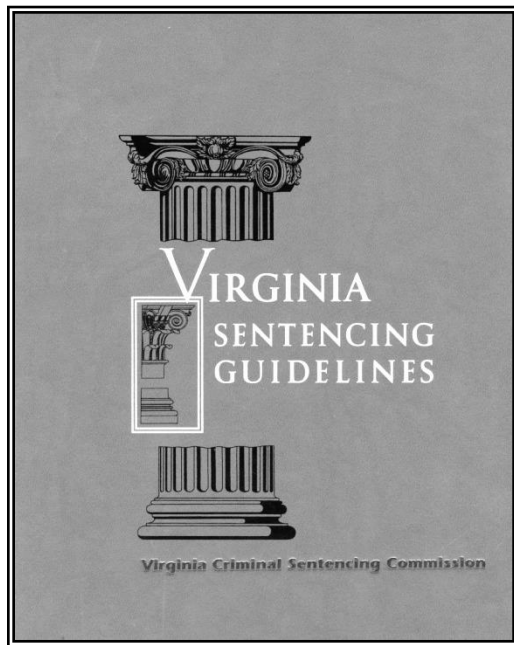




VIRGINIA CRIMINAL SENTENCING COMMISSION

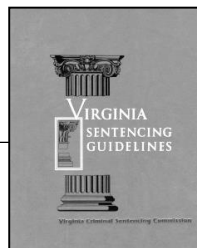


Possible Recommendations for Guidelines Revisions

November 2, 2016

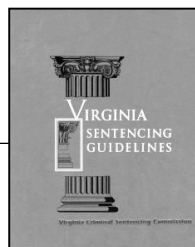
Modifications to the Sentencing Guidelines

- **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.**



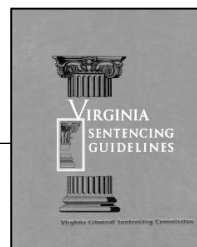
Proposals for Revisions to Existing Guidelines Offenses

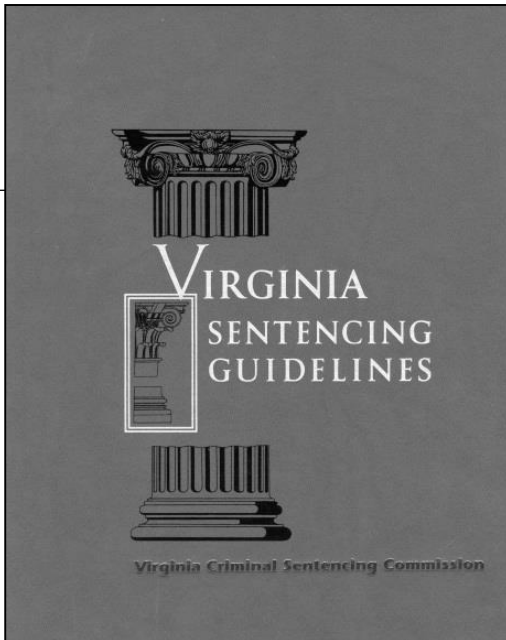
- **Proposals are designed to maximize compliance and balance mitigation and aggravation rates to the extent possible.**
- **Current guidelines worksheets serve as the base for scoring historical cases, but the points assigned to those factors may be adjusted and new factors may be added.**



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.**



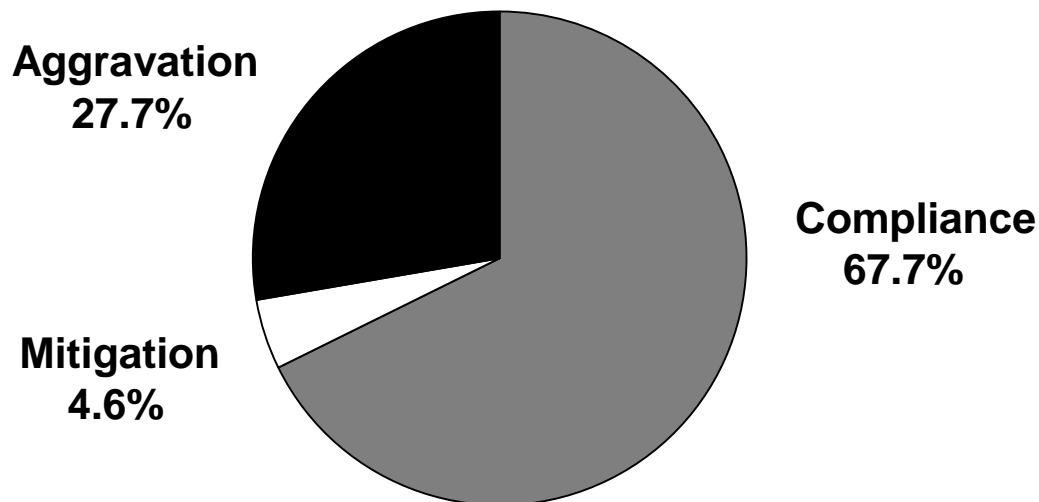


Proposed Recommendation 1:

**Revise guidelines for
Maliciously Discharging a Firearm/Missile
in/at an Occupied Building
(§ 18.2-279)**

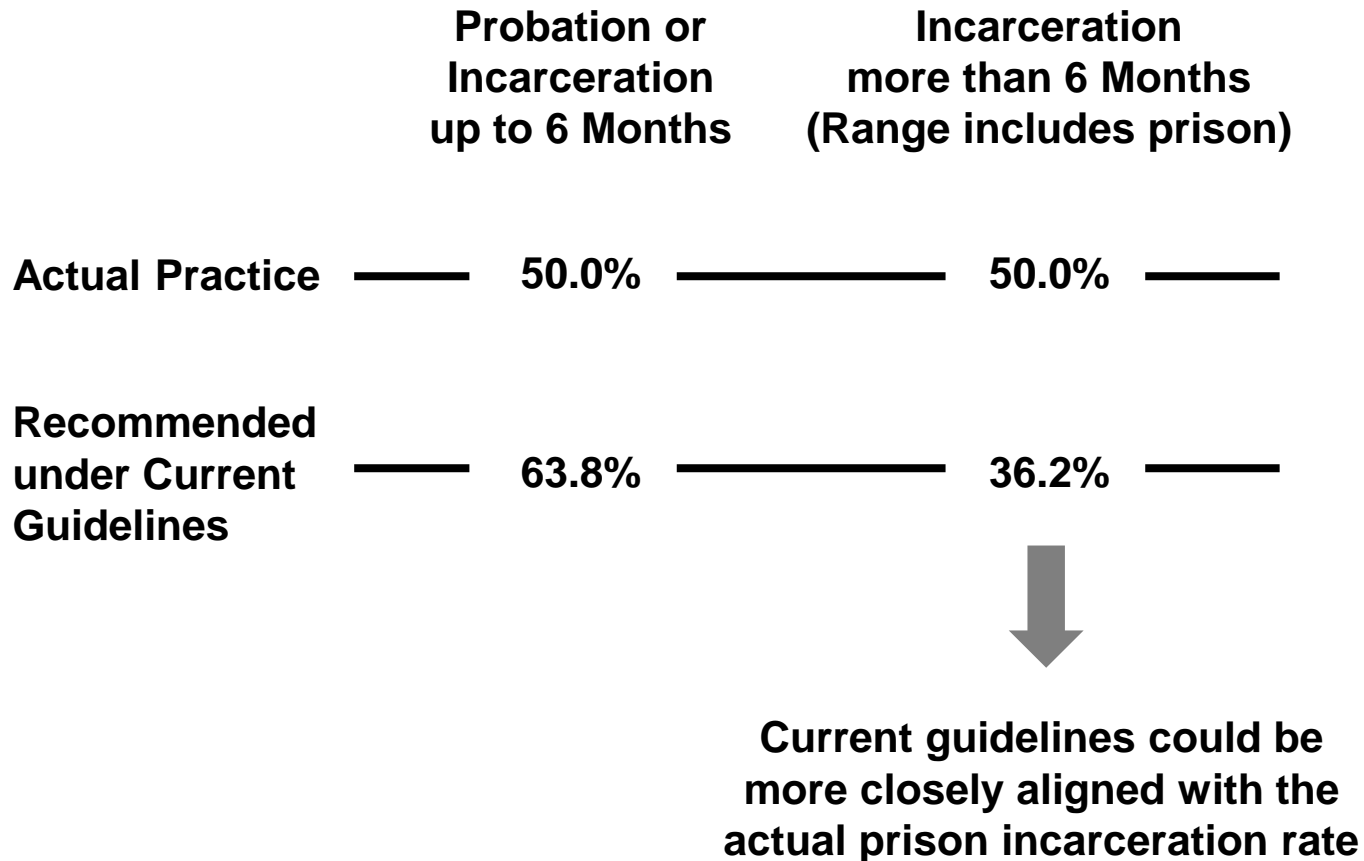
**Compliance with Guidelines for
Maliciously Discharging a Firearm/Missile
in/at an Occupied Building (§ 18.2-279)
FY2012-FY2016**

130 Sentencing Events



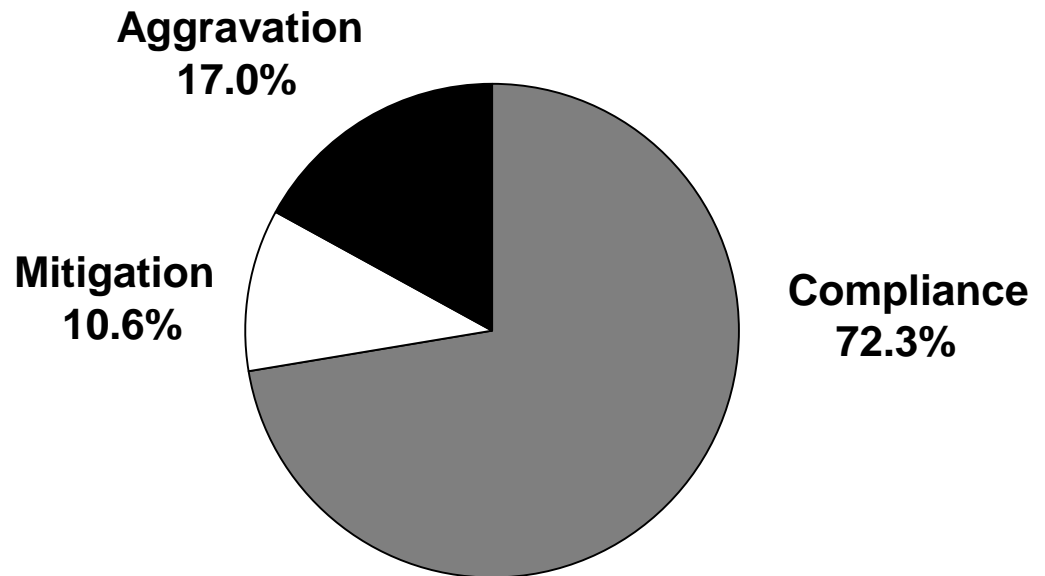
Compliance with the current guidelines for this offense is below the overall compliance rate and, when judges depart, they are significantly more likely to sentence above the guidelines than below.

**Actual versus Recommended Sentences for
Maliciously Discharging a Firearm/Missile
in/at an Occupied Building (§ 18.2-279)
FY2012-FY2016**



**Actual versus Recommended Sentences for
Maliciously Discharging a Firearm/Missile
in/at an Occupied Building (§ 18.2-279)
FY2012-FY2016**

**Cases in which guidelines
recommend incarceration
of more than 6 months
(range includes prison)**



47 Sentencing Events

Section A - Proposed

Weapon/Firearm ❖ Section A

Offender Name: _____

◆ Primary Offense _____

- A. Maliciously discharge firearm, etc., in/at occupied building (1 count) 2
- B. Discharge firearm from vehicle (1 count) 1
- C. Possess firearm on school property (1 count) 1
- D. Possession of sawed-off shotgun (1 count) 2
- E. False statement on firearm consent form (1 count) 1
- F. Possession of firearm, other weapon, explosives or ammunition by convicted felon
 - 1 count 3
 - 2 counts 4

Score

0	
---	--

◆ Primary Offense Remaining Counts Total the maximum penalties for counts of the primary not scored above _____

- Years: 5 - 7 1
- 8 - 18 2
- 19 - 28 3
- 29 - 38 4
- 39 or more 5

0	
---	--



SPLIT Primary Offense Remaining Counts factor and assign higher points for target offense

◆ Primary Offense Remaining Counts

Primary offense OTHER THAN Maliciously discharge firearm, etc., in/at occupied building § 18.2-279

Total Maximum Penalties	Points
Years: 5 - 7	1
8 - 18	2
19 - 28	3
29 - 38	4
39 or more	5

Primary offense Maliciously discharge firearm, etc., in/at occupied building § 18.2-279

Total Maximum Penalties	Points
Years: 5 - 7	2
8 - 18	3
19 - 28	4
29 - 38	5
39 or more	6

◆ Legally Restrained at Time of Offense _____

If total is 8 or less, go to SECTION B. If total is 9 or more, go to SECTION C.

Section A - Proposed

◆ **Primary Offense**

A. Maliciously discharge firearm, etc., in/at occupied building (1 count)	2
B. Discharge firearm from vehicle (1 count)	1
C. Possess firearm on school property (1 count)	1
D. Possession of sawed-off shotgun (1 count)	2
E. False statement on firearm consent form (1 count)	1
F. Possession of firearm, other weapon, explosives or ammunition by convicted felon	
1 count	3
2 counts	4

Score
▼

◆ **Primary Offense Remaining Counts** *Total the maximum penalties for counts of the primary not scored above*

Years: 5 - 7	1
8 - 18	2
19 - 28	3
29 - 38	4
39 or more	5

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

Years: Less than 1	0
1 - 7	1
8 - 18	2
19 - 28	3
29 - 38	4
39 or more	5

SPLIT Additional Offenses factor and assign higher points for target offense

◆ **Additional Offenses**

<p><u>Primary offense OTHER THAN Maliciously discharge firearm, etc., in/at occupied building § 18.2-279</u></p> <table border="0"> <thead> <tr> <th style="text-align: left;">Total Maximum Penalties</th> <th style="text-align: left;">Points</th> </tr> </thead> <tbody> <tr> <td>Years: 1 - 7</td> <td>1</td> </tr> <tr> <td>8 - 18</td> <td>2</td> </tr> <tr> <td>19 - 28</td> <td>3</td> </tr> <tr> <td>29 - 38</td> <td>4</td> </tr> <tr> <td>39 or more</td> <td>5</td> </tr> </tbody> </table>	Total Maximum Penalties	Points	Years: 1 - 7	1	8 - 18	2	19 - 28	3	29 - 38	4	39 or more	5	<p><u>Primary offense Maliciously discharge firearm, etc., in/at occupied building § 18.2-279</u></p> <table border="0"> <thead> <tr> <th style="text-align: left;">Total Maximum Penalties</th> <th style="text-align: left;">Points</th> </tr> </thead> <tbody> <tr> <td>Years: 1 - 7</td> <td>3</td> </tr> <tr> <td>8 - 18</td> <td>4</td> </tr> <tr> <td>19 - 28</td> <td>5</td> </tr> <tr> <td>29 - 38</td> <td>6</td> </tr> <tr> <td>39 or more</td> <td>7</td> </tr> </tbody> </table>	Total Maximum Penalties	Points	Years: 1 - 7	3	8 - 18	4	19 - 28	5	29 - 38	6	39 or more	7
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If total is 8 or less, go to SECTION B. If total is 9 or more, go to SECTION C.

Section A - Proposed

◆ **Primary Offense**

A. Maliciously discharge firearm, etc., in/at occupied building (1 count)	2
B. Discharge firearm from vehicle (1 count)	1
C. Possess firearm on school property (1 count)	1
D. Possession of sawed-off shotgun (1 count)	2
E. False statement on firearm consent form (1 count)	1
F. Possession of firearm, other weapon, explosives or ammunition by convicted felon	
1 count	3
2 counts	4

Score
▼

◆ **Primary Offense Remaining Counts** Total the maximum penalties for counts of the primary not scored above

Years: 5 - 7	1
8 - 18	2
19 - 28	3
29 - 38	4
39 or more	5

SPLIT Legally Restrained factor and assign higher points for target offense

◆ **Legally Restrained at Time of Offense**

<p><u>Primary offense OTHER THAN Maliciously discharge firearm, etc., in/at occupied building § 18.2-279</u></p> <table border="0" style="width: 100%;"> <tr> <td style="text-align: right;">Points</td> <td></td> </tr> <tr> <td>None</td> <td>0</td> </tr> <tr> <td>Other than post-incar supervision ..</td> <td>2</td> </tr> <tr> <td>Post-incarceration supervision</td> <td>5</td> </tr> </table>	Points		None	0	Other than post-incar supervision ..	2	Post-incarceration supervision	5	<p><u>Primary offense Maliciously discharge firearm, etc., in/at occupied building § 18.2-279</u></p> <table border="0" style="width: 100%;"> <tr> <td style="text-align: right;">Points</td> <td></td> </tr> <tr> <td>None</td> <td>0</td> </tr> <tr> <td>Other than post-incar supervision ..</td> <td>3</td> </tr> <tr> <td>Post-incarceration supervision</td> <td>6</td> </tr> </table>	Points		None	0	Other than post-incar supervision ..	3	Post-incarceration supervision	6
Points																	
None	0																
Other than post-incar supervision ..	2																
Post-incarceration supervision	5																
Points																	
None	0																
Other than post-incar supervision ..	3																
Post-incarceration supervision	6																

◆ **or Incarcerations/Commitments** If YES, add 4 →

◆ **Legally Restrained at Time of Offense**

None	0
Other than post-incarceration supervision	2
Post-incarceration supervision (supervision after incarceration)	5

If total is 8 or less, go to SECTION B. If total is 9 or more, go to SECTION C.

Section A - Proposed

◆ **Primary Offense** _____

A. Maliciously discharge firearm, etc., in/at occupied building (1 count).....	2	Score ▼ <input type="text" value="0"/>
B. Discharge firearm from vehicle (1 count)	1	
C. Possess firearm on school property (1 count)	1	
D. Possession of sawed-off shotgun (1 count).....	2	
E. False statement on firearm consent form (1 count).....	1	
F. Possession of firearm, other weapon, explosives or ammunition by convicted felon		
1 count	3	
2 counts	4	

◆ **Primary Offense Remaining Counts** Total the maximum penalties for counts of the primary not scored above

Years: 5 - 7	1	<input type="text" value="0"/>
8 - 18	2	
19 - 28	3	
29 - 38	4	
39 or more	5	

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

Years: Less than 1	0	<input type="text" value="0"/>
1 - 7	1	
8 - 18	2	
19 - 28	3	
29 - 38	4	
39 or more	5	

◆ **Victim Injury** _____

Threatened, emotional or physical	1	<input type="text" value="0"/>
Life threatening.....	2	

◆ **Conviction in Current Event Requiring Mandatory Minimum Term (6 mos or more) - If YES, add 8** →

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

Years: Less than 2.....	0	<input type="text"/>
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ADD new factor for specific types of additional offenses

SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE AT CONVICTION IS MALICIOUSLY DISCHARGING FIREARM, ETC., IN/AT OCCUPIED BUILDING § 18.2-279

◆ **Type of Additional Offense(s)**

Additional offense with VCC prefix of WPN or ASL → If YES, add 2

Section B - Proposed

Weapon/Firearm ❖ Section B

Offender Name: _____

◆ **Primary Offense** _____

- A. Maliciously discharge firearm, etc., in/at occupied building (1 count) 7
- B. Discharge firearm from vehicle (1 count) 8
- C. Possess firearm on school property (1 count) 7
- D. Possession of sawed-off shotgun (1 count) 6
- E. False statement on firearm consent form (1 count) 1

Score
▼

SPLIT Victim Injury factor and assign higher points for target offense

◆ **Victim Injury**

Primary offense OTHER THAN
Maliciously discharge firearm, etc.,
in/at occupied building § 18.2-279

Points

Threatened, emotional or physical .. 2
Life threatening 3

Primary offense
Maliciously discharge firearm, etc.,
in/at occupied building § 18.2-279

Points

Threatened, emotional or physical .. 3
Life threatening 4



◆ **Victim Injury** _____

Threatened, emotional or physical 2
Life threatening 3

0	
---	--

◆ **Legally Restrained at Time of Offense** _____

If YES, add 1 →

0	
---	--

If total is 10 or more, recommendation is JAIL up to 6 months.

Section C - Proposed

Weapon/Firearm Section C

Offender Name: _____

Primary Offense

Prior Record Classification
 Category I Category II Other
(scores for attempted/conspired offenses are in parentheses)

A. Maliciously discharge firearm, etc. in/at occupied building			
Attempted or conspired: 1 count	(32)	(16)	(8)
Completed: 1 count	56	28	14
Discharge firearm from vehicle (1 count)	48	24	12
Possess firearm on school property (1 count)	32	16	8
Possession of sawed-off shotgun (1 count)	36	18	9
False statement on consent form (1 count)	32	16	8
Possession of firearm, other weapon, explosives or ammunition by convicted felon (1 count)	32	16	8

Score

0		
---	--	--

INCREASE Primary Offense score for target offense

Prior Record Classification

Category I Category II Other

A. Maliciously discharge firearm, etc., in/at occupied building

Completed: 1 count 60 30 15

Firearm Used or Brandished _____ If YES, add 2 →

0	0	
---	---	--

Victim Injury _____

Threatened or emotional	2		
Physical	4		
Life threatening	5		

Prior Convictions/Adjudications Assign points to the 5 most recent and serious prior record events and total the points

Maximum Penalty: Less than 20 (years)	0		
20, 30, 40 or more	1		

Prior Felony Convictions /Adjudications Against Person _____

Number of Counts:	1	1		
	2	2		
	3	3		
	4	4		
	5 or more	5		

Prior Felony Convictions/Adjudications with the Same VCC Prefix as Primary Offense _____

Number of Counts:	1	2		
	2	4		
	3	6		
	4	8		
	5 or more	10		

Section C - Proposed

Weapon/Firearm Section C

Offender Name: _____

◆ Primary Offense _____

— Prior Record Classification —
 Category I Category II Other
(scores for attempted/consented offenses are known otherwise)

INCREASE Primary Offense score for target offense

Prior Record Classification
Category I Category II Other

A. Maliciously discharge firearm, etc., in/at occupied building

Completed: 1 count 60 30 15



SPLIT Prior Convictions/Adjudications factor and assign higher points for target offense

◆ Prior Convictions/Adjudications

Primary offense OTHER THAN
Maliciously discharge firearm, etc.,
in/at occupied building § 18.2-279

Maximum Penalty	Points
Years: Less than 20	0
20, 30, 40 or more	1

Primary offense
Maliciously discharge firearm, etc.,
in/at occupied building § 18.2-279

Maximum Penalty	Points
Years: Less than 20	0
20, 30, 40 or more	5

◆ **Prior Convictions/Adjudications** Assign points to the 5 most recent and serious prior record events and total the points

Maximum Penalty: Less than 20 0
 (years) 20, 30, 40 or more 1

0	0	
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◆ **Prior Felony Convictions /Adjudications Against Person**

Number of Counts: 1 1
 2 2
 3 3
 4 4
 5 or more 5

0	0	
---	---	--

◆ **Prior Felony Convictions/Adjudications with the Same VCC Prefix as Primary Offense**

Number of Counts: 1 2
 2 4
 3 6
 4 8
 5 or more 10

0		
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Section C - Proposed

Weapon/Firearm Section C

Offender Name: _____

◆ Primary Offense _____

____ Prior Record Classification ____
 Category I Category II Other
(scores for attempted/consented offenses are in parentheses)

INCREASE Primary Offense score for target offense

Prior Record Classification
Category I Category II Other

A. Maliciously discharge firearm, etc., in/at occupied building

Completed: 1 count 60 30 15

SPLIT Prior Felony Convictions/Adjudications Against Person factor and assign higher points for target offense

◆ Prior Felony Convictions/Adjudications Against Person

Primary offense OTHER THAN
Maliciously discharge firearm, etc.,
in/at occupied building § 18.2-279

Number of Counts	Points
1	1
2	2
3	3
4	4
5 or more	5

Primary offense
Maliciously discharge firearm, etc.,
in/at occupied building § 18.2-279

Number of Counts	Points
1	5
2	6
3	7
4	8
5 or more	9

◆ Prior Felony Convictions /Adjudications Against Person _____

Number of Counts:	1	1
	2	2
	3	3
	4	4
	5 or more	5

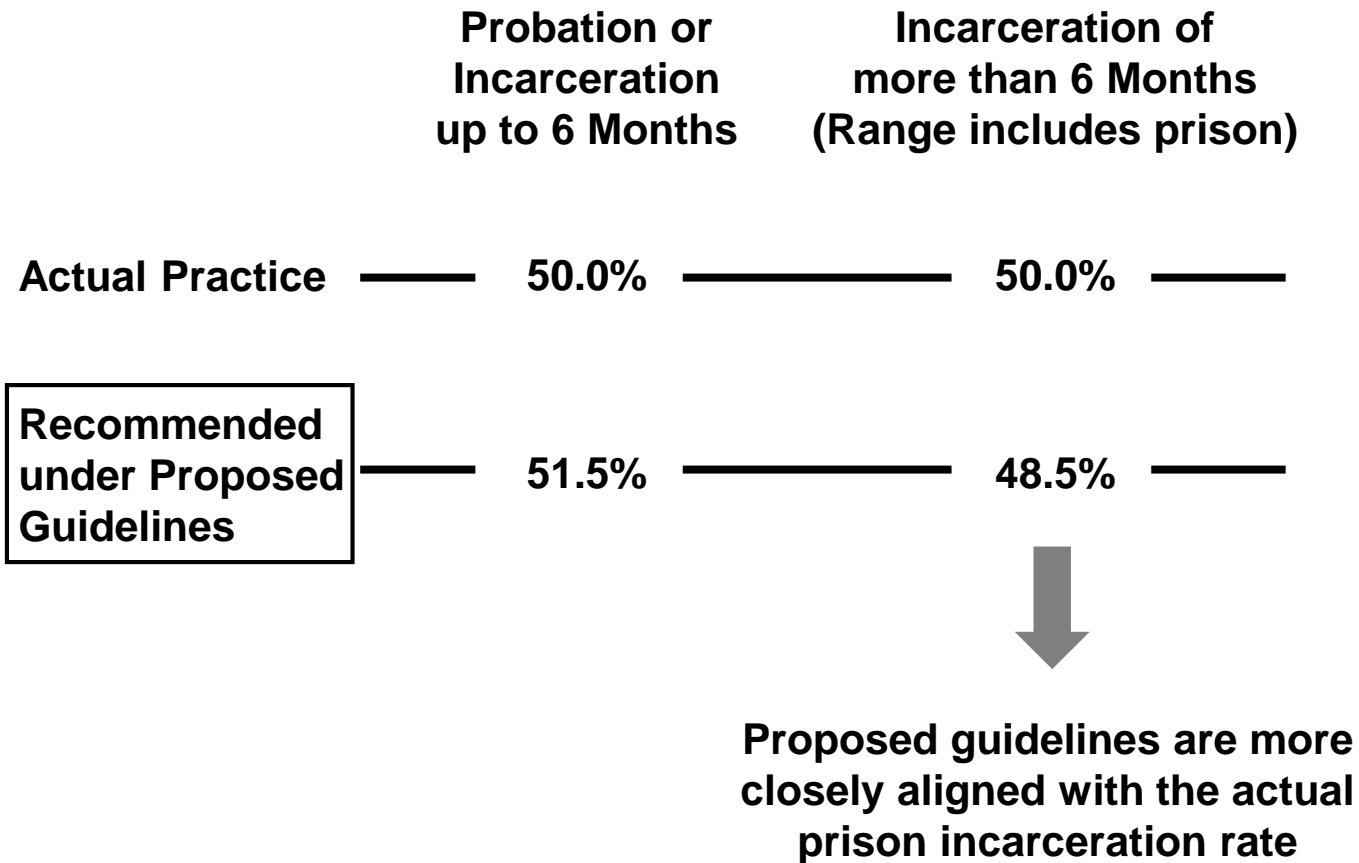
0	0	
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◆ Prior Felony Convictions/Adjudications with the Same VCC Prefix as Primary Offense _____

Number of Counts:	1	2
	2	4
	3	6
	4	8
	5 or more	10

0		
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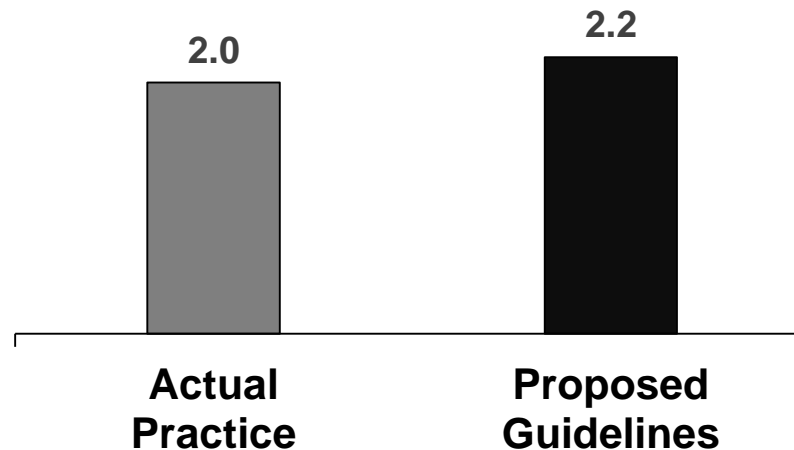
**Actual versus Proposed Sentences for
Maliciously Discharging a Firearm/Missile
in/at an Occupied Building (§ 18.2-279)
FY2012-FY2016**



**Actual versus Proposed Sentences for
Maliciously Discharging a Firearm/Missile
in/at an Occupied Building (§ 18.2-279)
FY2012-FY2016**

**Offenders Sentenced to
Incarceration of More than 6 Months**

Median Sentence (in years)



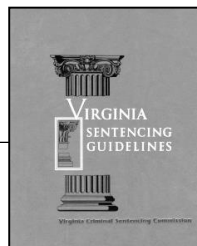
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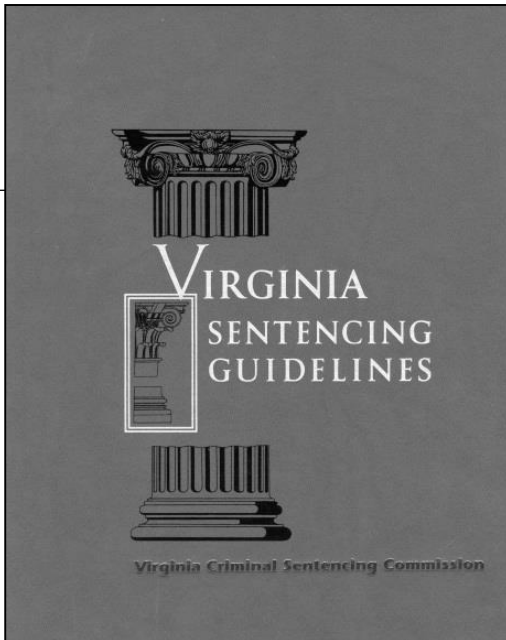
130 Sentencing Events

Dispositional Compliance			Overall Compliance		
	Current	Proposed		Current	Proposed
Compliance	69.2%	72.3%	Compliance	67.7%	69.2%
Mitigation	3.1%	14.6%	Mitigation	4.6%	14.6%
Aggravation	27.7%	13.1%	Aggravation	27.7%	16.2%

Proposed Recommendation 1

**Revise guidelines for
Maliciously Discharging a Firearm/Missile
in/at an Occupied Building (§ 18.2-279)
as proposed**





Proposed Recommendation 2:

Add Unlawfully Discharging a Firearm/Missile in/at an Occupied Building (§ 18.2-279) to the Weapon/Firearm guidelines

**Sentences for
Unlawfully Discharging a Firearm/Missile
in/at an Occupied Building (§ 18.2-279)
FY2012-FY2016**

60 Sentencing Events

Disposition	Percent	Median Sentence
No Incarceration	51.7%	NA
Incarceration up to 6 Months	28.3%	4 Months
Incarceration of More than 6 Months	20.0%	1.2 Years

Note: Data reflect cases in which this offense was the primary (or most serious) offense at sentencing. Two offenders were excluded because a rap sheet could not be located.

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

Section A - Proposed

Weapon/Firearm ❖ Section A

Offender Name: _____

◆ Primary Offense _____

A. Maliciously discharge firearm, etc., in/at occupied building (1 count) 2

A. Maliciously or unlawfully discharge firearm, etc., in/at occupied building
1 count 2

2 counts 4

0	
---	--

◆ Primary Offense Remaining Counts

Total the maximum penalties for counts of the primary not scored above

Years: 5 - 7 1
 8 - 18 2
 19 - 28 3
 29 - 38 4
 39 or more 5



0	
---	--

SPLIT Primary Offense Remaining Counts factor and assign higher points for target offense

<p>◆ Primary Offense Remaining Counts</p> <p><u>Primary offense OTHER THAN Maliciously or unlawfully discharge firearm in/at occupied building § 18.2-279</u></p> <table border="0"> <thead> <tr> <th style="text-align: left;">Total Maximum Penalties</th> <th style="text-align: left;">Points</th> </tr> </thead> <tbody> <tr> <td>Years: 5 - 7</td> <td>1</td> </tr> <tr> <td>8 - 18</td> <td>2</td> </tr> <tr> <td>19 - 28</td> <td>3</td> </tr> <tr> <td>29 - 38</td> <td>4</td> </tr> <tr> <td>39 or more</td> <td>5</td> </tr> </tbody> </table>	Total Maximum Penalties	Points	Years: 5 - 7	1	8 - 18	2	19 - 28	3	29 - 38	4	39 or more	5	<p><u>Primary offense Maliciously or unlawfully discharge firearm in/at occupied building § 18.2-279</u></p> <table border="0"> <thead> <tr> <th style="text-align: left;">Total Maximum Penalties</th> <th style="text-align: left;">Points</th> </tr> </thead> <tbody> <tr> <td>Years: 5 - 7</td> <td>2</td> </tr> <tr> <td>8 - 18</td> <td>3</td> </tr> <tr> <td>19 - 28</td> <td>4</td> </tr> <tr> <td>29 - 38</td> <td>5</td> </tr> <tr> <td>39 or more</td> <td>6</td> </tr> </tbody> </table>	Total Maximum Penalties	Points	Years: 5 - 7	2	8 - 18	3	19 - 28	4	29 - 38	5	39 or more	6
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If total is 8 or less, go to SECTION B. If total is 9 or more, go to SECTION C.

Section A - Proposed

◆ **Primary Offense** _____
 A. Maliciously discharge firearm, etc., in/at occupied building (1 count) 2

**A. Maliciously or unlawfully discharge firearm, etc., in/at occupied building
 1 count 2**

2 counts 4 0

◆ **Primary Offense Remaining Counts** Total the maximum penalties for counts of the primary not scored above _____

Years: 5 - 7 1
 8 - 18 2
 19 - 28 3
 29 - 38 4
 39 or more 5

↓

0

◆ **Additional Offenses** Total the maximum penalties for additional offenses, including counts _____

Years: Less than 1 0
 1 - 7 1
 8 - 18 2
 19 - 28 3
 29 - 38 4
 39 or more 5

↓

0



SPLIT Additional Offenses factor and assign higher points for target offense

<p>◆ Additional Offenses</p> <p><u>Primary offense OTHER THAN Maliciously or unlawfully discharge firearm in/at occupied building § 18.2-279</u></p> <table border="0" style="width: 100%;"> <thead> <tr> <th style="text-align: left;">Total Maximum Penalties</th> <th style="text-align: right;">Points</th> </tr> </thead> <tbody> <tr> <td>Years: 1 - 7</td> <td style="text-align: right;">1</td> </tr> <tr> <td>8 - 18</td> <td style="text-align: right;">2</td> </tr> <tr> <td>19 - 28</td> <td style="text-align: right;">3</td> </tr> <tr> <td>29 - 38</td> <td style="text-align: right;">4</td> </tr> <tr> <td>39 or more</td> <td style="text-align: right;">5</td> </tr> </tbody> </table>	Total Maximum Penalties	Points	Years: 1 - 7	1	8 - 18	2	19 - 28	3	29 - 38	4	39 or more	5	<p><u>Primary offense Maliciously or unlawfully discharge firearm in/at occupied building § 18.2-279</u></p> <table border="0" style="width: 100%;"> <thead> <tr> <th style="text-align: left;">Total Maximum Penalties</th> <th style="text-align: right;">Points</th> </tr> </thead> <tbody> <tr> <td>Years: 1 - 7</td> <td style="text-align: right;">3</td> </tr> <tr> <td>8 - 18</td> <td style="text-align: right;">4</td> </tr> <tr> <td>19 - 28</td> <td style="text-align: right;">5</td> </tr> <tr> <td>29 - 38</td> <td style="text-align: right;">6</td> </tr> <tr> <td>39 or more</td> <td style="text-align: right;">7</td> </tr> </tbody> </table>	Total Maximum Penalties	Points	Years: 1 - 7	3	8 - 18	4	19 - 28	5	29 - 38	6	39 or more	7
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19 - 28	3																								
29 - 38	4																								
39 or more	5																								
Total Maximum Penalties	Points																								
Years: 1 - 7	3																								
8 - 18	4																								
19 - 28	5																								
29 - 38	6																								
39 or more	7																								

If total is 8 or less, go to SECTION B. If total is 9 or more, go to SECTION C.

Section A - Proposed

◆ **Primary Offense** _____
 A. Maliciously discharge firearm, etc., in/at occupied building (1 count) 2

A. Maliciously or unlawfully discharge firearm, etc., in/at occupied building
1 count 2

2 counts 4

◆ **Primary Offense Remaining Counts** Total the maximum penalties for counts of the primary not scored above _____
 Years: 5 - 7 1
 8 - 18 2
 19 - 28 3
 29 - 38 4
 39 or more 5

SPLIT Legally Restrained factor and assign higher points for target offense

<p>◆ Legally Restrained at Time of Offense</p> <p><u>Primary offense OTHER THAN Maliciously or unlawfully discharge firearm in/at occupied building § 18.2-279</u></p> <table border="0"> <tr> <td></td> <td style="text-align: right;">Points</td> </tr> <tr> <td>None</td> <td style="text-align: right;">0</td> </tr> <tr> <td>Other than post-incar supervision ..</td> <td style="text-align: right;">2</td> </tr> <tr> <td>Post-incarceration supervision</td> <td style="text-align: right;">5</td> </tr> </table>		Points	None	0	Other than post-incar supervision ..	2	Post-incarceration supervision	5	<p><u>Primary offense Maliciously or unlawfully discharge firearm in/at occupied building § 18.2-279</u></p> <table border="0"> <tr> <td></td> <td style="text-align: right;">Points</td> </tr> <tr> <td>None</td> <td style="text-align: right;">0</td> </tr> <tr> <td>Other than post-incar supervision ..</td> <td style="text-align: right;">3</td> </tr> <tr> <td>Post-incarceration supervision</td> <td style="text-align: right;">6</td> </tr> </table>		Points	None	0	Other than post-incar supervision ..	3	Post-incarceration supervision	6
	Points																
None	0																
Other than post-incar supervision ..	2																
Post-incarceration supervision	5																
	Points																
None	0																
Other than post-incar supervision ..	3																
Post-incarceration supervision	6																

◆ **or Incarcerations/Commitments** _____ If YES, add 4 →

◆ **Legally Restrained at Time of Offense** _____

None	0
Other than post-incarceration supervision	2
Post-incarceration supervision (supervision after incarceration)	5

If total is 8 or less, go to SECTION B. If total is 9 or more, go to SECTION C.

Section A - Proposed

◆ **Primary Offense** _____
 A. Maliciously discharge firearm, etc., in/at occupied building (1 count) 2

A. Maliciously or unlawfully discharge firearm, etc., in/at occupied building
1 count 2

2 counts 4 0

◆ **Primary Offense Remaining Counts** Total the maximum penalties for counts of the primary not scored above _____

Years: 5 - 7 1
 8 - 18 2
 19 - 28 3
 29 - 38 4
 39 or more 5

↓

0

◆ **Additional Offenses** Total the maximum penalties for additional offenses, including counts _____

Years: Less than 1 0
 1 - 7 1
 8 - 18 2
 19 - 28 3
 29 - 38 4
 39 or more 5

↓

0

◆ **Victim Injury** _____

Threatened, emotional or physical 1
 Life threatening 2

↓

0

◆ **Conviction in Current Event Requiring Mandatory Minimum Term (6 mos or more) - If YES, add 8** → 0

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

Years: Less than 2 0

↓

0



New factor is only scored if primary offense is maliciously discharging firearm

SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE AT CONVICTION IS MALICIOUSLY DISCHARGING FIREARM, ETC., IN/AT OCCUPIED BUILDING § 18.2-279

◆ **Type of Additional Offense(s)**

Additional offense with VCC prefix of WPN or ASL → If YES, add 2

Section B - Proposed

Weapon/Firearm ❖ Section B

Offender Name: _____

◆ **Primary Offense** _____

A. Maliciously discharge firearm, etc., in/at occupied building (1 count)	7
B. Discharge firearm from vehicle (1 count)	8
C. Possess firearm on school property (1 count)	7
D. Possession of sawed-off shotgun (1 count)	6
E. False statement on firearm consent form (1 count)	1
F. Possession of firearm, other weapon, explosives or ammunition by convicted felon (1 count)	7

Score

▼

--	--

G. Unlawfully discharge firearm, etc., in/at occupied building
1 count 8

◆ **Primary Offense Remaining Counts** Total the maximum penalties for counts of the primary not scored above

Years: 5 - 9	2
10 - 19	3
20 - 29	4
30 - 39	5
40 or more	6

--	--

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

Years: Less than 1	0
1 - 9	2
10 - 19	3
20 - 29	4
30 - 39	5
40 or more	6

0	
---	--

◆ **Victim Injury** _____

Threatened, emotional or physical	2
Life threatening	3

0	
---	--

◆ **Legally Restrained at Time of Offense** _____ If YES, add 1 →

0	
---	--

If total is 10 or more, recommendation is JAIL up to 6 months.

Section C - Proposed

Weapon/Firearm Section C

Offender Name: _____

◆ Primary Offense _____

— Prior Record Classification —
 Category I Category II Other
(scores for attempted/conspired offenses are in parentheses)

A. Maliciously discharge firearm, etc. in/at occupied building			
Attempted or conspired: 1 count	(32)	(16)	(8)
Completed: 1 count	60	30	15
B. Discharge firearm from vehicle (1 count)	48	24	12
C. Possess firearm on school property (1 count)	32	16	8
D. Possession of sawed-off shotgun (1 count)	36	18	9
E. False statement on consent form (1 count)	32	16	8
F. Possession of firearm, other weapon, explosives or ammunition by convicted felon (1 count) ..	32	16	8

Score

▼

0		
---	--	--

Prior Record Classification
Category I Category II Other

G. Unlawfully discharge firearm, etc., in/at occupied building
Completed: 1 count 40 20 10

30	3	
40 or more	5	

◆ **Firearm Used or Brandished** _____ If YES, add 2 →

0	0	
---	---	--

◆ **Victim Injury** _____

Threatened or emotional	2	
Physical	4	
Life threatening	5	

◆ **Prior Convictions/Adjudications** Assign points to the 5 most recent and serious prior record events and total the points

Maximum Penalty: Less than 20 (years)	0	
20, 30, 40 or more	1	

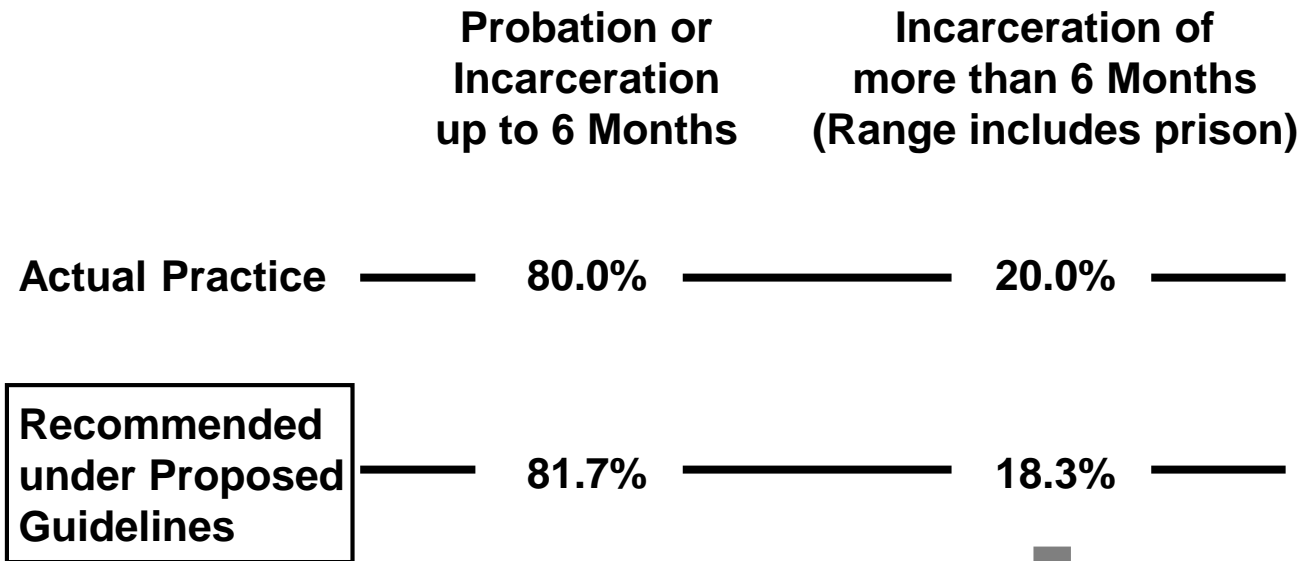
◆ **Prior Felony Convictions /Adjudications Against Person** _____

Number of Counts: 1	1	
2	2	
3	3	
4	4	
5 or more	5	

◆ **Prior Felony Convictions/Adjudications with the Same VCC Prefix as Primary Offense** _____

Number of Counts: 1	2	
2	4	
3	6	
4	8	
5 or more	10	

**Actual versus Proposed Sentences for
Unlawfully Discharging a Firearm/Missile
in/at an Occupied Building (§ 18.2-279)
FY2012-FY2016**

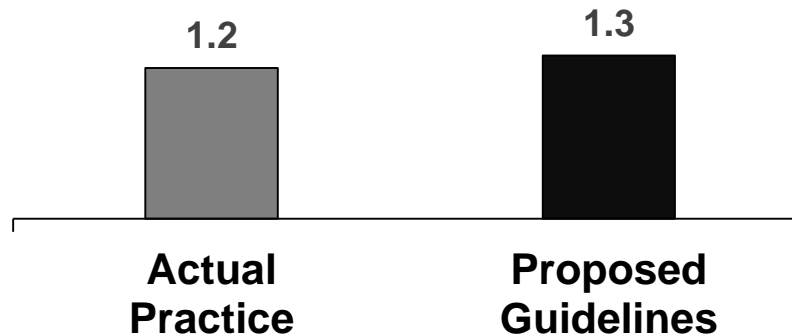


**Proposed guidelines are closely
aligned with the actual prison
incarceration rate**

**Actual versus Proposed Sentences for
Unlawfully Discharging a Firearm/Missile
in/at an Occupied Building (§ 18.2-279)
FY2012-FY2016**

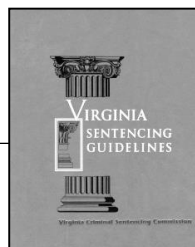
**Offenders Sentenced to
Incarceration of More than 6 Months**

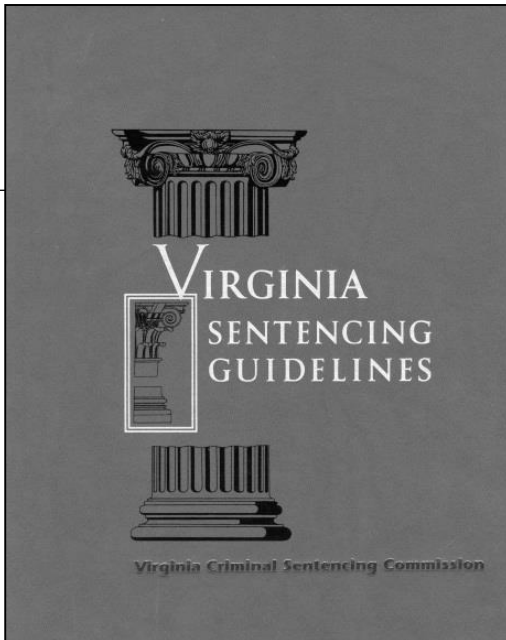
Median Sentence (in years)



Proposed Recommendation 2

**Add Unlawfully Discharging a
Firearm/Missile in/at an Occupied Building (§ 18.2-279)
to the Weapon/Firearm guidelines
as proposed**



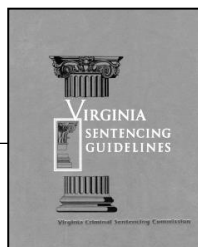


Proposed Recommendation 3:

**Add Carrying a
Concealed Weapon (§ 18.2-308)
to the Weapon/Firearm guidelines**

Carry concealed weapon (§ 18.2-308)

- **First conviction for carrying a concealed weapon is a Class 1 misdemeanor.**
- **Second conviction for carrying a concealed weapon is a Class 6 felony.**
- **Third conviction for carrying a concealed weapon is a Class 5 felony.**



Sentences for Carrying a Concealed Weapon (§ 18.2-308) FY2012-FY2016

Concealed Weapon, 2nd offense 113 Sentencing Events

Disposition	Percent	Median Sentence
No Incarceration	39.8%	NA
Incarceration up to 6 Months	35.4%	3 Months
Incarceration of More than 6 Months	24.8%	1.0 Year

Concealed Weapon, 3rd offense 18 Sentencing Events

Disposition	Percent	Median Sentence
No Incarceration	33.3%	NA
Incarceration up to 6 Months	22.2%	3 Months
Incarceration of More than 6 Months	44.4%	1.0 Year

Note: Data reflect cases in which this offense was the primary (or most serious) offense at sentencing. Offenders convicted of being a felon in possession of a firearm (§ 18.2-308.2(A)) and carrying a concealed weapon (§ 18.2-308) were excluded. Four offenders were excluded because a rap sheet could not be located.

Section A - Proposed

Weapon/Firearm Section A

Offender Name: _____

◆ Primary Offense _____

- A. Maliciously discharge firearm, etc., in/at occupied building (1 count)..... 2
- B. Discharge firearm from vehicle (1 count) 1
- C. Possess firearm on school property (1 count) 1
- D. Possession of sawed-off shotgun (1 count)..... 2
- E. False statement on firearm consent form (1 count)..... 1
- F. Possession of firearm, other weapon, explosives or ammunition by convicted felon
 - 1 count 3
 - 2 counts 4

Score

0	
---	--

G. Carry concealed weapon, 2nd or 3rd offense

1 count 2

- 29 - 38 4
- 39 or more 5

0	
---	--

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

- Years:
- Less than 1 0
 - 1 - 7 1
 - 8 - 18 2
 - 19 - 28 3
 - 29 - 38 4
 - 39 or more 5

0	
---	--

◆ Victim Injury _____

- Threatened, emotional or physical 1
- Life threatening 2

0	
---	--

◆ Conviction in Current Event Requiring Mandatory Minimum Term (6 mos or more) - If YES, add 8 →

0	
---	--

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

- Years:
- Less than 2 0
 - 2 - 38 1
 - 39 or more 2

0	
---	--

◆ Prior Incarcerations/Commitments _____ If YES, add 4 →

0	
---	--

◆ Legally Restrained at Time of Offense _____

If total is 8 or less, go to SECTION B. If total is 9 or more, go to SECTION C.

Section A - Proposed

Weapon/Firearm ❖ Section A

Offender Name: _____

◆ **Primary Offense** _____

- A. Maliciously discharge firearm, etc., in/at occupied building (1 count) 2
- B. Discharge firearm from vehicle (1 count) 1
- C. Possess firearm on school property (1 count) 1
- D. Possession of sawed-off shotgun (1 count) 2
- E. False statement on firearm consent form (1 count) 1
- F. Possession of firearm, other weapon, explosives or ammunition by convicted felon
 - 1 count 3
 - 2 counts 4

Score

0	
---	--

G. Carry concealed weapon, 2nd or 3rd offense

1 count 2

- 29 - 38 4
- 39 or more 5

0	
---	--

◆ **Additional Offenses** Total the maximum penalties for additional offenses, including counts _____

- Years:
- Less than 1 0
 - 1 - 7 1
 - 8 - 18 2
 - 19 - 28 3
 - 29 - 38 4
 - 39 or more 5

0	
---	--

ADD new criminal history factor

SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE AT CONVICTION IS CARRYING A CONCEALED WEAPON § 18.2-308

◆ **Prior Criminal Misdemeanor Convictions**

Number	Points
0	0
1 - 6	1
7 or more	2



If total is 8 or less, go to SECTION B. If total is 9 or more, go to SECTION C.

Section B - Proposed

Weapon/Firearm Section B

Offender Name: _____

◆ Primary Offense _____

- A. Maliciously discharge firearm, etc., in/at occupied building (1 count) 7
- B. Discharge firearm from vehicle (1 count) 8
- C. Possess firearm on school property (1 count) 7
- D. Possession of sawed-off shotgun (1 count) 6
- E. False statement on firearm consent form (1 count) 1
- F. Possession of firearm, other weapon, explosives or ammunition by convicted felon (1 count) 7

Score

▼

--	--

G. Carrying concealed weapon, 2nd or 3rd offense

1 count 7

◆ Primary Offense Remaining Counts Total the maximum penalties for counts of the primary not scored above

- Years:
- 5 - 9 2
 - 10 - 19 3
 - 20 - 29 4
 - 30 - 39 5
 - 40 or more 6

--	--

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

- Years:
- Less than 1 0
 - 1 - 9 2
 - 10 - 19 3
 - 20 - 29 4
 - 30 - 39 5
 - 40 or more 6

0	
---	--

◆ Victim Injury _____

- Threatened, emotional or physical 2
- Life threatening 3

0	
---	--

◆ Legally Restrained at Time of Offense _____ If YES, add 1 →

0	
---	--

If total is 10 or more, recommendation is JAIL up to 6 months.

Section B - Proposed

Weapon/Firearm ❖ Section B

Offender Name: _____

◆ **Primary Offense** _____

A. Maliciously discharge firearm, etc., in/at occupied building (1 count)	7
B. Discharge firearm from vehicle (1 count)	8
C. Possess firearm on school property (1 count)	7
D. Possession of sawed-off shotgun (1 count)	6
E. False statement on firearm consent form (1 count)	1
F. Possession of firearm, other weapon, explosives or ammunition by convicted felon (1 count)	7

Score

▼

--	--

G. Carrying concealed weapon, 2nd or 3rd offense

1 count 7

◆ **Primary Offense Remaining Counts** Total the maximum penalties for counts of the primary not scored above

Years: 5 - 9	2
10 - 19	3
20 - 29	4
30 - 39	5
40 or more	6

▼

0	
---	--

◆ **Additional Offenses** Total the maximum penalties for additional offenses, including counts _____

ADD new criminal history factor

SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE AT CONVICTION IS CARRYING A CONCEALED WEAPON § 18.2-308

◆ **Prior Criminal Misdemeanor Convictions**

Number	Points
0	0
1 or 2	1
3	2
4 or more	3



If total is 10 or more, recommendation is JAIL up to 6 months.

Section C - Proposed

Weapon/Firearm Section C

Offender Name: _____

◆ Primary Offense _____

— Prior Record Classification —
 Category I Category II Other
(scores for attempted/conspired offenses are in parentheses)

A. Maliciously discharge firearm, etc. in/at occupied building			
Attempted or conspired: 1 count	(32)	(16)	(8)
Completed: 1 count	56	28	14
B. Discharge firearm from vehicle (1 count)	48	24	12
C. Possess firearm on school property (1 count)	32	16	8
D. Possession of sawed-off shotgun (1 count)	36	18	9
E. False statement on consent form (1 count)	32	16	8
F. Possession of firearm, other weapon, explosives or ammunition by convicted felon (1 count) ..	32	16	8

Score

0		
---	--	--

G. Carrying concealed weapon, 2nd or 3rd offense

Completed: 1 count 32 16 8

Prior Record Classification

Category I Category II Other

30	3		
40 or more	5		

◆ Firearm Used or Brandished _____ If YES, add 2 →

0	0	
---	---	--

◆ Victim Injury _____

Threatened or emotional	2		
Physical	4	0	0
Life threatening	5		

◆ Prior Convictions/Adjudications Assign points to the 5 most recent and serious prior record events and total the points

Maximum Penalty: Less than 20	0	0	
(years) 20, 30, 40 or more	1		

◆ Prior Felony Convictions /Adjudications Against Person _____

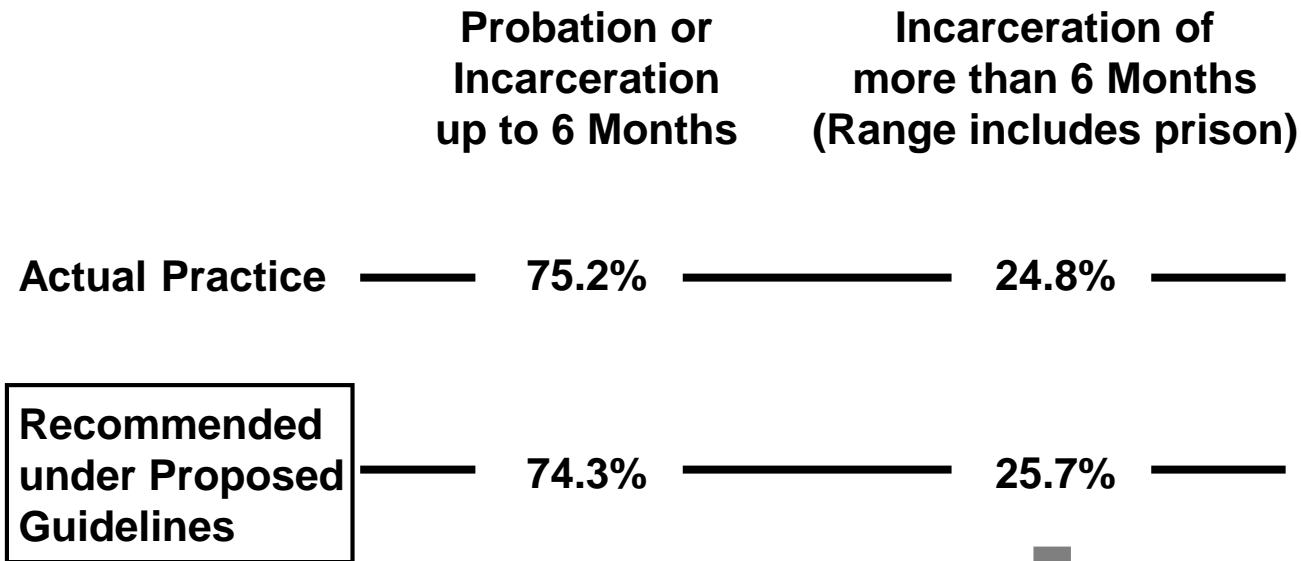
Number of Counts: 1	1		
2	2		
3	3		
4	4	0	0
5 or more	5		

◆ Prior Felony Convictions/Adjudications with the Same VCC Prefix as Primary Offense _____

Number of Counts: 1	2		
2	4		
3	6		
4	8		
5 or more	10	0	

Actual versus Proposed Sentences for Carrying a Concealed Weapon (§ 18.2-308) FY2012-FY2016

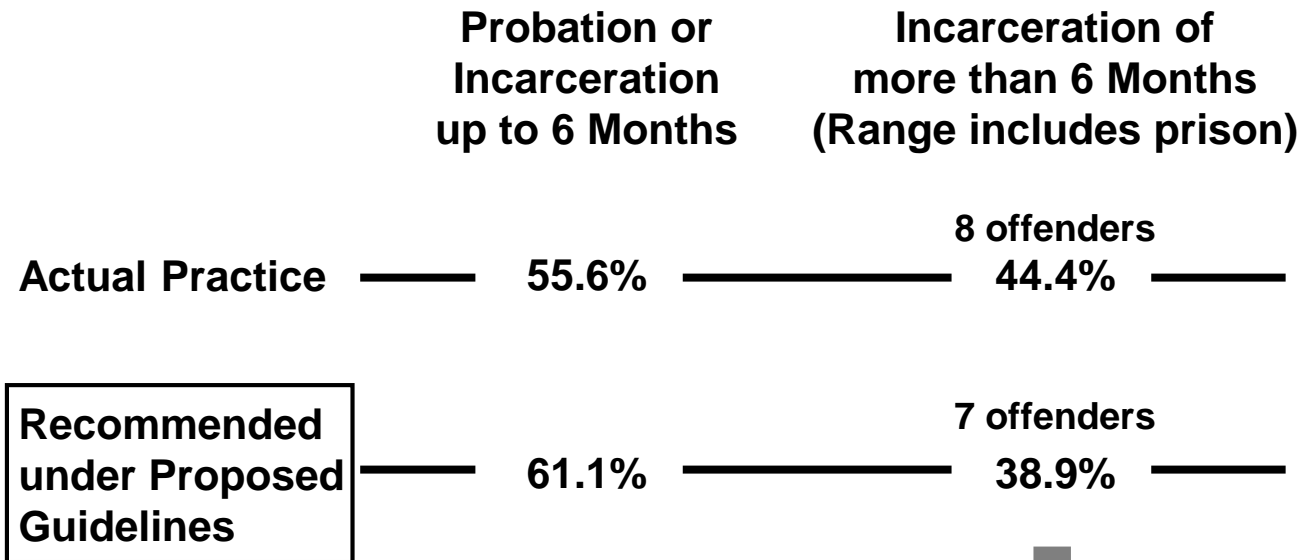
Concealed Weapon, 2nd offense



Proposed guidelines are closely
aligned with the actual prison
incarceration rate

Actual versus Proposed Sentences for Carrying a Concealed Weapon (§ 18.2-308) FY2012-FY2016

Concealed Weapon, 3rd offense



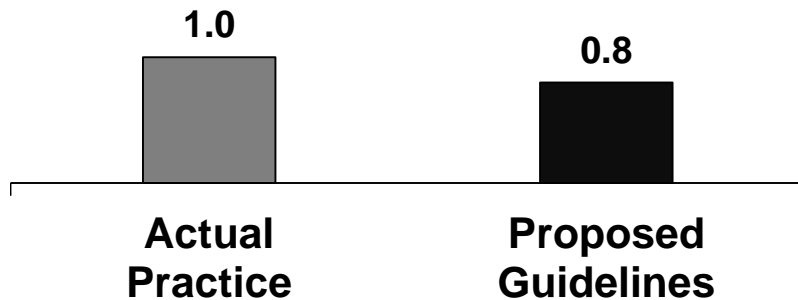
Proposed guidelines are closely
aligned with the actual prison
incarceration rate

Actual versus Proposed Sentences for Carrying a Concealed Weapon (§ 18.2-308) FY2012-FY2016

Concealed Weapon, 2nd offense

Offenders Sentenced to
Incarceration of More than 6 Months

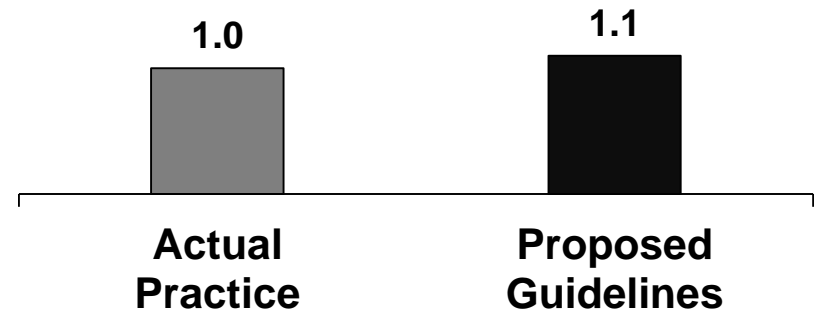
Median Sentence (in years)



Concealed Weapon, 3rd offense

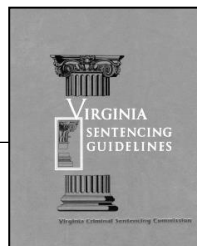
Offenders Sentenced to
Incarceration of More than 6 Months

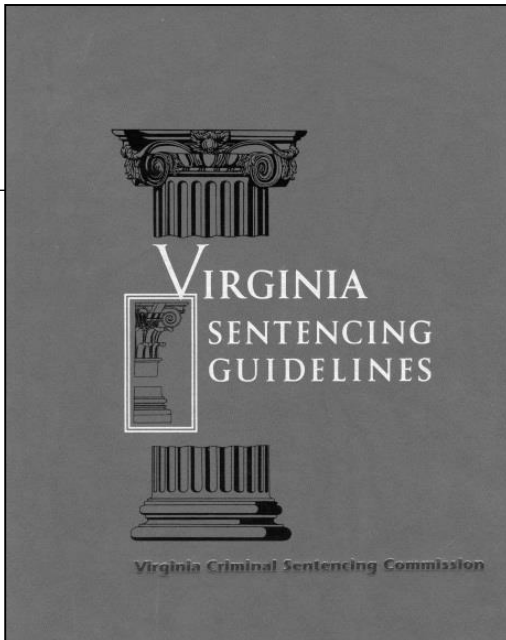
Median Sentence (in years)



Proposed Recommendation 3

**Add Carrying a Concealed Weapon (§ 18.2-308)
to the Weapon/Firearm guidelines
as proposed**





Proposed Recommendation 4:

Revise the “Mandatory Minimum for Weapon Conviction(s)” factor on Section C of the Schedule I/II Drug guidelines to include convictions under § 18.2-53.1

Schedule I/II Drug Guidelines Section C Worksheet

- **The factor “Mandatory Minimum for Weapon Conviction(s) in Current Event” does not include a conviction for “Use of a Firearm in the Commission of a Felony” (§ 18.2-53.1). The court must impose a mandatory sentence of 3 years for the first conviction and 5 years for a second or subsequent conviction.**
- **Only additional offenses that have a VCC prefix of “WPN” and a mandatory minimum of 2 years or 5 years are scored for this factor.**

Drug/Schedule I/II ❖ section C

Offender Name: _____

◆ Primary Offense

Prior Record Classification

Category I Category II Other
(scores for attempted/conspired offenses are in parentheses)

A. Possess Schedule I or II drug or First offender violation		Category I	Category II	Other
1 count	20	10	5	
2 counts	28	14	7	
3 counts	36	18	9	
B. Sell, Distribute, Possession with intent, etc., Schedule I or II drug				
Completed (Attempted or Conspired): 1 count	60 (48)	36 (24)	12 (12)	
2 counts	80 (64)	48 (32)	16 (16)	
3 counts	95 (76)	57 (38)	19 (19)	
4 counts	130 (104)	78 (52)	26 (26)	
C. Sell, etc., Schedule I or II drug, second offense				
Completed (Attempted or Conspired): 1 count	110 (88)	66 (44)	22 (22)	
2 counts	310 (248)	186 (124)	62 (62)	
D. Sell, etc., Schedule I or II drug - third or subsequent offense				
Attempted, conspired or completed: 1 count	175	105	35	
2 counts	390	234	78	
E. Manufacture Methamphetamine, first or second offense, § 18.2-248(C1)				
Attempted, conspired or completed: 1 count	145	87	29	
F. Sell, etc., Schedule I or II drug to minor				
Attempted, conspired or completed: 1 count	60	30	15	
G. Accommodation-Sell, etc., Schedule I or II drug				
Attempted, conspired or completed: 1 count	32	16	8	
2 counts	40	20	10	
H. Sell, etc., imitation Schedule I or II drug				
Attempted, conspired or completed: 1 count	12	6	3	
2 counts	20	10	5	

Score

1	2
---	---

◆ Primary Offense Remaining Counts

Assign points to each count of the primary not scored above and total the points

Maximum Penalty (years) 5,10	1	40 or more	5
------------------------------	---	------------	---

0	0
---	---

◆ Additional Offenses

Assign points to each additional offense (including counts) and total the points

Primary offense D: Sell, etc., Sch. I/II 3rd or Subsequent	
Years	Points
Less than 5	0
5, 10	2
20	4
30	6
40 or more	7

Primary offense: All other offenses	
Years	Points
Less than 5	0
5, 10	1
20	2
30	4
40 or more	5

0	2
---	---

◆ Mandatory Minimum for Weapon Conviction(s) in Current Event

Assign points to each additional offense with a mandatory minimum and total the points

2 Year Mandatory Minimum	13	5 Year Mandatory Minimum	32
--------------------------	----	--------------------------	----

0	13
---	----

◆ Firearm in Possession at Time of Offense

If YES, add 5

0	0	5
---	---	---

◆ Prior Convictions/Adjudications

Assign points to the 5 most recent and serious prior record events and total the points

Maximum Penalty: Less than 5	0	30	3
(years) 5, 10	1	40 or more	4
20	2		

0	1
---	---

◆ Prior Felony Drug Convictions/Adjudications

Primary offense D: Sell, etc., Sch. I/II 3rd or Subsequent	
Number of Counts	Score
2	9
3	10
4	17
5 or more	20

Primary offense: All other offenses	
Number of Counts	Score
2	0
3	1
4	2
5	3
6 or more	4

0	0
---	---

◆ Prior Felony Convictions/Adjudications Against Person

Number of Counts: 1	3	3	9
2	6	4 or more	12

0	0
---	---

◆ Prior Felony Property Convictions/Adjudications

Number of Counts: 1, 2	1	4 or more	3
3	2		

0	0	0
---	---	---

◆ Prior Juvenile Record

If YES, add 1

0	0	0
---	---	---

◆ Legally Restrained at Time of Offense

If YES, add 3

0	0	3
---	---	---

◆ Type of Additional Offense

Score if primary offense is E: Manufacture Methamphetamine § 18.2-248 (C1)
Additional offense of child present during manufacture of methamphetamine If YES, add 14

0	0
---	---

◆ Sale/Quantity of Cocaine

Score if primary offense is B, C, D, or F: § 18.2-248(C) or §18.2-255(A)
Quantity of Cocaine: Less than 28.35 grams 0 28.35 g to less than 226.8 grams 36 226.8 grams or more 60

0	0
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Total Score

See Drug/Schedule I/II Section C Recommendation Table for guidelines sentence range. Then go to Section D Nonviolent Risk Assessment and follow the instructions.

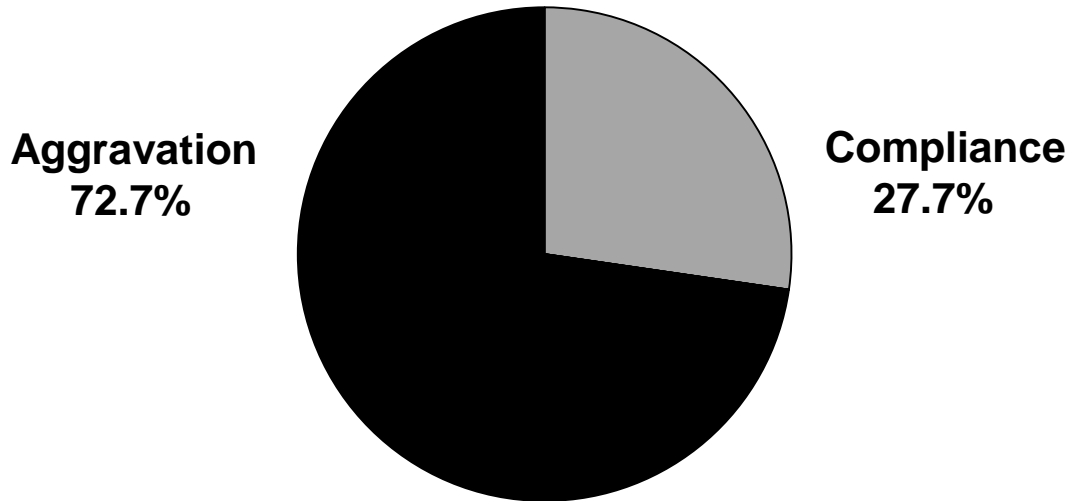
3	6
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This is not a typical case, but it is a face validity problem.

In 10 years, there were 11 cases that included use of a firearm in the commission of a felony.

**Compliance with Guidelines for
Schedule I/II Drug Offenses with an Additional Offense
under § 18.2-53.1
FY2009 – FY2016**

11 Sentencing Events



Drug/Schedule I/II ❖ Section C

Offender Name: _____

◆ Primary Offense

		Prior Record Classification		
		<input type="checkbox"/> Category I	<input type="checkbox"/> Category II	<input type="checkbox"/> Other
<i>(scores for attempted/conspired offenses are in parentheses)</i>				
A. Possess Schedule I or II drug or First offender violation	Attempted, conspired or completed:	1 count	20	10
		2 counts	28	14
		3 counts	36	18
B. Sell, Distribute, Possession with intent, etc., Schedule I or II drug	Completed (Attempted or Conspired):	1 count	60 (48)	36 (24)
		2 counts	80 (64)	48 (32)
		3 counts	95 (76)	57 (38)
		4 counts	130(104)	78 (52)
C. Sell, etc., Schedule I or II drug, second offense	Completed (Attempted or Conspired):	1 count	110 (88)	66 (44)
		2 counts	310(248)	186(124)
D. Sell, etc., Schedule I or II drug - third or subsequent offense	Attempted, conspired or completed:	1 count	175	105
		2 counts	390	234
E. Manufacture Methamphetamine, first or second offense, § 18.2-248(C1)	Attempted, conspired or completed:	1 count	145	87
F. Sell, etc., Schedule I or II drug to minor	Attempted, conspired or completed:	1 count	60	30
G. Accomodation-Sell, etc., Schedule I or II drug	Attempted, conspired or completed:	1 count	32	16
		2 counts	40	20
H. Sell, etc., imitation Schedule I or II drug	Attempted, conspired or completed:	1 count	12	6
		2 counts	20	10

Score

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◆ Primary Offense Remaining Counts Assign points to each count of the primary not scored above and total the points

Maximum Penalty (years) 5,10 1 40 or more 5

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◆ Additional Offenses Assign points to each additional offense (including counts) and total the points

Primary offense D: Sell, etc., Sch. I/II 3rd or Subsequent

Years	Points
Less than 5	0
5,10	2
20	4
30	6
40 or more	7

Primary offense: All other offenses

Years	Points
Less than 5	0
5,10	1
20	2
30	4
40 or more	5

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◆ Mandatory Minimum for Weapon Conviction(s) in Current Event Assign points to each additional offense with a mandatory minimum and total the points

2 Year Mandatory Minimum 13 5 Year Mandatory Minimum 32

0		
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REVISE Mandatory Minimum factor to score convictions under § 18.2-53.1

◆ Mandatory Minimum for Weapon Conviction(s) in Current Event

Assign points for each additional offense with a mandatory minimum and total points

2 Year Mandatory Minimum 13

3 Year Mandatory Minimum 25

5 Year Mandatory Minimum 32

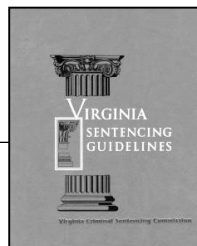
◆ Prior Juvenile Record

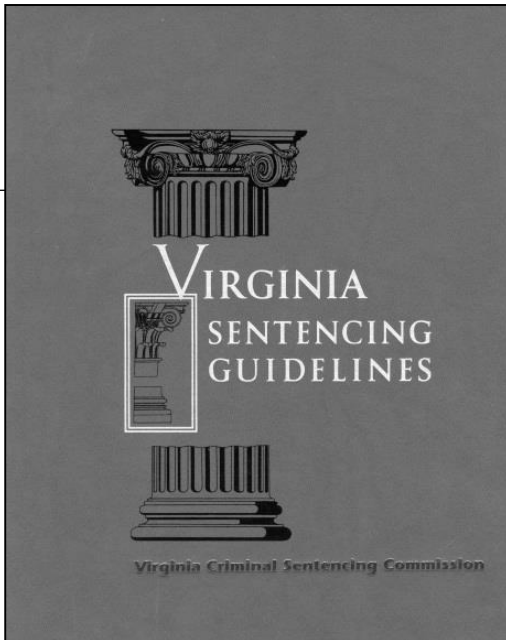
If YES, add 1

0	0	
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Proposed Recommendation 4

**Revise the “Mandatory Minimum for Weapon Conviction(s)”
factor on Section C of the Schedule I/II Drug guidelines
to include convictions under § 18.2-53.1
as proposed**





Proposed Recommendation 5:

Revise § 19.2-298.01 to require circuit court clerks to submit sentencing guidelines forms when the judge defers the disposition in the case

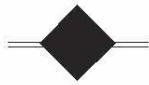
Guidelines Submission Requirements

§ 19.2-298.01

- Pursuant to § 19.2-298.01, following the entry of a final order of conviction and sentence in a felony case, circuit court clerks are required to send the sentencing guidelines worksheets, any departure reason, and a copy of the court order or orders, to the Commission.

Sentencing Guidelines Data Used by the Compensation Board

- **The Compensation Board uses sentencing guidelines data to calculate the Commonwealth's Attorneys workload statistics.**
- **The workload statistics affect how resources are distributed to Commonwealth's Attorney's offices.**
- **Several years ago, the Commission agreed to accept guidelines forms for cases in which the judge placed the defendant on first offender status (§ 18.2-251).**
 - **Court does not enter a finding of guilt.**
 - **These cases are included in the data provided to the Compensation Board.**



Worksheet Completion Responsibility **§ 19.2-298.01**

Plea of Not Guilty

If an offender pleads not guilty and is tried by the court (bench trial), the probation officer will be responsible for completing the guidelines worksheet. The officer will provide the original to the judge and copies to the Commonwealth's attorney and defense attorney before sentencing. The officer also retains a copy.

Plea of Guilty or Plea Agreements

If the offender pleads guilty or accepts a plea agreement (including an oral sentence recommendation), the court has the option to direct the probation officer to prepare the worksheet or, when the accused, the court and the Commonwealth's attorney concur, the Commonwealth's attorney may prepare the worksheet. In either case, the original will be provided to the judge with copies given to the Commonwealth's attorney (if prepared by the probation officer) and the defense attorney before sentencing. The preparer also retains a copy.

Jury Sentences

If the offender has been convicted by a jury and the jury has recommended a sentence, a sentencing guidelines worksheet must then be provided to the judge. No sentencing guidelines information may be provided to the jury (§ 19.2-298.01(A)). The probation officer will be responsible for completing the guidelines worksheet. The officer will provide the original to the judge and copies to the Commonwealth's attorney and defense attorney before sentencing. The officer also retains a copy.

Recording Sentence Information

- **Final Disposition** – The sentencing judge, circuit court clerk, or other judicial designee is responsible for completing the back section of the cover sheet, which specifies the actual sentence.

Policy

Sentencing for Multiple Jurisdictions

Convictions that occur in different jurisdictions, but result in one sentencing in one court, are still considered to be separate sentencing events. If the combined sentencing takes place on the same day, with the same judge, in the same court, separate worksheets must be prepared for each jurisdiction, reflecting the convictions arising in each locality. Policy does not prohibit a judge from reviewing one combined guideline, but the official guidelines must be prepared and submitted for each jurisdiction. If a judge departs from the recommendation for any jurisdiction, then a departure reason, as required by statute, must be provided.

Deferred Dispositions (e.g., First Offender)

When a court defers a finding of guilt for a guidelines offense, such as authorized under § 18.2-251, sentencing guidelines are to be submitted to the Commission after the court's decision to defer the finding. If the offender violates any condition of the deferral and the court finds the offender guilty of the guidelines offense, updated guidelines must be submitted to the court before sentencing. Guidelines must be sent to the Commission after each court action.

Factor Bargaining

The sentencing guidelines must be computed based on the rules stated within this manual. Guidelines rules are not to be circumvented by guidelines factor bargaining. Agreements that require the preparer to calculate guidelines factors in a manner that conflicts with established rules or procedures shall have no bearing on the completion of the official sentencing guidelines submitted to the court.

Departure Reasons

Guidelines Submission Requirements

§ 19.2-298.01

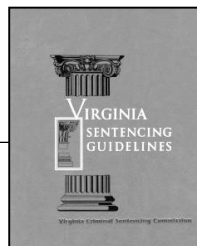
Language proposed at the September meeting

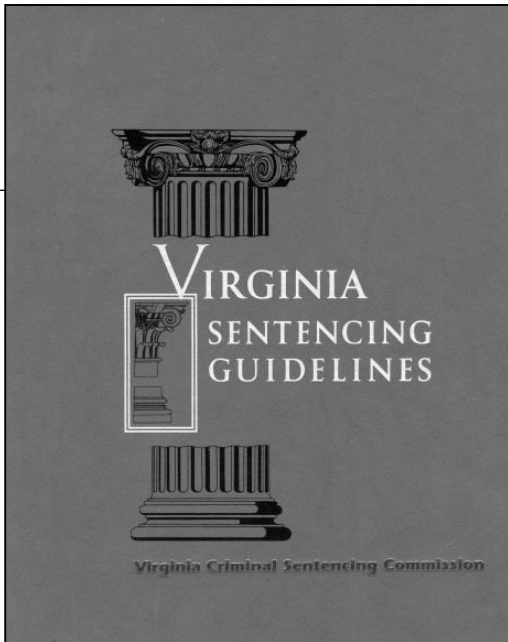
§ 19.2-298.01. Use of discretionary sentencing guidelines.

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

Proposed Recommendation 5

Revise § 19.2-298.01 to require circuit court clerks to submit sentencing guidelines forms when the judge defers the disposition in the case





Proposed Changes to the Sentencing Guidelines Cover Sheet

Final Disposition Fill In After Sentence Has Been Pronounced

SENTENCE

Total Time Imposed Before Suspension Life Sentence +

Years	Months	Days
<input type="text"/>	<input type="text"/>	<input type="text"/>

Total Effective Time to Serve Life Sentence +

<input type="text"/>	<input type="text"/>	<input type="text"/>
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Post Release

Post Release Term § 18.2-10

<input type="text"/>	<input type="text"/>	<input type="text"/>
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Post Release Supervision Period § 19.2-295.2(A)

<input type="text"/>	<input type="text"/>	<input type="text"/>
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Probation Period (Supervised) § 19.2 - 303 Indefinite

<input type="text"/>	<input type="text"/>	<input type="text"/>
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Check all that apply

- Incarceration Sentence to Run Concurrently With Another Sentencing Event
- Written Plea Agreement Accepted (Rule 3A:8(c) (1) (A) or (C))
- Plea and Recommendation Accepted (Rule 3A:8 (c) (1) (B))
- Oral Sentence Recommendation Accepted
- Restitution \$ _____
- Fine \$ _____

Other Sentencing Programs (check all that apply)

- Day Reporting
- Diversion Center Incarceration
- Electronic Monitoring
- Unsupervised Probation/Good Behavior
- § 18.2-251/§ 18.2-258.1
- Substance Abuse Treatment
- Community-Based Program
- Detention Center Incarceration
- Drug Court
- Intensive Probation

Office Use Only

<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
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REASON FOR DEPARTURE

Must be completed pursuant to § 19.2-298.01(B)

<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
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SENTENCING DATE

<input type="text"/>	<input type="text"/>	<input type="text"/>
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<input type="text"/>	<input type="text"/>
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<input type="text"/>	<input type="text"/>
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Judge's Signature

ATTACH COURT ORDER AND MAIL Pursuant to § 19.2-298.01(E)

After sentencing, send to:

Virginia Criminal Sentencing Commission • 100 North Ninth Street • Fifth Floor • Richmond, Virginia 23219

Sentenced to Time Served

Work with AG on a better way to identify time served

Good Behavior _____

Indeterminate Commitment to DJJ
 Determinant Commitment to DJJ _____

Other Deferred Finding, Execution of Sentence Suspended (ESS), Imposition of Sentence Suspended (ISS) _____