Virginia Criminal Sentencing Commission

2001 Annual Report

December 1, 2001

Virginia Criminal Sentencing Commission Members

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

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Chairman, Chesterfield County

Appointments by the Chief Justice of the Supreme Court

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(Frank S. Ferguson, Attorney General's Representative)

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The design and layout of the 2001 Annual Report of the
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Supreme Court of Virginia
Virginia Criminal Sentencing Commission

December 1, 2001

To: The Honorable Harry L. Carrico, Chief Justice of Virginia
The Honorable James S. Gilmore, III, Governor of Virginia
The Honorable Members of the General Assembly of Virginia
The Citizens of Virginia

Section 17.1-803(10) 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 *2001 Annual Report* of the Criminal Sentencing Commission.

This report details the work of the Commission over the past year and outlines the ambitious schedule of activities that lies ahead. The report provides a comprehensive examination of judicial compliance with the felony sentencing guidelines for fiscal year 2001. The Commission's recommendations to the 2002 session of the Virginia General Assembly are also contained within this report.

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

Respectfully submitted,

Ernest P. Gates

Ernest P. Gates, Chairman

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Introduction

Overview

This is the seventh annual report of the Virginia Criminal Sentencing Commission. The report is organized into six chapters.

The first chapter provides a general profile of the Commission and its various activities and projects undertaken during 2001. The second chapter includes the results of a detailed analysis of judicial compliance with the discretionary sentencing guidelines system as well as other related sentencing trend data. In the third chapter of this report, the results of the Commission's special study on methamphetamine offenses are presented. The fourth chapter contains a report on the Commission's pilot project involving an offender risk assessment instrument for use with nonviolent felons. The fifth chapter describes the impact of the no-parole/truth-in-sentencing system that has been in effect for any felony committed on or after January 1, 1995. The final chapter presents the Commission's recommendations for 2002.

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Commission Profile

The Virginia Criminal Sentencing Commission is comprised of 17 members as authorized in *Code of Virginia* §17.1-802. 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. Five members of the Commission are appointed by the General Assembly: the Speaker of the House of Delegates designates three members, and the Senate Committee on Privileges and Elections selects two members. The Governor appoints four members, at least one of whom must be a victim of crime or a representative of a crime victims' organization. The final member is Virginia's Attorney General, who serves by virtue of his office. In the past year, Virginia's Attorney General, Mark Earley, designated Deputy Attorney General Frank Ferguson as his representative at Commission meetings.

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

Activities of the Commission

The full membership of the Commission met four times in 2001: March 19, June 18, September 10 and November 5. The following discussion provides an overview of some of the Commission's actions and initiatives during the past year that are not discussed in detail elsewhere within this report.

Monitoring and Oversight

As required by §19.2-298.01 of the *Code of Virginia,* sentencing guidelines worksheets must be completed in all felony cases for which guidelines exist and judges must announce during court proceedings that the forms have been reviewed. After sentencing, the guidelines worksheets must be signed by the judge and become a part of the official record of each case. The clerk of the circuit court is responsible for sending the signed worksheets to the Commission.

The Commission's staff reviews the guidelines worksheets as they are received to ensure that the forms have been completed accurately. When problems are detected on a submitted form, it is sent back to the sentencing judge for corrective action. Since the conversion to the truth-in-sentencing system involved newly designed forms and new procedural requirements, previous annual reports documented a variety of worksheet completion problems, including missing judicial departure explanations and confusion over the post-release term and supervision period. Familiarization with the new system and ongoing feedback from the Commission's review process have reduced the number of errors detected during the past year.

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

Training and Education

The Commission continuously 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. Having all sides equally trained in the completion of guidelines worksheets is essential to a system of checks and balances that ensures the accuracy of sentencing guidelines.

In 2001, the Commission provided sentencing guidelines assistance in a variety of forms: training and education seminars, assistance via the hot line phone system, and publications and training materials. The Commission offered 47 training seminars in 22 different locations across the Commonwealth. This year the Commission staff developed and presented three training seminars: an introduction for new users of guidelines; a refresher course to address errors in the completion of guidelines and a "what's new" seminar focusing on changes effective July 1, 2001. All three seminars included a significant component on the sex offender risk assessment instrument implemented this year.

The Commission attempted to offer seminars in sites convenient to the majority of guideline users. The sites for these seminars included a combination of colleges and universities, libraries, local facilities, courthouses and criminal justice academies. Seminars were offered at the following colleges and universities: Southwest Virginia Higher Education Center, Longwood College, Radford University, Rappahannock Community College, Mountain Empire Community College, Germanna Community College, and Tidewater Community College. Other seminars were presented at the Department of Corrections' Training Academy, Cardinal Criminal Justice Academy, City of Richmond's Police Academy, Chesterfield County Police Academy, and Central Virginia Criminal Justice Academy. Facilities such as the Virginia Transportation and Research Council in Charlottesville, Fairfax Government

Complex, Winchester Parks and Recreation, Danville Parks and Recreation, Virginia Beach Central Library, and Virginia Beach Fire Training Center were used in an effort to provide a convenient and comfortable learning environment. Training sessions were also conducted at traditional locations such as the Arlington Circuit Court, Rockingham Circuit Court, Hampton General District Court, and the Virginia Supreme Court.

The Commission will continue to place a priority on providing sentencing guidelines training to any group of criminal justice professionals. The Commission regularly conducts sentencing guidelines training at the Department of Corrections' Training Academy as part of the curriculum for new probation officers. The Commission is also willing to provide an education program on guidelines and the no-parole sentencing system to any interested group or organization. If an individual is interested in training, he or she can contact the Commission and place his or her name on a waiting list. Once there is enough interest, a seminar will be held in a locality convenient to the majority of individuals on the list.

In addition to providing training and education programs, the Commission staff maintains a hot line phone system (804.225.4398). The phone line is staffed from 7:45 a.m. to 5:15 p.m., Monday through Friday, to respond quickly to any questions or concerns regarding the sentencing guidelines. The hot line continues to be an important resource for guidelines users around the Commonwealth. In 2001, Commission staff has responded to thousands of calls through the hot line service.

This year the manual was reorganized to make it more "user friendly." The instruction pages follow the flow of the worksheets and include headings that reflect the factor names on the worksheets. All tables are now conveniently located in the Appendices section of the manual. Two new tables that identify all the felonies covered by sentencing guidelines also are included in the Appendices. Many other changes incorporated into the manual were based on user suggestions and comments, including additional instructions for completing guideline worksheets. In addition, there were several substantive changes to guidelines factors and instructions based on recommendations presented in the Commission's previous annual report and approved by the General Assembly.

Community Corrections Revocation Data System

Under §17.1-803(7) of the *Code of Virginia,* it is the responsibility of the Commission to monitor sentencing practices in felony cases throughout the Commonwealth. While the Commission maintains a wide array of sentencing information on felons at the time they are initially sentenced in circuit court, information on the re-imposition of suspended prison time for felons returned to court for violation of the conditions of community supervision has been largely unavailable and its impact difficult to assess. Among other uses, information on cases involving re-imposition of suspended prison time is critically important to accurately forecast future correctional bed space needs.

With the sentencing reforms that abolished parole, circuit court judges now handle a wider array of supervision violation cases. Judges now handle violations of post-release supervision terms following release from incarceration, formerly dealt with by the Parole Board in the form of parole violations. Furthermore, the significant expansion of alternative sanction options available to judges means that the judiciary is also dealing with offenders who violate the conditions of these new programs.

In the fall of 1996, the Commission endorsed the implementation of a simple one-page form to succinctly capture a few pieces of critical information on the reasons for, and the outcome of, community supervision violation proceedings.

Early in 1997, the Commission teamed with the Department of Corrections to implement the data collection form. Procedures were established for the completion and submission of the forms to the Commission. The state's probation officers are responsible for completing the top section of the form each time they request a capias or a violation hearing with the circuit court judge responsible for an offender's supervision. The top half of the form contains the offender's identifying information and the reasons the probation officer feels there has been a violation of the conditions of supervision. In a few jurisdictions, the Commonwealth's Attorney's office has requested that prosecutors actively involved in the initiation of violation hearings also be allowed to complete the top section of the form for the court. The Commission has approved this variation on the normal form completion process.

The sentencing revocation form is then submitted to the judge. The judge completes the lower section of the form with his findings in the case and, if the offender is found to be in violation, the specific sanction imposed. The sentencing revocation form also provides a space for the judge to submit any additional comments regarding his or her decision in the case. The clerk of the circuit court is responsible for submitting the completed and signed original form to the Commission. The form has been designed to take advantage of advanced scanning technology, which enables the Commission to quickly and efficiently automate the information.

The Commission now includes training on the sentencing revocation form as part of the standard training provided to new probation officers at the Department of Corrections' Training Academy.

The sentencing revocation data collection form was instituted for all violation hearings held on or after July 1, 1997. The Commission believes that the re-imposition of suspended time is a vital facet in the punishment of offenders, and that data in this area has, in the past, been scant at best. The community corrections revocation data system, developed under the auspices of the Commission, will serve as an important link in our knowledge of the sanctioning of offenders from initial sentencing through release from community supervision.

Projecting Prison Bed Space Impact of Proposed Legislation

Per §30-19.1:5 of the *Code of Virginia,* the Commission is required to prepare impact statements for any proposed legislation which might result in a net increase in periods of imprisonment in state correctional facilities. Such statements must include details as to any increase or decrease in adult offender populations and any necessary adjustments in guideline midpoint recommendations. Beginning July 2000, the Commission's role in this process became more pronounced, when it became the sole source for impact statements on Virginia's adult correctional bed space needs.

During the 2001 legislative session, the Commission prepared 146 separate impact analyses on proposed bills. These proposed bills fell into four categories: 1) bills to increase the felony penalty class of a specific crime; 2) proposals to add a new mandatory minimum penalty for a specific crime; 3) legislation that would create a new criminal offense; and 4) bills that increase the penalty class of a specific crime from a misdemeanor to a felony.

The Commission utilized its computer simulation-forecasting program to estimate the projected impact of these proposals on the prison system. In most instances, the projected impact and accompanying analysis of a bill was presented to the General Assembly within 48 hours after the Commission was notified of the bill's introduction. These analyses were also made available on the internet through the Legislative Information System. When requested, the Commission provided pertinent oral testimony to accompany the impact analysis.

Substance Abuse Screening and Assessment for Offenders

During its 1998 session, the General Assembly passed sweeping legislation that requires many offenders, both adult and juvenile, to undergo screening and assessment for substance abuse problems related to drugs or alcohol. One aspect of this comprehensive new program is to provide judges and other criminal justice professionals with as much information as possible about the substance abuse problems of offenders they serve, so that sanctions can be tailored to address both public safety issues and the treatment needs of the offender. Statewide implementation began January 1, 2000.

The law targets all adult felons and those Class 1 misdemeanor drug offenders who are ordered to undergo supervision or participate in programming. Juvenile offenders adjudicated for a felony, a Class 1 or 2 drug-related misdemeanor, a drug-related charge that is the juvenile's first offense or any other act for which a juvenile is ordered to undergo a social history also fall under the screening and assessment provisions. Under the new law, these offenders must undergo a substance abuse screening. If the screening reveals key characteristics or behaviors likely related to drug use or alcohol abuse, a full assessment must be administered. Assessment is a thorough evaluation. Results of comprehensive assessment can be used for developing treatment plans and assessing needs for services. Different screening and assessment instruments are used for the adult and juvenile populations. For adult felons, screening and assessment is conducted by the Department of Corrections' probation and parole office, while local offices of the Virginia Alcohol Safety Action Program and local community-based probation agencies screen and assess adult misdemeanants. Juvenile offenders are screened and assessed by the court service units serving the Juvenile and Domestic Relations Court.

The Interagency Drug Offender Screening and Assessment Committee was created in 1999 to oversee the implementation and subsequent administration of this program. A Sentencing Commission staff member also serves on the committee.

In 2001, the Interagency Committee began working with evaluators from the Department of Criminal Justice Services' Criminal Justice Research Center to gauge the impact of the screening and assessment program. Also in 2001, the Interagency Committee began work on a criminal sanction/treatment matrix for use in supervising adult offenders in the community. The criminal sanction/treatment matrix currently under development is a tool that will compare the severity of substance abuse problems with criminal risk assessment. This process will assist courts and other criminal justice agencies to prioritize services to offenders with the most need for, and potential to benefit from, the service. In addition, the Interagency Committee is continuing to refine confidentiality protocols to promote efficient exchange of information among Virginia's criminal justice agencies and treatment organizations. Last year, in order to ensure that the program complies with federal confidentiality requirements, the Interagency Committee arranged for the Legal Action Center, a nationally recognized company specializing in confidentiality issues, to conduct specialized training events in Virginia.

Prison and Jail Population Forecasting

Since 1987, Virginia has projected the size of its future prison and jail populations through a process known as "consensus forecasting." This approach combines technical forecasting expertise with the valuable judgment and experience of professionals working in all areas of the criminal justice system.

While the Commission is not responsible for generating the prison or jail population forecast, it is included in the consensus forecasting process. During the past year, Commission staff members served on the technical committee that provided methodological and statistical review of the forecasting work. Also, the Commission's Director served on the Policy Advisory Committee that oversees the development of the prison and jail forecasts.

Review of Rape Sentencing Guidelines

In order to maintain the usefulness of the guidelines as a tool for judges, the Commission continually monitors the guidelines system and any changes and trends in judicial sentencing patterns. In 2001, concerns over the Rape guidelines, which cover rape, forcible sodomy and object sexual penetration offenses, prompted a Commission member and a practicing attorney to ask the Commission to re-examine the existing guidelines for these crimes.

Two particular concerns were raised to the Commission. First, the current Rape sentencing guidelines provide different sentencing recommendations for a rape of a victim under the age of 13 than for a rape against a victim who is at least 13 years old. When the victim is under 13, the guidelines start at a recommendation of 9.8 years for an offender with no prior criminal record, compared to 12.6 years for an offender who raped an older victim (13 years old or more). The difference in recommendations is exacerbated when the offender has a prior record containing a violent felony conviction. Concern was expressed about the difference in sentencing recommendations linked to the age of rape victims. The second area of concern relates to rape cases involving multiple victims. Here, the Rape guidelines provide substantially different sentence recommendations in cases involving two victims of different ages (one under the age of 13, the other 13 or more) compared to cases with two victims both of whom are at least 13 years of age. In the first scenario, the guidelines recommend a midpoint of 14.1 years for an offender with no prior record. In the second scenario, the guidelines recommend 27.6 years.

Although rape cases with multiple victims are uncommon, concern was expressed about the difference in sentencing recommendations linked to the ages of the victims.

Virginia's sentencing guidelines largely reflect historical sentencing patterns, which were later converted to historical patterns of time served when Virginia adopted truth-in-sentencing. The differences in the sentencing guidelines described above reflect historical patterns of punishment for rape offenders. The sentencing guidelines used today, however, also contain legislatively-mandated enhancements to increase the sentence recommendations for offenders with current or prior convictions for violent crimes.

In FY2001, compliance with the Rape sentencing guidelines was 67% overall, with nearly one in four judges sentencing below the range recommended by the guidelines. For rape of a victim under the age of 13, compliance with the guidelines was 79%. Judges sentenced above the guidelines in only 8% of the rape cases involving a young victim. If circuit court judges dramatically disagreed with the guidelines for this offense, it is likely a higher rate of departure above the guidelines would be detected.

As requested, however, the Commission has initiated a review of the sentencing guidelines for rape offenses. Patterns of compliance with, and departures from, the current sentencing guidelines were but one piece of information examined to date. The Commission has conducted analysis of the sentencing guidelines vis-à-vis current sentencing practices. In its discussions, the Commission remains cognizant that it only recently introduced the Sex Offender Risk Assessment instrument for offenders convicted of rape and other sexual assault offenses. Because this feature of the guidelines became effective on July 1, 2001, the impact of risk assessment for sex offenders is not yet known. The Commission expects risk assessment to have a greater impact on persons scored on the Rape sentencing guidelines than the sentencing guidelines for other sexual assault

offenses. The 100% and 300% increases in the upper end of the recommended sentence range resulting from risk assessment will more likely apply to offenders falling under the Rape guidelines than other sex offenders. However, the actual effect of risk assessment on sentencing practices cannot be determined so soon after its implementation date. Nonetheless, judges retain the discretion to depart from the guidelines recommendation in cases they feel the circumstances warrant such a deviation.

Upon recommendation from its Executive Committee, the Commission has elected to continue its review of the rape guidelines into the coming year. In 2002, the Commission plans to resume its detailed analysis of rape cases, with particular attention to cases involving multiple victims and to the use of force or lack of consent when the victim is less than 13 years of age. The Commission's work will include additional data collection.

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Comprehensive Review of Sentencing Guidelines

As detailed in §17.1-805 of the *Code of Virginia*, the initial set of discretionary felony sentencing guidelines is grounded in a comprehensive analysis of sentencing and prison time-served for felons released from incarceration during the years 1988 through 1992. This analysis formed a baseline set of sentencing midpoints and ranges upon which enhancements were applied to increase the recommendations for offenders with current or prior convictions for violent crimes. To date, the Commission has relied upon judicial departure information and guidelines user input as the basis for recommended revisions to specific factors on these initial guidelines. Now the Commission is in the position to analyze a full five years of sentencing under the no-parole policy to determine if any broader revisions to the guidelines are warranted.

One of the prominent features of the Virginia sentencing guidelines is that they are representative of historical sentencing and time served amounts for similarly situated offenders convicted of the same offense(s). These historical guidelines provide judges with a very useful tool as they deliberate on their sentencing decisions. Since 1991, Virginia's circuit judges have been provided with historically based sentencing guidelines that were grounded in an analysis of a recent five full years of criminal sentences. The judiciary had defined history, for sentencing guidelines, as the most recent five years of sentencing decisions for which data were available. Thus, when the new truth-in-sentencing/no-parole felony sentencing system was adopted by the General Assembly, it relied upon the same definition of history, a recent five-year time frame, for the new historical benchmarks.

Parole was abolished for any offender convicted of a felony offense committed on or after January 1, 1995. Since the effective date of parole abolition was tied to the offense date, it took some time before this new policy was applied to the majority of sentenced felons. Today, the Commission is confident that a full five years of data for felons sentenced under no-parole is available for analysis. The Commission proposes to initiate an analysis of approximately 124,000 no-parole sentencing decisions made during the five years from FY1997 through FY2001. This comprehensive analysis will ensure that judges are being provided with guidelines that reflect both historical sentencing decisions and changes in more recent sentencing practices.

The proposed analysis of such a large volume of sentencing decisions is a very time consuming task and must be conducted for each of the 14 sentencing guidelines major offense categories. Since it is not possible in the coming year to perform a comprehensive analysis of, or for the Commission to review, all the guidelines offense groups, the Commission proposes to conduct this analysis in stages. The first stage of the analysis work would concentrate on those offense groups with lower compliance rates or where recent legislation has potentially altered historical sentencing patterns. The later stages of the analysis would be reserved for offense groups exhibiting the highest compliance rates with no obvious departure patterns. It is estimated that approximately three to four offense groups can be comprehensively reviewed each year. By the end of this process, all the offense groups would be reviewed for their historical accuracy and the process would then be repeated and become an ongoing activity of the Commission.

Guidelines Compliance

Introduction

On January 1, 2001, Virginia's truth-in-sentencing system reached its six-year anniversary. Effective for any felony committed on or after January 1, 1995, the practice of discretionary parole release from prison was abolished, and the existing system of awarding inmates sentence credits for good behavior was eliminated. Under Virginia's truth-in-sentencing laws, convicted felons must serve at least 85% of the pronounced sentence, and they may earn, at most, 15% off in sentence credits regardless of whether their sentence is served in a state facility or a local jail. The Commission was established to develop and administer guidelines in an effort to provide Virginia's judiciary with sentencing recommendations in 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 the nearly 120,000 felony cases sentenced under truth-in-sentencing laws, judges have agreed with guidelines recommendations in four out of every five cases. The most recent data indicate that judges are agreeing with guidelines recommendations to a larger extent than before.

The Commission's last annual report presented an analysis of cases sentenced during fiscal year (FY) 2000. This report will focus on cases sentenced from the most recent year of available data, FY2001 (July 1, 2000, through June 30, 2001). Compliance is examined in a variety of ways in this report, and variations in data over the years are highlighted throughout. Because of the small amount of data available to date, the new guidelines elements introduced by the Commission on July 1, 2001, are not examined in this report.

Case Characteristics

Overall, the number of cases received by the Commission increased from 18,449 in FY2000 to 20,492 in FY2001. Of the 20,492 sentencing guidelines worksheets received by the Commission during the last fiscal year, 19,699 were submitted on new FY2001 guidelines forms and 793 were submitted on old guidelines forms. Several significant changes were made to the FY2001 guidelines worksheets including the addition of new guidelines offenses and adjustments to scoring on various factors. For the purpose of conducting a clear evaluation of sentencing guidelines in effect between July 1, 2000 and June 30, 2001, the following compliance analysis focuses only on those 19,699 cases submitted on FY2001 guidelines forms.

Under the truth-in-sentencing system, five urban circuits have contributed more sentencing guidelines cases each year than any of the other judicial circuits in the Commonwealth. These circuits follow Virginia's "Golden Crescent" of the most populous areas of the state. Virginia Beach

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(Circuit 2), Norfolk (Circuit 4), Newport News (Circuit 7), the City of Richmond (Circuit 13), and Fairfax (Circuit 19) each submitted more than 1,000 sentencing guidelines cases during FY2001. Also geographically located within the "Golden Crescent", Henrico County (Circuit 14) submitted over 1,000 cases in FY2001. Collectively these circuits accounted for more than one-third of all sentencing guidelines cases received by the Commission during the time period (Figure 1).

FIGURE 1

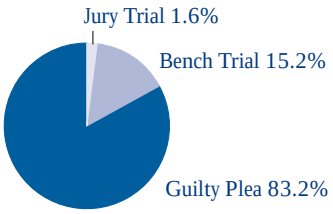
Number and Percentage of Cases Received by Circuit – FY2001

Circuit	Number	Percent
1	726	3.7%
2	1,390	7.1
3	600	3.0
4	1,872	9.5
5	592	3.0
6	282	1.4
7	1,005	5.1
8	433	2.2
9	434	2.2
10	430	2.2
11	356	1.8
12	402	2.0
13	1,037	5.3
14	1,022	5.2
15	911	4.6
16	616	3.1
17	448	2.3
18	349	1.8
19	1,119	5.7
20	389	2.0
21	326	1.7
22	659	3.3
23	645	3.3
24	717	3.6
25	502	2.5
26	624	3.2
27	540	2.7
28	247	1.3
29	336	1.7
30	105	0.5
31	577	2.9

There are three general methods by which Virginia's criminal cases are adjudicated: guilty pleas, bench trials, and jury trials. Felony cases in the Commonwealth's circuit courts overwhelmingly are resolved as the result of guilty pleas from defendants or plea agreements between defendants and the Commonwealth. During the last fiscal year, well over three-quarters of all guidelines cases (83%) were sentenced based on guilty pleas (Figure 2). Adjudication by a judge in a bench trial accounted for 15% of all felony guidelines cases sentenced, while less than 2% of felony guidelines cases involved jury trials. For the past three fiscal years, the overall rate of felony convictions adjudicated by a jury has been approximately half the rate that existed under the last year of the parole system. See *Juries and the Sentencing Guidelines* in this chapter for more information on jury trials.

FIGURE 2

Percentage of Cases Received by Method of Adjudication – FY2001



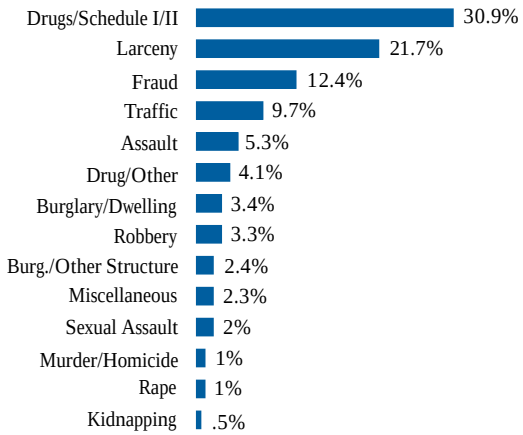
Sentencing guidelines worksheets in effect in FY2001 covered 14 distinct offense groups, including a new felony traffic offense worksheet. Worksheet offense groupings are based on the primary, or most serious, offense at conviction. Consistent with previous years, the Commission received more cases for Schedule I/II drug crimes in FY2001 than any of the other offense groups. Schedule I/II drug offenses represented, by far, the largest share (31%) of the cases sentenced in Virginia's circuit courts during the fiscal year

(Figure 3). Nearly two-thirds of the Schedule I/II drug offenses were for one crime alone – possession of a Schedule I/II drug. This pattern, however, has persisted since the truth-in-sentencing guidelines were introduced in 1995. In contrast, only about 4% of guidelines involved offenses listed on the Drug/Other worksheet. Property offenses also represented a significant share of the cases submitted to the Commission in FY2001. Nearly 22% of the fiscal year's guidelines cases were for larceny crimes, while the fraud group accounted for another 12% of these sentencing events. Felony traffic offenses comprised 10% of guidelines cases received during the year, primarily due to the addition in FY2000 of driving while intoxicated offenses to those crimes already covered by the sentencing guidelines.

The violent crimes of assault, robbery, homicide, kidnapping, rape and other sex crimes collectively represent a much smaller share of the FY2001 cases (13%). Assaults were the most common of the person offenses (5%) followed by robbery offenses (3%). The murder and rape offense groups each accounted for one percent of the cases, while kidnappings made up one-half of one percent of the cases sentenced during the year. The distribution of offenses among guidelines cases has changed very little since FY1998.

FIGURE 3

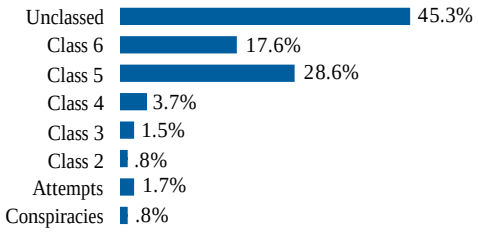
Percentage of Cases Received by Primary Offense Group – FY2001



The sentencing guidelines cover a wide range of felonies with varying penalty ranges specified in the *Code of Virginia*. A felony may be assigned to one of the existing six classes of felony penalty ranges, or the *Code* may specify a penalty that does not fall into one of the established penalty classes. Class 1 felonies are capital murder crimes and are not covered by the sentencing guidelines. Felonies with penalty structures differing from the Class 1 through Class 6 penalty ranges are unclassed felonies, and their penalties vary widely, with maximum sentences ranging from three years to life. In FY2001, nearly one-half of guidelines cases (45%) involved unclassed felonies, mainly due to the overwhelming number of unclassed drug offenses (Figure 4). Because possession of a Schedule I/II drug was the single most frequently occurring offense, Class 5 was the most common of the classed felonies (29%). The Commission received cases for the more serious classed felonies (Classes 2, 3, and 4) much less frequently. Convictions for attempted and conspired crimes were rare and together accounted for less than 3% of the cases.

FIGURE 4

Percentage of Cases Received by Felony Class of Primary Offense – FY2001



Compliance Defined

In the Commonwealth, judicial compliance with the truth-in-sentencing guidelines is voluntary. A judge may depart from the guidelines recommendation and sentence an offender either to a punishment more severe or less stringent than called for by the guidelines. In cases in which the judge has elected to sentence outside of the guidelines recommendation, he or she must, as stipulated in §19.2-298.01 of the *Code of Virginia,* provide a written reason for departure on the guidelines worksheet.

The Commission measures judicial agreement with the sentencing guidelines using two classes of compliance: strict and general. Together, they comprise the overall compliance rate. For a case to be in strict compliance, the offender must be sentenced to the same type of sanction (probation, incarceration up to six months, incarceration more than six months) that the guidelines recommend and to a term of incarceration that falls exactly within the sentence range recommended by the guidelines. A judicial sentence would also be considered in general compliance with the guidelines recommendation if 1) it meets modest criteria for rounding, 2) involves time served incarceration, or 3) complies with statutory diversion sentencing options in habitual traffic offender cases.

Compliance by rounding provides for a modest rounding allowance in instances when the active sentence handed down by a judge or jury is very close to the range recommended by the guidelines. For example, a judge would be considered in compliance with the guidelines if he sentenced an offender to a two-year sentence based on a guidelines recommendation that goes up to 1 year 11 months. In general, the Commission allows for rounding of a sentence that is within 5% of the guidelines recommendation.

Time served compliance is intended to accommodate judicial discretion and the complexity of the criminal justice system at the local level. A judge may sentence an offender to the amount of pre-sentence incarceration time served in a local jail when the guidelines call for a short jail term. Even though the judge does not sentence an offender to post-sentence incarceration time, the Commission typically considers this type of case to be in compliance. Conversely, a judge who sentences an offender to time served when the guidelines call for probation is also regarded as being in compliance with the guidelines because the offender was not ordered to serve any incarceration time after sentencing.

Compliance by diversion arises in habitual traffic offender cases as the result of amendments to §46.2-357(B2 and B3) of the *Code of Virginia,* effective July 1, 1997. The amendment allows judges to suspend the mandatory minimum 12-month incarceration term required in felony habitual traffic cases if the offender is sentenced to a boot camp, detention center or diversion center. For cases sentenced since the effective date of the legislation, the Commission considers either mode of sanctioning of these offenders to be an indication of judicial agreement with the sentencing guidelines.

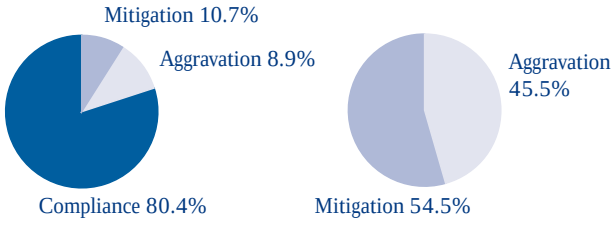
Overall Compliance with the Sentencing Guidelines

The overall compliance rate summarizes the extent to which Virginia's judges concur with recommendations provided by the sentencing guidelines, both in type of disposition and in length of incarceration. Between FY1995 and FY1998, the overall compliance rate hovered around 75%, and has been increasing steadily since FY1999. In FY2001, the overall compliance rate increased to 80.4%, its highest rate since the establishment of the no-parole system (Figure 5). The rise in overall compliance is reflected in various patterns highlighted throughout the chapter.

In addition to compliance, the Commission also studies departures from the guidelines. The rate at which judges sentence offenders to sanctions more severe than the guidelines recommendation, known as the "aggravation" rate, was 9% for FY2001. The "mitigation" rate, or the rate at which judges sentence offenders to sanctions considered less severe than the guidelines recommendation, was 11% for the fiscal year. Isolating cases that resulted in departures from the guidelines does not reveal a strong bias toward sentencing above or below guidelines recommendations. Of the FY2001 departures, 46% were cases of aggravation while 54% were cases of mitigation. Although the overall compliance rate has increased steadily, the pattern of departures from the guidelines has remained stable from FY1998 to FY2001.

FIGURE 5

Overall Guidelines Compliance and Direction of Departures – FY2001



Dispositional Compliance

Since the inception of truth-in-sentencing in 1995, the correspondence between dispositions recommended by the guidelines and the actual dispositions imposed in Virginia's circuit courts has been quite high. Figure 6 illustrates judicial concurrence in FY2001 with the type of disposition recommended by the guidelines. For instance, of all felony offenders recommended for more than six months of incarceration during FY2001, judges sentenced 85% to terms in excess of six months (Figure 6). Some offenders recommended for incarceration of more than six months received a shorter term of incarceration (one day to six months), but very few of these offenders received probation with no incarceration.

FIGURE 6

Recommended Dispositions and Actual Dispositions – FY2001

	Actual Disposition		
Recommended Disposition	Probation	Incarceration 1 day - 6 mos	Incarceration > 6 mos
Probation	78.4%	18.1%	3.5%
Incarceration 1 day-6 months	9.3%	79.9%	10.8%
Incarceration > 6 months	6.2%	9.3%	84.5%

Judges have also typically agreed with guidelines recommendations for shorter terms of incarceration. In FY2001, 80% of offenders received a sentence resulting in confinement of six months or less when such a penalty was recommended. In a small portion of cases, judges felt probation to be a more appropriate sanction than the recommended jail term, but very few offenders recommended for short-term incarceration received a sentence of more than six months. Finally, 78% of offenders whose guidelines recommendation called for no incarceration were given probation and no post-dispositional confinement. Some offenders with a "no incarceration" recommendation received a short jail term, but rarely did offenders recommended for no incarceration receive jail or prison terms of more than six months. Overall, eight out of every ten judges sentence the offender to the type of sanction recommended by the guidelines.

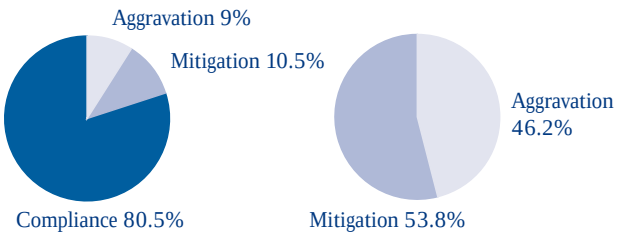
Since July 1, 1997, sentences to the state's boot camp, detention center and diversion center programs have been defined as incarceration sanctions for the purposes of the sentencing guidelines. While these programs continue to be defined as "probation" programs in their enactment clauses in the *Code of Virginia*, the Commission recognizes that the programs are more restrictive than probation supervision in the community. The Commission, therefore, defines them as incarceration terms under the sentencing guidelines. The boot camp program is considered to be four months of confinement (as of January 1, 1999), while the detention and diversion center programs are counted as six months of confinement. In the previous discussion of recommended and actual dispositions, imposition of any one of these programs is categorized as incarceration of six months or less.

Durational Compliance

In addition to examining the degree to which judges concur with the type of disposition recommended by the guidelines, the Commission studies durational compliance. This is defined as the rate at which judges sentence offenders to terms of incarceration that fall within the recommended guidelines range. Durational compliance analysis considers only those 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.

FIGURE 7

Durational Compliance and Direction of Departures* – FY2001



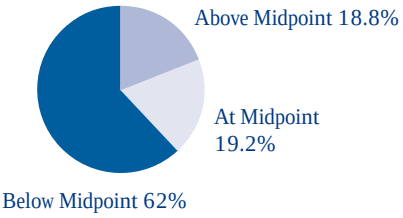
*Cases recommended for and receiving more than six months incarceration.

Durational compliance among FY2001 cases remained steady at 81% indicating that judges, more often than not, agree with the length of incarceration recommended by the guidelines in jail and prison cases (Figure 7). For FY2001 cases not in durational compliance, mitigations were slightly more prevalent (54%) than aggravations (46%). This fairly balanced departure pattern has been consistent since FY1998.

For cases recommended for incarceration of more than six months, the sentence length recommendation derived from the guidelines (known as the midpoint) is accompanied by a high-end and low-end recommendation. The sentence ranges recommended by the guidelines are relatively broad, allowing judges to utilize their discretion in sentencing offenders to different incarceration terms while still remaining in compliance with the guidelines. Analysis of FY2001 cases receiving incarceration in excess of six months that were in durational compliance reveals that one in five cases were sentenced to prison terms equivalent to the midpoint recommendation (Figure 8). For the majority of cases in which the judge sentenced the offender to a term of incarceration within the guidelines range (62%), the judge chose

FIGURE 8

Distribution of Sentences within Guidelines Range –FY2001



to sentence below the midpoint recommendation. Only 19% of the cases receiving incarceration over six months that were in durational compliance with the guidelines were sentenced above the midpoint recommendation. This pattern of sentencing within the range has been consistent since the truth-in-sentencing guidelines took effect in 1995, indicating that judges have favored the lower portion of the recommended range.

Offenders receiving more than six months of incarceration, but less than the recommended time, were given "effective" sentences (sentences less any suspended time) short of the guidelines range by a median value of eight months (Figure 9). For offenders receiving longer than recommended incarceration sentences, the effective sentence exceeded the guidelines range by a median value of five months. Thus, durational departures from the guidelines are typically only a few months above or below the recommended range, indicating that disagreement with the guidelines recommendation is, in most cases, not of a dramatic nature. The median length of durational departures both above and below the guidelines remained relatively unchanged from FY1998 to FY2001.

FIGURE 9

Median Length of Durational Departures – FY2001

Reasons for Departure from the Guidelines

Compliance with the truth-in-sentencing guidelines is voluntary. Although not obligated to sentence within guidelines recommendations, judges are required by §19.2-298.01 of the *Code of Virginia* to submit to the Commission their 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 Commission's discussions. Virginia's judges are not limited by any standardized or prescribed reasons for departure and may cite multiple reasons for departure in each guidelines case.

In FY2001, 11% of the 19,699 cases sentenced received sanctions that fell below the guidelines recommendation. An analysis of these mitigation cases reveals that 19% of the time judges cited as a departure reason the use of an alternative sanction program to punish the offender instead of a traditional term of incarceration (Figure 10). Detention center, diversion center, boot camp, intensive supervised probation, day reporting and drug court programs are examples of alternative sanctions available to judges in Virginia. The types and availability of programs, however, vary considerably among localities. Often, these mitigation cases represent diversions from a recommended incarceration term when the judge felt the offender was amenable to such a program.

Although use of alternative sanctions was the most popular judicial reason for mitigation, sentences in accordance with plea negotiations were cited in nearly one out of every five cases sentenced below the guidelines. In addition, an offender's potential for rehabilitation was often cited in conjunction with the use of an alternative sanction. Other mitigation reasons were prevalent as well. For instance, judges

referred to the offender's cooperation with authorities, such as aiding in the apprehension or prosecution of others, in 12% of the mitigation cases. Somewhat less often (7%), judges noted that the sentence was the result of a recommendation made by either the Commonwealth's Attorney or the Probation Officer. Although other reasons for mitigation were reported to the Commission in FY2001, only the most frequently cited reasons are discussed here.

Judges sentenced 9% of the FY2001 cases to terms more severe than the sentencing guidelines recommendation, resulting in "aggravation" sentences. In examining these cases, the Commission found that the most common reason for sentencing above the guidelines recommendation, cited in 16% of the aggravations, was the involvement of a plea agreement (Figure 11). Often felony cases involve complex sets of events or extreme circumstances for which judges feel a harsher than recommended sentence should be imposed. In nearly 12% of the cases, the judge noted that the "facts of the case" warranted a higher sentence, without identifying the specific circumstances associated with the case.

Judges also cited the offender's prior convictions for the same or similar offense (11%) and the offender's criminal lifestyle (9%) as reasons for harsher sanctions. For another 9% of the FY2001 aggravation cases, judges commented that they felt the guidelines recommendation was too low. In some cases (8%), judges sentenced above the guidelines by imposing an alternative sanction program, such as a boot camp, detention center or diversion center program, instead of straight probation as recommended by the guidelines. Since July 1, 1997, these programs have been counted as incarceration sanctions under the sentencing guidelines. Just over 6% of the upward departures were the result of jury trials. Finally, judges said they sentenced more harshly in 6% of the cases because of the offender's true offense behavior or the actual offense was more serious than the offense for which the offender was ultimately convicted. Many other reasons were cited by judges to explain aggravation sentences but with much less frequency than the reasons discussed here.

Appendices 1 and 2 contain detailed summaries of the reasons for departure from guidelines recommendations for each of the 14 guidelines offense groups.

FIGURE 10

Most Frequently Cited Reasons for Mitigation* – FY2001

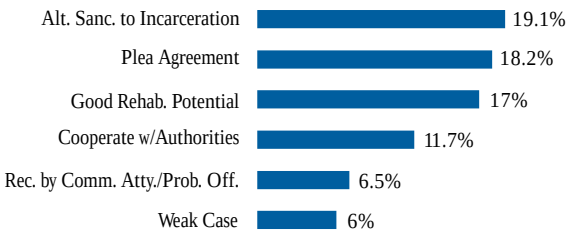
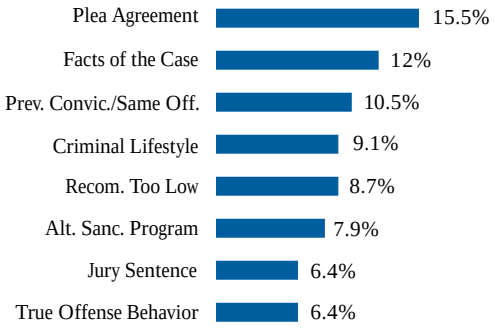


FIGURE 11

Most Frequently Cited Reasons for Aggravation* – FY2001



* Represents most frequently cited reasons only. Multiple reasons may be cited in each case.

Compliance by Circuit

Since the onset of truth-in-sentencing, compliance rates and departure patterns have varied significantly across Virginia's 31 judicial circuits. FY2001 continues to show significant differences among judicial circuits in the degree to which judges within each circuit agree with guidelines recommendations (Figure 12). The map and accompanying table on the following pages identify the location of each judicial circuit in the Commonwealth.

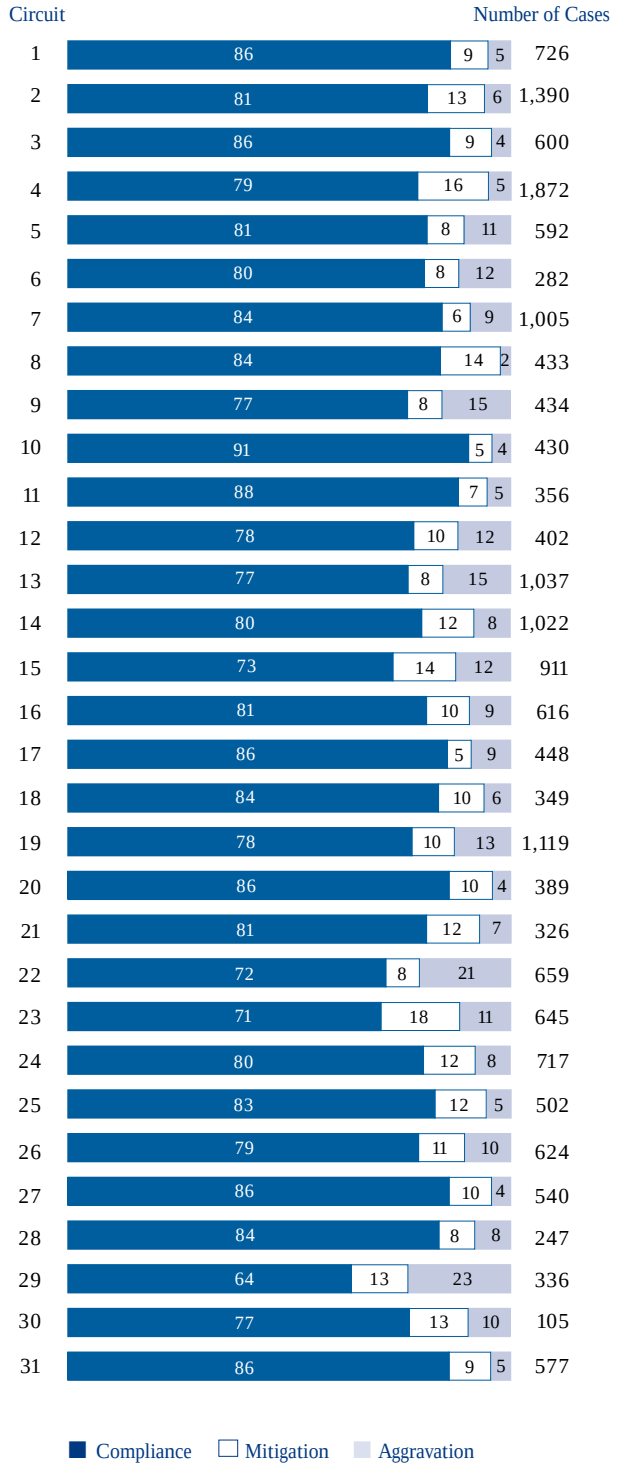
In FY2001, nearly two-thirds (65%) of the state's 31 circuits exhibited compliance rates at or above 80%, with another 32% reporting compliance rates between 70% and 79%. Only one circuit had a compliance rate below 70%. This distribution has changed somewhat since FY2000, when half of the judicial circuits had compliance rates below 80%. Overall, just over half (52%) of the circuits had higher compliance rates in FY2001 than in FY2000.

There are likely many reasons for the variations in compliance across circuits. Certain jurisdictions may see atypical cases not reflected in statewide averages. In addition, the availability of alternative or community-based programs currently differs from locality to locality. Both high and low compliance circuits can be found in close geographic proximity.

In FY2001, the highest rate of judicial agreement with the sentencing guidelines, 91%, was found in the South Boston/Charlotte area (Circuit 10). During the same time period, seven other circuits had compliance rates of at least 85%: Charlottesville (Circuit 1), Portsmouth (Circuit 3), Petersburg area (Circuit 11), Arlington (Circuit 17), Loudoun County

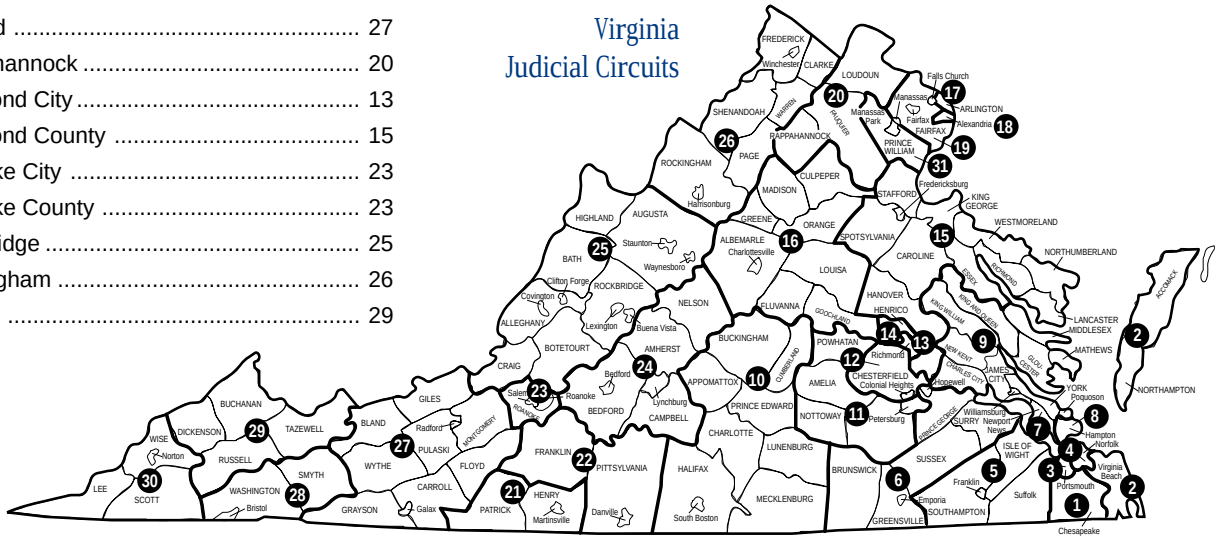
FIGURE 12

Compliance by Circuit – FY2001



Virginia Localities and Judicial Circuits

Virginia Judicial Circuits



(Circuit 20), Radford area (Circuit 27), and Prince William County (Circuit 31). The lowest compliance rates among judicial circuits in FY2001 were reported in Circuit 29 (Buchanan, Dickenson, Russell and Tazewell counties), Circuit 23 (Roanoke and Salem), and Circuit 22 (Danville, Pittsylvania, and Franklin counties). These circuits registered compliance rates of 64%, 71%, and 72% respectively.

In FY2001, some of the highest mitigation rates were found in Roanoke/Salem (Circuit 23), Norfolk (Circuit 4), Scott County (Circuit 30), Fredericksburg (Circuit 15), and Hampton (Circuit 8). Each of these circuits had a mitigation rate between 14 percent and 18 percent during the fiscal year. With regard to high mitigation rates, it would be too simplistic to assume that this reflects areas with lenient sentencing habits. Intermediate punishment programs are not uniformly available throughout the Commonwealth, and those jurisdictions with better access to these sentencing options may be using them as intended by the General Assembly. These sentences would appear as mitigations from the guidelines. Inspecting aggravation rates reveals that Buchanan County (Circuit 29) and Danville (Circuit 22), in addition to having some of the lowest compliance rates in the state, reported the highest aggravation rates in FY2001, 23% and 21% respectively.

Appendices 3 and 4 present compliance figures for judicial circuits by each of the 14 sentencing guidelines offense groups.

Compliance by Sentencing Guidelines Offense Group

Overall, judicial agreement with the sentencing guidelines among FY2001 cases was high, and departures from guidelines recommendations favored neither aggravation nor mitigation. As in previous years, variation exists in judicial agreement with the guidelines, as well as in judicial tendencies toward departure, when comparing the 14 offense groups (Figure 13).

For FY2001, compliance rates ranged from a high of 88% in the felony traffic offense group to a low of 67% in rape cases. In general, property and drug offenses exhibit rates of compliance higher than the violent offense categories. The violent offense groups (assault, rape, sexual assault, robbery, homicide and kidnapping) had compliance rates below 80% whereas most property and drug offense categories had compliance rates at or above 80%.

Judicial concurrence with guidelines recommendations increased for seven of the fourteen offense groups during the fiscal year. The highest increase in compliance, 8%, occurred among offenses involving burglary of non-dwellings/ other structures. Both mitigation and aggravation decreased for the two predominant offenses on the Burglary/Other worksheet: breaking and entering into a non-dwelling with intent to commit larceny, etc., without a deadly weapon and possession of burglary tools.

The largest decrease in judicial agreement with the guidelines in FY2001 occurred on the rape worksheet. Specifically, compliance with rape offense guidelines recommendations decreased 9%, from 76% in FY2000 to 67% in FY2001. Analysis of specific rape offenses reveals that the most significant drops in compliance involved rape, object sexual penetration and sodomy of victims less than age 13. Mitigation in sexual assault cases involving minors is not atypical; FY2001 rape offense data are no different in that more than one in five offenders in these cases (23%) were sentenced to sanctions less severe than those recommended by the guidelines. Reasons for departure below

the guidelines in rape cases involving minors vary greatly. Some of the more frequent reasons cited by judges include the offender's rehabilitation potential, remorse, or cooperation with authorities, victim involvement, alternative sanction sentencing, plea bargains, and weak evidence due to the victim's unwillingness or inability to testify. Thus, much of the decrease in judicial agreement with rape offenses involves increased mitigation in cases involving minors.

On July 1, 2000, the Commission introduced to the sentencing guidelines a new offense worksheet for felony traffic offenses. Offenses from this worksheet had the highest rate of compliance (88%) among the offense groups during the fiscal year. The high compliance rate may be attributed to the mandatory minimum sentences applicable in habitual traffic offender cases. Guidelines for habitual traffic offender cases recommend at least the mandatory minimum sentence applicable by law (12 months), with increases based on prior offenses. Habitual traffic offenses comprised well over half (61%) of all guidelines felony traffic offenses in FY2001, and their compliance rate averaged 91%.

Also contributing to the high compliance rate on the felony traffic worksheet is the addition of three new guidelines offenses in FY2001 related to driving while intoxicated (third conviction within ten years, third conviction within five years, and fourth or subsequent conviction within ten years). Each of the newly added felony DWI offenses has an applicable mandatory minimum sentence that has been incorporated into the guidelines recommendation. Overall compliance for DWI offenses reached 83% during the fiscal year, thereby driving up the compliance rate for guidelines as a whole.

Since 1995, departure patterns have differed significantly across offense groups, and FY2001 was no exception. Among the property crimes, burglaries of both dwellings and non-dwellings exhibited a marked mitigation pattern, and miscellaneous offense cases (e.g., arson, possession of a firearm by a convicted felon, and child abuse) favored aggravation (Figure 13). With respect to violent crime groups, both rape and robbery departures showed tendencies toward sentences that fell below the guidelines recommendation.

FIGURE 13
Guidelines Compliance by Offense – FY2001

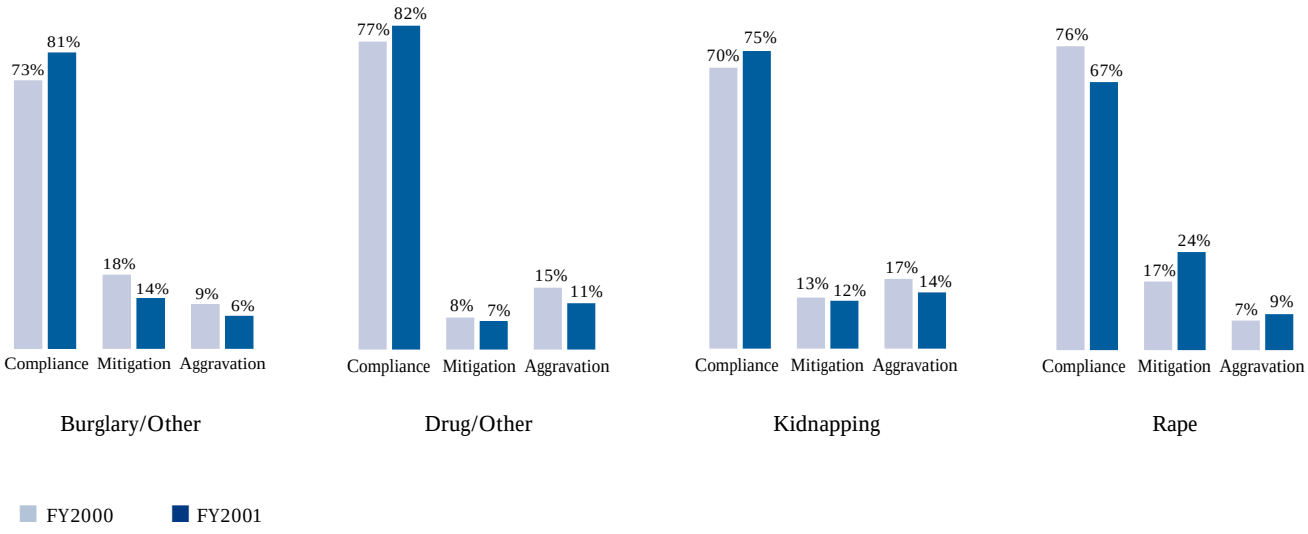
	Compliance	Mitigation	Aggravation	Number of Cases
Assault	78.7%	12.2%	9.1%	1,044
Burglary/Dwelling	72.7	17.5	9.8	670
Burg./Other Structure	80.5	13.5	6.0	467
Drug/Schedule I/II	79.3	10.6	10.1	6,082
Drug/Other	81.9	6.8	11.3	795
Fraud	80.1	14.8	5.1	2,449
Kidnapping	74.5	11.7	13.8	94
Larceny	83.6	8.4	8.0	4,271
Miscellaneous	84.8	3.5	11.7	460
Murder/Homicide	70.1	10.8	19.1	204
Rape	67.0	24.3	8.7	206
Robbery	68.1	20.7	11.2	652
Sexual Assault	69.8	15.1	15.1	397
Traffic	88.0	4.5	7.5	1,908

This mitigation pattern has been consistent with both rape and robbery offenses since the abolition of parole in 1995. Murder/homicide offenses have consistently shown a higher degree of sentencing above the guidelines recommendation, perhaps indicative of the higher frequency of jury trials in murder cases. Other violent crimes of kidnapping, assault, and sexual assault showed little variation between mitigation and aggravation proportions with respect to departures. See Figure 14 for selected offense compliance rates for FY2000 and FY2001.

Under the guidelines, offenses in the violent crime groups, along with burglaries of dwellings and burglaries with weapons, receive statutorily mandated midpoint enhancements that increase the sentencing guidelines recommendation (§17.1-805 of *Code of Virginia*). Further midpoint enhancements are applied in cases in which the offender has a violent prior record, resulting in a sentence recommendation in some cases that is up to six times longer than historical time served by violent offenders convicted of similar crimes under the old parole laws. Midpoint enhancements most likely impact compliance rates in very complex ways, and the effect is unlikely to be uniform across guidelines offense groups. For more information on midpoint enhancements, please refer to the section entitled *Compliance under Midpoint Enhancements* later in this chapter.

FIGURE 14

Guidelines Compliance for Select Offenses – FY2000 and FY2001



Specific Offense Compliance

Studying compliance by specific felony crime assists the Commission in determining those crimes where judges disagree with the sentencing guidelines most often. For convenience, the guidelines are assembled into 14 offense groups, but crimes that exhibit very high guidelines compliance may be collected into the same offense group with those experiencing a much lower rate of compliance. Analyzing compliance by specific crime unmasks the underlying compliance and departure patterns that are of interest to the Commission.

The guidelines in effect during FY2001 covered 200 distinct felony crimes defined in the *Code of Virginia,* representing about 97% of all felony sentencing events in Virginia's circuit courts. Figure 15 presents compliance results for those offenses that served as the primary offense in at least 100 cases during the most recent fiscal year. These 38 crimes accounted for nearly all (86%) of the FY2001 guidelines cases.

The compliance rates for the crimes listed in Figure 15 range from a high of 95% for habitual traffic offender with DWI to a low of 62% for offenders convicted of second or subsequent sale of a Schedule I/II drug. The single most common offense, simple possession of a Schedule I/II drug, comprised one out of every five guidelines cases and registered a compliance rate of 83%.

Nine crimes against the person surpassed the 100-case threshold. Compliance in unlawful injury cases historically has been higher than compliance for malicious injury cases, and this was again true in FY2001. Person crimes typically exhibit lower compliance than property and drug crimes, but the compliance rate for simple assault of a law enforcement officer was 85%, one of the highest of all offenses. Grand larceny from a person yielded a much higher compliance rate (80%) than the robbery crimes.

A significant portion of the offenses listed in Figure 15 are property crimes, including two burglaries. Burglary of other structure (non-dwelling) with intent to commit larceny (no weapon) demonstrated a slightly higher compliance rate than the same burglary committed in a dwelling (80% vs. 73%). For the property crimes, mitigations were more common than aggravations among departures from the guidelines, with the exception of shoplifting goods valued over $200, grand larceny (not from person), and embezzlement.

Although simple possession of a Schedule I/II drug was the most common offense among FY2001 guidelines cases, six other drug offenses had more than 100 sentencing guidelines cases during the same time period. The highest judicial agreement rate among the selected drug offenses in Figure 15 involved obtaining drugs by fraud, which had a 93% compliance rate. In FY2001, sentences for the sale or distribution of a Schedule I/II drug (including possession of a Schedule I/II drug with intent to distribute) complied with guidelines only 74% of the time, but this is a significant improvement from the 65% compliance rate reported in

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FIGURE 15

Compliance for Specific Felony Crimes with More Than 100 Cases – FY2001

	Compliance	Mitigation	Aggravation	Number of Cases
Person				
Malicious Injury	77.3%	13.5%	9.2%	229
Simple Assault of a Family Member, 3rd/Subsequent	73.1	17.6	9.2	119
Simple Assault of a Law Enforcement Officer	85.3	10.9	3.9	258
Unlawful Injury	78.8	11.1	10.2	325
Carnal Knowledge — Victim age 13,14	71.2	5.4	23.4	111
Grand Larceny from Person	79.8	6.6	13.6	198
Robbery of Business with a Gun or Simulated Gun	66.0	23.3	10.7	159
Robbery in Street with a Gun or Simulated Gun	69.0	23.0	7.9	126
Robbery in Street – No Gun or Simulated Gun	64.4	26.3	9.3	118
Property				
Burglary of Dwelling with Intent to Commit Larceny, No Deadly Weapon	73.2	17.3	9.5	568
Burglary of Other Structure with Intent to Commit Larceny, No Deadly Weapon	79.5	14.5	6.0	386
Bad Check, Valued $200 or More	81.6	13.2	5.1	136
Credit Card Theft	84.2	11.2	4.6	285
Forgery	78.9	15.4	5.7	650
Forgery of Public Record	76.5	18.6	4.8	456
Obtain Money by False Pretenses, Value $200 or More	77.7	15.8	6.5	278
Uttering	79.6	15.4	5.0	240
Embezzlement of $200 or More	87.3	3.3	9.4	519
Grand Larceny Auto	78.7	13.3	8.0	263
Grand Larceny, Not from Person	84.9	7.6	7.6	1,822
Petit Larceny (3rd conviction)	80.0	11.4	8.6	596
Receive Stolen Goods Valued $200 or More	83.4	10.7	5.9	205
Shoplifting Goods Valued Less than $200 (3rd conviction)	80.2	15.3	4.5	111
Shoplifting Goods Valued $200 or More	79.2	10.4	10.4	106
Unauthorized Use of Vehicle Valued $200 or More	84.9	7.8	7.4	258
Drug				
Obtain Prescription Drugs by Fraud	93.1	2.6	4.3	232
Possession of Schedule I/II Drug	82.8	6.2	11.0	3,798
Sale of .5 oz - 5 lb of Marijuana	80.0	6.4	13.6	440
Sale of Schedule I/II Drug for Accommodation	74.5	14.3	11.2	161
Sale, etc. of Schedule I/II Drug	73.7	18.6	7.7	1,710
Sale, etc. of Schedule I/II Drug — 2nd/Subsequent	61.9	23.0	15.1	126
Sale, etc. of Imitation Schedule I/II Drug	85.6	6.8	7.6	118
Traffic Offenses				
Drive While Intoxicated - 3rd within 5 years	84.9	4.7	10.4	106
Drive While Intoxicated - 3rd within 10 years	83.4	4.4	12.2	475
Drive While Intoxicated & Habitual Offender	94.7	3.0	2.3	132
Habitual Traffic Offense with Endangerment to Others	90.5	3.6	5.9	220
Habitual Traffic Offense - 2nd Offense, No Endangerment to Others	90.9	4.1	5.0	813
Other				
Possession of Firearm/Concealed Weapon by Non-Violent Convicted Felon	84.3	2.0	13.7	102

FY1998. In these sales-related cases involving Schedule I/II drugs, nearly one-fifth of the offenders received a sentence below the guidelines recommendation. In many of these mitigation cases, judges have deemed the offender amenable for placement in an alternative punishment program such as boot camp or detention center, programs the General Assembly intended to be used for nonviolent offenders who otherwise would be incarcerated for short jail or prison terms. Among the drug offenses in Figure 15, crimes involving a second or subsequent distribution of a Schedule I/II drug had by far the lowest compliance rate of all the drug offenses at only 62%. Although mitigations were more prevalent at 23%, aggravations involving second or subsequent distribution of a Schedule I/II drug were also frequent.

The new felony traffic worksheet in FY2001 contributed a substantial number of offenses to the guidelines. Habitual traffic offenses have shown consistently high compliance rates over the past years (90% and above), due primarily to the 12-month mandatory minimum sentences incorporated into the guidelines recommendations. Felony DWI offenses, new to the guidelines in FY2001, also showed high compliance rates, from 83% for DWI third within ten years to 95% for habitual offender with DWI.

The "Other" offense in Figure 15 is listed on the miscellaneous guidelines worksheet— possession of a firearm by a nonviolent convicted felon. For nonviolent felons possessing a firearm or concealed weapon, judges complied with the guidelines at a rate of 84% and handed down more stringent sentences in nearly all of the remaining cases.

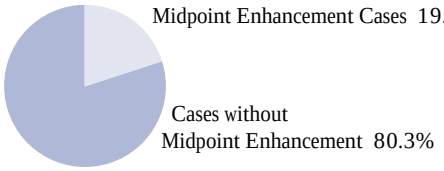
Compliance under Midpoint Enhancements

Section 17.1-805, 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 in those cases. Midpoint enhancements are an integral part of the design of the truth-in-sentencing guidelines. The objective of midpoint enhancements is to provide sentence recommendations for violent offenders that are significantly greater than the time that was served by offenders convicted of such crimes prior to the enactment of truth-in-sentencing laws. Midpoint enhancements are triggered for homicide, rape, or robbery offenses, most assaults and sexual assaults, and certain burglaries, when an offender stands convicted of one of these offenses. Offenders with a prior record containing at least one conviction for a violent crime are subject to degrees of midpoint enhancements based on the nature and seriousness of the offender's criminal history. The most serious prior record receives the most extreme enhancement. A prior record labeled "Category II" contains at least one violent prior 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.

Because midpoint enhancements are designed to target only violent offenders for longer sentences, enhancements do not affect the sentence recommendation for the majority of guidelines cases. Among the FY2001 cases, 80% of the cases did not involve midpoint enhancements of any kind (Figure 16).

FIGURE 16

Application of Midpoint Enhancements – FY2001

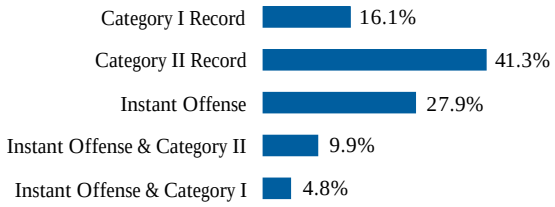


Only 20% of the cases qualified for a midpoint enhancement because of a current or prior conviction for a felony defined as violent under §17.1-805. The proportion of cases receiving midpoint enhancements has not fluctuated greatly since the institution of truth-in-sentencing guidelines in 1995. It has remained between 19% and 21% over the last six years.

Of the FY2001 cases in which midpoint enhancements applied, the most common midpoint enhancement was that for a Category II prior record. Approximately 41% of the midpoint enhancements were of this type, applicable to offenders with a nonviolent instant offense but a violent prior record categorized as Category II (Figure 17).

FIGURE 17

Type of Midpoint Enhancement Received – FY2001



The proportion of midpoint enhancement cases involving a Category II prior record has increased since FY1998. In FY2001, another 16% of midpoint enhancements were attributable to offenders with a more serious Category I prior record. Cases of offenders with a violent instant offense but no prior record of violence represented 28% of the midpoint enhancements in FY2001. The most substantial midpoint enhancements target offenders with a combination of instant and prior violent offenses. About 10% qualified for enhancements for both a current violent offense and a Category II prior record. Only a small percentage of cases (5%) 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 recommendations more often in midpoint enhancement cases than in cases without enhancements. In FY2001, compliance was only 71% when enhancements applied, significantly lower than compliance in all other cases (83%). Although compliance in midpoint enhancement cases was relatively low in FY2001, it has increased since FY1997. Nonetheless, compliance in midpoint enhancement cases is suppressing the overall compliance rate. When departing from enhanced guidelines recommendations, judges are choosing to mitigate in nearly four out of every five departures.

Guidelines recommendations for incarceration in excess of six months are provided as ranges to allow judges discretion in sentencing while still remaining in compliance with guidelines. Despite this, when sentencing offenders to incarceration periods in midpoint enhancement cases in FY2001, judges departed from the low end of the guidelines range by a mean of about four years (51 months), with the median mitigation departure at 34 months (Figure 18). Given the lower than average compliance rate and overwhelming mitigation pattern, this is evidence that judges feel the midpoint enhancements are too extreme in certain cases.

FIGURE 18

Length of Mitigation Departures in Midpoint Enhancement Cases – FY2001

FIGURE 19

Compliance by Type of Midpoint Enhancement* – FY2001

	Compliance	Mitigation	Aggravation	Number of Cases
None	82.6%	7.7%	9.7%	15,809
Category II Record	75.7	19.5	4.7	1,607
Category I Record	63.8	33.4	2.7	625
Instant Offense	69.5	20.7	9.9	1,084
Instant Offense & Category II	71.5	23.6	4.9	386
Instant Offense & Category I	66.5	27.1	6.4	188

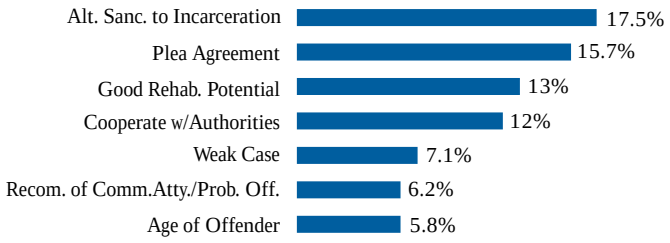
* Midpoint enhancements prescribe prison sentence recommendations for violent offenders which are significantly greater than historical time served under the parole system during the period 1988 to 1992.

Compliance, while generally lower in midpoint enhancement cases than in other cases, varies across the different types and combinations of midpoint enhancements (Figure 19). In FY2001, as in previous years, enhancements for a Category II prior record generated the highest rate of compliance of all midpoint enhancements (76%). Compliance in cases receiving enhancements for a Category I prior record was significantly lower (64%). Enhancements for a current violent offense dropped slightly in FY2001, from 72% to 70%. Those cases involving a combination of a current violent offense and a Category II prior record yielded a compliance rate of 72%, while those with the most significant midpoint enhancements (for both a violent instant offense and a Category I prior record) yielded a lower compliance rate of 67%.

The tendency for judges to impose sentences below the sentencing guidelines recommendation in midpoint enhancement cases is readily apparent. Analysis of departure reasons in cases involving midpoint enhancements, therefore, is focused on downward departures from the guidelines (Figure 20). Such analysis reveals that in FY2001 the most frequent reason for mitigation in these cases was based on the judge's decision to use alternative sanctions to traditional incarceration (18%). This reason for mitigation includes, but is not limited to, alternative sanctions ranging from the boot camp, detention center, and diversion center incarceration programs to substance abuse treatment, intensive supervised probation or a day reporting program. In 16% of the cases, judges cited a plea agreement as the reason for a downward departure. In nearly 13% of the mitigation cases, the judge sentenced based on the perceived potential for rehabilitation of the offender. Among other most frequently cited reasons for mitigating, judges noted that the defendant cooperated with authorities, the evidence against the defendant was weak, the Commonwealth's attorney or the probation officer recommended the sentence, or the defendant's age was a factor in the decision to mitigate.

FIGURE 20

Most Frequently Cited Reasons for Mitigation in Midpoint Enhancement Cases* – FY2001



*Represents most frequently cited reasons only. Multiple reasons may be cited in each case.

Juries and the Sentencing Guidelines

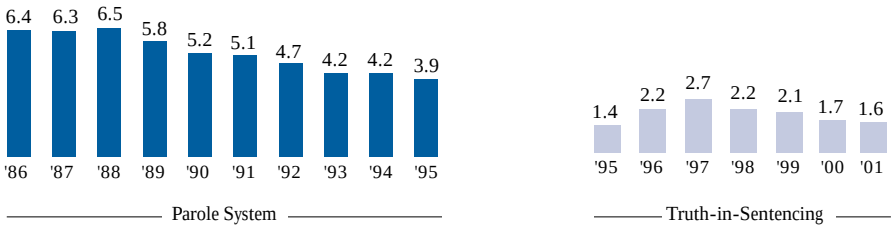
Virginia is one of only five states that allow juries to determine sentence length in non-capital offenses. Since the implementation of the truth-in-sentencing system, Virginia's juries have typically handed down sentences more severe than the recommendations of the sentencing guidelines. In fact, in FY2001, as in previous years, a jury sentence was far more likely to exceed the guidelines than fall within the guidelines range. By law, juries are not allowed to receive any information regarding the sentencing guidelines to assist them in their sentencing decisions.

Since FY1986, there has been a generally declining trend in the percentage of jury trials among felony convictions in Virginia's circuit courts (Figure 21). Under the parole system in the late 1980s, convictions by juries were as high as 6.5% before starting to decline in FY1989. In 1994, the General Assembly enacted provisions for a system of bifurcated jury trials. In bifurcated trials, the jury establishes the guilt or innocence of the defendant in the first phase of the trial, and then, in a second phase, the jury makes its sentencing decision. When the bifurcated trials became effective in FY1995, jurors in Virginia, for the first time, were presented with information on the offender's prior criminal record to assist them in making a sentencing decision. During the first year of the bifurcated trial process, jury convictions dropped slightly to just under 4% of all felony convictions, the lowest rate since the data series began.

Among the early cases subjected to the new truth-in-sentencing provisions, implemented during the last six months of FY1995, the jury adjudication rate sank to just over 1%. With only six months in FY1995 under the new truth-in-sentencing system, data on jury trial rates were inconclusive. However, during the first complete fiscal year of truth-in-sentencing (FY1996), just over 2% of the felony cases were resolved by jury trials, half the rate of the last year before the abolition of parole. Seemingly, the introduction of truth-in-sentencing, as well as the introduction of a bifurcated jury trial system, appears to have contributed to the significant reduction in jury trials. The percentage of jury convictions rose in FY1997 to nearly 3%, but since then has exhibited a downward trend.

FIGURE 21

Percent of Felony Convictions Adjudicated by Juries FY1986 – FY2001
Parole System v. Truth-in-Sentencing (No Parole) System

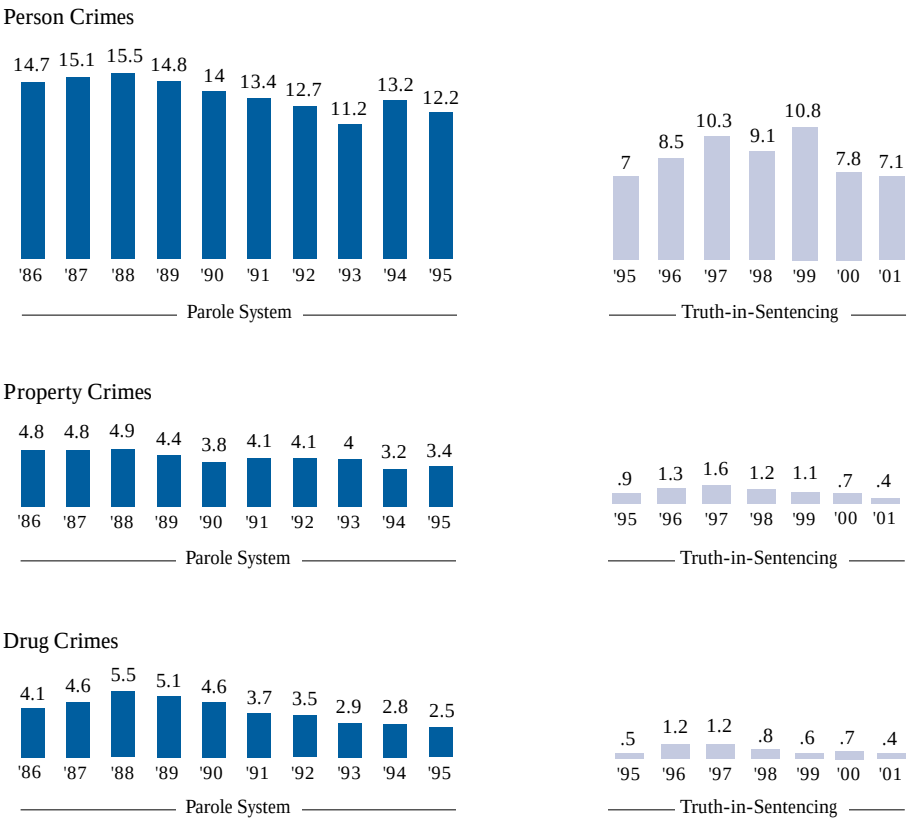


Inspecting jury data by offense type reveals very divergent trends for person, property and drug crimes. From FY1986 through FY1995 parole system cases, the percent of jury convictions for crimes against the person (homicide, robbery, assault, kidnapping, rape and sexual assault) was typically three to four times the percent for property and drug crimes, which were roughly equivalent to one another (Figure 22). However, with the implementation of truth-in-sentencing, the percent of convictions by juries dropped dramatically for all crime types. Under truth-in-sentencing, jury convictions involving person crimes have varied from 7% to nearly 11% of all felony convictions. Jury convictions for property and drug crimes have remained around 1% under truth-in-sentencing, but have dropped since FY2000 to about one-half of one percent.

Of the FY2001 cases under analysis for this report, the Commission received 274 cases tried and convicted by juries. While the compliance rate for cases adjudicated by a judge or resolved by a guilty plea exceeded 80% during the fiscal

FIGURE 22

Percent of Felony Convictions Adjudicated by Juries by Offense Type FY1986 – FY2001
Parole System v. Truth-in-Sentencing (No Parole) System

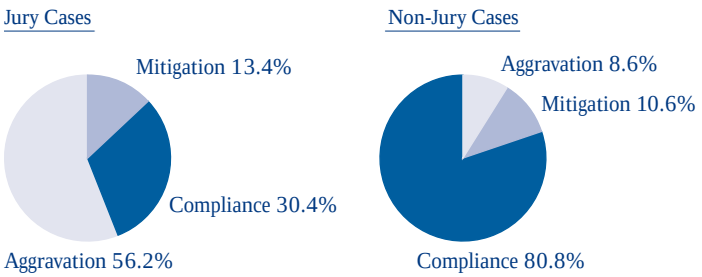


year, sentences handed down by juries fell into compliance with the guidelines only 30% of the time (Figure 23). In fact, jury sentences fell above the guidelines recommendation in 56% of the cases, more than six times the rate of aggravation in non-jury cases. When juries found an offender guilty of a crime against a person, their sentences were more likely to fall within the guidelines range. For person crimes, 54% of jury sentences were in compliance.

Judges, although permitted by law to lower a jury sentence they feel is inappropriate, typically do not amend sanctions imposed by juries. Judges modified jury sentences in less than one-third of the FY2001 cases in which juries found the defendant guilty. Of the cases in which the judge modified the jury sentence, judges brought a high jury sentence into compliance with the guidelines recommendation in about one-half of the modifications. Almost as often, judges modified the jury sentence but not enough to bring the final sentence into compliance.

FIGURE 23

Sentencing Guidelines Compliance in Jury Cases and Non-Jury Cases – FY2001



In those jury cases in which the final sentence fell short of the guidelines, it did so by a median value of about one and one-half years (Figure 24). In cases where the ultimate sentence resulted in a sanction more severe than the guidelines recommendation, the sentence exceeded the guidelines maximum recommendation by a median value of six years.

FIGURE 24

Median Length of Durational Departures in Jury Cases – FY2001

Methamphetamine Study

Introduction

Methamphetamine, a derivative of amphetamine, is a potent psychostimulant that affects the central nervous system. A man-made drug (unlike other drugs such as cocaine that are plant derived), methamphetamine can be produced from a few over-the-counter and low-cost ingredients. Methamphetamine is accessible in a variety of forms and can be ingested orally, snorted, smoked or injected intravenously. In its powder form, methamphetamine resembles granulated crystals, while larger crystalline pieces that are clear in color are often known as "ice." Because of the potential for physical and psychological abuse and dependency and its limited medical applications, methamphetamine is listed as a Schedule II narcotic under the Controlled Substances Act, Title II, of the Comprehensive Drug Abuse Prevention and Control Act of 1970. In the United States, the use of methamphetamine is most prevalent in the West but its popularity may be increasing in areas of the Midwest as well (National Institute of Justice 1999). According to the Office of National Drug Control Policy (1999), available statistics indicate that production, trafficking and use of methamphetamine increased in the United States during the 1990s.

Concern over the potential impact of methamphetamine-related crime in the Commonwealth prompted the Virginia General Assembly to adopt legislation during the 2001 session directing the Virginia Criminal Sentencing Commission to examine the state's felony sentencing guidelines for methamphetamine offenses (Chapters 352 and 375 of *The Acts of the Assembly 2001*). In addition, the legislation requested the Commission to conduct an assessment of the quantity of methamphetamine seized by law enforcement in such cases, with particular regard to the provisions of §18.2-248(H), amended by the General Assembly the previous year.

This chapter of the Commission's *2001 Annual Report* examines a wide array of information on methamphetamine-related crimes in Virginia, including the results of the Commission's analysis on the quantity of methamphetamine seized in these cases and its impact on sentencing outcomes in Virginia's circuit courts. A discussion of criminal penalties for methamphetamine crimes and a comparison of the sentencing guidelines used in the Virginia and federal judicial systems are also presented.

The Acts of the Assembly 2001 - Chapters 352 & 375

Be it enacted by the General Assembly of Virginia:

1. *§1. The Virginia Criminal Sentencing Commission shall develop discretionary felony sentencing guidelines midpoint and range recommendations for convictions related to possessing, manufacturing, selling, giving, distributing, or possessing with the intent to distribute, methamphetamine. The Commission shall conduct an assessment of the quantity of methamphetamine seized in such cases with regard to the recently amended provisions of subsection H of §18.2-248 and shall complete the assessment on or before December 1, 2001.*

Study Methodology

The Commission responded to the legislative mandate by designing and executing a research project to study methamphetamine-related crime in Virginia. In the first stage of the study, data were collected from a variety of state and federal sources. These sources included the United States Sentencing Commission, the Drug Enforcement Agency, the National Institute of Justice, the Arrestee Drug Abuse Monitoring program, Virginia's multi-jurisdictional drug task forces, the Virginia State Police, and the Virginia Department of Corrections. These data sources were mined to provide detailed information on the prevalence of, and trends in, methamphetamine offenses in the Commonwealth. Because some cases are processed through the federal court system, acquiring federal case data enabled the Commission to develop a more complete picture of methamphetamine crime taking place in Virginia.

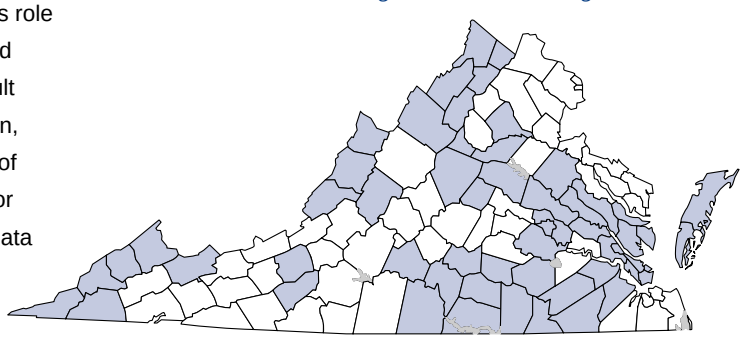
For the second stage of the study, the Commission conducted an in-depth analysis of methamphetamine cases resulting in conviction in the state's circuit courts. The Commission specifically targeted cases sentenced under Virginia's truth-in-sentencing provisions, which apply to felony offenders who commit offenses on or after January 1, 1995. The Commission utilized the Department of Corrections' Pre/Post-Sentence Investigation (PSI) information system for this purpose. The PSI report contains a wealth of information about the defendant and the crime. The PSI captures standardized information regarding the crimes for which the offender is convicted, the circumstances of the crime (e.g., use of a weapon, victim injury, the offender's role in the offense, his relationship to the victim, if he resisted arrest, the quantity of drugs involved, etc.), his prior adult record, his juvenile record, family and marital information, education, military service, employment history, history of alcohol and drug use, as well as any substance abuse or mental health treatment experiences. In addition, this data system contains information related to the quantity of drug seized in cases involving controlled substances. Because quantity was not always available for methamphetamine cases on the automated data file, the Commission requested copies of the narrative sections of PSI reports from probation offices around the state. It was felt that quantity information and other rich contextual detail of the offenses committed by offenders under study would be contained in the narrative sections. Through the narrative accounts found in the PSI reports, the Commission extracted data related to quantity of drug, to supplement the existing automated data. This process also allowed the Commission to correct any inaccuracies contained in the automated PSI system. The Commission performed a detailed analysis of this data.

Methamphetamine Seizures

By mid-2001, 26 multi-jurisdictional drug task forces were operating in the Commonwealth of Virginia. Each task force is comprised of at least two jurisdictions that have brought together law enforcement officials in those localities, in order to coordinate their efforts. These 26 task forces represent a total of 96 of Virginia's 136 localities, and often involve the Drug Enforcement Agency (DEA) and the Federal Bureau of Investigation (FBI) (Figure 25). Although many localities participate in a multi-jurisdictional drug task force, one in four Virginia localities are not members of such a task force. In

FIGURE 25

Multi-Jurisdictional Drug Task Forces in Virginia, 2001



Participating in multi-jurisdictional drug task force
Not participating in multi-jurisdictional drug task force

Source: Northwest Virginia Regional Drug Task Force, June 2001

particular, several densely-populated, urbanized jurisdictions in Northern Virginia and the Tidewater are not currently involved in a drug task force outside their own borders.

According to data reported by the Northwest Virginia Regional Drug Task Force, the Commonwealth's 26 drug task forces seized 34,067 grams (approximately 75 pounds) of methamphetamine between January 1, 1998, and June 8, 2001 (Figure 26). According to the Virginia State Police (2001), the statewide average street price for methamphetamine is currently $100 per gram. At that price, Virginia's drug task forces seized a total amount of methamphetamine worth about $3.4 million. During that nearly three and a half year period, the Northwest Virginia Regional Drug Task Force (covering the city of Winchester, the town of Front Royal, and the counties of Warren, Shenandoah, Frederick, Clarke and Page) together with the RUSH Task Force (in the city of Harrisonburg and Rockingham county) report having seized 31,694 grams of the drug, or 93%, of the total methamphetamine seized by Virginia's drug task forces statewide (Figure 26). While these data are limited to seizures reported by multi-jurisdictional drug task forces operating in the Commonwealth, it suggests that, overall, more methamphetamine is seized in this area of the Shenandoah Valley than elsewhere in the state.

As with other manufactured drugs, methamphetamine production facilities are typically known as "labs." The Drug Enforcement Agency's El Paso Intelligence Center (EPIC) collects and processes intelligence information related to clandestine lab seizures throughout the United States. According to EPIC, local, state and federal law enforcement agencies across the country closed 7,528 clandestine drug labs in 1999 (Drug Enforcement Agency 2001). Over 97% of these labs produced methamphetamine. More than one-third of the drug labs were seized in California alone (2,691 labs). In Washington State, law enforcement agencies shut down 597 clandestine drug labs. Four Midwest states were among those with the highest numbers of lab seizures reported to EPIC in 1999. During that year, law enforcement agencies captured 438 drug labs in Missouri. Oklahoma, Iowa and Arkansas officials closed 396, 356 and 334 labs, respectively. An additional 383 labs were targeted in Arizona. Fewer than 10 drug labs were seized in each of the east coast states, with the exception of Georgia (34 labs) and Florida (23 labs). The DEA identified eight clandestine drug lab seizures in Virginia in 1999. Neighbors to the west and south of Virginia (Tennessee and Kentucky) reported higher numbers of seizures during the same year (106 and 68 labs each). Among the drug labs shut down in the United States in 1999, the DEA categorized 237 as "super labs," drug labs capable of producing 10 pounds or more per manufacturing cycle. No super labs were found in Virginia. Nearly all (96%) of the super labs were located in California.

FIGURE 26

Methamphetamine Seizures by Virginia's Multi-Jurisdictional Drug Task Forces (in grams)
January 1, 1998 through June 8, 2001

	Northwest	RUSH	Other Task Forces	Total
1998	900	1,563	91	2,554
1999	712	10,246	121	11,079
2000	6,360	1,820	2,052	10,232
2001 (1/1-6/8)	4,349	5,744	109	10,202
Total	12,321	19,373	2,373	34,067

Note: The Northwest Virginia Regional Drug Task Force covers the city of Winchester, the town of Front Royal, and the counties of Warren, Shenandoah, Frederick, Clarke and Page. The RUSH Task Force covers the city of Harrisonburg and Rockingham county.

Source: Northwest Virginia Regional Drug Task Force, 2001

FIGURE 27

Methamphetamine Seized in Conviction Cases – Virginia's Circuit Courts (in grams)

Circuit	Total Grams	Percent
1	13.4	.4%
2	100.7	3.3
3	10.9	.4
4	1.9	.1
5	2.3	.1
6	.6	.0
7	.0	.0
8	2.6	.1
9	.0	.0
10	11.7	.4
11	104.2	3.4
12	36.7	1.2
13	1.0	.0
14	11.3	.4
15	22.1	.7
16	33.1	1.1
17	31.7	1.0
18	.0	.0
19	319.4	10.5
20	9.4	.3
21	21.2	0.7
22	3.0	0.1
23	39.4	1.3
24	218.6	7.2
25	444.5	14.7
26	693.1	22.9
27	211.7	7.0
28	592.7	19.6
29	2.8	.1
30	53.0	1.8
31	34.9	1.2
Total	3,027.8	100.0%

Note: Analysis includes cases sentenced under Virginia's truth-in-sentencing provisions from 1995 through 2000.

Conviction data provide additional information regarding methamphetamine seized in Virginia. The seizure data from the state's multi-jurisdictional drug task forces exclude those localities not participating in such a task force. Conviction data from the state's circuit courts provides information for all localities in Virginia. This data, however, exclude cases processed through the federal judicial system as well as cases resulting in acquittal or dismissal. Nonetheless, circuit court conviction data provide additional evidence that more methamphetamine is seized in the Shenandoah Valley area than in other areas of the state. Among circuit court conviction cases sentenced under truth-in-sentencing provisions from 1995 through 2000, cases in Circuit 26 in the Shenandoah Valley yielded 23% of the total amount of methamphetamine seized (Figure 27). This circuit includes the city of Winchester, the town of Front Royal, and the counties of Warren, Shenandoah, Frederick, Clarke and Page as well as the city of Harrisonburg and Rockingham county. These localities are covered by the Northwest Virginia Regional Drug Task Force and the RUSH Task Force. As noted previously, these task forces have reported the largest total seizures among all multi-jurisdictional drug task forces in the state. Cases in Circuit 25 (Staunton, Lexington and the counties of Alleghany, Augusta, Bath, Botetourt, Highland and Rockbridge) supplied another 15% of the methamphetamine seized in cases resulting in conviction in state court. The localities comprising Circuit 25 are partially covered by the Alleghany Highlands and the Rockbridge Regional Task Forces. Another 20% of the total methamphetamine seized in state conviction cases comes from Circuit 28 (the city of Bristol and the counties of Washington and Smyth). The localities in Circuit 28 are not currently members of any multi-jurisdictional drug task force. In addition, no task force covers Circuit 19 (Fairfax), which supplies nearly 11% of the total methamphetamine seized, according to conviction cases. No other circuit in Virginia contributes more than 10% of the methamphetamine seized when analyzing conviction data. It is interesting to note that, of the four circuits with the largest total methamphetamine seized, three are located in the Western half of the Commonwealth.

Methamphetamine Use Among Arrestees

The Arrestee Drug Abuse Monitoring (ADAM) program, sponsored by the National Institute of Justice (NIJ), provides valuable information on trends in drug use among the arrested population. Each year, this program assesses the prevalence of drug use among a representative sample of persons at the time of arrest. ADAM reports drug use and other characteristics of arrestees in 35 U.S. cities through interviews and drug testing in holding facilities. There are two fundamental components of the ADAM program: a questionnaire administered to the arrestee by a trained interviewer and drug testing through urinalysis. All ADAM sites test for a core panel of drugs, including amphetamines, cocaine, marijuana, phencyclidine (PCP), and opiates (heroin). Other drugs that can be tested for include alcohol and barbiturates. Using ADAM data, communities can assess the dimensions of their particular local substance abuse problems. According to NIJ, the ADAM program provides an understanding of drug use in an at-risk population and a strong basis from which to analyze and evaluate local and national substance abuse, policing, and criminal justice issues and practices (National Institute of Justice *ADAM Program Brief*). No locality in Virginia currently participates in the ADAM program. Several east coast cities are ADAM sites, however, including Washington DC, Atlanta, New York City, Philadelphia, Ft. Lauderdale and Miami.

According to the *1998 Annual Report on Methamphetamine Use Among Arrestees*, methamphetamine prevalence varies widely among ADAM sites. Perhaps more than any other drug, it shows clear regional variation (National Institute of Justice1999). Methamphetamine use among ADAM arrestees appears to be concentrated mainly in the Western and Northwestern United States. In 1994, none of the Eastern sites of the ADAM program reported methamphetamine-positive rates of more than one percent (Figure 28). In 1999, the ADAM system continued to show no sign of methamphetamine's spread to arrestees in the Eastern United States. Methamphetamine-positive rates for Eastern sites remained at less than one percent (National Institute of Justice 2000). It is interesting to note that, in most ADAM sites, the percentage of adult female arrestees testing positive for methamphetamine is greater than that for males.

FIGURE 28

Percentage of Arrestees Testing Positive for Methamphetamine in Selected ADAM Sites

Site	Gender	1994	1996	1998	1999
Atlanta	M	.1%	.0%	.0%	.4%
	F	.3	.0	-	.8
New York City	M	.3	.2	.0	.0
	F	.0	.0	.0	.0
Philadelphia	M	.1	.5	.6	.2
	F	.7	.0	.3	.0
Washington DC	M	.1	.0	.0	.9
	F	.0	.0	.5	-
Chicago	M	.1	.2	.2	.0
	F	-	-	-	.0
Omaha	M	3.3	4.3	10.2	7.8
	F	2.7	4.9	13.6	11.1
Los Angeles	M	7.7	4.1	8.0	8.9
	F	9.8	12.3	11.8	12.0
Phoenix	M	25.4	11.1	16.4	16.6
	F	26.0	14.0	22.4	14.3
Salt Lake City*	M	-	-	20.3	24.8
	F	-	-	31.4	34.1
San Diego	M	41.0	29.3	33.2	26.0
	F	53.0	31.3	33.3	36.3

* New ADAM site in 1998

Source: *1998 Annual Report on Methamphetamine Use among Arrestees* and *1999 Annual Report on Drug Use among Adult and Juvenile Arrestees* (National Institute of Justice)

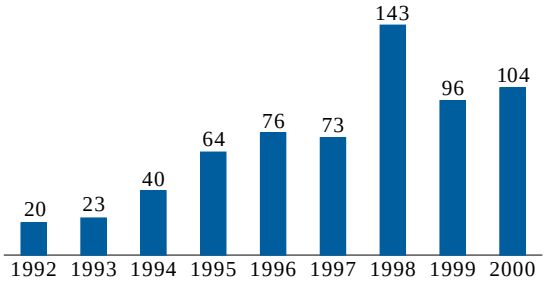
Methamphetamine Convictions

In order to conduct a thorough examination of methamphetamine crimes in Virginia, the Commission collected conviction data from both the state and federal judicial systems. Because a portion of criminal cases are processed through the federal judicial system, including federal data provides a more complete picture of the pervasiveness of and trends in methamphetamine convictions in the Commonwealth.

Data from Virginia's circuit courts indicate that the number of methamphetamine convictions in state courts has increased over the last decade (Figure 29). In 2000, the number of methamphetamine convictions reached 104, compared to 20 in 1992. In 1998, 143 cases were sentenced for methamphetamine-related crimes, the largest single-year figure. Following its 1998 peak, the number of methamphetamine convictions receded somewhat the next year, but remained above the pre-1998 level. These data include the offenses related to manufacturing, distributing, selling and possessing with intent to sell methamphetamine. In addition, the figures include cases of methamphetamine possession for personal use (no intent to sell). During 1999 and 2000, one-third (33%) of the methamphetamine convictions were for sales-related offenses (manufacturing, distributing, selling or possessing with intent to sell). Two-thirds of the circuit court convictions in 1999 and 2000 were reported as possession or accommodation offenses.

FIGURE 29

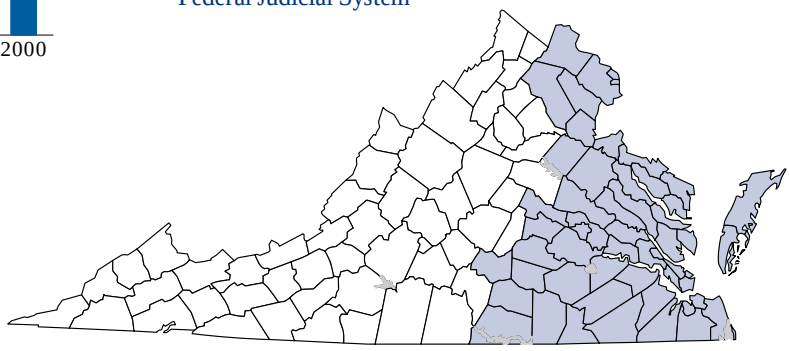
Methamphetamine Convictions in Virginia Circuit Courts



Dividing the state into Eastern and Western regions reveals an interesting pattern among conviction cases. Following the federal judicial districts for the state (Figure 30), it can be seen that, since 1995, the Western region of Virginia has exceeded the Eastern region in the number of metham-

FIGURE 30

Eastern and Western Districts of Virginia Used in the Federal Judicial System



Note: This chart is based on the divisions used for Virginia's federal judicial districts.

phetamine convictions in state circuit courts (Figure 31). In fact, most of the growth in the overall number of cases in Virginia's circuit courts is due to increases in these types of cases in the Western region since 1995. In 2000, circuit courts in the Western region sentenced four times more methamphetamine cases than those in the Eastern region. Both Eastern and Western regions saw a dramatic jump in methamphetamine cases in 1998. In the Eastern region, the number of methamphetamine cases dropped sharply in 1999 before returning to its pre-1998 level. In contrast, the number of methamphetamine cases in the Western region, although lower than the 1998 peak, continued to climb in 1999 and 2000, well above pre-existing case levels.

Conviction data from the federal judicial system suggest different patterns for methamphetamine cases processed through the federal courts. As in the state courts, the number of methamphetamine convictions in federal courts in Virginia has increased since 1994 (Figure 32). Also like the state courts, the number of offenders sentenced in federal courts jumped in 1998, but receded somewhat the following year. Nearly all federal cases involve the trafficking of methamphetamine. Only a small proportion of federal cases result in conviction for possession (no intent to sell). This contrasts with state court data, in which only one-third of the cases were for trafficking or other sales-related crimes. Although convictions from the Western region dominate recent state conviction data, federal data suggest that, in 1998 and 1999, the Eastern District contributed two-thirds of the methamphetamine cases sentenced in federal courts.

Each year, some of the offenders committing crimes in Virginia are taken into the federal courts and prosecuted in the federal judicial system. In 1998 and 1999, most (71%) of the methamphetamine convictions in Virginia took place in the state's circuit courts. Only 29% of the total methamphetamine convictions occurred in federal courts in Virginia. Among trafficking and sales convictions throughout Virginia, however, nearly two-thirds were handed down in federal court.

FIGURE 31

Methamphetamine Convictions
in Virginia Circuit Courts by Region

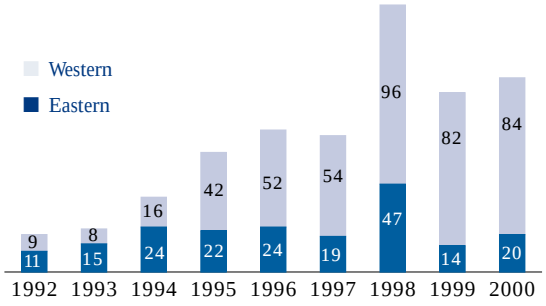
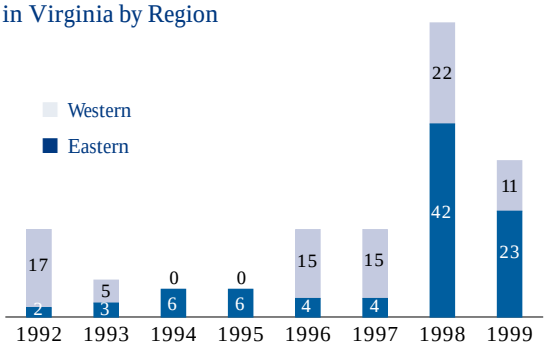


FIGURE 32

Methamphetamine Convictions in Federal Courts
in Virginia by Region



Source: United States Sentencing Commission

Relative Prevalence of Methamphetamine

According to state and federal data, methamphetamine convictions have increased in Virginia over the last decade. Although the number of the methamphetamine cases has risen, methamphetamine remains much less prevalent than cocaine statewide (Figure 33). The number of convictions in Virginia's circuit courts for cocaine offenses, nearly 5,800 in 1992, remained over 5,000 per year through 1998. In 1999, cocaine convictions declined to 4,666 and dropped again to 4,296 in 2000. During this period, the number of methamphetamine convictions in state courts, although increasing, never reached above 143. In 2000, methamphetamine convictions represented only 2% of the number of convictions involving cocaine. Of Schedule I or II drugs, heroin was also more prevalent than methamphetamine, with heroin convictions outnumbering methamphetamine convictions more than four to one.

FIGURE 33

Methamphetamine and Cocaine Conviction Cases in Virginia Circuit Courts 1992-2000

Year	Methamphetamine	Cocaine
1992	20	5,755
1993	23	5,309
1994	40	5,082
1995	64	5,132
1996	76	5,304
1997	73	5,098
1998	143	5,076
1999	96	4,666
2000	104	4,296

Note: Analysis includes the offenses of manufacture, distribution, selling, possessing with intent to sell, and possession (no intent to sell).

Quantity of Drug in Methamphetamine Sales

As directed by the General Assembly, the Commission closely examined the quantity of drug involved in methamphetamine cases. Through the narrative accounts found in pre-sentence investigation (PSI) reports, the Commission extracted data related to quantity of drug to supplement the existing automated data and corrected any inaccuracies contained in the automated PSI system. The Commission conducted detailed analysis of cases sentenced in circuit courts under Virginia's truth-in-sentencing provisions from 1995 through 2000.

Of the original 566 reported methamphetamine cases sentenced under truth-in-sentencing, 70 were removed from the data because the cases did not actually involve methamphetamine. Several other drugs, nearly all of which begin with the letters "me," were mistakenly recorded as methamphetamine in the automated PSI system. Collecting the narrative sections of these PSIs allowed the Commission to verify the type of drug as well as the quantity involved in each case. Of the remaining 496 truth-in-sentencing cases, 81 (16%) were missing quantity information and could not be examined at this stage of the analysis.

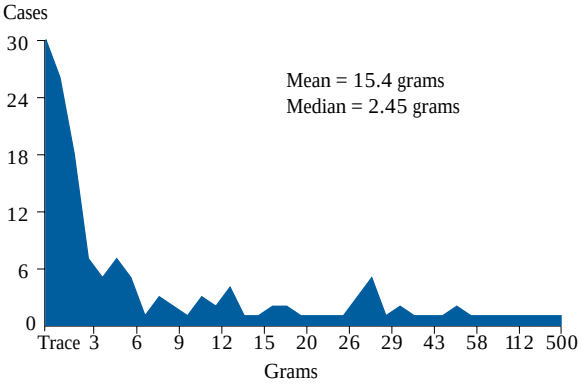
The Commission focused on offenses related to the sale of the drug (manufacturing, distributing, selling, and possessing with intent to sell). Sales cases comprised approximately one-third of the circuit court cases sentenced under truth-in-sentencing from 1995 through 2000.

The majority of methamphetamine sales cases involved relatively small amounts of the drug (Figure 34). While the mean seizure of methamphetamine was 15.4 grams per case, approximately one-third (32%) of the sales-related methamphetamine cases in Virginia's circuit courts involved one gram or less. In fact, half of the cases involved 2.45 grams or less (this value is known as the median). Very few cases in circuit courts (10%) resulted in the seizure of more than 28.35 grams (1 ounce) of methamphetamine.

Examining the data by region reveals that conviction cases in the state courts in the Eastern region of Virginia involve

FIGURE 34

Quantity of Drug in Methamphetamine Sales in Virginia Circuit Courts (in grams)



Note: Analysis includes cases sentenced under Virginia's truth-in-sentencing system from 1995 through 2000.

larger quantities of the drug on average than cases in the Western region (Figure 35). In the Eastern region, the average methamphetamine sale involved 19.8 grams of the drug. In the Western region, however, the mean sale is reported as 14.2 grams of methamphetamine. Because the mean can

FIGURE 35

Quantity of Drug in Methamphetamine Sales by Region (in grams)

		Eastern	Western
Virginia Circuit Court	Mean	19.8	14.2
	Median	3.5	2.0
Federal Court	Mean	54,278.7	753.5
	Median	818.0	199.9

Source: Virginia Criminal Sentencing Commission (1995-2000 Truth-In-Sentencing Cases); United States Sentencing Commission (1992-1999)

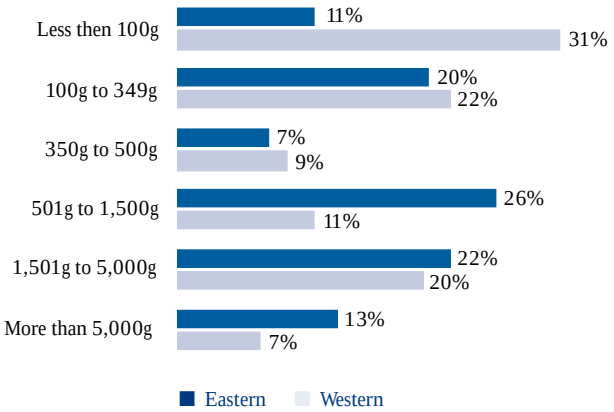
be affected by a few relatively large seizures, researchers often use the median to represent the typical case (the median defines the middle value where half the cases have higher values and half the cases have lower values). Among circuit court cases, the median sale in the Eastern region was 3.5 grams of methamphetamine, while the median sale in the Western region was slightly less (2.0 grams).

Examining data from the federal courts reveals a similar pattern (Figure 35). Trafficking cases in the Eastern district of Virginia resulted in a mean seizure of more than 54,000 grams (1992-1999). For the Western region, the mean seizure was considerably less (753.5 grams). While the median seizures are closer in value (818 grams v. 199.9 grams), federal data reveal that the Eastern district yields larger quantity cases than the Western district. Overall, the federal data indicate that larger quantity cases tend to be processed through the federal courts rather than the state courts. In addition, the difference between Eastern and Western region in terms of the amount of methamphetamine per case is more pronounced among federal cases than among cases sentenced in the state courts.

For a portion of the federal methamphetamine data, specific quantity information is not provided. Instead, quantity data is supplied in the form of a range. Using ranges to represent all the federal methamphetamine data reveals that a larger share of methamphetamine cases in the Western district than in the Eastern district involve quantities falling into ranges of 500 grams or less (Figure 36). A larger share of the Eastern district cases than Western district cases fall into the larger quantity categories (over 500 grams). This analysis provides additional evidence that federal methamphetamine cases in the Eastern district typically involve larger quantities than those in the Western district of Virginia.

FIGURE 36

Quantity of Drug in Methamphetamine Sales in Federal Cases by Region 1992-1999



Source: United States Sentencing Commission

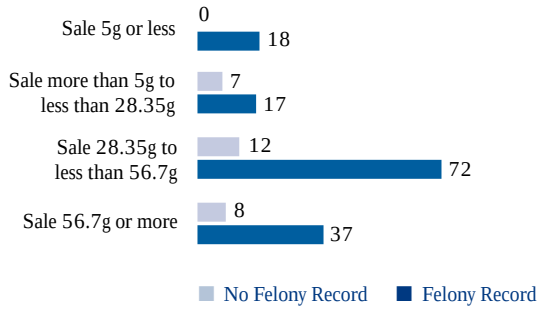
Quantity of Methamphetamine and Sentencing Outcome

The Commission carefully examined the relationship between quantity of methamphetamine and the sentencing outcome. This analysis focused on the offenders convicted in circuit courts in the Commonwealth. The analysis excluded federal cases because the federal sentencing guidelines explicitly account for drug quantity in methamphetamine cases, and the federal system limits judicial discretion by providing narrow sentence ranges and restricting departures from the guidelines. For these reasons, drug quantity is undoubtedly tied to sentencing outcome in the federal judicial system. In contrast, Virginia's sentencing guidelines are discretionary and the quantity of methamphetamine does not affect the recommended sentence. The relationship between drug quantity and sentencing outcome in state courts is not defined by the sentencing guidelines as it is in the federal guidelines system.

Analysis of sentencing patterns in methamphetamine sales cases provides strong evidence that sentencing in the state's circuit courts is not primarily driven by the quantity of drug. In fact, if the offender does not have a prior felony record, quantity of methamphetamine has little bearing on sentencing outcome (Figure 37).

FIGURE 37

Sentencing by Drug Quantity and Prior Record for Sale Cases Sentenced in Virginia Circuit Courts (in months)



Note: Analysis includes cases sentenced under Virginia's truth-in-sentencing system from 1995 through 2000.

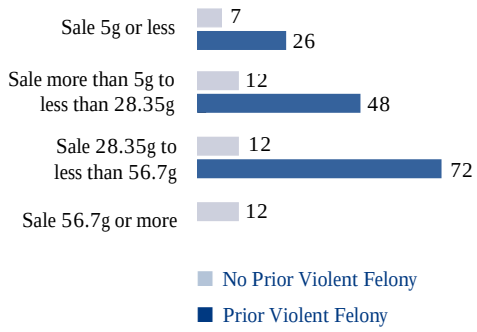
For offenders with no prior record, the median sentence ranges from 0 to 12 months. Even among cases involving 56.7 grams (2 ounces) or more, first-time felons received a median sentence of eight months imprisonment. In contrast, sanctioning in methamphetamine cases is largely driven by the criminal history of the defendant. Across each quantity category shown in Figure 37, offenders with a prior felony record received a more stringent sanction (based on the median sentence) than their counterparts who had not previously been convicted of a felony. Among repeat felons, quantity appears to play a more important role in sentencing. While repeat felony offenders who sold less than 28.35 grams (1 ounce) of methamphetamine typically received around 17 to 18 months in prison, repeat felons who sold larger amounts typically received substantially longer terms of incarceration (72 months for offenders who sold 28.35 grams to less than 56.7 grams and 37 months for offenders who sold 56.7 grams or more). Quantity of methamphetamine alone does not play a strong role in sentencing decisions by Virginia's circuit court judges. The importance of drug quantity is interwoven with the prior criminal history of the defendant.

The role of prior record in sentencing methamphetamine cases can be seen even more clearly by distinguishing offenders with a prior record that includes a prior conviction for a violent felony offense (Figure 38). For offenders who have never been convicted of a violent felony, the median sentence begins at seven months (sale of 5 grams or less), but the median sentence does not exceed 12 months even among offenders who sell large quantities of methamphetamine (56.7 grams or more). In contrast, for offenders with a prior violent felony conviction, sentences increase as the quantity of methamphetamine increases. Violent felons

who sold relatively small quantities of methamphetamine received a median sanction of 26 months in prison. Violent felons who sold more than five grams but less than 28.35 grams (1 ounce) were given a median sentence of 48 months. For selling 28.35 grams to 56.7 grams, violent felons received a median penalty of 72 months in prison. The circuit court data did not contain any offenders with a prior violent felony who sold 56.7 grams or more of methamphetamine. Overall, circuit court data suggest that drug quantity affects sentencing outcome only among offenders who have a prior felony record, particularly offenders who have previously been convicted of a violent felony. Virginia's circuit court judges do not appear to weigh drug quantity as a significant factor in cases involving offenders with a nonviolent criminal history.

FIGURE 38

Sentencing by Drug Quantity and Violent Prior Record for Sale Cases Sentenced in Virginia Circuit Courts
(in months)



Note: Analysis includes cases sentenced under Virginia's truth-in-sentencing system from 1995 through 2000.

Virginia Sentencing Guidelines

Since the abolition of parole in 1995, the Commission has administered a system of sentencing guidelines compatible with Virginia's new sanctioning system, designed by the General Assembly to achieve truth-in-sentencing and longer prison stays for violent offenders. For offenders sentenced for felony offenses committed on or after January 1, 1995, parole has been abolished and the rate at which felons in prison or jail may earn sentence reductions is restricted to no more than 15%. Felony offenders now serve at least 85% of their prison or jail sentences. This approach, known as "truth-in-sentencing," means that offenders serve all or nearly all of sentences imposed in the courtroom.

Virginia's truth-in-sentencing guidelines were formulated to target violent offenders for incarceration terms longer than those served under the parole system. Any offender with a current or prior conviction for a violent felony is subject to enhanced penalty recommendations under the truth-in-sentencing guidelines. 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 those offenders. Only offenders who have never been convicted of a violent crime are recommended by the guidelines to serve terms roughly equivalent to the average time served historically by similar offenders prior to the abolition of parole.

Virginia's sentencing guidelines are discretionary. Judges are free to depart from the guidelines recommendations and need only to cite a reason for the departure on the guidelines form.

Virginia's sentencing guidelines apply to many crimes involving a Schedule I or II drug, including methamphetamine. Except for cocaine offenses, the guidelines are unaffected by the quantity of drug seized. On July 1, 1997, the Commission implemented guidelines enhancements for offenders

who manufacture, distribute, sell or possess with intent to sell large amounts of cocaine, in any of its forms. Cocaine was selected for enhancements because, at that time, more than 90% of all Schedule I or II drug convictions in Virginia's circuit courts for sales-related offenses involved cocaine. Cocaine continues to comprise 88% of these convictions in the Commonwealth (2000). The enhancements to the drug sentencing guidelines increase the sentencing midpoint recommendation by 3 years in cases of cocaine trafficking involving 28.35 grams (1 ounce) up to 226.7 grams. The midpoint recommendation is increased by 5 years in cocaine trafficking cases in which 226.8 grams ($^1/_2$ pound) or more was seized.

Concerned over the potential impact of methamphetamine-related crime in the Commonwealth, the 2001 Virginia General Assembly directed the Commission to examine the state's felony sentencing guidelines for methamphetamine offenses and to assess the quantity of methamphetamine seized by law enforcement in such cases.

Virginia's sentencing guidelines do not currently explicitly account for quantity in methamphetamine cases. As demonstrated above, however, drug quantity by itself does not play a role in sentencing decisions made by Virginia's circuit court judges. Among cases resulting in convictions in the state's circuit courts, prior record, most notably violent prior record, appears to determine the sentencing outcome. Virginia's sentencing guidelines explicitly account for the offender's criminal history in several ways. Built-in midpoint enhancements increase the guidelines recommendation for offenders with prior violent convictions even if the offender's current offense is nonviolent. The size of the enhancement is related to the seriousness of the prior violent offense. For an offender convicted of one count of selling a Schedule I or II drug like methamphetamine, the score on the primary offense factor on the prison worksheet (Section C) is 12 for an offender who does not have a prior violent conviction (Figure 39). The score on this worksheet equates to months of imprisonment. If the offender has a prior conviction for a violent felony carrying a statutory maximum penalty of less

FIGURE 39

Primary Offense Factor on Section C of the Schedule I or II Drug Sentencing Guidelines

Drug/Schedule I/II* — *Section C

Offender Name: _____

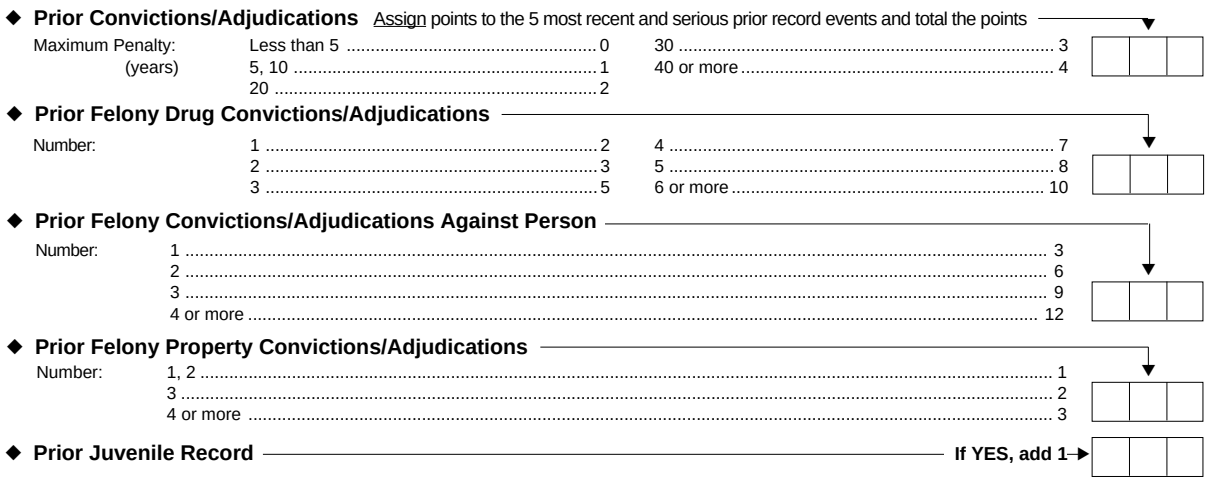
◆ **Primary Offense**

		Prior Record Classification		
		☐ Category I	☐ Category II	☐ Other
A. Possess Schedule I or II drug - 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, Schedule I or II drug				
Completed:	1 count	60	36	12
	2 counts	80	48	16
	3 counts	95	57	19
	4 counts	130	78	26
Attempted or conspired:	1 count	48	24	12
	2 counts	64	32	16
	3 counts	76	38	19
	4 counts	104	52	26
C. Sell, etc. Schedule I or II drug, subsequent offense; third or subsequent offense				
Completed:	1 count	110	66	22
	2 counts	310	186	62
Attempted or conspired:	1 count	88	44	22
	2 counts	248	124	62
D. Sell, etc. Schedule I or II drug to minor				
Attempted, conspired or completed:	1 count	60	30	15
E. Accommodation–Sell, etc. Schedule I or II drug - Attempted, conspired or completed:				
	1 count	32	16	8
	2 counts	40	20	10
F. Sell, etc. imitation Schedule I or II drug - Attempted, conspired or completed:				
	1 count	12	6	3
	2 counts	20	10	5

Score ▼ ☐☐☐

FIGURE 40

Prior Record Factors on Section C of the Schedule I or II Drug Sentencing Guidelines



than 40 years (Category II prior record), the guidelines score for this factor is increased to 36 months. If the offender has a prior conviction for a violent felony carrying a statutory maximum penalty of 40 years or more (Category I prior record), the guidelines score increases to 60 months.

In addition to these built-in enhancements for violent prior record, the prison worksheet (Section C) for Schedule I or II drug offenses contains other factors to score prior criminal history (Figure 40). The Prior Convictions/Adjudications factor captures the seriousness of the offender's prior convictions and adjudications of delinquency as a juvenile, including nonviolent offenses. The number of prior felony drug, person and property convictions and adjudications are also scored on this worksheet and serve to further increase the offender's prison recommendation. An additional point is added if the offender has a juvenile record of delinquency.

Prior criminal history plays an important role in Virginia's sentencing guidelines. The structure of the state's sentencing guidelines ensures that offenders with a prior criminal record, particularly those with a history of violence, are recommended for longer terms, and in many cases, substantially longer terms than first-time and nonviolent felons.

Mandatory Penalties for Schedule I or II Drug Offenses

Although judges can utilize Virginia's sentencing guidelines as a tool in formulating sentencing decisions in most cases, the *Code of Virginia* specifies several mandatory minimum penalties for offenses involving Schedule I or II drugs. These are shown in Figure 41. Several of these mandatory minimum penalties were passed by the 2000 General Assembly as part of the legislative package known as the Substance Abuse Reduction Effort, or SABRE. Under the SABRE initiative, the General Assembly revised the drug kingpin statute and expanded it by adding methamphetamine to other drugs already covered by the drug kingpin law. Under §18.2-248(H) of the *Code of Virginia,* an offender who manufactures, distributes, sells or possesses with intent to sell at least 100 grams of pure methamphetamine or at least 200 grams of a mixture containing methamphetamine is subject to a mandatory minimum penalty of 20 years unless the offender satisfies certain conditions, including cooperating with authorities in the prosecution of others. If the offender is operating a continuing criminal enterprise as

defined by §18.2-248(H1), the 20-year mandatory minimum penalty cannot be suspended. Under §18.2-248(H2), if an offender manufactures, distributes, sells or possesses with intent to sell at least 250 grams of pure methamphetamine or at least one kilogram of a methamphetamine mixture, a mandatory minimum penalty of life is applicable. The mandatory life penalty can be reduced to 40 years only if the offender aids law enforcement. These methamphetamine drug kingpin laws became effective July 1, 2000.

Other mandatory minimum penalty laws applicable to methamphetamine became effective on July 1, 2000. An offender who receives a third or subsequent conviction for selling a Schedule I or II drug is now subject to a three-year mandatory minimum sentence (§18.2-248(C)), as is an offender who transports an ounce or more of a Schedule I or II drug into the Commonwealth (§18.2-248.01). An offender convicted under §18.2-248.01 for transporting an ounce or more of a Schedule I or II drug into the Commonwealth a second time must serve a minimum of ten years. Also as of July 1, 2000, selling or possessing a Schedule I or II drug while possessing a firearm is subject to a five-year mandatory penalty. These laws defining mandatory penalties for offenses involving a Schedule I or II drug like methamphetamine can provide prosecutors with useful tools to secure minimum prison sentences for offenders who commit these crimes.

Mandatory sentences required by statute take precedence over the discretionary sentencing guidelines system. When scoring offenders on the sentencing guidelines, users of the guidelines are instructed to replace any part of the recommended sentence range (low, midpoint, or high) that falls below the mandatory minimum required by law with the specified mandatory minimum. This instruction ensures that the guidelines comply with any mandatory minimum penalties applicable in a case.

FIGURE 41

Mandatory Minimum Sentencing Laws in Virginia Related to Schedule I or II Drugs

Offense	Statute	Mandatory Penalty
Sell, distribute, possess with intent to distribute, or manufacture quantities of Schedule I or II drug defined in §18.2-248(H)	§18.2-248(H)	20 years
Sell, distribute, possess with intent to distribute, or manufacture quantities of Schedule I or II drug defined in §18.2-248(H1) as part of continuing criminal enterprise	§18.2-248(H1)(ii)	20 years
Sell, distribute, possess with intent to distribute, or manufacture quantities of Schedule I or II drug defined in §18.2-248(H2) as part of continuing criminal enterprise	§18.2-248(H2)(ii)	Life
Gross $100,000 but less than $250,000 within 12 month period from continuing criminal drug enterprise	§18.2-248(H1)(i)	20 years
Gross $250,000 or more within 12 month period from continuing criminal drug enterprise	§18.2-248(H2)(i)	Life
Sell, distribute, possess with intent to distribute, or manufacture (third or subsequent conviction)	§18.2-248(C)	3 years
Transport 1 ounce or more of cocaine or other Schedule I or II drug into Commonwealth	§18.2-248.01	3 years
Transport 1 ounce or more of cocaine or other Schedule I or II drug into Commonwealth (second or subsequent conviction)	§18.2-248.01	10 years
Sell Schedule I or II drug to a minor	§18.2-255(A)	5 years
Distribute Schedule I or II drug on school property	§18.2-255.2	1 year
Possess Schedule I or II drug while possessing a firearm	§18.2-308.4(A)	5 years
Sell, distribute, possess with intent to distribute, or manufacture Schedule I or II drug while possessing a firearm	§18.2-308.4(B)	5 years

Comparing Virginia and Federal Sentencing Guidelines

The federal judicial system also utilizes sentencing guidelines, which are administered by the United States Sentencing Commission. The federal sentencing guidelines differ from Virginia's guidelines system in several prominent ways. First, the federal sentencing guidelines are considered to be presumptive. Federal judges are expected to comply. Federal judges can depart from the guidelines recommendations only for certain specified circumstances. Moreover, the range recommended by the federal guidelines is relatively narrow, further limiting judicial discretion. The sentencing guidelines range is limited by law such that it cannot be wider than 25% of the minimum recommended sentence or six months, whichever is greater. The federal sentencing guidelines are represented by a two-dimensional grid based on the seriousness of the current offense (called "offense level") and the overall prior record score of the defendant. Unlike Virginia's sentencing guidelines, for offenses involving controlled substances, the current offense score is linked directly to the quantity of the drug in the case. The quantity thresholds are not based on analysis of sentencing patterns, but were set at normatively-selected levels. Compared to Virginia's sentencing guidelines, the federal guidelines place less emphasis on the defendant's criminal history. Prior criminal record, particularly prior violent record, serves to increase the guidelines recommendation to a greater degree under Virginia's guidelines system than the federal guidelines system.

The differences between the Virginia and the federal sentencing guidelines for drug offenders are demonstrated in Figure 42. For an offender convicted of trafficking a methamphetamine mixture who has no prior record, the Virginia sentencing guidelines recommend a sentence of seven to 16 months imprisonment. This recommendation does not change with drug quantity. At 200 grams, however, a mandatory minimum of 20 years could be applied and, at 1000 grams, a life mandatory penalty could be applied. Under the federal sentencing guidelines, however, the sentence recommendation increases from a range of 27 to 33 months for 10 grams of a methamphetamine mixture to a range of 121 to 151 months for 1000 grams of a methamphetamine mixture.

FIGURE 42

Virginia v. Federal Sentencing Guidelines

Sell/Traffic Methamphetamine Mixture (No Prior Record)

Drug Amount	Virginia Guidelines	Virginia Mandatory Penalty	Federal Guidelines
1000g	7 - 16 months	Life (§18.2-248(H2))	121 - 151 months
200g	7 - 16 months	20 years (§18.2-248(H,H1))	78 - 97 months
50g	7 - 16 months	None	63 - 78 months
10g	7 - 16 months	None	27 - 33 months

Sell/Traffic Methamphetamine Mixture (Prior Violent Conviction)

Drug Amount	Virginia Guidelines	Virginia Mandatory Penalty	Federal Guidelines
1000g	50 - 82 months	Life (§18.2-248(H2))	135 - 168 months
200g	50 - 82 months	20 years (§18.2-248(H,H1))	87 - 108 months
50g	50 - 82 months	None	70 - 87 months
10g	50 - 82 months	None	30 - 37 months

While the federal sentencing guidelines recommend more stringent prison terms than Virginia's guidelines, the mandatory penalties specified in the *Code of Virginia* would result in tougher sanctions than the federal system for offenders trafficking in larger quantities (200 grams or more of a methamphetamine mixture). For an offender with a prior violent conviction (such as a prior robbery), Virginia's sentencing guidelines increase substantially. The federal guidelines also increase in this scenario but not as steeply. For violent offenders who sell 50 grams of methamphetamine or less, Virginia's guidelines yield recommendations largely similar to those provided under the federal guidelines system. For violent offenders who sell larger amounts (200 grams or more of a methamphetamine mixture), Virginia's mandatory minimum penalty laws again provide even more stringent penalties than the federal guidelines.

FIGURE 43

Federal and Virginia Guidelines Recommendations for Actual Cases, 1995-2000

Federal Sentencing Guidelines Recommendation (in months)	Average Virginia Sentencing Guidelines Recommendation (in months)	Percent of Cases
6 - 12	14.9	12.2%
8 - 14	17.4	10.9
10 - 16	18.1	8.2
12 - 18	19.0	9.5
15 - 21	21.5	13.6
18 - 24	15.3	2.0
21 - 27	25.4	5.4
24 - 30	27.7	7.5
27 - 33	22.1	6.1
30 - 37	18.0	2.0
33 - 41	27.4	5.4
37 - 46	24.0	1.4
41 - 51	22.3	2.0
46 - 57	23.0	3.4
51 - 63	21.7	2.0
57 - 71	18.5	1.4
63 - 78	12.0	.7
70 - 87	19.5	1.4
97 - 121	13.0	.7
108 - 135	15.3	2.0
262 - 327	43.5	1.4
360 - LIFE	203.0	.7

69% of Cases

Critics of Virginia's sentencing guidelines have argued that the state's guidelines do not provide as stringent penalty recommendations as the federal guidelines system. It is interesting to note that when Virginia's methamphetamine sale cases are scored on the federal sentencing guidelines, the recommendations provided by the federal system are largely comparable to those the offender received under Virginia's guidelines. The results of this analysis are shown in Figure 43. The first column of Figure 43 represents the recommended sentence range provided by the federal sentencing guidelines. The second column represents the average recommendation provided under Virginia's sentencing guidelines for cases falling into that federal guidelines range. The third column reports the percent of cases convicted under Virginia's truth-in-sentencing laws between 1995 and 2000 that fall into each federal guidelines range. For example, 12% of the circuit court cases would have received a recommendation of 6 to 12 months incarceration under the federal guidelines. For these cases, the Virginia guidelines resulted in an average recommendation of nearly 15 months, a slightly higher recommendation than under the federal guidelines. The same can be said for offenders recommended for 8 to 14 months under the federal guidelines. This group of offenders, which comprises nearly 11% of the cases under analysis, was recommended for more than 17 months on average under Virginia's guidelines. For

each level of sentencing recommendation under the federal guidelines up through the range of 24 to 30 months, Virginia's guidelines provided roughly comparable recommendations. All together, this represents more than 69% of Virginia's circuit court cases. While critics suggest that Virginia's sentencing guidelines are not as tough on drug offenders as the federal guidelines, this analysis indicates that the two guidelines systems yield roughly comparable results for seven out of ten offenders convicted in circuit court for selling methamphetamine. In 31% of the cases (those recommended for 27 to 33 months or more under the federal guidelines), the federal guidelines recommend more stringent prison sentences than those recommended by the state's guidelines system. These cases typically involve larger amounts of drug, which drives up the current offense score under the federal guidelines.

During 1998 and 1999, 29% of the total methamphetamine convictions in Virginia took place in federal courts. Typically, it is cases involving large quantities of drug that are selected by federal prosecutors. It is important to note that the majority of the 1999 federal methamphetamine trafficking cases (25 out of 33) would have qualified under §18.2-248(H,H1,H2) of the *Code of Virginia* for a penalty of at least 20 years for distributing large amounts of methamphetamine. Under the revised drug kingpin laws in Virginia, these offenders could now receive prison terms of 20 years or more if prosecuted in Virginia's circuit courts.

Commission Deliberations

The Commission 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. The Commission studies changes and trends in judicial sentencing patterns in order to pinpoint specific areas where the guidelines may be out of sync with judicial thinking.

As directed by the General Assembly, the Commission this year has closely examined the sentencing guidelines for methamphetamine offenses. The Commission believes there is no compelling evidence to support revisions to the sentencing guidelines at this time. While available statistics indicate methamphetamine crimes increased during the 1990s, both nationally and in Virginia, the Commission found that methamphetamine crimes represent only a very small share of criminal drug activity in the Commonwealth. Although the numbers of seizures and convictions involving methamphetamine have increased in Virginia, particularly in the Western area of the state, methamphetamine remains much less prevalent than other Schedule I or II drugs. Cocaine continues to be much more pervasive a drug in Virginia than methamphetamine. In Virginia's circuit courts, more than 88% of convictions for selling a Schedule I or II drug involve cocaine. Statewide, convictions for heroin offenses also greatly outnumber those for methamphetamine. In 1999, the Arrestee Drug Abuse Monitoring (ADAM) program continued to show no sign of methamphetamine's spread to arrestees in the Eastern United States. Methamphetamine-positive rates for Eastern cities participating in the ADAM program have remained at less than one percent.

Overall, the Commission found that Virginia's circuit court judges do not weigh the quantity of methamphetamine as a significant factor when sentencing offenders. Prior record, most notably violent prior record, appears to be the most important factor in determining the sentencing outcome.

The sentencing guidelines currently in place in Virginia explicitly account for the offender's criminal history through built-in midpoint enhancements, which increase the guidelines recommendation for offenders with prior violent convictions, and factors on the guidelines worksheets that increase the sentencing recommendation based on the number and types of prior convictions in the offender's record.

The Commission reviewed the numerous mandatory minimum penalties for offenses involving a Schedule I or II drug, including methamphetamine, specified in the *Code of Virginia*. Many of these mandatory penalty laws became effective as recently as July 1, 2000. These mandatory sentences take precedence over the discretionary guidelines system.

Critics of Virginia's sentencing guidelines have argued that the state's guidelines do not provide as stringent penalty recommendations as the federal guidelines system. The Commission's analysis suggests, however, that the two guidelines systems yield roughly comparable recommendations for seven out of ten offenders who sell methamphetamine and are convicted in circuit courts in the Commonwealth.

While concluding there is not convincing evidence to recommend revisions to the sentencing guidelines at this time, the Commission will continue to monitor emerging patterns and trends in the sentencing of methamphetamine cases. The Commission may consider recommending revisions to the sentencing guidelines at a future date.

References

Drug Enforcement Administration. 2001. "Methamphetamine" (Drugs of Concern, March 2). Washington, DC: U.S. Department of Justice, Drug Enforcement Administration. Retrieved March 2, 2001 (*www.usdoj.gov/dea/concern/meth.htm*).

Koch Crime Institute. 2001. "National Trends of Methamphetamine." Topeka, KS: Koch Crime Institute. Retrieved March 2, 2001 (*www.kci.org/meth_info/national_trend.htm*).

National Drug Court Institute. 2000. "Methamphetamine." *Drug Court Practitioner Fact Sheet* 2(2).

National Institute of Justice. N.d. *Arrestee Drug Abuse Monitoring Program: Program Brief*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice.

National Institute of Justice. 1999. *1998 Annual Report on Methamphetamine Use Among Arrestees*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice.

National Institute of Justice. 2000. *1999 Annual Report on Drug Use Among Adult and Juvenile Arrestees*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice.

Office of National Drug Control Policy. 1999. *Methamphetamine.* ONDCP Drug Policy Information Clearinghouse NCJ-175677. Washington, DC: Executive Office of the President, Office of National Drug Control Policy.

Nonviolent Offender Risk Assessment

Introduction

In 1994, as part of the reform legislation that instituted truth-in-sentencing, the General Assembly required the Commission to study the feasibility of using an empirically-based risk assessment instrument to select 25% of the lowest risk, incarceration-bound, drug and property offenders 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 evaluation of nonviolent risk assessment in the pilot sites from 1998 to 2001. Most recently, the Commission conducted a validation study of the original risk assessment instrument to test and refine the instrument for possible use statewide. Upon conclusion of the validation study, the Commission reviewed nonviolent risk assessment and concluded that nonviolent risk assessment should be implemented statewide. Each phase of the nonviolent offender risk assessment project will be reviewed in this chapter.

Development of the Risk Assessment Instrument

To develop the original risk assessment instrument for nonviolent offenders, the Commission studied a random sample of over 1,500 fraud, larceny and drug offenders who had been released from incarceration between July 1, 1991, and December 31, 1992. Recidivism was defined as reconviction for a felony within three years of release from incarceration. Sample cases were matched to data from the Pre/Post-Sentence Investigation (PSI) database to determine which offenders had been reconvicted of a felony crime during the three-year follow-up period.

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

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on the risk assessment worksheet represents the likelihood that an offender will be reconvicted of a felony within three years. Offenders who score few points on the worksheet are less likely to be reconvicted of a felony than offenders who have a higher total score.

The Commission adopted a scoring threshold of nine points on the risk assessment scale. In the analysis used to construct the scale, offenders who scored nine points or less on the risk assessment instrument had a one in eight chance of being reconvicted for a felony crime within three years. Moreover, the Commission's analysis suggested that a threshold of nine points would satisfy the legislative goal of diverting 25% of nonviolent offenders from incarceration in a state prison facility to other types of sanctions.

The risk assessment worksheet is completed for fraud, larceny and drug offenders who are recommended for some period of incarceration by the guidelines and who satisfy the eligibility criteria established by the Commission. Offenders with any current or prior convictions for violent felonies (defined in §17.1-803) and offenders who sell an ounce or more of cocaine are excluded from risk assessment consideration. When the risk assessment instrument is completed, offenders scoring nine points or less on the scale are recommended for sanctions other than traditional incarceration. The instrument itself does not recommend any specific type or form of alternative punishment. That decision is left to the discretion of the judge and may depend on program availability. In these cases, judges are considered in compliance if they sentence within the recommended incarceration range or if they follow the recommendation for alternative punishment. For offenders scoring over nine points, the original recommendation for incarceration remains unchanged.

Pilot Program

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

Between December 1, 1997, and July 31, 2001, the Commission received 13,125 fraud, larceny and drug guidelines cases from pilot circuits (Figure 44). Circuits 4 (Norfolk) and 19 (Fairfax) accounted for approximately 24% of the cases each. Circuit 14 (Henrico) accounted for roughly 19% of all risk assessment cases received by the Commission during the time period. Circuit 7 (Newport News), added as a pilot site in the spring of 1999, contributed approximately 14% of all cases received by the Commission during the time period.

FIGURE 44

Number and Percentage of Cases Received by Pilot Circuit
December 1, 1997 - July 31, 2001

Pilot Circuit	Cases	Percent
4	3,175	24.2%
5	1,146	8.7
7	1,795	13.7
14	2,540	19.3
19	3,136	23.9
22	1,333	10.2

Of the risk assessment worksheets received, drug cases represent just over half of all offenses, with the large majority (46%) consisting of Schedule I/II drug offenses (Figure 45). Just less than one-third of all risk assessment cases sentenced during the time period were larceny offenses, while fraud offenses accounted for about 17% of the risk assessment cases.

FIGURE 45

Number and Percentage of Cases Received by Primary Offense
December 1, 1997 - July 31, 2001

Primary Offense	Cases	Percent
Drug/Schedule I/II	6,096	46.4%
Drug/Other	605	4.6
Fraud	2,212	16.9
Larceny	4,212	32.1

Not all fraud, larceny and drug offenders are eligible for risk assessment. Offenders recommended by the guidelines for probation with no active incarceration term are excluded, since the instrument was designed to assess the risk of offenders recommended for confinement. Of the fraud, larceny and drug cases received, 8,360 of the 13,125 (64%) were recommended for some period of incarceration by the guidelines. Offenders who do not satisfy the Commission's eligibility criteria are also excluded. Offenders who have current or prior convictions for violent felonies and those with a current offense involving the sale of an ounce or more of cocaine are not eligible for risk assessment. Between December 1, 1997, and July 31, 2001, 5,923 offenders satisfied the Commission's eligibility criteria and were deemed eligible for risk assessment screening. It should be noted that for 941 of the eligible offenders the risk assessment worksheet was not completed, despite the offenders' eligibility to participate in the assessment project.

Offenders scoring nine points or less on the risk assessment worksheet are recommended for sanctions other than traditional incarceration. Among the eligible offenders screened with the risk assessment instrument to date, approximately 24% have scored at or below the nine-point threshold and, therefore, have been recommended for alternative punishments. The average risk score for screened offenders was 13 points.

Risk assessment cases can be categorized into four groups based upon whether the offender was recommended for an alternative sanction by the risk assessment instrument and whether the judge subsequently sentenced the offender to some form of alternative punishment. Of the eligible offenders screened with the risk assessment instrument, 12% were recommended for and sentenced to an alternative punishment (Figure 46). Another 12% were sentenced to a traditional term of incarceration despite being recommended for an alternative sanction by the risk assessment instrument.

In 20% of the screened cases, the offender was not recommended for, but was sentenced to, an alternative punishment. A large share of these cases (two out of every five) scored just over the nine-point threshold (10 to 12 points). This indicates that judges recognize the probabilistic nature of risk assessment and make use of additional information when identifying good candidates for alternative sanctions. Nearly 56% of the screened offenders were not recommended for an alternative and judges concurred in these cases by utilizing traditional incarceration.

FIGURE 46

Recommended and Actual Dispositions to Alternative Sanctions
December 1, 1997 - July 31, 2001

Risk Recommendation	Actual Disposition	
	Received Alternative	Did Not Receive Alternative
Recommended for Alternative	12%	12.2%
Not Recommended for Alternative	20%	55.8%

Judges are not obligated to follow the recommendation of the risk assessment instrument. When offenders are recommended for an alternative sanction but not sentenced to one, judges are asked to communicate their reasons for not choosing an alternative punishment. The reasons cited by judges may help the Commission to identify circumstances in which judges disagree with the risk assessment recommendation most often. This information may be useful in improving the instrument as a sentencing tool. In nearly three-quarters of these cases, however, judges do not cite a reason for choosing traditional incarceration instead of an alternative sanction. Among those cases where a reason is cited, nearly 9% of the time judges cite a defendant's refusal to participate in an alternative sanction program (Virginia law permits offenders to refuse certain programs). In another 9% of cases where offenders are recommended for an alternative but sentenced to incarceration, the judge noted the large quantity of drugs involved in the case. Other reasons cited by judges for sentencing offenders to incarceration rather than alternative sanctions include the offender's criminal record (8%), previous or pending charges against the defendant for similar offenses (8%), the involvement of significant monetary loss on the part of the victim (7%), or the defendant's immersion in the drug culture (6%).

NCSC Evaluation

The National Center for State Courts (NCSC), with funding from the National Institute of Justice, has conducted an independent evaluation of the development and impact of the risk assessment instrument. The results have considerable implications for policymakers and practitioners, since no other structured sentencing system in the nation utilizes an empirically-based risk assessment tool to identify offenders with the lowest probability of recidivating for diversion into sanctions other than traditional incarceration.

During the summer of 2000, investigators visited the pilot sites to interview judges, Commonwealth's attorneys, defense counsel, and probation officers about the design and use of the risk assessment instrument. Although responses and recommendations varied by locality and occupation, some common themes emerged. Judges and probation officers generally supported the idea of offender risk assessment, but expressed concern about the inclusion of demographic factors on the risk scale. They noted that unemployed, unmarried males under the age of 20 begin with a score right at the recommendation threshold, and any additional scoring makes them ineligible for a diversion recommendation. While aware that past research shows this profile to be associated with higher recidivism rates, respondents felt this was the group most in need of services. Although most judges supported statewide expansion with qualifications, many probation officers were not supportive of expansion unless the demographic factors were reassessed.

Defense attorneys supported the greater use of alternative sanctions and generally favored expansion of the risk assessment program to other circuits. Prosecutors, however, did not generally support programs intended to divert offenders recommended for prison under the sentencing guidelines. They believed alternative sanctions were best suited for offenders guilty of a first non-violent felony conviction.

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

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

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

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

Included in the NCSC evaluation was a benefit-cost analysis of the risk assessment instrument. Estimates of the monetary value of all significant benefits and costs associated with the diversion of non-violent felons from traditional incarceration were calculated (Figure 47). The benefits of reduced prison (363 offenders diverted) and jail (192 offenders diverted) populations saved the Commonwealth an estimated $8.7 million dollars. Beyond these reduced incarceration

FIGURE 47

Benefit-Cost Analysis of Nonviolent Offender Risk Assessment in Pilot Sites – December 1, 1997 - September 30, 1999

Benefits	$8,700,000
Costs	$7,200,000
Net Benefit	$1,500,000

Note: For the year 2000, NCSC estimated the net benefits of the nonviolent offender risk assessment program would have ranged from $3.7 to $4.5 million, if it had been in use statewide.

costs, additional benefits accruing from the diverted population could include an increased number of offenders becoming productive citizens, decreased recidivism, and enhanced quality of life for offenders. It is very difficult to place a monetary value on these benefits, hence, no amount was assigned to them. The cost of alternative sanction programs for the diverted offenders was $6.2 million. An additional $1 million in costs were incurred when offenders failed in the assigned programs and became recidivists. The total benefits savings of $8.7 million were compared to the total diversion costs of $7.2 million to produce a net benefit of $1.5 million due to the diversion of non-violent felons through risk assessment. If the risk assessment instrument had been used statewide during 2000, the NCSC estimated net benefit would have been between $3.7 and $4.5 million in reduced costs.

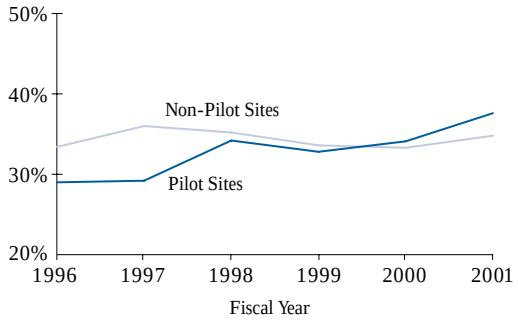
Commission Pilot Site Review

In its own analysis of pilot program data, the Commission focused on two specific features of the nonviolent risk assessment program: the rate at which offenders eligible for risk assessment were diverted to alternative sanctions and whether information necessary to accurately complete the risk instrument was available. It was important to determine whether nonviolent risk assessment in the pilot sites actually led to increased utilization of alternative sanctions and other beneficial changes. Accordingly, the Commission compared data from the pilot and non-pilot sites. Evidence from the pilot sites indicates that diversion of larceny, fraud and drug offenders who meet the Commission's eligibility criteria has increased under the risk assessment program. Before the risk assessment pilot program was implemented in fiscal year (FY) 1998, pilot circuits were less likely than non-pilot circuits to utilize alternative punishments for larceny, fraud and drug offenders when the sentencing guidelines recommended a term of incarceration in prison or jail (Figure 48). Between FY1996 and FY2001, however, the rate at which eligible offenders were diverted from incarceration to alternative sanctions increased by nearly 30% in the risk assessment pilot sites, compared to only 4% in non-pilot circuits It seems, therefore, that the risk assessment program is meeting its goal of diverting low risk nonviolent offenders to alternative sanctions while reserving traditional incarceration for high risk and violent offenders.

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

FIGURE 48

Rate of Diversion from Prison and Jail Incarceration for Risk Assessment Pilot and Non-Pilot Sites



Note: Analysis includes only larceny, fraud, and drug offenders eligible for risk assessment. Analysis is based on the definition of a state responsible (prison) sentence in §53.1-20 as of July 1, 1997.

Validation Study

Methodology

The purpose of the validation study was to test and refine the nonviolent risk assessment instrument previously introduced through the pilot program. In order to test the instrument, replication of original analytical methodology, to the highest degree possible, was essential. Otherwise, it would be impossible to distinguish strengths and limitations of the model from disparity in analytical approaches. While each stage of the project was concerned with nonviolent risk assessment, the conclusions that can be drawn depend on the methodology utilized. Figure 49 demonstrates differences and similarities in methodologies for each of the phases of the risk assessment project.

The population of offenders examined for the original analysis and validation study differs from that of the NCSC evaluation. The Commission's original analysis used a sample of offenders released over an 18-month period of time who were selected to model a group of offenders that was sentenced within the same period of time. This method was necessary because the early stages of the original analysis included offenders convicted of burglary, who traditionally receive longer sentences than fraud, larceny, and drug offenders. To use an actual sentence group, the Commission would have had to limit the amount of time burglary offenders were tracked for recidivism following release. The Commission later decided to exclude burglary offenders from nonviolent risk assessment. With the exclusion of burglary offenders, it was possible to utilize an actual sentence group for the Commission's validation study. The Commission's original analysis and validation study included offenders from throughout the Commonwealth who were eligible for nonviolent risk assessment. This approach differs from the evaluation study conducted by NCSC because the evaluation study observed only offenders from pilot sites that were already diverted to alternative sanctions.

FIGURE 49

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

	Original Analysis (1995-1996)	NCSC Evaluation (1999-2000)	Commission Validation (2001)
Measure of Recidivism	Felony Conviction	Any Arrest	Felony Conviction
Recidivism Rate	28%	33.15%	31.70%
Sample Size	1513	555	668
Sample Cases	Larceny, Fraud, Drug Offenders Released 7/1/91-12/31/92 (Release group selected to model sentence group)	Larceny, Fraud, Drug Offenders diverted in pilot sites	Larceny, Fraud, Drug Offenders Sentenced 1996 (Actual sentence group)
Methods of Analysis	Logistic Regression Survival Analysis	Survival Analysis	Logistic Regression Survival Analysis
Final Model Analytical Method	Logistic Regression	Survival Analysis and Interviews	Logistic Regression
Amount of Follow-up Time	3 + years	11 months - 3 years	3 + years
Sources of Follow-Up	VA Rap Sheets FBI Rap Sheets PSI - including narratives Juvenile Court information	VA Rap Sheets FBI Rap Sheets PSI File Reviews	VA Rap Sheets FBI Rap Sheets Other States Rap Sheets PSI data Guidelines data
Selection of Risk Threshold	General Assembly directive to divert 25% of qualified felons	Suggestions from field Experimentation	General Assembly directive to divert 25% of qualified felons

While the size of the sample varied in each stage of the analysis, each was adequate to produce statistically significant results. For the validation study, the Commission merged the PSI data system with the sentencing guidelines database and selected a sample of 800 fraud, larceny, and drug offenders sentenced in 1996. Of the entire sample, 54 were eliminated for the following reasons: the offender was still in prison or had died before release, files had been purged or were unavailable, duplicate cases were identified or the discovery of a violent prior conviction made an offender ineligible for risk assessment (Figure 50). The final data sets for the validation study were examined to confirm that the distribution of offense types accurately portrayed the population from which they were sampled.

Recidivism, as defined in the original nonviolent risk assessment model and the validation models, is any reconviction of a felony within three years of release from incarceration. A different definition of recidivism, re-arrest for any misdemeanor or felony, was utilized for the NCSC evaluation study.

FIGURE 50

Reasons for Excluding Cases from Validation Study

Reason	Number	Percent
Purged Files	1	2%
Offender Died Before Release	2	4
Files Unavailable	5	9
Duplicate Cases	6	11
Offender Ineligible for Nonviolent Risk Assessment	7	13
Offender Still in Prison	33	61
Total	54	100%

Pre-sentence report data, Virginia rap sheets, and FBI rap sheets were utilized in all phases of the analysis. In addition, the original analysis utilized information from the Juvenile and Domestic Relations Courts; however, this information did not prove fruitful to the analysis and was, therefore, not pursued for the validation study. The NCSC evaluation study also relied on information obtained from pilot site interviews. For the validation study, rap sheets from other states were available, allowing additional information on recidivist activity to be uncovered. Although using rap sheets from other states is a departure from the original analysis, the Commission determined that the increased accuracy of the data, and likewise increased information for the validation models, was worthy of the slight departure from original data sources.

Two main types of analysis were used in the original analysis and validation study. The first type of analysis (survival analysis) looks at characteristics of offenders who recidivate after various time intervals following release into the community. This type of analysis was utilized in every phase of the risk assessment project (the original analysis, the NCSC evaluation study, and the validation study). The second type of analysis (logistic regression) requires a consistent follow-up time for all offenders under study and looks for characteristics of offenders who recidivate within that time period. This type of analysis was utilized only in the original analysis and the validation study. Statistical tests revealed that the second type of analysis provided the most accurate predictive power and was most closely associated with recidivism in nonviolent risk assessment; consequently, the original nonviolent risk assessment model and the models developed through the validation study are based on the second type of analysis. The NCSC evaluation study also used information from field interviews to draw conclusions.

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

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

Models

The goal of nonviolent risk assessment is to accurately predict which nonviolent offenders are at the lowest risk of recidivating so that they can be recommended for alternative sanctions. Figure 51 summarizes the models developed through the validation study. Each model is a refinement of the original model which served as the basis for the risk assessment instrument currently used in the pilot sites. Two of the refined models were similar in their ability to predict recidivism; however, the third model did not perform as well and, therefore, was rejected.

FIGURE 51
Comparison of Validation Models

	Model 1	Model 2	Rejected Model
Type of Analysis	Logistic Regression	Logistic Regression	Survival Analysis
Sample Size	668	668	746
Follow-Up	3 years	3 years	44 days - 5 1/2 years
Non-Recidivists Accurately Predicted	75.66%	76.54%	72.50%
Recidivism Rate for Offenders Recommended for Alternative Sanctions	12.40%	14.50%	not included in final test

Models 1 and 2 include some common factors with the original model (Figure 52). Identical factors for gender and prior adult incarceration are included in the original and both validation models. In contrast, some of the factors in the original model (offender acted alone, prior felony drug offense, and prior juvenile commitment) are not part of either Model 1 or Model 2. In addition, one factor, offense type, which distinguishes among a larceny, fraud, or drug offense, is part of the validation models but not part of the original model. Other factors in the validation models are simply refined versions of factors in the original model.

Three factors that were in the original model were modified for use in the validation models. For instance, the original model used a scaled version of additional offenses whereas Validation Models 1 and 2 just look at whether or not there was at least one additional offense. Similarly, the original model considers arrests or commitments in the 12 months preceding the offense whereas the validation models extend the time frame to consider arrests or commitments in the 18 months preceding the offense. Finally, the original model includes a combination of prior felonies and misdemeanors. Models 1 and 2 also use prior felonies, but the focus in these models is on a combination of adult and juvenile felonies rather than a combination of felonies and misdemeanors.

The primary difference between Model 1 and Model 2 is the use of some of the demographic factors. Model 1 contains versions of four demographic factors (age, gender, marital status, and employment). These demographic factors were found to be statistically significant in predicting recidivism among larceny, fraud and drug offenders in both the Commission's original analysis and the validation study.

In response to concern expressed by some of the respondents interviewed by the National Center for State Courts (NCSC) during its evaluation of the risk assessment pilot program, the Commission tested alternative models that excluded some or all of the demographic factors. Although all four demographic factors were statistically significant in Model 1, the demographic factors were forcibly removed

FIGURE 52

Comparison of Original Risk Assessment Model and Validation Models

Original Model Factors	Validation Model 1 Factors	Validation Model 2 Factors
Gender	Gender	Gender
Age	Age	
Never Married	Never Married by Age 26	
Unemployed	Not Regularly Employed	
Acted Alone		
Additional Offenses - scale	Additional Offenses - yes/no	Additional Offenses - yes/no
Prior Arrest/Commitment within 12 mos.	Prior Arrest/Commitment within18 mos.	Prior Arrest/Commitment within18 mos.
Prior Felony/Misdemeanor combination	Prior Adult/Juvenile Felony combination	Prior Adult/Juvenile Felony combination
Prior Felony Drug Offenses		
Prior Adult Incarceration	Prior Adult Incarceration	Prior Adult Incarceration
Prior Juvenile Commitment		
	Offense Type	Offense Type

from the model one at a time, and in combination, so that the impact of removing each factor could be assessed. With only one exception, the elimination of the individual demographic factors or a combination of factors compromised the integrity of the statistical model. Only the combination of age, marital status and employment history could be excluded from Validation Model 1. The offense, gender and prior record factors continue to be statistically significant in Model 2 and would remain strong predictors of recidivism among larceny, fraud and drug offenders. Gender could not be removed from Model 2 without compromising the integrity of the statistical model.

For the validation study, the predictive power of the original risk assessment model was improved by refining the measures used for the demographic factors in Model 1. In the original risk assessment model, age was divided into four groups: younger than 20 years, 20 to 27 years, 28 to 33 years, and 34 years or older. Validation Model 1 also divides age into 4 groups: younger than 30 years, 30 to 40 years, 41 to 46 years, and 47 years or older. While both the original model and Model 1 add points based on age, Model 1 covers a broader spectrum of ages. A version of the marital status factor found in the original model is also included in Model 1. In the original model, points were awarded if the offender was never married. In Model 1, points would be added if the offender has never married and is at least 26 years of age. Finally, the original model includes unemployment at the time of offense. Model 1 includes a modified factor that is scored if the offender was not employed or not regularly employed during the two years preceding the offense.

Careful consideration is involved in the choice of models. Among these concerns is the type of factors utilized and statistical considerations including the predictive ability of the models and the composition of the resultant target group. The use of demographic factors is sensitive because demographic factors are believed by some to stand in for other socio-economic factors that are not easily defined, a concern raised during interviews conducted for the NCSC evaluation. Validation Model 2 was created in response to this concern. Nevertheless, the demographic factors used in these models are statistically significant and have the capability of predicting recidivism/non-recidivism in a manner that is consistent with the goal of nonviolent risk assessment. Based on just the use of demographic factors, Validation Model 2 might be considered more desirable because it utilizes fewer demographic factors.

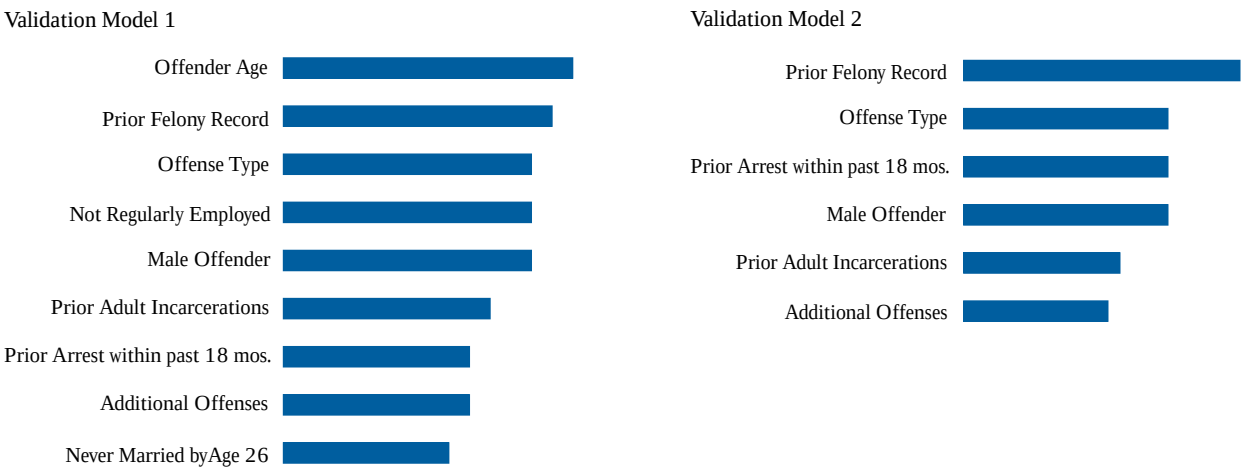
However, there are other considerations, including statistical accuracy and rates of recidivism among offenders recommended for diversion, that must be evaluated. The predictive ability of these models is a test of how accurately the models predict recidivism. In particular, the concern of nonviolent offender risk assessment is to accurately predict which offenders will be nonrecidivists so that the 25% of offenders with the lowest risk of recidivism can be recommended for alternative (nonprison) sanctions. Validation Model 1 predicts non-recidivists with 75.7% accuracy while Model 2 predicts nonrecidivists with 76.5% accuracy. Based on overall predictive accuracy, Model 2 would be the better choice, but only by a very slight margin. While Model 2 does a slightly better job at predicting nonrecidivists, another comparison is the recidivism rate of those recommended for alternative sanctions. This is of particular concern since the Commission was instructed by the General Assembly to proceed with “due regard for public safety needs.” For this test, the recidivism rate of offenders who would be recommended for alternative sanction is observed. Model 1 results in a 12.4% recidivism rate for offenders who are recommended for alternative sanctions. On the other hand, Model 2 results in a 14.5% recidivism rate for offenders who are recommended for alternative sanctions. Based on recidivism rates of those recommended for alternative sanctions, Model 1 would be the best choice. While each test of the strengths and weaknesses of nonviolent risk assessment models is important, the Commission weighed the importance of one to another in order to make a decision that is consistent with the objective of nonviolent risk assessment and the General Assembly directive.

Validation Model Factors

In the original model, the offender's age was the most important factor with all other factors trailing far behind. The factors of the validation models share a more equal role than those in the original model (Figure 53). Like the original model, the offender's age was the most important factor in Validation Model 1. The most important factor in Validation Model 2 (and the second most important factor in Model 1) is prior felony record, followed by offense type (larceny, fraud or drug). Lack of regular employment is next most important in Model 1. Prior arrest within the past 18 months is next most important in Model 2 but is less important in Model 1. Following prior arrest within the past 18 months is gender, prior adult incarcerations, and additional offenses for both models. The least important factor in Model 1 is offender never married by age 26.

The overall recidivism rate for the validation study sample was 31.7%. The increase from the recidivism rate of the original study (28%) may be attributed to improved access to information (other state rap sheets) and improved recording techniques. As expected, recidivism rates are higher among offenders with characteristics that result in points scored on the nonviolent risk assessment instrument. Figure 54 shows recidivism rates by offense and offender characteristics. Of the offenders studied, 40% of larceny offenders recidivated, followed by fraud and drug offenders with recidivism rates of approximately 27% each. Nearly 35% of male offenders recidivated, compared to nearly 23% of females. Offender age groups showed vastly different recidivism rates, with more than 35% of those younger than 30 years of age recidivating, around 30% of those 30 to 40 years of age recidivating, and 22% of offenders 41 to 46 years of age recidivating. None of the offenders over the age of 46 recidivated. Slightly over 21% of offenders who were regularly employed recidivated, compared to a little more than 35% of those who were not regularly employed.

Figure 53
Relative Importance of Factors in Validation Models



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

Other factors are related to the offender's prior criminal record (Figure 55). Of offenders with additional offenses, nearly 36% recidivated in contrast to 30% of offenders with no additional offenses. Nearly 35% of persons with arrests in the past 18 months recidivated compared to nearly 23% of those without an arrest within the past 18 months. Approximately 25% of offenders with no prior felonies recidivated, 31% of those with only prior adult felonies recidivated, nearly 42% of those with only a prior juvenile felony recidivated, and more than 55% of those with both a prior adult and a prior juvenile felony recidivated. Finally, 25% of offenders with no prior adult incarcerations recidivated compared to 29% of those with 1 or 2 prior adult incarcerations, 38% of those with 3 or 4 prior adult incarcerations, and 41% of those with 5 or more prior adult incarcerations.

FIGURE 54

Recidivism Rates by Offense and Offender Characteristics

Factor		Non-Recidivists	Recidivists	Recidivism Rate
Offense	Larceny	134	90	40.2%
	Fraud	85	32	27.4
	Drug	237	90	27.5
Male Offender	Yes	327	174	34.7
	No	129	38	22.8
Offender Age	Younger than 30 years	252	138	35.4
	30 - 40 years	141	61	30.2
	41 - 46 years	46	13	22.0
	Over 46 years	17	0	.0
Regularly Employed	Yes	137	37	21.3
	No	319	175	35.4

FIGURE 55

Recidivism Rates by Prior Record Factors

Factor		Non-Recidivists	Recidivists	Recidivism Rate
Additional Offenses	Yes	136	75	35.5%
	No	320	137	30.0
Prior Arrest/Commitment within 18 mos.	Yes	323	173	34.9
	No	133	39	22.7
Prior Felony Record	None	196	66	25.2
	Adult Only	196	89	31.2
	Juvenile Only	43	31	41.9
	Adult and Juvenile	21	26	55.3
Prior Adult Incarcerations	None	146	50	25.5
	1 to 2	170	70	29.2
	3 to 4	68	42	38.2
	5 +	72	50	41.0

Future of Nonviolent Risk Assessment

Discussion of the nonviolent offender risk assessment program was a significant component of the Commission's agenda during 2001. The Commission's objective was to develop a reliable and valid predictive scale based on independent empirical research and to determine if the resulting instrument could be a useful tool for judges in sentencing larceny, fraud and drug offenders who come before the circuit court. After careful consideration of the findings of the Commission's original analysis, its validation study, as well as the NCSC independent evaluation, the Commission concluded that a risk assessment instrument such as the one being pilot tested in selected circuits would be a useful tool for judges throughout the state. Because the risk assessment program encourages the use of alternative sanctions rather than traditional incarceration for low-risk nonviolent offenders, discontinuing this program in the circuits currently pilot testing the risk assessment instrument could result in the need for additional state-responsible (prison) beds. Conversely, expanding the project statewide could result in the diversion of additional low-risk nonviolent offenders from prison to alternative sanction programs. This is supported by the benefit/cost analysis of the NCSC's evaluation, which estimated that the net benefit of the nonviolent offender risk assessment program, had it been in use statewide during 2000, would have ranged from $3.7 to $4.5 million. In its deliberations, the Commission considered the fiscal implications of nonviolent offender risk assessment.

Based on the validation study conducted in 2001, the Commission has approved a risk assessment instrument that is a modified version of the instrument that served as the pilot prototype. The proposals for statewide expansion are described in detail in the chapter of this report entitled *Recommendations of the Commission* (Recommendations 1 and 2). Per §17.1-806 of the *Code of Virginia*, any modifications to the sentencing guidelines adopted by the Commission and contained in its annual report shall, unless otherwise provided by law, become effective on the following July 1.

Impact of Truth-In-Sentencing

Introduction

In the more than six years since the inception of Virginia's truth-in-sentencing system, the Commission has continually examined the impact of truth-in-sentencing laws on the criminal justice system in the Commonwealth. Legislation passed by the General Assembly in 1994 radically altered the way felons are sentenced and serve incarceration time in Virginia. The practice of discretionary parole release from prison was abolished, and the existing system of awarding inmates sentence credits for good behavior was eliminated. Virginia's truth-in-sentencing laws mandate sentencing guidelines recommendations for violent offenders (those with current or prior convictions for violent crimes) that are significantly longer than the terms violent felons typically served under the parole system, and the laws require felony offenders, once convicted, to serve at least 85% of their incarceration sentences. Since 1995, the Commission has carefully monitored the impact of these dramatic changes on the state's criminal justice system. Overall, judges have responded to the sentencing guidelines by complying with recommendations in four out of every five cases, inmates are serving a larger proportion of their sentences than they did under the parole system, violent offenders are serving longer terms than before the abolition of parole, the inmate population is not growing at the record rate of the early 1990s, and the numbers and types of alternative sanction programs have been expanded to provide judges with numerous sentencing options. Nearly seven years after the enactment of truth-in-sentencing laws in Virginia, there is substantial evidence that the system is achieving what its designers intended.

Impact on Percentage of Sentence Served for Felonies

The reform legislation that became effective January 1, 1995, was designed to accomplish several goals. One of the goals of the reform was to reduce drastically the gap between the sentence pronounced in the courtroom and the time actually served by a convicted felon in prison. Prior to 1995, extensive good conduct credits combined with the granting of parole resulted in many inmates serving at little as one-fourth or one-fifth of the sentence imposed by a judge or a jury. Today, under the truth-in-sentencing system, parole release has been eliminated and each inmate is required to serve at least 85% of his sentence. The system of earned sentence credits in place since 1995 limits the amount of time a felon can earn off his sentence to 15%.

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

Art Here

Analysis of earned sentence credits being accrued by inmates sentenced under truth-in-sentencing provisions and confined in Virginia's prisons on December 31, 2000, reveals that the largest share (39.5%) are earning at Level 2, or three days for every 30 served (Figure 56). Almost as many (38.6%) inmates are earning at the highest level, Level 1, gaining 4½ days for every 30 served. A much smaller proportion of inmates are earning at Levels 3 and 4. Over 9% are earning 1½ days for 30 served (Level 3), while 12.7% are earning no sentence credits at all (Level 4). Based on this one-day "snapshot" of the prison population, inmates sentenced under the truth-in-sentencing system are, on average, serving approximately 91% of the sentences imposed in Virginia's courtrooms. The rates of earned sentence credits do not vary significantly across major offense groupings. For instance, larceny and fraud offenders, on average, are earning credits such that they are serving over 90% of their sentences, while inmates convicted of robbery are serving about 91% of their sentences. Inmates incarcerated for drug crimes are serving 90%. The rates at which inmates were earning sentence credits at the end of 2000 closely reflect those recorded at the end of 1998 and 1999.

Under truth-in-sentencing, with no parole and limited sentence credits, inmates in Virginia's prisons are serving a much larger proportion of their sentences in incarceration than they did under the parole system. For instance, offenders convicted of first-degree murder under the parole system, on average, served less than one-third of the effective sentence (imposed sentence less any suspended time). Under the truth-in-sentencing system, first-degree murderers typically are serving 93% of their sentences in prison (Figure 57). Robbers, who on average spent less than one-third of their sentences in prison before being released under the parole system, are now serving over 91% of the sentences pronounced in Virginia's courtrooms. Property and drug offenders are also serving a larger share of their prison sentences. Although the average length of stay in prison under the parole system was less than 30% of the sentence, larceny offenders convicted under truth-in-sentencing provisions are serving more than 90% of their sentences. For selling a Schedule I/II drug like cocaine, offenders typically served only about one-fifth of their sentences when parole was in effect. Under truth-in-sentencing, offenders convicted of selling a Schedule I/II drug, on average, are serving 90% of the sentences handed down by judges and juries in the Commonwealth. The impact of truth-in-sentencing on the percentage of sentence served by prison inmates has been to reduce dramatically the gap between the sentence ordered by the court and the time actually served by a convicted felon in prison.

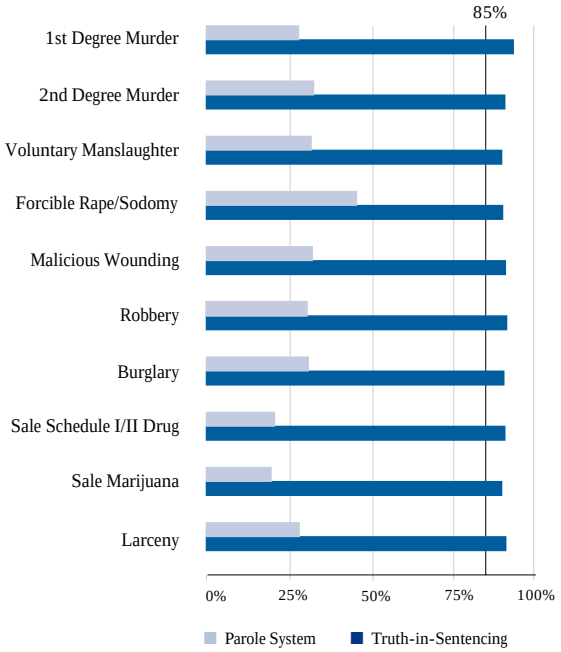
FIGURE 56

Levels of Earned Sentence Credits among Prison Inmates
(December 31, 2000)

Level	Days Earned	Percent
Level 1	4.5 days per 30 served	38.6%
Level 2	3.0 days per 30 served	39.5
Level 3	1.5 days per 30 served	9.2
Level 4	0 days	12.7

FIGURE 57

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



Parole system data represents FY 1993 prison releases; truth-in-sentencing data is derived from rate of sentence credits earned among prison inmates on December 31, 2000.

Impact on Incarceration Periods Served by Violent Offenders

Eliminating the practice of discretionary parole release and restructuring the system of sentence credits created a system of truth-in-sentencing in the Commonwealth and diminished the gap between sentence length and time served, but this was not the only goal of sentencing reform. Targeting violent felons for longer prison terms than they had served in the past was also a priority of the designers of the truth-in-sentencing system. The truth-in-sentencing guidelines were carefully crafted with a system of scoring enhancements designed to yield longer sentence recommendations for offenders with current or prior convictions for violent crimes, without increasing the proportion of convicted offenders sentenced to the state's prison system. When the truth-in-sentencing system was implemented in 1995, a prison sentence was defined as any sentence over six months. With scoring enhancements, whenever the truth-in-sentencing guidelines call for an incarceration term exceeding six months, the sentences recommended for violent felons are significantly longer than the time they typically served in prison under the parole system. Offenders convicted of nonviolent crimes with no history of violence are not subject to any scoring enhancements and the initial guidelines recommendations reflect the average incarceration time served by offenders convicted of similar crimes during a period governed by parole laws, prior to the implementation of truth-in-sentencing.

The truth-in-sentencing guidelines were designed to recommend longer sentences for violent offenders without increasing the proportion of felons sentenced to prison, and judges have responded to the guidelines by complying with recommendations at very high rates, particularly in terms of the type of disposition recommended by the guidelines. Overall, since the introduction of truth-in-sentencing, offenders have been sentenced to incarceration in excess of six months slightly less often than recommended by the guidelines.

For the fiscal years 1999 through 2001, the guidelines recommended that 80% of offenders convicted of crimes against the person serve more than six months, while 77% received such a sanction (Figure 58). Forty-four percent of property offenders were recommended for terms over six months and 38% of them were sentenced accordingly. For drug crimes, offenders were recommended for, and sentenced to, terms exceeding six months in 37% and 34% of the cases, respectively. Many property and drug offenders recommended by the guidelines to more than six months of incarceration in a traditional correctional setting have been placed in state and local alternative sanction programs instead. See *Impact on Alternative Punishment Options* in this chapter for information regarding alternative sanction programs under truth-in-sentencing. Several offenses in the other category, such as habitual offender and fourth offense of driving while intoxicated, carry mandatory time. This is one reason why 79% of the offenders in this category are recommended for a period of incarceration in excess of six months and 72% actually receive such a sentence.

FIGURE 58

Recommended and Actual Incarceration Rates for Terms Exceeding 6 Months by Offense Type
FY1999-FY2001

Type of Offense	Recommended	Actual
Person	79.7%	76.5%
Property	43.5	38.3
Drug	37.4	33.6
Other	79.2	71.6

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

The crime of first-degree murder illustrates the impact of truth-in-sentencing on prison terms served by violent offenders. Under the parole system (1988-1992), offenders convicted of first-degree murder who had no prior convictions for violent crimes were released typically after serving twelve and a half years in prison, based on the time served median (the middle value, where half of the time served values are higher and half are lower). Under the truth-in-sentencing system (FY1999-FY2001), however, first-degree murderers having no prior convictions for violent crimes have been receiving sentences with a median time to serve of 35 years (Figure 59). In these cases, time served in prison has tripled under truth-in-sentencing.

Virginia's truth-in-sentencing system has had an even larger impact on prison terms for violent offenders who have previous convictions for violent crimes. Offenders with prior convictions for violent felonies receive guidelines recommendations substantially longer than those without a violent prior record, and the size of the increased penalty recommendation is linked to the seriousness of the prior crimes, measured by statutory maximum penalty. The truth-in-sentencing guidelines specify two degrees of violent criminal records. A previous conviction for a violent felony with a maximum penalty of less than 40 years is a Category II prior record, while a past conviction for a violent felony carrying a maximum penalty of 40 years or more is a Category I record. The crime of first-degree murder can be used to demonstrate the impact of these prior record enhancements. First-degree murderers with a less serious violent record (Category II), who served a median of 14 years when parole was in effect (1988-1992), have been receiving terms under truth-in-sentencing (FY1999-2001) with a median time to serve of nearly 52 years. Offenders convicted of first-degree murder who had a previous conviction for a serious violent felony (Category I record) currently are serving terms with a median of 80 years under truth-in-sentencing, compared to the 15 years typically served during the parole era.

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

This discussion reports values of actual incarceration time served under parole laws (1988-1992) and expected time to be served under truth-in-sentencing provisions for cases sentenced in FY1999-FY2001. Time served values are represented by the median (the middle value, where half of the time served values are higher and half are lower). Truth-in-sentencing data includes only cases recommended for, and sentenced to, more than six months of incarceration.

FIGURE 59
First-Degree Murder

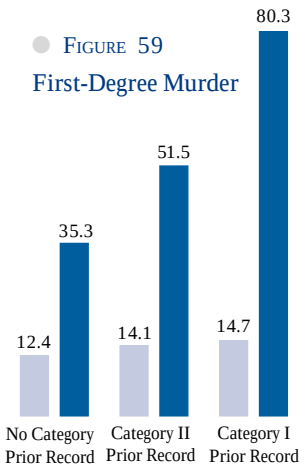


FIGURE 60
Second-Degree Murder

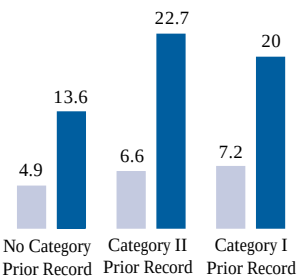


Figure 59 is not to scale with the other displays.

The crime of second-degree murder also provides an example of the impact of Virginia's truth-in-sentencing system on lengthening prison stays for violent offenders. Second-degree murderers historically served five to seven years under the parole system (Figure 60). With the implementation of truth-in-sentencing, offenders convicted of second-degree murder who have no record of violence have received sentences producing a median time to be served of over 13 years (FY1999-FY2001). For second-degree murderers with prior convictions for Category II violent crimes the impact of truth-in-sentencing is even more pronounced. Under truth-in-sentencing, these offenders are serving a median term of almost 23 years, or nearly four times the historical time served. The median sentence of 20 years for second-degree murders with a Category I prior record looks out-of-sync. However, it is important to note that there are very few offenders in this group and that a few cases can skew the data. In fact, in the two most recent fiscal years, there were four offenders with a Category I prior record convicted of second-degree murder. With such a small number of cases, the median time served can be affected by one or two unusual cases.

The impact of truth-in-sentencing is also evident in cases of voluntary manslaughter. For voluntary manslaughter, offenders sentenced to prison typically served two to three years under the parole system (1988-1992), regardless of the nature of their prior record (Figure 61). Persons with no violent prior record convicted of voluntary manslaughter under truth-in-sentencing (FY1999-FY2001) are serving more than twice as long as these offenders served historically. For those who do have previous convictions for violent crimes, median expected lengths of stay have risen to seven and almost nine years under truth-in-sentencing, depending on the seriousness of the offender's prior record. Offenders convicted of voluntary manslaughter today are serving prison terms two to three times longer than those served when parole was in effect.

The impact of sentencing reform on time served for rape and other sex crimes has been profound. Offenders convicted of rape under the parole system were released after serving, typically, five and a half to six and a half years in prison (1988-1992). Having a prior record of violence increased the rapist's median time served by only one year (Figure 62). Under sentencing reform (FY1999-FY2001), rapists with no previous record of violence are being sentenced to terms with a median one and a half times longer than the historical time served. In contrast to the parole system, offenders with a violent prior record will serve substantially longer terms than those without violent priors.

FIGURE 61
Voluntary Manslaughter

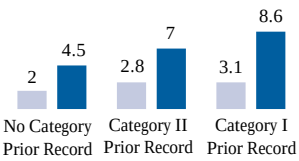
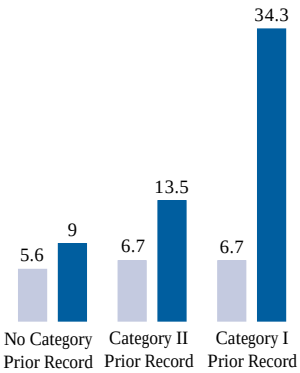


FIGURE 62
Forcible Rape



Category I is defined as any prior conviction or juvenile adjudication for a violent crime with a statutory maximum penalty of 40 years or more.

Category II is defined as any prior conviction or juvenile adjudication for a violent crime with a statutory maximum penalty less than 40 years.

Parole System

Truth-in-Sentencing

Based on the median, rapists with a less serious violent record (Category II) are being given terms to serve of 14 years compared to the seven years they served prior to sentencing reform. For those with a more serious violent prior record (Category I), such as a prior rape, the sentences imposed under truth-in-sentencing are equivalent to time to be served of 34 years, which is more than four times longer than the prison term served by these offenders historically.

The impact of truth-in-sentencing on forcible sodomy cases exhibits a pattern very similar to rape cases. Historically, under the parole system, offenders convicted of forcible sodomy served a median of four and a half to five and a half years in prison, even if they had a prior conviction for a serious violent felony (Figure 63). Recommendations of the truth-in-sentencing guidelines have led to a significant increase in the median time to serve for this crime. Once convicted of forcible sodomy, offenders can expect to serve terms typically ranging from 10 years, if they have no violent prior convictions, up to a median of 51 years if they have a Category I violent prior record. Compared to forcible rape, the median sentence for offenders with a Category I prior record appears high. Again, it is important to note that there are few offenders in this group and one or two unusual cases can have a strong effect on the reported median.

Lengths of stay for the crime of aggravated sexual battery have also increased as the result of sentencing reform. Aggravated sexual battery convictions under the parole system (1988-1992) yielded typical prison stays of one to two years (Figure 64). In contrast, sentences handed down under truth-in-sentencing (FY1999-FY2001) are producing a median time to serve ranging from just over two years for offenders never before convicted of a violent crime, to over six years for batterers who have committed violent felonies in the past. In aggravated sexual battery cases, time served has more than doubled under truth-in-sentencing.

The tougher penalties specified by the truth-in-sentencing guidelines for offenders convicted of aggravated malicious injury, which results in the permanent injury or impairment of the victim, have yielded substantially longer prison terms for this crime. Offenders convicted of aggravated malicious injury with no prior violent convictions, served, typically, less than four years in prison under the parole system (1988-1992), but sentencing reform (FY1999-FY2001) has resulted in a median term of nine years for these offenders

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

This discussion reports values of actual incarceration time served under parole laws (1988-1992) and expected time to be served under truth-in-sentencing provisions for cases sentenced in FY1999-FY2001. Time served values are represented by the median (the middle value, where half of the time served values are higher and half are lower). Truth-in-sentencing data includes only cases recommended for, and sentenced to, more than six months of incarceration.

FIGURE 63
Forcible Sodomy

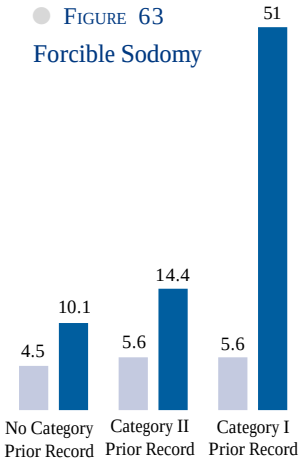
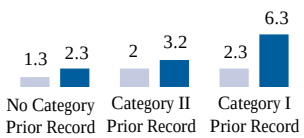


FIGURE 64
Aggravated Sexual Battery



(Figure 65). Likewise, the median length of stay for a conviction of aggravated malicious injury when an offender has a violent prior record has increased from 4 1/2 to 20 years for offenders with a Category II record and to 28 years when a Category I record is identified.

Sentencing in malicious injury cases demonstrates a similar pattern (Figure 66). Sentencing reform has more than doubled time served for those convicted of malicious injury who have no prior violent record or a less serious violent record (Category II), and almost tripled time served for those with the most serious violent record (Category I).

An examination of prison terms for offenders convicted of robbery in a residence reveals considerably longer lengths of stay after sentencing reform. Robbers who committed their crimes with firearms, but who had no previous record of violence, typically spent less than three years in prison under the parole system (Figure 67). Even robbers with the most serious type of violent prior record (Category I) only served a little more than four years in prison, based on the median, prior to sentencing reform and the introduction of the truth-in-sentencing guidelines. Today, however, offenders who commit robbery with a firearm are receiving prison terms that will result in a median time to serve of over six years, even in cases in which the offender has no prior violent convictions. This is more than double the typical time served by these offenders under the parole system. For robbers with the more serious violent prior record (Category I), such as a prior conviction for robbery, the expected time served in prison is now 16 years, or four times the historical time served for offenders fitting this profile.

The truth-in-sentencing guidelines were formulated to target violent offenders for incarceration terms longer than those served under the parole system. The designers of sentencing reform defined a violent offender not just in terms of the current offense for which the person stands convicted but in terms of the offender's entire criminal history. Any offender with a current or prior conviction for a violent felony is subject to enhanced penalty recommendations under the truth-in-sentencing guidelines. Only offenders who have never been convicted of a violent crime are recommended by the guidelines to serve terms equivalent to the average time served historically by similar offenders prior to the abolition of parole.

FIGURE 65
Aggravated Malicious Injury

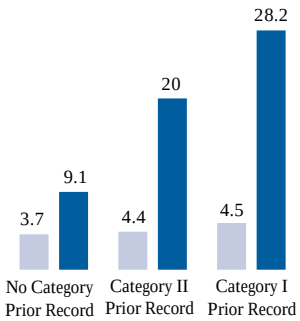


FIGURE 66
Malicious Injury

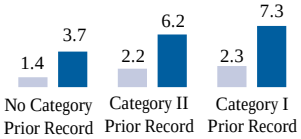
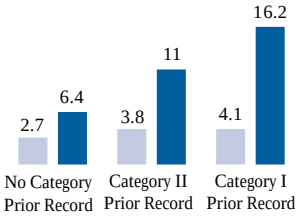


FIGURE 67
Robbery with Firearm



Category I is defined as any prior conviction or juvenile adjudication for a violent crime with a statutory maximum penalty of 40 years or more.

Category II is defined as any prior conviction or juvenile adjudication for a violent crime with a statutory maximum penalty less than 40 years.

Parole System

Truth-in-Sentencing

Sentencing reform and the truth-in-sentencing guidelines have been successful in increasing terms for violent felons, including offenders whose current offense is nonviolent but who have a prior record of criminal violence. For example, for the sale of a Schedule I/II drug such as cocaine, the truth-in-sentencing guidelines recommend an incarceration term of one year (the midpoint of the recommended range) in the absence of a violent record, the same as what offenders convicted of this offense served on average prior to sentencing reform (1988-1992). In the truth-in-sentencing period (FY1999-FY2001), these drug offenders, in fact, are serving a median of one year (Figure 68). The sentencing recommendations increase dramatically, however, if the offender has a violent criminal background. Although drug sellers with violent criminal histories typically served only a year and a half under the parole system, the truth-in-sentencing guidelines recommend sentences that are producing prison stays of three to four years (at the median), depending on the seriousness of prior record. Offenders convicted of selling a Schedule I/II drug who have a history of violence are serving two to three times longer under truth-in-sentencing than they did under the parole system.

In most cases of the sale of marijuana (more than 1/2 ounce and less than five pounds), the sentencing guidelines do not recommend incarceration over six months, particularly if the offender has a minimal prior record, and judges typically utilize sentencing options other than prison when sanctioning these offenders, thus reserving prison for those believed to be least amenable to alternative punishment programs. Under truth-in-sentencing, nonviolent offenders convicted of selling marijuana who receive sentences in excess of six months (the definition of a prison sentence when the guidelines were implemented in 1995) have been given terms which, at the median, are more than double historical time served during the parole era (Figure 69). For offenders who sold marijuana and have a prior violent record, the truth-in-sentencing guidelines have increased the time to be served above historical lengths of stay. When sellers of marijuana have the most serious violent criminal history (Category I), judges have responded by handing down sentences which will yield a median prison term of over two years.

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

This discussion reports values of actual incarceration time served under parole laws (1988-1992) and expected time to be served under truth-in-sentencing provisions for cases sentenced in FY1999-FY2001. Time served values are represented by the median (the middle value, where half of the time served values are higher and half are lower). Truth-in-sentencing data includes only cases recommended for, and sentenced to, more than six months of incarceration.

FIGURE 68

Sale of a Schedule I/II Drug

FIGURE 69

Sale of Marijuana (more than 1/2 oz. and less than 5 lbs.)

Similarly, in grand larceny cases, the sentencing guidelines do not recommend a sanction of incarceration over six months unless the offender has a fairly lengthy criminal history. When the guidelines recommend such a term and the judge chooses to impose such a sanction, grand larceny offenders with no violent prior record are being sentenced to a median term of just over one year (Figure 70). Offenders whose current offense is grand larceny but who have a prior record with a less serious violent crime (Category II) are serving twice as long after sentencing reform, with terms increasing from just under a year to just under two years. Their counterparts with the more serious violent prior records (Category I) are now serving terms of more than two years instead of the one year they had in the past.

The impact of Virginia's truth-in-sentencing system on the incarceration periods of violent offenders has been significant. The truth-in-sentencing data presented in this section provide evidence that the sentences imposed on violent offenders after sentencing reform are producing lengths of stay dramatically longer than those seen historically. Moreover, in contrast to the parole system, offenders with the most violent criminal records will be incarcerated much longer than those with less serious criminal histories.

FIGURE 70
Grand Larceny

Category I is defined as any prior conviction or juvenile adjudication for a violent crime with a statutory maximum penalty of 40 years or more.

Category II is defined as any prior conviction or juvenile adjudication for a violent crime with a statutory maximum penalty less than 40 years.

Impact on Projected Prison Bed Space Needs

During the development of sentencing reform legislation, much consideration was given as to how to balance the goals of truth-in-sentencing and longer incarceration terms for violent offenders with demand for expensive correctional resources. Under the truth-in-sentencing system, the sentencing guidelines recommend prison terms for violent offenders that are up to six times longer than those served prior to sentencing reform, while recommendations for nonviolent offenders are roughly equivalent to the time actually served by nonviolent offenders under the parole system. Moreover, the truth-in-sentencing guidelines were formulated to preserve the proportions and types of offenders sentenced to prison. At the same time, reform legislation established a network of local and state-run community corrections programs for nonviolent offenders. In other words, reform measures were carefully crafted with consideration of Virginia's current and planned prison capacity and with an eye towards using that capacity to house the state's most violent felons.

Truth-in-sentencing is expected to have an impact on the composition of Virginia's prison (i.e., state responsible) inmate population. Because violent offenders are serving significantly longer terms under truth-in-sentencing provisions than under the parole system and time served by nonviolent offenders has been held relatively constant, the proportion of the prison population composed of violent offenders relative to nonviolent offenders should increase over time. Violent offenders will remain in the state's prisons due to longer lengths of stay, while nonviolent offenders will continue to be released after serving approximately the same terms of incarceration as they did in the past. Over the next decade, the percentage of Virginia's prison population defined as violent, that is, the proportion of offenders with a current or previous conviction for a violent felony, should continue to grow.

To date, sentencing reform has not had the dramatic impact on the prison population that some critics had feared when the reforms were first enacted. Despite double-digit increases in the inmate population in the late 1980s and early 1990s, the number of state prisoners has grown much more slowly in recent years. Where the state once expected nearly 45,000 inmates in June 2002, the current projection for that date is 33,743, with an increase to 34,702 by June of 2006. The forecast for state prisoners developed in 2001 projects average annual growth of only .96% over the next five years, with the largest single-year growth projected for FY2002 (Figure 71). Slower than anticipated growth in the number of admissions to prison fueled progressively lower forecasts starting in the mid-1990s. Some critics of sentencing reform had been concerned that significantly longer prison terms for violent offenders, a major component of sentencing reform, might result in tremendous increases in the state's inmate population. Although violent offenders are serving much longer terms as the result of truth-in-sentencing reform, the prison population grew by less than 5% in FY2001 and no sizeable growth is projected for the next five years.

FIGURE 71

Historical and Projected State Responsible (Prison) Population 1993 - 2006

	Date*	Inmates	Percent Change
Historical	1993	20,760	
	1994	23,648	13.9%
	1995	27,364	15.7
	1996	28,743	5.0
	1997	28,743	.0
	1998	29,043	1.0
	1999	30,862	6.3
	2000	31,649	2.6
	2001	33,109	4.6
Projected	2002	33,743	1.9
	2003	34,046	.9
	2004	34,203	.5
	2005	34,512	.9
	2006	34,702	.6

* June figures are used for each year.

Impact on Alternative Punishment Options

When the truth-in-sentencing system was created, the General Assembly established a community-based corrections system at the state and local level. Reform legislation created a network of local and state-run community corrections programs for nonviolent offenders. This system was implemented to provide judges with additional sentencing options as alternatives to traditional incarceration for nonviolent offenders, enabling them to reserve costly correctional institution beds for the state's violent offenders. Although the Commonwealth already operated some community corrections programs at the time truth-in-sentencing laws were enacted, a more comprehensive system was enabled through this legislation.

As part of the state community-based corrections network, two new cornerstone programs, the diversion center incarceration program and the detention center incarceration program, were authorized. The new programs, while involving confinement, differ from traditional incarceration in jail or prison since they include more structured services designed to address problems associated with recidivism. These centers involve highly structured, short-term incarceration for felons deemed suitable by the courts and Department of Corrections. Offenders accepted in these programs are considered probationers while participating in the program and the sentencing judge retains authority over the offender should he fail the conditions of the program or subsequent community supervision requirements. The detention center program features military-style management and supervision, physical labor in organized public works projects and such services as remedial education and substance abuse services. The diversion center program emphasizes assistance to the offender in securing and maintaining employment while also providing education and substance abuse services. In the more than six years since the new sentencing system became effective, the Department of Corrections (DOC) has gradually established detention and diversion centers around the state as part of the community-based corrections system for state-responsible offenders.

As of July 2001, DOC is operating four detention centers and six diversion centers throughout the Commonwealth (Figure 72). Given current bed space, detention centers collectively served 1,436 felony offenders in FY2001, while diversion programs admitted 1,489 felons over the course of a year.

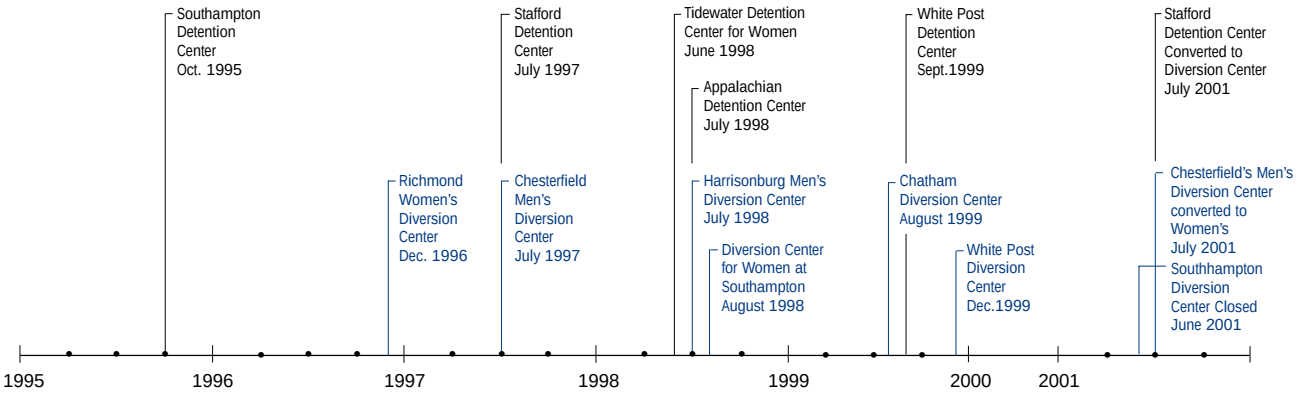
These two alternative punishment incarceration programs supplement the boot camp program which has been in operation since 1991. This program for young adult offenders is a military-style program focusing on drill and ceremony, physical labor, remedial education, and a drug education program. Young male offenders are received into the program in platoons averaging about 30 each. Beginning January 1, 1998, the program was lengthened from three to four months making it more comparable in length to the detention and diversion center programs. With space for 100 young men, the boot camp program can graduate 300 felons annually. The few women referred and accepted to the program are sent to a women's boot camp facility in Michigan. According to management at DOC, generally, the detention center is the preferred alternative due to cost and logistics.

On June 30, 2001, 1045 probationers were in the detention center, diversion center, and boot camp programs, compared to around 1071 offenders on the same date in 2000 and 824 offenders in June of 1999. The diversion center programs have been operating at full capacity while the detention center programs are functioning at near full capacity. In September of this year, 208 offenders had been accepted into one of these programs and were on waiting lists until openings could be made available.

In addition to the alternative incarceration programs described above, the DOC operates a host of non-incarceration programs as part of its community-based corrections system. Programs such as regular and intensive probation supervision, home electronic monitoring, day reporting centers, and adult residential centers are an integral part of the system. Regular probation services have been available since the 1940's; intensive supervision, characterized by smaller caseloads and closer monitoring of offenders, was pilot tested in the mid 1980's. Intensive supervision is now an alternative in most of the state's 42 probation districts. Home electronic monitoring, piloted in 1990-1992, is now available in all probation districts, and is used in conjunction with intensive and conventional supervision. In addition, the Department currently operates eleven day reporting centers and day reporting programs, with another in the planning stage. With current capacity, day reporting programs can supervise up to 1,730 felons over the course of a year. These centers feature daily offender contact and monitoring as well as structured services, such as educational and life

FIGURE 72

Opening Date for Currently Operating Detention Centers and Diversion Centers 1995-2001



skills training programs. Offenders report each day to the center and are directed to any combination of education or treatment programs, to a community center work project, or a job. Day reporting centers are considered a more viable option in urban rather than rural areas since offenders must have transportation to the center. In addition to day reporting centers DOC also operates 10 residential centers around the state for inmates transitioning back to the community, which together can serve 800 offenders a year.

Day reporting centers in Norfolk and Roanoke, along with districts in Charlottesville, Fredericksburg, Newport News, Portsmouth and Richmond and a community corrections program in Chesterfield/Colonial Heights are providing interactive services with their respective circuit courts to support "Drug Court" programs. Of the eight Drug Court programs operating in circuit courts, Norfolk is the only program that is strictly post-adjudication model. In exchange for participating in and completing the drug court program (treatment, drug screens, employment or school, etc.), a convicted offender can receive a reduced sentence. The other programs are a combination of post-adjudication, pre-adjudication and first-time offender models. In these seven Drug Court programs (Richmond, Newport News, Roanoke, Charlottesville, Portsmouth, Chesterfield and Colonial Heights, and the Rappahannock region), a judge may convict the offender or withhold the finding of guilt and later reduce or dismiss the charge if the offender successfully completes the Drug Court program. At the end of 2001, there are ten additional Drug Court programs for circuit courts in the planning stage.

In addition to expanding the network of state-run community corrections programs, the General Assembly also established a more intricate network of local community corrections programming as an integral part of reform legislation. In 1994, the General Assembly enacted the Comprehensive Community Corrections Act for Local-Responsible Offenders (CCCA) and the Pre-Trial Services Act (PSA). These two acts gave localities authority to provide supervision and services for defendants awaiting trial and for offenders convicted of low-level felonies (Class 5 and Class 6) or misdemeanors that carry jail time. In order to participate, localities were required, by legislative mandate, to create Community Criminal Justice Boards (CCJBs) comprised of representatives of the courts (circuit court, general district court and juvenile and domestic relations court), the Commonwealth's Attorney's office, the police department, the sheriff's and magistrate's offices, the education system, the Department of Mental Health, Mental Retardation and Substance Abuse Services, and other organizations. The CCJBs oversee the local CCCA and PSA programs, facilitate exchange among criminal justice agencies and serve as an important local policy board for criminal justice matters. The Virginia Department of Criminal Justice Services provides technical assistance, coordinating services and, often, grant funding for local CCCA and PSA programs.

Summary

In the seventh year of Virginia's comprehensive felony sentencing reform legislation, the overhaul of the felony sanctioning system continues to be a success. Offenders are serving approximately 91% of incarceration time imposed with violent felons serving significantly longer periods of incarceration than those historically served. At the same time, Virginia's prison population growth has continued to stabilize with a projected growth rate in the prison population of just .96% over the next five years. Part of the reduction in prison growth is due to the funding of intermediate punishment/treatment programs at a level to handle an increasing number of felons. Thus, nearly seven years after the enactment of the sentencing reform legislation in Virginia, there is substantial evidence that the system is continuing to achieve what its designers intended.

Recommendations of the Commission

Introduction

The Commission closely monitors the sentencing guidelines system and, each year, deliberates upon possible modifications to enhance the usefulness of the guidelines as a tool for judges in making their sentencing decisions. Under §17.1-806 of the *Code of Virginia*, any modifications adopted by the Commission must be presented in its annual report, due to the General Assembly each December 1. Unless otherwise provided by law, the changes recommended by the Commission become effective on the following July 1.

The Commission draws on several sources of information to guide its discussions about modifications to the guidelines system. Commission staff meet with circuit court judges and Commonwealth's attorneys at various times throughout the year, and these meetings provide an important forum for input from these two groups. In addition, the Commission operates a "hot line" phone system staffed Monday through Friday, to assist users with any questions or concerns regarding the preparation of the guidelines. While the hot line 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, often, these sessions provide information useful to the Commission. Finally, the Commission closely examines compliance with the guidelines and departure patterns in order to pinpoint specific areas where the guidelines may be out of sync with judicial thinking. The opinions of the judiciary, as expressed in the reasons they write for departing from guidelines, are very important in directing the Commission to those areas of most concern to judges.

This year, the Commission has adopted four recommendations. Each of these is described in detail on the pages that follow.

ART

Recommendation 1

Modify §16.1-305 of the *Code of Virginia* to allow Commonwealth's attorneys and probation officers access to juvenile court records for all jurisdictions through the Supreme Court of Virginia's Court Automated Information System (CAIS)

Issue

The Supreme Court of Virginia maintains a data system for court orders from both juvenile and circuit courts. Commonwealth's attorneys and probation officers have access to the automated circuit court orders and have requested access to the automated juvenile court orders to aid in the calculation of guidelines and the preparation of other reports for the court.

Discussion

Commonwealth's attorneys and probation officers currently have statutory authority under §16.1-305 to receive copies of court orders from juvenile courts for the purposes of calculating sentencing guidelines. The juvenile records maintained in CAIS include the same information that is available through the juvenile court in hard copy. According to the Executive Secretary of the Supreme Court, the Supreme Court cannot give open access to the juvenile section of CAIS because the Court cannot ensure that access to the information will be used solely for the purpose of calculating guidelines, as currently specified by *Code.*

Virginia law (§16.1-299(4)) requires juvenile court clerks to report juvenile adjudication dispositions for felonies to the Central Criminal Records Exchange (CCRE) maintained by the Virginia State Police. Under §19.2-389.1, both Commonwealth's attorneys and probation officers have open access to this information for a variety of criminal justice purposes. Since 1995, there has been and continues to be a serious problem in the under-reporting or lack of reporting by clerks of juvenile felony adjudications. Due to the limitations of CCRE juvenile record information, direct access to the automated juvenile records maintained in CAIS would provide Commonwealth's attorneys and probation officers with a more efficient and reliable method for incorporating an offender's juvenile record into the sentencing guidelines as well as other reports for the court.

If §16.1-305 were modified to allow Commonwealth's attorneys and probation officers access to an offender's juvenile record for criminal justice purposes not limited to guidelines calculations, the Supreme Court could permit access through its CAIS system. In essence, this is the same authority Commonwealth's attorneys and probation officers have to access juvenile court records through the CCRE and directly from the juvenile court.

Recommendation 2

Modify §§16.1-300 and 16.1-305 of the *Code of Virginia* to allow Commonwealth's attorneys and probation officers access to the social, medical, psychiatric and psychological reports of offenders who have appeared in the juvenile court, who have received supervision or services from a court service unit, or who have been committed to the Department of Juvenile Justice

Issue

Probation officers and Commonwealth's attorneys cannot accurately prepare sentencing guidelines risk assessment instruments and background investigations for the circuit court without access to an offender's complete criminal and social history.

Discussion

Since 1996, §16.1-305 has been revised several times to give Commonwealth's attorneys and probation officers access to an offender's prior criminal record, including juvenile adjudications. All other documents maintained by the juvenile court or the Department of Juvenile Justice can only be obtained by court order. Without a court order, adult probation officers and Commonwealth's attorneys are limited in their access to other relevant documents such as social histories that include a complete summary of a juvenile's criminal record, mental health reports that detail an offender's previous treatment history, and medical records that may be used initially to screen a juvenile for participation in an alternative program. Routine access for criminal justice purposes to documents maintained by the juvenile courts and the Department of Juvenile Justice is needed to accurately and efficiently relay pertinent information on offenders to sentencing judges.

Recommendation 3

Expand statewide the use of risk assessment for nonviolent offenders and encourage completion of pre-sentence investigation (PSI) reports in risk assessment cases

Issue

In its 1994 directive, the General Assembly instructed the Commission to develop a risk assessment instrument for nonviolent offenders and to determine if 25% of the lowest risk offenders could be diverted from prison to an alternative sanction "with due regard to public safety" (§17-235 of the *Code of Virginia*). This mandate was made in conjunction with other changes in the Commonwealth's sentencing structure that were designed to substantially increase the amount of time served in prison by offenders convicted of violent crimes and offenders with a record of prior violent offenses. The combined plan would reserve expensive prison beds for violent and relatively high-risk offenders, without jeopardizing public safety. The risk assessment pilot program has been operating in selected sites since 1997 and recently has undergone extensive review. Utilizing the array of information available on the nonviolent offender risk assessment project, the Commission concluded that a risk assessment instrument such as the one being pilot tested would be a useful tool for judges sentencing felony offenders in circuit courts throughout the state.

Discussion

The Commission contemplated several factors in its decision to recommend that risk assessment for nonviolent offenders be implemented statewide. Consideration of the original legislative mandate, the fiscal impact of the project, and the validity of the risk tool were deemed important in this decision. The results from the National Center for State Courts (NCSC) evaluation of the pilot project, outcome in the pilot sites, and the conclusions from the Commission's 2001 validation study were carefully assessed.

The NCSC evaluation was helpful to the Commission in confirming that the pilot program has been successful and that the fiscal benefits of the program are consistent with the General Assembly's goals. According to the NCSC, the pilot program has had a net fiscal benefit of $1.5 million (Figure 73). Furthermore, it is estimated that, had the risk assessment instrument been instituted statewide during 2000, the net benefit would have ranged from $3.7 to $4.5 million for that year. The NCSC evaluation confirmed the cost saving component of the nonviolent risk assessment program.

FIGURE 73

National Center for State Courts (NCSC) Benefit/Cost Analysis of Nonviolent Offender Risk Assessment in Pilot Sites

Benefits	$8,700,000
Costs	$7,200,000
Net Benefit	$1,500,000

Note: For the year 2000, NCSC estimated the net benefits of the nonviolent offender risk assessment program would have ranged from $3.7 to $4.5 million, if it had been in use statewide.

Evidence from the pilot sites indicates that diversion of larceny, fraud and drug offenders who meet the Commission's eligibility criteria has increased under the risk assessment program. Before the risk assessment pilot program was implemented in fiscal year (FY) 1998, pilot circuits were less likely than non-pilot circuits to utilize alternative punishments for larceny, fraud and drug offenders when the sentencing guidelines recommended a term of incarceration in prison or jail (Figure 74). Between FY1996 and FY2001, however, the rate at which eligible offenders were diverted from incarceration to alternative sanctions increased by nearly 30% in the risk assessment pilot sites, compared to only 4% in non-pilot circuits.

The risk assessment program has had an even larger impact on the utilization of alternative punishments for offenders recommended by the sentencing guidelines for a prison term (Figure 75). Diversion of eligible larceny, fraud and drug offenders from incarceration in a state prison facility to an alternative sanction program increased by 48% in the pilot sites between FY1996 and FY2001. In circuits that did not participate in the pilot project, the rate of diversion for prison-bound offenders increased by only 14% during that period.

The risk assessment program has provided judges in the pilot sites additional flexibility in sentencing larceny, fraud and drug offenders. In the risk assessment pilot program, judges have been considered in compliance with the guidelines if they sentence within the recommended incarceration range or if they follow the recommendation for alternative punishment. Once the risk assessment program is expanded statewide, judges in all circuits can utilize the recommended incarceration range or a recommended alternative punishment and be considered in compliance, just as they currently are in the pilot sites.

FIGURE 74

Rate of Diversion from Prison and Jail Incarceration for Risk Assessment Pilot and Non-Pilot Sites

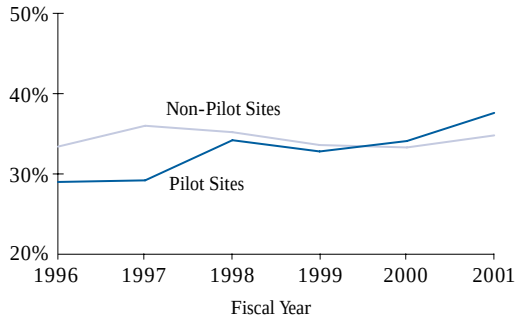
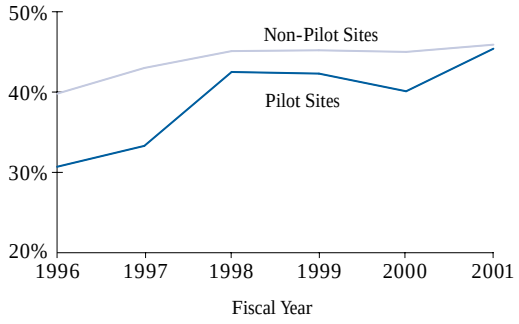


FIGURE 75

Rate of Diversion from Prison Incarceration for Risk Assessment Pilot and Non-Pilot Sites



Note: Analysis includes only larceny, fraud, and drug offenders eligible for risk assessment. Analysis is based on the definition of a state responsible (prison) sentence in §53.1-20 as of July 1, 1997.

The Commission's objective has been to develop a reliable and valid predictive scale based on independent empirical research and to determine if the resulting instrument could be a useful tool for judges when sentencing larceny, fraud and drug offenders who come before the circuit court. The Commission's validation study, conducted in 2001, confirmed that a statistically-based risk assessment instrument can assist judges in identifying those offenders who, based on empirical research, represent the lowest risk to public safety and, conversely, are the most likely to remain crime-free in the community. The purpose of the validation study was to test and refine the nonviolent risk assessment instrument previously introduced through the pilot program. Through better access to criminal records, a refined instrument with increased accuracy has been developed.

In conclusion, the Commission found that by identifying low-risk nonviolent offenders through the use of risk assessment, the Commonwealth is in the position to reserve expensive prison beds for violent offenders while minimizing the risk to public safety, in a manner that is consistent with the General Assembly's mandate to the Commission. Furthermore, with risk assessment, judges can select better candidates for diversion from prison and jail and have the flexibility to utilize alternative sanctions while remaining in compliance with the guidelines.

Assessment of risk using the Commission's instrument depends on a complete and accurate identification of previous arrests and prior felony convictions (both adult and juvenile), including out-of-state convictions. Presently, §19.2-299 does not require pre-sentence investigation reports in all cases involving larceny, fraud and drug offenses. However, when a pre-sentence investigation report is prepared, it is much more likely that a thorough and accurate criminal history check will be completed. Also, there is concern that if a pre-sentence investigation report is not ordered, some of the other factors in the risk assessment form, such as those relating to marital status and employment record, may not be completed accurately. In order to make the risk assessment instrument available to judges as a tool for diverting qualified, nonviolent offenders to alternative sanctions, the Commission encourages that pre-sentence investigations be conducted in all nonviolent offender risk assessment cases.

Recommendation 4

Amend the sentencing guidelines for larceny, fraud and drug offenses by incorporating a risk assessment instrument that includes the factors of gender, age, marital status at age 26, employment, additional offenses, prior arrest or commitment in the 18 months prior to the offense, adult and juvenile prior felony record, prior adult incarcerations, and the type of offense

Issue

After four years of pilot testing and detailed evaluation of the risk assessment program by the National Center for State Courts, the Commission is proposing to expand statewide the use of risk assessment for nonviolent offenders (see Recommendation 3). In 2001, the Commission reviewed the risk assessment program and refined its risk assessment instrument. This refinement improves the accuracy of the risk tool in predicting recidivism among larceny, fraud and drug offenders.

Discussion

The risk assessment instrument used in pilot testing was developed by analyzing recidivism patterns among larceny, fraud and drug offenders released from incarceration between 1992 and 1993. This year, the Commission conducted a validation study to test and refine the risk assessment instrument. For the most recent study, the Commission examined recidivism among a sample of offenders released from incarceration in 1996. The Commission evaluated several models of recidivism, each a refinement of the original model that served as the basis for the risk assessment instrument used in the pilot sites. In selecting a risk assessment model, the Commission considered the accuracy of prediction, public safety, and the factors included in the model.

The goal of risk assessment is to identify nonviolent offenders who represent the least risk to public safety and to recommend those offenders for alternative punishment programs in lieu of traditional incarceration in prison or jail. In accordance with the General Assembly's directive, the Commission chose a score threshold that would result in 25% of the lowest risk offenders being recommended for alternative sanctions. The risk assessment model selected by the Commission for statewide implementation outperformed the alternative models in its ability to identify candidates for diversion who have the lowest rates of recidivism and, therefore, represent the least risk to public safety should the judge elect to utilize an alternative sanction in those cases. Using the risk assessment model selected by the Commission, only 12% of the offenders who would be recommended for an alternative sanction were identified as recidivists during the Commission's 2001 study. In contrast, the recidivism rate was over 38% for offenders not recommended for an alternative sanction by the selected risk assessment model.

In response to concerns expressed by some of the respondents interviewed by the National Center for State Courts (NCSC) during its evaluation of the risk assessment pilot program, the Commission examined the importance of demographic factors in the risk assessment model. The Commission investigated the possibility of eliminating some or all of the demographic factors from the risk assessment instrument. Although all four demographic factors were statistically significant in predicting recidivism in both the original risk assessment study conducted in 1996-1997 and the

latest analysis in 2001, the demographic factors were forcibly removed from the model one at a time and in combinations, so that the impact of each factor could be assessed. One of the factors, gender, could not be removed without compromising the integrity of the model. While a model excluding age, marital status and employment was developed, the deletion of these factors increases the number of recidivists among those offenders who would be recommended for alternative sanctions. Since all the demographic factors utilized in the risk assessment model are statistically significant and offer valuable insight into the likelihood of recidivism, the Commission believes that it is in the best interest of public safety to retain the demographic factors in the risk assessment instrument. As the result of the 2001 study, three of the four demographic factors have been refined to improve the predictive power of the instrument. In the refined model selected by the Commission, the age factor encompasses a broader range of ages and the factor for marital status does not penalize the extremely young. The employment factor has been modified to capture the offender's employment record for the two years preceding the offense instead of the offender's employment status on the day of the crime.

The risk assessment instrument based on the model selected by the Commission for implementation statewide appears in Figure 76. Factors on the refined risk assessment instrument, like those on the original pilot instrument, are the result of statistical analysis. In combination, these factors can be used to calculate a score that is associated with risk of recidivism. Offenders with low scores share characteristics with offenders from the study sample who, proportionately, recidivated less often than those with higher scores. As directed by the General Assembly, the Commission chose a score threshold so that 25% of the lowest risk offenders will be recommended for alternative sanctions. For the instrument shown in Figure 76, offenders scoring 35 points or less will be recommended for alternative punishment.

The refined risk assessment instrument contains factors that are similar to the instrument that was used in the pilot program. Two of the factors, gender and prior adult incarceration, are identical to factors in the pilot instrument. Three of the factors (offender acted alone, prior felony drug offense, and prior juvenile commitment) were included in the pilot instrument but not the refined instrument because other factors proved to be stronger predictors of recidivism. One factor, type of offense, is in the refined instrument but was not part of the pilot instrument. On the pilot risk assessment tool, prior record was measured by determining the number of prior felony and misdemeanor convictions in the offender's background. During its 2001 study, the Commission found that categorizing the offender's record based on the existence of adult or juvenile convictions/adjudications for felony offenses is more strongly associated with recidivism among larceny, fraud and drug offenders. The remaining factors on the risk assessment instrument shown in Figure 76 are refined versions of factors found in the pilot instrument.

FIGURE 76

Proposed Risk Assessment Instrument for Larceny, Fraud and Drug Offenders

◆ **Offense Type** *Select the type of the instant offense*

- Drug 3
- Fraud 3
- Larceny ..... 11 ☐

◆ **Offender** *Score factors A - D and enter total score*

- **A**. Offender is a male 8
- **B**. Offender's age at time of offense
  - Younger than 30 years 13
  - 30 – 40 years 8
  - 41 – 46 years 1
  - Older than 46 years 0
- **C**. Offender not regularly employed 9
- **D**. Offender at least 26 years of age & never married ..... 6 ☐

◆ **Additional Offense** ..... IF YES, add 5 ☐

◆ **Arrest or Confinement Within Past 18 Months** (prior to offense) ..... IF YES, add 6 ☐

◆ **Prior Felony Convictions and Adjudications** *Select the combination of adult and juvenile felony convictions/adjudications that characterizes the offender's prior record*

- Any adult felony convictions 3
- Any juvenile felony convictions or adjudications 6
- Both adult and juvenile felony convictions/adjudications ..... 9 ☐

◆ **Prior Adult Incarceration**

Number
- 1 - 2 3
- 3 – 4 6
- 5 or more ..... 9 ☐

◆ **Total Score** ☐

Go to Cover Sheet and fill out Alternative Punishment Recommendations section. If total is 35 or less, check Recommended for Alternative Punishment. If total is 36 or more, check Do NOT Recommend for Alternative Punishment.

Appendices

Appendix 1

Judicial Reasons for Departure from Sentencing Guidelines

Property, Drug and Miscellaneous Offenses

Reasons for Mitigation	Burg. of Dwelling	Burg. of Other Structure	Sch. I/II Drugs	Other Drugs	Fraud	Larceny	Misc	Traffic
No reason given	1.9%	1.8%	4.7%	5.7%	7.7%	8.4%	16.7%	4.6%
Minimal property or monetary loss	0	1.8	0	0	0.3	3.8	0	0
Minimal circumstances/facts of the case	2.8	3.5	2.7	2.9	3.9	2.4	0	10.8
Small amount of drugs involved in the case	0	0	3.9	2.9	0	0	0	0
Offender and victim are friends	0	0	0	0	1.6	0.7	0	0
Offender has no prior record	0	0	0.8	5.7	0.3	0.3	0	0
Offender has minimal prior record	3.7	8.8	2.7	5.7	4.5	0	8.3	1.5
Offender's criminal record overstates his degree of criminal orientation	0	1.8	2.0	0.0	1.3	0.3	0	4.6
Offender cooperated with authorities	13.9	8.8	15.8	28.6	9.0	9.8	0	7.7
Offender is mentally or physically impaired	1.9	3.5	3.9	8.6	2.9	3.8	16.7	7.7
Offender has emotional or psychiatric problems	1.9	0	1.2	0	4.8	2.1	8.3	3.1
Offender has drug or alcohol problems	0.9	0	0.6	0	0.6	0.3	0	1.5
Offender has good potential for rehabilitation	8.3	10.5	17.4	14.3	27.0	16.0	16.7	23.1
Offender shows remorse	3.7	0	0.8	0	1.9	0.7	0	1.5
Age of offender	2.8	1.8	2.7	0	3.5	1.7	0	0
Multiple charges are being treated as one criminal event	0	0	0	0	1.0	0	0	0
Sentence recommended by Commonwealth's attorney or probation officer	4.6	14.0	5.5	8.6	8.7	5.6	8.3	4.6
Weak evidence or weak case	1.9	0	4.5	2.9	4.8	5.2	0	4.6
Plea agreement	8.3	7.0	13.7	11.4	11.9	17.8	16.7	10.8
Sentencing consistent with co-defendant or with similar cases in the jurisdiction	0	1.8	1.4	0	0.3	0	0	0
Offender already sentenced by another court or in previous proceeding for other offenses	8.3	3.5	2.5	0	5.5	4.2	8.3	0
Offender will likely have his probation revoked	1.9	3.5	1.2	0	1.0	1.4	0	0
Offender is sentenced to an alternative punishment to incarceration	38.0	47.4	25.0	5.7	12.9	18.5	0	16.9
Guidelines recommendation is too harsh	2.8	1.8	2.0	0	2.9	0.7	0	1.5
Judge rounded guidelines minimum to nearest whole year	5.6	1.8	0.8	0	1.3	1.4	0	4.6
Other reasons for mitigation	10.2	5.3	9.6	8.6	10.6	11.8	8.3	4.6

Note: Percentages indicate the percent of mitigation (or aggravation) cases in which the judge cites a particular reason for the mitigation (or aggravation) departure. The percentages will not add to 100% since more than one departure reason may be cited in each case.

Appendix 1

Judicial Reasons for Departure from Sentencing Guidelines

Property, Drug and Miscellaneous Offenses

Reasons for Aggravation	Burg. of Dwelling	Burg. of Other Structure	Sch. I/II Drugs	Other Drugs	Fraud	Larceny	Misc	Traffic
No reason given	3.4%	8.3%	5.3%	7.2%	4.0%	7.5%	8.7%	2.6%
Extreme property or monetary loss	5.2	8.3	0	0	7.0	12.7	0	0
The offense involved a high degree of planning	0	0	0	0	7.0	3.7	0	0
Aggravating circumstances/flagrancy of offense	29.3	8.3	3.3	10.1	7.0	16.1	30.4	0
Offender used a weapon in commission of the offense	0	0	0	1.4	0	0	6.5	7.0
Offender's true offense behavior was more serious than offenses at conviction	8.6	4.2	7.3	10.1	10.0	4.5	6.5	0.9
Extraordinary amount of drugs or purity of drugs involved in the case	0	0	6.5	10.1	0	0	0	0
Aggravating circumstances relating to sale of drugs	0	0	1.3	2.9	0	0	0	0
Offender immersed in drug culture	0	0	0.9	4.3	0	0	0	0
Victim injury	1.7	0	0.4	0	0	0	2.2	0
Previous punishment of offender has been ineffective	0	0	4.7	2.9	1.0	2.6	0	2.6
Offender was under some form of legal restraint at time of offense	0	4.2	5.8	4.3	1.0	3.0	0	0.9
Offender's criminal record understates the degree of his criminal orientation	10.3	12.5	10.0	4.3	9.0	9.0	8.7	12.3
Offender has previous conviction(s) or other charges for the same type of offense	0	4.2	10.5	8.7	7.0	13.1	4.3	25.4
Offender failed to cooperate with authorities	1.7	0	3.3	4.3	4.0	3.7	2.2	0
Offender has drug or alcohol problems	1.7	0	2.7	1.4	7.0	4.5	0	5.3
Offender has poor rehabilitation potential	0	0	4.0	1.4	4.0	1.9	4.3	17.5
Offender shows no remorse	6.9	0	1.6	1.4	1.0	2.2	4.3	2.6
Jury sentence	6.9	0	3.1	4.3	5.0	2.6	4.3	3.5
Plea agreement	13.8	4.2	15.4	10.1	19.0	12.7	10.9	7.9
Community sentiment	1.7	0	3.6	4.3	2.0	1.1	2.2	0
Sentencing consistent with co-defendant or with other similar cases in the jurisdiction	0	0	1.1	1.4	0	0.4	0	0
Judge wanted to teach offender a lesson	0	0	0.4	0	1.0	0	0	0
The offender was sentenced to boot camp, detention center or diversion center	10.3	25.0	9.8	11.6	10.0	8.2	2.2	9.6
Guidelines recommendation is too low	3.4	8.3	8.7	7.2	4.0	7.9	10.9	10.5
Mandatory minimum penalty is required in the case	0	0	2.9	2.9	0	0.4	4.3	0
Other reasons for aggravation	8.6	8.3	5.8	4.3	10.0	6.0	8.7	9.6

Note: Percentages indicate the percent of mitigation (or aggravation) cases in which the judge cites a particular reason for the mitigation (or aggravation) departure. The percentages will not add to 100% since more than one departure reason may be cited in each case.

Appendix 2

Judicial Reasons for Departure from Sentencing Guidelines

Offenses Against the Person

Reasons for Mitigation	Assault	Homicide	Kidnapping	Robbery	Rape	Sexual Assault
No reason given	5.1%	5.3%	0%	3.2%	0%	3.6%
Minimal circumstances/facts of the case	6.8	5.3	0	4.0	10.9	7.1
Offender was not the leader or active participant in offense	0.9	5.3	0	6.3	0	0
Offender and victim are related or friends	5.1	0	10.0	0.8	0	8.9
Little or no victim injury/offender did not intend to harm; victim requested lenient sentence	7.7	0	0	0.8	2.2	7.1
Victim was a willing participant or provoked the offense	1.7	0	0	0	4.3	3.6
Offender has no prior record	0.9	0	0	0.8	0	0
Offender has minimal prior criminal record	6.0	5.3	0	4.8	21.7	5.4
Offender's criminal record overstates his degree of criminal orientation	0	0	0	0.8	0	0
Offender cooperated with authorities or aided law enforcement	2.6	5.3	0	23.8	2.2	0
Offender has emotional or psychiatric problems	6.0	0	0	4.0	4.3	3.6
Offender is mentally or physically impaired	2.6	0	0	0	0	3.6
Offender has drug or alcohol problems	0.9	0	10.0	0.8	0	5.4
Offender has good potential for rehabilitation	13.7	5.3	20.0	7.1	23.9	8.9
Offender shows remorse	1.7	0	0	0.8	4.3	5.4
Age of offender	3.4	0	10.0	16.7	6.5	3.6
Jury sentence	0.0	21.1	0	3.2	13.0	3.6
Sentence was recommended by Commonwealth's attorney or probation officer	10.3	0	10.0	7.1	0	1.8
Weak evidence or weak case against the offender	12.8	10.5	20.0	4.8	17.4	25.0
Plea agreement	8.5	15.8	20.0	4.8	6.5	17.9
Sentencing consistent with codefendant or with other similar cases in the jurisdiction	0	0	0	1.6	0	0
Offender already sentenced by another court or in previous proceeding for other offenses	2.6	5.3	10.0	0	2.2	1.8
Offender will likely have his probation revoked	0.9	0	0	0	0	0
Offender is sentenced to an alternative punishment to incarceration	6.8	5.3	0	16.7	10.9	0
Guidelines recommendation is too harsh	0	0	0	0.8	0	0
Judge rounded guidelines minimum to nearest whole year	10.3	5.3	10.0	4.8	3.2	3.6
Other reasons for mitigation	6.8	0	0	10.3	0	1.8

Note: Percentages indicate the percent of mitigation (or aggravation) cases in which the judge cites a particular reason for the mitigation (or aggravation) departure. The percentages will not add to 100% since more than one departure reason may be cited in each case.

Appendix 2

Judicial Reasons for Departure from Sentencing Guidelines

Offenses Against the Person

Reasons for Aggravation	Assault	Homicide	Kidnapping	Robbery	Rape	Sexual Assault
No reason given	3.5%	5.7%	8.3%	7.7%	0%	5.5%
The offense involved a high degree of planning	0	0	0	0	0	1.8
Aggravating circumstances/flagrancy of offense	18.8	14.3	16.7	23.1	23.5	21.8
Offender used a weapon in commission of the offense	0	0	0	13.8	0	0
Offender's true offense behavior was more serious than offenses at conviction	4.7	14.3	0	1.5	5.9	10.9
Offender is related to or is the caretaker of the victim	1.2	0	0	0	17.6	7.3
Offense was an unprovoked attack	1.2	0	0	0	0	0
Offender knew of victim's vulnerability	2.4	2.9	8.3	1.5	41.2	25.5
The victim(s) wanted a harsh sentence	1.2	0	0	0	5.9	1.8
Extreme violence or severe victim injury	20.0	17.1	8.3	6.2	0	0
Previous punishment of offender has been ineffective	0	0	0	0	0	9.1
Offender was under some form of legal restraint at time of offense	0	0	8.3	0	0	0
Offender's record understates the degree of his criminal orientation	9.4	8.6	0	10.8	5.9	0
Offender has previous conviction(s) or other charges for the same offense	11.8	2.9	8.3	3.1	0	0
Offender failed to cooperate with authorities	0	0	0	0	0	1.8
Offender has poor rehabilitation potential	5.9	8.6	33.3	3.1	0	3.6
Offender shows no remorse	1.2	8.6	16.7	6.2	0	5.5
Jury sentence	17.6	28.6	8.3	27.7	23.5	5.5
Plea agreement	9.4	5.7	8.3	1.5	0	12.7
Guidelines recommendation is too low	15.3	8.6	25.0	6.2	11.8	12.7
Mandatory minimum penalty is required in the case	0	0	0	3.1	0	0
Other reasons for aggravation	9.4	5.7	8.3	9.2	5.9	5.5

Note: Percentages indicate the percent of mitigation (or aggravation) cases in which the judge cites a particular reason for the mitigation (or aggravation) departure. The percentages will not add to 100% since more than one departure reason may be cited in each case.

Appendix 3

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

Burglary of Dwelling

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	88.2%	11.8%		17
2	70.8	22.2	6.9	72
3	66.7	33.3		12
4	75.0	22.9	2.1	48
5	82.1	10.7	7.1	28
6	72.7	18.2	9.1	11
7	88.9	5.6	5.6	18
8	100.0	0	0	13
9	71.4	14.3	14.3	14
10	90.0	6.7	3.3	30
11	70.0	20.0	10.0	10
12	77.8	22.2	0	9
13	87.5	3.1	9.4	32
14	63.2	26.3	10.5	19
15	47.4	31.6	21.1	38
16	73.9	8.7	17.4	23
17	83.3	16.7	0	6
18	100.0	0	0	2
19	64.0	20.0	16.0	25
20	55.6	44.4	0	9
21	81.0	19.0		21
22	61.3	16.1	22.6	31
23	56.0	20.0	24.0	25
24	70.0	20.0	10.0	20
25	85.7	14.3	0	14
26	84.0	12.0	4.0	25
27	76.7	20.0	3.3	30
28	76.9	7.7	15.4	13
29	42.3	23.1	34.6	26
30	33.3	16.7	50.0	6
31	90.9	9.1	0	22
Total	**72.7**	**17.5**	**9.8**	**670**

Burglary of Other Structure

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	88.9%	11.1%	0%	9
2	76.7	16.7	6.7	30
3	90.9	0	9.1	11
4	77.8	18.5	3.7	27
5	83.3	16.7	0	12
6	75.0	25.0	0	8
7	94.1	5.9	0	17
8	87.5	12.5	0	8
9	71.4	14.3	14.3	7
10	84.6	7.7	7.7	13
11	92.3	7.7	0	13
12	66.7	33.3	0	6
13	73.3	26.7	0	15
14	81.0	9.5	9.5	21
15	71.4	28.6	0	14
16	90.9	9.1	0	22
17	76.9	23.1	0	13
18	75.0	16.7	8.3	12
19	64.7	17.6	17.6	17
20	90.0	10.0	0	10
21	84.2	5.3	10.5	19
22	87.5	6.3	6.3	16
23	100.0	0	0	13
24	64.0	28.0	8.0	25
25	83.3	5.6	11.1	18
26	100.0	0	0	19
27	88.9	11.1	0	18
28	81.8	9.1	9.1	11
29	63.6	9.1	27.3	22
30	60.0	20.0	20.0	5
31	68.8	25.0	6.3	16
Total	**80.5**	**13.5**	**6.0**	**467**

Other Drugs

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	84.2%	0%	15.8%	19
2	84.1	11.1	4.8	63
3	100.0	0	0	7
4	80.0	10.9	9.1	55
5	70.0	0	30.0	10
6	75.0	12.5	12.5	8
7	80.6	0	19.4	36
8	80.0	13.3	6.7	15
9	89.5	0	10.5	19
10	90.0	10.0	0	10
11	81.8	9.1	9.1	11
12	73.3	13.3	13.3	15
13	64.7	5.9	29.4	17
14	75.0	8.3	16.7	48
15	72.4	10.3	17.2	29
16	77.4	9.7	12.9	31
17	73.3	6.7	20.0	15
18	87.5	0	12.5	8
19	92.5	3.0	4.5	67
20	95.8	4.2	0	24
21	88.9	11.1	0	9
22	65.0	0	35.0	20
23	80.6	12.9	6.5	31
24	79.4	5.9	14.7	34
25	85.7	14.3	0	49
26	80.0	5.0	15.0	20
27	86.1	5.6	8.3	36
28	90.9	4.5	4.5	22
29	66.7	0	33.3	33
30	100.0	0	0	5
31	93.1	3.4	3.4	29
Total	**81.9**	**6.8**	**11.3**	**795**

Schedule I/II Drugs

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	82.7%	8.2%	9.2%	196
2	79.1	16.5	4.4	388
3	85.8	9.5	4.6	346
4	76.9	17.7	5.4	780
5	81.8	6.3	11.9	176
6	72.8	7.6	19.6	92
7	83.8	5.4	10.7	551
8	86.2	12.2	1.5	196
9	86.8	4.4	8.8	114
10	85.1	8.5	6.4	94
11	91.0	4.9	4.2	144
12	75.6	7.0	17.4	86
13	73.3	8.4	18.3	514
14	78.3	12.6	9.1	253
15	70.8	12.4	16.7	209
16	80.8	6.4	12.8	125
17	83.3	6.9	9.8	102
18	77.5	11.2	11.2	89
19	78.3	10.4	11.3	327
20	91.1	6.3	2.5	79
21	82.9	6.1	11.0	82
22	68.9	7.1	24.0	183
23	62.9	17.5	19.6	194
24	85.2	5.7	9.1	176
25	81.8	12.1	6.1	99
26	80.7	12.3	7.0	114
27	77.9	16.3	5.8	86
28	81.1	8.1	10.8	37
29	65.7	7.1	27.1	70
30	73.7	15.8	10.5	19
31	86.3	10.6	3.1	161
Total	**79.3**	**10.6**	**10.1**	**6,082**

Appendix 3

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

Fraud

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	90.6%	7.3%	2.1%	96
2	80.6	16.7	2.8	144
3	81.5	14.8	3.7	27
4	83.3	14.8	1.9	209
5	85.3	13.3	1.3	75
6	83.9	6.5	9.7	31
7	84.6	15.4	0	65
8	78.7	21.3	0	47
9	67.6	23.5	8.8	34
10	89.8	6.8	3.4	59
11	77.8	11.1	11.1	27
12	80.0	16.4	3.6	55
13	82.2	11.0	6.8	73
14	80.3	13.6	6.1	132
15	76.0	14.9	9.1	121
16	79.0	15.1	5.9	119
17	95.2	1.6	3.2	62
18	86.8	13.2	0	53
19	78.7	9.7	11.6	207
20	81.5	18.5	0	54
21	67.9	28.6	3.6	28
22	79.4	10.3	10.3	68
23	62.8	29.8	7.4	94
24	62.0	30.4	7.6	79
25	74.7	21.8	3.4	87
26	73.9	18.5	7.6	92
27	89.7	9.3	0.9	107
28	85.0	12.5	2.5	40
29	71.6	16.4	11.9	67
30	76.5	11.8	11.8	17
31	88.6	10.1	1.3	79
Total	**80.1**	**14.8**	**5.1**	**2,449**

Larceny

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	88.6%	8.2%	3.2%	220
2	85.8	8.0	6.2	289
3	89.2	8.4	2.4	83
4	81.1	14.2	4.7	423
5	79.4	9.2	11.5	131
6	84.6	5.8	9.6	52
7	88.5	5.3	6.2	113
8	83.3	16.7	0	54
9	71.8	5.1	23.1	78
10	92.1	3.2	4.8	63
11	87.9	5.2	6.9	58
12	79.2	5.2	15.6	96
13	79.9	5.7	14.4	174
14	84.8	7.5	7.7	362
15	80.3	11.8	7.9	228
16	81.5	11.1	7.4	108
17	89.3	3.6	7.1	168
18	91.2	4.8	4.0	125
19	78.4	8.7	12.9	264
20	88.2	6.9	4.9	102
21	83.1	13.0	3.9	77
22	79.2	3.5	17.4	144
23	80.0	13.3	6.7	135
24	88.7	7.3	4.0	124
25	88.0	7.6	4.3	92
26	81.1	6.3	12.6	143
27	89.8	7.9	2.4	127
28	85.7	7.1	7.1	42
29	65.0	11.7	23.3	60
30	83.3	11.1	5.6	18
31	86.8	7.0	6.1	114
TOTAL	**83.6**	**8.4**	**8.0**	**4,271**

Traffic

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	97.2%	2.8%	0%	72
2	91.8	6.3	1.9	159
3	87.5	12.5	0	16
4	93.3	6.7	0	90
5	91.2	1.8	7.0	57
6	89.2	5.4	5.4	37
7	91.0	3.8	5.1	78
8	86.4	9.1	4.5	22
9	73.2	3.1	23.7	97
10	94.9	3.4	1.7	59
11	100.0	0	0	17
12	82.8	6.3	10.9	64
13	95.8	2.1	2.1	48
14	95.4	1.5	3.1	65
15	85.7	5.6	8.7	126
16	94.6	0	5.4	93
17	77.8	0.0	22.2	27
18	71.4	28.6	0	7
19	79.3	5.7	14.9	87
20	87.0	3.7	9.3	54
21	82.1	10.7	7.1	28
22	71.1	2.6	26.3	76
23	86.6	6.0	7.5	67
24	91.9	5.7	2.4	123
25	87.0	3.7	9.3	54
26	86.5	3.1	10.4	96
27	91.4	1.7	6.9	58
28	92.7	4.9	2.4	41
29	70.0	10.0	20.0	20
30	100.0	0	0	12
31	89.5	8.8	1.8	57
TOTAL	**88.0**	**4.5**	**7.5**	**1,908**

Miscellaneous

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	100.0%	0%	0%	10
2	73.7	0	26.3	38
3	100.0	0	0	8
4	93.1	3.4	3.4	29
5	81.3	0	18.8	16
6	100.0	0	0	3
7	89.5	5.3	5.3	19
8	100.0	0	0	8
9	100.0	0	0	9
10	96.0	0	4.0	25
11	100.0	0	0	13
12	70.0	10.0	20.0	10
13	78.9	0	21.1	19
14	82.4	11.8	5.9	17
15	74.2	3.2	22.6	31
16	84.6	0	15.4	13
17	100.0	0	0	8
18	100.0	0	0	4
19	85.7	0	14.3	7
20	83.3	8.3	8.3	12
21	75.0	8.3	16.7	12
22	85.2	3.7	11.1	27
23	70.0	20.0	10.0	10
24	75.9	10.3	13.8	29
25	77.8	0	22.2	18
26	90.0	10.0	0	20
27	90.9	0	9.1	11
28	85.7	0	14.3	7
29	80.0	0	20.0	10
30	100.0	0	0	4
31	84.6	0	15.4	13
TOTAL	**84.8**	**3.5**	**11.7**	**460**

Appendix 4

Sentencing Guidelines Compliance by Judicial Circuit: Offenses Against the Person

Assault

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	83.3%	83.3%	3.3%	30
2	77.5	14.1	8.5	71
3	97.7	2.3	0	44
4	76.4	15.3	8.3	72
5	75.0	11.4	13.6	44
6	95.5	4.5	0	22
7	85.4	9.8	4.9	41
8	87.5	6.3	6.3	16
9	70.0	20.0	10.0	30
10	94.1	2.9	2.9	34
11	95.7	4.3	0	23
12	72.7	13.6	13.6	22
13	71.4	7.9	20.6	63
14	71.0	19.4	9.7	31
15	64.4	24.4	11.1	45
16	74.3	14.3	11.4	35
17	91.7	0	8.3	12
18	75.0	20.8	4.2	24
19	66.7	14.8	18.5	27
20	77.8	16.7	5.6	18
21	82.1	14.3	3.6	28
22	70.6	11.8	17.6	51
23	81.1	13.5	5.4	37
24	77.6	14.3	8.2	49
25	94.4	2.8	2.8	36
26	73.0	8.1	18.9	37
27	83.3	6.7	10.0	30
28	76.5	11.8	11.8	17
29	41.7	33.3	25.0	12
30	25.0	75.0	0	4
31	84.6	12.8	2.6	39
TOTAL	**78.7**	**12.2**	**9.1**	**1,044**

Kidnapping

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	66.7%	33.3%	0%	3
2	90.0	0	10.0	10
3	80.0	0	20.0	5
4	71.4	14.3	14.3	7
5	80.0	0	20.0	5
6	100.0	0	0	1
7	100.0	0	0	4
8	100.0	0	0	2
9	100.0	0	0	1
10	100.0	0	0	3
11	100.0	0	0	1
12	50.0	0	50.0	2
13	80.0	20.0	0	5
14	50.0	50.0	0	4
15	66.7	33.3	0	3
16	0	0	0	0
17	60.0	0	40.0	5
18	100.0	0	0	2
19	50.0	12.5	37.5	8
20	100.0	0	0	2
21	0	0	0	0
22	0	0	0	0
23	50.0	50.0	0	2
24	50.0	0	50.0	2
25	50.0	50.0	0	2
26	50.0	25.0	25.0	4
27	100.0	0	0	3
28	0	0	0	0
29	0	0	100.0	1
30	100.0	0	0	1
31	83.3	16.7	0	6
Total	**74.5**	**11.7**	**13.8**	**94**

Homicide

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	33.3%	0%	66.7%	6
2	78.6	7.1	14.3	14
3	80.0	10.0	10.0	10
4	72.4	10.3	17.2	29
5	50.0	0	50.0	2
6	50.0	50.0	0	2
7	80.0	0	20.0	5
8	71.4	0	28.6	7
9	40.0	20.0	40.0	5
10	88.9	0	11.1	9
11	66.7	0	33.3	3
12	100.0	0	0	2
13	64.0	8.0	28.0	25
14	44.4	44.4	11.1	9
15	66.7	22.2	11.1	9
16	100.0	0	0	7
17	0	0	0	0
18	100.0	0	0	2
19	62.5	12.5	25.0	8
20	100.0	0	0	2
21	83.3	16.7	0	6
22	20.0	20.0	60.0	5
23	100.0	0	0	3
24	83.3	0	16.7	12
25	60.0	40.0	0	5
26	100.0	0	0	5
27	75.0	0	25.0	4
28	0	0	100.0	1
29	0	100.0	0	1
30	75.0	25.0	0	4
31	50.0	0	50.0	2
TOTAL	**70.1**	**10.8**	**19.1**	**204**

Appendix 4

Sentencing Guidelines Compliance by Judicial Circuit: Offenses Against the Person

Robbery

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	64.0%	32.0%	4.0%	25
2	70.4	16.9	12.7	71
3	69.6	21.7	8.7	23
4	66.7	20.6	12.7	63
5	52.4	23.8	23.8	21
6	66.7	16.7	16.7	6
7	74.3	11.4	14.3	35
8	75.9	20.7	3.4	29
9	68.8	12.5	18.8	16
10	94.4	0.0	5.6	18
11	92.3	7.7	0.0	13
12	81.8	18.2	0.0	22
13	86.1	8.3	5.6	36
14	61.4	34.1	4.5	44
15	33.3	38.1	28.6	21
16	52.4	28.6	19.0	21
17	76.9	15.4	7.7	13
18	64.3	21.4	14.3	14
19	63.3	16.7	20.0	30
20	60.0	40.0	0.0	5
21	70.0	10.0	20.0	10
22	53.8	23.1	23.1	26
23	64.7	29.4	5.9	17
24	72.7	27.3	0.0	11
25	75.0	25.0	0.0	4
26	57.1	42.9	0.0	21
27	75.0	0.0	25.0	4
28	50.0	16.7	33.3	6
29	71.4	28.6	0.0	7
30	100.0	0.0	0.0	3
31	75.0	12.5	12.5	16
Total	**68.1**	**20.7**	**11.2**	**652**

Rape

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	80.0%	20.0%	0%	5
2	60.0	40.0	0.0	10
3	50.0	0.0	50.0	2
4	50.0	50.0	0.0	18
5	80.0	20.0	0.0	5
6	66.7	0.0	33.3	3
7	54.5	27.3	18.2	11
8	100.0	0.0	0.0	7
9	80.0	20.0	0.0	5
10	87.5	12.5	0.0	8
11	55.6	33.3	11.1	9
12	60.0	40.0	0.0	5
13	75.0	25.0	0.0	4
14	50.0	30.0	20.0	10
15	78.6	21.4	0.0	14
16	66.7	16.7	16.7	6
17	40.0	30.0	30.0	10
18	80.0	0.0	20.0	5
19	100.0	0.0	0.0	13
20	100.0	0.0	0.0	2
21	0.0	0.0	0.0	0
22	100.0	0.0	0.0	3
23	40.0	60.0	0.0	5
24	63.6	36.4	0.0	11
25	40.0	40.0	20.0	5
26	57.1	0.0	42.9	7
27	85.7	14.3	0.0	7
28	80.0	20.0	0.0	5
29	0.0	100.0	0.0	1
30	66.7	33.3	0.0	3
31	57.1	14.3	28.6	7
Total	**67.0**	**24.3**	**8.7**	**206**

Sexual Assault

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	83.3%	11.1%	5.6%	18
2	83.9	12.9	3.2	31
3	83.3	0.0	16.7	6
4	72.7	22.7	4.5	22
5	100.0	0.0	0.0	10
6	83.3	0.0	16.7	6
7	66.7	8.3	25.0	12
8	44.4	44.4	11.1	9
9	80.0	20.0	0.0	5
10	80.0	20.0	0.0	5
11	78.6	7.1	14.3	14
12	87.5	0.0	12.5	8
13	83.3	16.7	0.0	12
14	71.4	0.0	28.6	7
15	47.8	26.1	26.1	23
16	61.5	23.1	15.4	13
17	100.0	0.0	0.0	7
18	50.0	50.0	0.0	2
19	65.6	12.5	21.9	32
20	75.0	12.5	12.5	16
21	83.3	0.0	16.7	6
22	22.2	33.3	44.4	9
23	25.0	50.0	25.0	12
24	50.0	18.2	31.8	22
25	84.2	5.3	10.5	19
26	52.4	14.3	33.3	21
27	78.9	21.1	0.0	19
28	80.0	0.0	20.0	5
29	50.0	33.3	16.7	6
30	75.0	0.0	25.0	4
31	87.5	0.0	12.5	16
Total	**69.8**	**15.1**	**15.1**	**397**