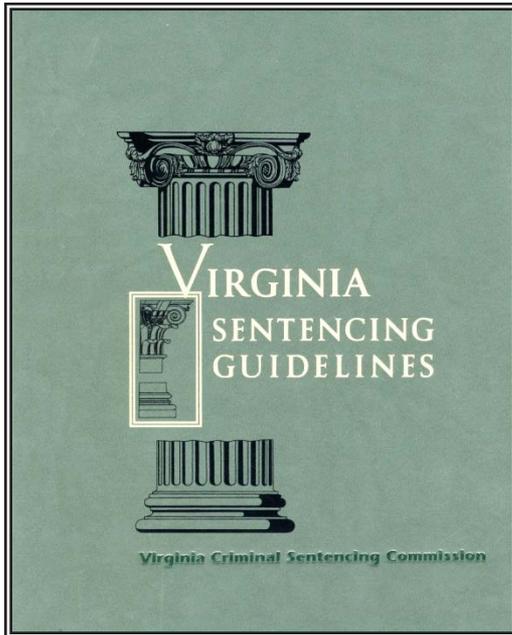




VIRGINIA CRIMINAL SENTENCING COMMISSION

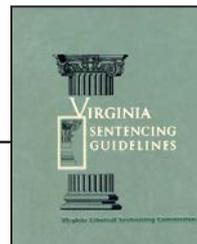


Proposed Topics for Possible Guidelines Revisions

September 21, 2015

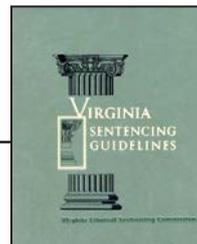
Modifications to the Sentencing Guidelines

- The Commission closely monitors the sentencing guidelines system and, each year, deliberates upon possible modifications to the guidelines.
- 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.



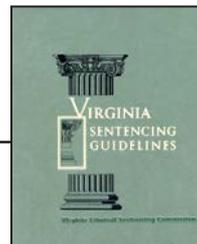
Proposals for New Guidelines Offenses

- **Proposals reflect the best fit for the historical data.**
- **Proposals are designed to closely match the historical rate of incarceration in prison and jail.**
- **Current guidelines worksheets serve as the base for scoring historical cases, but the points assigned to those factors may be different for the new offense and new factors may be added.**



Proposals for Revisions to Existing Sentencing Guidelines

- **Proposals are designed using historical data to adjust the guidelines with the goal of maximizing compliance and balancing mitigation and aggravation rates to the extent possible.**
- **Current guidelines worksheets serve as the base for scoring historical cases, but the points assigned to those factors may be adjusted and new factors may be added.**





**Directive from the
2014 General Assembly**

House Bill 504 and Senate Bill 433

2014 General Assembly

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

Be it enacted by the General Assembly of Virginia:

1. *§ 1. The proposed modifications to the discretionary sentencing guidelines for convictions related to the possession of child pornography adopted by the Virginia Criminal Sentencing Commission shall not become effective until July 1, 2016. The Commission will review these guidelines and complete its review by December 1, 2015. Any proposed modification in the Commission's 2015 Annual Report shall supersede the current proposed modifications.*

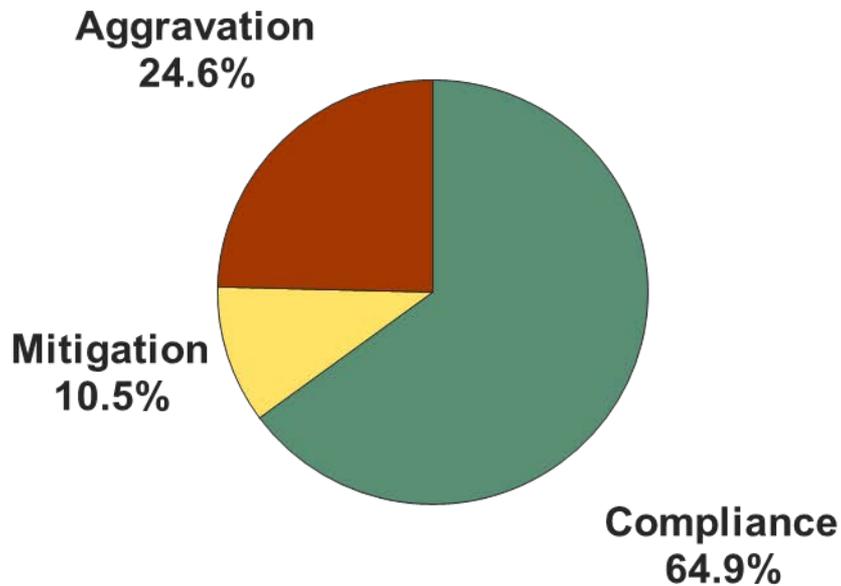
SUMMARY AS PASSED:

Delay proposed modifications to the discretionary sentencing guidelines; possession of child pornography. Provides that proposed modifications to the discretionary sentencing guidelines for possession of child pornography adopted by the Virginia Criminal Sentencing Commission shall not become effective until July 1, 2016. The Commission will review these guidelines and complete its review by December 1, 2015. Any proposed modification in the Commission's 2015 Annual Report shall supersede the current proposed modifications.

Sentencing Commission's 2013 Annual Report

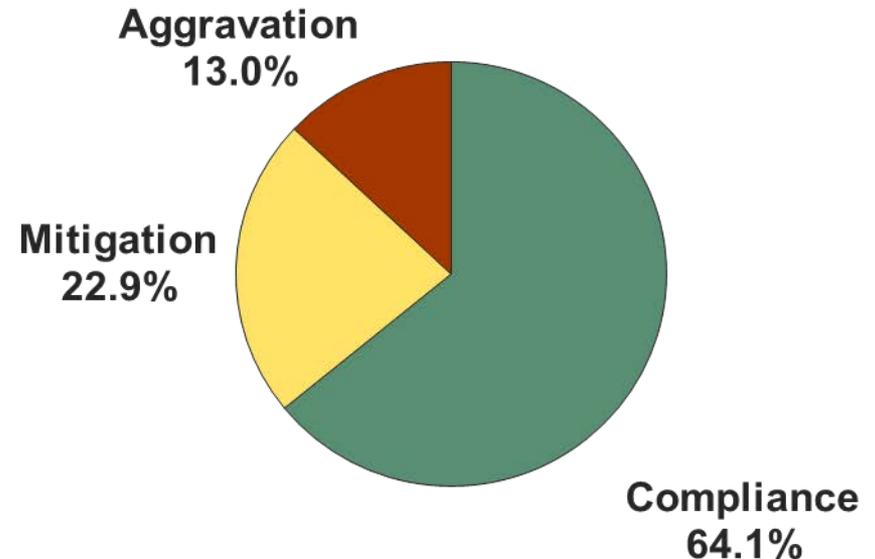
Compliance with Existing Sentencing Guidelines for Child Pornography Offenses FY2009 – FY2013

Production (§ 18.2-374.1)



Number of Cases = 57

Possession/Reproduction (§ 18.2-374.1:1)



Number of Cases = 362

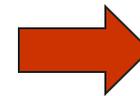


Sentencing Commission's 2013 Annual Report

Recommendation 2:

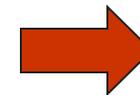
Modify the sentencing guidelines for child pornography (§§ 18.2-374.1 and 18.2-374.1:1) to bring the guidelines more in sync with actual sentencing practices for these offenses.

— **Increase recommendations for production and reproduction/transmission in certain cases.**



Accepted by General Assembly

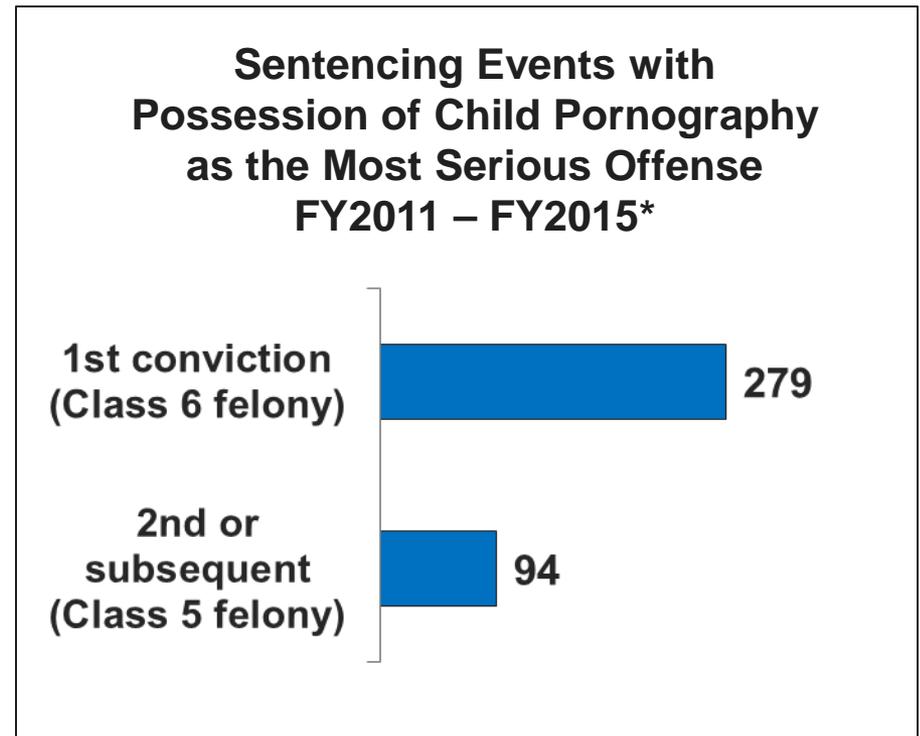
— **Decrease recommendations for possession.**



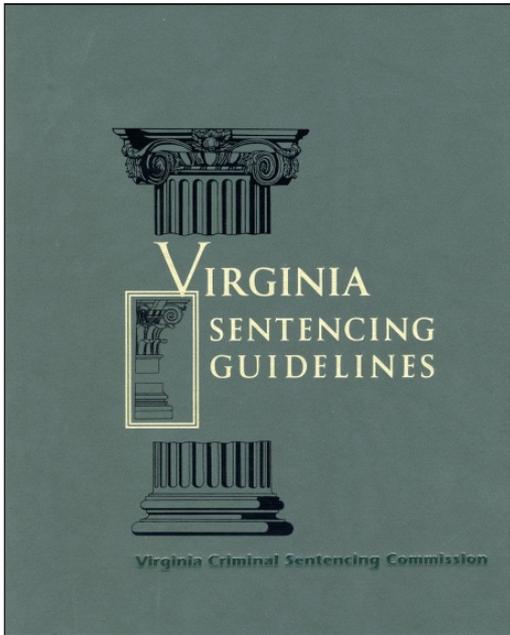
Delayed by General Assembly for additional study

2015 Review of Guidelines for Possession of Child Pornography

In June 2014, the Commission directed staff to add FY2014 and FY2015 data to the analysis (when the data became available) and retest the proposed changes presented in *2013 Annual Report*.



* FY2015 data are preliminary.



Ongoing Study

Larceny and Fraud Study 2013-2015

- **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.**
- **Based on the results of the analysis, the Commission could consider adding a factor to the sentencing guidelines to account for the value of money/property stolen in larceny and fraud cases.**
- **Factors gathered through supplemental data will be tested to try to improve the predictive ability of the guidelines model.**

Larceny and Fraud Study 2013-2015

Supplemental Data Collection

Dollar value of money or property stolen

Type(s) of items

Damage of items

Money/items recovered

Insurance coverage for items

Fraud protection for loss

Location of offense

Duration of offense

Number of victims

Type and Age of victim(s)

Offender relationship to victim

Status of restitution at time of sentencing

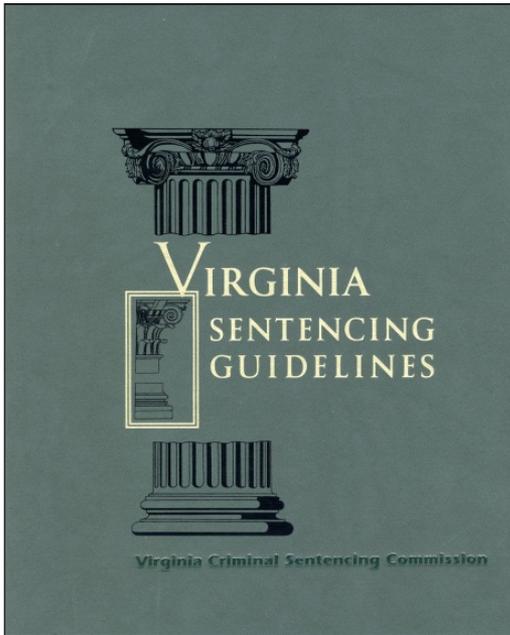
Restitution ordered at sentencing

Larceny and Fraud Study 2013-2015

A sample was selected from FY2011 - FY2013 sentencing events. A stratified random sampling technique was used to under-sample grand larceny cases and over-sample other types of larcenies. This was done in order to ensure adequate number of cases for non-grand larceny in the sample.

	Number of Sentencing Events
Grand Larceny	200
Embezzlement	600
Other Larcenies	400
Fraud	300
Total Sample	1,500

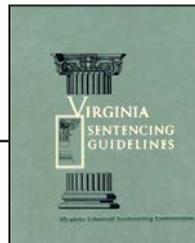
For the analysis, the sampled cases will be weighted to reflect each subgroup's actual proportion in the population.



Deferred Action from 2014

Strangulation (§ 18.2-51.6)

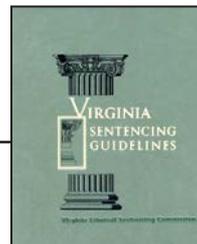
- **In 2014, staff presented a proposal to add strangulation under § 18.2-51.6 as a guidelines offenses, should the Commission wish to do so.**
- **The Commission elected not to add strangulation at that time to allow for further study.**



Strangulation (§ 18.2-51.6)

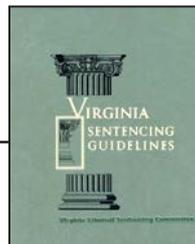
Any person who, without consent, impedes the blood circulation or respiration of another person by knowingly, intentionally, and unlawfully applying pressure to the neck of such person resulting in the wounding or bodily injury of such person is guilty of strangulation, a Class 6 felony.

(Effective July 1, 2012)



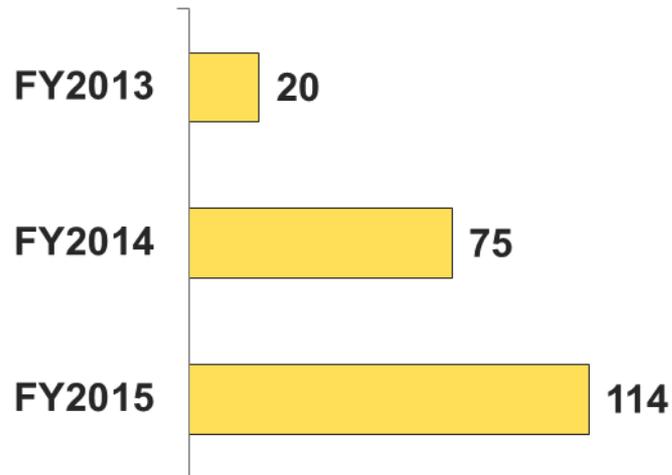
Strangulation (§ 18.2-51.6)

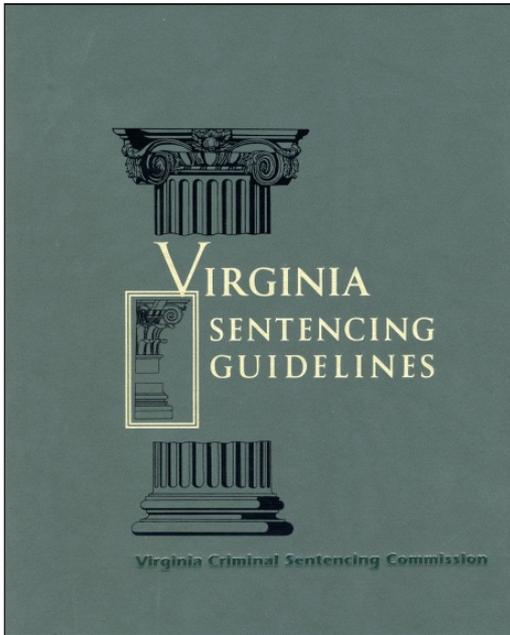
- In some cases, users have incorrectly prepared the guidelines using the Class 6 felony of unlawful wounding.
- Staff have received numerous requests to add this offense to the guidelines.



Strangulation (§ 18.2-51.6)

Number of Sentencing Events with Strangulation as the Most Serious Offense FY2013 – FY2015



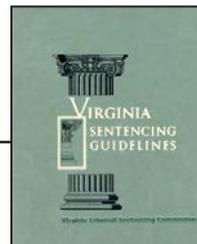


Possible Areas for Analysis of Existing Guidelines Offenses

Indecent Liberties

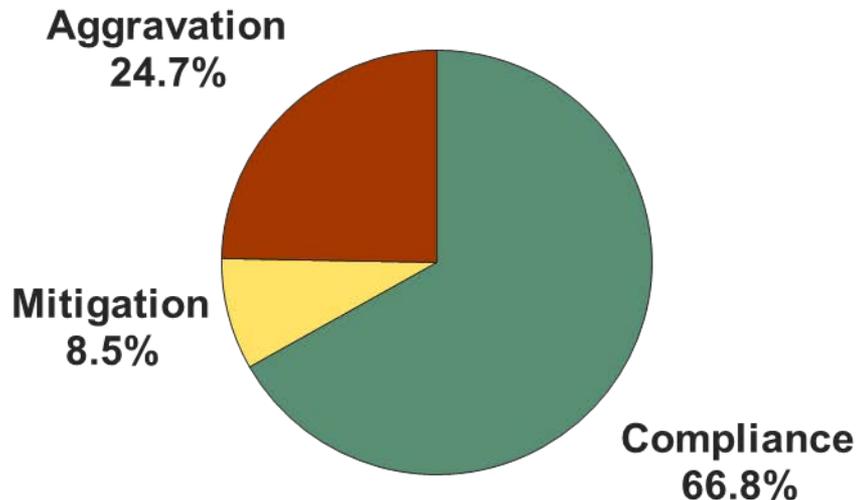
(§ 18.2-370(A) and § 18.2-370.1(A))

- In November 2014, staff presented an analysis of sentencing practices in indecent liberties cases.
- The Commission requested staff to continue analyzing the data related to this offense and to report back in 2015.
- Compliance with the current guidelines for these offenses is well below the overall compliance rate and when judges depart, they are significantly more likely to sentence above the guidelines than below.



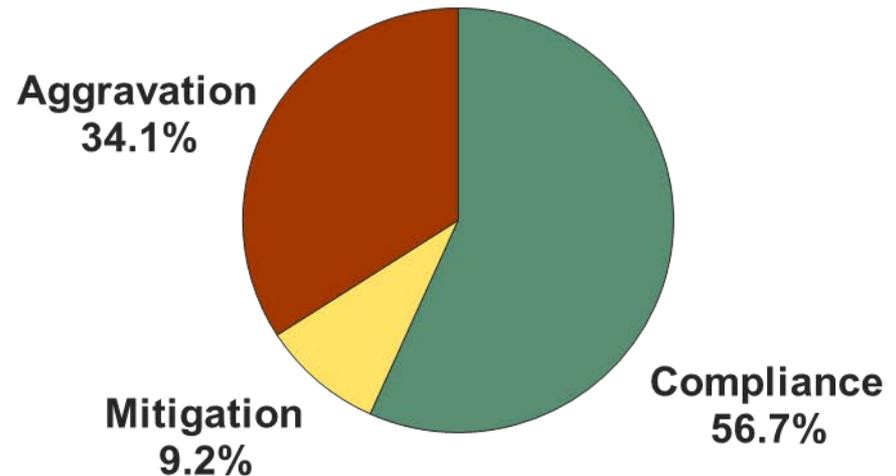
**Compliance with Sentencing Guidelines for
Indecent Liberties (§ 18.2-370(A) and § 18.2-370.1(A))
FY2011 – FY2015 (preliminary)**

**Indecent Liberties with
Child under Age 15
(§ 18.2-370(A))
Class 5 felony**



Number of Cases = 283

**Indecent Liberties
by Custodian
(§ 18.2-370.1(A))
Class 6 felony**



Number of Cases = 217

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

	Actual Practice	Recommended under Current Sentencing Guidelines
Probation or Incarceration Up to 6 Months	28.3%	35.3%
Incarceration More than 6 Months (Range includes prison)	71.7%	64.7%



**Current guidelines could be
more closely aligned with the
actual prison incarceration rate**

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

	Actual Practice	Recommended under Current Sentencing Guidelines
Probation or Incarceration Up to 6 Months	33.6%	50.2%
Incarceration More than 6 Months (Range includes prison)	66.4%	49.8%



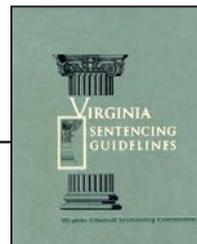
**Current guidelines could be
more closely aligned with the
actual prison incarceration rate**

Possession of Schedule I/II Drugs (§ 18.2-250) and Petit Larceny 3rd Offense (§ 18.2-104)

- **In a case shared with Commission staff, a defendant was convicted of possession of a Schedule I/II drug along with a petit larceny 3rd offense and the guidelines recommended probation/no incarceration.**
 - **If the Schedule I or II drug charge had not been included in that case, the guidelines scored just for the petit larceny 3rd offense recommended a prison term.**
- **A judge familiar with the case asked if the Commission would examine this combination of offenses to see if the data supported a revision to the guidelines.**

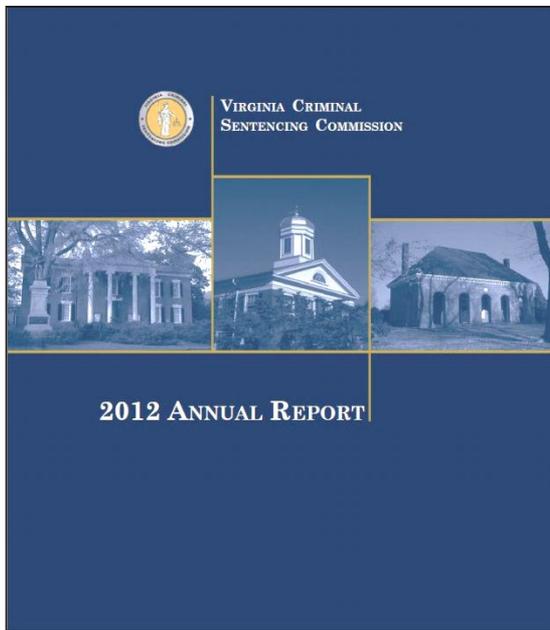
Possession of Schedule I/II Drugs (§ 18.2-250) and Petit Larceny 3rd Offense (§ 18.2-104)

- Between FY2011 and FY2015, there were 203 sentencing events where possession of a Schedule I or II drug was the primary offense and petit larceny 3rd was an additional offense.



Vehicular Involuntary Manslaughter (§ 18.2-36.1(A))

In its *2012 Annual Report*, the Commission recommended revisions to the sentencing guidelines for vehicular involuntary manslaughter (§ 18.2-36.1(A)).



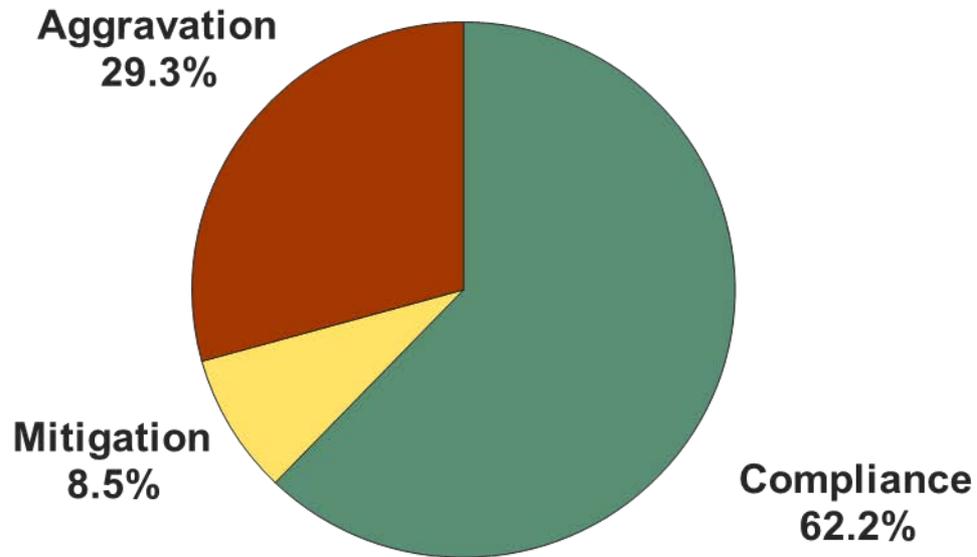
The General Assembly accepted the Commission's recommendation, and the revisions went into effect July 1, 2013.

Despite the revisions, the aggravation rate for the offense remains high.

Staff has received a request from a Commonwealth's attorney asking the Commission to revisit the guidelines for this offense.

**Compliance with Sentencing Guidelines for
Vehicular Involuntary Manslaughter (§ 18.2-36.1(A))
FY2008 – FY2012**

**BEFORE
revisions to
guidelines**



**Sentencing Events
= 82**

Note: Cases with scoring errors were excluded from the analysis.

2012 Approved Revisions

The 2012 approved revisions increased the points for vehicular involuntary manslaughter on Section A of the Murder/Homicide guidelines.

Murder/Homicide Section A

Offender Name: _____

◆ Primary Offense _____

A. First degree murder	Completed: 1 count	9
	Attempted or conspired: 1 count	8
B. Second degree murder or felony homicide		
	Completed: 1 count	8
	Attempted or conspired: 1 count	4
C. Voluntary manslaughter		
	Attempted, conspired or completed: 1 count	5
D. Involuntary manslaughter (§ 18.2-36)		
	Completed: 1 count	1
	2 counts	3
	Attempted or conspired: 1 count	1
E. Aggravated vehicular manslaughter	1 count	8
F. Vehicular involuntary manslaughter (§ 18.2-36.1(A))		
	1 count	8

Score

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All offenders convicted of this offense are recommended for Section C (prison sentence)

2012 Approved Revisions

The 2012 approved revisions added a new factor to Section C of the Murder/Homicide guidelines.

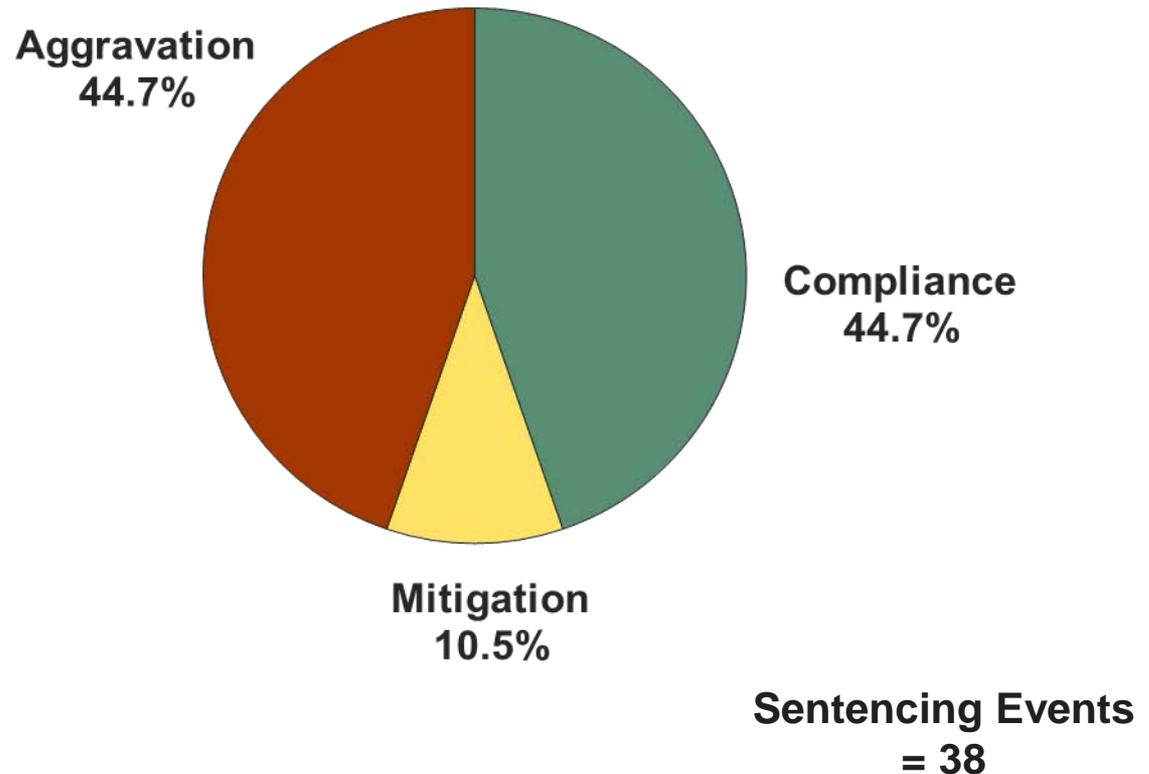
SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE IS
VEHICULAR INVOLUNTARY MANSLAUGHTER (§ 18.2-36.1(A))

◆ Additional Offense of Felony Hit and Run (§ 46.2-894)  If YES, add 23

This new factor increases the recommended prison sentence for offenders convicted of this combination of offenses.

**Compliance with Sentencing Guidelines for
Vehicular Involuntary Manslaughter (§ 18.2-36.1(A))
FY2014 – FY2015 (preliminary)**

**AFTER
revisions to
guidelines**

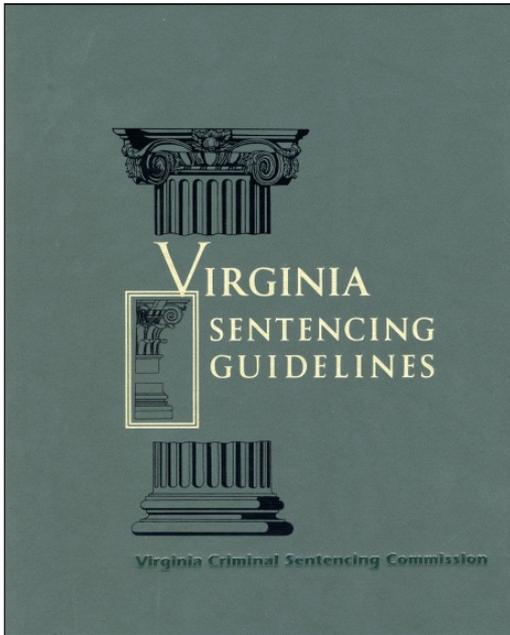


Note: Cases with scoring errors were excluded from the analysis.

**Compliance with Sentencing Guidelines for
Vehicular Involuntary Manslaughter (§ 18.2-36.1(A))
FY2008 – FY2015 (preliminary)**

Fiscal Year	Compliance	Mitigation	Aggravation	Number of Cases
2008	72.0%	4.0%	24.0%	25
2009	59.1%	9.1%	31.8%	22
2010	75.0%	0.0%	25.0%	20
2011	40.0%	13.3%	46.7%	15
2012	42.9%	14.3%	42.9%	14
2013	42.1%	0.0%	57.9%	19
2014	38.9%	11.1%	50.0%	18
2015	50.0%	10.0%	40.0%	20

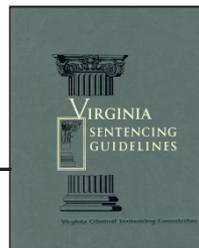
Note: Cases with scoring errors were excluded from the analysis.



Possible New Guidelines Offenses

Conspire to Commit Larceny, Aggregate Value of \$200 or More (§ 18.2-23(B))

- **Currently, convictions under § 18.2-23(B) involving conspiracy to steal property with an aggregate value of \$200 or more are not covered by the sentencing guidelines.**
- **In 2012, a proposal to add this offense to the guidelines was tabled in order to expand the analysis to include additional cases.**



**Conspire to Commit Larceny, Aggregate Value of \$200 or More
 (§ 18.2-23(B))
 FY2008 – FY2015
 137 Cases**

Disposition	Percent	Median Sentence
No Incarceration	32.8%	NA
Incarceration Up to 6 Months	35.8%	3 Months
Incarceration More than 6 Months	31.4%	1 Year

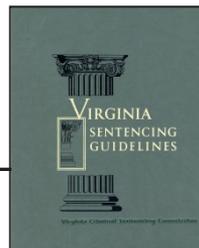
Note: Data reflect cases in which this offense was the primary (or most serious) offense at sentencing.

Source: Supreme Court of Virginia - Circuit Court Management System (CMS)

Aggravated Sexual Battery of Child 13-17 by Parent/Grandparent

(§ 18.2-67.3(A,3))

- **Currently, convictions under § 18.2-67.3(A,3) involving aggravated sexual battery of a child age 13-17 by a parent or grandparent are not covered by the sentencing guidelines.**
- **In 2012, a proposal to add this offense to the guidelines was tabled in order to expand the analysis to include additional cases.**



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

Disposition	Percent	Median Sentence
No Incarceration	13.3%	NA
Incarceration Up to 6 Months	15.6%	4.5 Months
Incarceration More than 6 Months	71.1%	5 Years

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

Source: Supreme Court of Virginia - Circuit Court Management System (CMS)