



# Virginia Criminal Sentencing Commission

## 2015 ANNUAL REPORT

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## Virginia Criminal Sentencing Commission Members

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SUPREME COURT OF VIRGINIA  
VIRGINIA CRIMINAL SENTENCING COMMISSION

December 1, 2015

To: The Honorable Donald W. Lemons, Chief Justice of Virginia  
The Honorable Terence R. McAuliffe, Governor of Virginia  
The Honorable Members of the General Assembly of Virginia  
The Citizens of Virginia

Section 17.1-803 of the *Code of Virginia* requires the Virginia Criminal Sentencing Commission to report annually upon its work and recommendations. Pursuant to this statutory obligation, we respectfully submit for your review the *2015 Annual Report* of the Criminal Sentencing Commission.

This report details the work of the Commission over the past year. The report includes a detailed analysis of judicial compliance with the felony sentencing guidelines during fiscal year 2015. The Commission's recommendations to the 2016 session of the Virginia General Assembly are also contained in this report.

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

Sincerely,

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

Edward L. Hogshire  
Chairman

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# TABLE OF CONTENTS

## Introduction

Overview .....	7
Commission Profile .....	7
Commission Meetings .....	8
Monitoring and Oversight .....	8
Training, Education and Other Assistance .....	9
Automation Project .....	11
Projecting the Impact of Proposed Legislation .....	12
Prison and Jail Population Forecasting .....	13
Assistance to Other Agencies .....	14
Immediate Sanction Probation Program .....	14
Larceny and Fraud Study .....	15

## Guidelines Compliance

Introduction .....	17
Compliance Defined .....	18
Overall Compliance with the Sentencing Guidelines .....	20
Dispositional Compliance .....	20
Durational Compliance .....	22
Reasons for Departure from the Guidelines .....	24
Compliance by Circuit .....	25
Virginia Localities and Judicial Circuits .....	26
Compliance by Sentencing Guidelines Offense Group .....	29
Compliance under Midpoint Enhancements .....	32
Juries and the Sentencing Guidelines .....	35
Compliance and Nonviolent Offender Risk Assessment .....	38
Compliance and Sex Offender Risk Assessment .....	41
Sentencing Revocation Reports .....	44
Probation Violation Guidelines .....	45

*continued next page*

## TABLE OF CONTENTS CONTINUED

### Immediate Sanction Probation Program

Introduction .....	53
Key Features and Stakeholders.....	57
Design of Virginia’s Immediate Sanction Probation Program.....	58
Program Implementation Update.....	58
Selection of Pilot Sites.....	58
Implementation Support.....	60
Supervision and Drug Testing.....	61
Defense Counsel .....	61
Court Processes.....	62
Law Enforcement .....	62
Treatment Providers .....	63
Implementation Challenges .....	63
Characteristics of Program Participants, Violations, Sanctions, and Completions.....	68
Upcoming Activities.....	73
References .....	74

### Larceny and Fraud Study

Introduction .....	75
Methodology .....	76
Non-Embezzlement Larceny Sample Characteristics.....	80
Non-Embezzlement Larceny Analysis.....	85
Fraud Sample Characteristics .....	86
Fraud Analysis .....	89
Embezzlement Sample Characteristics.....	90
Embezzlement Analysis.....	93
Conclusion .....	94

### Recommendations of the Commission

Introduction .....	95
Recommendation 1 .....	97
Recommendation 2 .....	99
Recommendation 3 .....	103
Recommendation 4 .....	110
Recommendation 5 .....	114
Recommendation 6 .....	120
Recommendation 7 .....	124
Recommendation 8 .....	127

Appendices .....	135
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# INTRODUCTION

## Overview

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

The report is organized into 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 2015. The Guidelines Compliance chapter that follows contains a comprehensive analysis of compliance with the sentencing guidelines during fiscal year (FY) 2015. The third chapter describes the Immediate Sanction Probation program, which the General Assembly has directed the Commission to implement in select pilot sites. The results of the Commission's recent study of larceny and fraud offenses are detailed in the fourth chapter. In the report's final chapter, the Commission presents its recommendations for revisions to the felony sentencing guidelines system.

## Commission Profile

The Virginia Criminal Sentencing Commission is comprised of 17 members, as authorized in § 17.1-802 of the *Code of Virginia*. The Chairman of the Commission is appointed by the Chief Justice of the Supreme Court of Virginia, must not be an active member of the judiciary, and must be confirmed by the General Assembly. The Chief Justice also appoints six judges or justices to serve on the Commission. The Governor appoints four members, at least one of whom must be a victim of crime or a representative of a crime victim's organization. The Speaker of the House of Delegates makes two appointments, while the Chairman of the House Courts of Justice Committee, or another member of the Courts Committee appointed by the chairman, must serve as the third House appointment. Similarly, the Senate Committee on Rules makes one appointment and the other appointment must be filled by the Chairman of the Senate Courts of Justice Committee or a designee from that committee. The final member of the Commission, Virginia's Attorney General, serves by virtue of his office.

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 2015. These meetings were held on April 13, June 8, September 21, and November 4. Minutes for each of these meetings are available on the Commission's website. ([www.vcsc.virginia.gov](http://www.vcsc.virginia.gov)).

Throughout the year, staff compiles information, analyzes data, and drafts recommendations for action by the full Commission. The Commission's Chairman appoints subcommittees, when needed, to allow for more extensive discussion on special topics.

### Monitoring and Oversight

Section 19.2-298.01 of the *Code of Virginia* requires that sentencing guidelines worksheets be completed in all felony cases covered by the guidelines. The guidelines cover approximately 95% of felony sentencing events in Virginia. This section of the *Code* also requires judges to announce, during court proceedings for each case, that the guidelines forms have been reviewed. After sentencing, the guidelines worksheets are signed by the judge and become a part of the official record of each case. The clerk of the circuit court is responsible for sending the completed and signed worksheets to the Commission.

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

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

### Training, Education and Other Assistance

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

In FY2015, the Commission offered 27 training seminars across the Commonwealth for more than 500 criminal justice professionals. As in previous years, Commission staff conducted training for attorneys and probation officers new to Virginia’s sentencing guidelines system. The six-hour seminar introduced participants to the sentencing guidelines and provided instruction on correct scoring of the guidelines worksheets. The seminar also introduced new users to the probation violation guidelines and the two offender risk assessment instruments that are incorporated into Virginia’s guidelines system. In addition, seminars for experienced guidelines users were provided during the year. These courses were approved by the Virginia State Bar, enabling participating attorneys to earn Continuing Legal Education credits. The Commission continued to provide a guidelines-related ethics class for attorneys, which was conducted in conjunction with the Virginia State Bar. The Virginia State Bar approved this class for one hour of Continuing Legal Education Ethics credit. The Commission prepared and conducted a refresher course to address regional issues identified by staff. This seminar, approved for three Continuing Legal Education credits, reinforced the rules for scoring guidelines accurately. A one-hour course was developed and conducted for judges based on frequently asked questions. Finally, the Commission conducted sentencing guidelines seminars at the Department of Corrections’ Training Academy, as part of the curriculum for new probation officers.

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

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

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

### Automation Project

In 2012, staff launched an automation project with two goals in mind: to update the Sentencing Commission's website and to automate the sentencing guidelines completion and submission process. The new website was completed in the fall of 2012. Since then, the Commission has been collaborating with the Supreme Court's Department of Judicial Information Technology (DJIT) to design a web-based application for automating the sentencing guidelines. DJIT has agreed to develop an application that will allow users to complete guidelines forms online, give users the ability to save guidelines information and recall it later, provide a way for users to submit the guidelines to the court electronically, and permit Clerk's Offices to send the guidelines forms to the Commission in electronic format.

An early prototype of the application was demonstrated for the Commission in 2013 and staff has sought input from court clerks, probation officers, a Commonwealth's attorney, and a defense attorney. In 2014, the Commission began pilot testing the application in Norfolk and expanded the pilot testing in 2015 to include Henrico County. While the pilot phase continues, additional components of the application are being designed. Statewide implementation could begin as early as the fall of 2016.

### Projecting the Impact of Proposed Legislation

Section 30-19.1:4 of the *Code of Virginia* requires the Commission to prepare fiscal impact statements for any proposed legislation that may result in a net increase in periods of imprisonment in state correctional facilities. These impact statements must include details as to the impact on adult, as well as juvenile, offender populations and any necessary adjustments to sentencing guideline recommendations. Any impact statement required under § 30-19.1:4 also must include an analysis of the impact on local and regional jails, as well as state and local community corrections programs.

For the 2015 General Assembly, the Commission prepared 265 impact statements on proposed legislation.

These proposals included:

- 1) legislation to increase the felony penalty class of a specific crime;
- 2) legislation to increase the penalty class of a specific crime from a misdemeanor to a felony;
- 3) legislation to add a new mandatory minimum penalty;
- 4) legislation to expand or clarify an existing crime; and
- 5) legislation that would create a new criminal offense.

The Commission utilizes its computer simulation forecasting program to estimate the projected impact of these proposals on the prison system. The estimated impact on the juvenile offender population is provided by Virginia's Department of Juvenile Justice. In most instances, the projected impact and accompanying analysis of a bill is presented to the General Assembly within 24 to 48 hours after the Commission is notified of the proposed legislation. When requested, the Commission provides pertinent oral testimony to accompany the impact analysis. Additional impact analyses may be conducted at the request of House Appropriations Committee staff, Senate Finance Committee staff, the Secretary of Public Safety, or staff of the Department of Planning and Budget.

### Prison and Jail Population Forecasting

Forecasts of offenders confined in state and local correctional facilities are essential for criminal justice budgeting and planning in Virginia. The forecasts are used to estimate operating expenses and future capital needs and to assess the impact of current and proposed criminal justice policies. Since 1987, the Secretary of Public Safety (now the Secretary of Public Safety and Homeland Security) has utilized an approach known as “consensus forecasting” to develop the offender population forecasts. This process brings together policy makers, administrators, and technical experts from all branches of state government. The process is structured through committees. The Technical Advisory Committee is comprised of experts in statistical and quantitative methods from several agencies. While individual members of this Committee generate the various prisoner forecasts, the Committee as a whole carefully scrutinizes each forecast according to the highest statistical standards. Select forecasts are presented to the Secretary’s Work

Group, which evaluates the forecasts and provides guidance and oversight for the Technical Advisory Committee. It includes deputy directors and senior managers of criminal justice and budget agencies, as well as staff of the House Appropriations and Senate Finance Committees. Forecasts accepted by the Work Group then are presented to the Policy Committee. Chaired by the Secretary of Public Safety and Homeland Security, this committee reviews the various forecasts, making any adjustments deemed necessary to account for emerging trends or recent policy changes, and selects the official forecast for each offender population. The Policy Committee is made up of agency directors, lawmakers and other top-level officials from Virginia’s executive, legislative and judicial branches, as well as representatives of Virginia’s law enforcement, prosecutor, sheriff, and jail associations.

While the Commission is not responsible for generating the prison or jail population forecast, it participates in the consensus forecasting process. In years past, Commission staff members have served on the Technical Advisory Committee and the Commission’s Director has served on the Policy Advisory Committee. At the Secretary’s request, the Commission’s Director or Deputy Director has chaired the Technical Advisory Committee since 2006. The Secretary presented the most recent offender forecasts to the General Assembly in a report submitted in November 2015.

### Assistance to Other Agencies

The Virginia State Crime Commission, a legislative branch agency, is charged by the General Assembly with several studies each year. The Crime Commission may request assistance from a variety of other agencies, including the Virginia Criminal Sentencing Commission. During the course of 2015, the Sentencing Commission was asked to provide data and analysis on charges and convictions for cigarette trafficking as well as stalking and protective order violations.

Assistance to other agencies or entities included:

- Tracking of recidivist activity among former juvenile offenders (now adults) for the Department of Juvenile Justice;
- Analysis of charges and convictions involving animal cruelty and animal fighting and examination of conviction data related to certain firearm offenses for the Office of the Attorney General;
- Reporting of charges and case outcomes for select sexual assault offenses to the Secretary of Public Safety and Homeland Security; and
- Providing an overview of sentencing patterns for drug and larceny offenses to the staff of the Senate Finance Committee.

### Immediate Sanction Probation Pilot Program

In 2012, the Virginia General Assembly adopted budget language to extend the provisions of § 19.2-303.5 of the *Code of Virginia* and to authorize the creation of up to four Immediate Sanction Probation programs (now Item 47 of Chapter 665 of the 2015 Acts of Assembly). The Immediate Sanction Probation program is designed to target nonviolent offenders who violate the conditions of probation while under supervision in the community but are not charged with a new crime. These violations are often referred to as “technical probation violations.”

The budget provision directs the Commission to select up to four jurisdictions to serve as pilot sites, with the concurrence of the Chief Judge and the Commonwealth’s Attorney in each locality. It further charges the Commission with developing guidelines and procedures for the program, administering the program, and evaluating the results. The 2015 General Assembly extended the pilot period to July 1, 2016, in order to allow the two newest pilot sites sufficient time to pilot test the program model.

In responding to the legislative mandate, the Commission has been engaged in a variety of activities. Details regarding the Commission’s activities to date, and plans for the coming year, can be found in the third chapter of this report.

### Larceny and Fraud Study

In 2013, the Commission approved a study of felony larceny and fraud offenses in order to examine the relationship between the value of money/property stolen and sentencing outcomes. Because value is not recorded in Virginia's criminal justice data systems, Commission staff undertook a significant data collection effort to gather value and other case details that may be relevant to judges' sentencing decisions. Staff traveled to Circuit Court Clerks' Offices around the Commonwealth to review case files. The data collection phase of the project was completed in early fall of 2015. Case file information was automated to supplement existing data maintained by the Commission, and the combined database was then analyzed. The results of this large-scale project are included in the fourth chapter of this report.



# GUIDELINES COMPLIANCE

## Introduction

On January 1, 2015, Virginia's truth-in-sentencing system reached its twentieth anniversary. Beginning January 1, 1995, the practice of discretionary parole release from prison was abolished and the existing system of sentence credits awarded to inmates for good behavior was eliminated. Under Virginia's truth-in-sentencing laws, convicted felons must serve at least 85% of the pronounced sentence and they may earn, at most, 15% off in sentence credits, regardless of whether their sentence is served in a state facility or a local jail. The Commission was established to develop and administer guidelines in an effort to provide Virginia's judiciary with sentencing recommendations for felony cases under the new truth-in-sentencing laws. Under the current no-parole system, guidelines recommendations for nonviolent offenders with no prior record of violence are tied to the amount of time they served during a period prior to the abolition of parole. In contrast, offenders convicted of violent crimes, and those with prior convictions for violent felonies, are subject to guidelines recommendations up to six times longer than the historical time served in prison by

similar offenders. In over 468,000 felony cases sentenced under truth-in-sentencing laws, judges have agreed with guidelines recommendations in more than three out of four cases. This report focuses on cases sentenced from the most recent year of available data, fiscal year (FY) 2015 (July 1, 2014, through June 30, 2015). Compliance is examined in a variety of ways in this report, and variations in data over the years are highlighted throughout.

**Figure 1****Number and Percentage of Cases Received by Circuit, FY2015**

Circuit	Total	Percent
1	841	3.5%
2	1,270	5.2%
3	524	2.2%
4	1,080	4.5%
5	470	1.9%
6	343	1.4%
7	601	2.5%
8	387	1.6%
9	587	2.4%
10	753	3.1%
11	346	1.4%
12	1,261	5.2%
13	1,139	4.7%
14	963	4.0%
15	1,370	5.7%
16	791	3.3%
17	300	1.2%
18	188	0.8%
19	996	4.1%
20	636	2.6%
21	392	1.6%
22	674	2.8%
23	833	3.4%
24	930	3.8%
25	978	4.0%
26	1,555	6.4%
27	1,073	4.4%
28	654	2.7%
29	1,009	4.2%
30	456	1.9%
31	801	3.3%

Total 24,201

28 cases were missing circuit information

In FY2015, eleven judicial circuits contributed more guidelines cases than any of the other judicial circuits in the Commonwealth. Those circuits, which include the Harrisonburg area (Circuit 26), Fredericksburg area (Circuit 15), Virginia Beach (Circuit 2), Chesterfield County (Circuit 12), Richmond City (Circuit 13), Norfolk (Circuit 4), Radford area (Circuit 27), Buchanan County area (Circuit 29), Fairfax County (Circuit 19), Botetourt County area (Circuit 25), and Henrico County (Circuit 14) comprised over half (52%) of all worksheets received in FY2015 (Figure 1).

During FY2015, the Commission received 24,229 sentencing guideline worksheets. Of these, 620 worksheets contained errors or omissions that affect the analysis of the case. For the purposes of conducting a clear evaluation of sentencing guidelines in effect for FY2015, the remaining sections of this chapter pertaining to judicial concurrence with guidelines recommendations focus only on those 23,609 cases for which guidelines recommendations were completed and calculated correctly.

**Compliance Defined**

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

The Commission measures judicial agreement with the sentencing guidelines using two classes of compliance: strict and general. Together, they comprise the overall compliance rate. For a case to be in strict compliance, the offender must be sentenced to the same type of sanction that the guidelines recommend (probation, incarceration for up to six months, incarceration for more than six months) and to a term of incarceration that falls exactly within the sentence range recommended by the guidelines. When risk assessment

for nonviolent offenders is applicable, a judge may sentence a recommended offender to an alternative punishment program or to a term of incarceration within the traditional guidelines range and be considered in strict compliance. A judicial sentence also would be considered in general agreement with the guidelines recommendation if the sentence 1) meets modest criteria for rounding, 2) involves time already served (in certain instances), or 3) complies with statutorily-permitted diversion options in habitual traffic offender cases.

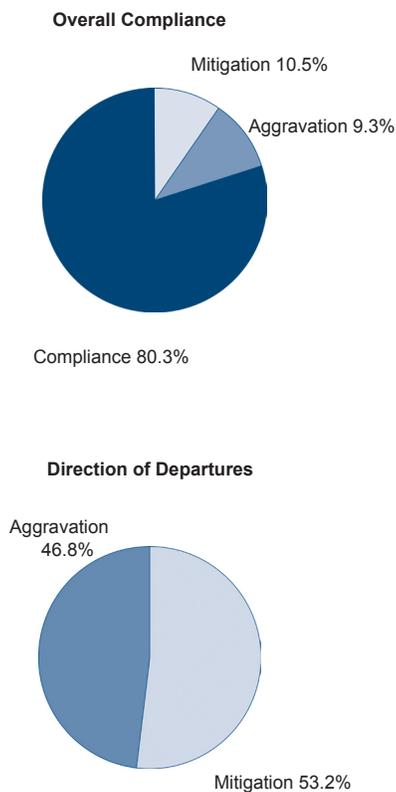
Compliance by rounding provides for a modest rounding allowance in instances when the active sentence handed down by a judge or jury is very close to the range recommended by the guidelines. For example, a judge would be considered in compliance with the guidelines if he or she sentenced an offender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

Time served compliance is intended to accommodate judicial discretion and the complexity of the criminal justice system at the local level. A judge may sentence an offender to the amount of pre-sentence incarceration time served in 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 also is regarded as being in compliance with the guidelines, because the offender was not ordered to serve any incarceration time after sentencing.

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

**Figure 2**

**Overall Guidelines Compliance and Direction of Departures FY2015 (23,609 cases)**



**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 remained around 75%, increased steadily between FY1999 and FY2001, and then decreased slightly in FY2002. For the past ten fiscal years, the compliance rate has hovered around 80%. During FY2015, judges continued to agree with the sentencing guidelines recommendations in approximately 80% of the cases (Figure 2).

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 9.3% for FY2015. The “mitigation” rate, or the rate at which judges sentence offenders to sanctions considered less severe than the guidelines recommendation, was 10.5% for the fiscal year. Thus, of the FY2015 departures, 46.8% were cases of aggravation while 53.2% 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 3 illustrates judicial concurrence in FY2015 with the type of disposition recommended by the guidelines. For instance, of all felony offenders recommended for more than six months of incarceration during FY2015, judges sentenced 86% to terms in excess of six months (Figure 3). Some offenders recommended for incarceration of more than six months received a shorter term of incarceration (one day to six months), but very few of these offenders received probation with no active incarceration.

Judges have also typically agreed with guidelines recommendations for other types of dispositions. In FY2015, 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, offenders recommended for short-term incarceration received a sentence of more than six months. Finally, 72% of offenders whose guidelines recommendation called for no incarceration were given probation and no post-dispositional confinement. Some offenders with a “no incarceration” recommendation received a short jail term, but rarely did these offenders receive an incarceration term of more than six months.

**Figure 3**

**Recommended Dispositions and Actual Dispositions, FY2015**

Recommended Disposition	Actual Disposition		
	Probation	Incarceration 1 day-6 mos.	Incarceration >6 mos.
Probation	72.2%	22.9%	4.8%
Incarceration 1 day - 6 months	11.4%	78.8%	9.7%
Incarceration > 6 months	5.8%	7.8%	86.4%

Since July 1, 1997, sentences to the state's former Boot Camp and the current Detention Center and Diversion Center programs have been defined as incarceration sanctions for the purposes of the sentencing guidelines. Although the state's Boot Camp program was discontinued in 2002, the Detention and Diversion Center programs have continued as sentencing options for judges. The Commission recognized that these programs are more restrictive than probation supervision in the community. In 2005, the Virginia Supreme Court concluded that participation in the Detention Center program is a form of incarceration (*Charles v. Commonwealth*). Because the Diversion Center program also involves a period of confinement, the Commission defines both the Detention Center and the Diversion Center programs as incarceration terms under the sentencing guidelines. Since 1997, the Detention and Diversion Center programs have been counted as six months of confinement. However, effective July 1, 2007, the Department of Corrections extended these programs by an additional four weeks. Therefore, beginning in FY2008, a sentence to either the Detention or Diversion Center program counted as seven months of confinement for sentencing guideline purposes.

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

### Durational Compliance

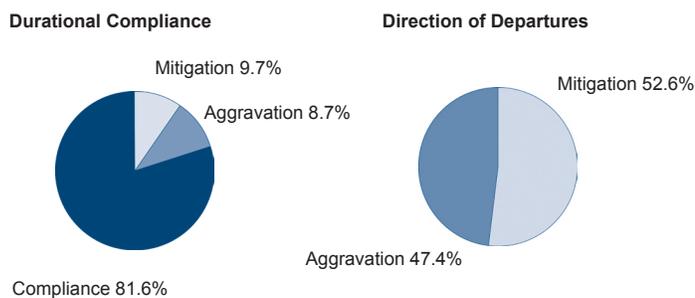
In addition to examining the degree to which judges concur with the type of disposition recommended by the guidelines, the Commission also studies durational compliance, which is defined as the rate at which judges sentence offenders to terms of incarceration that fall within the recommended guidelines range. Durational compliance analysis only considers cases for which the guidelines recommended an active term of incarceration and the offender received an incarceration sanction consisting of at least one day in jail.

Durational compliance among FY2015 cases was over 81%, indicating that judges, more often than not, agree with the length of incarceration recommended by the guidelines in jail and prison cases (Figure 4). Among FY2015 cases not in durational compliance, departures tended slightly more toward mitigation than aggravation.

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

**Figure 4**

#### Durational Compliance and Direction of Departures, FY2015\*

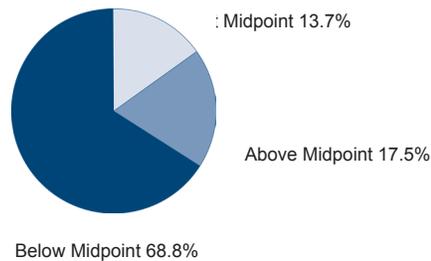


\* Analysis includes only cases recommended for and receiving an active term of incarceration.

When the guidelines recommended more than six months of incarceration, and judges sentenced within the recommended range, only a small share (14% of offenders in FY2015) were given prison terms exactly equal to the midpoint recommendation (Figure 5). Most of the cases (69%) in durational compliance with recommendations over six months resulted in sentences below the recommended midpoint. For the remaining 18% of these incarceration cases sentenced within the guidelines range, the sentence exceeded the midpoint recommendation. This pattern of sentencing within the range has been consistent since the truth-in-sentencing guidelines took effect in 1995, indicating that judges, overall, have favored the lower portion of the recommended range.

Overall, durational departures from the guidelines are typically no more than one year above or below the recommended range, indicating that disagreement with the guidelines recommendation, in most cases, is not extreme. Offenders receiving incarceration, but less than the recommended term, were given effective sentences (sentences less any suspended time) short of the guidelines by a median value of 9 months (Figure 6). For offenders receiving longer than recommended incarceration sentences, the effective sentence also exceeded the guidelines range by a median value of 10 months.

**Figure 5**  
**Distribution of Sentences within Guidelines Range, FY2015\***



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

**Figure 6**  
**Median Length of Durational Departures, FY2015**



### Reasons for Departure from the Guidelines

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

In FY2015, 10.5% of guidelines cases resulted in sanctions below the guidelines recommendation. The most frequently cited reasons for sentencing below the guidelines recommendation were: the acceptance of a plea agreement, judicial discretion, the defendant's cooperation with law enforcement, a sentence to a less-restrictive sanction, court procedural issues such as a sentence recommendation provided by the attorneys and mitigating offense circumstances. Although other reasons for mitigation were reported to the Commission in FY2015, only the most frequently cited reasons are noted here. For 365 of the 2,478 mitigating cases, a departure reason could not be discerned.

Judges sentenced 9.3% of the FY2015 cases to terms that were more severe than the sentencing guidelines recommendation, resulting in "aggravation" sentences. The most frequently cited reasons for sentencing above the guidelines recommendation were: the acceptance of a plea agreement, the flagrancy of the offense, the severity or degree of prior record, the number of counts in the sentencing event, the defendant's poor potential for being rehabilitated, the type and vulnerability of the victim, the degree of injury, and jury recommendation was higher. For 300 of the 2,184 cases sentenced above the guidelines recommendation, the Commission could not ascertain a departure reason.

*Appendices 1 and 2 contain detailed summaries of the reasons for departure from guidelines recommendations for each of the 17 guidelines offense groups*

### Compliance by Circuit

Since the onset of truth-in-sentencing, compliance rates and departure patterns have varied across Virginia's 31 judicial circuits. FY2015 continues to show differences among judicial circuits in the degree to which judges concur with guidelines recommendations (Figure 7).

The map and accompanying table on the following pages identify the location of each judicial circuit in the Commonwealth.

In FY2015, over half (52%) of the state's 31 circuits exhibited compliance rates at or above 80.6%, while the remaining 48% reported compliance rates between 66% and 80%. There are likely many reasons for the variations in compliance across circuits. Certain

**Figure 7**

#### Compliance by Circuit - FY2015

Circuit Name	Circuit	Compliance	Mitigation	Aggravation	Total
Prince William Area	31	88.3%	6.9%	4.8%	785
Bristol Area	28	87.9	6.8	5.3	643
Petersburg Area	11	87.1	8.2	4.7	342
Radford Area	27	86.0	6.3	7.7	1,026
Loudoun	20	85.1	4.9	10.0	629
Virginia Beach	2	84.3	8.5	7.3	1,253
Harrisonburg Area	26	84.1	8.4	7.5	1,517
Williamsburg Area	9	83.7	8.1	8.1	529
Lee Area	30	83.7	6.5	9.7	443
Chesterfield Area	12	83.5	9.0	7.5	1,240
Charlottesville Area	16	82.5	9.6	7.9	785
Lynchburg Area	24	82.4	11.4	6.3	924
Chesapeake	1	82.0	8.6	9.4	816
Newport News	7	81.2	11.5	7.4	584
Portsmouth	3	80.9	11.1	8.0	512
Martinsville Area	21	80.6	13.7	5.7	387
Alexandria	18	79.7	11.5	8.8	182
Henrico	14	79.4	8.8	11.8	941
Staunton Area	25	79.3	11.2	9.5	962
Norfolk	4	78.2	13.7	8.1	1,051
Danville Area	22	78.2	6.4	15.4	661
Roanoke Area	23	77.6	13.9	8.5	812
Fredericksburg	15	77.5	11.0	11.5	1,342
South Boston Area	10	77.5	10.4	12.1	742
Sussex Area	6	76.5	9.8	13.7	315
Fairfax	19	76.4	14.0	9.6	944
Suffolk Area	5	75.5	8.8	15.7	445
Hampton	8	74.4	16.8	8.8	386
Arlington Area	17	73.7	11.6	14.7	293
Buchanan Area	29	73.7	7.8	18.5	970
Richmond City	13	65.8	26.7	7.5	1,120

● Over half of the state's 31 circuits exhibited compliance rates at or above 80.6%.

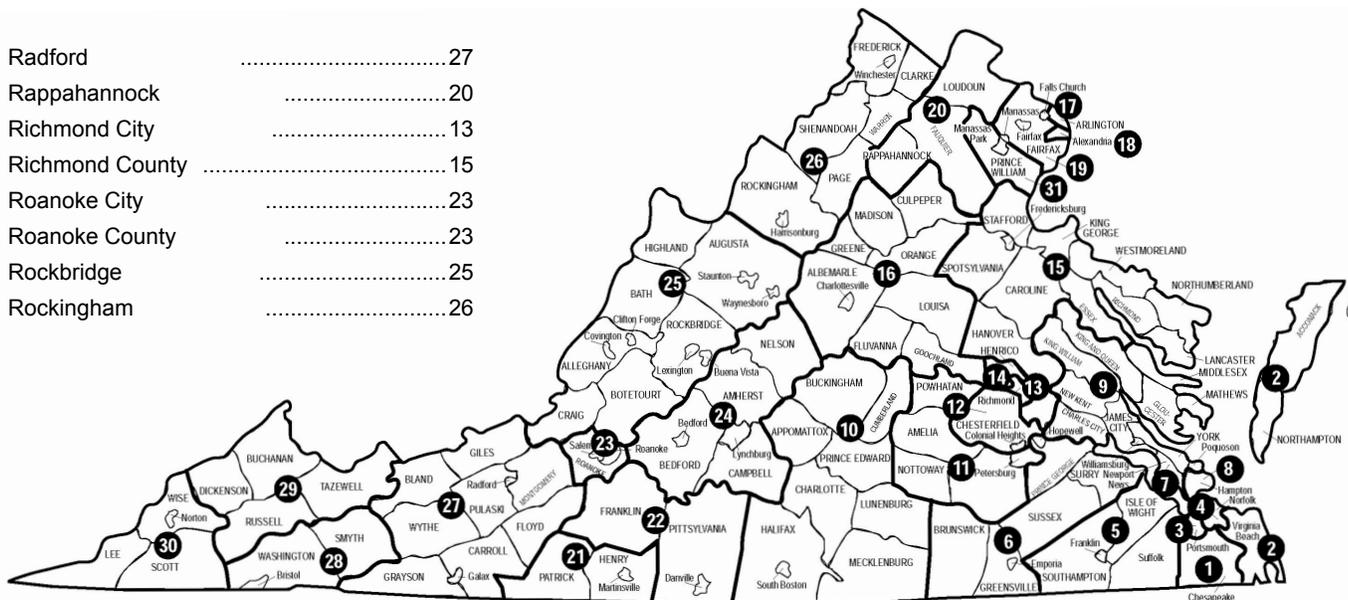
● Fifteen circuits reported compliance rates between 70% and 80%. Only one circuit had a compliance rate below 70%.

## Virginia Localities and Judicial Circuits

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

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

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



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 related primarily to geography. The circuits with the lowest compliance rates are scattered across the state, and both high and low compliance circuits can be found in close geographic proximity.

In FY2015, the highest rates of judicial agreement with the sentencing guidelines (88%) were in Circuit 31 (Prince William area) and Circuit 28 (Bristol area). Concurrence rates of 85% or higher were found in Circuit 11 (Petersburg area), Circuit 27 (Radford area) and Circuit 20 (Loudoun area). Circuit 13 (Richmond City) reported the lowest compliance rate among the judicial circuits in FY2015. However, all other concurrence rates were 74% or higher.

In FY2015, the highest mitigation rates were found in Circuit 13 (Richmond City), Circuit 8 (Hampton), Circuit 19 (Fairfax), Circuit 23 (Roanoke Valley), Circuit 21 (Martinsville area) and Circuit 4 (Norfolk). Circuit 13 (Richmond City) had a mitigation rate of nearly 27% while Circuit 8 (Hampton) had a mitigation rate of 17% for the fiscal year; Circuit 19 (Fairfax) recorded a mitigation rate of 14% followed by Circuit 23 (Roanoke area), Circuit 21 (Martinsville area) and Circuit 4 (Norfolk) with rates of slightly less than 14%. With regard to high mitigation rates, it would be

too simplistic to assume that this reflects areas with lenient sentencing habits. Intermediate punishment programs are not uniformly available throughout the Commonwealth, and jurisdictions with better access to these sentencing options may be using them as intended by the General Assembly. These sentences generally would appear as mitigations from the guidelines. Inspecting aggravation rates reveals that Circuit 29 (Buchanan County area) had the highest aggravation rate (nearly 19%), followed by Circuit 5 (Suffolk area) and Circuit 22 (Danville area) with rates between 15% and 16%. Lower compliance rates in these latter circuits are a reflection of the relatively high aggravation rates.

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

### Compliance by Sentencing Guidelines Offense Group

In FY2015, as in previous years, judicial agreement with the guidelines varied when comparing the 17 offense groups (Figure 8). For FY2015, compliance rates ranged from a high of 85% in the drug other offense group to a low of 59% in kidnapping cases. In general, property and drug offenses exhibit higher rates of compliance than the violent offense categories. Several violent offense groups (i.e., robbery, homicide, and kidnapping) had compliance rates at or below 64%, whereas many of the property and drug offense categories had compliance rates above 80%.

During the past fiscal year, judicial concurrence with guidelines recommendations remained relatively stable, fluctuating three percent or less for most offense groups. Compliance rates are much more susceptible to year-to-year fluctuations for offense groups with a small number of sentencing events in a given year. Compliance with the kidnapping worksheets (108 cases) decreased by 9.8 percentage points from FY2014 to FY2015 because of a significant change in aggravation. During the same time, compliance on the rape worksheets (153 cases) continued to increase this year by 5.1 percentage points because of a decrease in mitigation.

**Figure 8**

#### Compliance by Offense - FY2015

Offense	Compliance	Mitigation	Aggravation	Total
Drug Other	84.6%	6.1%	9.3%	1,425
Fraud	83.8	10.9	5.3	1,977
Larceny	83.8	9.6	6.6	5,893
Drug Schedule I/II	82.8	9.9	7.3	6,768
Traffic	79.3	8.8	11.9	1,600
Weapon	78.3	9.2	12.5	674
Burglary Other	77.5	10.4	12.2	395
Misc/Other	76.3	13.5	10.2	422
Rape	75.2	11.1	13.7	153
Assault	74.9	13.7	11.4	1,388
Obscenity	72.4	11.5	16.1	192
Burglary Dwelling	70.1	14.3	15.5	894
Sex Assault	68.2	8.5	23.3	399
Misc/Person/Property	67.9	7.1	25.0	480
Robbery	64.0	26.4	9.6	625
Murder	61.6	15.3	23.1	216
Kidnapping	59.3	15.7	25.0	108
Total	80.3	10.5	9.3	23,609

A number of changes went into effect beginning July 1, 2014. Scores were modified for four offenses and a new factor was added on the burglary worksheets. The guidelines scores for use of a communications system to solicit a child, § 18.2-374.3, financing, producing or taking part in or filming child pornography, § 18.2-374.1, and aggravated malicious wounding, § 18.2-51.2, were increased to more closely reflect judicial sentencing practices for these offenses. The scores for daytime burglary of a dwelling without a deadly weapon, § 18.2-91, were slightly lowered to reflect judicial sentencing practices. A new factor assigned additional points on the burglary worksheets when the primary offense of burglary was sentenced with an additional offense of aggravated malicious wounding.

Concurrence with the revised scores for use of a communications system to solicit a child was 69%. There were 19 cases for financing, producing or taking part in or filming child pornography for FY2015 with a concurrence rate of 63%. When not in compliance, judges had a tendency to go above the guidelines recommendation for these offenses. Adjustments to the scores for

aggravated assault resulted in an overall compliance rate of 62%. In 19 of the 61 cases, judges sentenced above the guidelines recommendation and below the recommendation in 4 cases.

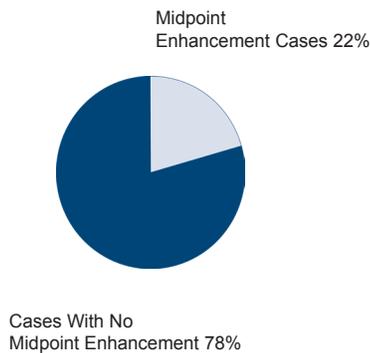
There were no cases in FY2015 impacted by the additional points on the burglary worksheets when the primary offense of burglary was sentenced with an additional offense of aggravated malicious wounding. However, there were nearly 800 cases impacted by the reduced scores for daytime burglary of a dwelling without a deadly weapon. Compliance in the first year for the newly revised scores was 70%, with an equal tendency to go either above or below the guidelines recommendation.

Since 1995, departure patterns have differed across offense groups, and FY2015 was no exception. In most cases, judges are sentencing within the recommendation, but for the offense groups of fraud, larceny, drug Schedule I/II, miscellaneous/other, assault, and robbery, judges when not in compliance, sentence below the recommendation. In fact, the robbery offense groups showed the highest mitigation rates, with over one-quarter of the robbery cases (26.4%), resulting in sentences below the guidelines. The most frequently cited mitigation reasons provided by judges in robbery cases included: the acceptance of a plea agreement, defendant cooperated with authorities, judicial discretion and court proceedings, and lack of an extensive prior record.

In the remaining offense groups, judges are more likely to sentence above the recommendation when not in compliance. In FY2015, the offense groups with the highest aggravation rates were miscellaneous person/property and kidnapping, at 25%, and murder/homicide and sexual assault, at 23%. These offense groups shared similar departure reasons. The most frequently cited aggravating departure reasons were, facts of the case, plea agreement, the defendant's poor rehabilitation, flagrancy of the offense and the type of victim involved (such as a child).

**Figure 9**

**Application of Midpoint  
Enhancements, FY2015**  
N=5,092



### Compliance Under Midpoint Enhancements

Section 17.1-805, formerly § 17-237, of the *Code of Virginia* describes the framework for what are known as “midpoint enhancements,” significant increases in guidelines scores for violent offenders that elevate the overall guidelines sentence recommendation. Midpoint enhancements are an integral part of the design of the truth-in-sentencing guidelines. By design, midpoint enhancements produce sentence recommendations for violent offenders that are significantly greater than the time that was served by offenders convicted of such crimes prior to the enactment of truth-in-sentencing laws. Offenders who are convicted of a violent crime or who have been previously convicted of a violent crime are recommended for incarceration terms up to six times longer than the terms served by offenders fitting similar profiles under the parole system. Midpoint enhancements are triggered for homicide, rape, or robbery offenses, most felony assaults and sexual assaults, and certain burglaries, when any one of these offenses is the current most serious offense, also called the “primary offense.” Offenders with a prior record containing at least

one conviction for a violent crime are subject to degrees of midpoint enhancements based on the nature and seriousness of the offender’s criminal history. The most serious prior record receives the most extreme enhancement. A prior record labeled “Category II” contains at least one prior violent felony conviction carrying a statutory maximum penalty of less than 40 years, whereas a “Category I” prior record includes at least one violent felony conviction with a statutory maximum penalty of 40 years or more. Category I and II offenses are defined in § 17.1-805.

Because midpoint enhancements are designed to target only violent offenders for longer sentences, enhancements do not affect the sentence recommendation for the majority of guidelines cases. Among the FY2015 cases, 78% of the cases did not involve midpoint enhancements of any kind (Figure 9). Only 22% of the cases qualified for a midpoint enhancement because of a current or prior conviction for a felony defined as violent under § 17.1-805. The proportion of cases receiving midpoint enhancements has fluctuated very little since the institution of truth-in-sentencing guidelines in 1995.

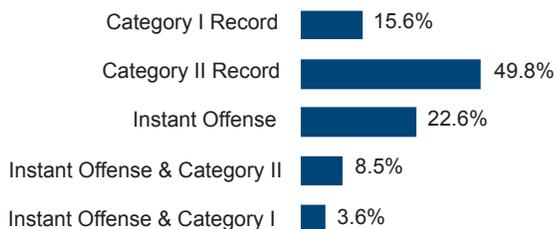
Of the FY2015 cases in which midpoint enhancements applied, the most common midpoint enhancement was for a Category II prior record. Approximately 50% of the midpoint enhancements were of this type and were applicable to offenders with a nonviolent instant offense but a violent prior record defined as Category II (Figure 10). In FY2015, another 16% of midpoint enhancements were attributable to offenders with a more serious Category I prior record. Cases of offenders with a violent instant offense but no prior record of violence represented 23% of the midpoint enhancements in FY2015. The most substantial midpoint enhancements target offenders with a combination of instant and prior violent offenses. A few less than 9% qualified for enhancements for both a current violent offense and a Category II prior record. Only a small percentage of cases (4%) were targeted for the most extreme midpoint enhancements triggered by a combination of a current violent offense and a Category I prior record.

Since the inception of the truth-in-sentencing guidelines, judges have departed from the guidelines recommendation more often in midpoint enhancement cases than in cases without enhancements. In FY2015, compliance was 71% when enhancements applied, which is significantly lower than compliance in all other cases (80%). Thus, compliance in midpoint enhancement cases is suppressing the overall compliance rate. When departing from enhanced guidelines recommendations, judges are choosing to mitigate in three out of every four departures.

Among FY2015 midpoint enhancement cases resulting in incarceration, judges departed from the low end of the guidelines range by an average of 24 months (Figure 11). The median departure (the middle value, where half of the values are lower and half are higher) was 12 months.

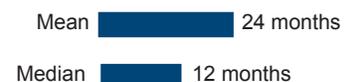
**Figure 10**

**Type of Midpoint Enhancements Received, FY2015**



**Figure 11**

**Length of Mitigation Departures in Midpoint Enhancement Cases, FY2015**



Compliance, while generally lower in midpoint enhancement cases than in other cases, varies across the different types and combinations of midpoint enhancements (Figure 12). In FY2015, 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 (62%). Compliance for enhancement cases involving a current violent offense, but no prior record of violence, was 70%. Cases involving a combination of a current violent offense and a Category II prior record yielded a compliance rate of 70%, while those with the most significant midpoint enhancements, for both a violent instant offense and a Category I prior record, yielded a lower compliance rate of 67%.

Because of the high rate of mitigation departures, analysis of departure reasons in midpoint enhancement cases focuses on downward departures from the guidelines. Judges sentence below the guidelines recommendation in three out of every four midpoint enhancement cases. The most frequently cited reasons for departure include the acceptance of a plea agreement, judicial discretion, the defendant's cooperation with law enforcement, facts of the case and utilization of sentencing alternatives.

**Figure 12**

**Compliance by Type of Midpoint Enhancement\*, FY2015**

	<b>Compliance</b>	<b>Mitigation</b>	<b>Aggravation</b>	<b>Number of Cases</b>
None	82.7%	7.4%	9.9%	18,517
Category I Record	62.1	34.4	3.5	794
Category II Record	74.9	19.1	6.0	2,534
Instant Offense	70.4	17.9	11.7	1,150
Instant Offense & Category I	66.9	29.8	3.3	181
Instant Offense & Category II	70.2	22.2	7.6	433
<b>Total</b>	<b>78.4</b>	<b>11.1</b>	<b>10.5</b>	<b>23,609</b>

\* 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 methods by which Virginia’s criminal cases are adjudicated: guilty pleas, bench trials, and jury trials. Felony cases in circuit courts are overwhelmingly resolved through guilty pleas from defendants, or plea agreements between defendants and the Commonwealth. During the last fiscal year, 91% of guideline cases were sentenced following guilty pleas (Figure 13). Adjudication by a judge in a bench trial accounted for 8% of all felony guidelines cases sentenced. During FY2015, 1.1% of cases involved jury trials. In a small number of cases, some of the charges were adjudicated by a judge, while others were adjudicated by a jury, after which the charges were combined into a single sentencing hearing.

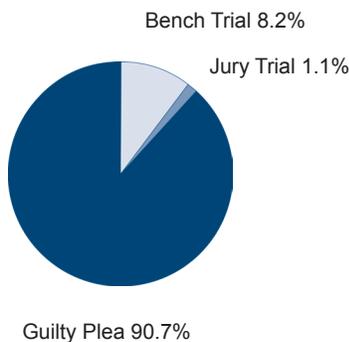
Since FY1986, there has been a generally declining trend in the percentage of jury trials among felony convictions in circuit courts

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

Among the early cases subjected to the new truth-in-sentencing provisions, implemented during the last six months of FY1995, jury adjudications sank to just over 1%.

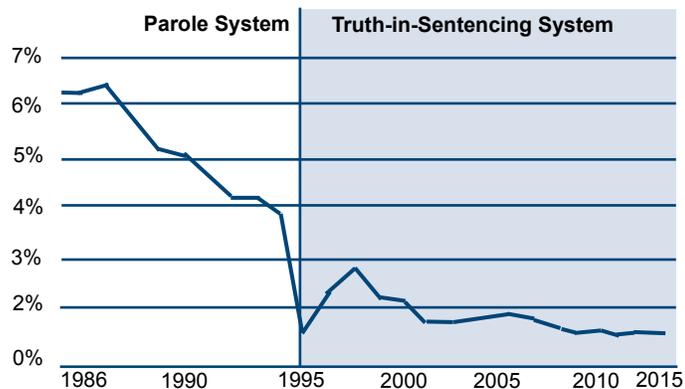
**Figure 13**

**Percentage of Cases Received by Method of Adjudication, FY2015**



**Figure 14**

**Percent of Felony Convictions Adjudicated by Juries FY1986-FY2015 Parole System v. Truth-in-Sentencing (No Parole) System**

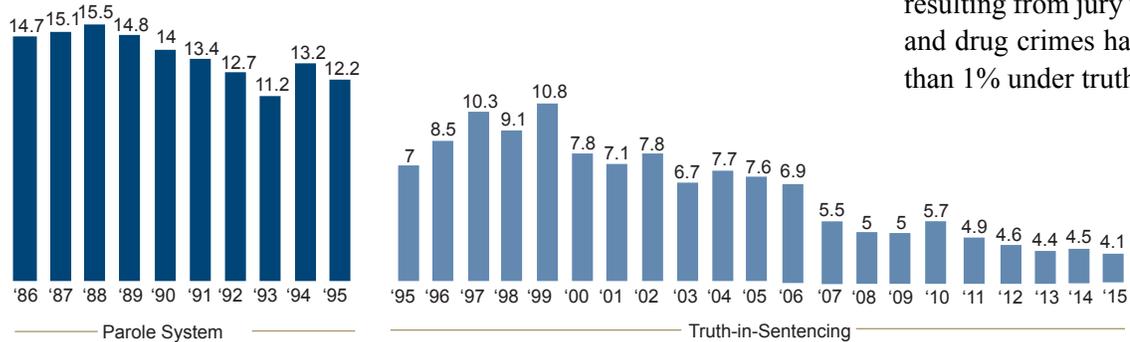


During the first complete fiscal year of truth-in-sentencing (FY1996), just over 2% of the cases were resolved by jury trials, which was half the rate of the last year before the abolition of parole. Seemingly, the introduction of truth-in-sentencing, as well as the introduction of a bifurcated jury trial system, appears to have contributed to the reduction in jury trials. Since FY2000, the percentage of jury convictions has remained less than 2%.

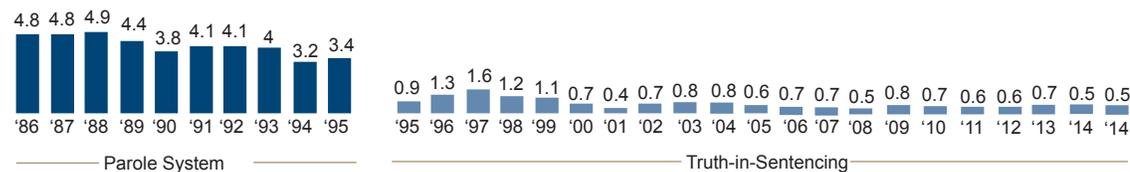
Inspecting jury data by offense type reveals very divergent patterns for person, property, and drug crimes. Under the parole system, jury cases comprised 11% to 16% of felony convictions for person crimes. This rate was typically three to four times the rate of jury trials for property and drug crimes (Figure 15). However, with the implementation of bifurcated trials and truth-in-sentencing provisions, the percent of convictions decided by juries dropped dramatically for all crime types. Since FY2007, the rate of jury convictions for person crimes has been between 4% and 6%, the lowest rates since truth-in-sentencing was enacted. The percent of felony convictions resulting from jury trials for property and drug crimes has declined to less than 1% under truth-in-sentencing.

**Figure 15**

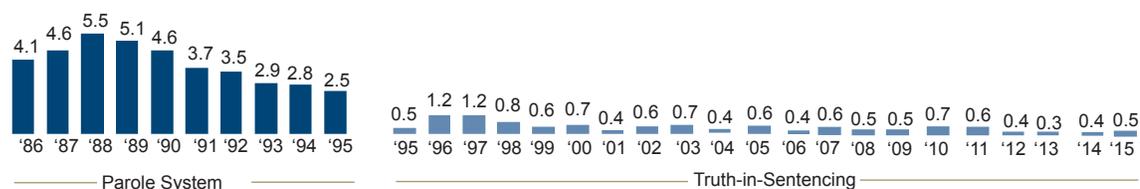
**Percent of Felony Convictions Adjudicated by Juries  
FY1986-FY2015  
Parole System v. Truth-in-Sentencing (No Parole) System**  
Person Crimes



**Property Crimes**



**Drug Crimes**



In FY2015, the Commission received 257 cases adjudicated by juries. While the compliance rate for cases adjudicated by a judge or resolved by a guilty plea was at 81% during the fiscal year, sentences handed down by juries concurred with the guidelines only 43% of the time (Figure 16). In fact, jury sentences were more likely to fall above the guidelines than within the recommended range (47%). This pattern of jury sentencing vis-à-vis the guidelines has been consistent since the truth-in-sentencing guidelines became effective in 1995. By law, however, juries are not allowed to receive any information regarding the sentencing guidelines.

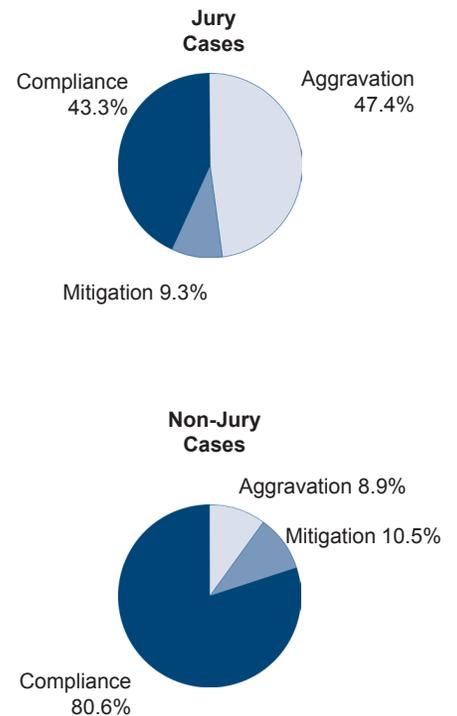
In jury cases in which the final sentence fell short of the guidelines, it did so by a median value of 31 months (Figure 17). In cases where the ultimate sentence resulted in a sanction more severe than the guidelines recommendation, the sentence exceeded the guidelines maximum recommendation by a median value of 44 months.

In FY2015, six of the jury cases involved a juvenile offender tried as an adult in circuit court. According to § 16.1-272 of the Code of Virginia, juveniles may be adjudicated by a jury in circuit court; however, any sentence must be handed down by the court without the intervention of a jury. Therefore, juries are not permitted to recommend sentences for juvenile offenders. Rather, circuit court judges are responsible for formulating sanctions for juvenile offenders. There are many options for sentencing these juveniles, including commitment to the Department of Juvenile Justice. Because judges, and not juries, must sentence in these cases, they are excluded from the previous analysis.

In cases of adults adjudicated by a jury, judges are permitted by law to lower a jury sentence. Typically, however, judges have chosen not to amend sanctions imposed by juries. In FY2015, judges modified 22% of jury sentences.

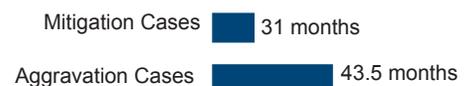
**Figure 16**

**Sentencing Guidelines Compliance in Jury and Non-Jury Cases, FY2015**



**Figure 17**

**Median Length of Durational Departures in Jury Cases, FY2015**



### Compliance and Nonviolent Offender Risk Assessment

In 1994, as part of the reform legislation that instituted truth-in-sentencing, the General Assembly directed the Commission to study the feasibility of using an empirically-based risk assessment instrument to select 25% of the lowest risk, incarceration-bound, drug and property offenders for placement in alternative (non-prison) sanctions. By 1996, the Commission developed such an instrument and implementation of the instrument began in pilot sites in 1997. The National Center for State Courts (NCSC) conducted an independent evaluation of 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. Between 2010 and 2012, the Commission conducted an extensive study of recidivism among nonviolent felons in Virginia in order to re-evaluate the current risk assessment instrument and potentially revise the instrument based upon more recent data. Based on the results of the 2010-2012 study, the Commission

recommended replacing the current risk assessment instrument with two instruments, one applicable to larceny and fraud offenders and the other specific to drug offenders. The Commission's study revealed that predictive accuracy was improved using two distinct instruments.

Nearly two-thirds of all guidelines received by the Commission for FY2015 were for nonviolent offenses. However, only 43% of these nonviolent offenders were eligible to be assessed for an alternative sanction recommendation. The goal of the nonviolent risk assessment instrument is to divert low-risk offenders who are recommended for incarceration on the guidelines to an alternative sanction other than prison or jail. Therefore, nonviolent offenders who are recommended for probation/no incarceration on the guidelines are not eligible for the assessment. Furthermore, the instrument is not to be applied to offenders convicted of distributing one ounce or more of cocaine, those who have a current or prior violent felony conviction, or those who must be sentenced to a mandatory minimum term of incarceration required by law. In addition to those not eligible for risk assessment, a risk assessment instrument was not completed and submitted to the Commission for 2,408 nonviolent offense cases.

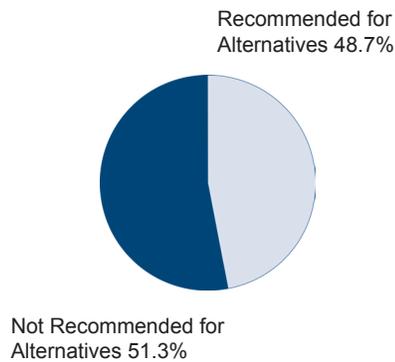
Among the eligible offenders in

FY2015 for whom a risk assessment form was received (6,772 cases), 49% were recommended for an alternative sanction by the risk assessment instrument (Figure 18). A portion of offenders recommended for an alternative sanction through risk assessment was given some form of alternative punishment by the judge. In FY2015, 41% of offenders recommended for an alternative were sentenced to an alternative punishment option.

Among offenders recommended for and receiving an alternative sanction through risk assessment, judges used supervised probation more often than any other option (Figure 19). In addition, in slightly less than half of the cases in which an alternative was recommended, judges sentenced the offender to a shorter term of incarceration in jail (less than twelve months) rather than the prison sentence recommended by the traditional guidelines range. Other frequent sanctions utilized were: restitution (37%), unsupervised probation (20%), substance abuse services (17%), indefinite probation (16%), fines (13%), and time served (11%). The Department of Corrections’ Diversion and Detention Center programs were used in 10% and 6% of the cases, respectively. Other alternatives/sanctions included: programs under the Comprehensive Community Corrections Act (CCCA), community service, electronic monitoring, first offender status under § 18.2-251, day reporting, litter control, intensive supervision, drug court, and work release.

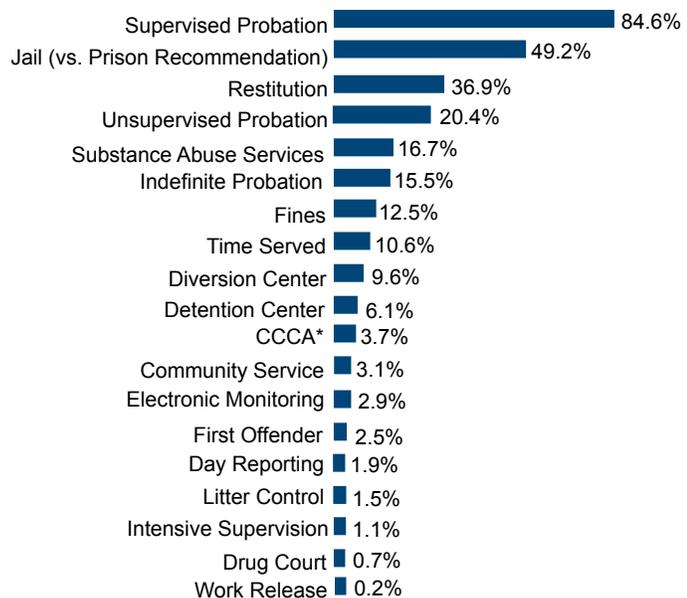
**Figure 18**

**Percentage of Eligible Nonviolent Risk Assessment Cases Recommended for Alternatives, FY2015 (6,772 cases)**



**Figure 19**

**Types of Alternative Sanctions Imposed, FY2015**



\* Any program established through the Comprehensive Community Corrections Act

When a nonviolent offender is recommended for an alternative sanction using the risk assessment instrument, a judge is considered to be in compliance with the guidelines if he or she chooses to sentence the defendant to a term within the traditional incarceration period recommended by the guidelines or if he or she chooses to sentence the offender to an alternative form of punishment. For drug offenders eligible for risk assessment, the overall guidelines compliance rate is 86%, but a portion of this compliance reflects the use of an alternative punishment option as recommended by the risk assessment tool (Figure

20). In 27% of these drug cases, judges have complied with the recommendation for an alternative sanction. Similarly, in fraud cases, with offenders eligible for risk assessment, the overall compliance rate is 85%. In 28% of these fraud cases, judges have complied by utilizing alternative punishment, when it was recommended. Finally, among larceny offenders eligible for risk assessment, the compliance rate is 85%. Judges used an alternative, as recommended by the risk assessment tool, in 8% of larceny cases. The lower use of alternatives for larceny offenders is primarily because larceny offenders are recommended for alternatives at a lower rate than drug and fraud offenders. The National Center for State Courts, in its evaluation of Virginia's risk assessment tool, and the Commission, during the course of its validation study, found that larceny offenders are the most likely to recidivate among nonviolent offenders.

**Figure 20**

**Compliance Rates for Nonviolent Offenders Eligible for Risk Assessment, FY2015**

	Mitigation	Compliance		Aggravation	Number of Cases	Overall Compliance
		Adjusted Range	Traditional Range			
Drug	7.3%	26.8%	59.4%	6.5%	3,336	 86.2%
Fraud	11.0%	27.6%	57.5%	3.9%	873	 85.1%
Larceny	9.5%	8.0%	77.3%	5.2%	2,563	 85.3%
Overall	8.6%	19.8%	65.9%	5.7%	6,772	 85.7%

### Compliance and Sex Offender Risk Assessment

In 1999, the Virginia General Assembly requested that the Virginia Criminal Sentencing Commission develop a sex offender risk assessment instrument, based on the risk of re-offense, that could be integrated into the state's sentencing guidelines system. Such a risk assessment instrument could be used as a tool to identify offenders who, as a group, represent the greatest risk for committing a new offense once released back into the community. The Commission conducted an extensive study of felony sex offenders convicted in Virginia's circuit courts and developed an empirical risk assessment tool based on the risk that an offender would be rearrested for a new sex offense or other crime against a person.

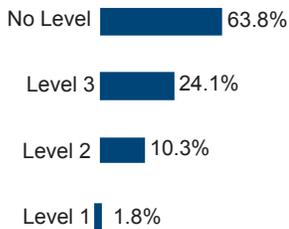
Effectively, risk assessment means developing profiles or composites based on overall group outcomes. Groups are defined by having a number of factors in common that are statistically relevant to predicting repeat offending. Groups exhibiting a high degree of re-offending are labeled high risk. Although no risk assessment model can ever predict a given outcome with perfect accuracy, the risk instrument produces overall higher scores for the groups of offenders who exhibited higher recidivism rates during the course of the Commission's study. In this way, the instrument developed by the Commission is indicative of offender risk.

The risk assessment instrument was incorporated into the sentencing guidelines for sex offenders beginning July 1, 2001. For each sex offender identified as a comparatively high risk (those scoring 28 points or more on the risk tool), the sentencing guidelines have been revised such that a prison term will always be recommended. In addition, the guidelines recommendation range (which comes in the form of a low end, a midpoint and a high end) is adjusted. For offenders scoring 28 points or more, the high end of the guidelines range is increased based on the offender's risk score, as summarized below.

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

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

**Figure 21**  
**Sex Offender Risk Assessment Levels for Sexual Assault Offenders, FY2015\***



\*Excludes cases missing the sex offender risk assessment portion of the Other Sexual Assault worksheet.

During FY2015, there were 399 offenders convicted of an offense covered by the sexual assault guidelines (this group excludes offenders convicted of rape, forcible sodomy, object penetration and obscenity offenses). In FY2015 solicitation of a minor and child pornography were removed from the sexual assault worksheet and a new obscenity worksheet was created. In addition, the sex offender risk assessment instrument does not apply to certain guideline offenses, such as bestiality, bigamy, non-forcible sodomy, and prostitution (52 of the 399 cases in FY2015). Of the remaining 340 sexual assault cases for which the risk assessment was applicable, the majority (64%) were not assigned a level of risk by the sex offender risk assessment instrument

(Figure 21). Approximately 24% of applicable sexual assault guidelines cases resulted in a Level 3 risk classification, with an additional 10% assigned to Level 2. Just 1.8% of offenders reached the highest risk category of Level 1.

Under the sex offender risk assessment, the upper end of the guidelines range is extended by 300%, 100% or 50% for offenders assigned to Level 1, 2 or 3, respectively. Judges utilize these extended ranges when sentencing sex offenders. For the seven sexual assault offenders reaching Level 1 risk during the past fiscal year, five of them were given sentences within the traditional guidelines range and one above and one below. (Figure 22). Judges used the extended guidelines range in 12% of Level 2 cases and 10% of Level 3 risk cases. Judges rarely sentenced Level 1, 2 or 3

**Figure 22**  
**Other Sexual Assault Compliance Rates By Risk Assessment Level, FY2015\***

	Mitigation	Compliance		Aggravation	Number of Cases	Overall Compliance
		Traditional Range	Adjusted Range			
Level 1	14.3%	71.4%	14.3%	---	7	85.7%
Level 2	8.8%	73.5%	11.8%	5.9%	34	85.3%
Level 3	7.1%	72.6%	9.5%	10.7%	84	82.1%
No Level	7.0%	61.9%	---	31.2%	215	61.9%
Overall	7.4%	65.9%	3.8%	22.9%	340	69.7%

\*Excludes cases missing the sex offender risk assessment portion of the Other Sexual Assault worksheet.

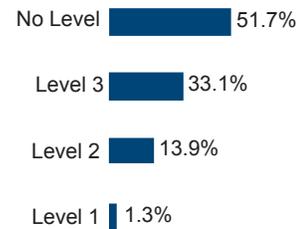
offenders to terms above the extended guidelines range provided in these cases. However, offenders who scored less than 28 points on the risk assessment instrument (who are not assigned a risk category and receive no guidelines adjustment) were less likely to be sentenced in compliance with the guidelines (62% compliance rate) and were more likely to receive a sentence that was an upward departure from the guidelines (31% aggravation rate).

In FY2015, there were 151 offenders convicted of offenses covered by the rape guidelines (which cover the crimes of rape, forcible sodomy, and object penetration). Among offenders convicted of these crimes, over one-half (52%) were not assigned a risk level by the Commission’s risk assessment instrument (Figure

23). Approximately 33% of these cases resulted in a Level 3 adjustment - a 50% increase in the upper end of the traditional guidelines range recommendation. An additional 14% received a Level 2 adjustment (100% increase). The most extreme adjustment (300%) affected approximately 1% of the rape guidelines cases. One of the two rape offenders reaching Level 1 risk group were sentenced within the extended high end of the range (Figure 24). As shown below, 24% of offenders with a Level 2 risk classification and 20% 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 only occasionally sentenced Level 1, 2 or 3 offenders above the expanded guidelines range.

**Figure 23**

**Sex Offender Risk Assessment Levels for Rape Offenders, FY2015\***



\*Excludes cases missing the sex offender risk assessment portion of the Rape worksheet.

**Figure 24**

**Rape Compliance Rates By Risk Assessment Level, FY2015\***

	Mitigation	Compliance		Aggravation	Number of Cases	Overall Compliance
		Traditional Range	Adjusted Range			
Level 1	---	50.0%	50.0%	---	2	100%
Level 2	---	71.4%	23.8%	4.8%	21	95.2%
Level 3	16.0%	58.0%	20.0%	6.0%	50	78%
No Level	10.3%	67.9%	---	21.8%	78	67.9%
Overall	10.6%	64.9%	10.6%	13.9%	151	75.5%

\*Excludes cases missing the sex offender risk assessment portion of the Rape worksheet.

### Sentencing Revocation Reports (SRRs)

One of the most comprehensive resources regarding revocations of community supervision in Virginia is the Sentencing Commission's Community Corrections Revocations Data System, also known as the Sentencing Revocation Report (SRR) database. First implemented in 1997 with assistance from the Department of Corrections (DOC), the SRR is a simple form designed to capture the reasons for, and the outcomes of, community supervision violation hearings. The probation officer (or

Commonwealth's attorney) completes the first part of the form, which includes the offender's identifying information and checkboxes indicating the reasons why a show cause or revocation hearing has been requested. The checkboxes are based on the list of eleven conditions for community supervision established for every offender, but special supervision conditions imposed by the court also can be recorded. Following the violation hearing, the judge completes the remainder of the form with the revocation decision and any sanction ordered in the case. The completed form is submitted to the Commission, where the information is automated. A revised SRR form was developed and implemented in 2004 to serve as a companion to the new probation violation sentencing guidelines introduced that year.

In FY2015, there were 12,526 alleged felony violations of probation, suspended sentences, or good behavior for which a Sentencing Revocation Report (SRR) was submitted to the Commission by October of this year. The SRRs received include cases in which the court found the defendant in violation, cases that the court decided to take under advisement until a later date, and cases in which the court did not find the defendant in violation. The circuits submitting the largest number of SRRs during the time period were Circuit 26 (Harrisonburg area) and Circuit 29 (Buchanan area). Circuit 6 (Sussex County area), Circuit 17 (Arlington area) and Circuit 18 (Alexandria) submitted the fewest SRRs during the time period (Figure 25).

**Figure 25**

#### Number and Percent of Sentencing Revocation Reports Received by Circuit, FY2015

Circuit	Circuit Name	Number	Percent
1	Chesapeake	735	5.9%
2	Virginia Beach	633	5.1
3	Portsmouth	321	2.6
4	Norfolk	703	5.6
5	Suffolk Area	394	3.1
6	Sussex Area	75	0.6
7	Newport News	322	2.6
8	Hampton	266	2.1
9	Williamsburg Area	371	3.0
10	South Boston Area	278	2.2
11	Petersburg Area	97	0.8
12	Chesterfield Area	285	2.3
13	Richmond City	371	3.0
14	Henrico	382	3.0
15	Fredericksburg	575	4.6
16	Charlottesville Area	312	2.5
17	Arlington Area	84	0.7
18	Alexandria	90	0.7
19	Fairfax	449	3.6
20	Loudoun	254	2.0
21	Martinsville Area	219	1.7
22	Danville Area	703	5.6
23	Roanoke Area	420	3.4
24	Lynchburg Area	460	3.7
25	Staunton Area	461	3.7
26	Harrisonburg Area	1,021	8.2
27	Radford Area	492	3.9
28	Bristol Area	365	2.9
29	Buchanan Area	842	6.7
30	Lee Area	177	1.4
31	Prince William Area	369	2.9
<b>Total</b>		<b>12,526</b>	<b>100.0%</b>

### Probation Violation Guidelines

In 2003, the General Assembly directed the Commission to develop, with due regard for public safety, discretionary sentencing guidelines for felony offenders who are determined by the court to be in violation of their probation supervision for reasons other than a new criminal conviction (Chapter 1042 of the 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 practices in revocation hearings.

Early use of the probation violation guidelines, which took effect on July 1, 2004, indicated that the guidelines needed further refinement to better reflect current judicial sentencing patterns in the punishment of supervision violators. Judicial compliance with the first edition of the probation violation guidelines was lower than expected, with only 37% of the violators being sentenced within the range recommended by the new guidelines. Therefore, the Commission’s 2004 Annual Report recommended several adjustments to the probation violation guidelines. The proposed changes were accepted by the General Assembly and the second edition of the probation violation guidelines took effect on July 1, 2005. These changes yielded an improved compliance rate of 48% for fiscal year (FY) 2006.

Compliance with the revised guidelines, and ongoing feedback from judges, suggested that further refinement could improve their utility as a benchmark for judges. Therefore, the Commission’s 2006 Annual Report recommended additional adjustments to the probation violation guidelines. The majority of the changes proposed in the 2006 Annual Report affected the Section A worksheet. The score on Section A of the probation violation guidelines determines whether an offender will be recommended for probation with no active term of incarceration to serve, or whether the offender will be referred to the Section C worksheet, for a jail or prison recommendation. Changes to the Section A worksheet included revising scores for existing factors, deleting certain factors and replacing them with others (e.g., “Previous Adult Probation Violation Events” replaced “Previous Capias/Revocation Requests”), and adding new factors (e.g., “Original Disposition was Incarceration”). The only change to the Section C worksheet (the sentence length recommendation) was an adjustment to the point value assigned to offenders who violated their sex offender restrictions. The proposed changes outlined in the 2006 Annual Report were accepted by the General Assembly and became effective for technical probation violators sentenced on July 1, 2007 and after. This third version of the probation violation guidelines has resulted in consistently higher compliance rates than previous versions of the guidelines.

Figure 26 illustrates compliance patterns over the years and the impact revisions to the guidelines had on compliance rates. Compliance has hovered above 50% since FY2008 and this pattern continues in FY2015. The remainder of this section will focus on violation cases for offenders sentenced between July 1, 2014 and June 30, 2015, fiscal year 2015.

For FY2015, the Commission received 12,526 SRRs. Of the total, 6,035 cases involved a new law violation. In these cases, the judge found the defendant guilty of violating Condition 1 of the Department of Corrections' Conditions of Probation (obey all federal, state, and local laws and ordinances). In 6,121 cases, the offender was found in violation of

other conditions not related to a new law violation. For these "technical violators," the Probation Violation Guidelines should be completed and submitted to the court. In a number of cases, the offender was not found in violation of any condition (192 cases) or the type of violation was not identified on the SRR form (178 cases).

Figure 27 compares new law violations and "technical violations" in FY2015 with previous years. Since FY2009, the number of revocations based on new law violations has exceeded the number of revocations based on violations of other conditions. Changes in policies for supervising offenders who violate conditions of probation that do not result in new

**Figure 26**

**Probation Violations Guidelines  
Compliance by Year, FY2005 - FY2015**

Fiscal Year	Compliance	Mitigation	Aggravation	Total
FY05	37.4%	27.3%	35.4%	3,140
FY06	48.4%	29.8%	21.8%	4,905
FY07	47.1%	31.7%	21.2%	5,930
FY08	53.9%	25.0%	21.0%	5,027
FY09	53.3%	25.8%	21.0%	4,487
FY10	52.7%	25.6%	21.7%	4,231
FY11	54.0%	24.1%	21.9%	4,767
FY12	50.2%	25.9%	23.9%	4,502
FY13	51.9%	23.3%	24.7%	4,785
FY14	53.2%	22.5%	24.3%	4,960
FY15	53.4%	24.3%	22.3%	5,369

*Note: Excludes cases with missing data, that were incomplete, or had other guidelines issues.*

convictions and procedures that require judges to receive and review the SRRs and Probation Violation Guidelines have impacted the number and types of revocations submitted to the court. In FY2014, the number of technical violations reviewed by the court began to increase in number. In that year, new law violations exceeded the number of technical violations by 160 cases. However, by FY2015 the number of technical violations exceed new law violations by less than 100 (Figure 27).

Upon further examination of the 6,121 technical violator cases, it was found that 752 could not be included in the analysis of judicial compliance with the Probation Violation Guidelines. There were several reasons for excluding these cases from compliance analysis. Cases were excluded if the guidelines were not applicable (the case involved a parole-eligible offense, a first-offender violation, a misdemeanor original offense, or an offender who was not on supervised probation), if the guidelines forms were incomplete, or if outdated forms were prepared. The following analysis of compliance with the Probation Violation Guidelines will focus on the remaining 5,369 technical violator cases heard in Virginia's circuit courts between July 2014 and June 2015.

**Figure 27**

**Sentencing Revocation Reports Received  
for Technical and New Law Violations  
FY1998 - FY2015**

<b>Fiscal Year</b>	<b>Technical Violations</b>	<b>New Law Violations</b>	<b>Number</b>
FY98	2,886	2,278	5,164
FY99	3,643	2,630	6,273
FY00	3,490	2,183	5,673
FY01	5,511	3,228	8,739
FY02	5,783	3,332	9,115
FY03	5,078	3,173	8,251
FY04	5,370	3,361	8,731
FY05	5,320	3,948	9,268
FY06	6,126	4,393	10,519
FY07	6,671	4,755	11,426
FY08	6,268	5,182	11,450
FY09	4,999	5,133	10,132
FY10	4,668	5,225	9,893
FY11	5,231	6,053	11,284
FY12	5,139	5,753	10,892
FY13	5,435	6,007	11,442
FY14	5,750	5,910	11,660
FY15	6,121	6,035	12,156

*Note: Excludes cases with missing data, that were incomplete, or had other guidelines issues.  
Updated using revised FY2007-FY2014 data*

Of the 5,369 cases in which offenders were found to be in violation of their probation for reasons other than a new law violation, approximately 44% were under supervision for a felony property offense (Figure 28). This represents the most serious offense for which the offender was on probation. Another 33% were under supervision for a felony drug conviction. Offenders who were on probation for a crime against a person (most serious original offense) made up a smaller portion (16%) of those found in violation during FY2015.

**Figure 28**

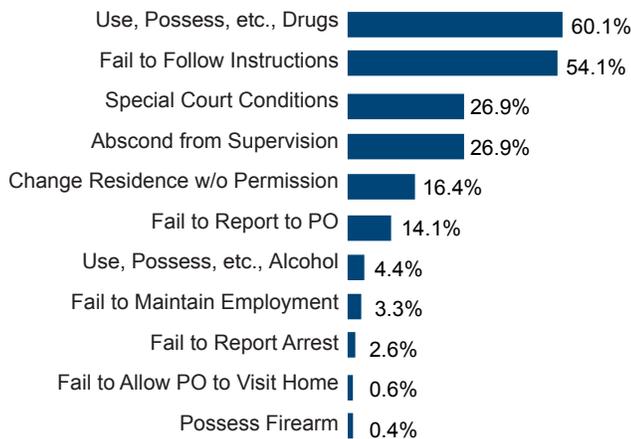
**Probation Violation Worksheets Received by Type of Most Serious Original Offense, FY2015\***

Original Offense Type	Percent Received
Property	43.6%
Drug	33.4
Person	16.1
Traffic	3.9
Other	3.0

*\*Includes FY2015 worksheets received regardless of disposition.*

**Figure 29**

**Violation Conditions Cited by Probation Officers, Excluding New Law Violations, FY2015\***



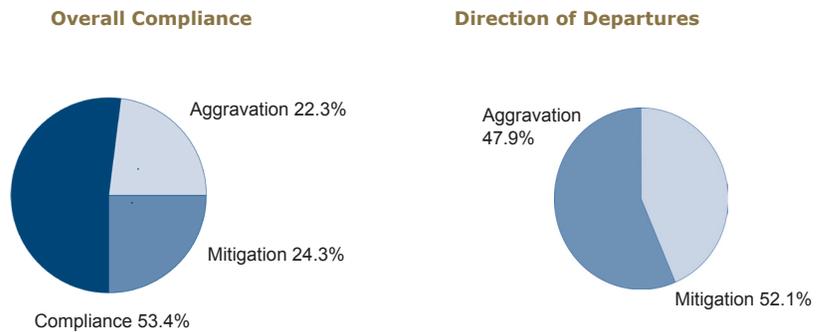
*\*Includes worksheets received in FY2015 regardless of disposition (not in violation, etc).*

Examining the 5,369 violation cases (excluding those with a new law violation) reveals that over half (60%) of the offenders were cited for using, possessing, or distributing a controlled substance (Condition 8 of the DOC Conditions of Probation). Violations of Condition 8 may include a positive test (urinalysis, etc.) for a controlled substance or a signed admission. More than half (54%) of the offenders were cited for failing to follow instructions given by the probation officer. Other frequently cited violations included absconding from supervision (27%), changing residence or traveling outside of designated areas without permission (16%) and failing to report to the probation officer in person or by telephone when instructed (14%). Offenders were often cited for failing to follow special conditions imposed by the court, including: failing to pay court costs and restitution, failing to comply with court-ordered substance abuse treatment, or failing to successfully complete alternatives, such as a Detention Center or Diversion Center program in more than one-fourth of the violation cases (27%). It is important to note that defendants may be, and typically are, cited for violating more than one condition of their probation (Figure 29).

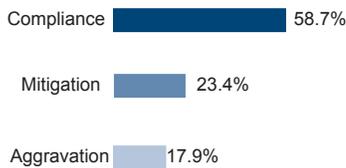
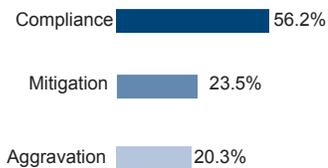
The overall compliance rate summarizes the extent to which Virginia’s judges concur with recommendations provided by the probation violation guidelines, both in type of disposition and in length of incarceration. In FY2015, the overall rate of compliance with the Probation Violation Guidelines was 53%, which is comparable to compliance rates since FY 2008 and significantly higher than the compliance rate of 37% for the first edition of the guidelines. The aggravation rate, or the rate at which judges sentence offenders to sanctions more severe than the guidelines recommend, was 22% during FY2015. The mitigation rate, or the rate at which judges sentence offenders to sanctions considered less severe than the guidelines recommendation, was 24% (Figure 30).

**Figure 30**

**Probation Violation Guidelines Overall Compliance and Direction of Departures, FY2015 (5,369 Cases)\***



*\*Includes FY2015 cases found to be in violation that were completed accurately on current guideline forms.*

**Figure 31****Probation Violation Guidelines  
Dispositional Compliance,  
FY2015****Figure 32****Probation Violation Guidelines  
Durational Compliance,  
FY2015\***

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

Figure 31 illustrates judicial concurrence with the type of disposition recommended by the Probation Violation Guidelines for FY2015. There are three general categories of sanctions recommended by the probation violation guidelines: probation/no incarceration, a jail sentence up to twelve months, or a prison sentence of one year or more. Data for the time period reveal that judges agree with the type of sanction recommended by the probation violation guidelines in 59% of the cases. When departing from the dispositional recommendation, judges were more likely to sentence below the guidelines recommendation than above it. Consistent with the traditional sentencing guidelines, sentences to the Detention Center and Diversion Center programs are defined as incarceration sanctions under the Probation Violation Guidelines and are counted as seven months of confinement (per changes to the program effective July 1, 2007).

Another facet of compliance is durational compliance. Durational compliance is defined as the rate at which judges sentence offenders to terms of incarceration that fall within the recommended guidelines range. Durational compliance analysis only considers cases for which the guidelines recommended an active term of incarceration and the offender received an incarceration sanction consisting of at least one day in jail. Data reveal that durational compliance for FY2015 was approximately 56% (Figure 32). For cases not in durational compliance, aggravations were just slightly less likely than mitigations.

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

Prior to July 1, 2010, completion of the Probation Violation Guidelines was not required by statute or other any provision of law. However, the 2010-2012 biennium budget passed by the General Assembly specifies that, as of July 1, 2010, a sentencing revocation report (SRR) and, if applicable, the Probation Violation Guidelines, must be presented to the court and reviewed by the judge for any violation hearing conducted pursuant to § 19.2-306 (this requirement can be found in Item 39 of Chapter 665 of the 2015 Acts of Assembly Act as approved, March 26, 2015). Similar to the traditional felony sentencing guidelines, sentencing in accordance with the recommendations of the Probation Violation Guidelines is voluntary. The approved budget language states, however, that in cases in which the Probation Violation Guidelines are required and the judge imposes a sentence greater than or less than the guidelines recommendation, the court must file with the record of the case a written explanation for the departure. The requirements pertaining to the Probation Violation Guidelines spelled out in the latest budget parallel existing statutory provisions governing the use of sentencing guidelines for felony offenses.

Before July 1, 2010, circuit court judges were not required to provide a written reason for departing from the Probation Violation Guidelines. Because the opinions of the judiciary, as reflected in their departure reasons, are of critical importance when revisions to the guidelines are considered, the Commission had requested that judges enter departure reasons on the Probation Violation Guidelines form. Many judges responded to the Commission's request. Ultimately, the types of adjustments to the Probation Violation Guidelines that would allow the guidelines to more closely reflect judicial sentencing practices across the Commonwealth are largely dependent upon the judges' written reasons for departure.

According to Probation Violation Guidelines data for FY2015, 47% of the cases resulted in sentences that fell outside the recommended guidelines range. With judges departing from these guidelines at such a high rate, written departure reasons are an integral part of understanding judicial sentencing decisions. An analysis of the 1,303 mitigation cases revealed that over half (53%) included a departure reason. For the mitigation cases in which departure reasons were provided, judges were most likely to cite the utilization of an alternative punishment option (e.g., Detention or Diversion Center programs, treatment options), judicial discretion based on issues related to the case, progress in rehabilitation, the involvement of a plea agreement, facts of the case or the recommendation of the attorney for the Commonwealth.

Examining the 1,198 aggravation cases, the Commission found that the majority (53%) included a departure reason. When a departure reason was provided in aggravation cases, judges were most likely to cite multiple revocations in the defendant's prior record, the defendant's failure to follow instructions or absconding from supervision, substance abuse issues and the need for rehabilitation.

FY2015 data suggest that judicial concurrence with Probation Violation Guidelines recommendations remains above 50% since the changes implemented July 1, 2007. As with the felony sentencing guidelines first implemented in 1991, the development of useful sentencing tools for judges to deal with probation violators will be an iterative process, with improvements made over several years. Feedback from judges, especially through written departure reasons, is of critical importance to the process of continuing to improve the guidelines, thereby making them a more useful tool for judges in formulating sanctions in probation violation hearings.

# IMMEDIATE SANCTION PROBATION PROGRAM

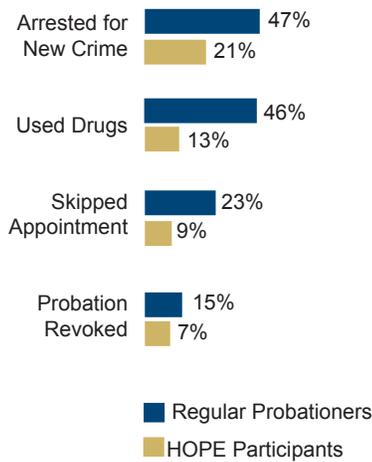
## Introduction

In 2004, Judge Steven Alm of Hawaii's First Circuit established the Hawaii Opportunity Probation with Enforcement (HOPE) program. The HOPE program was created with the goal of enhancing public safety and improving compliance with the rules and conditions of probation among offenders being supervised in the community. Targeting higher risk probationers under supervision in the community, the HOPE program applies swift and certain, but mild, sanctions for each violation of probation. The approach was markedly different from probation as it was being conducted in Hawaii at that time.

According to the National Institute of Justice, the HOPE approach is grounded in research which suggests that deferred and low-probability threats of severe punishment are less effective in changing behavior than immediate and high-probability threats of mild punishment (see, e.g., Grasmick & Bryjak, 1980; Nichols & Ross, 1990; Paternoster, 1989). In other words, the certainty of a punishment, even if it is moderate, has a stronger deterrent effect than the fear of a more severe penalty if there is a possibility of avoiding the punishment altogether. Furthermore, punishment that is both swiftly and consistently applied sends a strong message to probationers about personal responsibility and accountability. In addition, immediacy is a vital tool in shaping behavior because it can be used to clearly link the behavior with the consequence.

**Figure 33**

**Hawaii Opportunity Probation with Enforcement (HOPE) Program Evaluation Outcomes One Year Follow Up**



Source: Hawken, A. & Kleiman, M. (2009). Managing Drug Involved Probationers with Swift and Certain Sanctions: Evaluating Hawaii's HOPE. [www.ncjrs.gov/pdffiles1/nij/grants/229023.pdf](http://www.ncjrs.gov/pdffiles1/nij/grants/229023.pdf)

In 2009, a federally-funded evaluation of HOPE was completed using a randomized control trial, which is considered to be the most rigorous form of evaluation (this method is frequently used in clinical trials in medicine). After a one-year follow up period, evaluators found a significant reduction in technical violations and drug use among HOPE participants, as well as lower recidivism rates, compared to similar offenders supervised on regular probation (Figure 33). In a separate study, researchers found that HOPE participants and regular probationers served about the same number of jail days for violations, but HOPE participants used significantly fewer prison beds than regular probationers. Evaluators observed that most HOPE participants successfully changed their behavior, leading to increased compliance and lower recidivism.

After the release of the HOPE evaluation in 2009, interest in Hawaii's swift and certain sanctions model spread. In 2011, the Bureau of Justice Assistance and the National Institute of Justice partnered to provide grant funding to four jurisdictions to replicate and evaluate Hawaii's program model. As of November 2014, there were swift and certain sanctions programs operating in 19 states across the country. While many are still in the implementation or evaluation phase, preliminary reports from a number of programs are showing results similar to HOPE (see, e.g., Hawken & Kleiman, 2012; Carns & Martin, 2011; Loudenburg et al., 2012).

Policymakers in Virginia also became interested in Hawaii's approach to dealing with probation violators. In 2010, the General Assembly adopted legislation authorizing the creation of up to two Immediate Sanction Probation programs with key elements modeled after the HOPE program (see § 19.2-303.5 of the *Code of Virginia*). The 2010 legislation did not designate a particular agency to lead or coordinate the effort. Although supporting legislation existed, an Immediate Sanction Probation program had not been formally established by 2012. Nonetheless, many Virginia officials remained interested in launching such a program in the Commonwealth.

In May 2012, the General Assembly adopted budget language to extend the provisions of § 19.2-303.5 and to authorize the creation of up to four Immediate Sanction Probation programs (Item 50 of Chapter 3 of the 2012 Acts of Assembly, Special Session I). This provision directed the Virginia Criminal Sentencing Commission to select up to four jurisdictions to serve as pilot sites, with the concurrence of the Chief Judge and the Commonwealth's Attorney in each locality. It further charged the Sentencing Commission with developing guidelines and procedures for the program, administering the program, and evaluating the results. As no additional funding was appropriated for this purpose, the pilot project has been implemented within existing agency budgets and local resources. Although the legislation was slated to expire on July 1, 2015, the 2015 General Assembly modified budget language to extend the provisions until July 1, 2016 to allow the two newest pilot sites sufficient time to test the program (Item 47 of Chapter 665 of the 2015 Acts of Assembly).

**CHAPTER 665 of the 2015 Acts of Assembly  
Item 47**

**Virginia Criminal Sentencing Commission**

The Virginia Criminal Sentencing Commission, with the concurrence of the chief judge of the circuit court and the Commonwealth's attorney of the locality, shall designate each immediate sanction probation program site. The Virginia Criminal Sentencing Commission shall develop guidelines and procedures for implementing the program, administer the program, and evaluate the results of the program. As part of its administration of the program, the commission shall designate a standard, validated substance abuse assessment instrument to be used by probation and parole districts to assess probationers subject to the immediate sanction probation program. The commission shall also determine outcome measures and collect data for evaluation of the results of the program at the designated sites. The commission shall present a report on the implementation of the immediate sanction probation program, including preliminary recidivism results to the Chief Justice, Governor, and the Chairmen of the House and Senate Courts of Justice Committees, the House Appropriations Committee, and the Senate Finance Committee by November 1, 2016.

(Passed by the 2015 General Assembly)

§ 19.2-303.5. (Expires July 1, 2016) Immediate sanction probation programs.

There may be established in the Commonwealth up to two immediate sanction probation programs in accordance with the following provisions:

1. As a condition of a sentence suspended pursuant to § 19.2-303, a court may order a defendant convicted of a crime, other than a violent crime as defined in subsection C of § 17.1-805, to participate in an immediate sanction probation program.
2. If a participating offender fails to comply with any term or condition of his probation and the alleged probation violation is not that the offender committed a new crime or infraction, (i) his probation officer shall immediately issue a noncompliance letter pursuant to § 53.1-149 authorizing his arrest at any location in the Commonwealth and (ii) his probation violation hearing shall take priority on the court's docket. The probation officer may, in any event, exercise any other lawful authority he may have with respect to the offender.
3. When a participating offender is arrested pursuant to subdivision 2, the court shall conduct an immediate sanction hearing unless (i) the alleged probation violation is that the offender committed a new crime or infraction; (ii) the alleged probation violation is that the offender absconded for more than seven days; or (iii) the offender, attorney for the Commonwealth, or the court objects to such immediate sanction hearing. If the court conducts an immediate sanction hearing, it shall proceed pursuant to subdivision 4. Otherwise, the court shall proceed pursuant to § 19.2-306.
4. At the immediate sanction hearing, the court shall receive the noncompliance letter, which shall be admissible as evidence, and may receive other evidence. If the court finds good cause to believe that the offender has violated the terms or conditions of his probation, it may (i) revoke no more than 30 days of the previously suspended sentence and (ii) continue or modify any existing terms and conditions of probation. If the court does not modify the terms and conditions of probation or remove the defendant from the program, the previously ordered terms and conditions of probation shall continue to apply. The court may remove the offender from the immediate sanction probation program at any time.
5. The provisions of this section shall expire on July 1, 2016.

(Originally passed by the 2010 General Assembly and extended during subsequent sessions)

Per § 19.2-303.5, the Immediate Sanction Probation program is designed to target nonviolent offenders who violate the conditions of supervised probation but have not been charged with a new crime. These violations, often referred to as “technical violations,” include using illicit drugs, failing to report as required, and failing to follow the probation officer’s instructions. As in Hawaii, the goal is to reduce recidivism and improve compliance with the conditions of probation by applying swift and certain, but mild, sanctions for each violation. Improving compliance with probation rules and lowering recidivism rates reduces the likelihood that offenders ultimately will be sentenced to prison or lengthy jail terms. The Department of Corrections (DOC) reports that,

as of June 30, 2015, the state inmate population included 1,730 technical probation violators. In addition, DOC reports that 39% of the offenders sentenced to prison in FY2014 had been on probation at the time they committed a new offense. Reducing the number of probation violators who ultimately end up in prison, at a cost of over \$31,000 a year, reserves the most expensive correctional resources for violent and dangerous offenders. According to DOC, the average cost of supervising an offender in the community is \$1,355 per year. While the cost of Immediate Sanction Probation will exceed the average cost of regular probation, due to the intensive nature of monitoring and drug testing of participants when they enter the program, the cost is still considerably less than the cost of prison.

### Key Features and Stakeholders in the Swift and Certain Sanctions Model

The swift and certain sanctions model has several key features. Operational details may vary from program to program, but certain components are central to the swift and certain sanctions formula. These are:

- Higher risk probationers under supervision in the community are identified for participation in the program.
- The judge gives an official warning that probation terms will be strictly enforced and that each violation will result in jail time.
- Program participants are closely monitored to ensure that there are no violations.
- New participants undergo frequent, unannounced drug testing (4 to 6 times per month for at least the first month). For offenders testing negative, frequency of testing is gradually reduced.
- Participants who violate the rules or conditions of probation are immediately arrested and brought to jail.
- The court establishes an expedited process for dealing with violations (usually within three business days).
- For each violation, the judge orders a short jail term. The sentence for a violation is modest (usually only a few days in jail) but virtually certain and served immediately.

Successful implementation of a swift and certain sanctions program requires a significant amount of collaboration and coordination across numerous stakeholders representing multiple agencies and offices. Each stakeholder must be engaged, informed, and willing to participate. Critical stakeholders include:

- Judges,
- Prosecutors,
- Probation officers and the Department of Corrections,
- Defense attorneys,
- Law enforcement,
- Jail officials,
- Court clerks, and
- Treatment providers.

Without buy-in and continued cooperation from all stakeholders, a swift and certain sanctions program can be almost impossible to implement and sustain.

### Design of Virginia's Immediate Sanction Probation Program

The Sentencing Commission designed Virginia's Immediate Sanction Probation program in compliance with parameters established by the General Assembly's statutory and budgetary language and the key elements of the swift and certain sanctions model pioneered in Hawaii. Implementing Virginia's program with fidelity to the basic tenets of the swift and certain sanctions model provides the best opportunity to determine if the positive results observed in other states will emerge in Virginia as well. A full discussion of the design of the Immediate Sanction Probation Program is contained in the Commission's 2013 Annual Report.

### Program Implementation Update

In September 2012, the Sentencing Commission approved the design for Virginia's Immediate Sanction Probation pilot program. Sentencing Commission staff then moved forward with implementation, which began with identifying potential pilot sites.

#### Selection of Pilot Sites

Sentencing Commission staff worked closely with the Office of the Secretary of Public Safety and Homeland Security and the Department of Corrections to identify potential pilot sites for the Immediate Sanction Probation program. The Sentencing Commission wished to pilot test the program in jurisdictions in different regions of the state and in a mix of urban/suburban/rural localities. The

size of the probation population in each jurisdiction was also important, as small probation populations may not yield a sufficient number of eligible candidates to conduct a thorough evaluation of the program. In several localities, one or more officials had expressed interest to the Secretary or to the Sentencing Commission's director. Such local interest was highly desired. In addition, the Sentencing Commission hoped to test the program in various settings and therefore considered whether potential sites had a Public Defender's Office and if a drug court existed in the jurisdiction. After consideration of these factors, Sentencing Commission staff and the Deputy Secretary of Public Safety and Homeland Security approached stakeholders in Henrico, Lynchburg, and Newport News to discuss their possible participation in the pilot project. Henrico and Lynchburg agreed to participate, with start dates of November 1, 2012, and January 1, 2013, respectively (Figure 34). The stakeholders in Newport News elected not to participate in the pilot project. Subsequent meetings were held in Hampton and Chesapeake, but neither locality elected to move forward with a pilot program. Finding pilot sites has been one of the challenges to implementing the Immediate Sanction Probation program. These challenges are discussed in the next section of this chapter. In July 2013, Arlington agreed to participate as the third pilot site and, in September 2013,

Harrisonburg/Rockingham County agreed to become the fourth pilot site. Pilot programs in both Arlington and Harrisonburg/Rockingham became operational in January 2014. Start dates were set by local stakeholders.

In each site, Sentencing Commission staff organized and participated in multiple meetings prior to the start date to brief officials and staff on the program and to facilitate decisions about operational details.

The stakeholders in each of the selected pilot sites continue to foster excellent working relationships, which has been essential to successfully implementing the program.

**Figure 34**

**Immediate Sanction Probation Program  
Pilot Sites and Start Dates**



### Implementation Support

To support and facilitate the implementation of the program in each pilot site, the Sentencing Commission has:

- Developed guidelines and pro-cedures and prepared an implementation manual;
- Written a warning script for judges to use when placing offenders into the program;
- Created forms to help stakeholders with administrative processes and to gather data for the evaluation;
- Assisted with development of template court orders for the program;
- Ensured a point-of-contact was identified for each office/agency involved in the locality's pilot program and produced a contact list for each pilot site;
- Identified a payment process for court-appointed attorneys working with the program in Henrico, Harrisonburg/Rockingham, and Arlington;
- Collaborated with DOC, the Compensation Board, and Circuit Court Clerks to add new codes in automated systems so that program participants can be tracked;

- Met with all probation officers in Lynchburg, Henrico, Arlington, and Harrisonburg/Rockingham to explain the program and encourage the identification and referral of candidates; and

- Trained dozens of defense attorneys on the program's target population, purposes, and procedures.

Sentencing Commission staff have organized regular meetings with stakeholders in all four pilot sites. These meetings are very beneficial to review and refine procedures, examine the progress of the participants, and identify and resolve any issues or concerns as they arise. In this way, stakeholders work together to develop solutions that are satisfactory to everyone. Commission staff also speak with local stakeholders, particularly the Immediate Sanction Probation Officers, on an ongoing basis. These calls provide an opportunity to address questions from probation staff and to receive valuable feedback on the program from probation officers. Practitioners are also encouraged to call the Sentencing Commission to discuss emergent issues at any time. Sentencing Commission staff will continue to hold regular meetings in the pilot sites to encourage fidelity to the model and assist stakeholders in refining protocols, as needed.

### Supervision and Drug Testing

During the planning phase, the Sentencing Commission emphasized the need for uniformity in the supervision of program participants and in responses to violations. As a result, DOC has assigned a seasoned probation officer currently working in each pilot site as the Immediate Sanction Probation officer. This officer is dedicated to the supervision of the offenders participating in the pilot program. DOC is using existing resources to provide one new probation officer for each pilot site. In all of the pilot sites, the probation officers selected to supervise Immediate Sanction Probation offenders have demonstrated a strong competency and willingness to innovate to overcome potential challenges that have arisen. Their extensive experience and training continue to prove invaluable not only to those in their respective jurisdictions, but also to the program as a whole.

Implementing a swift and certain sanctions program is resource-intensive up front, largely due to the intense monitoring and frequent drug testing required by probation staff. Potential cost savings occur later through fewer revocations, lower recidivism rates, and reduced use of jail and prison. The Commission's formal report on the implementation of the immediate sanction probation program, including preliminary recidivism results, which is due to the General Assembly on November 1, 2016, will assist in determining if the results from other states with similar programs are replicated in Virginia as well.

### Defense Counsel

In Lynchburg, defense counsel is provided by the Public Defender's Office. Since Henrico and Harrisonburg/Rockingham do not have a Public Defender's Office, defense counsel is provided by numerous court-appointed attorneys who have agreed to work with the Immediate Sanction Program. The Arlington stakeholders are utilizing a blended approach, with the Public Defender's office representing individuals who were represented by their office on the underlying offenses or in instances in which the original attorney no longer wishes to represent the offender. Otherwise, the private or court-appointed attorney who represented the participant on the underlying felony charge is given the opportunity to represent the probationer.

### Court Processes

The pilot sites have established an expedited court process for dealing with program candidates and violations. Immediate Sanction Probation hearings are held on multiple days of the week so that offenders will not spend long in jail before being considered for placement in the program or having a violation heard by the court. Hearings for violations occur swiftly (usually within three business days following arrest). This expedited process diverges significantly from the normal probation violation process in Virginia, which can take weeks or even months in some jurisdictions.

Court hearings associated with the Immediate Sanction Probation program tend to be brief. Based on a sample of court hearings conducted in Henrico and Lynchburg, the candidate review hearings (when judges consider placing an offender into the program) last, on average, ten minutes each. Program violations have been handled in an average of eight minutes. This is comparable to the length of hearings in Hawaii's HOPE program.

### Law Enforcement

The law enforcement stakeholders continue to be enthusiastic partners in piloting the Immediate Sanction Probation program. By quickly executing arrests, law enforcement officers are integral to ensuring that program violations are met with swift and certain sanctions. Police officers and Sheriff's deputies in the pilot sites have demonstrated a high degree of commitment to upholding the tenets of the program.

Jail staff have also assisted by ensuring the quick transport of candidates and program participants between jail and court. In particular, the cooperation of the five jails that comprise the Blue Ridge Regional Jail Authority has been essential to the Lynchburg pilot program.

### Treatment Providers

Based on experiences in the two oldest pilot sites (Henrico and Lynchburg), the Sentencing Commission began to include substance abuse and mental health treatment providers as integral stakeholders in Virginia's pilot program in 2014. Staff of the Sentencing Commission have spoken with treatment providers in the pilot jurisdictions to explain the purposes of the pilot program as well as to request their assistance with offenders who request treatment or who demonstrate, by their behavior, that they need treatment. Treatment providers have been supportive of the program and have used it to enhance the services they provide to certain participants.

### Implementation Challenges

Establishing and successfully implementing a pilot program that diverges substantially from existing practices can be a difficult process and is not without challenges. Considerable groundwork must be laid prior to placing the first offender in the program. Once the program is operational, obstacles may be encountered and need to be addressed as quickly as possible.

Ensuring that violations are addressed immediately and cases are handled swiftly requires extensive collaboration and coordination among many criminal justice agencies and offices. Breakdowns in communication or commitment to the program within any office can hinder the ability of the program to operate in a swift and certain manner. Although achieving such seamless communication can pose a significant challenge in some jurisdictions, stakeholders in the pilot sites have demonstrated a continued commitment to working with each other and giving the pilot program the best opportunity to succeed. During the initial stakeholders meetings in each of the pilot sites, new lines of communication, procedures, forms, and template court orders were designed and refined to ensure that the swiftness aspect of the program could be successfully achieved without overwhelming any of the partners. While practitioners in the pilot sites appear to have reached a point of comfort with the practices developed

in their respective jurisdictions, ongoing stakeholders meetings proved beneficial in updating stakeholders on the progress of participants, addressing emerging challenges, and identifying potential improvements to existing practices.

As with most pilot programs, some challenges have arisen in the implementation of Virginia's Immediate Sanction Probation pilot program. While there is considerable interest in the swift and certain sanctions model, finding localities willing to participate as pilot sites took time. Because no funding was appropriated for Virginia's pilot project, it is being implemented within existing agency budgets and local resources. Since many agencies and offices have undergone reductions in staff in recent years and some offices experience a relatively high rate of turnover, taking on the responsibilities of a new program may not be seen as feasible. Three jurisdictions that the Sentencing Commission approached to pilot this program decided not to participate, citing resource limitations as one of the reasons.

For the jurisdictions that have agreed to pilot the Immediate Sanction Probation program, the stakeholders have remained dedicated to successfully implementing the program despite the extra workload. However, limited staff resources have presented additional challenges in the pilot sites. Fortunately, the stakeholders in each pilot jurisdiction have demonstrated a clear understanding of the challenges faced by each office and a desire to cooperate and assist one another, where possible. In general, the intense supervision of new participants, in conjunction with immediate arrests, hearings, and jail time for violations, can place stress on stakeholders with limited resources and, if the program grows, existing resources can be stretched thin.

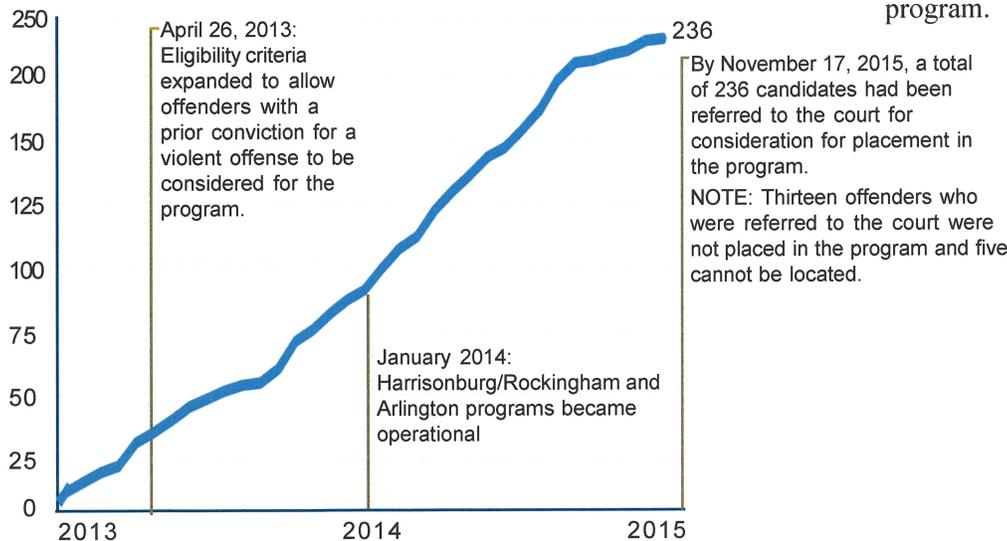
The number of program candidates identified by probation staff has been lower than initially expected. Much of this may be attributable to the eligibility criteria. For instance, stakeholders in two of the pilot sites have indicated that the eligibility criteria excluding offenders who have obligations to courts outside of the pilot jurisdiction significantly reduces the pool of eligible candidates. This eligibility criterion was established for the pilot programs to ensure that judges in the pilot sites have jurisdiction over the cases and can swiftly impose sanctions. To assist the probation officers in identifying eligible candidates in these jurisdictions, DOC provided lists of probationers who, based on available data, might meet the eligibility criteria.

Stakeholders in Lynchburg developed an innovative approach to expand the pool of eligible offenders. The Probation & Parole District there covers several jurisdictions (the City of Lynchburg as well as Amherst, Campbell, and Nelson Counties). Participants in the Lynchburg pilot program must have an obligation to Lynchburg Circuit Court. However, probation staff identified offenders believed to be good candidates for the program who lived just outside the Lynchburg City line. At the suggestion of Lynchburg stakeholders, the Sentencing Commission approached the Sheriffs in the neighboring Amherst and Campbell Counties, who agreed to assist with the pilot program by quickly executing Lynchburg's PB-15 arrest warrants in their respective jurisdictions. As a result, the pool of potential program participants for Lynchburg's pilot has been expanded to include those living outside the Lynchburg City limits. This is an excellent example of stakeholders innovating and collaborating to improve the implementation of the program in their jurisdiction.

Stakeholders in the pilot sites have indicated that other eligibility criteria further reduce the pool of eligible offenders. For example, per § 19.2-303.5, offenders on probation for a violent crime, as defined in § 17.1-805, are not eligible for the program. As initially designed, the Sentencing Commission also excluded offenders with a prior offense listed in § 17.1-805. During ongoing meetings in the pilot sites, members of multiple stakeholders groups indicated that they had identified probationers who they felt would respond well to the structure of the Immediate Sanction Probation program, but the offenders were ineligible due to a prior violent offense (a prior burglary was frequently cited; burglary is defined as a violent offense in § 17.1-805).

Based on feedback from stakeholders in the pilot sites participating at that time (Henrico and Lynchburg), as well as a potential pilot jurisdiction, the Sentencing Commission initiated discussions with the Secretary of Public Safety and Homeland Security, Commonwealth's attorneys, and several others. Sentencing Commission staff also conducted a comprehensive review of eligibility criteria and evaluation findings for similar swift and certain sanctions programs around the country. After careful consideration, the Sentencing Commission expanded the criteria to allow offenders with a prior conviction for an offense listed in § 17.1-805 to be considered for the program. Following the expansion of the eligibility criteria in April 2013, the number of potential candidates referred to the court increased. Figure 35 shows the cumulative number of candidates referred to the court through November 17, 2015. Pursuant to § 19.2-303.5, the judge ultimately determines if the offender will be placed into the program. The majority of candidates referred to the court (92.4%) have been placed in the Immediate Sanction Probation program.

**Figure 35**  
**Cumulative Number of Candidates for the Immediate Sanction Probation Program Referred to the Court by Month (as of November 17, 2015)**



Several stakeholders have also suggested that some probationers currently being supervised for a violent offense may respond well to the structure provided by the program. However, these offenders are statutorily excluded at this time. Research from the HOPE program in Hawaii and a similar program in Washington State indicates that offenders who are currently on supervision in the community for a violent offense may respond equally well to the close scrutiny and the swiftness and certainty of sanctions imposed in this type of program.

Probation & Parole Districts piloting the Immediate Sanction Probation program have also faced the challenge of ensuring that most, if not all, eligible candidates are referred to the court to be considered for placement in the program. The program relies heavily upon the probation officers in each District to identify offenders on their caseload who meet the eligibility criteria and have committed at least one recent technical violation. Probation officers are asked, once a candidate is identified, to prepare a Major Violation Report quickly detailing the nature of the alleged violations; the Major Violation Report is then submitted to the court as part of the referral process. Achieving a quick turn-around in the preparation of the Major Violation Report has proven to be challenging in Districts that have experienced significant staff reductions in recent years, where probation officers have large caseloads, or where officers prepare a high volume of Pre-Sentence Investigation reports. To encourage

referrals and ensure that any questions or concerns expressed by probation officers are addressed, DOC asked the Sentencing Commission to prepare and present materials to all of the probation officers in each of the pilot sites. In addition to the District-wide efforts to encourage referrals for the program, the Immediate Sanction Probation officers also play a significant role in encouraging fellow probation officers to refer potential candidates by assisting in the identification of possible candidates, answering questions regarding the program, and helping other officers complete the necessary paperwork for referrals (e.g., the Major Violation Report).

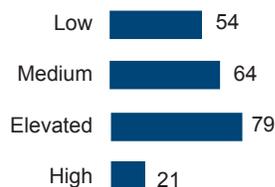
The pilot sites have also faced challenges related to certain types of probationers, such as offenders with mental health issues and limited resources for substance abuse services (for participants who request them or who demonstrate a need based on their behavior). Despite the numerous challenges, stakeholders in the participating pilot sites have demonstrated an ability to develop innovative solutions to overcome as many barriers as possible.

### Characteristics of Program Participants, Violations, Sanctions, and Completions

By November 17, 2015, 218 probationers had been placed into the Immediate Sanction Probation pilot program (70 in Henrico, 66 in Lynchburg, 65 in Harrisonburg/Rockingham, and 17 in Arlington). Among probationers who have been placed in the program, most (56.9%) are on supervised probation for a felony drug conviction, followed by larceny (32.1%), and fraud (11.5%). In addition, 16.1% were on supervised probation for other types of felony offenses, such as felony driving while intoxicated and eluding police. Since some probationers were on supervision for multiple types of offenses, these percentages do not add to 100%. Additionally, at least one-quarter (26.6%) have previously had a portion of the originally suspended term revoked because of a prior probation or suspended sentence revocation.

**Figure 36**

#### DOC Recidivism Risk Level for Offenders Placed in the Immediate Sanction Probation Program



Risk of recidivism/violent recidivism as determined by the COMPAS risk/needs assessment instrument used by the Department of Corrections

As noted earlier in this chapter, the Immediate Sanction Probation program focuses on higher risk probationers. The largest share of offenders placed into the program (36.2%) have been identified as elevated risk, based on the COMPAS risk/needs assessment instrument currently used by the Department of Corrections for supervision planning (Figure 36). Treated the same as high risk offenders, these offenders need only one technical violation to become a candidate for the program. On average, however, these offenders had accumulated four technical violations prior to being placed in the program. Offenders identified as elevated risk scored high on either the general recidivism or violent recidivism scales. While the general recidivism scale is designed to predict a wide variety of new offenses, the violent recidivism scale focuses solely on violent acts. Slightly less than 10% of offenders placed in the program were identified as high risk on both the general recidivism and violent recidivism scales. Of these, more than half (57.1%) had accumulated four or more violations prior to being placed in the program. The small number of high risk probationers that have been referred to the program is likely due to the fact that many of the probationers who are classified as high risk by COMPAS are on probation for a violent offense listed in § 17.1-805, which statutorily precludes them from participating in the Immediate Sanction Probation program.

By November 17, 2015, 64 medium risk offenders had been placed into the program. Medium risk offenders qualify for the program after two technical violations. On average, these offenders had four violations prior to program placement. Roughly one quarter (24.8%) of the probationers that have been placed into the program were identified as low risk for recidivating by the COMPAS instrument. Low risk offenders cannot become candidates for the Immediate Sanction Probation Program until they have accumulated at least three technical violations. The accrual of multiple violations increases a probationer's risk of failing probation. Probationers who were identified as low risk by the COMPAS instrument had accumulated an average of four such violations at the time they were placed in the Immediate Sanction Probation program.

As shown in Figure 37, roughly 23% of the participants who had been placed in the program by November 17, 2015, have not committed a violation after entering the program. All of these offenders had a record of technical violations prior to placement in the Immediate Sanction Probation program (the average was four previous technical violations). The remaining 168 participants committed at least one violation after being placed in the program.

**Figure 37**

**Immediate Sanction Probation Program Participants as of November 17, 2015**

	Locality				Total
	Henrico (start date: November 1, 2012)	Lynchburg (start date: January 1, 2013)	Harrisonburg/ Rockingham (start date: January 1, 2014)	Arlington (start date: January 6, 2014)	
Offenders Placed into the Program	70	66	65	17	218
Participants who have Violated	60	49	48	11	168
Number of Violations	153	92	130	23	398
Participants Removed	36	14	26	6	82
Current Participants	22	32	33	8	95
Number of Completions	12	20	6	3	41

As of November 17, 2015, 82 participants have been removed from the program. Of these, the majority (86.6%) were removed from the program for continued non-compliance. Slightly less than half (43.7%) of these offenders were sentenced to a jail term, with a median sentence of six months. An additional 29.6% were given a prison sentence, for which the median sentence length was 1.5 years. Another eleven offenders did not receive an active term of incarceration to serve after sentencing and three offenders are pending sentencing.

In a subset of the cases, judges also ordered participants who were removed from the program due to noncompliance to complete certain programs. For instance, five offenders were ordered to complete the Detention and Diversion Center programs, while four other individuals were required to complete residential or jail-based treatment programs. In two of the prison cases, the court recommended that the offenders serve the time in a therapeutic community. In twelve of the cases, the judges referred the probationer to drug court. All but three of these individuals were determined to be eligible.

A few other participants were removed for administrative reasons. For instance, the nine participants who received approval to move out of the jurisdiction were ineligible to continue in the program. Similarly, a participant who was charged with several felony offenses that occurred prior to his placement in the program (and resulted in a term of incarceration for those offenses) was necessarily removed from the program. The remaining participant died from injuries sustained in a motorcycle accident.

Of the 168 participants who committed at least one violation after being placed in the program, 58 have committed a single violation (Figure 38). Another 44 offenders have committed two violations, while 31 offenders have had three violations in the program. Research on the swift and certain sanctions approach in Hawaii and elsewhere indicates that offenders who commit one or more violations can nonetheless change their behavior and begin to comply with the conditions of probation.

In addition to implementing the Immediate Sanction Probation program, the Sentencing Commission has been charged with completing an evaluation of the pilot project. Outcome measures are being developed for the evaluation. Certainly, those outcome measures will include recidivism rates - how many participants were convicted of new offenses - and the use of jail and prison resources. In addition, it is important for the evaluation process to determine if the pilot sites were able to achieve both swiftness and certainty, critical elements of the program model.

**Figure 38**

**Number of Violations Committed by Participants in the Immediate Sanction Probation Program**



To allow the pilot programs in Henrico and Lynchburg sufficient time to test and refine the new procedures, the Sentencing Commission began tracking measures of swiftness on March 8, 2013. The expedited hearings have been conducted by the court within three days following the commission of a violation in roughly half of the cases (Figure 39). If a probationer tests positive for drug use, he or she is arrested immediately in the Probation & Parole District office. For offenders who fail to show up for a drug test or an appointment with the probation officer, a PB-15 is issued immediately and sent to law

enforcement officers, who search for the offender in the community. The time that it takes law enforcement to locate and arrest the offender affects the average time between violation and the court hearing. Breaking down the total three days from violation to hearing, the average time between violation and arrest has been less than one day and the average time between arrest and the hearing has been two days. Once a participant is arrested for a violation, courts are conducting hearings within an average of one business day. Based on this data, it appears that the stakeholders in the pilot sites have been able to successfully achieve the swiftness aspect of the program model.

**Figure 39**

**Measures of Swiftness for the Immediate Sanction Probation Program**

	Lynchburg	Henrico	Harrisonburg/ Rockingham	Arlington	Total
Percent of violation hearings held within 3 days of violation	34.2%	54.5%	51.9%	55.6%	48.9%
Avg. time between violation and hearing	5 days	3 days	3 days	3 days	4 days
Avg. time between violation and arrest	1 day	1 day	<1 day	<1 day	<1 day
Avg. time between arrest and hearing	2 days	1 day	2 days	2 days	2 days
Avg. time between arrest and hearing – business days	2 day	1 day	2 days	2 days	1 day

These figures are based on expedited hearings that occurred on or after March 8, 2013

Regarding the certainty aspect of the program, 100% of the violations detected in the four pilot sites have been met with jail sanctions, per the program’s design (Figure 40). For the first violation in the program, the average sanction has been three days. While the average sentence for the second violation is seven days, the average sanction for the third violation has been ten days. For the six offenders who have had a fifth violation and were allowed to remain in the program, the average sanction is 20 days. Certainty has been achieved in the pilot sites and the sanction days are consistently within the ranges recommended by the Sentencing Commission for the program.

If a participant has been violation-free for twelve months, the probationer is considered to have “successfully

completed” the Immediate Sanction Probation program. In comparison to other states that have implemented similar swift and certain sanction programs, the minimum program length of one year is relatively brief. However, if a participant violates a condition of supervision, the length of time in the program is generally extended to allow for sufficient step down practices and to ensure that the probationer has developed the tools necessary to remain successful in the community long term. Participants who are violation-free for twelve months may be returned to regular probation supervision, placed on a less-restrictive level of supervision or, at the judge’s discretion, released from supervision. Sufficient time has now elapsed for program participants in all four pilot sites to begin reaching the one-year minimum for successful program completion.

**Figure 40**

**Measures of Certainty and Consistency for Immediate Sanction Probation Program**

	Lynchburg	Henrico	Harrisonburg/ Rockingham	Arlington	Total
Percent of violations resulting in a jail term	100%	100%	100%	100%	100%
Average length of sentence for 1st violation	3 days	4 days	5 days	3 days	3 days
Average length of sentence for 2nd violation	5 days	8 days	7 days	10 days	7 days
Average length of sentence for 3rd violation	9 days	12.5 days	11 days	10 days*	10 days
Average length of sentence for 4th violation	15 days	20 days	15.5 days	20 days*	17 days
Average length of sentence for 5th violation	20 days*	20 days*	21.5 days	N/A	20 days
Average length of sentence for 6th violation	N/A	N/A	30 days*	N/A	30 days*

\* represents one case

As of November 17, 2015, judges in the pilot jurisdictions have released 41 participants from the program following substantial periods of compliance. Although successful participants are not required to attend the final hearing, during which the initial probation violation is dismissed, all but three participants have elected to be present. In nearly all of the cases, the judge has also removed the probationer from supervised probation. The Commission will continue to track this group of individuals for the purposes of the evaluation.

### Upcoming Activities

In the coming months, Sentencing Commission staff will continue to assist the stakeholders in the four pilot sites with the implementation of the Immediate Sanction Probation program.

The Sentencing Commission has started planning for the evaluation phase. In addition to the measures of swiftness and certainty described above, the Sentencing Commission will capture data on new arrests and new convictions for offenders who have participated in the program, which will be used to calculate recidivism rates. The Sentencing Commission will also calculate the number of days participants spent in jail serving time on violations, as well as the number of days served in jail or prison by participants who ultimately have their probation revoked (i.e., offenders who do not successfully complete the program). The Sentencing Commission will identify a comparison group of similar offenders under regular probation supervision. Thus, the outcomes of the pilot program will be assessed by comparing the results of participants to those for a like group of offenders on regular probation. As directed by budget language, the Commission will prepare and submit a report on the implementation of the Immediate Sanction Probation program, including preliminary recidivism results, by November 1, 2016.

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# LARCENY AND FRAUD STUDY

## Introduction

In 1997, the Commission undertook a study of felony embezzlement cases to examine the relationship between the amount embezzled and sentencing outcomes. Analysis revealed that the amount embezzled was an important factor to judges when sentencing offenders. Based on the results of the analysis, new factors were added to the Larceny guidelines to account for the amount involved in embezzlement cases, reflecting the relationship observed in the data. Between 1999 and 2000, the Commission conducted a similar study of non-embezzlement larceny and fraud cases to determine whether a similar relationship exists between the value of property stolen and sentences imposed. The study excluded certain offenses, such as motor vehicle theft and forgery of public records, as the statutory definitions are not tied to value. Additionally, the Commission collected supplemental data on variables that are not currently captured on the guidelines worksheets, including the type of item involved, age of the victim, the offender's relationship to the victim, duration of the offense, insurance coverage, item recovery, and restitution status

at sentencing. The 1999-2000 study found that any statistically significant changes were only marginally better at modeling judicial sentencing practices than the existing guidelines and would have added a layer of complexity to scoring the guidelines. As a result, the Commission took no action at that time. Beginning in 2013, the Commission decided to revisit these studies to determine whether the earlier findings were still applicable and to evaluate the performance of the current sentencing guidelines for larceny and fraud offenses.

The remainder of the current chapter is divided into two main sections. The first section discusses the study methodology. The second section describes the characteristics of the study sample and presents analyses for each of the offense groups: non-embezzlement larceny, fraud, and embezzlement.

### Methodology

**Figure 41**

**Types of Cases Included in Sample  
FY2011-FY2013**

Embezzlement	600
Other Larcenies	400
Fraud	300
Grand Larceny	200
<b>Total Sample</b>	<b>1,500</b>

The Commission chose to study the value of money or property stolen in larceny and fraud cases to determine if there is a relationship between the value involved in these cases and sentencing outcomes. The Commission was also aware that factors such as type of item stolen, location and duration of the offenses, number and type of victims, the offender's relationship to the victim, and restitution may have an impact on sentencing.

The Commission used a stratified random sampling technique to select cases that could be used to adequately explore the data and relationships therein. Stratified sampling ensures a more representative sample of specific offenses within each category, as some types of larceny and fraud cases occur at relatively low frequency. Specifically, this sampling technique was used to under-sample grand larceny cases and over-sample other types of larcenies, such as failure to return rental property and receiving stolen goods. This was done to make certain that an adequate number of non-grand larceny cases were included in the sample. To ensure a

sufficient number of cases would be available for analysis, as cases with missing or erroneous information would be dropped in subsequent stages, the Commission elected to use a total sample size of 1,500 cases split into groups based on the type of primary offense, as seen in Figure 41. The sample was selected from cases sentenced between fiscal years 2011 and 2013.

Since the focus of the study was on the value of items stolen or monetary benefit related to felony larceny or fraud offenses, certain cases were excluded from the analysis. For instance, third or subsequent convictions for petit larceny or shoplifting with a value under \$200 were excluded. Cases involving automobiles, such as grand larceny of an automobile or unauthorized use, were also omitted. Automobiles are relatively high-dollar items that are nearly always insured. Judges, therefore, may consider non-monetary factors to be more important, such as the impact on the victim of losing his or her sole means of transportation.

The Commission felt that judges could weigh factors differently in cases involving automobiles, so these cases were removed from the sample. Forging a public record (e.g., driver's licenses, traffic tickets, summons, or fingerprint cards) was excluded because these crimes typically do not involve a loss of property or monetary value.

The remaining primary offenses eligible for selection are listed in Figure 42. Some of the fraud offenses listed are deemed larceny in the *Code* for the purposes of punishment.

**Figure 42**

**Larceny/Fraud Study Offenses**

**Larceny Offenses**

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Shoplift, alter price tags >= \$200  
 Receive stolen goods-\$200 or more  
 Receive stolen firearm  
 Conversion by fraud of property titled to other, >=\$200  
 Goods on approval, fail to pay or return goods-\$200 or more  
 Bailee, fail to return animal, auto, etc. - \$200 or more  
 Fail to return leased personal property-\$200 or more  
 Grand larceny - \$5 or more from person  
 Grand larceny - \$200 or more not from person  
 Larceny of firearm, regardless of value, not from person  
 Altering, defacing, removing, possessing serial no. > \$200  
 Larceny of animals (dog, horse, pony, mule, cow, steer, etc.)  
 Larceny of animals and poultry worth less than \$200  
 Larceny of bank notes, checks, etc. worth \$200 or more  
 Larceny \$200 or more with intent to sell or distribute  
 Sell etc. stolen property aggregate value \$200 or more  
 Special commissioner, fail to account for money-\$200 or more  
 Embezzlement, \$200 or more  
 Embezzlement by public officer  
 Fraudulent entry by financial officer

**Fraud Offenses**

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Forging - Coins or bank notes  
 Forgery  
 Uttering  
 Possess forged bank notes or coins-10 or more  
 Obtain money by false pretenses >=\$200  
 Obtain signature, writing by false pretenses  
 Bad checks, \$200 or more  
 Bad checks, two or more w/in 90 days, >=\$200  
 False statement to obtain property/credit-\$200 or more  
 Identity Fraud - Financial loss greater than \$200  
 False statement to obtain utilities, TV, \$200 or more  
 False statement to obtain hotel/motel service, etc., >=\$200  
 Theft of credit card / numbers  
 Forgery/uttering of credit card  
 Credit Card Fraud >= \$200 over 6 month period  
 Receive goods from credit fraud-\$200 or more  
 Airline/railroad ticket-obtain at discount price by fraud  
 Fail to perform construction in return for advances, > \$200  
 Fraudulently obtaining welfare asst. - Value \$200 or more  
 Unauthorized use of food stamps - Value \$200 or more  
 Intent to defraud funds not used to pay labor/supplies \$200+

**Figure 43****Distribution of Study Cases by Region**

<b>Region</b>	<b>Percent</b>
Tidewater	25.7%
Central VA	22.5%
Northern VA	14.8%
Southside VA	13.6%
Shenandoah/Piedmont	13.1%
Southwest VA	10.3%

Note: Cases in the sample were weighted to reflect each subgroup's actual proportion in the population.

With the study sample drawn, the Commission attempted to collect supplemental information, including the total value of stolen property and other factors of interest that were not contained in the automated data available to the Commission. These data were sought from multiple sources. Narratives from Pre/Post-Sentence Investigation (PSI) reports submitted by probation officers were available for 622 (or 41.5%) cases within the sample. The Officer of the Court Remote Access (OCRA) system was used to access court records for 564 (37.6%) cases. In 522 (34.8%) cases, electronic sources were unavailable or failed to provide adequate detail. For these cases, data were obtained via in-person reviews of official court records by Commission staff.

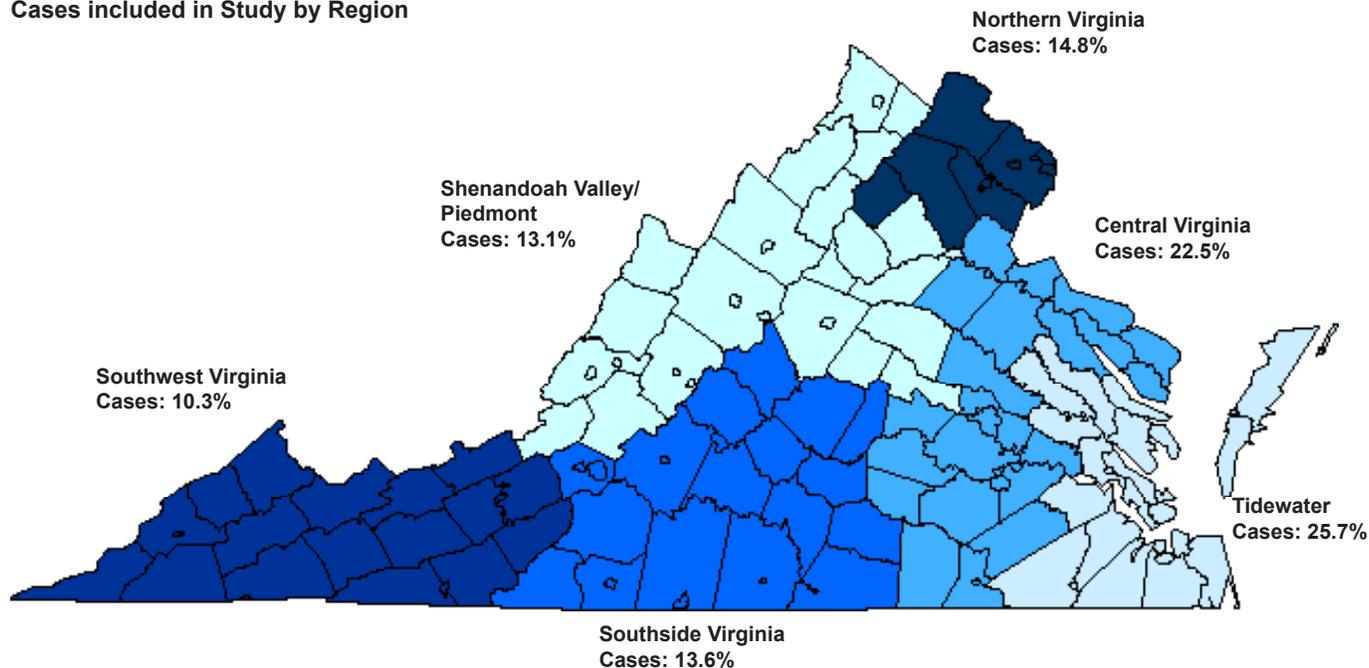
Factors recorded as part of the supplemental data collection included the total dollar value of stolen property, types of items stolen, location and duration of offenses, number and types of victims, physical injury to any victim, the offender's relationship to the victim, whether money or items were recovered, damage to items, insurance coverage or fraud protection for stolen items, the amount of restitution ordered (if any) at sentencing, and the status of restitution at sentencing.

Analysis of the supplemental data revealed that certain cases were inappropriate for inclusion in the study. Of the original sample, 56 cases were subsequently dropped from the study. Of these, supplemental data were unavailable in 53 cases (3.5%), and three additional cases (0.2%) were excluded due to an incorrect Virginia Crime Code (VCC). For example, cases involving forgery of a public record were erroneously coded as simple forgeries. The final sample included 1,444 cases: 569 embezzlement, 184 grand larceny, 401 other larceny, and 290 fraud cases.

The study sample contained cases from all areas of the Commonwealth of Virginia. Figure 44 presents the distribution of study cases by region. The geographical distribution of cases reflects the typical pattern seen across the state.

**Figure 44**

**Cases included in Study by Region**



Note: Cases in the sample were weighted to reflect each subgroup's actual proportion in the population.

NON-EMBEZZLEMENT  
LARCENY SAMPLE  
CHARACTERISTICS

The sample of non-embezzlement larceny cases was comprised of 585 sentencing events and included 184 grand larceny cases and 401 other types of larceny. As described above, the Commission purposefully under-sampled grand larceny cases and over-sampled other types of larcenies to ensure an adequate number of these latter offenses would be selected in the sample. For the analysis stage, the sampled cases were weighted to reflect each subgroup's actual proportion in the overall data. This step was necessary to ensure an unbiased analysis.

The Commission collected a variety of supplemental information for cases included in the sample, as shown in Figure 45. The value of items and/or money involved in non-embezzlement larcenies was examined by the Commission during the study. In more than one-quarter (28.2%) of these cases, the exact dollar value could not be determined. Of the cases where the value of the property was available, the median value of the items involved was \$897.50, with a range from \$2 to \$232,380. Cases with a value less than \$2,500 made up 52.6% of the non-embezzlement larceny cases, while just over two-thirds of cases, 67.1%, involved a value less than \$10,000.

The Commission also gathered information regarding the type of items involved in each larceny or fraud offense. Since a given larceny offense can involve more than one

type of item or the sentencing event may involve multiple counts of larceny, the percentages shown in Figure 45 relating to item type do not sum to 100%. The most common type of item taken in non-embezzlement larceny cases was electronics, including televisions, computers, and cell phones, with 27.1% of sentencing events involving at least one of these items. The second most common item was cash/monetary benefit, cited in 18.4% of events, followed by clothing and accessories, in 12.5% of events. The "other" category is a miscellaneous category comprised of items that, individually, contributed less than 2% of cases; these include bicycles, weapons (other than firearms), sporting goods, cigarettes, and animals.

Additional factors regarding the nature of the offense, including the location where it took place and the duration of the offense, were collected by the Commission. Over half (51.1%) of the non-embezzlement larceny offenses took place at a business. Inside a dwelling was the second most common location for these offenses, at 17.6%. The third most frequently occurring location for non-embezzlement larceny cases was outside a dwelling, at 6.8%. Locations in the "other" category include school zones, government property, and religious organizations. In terms of duration of the offense, the majority (80.7%) of the non-embezzlement larceny events occurred on one day.

**Figure 45**  
**Non-Embezzlement Larceny Sample Characteristics**

The Commission also examined the number of jurisdictions in which an offender was convicted during the same period of time, which is indicative of a possible crime spree. It has been suggested that judges consider crime spree events when making sentencing decisions. The Commission identified these cases by reviewing case files and matching sentencing events included in the sample with Circuit Court Case Management (CMS) data. For non-embezzlement larceny cases, 13.6% of offenders were convicted in more than one jurisdiction during the same time period.

Factors relating to victims were also collected, including the number of victims, type of victims, the relationship of the offender to the victim, and whether a victim was injured during an offense. Most of the offenses (77.1%) had one victim, while another 14.7% involved two victims. An additional 5.5% of sentencing events involved three or more victims. The type of victim was dominated by two categories: businesses, with 49.4% of cases, and individuals (48.3%). In a much smaller proportion of the cases, victims included schools, non-profit organizations, government agencies, religious organizations, and banks. The majority (57.4%) of non-embezzlement larceny offenders were strangers to the victim, although the relationship was unknown in 24.7% of the sentencing events. While most (84.5%) of the larceny sentencing events involved no physical injury, a few (1.4%) involved the threat of violence, and 1.4% involved physical injury to the victim.

Factor	Percent	Factor	Percent	
<b>Dollar Value of Items</b>		<b>Offender Relationship to Victim</b>		
Less Than \$200	1.5%	Stranger	57.4%	
\$200-499	17.2%	Acquaintance	8.3%	
\$500- 999	19.5%	Relative	4.6%	
\$1,000-2,499	14.4%	Employee	4.5%	
\$2,500-4,999	7.8%	Other	1.9%	
\$5,000-9,999	6.7%	Unknown	24.7%	
\$10,000 or More	4.7%			
Unknown	28.2%	<b>Victim Injury</b>		
<b>Types of Items Involved*</b>		None	84.5%	
Electronics	27.1%	Threatened Only	1.4%	
Cash/Monetary	18.4%	Injured	1.4%	
Clothing/Access.	12.5%	Unknown	12.7%	
Jewelry	11.9%	<b>Money/Items Recovered</b>		
Constr./Farm Equip.	8.6%	None	2.6%	
Metal	5.9%	Some	7.8%	
Home Goods	5.8%	All	17.3%	
Motor Vehicle	5.6%	N/A (e.g., no loss)	0.6%	
Auto Parts	5.0%	Unknown	71.7%	
Firearm	4.8%	<b>Damage to Items</b>		
Food	3.4%	None	5.8%	
Other	29.5%	Some Items Damaged	0.7%	
Unknown	20.9%	All Items Damaged	1.6%	
<b>Location of Offenses*</b>		N/A, (e.g., cash, etc.)	8.5%	
Business	51.1%	Unknown	83.4%	
Inside Dwelling	17.6%	<b>Restitution Ordered</b>		
Outside Dwelling	6.8%	Yes	42.2%	
Vehicle	2.6%	No	47.2%	
Public Loc.	2.6%	Yes, Non-Larceny only	0.5%	
Private Property	2.3%	Unknown	10.1%	
Other	1.1%	<b>Status of Restitution at Time of Sentencing</b>		
Unknown	21.3%	None Made	10.5%	
<b>Duration of Offenses</b>		Some Paid	0.6%	
1 Day	80.7%	Paid in Full	0.6%	
1 Day to 1 Month	10.8%	N/A	41.4%	
1 to 6 Months	2.3%	Unknown	46.9%	
6 Months to 1 Year	0.3%	<b>Number of Jurisdictions Convicted In</b>		
More than 1 Year	0.1%	One	86.4%	
Duration Unknown	5.8%	Two	11.4%	
<b>Number of Victims</b>		Three	0.3%	
One	77.1%	Four	1.3%	
Two	14.7%	Five or more	0.6%	
Three	3.1%	<b>Sentences ————— Median</b>		
Four or More	2.4%	Probation	32.6%	N/A
Unknown	2.7%	Jail (12 mos. or less)	43.8%	3 mos.
<b>Type of Victim(s)*</b>		Prison (1 yr. or more)	23.6%	2 yrs.
Business	49.4%			
Individual	48.3%			
Govt. Agency	1.6%			
Other	1.6%			
Unknown	3.6%			

\*Percentages may not total to 100% due to multiple larceny/fraud offenses in a given sentencing event.  
 Note: Cases in the sample were weighted to reflect each subgroup's actual proportion in the population.

The Commission also examined whether the items involved were recovered or damaged and if restitution was ordered by the court. Since

**Figure 46**

**Larceny Cases (Excluding Embezzlement)  
Restitution Ordered With Recovery of Items Stolen\***

Recovery	No	
	Restitution Ordered	Restitution Ordered
Full	88.4%	11.6%
Some	12.0%	88.0%
None	20.3%	79.7%

\* Information regarding restitution and recovery of items was only available in 25.7% of non-embezzlement larceny cases.

Note: Cases in the sample were weighted to reflect each subgroup's actual proportion in the population.

information regarding the recovery of, and damage to, the items was unknown in the vast majority of cases, the relationship of these two factors and the sentences imposed could not be analyzed thoroughly. More specifically, whether the item was recovered was unknown in 71.6% of cases and whether an item was damaged was unavailable in 83.4% of cases. Restitution was ordered in 42.2% of the non-embezzlement larceny offenses, while the restitution ordered in an additional 0.5% of cases was only associated with a non-larceny offense in the sentencing event. Information regarding whether any portion of the restitution was paid by the time of sentencing was unavailable in 46.9% of sentencing events, and only 1.2% of these cases showed at least some payment prior to sentencing. The relationship between whether restitution was ordered and whether stolen items

were recovered was also reviewed. Figure 46 shows that, in cases where all items were recovered, restitution was much less likely to be imposed at sentencing. Conversely, in cases where items were not recovered, judges were much more likely to order that the offender pay restitution for the items involved in a larceny.

In terms of sentencing practices for non-embezzlement larcenies, in nearly a third (32.6%) of the cases, these offenders did not receive an active term of incarceration to serve. A short jail stay was the most common outcome, seen in 43.8% of events, with a median sentence of three months. A prison sentence was the least common, making up 23.6% of the sentencing events; the median sentence length for these offenders was two years.

Since the Commission found a relationship between the value of items involved in embezzlement offenses in a previous study, exploring a potential relationship between these two factors in non-embezzlement cases was of particular interest to the Commission. Figure 47 displays the distribution of sentences received for given value categories. Overall, the value of items involved in non-embezzlement larceny cases do not appear to have a large impact on the sentence imposed, as indicated by the lack of obvious trends in the disposition rates. The two apparent exceptions to this are values less than \$200, the majority of which resulted in probation/no incarceration, and

items greater than \$10,000, which showed an increased proportion of cases sentenced to prison. However, when the Commission examined these potential relationships further, this group consisted of a fairly small proportion of the sample and no consistent pattern regarding the length of time imposed relative to the value of the property emerged.

**Figure 47**

**Larceny Cases (Excluding Embezzlement) - Property Value by Disposition**

	Probation/ No Incarceration	Jail Up to 12 Months	Median Jail Sentence (Months)	Prison 1 Year or More	Median Prison Sentence (Years)
Less than \$200*	51.6%	45.3%	6.0 mos.	3.1%	2.0 yrs.
\$200-499	31.8%	45.8%	3.0 mos.	22.4%	2.0 yrs.
\$500-999	33.9%	44.7%	3.0 mos.	21.4%	1.7 yrs.
\$1,000-2,499	49.6%	26.0%	3.0 mos.	24.4%	2.4 yrs.
\$2,500-4,999	33.8%	47.9%	4.5 mos.	18.3%	1.7 yrs.
\$5,000-9,999	45.0%	37.7%	3.0 mos.	17.3%	2.0 yrs.
\$10,000 or more	14.4%	33.0%	2.0 mos.	52.6%	3.0 yrs.
Missing Value	22.3%	53.2%	3.0 mos.	24.5%	1.8 yrs.
Total	32.6%	43.8%	3.0 mos.	23.6%	2.0 yrs.

\*Only 1.5% of cases involved a larceny value less than \$200.

Note: Cases in the sample were weighted to reflect each subgroup's actual proportion in the population.

The Commission also reviewed the prior record of offenders included in the sample. Commission staff obtained criminal history reports, or “rap sheets,” on these offenders from the Virginia State Police so that the offender’s prior record could be determined. Nine of the 585 offenders were excluded from the following figures because a rap sheet could not be located. In 33.1% of non-embezzlement larceny cases, the offender had previously been convicted of at least two prior larcenies or two or more offenses deemed larceny, or a combination thereof

(Figure 48). As a result, even if the current offense were a misdemeanor, these individuals could have been prosecuted for a felony under § 18.2-104 for a third or subsequent petit larceny. Figure 48 breaks down the percent of non-embezzlement larceny offenders for whom this is the case by the value of property involved in their current offense. For example, in 40.3% of cases with a value of \$200-\$499, the offender could have been prosecuted for a felony under § 18.2-104 regardless of the amount of the current larceny.

**Figure 48**  
**Percent of Non-Embezzlement Larceny Offenders with Sufficient Prior Record to be Prosecuted for Petit Larceny 3rd Offense\***

<b>Value in Current Offense</b>	<b>Percent</b>
Less than \$200	29.6%
\$200-\$499	40.3%
\$500-\$999	34.0%
\$1,000-\$2,499	46.1%
\$2,500-\$4,999	30.8%
\$.5000-\$9,999	12.9%
\$10,000 or more	48.6%
Overall	33.1%

\*Nine of the offenders were excluded because a rap sheet could not be located.

Note: Cases in the sample were weighted to reflect each subgroup’s actual proportion in the population.

## NON-EMBEZZLEMENT LARCENY ANALYSIS

The sentencing guidelines were created to provide sentence recommendations based on historical practices using information regarding the nature of the current offense(s) and an offender's criminal history. The guidelines, in essence, provide judges with a benchmark of the typical, or average, case outcome given the characteristics of the offense and the offender's prior record.

By design, sentencing guidelines include factors that, based on empirical analysis of the data, have been shown to be important to judges when making sentencing decisions. Compliance with the guidelines recommendation is voluntary, and a judge may sentence outside of the guidelines range in any case the judge feels the circumstances warrant it. Performance of the sentencing guidelines is assessed by examining compliance with the recommended sentences. In addition, since the guidelines are designed to model the typical sentence for a case (given certain factors), a balance between mitigation (when a sentence is lower than the guidelines recommendation) and aggravation (when a sentence is higher than the guidelines recommendation) is desired.

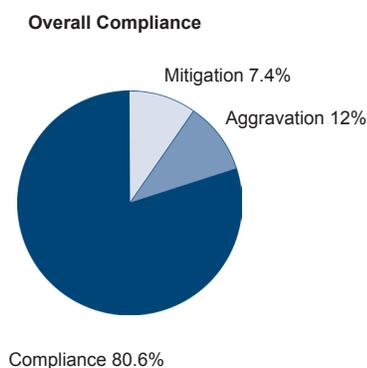
The Commission examined the compliance rates for the non-embezzlement larceny cases included in the sample to assess the performance of the current sentencing guidelines for these offenses. As shown in Figure 49, judges concurred

with the recommended sentence in the majority (80.6%) of these cases. When judges disagreed with the sentence recommended by the guidelines, the departures were relatively balanced. More specifically, judges imposed a sentence that fell below the guidelines recommendation in 7.4% of the sentencing events, while they imposed a sentence that was above the sentencing guidelines in 12% of the cases.

Using the supplemental data collected as part of the current study, the Commission tested various potential changes to the guidelines to determine whether compliance could be improved, with better balance of upward and downward departures, by inserting additional factors. However, none of the models tested performed better than the current model for non-embezzlement larceny cases.

**Figure 49**

### Guidelines Compliance for Non-Embezzlement Larceny Cases FY2011-FY2013



Note: Cases in the sample were weighted to reflect each subgroup's actual proportion in the population. Cases with scoring errors or where data were unavailable were excluded from the analysis.

### FRAUD SAMPLE CHARACTERISTICS

The fraud analysis consisted of a sample of 290 sentencing events occurring between FY2011 and FY2013. As with the non-embezzlement larceny offenses, the Commission attempted to collect a variety of supplemental data for fraud cases in the study. This included information on the type and value of items involved, the location and duration of the offense, victim information, the status of item recovery and condition, and restitution. These items are shown in Figure 50 and discussed below.

The Commission felt that it was particularly important to gather information regarding the value of items involved in fraud cases to determine its potential impact on sentencing outcomes. Of the fraud cases included in the sample, the value of items was unavailable in 22.1%. For cases where the value was available, the median value was \$1,186 and ranged from \$15 to \$549,000. Just over half (52.8%) of the cases involved an amount under \$2,500. Another 17.2% of the values were between \$2,500 and \$10,000 and 7.9% were greater than \$10,000. Nearly one in ten (9.3%) of the fraud cases involved a value less than \$200; this occurred most frequently in cases where the primary offense was forgery or credit card theft.

The type of items involved in felony fraud cases were examined to determine if this aspect of the offense was correlated with judicial

sentencing patterns. Since each fraud case may involve more than one item, the total percentage of items involved may not equal 100%. Unlike non-embezzlement larceny cases, the vast majority (92.1%) of fraud cases involved cash or monetary benefit. The Commission was unable to determine the type of item in only 3.4% of the fraud cases. Slightly more than one-tenth (11.0%) of the cases involved other types of items, including jewelry, food, automobiles, and services.

The Commission also studied the location and duration of fraud cases. As with the type of items, a sentencing event may include multiple locations and, therefore, the total percentage may exceed 100%. While the location could not be determined in 37.9% of the fraud cases, more than half of offenses (56.2%) occurred on the premises of a business. Locations in the “other” category include offenses that occurred via remote access, outside a dwelling, government offices, and school zones. For more than half of the fraud cases (55.2%), the offense took place during a single day. In 17.2% of cases, the offenses occurred for more than one day but less than a month. The offense duration was unknown in 12.4% of fraud cases.

The Commission examined the data to determine the number of jurisdictions in which a fraud offender was convicted during the same period of time, an indication of a possible crime spree. According to Circuit Court CMS data, most of the fraud offenders in the sample (79.7%) were only convicted in one jurisdiction. The proportion of fraud cases that spanned across

multiple jurisdictions (20.3%) is higher than the spree rate found for non-embezzlement larcenies.

Victim information, including the number and type of victims, the relationship of the offender to the victim(s), and whether any victims were injured, was also analyzed by the Commission. Fraud sentencing events generally involved one victim (74.1% of cases), while only 3.5% involved more than two victims. In terms of the type of victim, the most frequent classification was individuals (51.7%), followed by businesses (31.4%). In comparison, non-embezzlement larceny offenders most commonly targeted businesses. The relationship of the offender to the victim was unknown in 28.6% of cases. Of the remaining sentencing events, the offender was a stranger in 50.3% and an acquaintance in 11% of cases. Physical injury to the victim was not noted in any of the fraud cases, with 91.4% showing no injury, and only one case involving the threat of injury.

Whether items were recovered and whether the court ordered restitution were also examined to assess their potential impact on sentencing outcomes. However, in the majority of cases (80.7%) the Commission was unable to determine if the items were recovered. Of those where data were available, most items were either not recovered or the items involved were cash or monetary benefit. For the fraud cases, restitution was ordered in the majority (57.9%) of sentencing events.

**Figure 50**

**Fraud Sample Characteristics**

<b>Factor</b>	<b>Percent</b>	<b>Factor</b>	<b>Percent</b>	
<b>Dollar Value of Items</b>		<b>Victim Injury</b>		
Less than \$200	9.3%	None	91.4%	
\$200-499	12.1%	Threatened Only	0.3%	
\$500-999	14.5%	Unknown	8.3%	
\$1,000-2,499	16.9%			
\$2,500-4,999	9.6%	<b>Money/Items Recovered</b>		
\$5,000-9,999	7.6%	None	6.9%	
\$10,000 or More	7.9%	Some	3.1%	
Missing	22.1%	All	1.0%	
		N/A (e.g., no loss)	8.3%	
<b>Types of Item(s) Involved*</b>		Unknown	80.7%	
Monetary/Cash	92.1%	<b>Damage to Items</b>		
Clothing/Accessory	4.1%	None	0.7%	
Electronics	3.4%	N/A (e.g., cash, etc.)	81.7%	
Other	11.0%	Unknown	17.6%	
Unknown	3.4%			
<b>Location of Offenses*</b>		<b>Restitution Ordered</b>		
Business	56.2%	Yes	57.9%	
Inside Dwelling	7.2%	No	31.1%	
Other	9.7%	Unknown	11.0%	
Unknown	37.9%	<b>Status of Restitution at Time of Sentencing</b>		
<b>Duration of Offenses</b>		None Paid	11.4%	
1 Day	55.2%	Some Paid	1.7%	
1 Day to 1 Month	17.2%	Paid in Full	1.7%	
1 to 6 Months	7.2%	N/A	29.3%	
6 Months to 1 Year	3.5%	Unknown	55.9%	
More than 1 Year	4.5%	<b>Number of Jurisdictions Convicted In</b>		
Unknown	12.4%	One	79.7%	
<b>Number of Victims</b>		Two	16.2%	
One	74.1%	Three	2.4%	
Two	14.8%	Four	1.4%	
Three	2.1%	Five or more	0.3%	
Four or More	1.4%	<b>Sentences — Median</b>		
Unknown	7.6%	Probation	38.6%	N/A
<b>Type of Victim(s)*</b>		Jail (12 mos. or less)	36.2%	6 mos.
Individual	51.7%	Prison (1 yr. or more)	25.2%	1.5 yrs.
Business	31.4%	<b>Offender's Relationship to Victim(s)*</b>		
Bank	6.2%	Stranger	50.3%	
Government	6.2%	Acquaintance	11.0%	
Other	1.7%	Relative	4.8%	
Unknown	9.0%	Employee	4.5%	
<b>Offender's Relationship to Victim(s)*</b>		Other	3.8%	
Stranger	50.3%	Unknown	28.6%	
Acquaintance	11.0%			
Relative	4.8%			
Employee	4.5%			
Other	3.8%			
Unknown	28.6%			

\*Percentages may not total to 100% due to multiple larceny/fraud offenses in a given sentencing event.

**Figure 52**

**Percent of Fraud Offenders with Two or More Prior Larceny Offenses or Offenses Deemed Larceny\***

Value in Current Offense	Percent
Less than \$200	38.5%
\$200-\$499	47.1%
\$500-\$999	35.0%
\$1,000-\$2,499	39.1%
\$2,500-\$4,999	46.4%
\$5,000-\$9,999	28.6%
\$10,000 or more	40.9%
Overall	39.9%

\*Nine of the offenders were excluded because a rap sheet could not be located.

The primary focus of the current study is sentencing. The majority (74.8%) of fraud offenders included in the sample received a non-prison sentence; of these, approximately half received probation and half were given a jail sentence. Among fraud offenders sentenced to jail, the median sentence length was six months. Of the 25.2% of fraud offenders sentenced to prison, the median sentence was 1.5 years.

The Commission also examined whether the value of an item was associated with the sentence imposed (Figure 51). Overall, the value of items involved in fraud offenses do not appear to have a significant impact on the sentence imposed, as indicated by the lack of trends in the disposition rates.

The Commission also explored the prior records of fraud offenders included in the sample. Figure 52 indicates the percentage of individuals who were previously convicted of two or more larcenies or offenses deemed larceny, or combination thereof. In 39.9% of fraud cases studied, the offender had previously been convicted of at least two prior larcenies or two or more offenses deemed larceny, or a combination thereof (Figure 52). Some individuals with this type of prior record could have been prosecuted for a felony under § 18.2-104 for a third or subsequent petit larceny even if the current offense were a misdemeanor. In 47.1% of cases with a value of \$200-\$499, the offender had two or more prior larceny offenses or offenses deemed larceny.

**Figure 51**

**Fraud Cases - Property Value by Disposition**

	Probation/No Incarceration	Jail Up to 12 Months	Median Jail Sentence (Months)	Prison 1 Year or More	Median Prison Sentence (Years)
Less than \$200	33.3%	40.8%	6 mos.	25.9%	1.0 yrs.
\$200-499	34.3%	37.1%	4 mos.	28.6%	1.8 yrs.
\$500-999	45.2%	28.6%	3.5 mos.	26.2%	1.0 yrs.
\$1,000-2,499	42.9%	30.6%	6 mos.	26.5%	1.5 yrs.
\$2,500-4,999	35.7%	32.1%	7 mos.	32.2%	2.1 yrs.
\$5,000-9,999	36.4%	31.8%	8 mos.	31.8%	2.0 yrs.
\$10,000 or More	30.4%	43.5%	3 mos.	26.1%	2.5 yrs.
Missing Value	40.6%	43.8%	7 mos.	15.6%	2.0 yrs.
Total	38.6%	36.2%	6 mos.	25.2%	1.5 yrs.

## FRAUD ANALYSIS

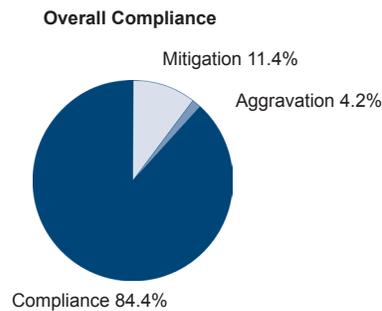
The sentencing guidelines are designed to provide sentence recommendations based on historical practices. In particular, the guidelines are based on information regarding aspects of the current offense(s) and an offender's criminal history.

By using actual sentencing data, the guidelines provide judges with a benchmark of the typical, or average, case outcome. Sentencing guidelines are designed to include factors that, based on empirical analysis of the data, have been shown to be important to judges determining sentences for the offenders who appear before them. Performance of Virginia's voluntary guidelines is assessed by examining compliance with the recommended sentences. Moreover, since the guidelines are designed to model the typical sentence for a case (given certain factors), a balance between mitigation and aggravation departures is desired.

The Commission examined the current compliance rates for fraud cases included in the sample to assess the performance of the current sentencing guidelines for these offenses. As shown in Figure 53, judges agreed with the recommended sentence in the majority (84.4%) of the cases. When judges did not agree with the recommendation, they tended to sentence below the guidelines more often than they sentenced above the recommendation. More specifically, judges imposed a sentence that fell below the guidelines recommendation in 11.4% of the sentencing events, while they gave a sentence above the guidelines in 4.2% of the cases. The Commission tested various possible modifications to the guidelines using the supplemental data from the current study to determine if compliance could be improved or if the departures could be better balanced. However, none of the models tested performed better than the current model for these cases.

**Figure 53**

### Guidelines Compliance for Fraud Cases FY2011-FY2013



Note: Cases with scoring errors or where data were unavailable were excluded from the analysis.

### EMBEZZLEMENT SAMPLE CHARACTERISTICS

The current study included a sample of 569 sentencing events in which embezzlement was the most serious offense. Similar to non-embezzlement larceny and fraud cases, the Commission collected a variety of supplemental data for embezzlement cases included in the sample. This included information on the type and value of item(s) involved, the location and duration of the offense, victim information, whether items were recovered and their condition, and restitution information. These case details are shown in Figure 54 and discussed below.

The Commission gathered information regarding the loss associated with felony embezzlement cases. In 36.9% of the cases, the Commission could not determine the value of property involved in embezzlement cases. The values gathered for the embezzlement sentencing events ranged from \$80 to \$1.4 million, with a median value of \$3,042. As shown in Figure 54, most of the cases (61.5%) involved less than \$10,000. Of these, the largest value category was \$1,000 to \$4,422, with 1: .3% of embezzlement cases falling in that range. In contrast to the lower values in non-embezzlement larceny and fraud cases, 8.2% of embezzlement cases involved values greater than \$100,000.

The type of items involved in embezzlement cases were also studied by the Commission. Each embezzlement case can potentially involve more than one item, so the

total percentage of items involved may not equal 100%. For 13.2% of cases the type of item was not available. The majority of embezzlement cases (78.9%) involved cash or monetary benefit. Items in the “other” category make up nearly one-tenth (9.8%) of the cases and include scrap metal, automobiles and parts, appliances and household items, and services.

Other variables related to the offenses, including the location where they took place and the duration of the offenses, were also collected by the Commission. The majority (77.3%) of embezzlement offenses took place at a business. The “other” category is a miscellaneous category comprised of items that, individually, contributed less than 1% of cases and includes schools, government property, and miscellaneous private properties. In contrast to non-embezzlement larceny and fraud cases, the majority of the embezzlement events, 69.9%, occurred over more than one day, with over half (50.1%) with a duration greater than one month. Also related to the offense and of interest to the Commission was the number of jurisdictions in which an offender was convicted during the same period of time, which is indicative of a crime spree. For embezzlement cases, only 1.6% were found to have evidence of this.

Factors relating to embezzlement victims were examined, including the number of victims, types of victims, the relationship of the offender to the victim, and whether a victim was injured during an offense. Almost all of the embezzlement offenses,

95.8%, involved only one victim. The two most common victims of embezzlement were businesses (80.5%) and individuals (9.1%). In contrast to non-embezzlement larcenies, embezzlement cases were most likely to be committed by an employee (in 89.1% of cases). “Other” relationships, which were all cited in less than 1% of cases, include relatives, caregivers, volunteers, figures of authority, and legal/financial advisors. Victim injury was not noted in 91.7% of cases, and only one case within the sample was found to have a threat of violence.

Some additional factors of interest include item recovery, damage to items, and whether restitution was ordered. In the majority of embezzlement cases (84.2%), whether items were recovered could not be determined. Similarly, damage to items was not applicable or unknown in 98.5% of cases. Restitution was ordered in 74.7% of cases, making it more common for embezzlement than in fraud or non-embezzlement larceny.

Sentencing for embezzlement cases was also examined. While more than half of these offenders (56.8%) did not receive an active term of incarceration to serve after sentencing, an additional 29.3% received a jail term. The median sentence length for embezzlement offenders sentenced to jail was two months. A prison sentence was ordered in 13.9% of the sentencing events, with a median sentence length of just under two years.

**Figure 54****Embezzlement Sample Characteristics**

<b>Factor</b>	<b>Percent</b>	<b>Factor</b>	<b>Percent</b>	
<b>Dollar Value of Items</b>		<b>Offender's Relationship to Victim*</b>		
Less than \$200	0.4%	Employee	89.1%	
\$200-499	7.4%	Volunteer	1.6%	
\$500-999	12.0%	Relative	1.2%	
\$1,000-2,499	18.1%	Other	4.7%	
\$2,500-4,999	10.4%	Unknown	7.6%	
\$5,000-9,999	13.0%	<b>Victim Injury</b>		
\$10,000-\$49,999	12.5%	None	91.7%	
\$50,000-\$99,999	3.7%	Threatened Only	0.2%	
\$100,000 or More	6.0%	Unknown	8.1%	
Missing	16.7%	<b>Money/Items Recovered</b>		
<b>Types of Item(s) Involved*</b>		None	6.5%	
Monetary Benefit	78.9%	Some	6.7%	
Clothing/Access.	3.9%	All	2.6%	
Electronics	3.5%	Unknown	84.2%	
Constr./Farm Equip.	2.5%	<b>Damage to Items</b>		
Food	2.5%	None	0.7%	
Cigarettes	1.6%	Some Damaged	0.4%	
Jewelry	1.1%	All Items Damaged	0.4%	
Other	9.8%	N/A (e.g., cash, etc.)	65.3%	
Unknown	13.2%	Unknown	33.2%	
<b>Location of Offenses*</b>		<b>Restitution Ordered</b>		
Business	77.3%	Yes	74.7%	
Remote Access	2.6%	No	13.7%	
Inside Dwelling	1.4%	Unknown	11.6%	
Other	1.8%	<b>Number of Jurisdictions Convicted In</b>		
Unknown	19.9%	One	98.4%	
<b>Duration of Offenses</b>		Two	1.2%	
1 Day	16.9%	Three or more	0.4%	
1 Day to 1 Month	19.8%	<b>Status of Restitution at Time of Sentencing</b>		
1 to 6 Months	28.5%	None Paid	11.2%	
6 Months to 1 Year	8.8%	Some Paid	4.6%	
More than 1 Year	12.8%	Paid in Full	3.9%	
Unknown	13.2%	Not Applicable	13.9%	
<b>Number of Victims</b>		Unknown	66.4%	
One	95.8%	<b>Sentences — Median</b>		
Two	2.6%	Probation	56.8%	N/A
Three	0.2%	Jail (12 mos. or less)	29.3%	2 mos.
Four or More	0.5%	Prison (1 yr. or more)	13.9%	1.9 yrs.
Unknown	0.9%			
<b>Type of Victim(s)*</b>				
Business	80.5%			
Individual	9.1%			
Non-Profit	3.3%			
Govt. Agency	2.6%			
School	1.8%			
Bank	1.4%			
Other	1.6%			
Unknown	1.1%			

\*Percentages may not total to 100% due to multiple larceny/fraud offenses in a given sentencing event.

The Commission also explored the potential relationship between the value of property involved and the sentence imposed. For embezzlement cases, a notable trend in disposition was seen in relation to item values. Specifically, as shown in Figure 55, individuals who embezzled \$10,000 or more were more likely to receive a prison sanction than others who embezzled smaller amounts. In addition, for cases involving \$10,000 or more, as the value of the loss increases, so does the proportion that received prison. This finding is consistent with the Commission’s 1997-1998 study of embezzlement cases. Since 1999, the guidelines have included a factor to account for the amount involved in an embezzlement case. Given the findings of the current study, judges largely concur with

the guidelines recommendations for embezzlement based on value.

The Commission also reviewed the prior record of offenders included in the sample. In 12.1% of embezzlement cases, the offender had previously been convicted of at least two prior larcenies or two or more offenses deemed larceny, or a combination of such offenses (Figure 56). As a result, even if the current offense had been a misdemeanor, these individuals could have been prosecuted for a felony under § 18.2-104 for a third or subsequent petit larceny. Figure 56 breaks down the percent of embezzlement offenders for whom this is the case by the value of their current offense. For example, in 18.4% of cases with a value of \$200-\$499, the offender could have been prosecuted for a felony regardless of the amount of the larceny. Compared to non-embezzlement larceny cases, offenders convicted of embezzlement were much less likely to have sufficient prior record to fall into this category.

**Figure 55**

**Embezzlement Cases - Property Value by Disposition**

	<b>Probation/ No Incarceration</b>	<b>Jail Up to 12 Months</b>	<b>Median Jail Sentence (Months)</b>	<b>Prison 1 Year or More</b>	<b>Median Prison Sentence (Years)</b>
Less than \$200*	50.0%	50.0%	2.0 mos.	0.0%	N/A
\$200-499	72.5%	22.5%	1.0 mos.	5.0%	3.0 yrs
\$500-999	69.4%	25.8%	1.2 mos.	4.8%	1.2 yrs
\$1,000-2,499	63.7%	27.5%	1.5 mos.	8.8%	2.0 yrs
\$2,500-4,999	69.8%	27.0%	2.0 mos.	3.2%	1.8 yrs
\$5,000-9,999	52.5%	40.0%	1.5 mos.	7.5%	1.3 yrs
\$10,000-\$49,999	52.3%	31.2%	2.0 mos.	16.5%	1.3 yrs.
\$50,000-\$99,999	39.3%	25.0%	6.0 mos.	35.7%	1.8 yrs.
\$100,000 or More	22.7%	22.7%	6.0 mos.	54.6%	2.5 yrs.
Missing	53.9%	33.3%	3.0 mos.	12.8%	1.0 yrs.
<b>Total</b>	<b>56.8%</b>	<b>29.3%</b>	<b>2.0 mos.</b>	<b>13.9%</b>	<b>1.9 yrs.</b>

\*Only two cases included an embezzlement value less than \$200.

**EMBEZZLEMENT ANALYSIS**

The sentencing guidelines provide sentence recommendations based on historical practices using information regarding aspects of the current offense(s) and an offender’s criminal history.

Through the analysis of sentencing data, the guidelines are designed to identify factors that are important to judges to help make sentencing decisions. The performance of the guidelines is assessed by examining judicial compliance with recommended sentences. In addition, since the guidelines are designed to model the typical sentence given the factors associated with a case, a balance between mitigation departures and aggravation departures is desired.

Compliance rates for felony embezzlement cases were analyzed to assess the performance of the current sentencing guidelines for these offenses. As shown in Figure 57, judges agree with the recommended sentence in the majority (84.1%) of these cases. However, when judges disagree with the guidelines, departures are not balanced to the extent they could be. Specifically, judges imposed a sentence that fell below the guidelines recommendation in 5.4% of the sentencing events, while they imposed a sentence that was above the sentencing guidelines in 10.5% of the cases.

**Figure 56**

**Percent of Embezzlement Offenders with Sufficient Prior Record to be Prosecuted for Petit Larceny 3rd Offense\***

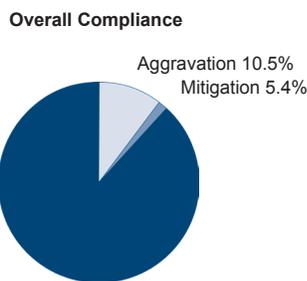
Value in Current Offense	Percent
Less than \$200**	50.0%
\$200-\$499	18.4%
\$500-\$999	12.9%
\$1,000-\$2,499	13.4%
\$2,500-\$4,999	8.1%
\$5,000-\$9,999	16.0%
\$10,000 - \$49,999	10.6%
\$50,000 - \$99,999	3.7%
\$100,000 or More	9.3%
Overall	12.1%

\*Twenty-three of the offenders were excluded because a rap sheet could not be located.

\*\* Only two cases involved an embezzlement value less than \$200.

**Figure 57**

**Guidelines Compliance for Embezzlement Cases FY2011-FY2013**



Compliance 84.1%

Note: Cases with scoring errors or where data were unavailable were excluded from the analysis.

While compliance with Virginia's sentencing guidelines is voluntary, circuit court judges are required by §19.2-298.01 of the *Code* to submit a written reason whenever they sentence outside of the guidelines range. For embezzlement cases, the most frequently cited reasons for sentencing above the guidelines were the degree of planning or trust, a greater than typical monetary loss, and the flagrancy of the offense/facts of the case.

Using the supplemental data collected as part of the current study, the Commission tested various potential changes to the guidelines and determined that compliance could be slightly improved and departures better balanced if one of the factors relating to the amount embezzled were modified. Details of this proposed change may be seen in Chapter 5, under Recommendation 1.

## CONCLUSION

With the exception of embezzlement cases, no consistent relationship between the value of property involved and sentencing outcomes was observed. While the Commission attempted to collect information regarding other factors associated with the offenses included in the study, information was missing in a fairly large proportion of the cases. While no changes are proposed for non-embezzlement larceny or fraud cases at this time, the Commission's study indicated that the sentencing guidelines for embezzlement could be modified to better account for the value involved in such cases. The Commission's recommendation is contained in Chapter 5 of this Annual Report.

# RECOMMENDATIONS OF THE COMMISSION

## INTRODUCTION

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

The Commission draws on several sources of information to guide its discussions about modifications to the guidelines system. Commission staff meet with circuit court judges and Commonwealth's attorneys at various times throughout the year, and these meetings provide an important forum for input from these two groups. In addition, the Commission operates a "hotline" phone system, staffed Monday through Friday, to assist users with any questions or concerns regarding the preparation of the guidelines.

While the hotline has proven to be an important resource for guidelines users, it has also been a rich source of input and feedback from criminal justice professionals around the Commonwealth. Moreover, the Commission conducts many training sessions over the course of a year and these sessions often provide information that is useful to the Commission. Finally, the Commission closely examines compliance with the guidelines and departure patterns in order to pinpoint specific areas where the guidelines may need adjustment to better reflect current judicial thinking. The opinions of the judiciary, as expressed in the reasons they write for departing from the guidelines, are very important in directing the Commission's attention to areas of the guidelines that may require amendment.

On an annual basis, the Commission examines those crimes not yet covered by the guidelines. Currently, the guidelines cover approximately 95% of felony cases in Virginia's circuit courts. Over the years, the General Assembly has created new crimes and raised other offenses from misdemeanors to felonies. The Commission tracks all of the changes to the Code of Virginia in order to identify new felonies that may be added to the guidelines system in the future. Unlike many other states, Virginia's guidelines are based on historical practices among its judges. The ability to create guidelines depends, in large part, on the number of historical cases that can

be used to identify past judicial sentencing patterns. Of the felonies not currently covered by the guidelines, most do not occur frequently enough for there to be a sufficient number of cases upon which to develop historically-based guideline ranges. Through this process, however, the Commission can identify offenses and analyze data to determine if it is feasible to add particular crimes to the guidelines system.

The Commission has adopted eight recommendations this year. Each of these is described in detail on the pages that follow.

## RECOMMENDATION 1

Revise the sentencing guidelines for felony embezzlement (§ 18.2-111) to increase the likelihood that persons who embezzle larger amounts will be recommended by the guidelines for more than six months of incarceration.

### Issue

In 2013, the Commission began a special study of felony larceny, fraud, and embezzlement cases to determine what, if any, changes to the sentencing guidelines could be made to improve compliance and balance mitigation and aggravation rates for these offenses. Currently, the compliance rate for felony embezzlement under § 18.2-111 is 84.1%, with judges almost twice as likely to hand out a sentence above the guidelines recommendation than below the guidelines recommendation, as shown in Figure 58.

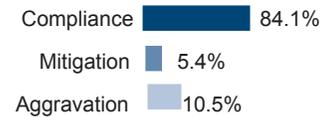
### Discussion

In an effort to increase compliance and better balance mitigation and aggravation rates, the Commission undertook an analysis of felony embezzlement cases using Sentencing Guidelines data from fiscal year (FY) 2011 through FY2013. As part of the Commission's study, which is discussed in Chapter 4, the Commission collected supplemental information for these cases. The value of the money or items embezzled was of particular interest to the Commission during the study. Currently, the sentencing guidelines for embezzlement cases include factors that increase the likelihood that an individual will be recommended for a period of incarceration, or a longer prison sentence, based on the value of the monetary loss or property involved. In addition to testing whether the existing dollar value categories on Sections A, B, and C of the guidelines are still predictive of the sentence received in embezzlement cases, the Commission examined a variety of different groupings as well.

According to Sentencing Guidelines data for FY2011-FY2013, the rate of compliance with the guidelines for embezzlement under § 18.2-111 was 84.1%. When judges departed from the recommendation, they were more likely to give the offender a sentence above the guidelines range than below it (10.5% and 5.4%, respectively).

**Figure 58**

**Compliance with Sentencing Guidelines for Felony Embezzlement (§ 18.2-111) FY2011 – FY2013  
484 Sentencing Events\***



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

When judges departed above the guidelines range, they cited the value of the property involved in nearly one-third (28.8%) of the cases. Although the examination of the current value categories for embezzlement cases indicated that the existing thresholds are closely associated with judicial sentencing patterns, the analysis indicated that sentencing guidelines compliance could be increased by a slight modification to the categories on Section A of the guidelines worksheets.

**Figure 59**

Proposed Larceny  
Section A Worksheet

SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE IS H: EMBEZZLEMENT (§ 18.2-111)	
<b>◆ Amount of Embezzlement</b>	
Amount:	
Less than \$10,000 .....	0
\$10,000 - \$19,999 .....	3
\$20,000 - \$74,999 .....	6
\$75,000 - \$119,999 .....	9
\$120,000 or more .....	14

Based on this analysis, the Commission recommends amending the guidelines for felony embezzlement under § 18.2-111, which can be found on the Larceny offense worksheets. Section A of the sentencing guidelines determines if an offender will be recommended for probation or jail up to six months (Section B) or incarceration of more than six months (Section C). The data indicate that adding a fifth category to the Amount of Embezzlement factor on Section A for losses over \$120,000 and assigning 14 points (Figure 59) would increase compliance for these cases and reduce upward departures.

The Commission also examined whether modifying Sections B and C would increase compliance or balance aggravation and mitigation for embezzlement cases. The Commission does not recommend any changes to Sections B or C for this offense at this time.

By amending the Larceny guidelines as recommended, the compliance rate with the guidelines for embezzlement under § 18.2-111 is expected to increase slightly to 85.1%. Mitigation and aggravation rates are expected to be more closely balanced, with a mitigation rate of 7.0% and an aggravation rate of 7.9% (Figure 60). The projected reduction in aggravating sentences indicates that the guidelines recommendation would be more in line with current judicial sentencing practices for this offense.

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

**Figure 60**

**Felony Embezzlement (§ 18.2-111)  
FY2011 – FY2013  
484 Sentencing Events\***

	Current	Proposed
Compliance	84.1%	85.1%
Mitigation	5.4%	7.0%
Aggravation	10.5%	7.9%

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

## RECOMMENDATION 2

Amend the sentencing guidelines for vehicular involuntary manslaughter (§ 18.2-36.1(A)) to more closely reflect judicial sentencing practices for the offense and amend the guidelines for voluntary manslaughter (§ 18.2-35) to increase the prison sentence recommendation in cases involving multiple counts of the offense.

### Issue

In 2012, the Commission examined sentencing practices in vehicular involuntary manslaughter cases. According to Sentencing Guidelines data for fiscal year (FY) 2008 through FY2012, the compliance rate for offenders convicted of vehicular involuntary manslaughter under § 18.2-36.1(A) as the primary, or most serious, offense was 62.2%. Furthermore, when judges departed from the guidelines recommendation, they were more likely to give the offender a sentence above the guidelines recommendation (aggravation rate of 29.3%) than below it (mitigation rate of 8.5%). In its *2012 Annual Report*, the Commission recommended revising the guidelines for vehicular involuntary manslaughter under § 18.2-36.1(A) to increase compliance and reduce the aggravation rate in these cases. These recommendations were accepted by the 2013 General Assembly and went into effect on July 1, 2013.

Recent sentencing data, however, indicates that the high aggravation rate persists in vehicular involuntary manslaughter cases. Therefore, the Commission re-evaluated the sentencing guidelines for this offense. Based on a thorough analysis of the most recent data, the Commission has developed a proposal that is expected to increase compliance and reduce the aggravation rate in these cases.

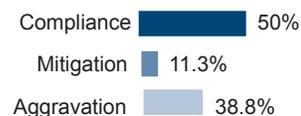
### Discussion

Based on Sentencing Guidelines data for FY2011 through FY2015, there were 80 sentencing events available for analysis where vehicular involuntary manslaughter under § 18.2-36.1(A) was the primary, or most serious, offense at sentencing. Compliance with the guidelines in these cases was 50.0%; furthermore, there was a high aggravation rate of 38.8%, compared to a mitigation rate of only 11.3% (Figure 61).

Section A of the sentencing guidelines determines if an offender will be recommended for probation or jail up to six months (Section B) or incarceration of more than six months (Section C). Currently, on Section A of the Murder/Homicide worksheet, all offenders convicted of vehicular involuntary manslaughter under § 18.2-36.1(A) are recommended for incarceration of more than six months. As a result, no changes to

**Figure 61**

**Compliance with Sentencing Guidelines for Vehicular Involuntary Manslaughter (§ 18.2-36.1 (A)) FY2011 – FY2015  
80 Sentencing Events\***



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

Section A are recommended. The persistence of a high aggravation rate suggests that additional modifications to the Section C worksheet may be necessary to lower the aggravation rate and bring the guidelines more in sync with actual sentencing practices during FY2011-FY2015.

Currently, on Section C, vehicular involuntary manslaughter is scored the same as other types of involuntary manslaughter. After a thorough analysis of the sentencing data, the Commission recommends increasing the Primary Offense points for vehicular involuntary manslaughter on Section C of the Murder/Homicide guidelines. Primary Offense points on Section C are assigned based on the classification of an offender's

prior record. An offender is scored under the Other category if he or she does not have a prior conviction for a violent felony defined in § 17.1-805(C). An offender is scored under Category II if he or she has a prior conviction for a violent felony that has a statutory maximum penalty of less than 40 years. Offenders are classified as Category I if they have a prior conviction for a violent felony with a statutory maximum of 40 years or more.

Based on analysis of the five most recent years of data, the Commission proposes the Section C primary offense scores shown in Figure 62 for offenders convicted pursuant to §18.2-36.1(A). Under the Commission's proposal, an offender whose primary offense is completed

**Figure 62**

**Proposed Murder/Homicide  
Section C Worksheet**

<b>Murder/Homicide ❖ Section C</b>		— Prior Record Classification —		
<b>◆ Primary Offense</b>		<input type="checkbox"/> Category I	<input type="checkbox"/> Category II	<input type="checkbox"/> Other
<b>A. First degree murder</b>				
Completed: 1 count	Life	596	335	
2 counts	Life	652	367	
Attempted or conspired: 1 count		(120)	(118)	(59)
<b>B. Second degree murder or felony homicide</b>				
Completed: 1 count		354	236	205
Attempted or conspired: 1 count		(120)	(118)	(59)
<b>C. Voluntary manslaughter</b>				
Completed: 1 count		120	96	48
2 counts		144	96	48
Attempted or conspired: 1 count		(60)	(48)	(24)
2 counts		(96)	(48)	(24)
<b>D. Involuntary manslaughter</b>				
Completed: 1 count		76	38	19
Attempted or conspired: 1 count		(60)	(38)	(19)
<b>E. Aggravated vehicular manslaughter 1 count</b>				
		213	142	71
<b>F. Vehicular Involuntary manslaughter</b>				
Completed: 1 count		80	40	20
2 counts		232	116	58
2 counts		320	160	80
Attempted or conspired: 1 count		(60)	(38)	(19)

vehicular involuntary manslaughter would score 20, 40, or 80 points for one count, depending on his or her prior record. Offenders with two counts would receive 58, 116, or 232 points and offenders with three or more counts would score 80, 160, or 320 points, based on their prior record. Primary Offense points for an attempted or conspired crime would remain unchanged. Any remaining counts would be scored under the Primary Offense Remaining Counts factor.

To address potential concerns regarding face validity (i.e. the Primary Offense points for two or more counts of vehicular involuntary manslaughter would exceed those for two counts of voluntary manslaughter), the Commission conducted an analysis of voluntary manslaughter cases involving more than one count. Based on this analysis, the Commission determined that the Primary Offense scores for two or more counts of completed voluntary manslaughter may be increased slightly, as shown in Figure 62, without impacting compliance for this offense.

As part of the 2012 revisions, the Commission added a new factor on the Section C worksheet that is only scored if the primary offense is vehicular involuntary manslaughter under § 18.2-36.1(A) and the offender is also sentenced for a felony hit and run offense. Currently, this factor adds 23 points and increases the prison sentence recommendation for individuals convicted of this combination of offenses. Further analysis has shown that an expansion of this factor may improve compliance in vehicular involuntary manslaughter cases where the offender was also sentenced for maiming, etc., of another resulting from driving while intoxicated (DWI) as defined in § 18.2-51.4(A). The Commission therefore recommends expanding this factor to include DWI maiming under § 18.2-51.4(A), and increasing the points from 23 to 37, as shown in Figure 63.

**Figure 63**

**Revised Murder/Homicide Factor**

<hr/> SCORE THE FOLLOWING ONLY IF PRIMARY OFFENSE AT CONVICTION IS D: INVOLUNTARY MANSLAUGHTER <u>WITH A VEHICLE</u> (§ 18.2-36.1(A))	
◆ <b>Type of Additional Offense</b>	
Additional offense of felony Hit and Run (§ 46.2-894) or Driving While Intoxicated, Victim Permanently Impaired (§ 18.2-51.4(A)) .....	37

These modifications to the Murder/Homicide sentencing guidelines are expected to increase compliance for vehicular involuntary manslaughter under § 18.2-36.1(A) to 61.3% (Figure 63). While the mitigation rate would essentially remain unchanged, the aggravation rate is projected to decrease. The reduction in aggravating sentences would bring recommendations more in line with current judicial sentencing practices for this offense.

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

**Figure 63**

**Vehicular Involuntary Manslaughter  
(§ 18.2-36.1 (A))  
FY2011 – FY2015  
80 Sentencing Events\***

	<b>Current</b>	<b>Proposed</b>
Compliance	50.0%	61.3%
Mitigation	11.3%	12.5%
Aggravation	38.8%	26.3%

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

### RECOMMENDATION 3

Modify the Assault sentencing guidelines to add strangulation resulting in bodily injury or wounding (§ 18.2-51.6).

#### Issue

Section 18.2-51.6, which defines felony strangulation, was added to the *Code of Virginia* by the 2012 General Assembly. This offense is not currently covered under sentencing guidelines when it is the primary (most serious) offense in the sentencing event. Previous analyses undertaken to examine adding this offense to the sentencing guidelines had limited utility because there were not sufficient data available for a robust analysis. However, using fiscal year (FY) 2013 through FY2015 data, the Commission has been able to conduct a more reliable analysis of felony strangulation cases and therefore recommends adding this offense to the Assault sentencing guidelines.

#### Discussion

To develop sentencing guidelines for this offense, the Commission examined historical sentencing practices for the period from fiscal year (FY) 2013 through FY2015. Data from the Circuit Court Case Management System (CMS) indicate that strangulation under § 18.2-51.6 was the primary offense in 209 sentencing events during this time period. Commission staff obtained criminal history reports, or “rap

sheets,” on these offenders from the Virginia State Police so that the offender’s prior record could be computed and used in scoring the various factors on the guidelines worksheets. Seven of the 209 offenders were excluded from the analysis because a rap sheet could not be located. The proposed guidelines are based on analysis of actual sentencing patterns, including the historical rate of incarceration in prison and jail.

As shown in Figure 64, one-quarter (25.2%) of offenders whose primary offense was strangulation under § 18.2-51.6 did not receive an active term of incarceration to serve after sentencing. For the 32.7% of offenders who were sentenced to a jail term of up to six months, the median sentence length was four months. The remaining 42.1% were sentenced to a term exceeding six months, with a median sentence length of one year.

**Figure 64**

**Strangulation Resulting in Bodily Injury  
(§ 18.2-51.6)  
FY2013 – FY2015  
202 Cases**

<b>Disposition</b>	<b>Percent</b>	<b>Median Sentence</b>
No Incarceration	25.2%	N/A
Incarceration up to 6 months	32.7%	4 Months
Incarceration more than 6 months	42.1%	1 Year

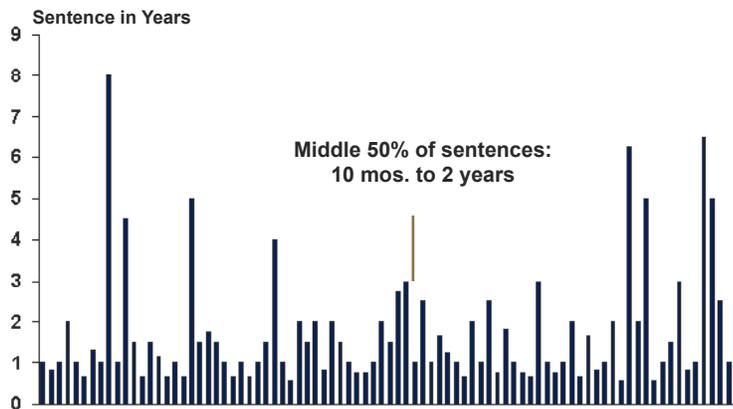
*Data reflect cases in which this offense was the primary (or most serious) offense at sentencing.*

For offenders receiving more than six months of incarceration, the sentences were further analyzed. Sentences in these cases ranged from seven months to eight years. Virginia’s sentencing guidelines are grounded in historical practices among judges and ranges are developed from the middle 50% of actual sentences, thus removing the extreme high and low sentences. As shown in Figure 65, the middle 50% of sentences for this offense encompasses ten months to two years.

Current guidelines worksheets serve as the starting point for scoring historical cases, but the points assigned to those factors may be different for the new offense and new factors may be added. Using historical sentencing data, various scoring scenarios were rigorously tested and compared to ensure the proposed guidelines are closely aligned with judicial sentencing practices in these cases. Based on this analysis, the Commission recommends adding strangulation resulting in bodily injury or wounding, as defined in § 18.2-51.6, to the Assault guidelines as described below.

**Figure 65**

**Strangulation Resulting in Bodily Injury  
(§ 18.2-51.6)  
FY2013 – FY2013  
Offenders Sentenced to Incarceration of More than 6 Months  
85 Cases**



Section A of the sentencing guidelines determines if an offender will be recommended for probation or jail up to six months (Section B) or incarceration of more than six months (Section C). On Section A of the Assault guidelines, the Commission recommends assigning three points on the Primary Offense factor for offenders convicted of completed strangulation (Figure 66). Offenders whose primary offense is attempted or conspired strangulation under § 18.2-51.6 would receive one point on this factor. Any remaining counts would be scored under the Primary Offense Remaining Counts factor. Other factors on Section A would be scored as they currently appear on the worksheet.

An offender who scores five or fewer points on Section A of the Assault guidelines is then scored on Section B, which determines if he or she will be recommended for probation/ no incarceration or a jail term of up to six months. The Commission recommends three modifications to Section B. First, the Commission recommends splitting the Additional Offenses factor to assign higher points when the primary offense at sentencing is strangulation under § 18.2-51.6 (Figure 67). The number of points assigned for this factor would remain the same for all other offenses.

**Figure 66**

**Proposed Assault  
Section A Worksheet**

<b>Assault ❖ Section A</b>	
<b>◆ Primary Offense</b>	
A. Assault and battery against a family member, third or subsequent conviction (1 count).....	2
B. Assault and battery against a law enforcement officer, fire or medical services, etc. (1 count).....	6
C. Any attempted or conspired assault and battery, unlawful injury or strangulation (1 count).....	(1)
D. Unlawful injury to law enforcement officer, fire/rescue personnel services, etc. (1 count).....	7
E. Any other unlawful injury	
1 count .....	1
2 counts .....	3
F. Any attempted or conspired malicious injury (1 count).....	(3)
G. Any attempted, conspired or completed aggravated malicious injury (1 count).....	7
H. Malicious injury to a law enforcement officer, fire or medical services, etc. (1 count).....	7
I. Any other malicious injury (1 count).....	7
J. Use of firearm in the commission of a felony (1 count).....	4
K. DWI with reckless disregard, victim permanently impaired	
1 count .....	1
2 counts .....	3
L. Strangulation resulting in bodily injury (1 count).....	3

As shown in Figure 67, the Commission also recommends modifying the Prior Convictions/Adjudications factor on Section B to assign higher points when strangulation is the primary offense in the sentencing event. When the primary offense is not strangulation, scores on this factor would remain the same.

Currently, Section B contains two factors (Prior Incarcerations/Commitments and Prior Misdemeanor Convictions/Adjudications) that are scored only if the primary offense is assault and battery against a family member, third or subsequent. The Commission recommends expanding the applicability of these factors to include instances in which the primary offense is strangulation under § 18.2-51.6. The number of points assigned for each of these factors would remain the same (Figure 67). The proposed modifications to Section B would ensure that the guidelines recommendations for strangulation resulting in bodily injury or wounding will be closely aligned to the actual jail incarceration rate for this offense. An offender who scores six or more points on Section A of the

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

Figure 67

Proposed Assault  
Section B Worksheet

**Assault ❖ Section B**

◆ Victim Injury \_\_\_\_\_

Threatened, emotional, or physical.....	2	
Life Threatening.....	4	

Score

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

<p>Primary offense: Strangulation (§ 18.2-51.6)</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">Maximum Penalty (years)</td> <td style="width: 40%; text-align: right;">Points</td> </tr> <tr> <td>Less than 5.....</td> <td style="text-align: right;">.5</td> </tr> <tr> <td>5 or more.....</td> <td style="text-align: right;">6</td> </tr> </table>	Maximum Penalty (years)	Points	Less than 5.....	.5	5 or more.....	6	<p>Primary offense: All other offenses</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">Maximum Penalty (years)</td> <td style="width: 40%; text-align: right;">Points</td> </tr> <tr> <td>Less than 5.....</td> <td style="text-align: right;">1</td> </tr> <tr> <td>5 or more.....</td> <td style="text-align: right;">2</td> </tr> </table>	Maximum Penalty (years)	Points	Less than 5.....	1	5 or more.....	2
Maximum Penalty (years)	Points												
Less than 5.....	.5												
5 or more.....	6												
Maximum Penalty (years)	Points												
Less than 5.....	1												
5 or more.....	2												

0

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

0

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

<p>Primary offense: Strangulation (§ 18.2-51.6)</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">Maximum Penalty (years)</td> <td style="width: 40%; text-align: right;">Points</td> </tr> <tr> <td>Less than 5.....</td> <td style="text-align: right;">0</td> </tr> <tr> <td>5 - 18.....</td> <td style="text-align: right;">3</td> </tr> <tr> <td>19 - 38.....</td> <td style="text-align: right;">4</td> </tr> <tr> <td>39 or more.....</td> <td style="text-align: right;">5</td> </tr> </table>	Maximum Penalty (years)	Points	Less than 5.....	0	5 - 18.....	3	19 - 38.....	4	39 or more.....	5	<p>Primary offense: All other offenses</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">Maximum Penalty (years)</td> <td style="width: 40%; text-align: right;">Points</td> </tr> <tr> <td>Less than 5.....</td> <td style="text-align: right;">0</td> </tr> <tr> <td>5 - 18.....</td> <td style="text-align: right;">1</td> </tr> <tr> <td>19 - 38.....</td> <td style="text-align: right;">2</td> </tr> <tr> <td>39 or more.....</td> <td style="text-align: right;">3</td> </tr> </table>	Maximum Penalty (years)	Points	Less than 5.....	0	5 - 18.....	1	19 - 38.....	2	39 or more.....	3
Maximum Penalty (years)	Points																				
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39 or more.....	5																				
Maximum Penalty (years)	Points																				
Less than 5.....	0																				
5 - 18.....	1																				
19 - 38.....	2																				
39 or more.....	3																				

0

◆ Prior Juvenile Record \_\_\_\_\_ If YES, add 3 \_\_\_\_\_

0

**SCORE THE FOLLOWING FACTORS ONLY IF PRIMARY OFFENSE AT CONVICTION IS  
ASSAULT & BATTERY AGAINST A FAMILY MEMBER - § 18.2-57.2(B)  
OR STRANGULATION (§ 18.2-51.6)**

◆ Prior Incarcerations/Commitments \_\_\_\_\_

Number: 1.....	1	
2.....	3	
3 or more.....	5	

0

◆ Prior Misdemeanor Convictions/Adjudications (Excludes Traffic) \_\_\_\_\_

Number of Counts: 1 - 2.....	0	
3 - 5.....	1	
6 - 8.....	2	
9 or more.....	3	

0

Total Score \_\_\_\_\_

See Assault Section B Recommendation Table to convert score to guidelines sentence. →

→

To most closely match the median prison sentence for offenders convicted of strangulation resulting in bodily injury, the Commission proposes assigning these offenders 7, 14, or 28 points, depending on the nature of their prior record (Figure 68). These cases would be scored on the remaining Section C factors as they currently appear on the worksheet.

When developing sentencing guidelines, the Commission’s goal is to match the historical prison incarceration rate as closely as possible. The proposed guidelines are designed to recommend the same proportion of offenders for a sentence greater than six months as have historically received such a sentence. As shown in Figure 69, the proposed guidelines are expected to recommend 43.1% of offenders convicted of this offense for a term of incarceration that exceeds six months. In actual practice, offenders were given such a sentence 42.1% of the time. In addition, rates for incarceration less than six months and probation/no incarceration were congruent (Figure 69). Thus, the recommended and historical rates of incarceration are relatively close.

**Figure 68**

**Proposed Assault  
Section C Worksheet**

Assault ❖ Section C		Prior Record Classification		
		<input type="checkbox"/> Category I	<input type="checkbox"/> Category II	<input type="checkbox"/> Other
<b>◆ Primary Offense</b>				
A. Assault and battery against a family member, third or subsequent conviction or Strangulation resulting in bodily injury (1 count)	28	14	7	
B. Assault and battery against a law enforcement officer, fire or medical services, etc. (1 count)	32	16	8	
C. Unlawful injury (1 count)	32	16	8	
D. Any attempted or conspired malicious injury (1 count)	(68)	(34)	(17)	
E. Any completed malicious injury				
1 count	102	68	34	
2 counts	120	80	40	
3 counts	204	136	68	
F. Aggravated malicious injury (1 count)	321	214	107	
G. Use of firearm in the commission of a felony - first offense (1 count)	32	32	32	
H. Use of firearm in the commission of a felony - subsequent offense (1 count)	56	56	56	
I. DWI with reckless disregard, Victim permanently impaired (1 count)	48	24	12	

In addition, the median sentence for offenders convicted of strangulation who received a sentence of six months or more was one year. For cases recommended for a term of incarceration greater than six months under the proposed guidelines, the median recommended sentence would be 1.1 years (Figure 70). As a result, the recommended and actual sentences are anticipated to be closely aligned.

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

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

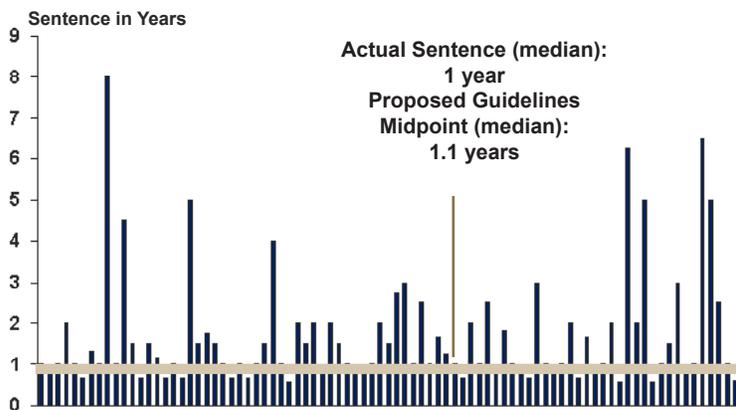
**Figure 69**

**Strangulation Resulting in Bodily Injury  
(§ 18.2-51.6)  
FY2013 – FY2015  
202 Cases**

Disposition	Recommended under Proposed Guidelines	Actual Practices Prior to Sentencing Guidelines
No Incarceration	24.8%	25.2%
Incarceration 1 Day to 3 Months	5.9%	7.4%
Incarceration 3 Months to 6 Months	26.2%	25.2%
Incarceration More than 6 Months	43.1%	42.1%

**Figure 70**

**Strangulation Resulting in Bodily Injury  
(§ 18.2-51.6)  
FY2013 – FY2013  
Offenders Sentenced to Incarceration of More than 6 Months  
85 Cases**



**RECOMMENDATION 4**

Modify the sentencing guidelines for aggravated sexual battery of a child age 13 or 14 (§ 18.2-67.3(A,4,a)) to increase the likelihood that an individual convicted of this offense will be recommended for incarceration of more than six months.

**Issue**

Aggravated sexual battery is a felony punishable by confinement in a state correctional facility for a term of one to twenty years, and by a fine of not more than \$100,000. Section 18.2-67.3 of the *Code of Virginia* defines several aggravated sexual battery offenses. Figure 71 presents sentencing guidelines compliance and departure rates for aggravated sexual battery offenses for fiscal year (FY) 2011 through FY2015.

**Figure 71**

**Compliance with Sentencing guidelines for Aggravated Sexual Battery Offenses (§ 18.2-67.3) FY2011 – FY2015**

<b>Offense</b>	<b>Compliance</b>	<b>Mitigation</b>	<b>Aggravation</b>	<b>Cases</b>
By Force, etc., Serious Injury (§ 18.2-67.3(A,4,b))	78.9%	5.3%	15.8%	38
By Force, etc., Threat of Weapon (§ 18.2-67.3(A,4,c))	75.0%	8.3%	16.7%	12
Victim < 13 (§ 18.2-67.3(A,1))	71.2%	14.4%	14.4%	618
Mental Incapacity/Helplessness (§ 18.2-67.3(A,2))	70.5%	11.5%	17.9%	78
Victim Age 13 or 14 (§ 18.2-67.3(A,4,a))	57.6%	11.9%	30.5%	59
Parent, etc., w/ Child Age 13-17 (§ 18.2-67.3(A,3))	Currently Not Covered			
<b>Overall</b>	<b>70.6%</b>	<b>13.4%</b>	<b>16.0%</b>	<b>805</b>

In general, compliance rates for these offenses ranged from 70.5% to 78.9%. However, compliance for aggravated sexual battery of a child age 13 or 14 was relatively low (57.6%) with a high aggravation rate (30.5%). As shown in Figure 72, the proportion of these cases recommended for incarceration of more than six months under the current guidelines (59.3%) is substantially lower than the actual incarceration rate (74.6%). Based on this information, the Commission conducted a thorough analysis and has developed a proposal to increase compliance and reduce the aggravation rate in these cases.

**Figure 72**

**Actual versus Recommended Incarceration Rates for Aggravated Sexual Battery with Child 13 or 14 (§ 18.2-67.3 (A,4,a)) FY2011 – FY2015**

	<b>Actual Practice</b>	<b>Recommended under Current Sentencing Guidelines</b>
Probation or Incarceration up to 6 Months	25.4%	40.7%
Incarceration More than 6 Months (Range includes prison)	74.6%	59.3%

**Discussion**

According to FY2011 through FY2015 Sentencing Guidelines data available at the time of analysis, there were 59 cases in which aggravated sexual battery of a child age 13 or 14 was the primary, or most serious, offense at sentencing. To address the disproportionate rate of aggravating sentences observed in these cases, the Commission recommends amending the Other Sexual Assault guidelines to increase the likelihood that an offender convicted of aggravated sexual battery of a child age 13 or 14

will be recommended for incarceration of more than six months. On the current Section A (Part II) worksheet, offenders whose primary offense is aggravated sexual battery score three points for one count on the Primary Offense factor, six points for two counts, and nine points for three or more counts. The Commission recommends increasing these scores to six, eight, and ten points, respectively, when the primary offense is aggravated sexual battery of a child age 13 or 14 (Figure 73).

No changes to the Other Sexual Assault Section B or C worksheets are proposed. Aggravated sexual battery of a child age 13 or 14 will continue to be scored the same as other aggravated sexual battery offenses on Sections B and C.

**Figure 73**

**Proposed Other Sexual Assault  
Section A Worksheet**

<b>Other Sexual Assault ❖ Section A (Part II)</b>	
<b>◆ Primary Offense</b>	
A. Other than listed below; all attempted or conspired offenses (1 count).....	1
B. Non-forcible sodomy, parent/grandparent to child or grandchild age 13 to 17	
1 count .....	7
C. Non-forcible sodomy, no parental relationship	
1 count .....	3
2 counts .....	4
3 counts .....	13
D. Indecent liberties with child	
1 - 2 counts .....	2
3 counts .....	3
E. Non-forcible carnal knowledge of child age 13, 14 (statutory rape)	
1 count .....	2
2 counts .....	8
3 counts .....	12
F. Aggravated sexual battery	
1 count .....	3
2 counts .....	6
3 counts .....	9
G. Aggravated sexual battery, victim age 13 or 14	
1 count .....	6
2 counts .....	8
3 counts .....	10
H. Incest with own child/grandchild (1 count).....	3
I. Incest with own child/grandchild age 13 to 17 (1 count).....	2

With this proposed modification, the proportion of cases recommended for incarceration of more than six months is projected to increase to 67.8%, which is more in line with the actual incarceration rate (Figure 74).

Based on the Commission’s analysis, overall compliance in these cases is expected to increase from 57.6% to 61.0%, with a better balance between mitigation and aggravation (Figure 75). In addition, dispositional compliance, which refers to the rate at which judges agree with the type of sanction recommended, is expected to increase from 66.1% to 71.2%. The proposed modification to the Other Sexual Assault guidelines is expected to bring recommendations more into line with current judicial sentencing practices for this offense.

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

**Figure 74**

**Actual versus Proposed Dispositions for Aggravated Sexual Battery with Child 13 or 14 (§ 18.2-67.3 (A,4,a)) FY2011 – FY2015**

	Actual Practice	Recommended under Proposed Sentencing Guidelines
Probation or Incarceration up to 6 Months	25.4%	32.2%
Incarceration More than 6 Months (Range includes prison)	74.6%	67.8%

**Figure 75**

**Compliance with Sentencing guidelines for Aggravated Sexual Battery with Child 13 or 14 (§ 18.2-67.3 (A,4,a)) FY2011 – FY2015**

	Dispositional Compliance			Overall Compliance	
	Current	Proposed		Current	Proposed
Compliance	66.1%	71.2%	Compliance	57.6%	61.0%
Mitigation	3.4%	6.8%	Mitigation	11.9%	18.6%
Aggravation	30.5%	22.0%	Aggravation	30.5%	20.3%

RECOMMENDATION 5

Amend the Other Sexual Assault sentencing guidelines to add aggravated sexual battery of a child age 13 to 17 by a parent, step-parent, grandparent, or step-grandparent (§ 18.2-67.3(A,3)).

Issue

Aggravated sexual battery is a felony punishable by confinement in a state correctional facility for a term of one to twenty years, and by a fine of not more than \$100,000. Section 18.2-67.3 of the *Code of Virginia* defines several aggravated sexual battery offenses. Five of the six offenses listed in § 18.2-67.3 are currently covered by the sentencing guidelines. Aggravated

sexual battery of a child age 13 to 17 by a parent, step-parent, grandparent, or step-grandparent, which was added to § 18.2-67.3(A,3) in 2005, is not currently covered by the sentencing guidelines when this offense is the primary, or most serious, offense in a sentencing event. As a result, the Commission conducted a thorough analysis and has developed a proposal to integrate this offense into the Other Sexual Assault guidelines.

Discussion

Circuit Court Case Management System (CMS) data for FY2008 through FY2015 indicate that there were 90 cases in which aggravated sexual battery of a child age 13 to 17 by a parent, etc., was the primary offense at sentencing. Commission staff obtained criminal history reports, or “rap sheets,” on these offenders from the Virginia State Police so that the offender’s prior record could be computed and used in scoring the various factors on the guidelines worksheets. Six of the 90 offenders were excluded from the analysis because a rap sheet could not be located.

Figure 76

**Aggravated Sexual Battery of Child 13-17 by Parent/Grandparent (§ 18.2-67.3 (A.3))**  
**FY2008 – FY2015**  
**84 Cases**

	Percent	Median Sentence
No Incarceration	13.1%	---
Incarceration up to 6 Months	15.5%	6 Months
Incarceration More than 6 Months	71.4%	4.3 Years

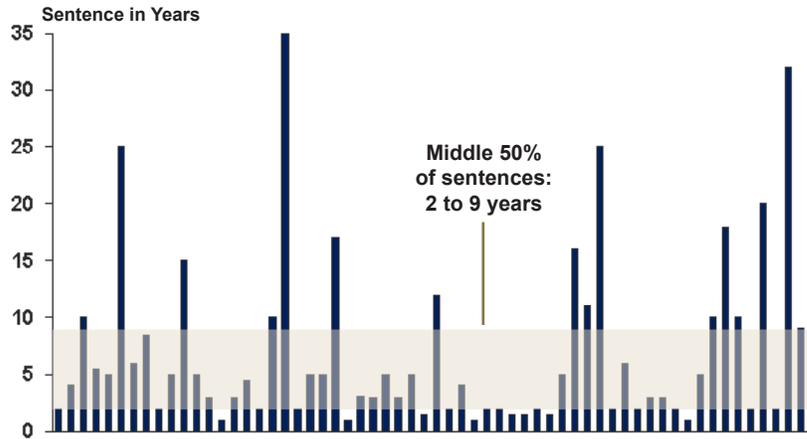
Figure 76 presents the sentencing outcomes for the 84 cases available for analysis. While 13.1% of these offenders did not receive an active term of incarceration to serve after sentencing, 15.5% received a jail term of six months or less. For offenders given a short jail sentence, the median sentence length was six months. The remaining 71.4% were sentenced to incarceration greater than six months, with a median sentence length of 4.3 years.

For offenders receiving more than six months of incarceration, the sentences were further analyzed. Sentences in these cases ranged from 12 months to 35 years. Virginia’s sentencing guidelines are grounded in historical practices among judges and ranges are developed from the middle 50% of actual sentences, thus removing the extreme high and low sentences. As shown in Figure 77, the middle 50% of sentences for this offense encompasses two to nine years.

To develop guidelines for this offense, the Commission examined historical sentencing practices for this crime for the period from FY2008 through FY2015. The proposed guidelines are based on analysis of actual sentencing patterns, including the historical rates of incarceration in prison and jail. The objective of the guidelines is to provide the judge with a benchmark of the typical, or average, case given the primary offense and other factors scored. Current guidelines worksheets serve as the starting point for scoring historical cases. Using historical sentencing data, various scoring scenarios were tested and compared to ensure that the proposed guidelines are closely aligned with judicial sentencing practices in these cases.

**Figure 77**

**Aggravated Sexual Battery of Child 13-17 by Parent/Grandparent  
 (§ 18.2-67.3(A,3))  
 FY2008 – FY2015  
 Offenders Sentenced to Incarceration of More than 6 Months  
 60 Cases**



**Figure 78**

**Proposed Other Sexual Assault  
Section A Worksheet**

**Other Sexual Assault ❖ Section A (Part I)**

**Offenses Not Applicable for Risk Assessment:**  
 Risk Assessment is **NOT APPLICABLE** if the primary offense is .....  
 bestiality, bigamy, non-forcible sodomy, prostitution, child pornography, child  
 solicitation or aggravated sexual battery of child 13-17 by parent/grandparent.  
*(Go to Section A (Part II))*

**Figure 79**

**Proposed Other Sexual Assault  
Section A Worksheet**

<b>Other Sexual Assault ❖ Section A (Part II)</b>	
<b>◆ Primary Offense</b>	
A. Other than listed below; all attempted or conspired offenses (1 count).....	1
B. Non-forcible sodomy, parent/grandparent to child or grandchild age 13 to 17	
1 count.....	7
C. Non-forcible sodomy, no parental relationship	
1 count.....	3
2 counts.....	4
3 counts.....	13
D. Indecent liberties with child	
1 - 2 counts.....	2
3 counts.....	3
E. Non-forcible carnal knowledge of child age 13, 14 (statutory rape)	
1 count.....	2
2 counts.....	8
3 counts.....	12
F. Aggravated sexual battery	
1 count.....	3
2 counts.....	6
3 counts.....	9
G. Incest with own child/grandchild (1 count).....	3
H. Incest with own child/grandchild age 13 to 17 (1 count).....	2
I. Aggravated sexual battery, parent/grandparent to child/grandchild age 13 to 17	
1 count.....	6
2 counts.....	8
3 counts.....	10

After a thorough examination of the data, the Commission recommends adding aggravated sexual battery of a child age 13 to 17 by a parent, etc., to the Other Sexual Assault guidelines as described below.

Section A (Part I) of the Other Sexual Assault guidelines is a risk assessment instrument that measures an offender’s risk of recidivating; offenders with an elevated risk are eligible for an enhanced high end sentencing recommendation. Offenders who violated § 18.2-67.3(A,3) were not included in the construction of this instrument, since this offense was not a felony at the time the risk assessment instrument was developed. As a result, future offenders sentenced under this statute would not be eligible for sex offender risk assessment (Figure 78).

Section A (Part II) of the sentencing guidelines worksheets determines if an offender will be recommended for probation or jail up to six months (Section B) or incarceration of more than six months (Section C). On the Section A (Part II) worksheet, the Commission recommends assigning six points for one count, eight points for two counts, and ten points for three counts when the primary offense is aggravated sexual battery of a child age 13 to 17 by a parent, etc. (Figure 79). Any remaining counts would be scored under the Primary Offense Remaining Counts factor. Other Section A factors would be scored as they currently appear on the worksheet.

This modification would ensure that the guidelines recommendations for aggravated sexual battery of a child age 13 to 17 by a parent, etc., will be closely aligned to the actual prison incarceration rate for this offense.

An offender who scores a total of 8 points or less on Section A (Part II) of the Other Sexual Assault guidelines is then scored on Section B, which will determine if he or she will be recommended for probation/no incarceration or a jail term of up to six months. After analysis of potential Section B cases, the Commission determined that aggravated sexual battery of a child age 13 to 17 by a parent, etc., may be added to the Other Sexual Assault guidelines without any modifications to the factors on the current Section B worksheet. Presently, all Section B offenders whose primary offense is aggravated sexual battery score two points for one count of the primary offense, four points for two counts, and six points for three counts. Any remaining counts are scored under the Primary Offense Remaining Counts factor. All other factors on Section B would be scored as they appear on the worksheet.

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

To most closely match the median prison sentence for offenders convicted of aggravated sexual battery of a child age 13 to 17 by a parent, etc., the Commission proposes the following Section C primary offense scores (Figure 80). These offenders would score 32, 56, or 84 points for one count, depending on their prior record. Offenders with two counts would score 34, 60, or 90 points and offenders with three or more counts

would score 68, 120, or 180 points, depending on the nature of their prior record. No additional modifications to the Section C worksheet are necessary to ensure that the sentence recommended by the guidelines is closely aligned with historical sentencing practices for this offense.

**Figure 80**

**Proposed Other Sexual Assault  
Section C Worksheet**

Other Sexual Assault ❖ Section C		Prior Record Classification		
		<input type="checkbox"/> Category I	<input type="checkbox"/> Category II	<input type="checkbox"/> Other
<b>◆ Primary Offense</b>				
A.	All attempted or conspired sexual assault (1 count).....	(24)	(12)	(6)
B.	Completed sexual assault other than listed below (1 count) .....	36	18	9
C.	Non-forcible sodomy, no parental relationship			
	1 count .....	24	12	6
	2 counts .....	40	20	10
	3 counts .....	104	52	26
D.	Non-forcible sodomy, parent/grandparent to child/grandchild age 13 - 17			
	1 count .....	36	18	9
E.	Indecent liberties with child			
	1 count .....	24	12	6
	2 counts .....	40	20	10
	3 counts .....	104	52	26
F.	Non-forcible carnal knowledge of child age 13 - 14 (statutory rape)			
	1 count .....	36	18	9
G.	Incest with own child/grandchild (1 count) .....	104	52	26
H.	Incest with own child/grandchild age 13 - 17 (1 count).....	104	52	26
I.	Aggravated sexual battery			
	1 count .....	90	60	34
	2 counts .....	132	88	50
	3 counts .....	288	192	108
J.	Aggravated sexual battery, parent/grandparent to child/grandchild age 13 to 17			
	1 count .....	84	56	32
	2 counts .....	90	60	34
	3 counts .....	180	120	68

As shown in Figure 81, the proposed guidelines for offenders convicted of aggravated sexual battery of a child age 13 to 17 by a parent, step-parent, grandparent, or step-grandparent would recommend approximately three-fourths of these offenders for a term of imprisonment in excess of six months, compared to the actual incarceration rate of 71.4%.

For offenders convicted of this offense who received a term of incarceration greater than six months, the median sentence was 4.3 years. Under the proposed guidelines, for cases recommended for a term of incarceration greater than six months, the median recommended sentence would be 4.2 years. As a result, the recommended and actual sentences are expected to be closely aligned (Figure 82).

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

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

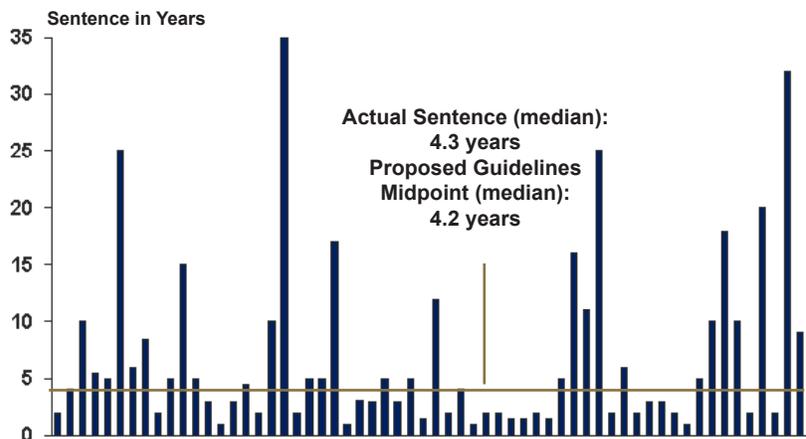
**Figure 81**

**Aggravated Sexual Battery of Child 13-17 by Parent/Grandparent  
 (§ 18.2-67.3 (A,3))  
 FY2008 – FY2015  
 84 Cases**

Sentencing Guidelines	Recommendations under Sentencing Guidelines		Actual Practices Prior to Sentencing Guidelines	
	Recommendation	Percent	NO PRISON Percent	PRISON Percent
Up to 8	No Prison	23.8%	50.0%	50.0%
9 or More	Prison	76.2%	21.9%	78.1%
		100.0%	28.6%	<b>OVERALL 71.4%</b>

**Figure 82**

**Aggravated Sexual Battery of Child 13-17 by Parent/Grandparent  
 (§ 18.2-67.3(A,3))  
 FY2008 – FY2015  
 Offenders Sentenced to Incarceration of More than 6 Months  
 60 Cases**



### RECOMMENDATION 6

Modify the sentencing guidelines for indecent liberties with a child by a custodian (§ 18.2-370.1(A)) to more closely reflect judicial sentencing practices for this offense.

#### Issue

Pursuant to § 18.2-370.1(A), indecent liberties with a child by a custodian is a Class 6 felony, which is punishable by one to five years in a state correctional facility. According to fiscal year (FY) 2011 through FY2015 Sentencing Guidelines data, the rate of compliance with the sentencing guidelines for indecent liberties by a custodian was 56.3%. When judges depart from the recommendation, they most often give the offender a sentence above the guidelines recommendation. This suggests that the guidelines could be refined to more closely reflect judicial thinking in these cases. As a result, the Commission conducted a thorough analysis and has developed a proposal to increase compliance and reduce the aggravation rate in these cases.

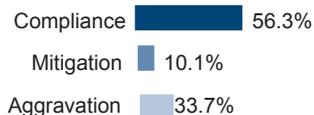
#### Discussion

According to FY2011 through FY2015 Sentencing Guidelines data available at the time of analysis, there were 208 cases in which indecent liberties with a child by a custodian was the primary, or most serious, offense at sentencing. As shown in Figure 83, the compliance rate for this offense is relatively low (56.3%). While judges hand down sentences that exceed the guidelines recommendation in roughly one-third of the cases, they sentence below the sentencing guidelines in only 10% of the cases.

Sentencing Guidelines data also indicate that two-thirds (66.3%) of offenders convicted of indecent liberties by a custodian were sentenced to a term of incarceration greater than six months; however, the current guidelines for this offense recommend just over half (50.5%) of the offenders for that type of disposition (Figure 84). Thus, the current sentencing guidelines could be more closely aligned with the actual rate of incarceration for this offense.

**Figure 83**

**Compliance with Sentencing guidelines for Indecent Liberties by Custodian (§ 18.2-370.1(A)) FY2011 – FY2015**  
208 Cases



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

**Figure 84**

**Actual versus Proposed Dispositions for Indecent Liberties by Custodian (§ 18.2-370.1(A)) FY2011 – FY2015**

	Actual Practice	Recommended under Current Sentencing Guidelines
Probation or Incarceration up to 6 Months	33.7%	49.5%
Incarceration More than 6 Months (Range includes prison)	66.3%	50.5%

To improve compliance and address the disproportionate rate of aggravating sentences, the Commission recommends amending the guidelines for indecent liberties by a custodian, which is covered by the Other Sexual Assault worksheets. To more closely reflect the historical rate of incarceration for this offense, the Commission first recommends modifying Section A (Part II) of the Other Sexual Assault worksheet. Section A (Part II) of the sentencing guidelines worksheets determines if an offender will be recommended for probation or jail up to six months (Section B) or incarceration of more than six months (Section C). Currently, on Section A, all types of indecent liberties receive the same number of primary offense points. As shown in Figure 85, the Commission recommends increasing the points on the Section A Primary Offense factor for offenders convicted of indecent liberties by a custodian. In cases involving one count, the Primary Offense score would increase from two to four points; for two counts, it would increase from two to six points; and for three counts, it would increase from three to seven points. This modification would increase the percentage of these offenders who will be recommended for incarceration greater than six months. Any remaining counts would be scored under the Primary Offense Remaining Counts factor. Other Section A (Part II) factors would be scored as they currently appear on the worksheet.

With the recommended changes on Section A (Part II), the sentencing guidelines for this offense are expected to be more closely aligned with the actual incarceration rate, as shown in Figure 86.

**Figure 85**

**Proposed Other Sexual Assault  
Section A Worksheet**

<b>Other Sexual Assault ❖ Section A (Part II)</b>	
<b>◆ Primary Offense</b>	
A. Other than listed below; all attempted or conspired offenses (1 count) .....	1
B. Non-forcible sodomy, parent/grandparent to child or grandchild age 13 to 17 1 count .....	7
C. Non-forcible sodomy, no parental relationship 1 count .....	3
2 counts .....	4
3 counts .....	13
D. Indecent liberties with child 1 - 2 counts .....	2
3 counts .....	3
E. Indecent liberties by custodian 1 count .....	4
2 counts .....	6
3 counts .....	7
F. Non-forcible carnal knowledge of child age 13, 14 (statutory rape) 1 count .....	2
2 counts .....	8
3 counts .....	12
G. Aggravated sexual battery 1 count .....	3
2 counts .....	6
3 counts .....	9
H. Incest with own child/grandchild (1 count) .....	3
I. Incest with own child/grandchild age 13 to 17 (1 count) .....	2

**Figure 86**

**Actual versus Recommended Dispositions for  
Indecent Liberties by Custodian (§ 18.2-370.1(A))  
FY2011 – FY2015**

	<b>Actual Practice</b>	<b>Recommended under Proposed Sentencing Guidelines</b>
Probation or Incarceration up to 6 Months	33.7%	35.6%
Incarceration More than 6 Months (Range includes prison)	66.3%	64.4%

**Figure 87**

**Proposed New Factor on Other Sexual Assault Section B Worksheet**

**SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE AT CONVICTION IS INDECENT LIBERTIES BY CUSTODIAN (§ 18.2-370.1(A))**

- ◆ Victim Injury
- Threatened or emotional ..... 3
- Physical or life threatening ..... 4

An offender who scores a total of eight points or less on Section A (Part II) of the Other Sexual Assault guidelines is then scored on Section B, which will determine if he or she will be recommended for probation/no incarceration or a jail term of up to six months. In order to more closely match the historical incarceration rate for offenders scored on Section B, the Commission recommends adding a Victim Injury factor to this worksheet, as shown in Figure 87. This new factor, which would only be scored if the primary offense is indecent liberties by a custodian, would assign three points in cases involving threatened or emotional injury and four points in cases involving physical or life threatening injury.

As shown in Figure 88, the Commission expects that these changes on Section B will more closely align the guidelines with the actual rates at which judges are sentencing these offenders to incarceration up to six months.

Commission staff also evaluated the performance of Section C, which determines the length of the prison sentence recommendation. The Commission does not recommend any changes to Section C of the Other Sexual Assault worksheets for this offense at this time.

**Figure 88**

**Actual versus Proposed Dispositions for Indecent Liberties by Custodian (§ 18.2-370.1(A)) FY2011 – FY2015**

<b>Section B</b>	<b>Actual Practice</b>	<b>Recommended Under <u>Current</u> Sentencing Guidelines</b>	<b>Recommended Under <u>Proposed</u> Sentencing Guidelines</b>
Probation	66.7%	82.0%	58.0%
Incarceration 1 Day to 6 Months	33.3%	18.0%	42.0%

By amending the Other Sexual Assault guidelines as proposed, the overall compliance rate with the guidelines for indecent liberties by a custodian is expected to increase slightly to 56.7%. In addition, the proposed changes are expected to yield improved balance between aggravation and mitigation rates for this offense, as shown in Figure 89.

Dispositional compliance measures the degree to which judges agree with the type of disposition recommended by the sentencing guidelines (e.g., no incarceration, incarceration up to six months, or incarceration greater than six months). The proposed recommendations are also expected to increase dispositional compliance in cases involving indecent liberties by a custodian (Figure 90). As a result, the proposed modifications to the Other Sexual Assault guidelines are expected to bring recommendations more into line with current judicial sentencing practices for this offense.

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

**Figure 89**

**Compliance with Sentencing Guidelines for Indecent Liberties by Custodian (§ 18.2-370.1(A))  
FY2011 – FY2015**

	<b>Current</b>	<b>Projected</b>
Compliance	56.3%	56.7%
Mitigation	10.1%	17.8%
Aggravation	33.7%	25.5%

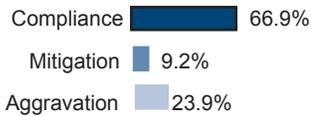
**Figure 90**

**Dispositional Compliance with Sentencing Guidelines for Indecent Liberties by Custodian (§ 18.2-370.1(A))  
FY2011 – FY2015**

	<b>Current</b>	<b>Projected</b>
Compliance	60.1%	66.8%
Mitigation	7.2%	15.4%
Aggravation	32.7%	17.8%

**Figure 91**

**Compliance with Sentencing Guidelines for Indecent Liberties with Child under Age 15 (§ 18.2-370(A))  
FY2011 – FY2015  
251 Cases**



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

**RECOMMENDATION 7**

Modify the sentencing guidelines for indecent liberties with child under 15 (§ 18.2-370(A)) to more closely reflect judicial sentencing practices for this offense

**Issue**

Pursuant to § 18.2-370, indecent liberties with a child under age 15 is a Class 5 felony, which is punishable by one to 10 years in a state correctional facility. According to fiscal year (FY) 2011 through FY2015 Sentencing Guidelines data, the rate of compliance with the sentencing guidelines for indecent liberties with a child under 15 was 66.9% (Figure 91). When judges depart from the recommendation, they typically give the offender a sentence above the guidelines recommendation. As a result, the Commission conducted a thorough analysis and has developed a proposal to increase compliance and reduce the aggravation rate in these cases.

**Discussion**

According to FY2011 through FY2015 Sentencing Guidelines data available at the time of analysis, indecent liberties with a child under age 15 was the primary, or most serious, offense in 251 sentencing events. While judges imposed a sentence within the recommended range in roughly two-thirds of the cases, they handed down sentences above the recommendation in nearly one-quarter of the cases. As shown in Figure 91, judges imposed a sentence below the guidelines recommendation in less than 10% of the cases.

Sentencing Guidelines data also indicate that the majority (72.5%) of offenders convicted of indecent liberties with a child under 15 were sentenced to a term of incarceration greater than six months. However, between FY2011 and FY2015, the current guidelines for this offense only recommended 67.3% of the offenders for this type of disposition (Figure 92). Thus, the guidelines are recommending this type of disposition less often than these offenders are actually receiving it.

**Figure 92**

**Actual versus Recommended Dispositions for Indecent Liberties with Child under Age 15 (§ 18.2-370(A))  
FY2011 – FY2015**

	<b>Actual Practice</b>	<b>Recommended under Current Sentencing Guidelines</b>
Probation or Incarceration up to 6 Months	27.5%	32.7%
Incarceration More than 6 Months (Range includes prison)	72.5%	67.3%

To improve compliance and address the disproportionate rate of aggravating sentences, the Commission recommends amending the guidelines for indecent liberties with a child under 15, which are covered by the Other Sexual Assault worksheets. Section A (Part II) of the sentencing guidelines worksheets determines if an offender will be recommended for probation or jail up to six months (Section B) or incarceration of more than six months (Section C). To more closely reflect the historical rate of incarceration for this type of offense, the Commission recommends modifying Section A (Part II) of the Other Sexual Assault worksheet as shown in Figure 93. Specifically, when the primary offense is indecent liberties with a child under 15, the Commission recommends increasing the points on the Section A Primary

Offense factor to three points for one count, eight points for two counts, and 10 points for three counts. Any re-remaining counts would be scored under the Primary Offense Remaining Counts factor. Other Section A (Part II) factors would be scored as they currently appear on the worksheet.

Under the proposed modifications to Section A (Part II), the sentencing guidelines for this offense are expected to be more in sync with the actual incarceration rate, as shown in Figure 94.

**Figure 94**

**Actual versus Proposed Dispositions for Indecent Liberties with Child under Age 15 (§ 18.2-370(A)) FY2011 – FY2015**

	Actual Practice	Recommended under Proposed Sentencing Guidelines
Probation or Incarceration up to 6 Months	27.5%	27.9%
Incarceration More than 6 Months (Range includes prison)	72.5%	72.1%

**Figure 93**

**Proposed Other Sexual Assault Section A (Part II) Worksheet**

<b>Other Sexual Assault ❖ Section A (Part II)</b>	
<b>◆ Primary Offense</b>	
A. Other than listed below; all attempted or conspired offenses (1 count) .....	1
B. Non-forcible sodomy, parent/grandparent to child or grandchild age 13 to 17 1 count .....	7
C. Non-forcible sodomy, no parental relationship 1 count .....	3
2 counts.....	4
3 counts.....	13
D. Indecent liberties with child 1 - 2 counts.....	2
3 counts.....	3
E. Indecent liberties with a child under age 15 1 count .....	3
2 counts.....	8
3 counts.....	10
F. Non-forcible carnal knowledge of child age 13, 14 (statutory rape) 1 count .....	2
2 counts.....	8
3 counts.....	12
G. Aggravated sexual battery 1 count .....	3
2 counts.....	6
3 counts.....	9
H. Incest with own child/grandchild (1 count).....	3
I. Incest with own child/grandchild age 13 to 17 (1 count).....	2

**Figure 95**

**Dispositional Compliance with Sentencing Guidelines for Indecent Liberties with Child under Age 15 (§ 18.2-370(A)) FY2011 – FY2015**

	<b>Current</b>	<b>Projected</b>
Compliance	76.9%	78.9%
Mitigation	7.6%	8.8%
Aggravation	15.5%	12.4%

Commission staff also evaluated the scores on Section B and Section C of the Other Sexual Assault worksheet. No changes to the Other Sexual Assault Section B or C worksheets are proposed.

Dispositional compliance indicates the degree to which judges agree with the type of disposition recommended by the sentencing guidelines (e.g., no incarceration, incarceration up to six months, or incarceration greater than six months). The proposed recommendations are also expected to increase dispositional compliance in cases involving indecent liberties with a child under 15 (Figure 95). As a result, the proposed modifications to the Other Sexual Assault guidelines are expected to bring recommendations more in line with current judicial sentencing practices for this offense.

By amending the Other Sexual Assault guidelines as recommended, the compliance rate with the guidelines for indecent liberties with a child under 15 is expected to increase slightly to 67.3% (Figure 96). In addition, the proposed changes are expected to slightly improve the balance between aggravation and mitigation rates for this offense.

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

**Figure 96**

**Compliance with Sentencing Guidelines for Indecent Liberties with Child under Age 15 (§ 18.2-370(A)) FY2011 – FY2015**

	<b>Current</b>	<b>Projected</b>
Compliance	66.9%	67.3%
Mitigation	9.2%	10.4%
Aggravation	23.9%	22.3%

## RECOMMENDATION 8

Modify the sentencing guidelines for possession of child pornography (§ 18.2-374.1:1) to bring the guidelines more in sync with sentencing practices for these offenses.

This recommendation follows a review completed pursuant to a directive from the 2014 General Assembly (see Figure 97).

### Issue

Offenses involving child pornography were added to the sentencing guidelines effective July 1, 2007. In its *2013 Annual Report*, the Commission recommended modifying the sentencing guidelines for production, reproduction, and possession of child pornography. These recommendations were made based on empirical analysis of historical sentencing patterns. The 2014 General Assembly accepted the revisions for production and reproduction of child pornography; however, it passed House Bill 504 and Senate Bill 433 to delay the proposed modifications for possession of child pornography for further study. Using the five most recent years of sentencing data currently available for these cases, the Commission has re-evaluated the guidelines for possession of child pornography as directed by the General Assembly.

## Figure 97

### 2014 General Assembly Directive

VIRGINIA ACTS OF ASSEMBLY — 2014 SESSION CHAPTER 100	
An Act to delay proposed modifications to the discretionary sentencing guidelines; possession of child pornography.	[H 504]
Approved March 3, 2014	
<p><b>Be it enacted by the General Assembly of Virginia:</b></p> <p><b>1. § 1.</b> <i>The proposed modifications to the discretionary sentencing guidelines for convictions related to the possession of child pornography in violation of subsections A and B of § 18.2-374.1:1 of the Code of Virginia adopted by the Virginia Criminal Sentencing Commission pursuant to subdivision 1 of § 17.1-803 of the Code of Virginia and contained in the Commission's 2013 Annual Report pursuant to subdivision 10 of § 17.1-803 shall not become effective until July 1, 2016. The Virginia Criminal Sentencing Commission shall review the discretionary sentencing guidelines recommendations for convictions related to the possession of child pornography in violation of subsections A and B of § 18.2-374.1:1 and complete its review by December 1, 2015. Any proposed modification to the discretionary sentencing guidelines for such convictions contained in the Commission's 2015 Annual Report shall supersede the proposed modifications contained in the Commission's 2013 Annual Report unless otherwise provided by law.</i></p>	

### Discussion

Section 18.2-374.1:1 of the *Code of Virginia* establishes penalties for offenses involving possession of child pornography. First offense possession is a Class 6 felony punishable by imprisonment from one to five years. A second or subsequent offense is a Class 5 felony punishable by imprisonment from one to ten years. Like production and reproduction offenses, possession of child pornography is defined as a violent offense in § 17.1-805 for the purpose of classifying an offender's prior record on the sentencing guidelines.

According to available Sentencing Guidelines data for FY2011 through FY2015, the rate of compliance with the guidelines for child pornography offenses is lower than the overall compliance rate of nearly 80% for all offenses. Annual compliance data for possession of child pornography cases is presented in Figure 98. Compliance rates ranged from 55.1% in FY2012 to 75.6% in FY2015; overall compliance for the entire five-year period was 66.7%. The overall mitigation rate for this period (21.8%) was roughly twice the overall aggravation rate (11.6%).

**Figure 98**

**Compliance with Sentencing Guidelines  
Possession of Child Pornography Offenses (§ 18.2-374.1:1),  
FY2011 - FY2015**

Fiscal Year	Compliance	Mitigation	Aggravation
2011	68.1%	21.7%	10.1%
2012	55.1%	26.1%	18.8%
2013	67.9%	23.1%	9.0%
2014	65.4%	20.5%	14.1%
2015	75.6%	17.9%	6.4%
Overall	66.7%	21.8%	11.6%

For the five-year period, compliance rates for first offense and second or subsequent offense of possessing of child pornography were approximately 67% each (Figure 99). In possession cases, judges are more likely to sentence below the guidelines range than above it; this is especially true in cases involving a second or subsequent offense (mitigation rate of 28.0% versus aggravation rate of 5.0%).

While compliance with Virginia’s sentencing guidelines is voluntary, circuit court judges are required by § 19.2-298.01 of the Code to submit a written reason whenever they sentence outside of the guidelines range. Between FY2011 and FY2015, the most frequently cited reasons for sentencing below the guidelines recommendation were: the defendant’s minimal prior record, the acceptance of a plea agreement, the cooperation of the defendant with law enforcement in the apprehension or prosecution of others, and mitigating circumstances surrounding the offense.

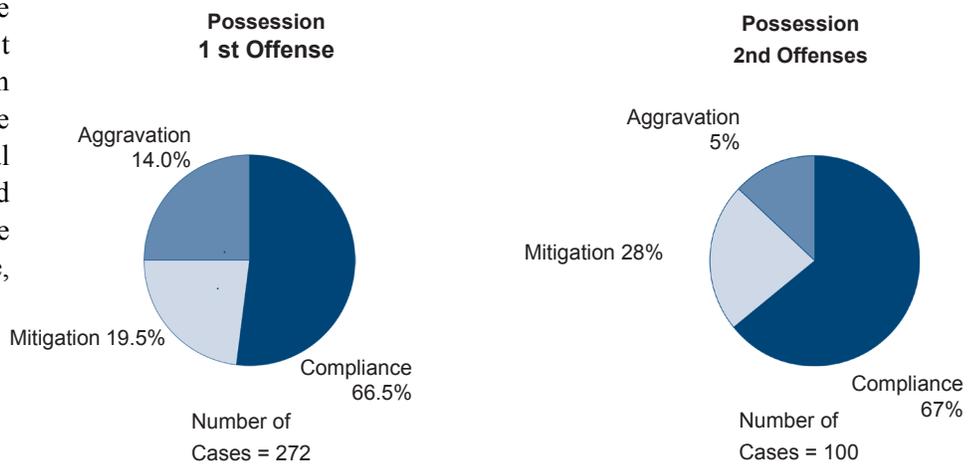
The lower than average compliance and high mitigation rates suggest that the guidelines for possession of child pornography could be refined to more closely reflect actual sentencing practices in these cases and provide judges with a more accurate benchmark of the typical, or average,

case outcome given the offense and the offender’s prior record. These findings are very similar to those presented in the Commission’s *2013 Annual Report*.

In conducting the review required by the General Assembly, the Commission tested its 2013 proposed guidelines revisions against the five most recent years of available data (FY2011-FY2015). The Commission’s 2013 proposal recommended modifications to the Other Sexual Assault/Obscenity Section A and C worksheets. Section A of the sentencing guidelines determines if an offender will be recommended for probation or jail up to six months (Section B) or incarceration of more than six months (Section C).

**Figure 99**

**Compliance with Sentencing Guidelines Possession of Child Pornography Offenses (§ 18.2-374.1:1), FY2011 - FY2015**



*NOTE: Attempted/conspired offenses and cases with scoring errors were excluded from the analysis.*

Actual versus recommended prison incarceration rates for offenders convicted of possession of child pornography are presented in Figure 100. Of these, 68.8% received a sentence of incarceration greater than six months, while the current

guidelines recommended a higher proportion (72.0%) of the offenders for incarceration of that length. The relatively low compliance rate and the differences between the recommended and actual dispositions for possession of child pornography cases suggest that the guidelines could be more closely aligned with the actual rate of incarceration for this offense. Differences in the actual versus recommended incarceration rates shown here were also revealed in the Commission’s 2013 analysis.

**Figure 100**

**Actual versus Recommended Prison Incarceration Rates for Possession/Reproduction of Child Pornography Offenses (§ 18.2-374.1:1) FY2011– FY2015**

	Actual Practice	Recommended under Current Sentencing Guidelines
Probation or Incarceration up to 6 Months	31.2%	28.0%
Incarceration More than 6 Months (Range includes prison)	68.8%	72.0%
	100%	100%

To more closely reflect the actual rate of incarceration for this type of offense, the Commission, in its 2013 proposal, had recommended that Primary Offense points for one count of first-time possession of child pornography be reduced from six to five points (Figure 101). Section A Primary Offense points for a second or subsequent offense would remain at nine.

**Figure 101**

**Proposed Other Sexual Assault/Obscenity Section A Worksheet**

Other Sexual Assault/Obscenity <del>Section A</del>																					
◆ <b>Primary Offense</b>																					
A. All attempted or conspired offenses (1 count).....	1																				
B. Production, publication, sale or financing child pornography (1 count).....	6																				
C. Possess child porn (1st Offense) (1 count).....	5																				
D. Possess child porn (2nd or subsequent) (1 count).....	9																				
E. Reproduce, transmit, sell, etc., child porn (1 count).....	5																				
F. Procure minor for obscene material by communications system (1 count).....	6																				
G. Procure minor for prostitution, sodomy, pornography by communications system (1 count).....	6																				
H. Propose sex act by communications system, child less than age 15 (1 count).....	8																				
I. Propose sex act by communications system, child less than age 15, offender 7+ years older (1 count).....	9																				
J. Propose sex act by communications system, child age 15 or more, offender 7+ years older (1 count).....	6																				
K. Propose sex act by communications system, child age 15 or more, offender 7+ yrs old (2nd/subseq.) (1 count).....	9																				
◆ <b>Primary Offense Remaining Counts</b> <u>Total</u> the maximum penalties for counts of the primary not scored above																					
<table border="1"> <thead> <tr> <th colspan="2">Primary offense B, C or D: Production or Possession of Child Porn</th> </tr> <tr> <th>Years</th> <th>Points</th> </tr> </thead> <tbody> <tr> <td>5 - 26.....</td> <td>2</td> </tr> <tr> <td>27 - 52.....</td> <td>3</td> </tr> <tr> <td>53 or more.....</td> <td>4</td> </tr> </tbody> </table>	Primary offense B, C or D: Production or Possession of Child Porn		Years	Points	5 - 26.....	2	27 - 52.....	3	53 or more.....	4	<table border="1"> <thead> <tr> <th colspan="2">Primary offense: All other offenses</th> </tr> <tr> <th>Years</th> <th>Points</th> </tr> </thead> <tbody> <tr> <td>5 - 26.....</td> <td>1</td> </tr> <tr> <td>27 - 52.....</td> <td>2</td> </tr> <tr> <td>53 or more.....</td> <td>3</td> </tr> </tbody> </table>	Primary offense: All other offenses		Years	Points	5 - 26.....	1	27 - 52.....	2	53 or more.....	3
Primary offense B, C or D: Production or Possession of Child Porn																					
Years	Points																				
5 - 26.....	2																				
27 - 52.....	3																				
53 or more.....	4																				
Primary offense: All other offenses																					
Years	Points																				
5 - 26.....	1																				
27 - 52.....	2																				
53 or more.....	3																				

The Commission also recommended expanding the Primary Offense Remaining Counts factor such that offenders convicted of possession of child pornography would be scored the same as offenders convicted of production of child pornography. Scoring possession offenders in this way, those who have multiple counts would receive one point more than they currently score (Figure 101). Analysis revealed that roughly 70% were convicted of more than one count of possession and would be assigned this additional point.

An offender who scores eight points or less on Section A of the Other Sexual Assault/Obscenity guidelines is then scored on the Section B worksheet, which determines whether the recommendation will be for probation or a jail term of up to six months. No modifications to the Section B worksheet were recommended under the Commission's 2013 proposal.

When these Section A revisions were tested on the FY2011-FY2015 data, the revised guidelines recommended 71.2% of the offenders for incarceration of more than six months. If Section A were revised as proposed, the guidelines would be more closely aligned with the actual incarceration rate, as shown in Figure 102.

**Figure 102**

**Actual versus Recommended Prison Incarceration Rates for Possession/Reproduction of Child Pornography Offenses (§ 18.2-374.1:1) FY2011– FY2015**

	<b>Actual Practice</b>	<b>Recommended under <u>2013 Proposed</u> Sentencing Guidelines</b>
Probation or Incarceration up to 6 Months	31.2%	28.8%
Incarceration More than 6 Months (Range includes prison)	68.8%	71.2%
	100%	100%

An offender who scores nine points or more on Section A of the Other Sexual Assault/Obscenity guidelines is then scored on Section C, which determines the length of the prison sentence recommendation. The Commission’s 2013 proposal would modify Section C of the Other Sexual Assault/Obscenity worksheet as shown in Figure 103. Primary Offense points on Section C are assigned based on the classification of an offender’s prior record. An offender is scored under the Other category if he does not have a prior conviction for a violent felony defined in § 17.1-805(C). An offender is scored under Category II if he has a prior conviction for a violent felony that has a statutory maximum penalty of less than 40 years. Offenders are classified as Category I if they have a prior conviction for a violent felony with a statutory maximum of 40 years or more.

Based on a detailed analysis of sentencing practices, the Commission, in its 2013 report, proposed a reduction in the Section C Primary Offense scores for offenders convicted of possession of child pornography (see Primary Offense Groups E and F). These offenders would score 12, 24, or 48 points on the Primary Offense factor for a first-time offense, depending on their prior record classification. If the conviction is for a second or subsequent offense, the offenders would score 19, 38, or 76 points, as determined by their prior record classification. No other changes to Section C were recommended as part of the Commission’s 2013 proposal.

The 2013 Section C revisions were applied to the FY2011-FY2015 cases recommended to Section C and the results are presented in Figure 104. The mean actual sentence for these cases is 2.1 years, compared with a mean sentence of 3.1 years recommended under the current Other Sexual Assault/Obscenity guidelines. Adjusting Section C as proposed, the mean recommended sentence would be 2.5 years, closer to the mean actual sentence. Thus, for cases scored on Section C, the 2013 proposal better reflects actual sentencing practices than the current guidelines. These results are very similar to those revealed in the Commission’s 2013 analysis.

Figure 103

Proposed Other Sexual Assault/Obscenity  
Section A Worksheet

Other Sexual Assault/Obscenity ❖		Section C		
		— Prior Record Classification —		
		<input type="checkbox"/> Category I	<input type="checkbox"/> Category II	<input type="checkbox"/> Other
<b>◆ Primary Offense</b>				
<b>A.</b>	All attempted or conspired offenses of possess, reproduce, transmit etc. child porn 1 count .....	(24)	(12)	(6)
<b>B.</b>	All attempted or conspired offenses of electronic solicitation of minor 1 count .....	(24)	(12)	(6)
<b>C.</b>	Entice, etc., minor to perform in porn; take part in child porn 1 count .....	68	34	17
<b>D.</b>	Produce child porn; finance child porn Attempted, conspired or completed: 1 count .....	100	50	25
	2 counts .....	216	108	54
<b>E.</b>	Possess child porn (1st Offense) 1 count .....	68 <b>48</b>	34 <b>24</b>	17 <b>12</b>
<b>F.</b>	Possess child porn (2nd or subsequent) 1 count .....	100 <b>76</b>	50 <b>38</b>	25 <b>19</b>

Applying the 2013 proposed changes to the Other Sexual Assault/Obscenity guidelines is projected to provide better balance between mitigation and aggravation, while maintaining the current compliance rate of 66.5% in first-time possession of child pornography cases (Figure 105). The compliance rate is expected to increase from 67.0% to 69.0% in cases involving a second or subsequent offense. These modifications are also projected to slightly reduce the disparity between mitigation and aggravation rates in second or subsequent offense cases. The increase in compliance and improved balance between mitigation and aggravation would bring recommendations more into line with current judicial sentencing practices for these offenses.

Given the strikingly similar findings produced by the newest analysis of possession of child pornography offenses, the Commission concluded that its 2013 proposal was best suited to model current judicial sentencing practices for possession of child pornography cases in order to provide judges with a more accurate benchmark of the typical, or average, case outcome. Therefore, the Commission resubmits the modifications contained in the Commission’s 2013 proposal for the 2016 General Assembly’s consideration.

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

**Figure 105**

**Compliance with Sentencing Guidelines for Possession of Child Pornography (First Offense) (§ 18.2-374.1:1) FY2011 – FY2015**

	Current	Projected
Compliance	66.5%	66.5%
Mitigation	19.5%	16.5%
Aggravation	14.0%	16.9%

**Compliance with Sentencing Guidelines for Possession of Child Pornography (Second Offense) (§ 18.2-374.1:1) FY2011 – FY2015**

	Current	Projected
Compliance	67%	69%
Mitigation	28%	24%
Aggravation	5%	7%

**Figure 104**

**Actual versus Recommended Prison Sentences for Possession of Child Pornography (§ 18.2-374.1:1) FY2011 – FY2015**

	Actual Practice	Recommended Under <u>Current</u> Sentencing Guidelines	Recommended Under <u>2013 Proposed</u> Sentencing Guidelines
Mean Sentence	2.1 years	3.1 years	2.5 years
Median Sentence	1.7 Years	2.5 years	2.0 years



# APPENDICES

## Appendix 1

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

#### Reasons for MITIGATION

<b>Burglary of Dwelling (195 Cases)</b>	<b>Number</b>	<b>Percent</b>
Plea Agreement	46	35.9%
Judicial discretion (time served, other sentence to serve, consistent with codefendant, etc.)	16	12.5%
Offender cooperated with authorities	16	12.5%
Offender is sentenced to an alternative punishment to incarceration	14	10.9%
Court Circumstances or Procedural Issues	12	9.4%
Facts of the case (not specific)	10	7.8%
No Reason Given	10	7.8%
Sentence recommended by Commonwealth's Attorney	10	7.8%
Victim's request	10	7.8%
Offender has minimal/no prior record	8	6.3%
Offender has good potential for rehabilitation	6	4.7%
Financial obligations (court costs, restitution, child support, etc.)	4	3.1%
Offender's health (mental, physical, emotional, etc.)	4	3.1%
Offender issues (age of offender, homeless, family issues, etc.)	4	3.1%
Offender not the leader	4	3.1%
Judge had an issue scoring guidelines factors	3	2.3%
Offender has made progress in rehabilitating him/herself	3	2.3%
Offender needs rehabilitation	3	2.3%
Victim circumstances (drug dealer, etc.)	3	2.3%
Sentencing guidelines recommendation not appropriate (non-specific)	2	1.6%
Victim cannot/will not testify	2	1.6%
Guidelines recommendation is too harsh	1	.8%
Little or no injury/offender did not intend to harm	1	.8%
Sentenced to Department of Juvenile Justice	1	.8%
Sentencing guidelines incorrect/missing	1	.8%
Victim circumstances (facts of the case, etc.)	1	.8%

<b>Burglary of Other Structure (69 Cases)</b>	<b>Number</b>	<b>Percent</b>
Plea Agreement	15	36.6%
Judicial discretion (time served, other sentence to serve, consistent with codefendant, etc.)	9	22.0%
No Reason Given	6	14.6%
Offender cooperated with authorities	6	14.6%
Facts of the case (not specific)	4	9.8%
Offender is sentenced to an alternative punishment to incarceration	4	9.8%
Sentence recommended by Commonwealth's Attorney	4	9.8%
Financial obligations (court costs, restitution, child support, etc.)	3	7.3%
Offender has made progress in rehabilitating him/herself	3	7.3%
Offender has minimal/no prior record	3	7.3%
Offender's substance abuse issues	3	7.3%
Offender not the leader	2	4.9%
Sequence of events, impact on recommendation	2	4.9%
Guidelines recommendation is too harsh	1	2.4%
Judge had an issue scoring guidelines factors	1	2.4%
Offender health (mental, physical, emotional, etc.)	1	2.4%
Offender needs rehabilitation	1	2.4%
Victim's request	1	2.4%

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

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

## Appendix 1

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

#### Reasons for AGGRAVATION

<b>Burglary of Dwelling (178 Cases)</b>	<b>Number</b>	<b>Percent</b>
Plea agreement	32	23.0%
Aggravating circumstances/flagrancy of offense	30	21.6%
No reason given	15	10.8%
Aggravating facts involving the breaking and entering	13	9.4%
Guidelines recommendation is too low	9	6.5%
Offender has extensive prior record or same type of prior offense	9	6.5%
Victim circumstances (facts of the case, etc.)	8	5.8%
Judicial discretion (time served, shock incarceration, consistent with codefendant, etc.)	7	5.0%
Jury sentence	4	2.9%
Offender is sentenced to an alternative punishment to incarceration	4	2.9%
Type of victim (child, etc.)	4	2.9%
Victim's request	4	2.9%
Extreme property or monetary loss	3	2.2%
Number of violations/counts in the event	3	2.2%
Offender has poor rehabilitation potential	3	2.2%
Offender used a weapon in commission of the offense	3	2.2%
Degree of victim injury (physical, emotional, etc.)	2	1.4%
Degree of violence toward victim	2	1.4%
Financial obligations (court costs, restitution, child support, etc.)	2	1.4%
Offense involved a high degree of planning/violation of trust	2	1.4%
On probation for a serious offense	2	1.4%
Poor conduct since commission of offense	2	1.4%
Sentence recommended by Commonwealth's Attorney	2	1.4%
True offense behavior was more serious than offenses at conviction	2	1.4%
Judge thought sentence was in compliance	2	1.4%
Aggravating court circumstances/proceedings (will resentence if alternative completed, etc.)	1	.7%
Committed offense while on probation	1	.7%
Failed to follow instructions while on probation	1	.7%
Illegible written reason	1	.7%
Offender failed alternative sanction program	1	.7%
Offender needs rehabilitation offered by jail/prison	1	.7%
Offender violated protective order or was stalking	1	.7%
Sentenced to an alternative	1	.7%
Used, etc., drugs/alcohol while on probation	1	.7%
<b>Burglary of Other Structure (68 Cases)</b>	<b>Number</b>	<b>Percent</b>
Plea agreement	12	25.0%
Aggravating circumstances/flagrancy of offense	8	16.7%
Offender has extensive prior record or same type of prior offense	8	16.7%
Judicial discretion (time served, shock incarceration, consistent with codefendant, etc.)	7	14.6%
No reason given	7	14.6%
Sentencing guidelines recommendation is not appropriate	5	10.4%
Number of violations/counts in the event	4	8.3%
Current offense involves drugs/alcohol (large amount, etc.)	2	4.2%
Jury sentence	2	4.2%
Offender failed to cooperate with authorities	2	4.2%
Type of victim (child, etc.)	2	4.2%
Aggravating court circumstances/proceedings (will resentence if alternative completed, etc.)	1	2.1%
Aggravating facts involving the breaking and entering	1	2.1%
Degree of violence toward victim	1	2.1%
Extreme property or monetary loss	1	2.1%
Never reported to or removed from probation	1	2.1%
Offender issues (age of offender, lacks family support, etc.)	1	2.1%
Offender's substance abuse issues	1	2.1%
Sentenced to an alternative	1	2.1%
Violent/disruptive behavior in custody	1	2.1%

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

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

## Appendix 1

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

#### Reasons for MITIGATION

<b>Drugs/Schedule I/II (922 Cases)</b>	<b>Number</b>	<b>Percent</b>
Plea Agreement	241	36.0%
No Reason Given	87	13.0%
Offender cooperated with authorities	80	12.0%
Offender is sentenced to an alternative punishment to incarceration	80	12.0%
Judicial discretion (time served, other sentence to serve, consistent with codefendant, etc.)	62	9.2%
Court Circumstances or Procedural Issues	59	8.8%
Offender has minimal/no prior record	56	8.4%
Sentence recommended by Commonwealth's Attorney	44	6.6%
Facts of the case (not specific)	36	5.2%
Offender's health (mental, physical, emotional, etc.)	32	4.8%
Offender has made progress in rehabilitating him/herself	25	3.7%
Current offense involves drugs/alcohol (small amount of drugs)	19	2.8%
Offender not the leader	14	2.1%
Behavior positive since commission of offense	13	1.9%
Offender has good potential for rehabilitation	11	1.6%
Offender needs rehabilitation	10	1.5%
Sentencing guidelines recommendation not appropriate (non-specific)	10	1.5%
Offender's substance abuse issues	10	1.4%
Offender issues (age of offender, homeless, family issues, etc.)	8	1.2%
Judge had an issue scoring guidelines factors	8	1.1%
Financial obligations (court costs, restitution, child support, etc.)	3	.4%
Guidelines recommendation is too harsh	2	.3%
Illegible written reason	2	.3%
Jury sentence	2	.3%
Sentencing guidelines incorrect/missing	2	.3%
Split trial/sentence (combination jury and bench trial)	2	.3%
Judge thought sentence was in compliance	1	.1%
Sequence of events, impact on recommendation	1	.1%
Victim circumstances (facts of the case, etc.)	1	.1%
Victim's request	1	.1%

<b>Drugs/Other (123 Cases)</b>	<b>Number</b>	<b>Percent</b>
Plea Agreement	35	40.2%
No Reason Given	13	14.9%
Judicial discretion (time served, other sentence to serve, consistent with codefendant, etc.)	10	11.5%
Offender cooperated with authorities	10	11.5%
Court Circumstances or Procedural Issues	8	9.2%
Offender is sentenced to an alternative punishment to incarceration	8	9.2%
Offender has minimal/no prior record	7	8.0%
Sentence recommended by Commonwealth's Attorney	6	6.9%
Facts of the case (not specific)	5	5.7%
Offender has good potential for rehabilitation	4	4.6%
Current offense involves drugs/alcohol (small amount of drugs)	3	3.4%
Offender has made progress in rehabilitating him/herself	3	3.4%
Offender needs rehabilitation	3	3.4%
Offender issues (age of offender, homeless, family issues, etc.)	2	2.3%
Sentencing guidelines recommendation not appropriate (non-specific)	2	2.3%
Behavior positive since commission of offense	1	1.1%
Financial obligations (court costs, restitution, child support, etc.)	1	1.1%
Judge thought sentence was in compliance	1	1.1%
Offender's health (mental, physical, emotional, etc.)	1	1.1%

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

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

## Appendix 1

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

#### Reasons for AGGRAVATION

<b>Drugs/Schedule I/II (609 Cases)</b>	<b>Number</b>	<b>Percent</b>
Plea agreement	184	38.6%
No reason given	72	15.1%
Offender has extensive prior record or same type of prior offense	54	11.3%
Number of violations/counts in the event	39	8.2%
Aggravating circumstances/flagrancy of offense	34	7.1%
Offender failed alternative sanction program	29	6.1%
Sentenced to an alternative	24	5.0%
Jury sentence	18	3.8%
Current offense involves drugs/alcohol (large amount, etc.)	15	3.1%
Offender's substance abuse issues	15	3.1%
Offender has poor rehabilitation potential	14	2.9%
Judicial discretion (time served, shock incarceration, consistent with codefendant, etc.)	13	2.7%
Aggravating court circumstances/proceedings (will resentence if alternative completed, etc.)	10	2.1%
Used, etc., drugs/alcohol while on probation	10	2.1%
Absconded from probation supervision	9	1.9%
Poor conduct since commission of offense	7	1.5%
Guidelines recommendation is too low	6	1.3%
Offender needs rehabilitation offered by jail/prison	6	1.3%
Sentencing guidelines recommendation is not appropriate	5	1.0%
True offense behavior was more serious than offenses at conviction	5	1.0%
Failed to follow instructions while on probation	4	.8%
Never reported to or removed from probation	4	.8%
Child present at time of offense	3	.6%
Offender failed to cooperate with authorities	3	.6%
Offender issues (age of offender, lacks family support, etc.)	3	.6%
Illegible written reason	3	.6%
Sentence recommended by Commonwealth's Attorney	3	.6%
Aggravating facts involving the breaking and entering	2	.4%
Degree of victim injury (physical, emotional, etc.)	2	.4%
Mandatory minimum involved in the event	2	.4%
New offenses were committed while on probation	2	.4%
Extreme property or monetary loss	1	.2%
Facts of sex offense involved	1	.2%
Financial obligations (court costs, restitution, child support, etc.)	1	.2%
Judge thought sentence was in compliance	1	.2%
Offender was leader	1	.2%

<b>Drugs/Other (162 Cases)</b>	<b>Number</b>	<b>Percent</b>
Plea agreement	40	30.1%
No reason given	22	16.5%
Current offense involves drugs/alcohol (large amount, etc.)	17	12.8%
Number of violations/counts in the event	11	8.3%
Aggravating circumstances/flagrancy of offense	9	6.8%
Guidelines recommendation is too low	8	6.0%
Offender has extensive prior record or same type of prior offense	8	6.0%
Poor conduct since commission of offense	6	4.5%
Offender failed alternative sanction program	5	3.8%
Offender has poor rehabilitation potential	4	3.0%
Sentence recommended by Commonwealth's Attorney	4	3.0%
Sentenced to an alternative	4	3.0%
Judicial discretion (time served, shock incarceration, consistent with codefendant, etc.)	3	2.3%
Jury sentence	3	2.3%
Offender's substance abuse issues	3	2.3%
Violent/disruptive behavior in custody	3	2.3%
Failed to follow instructions while on probation	2	1.5%
Child present at time of offense	1	.8%
Degree of victim injury (physical, emotional, etc.)	1	.8%
Mandatory minimum involved in the event	1	.8%
Offender failed to cooperate with authorities	1	.8%
Offender issues (age of offender, lacks family support, etc.)	1	.8%
Offender was leader	1	.8%

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

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

## Appendix 1

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

#### Reasons for MITIGATION

<b>Fraud (309 Cases)</b>	<b>Number</b>	<b>Percent</b>
Plea Agreement	70	32.6%
No Reason Given	32	14.9%
Judicial discretion (time served, other sentence to serve, consistent with codefendant, etc.)	27	12.6%
Financial obligations (court costs, restitution, child support, etc.)	25	11.6%
Offender is sentenced to an alternative punishment to incarceration	22	10.2%
Offender's health (mental, physical, emotional, etc.)	19	8.8%
Court Circumstances or Procedural Issues	15	7.0%
Offender has minimal/no prior record	13	6.0%
Sentence recommended by Commonwealth's Attorney	13	6.0%
Offender cooperated with authorities	12	5.6%
Facts of the case (not specific)	9	4.2%
Judge had an issue scoring guidelines factors	6	2.8%
Offender has made progress in rehabilitating him/herself	6	2.8%
Victim's request	6	2.8%
Offender has good potential for rehabilitation	5	2.3%
Sequence of events, impact on recommendation	5	2.3%
Offender issues (age of offender, homeless, family issues, etc.)	4	1.9%
Offender needs rehabilitation	4	1.9%
Sentencing guidelines recommendation not appropriate (non-specific)	3	1.4%
Guidelines recommendation is too harsh	2	.9%
Offender's substance abuse issues	2	.9%
Property was recovered	2	.9%
Victim cannot/will not testify	2	.9%
Victim circumstances (drug dealer, etc.)	2	.9%
Judge rounded guidelines minimum to nearest whole year	1	.5%
Judge thought sentence was in compliance	1	.5%
Sentenced to Department of Juvenile Justice	1	.5%

<b>Larceny (747 Cases)</b>	<b>Number</b>	<b>Percent</b>
Plea Agreement	170	29.9%
No Reason Given	117	20.6%
Offender is sentenced to an alternative punishment to incarceration	81	14.3%
Judicial discretion (time served, other sentence to serve, consistent with codefendant, etc.)	47	8.3%
Facts of the case (not specific)	34	6.0%
Offender has minimal/no prior record	33	5.8%
Offender health (mental, physical, emotional, etc.)	33	5.8%
Sentence recommended by Commonwealth's Attorney	33	5.8%
Offender cooperated with authorities	30	5.3%
Financial obligations (court costs, restitution, child support, etc.)	24	4.2%
Offender has made progress in rehabilitating him/herself	24	4.2%
Court Circumstances or Procedural Issues	20	3.5%
Property was recovered	18	3.2%
Offender issues (age of offender, homeless, family issues, etc.)	14	2.5%
Judge had an issue scoring guidelines factors	11	1.9%
Offender has good potential for rehabilitation	11	1.9%
Victim's request	9	1.6%
Offender's substance abuse issues	6	1.1%
Judge had an issue scoring guidelines factors	5	.9%
Jury sentence	5	.9%
Offender not the leader	5	.9%
Behavior positive since commission of the offense	2	.4%
Current offense involves drugs/alcohol (small amount of drugs)	2	.4%
Guidelines recommendation is too harsh	2	.4%
Illegible written reason	2	.4%
Judge rounded guidelines minimum to nearest whole year	2	.4%
Sentencing guidelines recommendation not appropriate (non-specific)	2	.4%
Victim cannot/will not testify	2	.4%
Sentencing guidelines incorrect/missing	1	.2%
Sequence of events, impact on recommendation	1	.2%
Victim circumstances (facts of the case, etc.)	1	.2%

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

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

## Appendix 1

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

#### Reasons for AGGRAVATION

<b>Fraud (135 Cases)</b>	<b>Number</b>	<b>Percent</b>
Plea agreement	25	24.0%
No reason given	21	20.2%
Aggravating circumstances/flagrancy of offense	12	11.5%
Offender has extensive prior record or same type of prior offense	11	10.6%
Extreme property or monetary loss	9	8.7%
Offense involved a high degree of planning/violation of trust	9	8.7%
Number of violations/counts in the event	6	5.8%
Type of victim (child, etc.)	6	5.8%
Judicial discretion (time served, shock incarceration, consistent with codefendant, etc.)	5	4.8%
Aggravating court circumstances/proceedings (will resentence if alternative completed, etc.)	4	3.8%
Guidelines recommendation is too low	4	3.8%
Offender failed to cooperate with authorities	3	2.9%
Offender has poor rehabilitation potential	3	2.9%
Degree of victim injury (physical, emotional, etc.)	2	1.9%
Failed to follow instructions while on probation	2	1.9%
Judge thought sentence was in compliance	2	1.9%
Poor conduct since commission of offense	2	1.9%
Sentenced to an alternative	2	1.9%
Victim circumstances (facts of the case, etc.)	2	1.9%
Absconded from probation supervision	1	1.0%
Jury sentence	1	1.0%
Offender issues (age of offender, lacks family support, etc.)	1	1.0%
Offender used a weapon in commission of the offense	1	1.0%

<b>Larceny (500 Cases)</b>	<b>Number</b>	<b>Percent</b>
No reason given	79	20.6%
Plea agreement	75	19.6%
Aggravating circumstances/flagrancy of offense	59	15.4%
Offender has extensive prior record or same type of prior offense	54	14.1%
Offense involved a high degree of planning/violation of trust	31	8.1%
Extreme property or monetary loss	28	7.3%
Sentenced to an alternative	26	6.8%
Number of violations/counts in the event	19	5.0%
Judicial discretion (time served, shock incarceration, consistent with codefendant, etc.)	14	3.7%
Offender has poor rehabilitation potential	12	3.2%
Guidelines recommendation is too low	11	2.9%
Type of victim (child, etc.)	9	2.3%
Aggravating court circumstances/proceedings (will resentence if alternative completed, etc.)	8	2.1%
Poor conduct since commission of offense	6	1.6%
Absconded from probation supervision	5	1.3%
Jury sentence	5	1.3%
Sentence recommended by Commonwealth's Attorney	5	1.3%
Financial obligations (court costs, restitution, child support, etc.)	4	1.0%
Offender used a weapon in commission of the offense	4	1.0%
Prior record not adequately weighed by guidelines	4	1.0%
Degree of victim injury (physical, emotional, etc.)	4	1.0%
Offender issues (age of offender, lacks family support, etc.)	4	1.0%
Aggravating facts involving the breaking and entering	3	.8%
Failed to follow instructions while on probation	3	.8%
Child present at time of offense	2	.5%
Current offense involves drugs/alcohol (large amount, etc.)	2	.5%
Gang related offense	2	.5%
New offenses were committed while on probation	2	.5%
Offender failed alternative sanction program	2	.5%
Offender's substance abuse issues	2	.5%
Sentencing guidelines recommendations not appropriate	2	.5%
Used, etc., drugs/alcohol while on probation	2	.5%
Victim circumstances (facts of the case, etc.)	2	.5%
Victim's request	2	.5%
2nd/subsequent revocation of defendant's probation	1	.3%

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

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

## Appendix 1

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

#### Reasons for MITIGATION

Miscellaneous/Other (92 Cases)	Number	Percent
Plea Agreement	25	43.9%
Offender cooperated with authorities	8	14.0%
Sentence recommended by Commonwealth's Attorney	7	12.3%
Court Circumstances or Procedural Issues	6	10.5%
No Reason Given	6	10.5%
Court Circumstances or Procedural Issues	5	8.8%
Offender's health (mental, physical, emotional, etc.)	5	8.8%
Judicial discretion (time served, other sentence to serve, consistent with codefendant, etc.)	4	7.0%
Offender has good potential for rehabilitation	4	7.0%
Offender has made progress in rehabilitating him/herself	3	5.3%
Offender has minimal/no prior record	3	5.3%
Offender needs rehabilitation	3	5.3%
Current offense involves drugs/alcohol (small amount of drugs)	2	3.5%
Facts of the case (not specific)	2	3.5%
Offender is sentenced to an alternative punishment to incarceration	2	3.5%
Offender issues (age of offender, homeless, family issues, etc.)	2	3.5%
Judge rounded guidelines minimum to nearest whole year	1	1.8%
Offender not the leader	1	1.8%
Sentenced to Department of Juvenile Justice	1	1.8%
Split trial/sentence (combination jury and bench trial)	1	1.8%
Victim's request	1	1.8%

Miscellaneous/Person & Property (51 Cases)	Number	Percent
Plea Agreement	8	23.5%
Judicial discretion (time served, other sentence to serve, consistent with codefendant, etc.)	4	11.8%
Offender's health (mental, physical, emotional, etc.)	4	11.8%
Sentence recommended by Commonwealth's Attorney	4	11.8%
Victim's Rrequest	4	11.8%
Court Circumstances or Procedural Issues	3	8.8%
Facts of the case (not specific)	3	8.8%
Financial obligations (court costs, restitution, child support, etc.)	3	8.8%
No Reason Given	3	8.8%
Offender has made progress in rehabilitating him/herself	3	8.8%
Little or no injury/offender did not intend to harm	2	5.9%
Offender cooperated with authorities	2	5.9%
Offender has good potential for rehabilitation	2	5.9%
Offender is sentenced to an alternative punishment to incarceration	2	5.9%
Victim circumstances (drug dealer, etc.)	2	5.9%
Judge had an issue scoring guidelines factors	1	2.9%
Property was recovered	1	2.9%

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

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

## Appendix 1

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

#### Reasons for AGGRAVATION

Miscellaneous/Other (58 Cases)	Number	Percent
Plea agreement	11	25.6%
No reason given	8	18.6%
Aggravating circumstances/flagrancy of offense	7	16.3%
Offender has extensive prior record or same type of prior offense	6	14.0%
Offender failed to cooperate with authorities	4	9.3%
Failed to follow instructions while on probation	2	4.7%
Guidelines recommendation is too low	2	4.7%
Jury sentence	2	4.7%
Offender has poor rehabilitation potential	2	4.7%
Absconded from probation supervision	1	2.3%
Aggravating court circumstances/proceedings (will resentence if alternative completed, etc.)	1	2.3%
Degree of victim injury (physical, emotional, etc.)	1	2.3%
Gang related offense	1	2.3%
Judge thought sentence was in compliance	1	2.3%
Never reported to or removed from probation	1	2.3%
Offender failed alternative sanction program	1	2.3%
Offender violated sex offender restrictions	1	2.3%
Offense involved a high degree of planning/violation of trust	1	2.3%
On probation for a serious offense	1	2.3%
Poor conduct since commission of offense	1	2.3%
Prior record not adequately weighed by guidelines	1	2.3%
Sentenced to an alternative	1	2.3%
True offense behavior was more serious than offenses at conviction	1	2.3%

Miscellaneous/Person & Property (192 Cases)	Number	Percent
Aggravating circumstances/flagrancy of offense	38	31.9%
Plea agreement	26	21.8%
Degree of victim injury (physical, emotional, etc.)	19	16.0%
Offender has extensive prior record or same type of prior offense	16	13.4%
No reason given	12	10.1%
Offender has extensive prior record or same type of prior offense	9	7.6%
Guidelines recommendation is too low	8	6.7%
Number of violations/counts in the event	8	6.7%
Offender has poor rehabilitation potential	7	5.8%
Absconded from probation supervision	6	5.0%
Offender has poor rehabilitation potential	6	5.0%
Poor conduct since commission of offense	5	4.2%
Judicial discretion (time served, shock incarceration, consistent with codefendant, etc.)	3	2.5%
Offender's substance abuse issues	3	2.5%
Current offense involves drugs/alcohol (large amount, etc.)	3	2.5%
Sentencing guidelines recommendation is not appropriate	3	2.5%
Aggravating facts involving the breaking and entering	2	1.7%
Sentenced to an alternative	2	1.7%
Violent/disruptive behavior in custody	2	1.7%
Aggravating court circumstances/proceedings (will resentence if alternative completed, etc.)	1	.8%
Behavior on probation (facts of the case)	1	.8%
Failed to follow instructions while on probation	1	.8%
Financial obligations (court costs, restitution, child support, etc.)	1	.8%
Offender violated protective order or was stalking	1	.8%
Offender was the leader	1	.8%
Offense involved a high degree of planning/violation of trust	1	.8%
On probation for a serious offense	1	.8%
Prior record not adequately weighed by guidelines	1	.8%
Sentenced to an alternative	1	.8%
Sentencing guidelines incorrect/missing	1	.8%
True offense behavior was more serious than offenses at conviction	1	.8%
Used, etc., drugs/alcohol while on probation	1	.8%
Victim circumstances (facts of the case, etc.)	1	.8%

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

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

## Appendix 1

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

#### Reasons for MITIGATION

<b>Traffic (183 Cases)</b>	<b>Number</b>	<b>Percent</b>
Plea Agreement	51	36.4%
No Reason Given	28	20.0%
Facts of the case (not specific)	12	8.6%
Offender has minimal/no prior record	12	8.6%
Court Circumstances or Procedural Issues	11	7.9%
Offender has made progress in rehabilitating him/herself	9	6.4%
Offender has good potential for rehabilitation	7	5.0%
Offender's health (mental, physical, emotional, etc.)	7	5.0%
Financial obligations (court costs, restitution, child support, etc.)	6	4.3%
Offender cooperated with authorities	6	4.3%
Guidelines recommendation is too harsh	4	2.9%
Judicial discretion (time served, other sentence to serve, consistent with codefendant, etc.)	4	2.9%
Offender issues (age of offender, homeless, family issues, etc.)	4	2.9%
Jury sentence	3	2.1%
Sentence recommended by Commonwealth's Attorney	3	2.1%
Sentencing guidelines recommendation not appropriate (non-specific)	3	2.1%
Offender is sentenced to an alternative punishment to incarceration	3	2.1%
Judge had an issue scoring guidelines factors	2	1.4%
Victim circumstances (drug dealer, etc.)	2	1.4%
Behavior positive since commission of offense	1	.7%
Offender needs rehabilitation	1	.7%
Offender not the leader	1	.7%
Sentencing guidelines incorrect/missing	1	.7%
Sequence of events, impact on recommendation	1	.7%
Victim circumstances (facts of the case, etc.)	1	.7%

<b>Weapons (88 Cases)</b>	<b>Number</b>	<b>Percent</b>
Plea Agreement	18	29.0%
Facts of the case (not specific)	16	25.8%
Offender has minimal/no prior record	9	14.5%
No Reason Given	8	12.9%
Judicial discretion (time served, other sentence to serve, consistent with codefendant, etc.)	6	9.7%
Offender cooperated with authorities	5	8.1%
Offender's health (mental, physical, emotional, etc.)	5	8.1%
Sentence recommended by Commonwealth's Attorney	5	8.1%
Weapon was not a firearm	5	8.1%
Court Circumstances or Procedural Issues	4	6.5%
Offender has good potential for rehabilitation	2	3.2%
Behavior positive since commission of offense	1	1.6%
Financial obligations (court costs, restitution, child support, etc.)	1	1.6%
Illegible written reason	1	1.6%
Offender is sentenced to an alternative punishment to incarceration	1	1.6%
Offender not the leader	1	1.6%

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

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

## Appendix 1

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

#### Reasons for AGGRAVATION

<b>Traffic (281 Cases)</b>	<b>Number</b>	<b>Percent</b>
Offender has extensive prior record or same type of prior offense	60	31.9%
Plea Agreement	33	17.6%
Aggravating circumstances/flagrancy of offense	29	15.4%
Current offense involves drugs/alcohol (large amount, etc.)	26	13.8%
No reason given	25	13.3%
Offender has poor rehabilitation potential	21	11.2%
Degree of victim injury (physical, emotional, etc.)	11	5.9%
Guidelines recommendation is too low	11	5.9%
Absconded from probation supervision	10	5.3%
Offense involved a traffic accident or reckless driving	10	5.3%
Jury sentence	8	4.3%
Number of violations/counts in the event	7	3.7%
Offender failed to cooperate with authorities	4	2.1%
Poor conduct since commission of offense	4	2.1%
Sentenced to an alternative	4	2.1%
Judicial discretion (time served, shock incarceration, consistent with codefendant, etc.)	3	1.6%
Mandatory minimum involved in the event	3	1.6%
Failed to follow instructions while on probation	2	1.1%
Offender needs rehabilitation offered by jail/prison	2	1.1%
Type of victim (child, etc.)	2	1.1%
2nd/subsequent revocation of defendant's probation	1	.5%
Aggravating court circumstances/proceedings (will resentence if alternative completed, etc.)	1	.5%
Child present at time of offense	1	.5%
Gang related offense	1	.5%
Offender issues (age of offender, lacks family support, etc.)	1	.5%
Victim circumstances (facts of the case, etc.)	1	.5%

<b>Weapons (111 Cases)</b>	<b>Number</b>	<b>Percent</b>
Plea Agreement	41	48.8%
Number of violations/counts in the event	15	17.9%
Aggravating circumstances/flagrancy of offense	13	15.5%
Jury sentence	7	8.3%
No reason given	6	7.1%
Offender has extensive prior record or same type of prior offense	5	6.0%
Sentence recommended by Commonwealth's Attorney	3	3.6%
Degree of victim injury (physical, emotional, etc.)	2	2.4%
Judicial discretion (time served, shock incarceration, consistent with codefendant, etc.)	2	2.4%
On probation for a serious offense	2	2.4%
Poor conduct since commission of offense	2	2.4%
True offense behavior was more serious than offenses at conviction	2	2.4%
Type of victim (child, etc.)	2	2.4%
Aggravating court circumstances/proceedings (will resentence if alternative completed, etc.)	1	1.2%
Guidelines recommendation is too low	1	1.2%
New offenses were committed while on probation	1	1.2%
Offender failed to cooperate with authorities	1	1.2%
Offender has poor rehabilitation potential	1	1.2%
Offender issues (age of offender, lacks family support, etc.)	1	1.2%
Offense involved a high degree of planning/violation of trust	1	1.2%
Sentenced to an alternative	1	1.2%
Victim circumstances (facts of the case, etc.)	1	1.2%

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

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

## Appendix 2

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

#### Reasons for MITIGATION

<b>Assault (281 Cases)</b>	<b>Number</b>	<b>Percent</b>
Plea Agreement	66	34.7%
Victim's request	31	16.3%
No reason given	29	15.3%
Court circumstances or procedural issues	22	11.6%
Offender's health (mental, physical, emotional, etc.)	16	8.4%
Sentence recommended by Commonwealth's Attorney	13	6.8%
Facts of the case (not specific)	13	6.8%
Judicial discretion (time served, other sentence to serve, consistent with codefendant, etc.)	12	6.3%
Offender cooperated with authorities	8	4.2%
Offender has minimal/no prior record	8	4.2%
Little or no injury/offender did not intend to harm	7	3.7%
Victim circumstances (drug dealer, etc.)	6	3.2%
Victim's role in the offense	6	3.2%
Financial obligations (court costs, restitution, child support, etc.)	5	2.6%
Offender has good potential for rehabilitation	5	2.6%
Offender is sentenced to an alternative punishment to incarceration	5	2.6%
Current offense involves drugs/alcohol (small amount of drugs)	4	2.1%
Jury sentence	4	2.1%
Victim cannot/will not testify	4	2.1%
Victim circumstances (facts of the case, etc.)	4	2.1%
Sentenced to Department of Juvenile Justice	3	1.6%
Offender has made progress in rehabilitating him/herself	2	1.1%
Offender issues (age of offender, homeless, family issues, etc.)	2	1.1%
Offender not the leader	2	1.1%
Illegible written reason	1	.5%
Judge had an issue scoring guidelines factors	1	.5%
Sentencing guidelines recommendation not appropriate (non-specific)	1	.5%
Weapon was not a firearm	1	.5%

<b>Kidnapping (28 Cases)</b>	<b>Number</b>	<b>Percent</b>
Plea Agreement	6	35.3%
Facts of the case (not specific)	3	17.6%
Offender has minimal/no prior record	3	17.6%
Sentence recommended by Commonwealth Attorney	3	17.6%
Court Circumstances or Procedural Issues	2	11.8%
Judicial discretion (time served, other sentence to serve, consistent with codefendant, etc.)	2	11.8%
Offender has good potential for rehabilitation	2	11.8%
Offender health (mental, physical, emotional, etc.)	2	11.8%
Victim request	2	11.8%
Guidelines recommendation is too harsh	1	5.9%
No Reason Given	1	5.9%
Victim circumstances (drug dealer, etc.)	1	5.9%

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

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

## Appendix 2

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

#### Reasons for AGGRAVATION

<b>Assault (229 Cases)</b>	<b>Number</b>	<b>Percent</b>
Plea agreement	34	21.7%
Aggravating circumstances/flagrancy of offense	30	19.1%
Degree of victim injury (physical, emotional, etc.)	27	17.2%
Jury sentence	20	12.7%
Number of violations/counts in the event	19	12.1%
No reason given	14	8.9%
Offender has extensive prior record or same type of prior offense	14	8.9%
Offender has poor rehabilitation potential	14	8.9%
Type of victim (child, etc.)	11	7.0%
Degree of violence toward victim	7	4.5%
Guidelines recommendation is too low	7	4.5%
Judicial discretion (time served, shock incarceration, consistent with codefendant, etc.)	5	3.2%
Sentencing guidelines not appropriate	5	3.2%
Aggravating court circumstances/proceedings (will resentence if alternative completed, etc.)	4	2.5%
Gang-related offense	3	1.9%
Current offense involves accident/reckless driving	2	1.3%
Current offense involves drugs/alcohol (large amount of drugs, school zone, etc.)	2	1.3%
Offender failed to cooperate with authorities	2	1.3%
2nd/subsequent revocation of defendant's probation	1	.6%
Absconded from probation supervision	1	.6%
Illegible written reason	1	.6%
Offender needs rehabilitation offered by jail/prison	1	.6%
Offender violated protective order or was stalking	1	.6%
Offense involved a high degree of planning/violation of trust	1	.6%
Sentence recommended by Commonwealth's Attorney	1	.6%
True offense behavior was more serious than offenses at conviction	1	.6%
Victim circumstances (facts of the case, etc.)	1	.6%

<b>Kidnapping (39 Cases)</b>	<b>Number</b>	<b>Percent</b>
Aggravating circumstances/flagrancy of offense	5	18.5%
Degree of violence toward victim	4	14.8%
Plea agreement	4	14.8%
Type of victim (child, etc.)	4	14.8%
Degree of victim injury (physical, emotional, etc.)	3	11.1%
Jury sentence	3	11.1%
Guidelines recommendation is too low	2	7.4%
Victim's request	2	7.4%
Offender has extensive prior record or same type of prior offense	2	7.4%
Offender has poor rehabilitation potential	2	7.4%
Offense involved a high degree of planning/violation of trust	2	7.4%
Facts of sex offense involved	1	3.7%
Mandatory minimum involved in event	1	3.7%
No reason given	1	3.7%
Offender issues (age of offender, lacks family support, etc.)	1	3.7%
Offender violated protective order or was stalking	1	3.7%
Sentence recommended by Commonwealth's Attorney	1	3.7%

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

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

## Appendix 2

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

#### Reasons for MITIGATION

<b>Homicide (51 Cases)</b>	<b>Number</b>	<b>Percent</b>
Plea Agreement	11	33.3%
Court circumstances or procedural issues	8	24.2%
Offender cooperated with authorities	5	15.2%
Jury sentence	4	12.1%
Victim's request	4	12.1%
Offender has good potential for rehabilitation	3	9.1%
Offender has minimal/no prior record	3	9.1%
Offender not the leader	3	9.1%
Offender's health (mental, physical, emotional, etc.)	2	6.1%
Current offense involves drugs/alcohol (small amount of drugs)	1	3.0%
Facts of the case (not specific)	1	3.0%
Judicial discretion (time served, other sentence to serve, consistent with codefendant, etc.)	1	3.0%
Offender issues (age of offender, homeless, family issues, etc.)	1	3.0%
Sentenced to Department of Juvenile Justice	1	3.0%
Sequence of events, impact on recommendation	1	3.0%
Victim circumstances (drug dealer, etc.)	1	3.0%
Victim's role in the offense	1	3.0%

<b>Robbery (255 Cases)</b>	<b>Number</b>	<b>Percent</b>
Offender cooperated with authorities	39	23.6%
Plea Agreement	36	21.8%
Judicial discretion (time served, other sentence to serve, consistent with codefendant, etc.)	25	15.2%
No Reason Given	22	13.3%
Court Circumstances or Procedural Issues	16	9.7%
Offender has minimal/no prior record	13	7.9%
Offender not the leader	12	7.3%
Sentence recommended by Commonwealth's Attorney	12	7.3%
Victim request	12	7.3%
Facts of the case (not specific)	11	6.7%
Sentenced to Department of Juvenile Justice	11	6.7%
Offender has good potential for rehabilitation	8	4.8%
Offender is sentenced to an alternative punishment to incarceration	5	3.0%
Guidelines recommendation is too harsh	4	2.4%
Jury sentence	4	2.4%
Offender's health (mental, physical, emotional, etc.)	4	2.4%
Offender has made progress in rehabilitating him/herself	3	1.8%
Victim cannot/will not testify	3	1.8%
Victim's role in the offense	3	1.8%
Offender needs rehabilitation	2	1.2%
Sequence of events, impact on recommendation	2	1.2%
Victim circumstances (drug dealer, etc.)	2	1.2%
Victim's request	2	1.2%
Weapon was not a firearm	2	1.2%
Offender's substance abuse issues	1	.6%
Sentencing guidelines recommendation not appropriate (non-specific)	1	.6%

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

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

## Appendix 2

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

#### Reasons for AGGRAVATION

<b>Homicide (84 Cases)</b>	<b>Number</b>	<b>Percent</b>
Aggravating circumstances/flagrancy of offense	19	38.8%
Degree of victim injury (physical, emotional, etc.)	6	12.2%
Jury sentence	6	12.2%
Offender has poor rehabilitation potential	6	12.2%
Plea agreement	6	12.2%
Type of victim (child, etc.)	6	12.2%
Guidelines recommendation is too low	5	10.2%
No reason given	5	10.2%
Degree of violence toward victim	4	8.2%
Offender has extensive prior record or same type of prior offense	4	8.2%
Current offense involves accident/reckless driving	2	4.1%
Current offense involves drugs/alcohol (large amount of drugs, school zone, etc.)	2	4.1%
Number of violations/counts in the event	2	4.1%
Aggravating court circumstances/proceedings (will resentence if alternative completed, etc.)	1	2.0%
Child present at time of offense	1	2.0%
Jury sentence and bench trial	1	2.0%
Offender used a weapon in commission of the offense	1	2.0%
Offense involved a high degree of planning/violation of trust	1	2.0%
On probation for a serious offense	1	2.0%
Prior record not adequately weighed by guidelines	1	2.0%
Sentence recommended by Commonwealth's Attorney	1	2.0%
Sentencing guidelines not appropriate	1	2.0%
Victim circumstances (facts of the case, etc.)	1	2.0%
Victim's request	1	2.0%
<b>Robbery (99 Cases)</b>	<b>Number</b>	<b>Percent</b>
Aggravating circumstances/flagrancy of offense	17	28.3%
Plea agreement	9	15.0%
No reason given	8	13.3%
Offender has extensive prior record or same type of prior offense	8	13.3%
Type of victim (child, etc.)	8	13.3%
Degree of victim injury (physical, emotional, etc.)	7	11.7%
Degree of violence toward victim	6	10.0%
Offense involved a high degree of planning/violation of trust	5	8.3%
Guidelines recommendation is too low	3	5.0%
Number of violations/counts in the event	3	5.0%
Offender used a weapon in commission of the offense	3	5.0%
Victim circumstances (facts of the case, etc.)	3	5.0%
Gang-related offense	2	3.3%
Mandatory minimum involved in event	2	3.3%
Offender has poor rehabilitation potential	2	3.3%
Offender was the leader	2	3.3%
On probation for a serious offense	2	3.3%
Aggravating court circumstances/proceedings (will resentence if alternative completed, etc.)	1	1.7%
Aggravating facts involving the breaking and entering	1	1.7%
Child present at time of offense	1	1.7%
Extreme property or monetary loss	1	1.7%
Jury sentence	1	1.7%
Offender issues (age of offender, lacks family support, etc.)	1	1.7%
Sentencing guidelines not appropriate	1	1.7%
Used, etc., drugs/alcohol while on probation	1	1.7%
Victim's request	1	1.7%

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

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

## Appendix 2

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

#### Reasons for MITIGATION

##### Rape (32 Cases)

	Number	Percent
Plea Agreement	6	35.3%
Jury sentence	4	23.5%
Victim cannot/will not testify	4	23.5%
Court Circumstances or Procedural Issues	2	11.8%
Facts of the case (not specific)	2	11.8%
Judicial discretion (time served, other sentence to serve, consistent with codefendant, etc.)	2	11.8%
Offender has minimal/no prior record	2	11.8%
Guidelines recommendation is too harsh	1	5.9%
Judge had an issue scoring guidelines factors	1	5.9%
Offender has good potential for rehabilitation	1	5.9%
Offender's health (mental, physical, emotional, etc.)	1	5.9%
Offender issues (age of offender, homeless, family issues, etc.)	1	5.9%
Offender not the leader	1	5.9%
Sequence of events, impact on recommendation	1	5.9%
Victim circumstances (drug dealer, etc.)	1	5.9%
Victim's request	1	5.9%
Victim's role in the offense	1	5.9%

##### Other Sexual Assault (61 Cases)

	Number	Percent
Plea Agreement	11	32.4%
Victim cannot/will not testify	9	26.5%
Court Circumstances or Procedural Issues	7	20.6%
Victim's request	7	20.6%
Facts of the case (not specific)	5	14.7%
Judicial discretion (time served, other sentence to serve, consistent with codefendant, etc.)	5	14.7%
Offender's health (mental, physical, emotional, etc.)	4	11.8%
Offender has good potential for rehabilitation	2	5.9%
Offender has minimal/no prior record	2	5.9%
Offender issues (age of offender, homeless, family issues, etc.)	2	5.9%
Financial obligations (court costs, restitution, child support, etc.)	1	2.9%
Guidelines recommendation is too harsh	1	2.9%
Little or no injury/offender did not intend to harm	1	2.9%
No reason given	1	2.9%
Offender cooperated with authorities	1	2.9%
Sentenced to Department of Juvenile Justice	1	2.9%
Victim circumstances (facts of the case, etc.)	1	2.9%

##### Other Sexual Assault/Obscenity (44 Cases)

	Number	Percent
Offender issues (age of offender, homeless, family issues, etc.)	7	31.8%
Facts of the case (not specific)	4	18.2%
Plea Agreement	4	18.2%
Victim's request	4	18.2%
Judge had an issue scoring guidelines factors	3	13.6%
Offender cooperated with authorities	3	13.6%
Offender has made progress in rehabilitating him/herself	3	13.6%
Sentence recommended by Commonwealth's Attorney	3	13.6%
Behavior positive since commission of offense	2	9.1%
No reason given	2	9.1%
Offender has good potential for rehabilitation	2	9.1%
Offender health (mental, physical, emotional, etc.)	2	9.1%
Financial obligations (court costs, restitution, child support, etc.)	1	4.5%
Guidelines recommendation is too harsh	1	4.5%
Judicial discretion (time served, other sentence to serve, consistent with codefendant, etc.)	1	4.5%
Jury sentence	1	4.5%
Sentencing guidelines recommendation not appropriate (non-specific)	1	4.5%

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

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

## Appendix 2

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

#### Reasons for AGGRAVATION

<b>Rape (37 Cases)</b>		
	<b>Number</b>	<b>Percent</b>
Aggravating circumstances/flagrancy of offense	9	42.9%
Offender has poor rehabilitation potential	6	28.6%
Type of victim (child, etc.)	6	28.6%
Offense involved a high degree of planning/violation of trust	3	14.3%
Jury sentence	2	9.5%
Number of violations/counts in the event	2	9.5%
Plea agreement	2	9.5%
Victim's request	2	9.5%
Facts of sex offense involved	1	4.8%
Guidelines recommendation is too low	1	4.8%
Offender health (mental, physical, emotional, etc.)	1	4.8%
Prior record not adequately weighed by guidelines	1	4.8%
Victim circumstances (facts of the case, etc.)	1	4.8%
<b>Other Sexual Assault (147 Cases)</b>		
	<b>Number</b>	<b>Percent</b>
Aggravating circumstances/flagrancy of offense	30	32.3%
Type of victim (child, etc.)	25	26.9%
Plea agreement	17	18.3%
Degree of victim injury (physical, emotional, etc.)	8	8.6%
Jury sentence	8	8.6%
Number of violations/counts in the event	8	8.6%
Offender has poor rehabilitation potential	7	7.5%
Offense involved a high degree of planning/violation of trust	7	7.5%
Guidelines recommendation is too low	6	6.5%
No reason given	5	5.4%
Offender has extensive prior record or same type of prior offense	5	5.4%
Aggravating court circumstances/proceedings (will resentence if alternative completed, etc.)	2	2.2%
Judicial discretion (time served, shock incarceration)	2	2.2%
Offender violated protective order or was stalking	2	2.2%
Sentence recommended by Commonwealth's Attorney	2	2.2%
True offense behavior was more serious than offenses at conviction	2	2.2%
Victim's request	2	2.2%
Current offense involves drugs/alcohol (large amount of drugs, school zone, etc.)	1	1.1%
Mandatory minimum involved in event	1	1.1%
Offender health (mental, physical, emotional, etc.)	1	1.1%
Offender issues (age of offender, lacks family support, etc.)	1	1.1%
Offender's substance abuse issues	1	1.1%
On probation for a serious offense	1	1.1%
Poor conduct since commission of offense	1	1.1%
Sentencing guidelines not appropriate	1	1.1%
Victim circumstances (facts of the case, etc.)	1	1.1%
<b>Other Sexual Assault/Obscenity (43 Cases)</b>		
	<b>Number</b>	<b>Percent</b>
Plea agreement	12	38.7%
Number of violations/counts in the event	8	25.8%
Aggravating circumstances/flagrancy of offense	4	12.9%
Facts of sex offense involved	4	12.9%
Guidelines recommendation is too low	4	12.9%
Offender has poor rehabilitation potential	2	6.5%
Type of victim (child, etc.)	2	6.5%
Degree of victim injury (physical, emotional, etc.)	1	3.2%
Judge thought sentence was in compliance	1	3.2%
Offender has extensive prior record or same type of prior offense	1	3.2%
Offense involved a high degree of planning/violation of trust	1	3.2%
Sentencing guidelines not appropriate	1	3.2%
Victim circumstances (facts of the case, etc.)	1	3.2%
Victim's request	1	3.2%

Appendix 3

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

**BURGLARY OF DWELLING**

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	68.4%	15.8%	15.8%	19
2	76.5	13.7	9.8	51
3	71.4	10.7	17.9	28
4	71.3	13.8	14.9	87
5	47.1	11.8	41.2	17
6	71.4	14.3	14.3	21
7	70.0	10.0	20.0	10
8	83.3	8.3	8.3	24
9	75.9	3.4	20.7	29
10	77.4	12.9	9.7	31
11	81.3	12.5	6.3	16
12	70.6	11.8	17.6	34
13	65.5	27.6	6.9	29
14	60.0	11.4	28.6	35
15	65.0	12.5	22.5	40
16	69.2	20.5	10.3	39
17	75.0	12.5	12.5	8
18	71.4	28.6	0.0	7
19	72.7	13.6	13.6	22
20	84.6	0.0	15.4	13
21	71.4	21.4	7.1	28
22	72.7	0.0	27.3	22
23	73.1	15.4	11.5	26
24	70.0	27.5	2.5	40
25	71.1	10.5	18.4	38
26	73.8	14.3	11.9	42
27	78.1	6.3	15.6	32
28	50.0	37.5	12.5	16
29	51.3	15.4	33.3	39
30	59.1	22.7	18.2	22
31	76.9	7.7	15.4	26
Total	70.1	14.3	15.5	891

**BURGLARY/OTHER**

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	88.9%	0.0%	11.1%	9
2	73.7	10.5	15.8	19
3	88.9	0.0	11.1	9
4	73.9	13.0	13.0	23
5	76.5	5.9	17.6	17
6	76.9	15.4	7.7	13
7	80.0	.0	20.0	5
8	85.7	14.3	0.0	7
9	85.7	0.0	14.3	7
10	76.9	11.5	11.5	26
11	100.0	.0	.0	7
12	93.3	.0	6.7	15
13	30.8	53.8	15.4	13
14	100.0	0.0	0.0	7
15	76.9	7.7	15.4	13
16	76.9	15.4	7.7	13
17	83.3	16.7	0.0	6
18	0.0	0.0	0.0	0
19	100.0	0.0	0.0	4
20	75.0	18.8	6.3	16
21	70.0	20.0	10.0	10
22	75.0	8.3	16.7	24
23	70.0	10.0	20.0	10
24	95.0	0.0	5.0	20
25	61.1	27.8	11.1	18
26	92.9	7.1	0.0	14
27	88.9	5.6	5.6	18
28	63.6	9.1	27.3	11
29	57.7	7.7	34.6	26
30	87.5	0.0	12.5	8
31	100.0	0.0	0.0	7
Total	77.5	10.4	12.2	395

**DRUG/OTHER**

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	85.3%	0.0%	14.7%	34
2	87.2	6.4	6.4	78
3	90.9	4.5	4.5	22
4	83.8	10.8	5.4	37
5	78.6	3.6	17.9	28
6	79.2	.0	20.8	24
7	93.5	6.5	0.0	31
8	78.9	15.8	5.3	19
9	84.2	0.0	15.8	19
10	77.9	11.7	10.4	77
11	94.7	.0	5.3	19
12	88.5	5.1	6.4	78
13	81.3	15.6	3.1	32
14	69.2	15.4	15.4	26
15	83.7	4.7	11.6	43
16	86.7	6.7	6.7	45
17	60.0	13.3	26.7	15
18	87.5	12.5	0.0	8
19	92.0	6.7	1.3	75
20	90.0	0.0	10.0	30
21	88.9	0.0	11.1	9
22	72.4	3.4	24.1	29
23	69.6	21.7	8.7	23
24	83.0	9.4	7.5	53
25	73.6	11.3	15.1	53
26	88.4	7.2	4.3	69
27	86.9	9.8	3.3	61
28	95.9	0.0	4.1	74
29	78.1	2.2	19.7	178
30	94.1	1.2	4.7	85
31	90.0	6.0	4.0	50
Total	84.6	6.1	9.3	1424

Appendix 3

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

**SCHEDULE I/II DRUGS**

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	82.5 %	7.8 %	9.7 %	217
2	88.9	6.2	4.9	306
3	80.8	12.1	7.1	198
4	83.1	10.6	6.4	236
5	80.8	7.1	12.1	99
6	80.8	4.1	15.1	73
7	85.1	11.7	3.2	154
8	83.1	13.0	3.9	77
9	85.7	8.6	5.7	105
10	77.0	12.5	10.5	200
11	88.0	8.0	4.0	75
12	87.9	4.3	7.8	372
13	67.1	27.1	5.8	517
14	87.9	5.7	6.5	247
15	78.9	7.0	14.1	341
16	86.5	7.9	5.6	178
17	72.9	11.4	15.7	70
18	84.2	7.9	7.9	38
19	86.0	12.2	1.8	222
20	84.6	6.7	8.7	195
21	83.8	12.1	4.0	99
22	82.1	6.5	11.3	168
23	76.0	15.0	9.0	200
24	80.4	12.8	6.8	281
25	80.5	11.3	8.2	328
26	84.7	9.5	5.8	619
27	87.7	4.2	8.1	359
28	90.2	7.4	2.3	215
29	82.1	4.0	13.9	201
30	88.4	4.1	7.4	121
31	90.4	6.8	2.8	249
Total	82.8	9.9	7.3	6760

**FRAUD**

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	86.7 %	12.2%	1.0 %	98
2	87.4	8.7	3.9	103
3	86.8	10.5	2.6	38
4	75.4	19.7	4.9	61
5	70.2	10.6	19.1	47
6	85.2	7.4	7.4	27
7	84.6	12.8	2.6	39
8	65.2	21.7	13.0	23
9	83.6	9.8	6.6	61
10	89.5	5.3	5.3	57
11	92.1	7.9	.0	38
12	87.2	10.6	2.1	94
13	70.8	29.2	0.0	48
14	70.0	15.7	14.3	70
15	80.9	12.8	6.4	141
16	85.3	9.3	5.3	75
17	66.7	15.4	17.9	39
18	88.9	11.1	0.0	9
19	84.2	13.9	2.0	101
20	90.6	3.1	6.3	64
21	83.9	16.1	.0	31
22	87.0	9.3	3.7	54
23	76.9	18.5	4.6	65
24	87.0	10.1	2.9	69
25	87.1	6.9	5.9	101
26	85.3	6.4	8.3	109
27	87.8	8.9	3.3	90
28	92.2	5.9	2.0	51
29	85.7	6.6	7.7	91
30	77.8	18.5	3.7	27
31	94.3	1.9	3.8	53
Total	83.8	10.9	5.3	1974

**LARCENY**

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	86.9 %	6.4 %	6.8 %	236
2	88.2	8.3	3.5	313
3	83.3	11.8	4.9	102
4	83.1	11.0	5.9	254
5	83.0	6.0	11.0	100
6	84.7	6.8	8.5	59
7	76.9	17.2	6.0	134
8	73.0	21.6	5.4	111
9	83.8	10.8	5.4	167
10	82.0	7.9	10.1	139
11	93.5	4.8	1.6	62
12	85.3	8.9	5.8	382
13	52.6	37.8	9.6	135
14	83.2	8.7	8.1	346
15	81.3	11.5	7.3	400
16	82.6	11.6	5.8	190
17	85.7	8.8	5.5	91
18	83.9	11.3	4.8	62
19	78.3	15.6	6.1	244
20	91.4	3.3	5.3	152
21	82.8	11.5	5.7	122
22	81.4	6.2	12.4	194
23	87.4	8.3	4.3	301
24	89.3	9.7	1.0	206
25	85.9	6.8	7.3	192
26	88.9	5.4	5.7	352
27	92.4	5.1	2.5	197
28	92.1	4.3	3.6	139
29	71.8	9.4	18.8	245
30	87.5	4.5	8.0	88
31	90.2	6.4	3.5	173
Total	83.8	9.6	6.6	5888

Appendix 3

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

TRAFFIC				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	73.7 %	6.6 %	19.7 %	76
2	81.1	7.4	11.6	95
3	82.1	3.6	14.3	28
4	77.4	15.1	7.5	53
5	81.4	2.3	16.3	43
6	75.9	10.3	13.8	29
7	92.5	1.9	5.7	53
8	69.6	21.7	8.7	23
9	90.4	3.8	5.8	52
10	79.6	3.7	16.7	54
11	80.0	17.1	2.9	35
12	82.7	9.9	7.4	81
13	55.3	28.9	15.8	38
14	71.8	2.6	25.6	39
15	79.0	9.5	11.4	105
16	91.8	2.7	5.5	73
17	59.3	18.5	22.2	27
18	63.6	9.1	27.3	11
19	62.7	12.0	25.3	83
20	78.6	3.6	17.9	56
21	94.4	5.6	.0	18
22	74.5	8.5	17.0	47
23	80.0	11.1	8.9	45
24	77.4	11.3	11.3	62
25	80.4	11.8	7.8	51
26	79.3	11.5	9.2	87
27	92.6	5.6	1.9	54
28	87.5	7.5	5.0	40
29	70.3	8.1	21.6	37
30	75.8	12.1	12.1	33
31	90.1	4.2	5.6	71
Total	79.3	8.8	11.9	1599

MISCELLANEOUS/OTHER				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	80.0 %	.0 %	20.0 %	15
2	92.3	0.0	7.7	13
3	100.0	0.0	0.0	5
4	68.3	17.1	14.6	41
5	80.0	0.0	20.0	5
6	66.7	33.3	0.0	12
7	71.4	0.0	28.6	7
8	100.0	0.0	0.0	7
9	0.0	100.0	0.0	1
10	100.0	0.0	0.0	9
11	66.7	26.7	6.7	15
12	55.8	38.5	5.8	52
13	89.5	10.5	0.0	19
14	80.0	13.3	6.7	15
15	81.8	12.1	6.1	33
16	84.6	7.7	7.7	13
17	75.0	0.0	25.0	4
18	100.0	0.0	0.0	2
19	50.0	20.0	30.0	10
20	81.8	0.0	18.2	11
21	100.0	.0	.0	2
22	66.7	4.8	28.6	21
23	76.9	23.1	0.0	13
24	83.3	8.3	8.3	12
25	78.6	0.0	21.4	14
26	84.6	7.7	7.7	13
27	94.4	5.6	.0	18
28	83.3	0.0	16.7	6
29	55.6	11.1	33.3	9
30	100.0	0.0	0.0	4
31	85.7	9.5	4.8	21
Total	76.3	13.5	10.2	422

MISCELLANEOUS/P&P				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	87.5%	.0 %	12.5%	8
2	64.7	11.8	23.5	34
3	66.7	0.0	33.3	6
4	66.7	0.0	33.3	18
5	60.0	0.0	40.0	10
6	66.7	.0	33.3	6
7	100.0	0.0	0.0	7
8	85.7	14.3	0.0	7
9	75.0	0.0	25.0	12
10	87.5	0.0	12.5	16
11	50.0	0.0	50.0	4
12	25.0	25.0	50.0	12
13	66.7	20.0	13.3	15
14	54.5	0.0	45.5	11
15	72.2	11.1	16.7	36
16	57.1	4.8	38.1	21
17	60.0	0.0	40.0	5
18	50.0	0.0	50.0	4
19	70.6	5.9	23.5	17
20	76.9	0.0	23.1	13
21	66.7	.0	33.3	6
22	53.8	7.7	38.5	13
23	64.3	7.1	28.6	14
24	69.2	3.8	26.9	26
25	81.0	9.5	9.5	21
26	87.9	3.0	9.1	33
27	70.0	10.0	20.0	40
28	71.4	0.0	28.6	14
29	45.5	9.1	45.5	33
30	71.4	14.3	14.3	7
31	63.6	27.3	9.1	11
Total	67.9	7.1	25.0	480

## Appendix 3

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

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WEAPONS				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	66.7 %	20.8 %	12.5 %	24
2	82.8	3.4	13.8	29
3	95.0	5.0	0.0	20
4	73.3	13.3	13.3	30
5	66.7	16.7	16.7	12
6	37.5	25.0	37.5	8
7	87.5	0.0	12.5	24
8	69.6	0.0	30.4	23
9	100.0	0.0	0.0	13
10	80.8	3.8	15.4	26
11	86.7	6.7	6.7	15
12	75.0	5.0	20.0	20
13	83.3	6.7	10.0	60
14	68.4	10.5	21.1	19
15	82.9	7.3	9.8	41
16	66.7	14.3	19.0	21
17	0.0	100.0	0.0	1
18	100.0	0.0	0.0	4
19	61.5	30.8	7.7	13
20	100.0	0.0	0.0	9
21	78.6	14.3	7.1	14
22	80.0	3.3	16.7	30
23	50.0	16.7	33.3	18
24	87.1	6.5	6.5	31
25	66.7	18.2	15.2	33
26	86.2	6.9	6.9	29
27	93.8	0.0	6.3	32
28	85.7	9.5	4.8	21
29	63.0	22.2	14.8	27
30	91.7	8.3	0.0	12
31	84.6	15.4	0.0	13
Total	78.3	9.2	12.5	672

Appendix 4

Sentencing Guidelines Compliance by Judicial Circuit: Offenses Against the Person

**ASSAULT**

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	76.1%	17.4 %	6.5 %	46
2	81.1	10.0	8.9	90
3	75.9	10.3	13.8	29
4	78.2	12.9	8.9	101
5	66.7	16.7	16.7	36
6	73.7	10.5	15.8	19
7	71.0	12.9	16.1	62
8	70.8	16.7	12.5	24
9	97.0	3.0	0.0	33
10	65.4	17.3	17.3	52
11	87.0	4.3	8.7	23
12	79.5	13.6	6.8	44
13	63.2	22.4	14.5	76
14	83.7	4.1	12.2	49
15	61.5	23.1	15.4	65
16	78.5	9.2	12.3	65
17	60.0	10.0	30.0	10
18	66.7	13.3	20.0	15
19	80.8	11.5	7.7	26
20	76.0	12.0	12.0	25
21	64.0	20.0	16.0	25
22	84.6	0.0	15.4	26
23	66.1	22.0	11.9	59
24	78.8	12.1	9.1	66
25	66.7	22.9	10.4	48
26	79.4	14.7	5.9	68
27	70.8	18.5	10.8	65
28	78.8	12.1	9.1	33
29	79.2	14.6	6.3	48
30	68.4	5.3	26.3	19
31	89.2	0.0	10.8	37
Total	74.9	13.7	11.4	1384

**KIDNAPPING**

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	75.0 %	25.0%	0.0 %	4
2	66.7	0.0	33.3	3
3	50.0	50.0	0.0	2
4	75.0	0.0	25.0	8
5	75.0	12.5	12.5	8
6	100.0	0.0	0.0	1
7	50.0	0.0	50.0	4
8	25.0	50.0	25.0	4
9	50.0	0.0	50.0	2
10	35.7	28.6	35.7	14
11	66.7	.0	33.3	3
12	50.0	50.0	0.0	2
13	50.0	16.7	33.3	6
14	50.0	0.0	50.0	2
15	33.3	0.0	66.7	3
16	80.0	0.0	20.0	5
17	66.7	0.0	33.3	3
18	50.0	0.0	50.0	2
19	66.7	0.0	33.3	3
20	66.7	0.0	33.3	3
21	0.0	0.0	0.0	0
22	80.0	20.0	0.0	5
23	66.7	0.0	33.3	3
24	66.7	33.3	0.0	3
25	50.0	50.0	0.0	2
26	75.0	25.0	0.0	4
27	100.0	0.0	0.0	2
28	0.0	100.0	0.0	1
29	100.0	0.0	0.0	1
30	0.0	0.0	0.0	1
31	50.0	25.0	25.0	4
Total	59.3	15.7	25.0	108

**HOMICIDE**

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	75.0 %	25.0 %	0.0 %	4
2	60.0	0.0	40.0	10
3	0.0	0.0	100.0	2
4	61.1	33.3	5.6	18
5	60.0	20.0	20.0	5
6	66.7	16.7	16.7	6
7	71.4	14.3	14.3	7
8	42.9	14.3	42.9	7
9	0.0	0.0	100.0	2
10	75.0	25.0	0.0	4
11	66.7	11.1	22.2	9
12	57.1	14.3	28.6	7
13	68.0	20.0	12.0	25
14	50.0	20.0	30.0	10
15	50.0	7.1	42.9	14
16	100.0	0.0	0.0	1
17	0.0	0.0	0.0	0
18	0.0	0.0	0.0	0
19	25.0	0.0	75.0	4
20	100.0	0.0	0.0	5
21	33.3	66.7	0.0	6
22	66.7	0.0	33.3	3
23	33.3	33.3	33.3	3
24	92.9	0.0	7.1	14
25	80.0	0.0	20.0	5
26	25.0	16.7	58.3	12
27	66.7	0.0	33.3	6
28	60.0	0.0	40.0	5
29	80.0	10.0	10.0	10
30	80.0	20.0	0.0	5
31	71.4	28.6	0.0	7
Total	61.6	15.3	23.1	216

Appendix 4

Sentencing Guidelines Compliance by Judicial Circuit: Offenses Against the Person

**ROBBERY**

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	72.7 %	9.1 %	18.2 %	11
2	67.2	23.0	9.8	61
3	62.5	37.5	0.0	16
4	56.6	41.5	1.9	53
5	54.5	36.4	9.1	11
6	42.9	42.9	14.3	7
7	68.8	21.9	9.4	32
8	59.1	31.8	9.1	22
9	50.0	35.7	14.3	14
10	27.3	18.2	54.5	11
11	91.7	8.3	0.0	12
12	86.2	3.4	10.3	29
13	65.5	32.2	2.3	87
14	73.2	22.0	4.9	41
15	59.1	40.9	0.0	22
16	73.3	26.7	0.0	15
17	50.0	25.0	25.0	4
18	63.6	27.3	9.1	11
19	50.0	36.8	13.2	38
20	77.8	11.1	11.1	9
21	100.0	0.0	0.0	7
22	27.3	18.2	54.5	11
23	52.2	30.4	17.4	23
24	58.3	33.3	8.3	12
25	61.5	38.5	0.0	13
26	81.8	9.1	9.1	11
27	66.7	0.0	33.3	9
28	75.0	0.0	25.0	4
29	71.4	14.3	14.3	7
30	16.7	16.7	66.7	6
31	86.7	13.3	0.0	15
Total	64.0	26.4	9.6	624

**RAPE**

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	57.1 %	14.3 %	28.6 %	7
2	72.2	11.1	16.7	18
3	0.0	0.0	0.0	0.0
4	100.0	0.0	0.0	11
5	80.0	20.0	0.0	5
6	80.0	.0	20.0	5
7	100.0	0.0	0.0	5
8	66.7	0.0	33.3	3
9	100.0	0.0	0.0	1
10	75.0	12.5	12.5	8
11	100.0	0.0	0.0	2
12	100.0	0.0	0.0	2
13	0.0	0.0	0.0	0
14	100.0	0.0	0.0	2
15	60.0	20.0	20.0	5
16	87.5	0.0	12.5	8
17	83.3	0.0	16.7	6
18	100.0	0.0	0.0	2
19	80.0	0.0	20.0	5
20	87.5	0.0	12.5	8
21	50.0	50.0	0.0	2
22	75.0	0.0	25.0	4
23	0.0	0.0	0.0	0
24	75.0	0.0	25.0	4
25	42.9	28.6	28.6	7
26	66.7	16.7	16.7	6
27	60.0	40.0	0.0	5
28	100.0	0.0	0.0	2
29	33.3	33.3	33.3	3
30	33.3	0.0	66.7	3
31	71.4	28.6	0.0	14
Total	75.2	11.1	13.7	153

**OTHER SEXUAL ASSAULT**

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	66.7 %	16.7 %	16.7 %	6
2	92.3	3.8	3.8	26
3	50.0	16.7	33.3	6
4	94.7	0.0	5.3	19
5	50.0	50.0	0.0	2
6	40.0	40.0	20.0	5
7	75.0	12.5	12.5	8
8	100.0	0.0	0.0	4
9	70.0	0.0	30.0	10
10	73.3	13.3	13.3	15
11	100.0	0.0	0.0	4
12	84.6	15.4	.0	13
13	68.8	12.5	18.8	16
14	38.1	9.5	52.4	21
15	62.5	12.5	25.0	24
16	81.8	9.1	9.1	11
17	0.0	0.0	0.0	0
18	85.7	14.3	0.0	7
19	48.5	3.0	48.5	33
20	53.3	6.7	40.0	15
21	80.0	20.0	.0	5
22	42.9	14.3	42.9	7
23	50.0	50.0	0.0	6
24	71.4	14.3	14.3	14
25	68.4	5.3	26.3	19
26	75.9	0.0	24.1	29
27	65.5	0.0	34.5	29
28	70.0	20.0	10.0	10
29	33.3	22.2	44.4	9
30	100.0	0.0	0.0	2
31	75.0	0.0	25.0	24
Total	68.2	8.5	23.3	399

Appendix 4

Sentencing Guidelines Compliance by Judicial Circuit: Offenses Against the Person

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**OBSCENITY**

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	100.0 %	0.0 %	0.0 %	2
2	75.0	0.0	25.0	4
3	100.0	0.0	0.0	1
4	100.0	0.0	0.0	1
5	0.0	0.0	0.0	0
6	0.0	0.0	0.0	0
7	50.0	0.0	50.0	2
8	100.0	0.0	0.0	1
9	100.0	0.0	0.0	1
10	100.0	0.0	0.0	3
11	100.0	0.0	0.0	3
12	33.3	33.3	33.3	3
13	50.0	25.0	25.0	4
14	100.0	0.0	0.0	1
15	68.8	6.3	25.0	16
16	83.3	8.3	8.3	12
17	100.0	0.0	0.0	4
18	0.0	0.0	0.0	0
19	56.8	22.7	20.5	44
20	60.0	20.0	20.0	5
21	100.0	0.0	0.0	3
22	66.7	0.0	33.3	3
23	66.7	0.0	33.3	3
24	90.9	0.0	9.1	11
25	89.5	10.5	0.0	19
26	60.0	5.0	35.0	20
27	77.8	11.1	11.1	9
28	100.0	0.0	0.0	1
29	50.0	33.3	16.7	6
30	0.0	0.0	0.0	0
31	90.0	10.0	0.0	10
Total	72.4	11.5	16.1	192