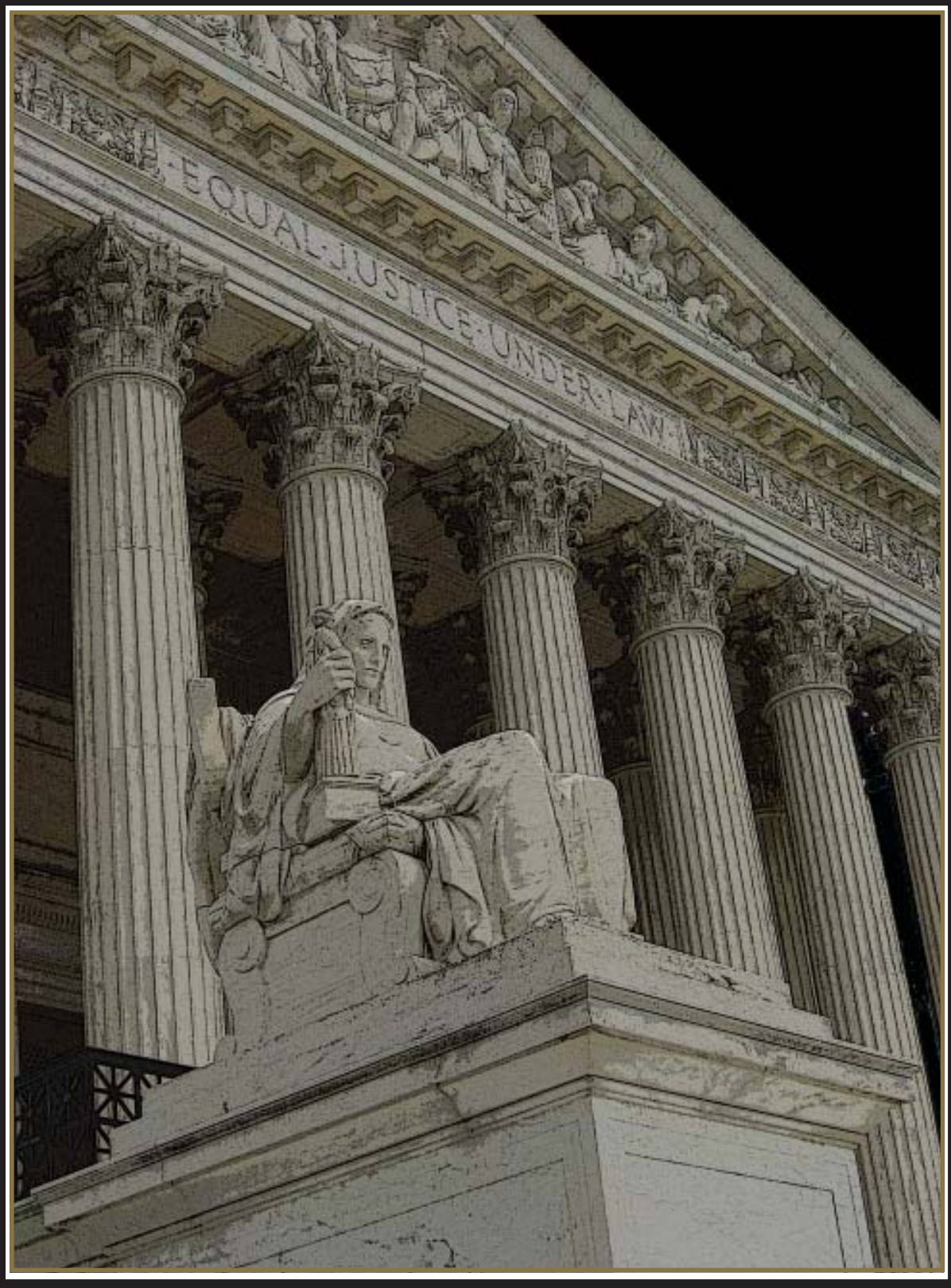
Virginia Criminal Sentencing Commission



Annual Report 2005


EQUAL JUSTICE UNDER LAW

Virginia Criminal Sentencing Commission

2005 Annual Report

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Phone: 804.225.4398

Virginia Criminal Sentencing Commission Members

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Chairman, Fairfax County

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Chairman

Commonwealth of Virginia

Richard P. Kern, Ph.D.
Director

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Supreme Court of Virginia
Virginia Criminal Sentencing Commission

December 2005

To: The Honorable Leroy Rountree Hassell, Sr., Chief Justice of Virginia
The Honorable Mark R. Warner, Governor of Virginia
The Honorable Members of the General Assembly of Virginia
The Citizens of Virginia

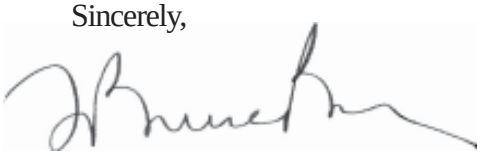
Section 17.1-803 of the *Code of Virginia* requires the Virginia Criminal Sentencing Commission to report annually upon its work and recommendations. Pursuant to this statutory obligation, we respectfully submit for your review the *2005 Annual Report* of the Criminal Sentencing Commission.

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 2005. The Commission's recommendations to the 2005 session of the Virginia General Assembly are also contained in this report.

January 1, 2006, marks the eleventh anniversary of the Commission's implementation of Virginia's no-parole, truth-in-sentencing system. At this milestone, the Commission's report takes a close look at the performance of the new sentencing system in meeting specific objectives set forth by its designers.

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

Sincerely,



F. Bruce Bach
Chairman

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Introduction

Overview

The Virginia Criminal Sentencing Commission is required by § 17.1-803 of the *Code of Virginia* to report annually to the General Assembly, the Governor and the Chief Justice of the Supreme Court of Virginia. To fulfill its statutory obligation, the Commission respectfully submits this report, the eleventh in the series. As in previous years, the report provides detailed analysis of judicial compliance with the discretionary sentencing guidelines. Additionally, the report presents the findings of the Commission with regard to the implementation of and judicial reference to a new sentencing guidelines system for offenders found in violation of the conditions of their probation or post-release supervision who have not been convicted of a new crime. This report also includes an analysis of the continued impact of the truth-in-sentencing system in Virginia, documenting both the successes of Virginia's guidelines and the ongoing work of the Commission. This section of the report addresses the Commission's continued work on the development and implementation of a risk assessment instrument for this specific offender population. During the past calendar year, the Criminal Sentencing Commission has provided significant research support to the Sex Offender Task Force of the Virginia State Crime Commission. The research work compiled by the Criminal Sentencing Commission for the Task Force is presented in a separate chapter contained herein. Finally, the report includes the Commission's approved recommendations for revisions to the felony sentencing guidelines system and, where applicable, suggested revisions to the *Code of Virginia*.

The report is organized into five chapters. The remainder of the Introduction chapter provides a general profile of the Commission and an overview of its various activities and projects during 2005. The Guidelines Compliance chapter provides the results of a comprehensive analysis of compliance with the sentencing guidelines during fiscal year (FY) 2005, as well as other related sentencing trend data with special attention paid to the use of the probation violation sentencing guidelines. A comprehensive review of the continued impact of the truth-in-sentencing guidelines system is presented in the chapter that follows. The subsequent chapter provides some results from a new recidivism study conducted by the Sentencing Commission at the behest of the Sex Offender Task Force of the State Crime Commission. The report's final chapter presents the Commission's recommendations for 2005.

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

Commission Profile

The Virginia Criminal Sentencing Commission is comprised of 17 members as authorized in the *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. The Governor appoints four members, at least one of whom must be a victim of crime or a representative of a crime victim's organization. In the original legislation, five members of the Commission are appointed by the General Assembly: the Speaker of the House of Delegates designating three members, and the Senate Committee on Privileges and Elections selecting two members. The 2005 General Assembly modified this language somewhat. Now, the Speaker of the House of Delegates has two appointments while the Chairman of the House Committee for Courts of Justice or his designee who shall be a member of the committee comprises the third House appointment. Similarly, the Senate Committee on Rules now makes only one appointment while the remaining vacancy is filled by the Chairman of the Senate Committee for Courts of Justice or his designee who shall be a member of the committee. Since the provisions of this legislative action do not affect existing appointments for which the terms have not expired, this revision has not yet taken affect. The final member of the Commission is Virginia's Attorney General or his designee, who serves by virtue of his office.

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.

Commission Meetings

The full membership of the Commission met four times during 2005. These meetings, held in the Supreme Court of Virginia, were held on March 14, June 13, September 12 and November 14. Minutes for each of these meetings are available on the Commission's website (www.vcsc.state.va.us).

Monitoring and Oversight

Section 19.2-298.01 of the *Code of Virginia* requires that sentencing guidelines worksheets be completed in all felony cases for which there are guidelines. This section of the *Code* also requires judges to announce during court proceedings for each case that the guidelines forms have been reviewed. After sentencing, the guidelines worksheets 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 completed and signed worksheets to the Commission.

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

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

Training and Education

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

In 2005, 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 66 training seminars in 31 different locations across the Commonwealth, returning to many of these locations multiple times throughout the year. This year, the Commission staff offered three training seminars: an introduction for new users of guidelines, a "What's New" course designed to update experienced users on recent changes to the guidelines and a seminar on the probation violation risk assessment. The introduction and "What's New" seminars included a significant component on the probation violation sentencing guidelines that were implemented last year and revised for defendants sentenced July 1, 2005 and after. The probation risk assessment seminar was a collaborative effort between the Virginia Criminal Sentencing Commission and the Virginia Department of Corrections.

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

The Commission will continue to place a priority on providing sentencing guidelines training on request 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, the user can contact the Commission and place his or her name on a waiting list. Once there is enough interest, a seminar is developed and presented in a locality convenient to the majority of individuals on the list.

In addition to providing training and education programs, the Commission maintains a website and a "hot line" phone system (804.225.4398). By visiting the website, a user can learn about upcoming training sessions, access Commission reports, look up Virginia Crime Codes (VCCs) and utilize on-line versions of the sentencing guidelines forms. The "hot line" phone 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. As in previous years, the staff of the Commission has responded to thousands of calls through this service during 2005.

Probation Violator Risk Assessment Study

Since 1991, Virginia's circuit judges have been provided with historically-based sentencing guidelines grounded in actual judicial sanctioning practices in the Commonwealth. Today, sentencing guidelines apply to nearly all felony offenses. These discretionary guidelines are an important tool available to judges to assist them in formulating sentences for convicted felons. Judges, however, have not had the benefit of guidelines when sentencing probation violators. With the abolition of parole, circuit judges in the Commonwealth now handle the large majority of supervision violation cases, including violations of supervision following release from incarceration that formerly were handled by Virginia's Parole Board as parole violations. In 2003, the General Assembly directed the Commission to develop, with due regard for public safety, discretionary sentencing guidelines for felony offenders who are determined by the court to be in violation of probation supervision but not convicted of a new crime (Chapter 1042 of the 2003 Acts of Assembly). These offenders are often referred to as "technical violators." The directive specified that the guidelines be based on an examination of historical judicial sanctioning patterns in revocation hearings. The mandate also charged the Commission with analyzing recidivism among probation violators not convicted of a new crime and evaluating the feasibility of integrating a risk assessment instrument into the guidelines for these offenders.

In 2003, the Commission embarked upon an extensive data collection effort in order to learn more about Virginia's probation violators. This effort, which included reviewing offenders' probation files and criminal history reports (rap sheets), provided rich detail about violators, their behavior while under supervision and specific reasons why probation officers brought the offenders back to court for revocation hearings. Based on this exhaustive data collection, the Commission developed sentencing guidelines that reflect historical practices in the punishment of violators returned to court for reasons other than a new criminal conviction. In its *2003 Annual Report*, the Commission recommended to the General Assembly that the probation violation guidelines be implemented statewide. The 2004 General Assembly accepted the Commission's recommendation and statewide use began July 1, 2004.

The second phase of this study, analyzing recidivism and evaluating the feasibility of developing a risk assessment tool for violators not convicted of a new crime, was completed last year. The results of the analysis were provided in considerable detail in the chapter of the 2004 Annual Report dedicated to the Probation Violator Study. The Commission recommended that the newly developed risk assessment tool be incorporated into the existing sentencing guidelines for probation violators. The Commission also recommended that sentencing options, beyond traditional incarceration in a state prison or local jail, should be made available to circuit court judges to be applied to low-risk probation violators. The Commission estimated that, if applied statewide, over 50% of probation violators returned to court for reasons other than a new conviction would be recommended for alternative punishment options with use of the risk assessment instrument. Because only modest funds were provided for the support of new alternative punishment options, the Commission has moved cautiously in implementing this new facet of the guidelines. Consequently, the risk assessment component of the probation violation sentencing guidelines is being phased in beginning with judicial use in the 4th judicial circuit (Norfolk). Expansion beyond that will be dependent upon case volume and resource availability.

Virginia State Crime Commission: Sex Offender Task Force

In the spring of 2005, the Virginia State Crime Commission created a Sex Offender Task Force. The Task Force is comprised of 23 members and is co-chaired by Delegates David Albo and Robert McDonnell. The task force is principally charged with examining Virginia's current laws addressing the civil commitment and public registry of convicted sex offenders. The task force is organized into two sub-committees: a civil commitment sub-committee and a sex offender registry sub-committee.

Because of the Criminal Sentencing Commission's expertise in sex offender research accumulated over the past five years in support of the development, implementation and ongoing evaluation of the sex offender risk assessment instrument component of the sentencing guidelines, the Sex Offender Task Force requested staff support for their effort. Accordingly, the Commission's research staff has expended a significant amount of time over the past six months designing, executing, and presenting the results of a major recidivism study of Virginia sex offenders. The results from this research have been made available to the task force as part of their deliberations. Some findings from this important research are provided in Chapter 4 of this report.

Projecting Prison Bed Space Impact of Proposed Legislation

Section 30-19.1:4 of the *Code of Virginia* requires the Commission to prepare fiscal impact statements for any proposed legislation 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. Additionally, any impact statement required under § 30-19.1:4 must include an analysis of the impact on local and regional jails as well as state and local community corrections programs.

During the 2005 General Assembly session, the Commission prepared 243 separate impact analyses on proposed legislation. These proposals fell into five categories: 1) legislation to increase the felony penalty class of a specific crime; 2) legislation to add a new mandatory minimum penalty for a specific crime; 3) legislation to expand or clarify an existing crime; 4) legislation that would create a new criminal offense; and 5) legislation that increases 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 proposed legislation. When requested, the Commission provided pertinent oral testimony to accompany the impact analysis.

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 Deputy Director served on the Policy Advisory Committee that oversees the development of the prison and jail forecasts.

Sentencing Guidelines Software

The Commission's website (www.vcsc.state.va.us) offers a variety of helpful tools for those who prepare or use Virginia's sentencing guidelines. A visitor to the website can learn about upcoming training sessions, register for a training seminar, access Commission reports, and look up Virginia Crime Codes (VCCs). In addition, the website provides on-line versions of the sentencing guidelines forms. The guidelines forms available on-line allow a user to print blank forms to his or her local printer or to fill in the form's blanks on screen so that the completed form can be printed locally.

The current system, however, is limited. Users must still select which forms to prepare, determine each score to enter, sum the points, enter the total score, look up the guidelines recommendation corresponding to the total score and insert the guidelines range on the cover sheet of the form. No information is saved or stored by the system once the user prints and exits the on-line screen.

The Commission has been working closely with a software development company, Cross Current Corporation, to enhance and expand the functionality of the current system. The Commission is striving to fully automate the preparation of the sentencing guidelines forms and provide this service on-line to users. The development of sentencing guidelines software is proceeding in phases. Phase 2 is nearing completion. Phase 2 will provide users with additional features beyond what is currently available through the Commission's website. For example, it will total the scores automatically and fill in the appropriate guidelines sentence range for the case on the cover sheet of the form. It will also allow users to run multiple charging scenarios, save prepared guidelines forms to a local computer, send completed forms to the Commission electronically, and search the guidelines database for previously completed forms for a particular offender. The software will be available through the website to all prosecutors, probation officers, public defenders and defense attorneys who register with the Commission and receive a log-in identification and password. The Commission is very close to pilot testing this phase of the software and hope to make it available statewide during the coming year.

Guidelines Compliance

Introduction

On January 1, 2006, Virginia's truth-in-sentencing system will reach its eleven-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% earned sentence credit 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 more than 220,000 felony cases sentenced under truth-in-sentencing laws, judges have agreed with guidelines recommendations in more than three out of every four cases.

The Commission's last annual report presented an analysis of cases sentenced during fiscal year (FY) 2004. This report will focus on cases sentenced from the most recent year of available data, FY2005 (July 1, 2004, through June 30, 2005). Compliance is examined in a variety of ways in this report, and variations in data over the years are highlighted throughout.

U.S. Supreme Court, Washington, DC

In the more than 220,000 felony cases sentenced under truth-in-sentencing laws, judges have agreed with guidelines recommendations in more than three out of every four cases

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. When risk assessment for nonviolent offenders is applicable, a judge may sentence an offender who is recommended for an alternative punishment program or to a term of incarceration within the traditional guidelines range and be considered in strict compliance. A judicial sentence would also be considered in general agreement with the guidelines recommendation if the sentence 1) meets modest criteria for rounding, 2) involves time served incarceration in certain instances, 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 five percent 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 special exception arises in habitual traffic 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 conditioned upon their sentencing the offenders to a Detention Center or Diversion Center Incarceration Program. For cases sentenced since the effective date of the legislation, the Commission considers either mode of sanctioning of these offenders to be 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%, increased steadily between FY1999 and FY2001, and then decreased slightly in FY2002. Over the past three fiscal years the compliance rate has been increasing once again. For FY2005, the compliance rate was its highest ever, at 81.2% (Figure 1).

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 9.4% for FY2005. The "mitigation" rate, or the rate at which judges sentence offenders to sanctions considered less severe than the guidelines recommendation, was also 9.4% for the fiscal year. Thus, of the FY2005 departures, 50% were cases of aggravation while 50% were cases of mitigation.

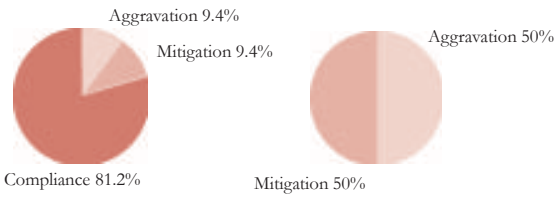
Dispositional Compliance

Since the inception of truth-in-sentencing in 1995, the correspondence between dispositions recommended by the guidelines and the actual dispositions imposed in Virginia's circuit courts has been quite high. Figure 2 illustrates judicial concurrence in FY2005 with the type of disposition recommended by the guidelines. For instance, of all felony offenders recommended for more than six months of incarceration during FY2005, judges sentenced 86% to terms in excess of six months (Figure 2). Some offenders recommended for incarceration of more than six months received a shorter term of incarceration (one day to six months), but very few of these offenders received probation with no active incarceration.

Judges have also typically agreed with guidelines recommendations for shorter terms of incarceration. In FY2005, 79% of offenders received a sentence resulting in confinement of six months or less when such a penalty was recommended. In some cases, judges felt probation to be a more appropriate sanction than the recommended jail term, and in other cases

FIGURE 1

Overall Guidelines Compliance and Direction of Departures, FY 2005



offenders recommended for short-term incarceration received a sentence of more than six months. Finally, 75% 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.

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. Although the state's Boot Camp program was discontinued in 2002, the Detention and Diversion Center 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 Detention and Diversion Center programs are counted as six months of confinement. In the previous discussion of recommended and actual dispositions, imposition of one of these programs is categorized as incarceration of six months or less.

FIGURE 2

Recommended Dispositions and Actual Dispositions, FY2005

	Actual Disposition		
Recommended Disposition	Probation	Incarceration 1 day - 6 mos.	Incarceration > 6 mos.
Probation	74.9%	21.3%	3.8%
Incarceration 1 day - 6 months	9.4%	78.8%	11.8%
Incarceration > 6 months	5.5%	9.0%	85.5%

Durational Compliance

In addition to examining the degree to which judges concur with the type of disposition recommended by the guidelines, the Commission also studies durational compliance, 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.

Durational compliance among FY2005 cases was approximately 81%, indicating that judges, more often than not, agree with the length of incarceration recommended by the guidelines in jail and prison cases (Figure 3). For FY2005 cases not in durational compliance, aggravations were slightly more prevalent (51%) than mitigations (49%).

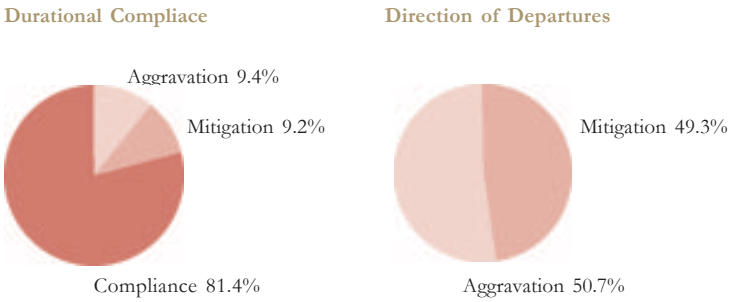
For cases recommended for incarceration of more than six months, the sentence length recommendation derived from the guidelines (known as the midpoint) is accompanied by a high-end and low-end recommendation. The sentence ranges recommended by the guidelines are relatively broad, allowing judges to utilize their discretion in sentencing offenders to different incarceration terms while still remaining in compliance with the guidelines. Analysis of FY2005 cases receiving incarceration in excess of

six months that were in durational compliance reveals that 15% of cases were sentenced to prison terms equivalent to the midpoint recommendation (Figure 4). For cases in which the judge sentenced the offender to a term of incarceration within the guidelines recommended range, two-thirds (66%) were given a sentence below the recommended midpoint. 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, overall, 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 ten months (Figure 5). For offenders receiving longer than recommended incarceration sentences, the effective sentence exceeded the guidelines range by a median value of nine months. Thus, durational departures from the guidelines are typically less than one year above or below the recommended range, indicating that disagreement with the guidelines recommendation is, in most cases, not extreme.

FIGURE 3

Durational Compliance and Direction of Departures, FY 2005*



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

FIGURE 4

Distribution of Sentences within Guidelines Range, FY2005

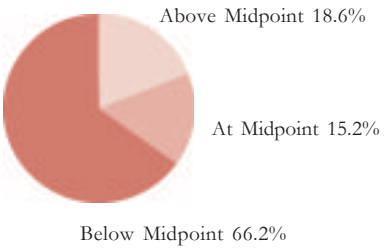


FIGURE 5

Median Length of Durational Departures, FY2005

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 analysis. Virginia's judges are not limited by any standardized or prescribed reasons for departure and may cite multiple reasons for departure in each guidelines case.

In FY2005, 9.4% of guideline cases sentenced received sanctions that fell below the guidelines recommendation. An analysis of the 22,028 sentencing guidelines cases reveals that 2% of the time, judges sentence below the guidelines recommendation and a departure reason is not provided. Another 2% cite the involvement of a plea agreement as the reason for a mitigating departure (Figure 6).

FIGURE 6

Most Frequently Cited Reasons for Mitigations*, FY2005

FIGURE 7

Most Frequently Cited Reasons for Aggravations*, FY2005

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

With regard to other mitigated sentences, an offender's potential for rehabilitation was indicated, in conjunction with the use of an alternative sanction, in 1% of the guideline cases. The use of an alternative sanction, such as Detention or Diversion Center, was cited as a mitigating reason in 1% of guideline cases. Judges also referred to the offender's cooperation with authorities, such as aiding in the apprehension or prosecution of others, as well as minimal circumstances surrounding the case. Although other reasons for mitigation were reported to the Commission in FY2005, only the most frequently cited reasons are discussed here.

Judges sentenced 9.4% of the FY2005 cases to terms more severe than the sentencing guidelines recommendation, resulting in "aggravation" sentences. In examining the 22,028 sentencing guideline cases, the Commission found that 2% of the time an upward departure rationale is not provided. (Figure 7) In 2% of guideline cases, a plea agreement which called for a tougher sanction than that recommended by guidelines was listed as the reason for an upward departure. Other commonly cited reasons relate to the flagrancy of the offense (1%) or the imposition of an alternative sanction such as Detention or Diversion Center, rather than the probation period recommended by the guidelines (1%). Judges also noted that the offender had a previous conviction for the same type of offense (1%) and that the guidelines recommendation was too low given the circumstances of the case (1%). These felony cases often involve complex sets of events or extreme circumstances for which judges feel a harsher than recommended sentence should be imposed. 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.

Compliance by Circuit

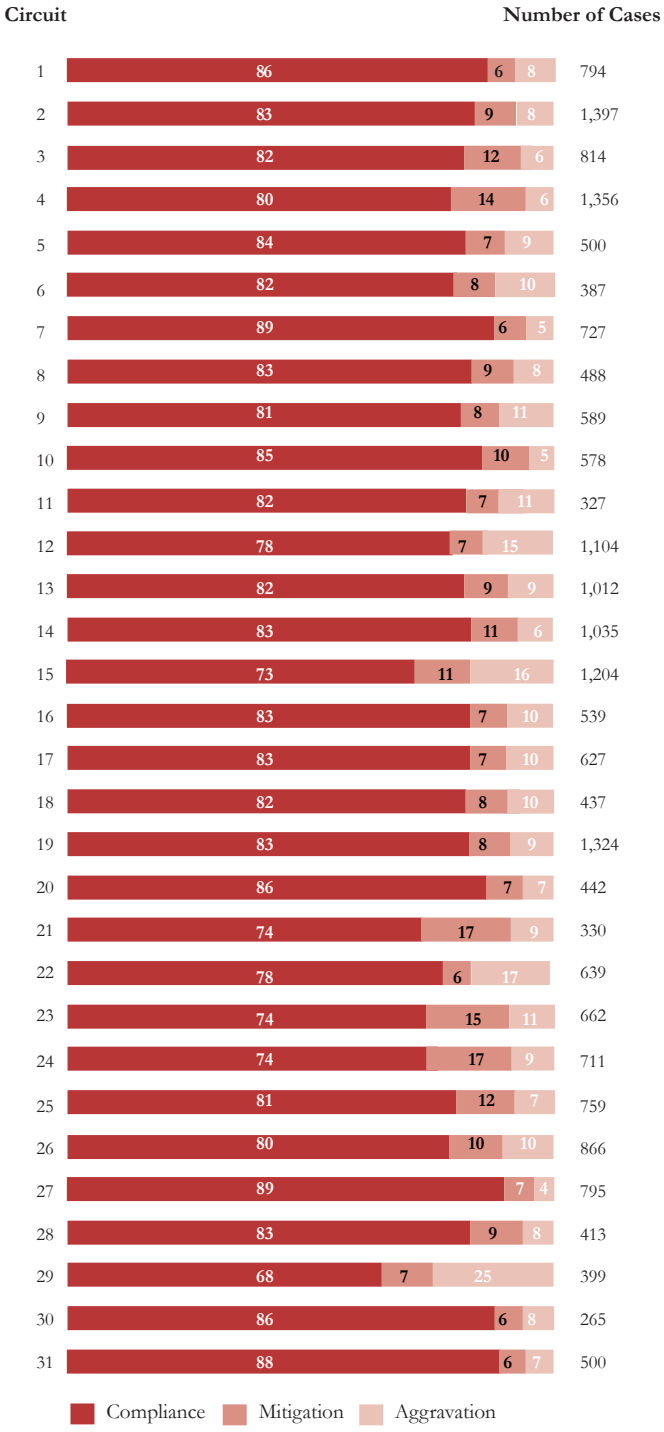
Since the onset of truth-in-sentencing, compliance rates and departure patterns have varied across Virginia's 31 judicial circuits. FY2005 continues to show differences among judicial circuits in the degree to which judges within each circuit agree with guidelines recommendations (Figure 8). The map and accompanying table on the following pages identify the location of each judicial circuit in the Commonwealth.

In FY2005, more than three-quarters (77%) of the state's 31 circuits exhibited compliance rates at or above 80%, while 19% reported compliance rates between 70% and 79%. Only one circuit had a compliance rate below 70%. There are likely many reasons for the variations in compliance across circuits. Certain jurisdictions may see atypical cases not reflected in statewide averages. In addition, the availability of alternative or community-based programs currently differs from locality to locality. The degree to which judges agree with guidelines recommendations does not seem to be primarily related to geography. The circuits with the lowest compliance rates are scattered across the state, and both high and low compliance circuits can be found in close geographic proximity.

In FY2005, the highest rates of judicial agreement with the sentencing guidelines, at 88% or higher, were found in the Radford area (Circuit 27), Newport News (Circuit 7), and Prince William County (Circuit 31). The lowest compliance rates among judicial circuits in FY2005 were reported in Circuit 29 (Buchanan, Dickenson, Russell and Tazewell counties), Circuit 15 (Fredericksburg,

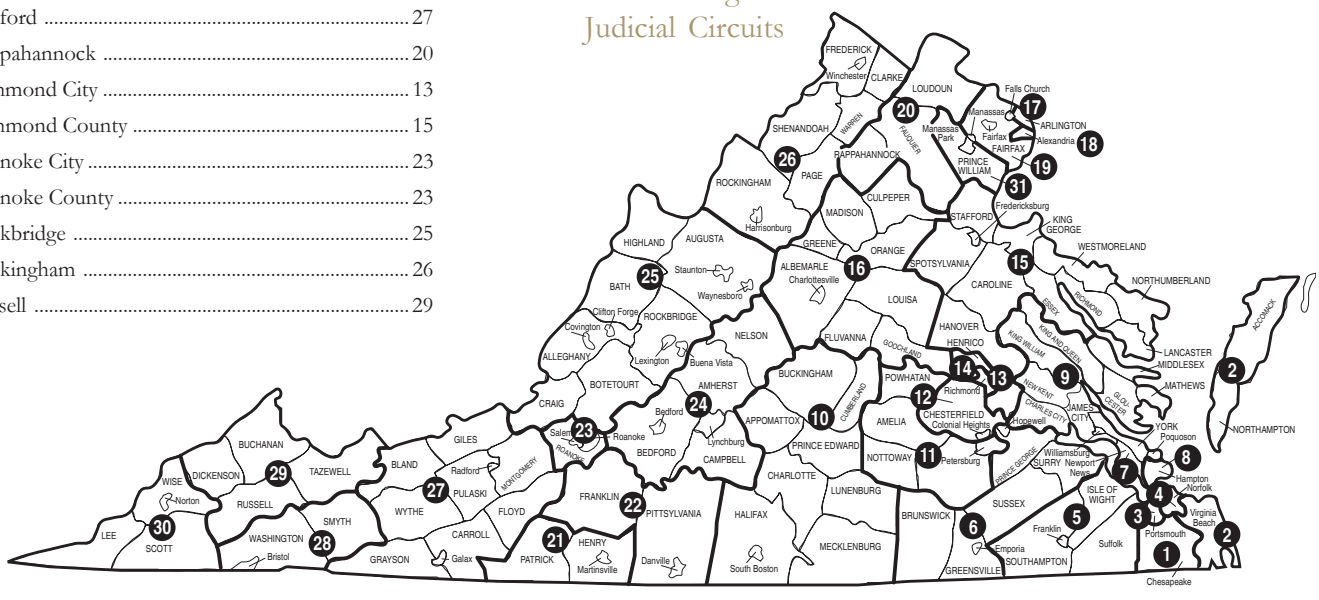
FIGURE 8

Compliance by Circuit - FY 2005



Virginia Localities and Judicial Circuits

Virginia Judicial Circuits



Stafford, Hanover, King George, Caroline, Essex, etc.), and Circuit 23 (Roanoke).

In FY2005, some of the highest mitigation rates were found in the Martinsville area (Circuit 21) and the Lynchburg area (Circuit 24). Each of these circuits had a mitigation rate around 17% 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 generally would appear as mitigations from the guidelines. Inspecting aggravation rates reveals that Circuit 29 (Buchanan County area) had the highest aggravation rate at 25%, followed by Circuit 22 (Danville) at 17%, and Circuit 15 (Fredericksburg, Stafford, Hanover, King George, Caroline, Essex, etc.) at 16%. Thus, lower compliance rates in these circuits are due primarily to high aggravation rates.

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

In FY2005, 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 9). For FY2005, compliance rates ranged from a high of 87% in the fraud offense group to a low of 60% in murder 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 at or below 75% whereas many of the property and drug offense categories had compliance rates above 83%.

Judicial concurrence with guidelines recommendations increased for nine of the fourteen offense groups during the fiscal year. The largest increase in compliance is evident for the Burglary of Other Structure offense group (+6%), driven primarily by a decrease in the aggravation rate. However, aggravation rates for cases involving Burglary of Other Structure have fluctuated from 6% to 12% during the last eleven years. Therefore, an aggravation rate of 8.7% in

FIGURE 9

Guidelines Compliance by Offense - FY 2005

	Compliance	Mitigation	Aggravation	Number of Cases
Fraud	86.8%	7.9%	5.4%	2,874
Traffic	85.1	5.0	9.8	1,944
Drug/Other	84.5	4.7	10.8	864
Larceny	83.7	7.8	8.5	4,942
Drug/Schedule I/II	83.1	7.9	9.0	6,593
Burg./Other Structure	78.2	13.1	8.7	551
Miscellaneous	76.0	7.9	16.1	571
Assault	74.7	14.2	11.2	1,263
Rape	69.5	23.0	7.5	200
Burglary/Dwelling	67.4	20.6	12.0	757
Sexual Assault	67.3	16.8	16.0	400
Kidnapping	66.1	11.9	22.0	109
Robbery	64.3	22.5	13.2	726
Murder/Homicide	59.8	19.2	20.9	234

FY2005 does not necessarily indicate a trend in departures. Rates of departure involving Burglary of Other Structures will continue to be monitored in the coming years.

Five of the fourteen offense groups had lower compliance rates over the previous fiscal year. The largest decrease in compliance (-10%) occurred on the Murder/Homicide worksheet, driven primarily by a decrease in compliance in second degree murder cases. The higher mitigation rate for second degree murder offenses in FY2005, at least in part, can be attributed to an increase in the number of plea agreements involved in these cases, an increase of 11% over FY2004. Compliance on the Other Sexual Assault worksheet decreased by 9% over FY2004, with increases in both mitigation and aggravation rates. In FY2004, the compliance rate for Other Sexual Assault offenses was unusually high at 74.6%. Essentially, the FY2005 compliance rate of 67.3% is more typical of rates seen in most fiscal years on the Other Sexual Assault worksheet.

Since 1995, departure patterns have differed across offense groups, and FY2005 was no exception. Among the property crimes, mitigation rates have decreased over previous years. This pattern can be attributed to some extent to the increased number of nonviolent offenders being recommended for alternative sanctions other than prison on the Nonviolent Risk Assessment instrument *(see Compliance and Nonviolent Risk Assessment for more information)*. With respect to violent crime groups, both rape and robbery departures showed tendencies toward sentences that fell below the guidelines recommendation, with nearly one-quarter of cases resulting in mitigation sentences. This mitigation pattern has been consistent with both rape and robbery offenses since the abolition of parole in 1995. The most frequently cited mitigation reasons provided by judges in rape cases include the refusal of victims and witnesses to testify, the victim's request that the offender receive a more lenient sentence, and a jury sentence recommendation. The most frequently cited mitigation reasons provided by judges in robbery cases include the defendant's cooperation with law enforcement, the involvement of a plea agreement, the use of alternative sanctions other than jail or prison, and the age of the offender.

In FY2005, offenses with the highest aggravation rates included Kidnapping (22%), Murder/Homicide (21%), and Miscellaneous (16%). With respect to kidnapping, the high aggravation rate is a function of the small number of kidnapping cases rather than a true departure pattern. In Murder/Homicide cases, the influence of jury trials and the extreme case circumstances have historically contributed to higher aggravation rates. On the Miscellaneous worksheet, high aggravation rates can be seen in child abuse and neglect cases that involve serious physical injury (32%), and in cases involving nonviolent offenders who possess/transport firearms (18%).

Compliance under Midpoint Enhancements

Section 17.1-805, formerly §17-237, of the *Code of Virginia* describes the framework for what are known as "midpoint enhancements," significant increases in guidelines scores for cases involving 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. Offenders who are convicted of a violent crime or who have been previously convicted of a violent crime are recommended for incarceration terms up to six times longer than the terms served by offenders fitting similar profiles under the parole system. Midpoint enhancements are triggered for homicide, rape, or robbery offenses, most assaults and sexual assaults, and certain burglaries, when any one of these offenses is the current most serious offense, also called the "instant offense." Offenders with a prior record containing at least one conviction for a violent crime are subject to degrees of midpoint enhancements based on the nature and seriousness of the offender's criminal history. The most serious prior record receives the most extreme enhancement. A prior record labeled "Category II" contains at least one 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 FY2005 cases, 80% of the cases did not involve midpoint enhancements of any kind (Figure 10). 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 percent over the last eleven years.

Of the FY2005 cases in which midpoint enhancements applied, the most common midpoint enhancement was for a Category II prior record. Approximately 46% of the midpoint enhancements were of this type, applicable to offenders with a nonviolent instant offense but a violent prior record defined as Category II (Figure 11). In FY2005, another 14% 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

FIGURE 10

Application of Midpoint Enhancements, FY 2005

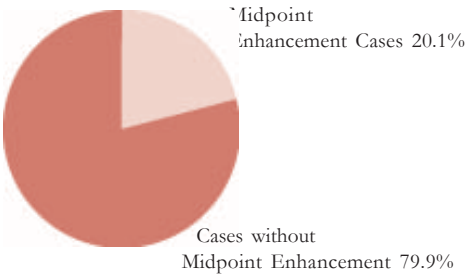
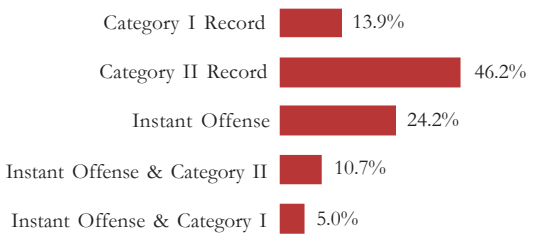


FIGURE 11

Type of Midpoint Enhancements Received, FY 2005



prior record of violence represented 24% of the midpoint enhancements in FY2005. The most substantial midpoint enhancements target offenders with a combination of instant and prior violent offenses. About 11% 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 sentencing guidelines more often in midpoint enhancement cases than in cases without enhancements. In FY2005, compliance was 70% when enhancements applied, significantly lower than compliance in all other cases (84%). Thus, compliance in midpoint enhancement cases is suppressing the overall compliance rate. When departing from enhanced guidelines recommendations, judges are choosing to mitigate in nearly three out of every four departures.

Among FY2005 midpoint enhancement cases resulting in incarceration, judges departed from the low end of the guidelines range by an average of two years (Figure 12). The median mitigation departure (the middle value, where half are lower and half are higher) was 14 months.

Compliance, while generally lower in midpoint enhancement cases than in other cases, varies across the different types and combinations of midpoint enhancements (Figure 13). In FY2005, as in previous years, enhancements for a Category II prior record generated the highest rate of compliance of all midpoint enhancements (75%). Compliance in cases receiving enhancements for a Category I prior record was significantly lower (67%). Compliance for enhancement cases involving a current violent offense was 67%. Those cases involving a combination of a current violent offense and a Category II prior record yielded a compliance rate of 65%, while those with the most significant midpoint enhancements, for both a violent instant offense and a Category I prior record, yielded a lower compliance rate of 60%.

Analysis of departure reasons in cases involving midpoint enhancements focuses on downward departures from the guidelines. Examination of midpoint enhancement cases shows that 1% are mitigations, but do not have a departure reason provided on the guidelines form submitted to the Commission. For those that do have a departure reason cited, the most frequent reasons cited for mitigation were based on the involvement of a plea agreement (1%), or the defendant's cooperation with law enforcement (1%).

FIGURE 12

Length of Mitigation Departures in Midpoint Enhancement Cases, FY2005

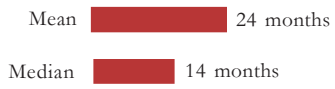


FIGURE 13

Compliance by Type of Midpoint Enhancement*, FY2005

	Compliance	Mitigation	Aggravation	Number of Cases
None	84.0%	6.0%	10.0%	17,593
Category II Record	75.1	19.4	5.5	2,051
Category I Record	66.8	29.9	3.3	615
Instant Offense	67.4	22.2	10.4	1,073
Instant Offense & Category II	65.3	25.5	9.3	475
Instant Offense & Category I	59.7	30.8	9.5	221

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

Juries and the Sentencing Guidelines

There are three 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, 88% of guidelines cases were sentenced following guilty pleas (Figure 14). Adjudication by a judge in a bench trial accounted for 11% of all felony guidelines cases sentenced. During FY2005, less than 2% of felony guidelines cases involved jury trials. During previous fiscal years of truth-in-sentencing, the overall rate of jury trials has been approximately half of the jury trial rate that existed under the last year of the parole system.

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 typically have handed down sentences more severe than the recommendations of the sentencing guidelines. In FY2005, as in previous years, a jury sentence was far more likely to exceed the guidelines recommendation than sentences handed down in trials involving guilty pleas or bench trials. By law, juries are not allowed to receive any information regarding the sentencing guidelines.

Since FY1986, there has been a generally declining trend in the percentage of jury trials among felony convictions in circuit courts (Figure 15). Under the parole system in the late 1980s, the percent of jury convictions of all felony convictions was as high as 6.5% before starting to decline in FY1989. In 1994, the General Assembly enacted provisions for a system of bifurcated jury trials. In bifurcated trials, the jury establishes the guilt or innocence of the defendant in the first phase of the trial, and then, in a second phase, the jury makes its sentencing decision. When the bifurcated trials became effective on July 1, 1994 (FY1995), jurors in Virginia, for the first time, were presented with information on the offender's prior criminal record to assist them in making a sentencing decision. During the first year of the bifurcated trial process, jury convictions dropped slightly to fewer than 4% of all felony convictions, the lowest rate since the data series began.

Among the early cases subjected to the new truth-in-sentencing provisions, implemented during the

FIGURE 14

Percentage of Cases Received by Method of Adjudication, FY 2005

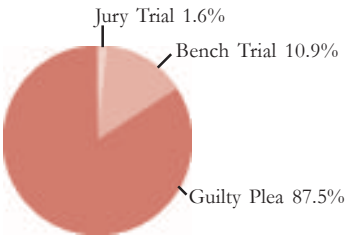
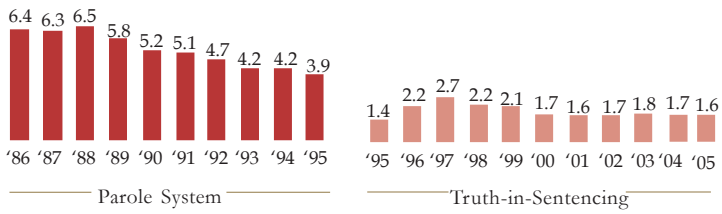


FIGURE 15

Percent of Felony Convictions Adjudicated by Juries FY1986-- FY2005
Parole System v. Truth-in-Sentencing (No Parole) System

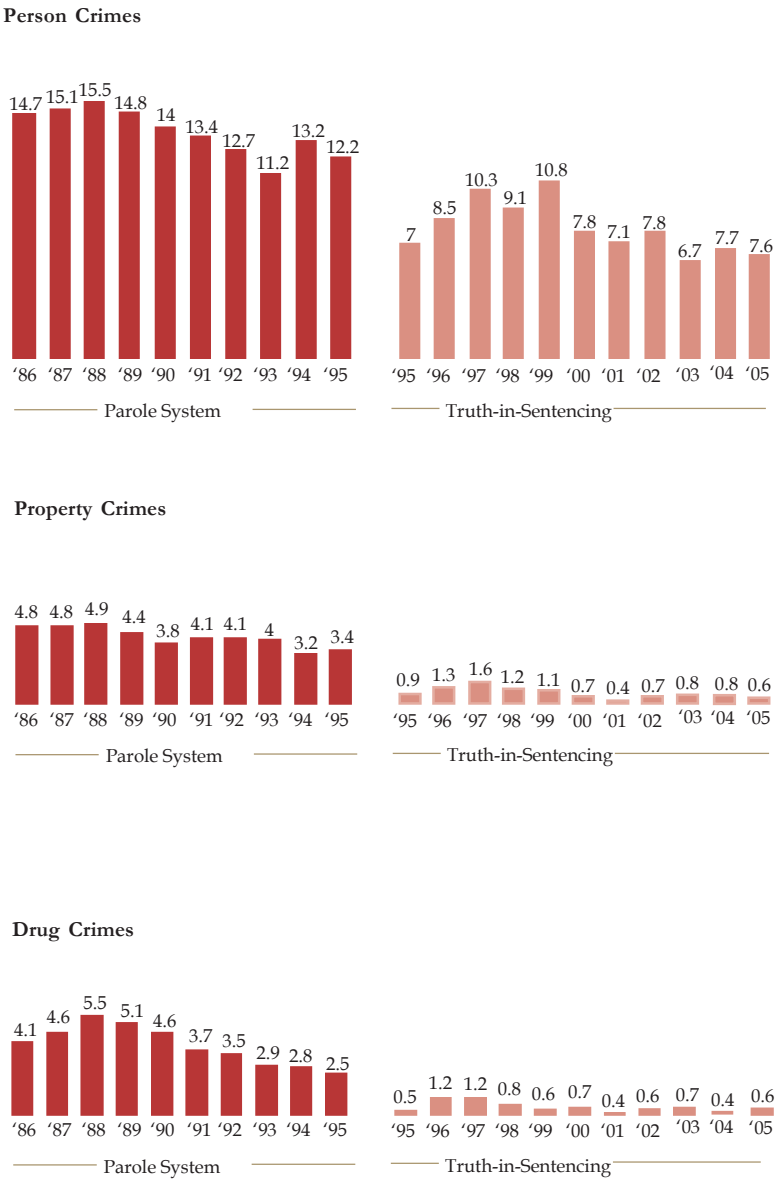


last six months of FY1995, jury adjudications sank to just over 1%. During the first complete fiscal year of truth-in-sentencing (FY1996), just over 2% of the cases were resolved by jury trials, half the rate of the last year before the abolition of parole. Seemingly, the introduction of truth-in-sentencing, 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 has declined to under 2%.

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 convictions by juries 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 16). However, with the implementation of truth-in-sentencing, the percent of convictions handed down 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 felony convictions. The percent of felony convictions resulting from jury trials for property and drug crimes declined to less than 1% under truth-in-sentencing.

FIGURE 16

Percent of Felony Convictions Adjudicated by Juries FY1986-- FY2005
Parole System v. Truth-in-Sentencing (No Parole) System



In FY2005, the Commission received 321 cases tried by juries. While the compliance rate for cases adjudicated by a judge or resolved by a guilty plea was at 82% during the fiscal year, sentences handed down by juries concurred with the guidelines only 49% of the time (Figure 17). In fact, jury sentences fell above the guidelines recommendation in 38% of the cases. This pattern of jury sentencing vis-à-vis the guidelines has been consistent since the truth-in-sentencing guidelines became effective in 1995.

Judges, although permitted by law to lower a jury sentence, typically do not amend sanctions imposed by juries. Judges modified jury sentences in 24% of the FY2005 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 35% of the time. In another 40% of the cases, judges modified the jury sentence but not enough to bring the final sentence into compliance.

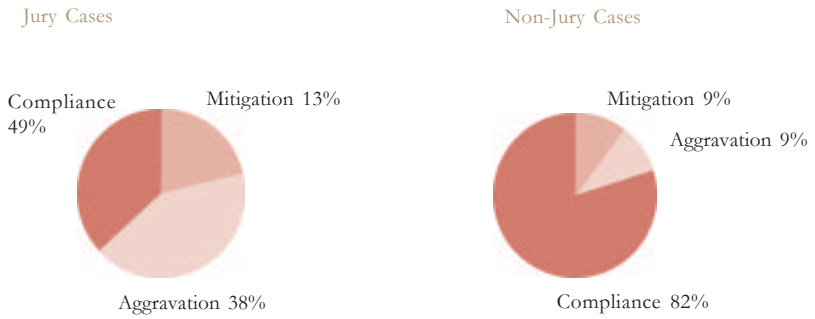
In those jury cases in which the final sentence fell short of the guidelines, it did so by a median value of just over two years (Figure 18). In cases where the ultimate sentence resulted in a sanction more severe than the guidelines recommendation, the sentence exceeded the guidelines maximum recommendation by a median value of nearly four years.

FIGURE 18

Median Length of Durational Departures in Jury Cases, FY2005

FIGURE 17

Sentencing Guidelines Compliance in Jury Cases and Non-Jury, FY2005



Compliance and Nonviolent Risk Assessment

In 1994, as part of the reform legislation that instituted truth-in-sentencing, the General Assembly directed the Commission to study the feasibility of using an empirically-based risk assessment instrument to select 25% of the lowest risk, incarceration-bound, drug and property offenders for placement in alternative (non-prison) sanctions. By 1996, the Commission developed such an instrument and implementation of the instrument began in pilot sites in 1997. The National Center for State Courts (NCSC) conducted an evaluation of nonviolent risk assessment in the pilot sites for the period from 1998 to 2001. In 2001, the Commission conducted a validation study of the original risk assessment instrument to test and refine the instrument for possible use statewide. In July 2002, the nonviolent risk assessment instrument was implemented statewide for all felony larceny, fraud, and drug cases. This chapter will review the most recent year of available statewide nonviolent risk assessment data, specifically for FY2005.

Between July 1, 2004 and June 30, 2005, more than two-thirds of all guidelines received by the Commission were for nonviolent offenses. However, only 42% (6,418) of these nonviolent cases were actually eligible to be assessed for an alternative sanction recommendation. The goal of the nonviolent risk assessment instrument is to divert low-risk offenders, who are recommended for incarceration on the guidelines, to an alternative sanction other than prison. Therefore, nonviolent offenders who are recommended for probation/ no incarceration on the guidelines are not eligible for the assessment. Furthermore, the instrument is not to be applied to offenders convicted of distributing one ounce or more of cocaine and those who have a current or prior violent felony conviction. In addition, there were 1,898 nonviolent offense cases for which a risk assessment instrument was not completed, including those cases that may have been eligible for assessment.

Of the 6,418 eligible nonviolent offense cases in FY2005, 48% were recommended for an alternative sanction by the risk assessment instrument (Figure 19). Beginning July 1, 2004, the threshold for nonviolent offenders to be recommended for an alternative sanction on the risk assessment increased from 35 points to 38 points. Therefore, nonviolent offenders recommended for incarceration on the guidelines that receive 38 points or less on the risk assessment instrument are now recommended for an alternative sanction. This change in FY2005 resulted in 587 more nonviolent offenders being recommended for an alternative sanction other than prison.

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, 21% were recommended for and sentenced to an alternative punishment (Figure 20). Another 27% were sentenced to a traditional term of incarceration despite being recommended for an alternative sanction by the risk assessment instrument. In 13% of the screened cases, the offender was not recommended for, but was sentenced to, an alternative punishment.

FIGURE 19

Percentage of Eligible Non-Violent Risk Assessment Cases Recommended for Alternatives, FY2005

Recommended for Alternatives 48%

Not Recommended forAlternatives 52%

FIGURE 20

Recommended and Actual Dispositions to Alternative Sanctions, FY2005

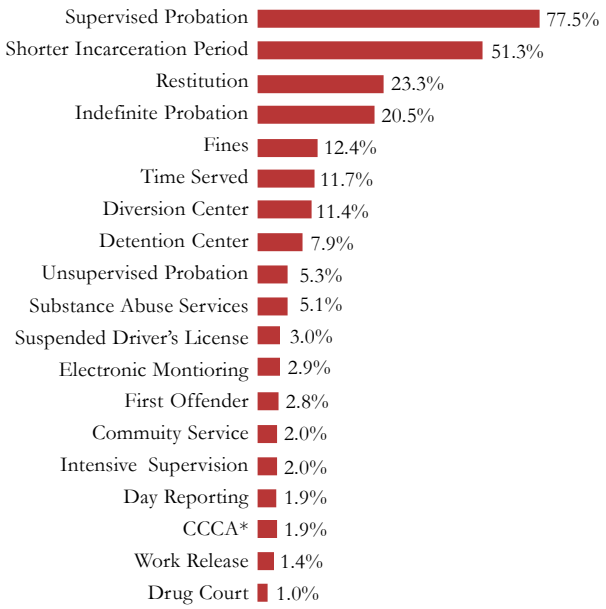
	Actual Disposition	
Recommended Disposition	Offender Received Alternative	Offender Did Not Received Alternative
Offender Recommended for Alternative	20.6%	27.0%
Offender Not Recommended for Alternative	13.0%	39.4%

Nearly 40% of the offenders screened in FY2005 were not recommended for an alternative, and judges concurred in these cases by utilizing traditional incarceration. It is notable that of the 587 offenders that scored between 36 and 38 points, those that prior to July 1, 2004 were not recommended for an alternative, 38% did receive an alternative sanction to a prison sentence.

In cases in which offenders were recommended for and received an alternative sanction, judges most often sentenced the offender to a period of supervised probation (78%) (Figure 21). In addition, in just over half of the cases in which an alternative was recommended, judges sentenced the offender to incarceration, but to a term shorter than that recommended by the traditional guidelines range. Other frequent sanctions reported include restitution (23%), indefinite probation (21%), fines (12%), and time served incarceration (12%). The Department of Corrections' Diversion Center program was cited in 11% of the cases; the Detention Center program was cited as an alternative sanction approximately 8% of the time. Less frequently cited alternatives include unsupervised probation, substance abuse services, suspended driver's license, home electronic monitoring (HEM), first offender status under §18.2-251, and community service, etc.

FIGURE 21

Most Frequent Types of Alternative Sanctions Imposed, FY2005



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

Of the risk assessment worksheets received, drug cases represent nearly half of all offenses, with the large majority (43%) consisting of Schedule I/II drug offenses. Of the 3,113 eligible drug cases in FY2005, 24% were recommended for and received an alternative sanction to prison (Figure 22). Another 10% were not recommended for an alternative by the risk assessment instrument; however, the judge deemed that an alternative would be appropriate and sentenced the individual as such.

Just under one-third (32%) of all risk assessment cases sentenced during the time period were larceny offenses. Of the 1,978 eligible larceny cases, 8% were recommended for and received an alternative sanction to prison (Figure 23). Another 14% were not recommended for an alternative sanction, but the judge sentenced the individual to an alternative to prison. Well over half of the larceny offenders (58%) were not recommended for, and did not receive, an alternative sanction on the risk assessment instrument. In these cases, the judge agreed that a traditional incarceration sentence was the appropriate punishment. The nonviolent offender risk assessment instrument recommends fewer larceny offenders for alternative sanctions because both the National Center for State Courts evaluation and the Commission's validation study found that larceny offenders are most likely to recidivate among nonviolent offenders.

Fraud offenses accounted for about 19% of the nonviolent risk assessment cases in FY2005. Of the 1,327 eligible fraud cases, 32% were recommended for and received an alternative sanction to prison (Figure 24). Another 18% were not recommended for an alternative on the risk assessment instrument, but the judge felt that an alternative was the most appropriate sanction. In total, 57% of eligible fraud offenders screened by the risk assessment instrument received an alternative sanction. This would seem to indicate that judges feel fraud offenders are the most amenable, among nonviolent offenders, for alternative sanctions.

FIGURE 22

Recommended and Actual Dispositions to Alternative Sanctions in Drug Cases, FY2005

Drug Cases (N=3,113)

	Received Alternative	Did Not Receive Alternative
Recommended for Alternative	23.6%	32.2%
Not Recommended for Alternative	10.2%	34.0%

FIGURE 23

Recommended and Actual Dispositions to Alternative Sanctions in Larceny Cases, FY2005

Larceny Cases (N=1,978)

	Received Alternative	Did Not Receive Alternative
Recommended for Alternative	8.0%	20.1%
Not Recommended for Alternative	13.8%	58.1%

FIGURE 24

Recommended and Actual Dispositions to Alternative Sanctions in Fraud Cases, FY2005

Fraud Cases (N=1,327)

	Received Alternative	Did Not Receive Alternative
Recommended for Alternative	32.1%	24.8%
Not Recommended for Alternative	18.4%	24.7%

Compliance and Sex Offender Risk Assessment

In 1999, the Virginia General Assembly requested the Virginia Criminal Sentencing Commission to develop a sex offender risk assessment instrument, based on the risk of re-offense, which could be integrated into the state's sentencing guidelines system. Such a risk assessment instrument could be used as a tool to identify those offenders who, as a group, represent the greatest risk for committing a new offense once released back into the community. The Commission conducted an extensive study of felony sex offenders convicted in Virginia's circuit courts and developed an empirical risk assessment tool based on the risk that an offender would be re-arrested for a new sex offense or other crime against the person. Effectively, risk assessment means developing profiles or composites based on overall group outcomes. Groups are defined by having a number of factors in common that are statistically relevant to predicting repeat offending. Those groups exhibiting a high degree of re-offending are labeled high risk. Although no risk assessment model can ever predict a given outcome with perfect accuracy, the risk instrument, overall, produces higher scores for the groups of offenders who exhibited higher recidivism rates during the course of the Commission's study. In this way, the instrument developed by the Commission is indicative of offender risk.

The risk assessment instrument was incorporated into the sentencing guidelines for sex offenders beginning July 1, 2001. For each sex offender identified as a comparatively high risk (those scoring 28 points or more on the risk tool), the sentencing guidelines have been revised such that a prison term will always be recommended. In addition, the guidelines

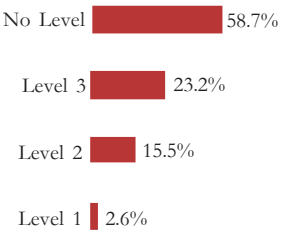
recommendation range (which comes in the form of a low end, a midpoint and a high end) is adjusted. For offenders scoring 28 points or more, the high end of the guidelines range is increased based on the offender's risk score, as summarized below.

- For offenders scoring 44 or more, the upper end of the guidelines range is increased by 300%.
- For offenders scoring 34 through 43 points, the upper end of the guidelines range is increased by 100%.
- For offenders scoring 28 through 33 points, the upper end of the guidelines range is increased by 50%.

The low end and the midpoint remain unchanged. Increasing the upper end of the recommended range provides judges the flexibility to sentence higher risk sex offenders to terms above the traditional guidelines range and still be in compliance with the guidelines. This approach allows the judge to incorporate sex offender risk assessment into the sentencing decision while providing the judge with flexibility to evaluate the circumstances of each case. Findings from the most recent year of available sex offender risk assessment data (FY2005) are presented below.

FIGURE 25

Sex Offender Risk Levels for Other Sexual Assault Offenses - FY2005



During FY2005, there were 400 offenders convicted of an offense covered by the Other Sexual Assault guidelines. The majority (58%) were not assigned a level of risk by the sex offender risk assessment instrument (Figure 25). Approximately 23% of Other Sexual Assault guidelines cases resulted in a Level 3 risk classification, with an additional 16% assigned to Level 2. Only 3% of offenders reached the highest risk category of Level 1.

Under sex offender risk assessment, the upper end of the guidelines range is extended by 300%, 100% or 50% for offenders assigned to Level 1, 2 or 3, respectively. Judges have begun to utilize these extended ranges when sentencing sex offenders. For sexual assault offenders reaching Level 1 risk, 56% were given sentences within the extended guidelines range (Figure 26). Judges used the extended guidelines range in 11% of the Level 2 risk cases. Judges rarely sentenced Level 1, 2 or 3 offenders to terms above the extended guidelines range provided in these cases. However, offenders who scored less than 28 points on the risk assessment instrument (who are not assigned a risk category and receive no guidelines adjustment) were less likely to be sentenced in compliance with the guidelines (62%) and the most likely to receive a sentence that was an upward departure from the guidelines (24%).

FIGURE 26

Other Sexual Assault Compliance Rates by Risk Level Offenses - FY2005

		Compliance			
	Mitigation	Traditional Range	Adjusted Range	Aggravation	Number of Cases
Level 1	0%	44%	56%	0%	9
Level 2	21%	66%	11%	2%	53
Level 3	22%	62%	14%	2%	79
No Level	14%	62%	—	24%	200
Overall	**16%**	**62%**	**7%**	**15%**	**341**

Offenders on the Other Sexual Assault worksheet who are assigned a risk level (Level 1, 2, or 3) are automatically recommended for a term of incarceration that includes a prison sentence. Therefore, many sex offenders who historically were recommended for probation or a short jail term on the guidelines are now recommended for prison. During FY2005, there were 51 cases affected by this change in guidelines. In 84% of the cases, where the recommended disposition changed from probation or jail to a term that includes prison, judges agreed with the recommendation and imposed an effective prison sentence. In the remaining 16% of affected cases, judges sentenced the offender to probation or to an incarceration period of six months or less.

In FY2005, there were 200 offenders convicted of offenses covered by the Rape guidelines (which include rape, forcible sodomy, and object penetration). Among 194 offenders convicted of these crimes for which the risk assessment was completed, nearly one-half (47%) were not assigned a risk level by the Commission's risk assessment instrument. The proportion of offenders receiving a risk classification and, therefore, an adjusted guidelines recommendation is higher among Rape offenders than among Other Sexual Assault offenders (53% versus 42%). Approximately 21% of Rape cases resulted in a Level 3 adjustment—a 50% increase in the upper end of the traditional guidelines range recommendation (Figure 27). An additional 25% received a Level 2 adjustment (100% increase). The most extreme adjustment (300%) affected 7% of Rape guidelines cases.

For the 13 rape offenders reaching the Level 1 risk group, judges used the extended guidelines range in 46% of the cases (Figure 28). However, 29% of offenders with a Level 2 risk classification, and 24% of offenders with a Level 3 risk classification, were given prison sentences within the adjusted range of the guidelines. With extended guidelines ranges available for higher risk sex offenders, judges rarely sentenced Level 1, 2 or 3 offenders above the expanded guidelines range. Offenders within a Level 1 risk category were sentenced below the guidelines recommendation 31% of the time. A mitigating sentence was given to Level 2 risk offenders 18% of the time and to Level 3 risk offenders 22% of the time. Offenders who did not fall into a category of risk were sentenced below the recommended range of incarceration approximately 24% of the time. Overall, nearly one-quarter (23%) of rape cases were sentenced below the recommended guidelines range. This pattern of higher mitigation rates in rape cases has been evident over the past eleven years. In FY2005, the most frequently cited reasons for a mitigating departure in rape cases involve extralegal factors, such as the victim's request that the offender receive a more lenient sentence, the involvement of jury sentencing, and cases in which victims and/or witnesses refuse to testify.

FIGURE 27

Sex Offender Risk Levels for Rape Offenses - FY2005

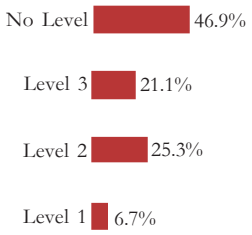


FIGURE 28

Rape Compliance Rates by Risk Level Offenses - FY2005

		Compliance			
	Mitigation	Traditional Range	Adjusted Range	Aggravation	Number of Cases
Level 1	31%	23%	46%	0%	13
Level 2	18%	51%	29%	2%	49
Level 3	22%	49%	24%	5%	41
No Level	24%	64%	—	12%	91
Overall	**23%**	**55%**	**15%**	**7%**	**194**

Compliance and Probation Violation Guidelines

In 2003, the General Assembly directed the Commission to develop, with due regard for public safety, discretionary sentencing guidelines for application in cases involving felony offenders who are determined by the court to be in violation of their probation supervision for reasons other than a new criminal conviction (Chapter 1042 of the Acts of Assembly 2003). Often these offenders are referred to as "technical violators." In determining the guidelines, the Commission was to examine historical judicial sanctioning patterns in revocation hearings for such cases. The Sentencing Commission completed these tasks and reported its findings and recommendations in the 2004 Annual Report. The probation violation sentencing guidelines took effect for any probation violator sanctioned on or after July 1, 2004.

Early examination of judicial compliance and departure patterns with use of the probation violation guidelines indicated that the guidelines needed further refinement to better reflect current judicial sentiment in the punishment of supervision violators. Therefore, the Sentencing Commission's *2004 Annual Report* recommended several adjustments to the probation violation guidelines. Recommended changes included assigning additional points on the Section A worksheet (incarceration/no incarceration recommendation) for offenders found in violation of certain conditions of probation. Also, defendants who admitted to using drugs, other than marijuana or alcohol, during their current supervision period, would be assigned the same number of points on the Section C worksheet (incarceration length recommendation) as those who had a positive drug test. Lastly, the Section C recommendation table was adjusted so that defendants would need more points to be recommended for longer periods of incarceration.

These proposed changes were approved by the General Assembly and, subsequently, became effective for technical probation violators sentenced on or after July 1, 2005. This portion of the report will examine preliminary data on judicial sentencing practices using the new probation violation guidelines. Specifically, the analysis will focus on technical probation violation cases (those that do not involve a new law violation) that were sentenced between July 1, 2005 and October 31, 2005 using the new FY2006 guidelines.

Overview of Probation Violation Guidelines Received

Between July 1, 2005 and October 31, 2005, the Commission received 1,211 technical probation violation guidelines completed on the new FY2006 worksheet. The worksheets include cases in which the court found the defendant in violation of the conditions of probation (except Condition 1, a new law violation), cases that the court decided to take under advisement until a later date, and cases in which the court found the defendant not in violation. Of the 1,211 cases, 43% cited a felony property offense as the most serious offense for which the offender was on probation, followed by felony drug offenses at 40% (Figure 29). A smaller portion (10%) of the offenders being brought back before the court for a technical violation (not a new law violation) involved those for whom their most serious original offense was a person crime.

When examining the conditions of probation that these offenders were alleged to have violated, nearly 44% were cited for using, possessing, or distributing a controlled substance (Condition 8 of the DOC Conditions of Probation) (Figure 30). Violations of Condition 8 may include a positive test (urinalysis, etc.) for a controlled substance or a signed admission admitting to the use of controlled substances during the current supervision period. Offenders were also likely to be cited for failing to follow their probation officer's instructions (38%), failing to report to the probation office in person or by telephone when instructed (36%), and absconding from supervision (33%). In approximately one-quarter of the

FIGURE 29

Number of Probation Violation Worksheets Received by Type of Most Serious Original Offense—Preliminary FY2006*

Original Offense Type	Number Received	Percent Received
Property	521	43.0
Drug	485	40.0
Person	122	10.1
Traffic	59	4.9
Other	24	2.0
Total	1,211	100.0

**Includes FY2006 worksheets received through 10/31/05 regardless of disposition(not in violation, etc)*

violation cases (23%), defendants were cited for failing to follow special conditions imposed by the court. These conditions most often included failing to pay court costs and restitution, failing to comply with court-ordered substance abuse treatment, or failing to successfully complete alternatives such as Detention Center, Diversion Center, or Day Reporting. It is important to note that defendants may be, and typically are, cited for more than one violation of their probation conditions in a Sentencing Revocation Report.

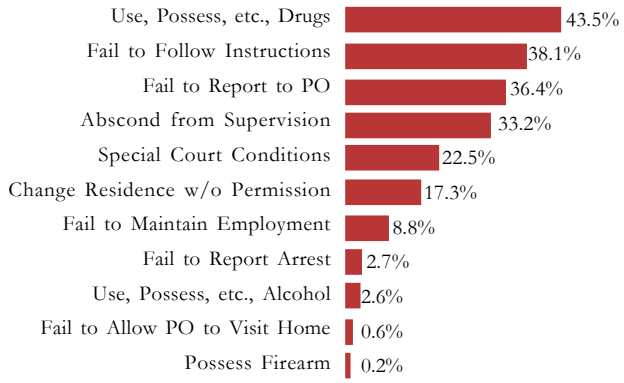
Of the 1,211 probation violation cases that the Commission received between July 1, 2005 and October 31, 2005, there were 1,162 in which the defendant was found in violation of any condition of probation, other than a new law violation. The remaining cases were either taken under advisement until a later date, or were found not in violation. The following analysis will focus on the 1,162 cases in which defendants were found in violation of any condition of probation, other than a new law violation, and for which the new FY2006 probation violation guidelines were completed.

Overall Compliance with the Probation Violation Guidelines

The overall compliance rate summarizes the extent to which Virginia's judges concur with recommendations provided by the probation violation guidelines, both in type of disposition and in length of incarceration. Between July 1, 2005 and October 31, 2005, the overall compliance rate was 48.6%, a modest compliance rate but one that represents a significant increase over the preliminary FY2005 compliance rate (37%) reported in the Commission's *2004 Annual Report* (Figure 31). Preliminary data show the rate at which a judge sentences an offender to sanctions more severe than the guidelines recommendation, known as the "aggravation" rate, was 19.8% for the period between July 1, 2005 and October 31, 2005. The "mitigation" rate, or the rate at which judges sentence offenders to sanctions considered less severe than the guidelines recommendation, was much higher at 31.6% for the same time period. Thus, of the preliminary FY2006 departures, 38.5% were cases of aggravation while 61.5% were cases of mitigation .

FIGURE 30

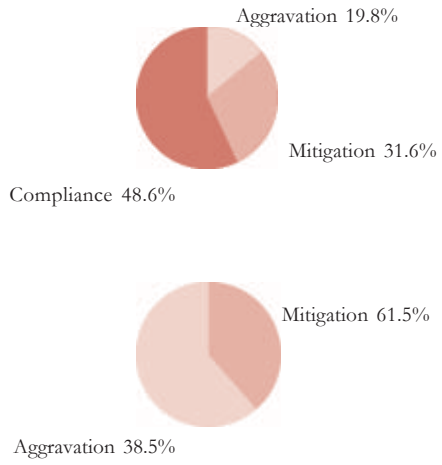
Technical Violation Conditions Cited by Probation Officer—Preliminary FY2006*



**Includes FY2006 worksheets received through 10/31/05 regardless of disposition(not in violation, etc). Technical violations do not include Condition 1—New Law Violations. See DOC Conditions of Probation.*

FIGURE 31

Overall Guidelines Compliance and Direction of Departures, FY 2006*



**Includes FY2006 cases received through 10/31/05 found to be in violation*

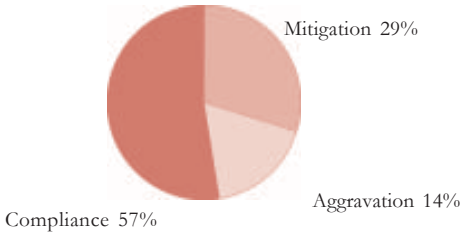
Dispositional Compliance

Figure 32 illustrates judicial concurrence with the type of disposition recommended by the probation violation guidelines for the four-month period between July 1, 2005 and October 31, 2005. There are three general categories of sanctions recommended by the probation violation guidelines—probation/no incarceration, a jail sentence up to twelve months, or a prison sentence of one year or more. Preliminary data for FY2006 reveal that judges agree with the type of sanction recommended by the probation violation guidelines in 57% of the cases. Judges sentenced defendants to less severe sanctions than those recommended by the guidelines approximately 29% of the time. Judges chose to sentence probation violators to more severe sanctions in 14% of the cases. Thus, when departing from the probation violation guidelines, judges more often chose to sentence the defendant to probation with no incarceration or to a jail sentence of twelve months or less.

Consistent with the traditional sentencing guidelines, sentences to the Detention Center and Diversion Center programs are also defined as incarceration sanctions for the probation violation guidelines. The Detention and Diversion Center programs are counted as six months of confinement. In the previous discussion of dispositional compliance, imposition of one of these programs is categorized as incarceration of six months.

FIGURE 32

Dispositional Guidelines Compliance and Direction of Departures, FY 2006*



**Includes FY2006 cases received through 10/31/05 found to be in violation*

Durational Compliance

In addition to examining the degree to which judges concur with the type of disposition recommended by the guidelines, the Commission also studies durational compliance, defined as the rate at which a judge sentences 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.

Among the technical violation cases received through October 31, 2005, there were 711 cases that were recommended for, and actually received, an active period of incarceration of one day or more. Preliminary data show that durational compliance for the specified time period was approximately 53% (Figure 33). For preliminary FY2006 cases not in durational compliance, mitigations were more prevalent (63%) than aggravations (37%). When judges sentenced offenders to incarceration, but to an amount less than the recommended time, offenders were given "effective" sentences (incarceration sentences less any suspended time) short of the guidelines range by a median value of nine months (Figure 34). For offenders receiving longer than recommended incarceration sentences, the effective sentence exceeded the guidelines range by a median value of eight months. Thus, durational departures from the guidelines are typically less than one year above or below the recommended range.

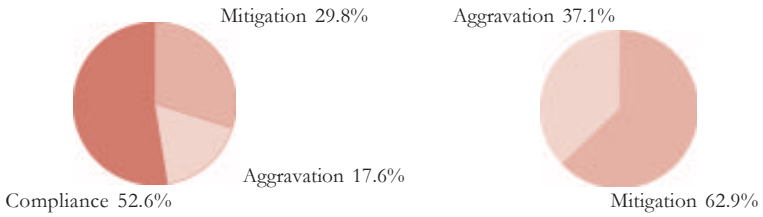
Reasons for Departure from the Guidelines

Similar to the traditional felony sentencing guidelines, sentencing in accordance with the recommendations of the probation violation guidelines is voluntary. Each year, as the Commission deliberates upon recommendations for revisions to the guidelines, the opinions of the judiciary, as reflected in their written departure reasons, are an important part of the analysis. Virginia's judges are not limited by any standardized or prescribed reasons for departure and may cite multiple reasons for departure in each guidelines case. With respect to the traditional sentencing guidelines, Virginia's judges are required by § 19.2-298.01 of the *Code of Virginia* to submit reasons for departure. However, currently there is no requirement in the *Code of Virginia* that the probation violation guidelines be submitted to the court in felony violation cases, and no requirement that judges provide written reasons for departure when sentencing outside of the guidelines recommendation.

According to preliminary data collected for FY2006, 31.6% of technical probation violation cases sentenced received sanctions that fell below the guidelines recommendation. With nearly one-third of technical violation cases being sentenced to lesser sanctions than those currently recommended by the probation violation guidelines, written departure reasons are an integral part of gauging judicial sentencing patterns. Ultimately, the types

FIGURE 33

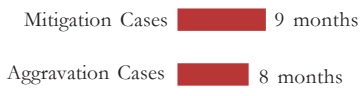
Overall Durational Compliance and Direction of Departures, FY 2006* (N=711)



**Includes FY2006 cases received through 10/31/05 found to be in violation*

FIGURE 34

Length of Departure in Recommended Jail/Prison Cases--Preliminary FY2006*



of adjustments to the probation violation guidelines, those that would allow the guidelines to more closely reflect judicial sentencing patterns across the Commonwealth, are largely dependant upon the judges' written reasons for departure. Unfortunately, a detailed analysis of the 367 mitigating technical violation cases sentenced between July 1, 2005 and October 31, 2005 revealed that a large number of the cases did not have a clearly delineated departure reason.

Judges sentenced 19.8% of the technical violation cases received between July 1, 2005 and October 31, 2005 to terms more severe than the probation violation guidelines recommendation, resulting in "aggravation" sentences. In examining these 230 aggravation cases, the Commission again found that many of these departures were not accompanied with a departure explanation. The lack of sufficient information, in the form of a written departure reason, makes it difficult for the Commission to propose changes to the guidelines that are based on empirical data.

Compliance by Circuit

In the initial analysis of judicial sentencing patterns in technical probation violation cases, the Commission found a great degree of disparity across Virginia's 31 judicial circuits. In its study, the Commission found that where a defendant was sentenced for a technical probation violation was more predictive of the type and severity of the sanction he or she would receive rather than other legal factors, such as behavior on probation, etc. Therefore, an analysis of judicial sentencing practices across circuits, since the implementation of violation guidelines, is necessary to determine the impact of the guidelines on reducing unwarranted sentencing disparity. However, preliminary FY2006 data in technical probation violation cases show significant differences between circuits in the number of cases received by the Commission. These data reveal that some circuits may not be applying the use of the probation violation sentencing guidelines as consistently as some other judicial circuits.

The distinctive differences in the number of probation violation guidelines received among judicial circuits pose further difficulty for the Commission in examining the impact of, and potential need for changes to, the probation violation guidelines. Therefore, as indicated in the Recommendation Section of this annual report, the Commission is proposing measures that will ensure that probation violation guidelines are completed for all felony probation violators who are not cited for a new conviction, and that written departure reasons are provided by the court when the sentence is not in concurrence with the guidelines recommendation.

Only by receiving all probation violation guidelines and departure reasons, when applicable, will the Commission be capable of proposing meaningful, empirically-grounded changes to the probation violation guidelines.

Impact of Truth-in-Sentencing

Introduction

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 agreeing 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 did not grow at the record rate seen prior to the abolition of parole, and judges continue to have alternative sentencing options available. Since the enactment of truth-in-sentencing laws in Virginia more than a decade ago, there is substantial evidence that the system is achieving what its designers intended.

The reform of more than a decade ago, shows substantial evidence that the system is working.

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 as little as one-fourth 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.

Analysis of earned sentenced credits being accrued by inmates sentenced under truth-in-sentencing provisions and confined in Virginia's prisons on December 31, 2004, reveals that the largest share of inmates (69.7%) are earning at the highest level, Level 1, gaining 4½ days per 30 days served (Figure 35). A much smaller proportion of inmates are earning at Levels 2, 3 and 4; approximately 12% are earning 3 days for 30 served (Level 2), 7.3% are earning 1½ days for 30 served (Level 3), and 11.1% 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 89% 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 about

FIGURE 35

Levels of Earned Sentence Credits among Prison Inmates (December 31, 2004)

Level	Days Earned	Percent
Level 1	4.5 days per 30 served	69.7%
Level 2	3.0 days per 30 served	12.0
Level 3	1.5 days per 30 served	7.3
Level 4	0 days	11.1

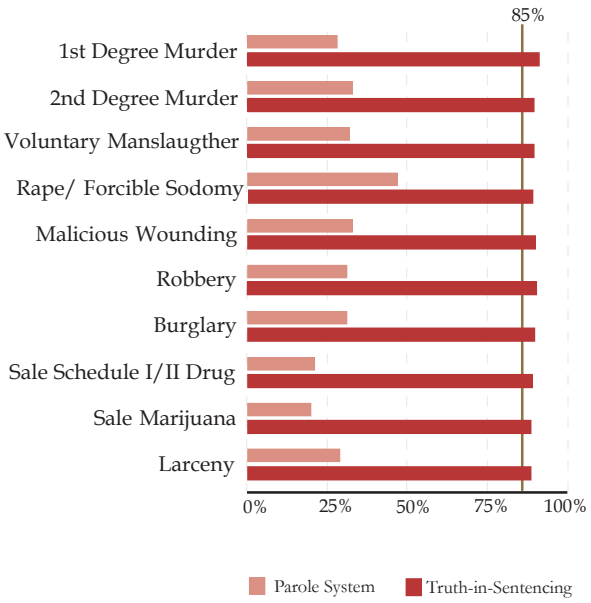
89% of their sentences, while inmates convicted of robbery are serving over 90% of their sentences. Inmates incarcerated for drug crimes are serving 88.6%.

The rate at which inmates were earning sentence credits has recently undergone change. Over the past five years, approximately 80% of the confined inmates have been at either Level 1 or 2, but the percentage of inmates in Level 1 has almost doubled from 35.9% in 2000 to 69.7% in 2004. The shift is due to a change in DOC's policy for new commitments to the Department. Prior to January 1, 2003, new inmates were automatically assigned to Level 2; beginning January 1, 2003, new inmates were assigned to Level 1.

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). Offenders given a life sentence who were eligible for parole could become parole eligible after serving between 12 and 15 years. Under the truth-in-sentencing system, first-degree murderers typically are serving 91% of their sentences in prison (Figure 36). A life sentence under truth-in-sentencing requires that an offender remain incarcerated for life unless released conditionally under § 53.1-40.01 after reaching the age of 60 or 65. 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 90% 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 nearly 89% 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 89% 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 in prison by a convicted felon.

FIGURE 36

Percent of Prison 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, 2004.

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 sentencing within 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 most recent five year period, fiscal years 2001 through 2005, the guidelines recommended that 86% of offenders convicted of crimes against the person serve more than six months, while 79% received such a sanction (Figure 37). Forty-six percent of property offenders were recommended for terms over six

FIGURE 37

Recommended and Actual Incarceration Rate for Terms Exceeding 6 Months by Offense Type, FY2001-FY2005

Type of Offense	Recommended	Actual
Person	86.0%	78.7%
Property	46.2	41.7
Drug	40.3	37.0
Other	68.3	66.1

months and 42% of them were sentenced accordingly. For drug crimes, offenders were recommended for and sentenced to terms exceeding six months in 40% and 37% 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 current alternative sanction programs under truth-in-sentencing. Remaining crimes are grouped together into the Other offense category shown in Figure 56. Several offenses in the Other category, such as habitual offender and fourth offense of driving while intoxicated, carry mandatory time of one year. This is one reason why 68% of the offenders in this category are recommended for a period of incarceration in excess of six months and 66% actually receive such a sentence.

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 rape illustrates the impact of truth-in-sentencing on prison terms served by violent offenders. 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 (the middle value, where half of the time served values are higher and half are lower) time served by only one year. Under sentencing reform (FY2001-FY2005), rapists with no previous record of violence are being sentenced to terms with a median nearly twice the historical time served (Figure 38).

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 rape can also be used to demonstrate the impact of these prior record enhancements. In contrast to the parole system, offenders with a violent prior record will serve substantially longer terms than those without violent priors. Based on the median, rapists with a less serious violent record (Category II) are being given terms to serve of 24 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 more than 34 years, which is more than five 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 39). 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 almost 11 years, if they have no violent prior convictions, up to median of nearly 30 years if they have a Category I violent prior record.

Sentencing decisions over the past five years for first and second-degree murder illustrates that judges are imposing significantly higher effective sentences under the truth-in-sentencing system, particularly for offenders with a Category I or Category II violent prior record. Under the parole system (1988-1992), offenders convicted of first-degree murder who had no prior convictions for

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

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

FIGURE 38
Rape

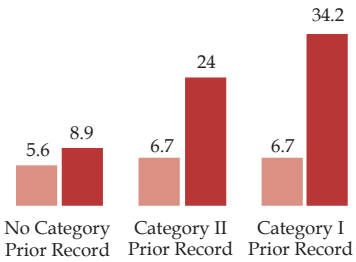
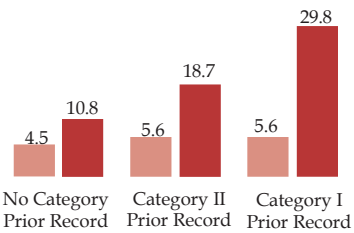


FIGURE 39
Forcible Sodomy



violent crimes were released typically after serving twelve and a half years in prison, based on the time-served median. Under the truth-in-sentencing system (FY2001-FY2005), however, first-degree murderers having no prior convictions for violent crimes have been receiving sentences with a median time to serve of 32 years (Figure 40). In these cases, time served in prison has almost tripled under truth-in-sentencing. First-degree murderers with any violent record, Category I or Category II, have been sentenced to a median sentence of more than 40 years, compared to the typical sentence of less than 15 years under the parole system. The median sentence for Category I offenders is not much higher than for Category II, but it is important to remember that for many offenders, a sentence of this magnitude will result in confinement for the remainder of their natural lives.

First-degree murder is the only guidelines offense where it is possible to receive a sentence recommendation of life. For all the other offenses the recommendation is in years and months. For this analysis, a sentence of life was calculated based on the offender's life expectancy as defined by the Center for Disease Control. For example, a 35 year-old offender is expected to live on average another 43.5 years; therefore, a life sentence is calculated as 43.5 years for this individual. A 20 year old is expected to live another 57.7 years and life is calculated as such. Under the former parole system an offender sentenced to life was eligible for parole after serving between 12 and 15 years. Under the no-parole system a sentence of life or sentence over 36 years has essentially the same effect – life in prison.

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 (1988-1992) (Figure 41). With the implementation of truth-in-sentencing (FY2001-FY2005), offenders convicted of second-degree murder with no record of violence have received sentences producing a median time to be served of over 16 years. For second-degree murderers with prior convictions for violent crimes the impact of truth-in-sentencing is even more pronounced. Under truth-in-sentencing, these offenders are serving a median between 18 and 22 years, or nearly three times the historical time

This discussion reports values of actual incarceration time served under the parole laws (1988-1992) and expected time to be served under truth-in-sentencing provisions for cases sentenced in FY2001-FY2005. 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 40
First-Degree Murder

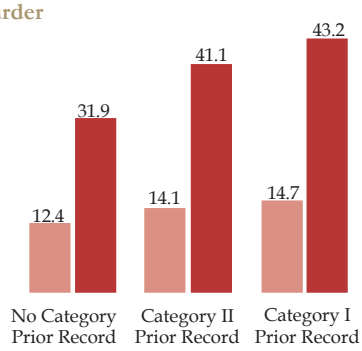
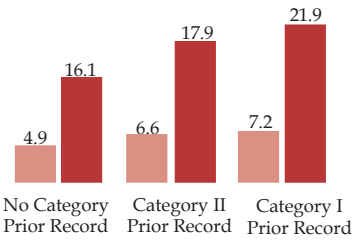


FIGURE 41
Second-Degree Murder



Parole System

Truth-in-Sentencing

served. Although the difference between sentences for offenders with Category II versus Category I prior record is small, it is important to note that there are relatively few offenders with a Category I prior record and the data may be skewed by a handful of extreme cases. In fact, there were 10 offenders with a Category I prior record convicted of second-degree murder over the five year period.

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 42). Persons with no violent prior record convicted of voluntary manslaughter under truth-in-sentencing (FY2001-FY2005) 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 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 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 conviction, served, typically, less than four years in prison under the parole system (1988-1992), but sentencing reform (FY2001-FY2005) has resulted in a median term of nearly 10 years for these offenders (Figure 43). Likewise, the median length of stay for a conviction of aggravated malicious injury when an offender has a violent prior record has increased from four and a half years to 16 years for offenders with a Category II record and to 18 years when a Category I record is present.

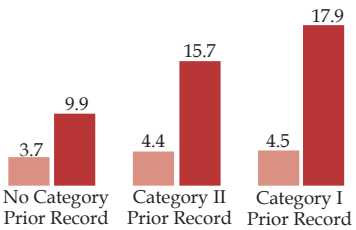
Sentencing in malicious injury cases demonstrates a similar pattern (Figure 44). Sentencing reform has more than doubled time served for those convicted of malicious injury who have no prior violent record or a less serious violent record (Category II), and more than tripled time served

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

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

FIGURE 42
Voluntary Manslaughter

FIGURE 43
Aggravated Malicious Injury



for those with the most serious violent record (Category I).

An examination of prison terms for offenders convicted of robbery with a firearm 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 45). Even robbers with the most serious type of violent prior record (Category I) only served a little more than four years in prison, based on the median, prior to the 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 seven 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.

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 46). In contrast, sentences handed down under truth-in-sentencing (FY2001-FY2005) are producing a median time to serve ranging from more than three years for offenders never before convicted of a violent crime, to almost nine 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, and nearly quadrupled for those with the more serious violent prior record (Category I).

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 has been 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

FIGURE 44
Malicious Injury

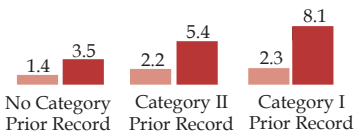
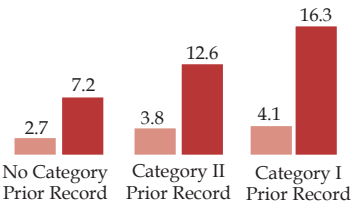


FIGURE 45
Robbery with Firearm



This discussion reports values of actual incarceration time served under the parole laws (1988-1992) and expected time to be served under truth-in-sentencing provisions for cases sentenced in FY2001-FY2005. 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.

Parole System

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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.

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 (FY2001-FY2005), these drug offenders, in fact, are serving a median of slightly less than one year (Figure 47). 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 more than twice as long under truth-in-sentencing as they did under the parole system.

In most cases of the sale of marijuana (more than ½ 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. Judges often utilize sentencing options other than prison when sanctioning these offenders, reserving prison for those believed to be least amenable to alternative punishment programs. Under truth-in-sentencing, offenders convicted of selling marijuana who receive sentences in excess of six months, despite having a nonviolent criminal record, have been given terms which, at the median, more than double historical time served during the parole era (Figure 48). For offenders who sold marijuana and have a prior violent record, the truth-in-sentencing guidelines have resulted in an increase in the time to be served. When sellers of marijuana

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

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

FIGURE 46
Aggravated Sexual Battery

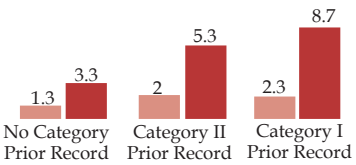
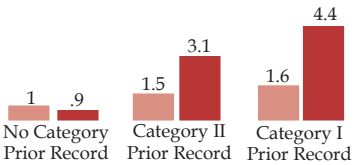


FIGURE 47
Sale of a Schedule I/II Drug



have the most serious violent criminal history (Category I), judges have responded by handing down sentences which will yield a median prison term of nearly two years.

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 49). Offenders whose current offense is grand larceny but who have a prior record with a violent crime (Category I and II) are serving about twice as long after sentencing reform, with terms increasing from a year to just under two years. 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.

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

FIGURE 48
Sale of Marijuana (More than 1/2 oz. and less than 5 lbs)

FIGURE 49
Grand Larceny

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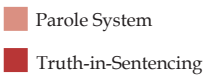


current and planned prison capacity and with an eye towards using that capacity to house the state's most violent felons.

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.

Sentencing reform and the abolition of parole did not have the dramatic impact on the prison population that some critics had once feared when the reforms were first enacted. Despite double-digit increases in the inmate population in the late 1980s and early 1990s, the number of state prisoners grew at a slower rate beginning in 1996. 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. In recent years, the number of nonviolent offenders incarcerated in prison and the number of probation and postrelease supervision violators given a prison term has increased. As a result, the forecast for state prisoners developed in 2003 projects average annual growth of 3.7% over the next five years (Figure 49).

FIGURE 50

Historical and Projected State Responsible (Prison) Population 1993-2011

	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	0.0
	1998	28,657	-0.3
	1999	30,112*	5.1
	2000	30,882*	2.6
	2001	32,347*	4.7
	2002	34,171*	5.6
	2003	35,363*	3.5
	2004	35,879*	1.5
	2005	35,899	0.1
Projected	2006	36,329	1.2
	2007	36,933	1.7
	2008	37,513	1.6
	2009	38,227	1.9
	2010	39,082	2.2
	2011	39,925	2.2

Date is June of each year

June 1996 and June 1997 actual prison population levels were identical, according to the Virginia Department of Corrections.

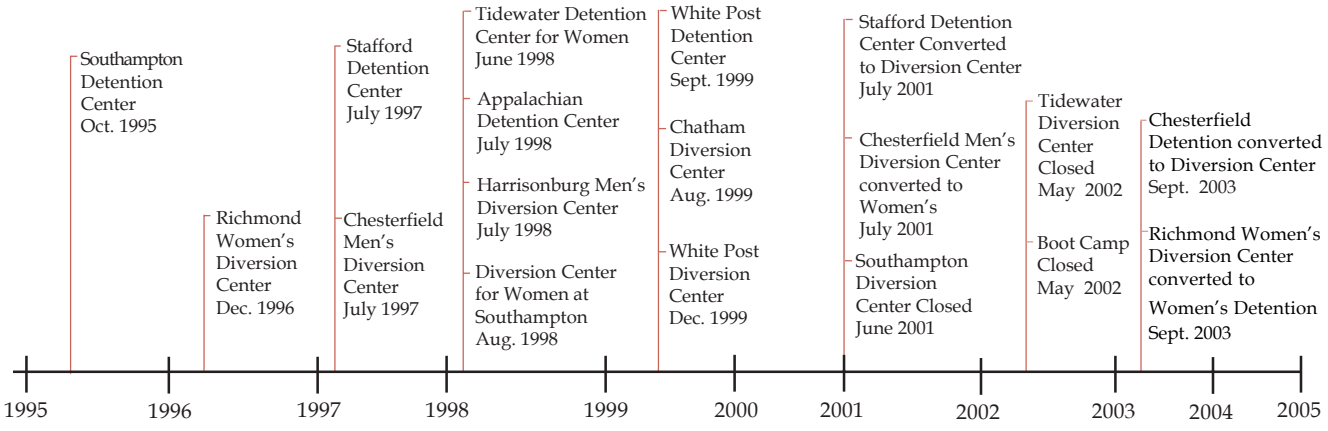
*FY1999 to FY2004 data was revised by the Virginia Department of Corrections to account for felons who were ordered to serve their time in a local facility.

Impact of Alternative Punishment Options

When the truth-in-sentencing system was created in 1994, the General Assembly established a two level community-based corrections system. 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 for nonviolent offenders as alternatives to traditional incarceration, 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 they involve 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, Parole Board, and Department of Corrections. Offenders accepted in these programs are on probation or parole while participating in the program and the sentencing judge or Parole Board 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 eight 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 2005, DOC was operating four Detention Centers and five Diversion Centers throughout the Commonwealth (Figure 51). In September 2003, the Richmond Diversion Center was converted to a Detention Center and the Chesterfield Detention Center converted to a Diversion Center.

FIGURE 51
Detention Centers and Diversion Centers 1995 - 2005



This consolidated female Diversion Center women participants in Chesterfield County and shifted the women detainees to the Richmond facility. The result is four Detention Centers with a capacity of 400 and five Diversion Centers with a capacity of 572.

In FY2005, Detention Centers collectively admitted 963 felons, resulting in 808 graduations and 161 terminations. Diversion programs admitted 1,503 felons, graduating 1,384 and terminating 128.

On June 30, 2005, 864 probationers and parolees were in the Detention Center and Diversion Center programs with 89 on the waiting lists. The Diversion Center programs and the Detention Center programs are operating at near full capacity. The 2003 General Assembly authorized DOC to utilize the Detention Center and Diversion Center programs for offenders on probation or other forms of community supervision who were not complying with the conditions of supervision.

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 and parole supervision, home electronic monitoring, day reporting programs, and community residential programs are an integral part of the system. Regular probation and parole services have been available since 1942; intensive supervision, characterized by smaller caseloads and closer monitoring of offenders, was pilot tested in the mid 1980s. Intensive supervision is now an alternative in most of the state's 43 probation and parole districts. Home electronic monitoring, piloted in 1990-1992, is now available in all probation and parole districts, and is used in conjunction with intensive and conventional supervision. Global positioning by satellite (GPS) has been piloted since FY2004. The Division of Community Corrections has more than 100 service providers of residential and outpatient substance abuse and sexual offender services under contract or memoranda of agreement.

The Department currently operates ten day reporting programs. The centers were reduced in scope, consolidated with probation and parole offices and restyled as programs during the budget cutbacks in FY2003. With current capacity of 1,000 participants, day reporting programs are consistently over capacity. On June 30, 2005, the census was 1,158. These programs are characterized by an "onsite, one stop" array of services such as life skills, substance abuse testing and treatment, educational training and frequent offender contacts targeted at delinquent and transitioning offenders.

Offenders report to the program and participate in any combination of education or treatment programs, to a community center work project, or a job. Day reporting programs 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 programs DOC also contracts with private community residential facilities and residential transition therapeutic community programs around the state for inmates transitioning back to the community. Together these can serve 800 offenders a year. Two additional day reporting programs are planned for FY2006.

The capacity for many of the Community Corrections programs was limited by significant budget reductions in FY2002 and FY2003 and rebuilding capacity is underway. However, the probation and parole caseload now exceeds 52,000 offenders and the staff completed over 78,000 investigations in FY2005. In 2003, despite the cuts in staff, the American Correctional Association completed an audit and re-accredited the

Probation and Parole Services of the Department of Corrections. The Diversion Centers now have to generate a portion of their operating budget from offender room and board charges which were previously used to enhance programming. In addition, substance abuse and sex offender treatment funds were reduced and several programs eliminated, but there has been some rebuilding of the service capacity. While many of the community-based correction programs created by the General Assembly in 1994 are functioning well, the future availability and the scope of these programs are subject to change due to budget realities.

Local community-based corrections programs that were an integral part of reform legislation may also be impacted by the state's budget reductions. In 1994, the General Assembly created 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 misdemeanors or low-level felonies (Class 5 and Class 6). 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. The availability of funds through the state may impact the expansion or continuation of programs created by the Local Community Corrections Act and the Pre-Trial Services Act.

Summary

After eleven years of Virginia's comprehensive felony sentencing reform legislation, the overhaul of the felony sanctioning system continues to be a success. Offenders are serving approximately 89% 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 has not grown at the double-digit rates seen prior to sentencing reform, despite longer lengths of stay for violent offenders and recent increases in the number of nonviolent offenders and probation and parole violators sentenced to prison. Part of the reduction in the pace of prison growth was due to the funding of intermediate punishment/ treatment programs at a level to handle the increasing number of felons. Nearly 11 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.

Sex Offenders in Virginia

Sex Offenders in Virginia: New Research

Prompted by a few well-publicized crimes against children committed by sex offenders in other states, the Virginia State Crime Commission formed the Sex Offender Task Force in March 2005. Legislators, law enforcement and corrections' officials, prosecutors, mental health professionals, victim representatives and other public figures were appointed to serve on the Task Force (Figure 52). The Task Force was charged with reviewing the effectiveness of current provisions and making recommendations to improve policies related to the punishment, management, supervision, and treatment of sex offenders in the Commonwealth. Much of the Task Force's work would focus on Virginia's Sex Offender and Crimes against Minors Registry and the civil commitment program for offenders determined to be sexually violent predators (§ 37.1-70.1 et seq.). The members of this Task Force are listed in Figure A. At the request of the Crime Commission's chairman, the Sentencing Commission agreed to provide technical assistance to the newly-formed Task Force. This technical assistance included data analysis, recidivism research, and assessment of the potential fiscal impact of Task Force recommendations.

Sex Offender Registry

One of the first issues examined by the Task Force was Virginia's Sex Offender and Crimes against Minors Registry. The Registry, maintained by the Virginia State Police, contains information on offenders convicted in the Commonwealth of certain specified crimes (§ 9.1-901 et seq). Much of this information is available to citizens via the Internet. Using the internet, for example, a citizen can search the Registry by offender name or by zip code. Sentencing Commission staff requested and received Registry data in an automated file for analysis. Results of the analysis were presented to the June 7 meeting of the Sex Offender Task Force. Offenders convicted of an offense listed in § 9.1-902 are required to provide certain information to law enforcement for the Sex Offender and Crimes against Minors Registry. Most of the offenses specified in this statute are felony sex offenses, but certain murder, kidnapping, burglary and misdemeanor sex offenses also require registration. Many of the offenses listed in this statute are defined as sexually violent offenses. This designation requires offenders convicted of one of these crimes to register more frequently (every 90 days instead of annually). In addition, offenders convicted of a sexually violent offense are guilty of a Class 6 felony (instead of a Class 1 misdemeanor) should they fail to register or re-register as required.

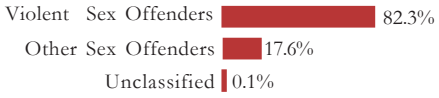
FIGURE 52

Members of the Virginia State Crime Commission's Sex Offender Task Force

Delegate David B. Albo, Co-Chairman
Delegate Robert F. McDonnell, Co-Chairman
Mr. Paul Martin Andrews
Delegate Robert B. Bell
Sheriff Mike Brown
Mr. Glenn R. Croshaw
Colonel W. Steven Flaherty
Delegate H. Morgan Griffith
Delegate Phillip A. Hamilton
Senator Janet D. Howell
Mr. Gene M. Johnson
Delegate Terry G. Kilgore
The Honorable John W. Marshall
Colonel W. Gerald Massengill
Mr. Bobby Mathieson
Ms. Wendy S. McClellan
Deputy Chief Greg Mullin
Dr. James Reinhard
Mr. Richard L. Savage
Delegate Beverly J. Sherwood
William J. Stejskal, Ph.D.
Senator Kenneth W. Stolle
The Honorable Richard E. Trodden

FIGURE 53

Classification of Offenders on the Sex Offender and Crimes against Minors Registry (May 20, 2005)
Total = 13,262



Sexually violent offenses are defined in § 9.1-902

FIGURE 54

Age of Offenders on the Sex Offender and Crimes against Minors Registry (May 20, 2005)

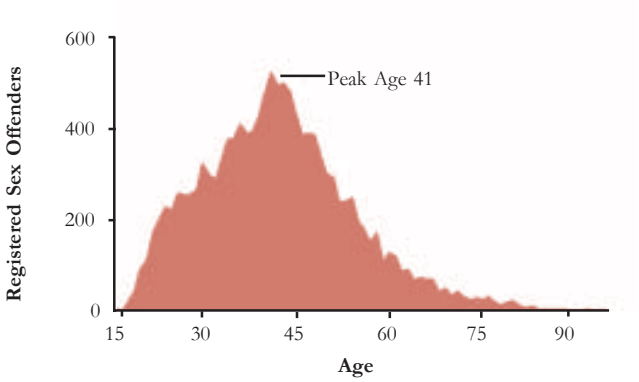
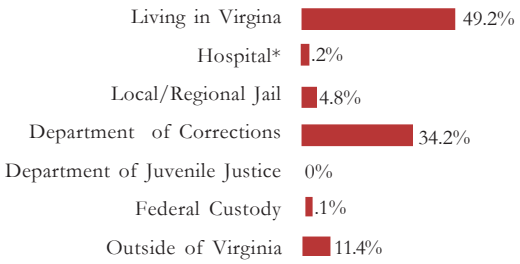


FIGURE 55

Location of Offenders on the Sex Offender and Crimes against Minors Registry May 20, 2005 (N=13,262)



**Hospital also includes mental health facilities, civilly committed sex offenders, and nursing homes.*

Location is based on the address recorded on the Sex Offender and Crimes against Minors Registry on May 20, 2005.

Registry Data Profile

As of May 20, 2005, the Sex Offender and Crimes against Minors Registry contained the names of 13,262 offenders. The vast majority (82%) had been convicted of crimes defined as sexually violent offenses (Figure 53).

Figure 54 shows the age of offenders registered as of May 20, 2005. The peak age of offenders on the Registry was 41. Half of the offenders were between the ages of 33 and 49. The youngest offender on the Registry was 16, while the oldest was 95.

On May 20, 2005, approximately half (49%) of registered offenders were residing in Virginia communities (Figure 55). According to the Registry, more than one-third (34%) of offenders were incarcerated in a Department of Corrections (DOC) facility on that date. When an offender who is required to register enters the prison system, DOC notifies the State Police and the offender's location information is updated on the Registry. In addition to the offenders in prison, nearly 5% of registered offenders were recorded as being in jail on May 20. A small number of offenders had been committed to the state's Department of Juvenile Justice or were being held in federal custody. Approximately one in ten registered offenders had an out-of-state address listed on the Registry.

Analysis revealed that the addresses recorded on the Registry were incorrect for some offenders. For instance, of the 4,534 registered offenders with a prison address on May 20, 128 (or nearly 3%) could not be located in the DOC inmate population (based on a search of inmate data for that date). In addition, of the 643 offenders with a jail address provided in the Registry, 145 (23%) actually had been transferred to a DOC facility. Another 113 (18%) could not be located in a jail or prison in the Commonwealth, despite the Registry listing a jail address. Other location or address problems exist. For 43 offenders on the Registry (34 of whom are sexually violent offenders), the words "last known address" were recorded in the Registry address field, with no additional information provided. Three

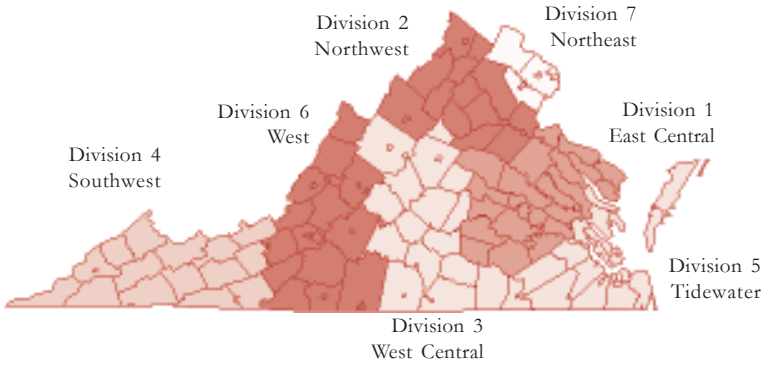
offenders were recorded as "homeless," while 27 were reportedly living in a hotel or motel.

Although there are registered offenders living throughout Virginia, they are not evenly distributed across the Commonwealth. The State Police divide the state into seven administrative regions. These regions are displayed in Figure 56. Registered sex offenders living in Virginia communities (not incarcerated, confined or living out-of-state) most often reside in the Tidewater area of the state. As Figure 57 shows, nearly one-third of the sex offenders on the Registry were living in the Tidewater region. This is more than double the percent living in any other area of Virginia. Approximately 16% of registered sex offenders were living in East Central region (Division 1), which includes the Richmond metropolitan area. Fewer registered offenders resided in other regions.

In Virginia, registered offenders must re-register every year, even if they do not change their address. Offenders convicted of sexually violent offenses, as defined in *Code*, must re-register every 90 days. To facilitate the re-registration process, the State Police send a registered letter to each offender at his or her last recorded address, prior to the offender's re-registration date. The offender must fill out the information on the form, place his or her thumbprints on the document and return it to the State Police prior to the re-registration deadline. Once it is received, the State Police verify that the thumbprints do indeed belong to the offender.

FIGURE 56

Virginia State Police Divisions



According to Registry data, a total of 567 registered offenders were not in compliance with registration requirements as of May 20, 2005, because the re-registration cards had not been returned by the due date. This represents about 4% of registered offenders (Figure 58).

FIGURE 57

Registered Offenders Living in Virginia (Not Incarcerated or Confined) By State Police Division

State Police Division	Number	Percent
Division 1: East Central	1,063	16.3%
Division 2: Northwest	669	10.3%
Division 3: West Central	681	10.4%
Division 4: Southwest	528	8.1%
Division 5: Tidewater	2,023	31.0%
Division 6: West	771	11.8%
Division 7: Northeast	790	12.1%
Total	**6,525**	**100.0%**

Location is based on the address recorded on the Sex Offender and Crimes against Minors Registry on May 20, 2005. Data do not include offenders registered as residing in a hospital, jail, prison or juvenile correctional center. Offenders in federal custody or living out of state are also excluded.

FIGURE 58

Offenders on the Sex Offender and Crimes against Minors Registry (May 20, 2005) in Violation of Requirements

Status	Number	Percent
Not in Violation	12,695	95.7%
In Violation		
Seuxaully Violent Offenders	377	2.9%
Other Sex Offenders	190	1.4%
Total	**13,262**	**100.0%**

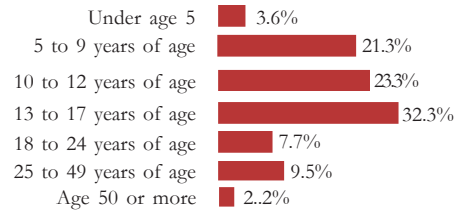
While an offender who is required to register must submit his home address to the State Police, current Registry laws do not require the offender to report his place of work or work address. The State Police collect work information for those offenders who choose to provide it. Analysis, however, showed that work information is missing for the majority (78%) of registered offenders who were residing in Virginia (not incarcerated, confined or living out-of-state) and in compliance with Registry requirements on May 20, 2005. For an additional 85 offenders, the work address indicated the offender was "self-employed" or the work address provided matched the home address.

Provisions governing Virginia's Sex Offender and Crimes against Minors Registry require the State Police to have a photograph of each offender who registers. State Police protocols specify that registered offenders submit a new photograph every two years. The Sentencing Commission's analysis suggests that this condition is often not satisfied. Among registered offenders living in Virginia who were not incarcerated or confined on May 20 and who were otherwise in compliance with registration requirements, more than 21% had an out-of-date photo on the Registry. To complete its analysis of the Sex Offender and Crimes against Minors Registry, the Sentencing Commission located Pre/Post-Sentence Investigation (PSI) reports for as many of the registered offenders as possible. Using PSI reports, the Sentencing Commission could obtain victim information for many of the offenders on the Registry. For 8,473 of the 13,262 registered sex offenders as of May 20, 2005, the age of at least one victim could be identified through PSI information. For these 8,473 offenders, 9,129 victims had age information record on a PSI. Based on available data, the Commission found that nearly 81% of the victims of registered sex offenders were under the age of 18 when the offense was committed (Figure 59). One in four victims was under the age of 10. For victims under the age of 18, the median age (the middle value, where half the victims are older and half are younger) was 12. The median age was 27 for adult victims.

Where victim gender is known (9,739 victims), the Sentencing Commission's analysis revealed that approximately one in ten (12%) of the victims of Registry offenders were male. Male victims, however, were more likely to be under the age of 13 than female victims (Figure 60). For example, 29% of male victims were between the ages of five and nine, while 20% of female victims were between those ages. This pattern reverses beginning at age 13. Although 29% of male victims were young teenagers (age 13 to 17), nearly 33% of female victims fell into this age bracket. Female victims were much more likely to be over the age of 18

FIGURE 59

Victims of Offenders on the Sex Offender and Crimes against Minors Registry (May 20, 2005) by Age



Analysis is based on a matching of the Registry with the Pre/Post-Sentence Investigation(PSI) database. For 8,473 of the 13,262 registered offenders as of May 20, 2005, the age of at least one victim could be identified through PSI information. For these 8,473 offenders, a total of 9,129 victims had age information recorded on a PSI.

FIGURE 60

Victims of Offenders on the Sex Offender and Crimes against Minors Registry (May 20, 2005) by Age and Gender

Age of Victims	Females	Males
Under age 5	3.1%	7.5%
5 to 9 years of age	20.3%	29.0%
10 to 12 years of age	22.7%	27.7%
13 to 17 years of age	32.7%	28.8%
18 to 24 years of age	8.3%	4.0%
25 to 49 years of age	10.5%	2.4%
Age 50 or more	2.4%	0.6%

For 8,473 of the 13,262 registered offenders as of May 20, 2005, the age of at least one victim could be identified through PSI information. For these 8,473 offenders, a total of 9,129 victims had age information recorded on a PSI.

than male victims. Overall, few adult males were victimized.

The analysis of available PSI data indicated that over 70% of the victims had some type of relationship with the offender at the time of the assault (Figure 61). In particular, for one in three victims, the offender was a family or household member. Previous research conducted by the Commission suggests that over 80% of victims of sexual assault in Virginia know the offender in some way, even if just as an acquaintance (Virginia Criminal Sentencing Commission 2001). Children are even more likely than adult victims to know the offender.

Sex Offender Recidivism

At its June 7 meeting, the Sex Offender Task Force requested detailed information regarding the rates at which Virginia's sex offenders recidivate, or relapse into criminal behavior. The Task Force was particularly interested in differences in recidivism rates across specific types of sex crimes, such as rape, aggravated sexual battery and indecent liberties with children. At the behest of the Task Force, the Sentencing Commission undertook this research project. Since 1995, the Sentencing Commission has conducted numerous studies of recidivism with a variety of offender populations. One such study, which examined felony sex offenders convicted in the Commonwealth, was completed in 2000. The Sentencing Commission's recidivism research culminated in the development of a risk assessment instrument for sex offenders that is predictive of the risk of reoffending. Risk assessment has been provided to circuit court judges since 2001 as an additional tool to assist in the sentencing of felony sex offenders.

All recidivism research underestimates the actual rate of crime, since not all criminal behavior comes to the attention of law enforcement. Measuring the recidivism of sex offenders is particularly difficult. The vast majority of rapes and other sexual assaults are never reported to law enforcement. A study conducted by the National Victim Center found that 84% of sexual assaults are never officially report (National Center for Victims of Crime and Crime Victims Research and Treatment Center 1992). According to data from the U. S. Department of Justice, a national crime victimization survey found that nearly three-quarters of rapes and sexual assaults go unreported (U.S. Department of Justice 2000). Reasons cited for non-reporting often include personal reasons (the victim knows the offender), fear of reprisal, protecting the offender (who may be a family member), lack of confidentiality, and fear of police bias in favor of the offender.

Even when the crime is reported and an arrest is made, obtaining a conviction may be difficult due to a lack of physical evidence, the very young age of the victim, or an unwillingness of the victim to testify. The U.S. Department of Justice estimates

FIGURE 61

Victims of Offenders on the Sex Offender and Crimes against Minors Registry (May 20, 2005) by Type of Relationship

Type of Relationship	Percent
None	29.7%
Friend	37.9%
Family or Household member	32.3%
Police Officer	0.1%

Analysis is based on a matching of the Registry with the Pre/Post-Sentence Investigation(PSI) database. For 8,994 of the 13,262 registered offenders as of May 20, 2005, the age of at least one victim could be identified through PSI information. For these 8,994 offenders, a total of 9,129 victims had age information recorded on a PSI.

that, for every 100 rapes committed, 35 are reported to police, 18 result in an arrest, and 14 are prosecuted; of these, 8 offenders are convicted of a felony and 6 receive incarceration (U.S. Department of Justice 1997). Therefore, identifying recidivism using official records seriously underestimates the actual rate at which sex offenders commit new crimes. Reconviction, or worse, reincarceration are highly diluted measures of sexual offense recidivism. Despite the limitations of official crime statistics, these data are the best available sources of information for criminologists to conduct large-scale studies of offender recidivism.

Research Methodology

For the most recent study, the Sentencing Commission examined sex offenders released from incarceration in Virginia, as well as those released directly into the Virginia communities without prison or jail time. All fiscal year (FY) 1998, FY1999, and FY2000 releases from prison and jail, as well as those given probation without active incarceration, were identified. Selecting these years allowed for a minimum of five years of follow-up for all offenders in the study. Whereas a three-year follow-up may be adequate for general studies of recidivism, numerous reports reviewed by the Sentencing Commission suggest that sex offenders recidivate over a longer period of time prior to detection compared to other offenders. For this study, sex offenders were tracked for a minimum of five years in the community up to a maximum of eight years. The average follow-up period was 6.5 years.

Criminal history reports (rap sheets) were requested from the State Police, including each offender's criminal record in Virginia, other states, and the federal system. Recidivism activity for each offender, detailed arrest and conviction data and specific offense information, was recorded and automated for analysis. A total of 2,080 felony sex offenders were studied; this figure includes offenders convicted of kidnapping with the intent to defile or kidnapping for an immoral purpose. A total of 155 sex offenders released during the study period were excluded from the study for the following reasons: they were found to be deceased (33), they were convicted of prostitution, bestiality, indecent exposure, or bigamy offenses (40), or the exact nature of the conviction offense could not be determined from existing data (82).

Recidivism Findings

Figure 62 classifies the 2,080 sex offenders studied by their original conviction offense. This is the most serious offense for which the offender was incarcerated or placed on probation. The four most serious statutory crimes (rape, forcible sodomy, object sexual penetration, and aggravated sexual battery) accounted for roughly two-thirds of the cases studied. Carnal knowledge and indecent liberties represented an additional 30%. Less than 5% of the released offenders had been convicted of the remaining offenses (nonforcible sodomy, kidnapping with intent to defile or for an immoral purpose, and incest).

FIGURE 62

Offenders Released from Prison and Jail and Placed on Probation FY1998, FY1999, FY 2000 (N=2,080)

Initial Conviction Offense	Offenders	Percent of Cases
Aggravated Sexual Battery	675	32.5%
Rape	492	23.6%
Carnal Knowledge	326	15.7%
Indecent Liberties	303	14.6%
Forcible Sodomy	156	7.5%
Nonforcible Sodomy	64	3.1%
Object Sexual Penetration	27	1.3%
Kidnap Immoral Purpose	25	1.2%
Incest	12	.5%

FIGURE 63

Offender Recidivism Rates

Recidivism Measure	Recidivists	Rate
Any New Arrest	1,087	52.3%
Any New Felony Arrest	854	41.1%
Any New Conviction	824	39.6%
Any New Sex or Person Crime Arrest	544	26.5%
Any New Felony Conviction	449	21.6%
Any Sex Offender Registry Violation Arrest	556	26.7%

The rates of recidivism for this population of sex offenders vary depending on the particular measure of recidivism used. Figure 63 presents recidivism rates corresponding to several different recidivism measures. The rates ranged from a low of approximately 22% when recidivism is measured as any new felony conviction to a high of approximately 52% when recidivism is defined as any new arrest. Although reconviction rates substantially underestimate sex offender recidivism, a measure based on any new arrest may also be undesirable since it includes non-offense behavior such as probation violations, failure to appear and contempt of court violations. For its previous sex offender recidivism study, the Sentencing Commission elected to measure recidivism as any new arrest for a sex offense or other crime against the person. Using this more precise measure, the recidivism rate for sex offenders released in FY1998, FY1999 and FY2000 was approximately 26%. When analyzing recidivism patterns, the Sentencing Commission also recorded arrests for violations of laws governing Virginia's Sex Offender and Crimes against Minors Registry. About one in four released sex offenders were arrested during the follow-up period for failing to register or reregister as required.

The recidivism measures noted above are not mutually exclusive. That is, an offender could be captured in more than one category. For example, some offenders were arrested for a new sex offense or other crime against a person while others were arrested for violating Registry requirements; some of the released offenders were arrested for both types of offenses following their return to the community. Combining these two measures reveals that nearly 42% of sex offenders were arrested for a new sex offense/ person crime or for Registry violation (Figure 64). It is interesting to note that almost half (42%) of offenders arrested for Registry violations also had at least one arrest for a sex or person crime during the follow-up period. This suggests that, for many released sex offenders, failure to register or re-register is not their only offense behavior.

The Sentencing Commission's recidivism study revealed that patterns of recidivism vary depending on the crime for which the offender was originally convicted. Figure 65 displays sex offender recidivism rates by the original conviction offense. The recidivism rates shown are based on the rate at which offenders were arrested for a new sex offense or other crime against a person. Those initially convicted of rape and carnal knowledge exhibited the highest recidivism, with rates exceeding one-third (35% and 34%, respectively). Those initially convicted of aggravated sexual battery, object sexual penetration, forcible sodomy, and kidnapping to defile or for an immoral purpose demonstrated lower rates of recidivism, between 20% and 23%. Other crime types (indecent liberties and nonforcible sodomy) showed still lower rates, which ranged from 14% to 18%. Incest offenders recorded the lowest recidivism rates (8%); however, only 12 offenders in the study had been convicted of this type of crime. Nonetheless, this finding is consistent

FIGURE 64

Arrests for a New Sex Offense, Person Crime, or a Violation of the Sex Offender and Crimes against Minors Registry (N=2,080)

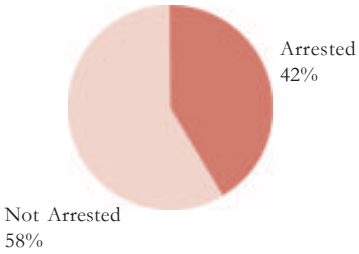


FIGURE 65

Sex Offender Recidivism Rates by Original Conviction Offense

Original Conviction Offense	Recidivists	Recidism Rate
Rape	173	35.2%
Carnal Knowledge	112	34.4%
Aggravated Sexual Battery	151	22.4%
Object Sexual Penetration	6	22.2%
Forcible Sodomy	32	20.5%
Kidnap Immoral Purpose	5	20.0%
Indecent Liberties	55	18.2%
Nonforcible Sodomy	9	14.1%
Incest	1	8.3%

Recidivism is measured as a new arrest for a sex offense or other crime against the person.

FIGURE 66

Sex Offense Recidivists by Type of New Sex or Person Crime Arrest

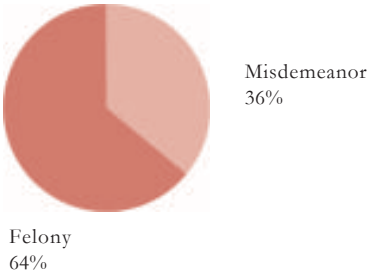


FIGURE 67

Sex Offender Recidivists by Type of New Crime Arrest

Type of New Crime Arrest	Cases	Percent of Cases
Assault	304	62%
Other Sex Offenses	89	18%
Rape	48	9.7%
Kidnapping	15	3%
Robbery	13	2.6%
Criminal Traffic with Injury	12	2.4%
Public Order (Threats)	8	1.6%
Murder	4	.8%

FIGURE 68

Arrest Rates for Violations of the Sex Offender and Crimes against Minors Registry by Original Conviction Offense

Original Conviction Offense	Arrestees	Arrest Rate
Rape	164	33.3%
Aggravated Sexual Battery	188	27.9%
Object Sexual Penetration	7	25.9%
Carnal Knowledge	82	25.2%
Forcible Sodomy	34	21.8%
Indecent Liberties	65	21.5%
Kidnap Immoral Purpose	5	20%
Nonforcible Sodomy	10	15.6%
Incest	1	8.3%

with that of other researchers, who have found lower recidivism rates among incest offenders, based on official law enforcement statistics, compared to other types of sex offenders (Virginia Criminal Sentencing Commission 2001). The Sentencing Commission found that recidivists were more likely to be rearrested for a felony than a misdemeanor. In fact, two in three recidivists in this study were rearrested for a felony sex offense or other crime against a person (Figure 66).

The most common type of crime for which recidivists were arrested during the follow-up period was assault. As Figure 67 shows, assault was the most prevalent crime among recidivists overall. Assault offenses (ranging from malicious or unlawful wounding to domestic assault and assault and battery) accounted for nearly two-thirds of the recorded recidivism (62%). Following assaults, arrests for sex offenses other than rape were the most frequent (18%). One in ten recidivists was arrested for a new rape. Other types of person crimes (including kidnapping, robbery, traffic offenses resulting in victim injury, public order crimes involving threats to another, and murder) represented less of the recidivism activity.

Of all offenders studied, rapists demonstrated the greatest propensity to be arrested for Registry violations, as shown in Figure 68. Approximately one-third of those initially convicted of rape were arrested for failing to register or re-register as required. Felons originally convicted of aggravated sexual battery, object sexual penetration, and carnal knowledge had relatively high arrest rates for Registry violations as well, over 25% in each group.

A large majority (86%) of sex offenders in the recidivism study were released after serving a term of incarceration. Most of the offenders in the study were released from prison (Figure 69). Nearly two-thirds (65%) of sex offenders returning to the community had served time in a Virginia prison. Some offenders, about one in five (or 21%), received a lesser sanction and served time in a local or regional jail in Virginia. A minority of offenders (14%) were given probation without an active term of incarceration for their original offense.

It is interesting to note that offenders released during the study period served their sentences under two different systems. Parole was abolished in Virginia for felony offenses committed on or after January 1, 1995. Offenders who committed their crimes prior to that date are sentenced under the Commonwealth's parole laws and serve out their sentences under the old system of good conduct credits and parole eligibility. Of the 2,080 sex offenders released or given probation during the period from FY1998 through FY2000, nearly three-fourths (72%) were subject to the old parole laws. The remaining offenders in the study (28%) were subject to Virginia's no-parole/truth-in-sentencing provisions, which require felons to serve at least 85% of the incarceration period ordered by the court. Today, nearly all felons coming before the circuit court in Virginia are sentenced under the truth-in-sentencing system.

The Sentencing Commission's recidivism analysis revealed that sex offenders who served time in prison exhibited the highest rate of recidivism following return to the community. Offenders released from prison recidivated at the highest rate, 28%, as shown in Figure 70. Offenders who had been sentenced to serve jail time for the original offense had a slightly lower recidivism rate of 25%. Offenders sentenced to probation without an active term of incarceration recidivated at the lowest rate, 19%.

Offenders released from prison also had the highest rearrest rate for Registry violations, approximately 31% (Figure 71). This rate is substantially higher than the violation rates for offenders given jail time and those given probation without incarceration. Offenders released from jail and those sentenced to probation exhibited Registry violation arrest rates of 18% and 19%, respectively.

When arrests for a new sex/person crime and Registry violations are combined, the recidivism patterns of prison releasees is more revealing. Almost half of sex offenders released from prison were arrested for a new sex, person crime, or Registry violation after leaving prison (Figure 72). Nearly 36% of jail releases were subsequently arrested for a sex/person crime or a Registry violation. At 32%, those who received probation in lieu or prison or

FIGURE 69

Released Sex Offenders by Type of Original Sanction (N=2,080)

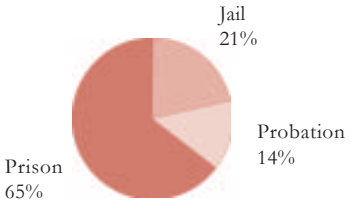


FIGURE 70

Sex Offender Recidivism* Rates by Type of Original Sanction (N=2,080)

Original Sanction	Recidivists	Recidivism Rate
Prison	377	28%
Jail	112	25.2%
Probation	55	18.9%
Total	544	

**Recidivism is measured as a new arrest for a sex offense or other crime against the person.*

FIGURE 71

Arrest Rates for Violations of the Sex Offender and Crimes against Minors Registry by Type of Original Sanction

Original Sanction	Arrestees	Arrest Rate
Prison	420	31.2%
Jail	81	18.2%
Probation	55	18.9%
Total	556	

FIGURE 72

Arrest Rates for a New Sex Offense, Person Crime, or a Violation of the Sex Offender and Crimes against Minors Registry by Type of Original Sanction

Original Sanction	Arrestees	Arrest Rate
Prison	613	54.6%
Jail	159	35.8%
Probation	94	32.3%
Total	866	

jail were the least likely to be arrested, based on this combined measure.

Criminologists often have found that age is highly correlated with repeat offending. For most crimes, particularly violent crimes, offenders tend to age out of their criminal careers by their mid to late 20s, when recidivism rates drop off markedly. For example, Figure 12 displays the age distribution for persons arrested for robbery in Virginia. The peak age of robbery arrestees is 18. Robbery arrests decline sharply with increasing age and are practically nonexistent after age 45.

Sex offenders, however, differ from offenders who commit other types of crimes. There is evidence suggesting that sex offenders remain at-risk for reoffending longer than other criminal groups. Hanson (2001) studied rapists, child molesters, and offenders convicted of incest, finding that in each of these groups recidivism began to decline at age 25 but did not approach zero until ages 60 to 70. In particular, child molesters maintained their risk longer than offenders in the other two groups.

For this study, the Sentencing Commission examined the age distribution for persons arrested (and subsequently convicted) for felony sex offenses in Virginia. Seen in Figure 13, this age distribution looks very different than the age distribution for robbery. Although the peak age at arrest is virtually the same for both groups, arrests for felony sex offenses do not decline as rapidly with advancing age. While the number of arrests for felony sex offenses peaks at age 19, the number of persons arrested for felony offenses remains fairly level from age 22 through 42. The number of sex offense arrests does not drop off until offenders reach their mid to late 40s. These data support the Sentencing Commission's previous research, which found that sex offenders remain criminally active until much later in life compared to other offenders.

The recidivism study conducted by the Sentencing Commission for the Sex Offender Task Force found further evidence that sex offenders are at risk for reoffending even into middle age. As shown in Figure 75, the youngest sex offenders recidivated at the highest rates during the study period (nearly 37%). However, released sex offenders who were between the ages of 25 and 34 recidivated nearly as often (nearly 32%). The recidivism rate remained fairly high (at 23%) for offenders released between the ages of 35 to 45. Only for offenders who were age 46 or older when released were recidivism rates

FIGURE 73

Age Distribution of Robbery Arrestees in Virginia

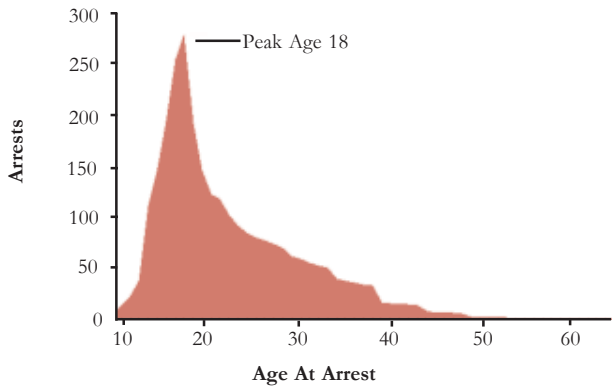
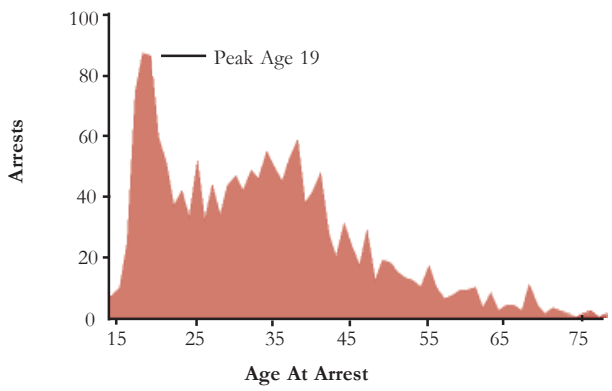


FIGURE 74

Age Distribution of Arrestees for Felony Sex Offenses in Virginia



markedly lower. For this oldest age group, the recidivism rate was 13%.

The Sentencing Commission's analysis also reveals that the younger the sex offender when released, the more likely he or she is to be arrested for violating Registry requirements when in the community. Figure 76 shows that offenders age 34 and under had higher arrest rates associated with Registry violations than older offenders. For example, nearly 33% of offenders who were 25 to 34 years of age at release were arrested for a Registry violation compared to 26% for offenders who were 35 to 45 when released. As with the recidivism rates for sex offenses and other person crimes shown above, released sex offenders who were 46 or more were by far the least likely to be arrested for failing to register or re-register as required (rate of 15%).

When examining arrests for Registry violations, the Sentencing Commission found that it was not unusual for offenders to incur more than one arrest for failing to register or reregister. Of the 556 offenders with Registry violations, 238 (almost 43%) were arrested more than once for such a violation following release into the community (Figure 77). A few sex offenders in the study have been arrested 10 or more times for Registry violations.

Sex Offender Risk Assessment

The study of sex offender recidivism completed at the request of the Sex Offender Task Force was not the first such study conducted by the Sentencing Commission. In 1999, the Virginia General Assembly requested the Sentencing Commission to develop a sex offender risk assessment instrument, based on the risk of reoffense, which could be integrated into the state's sentencing guidelines system (Senate Joint Resolution 333). Such a risk instrument can be used as a tool to identify those offenders who, as a group, represent the greatest risk for committing a new offense once released back into the community. The Sentencing Commission conducted an extensive study of felony sex offenders convicted in Virginia's circuit courts and developed an empirical risk assessment tool based on the risk that an offender would be rearrested for a new sex offense or other crime against the person.

For its previous study, completed in 2000, the Sentencing Commission drew a random sample of 600 cases from a population of felony sex

FIGURE 75

Sex Offender Recidivism Rates by Age at Rearrest

Age	Recidivists	Recidivism Rate
Up to 24	135	36.5%
25 - 34	190	31.7%
35 - 45	170	23.1%
46 or Older	48	13%

Recidivism is measured as a new arrest for a sex offense or other crime against the person.

FIGURE 76

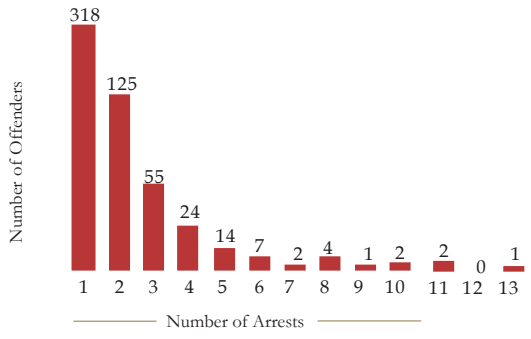
Arrest Rates for Violations of the Sex Offender and Crimes against Minors Registry by Age at Release or Probation Placement

Age	Arrestees	Arrest Rate
Up to 24	117	31.6%
25 - 34	196	32.7%
35 - 45	188	25.5%
46 or Older	55	14.9%

Recidivism is measured as a new arrest for a sex offense or other crime against the person.

FIGURE 77

Number of Arrests Per Offender for Violations of the Sex Offender and Crimes against Minors Registry



offenders released from incarceration or given probation during FY1990 through FY1993. Since numerous studies had established that sex offenders recidivate over a longer period of time prior to detection compared to other offenders, all offenders studied were followed for five to ten years after their return to the community. Recidivism was defined as a rearrest for a sex offense or other crime against the person. Commission staff analyzed over 200 factors relating to offense behavior, number and type of victims, the offender's prior criminal record, education, employment, family history, and treatment, for evidence of a possible relationship with recidivism.

Of all the factors examined by the Sentencing Commission, nine were identified as being significantly associated with the risk of recidivism. These are displayed in Figure 78, with the length of the bar indicating the relative importance of each factor.

A risk assessment worksheet was then constructed with points assigned to the factors based on their relative importance in predicting recidivism. The final risk assessment worksheet is shown in Figure 18. While no risk assessment model can ever predict a given outcome with perfect accuracy, the Sentencing Commission's risk assessment instrument, overall, produces higher scores for the

FIGURE 78

Significant Factors in Predicting Sex Offender Recidivism By Relative Importance

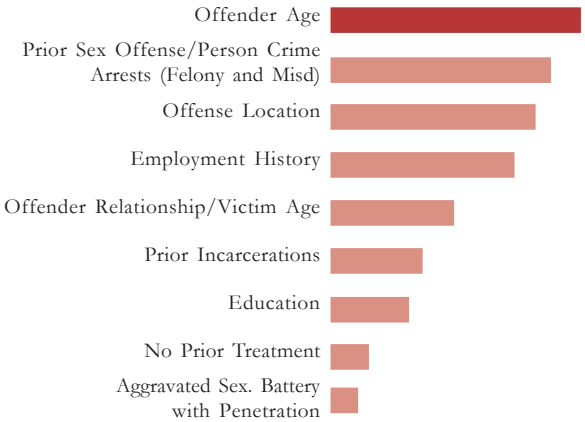


FIGURE 79

Virginia Criminal Sentencing Commission's Sex Offender Risk Assessment Instrument

Other Sexual Assault — Section A (Part I) Offender Name: _____

Offenses Not Applicable for Risk Assessment:

☐ Risk Assessment is **NOT APPLICABLE** if the primary offense is adultery, bestiality, bigamy, non-forcible sodomy, or prostitution. *(Go to Section A (Part II)*

◆ **Offender's Age at Time of Offense**

Younger than 35 years	12
35 to 46 years	4
Older than 46 years	0

◆ **Less than 9th Grade Education** — If YES, add 4 → 0

◆ **Not Regularly Employed** — If YES, add 5 → 0

◆ **Offender's Relationship with Victim**

Victim Under Age 10	Relative	0
	Known to victim (not relative or step-parent)	4
	Stranger	4
	Step-parent	9
Victim Age 10 or more	Relative	2
	Known to victim (not relative or step-parent)	3
	Stranger	8
	Step-parent	2

0

◆ **Aggravated Sexual Battery** (Primary Offense §18.2-67.3)

No penetration or attempted penetration of victim	0
Penetration or attempted penetration of victim	4

0

◆ **Location of Offense**

Place of employment	0
Shared victim/offender residence	3
Outdoors	3
Motor Vehicle	4
Victim's residence (not offender's)	5
Offender's residence or other residence	9
Location other than listed	3

0

◆ **Prior Adult Felony/Misdemeanor Arrests for Crimes Against Person**

Number:		
0 Felonies	1 - 3 Misdemeanors	1
	4+ Misdemeanors	8
1 Felony	0 - 2 Misdemeanors	5
	3+ Misdemeanors	8
2+ Felonies	0 - 3 Misdemeanors	8
	4+ Misdemeanors	15

◆ **Prior Incarcerations/Commitments** — If YES, add 3 → 0

◆ **Prior Treatment**

Prior mental health commitment	0
Prior mental health treatment	2
Prior alcohol or drug treatment	3
No prior treatment	4

0

Risk Score

Risk Level (Risk Score)

❑ 44 or more	Level 1
❑ 34 - 43	Level 2
❑ 28 - 33	Level 3
❑ up to 27	No Adjustment

Go to **Section A (Part II)**

Other Sexual Assault/Section A (Part I) Eff. 7-1-02

groups of offenders who exhibited higher recidivism during the course of the Commission's study. In this way, the instrument is indicative of offender risk.

The utility of this risk tool in assigning risk is depicted in Figure 79. The chart at the top of Figure 19 plots the rate of recidivism corresponding to each risk score. Overall, as the risk assessment score increases, the rate of recidivism attributable to offenders scoring at that level also increases. As the chart at the bottom of Figure 80 shows, offenders scoring 12 points or less recidivated at the lowest, 8%. Offenders scoring 13 to 17 points recidivated at a slightly higher rate of 14%, while those scoring 18 to 27 points recidivated at a rate of 17%. Those offenders scoring 28 points or more, however, tended to recidivate at much higher rates than those with scores below that threshold. The rate of recidivism more than doubled to 41% among offenders scoring 28 through 33 points. Offenders scoring 34 through 43 points of the risk assessment scale recidivated at an even higher rate of 71%. Finally, all offenders scoring 44 points or more on the risk assessment instrument devised by the Commission were confirmed as recidivists within the study period (100% recidivism rate).

Per its legislative directive, the Sentencing Commission incorporated sex offender risk assessment into the sentencing guidelines. In its *2000 Annual Report*, the Sentencing Commission recommended the risk assessment tool and revised guidelines be implemented statewide beginning July 1, 2001, and the General Assembly approved this action.

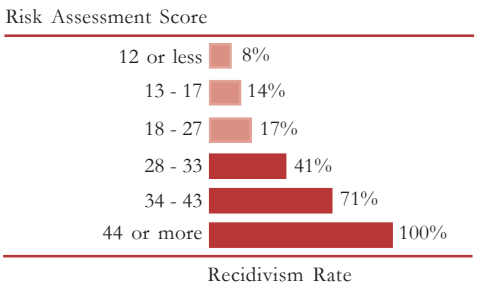
For each sex offender identified as a comparatively high risk (based on a score of 28 or more on the risk assessment instrument), the sentencing guidelines will always recommend a prison term. In addition, the guidelines recommendation range (which comes in the form of a low end, a midpoint and a high end) is adjusted for higher risk offenders. For offenders scoring 28 points or more, the high end of the guidelines range is increased based on the offender's risk score, as follows:

- For offenders scoring 44 points or more, the upper end of the guidelines range is increased by 300% (Level 1/Very High Risk).
- For offenders scoring 34 to 43 points, the upper end of the guidelines range is increased by 100% (Level 2/High Risk).
- For offenders scoring 28 to 33 points, the upper end of the guidelines range is increased by 50% (Level 3/Moderate Risk).

The low end of the guidelines range and the midpoint remain unchanged. The Sentencing Commission feels that increasing the upper end of the recommended range provides judges the flexibility to sentence higher risk sex offenders to terms above the traditional guidelines range and still be in compliance with the guidelines. This approach allows judges to incorporate risk assessment into the sentencing decision while providing the judge with flexibility to evaluate the circumstances of each case.

FIGURE 80

Recidivism Rates by Risk Score Based on the Sex Offender Risk Assessment Instrument Developed by the Virginia Criminal Sentencing Commission (2000)



Risk Assessment Impact

As shown in Figure 81, during fiscal years (FY) 2002 through FY2005, approximately 50% of offenders convicted of rape, forcible sodomy or object sexual penetration (offenses covered by the Rape sentencing guidelines) fell into one of the risk categories (Moderate, High or Very High Risk) and received a guidelines adjustment. Half of these offenders, therefore, were deemed to pose an elevated risk to future public safety. Among the sex offenders assigned to a risk category, the largest share (one in four) was found to be at Moderate Risk for reoffending; these offenders were subject to the lowest level of guidelines enhancement (a 50% increase in the upper end of the guidelines range). A smaller percentage of offenders (one in five) were categorized as High Risk. This classification resulted in a 100% increase in the upper end of the guidelines recommendation. Relatively few offenders received the most extreme guidelines adjustment (300%) for being at Very High Risk of reoffending (about 4% fell into this category).

Integration of the Sentencing Commission's risk assessment instrument into the guidelines for sex offenders is having its intended effect resulting in longer sentences, on average, for higher risk offenders. Offenders in the highest risk category are receiving prison terms that, for many, are effectively life sentences. Figure 82 shows mean prison sentences for offenders convicted of rape, forcible sodomy, and object sexual penetration by risk level. As risk level increases, the mean prison sentence rises in a stair-step fashion. Between FY2002 and FY2005, the mean prison sentence for offenders not assigned to a risk category was 16.5 years. For offenders in the Moderate Risk category, the mean prison sentence was nearly 20 years. The mean prison sentence increases substantially to 33 years for offenders scoring in the High Risk category. Finally, offenders falling into the Very High Risk category received mean prison terms of nearly 43 years.

Based upon the research results summarized above, the majority of the members of the Criminal Sentencing Commission continue to believe that the most cost-effective method of targeting long term incapacitation to those who are clearly sexual predators is the approach represented by the continued judicial use of an effective risk assessment instrument coupled with sentencing guidelines modeled on the risk factors contained in the instrument. Continuing such a risk-based approach to the sanctioning of sexual predators also largely avoids the unintended consequences that other states are experiencing with a less targeted approach. We therefore recommend that the General Assembly continue this approach to the sentencing of sex offenders and permit the Commission to continue to refine and improve the risk assessment instrument based upon ongoing review of the data and criminological research.

FIGURE 81

Virginia Sentencing Guidelines
Sex Offender Risk Levels FY 2002- FY 2005

Rape, Forcible Sodomy and
Object Penetration Cases (N=847)

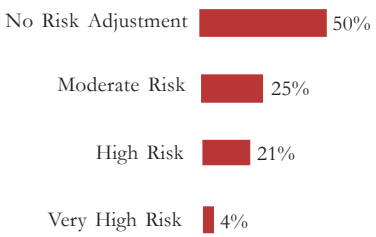
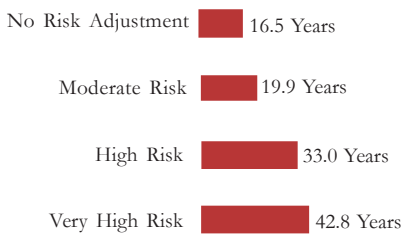


FIGURE 82

Mean Prison Sentences in Completed Rape, Forcible Sodomy and Object Penetration Cases by Sex Offender Risk Levels FY 2002- FY 2005

Rape, Forcible Sodomy and
Object Penetration Cases (N=838)



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Recommendations

Introduction

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

The Commission draws on several sources of information to guide its discussions about modifications to the guidelines system. Commission staff met 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 focused its attention on those crimes for which compliance and departures appeared inconsistent or out of line with overall trends. Such analysis pinpoints specific areas where the sentencing guidelines may need adjustment on the assumption that a very low compliance rate may imply that these guidelines are out of synch with current judicial thinking. The opinions of the judiciary as expressed in patterns of compliance and departures, and in written departure reasons, are very important in directing the Commission's attention to potential areas of the guidelines that may require amendment.

In 2005, the Commission continued its ongoing work on legislative directives to integrate risk assessment tools into the criminal sentencing guidelines system. Risk assessment instruments, as developed by the Sentencing Commission, provide additional information to judges on the relative likelihood of an offender continuing to be a threat to public safety and, in turn, help judges make more informed and appropriate sanctioning decisions. Today, risk assessment for nonviolent and sex offenders is integrated into the sentencing guidelines system and continues to be very successful in helping judges prioritize limited prison resources for incapacitating our most dangerous offenders. Soon, risk assessment will be made available to judges to assist them in reaching appropriate sanction decisions for those found to be in violation of a condition of their probation or post-release supervision.

Virginia is the recognized national leader in the application of criminological research findings to develop valuable sentencing tools for judges that identify felons who pose a high risk of recidivism and a continuing threat to public safety. The comprehensive and exhaustive research work that forms the foundation of the risk assessment tools, however, must be complemented by access to reliable information continually compiled on Virginia's felon population. Accordingly, several of the recommendations that follow address matters that the Commission believes are critically necessary to ensuring that this important work continues and expands so that our judiciary and policy decision-makers have access to the best data and research available on our criminal offender population.

In all, the Commission has adopted fourteen recommendations this year. Each of these is described in detail on the pages that follow.

Recommendation 1

Modify § 19.2-298.01 of the *Code of Virginia* to require 1) completion of the Sentencing Revocation Report (SRR) in all felony cases involving a violation of probation or other form of community supervision, 2) preparation and judicial review of the probation violation sentencing guidelines, when applicable, 3) written explanation of any departure from those guidelines, and 4) submission of these documents, including disposition in each case, by the clerk of the circuit court to the Virginia Criminal Sentencing Commission.

Issue

Currently, § 19.2-298.01 of the *Code of Virginia* outlines specific provisions requiring the completion and submission of the sentencing guidelines worksheets applicable for felony offenses. This provision became effective January 1, 1995.

Since that time, the Commission has implemented a reporting system for tracking community supervision violation proceedings in Virginia's circuit courts. This system provides information that is not available from any other source in the Commonwealth. Implemented in 1997, the report is a simple, one-page form known as the Sentencing Revocation Report (or SRR). In addition, at the direction of the General Assembly, the Commission implemented discretionary sentencing guidelines applicable to felony offenders who violate the conditions of probation but are not convicted of a new crime. Statewide use of the probation violation sentencing guidelines began July 1, 2004. Existing law does not specifically require completion and submission of the SRR or the new guidelines for felony probation violators.

The Commission's analysis of probation violation cases reveals that there is a lack of uniformity across the state in the use and application of the sentencing guidelines. The sentencing guidelines are designed to address the issue of unwarranted disparity in judicial decision-making. However, the guidelines are of limited use in this regard if they are not uniformly prepared and presented to judges in every applicable case. Furthermore, for the guidelines to be accurately calibrated to reflect current judicial thinking on the sanctioning of these felons, reasons for any guidelines departure must be provided to the Commission for further analysis and identification of important trends.

Discussion

Under current *Code*, the provisions of § 19.2-298.01 apply to the sentencing guidelines for felony offenses, established pursuant to § 17.1-800 through § 17.1-806. These provisions require the preparation of the sentencing guidelines worksheets in all felony cases (other than Class 1 felonies). In addition, the judge is required to review and consider the suitability of the guidelines in each case. When a judge sentences above or below the guidelines, the judge is to provide a written explanation for the departure. Finally, the clerk of the circuit court must submit the guidelines forms to the Commission.

The requirements pertaining to the sentencing guidelines for felony offenses are explicitly stated in § 19.2-298.01. Since § 19.2-298.01 was enacted, however, the Commission has developed and implemented two programs, one by mandate of the General Assembly, that are not specifically addressed by this statute.

Charged under § 17.1-803(7) with monitoring sentencing practices in felony cases, the Commission found that there was little to no information available on violations of community supervision or how judges were punishing violators. While the Commonwealth maintains a wide array of sentencing information on felons at the time they are initially sentenced in circuit court, information on the reimposition of suspended incarceration time for felons returned to court for violation of the conditions of community supervision was, until 1997, largely unavailable and its impact difficult to assess. In 1997, the Commission teamed with the Department of Corrections (DOC) to implement a procedure for systematically gathering data on the reasons for, and the outcomes of, community supervision violation proceedings in Virginia's circuit courts. With DOC's assistance, the Commission developed a simple one-page form called the Sentencing Revocation Report (SRR) to capture this information. The Commission has requested that either a probation officer or Commonwealth's attorney prepare an SRR for each hearing related to the violation of probation or other form of community supervision. The Commission has also requested that the clerk of the circuit submit each completed form to the Commission following the violation hearing. However, this process is not mandated by statute.

In 2003, the General Assembly directed the Commission to develop discretionary sentencing guidelines for a special population of offenders not previously covered by the guidelines. Implemented statewide July 1, 2004, these new guidelines apply in cases of felony offenders who violate the conditions of probation but are not convicted of a new crime. The Commission has requested that a Commonwealth's attorney or probation officer complete the new guidelines for each violation hearing involving an offender who is returned to court for reasons other than a new criminal conviction. These guidelines are to be attached to the SRR form and given to the court for review. The Commission has asked judges to review the guidelines, enter the disposition, and provide a reason for departure when a sentence outside of the guidelines is given. Once the hearing has taken place, the Commission has requested the clerk to forward the forms to the Commission. This process, however, is not stipulated in the *Code of Virginia*.

While the Sentencing Revocation Report (SRR) yields crucial criminal justice data not otherwise available, it is not required by § 19.2-298.01. Nor does § 19.2-298.01 specifically require the completion and submission of the new probation violation sentencing guidelines, which were developed and implemented in response to a directive from the 2003 General Assembly. The Commission proposes expanding § 19.2-298.01 to cover the SRR and probation violation sentencing guidelines under the provisions of this statute.

Recommendation 2

Seek a Rule of Court from the Judicial Council of the Virginia Supreme Court to require 1) completion of the Sentencing Revocation Report (SRR) in all felony cases involving a violation of probation or other form of community supervision, 2) preparation and judicial review of the probation violation sentencing guidelines, when applicable, 3) written explanation of any departure from those guidelines, and 4) submission of these documents, including disposition in each case, by the clerk of the circuit court to the Virginia Criminal Sentencing Commission.

Issue

The Judicial Council of Virginia is charged with the responsibility of making a continuous study of the organization, rules and methods of procedure and practice of the judicial system of the Commonwealth. Rules of court can be used to establish forms and procedures that are mandatory or require substantial compliance. After affirmative votes from the Advisory Committee on Rules of Court and the Judicial Council, the proposed rule of court goes before the Supreme Court for possible adoption.

Currently, § 19.2-298.01 of the *Code of Virginia* outlines specific provisions requiring the completion and submission of the sentencing guidelines worksheets applicable for felony offenses. This *Code* provision became effective January 1, 1995.

Since that time, the Commission has implemented a reporting system for tracking community supervision violation proceedings in Virginia's circuit courts. This system provides information that is not available from any other source in the Commonwealth. Implemented in 1997, the report is a simple, one-page form known as the Sentencing Revocation Report (or SRR). In addition, at the direction of the General Assembly, the Commission implemented discretionary sentencing guidelines applicable to felony offenders who violate the conditions of probation but are not convicted of a new crime. Statewide use of the probation violation sentencing guidelines began July 1, 2004. Neither existing laws nor established rules of court specifically require completion and submission of the SRR or the new guidelines for felony probation violators.

The Commission's analysis of probation violation cases reveals that there is a lack of uniformity across the state in the use and application of the sentencing guidelines. The sentencing guidelines are designed to address the issue of unwarranted disparity in judicial decision-making. However, the guidelines are of limited use in this regard if they are not uniformly prepared and presented to judges in every applicable case. Furthermore, for the guidelines to be accurately calibrated to reflect current judicial thinking on the sanctioning of these felons, reasons for any guidelines departure must be provided to the Commission for further analysis and identification of important trends.

Discussion

The Commission recommends that a rule of court be adopted for probation violation guidelines and sentencing revocation reports that parallels § 19.2-298.01 of the *Code of Virginia.* Historically, the *Code of Virginia,* not rules of court, has established procedures for implementing sentencing guidelines in the Commonwealth.

Under current *Code*, the provisions of § 19.2-298.01 apply to the sentencing guidelines for felony offenses, established pursuant to § 17.1-800 through § 17.1-806. These provisions require the preparation of the sentencing guidelines worksheets in all felony cases (other than Class 1 felonies). In addition, the judge is required to review and consider the suitability of the guidelines in each case. When a judge sentences above or below the guidelines, the judge is to provide a written explanation for the departure. Finally, the clerk of the circuit court must submit the guidelines forms to the Commission.

The requirements pertaining to the sentencing guidelines for felony offenses are explicitly stated in § 19.2-298.01. Since § 19.2-298.01 was enacted, however, the Commission has developed and implemented two programs, one by mandate of the General Assembly, that are not specifically addressed by this statute.

Charged under § 17.1-803(7) with monitoring sentencing practices in felony cases, the Commission found that there was little to no information available on violations of community supervision or how judges were punishing violators. While the Commonwealth maintains a wide array of sentencing information on felons at the time they are initially sentenced in circuit court, information on the reimposition of suspended incarceration time for felons returned to court for violation of the conditions of community supervision was, until 1997, largely unavailable and its impact difficult to assess. In 1997, the Commission teamed with the Department of Corrections (DOC) to implement a procedure for systematically gathering data on the reasons for, and the outcomes of, community supervision violation proceedings in Virginia's circuit courts. With DOC's assistance, the Commission developed a simple one-page form called the Sentencing Revocation Report (SRR) to capture this information. The Commission has requested that either a probation officer or Commonwealth's attorney prepare an SRR for each hearing related to the violation of probation or other form of community supervision. The Commission has also requested that the clerk of the circuit submit each completed form to the Commission following the violation hearing. However, this process is not mandated by either statute or rule of court.

In 2003, the General Assembly directed the Commission to develop discretionary sentencing guidelines for a special population of offenders not previously covered by the guidelines. Implemented statewide July 1, 2004, these new guidelines apply in cases of felony offenders who violate the conditions of probation but are not convicted of a new crime. The Commission has requested that a Commonwealth's attorney or probation officer complete the new guidelines for each violation hearing involving an offender who is returned to court for reasons other than a new criminal conviction. These guidelines are to be attached to the SRR form and given to the court for review. The Commission has asked judges to review the guidelines, enter the disposition, and provide a reason for departure when a sentence outside of the guidelines is given. Once the hearing has taken place, the Commission has requested the clerk to forward the forms to the Commission. This process, however, is not stipulated in the *Code of Virginia* or by a rule of court.

The Commission's preference is to continue to establish policy and procedures for implementation of Virginia's voluntary sentencing guidelines through the legislative process. While the Sentencing Revocation Report (SRR) yields crucial criminal justice data not otherwise available, it is not required to be completed by *Code* or rule of court. Nor does § 19.2-298.01 or a rule of court specifically require the completion and submission of the new probation violation sentencing guidelines, which were developed and implemented in response to a directive from the 2003 General Assembly. The Commission proposes the establishment of a rule of court to mandate the completion, review and submittal of the Sentencing Revocation Report (SRR) and probation violation sentencing guidelines, unless it is the will of the General Assembly to modify § 19.2-298.01 of the *Code of Virginia* to achieve this end.

Recommendation 3

Amend §19.2-299 to require pre-sentence investigation reports in all cases involving a conviction for a felony-level sex offense.

Issue

If waived by the court, the defendant and the attorney for the Commonwealth, pre-sentence investigation reports are not required in all cases involving rape, forcible sodomy, objection penetration and other serious felony-level sex offenses. Assessment of risk using the Commission's sex offender risk assessment instrument depends on, among other things, complete and accurate identification of prior arrests for crimes against the person, thorough knowledge of the offender's employment, education and treatment history, and detailed information related to the offense and the victim. Pre-sentence reports in these difficult cases also provides sentencing judges with a fuller context within which to determine the potential future dangerousness of a person convicted of a felony-level sex crime.

Analysis

Presently, §19.2-299 does not require pre-sentence investigation reports in all cases involving rape and sex offenses. However, assessment of risk using the Commission's sex offender risk assessment instrument depends on, among many other things, a complete and accurate identification of prior arrests for crimes against the person (both adult and juvenile), including out-of-state arrests. 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 important factors on the risk assessment form may not be completed accurately (e.g., employment, education, prior treatment experience).

In FY2001, pre-sentence reports were prepared in approximately 77% of the 865 rape, forcible sodomy, object sexual penetration and other felony sexual assault convictions in the Commonwealth. In FY2003, the number of pre-sentence reports decreased to 58% of the 916 felony sex offender conviction cases.

Under the Department of Corrections' present policy, if a pre-sentence report is not completed in a sex offender case and the offender receives either supervised probation or any prison incarceration time, a post-sentence investigation report must be prepared. Based on FY2003 experience, if pre-sentence investigations were required in all sex offender cases, approximately 380 post-sentence investigations would have had to be completed prior to sentencing and presented to the sentencing judge as a pre-sentence report.

In addition to providing valuable information for the accurate completion of the sex offender risk assessment, a pre-sentence report provides to a judge a more thorough and comprehensive picture of the offender and establishes a context for the proper consideration and role of risk assessment. The impact of shifting to all pre-sentence reports in these cases likely would have little impact on a single jurisdiction. Based on FY2003 pre-sentence data, the Commission estimates that the average district probation office will be minimally impacted by this suggested revision.

Recommendation 4

§ 19.2-389.1 of the *Code of Virginia* should be modified to allow the Virginia Criminal Sentencing Commission access to statewide automated reporting of juvenile adjudications as maintained by the Central Criminal Records Exchange. The Commission's use of juvenile criminal history information would be limited to research purposes only.

Issue

Currently, § 19.2-389.1 of the *Code of Virginia* allows both the probation officer and attorney for the Commonwealth to have access to juvenile record information maintained by the Central Criminal Records Exchange (CCRE). Access to juvenile criminal history is granted by statute to aid in the preparation of the discretionary sentencing guidelines worksheets in addition to other functions. However, the Virginia Criminal Sentencing Commission is not provided access to this same automated juvenile history for research purposes. The Criminal Sentencing Commission often undertakes very sophisticated studies of offender recidivism rates and patterns. Access to juvenile record information is critical to ensuring that this research is accurate and comprehensive.

Discussion

Under current *Code*, the provisions of § 19.2-389.1 limit access to the automated juvenile history to preparation of: pretrial investigation reports, pre-sentence and post-sentence reports and sentencing guidelines. Other agencies, such as community-based probation programs, Department of Forensic Science and the Office of the Attorney General have statutory access to juvenile records maintained by CCRE for specific purposes.

The Virginia Criminal Sentencing Commission's need for juvenile history information is limited to research purposes. Developing sentencing guideline revisions, reviewing and auditing scoring decisions and accurately capturing recidivist activity requires access to juvenile history. Therefore, the Commission recommends that § 19.2-389.1 be modified to allow the Commission access to juvenile criminal records, archived in the Central Criminal Records Exchange, for the specific purpose of research.

Recommendation 5

Amend the fraud sentencing guidelines to add a crime defined in § 18.2-168 of the *Code of Virginia* relating to uttering, or the attempt to employ as true knowing it to be forged, a public record.

Issue

Currently, uttering a public record under § 18.2-168 of the *Code of Virginia* is not covered by the fraud sentencing guidelines.

Analysis

Until 1999, the Virginia Crime Codes (VCC), and by extension, the sentencing guidelines did not differentiate between the forging and uttering of a public record under § 18.2-168. In 1999, the Commission became aware that several Commonwealth's attorneys were charging forgery of a public record separate from uttering a public record, and responded by creating a separate offense code. Although the Commission acted to separate the offenses for more accurate reporting, it did not treat the offense as one covered by the sentencing guidelines.

Uttering of a public record is a Class 4 felony. Analysis of the FY1999 through FY2003 Pre-/Post-Sentence Investigation (PSI) database indicates that there have been 36 offenders convicted of this crime over this five-year period. Nearly two-thirds (61%) were sentenced to some term of incarceration; 33% were sentenced to jail (12 months or less) with a median term of three and a half months, while 28% were sentenced to a prison term (1 year or more), with a median sentence of 1.6 years.

When compared to the 709 convictions, during the same time period, for forgery of a public document, it is evident that judges are sentencing those convictions of uttering or forgery of public documents to similar terms. In the forgery cases, nearly two-thirds (62%) were sentenced to some term of incarceration; 26% were sentenced to jail (12 months or less), while 36% were sentenced to a prison term (1 year or more) (Figure 83). Judges sentence within the guidelines recommendation for forgery of a public document in over 80% of the cases. Compliance for the uttering of a public document is expected to mirror the compliance rate for forgery of a public document.

The Commission utilized the FY1999-FY2003 sentencing patterns for this crime to develop guidelines scores that reflect current judicial sanctioning practices. The Commission proposes to score uttering of a public record the same as it currently does forgery of a public record.Like forgery of a public document, uttering a public document would be scored under "Other than ListedBelow".

The Commission's proposal is designed to integrate current judicial sanctioning practices into the guidelines; therefore, no impact on correctional bed space is anticipated.

FIGURE 83

Actual and Proposed Guidelines Dispositions for Forgery and Uttering of a Public Document

Type of Disposition	Actual	Recommended Under Proposed Guidelines
No incarceration	28%	35%
Jail (12 months or less)	33	27
Prison (1 year or more)	29	37

Recommendation 6

Amend the fraud sentencing guidelines to add a crime defined in § 18.2-186.3(D) of the *Code of Virginia* relating to the use of identifying information to defraud involving a loss of more than $200.

Issue:

Currently, use of identifying information to defraud involving a loss of more than $200 under § 18.2-186.3(D) of the *Code of Virginia* is not covered by the sentencing guidelines.

Analysis:

Identity fraud was added to the *Code of Virginia* in the 2000 session of the General Assembly. Under § 18.2-186.3(D), when the loss is more than $200, the crime becomes a Class 6 felony. Analysis of the FY2000 through FY2003 Pre-/Post-Sentence Investigation (PSI) database indicates that there have been 51 offenders convicted of this crime during this four-year period. More than two-thirds (72%) were sentenced to some term of incarceration; 33% were sentenced to jail (12 months or less), with a median term of six months, while 39% were sentenced to a prison term (1 year or more), with a median sentence of 1 year 6 months (Figure 84).

The Commission utilized the FY2000-FY2003 sentencing patterns for this crime to develop guidelines scores that reflect current judicial sanctioning practices. Under the Commission's proposal, the score on the Primary Offense factor for a single count of this crime would be six points on Section A and six points on Section B. On Section C, the base score of the Primary Offense factor would be nine points for one count of the offense. In accordance with § 17.1-805, the guidelines scores are increased for offenders with prior convictions for violent felonies. For an offender with a prior conviction for a violent felony carrying a statutory maximum penalty of less than 40 years (classified as a Category II record), the score would increase to 18 points for one count of the crime. For an offender with a prior conviction for a violent felony with a maximum penalty of 40 years or more (a Category I record), the score for the Primary Offense factor for one count would rise to 36 points. As illustrated in Figure 3, the Commission's proposal correlates with actual sentencing dispositions for this crime.

The Commission's proposal is designed to integrate current judicial sanctioning practices into the guidelines; therefore, no impact on correctional bed space is anticipated.

FIGURE 84

Actual and Proposed Guidelines Dispositions for Identity Fraud

Type of Disposition	Actual	Recommended Under Proposed Guidelines
No incarceration	28%	35%
Jail (12 months or less)	33	27
Prison (1 year or more)	39	37

Recommendation 7

Amend the fraud sentencing guidelines to add a crime defined in § 63.2-502 relating to knowingly make any false application for public assistance.

Issue:

Currently, to knowingly make any false application for public assistance under § 63.2-502 of the *Code of Virginia* is not covered by the sentencing guidelines.

Analysis:

To knowingly make any false application for public assistance under § 63.2-502 is a Class 5 felony. Analysis of the FY1999 through FY2003 Pre-/Post-Sentence Investigation (PSI) database indicates that there have been 21 offenders convicted of this crime during this five-year period. More than half (52%) were sentenced to no active term of incarceration, 43% were sentenced to jail (12 months or less), with a median term of three months, and one was sentenced to prison (1 year or more) (Figure 85).

The Commission utilized the FY1999-FY2003 sentencing patterns for this crime to develop guidelines scores that reflect current judicial sanctioning practices. The Commission proposes to score the offense of knowingly make false application for public assistance the same as other welfare fraud crimes currently covered by the guidelines. Under the Commission's proposal, the score on the Primary Offense factor for a single count of this crime would be two points on Section A and one point on Section B. On Section C, the base score of the Primary Offense factor would be three points for one count of the offense. In accordance with § 17.1-805, the guidelines scores are increased for offenders with prior convictions for violent felonies.

FIGURE 85

Proposed Primary Offense Factor False Application for Welfare- Section C

	Category I	Category II	Other
Other than listed below			
1 count	24	12	6
2 counts	28	14	7
3 counts	40	20	10
4 counts	56	28	14
Credit card theft (1 count)	36	18	9
Welfare fraud or food stamp fraud ($200 or more)			
1 count	12	6	3
2 counts	20	10	5
Forging coins, checks or bank notes; Other writings; Uttering; Making or possessing forging instruments			
1 count	28	14	7
2 - 3 counts	32	16	8
4 counts	40	20	10
Construction fraud (1 count)	36	18	9
False Application for Welfare (1 count)	12	6	3

For an offender with a prior conviction for a violent felony carrying a statutory maximum penalty of less than 40 years (classified as a Category II record), the score would increase to six points for one count of the crime. For an offender with a prior conviction for a violent felony with a maximum penalty of 40 years or more (a Category I record), the score for the Primary Offense factor for one count would rise to 12 points. The complete proposed points for the Primary Offense factor on each section of the fraud sentencing guidelines are illustrated in Figure 85. As illustrated in Figure 86, the Commission's proposal correlates with actual sentencing dispositions for this crime.

The Commission's proposal is designed to integrate current judicial sanctioning practices into the guidelines; therefore, no impact on correctional bed space is anticipated.

FIGURE 86

Actual and Proposed Guidelines Dispositions for False Applications for Public Assistance

Type of Disposition	Actual	Recommended Under Proposed Guidelines
No incarceration	52%	57%
Jail (12 months or less)	43	38
Prison (1 year or more)	5	5

Recommendation 8

Amend the traffic sentencing guidelines to add a crime defined in § 46.2-817 of the *Code of Virginia* relating to eluding police; specifically, the felony violation of interfering or endangering an officer or vehicle by disregarding a signal by a law-enforcement officer to stop.

Issue:

Currently, interfering or endangering an officer or vehicle by disregarding a signal by a law-enforcement officer to stop under § 46.2-817 of the *Code of Virginia* is not covered by the sentencing guidelines.

Analysis:

Interfering or endangering an officer or vehicle by disregarding a signal by a law-enforcement officer to stop was elevated from a Class 1 misdemeanor to a Class 6 felony in the 1999 session of the General Assembly. Analysis of the FY1999 through FY2003 Pre-/Post-Sentence Investigation (PSI) database indicates that there have been 566 offenders convicted of this crime over a five-year period. More than three-fourths (77%) were sentenced to an active term of incarceration; 44% were sentenced to jail (12 months or less), with a median term of six months, while 33% were sentenced to a prison term (1 year or more), with a median sentence of 1 year 6 months (Figure 87). However, if the offender had previously been convicted of a traffic-related felony, the number of offenders sentenced to some term of incarceration increased to 86%.

Figure 88 illustrates a new factor to capture offenders convicted of this crime, who have a previous traffic-related felony. An additional eight points is added to the guidelines score on Section A and one point on Section C. The additional points are needed to obtain a guidelines recommendation reflective of current judicial sanctioning.

The Commission utilized the FY1999-FY2003 sentencing patterns for this crime to develop guidelines scores that reflect current judicial sanctioning practices. Under the Commission's proposal, the score on the Primary Offense factor for a single count of this crime would be five points on Section A and nine points on Section B. On Section C, the base score of the Primary Offense factor would be 10 points for one count of the offense. In accordance with § 17.1-805, the guidelines scores are increased for offenders with prior convictions for violent

FIGURE 87

Actual and Proposed Guidelines Dispositions for Disregarding a Police Command to Stop

Type of Disposition	Actual	Recommended Under Proposed Guidelines
No incarceration	23%	19%
Jail (12 months or less)	44	50
Prison (1 year or more)	33	31

felonies. For an offender with a prior conviction for a violent felony carrying a statutory maximum penalty of less than 40 years (classified as a Category II record), the score would increase to 20 points for one count of the crime. For an offender with a prior conviction for a violent felony with a maximum penalty of 40 years or more (a Category I record), the score for the Primary Offense factor for one count would rise to 40 points. As illustrated in Figure 89, the Commission's proposal correlates with actual sentencing dispositions for this crime.

The Commission's proposal is designed to integrate current judicial sanctioning practices into the guidelines; therefore, no impact on correctional bed space is anticipated.

FIGURE 88

Felony Traffic Factor for Disregarding a Police Command to Stop
Traffic Section A and B

Proposed Factor:
Section A
Any Felony Traffic Conviction
(Score only if the Primary Offense is Disregarding a Police Command to Stop) . . . . . If yes, Add 8

Section B
Any Felony Traffic Conviction
(Score only if the Primary Offense is Disregarding a Police Command to Stop) . . . . . If yes, Add 1

FIGURE 89

Proposed Primary Offense Factor for
Disregarding a Police Command to Stop -Traffic Section C

	Category I	Category II	Other
DWI - Third conviction within 5 years (1 count)	20	10	5
DWI - Third conviction within 10 years (1 count)	20	10	5
DWI - Fourth or subsequent conviction within 10 years			
1 count	40	20	10
2 counts	48	24	12
3 counts	68	34	17
Habitual Offender: endangerment, second or subsequent, or DWI and declared habitual offender for DWI, involuntary manslaughter			
1 count	40	20	10
2 counts	48	24	12
3 counts	68	34	17
Drive on revoked license after DWI, involuntary manslaughter, or DWI victim permanently impaired (maiming) - endangerment			
1 count	40	20	10
2 counts	48	24	12
3 counts	68	34	17
Drive on revoked license after DWI, involuntary manslaughter, or DWI victim permanently impaired (maiming) and DWI etc. violation			
1 count	40	20	10
2 counts	48	24	12
3 counts	68	34	17
Drive on revoked license after DWI, involuntary manslaughter, or DWI victim permanently impaired (maiming) - second or subsequent			
1 count	40	20	10
2 counts	48	24	12
3 counts	68	34	17
Hit and run, driver fails to stop and aid victim			
1 count	20	10	5
Disregarding a Police Command to Stop			
1 count	40	20	10

Recommendation 9

Amend the miscellaneous sentencing guidelines to add a crime defined in § 18.2-60(A.1) of the *Code of Virginia* of knowingly make a threat to kill or do bodily injury by letter, communication or electronic message.

Issue:
Currently, to knowingly make a threat to kill or do bodily injury by letter, communication or electronic message under § 18.2-60(A.1) of the *Code of Virginia* is not covered by the sentencing guidelines.

Analysis:
To knowingly make a threat to kill or do bodily injury by letter, communication or electronic message is a Class 6 felony. Although the 2000 session of the General Assembly rewrote § 18.2-60, the intent of the law remained the same including the form of threat described in paragraph 1 of subsection A. Analysis of the FY1999 through FY2003 Pre-/Post-Sentence Investigation (PSI) database indicates that there have been 40 offenders convicted of this crime over a five-year period. More than two-thirds (70%) were sentenced to an active term of incarceration; 23% were sentenced to jail (12 months or less), with a median term of three months, while 47% were sentenced to a prison term (1 year or more), with a median sentence of two years (Figure 90).

The Commission utilized the FY1999-FY2003 sentencing patterns for this crime to develop guidelines scores that reflect current judicial sanctioning practices. Under the Commission's proposal, the score on the Primary Offense factor for a single count of this crime would be three points on Section A and seven points on Section B. On Section C, the base score of the Primary Offense factor would be 10 points for one count of the offense. In accordance with § 17.1-805, the guidelines scores are increased for offenders with prior convictions for violent felonies. For an offender with a prior conviction for a violent felony carrying a statutory maximum penalty of less than 40 years (classified as a Category II record), the score would increase to 20 points for one count of the crime. For an offender with a prior conviction for a violent felony with a maximum penalty of 40 years or more (a Category I record), the score for the Primary Offense factor for one count would rise to 40 points. As illustrated in Figure 91, the Commission's proposal correlates with actual sentencing dispositions for this crime.

The Commission's proposal is designed to integrate current judicial sanctioning practices into the guidelines; therefore, no impact on correctional bed space is anticipated.

FIGURE 90
Actual and Proposed Guidelines Dispositions for Threaten to Kill or Do Bodily Injury by Letter, Communication or Electronic Message

Type of Disposition	Actual	Recommended Under Proposed Guidelines
No incarceration	30%	28%
Jail (12 months or less)	23	25
Prison (1 year or more)	47	47

FIGURE 91
Proposed Primary Offense Factor on Section C

	Category I	Category II	Other
Threaten to Kill or Do Bodily Injury by Letter, Communication or Electronic Message (1 count)	40	20	10

Recommendation 10

Amend the miscellaneous offense sentencing guidelines to add a crime defined in § 18.2-77(B) of the *Code of Virginia* relating to arson of an unoccupied dwelling place or church.

Issue:

Currently, arson of an unoccupied dwelling place or church under § 18.2-77(B) of the *Code of Virginia* is not covered by the sentencing guidelines.

Analysis:

Arson of an unoccupied dwelling place or church under § 18.2-77(B) is a Class 4 felony. Analysis of the FY1999 through FY2003 Pre-/Post-Sentence Investigation (PSI) database indicates that there have been 45 offenders convicted of this type of crime during this five-year period. Over two-thirds (69%) were sentenced to an active term of incarceration; 22% were sentenced to jail (12 months or less), with a median term of six months, while 47% were sentenced to a prison term (1 year or more), with a median sentence of 2 years 6 months (Figure 92).

The Commission utilized the FY1999-FY2003 sentencing patterns for this crime to develop guidelines scores that reflect current judicial sanctioning practices. Under the Commission's proposal, the score on the Primary Offense factor for a single count of this crime would be six points on Section A and six points on Section B. On Section C, the base score of the Primary Offense factor would be 17 points for one count of the offense. In accordance with § 17.1-805, the guidelines scores are increased for offenders with prior convictions for violent felonies. For an offender with a prior conviction for a violent felony carrying a statutory maximum penalty of less than 40 years (classified as a Category II record), the score would increase to 34 points for one count of the crime. For an offender with a prior conviction for a violent felony with a maximum penalty of 40 years or more (a Category I record), the score for the Primary Offense factor for one count would rise to 68 points. As illustrated in Figure 93, the Commission's proposal correlates with actual sentencing dispositions for this crime.

The Commission's proposal is designed to integrate current judicial sanctioning practices into the guidelines; therefore, no impact on correctional bed space is anticipated.

FIGURE 92

Actual and Proposed Guidelines Dispositions for Arson of Unoccupied Dwelling Place or Church

Type of Disposition	Actual	Recommended Under Proposed Guidelines
No incarceration	31%	27%
Jail (12 months or less)	22	20
Prison (1 year or more)	47	53

FIGURE 93

Proposed Primary Offense Factor on Section C

	Category I	Category II	Other
Arson of Unoccupied Dwelling or Church (1 count)	68	34	17

Recommendation 11

Amend the miscellaneous offense sentencing guidelines to add a crime defined in § 53.1-203(1) of the *Code of Virginia* relating to escape from a correctional facility or from any person in charge of such prisoner.

Issue:

Currently, escape from a correctional facility or from any person in charge of such prisoner under § 53.1-203(1) of the *Code of Virginia* is not covered by the sentencing guidelines.

Analysis:

Escape from a correctional facility or from any person in charge of such prisoner under § 53.1-203(1) is a Class 6 felony with a mandatory minimum of one year. Analysis of the FY1999 through FY2003 Pre-/Post-Sentence Investigation (PSI) database indicates that there have been 24 offenders convicted of this type of crime over this five-year period. All (100%) such offenders were sentenced to a prison term of incarceration (1 year or more), with a median sentence of one year (Figure 94).

The Commission utilized the FY1999-FY2003 sentencing patterns for this crime to develop guidelines scores that reflect current judicial sanctioning practices. Under the Commission's proposal, the score on the Primary Offense factor for a single count of this crime would be seven points on Section A and 10 points on Section B. On Section C, the base score of the Primary Offense factor would be 10 points for one count of the offense. In accordance with § 17.1-805, the guidelines scores are increased for offenders with prior convictions for violent felonies. For an offender with a prior conviction for a violent felony carrying a statutory maximum penalty of less than 40 years (classified as a Category II record), the score would increase to 20 points for one count of the crime. For an offender with a prior conviction for a violent felony with a maximum penalty of 40 years or more (a Category I record), the score for the Primary Offense factor for one count would rise to 40 points. The Commission's proposal correlates with actual sentencing dispositions for this crime (Figure 95).

The Commission's proposal is designed to integrate current judicial sanctioning practices into the guidelines, therefore no impact on correctional bed space is anticipated.

FIGURE 94

Actual and Proposed Guidelines Dispositions for Escape from a Correctional Facility

Type of Disposition	Actual	Recommended Under Proposed Guidelines
No incarceration	0%	0%
Jail (12 months or less)	0	0
Prison (1 year or more)	100	100

FIGURE 95

Proposed Primary Offense Factor on Section C

	Category I	Category II	Other
Escape from a Correctional Facility (1 count)	40	20	10

Recommendation 12

Amend the weapons offense sentencing guidelines to add a crime defined in § 18.2-286.1 of the *Code of Virginia* relating to the intentional discharge of a firearm from a motor vehicle to create the risk of injury or death, or the reasonable apprehension of injury or death by another.

Issue:

Currently, the intentional discharge of a firearm from a motor vehicle under § 18.2-286.1 of the *Code of Virginia* is not covered by the sentencing guidelines.

Analysis:

To intentionally discharge a firearm from a motor vehicle under § 18.2-286.1 is a Class 5 felony. Analysis of the FY1999 through FY2003 Pre-/Post-Sentence Investigation (PSI) database indicates that there have been 22 offenders convicted of this type of crime during the five-year period. Nearly three-fourths (73%) were sentenced to an active term of incarceration; 30% were sentenced to jail (12 months or less), with a median term of four months, while 43% were sentenced to a prison term (1 year or more), with a median sentence of 2 years 6 months (Figure 96).

The Commission utilized the FY1999-FY2003 sentencing patterns for this crime to develop guidelines scores that reflect current judicial sanctioning practices. Under the Commission's proposal, the score on the Primary Offense factor for a single count of this crime would be one point on Section A and eight points on Section B. On Section C, the base score of the Primary Offense factor would be 12 points for one count of the offense. In accordance with § 17.1-805, the guidelines scores are increased for offenders with prior convictions for violent felonies. For an offender with a prior conviction for a violent felony carrying a statutory maximum penalty of less than 40 years (classified as a Category II record), the score would increase to 24 points for one count of the crime. For an offender with a prior conviction for a violent felony with a maximum penalty of 40 years or more (a Category I record), the score for the Primary Offense factor for one count would rise to 48 points. As illustrated in Figure 97, the Commission's proposal correlates with actual sentencing dispositions for this crime.

The Commission's proposal is designed to integrate current judicial sanctioning practices into the guidelines; therefore, no impact on correctional bed space is anticipated.

FIGURE 96

Actual and Proposed Guidelines Dispositions for Discharging a Firearm from a Motor Vehicle

Type of Disposition	Actual	Recommended Under Proposed Guidelines
No incarceration	27%	30%
Jail (12 months or less)	30	25
Prison (1 year or more)	43	45

FIGURE 97

Proposed Primary Offense Factor on Section C

	Category I	Category II	Other
Discharge Firearm from motor vehicle (1 count)	48	24	12

Recommendation 13

Amend the weapons offense sentencing guidelines to add a crime defined in § 18.2-308.1(B) of the *Code of Virginia* relating to possession of a firearm on school property or a school bus.

Issue:

Currently, the possession of a firearm on school property or a school bus under § 18.2-308.1(B) of the *Code of Virginia* is not covered by the sentencing guidelines.

Analysis:

To possess a firearm on school property or a school bus under § 18.2-308.1(B) is a Class 6 felony. Analysis of the FY1999 through FY2003 Pre-/Post-Sentence Investigation (PSI) database indicates that there have been 24 offenders convicted of this type of firearm possession during this five-year period. Two-thirds (67%) were sentenced to no active term of incarceration; 25% were sentenced to jail (12 months or less), with a median term of four months, while 8% were sentenced to a prison term (1 year or more), with a median sentence of one year. Of those sentenced to no incarceration, over one-fourth had served an indeterminable amount of time in pretrial incarceration (Figure 98).

The Commission utilized the FY1999-FY2003 sentencing patterns for this crime to develop guidelines scores that reflect current judicial sanctioning practices. Under the Commission's proposal, the score on the Primary Offense factor for a single count of this crime would be one point on Section A and seven points on Section B. On Section C, the base score of the Primary Offense factor would be eight points for one count of the offense. In accordance with § 17.1-805, the guidelines scores are increased for offenders with prior convictions for violent felonies. For an offender with a prior conviction for a violent felony carrying a statutory maximum penalty of less than 40 years (classified as a Category II record), the score would increase to 16 points for one count of the crime. For an offender with a prior conviction for a violent felony with a maximum penalty of 40 years or more (a Category I record), the score for the Primary Offense factor for one count would rise to 32 points. As illustrated in Figure 99, the Commission's proposal correlates with actual sentencing dispositions for this crime.

The Commission's proposal is designed to integrate current judicial sanctioning practices into the guidelines; therefore, no impact on correctional bed space is anticipated.

FIGURE 98

Actual and Proposed Guidelines Dispositions for Possessing a Firearm on School Property

Type of Disposition	Actual	Recommended Under Proposed Guidelines
No incarceration	67%	58%
Jail (12 months or less)	25	38
Prison (1 year or more)	8	4

FIGURE 99

Proposed Primary Offense Factor on Section C

	Category I	Category II	Other
Possessing a Firearm on School Property (1 count)	32	16	8

Recommendation 14

Amend the weapons offense sentencing guidelines to add a crime defined in § 18.2-308.2:2(K) of the *Code of Virginia* relating to the willful and intentional making of a false statement on the consent form required by Virginia or federal law for certain firearm transactions.

Issue:

Currently, the willful and intentional making of a false statement on the consent form required for certain firearm transactions under § 18.2-308. 2:2(K) of the *Code of Virginia* is not covered by the sentencing guidelines.

Analysis:

The willful and intentional making of a false statement on the consent form required for certain firearm transactions under § 18.2-308. 2:2(K) is a Class 5 felony. Analysis of the FY1999 FY2003 Pre-/Post-Sentence Investigation (PSI) database indicates that there have been 240 offenders convicted of this crime during the five-year period. More than three-fourths (77%) were sentenced to no active term of incarceration; 16% were sentenced to jail (12 months or less), with a median term of three months, while 7% were sentenced to a prison term (1 year or more), with a median sentence of 1 year 3 months (Figure 100).

The Commission utilized the FY1999-FY2003 sentencing patterns for this crime to develop guidelines scores that reflect current judicial sanctioning practices. Under the Commission's proposal, the score on the Primary Offense factor for a single count of this crime would be four points on Section A and one point on Section B. On Section C, the base score of the Primary Offense factor would be eight points for one count of the offense. In accordance with § 17.1-805, the guidelines scores are increased for offenders with prior convictions for violent felonies. For an offender with a prior conviction for a violent felony carrying a statutory maximum penalty of less than 40 years (classified as a Category II record), the score would increase to 16 points for one count of the crime. For an offender with a prior conviction for a violent felony with a maximum penalty of 40 years or more (a Category I record), the score for the Primary Offense factor for one count would rise to 32 points. As illustrated in Figure 101, the Commission's proposal correlates with actual sentencing dispositions for this crime.

The Commission's proposal is designed to integrate current judicial sanctioning practices into the guidelines; therefore, no impact on correctional bed space is anticipated.

FIGURE 100

Actual and Proposed Guidelines Dispositions for Making a False Statement on Consent Form for Certain Firearm transactions

Type of Disposition	Actual	Recommended Under Proposed Guidelines
No incarceration	77%	77%
Jail (12 months or less)	16	14
Prison (1 year or more)	7	9

FIGURE 101

Proposed Primary Offense Factor on Section C

	Category I	Category II	Other
Making a false statement on consent form for certain firearm transactions (1 count)	32	16	8

Appendices

Appendix 1

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

Reasons for MITIGATION	Burg. of Dwelling (N=156)	Burg. Other Structure (N=72)	Sch. I/II Drugs (N=524)	Other Drugs (N=41)	Fraud (N=226)	Larceny (N=386)	Misc (N=45)	Traffic (N=98)
No reason given	25	12	94	12	29	67	10	29
Minimal property or monetary loss	3	0	1	0	2	8	0	0
Minimal circumstances/facts of the case	6	2	21	1	13	24	4	8
Offender not the leader	1	1	2	0	1	1	0	0
Small amount of drugs involved in the case	0	0	9	0	0	0	0	0
Offender and victims are relatives/friends	3	0	0	0	2	8	0	0
Little or no injury/offender did not intend to harm; victim requested lenient sentence	7	1	0	0	5	13	0	0
Victim was a willing participant								
Offender has no prior record	1	0	3	0	0	0	0	0
Offender has minimal prior record	3	1	12	0	10	3	1	2
Offender's criminal record overstates his degree of criminal orientation	3	0	9	2	3	3	1	0
Offender cooperated with authorities	19	13	59	6	19	34	0	5
Offender is mentally or physically impaired	0	0	10	0	8	11	0	0
Offender has emotional or psychiatric problems	5	1	2	0	2	14	0	3
Offender has drug or alcohol problems	1	0	2	0	1	2	1	0
Offender needs counseling	1	1	5	0	1	3	1	0
Offender has good potential for rehabilitation	13	4	43	5	37	44	4	5
Offender shows remorse	0	0	4	0	1	1	0	3
Age of Offender	4	3	11	1	2	5	2	2
Guilty plea	0	0	0	0	0	1	0	0
Jury sentence	1	0	2	0	1	0	0	1
Multiple charges are being treated as one criminal event	4	1	0	0	1	2	0	0
Sentence recommended by Commonwealth Attorney or probation officer	10	2	23	1	14	16	2	4
Weak evidence or weak case	8	1	12	0	8	14	5	3
Plea agreement	21	15	116	6	37	75	13	24
Sentencing Consistency with co-defendant or with similar cases in the jurisdiction	0	0	2	0	1	5	0	0
Time served	3	5	6	1	6	16	1	1
Offender already sentenced by another court or in previous proceeding for other offenses	8	2	9	0	13	13	0	2
Offender will likely have his probation revoked	1	0	3	0	0	1	0	0
Offender is sentenced to an alt. punishment to incarceration	18	12	68	2	17	27	1	5
Guidelines recommendation is too harsh	6	0	9	2	7	6	2	1
Judge rounded guidelines minimum to nearest whole year	5	4	9	3	3	7	0	1
Guidelines recommendation exceeded the statutory maximum	0	0	0	0	0	1	0	0
Other mitigating factors	0	0	12	0	9	6	2	2

Note: Percentages indicate the percent of mitigation (or aggravation) cases in which the judge cite 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 (N=91)	Burg. Other Structure (N=48)	Sch. I/II Drugs (N=591)	Other Drugs (N=93)	Fraud (N=154)	Larceny (N=420)	Misc (N=92)	Traffic (N=191)
No reason given	14	4	89	14	33	64	22	35
Extreme property or monetary loss	3	0	0	0	4	27	0	0
The offense involved a high degree of planning	0	2	0	1	6	8	1	1
Aggravating circumstances/flagrancy of offense	22	8	24	3	11	56	6	19
Offender used a weapon in commission of the offense	1	0	3	1	0	1	4	0
Offender was the leader	0	1	1	0	0	1	0	0
Offender's true offense behavior was more serious than offenses at conviction	4	2	28	3	3	17	2	3
Extraordinary amount of drugs or purity of drugs involved in the case	0	0	24	7	0	0	0	0
Aggravating circumstances relating to sale of drugs	0	0	3	0	0	0	0	0
Drugs involved	0	0	8	1	0	0	0	0
Offender immersed in drug culture	0	0	3	0	0	0	0	0
Offender is related to or is the caretaker of the victim	0	0	0	0	0	2	0	0
Unprovoked attack	0	1	2	0	0	0	0	0
Victim vulnerability	1	0	1	0	2	6	6	0
Victim request	1	0	1	0	3	8	3	8
Victim injury	0	0	3	0	2	4	7	5
Previous punishment of offender has been ineffective	2	0	11	2	4	12	1	1
Offender was under some form of legal restraint at time of offense	1	1	15	1	0	10	0	5
Offender has a serious juvenile record	1	1	0	1	0	0	0	0
Offender's criminal record understates the degree of his criminal orientation	4	6	37	5	6	27	3	12
Offender has previous conviction(s) or other charges for the same type of offense	3	2	20	6	7	40	3	44
New crime committed after current offense	0	0	15	4	0	8	1	3
Offender failed to cooperate with authorities	1	0	24	3	5	9	4	5
Offender has drug or alcohol problems	0	0	14	0	0	3	0	11
Offender has poor rehabilitation potential	4	2	16	2	5	18	3	17
Offender shows no remorse	0	0	7	0	5	7	0	1
Age of offender	0	0	0	1	0	0	0	0
Jury sentence	6	2	17	1	0	6	4	6
Sentence recommend by Commonwealth Attorney or probation officer	1	1	6	0	2	5	1	1
Plea agreement	18	5	140	13	30	60	21	26
Community sentiment	0	0	2	1	0	1	0	0
Sentencing consistency with codefendant or with other similar cases in the jurisdiction	2	2	5	2	0	4	0	0
Judge wanted to teach offender a lesson	0	0	0	1	1	1	1	0
Offender is sentenced to an alternative punishment to incarceration	3	4	59	7	20	37	2	14
Guidelines recommendation is too low	10	6	37	9	9	32	3	15
Mandatory minimum penalty is required in the case	0	0	5	0	0	2	5	0
Judge rounded guidelines minimum to nearest whole year	2	3	8	1	5	4	2	2
Other reason for aggravation	4	2	8	2	5	7	1	1

Note: Percentages indicate the percent of mitigation (or aggravation) cases in which the judge cite 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 (N=179)	Homicide (N=45)	Kidnapping (N=13)	Robbery (N=163)	Rape (N=46)	Sexual Assault (N=67)
No reason given	25	5	1	21	8	9
Minimal property or monetary loss	0	0	0	1	0	0
Minimal circumstances/facts of the case	13	3	3	6	3	6
Offender was not the leader/active participant in offense	4	2	0	6	0	1
Offender and victim are related or friends	2	1	2	1	3	1
Little or no victim injuryoffender did not intend to harm; victim requested lenient sentence	19	2	3	2	6	7
Victim was a willing participant or provoked the offense	2	1	0	0	0	0
Offender has no prior record	1	2	0	5	0	3
Offender has minimal prior criminal record	4	2	0	6	3	2
Offender's criminal record overstates his degree of criminal orientation	0	0	0	1	0	0
Offender cooperated w/ authorities or law enforcement	5	7	4	30	1	1
Offender has emotional or psychiatric problems	5	0	1	3	0	1
Offender is mentally or physically impaired	7	1	2	4	1	1
Offender has drug or alcohol problems	3	0	0	1	0	1
Offender needs counseling	0	0	0	1	0	0
Offender has good potential for rehabilitation	8	1	1	11	3	6
Offender shows remorse	2	1	0	2	1	1
Age of offender	7	3	0	14	4	4
Multiple charges are being treated as one criminal event	1	0	0	4	0	0
Attempt, not a completed act	1	0	0	0	0	0
Jury sentence	3	10	1	0	5	0
Sentence was recommended by Commonwealth's attorney or probation officer	8	0	0	10	3	5
Weak evidence or weak case against the offender	18	7	0	8	5	12
Plea agreement	39	6	0	20	4	13
Sentencing consistency with codefendant or with other similar cases in the jurisdiction	2	0	0	1	0	0
Time served	4	0	0	0	0	0
Offender already sentenced by another court or in previous proceeding for other offenses	2	1	0	7	0	0
Offender will likely have his probation revoked	0	1	0	0	0	0
Offender is sentenced to an alt. punishment to incarceration	3	0	0	14	2	1
Guidelines recommendation is too harsh	1	0	0	3	3	0
Judge rounded guidelines minimum to nearest whole year	3	0	0	5	0	2
Guidelines recommendation exceeded the statutory maximum	1	1	0	0	0	0
Other reasons for mitigation	4	0	0	3	2	2

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 (N=141)	Homicide (N=49)	Kidnapping (N=24)	Robbery (N=96)	Rape (N=15)	Sexual Assault (N=64)
No reason given	23	2	2	14	0	9
The offense involved a high degree of planning	0	0	4	0	1	1
Aggravating circumstances/flagrancy of offense	25	9	6	22	3	16
Offender used a weapon in commission of the offense	4	3	2	6	0	0
Offender's true offense behavior was more serious than offenses at conviction	11	2	0	3	1	6
Offender is related to or is the caretaker of the victim	2	0	0	0	1	3
Offense was an unprovoked attack	1	1	0	1	0	0
Offender knew of victim's vulnerability	5	1	1	6	1	8
The victim(s) wanted a harsh sentence	2	1	0	5	0	9
Extreme violence or severe victim injury	21	13	4	9	2	0
Previous punishment of offender has been ineffective	1	0	0	1	0	0
Offender was under some form of legal restraint at time of offense	0	0	0	1	0	0
Offender's record understates the degree of his criminal orientation	2	2	0	2	0	0
Offender has previous conviction(s) or other charges for the same offense	4	1	0	5	0	0
New crime committed after current offense	0	0	0	0	0	1
Offender failed to cooperate with authorities	2	2	0	0	0	2
Offender has mental health problems	0	0	0	0	1	0
Offender has drug or alcohol problems	0	2	0	0	1	0
Offender has poor rehabilitation potential	7	4	1	9	3	1
Offender shows no remorse	3	1	0	2	3	6
Jury sentence	15	10	5	12	4	1
Sentence was recommended by Commonwealth's attorney or probation officer	1	2	1	3	0	0
Plea agreement	20	4	3	5	0	7
Community sentiment	1	0	0	4	0	0
Offender is sentenced to an alt. punishment to incarceration	0	0	0	0	0	1
Guidelines recommendation is too low	17	3	2	9	1	5
Mandatory minimum penalty is required in the case	1	0	0	4	0	0
Judge rounded guidelines minimum to nearest whole year	3	1	1	0	0	1
Other reasons for aggravation	3	0	0	1	3	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 3

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

Burglary of Dwelling

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	58.1	16.1	25.8	31
2	71.4	19.6	8.9	56
3	64.5	25.8	9.7	31
4	57.7	19.2	23.1	26
5	71.4	14.3	14.3	14
6	76.9	7.7	15.4	13
7	78.3	8.7	13.0	23
8	81.8	9.1	9.1	22
9	66.7	25.0	8.3	24
10	69.0	27.6	3.4	29
11	76.2	14.3	9.5	21
12	64.9	21.6	13.5	37
13	56.0	20.0	24.0	25
14	53.8	19.2	26.9	26
15	64.9	16.2	18.9	37
16	86.7	6.7	6.7	15
17	80.0	10.0	10.0	10
18	63.6	18.2	18.2	11
19	62.5	21.9	15.6	32
20	70.0	20.0	10.0	10
21	66.7	29.2	4.2	24
22	65.6	15.6	18.8	32
23	55.0	35.0	10.0	20
24	60.6	36.4	3.0	33
25	69.7	24.2	6.1	33
26	64.3	25.0	10.7	28
27	75.8	21.2	3.0	33
28	71.4	28.6	0.0	7
29	66.7	20.0	13.3	15
30	82.6	8.7	8.7	23
31	62.5	37.5	0.0	16
Total	67.4	20.6	12.0	757

Burglary of Other Structure

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	84.2	0.0	15.8	19
2	87.9	6.1	6.1	33
3	90.9	9.1	0.0	11
4	75.0	25.0	0.0	20
5	88.9	11.1	0.0	9
6	76.9	15.4	7.7	13
7	70.0	30.0	0.0	10
8	100.0	0.0	0.0	4
9	88.9	0.0	11.1	9
10	70.6	23.5	5.9	17
11	80.0	0.0	20.0	10
12	78.3	4.3	17.4	23
13	81.3	12.5	6.3	16
14	82.8	13.8	3.4	29
15	66.7	25.9	7.4	27
16	69.2	23.1	7.7	26
17	87.5	6.3	6.3	16
18	76.5	5.9	17.6	17
19	81.8	4.5	13.6	22
20	66.7	22.2	11.1	9
21	53.8	30.8	15.4	26
22	76.0	4.0	20.0	25
23	84.2	5.3	10.5	19
24	52.2	43.5	4.3	23
25	82.4	8.8	8.8	34
26	85.0	5.0	10.0	20
27	91.7	8.3	0.0	12
28	75.0	16.7	8.3	12
29	80.0	10.0	10.0	20
30	100.0	0.0	0.0	13
31	100.0	0.0	0.0	7
Total	78.2	13.1	8.7	551

Other Drugs

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	50.0	0.0	50.0	8
2	88.4	5.8	5.8	69
3	95.8	4.2	0.0	24
4	82.6	10.9	6.5	46
5	77.8	11.1	11.1	9
6	80.0	0.0	20.0	10
7	94.1	0.0	5.9	17
8	93.8	6.3	0.0	16
9	90.0	5.0	5.0	20
10	100.0	0.0	0.0	13
11	100.0	0.0	0.0	9
12	72.1	11.6	16.3	43
13	88.5	3.8	7.7	26
14	95.0	2.5	2.5	40
15	71.0	1.6	27.4	62
16	85.2	7.4	7.4	27
17	92.0	0.0	8.0	25
18	90.0	0.0	10.0	10
19	86.1	5.0	8.9	101
20	83.3	8.3	8.3	24
21	100.0	0.0	0.0	5
22	68.8	0.0	31.3	16
23	73.9	17.4	8.7	23
24	75.9	0.0	24.1	29
25	81.4	7.0	11.6	43
26	82.4	5.9	11.8	34
27	94.7	2.6	2.6	38
28	95.5	0.0	4.5	22
29	55.6	0.0	44.4	18
30	89.5	5.3	5.3	19
31	100.0	0.0	0.0	18
Total	84.5	4.7	10.8	864

Schedule I/II Drugs

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	86.0	3.5	10.5	172
2	84.7	9.5	5.8	465
3	82.2	12.8	5.0	477
4	83.7	12.1	4.2	613
5	90.5	3.4	6.0	116
6	83.7	5.9	10.4	135
7	92.7	4.2	3.1	288
8	86.3	4.8	8.9	168
9	86.5	7.0	6.4	171
10	83.4	8.3	8.3	145
11	84.8	5.4	9.8	112
12	76.6	5.5	18.0	256
13	87.1	5.2	7.7	466
14	80.4	12.8	6.8	219
15	67.0	10.0	23.1	321
16	83.1	7.0	9.9	142
17	89.0	5.2	5.8	155
18	81.5	8.6	9.9	81
19	87.5	7.8	4.6	345
20	92.8	3.1	4.1	97
21	78.7	10.7	10.7	75
22	72.9	5.7	21.4	140
23	79.7	9.2	11.1	207
24	79.9	6.9	13.2	189
25	78.8	11.1	10.1	189
26	77.4	9.1	13.6	265
27	89.9	6.0	4.0	199
28	87.4	5.3	7.4	95
29	63.2	5.7	31.0	87
30	90.2	4.9	4.9	61
31	90.1	3.5	6.4	141
Total	83.1	7.9	9.0	6593

Appendix 3

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

Fraud

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	94.8	1.7	3.5	115
2	88.3	6.6	5.1	137
3	87.5	5.0	7.5	40
4	81.0	14.3	4.8	84
5	87.7	8.2	4.1	73
6	85.4	4.9	9.8	41
7	87.5	8.3	4.2	72
8	94.2	3.8	1.9	52
9	82.9	9.2	7.9	76
10	91.8	6.2	2.1	97
11	90.5	4.8	4.8	42
12	81.3	5.3	13.3	150
13	85.0	8.3	6.7	60
14	88.5	7.6	3.8	131
15	81.7	8.0	10.3	175
16	85.5	7.9	6.6	76
17	87.8	6.1	6.1	98
18	92.1	5.3	2.6	76
19	89.5	5.0	5.5	200
20	95.5	3.0	1.5	67
21	81.0	19.0	0.0	42
22	89.9	1.1	9.0	89
23	75.9	17.6	6.5	108
24	75.8	24.2	0.0	95
25	87.2	12.0	0.8	125
26	89.2	7.7	3.1	130
27	90.9	5.6	3.5	143
28	87.8	7.8	4.4	90
29	78.4	9.1	12.5	88
30	81.1	10.8	8.1	37
31	96.9	3.1	0.0	64
Total	86.8	7.9	5.4	2874

Larceny

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	86.7	7.6	5.8	225
2	86.3	6.8	6.8	307
3	84.8	8.7	6.5	92
4	83.3	13.0	3.7	300
5	84.6	7.7	7.7	130
6	84.6	9.2	6.2	65
7	91.1	5.9	3.0	101
8	84.4	7.8	7.8	90
9	79.7	5.9	14.4	118
10	86.4	8.7	4.9	103
11	81.5	3.7	14.8	54
12	81.2	2.5	16.3	325
13	83.6	6.3	10.1	159
14	88.6	6.9	4.5	377
15	74.9	11.8	13.3	279
16	84.2	2.6	13.2	76
17	84.1	5.8	10.1	207
18	87.7	5.5	6.8	146
19	84.5	7.3	8.2	328
20	86.4	6.8	6.8	118
21	83.1	13.6	3.4	59
22	81.5	4.8	13.7	168
23	74.8	14.2	11.0	127
24	74.4	17.9	7.7	117
25	85.7	8.8	5.4	147
26	78.5	13.9	7.6	158
27	93.2	4.2	2.6	190
28	81.7	9.7	8.6	93
29	71.1	4.4	24.4	90
30	82.5	7.9	9.5	63
31	89.0	5.5	5.5	127
Total	83.7	7.8	8.5	4942

Traffic

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	88.7	6.6	4.7	106
2	81.7	4.0	14.3	126
3	93.9	3.0	3.0	33
4	80.3	10.5	9.2	76
5	88.6	2.3	9.1	44
6	88.2	0.0	11.8	34
7	94.9	1.3	3.8	79
8	86.8	0.0	13.2	38
9	71.6	7.4	21.0	81
10	86.8	5.9	7.4	68
11	96.0	0.0	4.0	25
12	89.0	4.0	7.0	100
13	87.2	8.5	4.3	47
14	87.1	7.1	5.7	70
15	79.3	10.8	9.9	111
16	93.9	1.2	4.9	82
17	79.3	10.3	10.3	29
18	76.5	5.9	17.6	17
19	76.6	0.9	22.4	107
20	87.7	1.8	10.5	57
21	84.4	9.4	6.3	32
22	79.7	3.4	16.9	59
23	86.7	8.9	4.4	45
24	89.0	4.9	6.1	82
25	88.0	4.8	7.2	83
26	83.0	7.1	9.8	112
27	87.5	4.2	8.3	72
28	77.1	5.7	17.1	35
29	73.7	10.5	15.8	19
30	91.7	0.0	8.3	24
31	90.2	2.0	7.8	51
Total	85.1	5.0	9.8	1944

Miscellaneous

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	72.2	16.7	11.1	18
2	89.3	0.0	10.7	28
3	94.1	0.0	5.9	17
4	85.7	7.1	7.1	28
5	76.9	3.8	19.2	26
6	66.7	20.0	13.3	15
7	66.7	11.1	22.2	18
8	73.3	20.0	6.7	15
9	73.3	6.7	20.0	15
10	87.0	4.3	8.7	23
11	50.0	25.0	25.0	8
12	72.0	16.0	12.0	25
13	78.1	3.1	18.8	32
14	77.8	0.0	22.2	18
15	88.9	5.6	5.6	36
16	75.0	0.0	25.0	16
17	42.9	0.0	57.1	7
18	50.0	16.7	33.3	6
19	66.7	16.7	16.7	18
20	72.7	9.1	18.2	11
21	58.3	0.0	41.7	12
22	92.9	0.0	7.1	28
23	72.7	0.0	27.3	11
24	72.7	13.6	13.6	22
25	75.9	10.3	13.8	29
26	80.0	4.0	16.0	25
27	72.4	13.8	13.8	29
28	62.5	18.8	18.8	16
29	16.7	16.7	66.7	6
30	83.3	0.0	16.7	6
31	71.4	0.0	28.6	7
Total	76.0	7.9	16.1	571

Appendix 4

Sentencing Guidelines Compliance by Judicial Circuit: Offenses Against the Person

Assault

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	92.7	4.9	2.4	41
2	66.7	15.9	17.4	69
3	80.0	12.0	8.0	50
4	71.0	17.7	11.3	62
5	82.5	7.5	10.0	40
6	83.3	10.0	6.7	30
7	82.6	15.2	2.2	46
8	75.0	15.0	10.0	20
9	78.4	2.7	18.9	37
10	78.7	19.1	2.1	47
11	66.7	0.0	33.3	18
12	81.0	5.2	13.8	58
13	71.0	10.1	18.8	69
14	78.6	16.7	4.8	42
15	80.0	14.3	5.7	70
16	77.3	15.9	6.8	44
17	80.0	5.0	15.0	20
18	70.3	13.5	16.2	37
19	71.0	8.7	20.3	69
20	60.0	26.7	13.3	15
21	65.0	25.0	10.0	20
22	73.0	13.5	13.5	37
23	51.1	34.0	14.9	47
24	61.8	26.5	11.8	68
25	65.7	25.7	8.6	35
26	73.1	19.2	7.7	52
27	86.4	9.1	4.5	44
28	83.3	11.1	5.6	18
29	80.0	10.0	10.0	20
30	72.7	18.2	9.1	11
31	84.6	0.0	15.4	26
Total	74.7	14.2	11.2	1263

Kidnapping

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	0.0	0.0	0.0	0
2	66.7	0.0	33.3	6
3	75.0	0.0	25.0	4
4	100.0	0.0	0.0	4
5	66.7	33.3	0.0	3
6	100.0	0.0	0.0	1
7	66.7	0.0	33.3	6
8	71.4	28.6	0.0	7
9	100.0	0.0	0.0	4
10	50.0	0.0	50.0	2
11	100.0	0.0	0.0	2
12	33.3	0.0	66.7	3
13	75.0	25.0	0.0	4
14	50.0	0.0	50.0	2
15	50.0	25.0	25.0	8
16	66.7	0.0	33.3	3
17	100.0	0.0	0.0	3
18	71.4	0.0	28.6	7
19	66.7	16.7	16.7	6
20	0.0	0.0	0.0	0
21	50.0	50.0	0.0	2
22	54.5	18.2	27.3	11
23	50.0	16.7	33.3	6
24	60.0	20.0	20.0	5
25	50.0	25.0	25.0	4
26	50.0	0.0	50.0	2
27	100.0	0.0	0.0	1
28	0.0	0.0	0.0	0
29	0.0	0.0	0.0	0
30	100.0	0.0	0.0	1
31	50.0	0.0	50.0	2
Total	66.1	11.9	22.0	109

Homicide

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	100.0	0.0	0.0	5
2	42.9	35.7	21.4	14
3	50.0	16.7	33.3	6
4	40.0	40.0	20.0	10
5	25.0	25.0	50.0	4
6	0.0	100.0	0.0	1
7	66.7	6.7	26.7	15
8	66.7	33.3	0.0	9
9	66.7	33.3	0.0	3
10	100.0	0.0	0.0	3
11	80.0	0.0	20.0	5
12	85.7	0.0	14.3	14
13	54.1	29.7	16.2	37
14	72.7	27.3	0.0	11
15	45.5	18.2	36.4	11
16	50.0	33.3	16.7	6
17	58.3	25.0	16.7	12
18	100.0	0.0	0.0	1
19	45.5	0.0	54.5	11
20	66.7	0.0	33.3	3
21	60.0	0.0	40.0	5
22	60.0	0.0	40.0	5
23	57.1	42.9	0.0	7
24	50.0	0.0	50.0	6
25	44.4	33.3	22.2	9
26	66.7	0.0	33.3	3
27	100.0	0.0	0.0	4
28	100.0	0.0	0.0	4
29	50.0	0.0	50.0	2
30	100.0	0.0	0.0	2
31	50.0	16.7	33.3	6
Total	59.8	19.2	20.9	234

Appendix 4

Sentencing Guidelines Compliance by Judicial Circuit: Offenses Against the Person

Robbery

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	73.5	23.5	2.9	34
2	77.8	11.1	11.1	54
3	70.6	11.8	17.6	17
4	56.9	24.6	18.5	65
5	60.0	20.0	20.0	15
6	56.3	31.3	12.5	16
7	88.9	0.0	11.1	36
8	53.8	26.9	19.2	26
9	75.0	15.0	10.0	20
10	93.8	6.3	0.0	16
11	75.0	25.0	0.0	8
12	63.6	22.7	13.6	44
13	70.8	22.9	6.3	48
14	59.6	38.5	1.9	52
15	43.3	36.7	20.0	30
16	62.5	12.5	25.0	8
17	80.0	10.0	10.0	20
18	72.7	18.2	9.1	22
19	57.9	34.2	7.9	38
20	66.7	11.1	22.2	9
21	55.0	30.0	15.0	20
22	46.2	7.7	46.2	13
23	48.1	25.9	25.9	27
24	63.2	36.8	0.0	19
25	50.0	50.0	0.0	4
26	68.8	25.0	6.3	16
27	66.7	22.2	11.1	9
28	50.0	37.5	12.5	8
29	31.3	0.0	68.8	16
30	100.0	0.0	0.0	1
31	64.3	28.6	7.1	14
Total	64.3	22.5	13.2	726

Rape

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	88.9	11.1	0.0	9
2	62.5	37.5	0.0	8
3	100.0	0.0	0.0	5
4	66.7	33.3	0.0	9
5	66.7	16.7	16.7	6
6	66.7	16.7	16.7	6
7	25.0	75.0	0.0	4
8	55.6	44.4	0.0	9
9	75.0	25.0	0.0	4
10	83.3	16.7	0.0	6
11	50.0	50.0	0.0	6
12	71.4	28.6	0.0	7
13	77.8	22.2	0.0	9
14	66.7	33.3	0.0	3
15	73.7	5.3	21.1	19
16	75.0	12.5	12.5	8
17	50.0	30.0	20.0	10
18	33.3	0.0	66.7	3
19	77.8	11.1	11.1	9
20	75.0	25.0	0.0	8
21	0.0	100.0	0.0	1
22	60.0	40.0	0.0	5
23	83.3	0.0	16.7	6
24	50.0	50.0	0.0	6
25	75.0	25.0	0.0	8
26	66.7	16.7	16.7	6
27	100.0	0.0	0.0	3
28	100.0	0.0	0.0	3
29	60.0	40.0	0.0	5
30	100.0	0.0	0.0	2
31	83.3	0.0	16.7	6
Total	69.5	23.0	7.5	200

Other Sexual Assault

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	90.9	0.0	9.1	11
2	76.0	16.0	8.0	25
3	28.6	42.9	28.6	7
4	76.9	0.0	23.1	13
5	72.7	18.2	9.1	11
6	71.4	0.0	28.6	7
7	66.7	25.0	8.3	12
8	66.7	33.3	0.0	12
9	100.0	0.0	0.0	7
10	77.8	22.2	0.0	9
11	57.1	28.6	14.3	7
12	47.4	31.6	21.1	19
13	64.3	28.6	7.1	14
14	46.7	26.7	26.7	15
15	50.0	22.2	27.8	18
16	80.0	10.0	10.0	10
17	33.3	6.7	60.0	15
18	0.0	66.7	33.3	3
19	78.9	10.5	10.5	38
20	64.3	21.4	14.3	14
21	85.7	0.0	14.3	7
22	81.8	9.1	9.1	11
23	55.6	33.3	11.1	9
24	52.9	23.5	23.5	17
25	75.0	18.8	6.3	16
26	80.0	13.3	6.7	15
27	94.4	5.6	0.0	18
28	60.0	10.0	30.0	10
29	53.8	7.7	38.5	13
30	50.0	0.0	50.0	2
31	73.3	13.3	13.3	15
Total	67.3	16.8	16.0	400

Virginia Criminal Sentencing Commission
Sentencing Guidelines Hotline
804.225.4398