



# VIRGINIA CRIMINAL SENTENCING COMMISSION



## Review of Guidelines for Heroin Distribution (House Bill 1059)

September 12, 2016

## 2016 SESSION

### CHAPTER 398

*An Act to direct the Virginia Criminal Sentencing Commission to study the sentencing guidelines for heroin possession.*

[H 1059]

Approved March 11, 2016

**Be it enacted by the General Assembly of Virginia:**

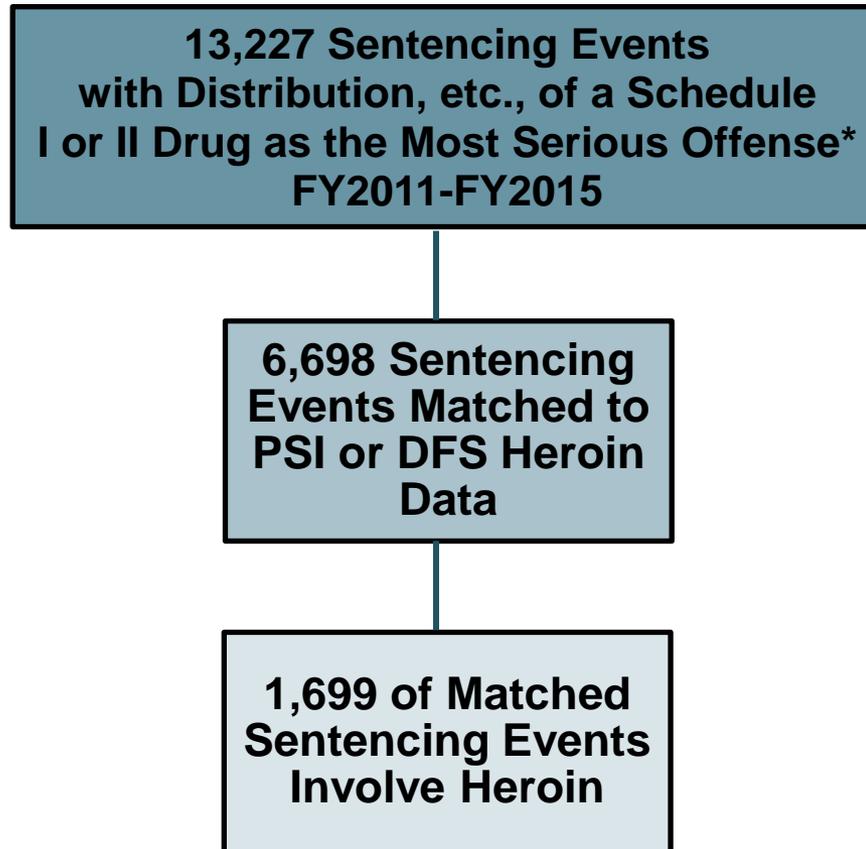
**1. § 1.** *The Virginia Criminal Sentencing Commission (the Commission) under its powers and duties shall evaluate judge-sentencing and jury-sentencing patterns and practices in cases of manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell, give, or distribute heroin across the Commonwealth and recommend adjustments in the sentencing guidelines previously adopted by the Commission.*

# Methodology

- **Since sentencing guidelines data do not identify the type of drug involved, staff matched sentencing guidelines cases to Pre-Sentence Investigation Report (PSI) data.**
- **For cases in which a PSI was not prepared or where the quantity of heroin involved was unknown, staff matched sentencing guidelines cases to data provided by the Virginia Department of Forensic Science (DFS).**
  - **DFS data included heroin samples submitted to DFS with offense dates between FY2008 and FY2015.**



# Sentencing Guidelines Matched to Pre-Sentence Investigation (PSI) Reports or Department of Forensic Science (DFS) Submissions



**\* Most serious offense at sentencing under § 18.2-248(C), 18.2-248(D), or 18.2-255(A).**

Sources: Sentencing Guidelines Database, FY2011-FY2015  
Pre/Post-Sentence Investigation (PSI) Report System, FY2011-FY2015  
Department of Forensic Science Drug Submission Database



# Sentencing Guidelines Data Matched to Additional Datasets

- **Of the 1,699 heroin distribution, etc., sentencing events identified by matching to PSI and DFS records, approximately 96.2% have quantity recorded.**
  - **Median quantity of heroin was .51 grams.**
- **Roughly one-third of heroin sentencing events involve multiple counts of distribution, etc., of Schedule I or II drug (which may involve other drugs in addition to heroin).**



# Sentencing Outcomes for Distribution, etc., of a Schedule I/II Drug\* FY2011 – FY2015

Disposition	Heroin		Other Sch. I/II Drug	
	Percent	Median	Percent	Median
Probation/ No Incarceration	9.9%	N/A	13.6%	N/A
Jail – Up to 12 Months	19.4%	8 Mos.	26.1%	8 Mos.
Prison – 1 Year or More	70.7%	2.8 Yrs.	60.3%	2.2 Yrs.
	<b>N=1,699</b>		<b>N=11,528</b>	

\* Most serious offense at sentencing under § 18.2-248(C), 18.2-248(D), or 18.2-255(A).

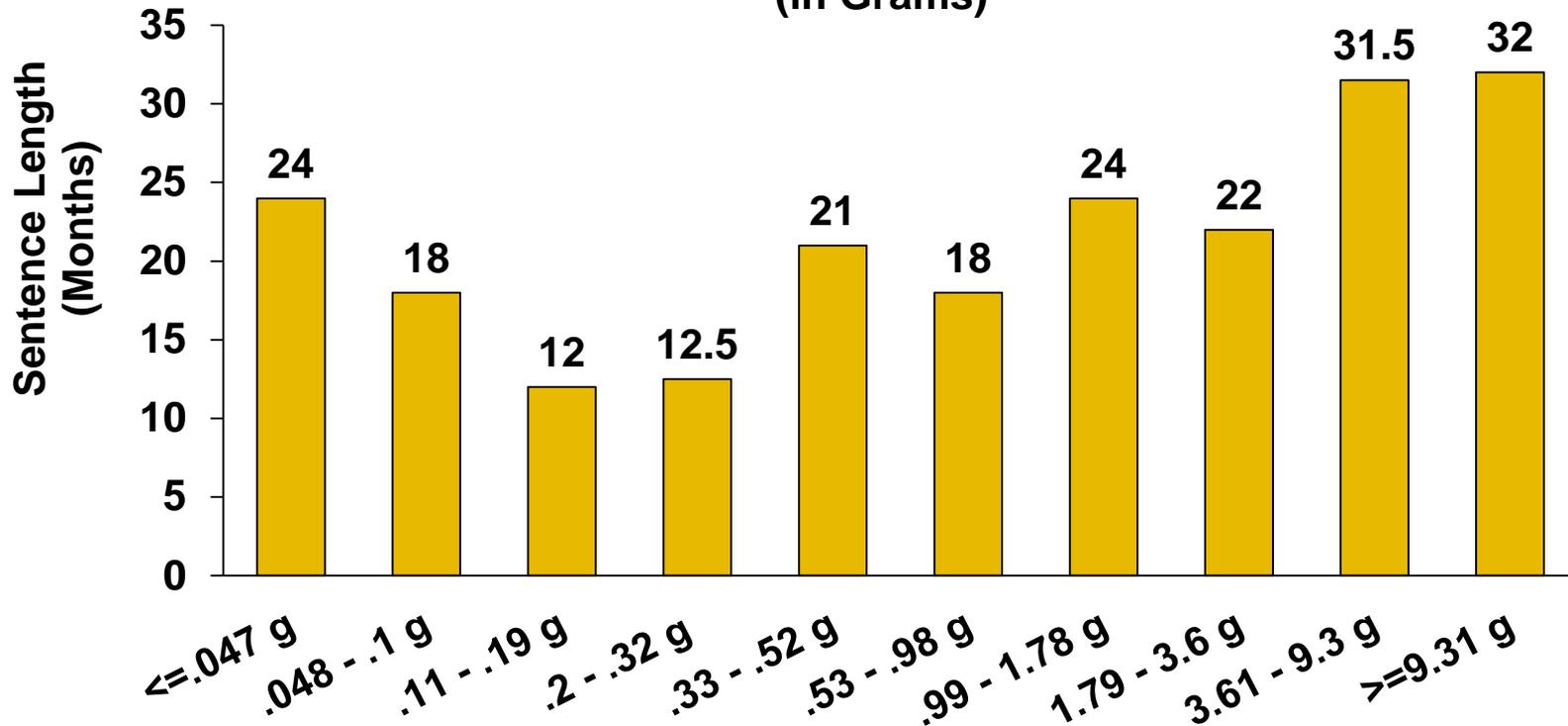
Source: Sentencing Guidelines Database, FY2011-FY2015  
Pre/Post-Sentence Investigation (PSI) Report System, FY2011-FY2015  
Department of Forensic Science Drug Submission Database

Note: Guidelines cases with scoring errors and other types of errors were excluded from the analysis.

# Sentencing Outcomes for Distribution, etc., of Heroin\*

## FY2011 – FY2015

**Heroin Sentencing Events  
Median Sentence Length by Amount of Heroin Involved  
(in Grams)**



\* Most serious offense at sentencing under § 18.2-248(C), 18.2-248(D), or 18.2-255(A).

Source: Sentencing Guidelines Database, FY2011-FY2015  
Pre/Post-Sentence Investigation (PSI) Report System, FY2011-FY2015  
Department of Forensic Science Drug Submission Database

Note: Guidelines cases with scoring errors and other types of errors were excluded from the analysis.

# Compliance with Sentencing Guidelines for Distribution, etc., of a Schedule I/II Drug\* FY2011 – FY2015

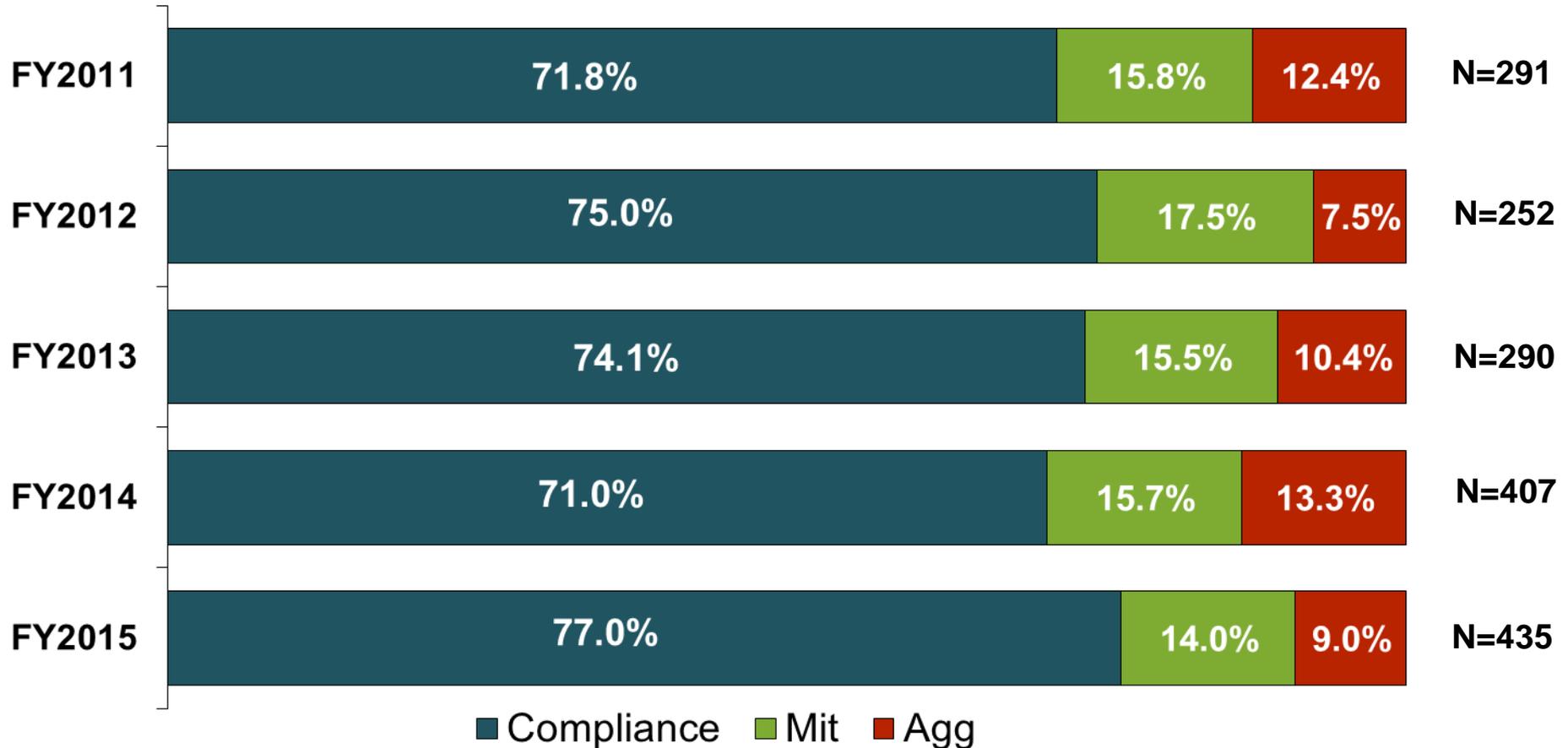
	<b>Heroin</b>	<b>Other Sch. I/II Drug</b>
<b>Compliance</b>	<b>73.9%</b>	<b>78.7%</b>
<b>Mitigation</b>	<b>15.5%</b>	<b>14.3%</b>
<b>Aggravation</b>	<b>10.6%</b>	<b>7.0%</b>

\* **Most serious offense at sentencing under § 18.2-248(C), 18.2-248(D), or 18.2-255(A).**

Source: Sentencing Guidelines Database, FY2011-FY2015  
Pre/Post-Sentence Investigation (PSI) Report System, FY2011-FY2015  
Department of Forensic Science Drug Submission Database

Note: Guidelines cases with scoring errors and other types of errors were excluded from the analysis.

# Compliance with Sentencing Guidelines for Distribution, etc., of Heroin\* FY2011 – FY2015



\* Most serious offense at sentencing under § 18.2-248(C), 18.2-248(D), or 18.2-255(A).

Source: Sentencing Guidelines Database, FY2011-FY2015  
 Pre/Post-Sentence Investigation (PSI) Report System, FY2011-FY2015  
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# Compliance with Sentencing Guidelines for Distribution, etc., of Heroin FY2011 – FY2015

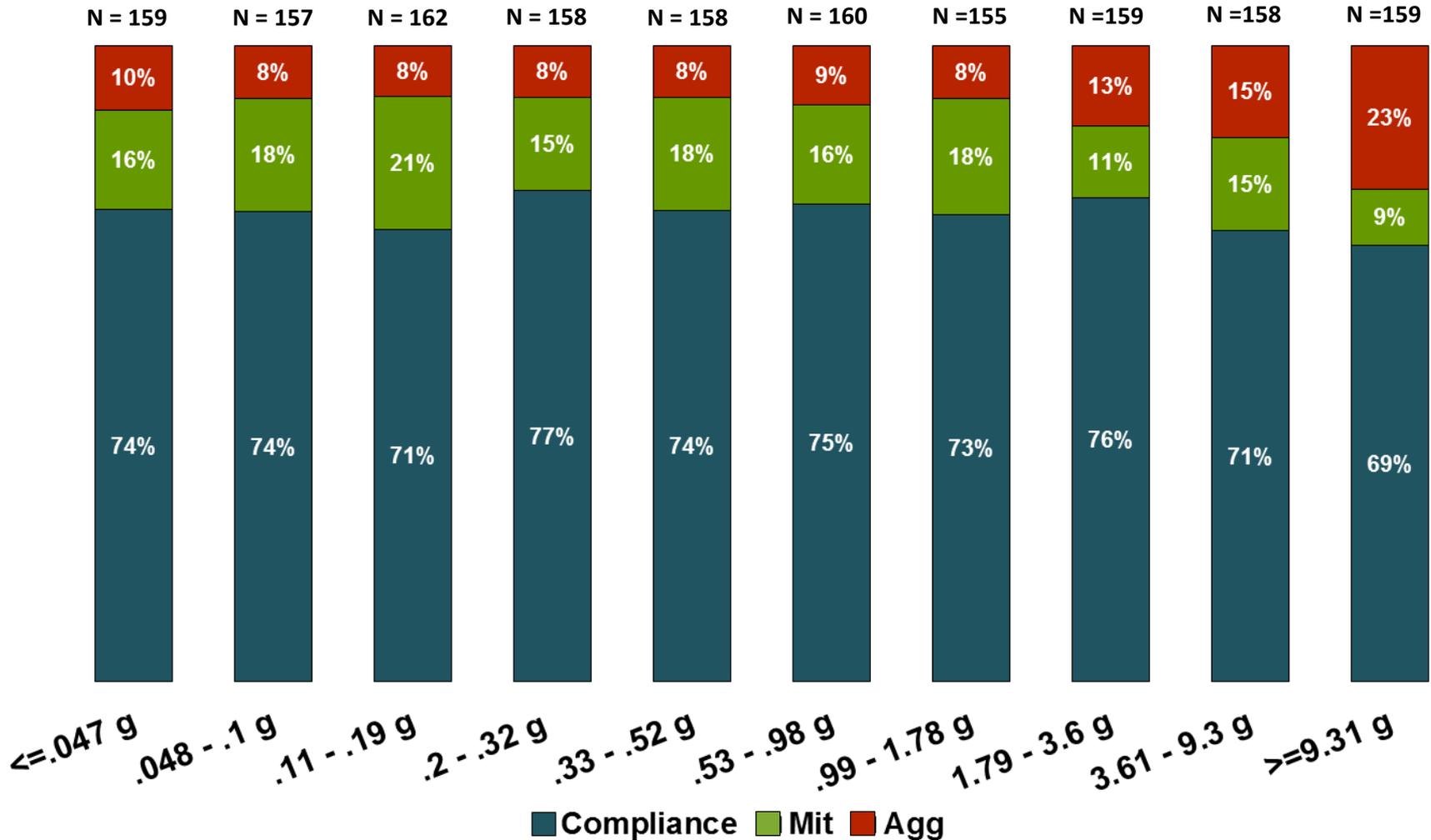
## Heroin Sentencing Events

Primary Offense	Compliance	Mit.	Agg.	# of Cases
<b>Distribution, sale, etc. (§ 18.2-248(C))</b>	<b>73.4%</b>	<b>15.5%</b>	<b>11.1%</b>	<b>1,585</b>
<b>Distribution, etc., as an Accommodation (§ 18.2-248(D))</b>	<b>81.1%</b>	<b>15.6%</b>	<b>3.3%</b>	<b>90</b>
<b>Distribution to Minors (§ 18.2-255(A))</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>0</b>

Source: Sentencing Guidelines Database, FY2011-FY2015  
Pre/Post-Sentence Investigation (PSI) Report System, FY2011-FY2015  
Department of Forensic Science Drug Submission Database

Note: Guidelines cases with scoring errors and other types of errors were excluded from the analysis.

# Compliance with Sentencing Guidelines for Sale, etc., of Heroin by Amount (Grams) (§ 18.2-248(C)) FY2011 – FY2015



Source: Sentencing Guidelines Database, FY2011-FY2015  
 Pre/Post-Sentence Investigation (PSI) Report System, FY2011-FY2015  
 Department of Forensic Science Drug Submission Database

Note: Guidelines cases with scoring errors and other types of errors were excluded from the analysis.

# Reviewing Sentencing Guidelines for Cases Involving Distribution, etc., of Heroin

- **Staff explored numerous scenarios in an attempt to further increase compliance for heroin distribution, etc., cases.**
- **In general, a better balance between mitigation and aggravation could only be achieved at the expense of a loss in overall compliance.**
  - **Under the various scenarios tested, compliance for distribution, etc., of heroin decreased by one to five percentage points.**
- **Therefore, the staff has no recommendation for modifications at this time.**



