type of probation violation. In other words, it is better to evaluate how well the Guidelines reflect judicial sentencing by focusing on the concurrence rates for third technical violations, second technical violation for possessing a firearm or absconding violations and new law violations (i.e., cases in which the statutory caps on sentences do not apply).

As expected, concurrence rates for first and second technical violations and first violation for possessing a firearm or absconding are high (99%). The Sentencing Guidelines were engineered to recommend sentences that reflect the statutory requirements. At the start, some judges believed that the provisions of § 19.2-306.1 did not apply to cases that were originally sentenced prior to July 1, 2021. Their sentences did not always reflect the statutory limits of no time or no more than 14 days and were above the Guidelines recommendation that reflected the statutory requirements and limits. The Virginia Court of Appeals decisions in Green v. Commonwealth, 75 Va. App. 69 (2022), and Smith v. Commonwealth, 22 Vap UNP 0841212 (2022), support the interpretation of these judges. In a different case, Heart v. Commonwealth, 75 Va. App. 453 (2022), the court issued an opinion that the prosecutor must present evidence on the type of prior violation. Ultimately, the type and number of prior violations determine what, if any, statutory limits apply. (Please see page 50 for a list of Court Appeals decisions related to § 19.2-306.1).

After the Green v. Commonwealth decision, the Commission implemented the Sentencing Guidelines as initially planned and accepted by the 2021 General Assembly. Based on all the court decisions, if the judge did not want to sentence under the § 19.2-306.1 provisions for violations based on offenses prior to July 1, 2021, the court could request that the worksheet now labeled Technical Violation/ Special Condition Violation, or the New Law Felony or Misdemeanor worksheets be completed. The Technical Violation/Special Condition Violation worksheet reflects a historically accurate sentence for all technical violations. The New Law Felony and New Law Misdemeanor Violation worksheets also returns a historically accurate recommendation if the probationer was found in violation of Condition 1, a new law conviction. The 2022 and 2023 court decisions created circumstances where

Figure 29

Overall Probation Violation Guidelines Concurrence FY2023*



** Significiant changes to statutes and sentencing guidelines were made in FY2022. The inclusion of new law violations in the Probation Violation Guidelines significantly increased the number of cases.*

similarly situated individuals would not receive the same Guidelines recommendation. Moreover, some probation violators had been sanctioned under the new statutory requirements while others were sanctioned under the old law. The decision about which statute applied may have resulted in different Guidelines recommendations and, ultimately in different sentences.

The median sentences in Figure 30 only includes cases when the court imposed time. The results include the multiple ways judges are applying the requirements of § 19.2-306.1. It should be noted that within each category, there were cases when the judge imposed no time. Overall, nearly a quarter of violators were not sentenced to any additional time.

Figure 30

Probation Violation Guidelines Concurrencewith Good Rehabilitation Potential, FY2023

Type of Revocation	Concurrence	Mitigation	Aggravation	Total Number of Cases	Effective Sentence Median (Months)*
Technical Violation - First	98.8%	0.0%	1.2%	1,504	0.46
Technical Violation - Second	96.8%	0.0%	3.2%	774	0.46
Technical Violation - Third	79.9%	16.4%	3.6%	608	11.00
Technical Violation Possess Firearm/Abscond - First	98.2%	0.0%	1.8%	991	0.46
Technical Violation Possess Firearm/Abscond - Second	83.3%	10.9%	5.8%	337	8.0
Special Condition Violations	82.4%	12.0%	5.6%	1,548	6.0
New Misdemeanor Conviction	86.9%	9.2%	3.9%	2,213	6.0
New Felony Conviction	83.9%	10.4%	5.7%	2,739	12.0
Overall	**88.4%**	**7.6%**	**4.0%**	**10,754**	**6.0**

** Median is the effective sentence when the court imposed time. In every category there are cases when the court imposed no time.*

In FY2023, excluding the Guidelines that reflect statutory requirements, concurrence rates range from 87% to a low of 80%. These concurrence rates are the highest rates achieved since Probation Violation Guidelines were implemented in 2004. When judges sentence outside the recommendation, their sentences are more likely to be below the low end of the recommended sentencing range. There is not an equal division between mitigating (7.6%) and aggravating (4.0%) departures. While the worksheets were developed based on analysis of historical data, they were subsequently modified to reflect the requirements of § 19.2-306.1. Furthermore, there is evidence to suggest the requirements of § 19.2-306.1 have impacted sentencing, court procedures, and behaviors.

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. In addition, once the interpretation of § 19.2-306.1 is resolved and agreed upon, Guidelines will once again return the same recommendation for similarly-situated individuals.

VIOLATIONS OF PROBATION THAT DO NOT RESULT IN GUIDELINES RECOMMENDATION

Occasionally, a probationer is returned to court for a behavior that occurred during an earlier supervision period. The behavior is most likely a new law violation. In these cases, the court previously decided to revoke, extend, or release the defendant from probation without knowing about or addressing the alleged violation. The policy of the Commission is that only the Sentencing Revocation Report is completed in such circumstances and the Probation Violation Guidelines are not completed. The preparer checks the "Procedural" box and no recommendation is calculated. There were 28 such cases identified in FY2023. Of those, nine cases did not result in an active period of incarceration. The median sentence imposed for those sentenced to incarceration was nine months.

PRETRIAL INCARCERATION PENDING A PROBATION VIOLATION HEARING FY2023

Unrelated to Probation Violation Guidelines is the amount of time a probationer is incarcerated pending a probation violation hearing. The revised Code limits the amount of time a probationer may serve for a first or second technical violation. However, the Code does not modify the mechanisms used to establish hearing dates. Currently, a capias or a PB-15 (issued by the probation officer) often requires the probationer to spend some time incarcerated, even for a technical violation, before a judge can decide on how to proceed with the alleged violation. If possible, judges are often issuing or replacing a capias or PB-15 warrant with a show cause.

Procedures and availability of a judge to hear a case vary across the Commonwealth. Figure 31 identifies that most probationers (53%) are serving some pretrial incarceration time prior to having their probation supervision revoked. One must note that pretrial confinement time may be associated with a different offense in a different jurisdiction or state and not the probation violation. The function of the Sentencing Revocation Report is to determine if the defendant was at liberty prior to their violation hearing. It was not designed and should not be used for calculation of jail credit. Also, Figure 31 does not take into consideration if the final sentence for the violation was time served, jail, prison, a return to probation or a release from probation supervision. When a probationer serves time prior to the judge's decision to revoke, the amount of pretrial time served is related to the type of revocation . First and second technical violators are serving less time than probationers who are before the court for third technical violations. As addressed earlier, special conditions include a variety of behavior that may lead to revocations. When the violations are for special conditions, the amount of pretrial incarceration, on average, is more than technical violations and less than new law violations. The longest period of pretrial incarceration is for probationers convicted of new offenses . If the new law violation is for a misdemeanor or lesser offense, the median pretrial time served is 58 days, and the median pretrial time is about 132 days for a new felony conviction (Figure 31).

Figure 31

Pretrial Incarceration Pending a Probation Violation Hearing, FY2023

Type of Revocation	Confined Prior to Sentencing Identified	Not Confined Prior to Sentencing	Median Pretrial Confinement (Days)	Total Number of Cases	Number Probationers Confined*
Technical Violation - First	46.9%	53.1%	20.0	1,633	766
Technical Violation - Second	53.0%	47.0%	23.0	895	469
Technical Violation Possess Firearm/Abscond - First	56.4%	43.6%	29.0	1,173	662
Technical Violation Possess Firearm/Abscond - Second	58.8%	41.2%	44.0	405	238
Technical Violation - Third	55.5%	44.5%	41.0	741	411
Special Condition Violations	54.9%	45.1%	36.0	1,740	995
New Misdemeanor Conviction	56.1%	43.9%	58.0	2,422	1,359
New Felony Conviction	55.5%	44.5%	132.0	2,996	1,663
Overall	**53.3%**	**46.7%**	**43.0**	**12,746**	**8,798**

** This chart includes all Sentencing Revocation Reports received. Of the reports received, 751 cases were missing information need for the calculation of pretrial confinement*

COURT OF APPEALS CASES AS OF NOVEMBER 1, 2023, RELATED TO § 19.2-306.1

Below is a QR code that is connected to the Court of Appeals decisions. The decisions have begun to standardize what conduct is defined by § 19.2-306.1 as technical and limits the amount of time a judge can impose for a first or second violation. Generally, it appears from the decisions that the conduct presented to the court from the officer's Major Violation Report determines if the violation is a technical violation. The condition cited by the probation officer or the condition cited in a court order does not appear to be a determining factor. The Commission will continue to update the list of opinions on the VCSC mobile website.

Canales v. Commonwealth, 78 Va. App. 353, 891 S.E.2d 405 (2023)

Diaz-Urrutia v. Commonwealth, 77 Va. App. 182, 884 S.E.2d 839 (2023)

Nottingham v. Commonwealth, 77 Va. App. 60, 884 S.E.2d 254 (2023)

Delaune v. Commonwealth, 76 Va. App. 372, 882 S.E.2d 27 (2023)

Henthorne v. Commonwealth, 76 Va. App. 60, 879 S.E.2d 913 (2022)

Heart v. Commonwealth, 75 Va. App. 453, 877 S.E.2d 522 (2022)

Smith v. Commonwealth, 22 Vap UNP 0841212 (2022)

Green v. Commonwealth, 75 Va. App. 69, 873 S.E.2d 96 (2022)

VIRGINIA'S PRETRIAL DATA PROJECT 3

INTRODUCTION

Virginia's Pretrial Data Project was established in 2018 under the direction of the Virginia State Crime Commission as part of the Crime Commission's broader study of the pretrial system in the Commonwealth[1]. The purpose of the Project was to address the significant lack of data available to answer key questions regarding the pretrial process in Virginia. The Project was an unprecedented, collaborative effort among numerous state and local agencies representing all three branches of government. The Crime Commission's study focused on a cohort of individuals charged with a criminal offense during a one-month period (October 2017). The work was well-received by lawmakers, and the 2021 General Assembly (Special Session I) passed legislation (House Bill 2110 and Senate Bill 1391) directing the Virginia Criminal Sentencing Commission to continue this work on an annual basis. Virginia's work in the area of pretrial data collection has begun to receive national attention.

The legislation, now codified in § 19.2-134.1, requires the Sentencing Commission to submit a report on the Pretrial Data Project each December 1. The Sentencing Commission also must create and maintain an interactive data dashboard tool on its website that will display aggregated data based on characteristics or factors selected by the user. Lastly, the Project datasets (with all personal/case identifiers removed) must be made available on the Commission's website.

The Sentencing Commission's first report on Virginia's pretrial data collection project was submitted to the General Assembly in 2022[2]. The study focused on individuals with pretrial contact events during Calendar Year (CY) 2018. That period of time was selected in order to establish a pre-COVID baseline of pretrial data. Establishing a baseline allows researchers to better assess the impact of subsequent events (such as the COVID-19 pandemic) or changes in laws or policies (such as the elimination of the presumptive denial of bail from the Code of Virginia). For the current study, individuals with pretrial contact events during CY2019 and CY2020

[1] See Virginia State Crime Commission. (2021). Virginia Pretrial Data Project: Final Report.

[2] See Virginia Criminal Sentencing Commission. (2022). Virginia Pretrial Data Project: Findings from the 2018 Cohort.

were selected. A contact event is the point at which an individual comes into contact with the criminal justice system and he or she is charged with a criminal offense, thus beginning the pretrial process. As with the previous study, for individuals with more than one contact event during the calendar year, only the first event was selected. While adhering to the established data collection methods, the Sentencing Commission introduced another selection criteria for the CY2019 and CY2020 cohorts. With multiple years of pretrial data now available, the Sentencing Commission was able to identify contact events in CY2019 and CY2020 that were associated with a contact event that occurred during the previous calendar year. For example, this may occur if an individual had a contact event in one year that resulted in his release during the pretrial period and, while on pretrial release, the individual was arrested for a new criminal offense during the following calendar year. The new criminal arrest during the pretrial release period is considered an outcome of the original event. For the newest study, the first contact events in a calendar year were excluded if they were identified as pretrial outcomes for an event that occurred during the previous calendar year. The Sentencing Commission found that the excluded events accounted for only 6% of all defendants initially selected for analysis; moreover, the underlying demographic characteristics of the excluded defendants were not different from the overall cohort. While the CY2018 cohort data does not have the benefit of data from previous years, the general insights about year-to-year changes in pretrial measures and outcomes are not significantly affected by the exclusion of the cases described. As with the previous study, individuals in the cohorts were tracked for a minimum of 15 months (until the disposition of the case or the end of the follow-up period, whichever occurred first).

Data for the Project was obtained from numerous criminal justice agencies in Virginia. Compiling the data into a unified dataset requires numerous iterations of matching, merging and data cleaning to ensure accuracy when linking information from the respective data systems to each defendant in the cohort. More than 500 data elements were captured for each defendant, including demographics, charging details, criminal history records, pretrial release status, bond type and amount, court appearance by the defendant, new criminal arrest during the pretrial period, and final dispositions.

The Sentencing Commission's analysis focuses on adult defendants whose contact event included a charge for a new criminal offense punishable by incarceration where a bail determination was made by a judicial officer (i.e., a magistrate or judge). Other defendants, such as those released on a summons, were not analyzed for this report. This report presents various descriptive findings for the selected defendants, their key characteristics, how they proceeded through the pretrial system, and outcomes. This report also compares a number of measures across the three years of data now available.

When examining pretrial outcomes, it is important to consider what factors or combination of factors may be associated with success or failure while on pretrial release. Empirically-based risk assessment tools are commonly used to estimate the likelihood of success or failure in the community during the pretrial period in a uniform manner. For the purposes of the Project, the Public Safety Assessment (PSA), a pretrial risk assessment tool developed by Arnold Ventures, was utilized. While the PSA has been validated elsewhere, this year the Sentencing Commission examined the predictive validity of the PSA in regards to Virginia's pretrial population.

Virginia's Pretrial Data Project serves as a valuable resource for policy makers, practitioners, and academics. Findings from the Commission's ongoing analyses may be used to inform policy and practice and provide a platform for discussion of pretrial matters in the Commonwealth today and in the years to come.

KEY FINDINGS

Presented below are key descriptive findings from the Commission's analysis of CY2018-CY2020 pretrial data. The findings are generally consistent from year to year; however, interesting trends have emerged. These are noted below.

- The demographic characteristics of defendants are similar across all three calendar years. Defendants are mostly male, white, between the ages of 18 and 35, and indigent.

- Approximately 46% to 48% of defendants were charged with a felony offense, while 51% to 54% were charged with a misdemeanor or special class offense as the most serious offense in the contact event. Throughout CY2018-CY2020, the most common felony charge was a drug offense. In CY2020, assault became the most common misdemeanor charge.

- Throughout CY2018-CY2020, the vast majority of defendants were ultimately released from custody during the pretrial period. Approximately one in ten defendants were detained throughout the pretrial period. During the three-year period, release rates increased slightly, from 86.8% in CY2018 to 87.7% in CY2019 and 89.5% in CY2020. Release rates generally increased across all demographic groups in CY2020.

- Over half of the defendants each year were released on a personal recognizance or unsecured bond. The percentage of defendants released on personal or unsecured bond increased from 51.5% in CY2018 to 57.5% in CY2020.

- Across all three years, females were more likely to be released pretrial than males (93.6%-94.8% versus 84.3%-87.5%) and Whites were more likely to be released than Blacks (88.0%-90.4% versus 85.2%-88.1%). Non-indigent defendants were more likely to be released than defendants categorized as indigent (94.2%-94.6% versus 81.4%-85.7%).

- For charges involving a felony or violent offense, females remained more likely than males to be released. Similarly, when charged with a felony or violent offense, Whites were released more often than Blacks. Non-indigent defendants charged with a felony or violent offense were much more likely to be released than indigent defendants charged with the same type of offense.

- Secured bond amounts at the time of release generally did not vary widely across sex, race, age, or indigency status, or year of release.

- Of released defendants, between 15.6% and 16.1% each year were ordered to receive supervision by a Pretrial Services Agency. A larger percentage of defendants placed under pretrial supervision requirements received a secured bond than those released who were not placed under pretrial supervision.

- Across each year examined, a large majority of released defendants were not charged with failure to appear at court proceedings for the offense(s) in the contact event. Similarly, the majority of released defendants were not arrested during the pretrial period for an in-state offense punishable by incarceration. However, the failure-to-appear rate increased from 12.4% in CY2018 to 16.2% in CY2020, while the new-arrest rate increased from 22.4% in CY2018 to 23.5% in CY2020.

- In CY2018, approximately 60% of defendants were convicted of at least one offense in the contact event (original or reduced charge). The conviction rate dropped to 52.2% in CY2020.

- The percentage of released defendants charged with failure to appear or who were arrested for a new in-state offense punishable by incarceration increased as the defendants' Public Safety Assessment (PSA) scores increased, suggesting that the PSA may be a useful tool in pretrial release decision making.

- PSA scores for both failure-to-appear (FTA) and new criminal arrest (NCA) were quite similar across the CY2018-CY2020 cohort groups. For both FTA and NCA measures, the largest share of defendants were classified as low risk (score of 1 or 2).

- Each year, defendants with higher PSA scores were less likely to be released than those with lower scores. However, a larger percentage of defendants with higher PSA scores (5 or 6) were released during CY2020 than in previous years.

- In CY2020, the percentages of released defendants charged with failure to appear or who were arrested for a new in-state offense punishable by incarceration were higher than in previous years, and failure rates increased the most for defendants with higher PSA scores.

- Descriptive analysis alone cannot validate the predictive power of the PSA instrument as a tool for pretrial release decision making. For this reason, more sophisticated analyses were conducted to examine the predictive validity of the PSA for Virginia's pretrial population. Based on CY2018-CY2020 data, the statistical model with only the PSA score (and no other explanatory variables) yielded a medium level of overall statistical power, with the standard measure of overall predictive power around 0.60.

- The Commission experimented with expanded statistical models including legal and contextual factors that are not captured by the PSA instrument. Throughout various models tested, the estimation of the PSA score variable remained highly significant. In general, however, the expanded models achieved higher predictive power, with the standard measure ranging from 0.71 to 0.74. The findings suggest that the PSA scores are highly correlated with pretrial failures but the PSA instrument does not account for all factors that have influential effects on pretrial outcomes in Virginia.

The full report, entitled Virginia Pretrial Data Project: Findings from the 2019 and 2020 Cohorts, can be found on the Commission's website at http://www.vcsc.virginia.gov/pretrialdataproject.html .

SPECIAL TOPICS 4

POTENTIAL IMPACTS ON §§ 53.1-202.3 AND 17.1-805

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, confined offender populations and any necessary adjustments to Sentencing Guidelines 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.

Additonally, as detailed in the *Code of Virginia* § 17.1-803, the General Assembly entrusted the Commission with eleven powers and duties. Besides the duties specific to development and maintenance of Sentencing Guidelines, the *Code* requires the Commission to:

- Monitor sentencing practices in felony cases throughout the Commonwealth, including the use of the discretionary Sentencing Guidelines, and maintain a database containing the information obtained.

- Monitor felony sentence lengths, crime trends, correctional facility population trends, and correctional resources and make recommendations regarding projected correctional facilities capacity requirements and related correctional resource needs.

- Study felony statutes in the context of judge-sentencing and jury-sentencing patterns as they evolve after January 1, 1995, and make recommendations for the revision of general criminal offense statutes to provide more specific offense definitions and more narrowly prescribed ranges of punishment.

- Report upon its work and recommendations annually on or before December 1 to the General Assembly, the Governor, and the Chief Justice of the Supreme Court of Virginia.

Beginning in the 2024 General Assembly Session, the fiscal impact statements prepared by the Commission staff will include a phrase that the legislature may need to consider the impact of § 53.1-202.3 (Earned Sentence Credits) and § 17.1-805 (definition of violent offenses) on newly-established felonies. The Commission has no position or recommendation on this matter but is obligated to advise policymakers of the impact of proposed statutes on existing statutes.

Prior to the 2024 General Assembly, the Commission had no consistent way of advising the legislature on this matter. To address this issue, below are a list of offenses that were added to the *Code* before the fiscal impact statements included a phrase related to §§ 53.1-202.3 and 17.1-805. Only offenses added since the last modifications of these sections are listed. No action is necessarily needed. The information is provided as a resource for policy makers, and no recommendation is implied.

Figure 32
§ 53.1-202.3 Earned Sentence Credit

Statute	Date Added	Description of Offense
18.2-46.6	7/1/2023	Fentanyl, weapon of terrorism
18.2-59.1	7/1/2023	Sexual extortion
18.2-59.1	7/1/2023	Sexual extortion of minor
18.2-103.1	7/1/2023	Conspire retail theft aggregate value >$5000 over 90 days
18.2-146	7/1/2022	Catalytic converter, damage, etc., vehicle, aircraft or boat
18.2-146.1	7/1/2023	Catalytic converter, unlawful purchase or sale
18.2-340.30	7/1/2022	Gambling Charitable gaming, false information on report
18.2-356.1(A)	7/1/2023	Offer money, etc., to obtain custody or control of minor
18.2-356.1(B)	7/1/2023	Receive money for custody or control on minor, offer to sell, etc.
18.2-361.01	7/1/2022	Sexual abuse of animal
18.2-461.1(C)	7/1/2023	False emergency communication, results in serious injury
18.2-461.1(D)	7/1/2023	False emergency communication, results in a death
18.2-473.2(C)	7/1/2022	Security camera covered in jail or prison, made inoperable, etc., prevent view of felony
19.2-188.4	7/1/2022	Two-way Video Testimony, Engage in off-camera communications, perjury
37.2-912(C)	7/1/2023	Tamper with GPS by conditionally released sex offender
46.2-345.3	1/1/2022	False statement, etc., on privilege card application to commit felony
51.1-303	7/1/2023	Perjury, creditable service by judge
51.1-304	7/1/2023	Perjury, contributions to judicial retirement
56-265.24:1	7/1/2023	Excavates after notified of threat to safety or property

Figure 33
§ 17.1-805 Definition of Violent Offenses

Statute	Date Added	Description of Offense
3.2-6570(F)	7/1/2019	Torture/mutilate dog or cat causing death or serious injury
4.1-1100(C)	7/1/2021	PossessionPossess more than 1 pound of marijuana
4.1-1101	7/1/2021	Possess more than 100 marijuana plants
4.1-1101	7/1/2021	Possess between 50 to 100 marijuana plants
18.2-46.2(ii)	7/1/2023	Participation in criminal act, predicate is act of violence
18.2-46.6	7/1/2023	Fentanyl Fentanyl, weapon of terrorism
18.2-47(C)	7/1/2023	Abduction of minor
18.2-51.7(A)	7/1/2018	Circumcision, etc., of minor's labia majora, etc.
18.2-51.7(B)	7/1/2018	Parent, etc., consents to minor's labia majora circumcision, etc.
18.2-51.7(C)	7/1/2018	Parent, etc., takes minor from state, labia majora circumcision, etc.
18.2-59.1	7/1/2023	Sexual extortion of minor
18.2-59.1	7/1/2023	Sexual extortion
18.2-60(A,3)	7/1/2021	Threat by letter, etc., intent to intimidate a population, etc.
18.2-64.2	7/1/2020	Carnal knowledge by employee of bail bond company
18.2-146	7/1/2022	Catalytic converter, damage, etc., vehicle, aircraft or boat for
18.2-146.1	7/1/2023	Catalytic converter, unlawful purchase or sale
18.2-308.5:1	7/1/2020	WEAPONS Possess, sell, etc., trigger activator
18.2-356.1(A)	7/1/2023	Offer money, etc., to obtain custody or control of minor
18.2-356.1(B)	7/1/2023	Receive money for custody or control on minor, offer to sell, etc.
18.2-361.01	7/1/2022	Sexual abuse of animal
18.2-461	3/1/2021	False report to police because of race, religion, orientation, etc.
18.2-461.1(C)	7/1/2023	False emergency communication, results in serious injury
18.2-461.1(D)	7/1/2023	False emergency communication, results in a death
18.2-474.2	7/1/2021	Becuniary benefit, providing weapon, drug, etc., to prisoner
19.2-188.4	7/1/2022	Two-way Video Testimony, Engage in off-camera communications
19.2-392.14	7/1/2021	Disclosure of sealed criminal records maliciously
37.2-912(C)	7/1/2023	Tamper with GPS by conditionally released sex offender
46.2-345.2	7/1/2019	Obtain identification card to commit felony offense
46.2-345.3	1/1/2022	False statement, etc., on privilege card application to commit felony
51.1-303	7/1/2023	Perjury, creditable service by judge
51.1-304	7/1/2023	Perjury, contributions to judicial retirement
54.1-522	7/1/2020	Registration application for athlete agent, perjury
56-265.24:1	7/1/2023	Excavates after notified of threat to safety or property
58.1-4114	7/1/2020	Supplier's permit, false statement on application
58.1-4126	7/1/2020	Illegal operation of casino
58.1-4127	7/1/2020	Credential, license, etc., fraudulent use of
58.1-4137	7/1/2020	Mobile casino gaming, without approval
58.1-4138	7/1/2020	Mobile casino gaming, tamper with equipment, etc.
58.1-4139	7/1/2020	Mobile casino gaming, tamper with odds, rules, etc.

MISSING GUIDELINES AND REQUIRED INFORMATION

The Sentencing Commission has several legislative mandates that it must fulfill. Among these, the Commission must develop, maintain, and modify a system of discretionary Sentencing Guidelines that take into account historical data for use in all felony cases. To fulfill these legislative mandates, the Commission requires criminal case information of the highest quality. Historically, much of the detailed criminal case information came from Presentence Investigation Reports. However, these reports are now prepared in only 40%-45% of felony sentencing events in Virginia. Thus, there is currently no universal source of information for felony cases in the Commonwealth.

The Commission staff attempts to obtain as much information as possible from the Sentencing Guidelines cover sheets and worksheets. To increase the number of Guidelines received and to reduce the cost of mailing copies as required by § 19.2-298.01(E), the Commission collaborated with the Supreme Court's Department of Judicial Information Technology (DJIT) to design a web-based application for automating the Sentencing Guidelines, called SWIFT! (Sentencing Worksheets and Integrated File Transfer). In FY2023, SWIFT became the only official way to transfer Guidelines to the Commission. However, a significant number of clerks and judges across the state have decided not to use the full capabilities of SWIFT. Many continue to scan Guidelines into their files and only use SWIFT to electronically transfer the scanned images of Guidelines to the Commission. Others continue to email or physically mail copies of the Guidelines. As a result, Guidelines are submitted to the Commission well after the time defined in § 19.2-298.01. The number of Guidelines received in FY2023 is significantly lower than in previous years. The Commission cannot determine if this overall reduction is due to policies related to prosecution, reduction in arrests, or due to issues related to the use of SWIFT.

The table on the next page (Figure 34) identifies the number of Guidelines received by jurisdictions for Fiscal Years 2020-2023. The last column identifies the increase or decrease in Guidelines received between FY2022 and FY2023. Historically, staff processes data from the past fiscal year well past the time the Annual Report is published. Staff will continue to compare court data with the Guidelines received to resolve any distribution issues.

Figure 34
Sentencing Guidelines Received (11/01/2023)

Locality	FY2020	FY2021	FY2022	FY2023	Difference Between FY2022 and FY2023
ACCOMACK	52	83	44	45	1
ALBEMARLE	173	112	74	54	-20
ALLEGHANY	205	206	165	167	2
AMELIA	47	40	53	37	-16
AMHERST	156	143	93	138	45
APPOMATTOX	68	58	53	46	-7
ARLINGTON	151	163	112	65	-47
AUGUSTA	366	417	447	363	-84
BATH	29	27	17	6	-11
BEDFORD	149	189	170	151	-19
BLAND	18	18	19	21	2
BOTETOURT	149	198	172	117	-55
BRUNSWICK	49	40	51	56	5
BUCHANAN	151	141	191	84	-107
BUCKINGHAM	78	66	59	76	17
CAMPBELL	221	191	219	182	-37
CAROLINE	72	84	58	59	1
CARROLL	261	292	210	254	44
CHARLES CITY	5	11	7	2	-5
CHARLOTTE	46	61	47	37	-10
CHESTERFIELD	772	770	693	524	-169
CLARKE	35	13	15	21	6
CRAIG	15	19	14	13	-1
CULPEPER	192	201	212	196	-16
CUMBERLAND	30	29	21	18	-3
DICKENSON	88	78	88	65	-23
DINWIDDIE	53	56	46	59	13
ESSEX	28	33	18	26	8
FAIRFAX COUNTY	540	311	332	476	144
FAUQUIER	95	88	88	83	-5
FLOYD	47	40	50	18	32
FLUVANNA	40	49	48	36	-12
FRANKLIN COUNTY	196	228	263	166	-97
FREDERICK	232	331	344	362	18
GILES	115	109	88	77	-11
GLOUCESTER	133	164	146	205	59
GOOCHLAND	25	35	39	29	-10
GRAYSON	111	128	171	184	13
GREENE	68	61	60	53	-7
GREENSVILLE	107	101	101	81	-20
HALIFAX	196	230	163	103	-60
HANOVER	457	400	284	255	-29
HENRICO	1133	839	932	989	57
HENRY	213	194	282	247	-35
HIGHLAND	4	4	5	8	3
ISLE OF WIGHT	67	79	74	48	-26

Locality	FY2020	FY2012	FY2022	FY2023	Difference Between FY2022 and FY2023
KING & QUEEN	29	40	20	14	-6
KING GEORGE	53	42	24	37	13
KING WILLIAM	18	31	31	28	-3
LANCASTER	14	18	30	22	-8
LEE	168	120	149	136	-13
LOUDOUN	288	145	130	97	-33
LOUISA	105	105	76	80	4
LUNENBURG	61	37	6	36	30
MADISON	34	18	19	14	-5
MATHEWS	13	20	6	15	9
MECKLENBURG	175	195	145	83	-62
MIDDLESEX	35	30	29	34	5
MONTGOMERY	325	369	322	314	-8
NELSON	135	102	82	73	-9
NEW KENT	49	39	49	62	13
NORTHAMPTON	35	39	32	29	-3
NORTHUMBERLAND	26	26	35	22	-13
NOTTOWAY	66	68	63	45	-18
ORANGE	87	48	47	40	-7
PAGE	143	139	163	146	-17
PATRICK	89	121	93	67	-26
PITTSYLVANIA	117	71	129	154	25
POWHATAN	48	36	49	27	-22
PRINCE EDWARD	87	84	82	98	16
PRINCE GEORGE	97	145	153	133	-20
PRINCE WILLIAM	459	300	281	271	-10
PULASKI	261	276	229	224	-5
RAPPAHANNOCK	10	9	5	24	19
RICHMOND COUNTY	30	24	22	22	0
ROANOKE COUNTY	395	353	253	232	-21
ROCKBRIDGE	283	200	180	148	-32
ROCKINGHAM	489	520	534	587	53
RUSSELL	156	134	175	118	-57
SCOTT	202	223	261	202	-59
SHENANDOAH	122	112	127	100	-27
SMYTH	251	265	168	121	-47
SOUTHAMPTON	82	88	78	86	8
SPOTSYLVANIA	408	533	456	411	-45
STAFFORD	467	510	486	358	-128
SURRY	13	8	0	4	4
SUSSEX	25	37	25	28	3
TAZEWELL	392	435	366	309	-57
WARREN	125	143	214	237	23
WASHINGTON	327	413	349	267	-82
WESTMORELAND	62	42	45	37	-8
WISE	246	186	207	168	-39
WYTHE	201	205	147	142	-5
YORK	150	124	115	100	-15

Cities	FY2020	FY2021	FY2022	FY2023	Difference Between FY2022 and FY2023
ALEXANDRIA	94	50	47	50	3
BRISTOL	205	278	224	191	-33
BUENA VISTA	49	59	58	51	-7
CHARLOTTESVILLE	95	83	49	22	-27
CHESAPEAKE	710	755	885	666	-219
COLONIAL HEIGHTS	139	123	75	55	-20
DANVILLE	338	213	223	274	51
FREDERICKSBURG	242	230	230	188	-42
HAMPTON	301	248	206	163	-43
HOPEWELL	158	115	122	115	-7
LYNCHBURG	352	375	377	227	-150
MARTINSVILLE	43	74	107	103	-4
NEWPORT NEWS	409	343	313	304	-9
NORFOLK	657	536	496	378	-118
PETERSBURG	37	54	45	52	7
PORTSMOUTH	167	139	106	64	-42
RADFORD	71	72	73	77	4
RICHMOND CITY	551	475	471	524	53
ROANOKE CITY	465	406	296	382	86
SALEM	186	129	104	71	-33
STAUNTON	214	216	228	212	-16
SUFFOLK	225	250	244	183	-61
VIRGINIA BEACH	1052	1090	1186	1130	-56
WAYNESBORO	177	137	124	137	13
WILLIAMSBURG	161	177	150	163	13
WINCHESTER	189	148	168	199	31

Another source of information for the Commission is the Case Details Worksheet. Since Presentence Investigation Reports are not ordered in every case, the Case Details Worksheet was developed to be submitted with the Sentencing Guidelines for anyone sentenced on or after July 1, 2021. This worksheet provides judges with standardized information regarding details of the offense(s) prior to sentencing and aids preparers in scoring Guidelines factors. The information captured on the Case Details Worksheet is not consistently available in other criminal justice data systems in Virginia. There is currently no universal source of detailed case information on felony cases other than the Commission's Case Details Worksheet. However, basic information that is needed to complete the Guidelines is often not recorded on the Case Details Worksheet. Without this additional information, the Commission cannot move forward with a full reanalysis of Guidelines as approved by the Commission in June 2021.

Figure 35
Case Details Worksheet - Missing Information

Number	Factor	Percentage of Missing Information
2	Defendant Information Gender	33.0%
2	Defendant Information Race	43.9%
2	Defendant Information age	46.3%
10	Legal Status at Time of Offense	47.0%
11	Weapon Used*	31.0%
12	Weapon Type*	32.4%
13	Offender's Role	53.6%
14	Value of Property Taken/Damaged**	83.2%
15	Location	59.4%
16	Injury to Victim *	29.6%
17	Victim Relationship to Offender *	67.2%
18	Victim Information Gender *	40.4%
18	Victim Information Race	57.6%
18	Victim Information age	63.8%
19	Type of Drug	48.4%
20	Number of Felony Juvenile Adjudications	92.7%

* Analysis Limited Assault, Murder, Rape, Robbery, & Sexual Assaults

Unlike in many other states, Virginia's Criminal Sentencing Commission is not a policy-making body. 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. Without complete access to data, the Commission cannot fulfill its statutory requirement and develop Guidelines that accurately reflect current sentencing practices.

There are several options for the Commission to consider on how to resolve issues related to access to criminal justice information. One is to modify the *Code of Virginia* to ensure that the Commission, by statute, has complete access to criminal justice data maintained by the courts and other agencies (please see the Recommendation Section of this Annual Report). A second option is to modify SWIFT to require certain fields are completed before the Guidelines can be finalized and submitted to the court. A possible consequence of tightening up the requirements in SWIFT is that the preparer may refuse to finalize the Guidelines and will instead submit handwritten worksheets. The Commission will continue to try and resolve access to data and missing data issues so it may meet its duties as defined in § 17.1-803.

RECOMMENDATIONS 5

INTRODUCTION

The Commission closely monitors the Sentencing Guidelines system and, each year, deliberates upon possible modifications to enhance the usefulness of the Guidelines as a tool for judges in making their sentencing decisions. Under § 17.1-806 of the *Code of Virginia*, any modifications adopted by the Commission must be presented in its annual report, due to the General Assembly each December 1. Unless otherwise provided by law, Guidelines 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 concurrence 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 also 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 six recommendations this year. Each of these is described in detail on the pages that follow.

RECOMMENDATION ONE

Amend Miscellaneous/Other Sentencing Guidelines to add Delivery of Drugs to Prisoner (§ 18.2-474.1) as a Guidelines offense.

ISSUE

Currently, Virginia's Sentencing Guidelines do not cover the offense of Delivery of Drugs to Prisoner as defined in § 18.2-474.1*. This offense is a Class 5 felony, punishable by imprisonment of 1 - 10 years. The offense was added to the Code of Virginia by the 1975 General Assembly and last modified in 2014. 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 FY2017 through FY2022, the Commission has developed a proposal to add this offense to the sentencing guidelines.

DISCUSSION

Figure 36 presents the distribution of actual sentencing dispositions for 401 sentencing events from the FY2017 - FY2022 CMS data where the primary offense was Delivery of Drugs to Prisoner (§ 18.2-474.1).

Staff obtained the criminal histories of the defendants in the original analysis and used this data to edit and create factors on the Miscellaneous/Other worksheet.

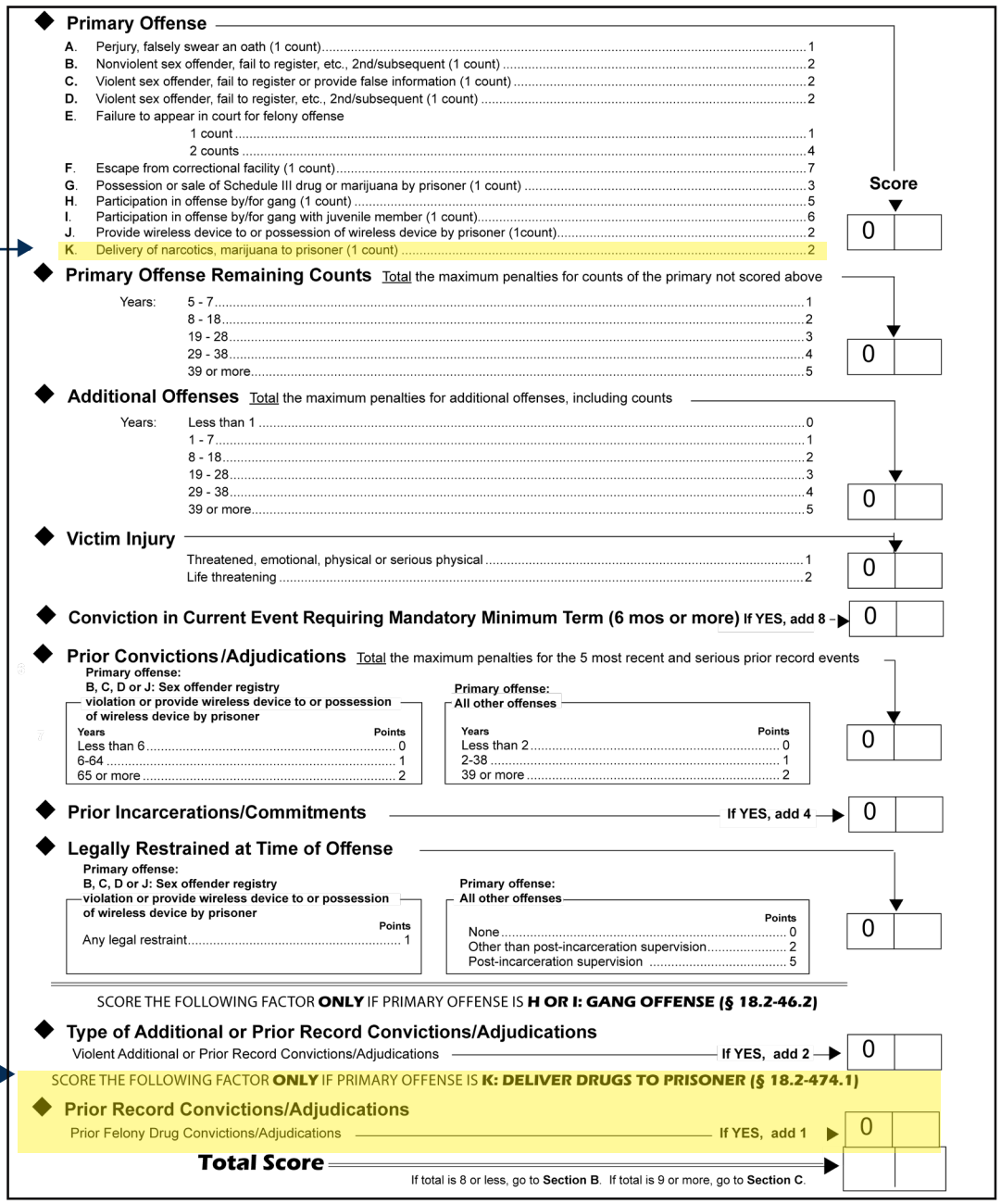
Figure 36
Delivery of Drugs to Prisoner (§ 18.2-474.1)
FY2017-FY2022
N=401

Disposition	Percent	Median Sentences
No Incarceration	28.2%	n/a
Incarceration up to 6 months	43.4%	6 Months
Incarceration More than 6 months	28.4%	13 Months

The proposed changes are as follows. On the Section A worksheet (Figure 37), defendants convicted of delivery of drugs to a prisoner would receive a score of 2 points for one count of the primary offense. The addition of a new Prior Felony Drug Convictions/Adjudications factor would add an additional 1 point if they have one or more prior felony drug convictions. Defendants who have a total Section A score of 8 or less will be recommended for no incarceration or incarceration up to 6 months, and defendants who score 9 or higher will be recommended for incarceration more than 6 months.

Figure 37

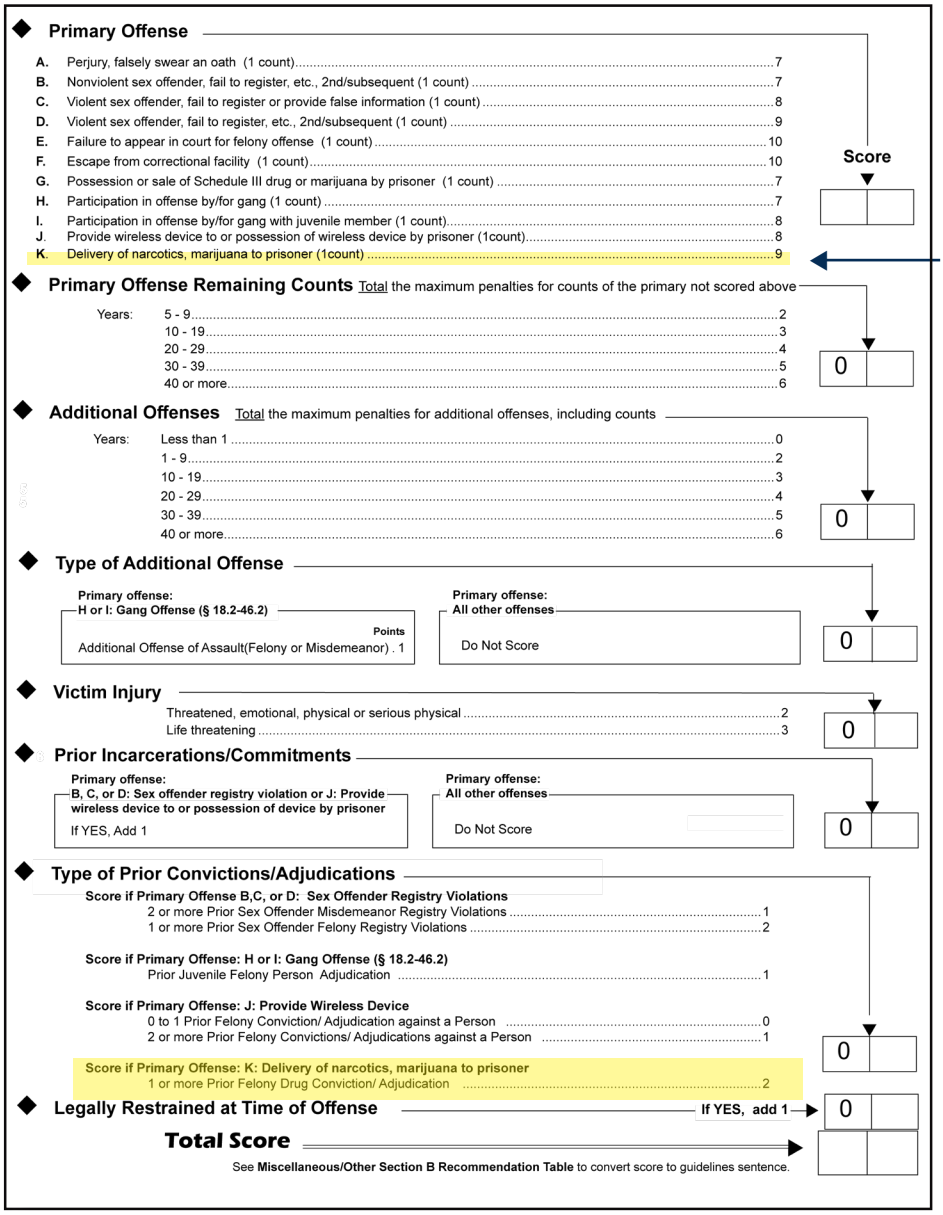
Proposed Miscellaneous/Other Section A Worksheet



On the Section B worksheet (Figure 38), defendants convicted of delivery of drugs to a prisoner would receive a score of 9 points for one count of the primary offense. The addition of a new Prior Felony Drug Convictions/Adjudications factor on this worksheet would add an additional 2 points on Section B if they have one or more prior felony drug convictions. Defendants who have a total Section B score of 9 or less will be recommended for no incarceration, and defendants who score 10 or more will be recommended for incarceration for 1 day to 6 months.

Figure 38

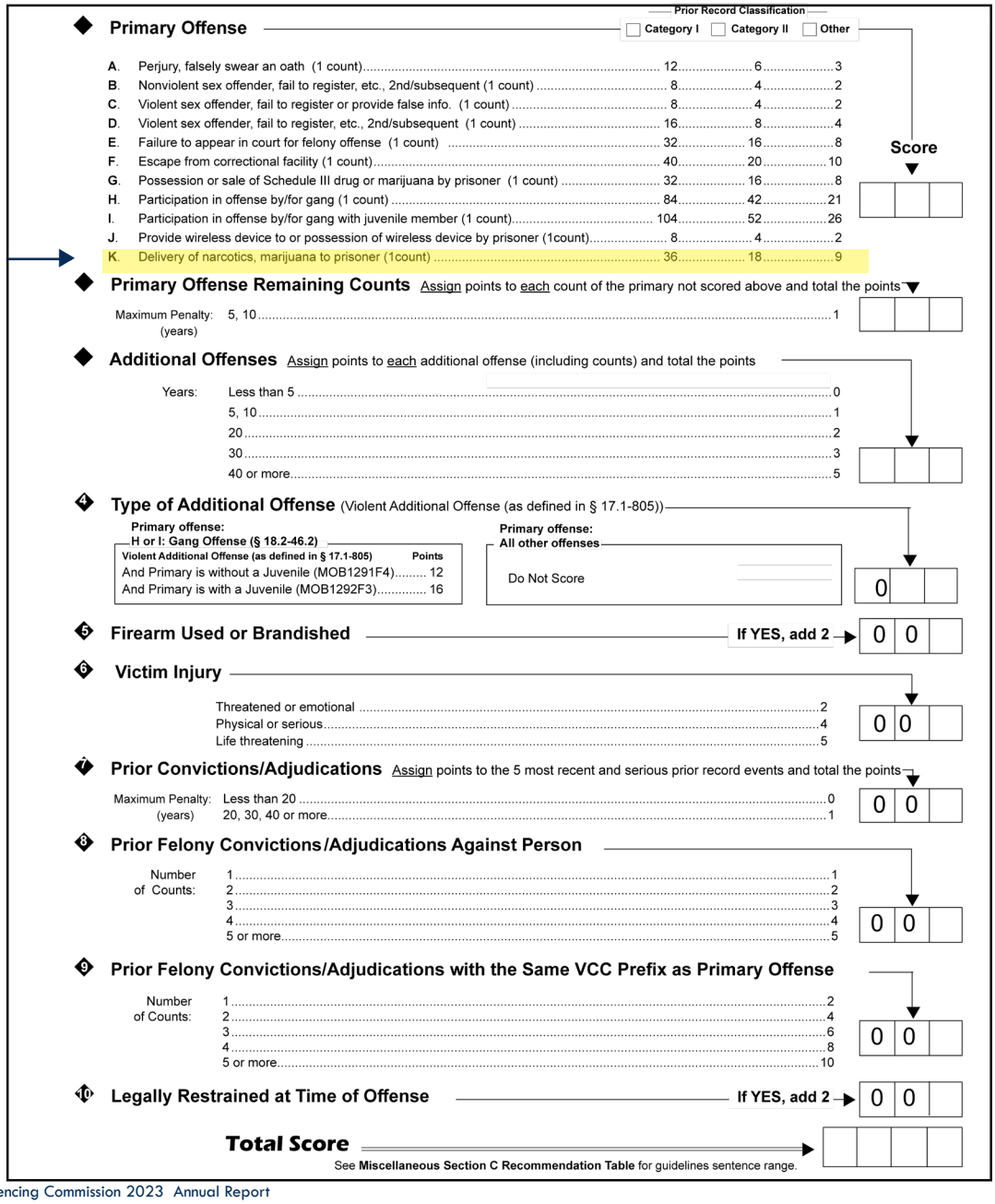
Proposed Miscellaneous/Other Section B Worksheet



A total score of 9 or more points on the Section A worksheet means that the defendant will then be scored on the Section C worksheet to determine the sentence length recommendation of seven months or greater. Primary Offense points on Section C are assigned based on the classification of a defendant's prior record. Under the Commission's proposed amendments to Section C, defendants convicted of delivering drugs to a prisoner will be scored 9 points for 1 count if classified as Other, 18 points if classified as a Category II defendant, or 36 points if classified as a Category I defendant (Figure 39).

Figure 39

Proposed Miscellaneous/Other Section C Worksheet



Based on these scoring modifications, Figure 40 compares the proposed sentencing recommendations to the actual sentencing dispositions observed for defendants sentenced for delivering drugs to a prisoner.

These numbers closely align with the dispositions the defendants received. Under the proposed changes, there is a slight decrease in the percentages of defendants recommended for no incarceration and incarceration up to 6 months, and a slight increase in defendants recommended for incarceration more than 6 months.

Figure 40
Actual versus Proposed Recommended Dispositions for Delivery of Drugs to Prisoner (§ 18.2-474.1) FY2017-FY2022

	Probation/ No Incarceration	**Incarceration 1 day - 6 mos.**	**Incarceration > 6 mos.** (Range includes prison)
Actual Practice	28.2%	43.4%	28.4%
Recommended under Proposed Guidelines	25.7%	41.9%	32.4%

The Commission also anticipates that the proposed guidelines will yield sentence length recommendations that approximate judicial sentencing practices for these offenses. For defendants convicted of this offense who received a term of incarceration up to six months, the median sentence was six months (Figure 41). For those convicted of this offense who received a term of incarceration greater than 6 months, the median sentence was 13 months (Figure 42). Under the proposed guidelines, the median recommended sentences are 6 months for those recommended for six months or less of incarceration and 13 months for those recommended for more than 6 months of incarceration. 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.

*§ 18.2-474.1 also includes the description and penalty for the delivery of firearms, explosives, and ammunition to prisoners (PRI-3243-F3). The above analysis did not include these offenses.

Figure 41

Actual versus Proposed Recommended Dispositions for Delivery of Drugs to Prisoner (§ 18.2-474.1) FY2017-FY2022

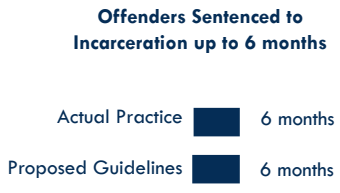
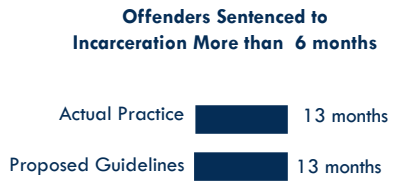


Figure 42

Actual versus Proposed Recommended Dispositions for Delivery of Drugs to Prisoner (§ 18.2-474.1) FY2017-FY2022



RECOMMENDATION TWO

Amend Drug Schedule I/II Sentencing Guidelines to add distribution, etc., 10 grams or more of methamphetamine, its salts, isomers, or salts of its isomers or 20 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers, in violation of § 18.2-248 (C,4), as a Guidelines offense.

ISSUE

Currently, Virginia's Sentencing Guidelines do not cover the offense of distribution or possession with intent to distribute 10 grams of methamphetamine or 20 grams of a mixture containing a detectable amount of methamphetamine, as defined in § 18.2-248(C,4). This offense is an unclassed felony, punishable by imprisonment of five years to life, and carries a mandatory minimum sentence of five years. The offense was added to the Code of Virginia by the 2006 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 FY2017 through FY2022, the Commission has developed a proposal to add this offense to the sentencing guidelines.

DISCUSSION

Figure 43 presents the distribution of actual sentencing dispositions for 218 sentencing events from the FY2017 - FY2022 CMS data where the primary offense was defined under § 18.2-248(C,4). This figure shows that all of the defendants received a period of incarceration greater than six months with a median prison sentence of five years.

Figure 43

Violation of Distribution, Etc. 10g Methamphetamines (20 g Mixture)
(§ 18.2-248 (C,4))
FY2017-FY2022
N=218

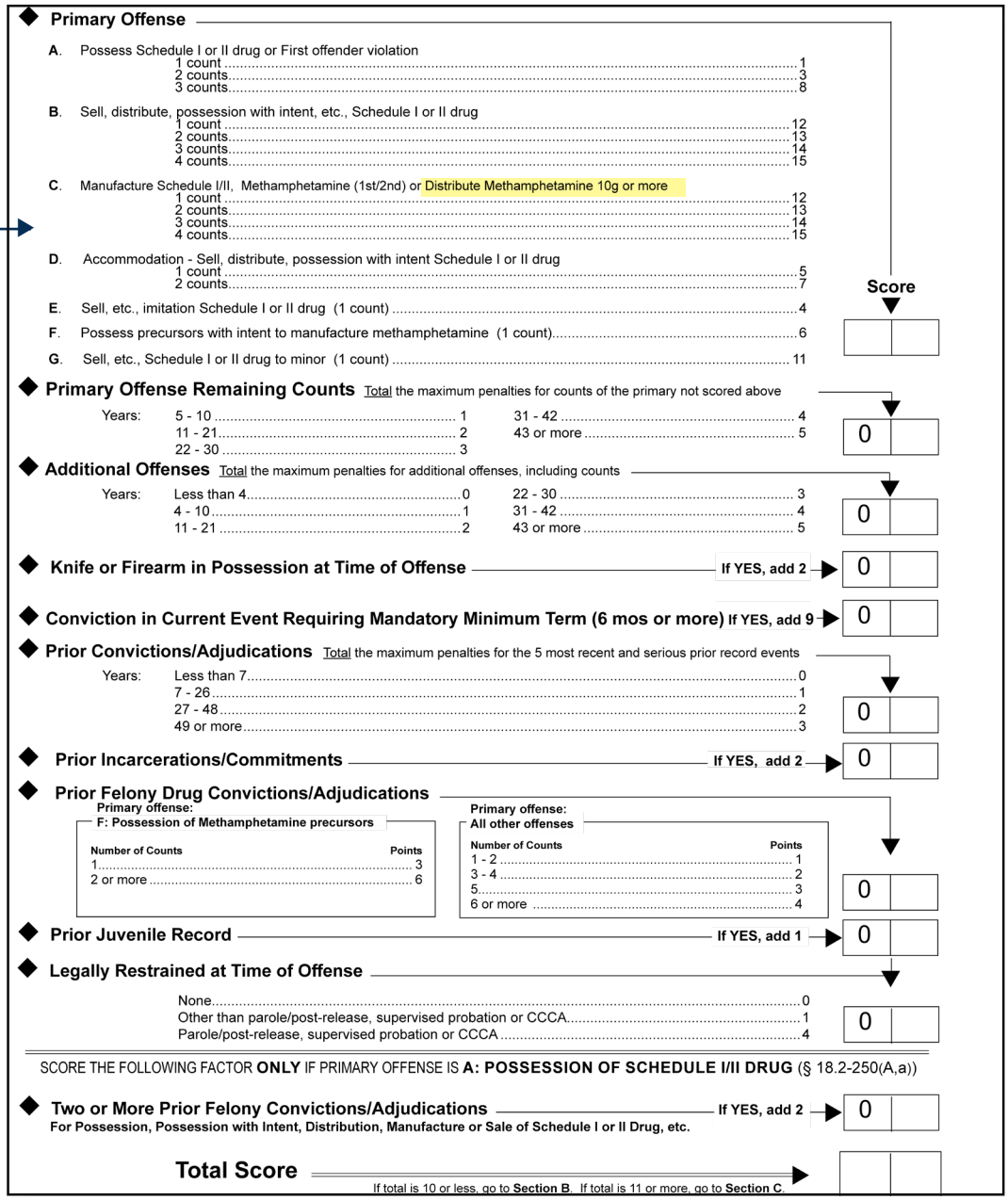
Disposition	Percent	Median Sentences
No Incarceration	0%	n/a
Incarceration up to 6 months	0%	n/a
Incarceration More than 6 months	100%	5 Years

All convictions for the distribution or manufacture of any Schedule I/II drug have historically received a recommendation for a prison sentence. On the Section A worksheet, a total score of 11 or more points means that the defendant will then be scored on the Section C worksheet to determine the appropriate prison length recommendation. Defendants convicted of this offense would score 12 points. The points assigned are the same assigned for the distribution of a Schedule I/II drug, the manufacture of methamphetamine, or the manufacture of a Schedule I/II drug on the Primary Offense section. Therefore, every conviction for this offense would automatically be recommended for Section C (Figure 44).

Figure 44

Proposed Schedule I/II drug Section A Worksheet

New Offense Added →



Section B of the Sentencing Guidelines determines if a defendant will be recommended for either probation/no incarceration or jail up to six months. Because defendants convicted of this offense will automatically be recommended for Section C, the Commission recommends no changes for Section B.

As previously mentioned, a total score of 11 or more points on the Section A worksheet means that the defendant 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 a defendant's prior record. Under the Commission's proposed amendments to Section C, defendants convicted of this offense will be scored on the Primary Offense factor in the same manner as defendants convicted of manufacture a Schedule I/II drug and manufacture methamphetamine. Defendants will receive 26 points for one count if classified as Other, 78 points if classified as a Category II defendant, or 130 points if classified as a Category I defendant (Figure 45). The Commission's proposal also modifies the Section C factor Mandatory Minimum for Weapon Conviction(s) in the Current event (Figure 45). The factor will be expanded so that any sentencing event that includes a mandatory minimum, not just mandatory sentences for weapon offenses, will be scored. This change is needed not only to add the proposed offense, but to better reflect historical sentencing patterns for drug offenses with any mandatory minimum in the event.

Figure 45

Proposed Primary Offense Factor Schedule I/II drug Section C Worksheet

◆ **Primary Offense**

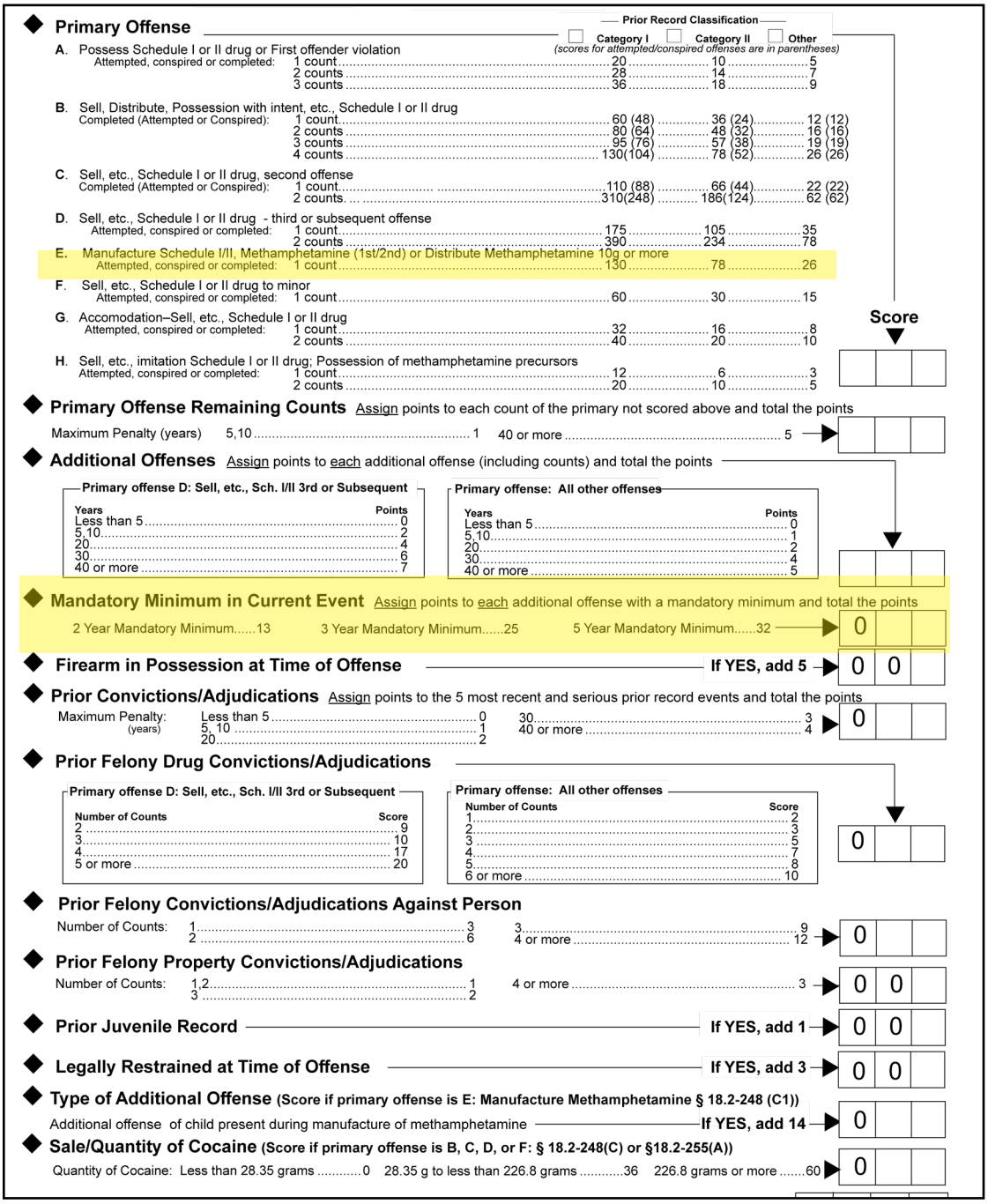
Prior Record Classification — ☐ Category I ☐ Category II ☐ Other

(scores for attempted/conspired offenses are in parentheses)

A. Possess Schedule I or II drug or First offender violation				
Attempted, conspired or completed:	1 count	20	10	5
	2 counts	28	14	7
	3 counts	36	18	9
B. Sell, Distribute, Possession with intent, etc., Schedule I or II drug				
Completed (Attempted or Conspired):	1 count	60 (48)	36 (24)	12 (12)
	2 counts	80 (64)	48 (32)	16 (16)
	3 counts	95 (76)	57 (38)	19 (19)
	4 counts	130(104)	78 (52)	26 (26)
C. Sell, etc., Schedule I or II drug, second offense				
Completed (Attempted or Conspired):	1 count	110 (88)	66 (44)	22 (22)
	2 counts.	310(248)	186(124)	62 (62)
D. Sell, etc., Schedule I or II drug - third or subsequent offense				
Attempted, conspired or completed:	1 count	175	105	35
	2 counts	390	234	78
E. Manufacture Schedule I/II, Methamphetamine (1st/2nd) or Distribute Methamphetamine 10g or more ← New Offense Added				
Attempted, conspired or completed:	1 count	130	78	26
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

Figure 45

Proposed Primary Offense Factor Schedule I/II drug Section C Worksheet



Sentencing Guidelines data for FY2018 - FY2023 indicate that a third of the cases with mandatory minimums for non-weapon offenses resulted in a Guidelines recommendation below the mandatory minimum. Even after the recommendation is adjusted to reflect the mandatory requirement, judges sentenced above the Guidelines recommendation in 37% (40) of the cases (121 total cases). As proposed, if the sentencing event includes a mandatory minimum of two years, 13 points are assigned. If the mandatory requirement is three years, 25 points are assigned, and if the mandatory requirement is five years or more, 32 points are assigned. 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.

Based on these scoring modifications, Figure 46 compares the proposed sentencing recommendations for defendants sentenced for the primary offense under § 18.2-248(C,4) to the actual sentencing dispositions observed for these cases. The proposed guidelines recommend that 100% of the defendants 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.

Figure 46

Actual versus Proposed Recommended Dispositions

for Violation of Distribution, Etc. 10g Methamphetamines (20 g Mixture)
FY2017-FY2022
N=218

	Probation/ No Incarceration	**Incarceration 1 day - 6 mos.**	**Incarceration > 6 mos.** (Range includes prison)
Actual Practice	0%	0%	100%
Recommended under Proposed Guidelines	0%	0%	100%

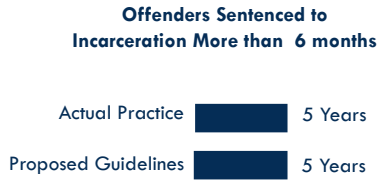
The Commission also anticipates that the proposed guidelines will yield sentence length recommendations that approximate judicial sentencing practices for these offenses. For defendants convicted of this offense who received a term of incarceration greater than six months, the median sentence was five years (Figure 47). Under the proposed guidelines, the median recommended sentence is estimated to be five years. 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 47

Actual versus Proposed Recommended Dispositions for Violation of Distribution, Etc. 10g Methamphetamines (20 g Mixture) FY2017-FY2022 N=218



RECOMMENDATION THREE

Add Violation of Protective Order 3rd or Subsequent within 20 years (§ 16.1-253.2(A)) to the Miscellaneous/Person & Property Guidelines.

ISSUE

Currently, Virginia's sentencing guidelines do not the cover felony offense defined in § 16.2-253(A) (Violation of Protective Order 3rd or Subsequent within 20 years). This crime is a Class 6 felony, with a statutory penalty range of one to five years. The punishment of this offense includes a mandatory minimum term of confinement of six months. The Commission found that the number of convictions for the Violation of Protective Order 3rd or Subsequent within 20 years (§ 16.2-253(A)) 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 Guidelines offenses. Based on analysis of Circuit Court Case Management System (CMS) data from fiscal year (FY) 2017 through FY2022, the Commission has developed a proposal to add this felony offense to the sentencing guidelines[1].

DISCUSSION

Figure 48 presents the distribution of actual sentencing dispositions for 99 sentencing events from the FY2017-FY2022 CMS data where the primary offense was a felony under § 16.2-253(A) (Violation of Protective Order 3rd or Subsequent within 20 years). It shows that 37.4% of the cases were sentenced to a short term of incarceration lasting up to six months (median sentence of six months). The remaining 62.6% of cases were sentenced to a term of incarceration of more than six months (median sentence of one year), which would correspond to a prison recommendation on the Sentencing Guidelines. No offenders received probation/no incarceration.

Figure 48

Violation of Protective Order 3rd or subsequent within 20 years (§ 16.1-253.2(A)
FY2017-FY2022
N=99

Disposition	Percent	Median Sentences
No Incarceration	0%	n/a
Incarceration up to 6 months	37.4%	6 months
Incarceration More than 6 months	62.6%	1 Year

1 There is the same type of offense defined under § 18.2-60.4 (A). The protective order violation under this statute does not involve family abuse toward family or household members, and such offense is handled by General District Court. According to the 10-year CMS data, there were only 55 cases where this offense is the primary or most serious offense. Since there was an insufficient sample size to analyze, the Violation of Protective Order 3rd or Subsequent within 20 years under § 18.2-60.4 (A) was not recommended as a Guidelines offense.

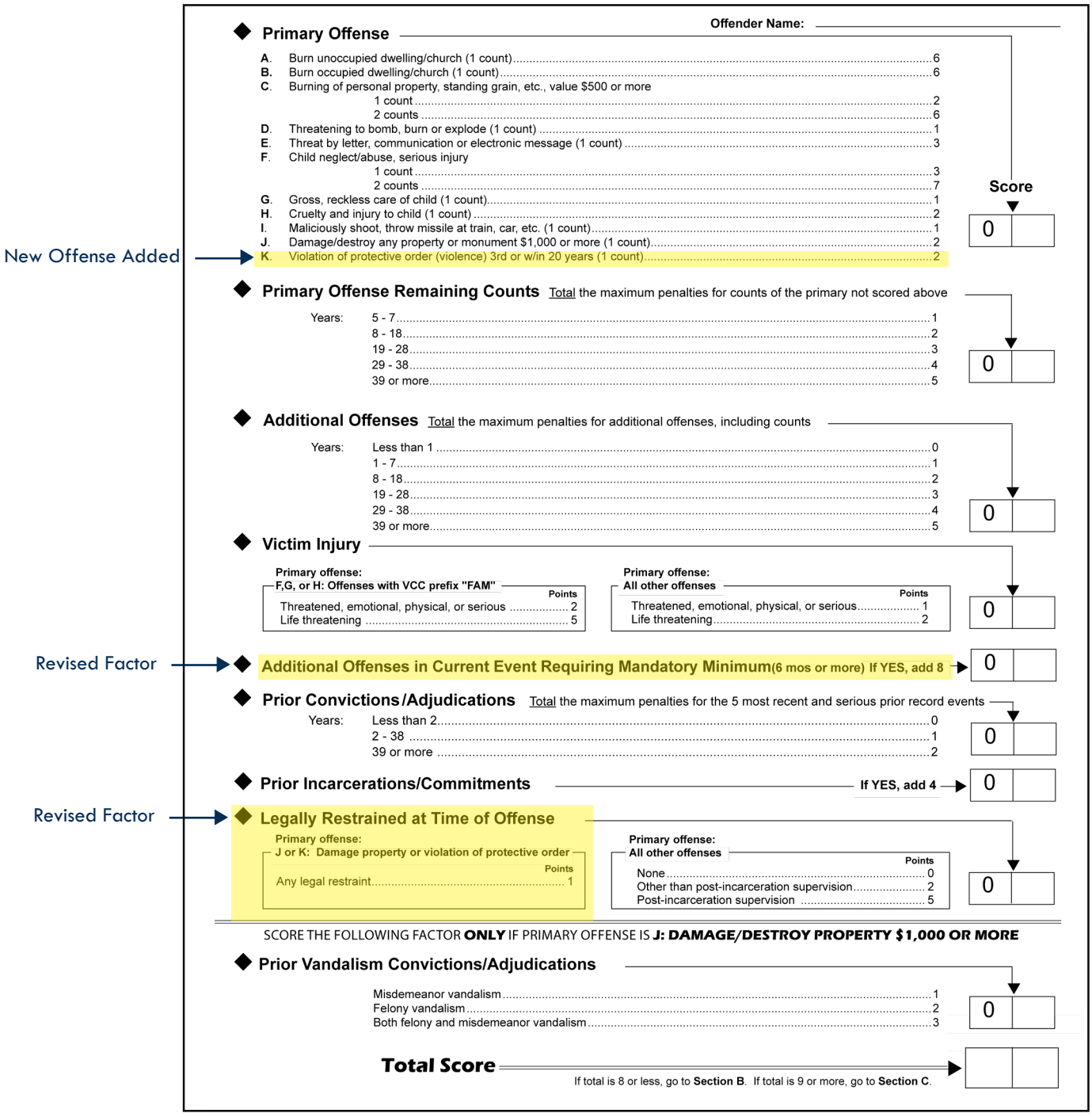
An initial analysis based on the historical sentencing patterns suggests that no offenders were sentenced to receive probation/no incarceration; even three offenders convicted of this offense as an attempted act received an active term of incarceration. Considering this finding, after extensive analysis of the updated six years of sentencing guidelines data (FY2017-2022), the Commission has developed a proposal to closely align the recommended sentencing Guidelines with actual practice.

Current guidelines worksheets serve as the starting point for scoring historical cases. The initial approach taken was to score these cases on the Miscellaneous/Person & Property worksheets; the proposed offense, if approved, will be covered under Miscellaneous/Person & Property Guidelines. If an offender has a total score of 9 points or more on the Miscellaneous/ Person & Property 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, the guidelines recommendation is for probation/ no incarceration or incarceration up to six months. It is also important to note that a person convicted of a Violation of Protective Order 3rd or Subsequent within 20 years under § 16.1-253.2(A) would automatically be scored for legal restraint factor.

On Section A of the Miscellaneous/Person & Property guidelines, offenders convicted of this offense as their primary offense at sentencing will receive 2 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. An analysis on Section A reveals that if all offenders were assigned with 8 points for the mandatory minimum factor in Section A, the recommended Sentencing Guidelines will significantly deviate from the actual sentencing distributions. Because the current data shows that this factor is only scored if any additional offenses in the current event require mandatory minimum terms with 6 months or more (no Guidelines offenses under these worksheets require mandatory minimum terms), the Commission recommends modifying the wordings of this factor into "Additional Offenses in Current Event Requiring Mandatory Minimums." The remaining factors on the worksheet would be scored as they currently appear on Section A. For the Victim Injury factor, the Commission recommends following the point distributions for "All other offenses" if the offenders were convicted of Violation of Protective Order 3rd or Subsequent within 20 years (§ 16.1-253.2(A)) as their primary offense. Moreover, for the factor of Legally Restrained at Time of Offense, the Commission recommends following the same point distribution as J: Damage/Destroy property with $1,000 or more (Figure 49).

Figure 49

Proposed Miscellaneous/Person & Property Section A Worksheet



Offender Name: _____

Primary Offense

		Score
A.	Burn unoccupied dwelling/church (1 count)	6
B.	Burn occupied dwelling/church (1 count)	6
C.	Burning of personal property, standing grain, etc., value $500 or more	
	1 count	2
	2 counts	6
D.	Threatening to bomb, burn or explode (1 count)	1
E.	Threat by letter, communication or electronic message (1 count)	3
F.	Child neglect/abuse, serious injury	
	1 count	3
	2 counts	7
G.	Gross, reckless care of child (1 count)	1
H.	Cruelty and injury to child (1 count)	2
I.	Maliciously shoot, throw missile at train, car, etc. (1 count)	1
J.	Damage/destroy any property or monument $1,000 or more (1 count)	2
New Offense Added → K.	Violation of protective order (violence) 3rd or w/in 20 years (1 count)	2

Primary Offense Remaining Counts Total the maximum penalties for counts of the primary not scored above

Years:		
	5 - 7	1
	8 - 18	2
	19 - 28	3
	29 - 38	4
	39 or more	5

Additional Offenses Total the maximum penalties for additional offenses, including counts

Years:		
	Less than 1	0
	1 - 7	1
	8 - 18	2
	19 - 28	3
	29 - 38	4
	39 or more	5

Victim Injury

Primary offense: F,G, or H: Offenses with VCC prefix "FAM"	Points
Threatened, emotional, physical, or serious	2
Life threatening	5

Primary offense: All other offenses	Points
Threatened, emotional, physical, or serious	1
Life threatening	2

Revised Factor → **Additional Offenses in Current Event Requiring Mandatory Minimum** (6 mos or more) If YES, add 8

Prior Convictions/Adjudications Total the maximum penalties for the 5 most recent and serious prior record events

Years:		
	Less than 2	0
	2 - 38	1
	39 or more	2

Prior Incarcerations/Commitments If YES, add 4

Revised Factor → **Legally Restrained at Time of Offense**

Primary offense: J or K: Damage property or violation of protective order	Points
Any legal restraint	1

Primary offense: All other offenses	Points
None	0
Other than post-incarceration supervision	2
Post-incarceration supervision	5

SCORE THE FOLLOWING FACTOR **ONLY** IF PRIMARY OFFENSE IS **J: DAMAGE/DESTROY PROPERTY $1,000 OR MORE**

Prior Vandalism Convictions/Adjudications

Misdemeanor vandalism	1
Felony vandalism	2
Both felony and misdemeanor vandalism	3

Total Score

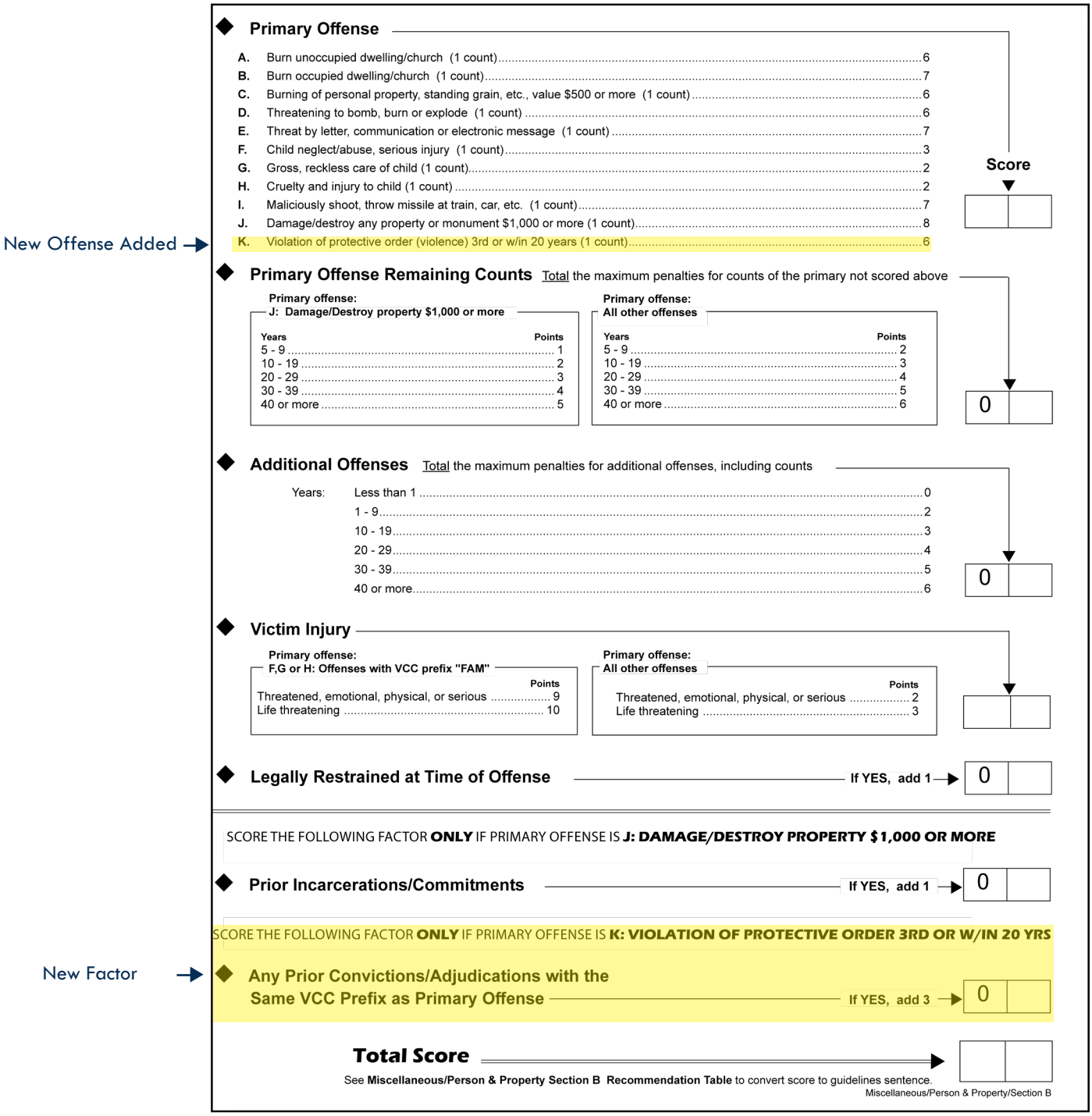
If total is 8 or less, go to **Section B**. If total is 9 or more, go to **Section C**.

Section B of the Sentencing Guidelines determines if an offender will be recommended for either probation/no incarceration or jail up to six months. A total score of 10 or more points on the Miscellaneous/Person & Property Section B worksheet indicates that the offender will be recommended for incarceration from one day to six months. The offenders convicted of Violation of Protective Order 3rd or Subsequent within 20 years (§ 16.1-253.2(A)) as their primary offense will receive 6 points for one count on the Primary Offense factor on Section B (Figure 50). The remaining factors on the worksheet would be scored as they currently appear on Section B. For the factors of Primary Offense Remaining Counts and Victim Injury, the Commission recommends following the point distributions for "All other offenses" if the offenders were convicted of Violation of Protective Order 3rd or Subsequent within 20 years (§ 16.1-253.2(A)) as their primary offense. Once again, as mentioned above, any person convicted of a proposed protective order violation (§ 16.1-253.2(A)) would automatically be scored for a legal restraint factor. In addition, the Commission recommends adding a new scoring factor to Section B. The proposed factor would assign 3 points for "Any Prior Convictions/Adjudications with the Same VCC Prefix as Primary Offense." This factor will be only applicable to the offenders who are convicted of the proposed offense as a primary. Adding this new scoring factor to Section B worksheet will bring the guidelines recommendations into line with actual judicial sentencing practices.

Offenders who score 9 points or more on Section A of the Miscellaneous/Person & Property guidelines are scored on Section C, which determines the sentence length recommendation for a term of imprisonment. Primary Offense points on Section C are assigned based on the classification of an offender's prior record. An offender is scored under the Other category if he or she does not have a prior conviction for a violent felony defined in § 17.1-805(C). An offender is scored under Category II if he or she has a prior conviction for a violent felony that has a statutory maximum penalty of less than 40 years. Offenders are classified as Category I if they have a prior conviction for a violent felony with a statutory maximum of 40 years or more.

Figure 50

Proposed Miscellaneous/Person & Property Section B Worksheet



◆ **Primary Offense**

A.	Burn unoccupied dwelling/church (1 count)	6
B.	Burn occupied dwelling/church (1 count)	7
C.	Burning of personal property, standing grain, etc., value $500 or more (1 count)	6
D.	Threatening to bomb, burn or explode (1 count)	6
E.	Threat by letter, communication or electronic message (1 count)	7
F.	Child neglect/abuse, serious injury (1 count)	3
G.	Gross, reckless care of child (1 count)	2
H.	Cruelty and injury to child (1 count)	2
I.	Maliciously shoot, throw missile at train, car, etc. (1 count)	7
J.	Damage/destroy any property or monument $1,000 or more (1 count)	8
K.	Violation of protective order (violence) 3rd or w/in 20 years (1 count)	6

Score

New Offense Added →

◆ **Primary Offense Remaining Counts** Total the maximum penalties for counts of the primary not scored above

Primary offense: J: Damage/Destroy property $1,000 or more

Years	Points
5 - 9	1
10 - 19	2
20 - 29	3
30 - 39	4
40 or more	5

Primary offense: All other offenses

Years	Points
5 - 9	2
10 - 19	3
20 - 29	4
30 - 39	5
40 or more	6

0

◆ **Additional Offenses** Total the maximum penalties for additional offenses, including counts

Years:		
	Less than 1	0
	1 - 9	2
	10 - 19	3
	20 - 29	4
	30 - 39	5
	40 or more	6

0

◆ **Victim Injury**

Primary offense: F,G or H: Offenses with VCC prefix "FAM"

	Points
Threatened, emotional, physical, or serious	9
Life threatening	10

Primary offense: All other offenses

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

◆ **Legally Restrained at Time of Offense** — If YES, add 1 → 0

SCORE THE FOLLOWING FACTOR **ONLY** IF PRIMARY OFFENSE IS **J: DAMAGE/DESTROY PROPERTY $1,000 OR MORE**

◆ **Prior Incarcerations/Commitments** — If YES, add 1 → 0

SCORE THE FOLLOWING FACTOR **ONLY** IF PRIMARY OFFENSE IS **K: VIOLATION OF PROTECTIVE ORDER 3RD OR W/IN 20 YRS**

New Factor →

◆ **Any Prior Convictions/Adjudications with the Same VCC Prefix as Primary Offense** — If YES, add 3 → 0

Total Score

See **Miscellaneous/Person & Property Section B Recommendation Table** to convert score to guidelines sentence.

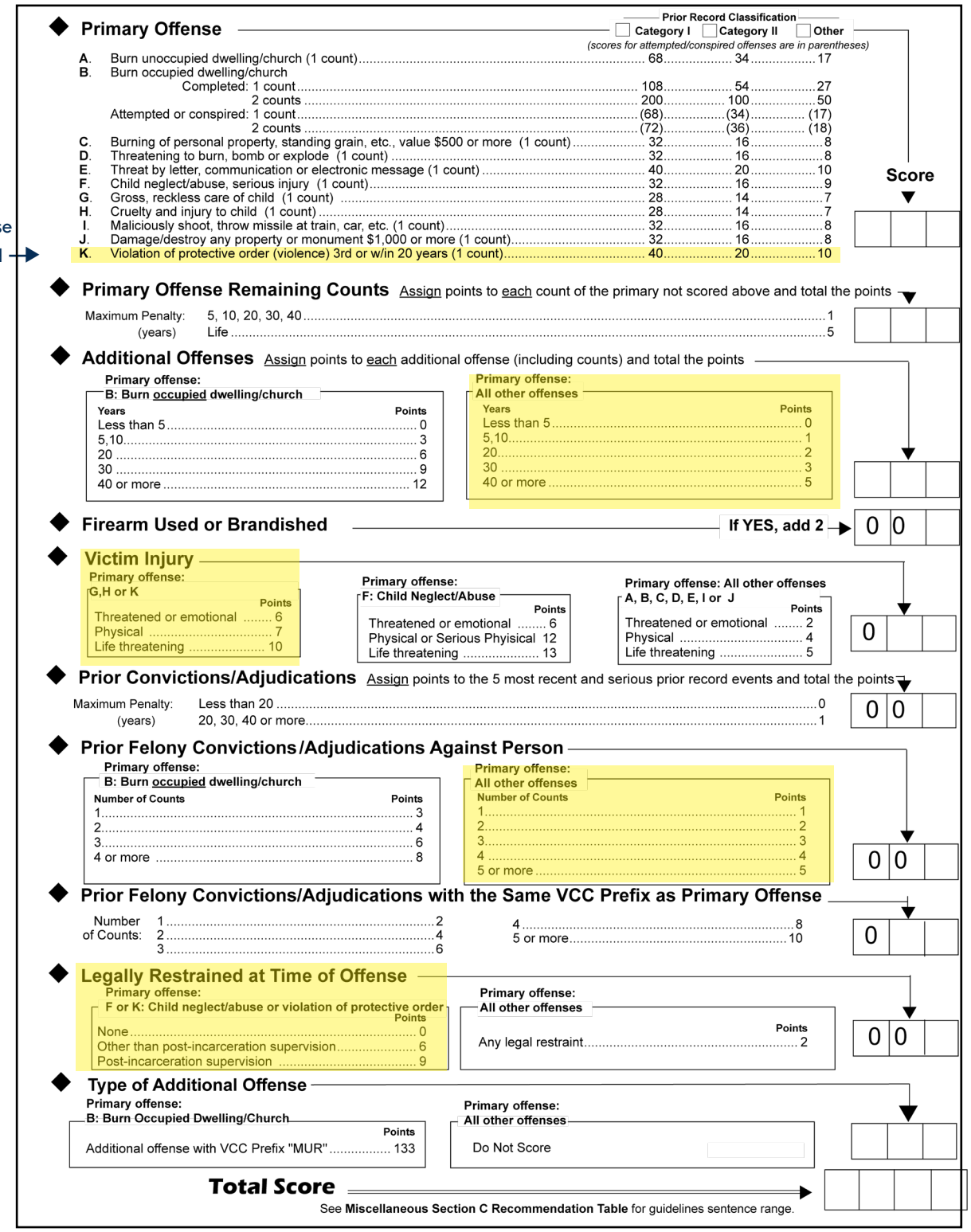
Miscellaneous/Person & Property/Section B

Offenders convicted of one count of Violation of Protective Order 3rd or Subsequent within 20 years (§ 16.1-253.2(A)) as a primary offense would receive 10 points for the Primary Offense factor if the offender's prior record is classified as Other, 20 points if he or she is a Category II offender, or 40 points if he or she is a Category I offender. This primary offense point assignment is the same as those convicted of "Threat by letter, communication, or electronic messages" under letter E. Any remaining counts of the primary offense will be scored under the "Primary Offense Remaining Counts" factor. No additional modifications to the Section C worksheets are necessary, as the projected sentence recommended by the current guidelines is closely aligned with historical sentencing practices for this offense. Regarding the remaining factors on Section C worksheet, the Commission recommends following the point assignments under "All other offenses" for Additional Offenses and Prior Felony Convictions/Adjudications against Person factors. For the Victim Injury factor, the Commission recommends following the scoring for G or H: Reckless Care/Cruelty to Child. For the legal restraint factor, the Commission recommends following the points for F: Child neglect/abuse. Lastly, the Commission recommends "Do Not Score" for the Type of Additional Offense factor (Figure 51).

When developing Sentencing Guidelines, the Commission's goal is to match, or come very close to, the historical jail/prison incarceration rate. The proposed guidelines are designed to recommend the same proportion of offenders for a sentence greater than six months as those who 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.

Figure 51

Proposed Miscellaneous/Person & Property Section C Worksheet



Primary Offense

Prior Record Classification: ☐ Category I ☐ Category II ☐ Other

(scores for attempted/conspired offenses are in parentheses)

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
K.	Violation of protective order (violence) 3rd or w/in 20 years (1 count)	40	20	10

New Offense Added → K

Score

Primary Offense Remaining Counts

Assign points to each count of the primary not scored above and total the points

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

Additional Offenses

Assign points to each additional offense (including counts) and total the points

Primary offense: B: Burn occupied dwelling/church

Years	Points
Less than 5	0
5,10	3
20	6
30	9
40 or more	12

Primary offense: All other offenses

Years	Points
Less than 5	0
5,10	1
20	2
30	3
40 or more	5

Firearm Used or Brandished

If YES, add 2 → 0 0

Victim Injury

Primary offense: G,H or K

	Points
Threatened or emotional	6
Physical	7
Life threatening	10

Primary offense: F: Child Neglect/Abuse

	Points
Threatened or emotional	6
Physical or Serious Phyisical	12
Life threatening	13

Primary offense: All other offenses A, B, C, D, E, I or J

	Points
Threatened or emotional	2
Physical	4
Life threatening	5

0

Prior Convictions/Adjudications

Assign points to the 5 most recent and serious prior record events and total the points

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

0 0

Prior Felony Convictions/Adjudications Against Person

Primary offense: B: Burn occupied dwelling/church

Number of Counts	Points
1	3
2	4
3	6
4 or more	8

Primary offense: All other offenses

Number of Counts	Points
1	1
2	2
3	3
4	4
5 or more	5

0 0

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		

0

Legally Restrained at Time of Offense

Primary offense: F or K: Child neglect/abuse or violation of protective order

	Points
None	0
Other than post-incarceration supervision	6
Post-incarceration supervision	9

Primary offense: All other offenses

	Points
Any legal restraint	2

0 0

Type of Additional Offense

Primary offense: B: Burn Occupied Dwelling/Church

	Points
Additional offense with VCC Prefix "MUR"	133

Primary offense: All other offenses

Do Not Score

Total Score

See **Miscellaneous Section C Recommendation Table** for guidelines sentence range.

As Figure 52 illustrates, the proposed guidelines for Violation of Protective Order 3rd or Subsequent within 20 years (§ 16.1-253.2(A)) is expected to result in Guidelines recommendations that closely reflect actual sentencing practices.

Figure 52

Actual versus Proposed Recommended Dispositions for Violation of Protective Order 3rd or subsequent within 20 years (§ 16.1-253.2(A)

	Probation/ No Incarceration	Incarceration 1 day - 6 mos.	Incarceration > 6 mos. (Range includes prison)
Actual Practice	0%	37.4%	62.6%
Recommended under Proposed Guidelines	0%	38.4%	61.6%

Moreover, median sentences between the cases under the proposed Guidelines and in actual practice are perfectly aligned. For instance, according to Figure 53, which reflects the incarceration up to 6 months (equivalent to Section B recommendation), the median sentence in actual practice is just the same as the one for the proposed Guidelines (6 months). In the same token, the median actual and recommended sentences were exactly one year between the offenders convicted of this crime who received a term of incarceration greater than six months and the cases recommended for a term of incarceration greater than six months (Figure 54).

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 53

Actual versus Proposed Recommended Dispositions for Violation of Protective Order 3rd or subsequent within 20 years (§ 16.1-253.2(A)

Offenders Sentenced to Incarceration up to 6 months

Figure 54

Actual versus Proposed Recommended Dispositions for Violation of Protective Order 3rd or subsequent within 20 years (§ 16.1-253.2(A)

Offenders Sentenced to Incarceration More than 6 months

RECOMMENDATION FOUR

Amend Larceny Sentencing Guidelines to add conspire, confederate, or combine with another or others in the Commonwealth to commit larceny or counsel, assist, aid or abet another in the performance of a larceny, where the aggregate value of the goods or merchandise involved is $1,000 or more, a violation of § 18.2-23 (B) as a Guidelines offense.

ISSUE

Currently, Virginia's Sentencing Guidelines do not cover the offense of conspire to commit or assist in larceny with an aggregate value of $1,000 or more, as defined in § 18.2-23(B). This offense is an unclassed felony, punishable by imprisonment of 1 - 20 years. The offense was added to the Code of Virginia by the 2003 General Assembly and modified to reflect a $500 threshold for grand larceny in 2018 and $1,000 threshold in 2020. 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 FY2017 - FY2022, the Commission has developed a proposal to add this offense to the sentencing guidelines.

DISCUSSION

Figure 55 presents the distribution of actual sentencing dispositions for 110 sentencing events from the FY2017 - FY2022 CMS data where the primary offense was defined under 18.2-23(B). It shows that the majority of the defendants received a period of incarceration. Nearly 41% were sentenced to incarceration of up to six months and 36% were sentenced to incarceration of more than six months.

With regard to the Larceny Sentencing Guidelines, a total score of 15 or fewer points on the Section A worksheet means that the defendant will then be scored on the Section B worksheet to determine if the recommendation will be either probation/no incarceration or jail up to six months. A total score of 16 or more points on Section A means that the defendant will then be scored on the Section C worksheet to determine the appropriate prison length recommendation.

Figure 55

Conspire to Commit or Assist in Larceny with an Aggregate Value of $1,000 or more, as defined in § 18.2-23(B)
FY2017-FY2022
N=110

Disposition	Percent	Median Sentences
No Incarceration	23.6%	n/a
Incarceration up to 6 months	40.8%	3 months
Incarceration More than 6 months	35.6%	1 Year

On Section A of the Larceny Guidelines, defendants convicted of this offense as their primary offense will receive 4 points for one count of the primary offense and 11 points for two counts. Any remaining counts of the primary offense would be scored under the Primary Offense Remaining Counts factor (Figure 56). The remaining factors on the worksheet would be scored as they currently appear on Section A. With this approach, the proposed guidelines are expected to be closely aligned to the actual proportion of cases resulting in probation/no incarceration, a jail disposition, or a prison disposition.

Figure 56

Proposed Larceny Section A Worksheet

New Offense Added →

◆ **Primary Offense** — *(scores for attempted/conspired offenses are in parentheses)*

A.	Attempted or conspired larceny (1 count)	(1)
B.	Statutory maximum penalty equals 5 years	
	1 count	1
	2 counts	4
	3 counts	6
C.	Statutory maximum penalty equals 10 years (1 count)	3
D.	Grand larceny auto	
	1 count	5
	2 counts	7
	3 counts	10
E.	Grand larceny from person or conspire to commit or assist in larceny with an aggregate value over $1,000	
	1 count	4
	2 counts	11
F.	Grand larceny of a firearm (1 count)	1
G.	Failure of bailee to return animal, aircraft, vehicle or boat (1 count)	4
H.	Larceny of bank notes, checks or any book of accounts; Any other larceny offense with maximum penalty of 20 years	
	1 count	2
	2 - 3 counts	4
	4 counts	6

Score: ____

◆ **Primary Offense Remaining Counts** Total the maximum penalties for counts of the primary not scored above

Years:	5 - 11	1	34 - 44	4
	12 - 22	2	45 or more	5
	23 - 33	3		

0 ____

◆ **Additional Offenses** Total the maximum penalties for additional offenses, including counts

Years:	Less than 1	0	23 - 33	3
	1 - 11	1	34 - 44	4
	12 - 22	2	45 or more	5

0 ____

◆ **Prior Convictions/Adjudications** Total the maximum penalties for the 5 most recent and serious prior record events

Years:	Less than 2	0	21 - 36	3
	2 - 11	1	37 or more	4
	12 - 20	2		

0 ____

◆ **Prior Felony Larceny Convictions/Adjudications**

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

0 ____

◆ **Other Prior Felony Property Convictions/Adjudications**

Number of Counts:	1 - 4	1
	5 or more	2

0 ____

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

Number of Counts:	1	1
	2 or more	2

0 ____

◆ **Prior Misdemeanor Convictions/Adjudications** (Excludes Traffic)

Number of Counts:	1 - 4	1
	5 - 8	2
	9 or more	3

0 ____

◆ **Prior Incarcerations/Commitments** — If YES, add 5 → 0 ____

◆ **Prior Juvenile Record** — If YES, add 1 → 0 ____

◆ **Legally Restrained at Time of Offense**

None	0
Other than parole/post-release, supervised probation or CCCA	1
Parole/post-release, supervised probation or CCCA	2

0 ____

SCORE THE FOLLOWING FACTOR **ONLY** IF PRIMARY OFFENSE IS **H: EMBEZZLEMENT (§ 18.2-111)**

◆ **Amount of Embezzlement**

Amount:	Less than $10,000	0
	$10,000-$19,999	3
	$20,000-$74,999	6
	$75,000-$119,999	9
	$120,000 or more	14

____

Total Score ____

If total is 15 or less, go to **Section B**. If total is 16 or more, go to **Section C**.

A defendant who scores a total of 15 points or less on Section A of the Larceny Guidelines is then scored on Section B, which will determine if the recommendation is probation/no incarceration or a jail term of up to six months. The Commission recommends assigning 6 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 (Figure 57). The proposed modifications to Section B of the Larceny Guidelines will ensure that nearly the same proportion of defendants who historically received a jail sentence of six months or less would be recommended for this type of sentence by the Guidelines for this offense.

Figure 57

Proposed Larceny Section B Worksheet

New Offense Added →

◆ **Primary Offense** (scores for attempted/conspired offenses are in parentheses)

A. Any attempted or conspired larceny (1 count) ..... (1)
B. Maximum penalty equals 5 or 10 years
1 count 3
2 counts 4
3 counts 7
C. Grand larceny auto
1 count 3
2 counts 4
3 counts 7
D. Grand larceny from person or conspire to commit or assist in larceny with an aggregate value over $1,000 (1 count) 6
E. Grand larceny of a firearm (1 count) 1
F. Failure of bailee to return animal, aircraft, vehicle or boat (1 count) 1
G. Larceny of bank notes, checks, etc. or any book of accounts
1 count 3
2 counts 4
3 counts 7
H. Any other grand larceny offense with a maximum penalty of 20 years
1 count 3
2 counts 4
3 counts 7

Score: 0

◆ **Primary Offense Remaining Counts** Total the maximum penalties for counts of the primary not scored above

Years: Less than 22 ..... 0; 22 - 31 ..... 1; 32 - 42 ..... 2; 43 or more 3

0

◆ **Additional Offenses** Total the maximum penalties for additional offenses, including counts

Years: Less than 1 ..... 0; 1 - 10 ..... 1; 11 - 21 ..... 2; 22 - 31 ..... 3; 32 - 42 ..... 4; 43 or more 5

0

◆ **Prior Convictions/Adjudications** Total the maximum penalties for the 5 most recent and serious prior record events

Years: Less than 2 ..... 0; 2 - 19 ..... 1; 20 - 38 ..... 2; 39 or more 3

0

◆ **Prior Misdemeanor Convictions/Adjudications** (Excludes Traffic)

Number of Counts: 1 - 2 ..... 2; 3 ..... 3; 4 or more 4

0

◆ **Prior Incarcerations/Commitments** If YES, add 7 →

0

◆ **Legally Restrained at Time of Offense**

None 0
Other than parole/post-release, supervised probation or CCCA 4
Parole/post-release, supervised probation or CCCA 5

0

SCORE THE FOLLOWING FACTOR **ONLY** IF PRIMARY OFFENSE IS **H: EMBEZZLEMENT (§ 18.2-111)**

◆ **Amount of Embezzlement**

Amount: Less than $15,000 ..... 0; $15,000 or more 3

0

Total Score

See **Larceny Section B Recommendation Table** to convert score to guidelines sentence.
Then, go to **Section D Nonviolent Risk Assessment** and follow the instructions.

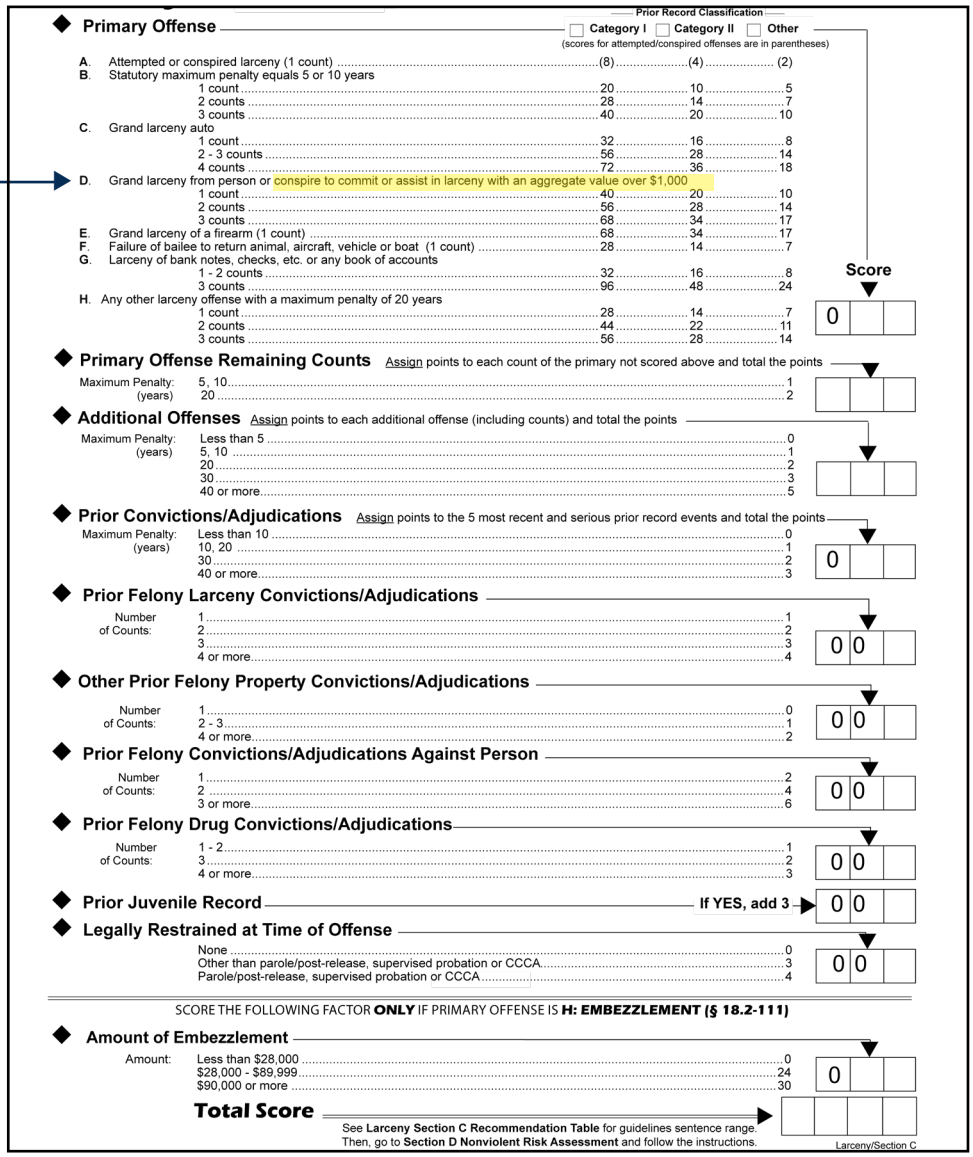
Larceny/Section B

A total score of 16 or more points on the Larceny Guidelines Section A worksheet means that the defendant will then be scored on the Section C Guidelines to determine the sentence length recommendation for a term of imprisonment. Primary Offense points on Section C are assigned based on the classification of a defendant's prior record. Under the Commission's proposed amendments to Section C, defendants convicted of this offense will be scored on the Primary Offense factor so that a defendant will receive 10 points for one count if classified as Other, 20 points if classified as a Category II defendant, or 40 points if classified as a Category I defendant. The Primary Offense factor will score up to three counts of the primary offense. More than three counts of the primary will be scored under the factor Primary Offense Remaining Counts (Figure 58). No other modifications to the Section

Figure 58

Proposed Larceny Section C Worksheet

New Offense Added →



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

A.	Attempted or conspired larceny (1 count)	(8)	(4)	(2)
B.	Statutory maximum penalty equals 5 or 10 years			
	1 count	20	10	5
	2 counts	28	14	7
	3 counts	40	20	10
C.	Grand larceny auto			
	1 count	32	16	8
	2 - 3 counts	56	28	14
	4 counts	72	36	18
D.	Grand larceny from person or conspire to commit or assist in larceny with an aggregate value over $1,000			
	1 count	40	20	10
	2 counts	56	28	14
	3 counts	68	34	17
E.	Grand larceny of a firearm (1 count)	68	34	17
F.	Failure of bailee to return animal, aircraft, vehicle or boat (1 count)	28	14	7
G.	Larceny of bank notes, checks, etc. or any book of accounts			
	1 - 2 counts	32	16	8
	3 counts	96	48	24
H.	Any other larceny offense with a maximum penalty of 20 years			
	1 count	28	14	7
	2 counts	44	22	11
	3 counts	56	28	14

Score: 0

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

Maximum Penalty (years)		
5, 10		1
20		2

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

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

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

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

Score: 0

◆ **Prior Felony Larceny Convictions/Adjudications**

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

Score: 0 0

◆ **Other Prior Felony Property Convictions/Adjudications**

Number of Counts:	
1	0
2 - 3	1
4 or more	2

Score: 0 0

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

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

Score: 0 0

◆ **Prior Felony Drug Convictions/Adjudications**

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

Score: 0 0

◆ **Prior Juvenile Record** — If YES, add 3 → Score: 0 0

◆ **Legally Restrained at Time of Offense**

None	0
Other than parole/post-release, supervised probation or CCCA	3
Parole/post-release, supervised probation or CCCA	4

Score: 0 0

SCORE THE FOLLOWING FACTOR **ONLY** IF PRIMARY OFFENSE IS **H: EMBEZZLEMENT (§ 18.2-111)**

◆ **Amount of Embezzlement**

Amount:	
Less than $28,000	0
$28,000 - $89,999	24
$90,000 or more	30

Score: 0

Total Score

See **Larceny Section C Recommendation Table** for guidelines sentence range.
Then, go to **Section D Nonviolent Risk Assessment** and follow the instructions.

Larceny/Section C

C worksheet are necessary to ensure that the sentences recommended by the Guidelines accurately reflect historical sentencing practices for these crimes.

Based on these scoring modifications, Figure 59 compares the proposed sentencing recommendations for defendants sentenced for the primary offense under § 18.2-23(B) to the actual sentencing dispositions observed for these cases. The proposed guidelines recommend that 44% of the defendants receive an incarceration sanction of six months or less and 29% receive an active sentence of over six months. The proposal reflects the best fit with actual judicial sentencing practices. The proposed Guidelines, therefore, are aligned as much as possible with the actual prison incarceration rate.

Figure 59
Actual versus Proposed Recommended Dispositions for Conspire to Commit or Assist in Larceny with an Aggregate Value of $1,000 or more, as defined in § 18.2-23(B)

	Probation/ No Incarceration	**Incarceration 1 day - 6 mos.**	**Incarceration > 6 mos.** (Range includes prison)
Actual Practice	23.6%	40.8%	35.6%
Recommended under Proposed Guidelines	26.6%	44.3%	29.1%

The Commission also anticipates that the proposed guidelines will yield sentence length recommendations that approximate judicial sentencing practices for these offenses. For defendants convicted of this offense who received a term of incarceration six months or less, the median sentence was three months (Figure 60). Under the proposed guidelines, the median recommended sentence is estimated to be three months. Thus, the recommended and actual sentences are closely aligned.

For defendants convicted of this offense who received a term of incarceration more than six months, the median sentence was one year (Figure 61). Under the proposed guidelines, the median recommended sentence is estimated to be one year. 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 60

Actual versus Proposed Recommended Dispositions for Conspire to Commit or Assist in Larceny with an Aggregate Value of $1,000 or more, as defined in § 18.2-23(B)

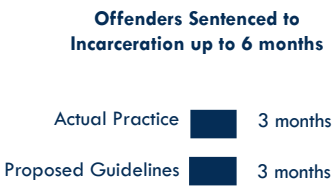


Figure 61

Actual versus Proposed Recommended Dispositions for Conspire to Commit or Assist in Larceny with an Aggregate Value of $1,000 or more, as defined in § 18.2-23(B)

RECOMMENDATION FIVE

Modify the Nonviolent Risk Assessment that is required in every felony drug, fraud and larceny Guidelines to exclude any defendant who commits one of these felonies while serving a state-responsible sentence of one year or more (prison).

ISSUE

Currently, there is a face validity issue when the Nonviolent Risk Assessment recommends an alternative to incarceration for a drug, fraud or larceny felony that occurs in prison and the defendant is serving a significant sentence. First, practically, the risk assessment is not relevant because the defendant must first serve the initial sentence. Second, these types of cases were not included in the development of the risk assessment instrument.

DISCUSSION

This change does not impact historically based recommendations because crimes that occurred in prison by defendants serving sentences longer than the follow-up period in the risk assessment study would have been excluded from the analysis. The court may still sentence the defendant to an alternative, counseling, or treatment after release. However, the Guidelines will have no formal recommendation. By making this change, the illogical application of the Nonviolent Risk Assessment for defendants serving prison sentences is removed (Figure 62).

Figure 62

Proposed Nonviolent Risk Assessment Section D Worksheet

Nonviolent Risk Assessment ❖ ***Section D***

◆ **Ineligibility Conditions**

A.	Was the offender recommended for **Probation/No Incarceration** on Section B?	☐ Yes	☐ No
B.	Do any of the offenses at sentencing involve the sale, distribution, or possession with intent, etc. of cocaine of a combined quantity of 28.35 grams (1 ounce) or more?	☐ Yes	☐ No
C.	Are any prior record offenses violent (Category I/II listed in Appendix A of the Guidelines Manual)?	☐ Yes	☐ No
D.	Are any of the offenses at sentencing violent (Category I/II listed in Appendix A of the Guidelines Manual)?	☐ Yes	☐ No
E.	Do any of the offenses at sentencing require a mandatory term of incarceration?	☐ Yes	☐ No
F.	Did the offense occur while serving a state-responsible (prison) sentence?	☐ Yes	☐ No

If answered YES to ANY, go to "Nonviolent Risk Assessment Recommendations" on cover sheet and check Not Applicable. If answered NO to ALL, complete remainder of Section D worksheet.

This issue is rare. However, 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.

RECOMMENDATION SIX

Request legislation to 1) provide the Virginia Criminal Sentencing Commission with online access to information maintained in court case management systems administered by the Office of the Executive Secretary (OES) of the Supreme Court of Virginia, including detailed information beyond what is available to the general public, 2) provide staff of the Commission with access to the Officer of the Court Remote Access (OCRA) system through a single agreement between the clerk of court and the Commission's Director, and 3) authorize the Commission to access, for specified purposes, juvenile case information already maintained by the OES in electronic format in a court case management system.

ISSUE

For many years, the Commission had online access to case management systems used in the general district courts and circuit courts, including access to certain information not otherwise available to the general public, such as complete birthdates, complete social security numbers, identification of the sentencing judge, and notes entered into the system by the clerk of court. In 2023, the Office of the Executive Secretary (OES) of the Supreme Court of Virginia withdrew the Commission's online access to detailed case information (through a system that was known as TPX), stating that access was precluded by § 17.1-293.

While most circuit court clerks have granted Commission staff access to the OCRA system, clerks require each staff member to submit a separate notarized application and, in some jurisdictions, this must be done annually. In FY2023, Commission staff completed over 300 OCRA applications for three staff members.

Furthermore, the Commission does not have access to juvenile case information maintained in electronic format in the case management system administered by OES. Such access is not expressly permitted in § 16.1-305. As such, the Commission's ability to respond to legislative requests and assess the impact of proposed legislation is limited.

DISCUSSION

The Commission seeks legislation to improve the agency's access to data and information in order to best fulfill its statutory mandates. The Commission's recommendation has three aspects and each is discussed below.

Online access to detailed information in court case management systems

The Commission seeks to improve online access to information maintained in court case management systems administered by the OES, including detailed information beyond what is available to the general public.

For many years, the Commission had online access to case management systems used in the general district courts and circuit courts. This included access to certain information not otherwise available to the general public, such as complete birthdates, complete social security numbers, identification of the sentencing judge, and notes entered into the system by the clerk of court. The Commission long used such access to ensure that information on the Sentencing Guidelines forms, submitted by courts around the Commonwealth, was complete and accurate, including identifying information necessary to accurately match Guidelines records to other criminal justice data systems. Matching records across data systems is a critical part of the Commission's research work. While the Commission is provided periodic downloads of fiscal year data (see Item 52 of Chapter 1 of the Acts of Assembly of 2023, Special Session I), the Commission continues to need access to current and recently concluded cases on the courts' dockets to ensure the accuracy of Guidelines information as it is entered into the agency's data system.

In 2023, the Office of the Executive Secretary (OES) of the Supreme Court of Virginia withdrew the Commission's online access to detailed case information (through a system that was known as TPX), stating that access was precluded by § 17.1-293. Thus, the Commission seeks to amend § 17.1-293 in order to restore its access to more detailed information within online case management systems.

It is important to note that the Commission is a judicial branch agency defined by federal law (Section 534(a) of Title 28, United States Code) and by § 9.1-101 of the Code of Virginia as a criminal justice agency.

Access to OCRA through a single agreement

Clerks of the circuit court, in most jurisdictions, have allowed Commission staff to access court records that have been scanned and are maintained in each court's OCRA system. This allows staff to quickly resolve Guidelines or research issues on a case-by-case basis without contacting the clerks. However, for each staff member who needs access, a separate notarized application must be filed. In some jurisdictions, this is on a yearly basis. In FY2023, Commission staff completed over 300 OCRA applications for three staff members. Commission staff now have direct access to OCRA in 98 out of 120 courts. A single agreement between the Commission's Director and each circuit court clerk would be a more efficient way to grant OCRA access to staff while maintaining necessary security. The Commission seeks to amend § 17.1-293 to provide for a single agreement between the court clerk and the Commission's Director for the reasons described.

Access to juvenile case information maintained in a case management system

In Virginia, juvenile court records are confidential and are open only to certain persons or under specified circumstances as provided in § 16.1-305. Although defined as a "criminal justice agency" in § 9.1-101 and under federal law, the Commission currently does not have access to juvenile case information. The Commission seeks legislation in the 2024 General Assembly to provide the agency with access to certain types of juvenile case information, which the Commission would use only for limited purposes. With the access requested, the Commission would be better able to respond to legislative requests, more fully assess the impact of legislation related to juvenile transfer, and improve analysis needed for the development and revision of Sentencing Guidelines. The Commission currently is authorized by § 19.2-389.1 to receive juvenile record information from the Central Criminal Record Exchange (CCRE) maintained by the Virginia State Police, but that data is not sufficient for all of the Commission's research needs.

The Commission has received a number of requests in the past to study the issue of juveniles transferred to circuit court for trial as adults. Some of the requests have come from the Virginia State Crime Commission and staff of the Senate Finance Committee. Without access to juvenile case information, the Commission's research in this area is very limited. The Commission can only provide information on juveniles who are ultimately convicted of a felony in circuit court. The Commission is unable to study cases in which a preliminary hearing was held pursuant to § 16.1-269.1, cases in which the juvenile was not transferred to circuit court, or cases in which juveniles, were automatically treated as adults in circuit court because they were previously transferred from juvenile court and convicted as an adult (§ 16.1-271).

In addition, the Commission is required by § 30-19.1:4 to prepare fiscal impact statements for legislation that could potentially increase the state prison population. This requirement includes bills that may increase the number of juveniles transferred to circuit court for trial as adults. Because the Commission does not have access to juvenile case information, the Commission's ability to assess the impact of juvenile transfer legislation is very limited.

The Commission seeks to amend § 16.1-305 to allow the Commission to access juvenile case information already maintained in electronic format in the juvenile court case management system. Under the change sought by the Commission, the Executive Secretary of the Supreme Court would provide for the transfer of juvenile case information in the case management system to the Commission. The Commission would be permitted to use the data only for research, evaluation, or statistical purposes, for the preparation or assistance with the preparation of Sentencing Guidelines required by § 19.2-298.01, or for aggregate analysis necessary for the development or revision of Sentencing Guidelines as provided in § 17.1-806. The data may also be used in the preparation of aggregate reports required by law or requested by the General Assembly or certain state officials. The Commission would be required to ensure the confidentiality and security of the data.

Figure 63
Proposed Legislative Amendments

§ 17.1-293. Posting and availability of certain information on the Internet; prohibitions.

A. Notwithstanding Chapter 37 (§ 2.2-3700 et seq.) of Title 2.2 or subsection B, it is unlawful for any court clerk to disclose the social security number or other identification numbers appearing on driver's licenses or other documents issued under Chapter 3 (§ 46.2-300 et seq.) of Title 46.2 or the comparable law of another jurisdiction or information on credit cards, debit cards, bank accounts, or other electronic billing and payment systems that was supplied to a court clerk for the purpose of paying fees, fines, taxes, or other charges collected by such court clerk. The prohibition shall not apply where disclosure of such information is required (i) to conduct or complete the transaction for which such information was submitted or (ii) by other law or court order.

B. Beginning January 1, 2004, no court clerk shall post on the Internet any document that contains the following information: (i) an actual signature, (ii) a social security number, (iii) a date of birth identified with a particular person, (iv) the maiden name of a person's parent so as to be identified with a particular person, (v) any financial account number or numbers, or (vi) the name and age of any minor child.

C. Each such clerk shall post notice that includes a list of the documents routinely posted on its website. However, the clerk shall not post information on his website that includes private activity for private financial gain.

D. Nothing in this section shall be construed to prohibit access to any original document as provided by law.

E. This section shall not apply to the following:

1. Providing access to any document among the land records via secure remote access pursuant to § 17.1-294;

2. Postings related to legitimate law-enforcement purposes;

3. Postings of historical, genealogical, interpretive, or educational documents and information about historic persons and events;

4. Postings of instruments and records filed or recorded that are more than 100 years old;

5. Providing secure remote access to any person, his counsel, or staff which counsel directly supervises to documents filed in matters to which such person is a party;

6. Providing official certificates and certified records in digital form of any document maintained by the clerk pursuant to § 17.1-258.3:2; and

7. Providing secure remote access to nonconfidential court records, subject to any fees charged by the clerk, to members in good standing with the Virginia State Bar and their authorized agents, pro hac vice attorneys authorized by the court for purposes of the practice of law, and such governmental agencies as authorized by the clerk.

If a clerk of the circuit court provides secure remote access to nonconfidential court records, the clerk shall by a signed agreement with the Director of the Virginia Criminal Sentencing Commission provide secure remote access to such records to staff of the Commission.

F. Nothing in this section shall prohibit the Supreme Court or any other court clerk from providing online access to a case management system that may include abstracts of case filings and proceedings in the courts of the Commonwealth, including online access to subscribers of nonconfidential criminal case information to confirm the complete date of birth of a defendant.

G. Nothing in this section shall prohibit a court clerk from providing online access to a case management system that may include abstracts of case filings and proceedings in the courts of the Commonwealth, including online access to nonconfidential criminal case information, to any person designated by § 19.2-298.01(C) to prepare sentencing guidelines for the court. Any such access shall include information to confirm the defendant's complete date of birth, complete social security number, and the identity of the sentencing judge.

H. The clerk of each circuit court shall provide online access to a case management system that may include abstracts of case filings and proceedings in the circuit courts to the Virginia Criminal Sentencing Commission. The Commission may use the information only for research, evaluation, or statistical purposes, for the preparation or assistance with the preparation of sentencing guidelines required by § 19.2-298.01, or the review of Sentencing Guidelines submitted to the Commission. Access shall include information to confirm the defendant's complete date of birth, complete social security number, and the identity of the sentencing judge. The Commission shall ensure the confidentiality and security of the information. The Commission shall not publish personal or case identifying information, including names, dates of birth, and social security numbers included in the records.

I ~~G.~~ The court clerk shall be immune from suit arising from any acts or omissions relating to providing remote access on the Internet pursuant to this section unless the clerk was grossly negligent or engaged in willful misconduct.

This subsection shall not be construed to limit, withdraw, or overturn any defense or immunity already existing in statutory or common law, or to affect any cause of action accruing prior to July 1, 2005.

J ~~H.~~ Nothing in this section shall be construed to permit any data accessed by secure remote access to be sold or posted on any other website or in any way redistributed to any third party, and the clerk, in his discretion, may deny secure remote access to ensure compliance with these provisions. However, the data accessed by secure remote access may be included in products or services provided to a third party of the subscriber provided that (i) such data is not made available to the general public and (ii) the subscriber maintains administrative, technical, and security safeguards to protect the confidentiality, integrity, and limited availability of the data.

§ 16.1-305. Confidentiality of court records.

A. Social, medical and psychiatric or psychological records, including reports or preliminary inquiries, predisposition studies and supervision records, of neglected and abused children, children in need of services, children in need of supervision and delinquent children shall be filed with the other papers in the juvenile's case file. All juvenile case files shall be filed separately from adult files and records of the court and shall be open for inspection only to the following:

1. The judge, probation officers and professional staff assigned to serve the juvenile and domestic relations district courts;

2. Representatives of a public or private agency or department providing supervision or having legal custody of the child or furnishing evaluation or treatment of the child ordered or requested by the court;

3. The attorney for any party, including the attorney for the Commonwealth;

4. Any other person, agency or institution, by order of the court, having a legitimate interest in the case or in the work of the court. However, for the purposes of an investigation conducted by a local community-based probation services agency, preparation of a pretrial investigation report, or of a presentence or postsentence report upon a finding of guilty in a circuit court or for the preparation of a background report for the Parole Board, adult probation and parole officers, including United States Probation and Pretrial Services Officers, any officer of a local pretrial services agency established or operated pursuant to Article 5 (§ 19.2-152.2 et seq.) of Chapter 9 of Title 19.2, and any officer of a local community-based

probation services agency established or operated pursuant to the Comprehensive Community Corrections Act for Local-Responsible Offenders (§ 9.1-173 et seq.) shall have access to an accused's or inmate's records in juvenile court without a court order and for the purpose of preparing the discretionary sentencing guidelines worksheets and related risk assessment instruments as directed by the court pursuant to subsection C of § 19.2-298.01, the attorney for the Commonwealth and any pretrial services or probation officer shall have access to the defendant's records in juvenile court without a court order;

5. Any attorney for the Commonwealth and any local pretrial services or community-based probation officer or state adult probation or parole officer shall have direct access to the defendant's juvenile court delinquency records maintained in an electronic format by the court for the strictly limited purposes of preparing a pretrial investigation report, including any related risk assessment instrument, any presentence report, any discretionary sentencing guidelines worksheets, including related risk assessment instruments, any post-sentence investigation report or preparing for any transfer or sentencing hearing.

A copy of the court order of disposition in a delinquency case shall be provided to a probation officer or attorney for the Commonwealth, when requested for the purpose of calculating sentencing guidelines. The copies shall remain confidential, but reports may be prepared using the information contained therein as provided in §§ 19.2-298.01 and 19.2-299.

6. The Executive Secretary of the Supreme Court shall provide for the transfer of juvenile case data maintained by the Office of the Executive Secretary of the Supreme Court of Virginia in an electronic format that includes the disposition in delinquency cases and case identifying information, including names, social security numbers and dates of birth to the Virginia Criminal Sentencing Commission, when requested for the purpose of calculating Sentencing Guidelines, and for research, evaluation, or statistical purposes only. The data shall remain confidential, but the data may be used for developing Sentencing Guidelines and preparing aggregate reports as required by statute or requested by the General Assembly, the Office of the Attorney General, the Office of the Governor, or a member of the Governor's Cabinet. Such data shall not be subject to the Virginia Freedom of Information Act. The Virginia Criminal Sentencing Commission shall ensure the confidentiality and security of the data.

7.~~6.~~ The Office of the Attorney General, for all criminal justice activities otherwise permitted and for purposes of performing duties required by Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

A1. Any person, agency, or institution that may inspect juvenile case files pursuant to subdivisions A 1 through 4 shall be authorized to have copies made of such records, subject to any restrictions, conditions, or prohibitions that the court may impose.

B. All or any part of the records enumerated in subsection A, or information secured from such records, which is presented to the judge in court or otherwise in a proceeding under this law shall also be made available to the parties to the proceedings and their attorneys.

B1. If a juvenile 14 years of age or older at the time of the offense is adjudicated delinquent on the basis of an act which would be a felony if committed by an adult, all court records regarding that adjudication and any subsequent adjudication of delinquency, other than those records specified in subsection A, shall be open to the public. However, if a hearing was closed, the judge may order that certain records or portions thereof remain confidential to the extent necessary to protect any juvenile victim or juvenile witness.

C. All other juvenile records, including the docket, petitions, motions and other papers filed with a case, transcripts of testimony, findings, verdicts, orders and decrees shall be open to inspection only by those persons and agencies designated in subsections A and B. However, a licensed bail bondsman shall be entitled to know the status of a bond he has posted or provided surety on for a juvenile under § 16.1-258. This shall not authorize a bail bondsman to have access to or inspect any other portion of his principal's juvenile court records.

D. Attested copies of papers filed in connection with an adjudication of guilty for an offense for which the clerk is required by § 46.2-383 to furnish an abstract to the Department of Motor Vehicles, which shows the charge, finding, disposition, name of the attorney for the juvenile, or waiver of attorney shall be furnished to an attorney for the Commonwealth upon certification by the prosecuting attorney that such papers are needed as evidence in a pending criminal or traffic proceeding and that such papers will be only used for such evidentiary purpose.

D1. Attested copies of papers filed in connection with an adjudication of guilt for a delinquent act that would be a felony if committed by an adult, which show the charge, finding, disposition, name of the attorney for the juvenile, or waiver of attorney by the juvenile, shall be furnished to an attorney for the Commonwealth upon his certification that such papers are needed as evidence in a pending criminal prosecution for a violation of § 18.2-308.2 and that such papers will be only used for such evidentiary purpose.

E. Upon request, a copy of the court order of disposition in a delinquency case shall be provided to the Virginia Workers' Compensation Commission solely for purposes of determining whether to make an award to the victim of a crime, and such information shall not be disseminated or used by the Commission for any other purpose including but not limited to actions pursuant to § 19.2-368.15.

F. Staff of the court services unit or the attorney for the Commonwealth shall provide notice of the disposition in a case involving a juvenile who is committed to state care after being adjudicated for a criminal sexual assault as specified in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 to the victim or a parent of a minor victim, upon request. Additionally, if the victim or parent submits a written request, the Department of Juvenile Justice shall provide advance notice of such juvenile offender's anticipated date of release from commitment.

G. Any record in a juvenile case file which is open for inspection by the professional staff of the Department of Juvenile Justice pursuant to subsection A and is maintained in an electronic format by the court, may be transmitted electronically to the Department of Juvenile Justice. Any record so transmitted shall be subject to the provisions of § 16.1-300. (Code 1950, § 16.1-162; 1956, c. 555; 1958, c. 353; 1971, Ex. Sess., c. 228; 1975, c. 334; 1977, c. 559; 1979, c. 605; 1983, c. 389; 1984, c. 34; 1988, c. 541; 1989, c. 182; 1990, c. 258; 1992, c. 547; 1994, c. 603; 1995, c. 430; 1996, cc. 755, 870, 914; 1998, cc. 278, 521; 2002, cc. 701, 735, 741; 2003, c. 143; 2004, c. 446; 2007, c. 133; 2009, cc. 138, 308, 740; 2021, Sp. Sess. I, c. 463.)

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APPENDICES

Appendix ①

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

Reasons for MITIGATION

Burglary of Dwelling (34 Cases)	Number	Percent
Plea Agreement	14	41.2%
No mitigating reason given	7	20.6%
Request of the victim	4	11.8%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	3	8.8%
Sentenced to alternative punishment	2	5.9%
Mitigated court circumstances or proceedings (e.g., will resentence)	2	5.9%
Recommended by the attorney for the Commonwealth	2	5.9%
Offender was not the leader	2	5.9%
Cooperated with authorities	1	2.9%
Behavior positive since commission of the offense	1	2.9%
Recommended by the jury	1	2.9%
Judge had issues with risk assessment	1	2.9%
Offender has minimal or no prior record	1	2.9%
Offender has good potential for rehabilitation	1	2.9%

Burglary of Other Structure (31 Cases)	Number	Percent
Plea Agreement	17	54.8%
No mitigating reason given	6	19.4%
Sentenced to alternative punishment	5	16.1%
Mitigated court circumstances or proceedings (e.g., will resentence)	2	6.5%
Recommended by the attorney for the Commonwealth	2	6.5%
Offender has health issues	2	6.5%
Mitigated facts of the offense	1	3.2%
Offender has made progress in rehabilitating himself or herself	1	3.2%

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 (27Cases)	Number	Percent
Aggravated facts of the offense	12	44.4%
Plea agreement	11	40.7%
Sentencing guidelines recommendation was too low	4	14.8%
Offense involved a high degree of planning or a violation of trust	3	11.1%
Multiple counts, offenses or violations in the event (prosecuted or not)	3	11.1%
Offender has extensive prior record or same type of prior offense	3	11.1%
Victim circumstances (facts or the case, vulnerability, etc.)	3	11.1%
Aggravated facts of the offense, specific to breaking and entering	2	7.4%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	2	7.4%
Offense involved possession or use of a weapon	2	7.4%
No aggravating reason given	1	3.7%
Absconded from supervision	1	3.7%
Poor conduct since commission of the offense	1	3.7%
Gang-related offense	1	3.7%
Offender issues, general (e.g., age, family support, impact on community, etc.)	1	3.7%
Offender has poor rehabilitation potential	1	3.7%
Degree of victim injury (physical, emotional, etc.)	1	3.7%
Victim requested aggravating sentence	1	3.7%

Burglary of Other Structure (17 Cases)	Number	Percent
Offender has extensive prior record or same type of prior offense	5	29.4%
Aggravated facts of the offense	4	23.5%
Plea agreement	4	23.5%
Multiple counts, offenses or violations in the event (prosecuted or not)	2	11.8%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	2	11.8%
Degree of victim injury (physical, emotional, etc.)	2	11.8%
No aggravating reason given	1	5.9%
Failed to follow instructions while on probation	1	5.9%
Poor conduct since commission of the offense	1	5.9%
Offense involved a high degree of planning or a violation of trust	1	5.9%
Recommended by the jury	1	5.9%
Prior record not adequately weighed by guidelines	1	5.9%
Offender was the leader	1	5.9%
Mitigated facts of the offense	1	5.9%

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

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

Appendix ①

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

Reasons for MITIGATION

Drugs/Schedule I/II (531 Cases)	Number	Percent
Plea Agreement	242	45.7%
No mitigating reason given	68	12.9%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	65	12.3%
Sentenced to alternative punishment	53	10.0%
Offender has good potential for rehabilitation	36	6.8%
Mitigated court circumstances or proceedings (e.g., will resentence)	29	5.5%
Offender has made progress in rehabilitating himself or herself	28	5.3%
Mitigated facts of the offense	23	4.3%
Offender has health issues	22	4.2%
Offender issues, general (e.g., age, family support, impact on community, etc.)	17	3.2%
Cooperated with authorities	16	3.0%
Recommended by the attorney for the Commonwealth	15	2.8%
Offender has minimal or no prior record	14	2.6%
Current offense involves drugs or alcohol (e.g., small amount)	11	2.1%
Behavior positive since commission of the offense	9	1.7%
Offender has substance abuse issues	9	1.7%
Sentencing guidelines recommendation not appropriate (non-specific)	9	1.7%
Offender needs rehabilitation	8	1.5%
Sentencing guidelines recommendation was too high	6	1.1%
Sentencing guidelines were missing or incorrect	4	0.8%
Illegible written mitigating reason	3	0.6%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	2	0.4%
Plea agreement	2	0.4%
Judge believed sentence was in concurrence with recommendation	2	0.4%
Sentencing guidelines scoring issue (e.g., prior conviction not scored correctly, etc.)	2	0.4%
Victim cannot or will not testify	2	0.4%
Poor conduct since commission of the offense	1	0.2%
Aggravated facts of the offense	1	0.2%
Absconding from supervision in question	1	0.2%
Probation violation based on minimal circumstances involving drugs or alcohol	1	0.2%
Probation violation based on minimal facts of the case	1	0.2%
Property was recovered or was of little value	1	0.2%
Sequence of events had impact on recommendation	1	0.2%
Recommended by the jury	1	0.2%
Recommended by the probation officer	1	0.2%
Financial obligations (child support, restitution, court costs, etc.)	1	0.2%
Sentence was rounded down	1	0.2%
Offender was not the leader	1	0.2%
Offender has failed other alternatives or rehabilitation	1	0.2%
Mitigating court probation circumstances or proceedings (e.g., extend probation)	1	0.2%
Weapon was not a firearm	1	0.2%
Behavior was positive while in custody	1	0.2%

Drugs/Other (14 Cases)	Number	Percent
Plea Agreement	8	57.1%
Mitigated court circumstances or proceedings (e.g., will resentence)	3	21.4%
No mitigating reason given	2	14.3%
Plea agreement	1	7.1%
Sentenced to alternative punishment	1	7.1%
Probation violation based on minimal circumstances involving drugs or alcohol	1	7.1%
Recommended by the attorney for the Commonwealth	1	7.1%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	1	7.1%
Offender has made progress in rehabilitating himself or herself	1	7.1%

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

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

Appendix ①

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

Reasons for AGGRAVATION

Drugs/Schedule I/II (403 Cases)	Number	Percent
Plea agreement	183	45.4%
Multiple counts, offenses or violations in the event (prosecuted or not)	83	20.6%
Aggravated facts of the offense	38	9.4%
No aggravating reason given	34	8.4%
Current offense involved drugs or alcohol (e.g., large amount, location, etc.)	28	6.9%
Offender failed alternative program	28	6.9%
Offender has extensive prior record or same type of prior offense	23	5.7%
Poor conduct since commission of the offense	17	4.2%
Aggravated court circumstances or proceedings (e.g., will resentence)	16	4.0%
Offender has poor rehabilitation potential	14	3.5%
Sentenced to alternative punishment	11	2.7%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	11	2.7%
Offender needs rehabilitation offered by jail or prison	10	2.5%
Offender has substance abuse issues	9	2.2%
Absconded from supervision	7	1.7%
Type of victim (child, weak, etc.)	7	1.7%
Child present at time of the offense	6	1.5%
Sentencing guidelines recommendation was too low	6	1.5%
Degree of victim injury (physical, emotional, etc.)	6	1.5%
Recommended by the attorney for the Commonwealth	5	1.2%
Offense involved possession or use of a weapon	5	1.2%
Failed to follow instructions while on probation	4	1.0%
Violent of disruptive behavior while in custody	3	0.7%
Recommended by the jury	3	0.7%
Mandatory minimum was involved in the event	3	0.7%
Prior record not adequately weighed by guidelines	3	0.7%
Failed to cooperate with authorities	2	0.5%
Used, etc., drugs or alcohol while on probation	2	0.5%
Failed to attend meeting or keep appointments while on probation	2	0.5%
Multiple trial types (i.e., jury, bench, plea)	2	0.5%
Sentencing guidelines recommendation is not appropriate	2	0.5%
Offender issues, general (e.g., age, family support, impact on community, etc.)	2	0.5%
Seriousness of the original offense	2	0.5%
Never reported for probation or signed conditions	2	0.5%
Sentenced to alternative punishment	2	0.5%
Failed to cooperate with authorities while on probation	1	0.2%
Did not exercise due caution while driving, excessive speeding, etc.	1	0.2%
Extreme property or monetary loss	1	0.2%
Judge believed sentence was in concurrence with recommendation	1	0.2%
Sentencing guidelines scoring issue (e.g., recommendation not adjusted for mandatory time)	1	0.2%
Victim circumstances (facts or the case, vulnerability, etc.)	1	0.2%
Victim requested aggravating sentence	1	0.2%
Mitigated court circumstances or proceedings (e.g., will resentence)	1	0.2%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	1	0.2%
Offender has good potential for rehabilitation	1	0.2%

Drugs/Other (20 Cases)	Number	Percent
Plea agreement	10	50.0%
Multiple counts, offenses or violations in the event (prosecuted or not)	6	30.0%
No aggravating reason given	3	15.0%
Aggravated facts of the offense	3	15.0%
Sentencing guidelines recommendation was too low	2	10.0%
Offender has extensive prior record or same type of prior offense	2	10.0%
Offender has poor rehabilitation potential	2	10.0%
Offense involved a high degree of planning or a violation of trust	1	5.0%
Current offense involved drugs or alcohol (e.g., large amount, location, etc.)	1	5.0%

Appendix ①

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

Reasons for MITIGATION

Fraud (53 Cases)	Number	Percent
Plea Agreement	28	52.8%
Sentenced to alternative punishment	6	11.3%
Mitigated facts of the offense	5	9.4%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	5	9.4%
Recommended by the attorney for the Commonwealth	4	7.5%
Offender has good potential for rehabilitation	4	7.5%
No mitigating reason given	3	5.7%
Mitigated court circumstances or proceedings (e.g., will resentence)	3	5.7%
Offender has health issues	3	5.7%
Request of the victim	3	5.7%
Property was recovered or was of little value	2	3.8%
Offender has minimal or no prior record	2	3.8%
Illegible written mitigating reason	1	1.9%
Sentencing guidelines were missing or incorrect	1	1.9%
Sentencing guidelines scoring issue (e.g., prior conviction not scored correctly, etc.)	1	1.9%
Sentencing guidelines recommendation was too high	1	1.9%
Offender issues, general (e.g., age, family support, impact on community, etc.)	1	1.9%
Offender has made progress in rehabilitating himself or herself	1	1.9%

Larceny (107 Cases)	Number	Percent
Plea Agreement	50	47.2%
No mitigating reason given	19	17.9%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	15	14.2%
Sentenced to alternative punishment	10	9.4%
Financial obligations (child support, restitution, court costs, etc.)	8	7.5%
Offender has health issues	6	5.7%
Offender has good potential for rehabilitation	6	5.7%
Cooperated with authorities	5	4.7%
Mitigated facts of the offense	4	3.8%
Recommended by the attorney for the Commonwealth	4	3.8%
Behavior positive since commission of the offense	3	2.8%
Mitigated court circumstances or proceedings (e.g., will resentence)	3	2.8%
Offender issues, general (e.g., age, family support, impact on community, etc.)	2	1.9%
Request of the victim	2	1.9%
Offender has substance abuse issues	1	0.9%
Judge believed sentence was in concurrence with recommendation	1	0.9%
Original offense was nonviolent	1	0.9%
Offender needs rehabilitation	1	0.9%
Offender has made progress in rehabilitating himself or herself	1	0.9%
Victim cannot or will not testify	1	0.9%

Note: Figures indicate the number of times a departure reason was cited.
Because multiple reasons may be cited in each case, figures will not total the number of cases in each offense group.

Appendix ①

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

Reasons for AGGRAVATION

Fraud (32 Cases)	Number	Percent
Plea agreement	10	31.3%
Aggravated facts of the offense	7	21.9%
No aggravating reason given	5	15.6%
Offense involved a high degree of planning or a violation of trust	5	15.6%
Offender has extensive prior record or same type of prior offense	3	9.4%
Extreme property or monetary loss	2	6.3%
Financial obligations (child support, restitution, court costs, etc.)	2	6.3%
Multiple counts, offenses or violations in the event (prosecuted or not)	2	6.3%
Offender has poor rehabilitation potential	2	6.3%
Type of victim (child, weak, etc.)	2	6.3%
Victim requested aggravating sentence	2	6.3%
Missing information	1	3.1%
Sentenced to alternative punishment	1	3.1%
Failed to follow instructions while on probation	1	3.1%
Poor conduct since commission of the offense	1	3.1%
Prior record not adequately weighed by guidelines	1	3.1%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	1	3.1%
Victim circumstances (facts or the case, vulnerability, etc.)	1	3.1%
Offender violated a restraining order or stalked victim	1	3.1%

Larceny (109 Cases)	Number	Percent
Plea agreement	48	44.4%
Aggravated facts of the offense	21	19.4%
No aggravating reason given	15	13.9%
Multiple counts, offenses or violations in the event (prosecuted or not)	9	8.3%
Sentenced to alternative punishment	6	5.6%
Sentencing guidelines recommendation was too low	6	5.6%
Offender has extensive prior record or same type of prior offense	6	5.6%
Recommended by the attorney for the Commonwealth	5	4.6%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	5	4.6%
Poor conduct since commission of the offense	4	3.7%
Offense involved a high degree of planning or a violation of trust	4	3.7%
Did not exercise due caution while driving, excessive speeding, etc.	3	2.8%
Aggravated facts of the offense, specific to breaking and entering	3	2.8%
Extreme property or monetary loss	3	2.8%
Offender has poor rehabilitation potential	2	1.9%
Offender failed alternative program	2	1.9%
Type of victim (child, weak, etc.)	2	1.9%
Failed to cooperate with authorities	1	0.9%
Aggravated court circumstances or proceedings (e.g., will resentence)	1	0.9%
Current offense involved drugs or alcohol (e.g., large amount, location, etc.)	1	0.9%
Offender has substance abuse issues	1	0.9%
Financial obligations (child support, restitution, court costs, etc.)	1	0.9%
Sentencing guidelines recommendation is not appropriate	1	0.9%
Prior record not adequately weighed by guidelines	1	0.9%
Offender was the leader	1	0.9%
Offender has health issues	1	0.9%
Offender issues, general (e.g., age, family support, impact on community, etc.)	1	0.9%

Note: Figures indicate the number of times a departure reason was cited.
Because multiple reasons may be cited in each case, figures will not total the number of cases in each offense group.

Appendix ①

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

Reasons for MITIGATION

Miscellaneous/Other (29 Cases)	Number	Percent
Plea Agreement	18	62.1%
No mitigating reason given	4	13.8%
Offender has made progress in rehabilitating himself or herself	3	10.3%
Probation violation based on minimal facts of the case	2	6.9%
Mitigated facts of the offense	2	6.9%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	2	6.9%
Offender has minimal or no prior record	2	6.9%
Recommended by the attorney for the Commonwealth	1	3.4%
Recommended by the jury	1	3.4%
Offender has health issues	1	3.4%
Offender has good potential for rehabilitation	1	3.4%
Offender needs rehabilitation	1	3.4%
Mitigating facts of the offense, specific to sex offenses	1	3.4%

Miscellaneous/Person & Property (46 Cases)	Number	Percent
Plea Agreement	22	47.8%
Mitigated court circumstances or proceedings (e.g., will resentence)	6	13.0%
Offender has good potential for rehabilitation	6	13.0%
No mitigating reason given	4	8.7%
Cooperated with authorities	4	8.7%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	4	8.7%
Offender has health issues	4	8.7%
Mitigated facts of the offense	3	6.5%
Offender has minimal or no prior record	3	6.5%
Request of the victim	3	6.5%
Sentenced to alternative punishment	2	4.3%
Recommended by the attorney for the Commonwealth	2	4.3%
Sequence of events had impact on recommendation	1	2.2%
Recommended by the probation officer	1	2.2%
Financial obligations (child support, restitution, court costs, etc.)	1	2.2%
Sentencing guidelines recommendation not appropriate (non-specific)	1	2.2%
Sentence was rounded down	1	2.2%
Offender has made progress in rehabilitating himself or herself	1	2.2%
Victim circumstances (drug dealer, etc.)	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

Miscellaneous/Other (20 Cases)	Number	Percent
Aggravated facts of the offense	9	45.0%
Plea agreement	8	40.0%
Multiple counts, offenses or violations in the event (prosecuted or not)	4	20.0%
Offender has extensive prior record or same type of prior offense	3	15.0%
No aggravating reason given	2	10.0%
Absconded from supervision	2	10.0%
Offense involved a high degree of planning or a violation of trust	1	5.0%
Offender failed alternative program	1	5.0%
Degree of victim injury (physical, emotional, etc.)	1	5.0%
Offense involved possession or use of a weapon	1	5.0%

Miscellaneous/Person & Property (76 Cases)	Number	Percent
Aggravated facts of the offense	32	42.1%
Plea agreement	27	35.5%
Degree of victim injury (physical, emotional, etc.)	11	14.5%
Type of victim (child, weak, etc.)	10	13.2%
Multiple counts, offenses or violations in the event (prosecuted or not)	9	11.8%
Child present at time of the offense	8	10.5%
Offender has poor rehabilitation potential	7	9.2%
Offender has extensive prior record or same type of prior offense	6	7.9%
Sentencing guidelines recommendation was too low	5	6.6%
No aggravating reason given	3	3.9%
Poor conduct since commission of the offense	3	3.9%
Did not exercise due caution while driving, excessive speeding, etc.	2	2.6%
Offense involved a high degree of planning or a violation of trust	2	2.6%
Recommended by the jury	2	2.6%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	2	2.6%
Offender needs rehabilitation offered by jail or prison	2	2.6%
Sentenced to alternative punishment	1	1.3%
Extreme property or monetary loss	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%
Current offense involved drugs or alcohol (e.g., large amount, location, etc.)	1	1.3%
Offender has substance abuse issues	1	1.3%
Mandatory minimum was involved in the event	1	1.3%
Sentencing guidelines recommendation is not appropriate	1	1.3%
Prior record not adequately weighed by guidelines	1	1.3%
Offender violated a restraining order or stalked victim	1	1.3%
Victim requested aggravating sentence	1	1.3%
Degree of violence directed at victim	1	1.3%
Current offense involves drugs or alcohol (e.g., small amount)	1	1.3%

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

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

Appendix ①

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

Reasons for MITIGATION

Traffic (88 Cases)	Number	Percent
Plea Agreement	48	55.2%
No mitigating reason given	9	10.3%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	9	10.3%
Offender has health issues	6	6.9%
Offender has good potential for rehabilitation	6	6.9%
Sentenced to alternative punishment	5	5.7%
Recommended by the attorney for the Commonwealth	5	5.7%
Mitigated court circumstances or proceedings (e.g., will resentence)	4	4.6%
Offender has minimal or no prior record	3	3.4%
Mitigated facts of the offense	2	2.3%
Sentencing guidelines scoring issue (e.g., prior conviction not scored correctly, etc.)	2	2.3%
Illegible written mitigating reason	1	1.1%
Offender has substance abuse issues	1	1.1%
Probation violation based on minor new offense	1	1.1%
Behavior positive since commission of the offense	1	1.1%
Recommended by the jury	1	1.1%
Financial obligations (child support, restitution, court costs, etc.)	1	1.1%
Sentencing guidelines recommendation not appropriate (non-specific)	1	1.1%
Sentencing guidelines recommendation was too high	1	1.1%
Offender issues, general (e.g., age, family support, impact on community, etc.)	1	1.1%
Offender needs rehabilitation	1	1.1%
Offender has made progress in rehabilitating himself or herself	1	1.1%
Little or no injury, offender did not intend to harm victim	1	1.1%
Request of the victim	1	1.1%

Weapons (69 Cases)	Number	Percent
Plea Agreement	37	53.6%
Mitigated court circumstances or proceedings (e.g., will resentence)	12	17.4%
No mitigating reason given	10	14.5%
Mitigated facts of the offense	7	10.1%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	6	8.7%
Offender has good potential for rehabilitation	6	8.7%
Offender has health issues	4	5.8%
Offender has minimal or no prior record	3	4.3%
Cooperated with authorities	2	2.9%
Offender issues, general (e.g., age, family support, impact on community, etc.)	2	2.9%
Multiple counts, offenses or violations in the event (prosecuted or not)	1	1.4%
Offense involved possession or use of a weapon	1	1.4%
Sentenced to alternative punishment	1	1.4%
Recommended by the attorney for the Commonwealth	1	1.4%
Recommended by the probation officer	1	1.4%
Current offense involves drugs or alcohol (e.g., small amount)	1	1.4%
Financial obligations (child support, restitution, court costs, etc.)	1	1.4%
Sentencing guidelines recommendation not appropriate (non-specific)	1	1.4%
Sentencing guidelines recommendation was too high	1	1.4%
Offender needs rehabilitation	1	1.4%
Little or no injury, offender did not intend to harm victim	1	1.4%
Request of the victim	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 (111 Cases)	Number	Percent
Aggravated facts of the offense	40	36.0%
Plea agreement	34	30.6%
Offender has extensive prior record or same type of prior offense	19	17.1%
Did not exercise due caution while driving, excessive speeding, etc.	15	13.5%
Sentencing guidelines recommendation was too low	13	11.7%
Offender has substance abuse issues	12	10.8%
Offender has poor rehabilitation potential	12	10.8%
Multiple counts, offenses or violations in the event (prosecuted or not)	10	9.0%
No aggravating reason given	9	8.1%
Degree of victim injury (physical, emotional, etc.)	9	8.1%
Poor conduct since commission of the offense	4	3.6%
Sentenced to alternative punishment	3	2.7%
Failed to follow instructions while on probation	2	1.8%
Recommended by the jury	2	1.8%
Current offense involved drugs or alcohol (e.g., large amount, location, etc.)	2	1.8%
Prior record not adequately weighed by guidelines	2	1.8%
Offender issues, general (e.g., age, family support, impact on community, etc.)	2	1.8%
Type of victim (child, weak, etc.)	2	1.8%
Gang-related offense	1	0.9%
Child present at time of the offense	1	0.9%
Sentencing guidelines recommendation is not appropriate	1	0.9%
Judicial discretion (e.g., time served, shock incarceration, consistent with codef., etc.)	1	0.9%
Victim requested aggravating sentence	1	0.9%
Offense involved possession or use of a weapon	1	0.9%

Weapons (313 Cases)	Number	Percent
Plea agreement	154	49.4%
No aggravating reason given	65	20.8%
Multiple counts, offenses or violations in the event (prosecuted or not)	50	16.0%
Aggravated facts of the offense	21	6.7%
Recommended by the jury	19	6.1%
Mandatory minimum was involved in the event	14	4.5%
Offender has extensive prior record or same type of prior offense	11	3.5%
Offense involved possession or use of a weapon	5	1.6%
Recommended by the attorney for the Commonwealth	4	1.3%
Offender has poor rehabilitation potential	4	1.3%
Aggravated court circumstances or proceedings (e.g., will resentence)	3	1.0%
Type of victim (child, weak, etc.)	3	1.0%
Illegible written aggravating reason	2	0.6%
Did not exercise due caution while driving, excessive speeding, etc.	2	0.6%
Sentencing guidelines recommendation was too low	2	0.6%
Degree of victim injury (physical, emotional, etc.)	2	0.6%
Failed to cooperate with authorities	1	0.3%
Gang-related offense	1	0.3%
Sentencing guidelines recommendation is not appropriate	1	0.3%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	1	0.3%

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

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

Appendix ②

Judicial Reasons for Departure from Sentencing Guidelines
Offenses Against the Person

Reasons for MITIGATION

Assault (106 Cases)	Number	Percent
Plea Agreement	54	50.9%
Request of the victim	15	14.2%
No mitigating reason given	10	9.4%
Mitigated facts of the offense	9	8.5%
Offender has health issues	8	7.5%
Mitigated court circumstances or proceedings (e.g., will resentence)	6	5.7%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	6	5.7%
Offender has good potential for rehabilitation	6	5.7%
Victim cannot or will not testify	6	5.7%
Sentenced to alternative punishment	5	4.7%
Recommended by the attorney for the Commonwealth	4	3.8%
Little or no injury, offender did not intend to harm victim	4	3.8%
Sentenced as a juvenile to DJJ	4	3.8%
Illegible written mitigating reason	2	1.9%
Behavior positive since commission of the offense	2	1.9%
Offender issues, general (e.g., age, family support, impact on community, etc.)	2	1.9%
Offender has minimal or no prior record	2	1.9%
Role of victim in the offense	2	1.9%
Poor conduct since commission of the offense	1	0.9%
Aggravated facts of the offense	1	0.9%
Degree of victim injury (physical, emotional, etc.)	1	0.9%
Cooperated with authorities	1	0.9%
Current offense involves drugs or alcohol (e.g., small amount)	1	0.9%
Offender has substance abuse issues	1	0.9%
Financial obligations (child support, restitution, court costs, etc.)	1	0.9%
Victim circumstances (facts or the case, credibility issues, etc.)	1	0.9%
Victim circumstances (drug dealer, etc.)	1	0.9%

Kidnapping (10 Cases)	Number	Percent
Plea Agreement	6	60.0%
No mitigating reason given	2	20.0%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	2	20.0%
Mitigated court circumstances or proceedings (e.g., will resentence)	1	10.0%
Victim cannot or will not testify	1	10.0%

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

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

Appendix ②

Judicial Reasons for Departure from Sentencing Guidelines
Offenses Against the Person

Reasons for AGGRAVATION

Assault (154 Cases)	Number	Percent
Aggravated facts of the offense	54	35.1%
Plea agreement	33	21.4%
Degree of victim injury (physical, emotional, etc.)	29	18.8%
Offender has extensive prior record or same type of prior offense	20	13.0%
Offender has poor rehabilitation potential	20	13.0%
Multiple counts, offenses or violations in the event (prosecuted or not)	16	10.4%
Degree of violence directed at victim	14	9.1%
Sentencing guidelines recommendation was too low	12	7.8%
No aggravating reason given	11	7.1%
Type of victim (child, weak, etc.)	11	7.1%
Sentencing guidelines recommendation is not appropriate	9	5.8%
Recommended by the attorney for the Commonwealth	6	3.9%
Victim requested aggravating sentence	6	3.9%
Recommended by the jury	5	3.2%
Child present at time of the offense	4	2.6%
Poor conduct since commission of the offense	3	1.9%
Offender issues, general (e.g., age, family support, impact on community, etc.)	3	1.9%
Offender violated a restraining order or stalked victim	3	1.9%
Failed to cooperate with authorities	2	1.3%
Violent of disruptive behavior while in custody	2	1.3%
Failed to follow instructions while on probation	2	1.3%
Offense involved a high degree of planning or a violation of trust	2	1.3%
Mandatory minimum was involved in the event	2	1.3%
Offender has health issues	2	1.3%
Seriousness of the original offense	2	1.3%
Victim circumstances (facts or the case, vulnerability, etc.)	2	1.3%
Offense involved possession or use of a weapon	2	1.3%
Offender has good potential for rehabilitation	2	1.3%
Illegible written aggravating reason	1	0.6%
Did not exercise due caution while driving, excessive speeding, etc.	1	0.6%
Aggravated facts of the offense, specific to breaking and entering	1	0.6%
Gang-related offense	1	0.6%
True offense behavior was more serious than offenses at conviction	1	0.6%
Offender has substance abuse issues	1	0.6%
Prior record not adequately weighed by guidelines	1	0.6%
Sentence was rounded up	1	0.6%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	1	0.6%
Offender failed alternative program	1	0.6%
Never reported for probation or signed conditions	1	0.6%
Plea Agreement	1	0.6%

Kidnapping (12 Cases)	Number	Percent
Aggravated facts of the offense	5	41.7%
Offender has poor rehabilitation potential	3	25.0%
Offense involved a high degree of planning or a violation of trust	2	16.7%
Recommended by the jury	2	16.7%
Type of victim (child, weak, etc.)	2	16.7%
Illegible written aggravating reason	1	8.3%
Multiple trial types (i.e., jury, bench, plea)	1	8.3%
Multiple counts, offenses or violations in the event (prosecuted or not)	1	8.3%
Prior record not adequately weighed by guidelines	1	8.3%
Plea agreement	1	8.3%
Offender has extensive prior record or same type of prior offense	1	8.3%
Victim circumstances (facts or the case, vulnerability, etc.)	1	8.3%
Degree of victim injury (physical, emotional, etc.)	1	8.3%
Degree of violence directed at victim	1	8.3%
Degree of victim injury (physical, emotional, etc.)	1	4.3%
Offender violated a restraining order or stalked victim	1	4.3%
Victim requested aggravating sentence	1	4.3%
Mitigated facts of the offense	1	4.3%

Appendix ②

Judicial Reasons for Departure from Sentencing Guidelines
Offenses Against the Person

Reasons for MITIGATION

Homicide (14 Cases)	Number	Percent
Plea Agreement	5	35.7%
No mitigating reason given	3	21.4%
Aggravated facts of the offense	1	7.1%
Offender has extensive prior record or same type of prior offense	1	7.1%
Offender has poor rehabilitation potential	1	7.1%
Cooperated with authorities	1	7.1%
Mitigated court circumstances or proceedings (e.g., will resentence)	1	7.1%
Sentencing guidelines scoring issue (e.g., prior conviction not scored correctly, etc.)	1	7.1%
Offender issues, general (e.g., age, family support, impact on community, etc.)	1	7.1%
Offender has good potential for rehabilitation	1	7.1%
Victim cannot or will not testify	1	7.1%
Sentenced as a juvenile to DJJ	1	7.1%

Robbery/Carjacking (4 Cases)	Number	Percent
Sentenced to alternative punishment	1	25.0%
Mitigated court circumstances or proceedings (e.g., will resentence)	1	25.0%
Multiple trial types (i.e., jury, bench, plea)	1	25.0%
Plea Agreement	1	25.0%
Request of the victim	1	25.0%
Sentenced as a juvenile to DJJ	1	25.0%

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 (87 Cases)	Number	Percent
Aggravated facts of the offense	43	49.4%
Offender has poor rehabilitation potential	16	18.4%
Plea agreement	13	14.9%
Degree of victim injury (physical, emotional, etc.)	13	14.9%
Sentencing guidelines recommendation was too low	8	9.2%
Degree of violence directed at victim	8	9.2%
Recommended by the jury	7	8.0%
Type of victim (child, weak, etc.)	7	8.0%
Multiple counts, offenses or violations in the event (prosecuted or not)	6	6.9%
Offender has extensive prior record or same type of prior offense	5	5.7%
Victim requested aggravating sentence	5	5.7%
Failed to cooperate with authorities	3	3.4%
Offense involved a high degree of planning or a violation of trust	3	3.4%
Recommended by the attorney for the Commonwealth	3	3.4%
Current offense involved drugs or alcohol (e.g., large amount, location, etc.)	3	3.4%
Prior record not adequately weighed by guidelines	3	3.4%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	3	3.4%
No aggravating reason given	2	2.3%
Poor conduct since commission of the offense	2	2.3%
Did not exercise due caution while driving, excessive speeding, etc.	2	2.3%
Aggravated court circumstances or proceedings (e.g., will resentence)	2	2.3%
Offender has substance abuse issues	2	2.3%
Offender failed alternative program	2	2.3%
Failed to follow instructions while on probation	1	1.1%
Child present at time of the offense	1	1.1%
True offense behavior was more serious than offenses at conviction	1	1.1%
Offender needs rehabilitation offered by jail or prison	1	1.1%
Victim circumstances (facts or the case, vulnerability, etc.)	1	1.1%
Plea Agreement	1	1.1%

Robbery/Carjacking (0 Cases)	Number	Percent

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 (15 Cases)	Number	Percent
Plea Agreement	12	80.0%
Sequence of events had impact on recommendation	2	13.3%
Mitigated court circumstances or proceedings (e.g., will resentence)	2	13.3%
Offender issues, general (e.g., age, family support, impact on community, etc.)	2	13.3%
Request of the victim	2	13.3%
Sentencing guidelines recommendation not appropriate (non-specific)	1	6.7%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	1	6.7%
Offender has health issues	1	6.7%
Victim cannot or will not testify	1	6.7%

Other Sexual Assault (15 Cases)	Number	Percent
Plea Agreement	5	35.7%
No mitigating reason given	4	28.6%
Victim cannot or will not testify	3	21.4%
Mitigated facts of the offense	2	14.3%
Victim circumstances (drug dealer, etc.)	2	14.3%
Request of the victim	2	14.3%
Sentenced to alternative punishment	1	7.1%
Sequence of events had impact on recommendation	1	7.1%
Recommended by the attorney for the Commonwealth	1	7.1%
Sentencing guidelines recommendation not appropriate (non-specific)	1	7.1%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	1	7.1%
Offender issues, general (e.g., age, family support, impact on community, etc.)	1	7.1%

Other Sexual Assault/Obscenity (14 Cases)	Number	Percent
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	4	28.6%
Plea Agreement	4	28.6%
No mitigating reason given	3	21.4%
Offender issues, general (e.g., age, family support, impact on community, etc.)	3	21.4%
Offender has minimal or no prior record	3	21.4%
Mitigated facts of the offense	2	14.3%
Cooperated with authorities	1	7.1%
Sequence of events had impact on recommendation	1	7.1%
Mitigated court circumstances or proceedings (e.g., will resentence)	1	7.1%
Offender has health issues	1	7.1%
Offender has good potential for rehabilitation	1	7.1%
Offender needs rehabilitation	1	7.1%
Victim cannot or will not testify	1	7.1%

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

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

Appendix ②

Judicial Reasons for Departure from Sentencing Guidelines
Offenses Against the Person

Reasons for AGGRAVATION

Rape (20 Cases)	Number	Percent
Aggravated facts of the offense	9	45.0%
Offender has poor rehabilitation potential	6	30.0%
Type of victim (child, weak, etc.)	5	25.0%
No aggravating reason given	3	15.0%
Recommended by the jury	3	15.0%
Multiple counts, offenses or violations in the event (prosecuted or not)	2	10.0%
Plea agreement	2	10.0%
Offender has extensive prior record or same type of prior offense	2	10.0%
Degree of victim injury (physical, emotional, etc.)	2	10.0%
Offense involved a high degree of planning or a violation of trust	1	5.0%
Recommended by the attorney for the Commonwealth	1	5.0%
Sentencing guidelines recommendation was too low	1	5.0%
Offender issues, general (e.g., age, family support, impact on community, etc.)	1	5.0%
Aggravated facts of the offense, specific to sex offenses	1	5.0%
Victim requested aggravating sentence	1	5.0%

Other Sexual Assault (52 Cases)	Number	Percent
Aggravated facts of the offense	22	42.3%
Plea agreement	13	25.0%
Type of victim (child, weak, etc.)	10	19.2%
Multiple counts, offenses or violations in the event (prosecuted or not)	8	15.4%
Offender has poor rehabilitation potential	8	15.4%
Sentencing guidelines recommendation was too low	7	13.5%
No aggravating reason given	4	7.7%
Offense involved a high degree of planning or a violation of trust	4	7.7%
Degree of victim injury (physical, emotional, etc.)	4	7.7%
Recommended by the jury	3	5.8%
Offender has extensive prior record or same type of prior offense	3	5.8%
Victim requested aggravating sentence	3	5.8%
Aggravated facts of the offense, specific to sex offenses	2	3.8%
Sex offender has poor rehabilitation potential	2	3.8%
Sentenced to alternative punishment	1	1.9%
Failed to cooperate with authorities	1	1.9%
True offense behavior was more serious than offenses at conviction	1	1.9%
Recommended by the attorney for the Commonwealth	1	1.9%
Sentencing guidelines recommendation is not appropriate	1	1.9%
Victim circumstances (facts or the case, vulnerability, etc.)	1	1.9%

Other Sexual Assault/Obscenity (14 Cases)	Number	Percent
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	4	28.6%
Plea Agreement	4	28.6%
No mitigating reason given	3	21.4%
Offender issues, general (e.g., age, family support, impact on community, etc.)	3	21.4%
Offender has minimal or no prior record	3	21.4%
Mitigated facts of the offense	2	14.3%
Cooperated with authorities	1	7.1%
Sequence of events had impact on recommendation	1	7.1%
Mitigated court circumstances or proceedings (e.g., will resentence)	1	7.1%
Offender has health issues	1	7.1%
Offender has good potential for rehabilitation	1	7.1%
Offender needs rehabilitation	1	7.1%
Victim cannot or will not testify	1	7.1%

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

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

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

BURGLARY OF DWELLING

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	80%	0.0%	20%	5
2	90.9	0.0	9.1	11
3	0.0	100	0.0	1
4	89.5	10.5	0.0	19
5	50.0	0.0	50.0	2
6	83.3	16.7	0.0	6
7	100	0.0	0.0	1
8	28.6	71.4	0.0	7
9	72.7	0.0	27.3	11
10	71.4	7.1	21.4	14
11	85.7	14.3	0.0	7
12	100	0.0	0.0	2
13	75.0	16.7	8.3	12
14	80.0	10.0	10.0	10
15	77.8	0.0	22.2	9
16	44.4	33.3	22.2	9
17	100	0.0	0.0	1
18	0.0	100	0.0	1
19	57.1	28.6	14.3	7
20	50.0	0.0	50.0	2
21	84.6	7.7	7.7	13
22	92.3	0.0	7.7	13
23	63.6	36.4	0.0	11
24	89.5	5.3	5.3	19
25	84.6	15.4	0.0	13
26	81.3	0.0	18.8	16
27	87.5	12.5	0.0	16
28	75.0	25.0	0.0	8
29	80.0	20.0	0.0	5
30	75.0	25.0	0.0	4
31	33.3	0.0	66.7	6
Total	76.6	13.0	10.3	261

BURGLARY/OTHER

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	85.7%	0%	14.3%	7
2	85.7	7.1	7.1	14
3	0.0	0.0	0.0	0
4	77.8	22.2	0.0	9
5	100	0.0	0.0	1
6	71.4	14.3	14.3	7
7	66.7	33.3	0.0	6
8	83.3	16.7	0.0	6
9	66.7	0.0	33.3	6
10	90.0	10.0	0.0	10
11	85.7	0.0	14.3	7
12	100	0.0	0.0	7
13	58.3	25.0	16.7	12
14	73.3	13.3	13.3	15
15	92.3	7.7	0.0	13
16	100	0.0	0.0	7
17	33.3	33.3	33.3	3
18	50.0	50.0	0.0	2
19	40.0	60.0	0.0	5
20	66.7	0.0	33.3	3
21	100.0	0.0	0.0	9
22	93.8	0.0	6.3	16
23	79.2	12.5	8.3	24
24	100	0.0	0.0	8
25	73.9	26.1	0.0	23
26	92.9	0.0	7.1	14
27	95.5	0.0	4.5	22
28	100	0.0	0.0	9
29	75.0	25.0	0.0	4
30	83.3	16.7	0.0	6
31	0.0	100.0	0.0	1
Total	82.6	11.2	6.2	276

DRUG/OTHER

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	83.3%	16.7%	0%	12
2	81.3	6.3	12.5	16
3	0.0	0.0	0.0	0
4	75.0	0.0	25.0	4
5	71.4	0.0	28.6	7
6	62.5	0.0	37.5	8
7	60.0	0.0	40.0	5
8	100	0.0	0.0	2
9	100	0.0	0.0	5
10	100	0.0	0.0	6
11	0.0	100	0.0	1
12	80.0	0.0	20.0	5
13	50.0	16.7	33.3	6
14	60.0	20.0	20.0	5
15	100	0.0	0.0	10
16	100	0.0	0.0	4
17	100	0.0	0.0	2
18	0.0	0.0	0.0	0
19	100	0.0	0.0	1
20	82.4	5.9	11.8	17
21	83.3	16.7	0.0	6
22	84.6	0.0	15.4	13
23	0.0	0.0	0.0	0
24	100	0.0	0.0	8
25	83.3	0.0	16.7	6
26	85.7	14.3	0.0	14
27	90.0	10.0	0.0	20
28	100	0.0	0.0	3
29	91.2	5.9	2.9	34
30	100	0.0	0.0	10
31	100	0.0	0.0	1
Total	85.3	6.1	8.7	231

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

DRUG SCHEDULE I/II

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	85.8%	9.3%	4.9%	247
2	90.5	4.7	4.7	359
3	42.9	42.9	14.3	7
4	77.1	14.6	8.3	48
5	82.7	7.7	9.6	52
6	84.2	6.3	9.5	95
7	83.2	13.7	3.2	95
8	89.1	8.7	2.2	46
9	86.9	3.4	9.7	176
10	86.3	7.2	6.5	139
11	88.4	9.3	2.3	43
12	91.3	6.4	2.3	219
13	73.4	19.4	7.2	139
14	81.4	11.5	7.1	451
15	79.2	9.9	10.9	534
16	81.1	11.4	7.4	175
17	72.7	9.1	18.2	11
18	87.5	12.5	0.0	8
19	72.9	20.6	6.5	107
20	76.6	10.6	12.8	47
21	87.0	6.2	6.7	193
22	89.1	2.9	8.0	238
23	82.4	13.4	4.2	238
24	91.8	5.2	2.9	306
25	80.5	12.4	7.1	437
26	92.0	4.0	4.0	746
27	91.7	4.4	3.9	617
28	86.4	10.7	2.9	243
29	84.8	3.6	11.6	250
30	87.0	6.1	6.9	262
31	83.8	14.7	1.5	68
Total	85.9	8.0	6.1	6,605

NOTE: Circuit Number missing in 9 cases.

FRAUD

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	94.3%	0%	5.7%	35
2	95.0	0.0	5.0	40
3	0.0	0.0	0.0	0
4	88.9	11.1	0.0	9
5	85.0	5.0	10.0	20
6	100	0.0	0.0	15
7	66.7	33.3	0.0	6
8	50.0	0.0	50.0	2
9	92.1	5.3	2.6	38
10	93.8	6.3	0.0	16
11	92.3	0.0	7.7	13
12	94.7	5.3	0.0	19
13	87.5	12.5	0.0	8
14	78.6	3.6	17.9	28
15	84.7	9.4	5.9	85
16	92.9	7.1	0.0	14
17	0.0	50.0	50.0	2
18	66.7	33.3	0.0	3
19	80.0	15.0	5.0	20
20	81.8	9.1	9.1	11
21	90.9	9.1	0.0	11
22	90.3	3.2	6.5	31
23	80.0	13.3	6.7	30
24	90.9	6.1	3.0	33
25	83.1	16.9	0.0	65
26	92.6	7.4	0.0	54
27	91.7	2.8	5.6	36
28	85.7	9.5	4.8	21
29	93.8	6.3	0.0	16
30	90.0	10.0	0.0	10
31	71.4	0.0	28.6	7
Total	87.8	7.6	4.6	699

NOTE: Circuit Number missing in 1 case.

LARCENY

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	90%	3%	7%	61
2	89.0	2.2	8.8	91
3	62.5	37.5	0.0	8
4	79.2	6.3	14.6	48
5	77.1	5.7	17.1	35
6	84.4	6.3	9.4	32
7	94.4	0.0	5.6	18
8	76.5	11.8	11.8	17
9	92.6	1.9	5.6	54
10	90.5	2.4	7.1	42
11	94.4	0.0	5.6	18
12	91.7	5.0	3.3	60
13	64.7	35.3	0.0	17
14	81.1	8.1	10.8	74
15	79.8	9.2	11.0	109
16	75.6	13.3	11.1	45
17	100	0.0	0.0	5
18	80.0	0.0	20.0	5
19	76.0	18.0	6.0	50
20	65.0	15.0	20.0	20
21	81.6	7.9	10.5	38
22	93.0	0.0	7.0	57
23	73.9	11.6	14.5	69
24	91.7	6.3	2.1	48
25	80.3	15.8	3.9	76
26	90.9	6.1	3.0	99
27	91.2	8.8	0.0	68
28	95.9	4.1	0.0	49
29	91.1	2.2	6.7	45
30	77.8	5.6	16.7	36
31	80.8	11.5	7.7	26
Total	84.8	7.5	7.7	1,424

NOTE: Circuit Number missing in 4 cases.

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

TRAFFIC

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	89.5%	3.5%	7.0%	57
2	89.6	7.5	3.0	67
3	33.3	66.7	0.0	3
4	88.2	0.0	11.8	17
5	82.2	6.7	11.1	45
6	75.6	14.6	9.8	41
7	95.2	4.8	0.0	21
8	100	0.0	0.0	9
9	90.6	1.6	7.8	64
10	96.2	0.0	3.8	26
11	100	0.0	0.0	27
12	78.8	6.1	15.2	66
13	89.5	5.3	5.3	19
14	63.9	2.8	33.3	36
15	81.8	9.1	9.1	132
16	88.5	4.9	6.6	61
17	66.7	33.3	0.0	3
18	100	0.0	0.0	2
19	58.6	34.5	6.9	29
20	71.4	4.8	23.8	21
21	81.3	0.0	18.8	16
22	80.8	7.7	11.5	26
23	71.0	21.0	8.1	62
24	91.1	3.6	5.4	56
25	84.1	6.3	9.5	63
26	82.6	5.5	11.9	109
27	96.1	2.0	2.0	51
28	86.7	6.7	6.7	15
29	86.7	6.7	6.7	15
30	87.5	12.5	0.0	16
31	62.5	12.5	25.0	24
Total	83.4	7.3	9.2	1,201

NOTE: Circuit Number missing in 2 cases.

MISCELLANEOUS/OTHER

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	100%	0%	0%	6
2	95.2	4.8	0.0	21
3	0.0	0.0	0.0	0
4	85.7	14.3	0.0	14
5	100	0.0	0.0	6
6	82.1	10.7	7.1	28
7	71.4	28.6	0.0	7
8	75.0	25.0	0.0	8
9	100	0.0	0.0	8
10	91.7	8.3	0.0	12
11	100	0.0	0.0	12
12	90.9	9.1	0.0	11
13	95.2	0.0	4.8	21
14	75.0	0.0	25.0	16
15	83.8	8.1	8.1	37
16	72.7	18.2	9.1	11
17	0.0	0.0	0.0	0
18	100	0.0	0.0	2
19	50.0	25.0	25.0	4
20	50.0	50.0	0.0	2
21	100	0.0	0.0	7
22	100	0.0	0.0	20
23	74.3	20.0	5.7	35
24	100	0.0	0.0	10
25	84.2	10.5	5.3	19
26	95.8	0.0	4.2	24
27	75.0	0.0	25.0	8
28	100	0.0	0.0	17
29	100	0.0	0.0	6
30	91.7	4.2	4.2	24
31	66.7	0.0	33.3	3
Total	87.7	7.3	5.0	399

MISCELLANEOUS/P&P

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	66.7%	26.7%	6.7%	15
2	76.9	0.0	23.1	26
3	50.0	50.0	0.0	4
4	77.8	0.0	22.2	9
5	85.7	7.1	7.1	14
6	87.5	12.5	0.0	16
7	70.0	20.0	10.0	10
8	100	0.0	0.0	3
9	77.3	9.1	13.6	22
10	68.2	0.0	31.8	22
11	81.8	0.0	18.2	11
12	92.9	0.0	7.1	14
13	71.4	0.0	28.6	14
14	63.6	9.1	27.3	22
15	80.5	7.3	12.2	41
16	71.4	14.3	14.3	14
17	0.0	0.0	0.0	0
18	100	0.0	0.0	1
19	50.0	0.0	50.0	2
20	60.0	0.0	40.0	5
21	81.8	9.1	9.1	11
22	77.8	11.1	11.1	18
23	71.4	0.0	28.6	14
24	84.8	0.0	15.2	33
25	72.1	16.3	11.6	43
26	71.4	12.2	16.3	49
27	80.6	9.7	9.7	31
28	63.6	27.3	9.1	11
29	64.3	28.6	7.1	14
30	90.9	0.0	9.1	11
31	88.9	0.0	11.1	9
Total	76.1	9.0	14.9	510

NOTE: Circuit Number missing in 1 case.

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

WEAPONS

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	68.5%	3.7%	27.8%	54
2	64.2	2.1	33.7	95
3	62.5	37.5	0.0	8
4	58.1	4.8	37.1	62
5	54.5	12.1	33.3	33
6	60.0	2.9	37.1	35
7	51.1	6.4	42.6	47
8	60.0	10.0	30.0	10
9	57.7	7.7	34.6	26
10	60.9	4.3	34.8	23
11	50.0	5.0	45.0	20
12	81.5	14.8	3.7	27
13	54.9	8.8	36.3	113
14	71.9	5.3	22.8	57
15	72.1	4.9	23.0	61
16	75.8	12.1	12.1	33
17	0.0	0.0	0.0	0
18	25.0	25.0	50.0	4
19	75.0	0.0	25.0	12
20	50.0	50.0	0.0	2
21	55.6	11.1	33.3	18
22	64.4	2.2	33.3	45
23	53.7	11.1	35.2	54
24	65.1	2.3	32.6	43
25	71.7	8.7	19.6	46
26	76.5	5.9	17.6	34
27	70.6	8.8	20.6	34
28	66.7	0.0	33.3	9
29	61.5	0.0	38.5	13
30	94.1	5.9	0.0	17
31	50.0	0.0	50.0	12
Total	63.7	6.6	29.8	1,052

NOTE: Circuit Number missing in 5 cases.

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

ASSAULT

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	83%	6%	11%	35
2	81.4	4.3	14.3	70
3	60.0	30.0	10.0	10
4	73.0	11.1	15.9	63
5	74.5	10.6	14.9	47
6	75.8	9.1	15.2	33
7	84.8	0.0	15.2	33
8	85.7	0.0	14.3	14
9	87.7	4.6	7.7	65
10	88.1	4.8	7.1	42
11	95.5	0.0	4.5	22
12	76.3	0.0	23.7	38
13	81.3	10.4	8.3	48
14	53.7	9.8	36.6	41
15	75.3	9.9	14.8	81
16	81.8	6.8	11.4	44
17	100	0.0	0.0	2
18	55.6	11.1	33.3	9
19	76.3	10.5	13.2	38
20	61.5	7.7	30.8	13
21	80.8	11.5	7.7	26
22	81.1	7.5	11.3	53
23	80.0	10.9	9.1	55
24	87.3	3.2	9.5	63
25	77.4	17.9	4.8	84
26	80.0	9.2	10.8	65
27	87.9	8.6	3.4	58
28	75.7	13.5	10.8	37
29	85.0	10.0	5.0	20
30	85.0	10.0	5.0	20
31	74.2	6.5	19.4	31
Total	79.4	8.4	12.2	1,260

KIDNAPPING

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	0%	0%	100%	2
2	100	0.0	0.0	9
3	0.0	0.0	0.0	0
4	100	0.0	0.0	4
5	0.0	0.0	100	1
6	71.4	14.3	14.3	7
7	100	0.0	0.0	4
8	33.3	66.7	0.0	3
9	100	0.0	0.0	6
10	90.0	0.0	10.0	10
11	100	0.0	0.0	4
12	80.0	0.0	20.0	5
13	50.0	25.0	25.0	4
14	66.7	0.0	33.3	3
15	85.7	0.0	14.3	7
16	88.9	0.0	11.1	9
17	0.0	0.0	0.0	0
18	100	0.0	0.0	2
19	75.0	25.0	0.0	4
20	0.0	0.0	0.0	0
21	66.7	33.3	0.0	3
22	100	0.0	0.0	1
23	50.0	0.0	50.0	2
24	100	0.0	0.0	6
25	70.0	30.0	0.0	10
26	100	0.0	0.0	2
27	100	0.0	0.0	4
28	100	0.0	0.0	2
29	100	0.0	0.0	2
30	0.0	0.0	0.0	0
31	60.0	20.0	20.0	5
Total	82.0	8.2	9.8	122

NOTE: Circuit Number missing in 1 case.

HOMICIDE

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	80%	0%	20%	5
2	55.6	5.6	38.9	18
3	50.0	0.0	50.0	6
4	61.1	0.0	38.9	18
5	66.7	0.0	33.3	3
6	62.5	0.0	37.5	8
7	81.8	0.0	18.2	11
8	42.9	0.0	57.1	7
9	72.7	9.1	18.2	11
10	88.9	11.1	0.0	9
11	87.5	0.0	12.5	8
12	78.9	0.0	21.1	19
13	74.2	6.5	19.4	31
14	72.7	0.0	27.3	11
15	58.8	11.8	29.4	17
16	33.3	0.0	66.7	3
17	100	0.0	0.0	1
18	50.0	25.0	25.0	4
19	60.0	0.0	40.0	10
20	66.7	11.1	22.2	9
21	75.0	0.0	25.0	8
22	88.9	0.0	11.1	9
23	76.9	0.0	23.1	13
24	60.0	20.0	20.0	5
25	71.4	7.1	21.4	14
26	52.9	0.0	47.1	17
27	66.7	0.0	33.3	6
28	66.7	11.1	22.2	9
29	66.7	0.0	33.3	3
30	25.0	0.0	75.0	4
31	44.4	22.2	33.3	9
Total	67.0	4.6	28.4	306

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

ROBBERY/CARJACKING

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	100%	0%	0%	1
2	100	0.0	0.0	1
3	100	0.0	0.0	1
4	75.0	25.0	0.0	4
5	0.0	0.0	0.0	0
6	0.0	0.0	0.0	0
7	100	0.0	0.0	1
8	0.0	0.0	0.0	0
9	0.0	0.0	0.0	0
10	0.0	0.0	0.0	0
11	0.0	0.0	0.0	0
12	0.0	0.0	100	1
13	0.0	100	0.0	3
14	66.7	0.0	33.3	3
15	80.0	0.0	20.0	5
16	0.0	0.0	0.0	0
17	0.0	0.0	0.0	0
18	0.0	0.0	0.0	0
19	0.0	0.0	0.0	0
20	0.0	0.0	0.0	0
21	0.0	0.0	0.0	0
22	100	0.0	0.0	1
23	0.0	0.0	0.0	0
24	0.0	0.0	0.0	0
25	100	0.0	0.0	1
26	0.0	0.0	100	1
27	0.0	0.0	0.0	0
28	0.0	0.0	0.0	0
29	100	0.0	0.0	1
30	0.0	0.0	0.0	0
31	0.0	0.0	0.0	0
Total	66.7	16.7	16.7	24

RAPE

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	0%	0%	0%	0
2	77.8	11.1	11.1	9
3	0.0	100	0.0	1
4	100	0.0	0.0	5
5	100	0.0	0.0	2
6	50.0	25.0	25.0	4
7	100	0.0	0.0	1
8	66.7	0.0	33.3	3
9	90.9	0.0	9.1	11
10	83.3	16.7	0.0	6
11	77.8	11.1	11.1	9
12	100	0.0	0.0	3
13	100	0.0	0.0	4
14	66.7	16.7	16.7	6
15	58.3	16.7	25.0	12
16	83.3	0.0	16.7	6
17	0.0	0.0	100	1
18	100	0.0	0.0	1
19	71.4	21.4	7.1	14
20	100	0.0	0.0	1
21	75.0	25.0	0.0	4
22	66.7	33.3	0.0	6
23	100	0.0	0.0	2
24	100	0.0	0.0	5
25	75.0	0.0	25.0	12
26	75.0	12.5	12.5	8
27	100	0.0	0.0	3
28	71.4	0.0	28.6	7
29	100	0.0	0.0	3
30	100	0.0	0.0	1
31	33.3	0.0	66.7	3
Total	77.1	9.8	13.1	153

OTHER SEXUAL ASSAULT

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	80%	20%	0%	5
2	72.2	5.6	22.2	18
3	100	0.0	0.0	2
4	85.7	14.3	0.0	7
5	75.0	0.0	25.0	4
6	100	0.0	0.0	5
7	66.7	11.1	22.2	9
8	100	0.0	0.0	3
9	70.0	0.0	30.0	10
10	100	0.0	0.0	11
11	66.7	0.0	33.3	3
12	66.7	16.7	16.7	12
13	80.0	0.0	20.0	5
14	50.0	0.0	50.0	6
15	64.7	5.9	29.4	17
16	90.0	10.0	0.0	10
17	100	0.0	0.0	1
18	50.0	50.0	0.0	2
19	56.5	13.0	30.4	23
20	37.5	0.0	62.5	8
21	100	0.0	0.0	4
22	66.7	0.0	33.3	3
23	66.7	0.0	33.3	6
24	100	0.0	0.0	9
25	70.0	0.0	30.0	10
26	71.4	4.8	23.8	21
27	87.5	0.0	12.5	8
28	75.0	25.0	0.0	4
29	66.7	0.0	33.3	3
30	60.0	20.0	20.0	5
31	83.3	0.0	16.7	18
Total	73.5	5.9	20.6	253

NOTE: Circuit Number missing in 1 case.

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

OBSCENITY

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	100%	0%	0%	5
2	80.0	0.0	20.0	5
3	0.0	0.0	0.0	0
4	100	0.0	0.0	2
5	50.0	0.0	50.0	2
6	0.0	0.0	0.0	0
7	0.0	0.0	0.0	0
8	100	0.0	0.0	1
9	66.7	11.1	22.2	9
10	57.1	0.0	42.9	7
11	50.0	25.0	25.0	4
12	100	0.0	0.0	3
13	0.0	50.0	50.0	2
14	55.6	0.0	44.4	18
15	78.6	14.3	7.1	14
16	71.4	0.0	28.6	7
17	50.0	0.0	50.0	2
18	100	0.0	0.0	1
19	82.1	7.1	10.7	28
20	75.0	0.0	25.0	4
21	100	0.0	0.0	3
22	100	0.0	0.0	3
23	57.1	28.6	14.3	7
24	63.6	27.3	9.1	11
25	88.0	0.0	12.0	25
26	60.7	3.6	35.7	28
27	93.8	6.3	0.0	16
28	100.0	0.0	0.0	1
29	0.0	0.0	100	1
30	100	0.0	0.0	1
31	71.4	0.0	28.6	7
Total	73.7	6.5	19.8	217

Appendix 5
Sentencing Guidelines Received by Jurisdiction

COUNTIES	
ACCOMACK	45
ALBEMARLE	54
ALLEGHANY	167
AMELIA	37
AMHERST	138
APPOMATTOX	46
ARLINGTON	65
AUGUSTA	363
BATH	6
BEDFORD	151
BLAND	21
BOTETOURT	117
BRUNSWICK	56
BUCHANAN	84
BUCKINGHAM	76
CAMPBELL	182
CAROLINE	59
CARROLL	254
CHARLES CITY	2
CHARLOTTE	37
CHESTERFIELD	524
CLARKE	21
CRAIG	13
CULPEPER	196
CUMBERLAND	18
DICKENSON	65
DINWIDDIE	59
ESSEX	26
FAIRFAX COUNTY	476
FAUQUIER	83
FLOYD	18
FLUVANNA	36
FRANKLIN COUNTY	166
FREDERICK	362
GILES	77
GLOUCESTER	205
GOOCHLAND	29
GRAYSON	184
GREENE	53
GREENSVILLE	81
HALIFAX	103
HANOVER	255
HENRICO	989
HENRY	247
HIGHLAND	8
ISLE OF WIGHT	48
KING & QUEEN	14
KING GEORGE	37
KING WILLIAM	28
LANCASTER	22
LEE	136
LOUDOUN	97
LOUISA	80
LUNENBURG	36
MADISON	14
MATHEWS	15
MECKLENBURG	83
MIDDLESEX	34
MONTGOMERY	314
NELSON	73
NEW KENT	62
NORTHAMPTON	29
NORTHUMBERLAND	22
NOTTOWAY	45
ORANGE	40
PAGE	146
PATRICK	67
PITTSYLVANIA	154
POWHATAN	27
PRINCE EDWARD	98
PRINCE GEORGE	133
PRINCE WILLIAM	271
PULASKI	224
RAPPAHANNOCK	24
RICHMOND COUNTY	22
ROANOKE COUNTY	232
ROCKBRIDGE	148
ROCKINGHAM	587
RUSSELL	118
SCOTT	202
SHENANDOAH	100
SMYTH	121
SOUTHAMPTON	86
SPOTSYLVANIA	411
STAFFORD	358
SURRY	4
SUSSEX	28
TAZEWELL	309
WARREN	237
WASHINGTON	267
WESTMORELAND	37
WISE	168
WYTHE	142
YORK	100

CITIES	
ALEXANDRIA	50
BRISTOL	191
BUENA VISTA	51
CHARLOTTESVILLE	22
CHESAPEAKE	666
COLONIAL HEIGHTS	55
DANVILLE	274
FREDERICKSBURG	188
HAMPTON	163
HOPEWELL	115
LYNCHBURG	227
MARTINSVILLE	103
NEWPORT NEWS	304
NORFOLK	378
PETERSBURG	52
PORTSMOUTH	64
RADFORD	77
RICHMOND CITY	524
ROANOKE CITY	382
SALEM	71
STAUNTON	212
SUFFOLK	183
VIRGINIA BEACH	1130
WAYNESBORO	137
WILLIAMSBURG	163
WINCHESTER	199
Total	18,285