



VIRGINIA CRIMINAL SENTENCING COMMISSION



Judicial Departure Reasons

September 12, 2016



HB 1298

Requiring an adequate written explanation when a judge departs from the sentencing guidelines

Introduced by: Charniele L. Herring

SUMMARY AS INTRODUCED:

Requires the written explanation that the court must file with the record of a case when departing from the sentencing guidelines to adequately explain the sentence imposed to promote fair sentencing.

VCSC FISCAL IMPACT: Not Required

HISTORY

- 01/21/16 House: Referred to Committee for Courts of Justice
- 01/26/16 House: Assigned Courts sub: Criminal Law
- 01/29/16 House: Subcommittee recommends laying on the table by voice vote
- 02/16/16 House: Left in Courts of Justice
- 03/11/16 Letter sent to Sentencing Commission requesting review of bill and recommendations for 2017 Session

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HOUSE BILL NO. 1298

Offered January 21, 2016

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3 *A BILL to amend and reenact § 19.2-298.01 of the Code of Virginia, relating to discretionary sentencing*
4 *guidelines; written explanation.*
5

 Patron—Herring

 6
7 Referred to Committee for Courts of Justice
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Be it enacted by the General Assembly of Virginia:
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10 **1. That § 19.2-298.01 of the Code of Virginia is amended and reenacted as follows:**
§ 19.2-298.01. Use of discretionary sentencing guidelines.
 11
12 A. In all felony cases, other than Class 1 felonies, the court shall (i) have presented to it the
13 appropriate discretionary sentencing guidelines worksheets and (ii) review and consider the suitability of
14 the applicable discretionary sentencing guidelines established pursuant to Chapter 8 (§ 17.1-800 et seq.)
15 of Title 17.1. Before imposing sentence, the court shall state for the record that such review and
16 consideration have been accomplished and shall make the completed worksheets a part of the record of
17 the case and open for inspection. In cases tried by a jury, the jury shall not be presented any
18 information regarding sentencing guidelines.

 19 B. In any felony case, other than Class 1 felonies, in which the court imposes a sentence ~~which~~ *that*
20 is either greater or less than that indicated by the discretionary sentencing guidelines, the court shall file
21 with the record of the case a written explanation of such departure. *The written explanation shall*
22 *adequately explain the sentence imposed to promote fair sentencing.*

 23 C. In felony cases, other than Class 1 felonies, tried by a jury and in felony cases tried by the court
24 without a jury upon a plea of not guilty, the court shall direct a probation officer of such court to
25 prepare the discretionary sentencing guidelines worksheets. In felony cases tried upon a plea of guilty,
26 including cases which are the subject of a plea agreement, the court shall direct a probation officer of
27 such court to prepare the discretionary sentencing guidelines worksheets, or, with the concurrence of the
28 accused, the court and the attorney for the Commonwealth, the worksheets shall be prepared by the
29 attorney for the Commonwealth.

 30 D. Except as provided in subsection E, discretionary sentencing guidelines worksheets prepared
31 pursuant to this section shall be subject to the same distribution as presentence investigation reports
32 prepared pursuant to subsection A of § 19.2-299.

 33 E. Following the entry of a final order of conviction and sentence in a felony case, the clerk of the
34 circuit court in which the case was tried shall cause a copy of such order or orders, the original of the
35 discretionary sentencing guidelines worksheets prepared in the case, and a copy of any departure
36 explanation prepared pursuant to subsection B to be forwarded to the Virginia Criminal Sentencing
37 Commission within five days. Similarly, the statement required by §§ 19.2-295 and 19.2-303 and
38 regarding departure from or modification of a sentence fixed by a jury shall be forwarded to the
39 Virginia Criminal Sentencing Commission.

 40 F. The failure to follow any or all of the provisions of this section or the failure to follow any or all
41 of the provisions of this section in the prescribed manner shall not be reviewable on appeal or the basis
42 of any other post-conviction relief.

 43 G. The provisions of this section shall apply only to felony cases in which the offense is committed
44 on or after January 1, 1995, and for which there are discretionary sentencing guidelines. For purposes of
45 the discretionary sentencing guidelines only, a person sentenced to a boot camp incarceration program
46 pursuant to § 19.2-316.1, a detention center incarceration program pursuant to § 19.2-316.2 or a
47 diversion center incarceration program pursuant to § 19.2-316.3 shall be deemed to be sentenced to a
48 term of incarceration.

INTRODUCED

HB1298





COMMONWEALTH OF VIRGINIA
HOUSE OF DELEGATES
RICHMOND

DAVID B. ALBO
6367 ROLLING MILL PLACE, SUITE 102
SPRINGFIELD, VIRGINIA 22152

FORTY-SECOND DISTRICT

COMMITTEE ASSIGNMENTS:
COURTS OF JUSTICE (CHAIRMAN)
PRIVILEGES AND ELECTIONS
GENERAL LAWS

March 11, 2016

Virginia Criminal Sentencing Commission
100 North 9th Street
Richmond, VA 23219

To whom it may concern,

I am writing to you in regards to legislation that was tabled in the House Courts of Justice Committee during Session. The Committee all agreed upon the basis of this bill, but could not reach a consensus on how to structure it. Could you please review this bill and the concept it addresses and make recommendations for the 2017 Session?

HB 1298 (Herring); specifically, can the Commission compile data on judges who fail to file the written explanation for deviating from the guidelines required by § 19.2-298.01

Thank you for your consideration. Should you need any other information, please do not hesitate to contact me.

Best Regards,



David B. Albo



Sentencing Guidelines Compliance and Departure Rates FY2012-FY2016

	Compliance	Mitigation	Aggravation	Number of Sentencing Events
FY2012	78.4%	11.4%	10.2%	23,515
FY2013	78.8%	11.2%	10.0%	24,472
FY2014	78.4%	11.2%	10.4%	24,854
FY2015	80.2%	10.5%	9.3%	24,254
FY2016*	80.8%	9.8%	9.4%	22,217
Overall	79.3%	10.8%	9.9%	119,313

There were 24,698 departures during the most recent five-year period

* FY2016 data are preliminary.



Sentencing Guidelines Departure Reasons FY2012-FY2016

	Departure reason provided by judge or check box	No departure reason provided by judge or check box	Number of Sentencing Events
FY2012	80.3%	19.7%	5,068
FY2013	82.8%	17.2%	5,191
FY2014	85.4%	14.6%	5,371
FY2015	86.6%	13.4%	4,805
FY2016*	85.8%	14.2%	4,263
Overall	84.1%	15.9%	24,698

* FY2016 data are preliminary.

**For the most recent
five-year period,
3,920 departures are
missing a departure reason**



Sentencing Guidelines Departure Reasons FY2012-FY2016

**Percentage of cases in which
no departure reason was provided
by judge or check box**

	Downward Departures	Upward Departures
FY2012	20.3%	19.0%
FY2013	17.0%	17.4%
FY2014	15.1%	14.1%
FY2015	13.7%	13.0%
FY2016*	14.8%	13.5%
Overall	16.2%	15.5%

*** FY2016 data are preliminary.**



Sentencing Guidelines Departure Reasons FY2012-FY2016

**Percentage of cases in which
no departure reason was provided
by judge or check box**

Current Offense	Murder, Robbery, Assault	Rape, Sex Assault, Kidnapping	Fraud, Larceny	Drug
FY2012	16.1%	15.3%	22.2%	21.8%
FY2013	12.6%	1.7%	20.7%	20.4%
FY2014	8.7%	3.4%	17.1%	15.0%
FY2015	11.2%	2.3%	18.9%	13.0%
FY2016	10.5%	6.5%	15.6%	16.1%
Overall	12.0%	6.0%	19.0%	17.2%

FY2016 data are preliminary.



Sentencing Guidelines Departure Reasons FY2012-FY2016

Cases in which no departure reason was provided by judge or check box

Circuit	Percent	Number	Circuit	Percent	Number
1	30.0%	278	17	25.9%	94
2	17.4%	177	18	17.1%	36
3	12.2%	69	19	23.7%	300
4	17.6%	193	20	12.6%	58
5	18.5%	102	21	19.2%	75
6	20.4%	77	22	9.2%	71
7	16.9%	98	23	10.6%	105
8	22.0%	93	24	10.8%	101
9	15.8%	92	25	8.7%	87
10	15.8%	117	26	6.5%	74
11	7.2%	24	27	13.1%	100
12	34.9%	380	28	5.7%	23
13	7.9%	138	29	20.8%	221
14	18.8%	204	30	15.7%	81
15	9.7%	197	31	25.9%	127
16	16.2%	124			

Sample of Information Requested by General Assembly

Sentencing Guidelines Concurrence and Departure Rates CY 2008 – CY2015 (Through June)

The Honorable [REDACTED]
[REDACTED]th Circuit

Year	Compliance	Mitigation	Aggravation	Cases
2008	90.8%	3.1%	6.1%	98
2009	80.0%	8.0%	12.0%	100
2010	86.0%	7.5%	6.5%	107
2011	76.1%	8.0%*	15.9%	88
2012	85.3%	8.0%*	6.7%	75
2013	73.6%	11.5%*	14.9%	87
2014	78.9%	12.7%	8.5%	71
2015	84.8%	10.9%	4.3%	46
Total	82.0%	8.3%	9.7%	672

Note: Figures for CY2015 are through June only

* Three jury recommendations (one each in 2011, 2012 & 2013) were below the guidelines recommendation. By law, judges are not permitted to increase a sentence recommended by a jury (§ 19.2-303).

