

Virginia Criminal Sentencing Commission



2017 ANNUAL REPORT

DECEMBER 1, 2017

Virginia Criminal Sentencing Commission Members

**Appointed by the Chief Justice of the Supreme Court
and Confirmed by the General Assembly**

Judge Edward L. Hogshire (Ret.)
Chairman, Charlottesville

Appointments by the Chief Justice of the Supreme Court

Judge Rossie D. Alston, Jr., Vice Chair, Manassas
Judge Bradley B. Cavedo, Richmond City
Judge Dennis L. Hupp, Woodstock
Judge Lisa Bondareff Kemler, Alexandria
Judge Michael Lee Moore, Russell
Judge Charles S. Sharp, Stafford

Attorney General

The Honorable Mark R. Herring
(**Diane Abato**, Attorney General's Representative)

Senate Appointments

Senator Bryce E. Reeves, Spotsylvania
Judge James S. Yoffy, Henrico

House of Delegates Appointments

Delegate Benjamin L. Cline, Rockbridge
The Honorable James Fisher, Fauquier
The Honorable James E. Plowman, Loudon

Governor's Appointments

The Honorable H.F. Haymore Jr., Pittsylvania
Kyanna Perkins, Chesterfield
Kemba Smith Pradia, Richmond City
The Honorable Shannon Taylor, Henrico

Commonwealth of Virginia

HON. EDWARD L. HOGSHIRE (RET.)
CHAIRMAN

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Supreme Court of Virginia
Virginia Criminal Sentencing Commission

December 1, 2017

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

Section 17.1-803 of the *Code of Virginia* requires the Virginia Criminal Sentencing Commission to report annually upon its work and recommendations. Pursuant to this statutory obligation, we respectfully submit for your review the *2017 Annual Report* of the Criminal Sentencing Commission.

This report details the work of the Commission over the past year. The report includes a detailed analysis of judicial compliance with the felony sentencing guidelines during fiscal year 2017. The Commission's recommendations to the 2018 session of the Virginia General Assembly are also contained in this report.

I would like to use this opportunity to express our utmost gratitude to a Commission member who will be completing his term with the Commission at the end of 2017. The member is H.F. Haymore Jr., of Pittsylvania. He has performed his duties in an exemplary fashion and our work is far better because of his insights and valuable contributions.

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

Sincerely,

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

Edward L. Hogshire
Retired Judge
Chairman



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INTRODUCTION

Overview

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

The report is organized into five chapters. The remainder of the Introduction chapter provides a general profile of the Commission and an overview of its various activities and projects. The Guidelines Compliance chapter that follows contains a comprehensive analysis of compliance with the sentencing guidelines during fiscal year (FY) 2017. The third chapter describes the Commission's efforts to automate the sentencing guidelines preparation and submission process. In response to a 2016 legislative directive, the Commission reviewed recidivism among released federal inmates and this work is described in the fourth chapter. In the report's final chapter, the Commission presents its recommendations for revisions to the felony sentencing guidelines system.

Commission Profile

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

Commission Meetings

The full membership of the Commission met four times during 2017. These meetings were held on April 3, June 5, September 11, and November 1. Minutes for each of these meetings are available on the Commission's website ([www.vcsc.virginia.gov / meetings.html](http://www.vcsc.virginia.gov/meetings.html)).

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

Monitoring and Oversight

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

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

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

Training, Education and Other Assistance

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

In FY2017, the Commission offered 25 training seminars across the Commonwealth for more than 500 criminal justice professionals. As in previous years, Commission staff conducted training for attorneys and probation officers new to Virginia’s sentencing guidelines system. The six-hour seminar introduced participants to the sentencing guidelines and provided instruction on correct scoring of the guidelines worksheets. The seminar also introduced new users to the probation violation guidelines and the two offender risk assessment instruments that are incorporated into Virginia’s guidelines system. In addition, seminars for experienced guidelines users were provided during the year. These courses were approved by the Virginia State Bar, enabling participating attorneys to earn Continuing Legal Education credits. The Commission continued to provide a guidelines-related ethics class for attorneys, which was conducted in conjunction with the Virginia State Bar. The Virginia State Bar approved this class for one hour of Continuing Legal Education Ethics credit. A three-hour course on the development and use of sentencing guidelines, led by Judge David Carson from the 23rd Circuit and Commission staff, was conducted for newly-elected judges. The Commission also conducted sentencing guidelines seminars at the Department of Corrections’ Training Academy, as part of the curriculum for new probation officers and traveled to district offices when training was needed. Finally, the Commission often offers refresher courses to Bar Associations across the Commonwealth. This year the Loudoun Bar Association sponsored the Evaluation of Sentencing Guidelines Skills and Ethics seminar for the members of the local and neighboring bar associations.

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

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

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

By visiting the Commission's website, a user can learn about upcoming training sessions, access Commission reports, look up Virginia Crime Codes (VCCs), and utilize on-line versions of the sentencing guidelines forms. Another resource is the Commission's mobile website and electronic guidelines manual. This resource is formatted for use on a smartphone and provides a quick resource when the guidelines manual is not available.

Automation Project - SWIFT!

In 2012, staff launched a project to automate the sentencing guidelines completion and submission process. The Commission has been collaborating with the Supreme Court's Department of Judicial Information Technology (DJIT) to design a web-based application for automating the sentencing guidelines. The application is called SWIFT (Sentencing Worksheets and Integrated File Transfer). The Commission has been pilot testing certain features of the application and is nearing the first phase of statewide implementation. To learn more about this project, please refer to the SWIFT chapter in this report.

Projecting the Impact of Proposed Legislation

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

For the 2017 General Assembly, the Commission prepared nearly 230 impact statements on proposed legislation. These proposals included: 1) legislation to increase the felony penalty class of a specific crime; 2) legislation to increase the penalty class of a specific crime from a misdemeanor to a felony; 3) legislation to add a new mandatory minimum penalty; 4) legislation to expand or clarify an existing crime; and 5) legislation that would create a new criminal offense. The Commission utilizes its computer simulation forecasting program to estimate the projected impact of these proposals on the prison system. The estimated impact on the juvenile offender population is provided by Virginia's Department of Juvenile Justice. In most instances, the projected impact and accompanying analysis of a bill is presented to the General Assembly within 24 to 48 hours after the Commission is notified of the proposed legislation. When requested, the Commission provides pertinent oral testimony to accompany the impact analysis. Additional impact analyses may be conducted at the request of House Appropriations Committee staff, Senate Finance Committee staff, the Secretary of Public Safety and Homeland Security, or staff of the Department of Planning and Budget.

Prison and Jail Population Forecasting

Forecasts of offenders confined in state and local correctional facilities are essential for criminal justice budgeting and planning in Virginia. The forecasts are used to estimate operating expenses and future capital needs and to assess the impact of current and proposed criminal justice policies. Since 1987, the Secretary of Public Safety and Homeland Security has utilized an approach known as “consensus forecasting” to develop the offender population forecasts. This process brings together policy makers, administrators, and technical experts from all branches of state government. The process is structured through committees. The Technical Advisory Committee is comprised of experts in statistical and quantitative methods from several agencies. While individual members of this Committee generate the various prisoner forecasts, the Committee as a whole carefully scrutinizes each forecast according to the highest statistical standards. At the Secretary’s request, the Commission’s Director or Deputy Director has chaired the Technical Advisory Committee since 2006.

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

The Secretary presented the most recent offender forecasts to the General Assembly in a report submitted in October 2017.

Review of Federal Inmate Recidivism

During its 2016 Session, the General Assembly also adopted House Bill 1105. This legislation directed the Commission to examine recidivism among federal inmates whose sentences were retroactively reduced pursuant to Amendments 782 and 788 of the US Sentencing Commission's Guidelines Manual. The legislative mandate directed the Commission to focus on acts of recidivism committed by such inmates in the Commonwealth. The Commission's exploration of recidivism among federal inmates is described in the fourth chapter in this report.

Assistance to Other Agencies

When requested, the Commission provides technical assistance, in the form of data and analysis, to other state agencies. During 2017, the Commission assisted agencies such as the Virginia State Crime Commission, a legislative branch agency, and the Virginia Department of Juvenile Justice. In addition, the Commission's Director was asked by the Secretary of Public Safety and Homeland Security to continue serving on the state policy team for Virginia's Evidence-Based Decision Making (EBDM) initiative.

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GUIDELINES COMPLIANCE

Introduction

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

This report focuses on cases sentenced from the most recent year of available data, fiscal year (FY) 2017 (July 1, 2016, through June 30, 2017). Concurrence is examined in a variety of ways in this report, and variations in data over the years are highlighted throughout.

Figure 1

**Number and Percentage
of Cases Received by
Circuit - FY2017***

Circuit	Number	Percent
1	886	3.6%
2	1,250	5.1%
3	387	1.6%
4	1,021	4.2%
5	520	2.1%
6	306	1.3%
7	480	2.0%
8	274	1.1%
9	597	2.4%
10	645	2.6%
11	313	1.3%
12	1,322	5.4%
13	854	3.5%
14	1,019	4.2%
15	1,908	7.8%
16	919	3.8%
17	489	2.0%
18	222	0.9%
19	937	3.8%
20	595	2.4%
21	363	1.5%
22	593	2.4%
23	846	3.5%
24	964	4.0%
25	1,222	5.0%
26	1,533	6.3%
27	1,241	5.1%
28	660	2.7%
29	756	3.1%
30	580	2.4%
31	692	2.8%
Total	24,394	100%

*3 cases were missing a circuit number

In FY2017, ten judicial circuits contributed more guidelines cases than any of the other judicial circuits in the Commonwealth. Those circuits, which include the Fredericksburg area (Circuit 15), the Harrisonburg area (Circuit 26), Chesterfield County (Circuit 12), Virginia Beach (Circuit 2), the Radford area (Circuit 27), the Botetourt County area (Circuit 25), Norfolk (Circuit 4), Henrico County (Circuit 14), the Lynchburg area (Circuit 24) and Fairfax (Circuit 19) comprised over half (50%) of all worksheets received in FY2017 (Figure 1). See Appendix 4 for a breakdown of guidelines received by jurisdiction.

During FY2017, the Commission received 24,397 sentencing guideline worksheets. Of these, 923 worksheets contained errors or omissions that affect the analysis of the case. For the purposes of conducting a clear evaluation of sentencing guidelines in effect for FY2017, the remaining sections of this chapter pertaining to judicial concurrence with guidelines recommendations focus only on those 23,474 cases for which guidelines recommendations were completed and calculated correctly.

Compliance Defined

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

The Commission measures judicial agreement with the sentencing guidelines using two classes of concurrence: strict and general. Together, they comprise the overall concurrence rate. For a case to be in strict concurrence, the offender must be sentenced to the same type of sanction that the guidelines recommend (probation, incarceration for up to six months, incarceration for more than six months) and to a term of incarceration that falls exactly within the sentence range recommended by the guidelines. When risk assessment for nonviolent offenders is applicable, a judge may sentence a recommended offender to an alternative punishment program or to a term of incarceration within the traditional guidelines range and be considered in strict concurrence. A judicial sentence would be considered in general agreement with the guidelines recommendation if the sentence 1) meets modest criteria for rounding, 2) involves time already served (in certain instances), or 3) complies with statutorily-permitted diversion options in habitual traffic offender cases.

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

Time served concurrence is intended to accommodate judicial discretion and the complexity of the criminal justice system at the local level. A judge may sentence an offender to the amount of pre-sentence incarceration time served in jail when the guidelines call for a short jail term. Even though the judge does not sentence an offender to serve incarceration time after sentencing, the Commission typically considers this type of case to be in concurrence. Conversely, a judge who sentences an offender to time served when the guidelines call for probation also is regarded as being in concurrence with the guidelines because the offender was not ordered to serve any period of incarceration after sentencing.

Concurrence through the use of diversion options in habitual traffic cases resulted from amendments to § 46.2-357(B2 and B3) of the *Code of Virginia*, effective July 1, 1997. The amendment allows judges to suspend the mandatory minimum 12-month incarceration term required in felony habitual traffic cases if they sentence the offender to a Detention Center or Diversion Center Incarceration Program. In 2017, the Department of Corrections started referring to Detention and Diversion as the Community Corrections Alternative Program (CCAP). For cases sentenced since the effective date of the legislation, the Commission considers either mode of sanctioning of these offenders (incarceration or Detention/Diversion program) to be in concurrence with the sentencing guidelines.

Overall Compliance with the Sentencing Guidelines

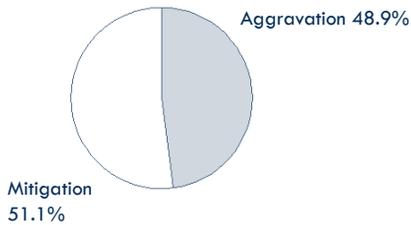
Figure 2

Overall Guidelines Compliance and Direction of Departures - FY2017

Overall Compliance



Direction of Departures



The overall concurrence rate summarizes the extent to which Virginia’s judges concur with recommendations provided by the sentencing guidelines, both in type of disposition and in length of incarceration. For the past twelve fiscal years, the concurrence rate has hovered around 80%. During FY2017, judges continued to agree with the sentencing guidelines recommendations in approximately 81% of the cases (Figure 2).

In addition to concurrence, the Commission also studies departures from the guidelines. The rate at which judges sentence offenders to sanctions more severe than the guidelines recommendation, known as the “aggravation” rate, was 9.2% for FY2017. The “mitigation” rate, or the rate at which judges sentence offenders to sanctions considered less severe than the guidelines recommendation, was 9.6% for the fiscal year. Thus, of the FY2017 departures, 48.9% were cases of aggravation while 51.1% were cases of mitigation.

Dispositional Compliance

Since the inception of truth-in-sentencing in 1995, the correspondence between dispositions recommended by the guidelines and the actual dispositions imposed in Virginia’s circuit courts has been quite high. Figure 3 illustrates judicial concurrence in FY2017 with the type of disposition recommended by the guidelines. For instance, of all felony offenders recommended for more than six months of incarceration during FY2017, judges sentenced 87% to terms in excess of six months (Figure 3). Some offenders recommended for incarceration of more than six months received a shorter term of incarceration (one day to six months) or probation with no active incarceration, but the percentage of offenders receiving such dispositions were small.

Figure 3

Recommended and Actual Dispositions - FY2017

Recommended Disposition	Actual Disposition		
	Probation	Incarceration 1 day - 6 mos.	Incarceration > 6 mos.
Probation	73.6%	22.5%	4.0%
Incarceration 1 day - 6 months	11.1%	79.9%	9.0%
Incarceration > 6 months	5.6%	7.5%	87.0%

Judges have also typically agreed with guidelines recommendations for other types of dispositions. In FY2017, 80% of offenders received a sentence resulting in confinement of six months or less when such a sanction was recommended. In some cases, judges felt probation to be a more appropriate sanction than the recommended jail term and, in other cases, offenders recommended for short-term incarceration received a sentence of more than six months. Finally, 74% of offenders whose guidelines recommendation called for no incarceration were given probation and no post-dispositional confinement. Some offenders with a “no incarceration” recommendation received a short jail term, but rarely did these offenders receive an incarceration term of more than six months.

Since July 1, 1997, sentences to the state’s former Boot Camp and Detention and Diversion Centers have been defined as incarceration sanctions for the purposes of the sentencing guidelines. Although the state’s Boot Camp program was discontinued in 2002, the Detention and Diversion Center programs have continued as sentencing options for judges. The Commission recognized that these programs are more restrictive than probation supervision in the community. In 2005, the Virginia Supreme Court concluded that participation in the Detention Center program is a form of incarceration (*Charles v. Commonwealth*). Because the Diversion Center program also involves a period of confinement, the Commission defines both the Detention Center and the Diversion Center programs as incarceration terms under the sentencing guidelines. Between 1997 and 2003, the Detention and Diversion Center programs were counted as six months of confinement. However, effective July 1, 2007, the Department of Corrections extended these programs by an additional four weeks. Therefore, beginning in FY2008, a sentence to either the Detention or Diversion Center program counted as seven months of confinement for sentencing guideline purposes. Towards the end of FY2017, the Department of Corrections again modified the two programs. Now called Community Corrections Alternative Programs (CCAP), these programs require confinement for a minimum of seven months to a maximum of 12 months.

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

Figure 4

Durational Compliance and Direction of Departures - FY2017*



Durational Compliance

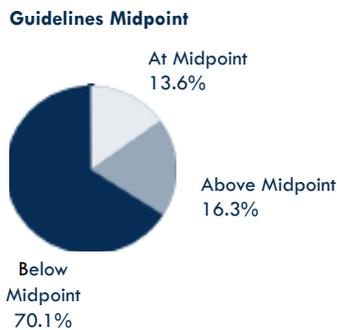
In addition to examining the degree to which judges concur with the type of disposition recommended by the guidelines, the Commission also studies durational concurrence, which is defined as the rate at which judges sentence offenders to terms of incarceration that fall within the recommended guidelines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

Durational concurrence among FY2017 cases was over 82%, indicating that judges, more often than not, agree with the length of incarceration recommended by the guidelines in jail and prison cases (Figure 4). Among FY2017 cases not in durational concurrence, departures tended slightly more toward aggravation than mitigation.

For cases recommended for incarceration of more than six months, the sentence length recommendation derived from the guidelines (known as the midpoint) is accompanied by a high-end and low-end recommendation. The sentence ranges recommended by the guidelines are relatively broad, allowing judges to use their discretion in sentencing offenders to different incarceration terms, while still remaining in concurrence with the guidelines. When the guidelines recommended more than six months of incarceration, and judges sentenced within the recommended range, only a small share (14% of offenders in FY2017) were given prison terms exactly equal to the midpoint recommendation (Figure 5). Most of the cases (70%) in durational concurrence with recommendations over six months resulted in sentences below the recommended midpoint. For the remaining 16% of these incarceration cases sentenced within the guidelines range, the sentence exceeded the midpoint recommendation. This pattern of sentencing within the range has been consistent since the truth-in-sentencing guidelines took effect in 1995, indicating that judges, overall, have favored the lower portion of the recommended range.

Figure 5

Distribution of Sentences within Guidelines Range - FY2017**



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

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

Figure 6

**Median Length of
Duration Departures - FY2017***



*Cases recommended for and receiving an active jail or prison sentence.

Reasons for Departure from the Guidelines

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

In FY2017, 9.6% of guidelines cases resulted in sanctions below the guidelines recommended range. The most frequently cited reasons for sentencing below the guidelines recommendation were: the acceptance of a plea agreement, a sentence to a less-restrictive sanction, judicial discretion, the defendant's cooperation with law enforcement, mitigating offense circumstances, court procedural issues such as a sentence recommendation provided by the attorneys, and the defendant's lack of or minimal prior record. Although other reasons for mitigation were reported to the Commission in FY2017, only the most frequently cited reasons are noted here. For 296 of the 2,250 mitigating cases, a departure reason could not be discerned.

Judges sentenced 9.2% of the FY2017 cases to terms that were more severe than the sentencing guidelines recommendation, resulting in "aggravation" sentences. The most frequently cited reasons for sentencing above the guidelines recommendation were: the acceptance of a plea agreement, the flagrancy of the offense, the number of counts in the sentencing event, the severity or degree of prior record, the defendant's poor potential for being rehabilitated, jury recommendation, and the involvement of drugs in the offense. For 287 of the 2,152 cases sentenced above the guidelines recommendation, the Commission could not ascertain a departure reason.

Appendices 1 and 2 present detailed tables of the reasons for departure from guidelines recommendations for each of the 17 guidelines offense groups.

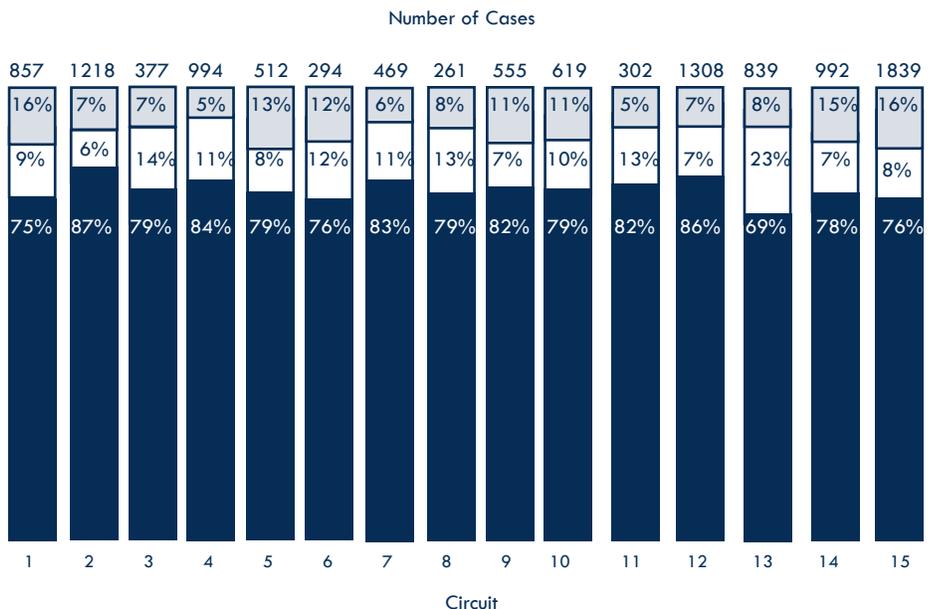
Compliance by Circuit

Since the onset of truth-in-sentencing, concurrence rates and departure patterns have varied across Virginia’s 31 judicial circuits. FY2017 continues to show differences among judicial circuits in the degree to which judges concur with guidelines recommendations (Figure 7). The map on the following pages identifies the location of each judicial circuit in the Commonwealth.

In FY2017, over half (52%) of the state’s 31 circuits exhibited concurrence rates at or above 80%, while the remaining 48% reported concurrence rates between 69% and 79%. There are likely many reasons for the variations in concurrence across circuits. Certain jurisdictions may see atypical cases not reflected in statewide averages. In addition, the availability of alternative or community-based programs currently differs from locality to locality. The degree to which judges concur with guidelines recommendations does not seem to be related primarily to geography. The circuits with the lowest concurrence rates are scattered across the state, and both high and low concurrence circuits can be found in close geographic proximity.

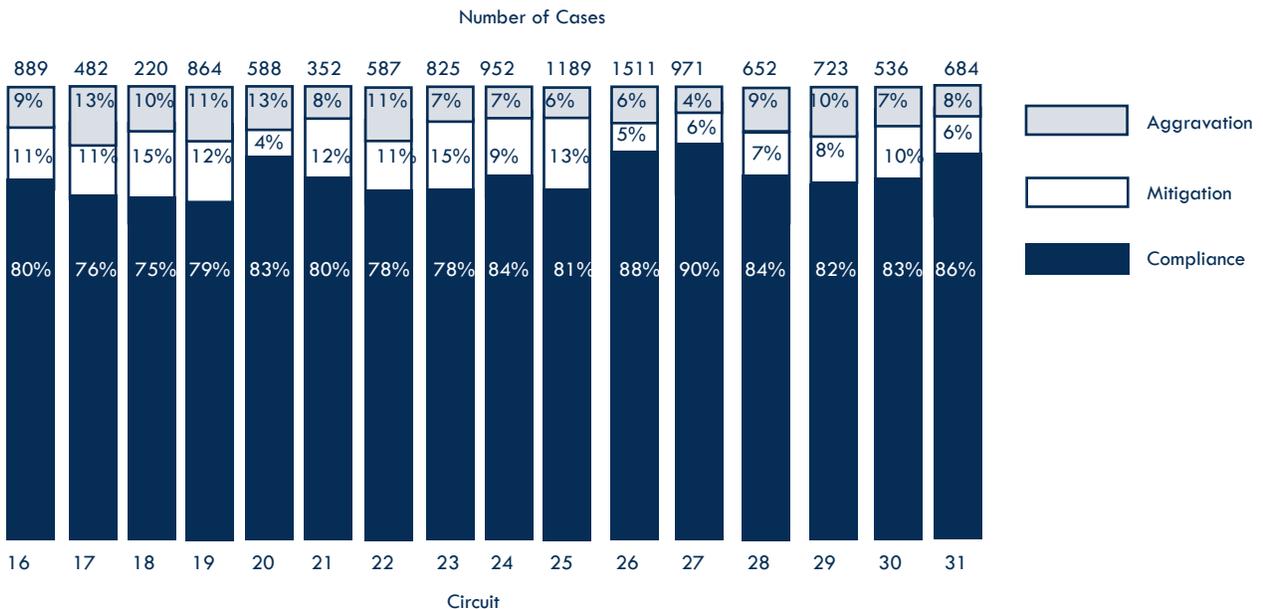
In FY2017, the highest rate of judicial agreement with the sentencing guidelines (90%) was in Circuit 27 (Radford area). A concurrence rate of 88% was found in Circuit 26 (Harrisonburg Area) followed by an 87% concurrence rate in Circuit 2 (Virginia Beach). Circuit 31 (Prince William area) and Circuit 12 (Chesterfield area) had concurrence rates of 86%. Circuit 13 (Richmond City) reported the lowest concurrence rate among the judicial circuits in FY2017. For 30 of the 31 judicial circuits, the concurrence rates were 75% or higher (Figure 7).

Figure 7
Compliance by Circuit - FY2017



In FY2017, the highest mitigation rates were found in Circuit 13 (Richmond City), Circuit 23 (Roanoke Valley), Circuit 18 (Alexandria), Circuit 3 (Portsmouth), Circuit 8 (Hampton), Circuit 25 (Staunton Area), Circuit 19 (Fairfax), and Circuit 11 (Petersburg area). Circuit 13 (Richmond City) had a mitigation rate of 23%, which is a decrease from previous years. Circuit 23 (Roanoke Valley) and Circuit 18 (Alexandria) had mitigation rates of 15% for the fiscal year; Circuit 8 (Hampton), Circuit 25 (Staunton Area) and Circuit 11 (Petersburg Area) recorded mitigation rates of 13%. With regard to high mitigation rates, it would be too simplistic to assume that this reflects areas with lenient sentencing habits. Intermediate punishment programs are not uniformly available throughout the Commonwealth, and jurisdictions with better access to these sentencing options may be using them as intended by the General Assembly. These sentences generally would appear as mitigations from the guidelines. Inspecting aggravation rates reveals that Circuit 15 (Fredericksburg area) had the highest aggravation rate (15.9%), followed by Circuit 1 (Chesapeake) and Circuit 14 (Henrico) with rates between 15.7% and 15.0%. Lower concurrence rates in these latter circuits are a reflection of the relatively high aggravation rates.

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



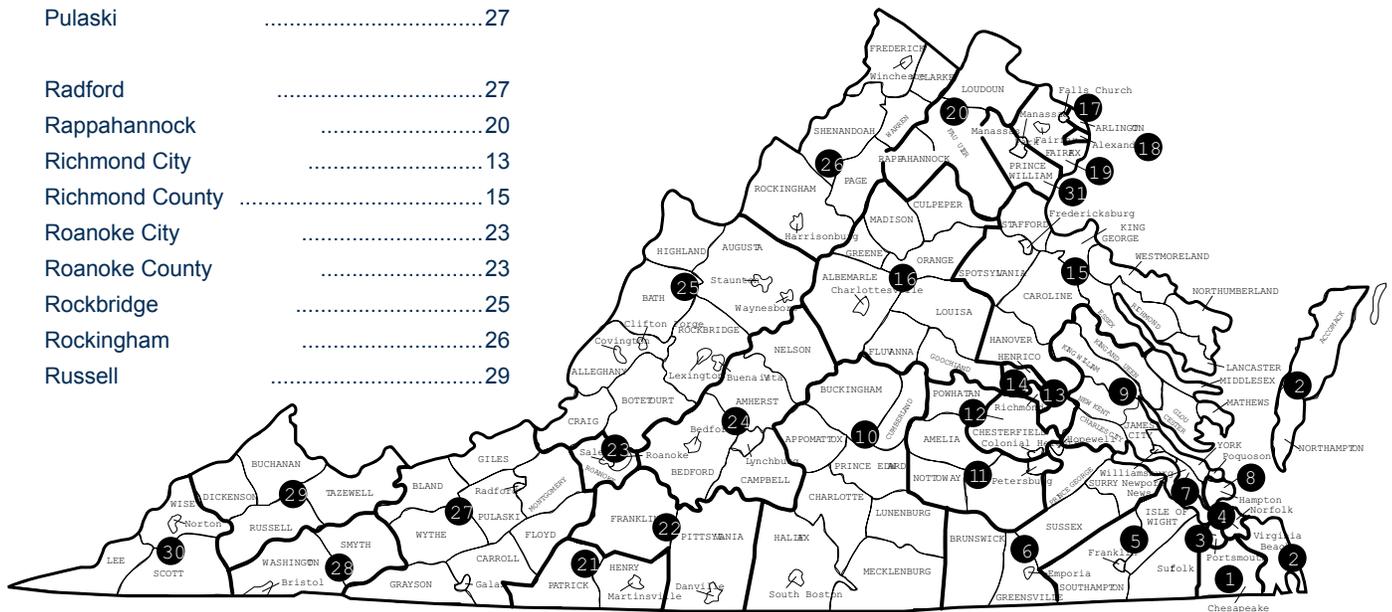
Virginia Localities and Judicial Circuits

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

Madison	16
Manassas	31
Martinsville	21
Mathews	9
Mecklenburg	10
Middlesex	9
Montgomery	27
Nelson	24
New Kent	9
Newport News	7
Norfolk	4
Northampton	2
Northumberland	15
Norton	30
Nottoway	11
Orange	16
Page	26
Patrick	21
Petersburg	11
Pittsylvania	22
Poquoson	9
Portsmouth	3
Powhatan	11
Prince Edward	10
Prince George	6
Prince William	31
Pulaski	27

Salem	23
Scott	30
Shenandoah	26
Smyth	28
Southampton	5
Spotsylvania	15
Stafford	15
Staunton	25
Suffolk	5
Surry	6
Sussex	6
Tazewell	29
Virginia Beach	2
Warren	26
Washington	28
Waynesboro	25
Westmoreland	15
Williamsburg	9
Winchester	26
Wise	30
Wythe	27
York	9

**Virginia
Judicial Circuits**



Compliance by Sentencing Guidelines Offense Group

In FY2017, as in previous years, judicial agreement with the guidelines varied when comparing the 17 offense groups (Figure 8). For FY2017, concurrence rates ranged from a high of 85.6% in the Drug Other offense group to a low of 65.1% in Robbery cases. In general, property and drug offenses exhibit higher rates of concurrence than the violent offense categories. Several violent offense groups (i.e., Robbery, Sexual Assault, Kidnapping, Murder/Homicide and Rape) had concurrence rates at or below 69%, whereas many of the property and drug offense categories had concurrence rates above 80%.

During the past fiscal year, judicial concurrence with guidelines recommendations remained relatively stable, fluctuating less than four percentage points for most offense groups. Concurrence rates are much more susceptible to year-to-year fluctuations for offense groups with small number of sentencing events in a given year. Concurrence with the Kidnapping worksheets (126 cases) decreased by 12 percentage points from FY2016 to FY2017 because of significant increase in both mitigation and aggravation. During the same time, concurrence on the Murder/Homicide worksheets (216 cases) increased this year by 6.2 percentage points because judges, although still more likely to go above the guidelines recommendation when not concurring with the recommendation, concurred with the guidelines recommendations at a higher rate.

Figure 8
Guidelines Compliance by Offense - FY2017

	Compliance	Mitigation	Aggravation	Number of Cases
Drug Other	85.6%	5.5%	8.9%	1,019
Fraud	85.6%	9.2%	5.2%	1,848
Larceny	84.5%	9.1%	6.4%	5,198
Drug Schedule I/II	83.3%	8.3%	8.4%	8,256
Burglary Other	81.1%	11.5%	7.4%	312
Traffic	79.7%	8.1%	12.2%	1,535
Miscellaneous Other	78.5%	15.0%	6.5%	413
Weapon	76.6%	11.7%	11.8%	721
Obscenity	76.5%	3.3%	20.3%	153
Assault	76.2%	13.6%	10.2%	1,564
Miscellaneous Person/Property	74.1%	9.3%	16.5%	460
Burglary Dwelling	70.6%	13.4%	16.0%	649
Rape	69.2%	11.6%	19.2%	172
Murder	67.1%	9.7%	23.1%	216
Kidnapping	66.7%	9.5%	23.8%	126
Sexual Assault	66.2%	7.8%	26.0%	308
Robbery	65.1%	25.2%	9.7%	524
Total	81.2%	9.6%	9.2%	23,474

A number of changes went into effect beginning July 1, 2016. Two new felony offenses (strangulation and aggravated sexual battery of a child age 13-17 by a parent, step-parent, grandparent or step-grandparent) were added to the sentencing guidelines system. An existing factor on the Larceny worksheet, Amount Embezzled, was modified to reflect historical sentencing patterns when the amount was \$120,000 or more. Scores were increased on the Murder/Homicide worksheet for vehicular involuntary manslaughter and for two counts of voluntary manslaughter. The factor Type of Additional Offense on the Murder/Homicide worksheet was adjusted to include both felony hit and run and maiming that resulted because of driving while intoxicated. Points were increased on the Other Sexual Assault worksheet for aggravated sexual battery of a child 13 or 14, indecent liberties with a child by a custodian and indecent liberties with a child under 15. On the Obscenity worksheet, points were reduced for a possession of child pornography; however, the Primary Offense Remaining Counts factor was split so that possession and production of child pornography were scored the same.

In FY2017, there were 164 sentencing events with strangulation as the most serious offense. Concurrence with the guidelines recommendation for this newly added offense was 74%. In 15% of the cases, the sentences were below the guidelines recommendation and above in 11%. There were 13 guidelines submitted in FY2017 for aggravated sexual battery of a child age 13-17 by a parent, step-parent, grandparent or step-grandparent. The initial concurrence rate for this offense was 62%, with a tendency to sentence above the guidelines in 30.8% of the cases or in (4 of the 13 cases). In one case (7.7%), the effective sentence was below the guidelines recommendation.

In eight cases, when embezzlement was the most serious offense on the Larceny worksheet and the amount embezzled was at least \$120,000, the concurrence rate with the guidelines recommendation was 75%. When judges did not concur with the recommendation, the sentences were just as likely to be below the recommendation as above. Overall concurrence rates for embezzlement in FY2017, including all dollar amounts, was 85% with an aggravation rate of 10%.

Historically, in cases when vehicular involuntary manslaughter was the most serious offense, judges were likely to sentence above the recommendation when not in agreement with the guidelines recommendation. In FY2017, the trend continued even with the increase in scores and revised factors. The aggravation rate was 29% during this time, but overall concurrence with the recommendation was 71%. Additional facts of the case that are often relevant in murder/homicide cases continue to be significant in determining the judge's concurrence with the guidelines recommendation or sentencing above the recommendation. There were no cases sentenced below the guidelines recommendation for vehicular involuntary manslaughter.

The other change to the Murder/Homicide worksheet was for multiple counts of voluntary manslaughter. There were 26 convictions for voluntary manslaughter in FY2017, but none involved multiple counts. Overall concurrence for voluntary manslaughter was 50% with a tendency to sentence above the recommendation in 9 of the 26 cases (35%).

Similar to the changes on the Murder/Homicide worksheets, increased scores did not substantially improve concurrence with the guidelines recommendation on the Other Sexual Assault worksheet. There were four cases in which aggravated sexual battery of a child age 13 or 14 was the most serious offense. Concurrence was 50% and aggravation was also 50%. There were 41 cases when indecent liberties with a child by a custodian was the most serious offense. Concurrence with the guidelines recommendation was 61% and aggravation was 32%. In three cases (7%), the sentence imposed was less than the guidelines recommendation. There were 38 cases with indecent liberties with a child under age of 15 and three cases that involved attempted indecent liberties as the most serious offense. Concurrence was 64%, and judges sentenced below in 11% of the cases. The remaining 25% of cases were sentenced above the guidelines recommendation. Many of these sexual assault cases, similar to other violent offenses, involved elements that were unique to the crime and cannot be formulated for scoring on the sentencing guidelines. Concurrence rates for the possession of child pornography, first or second offense, were above 80%. There were 34 cases of possession of child pornography, first offense, as the most serious offense. The concurrence rate was 82.4% in these cases. One case was sentenced below the recommendation (2.9%) and five cases above (14.7%). For a second offense (as the most serious), there were 18 cases. The concurrence rate was 88.9%, with a mitigation rate of 5.8% and an aggravation rate of 9.6%.

Since 1995, departure patterns have differed across offense groups, and FY2017 was no exception. In most cases, judges are sentencing within the recommendation, but for the offense groups of Robbery, Miscellaneous Other (e.g., perjury, failure to appear, etc.), Assault, Burglary Other Structure, Fraud, and Larceny, judges, when not in concurrence, sentenced below the recommendation. In fact, the Robbery offense group showed the highest mitigation rates with one-quarter of the robbery cases (25.2%), resulting in sentences below the guidelines. The most frequently cited mitigation reasons provided by judges in robbery cases included: the acceptance of a plea agreement, the defendant cooperated with authorities, facts of the case, judicial discretion, and the lack of an extensive prior record.

In the remaining offense groups, judges are more likely to sentence above the recommendation when not in concurrence. In FY2017, the offense groups with the highest aggravation rates were Sexual Assault at 26%, Kidnapping at 24% and Murder/Homicide at 23%. These offense groups shared similar departure reasons. The most frequently cited aggravating departure reasons were: facts of the case, flagrancy of the offense and plea agreement. Judges also frequently cited recommendation from a jury as the reason for the upward departure, especially in Murder/Homicide cases.

Compliance Under Midpoint Enhancements

Section 17.1-805, formerly § 17-237, of the *Code of Virginia* describes the framework for what are known as “midpoint enhancements,” significant increases in guidelines scores for violent offenders that elevate the overall guidelines sentence recommendation. Midpoint enhancements are an integral part of the design of the truth-in-sentencing guidelines. By design, midpoint enhancements produce sentence recommendations for violent offenders that are significantly greater than the time that was served by offenders convicted of such crimes prior to the enactment of Virginia’s truth-in-sentencing laws. Offenders who are convicted of a violent crime or who have been previously convicted of a violent crime are recommended for incarceration terms up to six times longer than the terms served by offenders fitting similar profiles under the parole system. Midpoint enhancements are triggered for homicide, rape, or robbery offenses, most felony assaults and sexual assaults, and certain burglaries, when any one of these offenses is the current most serious offense, also called the “primary offense.” Offenders with a prior record containing at least one conviction for a violent crime are subject to degrees of midpoint enhancements based on the nature and seriousness of the offender’s criminal history. The most serious prior record receives the most extreme enhancement. A prior record labeled “Category II” contains at least one prior violent felony conviction carrying a statutory maximum penalty of less than 40 years, whereas a “Category I” prior record includes at least one violent felony conviction with a statutory maximum penalty of 40 years or more. Category I and II offenses are defined in § 17.1-805.

Because midpoint enhancements are designed to target only violent offenders for longer sentences, enhancements do not affect the sentence recommendation for the majority of guidelines cases. Among the FY2017 cases, 79% of the cases did not involve midpoint enhancements of any kind (Figure 9). Only 21% of the cases qualified for a midpoint enhancement because of a current or prior conviction for a felony defined as violent under § 17.1-805. The proportion of cases receiving midpoint enhancements has fluctuated very little since the institution of truth-in-sentencing guidelines in 1995.

Of the FY2017 cases in which midpoint enhancements applied, the most common midpoint enhancement was for a Category II prior record. Approximately 51% of the midpoint enhancements were of this type and were applicable to offenders with a nonviolent instant (current) offense but a violent prior record defined as Category II (Figure 10). In FY2017, another 18% of midpoint enhancements were attributable to offenders with a more serious Category I prior record. Cases of offenders with a violent instant offense but no prior record of violence represented 21% of the midpoint enhancements in FY2017. The most substantial midpoint enhancements target offenders with a combination of instant and prior violent offenses. Roughly 8% qualified for enhancements for both a current violent offense and a Category II prior record. A very small percentage of cases (3%) were targeted for the most extreme midpoint enhancements triggered by a combination of a current violent offense and a Category I prior record.

Figure 9

Application of Midpoint Enhancements - FY2017

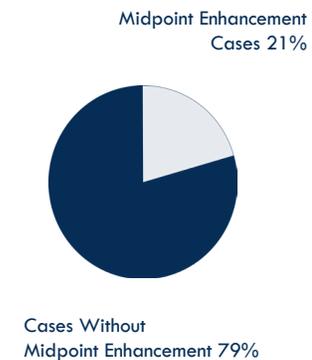


Figure 10

Type of Midpoint Enhancements Received - FY2017

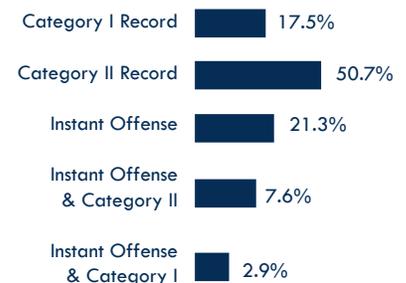


Figure 11

**Length of Mitigation Departures
in Midpoint Enhancement Cases - FY2017**



* Analysis includes only cases that were recommended for more than six months of incarceration and resulted in a sentence below the guidelines range.

Since the inception of the truth-in-sentencing guidelines, judges have departed from the guidelines recommendation more often in midpoint enhancement cases than in cases without enhancements. In FY2017, concurrence was 72% when enhancements applied, which is significantly lower than concurrence in all other cases (84%). Thus, concurrence in midpoint enhancement cases is suppressing the overall concurrence rate. When departing from enhanced guidelines recommendations, judges are choosing to mitigate in three out of every four departures.

Among FY2017 midpoint enhancement cases resulting in incarceration, judges departed from the low end of the guidelines range by an average of 20 months (Figure 11). The median departure (the middle value, where half of the values are lower and half are higher) was 12 months.

Concurrence, while generally lower in midpoint enhancement cases than in other cases, varies across the different types and combinations of midpoint enhancements (Figure 12). In FY2017, as in previous years, enhancements for a Category II prior record generated the highest rate of concurrence of all midpoint enhancements (76%). Concurrence in cases receiving enhancements for a Category I prior record generated the lowest concurrence (64%). Concurrence for enhancement cases involving a current violent offense, but no prior record of violence, was 71%. Cases involving a combination of a current violent offense and a Category II prior record yielded a concurrence rate of 72%, while those with the most significant midpoint enhancements, for both a violent instant offense and a Category I prior record, had a lower concurrence rate (69%).

Figure 12

Compliance by Type of Midpoint Enhancement - FY2017

Midpoint Enhancement	Compliance	Mitigation	Aggravation	Number of Cases
None	83.6%	6.5%	9.9%	18,575
Category I	64.1%	33.6%	2.3%	857
Category II	75.8%	18.5%	5.7%	2,484
Instant Offense	70.8%	17.3%	11.9%	1,042
Instant and Category I	68.5%	25.2%	6.3%	143
Instant and Category II	72.1%	20.4%	7.5%	373
Total	81.2%	9.6%	9.2%	23,474

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

Juries and the Sentencing Guidelines

There are three methods by which Virginia’s criminal cases are adjudicated: guilty pleas, bench trials, and jury trials. Felony cases in circuit courts are overwhelmingly resolved through guilty pleas from defendants, or plea agreements between defendants and the Commonwealth. During the last fiscal year, 91% of guideline cases were sentenced following guilty pleas (Figure 13). Adjudication by a judge in a bench trial accounted for 8% of all felony guidelines cases sentenced. During FY2017, 1.1% of cases involved jury trials. In a small number of cases, some of the charges were adjudicated by a judge, while others were adjudicated by a jury, after which the charges were combined into a single sentencing hearing.

Since FY1986, there has been a generally declining trend in the percentage of jury trials among felony convictions in circuit courts (Figure 14). Under the parole system in the late 1980s, the percent of jury trials was as high as 6.5% before starting to decline in FY1989. In 1994, the General Assembly enacted provisions for a system of bifurcated jury trials. In bifurcated trials, the jury establishes the guilt or innocence of the defendant in the first phase of the trial and then, in a second phase, the jury makes its sentencing decision. When the bifurcated trials became effective on July 1, 1994 (FY1995), jurors in Virginia, for the first time, were presented with information on the offender’s prior criminal record to assist them in making a sentencing decision. During the first year of the bifurcated trial process, jury convictions dropped slightly, to fewer than 4% of all felony convictions. This was the lowest rate recorded up to that time.

Among the early cases subjected to the new truth-in-sentencing provisions, implemented during the last six months of FY1995, jury adjudications sank to just over 1%. During the first complete fiscal year of truth-in-sentencing (FY1996), just over 2% of the cases were resolved by jury trials, which was half the rate of the last year before the abolition of parole. Seemingly, the introduction of truth-in-sentencing, as well as the implementation of a bifurcated jury trial system, appears to have contributed to the reduction in jury trials. Since FY2000, the percentage of jury convictions has remained less than 2%.

Figure 13
Percentage of Cases Received by Method of Adjudication, FY2017

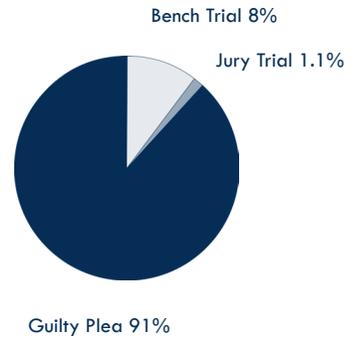
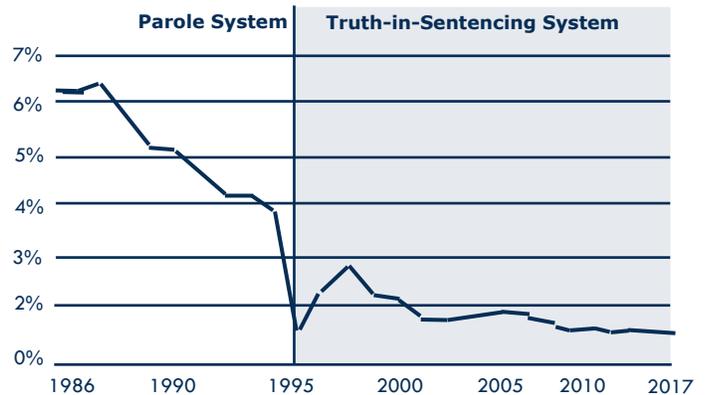


Figure 14
Percent of Felony Convictions Adjudicated by Juries FY1986-FY2017 Parole System v. Truth-in-Sentencing (No Parole) System

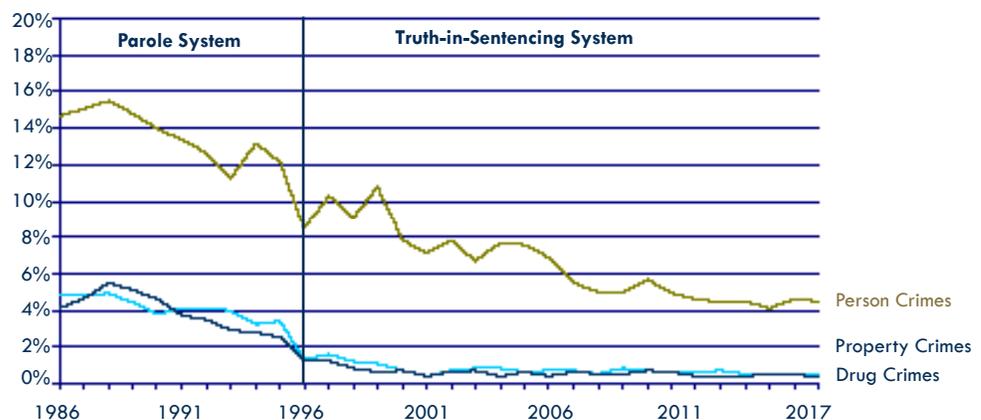


Inspecting jury data by offense type reveals very divergent patterns for person, property, and drug crimes. Under the parole system, jury cases comprised 11% to 16% of felony convictions for person crimes. This rate was typically three to four times the rate of jury trials for property and drug crimes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

In FY2017, the Commission received 261 cases adjudicated by juries. While the concurrence rate for cases adjudicated by a judge or resolved by a guilty plea was at 82% during the fiscal year, sentences handed down by juries concurred with the guidelines only 43% of the time (Figure 16). In fact, jury sentences were more likely to fall above the guidelines than within the recommended range. This pattern of jury sentencing vis-à-vis the guidelines has been consistent since the truth-in-sentencing guidelines became effective in 1995. By law, however, juries are not allowed to receive any information regarding the sentencing guidelines.

Figure 15

**Percent of Felony Convictions Adjudicated by Juries FY1986-FY2017
Parole System v. Truth-in-Sentencing (No Parole) System**



In jury cases in which the final sentence fell short of the guidelines, it did so by a median value of 20 months (Figure 17). In cases where the ultimate sentence resulted in a sanction more severe than the guidelines recommendation, the sentence exceeded the guidelines maximum recommendation by a median value of 54 months.

In FY2017, five of the jury cases involved a juvenile offender tried as an adult in circuit court. According to § 16.1-272 of the Code of Virginia, juveniles may be adjudicated by a jury in circuit court; however, any sentence must be handed down by the judge without the intervention of a jury. Thus, juries are not permitted to recommend sentences for juvenile offenders. There are many options for sentencing these juveniles, including commitment to the Department of Juvenile Justice. Because judges, and not juries, must sentence in these cases, they are excluded from the previous analysis.

In cases of adults adjudicated by a jury, judges are permitted by law to lower a jury sentence. Typically, however, judges have chosen not to amend sanctions imposed by juries. In FY2017, judges modified 14% of jury sentences.

Figure 16

Sentencing Guidelines Compliance in Jury and Non-Jury Cases, FY2017

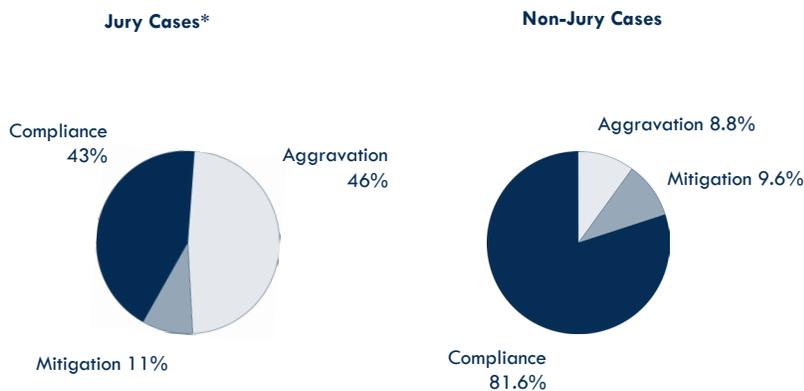


Figure 17

Median Length of Durational Departures in Jury Cases, FY2017



* The jury case compliance rate is calculated based on the sentence recommended by the jury. Judges modified jury sentences in 35 of 256 cases, or 14%. (Analysis excludes 5 juveniles whose guilt was determined by a jury)

Compliance and Nonviolent Offender Risk Assessment

In 1994, as part of the reform legislation that instituted truth-in-sentencing, the General Assembly directed the Commission to study the feasibility of using an empirically-based risk assessment instrument to select 25% of the lowest risk, incarceration-bound, drug and property offenders for placement in alternative (non-prison) sanctions. By 1996, the Commission developed such an instrument and implementation of the instrument began in pilot sites in 1997. The National Center for State Courts (NCSC) conducted an independent evaluation of the use of risk assessment in the pilot sites for the period from 1998 to 2001. In 2001, the Commission conducted a validation study of the original risk assessment instrument to test and refine the instrument for possible use statewide. In July 2002, the nonviolent offender risk assessment instrument was implemented statewide for all felony larceny, fraud and drug cases.

Between 2010 and 2012, the Commission conducted an extensive study of recidivism among nonviolent felons in Virginia in order to re-evaluate the risk assessment instrument and potentially revise the instrument based upon more recent data. Based on the results of the 2010-2012 study, the Commission recommended replacing the risk assessment instrument with two instruments, one applicable to larceny and fraud offenders and the other specific to drug offenders. The Commission's study revealed that predictive accuracy was improved using two distinct instruments.

Over two-thirds of all guidelines received by the Commission for FY2017 were for nonviolent offenses. However, only 42% of these nonviolent offenders were eligible to be assessed for an alternative sanction recommendation through the risk assessment instrument. The goal of the nonviolent risk assessment instrument is to divert low-risk offenders who are recommended for incarceration on the guidelines to an alternative sanction other than prison or jail. Therefore, nonviolent offenders who are recommended for probation/no incarceration on the guidelines are not eligible for the assessment. Furthermore, the instrument is not to be applied to offenders convicted of distributing one ounce or more of cocaine, those who have a current or prior violent felony conviction, or those who must be sentenced to a mandatory minimum term of incarceration required by law. In addition to those not eligible for risk assessment, a risk assessment instrument was not completed and submitted to the Commission for 986 nonviolent offense cases.

Among the eligible offenders in FY2017 for whom a risk assessment form was received (6,803 cases), 49% were recommended for an alternative sanction by the risk assessment instrument (Figure 18). Less than half of the offenders recommended for an alternative sanction through risk assessment were given some form of alternative punishment by the judge. In FY2017, 39% of offenders recommended for an alternative were sentenced to an alternative punishment option.

Among offenders recommended for and receiving an alternative sanction through risk assessment, judges used supervised probation more often than any other option (Figure 19). In addition, in slightly less than half of the cases in which an alternative was recommended, judges sentenced the offender to a term of incarceration in jail (less than twelve months) rather than the prison sentence recommended by the traditional guidelines range. Other frequent sanctions utilized were: unsupervised probation or good behavior (43%), restitution (33%), substance abuse services (32%), time served (12%) and fines (11%). The Department of Corrections' Diversion Center program was used in 7% of the cases. Other alternatives/sanctions included: first offender status under § 18.2-251, programs under the Comprehensive Community Corrections Act (CCCA), Detention Center, day reporting, electronic monitoring, community service, drug court, litter control, intensive supervision, and work release.

Figure 18

Percentage of Eligible Nonviolent Risk Assessment Cases Recommended for Alternatives, FY2017 (6,803 cases)

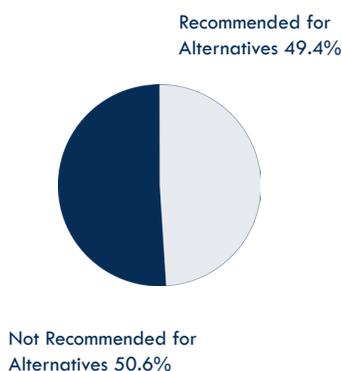


Figure 19

Types of Alternative Sanctions Imposed - FY2017



* Includes indefinite supervised probation (19%)

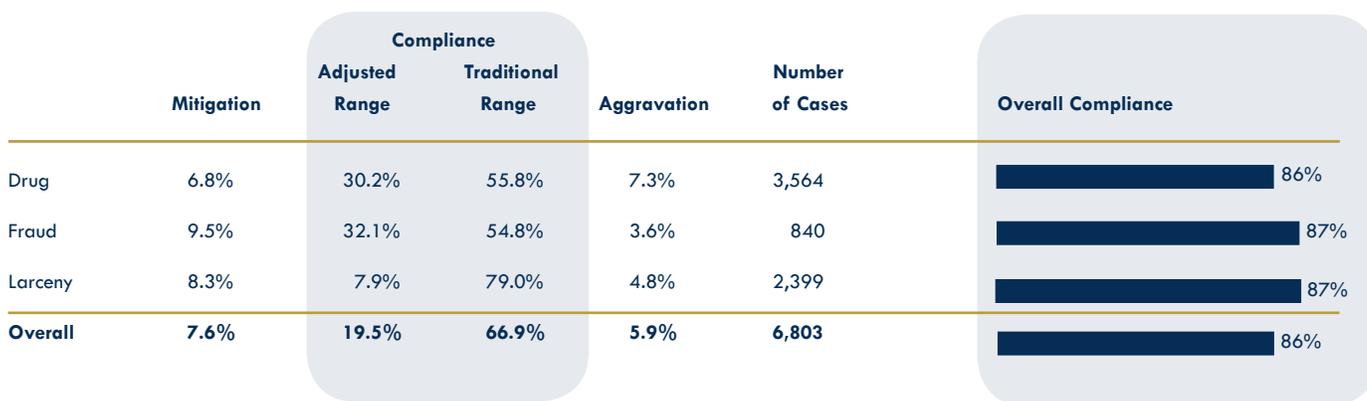
** Any program established through the Comprehensive Community Corrections Act

These percentages do not sum to 100% because multiple sanctions may be imposed in each case.

When a nonviolent offender is recommended for an alternative sanction based on the risk assessment instrument, a judge is considered to be in concurrence with the guidelines if he or she chooses to sentence the defendant to a term within the traditional incarceration period recommended by the guidelines or if he or she chooses to sentence the offender to an alternative form of punishment. For drug offenders eligible for risk assessment, the overall guidelines concurrence rate is 86%, but a portion of this concurrence reflects the use of an alternative punishment option as recommended by the risk assessment tool (Figure 20). In 30% of these drug cases, judges have complied with the recommendation for an alternative sanction. Similarly, in fraud cases, with offenders eligible for risk assessment, the overall concurrence rate is 87%. In 32% of these fraud cases, judges have complied by utilizing alternative punishment when it was recommended. Finally, among larceny offenders eligible for risk assessment, the concurrence rate is 87%. Judges used an alternative, as recommended by the risk assessment tool, in 8% of larceny cases. The lower use of alternatives for larceny offenders is primarily because larceny offenders are recommended for alternatives at a lower rate than drug and fraud offenders. The National Center for State Courts, in its evaluation of Virginia’s risk assessment tool, and the Commission, during the course of its validation study, found that larceny offenders are the most likely to recidivate among nonviolent offenders.

Figure 20

Compliance Rates for Nonviolent Offenders Eligible for Risk Assessment - FY2017



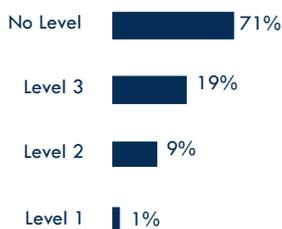
Compliance and Sex Offender Risk Assessment

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

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

Figure 21

Sex Offender Risk Assessment Levels for Sexual Assault Offenders, FY2017



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

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

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

During FY2017, there were 308 offenders convicted of an offense covered by the Sexual Assault guidelines (this group excludes offenders convicted of rape, forcible sodomy, object penetration and obscenity offenses). As of July 1, 2014, solicitation of a minor through the use of a communication system and child pornography offenses were removed from the Sexual Assault worksheet and a new Obscenity worksheet was created. In addition, the sex offender risk assessment instrument does not apply to certain guideline offenses, such as bestiality, bigamy, and prostitution (23 of the 308 cases in FY2017). Another eight cases were missing information and were excluded. Of the remaining 277 Sexual Assault cases for which the risk assessment was applicable, the majority (71%) were not assigned a level of risk by the sex offender risk assessment instrument (Figure 21). Approximately 19% of applicable Sexual Assault guidelines cases resulted in a Level 3 risk classification, with an additional 9% assigned to Level 2. Just 1% of offenders reached the highest risk category of Level 1.

Under the sex offender risk assessment, the upper end of the guidelines range is extended by 300%, 100% or 50% for offenders assigned to Level 1, 2 or 3, respectively. Data suggest judges utilize these extended ranges when sentencing some sex offenders. For the three sexual assault offenders reaching Level 1 risk during the past fiscal year, one was given a sentence outside the traditional guidelines range, and two were sentenced within the extended guidelines range (Figure 22). Judges used the extended guidelines range in 23% of Level 2 cases and 16% of Level 3 risk cases. Judges rarely sentenced Level 1, 2 or 3 offenders to terms above the extended guidelines range provided in these cases. However, offenders who scored less than 28 points on the risk assessment instrument (who are not assigned a risk category and receive no guidelines adjustment) had similar concurrence rates with the traditional guidelines recommendations as Levels 2 and 3 offenders (62% concurrence rate), but were more likely to receive a sentence that was an upward departure from the guidelines (31% aggravation rate).

Figure 22
Other Sexual Assault Compliance Rates By Risk Assessment Level, FY2017

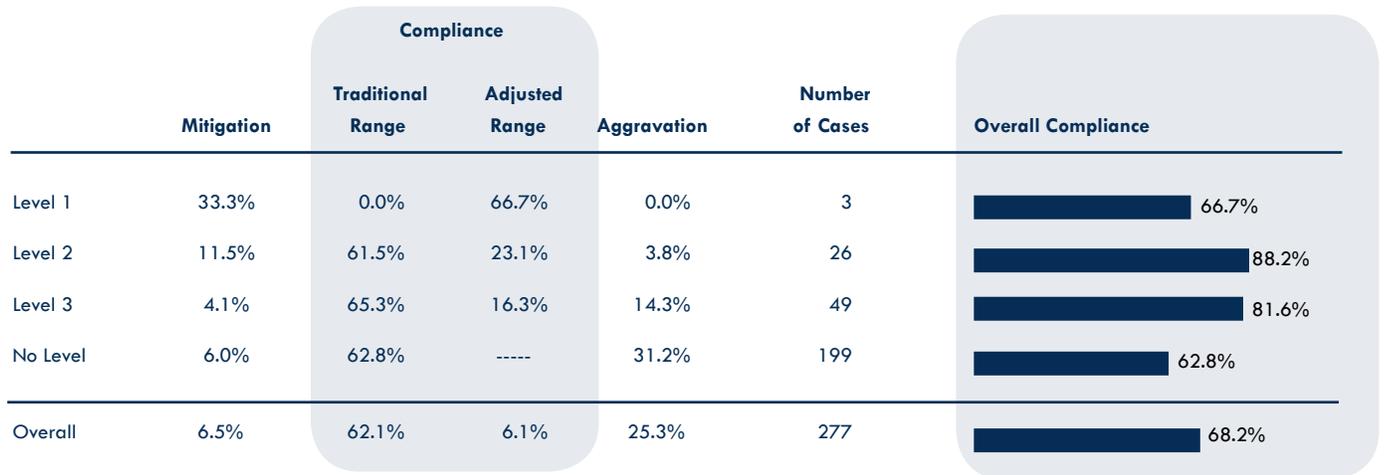
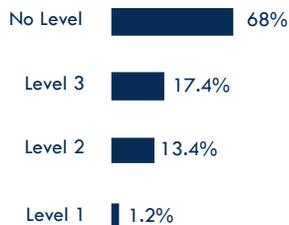


Figure 23

Sex Offender Risk Assessment Levels for Rape Offenders, FY2017



In FY2017, there were 172 offenders convicted of offenses covered by the Rape guidelines (which cover the crimes of rape, forcible sodomy, and object penetration). Among offenders convicted of these crimes, over two-thirds (68%) were not assigned a risk level by the Commission’s risk assessment instrument (Figure 23).

Approximately 17% of these cases resulted in a Level 3 adjustment. An additional 13% received a Level 2 adjustment. The most extreme adjustment affected slightly more than 1% of the Rape guidelines cases. One of the two rape offenders reaching the Level 1 risk group was sentenced within the extended high end of the range (Figure 24). As shown below, 35% of offenders with a Level 2 risk classification and 23% of offenders with a Level 3 risk classification were given prison sentences within the adjusted range of the guidelines. With extended guidelines ranges available for higher risk sex offenders, judges continue to only occasionally sentence Level 1, 2 or 3 offenders above the expanded guidelines range.

Figure 24

Rape Compliance Rates By Risk Assessment Level, FY2017

	Mitigation	Compliance		Aggravation	Number of Cases	Overall Compliance
		Traditional Range	Adjusted Range			
Level 1	0.0%	50.0%	50.0%	0.0%	2	100%
Level 2	13.0%	43.5%	34.8%	9.7%	23	78.3%
Level 3	16.7%	46.7%	23.3%	13.3%	30	70%
No Level	10.3%	66.7%	---	23.1%	117	66.7%
Overall	11.6%	59.9%	9.3%	15.5%	172	69.2%

Sentencing Revocation Reports (SRRs)

One of the most comprehensive resources regarding revocations of community supervision in Virginia is the Commission's Community Corrections Revocations Data System, also known as the Sentencing Revocation Report (SRR) database. First implemented in 1997 with assistance from the Department of Corrections (DOC), the SRR is a simple form designed to capture the reasons for, and the outcomes of, community supervision violation hearings. The probation officer (or Commonwealth's attorney) completes the first part of the form, which includes the offender's identifying information and checkboxes indicating the reasons why a show cause or revocation hearing has been requested. The checkboxes are based on the list of eleven conditions for community supervision established for every offender, but special supervision conditions imposed by the court also can be recorded. Following the violation hearing, the judge completes the remainder of the form with the revocation decision and any sanction ordered in the case. The completed form is submitted to the Commission, where the information is automated. A revised SRR form was developed and implemented in 2004 to serve as a companion to the new probation violation sentencing guidelines introduced that year.

In FY2017, there were 12,294 alleged felony violations of probation, suspended sentences, or good behavior for which a (SRR) was submitted to the Commission (as of November 3, 2017). The SRRs received include cases in which the court found the defendant in violation, cases that the court decided to take under advisement until a later date, and cases in which the court did not find the defendant in violation. The circuits submitting the largest number of SRRs during the time period were Circuit 2 (Virginia Beach), Circuit 15 (Fredericksburg area) and Circuit 26 (Harrisonburg Area). Circuit 6 (Sussex County area), Circuit 18 (Alexandria), and Circuit 11 (Petersburg area) submitted the fewest SRRs during the time period (Figure 25).

Of the total 12,294 SRRs, 5,512 cases involved a new law violation. In these cases, the judge found the defendant guilty of violating Condition 1 of the Department of Corrections' Conditions of Probation (obey all federal, state, and local laws and ordinances). In 6,494 cases, the offender was found in violation of other conditions not related to a new law violation. In a number of cases, the offender was not found in violation of any condition (193 cases) or the type of violation was not identified on the SRR form (95 cases).

Figure 25

Number and Percentage of SRRs Received by Circuit - FY 2017*

Circuit	Number	Percent
1	687	5.6
2	801	6.5
3	306	2.5
4	491	4.0
5	352	2.9
6	39	0.3
7	212	1.7
8	171	1.4
9	400	3.3
10	297	2.4
11	107	0.9
12	609	5.0
13	211	1.7
14	493	4.0
15	780	6.3
16	373	3.0
17	152	1.2
18	66	0.5
19	306	2.5
20	263	2.1
21	231	1.9
22	719	5.8
23	435	3.5
24	318	2.6
25	393	3.2
26	753	6.1
27	522	4.2
28	476	3.9
29	727	5.9
30	273	2.2
31	330	2.7

*1 case was missing a circuit number

Figure 26 compares new law violations with “technical violations” in FY2017 with previous years. Between FY2009 and FY2014 the number of revocations based on new law violations exceeded the number of revocations based on violations of other conditions. Changes in policies for supervising offenders who violate conditions of probation that do not result in new convictions and procedures that require judges to receive and review the SRRs and Probation Violation Guidelines have impacted the number and types of revocations submitted to the court. In FY2014, the number of technical violations reviewed by the court began to increase in number. In that year, new law violations exceeded the number of technical violations by 161 cases. However, since FY2015 the number of technical violations once again exceed the new law violations. In FY 2017, technical violations exceed new law violations by over 982 cases.

Figure 26

**Sentencing Revocation Reports Received for Technical and New Law Violations
FY1998 - FY2017**

Fiscal Year	Technical Violations	New Law Violations	Number
FY1998	2,886	2,278	5,164
FY1999	3,643	2,630	6,273
FY2000	3,490	2,183	5,673
FY2001	5,511	3,228	8,739
FY2002	5,783	3,332	9,115
FY2003	5,078	3,173	8,251
FY2004	5,370	3,361	8,731
FY2005	5,320	3,948	9,268
FY2006	5,509	3,672	9,181
FY2007	6,670	4,755	11,425
FY2008	6,269	5,182	11,451
FY2009	5,000	5,133	10,133
FY2010	4,670	5,225	9,895
FY2011	5,238	6,056	11,294
FY2012	5,141	5,756	10,897
FY2013	5,442	6,011	11,453
FY2014	5,765	5,926	11,691
FY2015	6,504	6,392	12,896
FY2016	6,634	5,985	12,619
FY2017	6,494	5,512	12,006

Note: Excludes cases with missing data that were incomplete or had other guidelines issues. Data from past fiscal years are continuously monitored and modified to better reflect the events for that time period.

Probation Violation Guidelines (PVGs)

In 2003, the General Assembly directed the Commission to develop, with due regard for public safety, discretionary sentencing guidelines for felony offenders who are determined by the court to be in violation of their probation supervision for reasons other than a new criminal conviction (Chapter 1042 of the 2003 Acts of Assembly). Often, these offenders are referred to as “technical violators.” In developing the guidelines, the Commission was to examine historical judicial sanctioning practices in revocation hearings.

Early use of the probation violation guidelines, which took effect on July 1, 2004, indicated that the guidelines needed further refinement to better reflect current judicial sentencing patterns in the punishment of supervision violators. Judicial concurrence with the first edition of the probation violation guidelines was lower than expected, with only 37% of the violators being sentenced within the range recommended by the new guidelines. Therefore, the Commission’s *2004 Annual Report* recommended several adjustments to the probation violation guidelines. The proposed changes were accepted by the General Assembly and the second edition of the probation violation guidelines took effect on July 1, 2005. These changes yielded an improved concurrence rate of 48% for FY2006.

Concurrence with the revised guidelines, and ongoing feedback from judges, suggested that further refinement could improve their utility as a benchmark for judges. Therefore, the Commission’s *2006 Annual Report* recommended additional adjustments to the probation violation guidelines. The majority of the changes proposed in the *2006 Annual Report* affected the Section A worksheet. The score on Section A of the probation violation guidelines determines whether an offender will be recommended for probation with no active term of incarceration to serve, or whether the offender will be referred to the Section C worksheet for a jail or prison recommendation. Changes to the Section A worksheet included revising scores for existing factors, deleting certain factors and replacing them with others (e.g., “Previous Adult Probation Violation Events” replaced “Previous Capias/Revocation Requests”), and adding new factors (e.g., “Original Disposition was Incarceration”).

The only change to the Section C worksheet (the sentence length recommendation) was an adjustment to the point value assigned to offenders who violated their sex offender restrictions. The proposed changes outlined in the *2006 Annual Report* were accepted by the General Assembly and became effective for technical probation violators sentenced on July 1, 2007, and after. This third version of the probation violation guidelines has resulted in consistently higher concurrence rate than previous versions of the guidelines. Figure 27 illustrates concurrence patterns over the years and the impact revisions to the guidelines had on concurrence rates. Concurrence has hovered above 50% since FY2008 and this pattern continues in FY2017.

For FY2017, 6,494 of the 12,294 SRRs involved technical violations only. Upon further examination, it was found that 811 could not be included in more detailed analysis. Cases were excluded if the guidelines were not applicable (the case involved a parole-eligible offense, a first-offender violation, a misdemeanor original offense, or an offender who was not on supervised probation), if the guidelines forms were incomplete, or if outdated forms were prepared. Cases in which the judge did not find the probationer in violation were also removed from the analysis.

Of the 5,683 cases examined in which offenders were found to be in violation of

Figure 27

Probation Violations Guidelines Compliance by Year, FY2005 - FY2017

Fiscal Year	Compliance	Mitigation	Aggravation	Total
FY2005	37.4%	27.3%	35.4%	3,140
FY2006	48.4%	30.0%	21.6%	4,793
FY2007	47.1%	31.7%	21.2%	5,929
FY2008	53.9%	25.0%	21.0%	5,028
FY2009	53.3%	25.8%	21.0%	4,488
FY2010	52.7%	25.6%	21.7%	4,233
FY2011	54.0%	24.1%	21.9%	4,773
FY2012	50.2%	25.9%	23.9%	4,504
FY2013	51.9%	23.3%	24.8%	4,792
FY2014	53.3%	22.5%	24.2%	4,973
FY2015	53.6%	24.2%	22.2%	5,713
FY2016	55.9%	25.3%	18.8%	5,791
FY2017	55.4%	25.8%	18.8%	5,683

Note: Excludes cases with missing data, that were incomplete, or had other guidelines issues. Data from past fiscal years are continuously monitored and modified to better reflect the events for that time period.

their probation for reasons other than a new law violation, approximately 45% were under supervision for a felony property offense (Figure 28). This represents the most serious offense for which the offender was on probation. Another 34% were under supervision for a felony drug conviction. Offenders who were on probation for a crime against a person (most serious original offense) made up a smaller portion (15%) of those found in violation during FY2017.

Examining the 5,683 technical violation cases reveals that over half (62%) of the offenders were cited for using, possessing, or distributing a controlled substance (Condition 8 of the DOC Conditions of Probation). Violations of Condition 8 may include a positive test (urinalysis, etc.) for a controlled substance or a signed admission. More than half (56%) of the offenders were cited for failing to follow instructions given by the probation officer. Other frequently cited violations included absconding from supervision (30%), changing residence or traveling outside of designated areas without permission (15%) and failing to report to the probation officer in person or by telephone when instructed (13%). In more than one-fourth of the violation cases (27%) offenders were often cited for failing to follow special conditions imposed by the court, including: failing to pay court costs and restitution, failing to comply with court-ordered substance abuse treatment, or failing to successfully complete alternatives, such as a Detention Center or Diversion Center program. It is important to note that defendants may be, and typically are, cited for violating more than one condition of their probation (Figure 29).

Figure 28

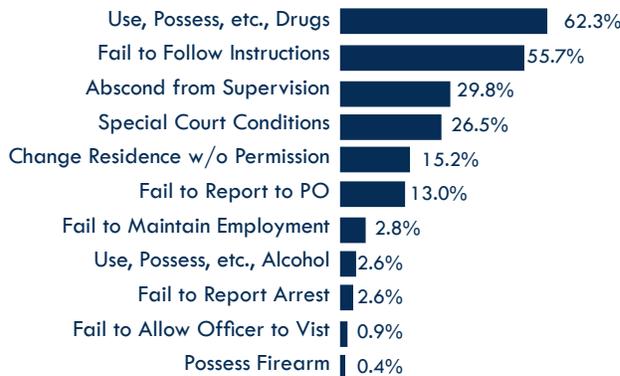
**Probation Violation Guidelines Worksheets Received by Type of Most Serious Original Offense - FY2017*
N=5,683**

Original Offense Type	Percent Received
Property	45.0%
Drug	33.9%
Person	15.0%
Traffic	3.2%
Other	3.0%

**Includes FY2017 cases found to be in violation that were completed accurately on current guideline forms.*

Figure 29

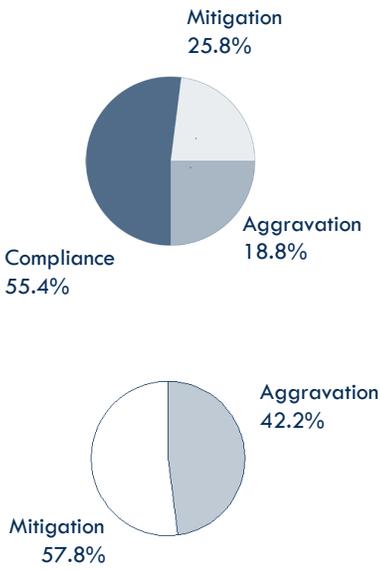
Violation Conditions Cited by Probation Officers, Excluding New Law Violations - FY2017*



**Includes FY2017 cases found to be in violation that were completed accurately on current guideline forms.*

Figure 30

**Overall Probation Violation Guidelines
Compliance and Direction of Departures -
FY 2017
N=5,683**

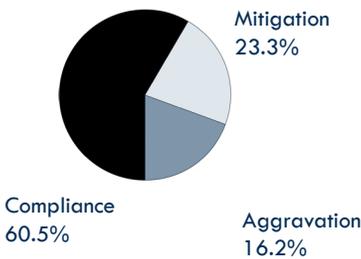


The overall concurrence rate summarizes the extent to which Virginia’s judges concur with recommendations provided by the probation violation guidelines, both in type of disposition and in length of incarceration. In FY2017, the overall rate of concurrence with the Probation Violation Guidelines was 55%, which is comparable to concurrence rates since FY 2008 (Figure 30). The aggravation rate, or the rate at which judges sentence offenders to sanctions more severe than the guidelines recommend, was 19% during FY2017. The mitigation rate, or the rate at which judges sentence offenders to sanctions considered less severe than the guidelines recommendation, was 26%.

Figure 31 illustrates judicial concurrence with the type of disposition recommended by the Probation Violation Guidelines for FY2017. There are three general categories of sanctions recommended by the probation violation guidelines: probation/ no incarceration, a jail sentence up to twelve months, or a prison sentence of one year or more. Data for the time period reveal, that judges agree with the type of sanction recommended by the probation violation guidelines in 61% of the cases. When departing from the dispositional recommendation, judges were more likely to sentence below the guidelines recommendation than above it. Consistent with the traditional sentencing guidelines, sentences to the Detention Center, Diversion Center and Community Corrections Alternative Program (CCAP) are defined as incarceration sanctions under the Probation Violation Guidelines.

Figure 31

**Probation Violation Guidelines
Dispositional Compliance
FY2017**



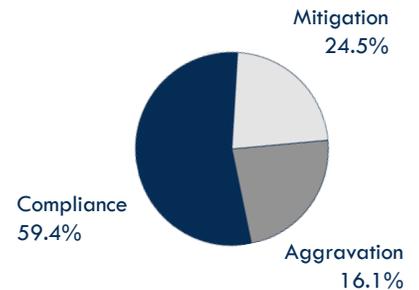
Another facet of concurrence is durational concurrence. Durational concurrence is defined as the rate at which judges sentence offenders to terms of incarceration that fall within the recommended guidelines range. Durational concurrence analysis only considers cases for which the guidelines recommended an active term of incarceration and the offender received an incarceration sanction consisting of at least one day in jail. Data reveal, that durational concurrence for FY2017 was approximately 59% (Figure 32). For cases not in durational concurrence, aggravations were less likely than mitigations.

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

Prior to July 1, 2010, completion of the Probation Violation Guidelines was not required by statute or other any provision of law. However, the 2010-2012 biennium budget passed by the General Assembly specified that, as of July 1, 2010, a Sentencing Revocation Report (SRR) and, if applicable, the Probation Violation Guidelines, must be presented to the court and reviewed by the judge for any violation hearing conducted pursuant to § 19.2-306. This requirement continues to be in the budget and can be found in Item 42 of Chapter 780 of the 2017 Acts of Assembly Act. Similar to the traditional felony sentencing guidelines, sentencing in accordance with the recommendations of the Probation Violation Guidelines is voluntary. The approved budget language states, however, that in cases in which the Probation Violation Guidelines are required and the judge imposes a sentence greater than or less than the guidelines recommendation, the court must file with the record of the case a written explanation for the departure. The requirements pertaining to the Probation Violation Guidelines spelled out in the latest budget parallel existing statutory provisions governing the use of sentencing guidelines for felony offenses.

Figure 32

**Probation Violation Guidelines
Durational Compliance* FY 2017**



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

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

According to Probation Violation Guidelines data for FY2017, 45% of the cases resulted in sentences that fell outside the recommended guidelines range. With judges departing from these guidelines at such a high rate, written departure reasons are an integral part of understanding judicial sentencing decisions. An analysis of the 1,466 mitigation cases revealed that 66% included a departure reason. The same percentage was reported last year. For the mitigation cases in which departure reasons were provided, judges were most likely to cite the recommendation of the attorney for the Commonwealth, the utilization of an alternative punishment option (e.g., Detention or Diversion Center programs, treatment options), progress in rehabilitation, judicial discretion based on issues related to the case, the potential for rehabilitation or the offender's health.

Examining the 1,069 aggravation cases, the Commission found that the majority (60%) included a departure reason. When a reason was provided in upward departures, judges were most likely to cite multiple revocations in the defendant's prior record, the defendant's failure to follow instructions, substance abuse issues, absconding from supervision, the recommendation of the attorney for the Commonwealth or aggravating facts of the case.

FY2017 data suggest that judicial concurrence with Probation Violation Guidelines recommendations remains above 50% since the changes implemented July 1, 2007. As with the felony sentencing guidelines first implemented in 1991, the development of useful sentencing tools for judges to deal with probation violators will be an iterative process, with improvements made over several years. Feedback from judges, especially through written departure reasons, is of critical importance to the process of continuing to improve the guidelines, thereby making them a more useful tool for judges in formulating sanctions in probation violation hearings.

3

AUTOMATION OF SENTENCING GUIDELINES: SWIFT!

History

In 2012, staff launched a project to automate the sentencing guidelines completion and submission process. The Sentencing Worksheets and Interactive File Transfer (SWIFT) project is a collaborative effort between the Sentencing Commission, the Supreme Court's Department of Judicial Information Technology (DJIT) and the Department of Judicial Services (DJS). SWIFT is a web-based application designed for automating the sentencing guidelines. When complete, the application will allow users to complete guidelines forms online, give users the ability to save guidelines information and recall it later, provide a way for users to submit the guidelines to the court electronically, and permit Clerk's Offices to send the guidelines forms to the Commission in electronic (data) format.

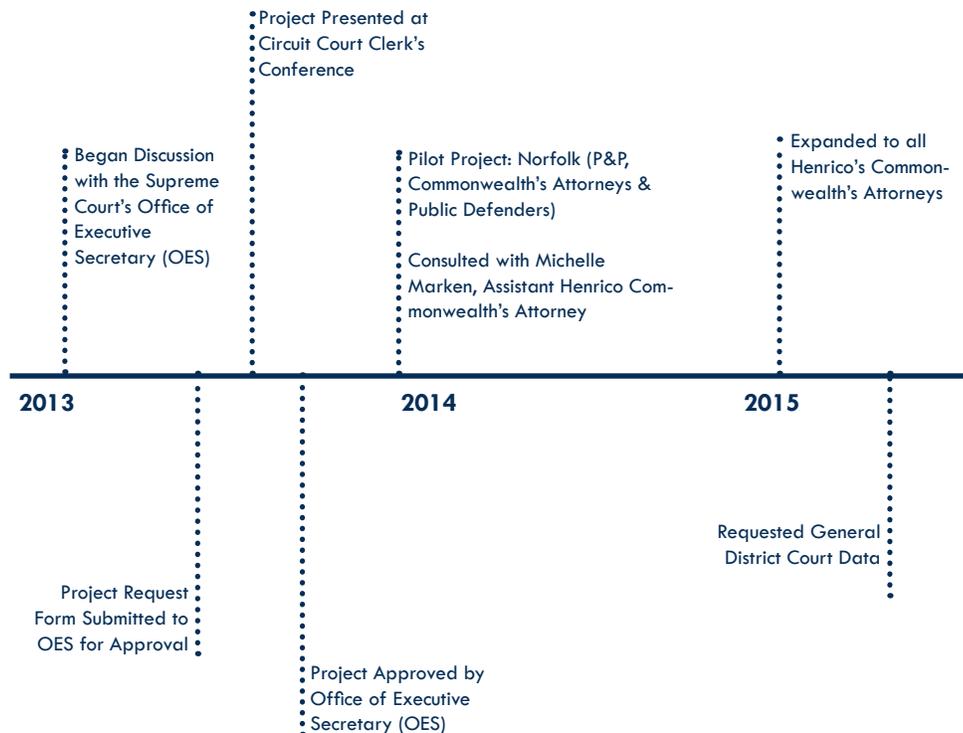
An early prototype of SWIFT was demonstrated for the Commission in 2013 and staff sought input from court clerks, probation officers, Commonwealth's attorneys, and defense attorneys. In 2014, the Commission began pilot testing the application in Norfolk and Henrico County and then expanded the pilot testing in 2015 to include all attorneys in the Henrico County's Commonwealth's Attorney's office. During this phase, valuable input was provided and recommendations were incorporated into SWIFT.

One of the efficiencies of SWIFT is that it utilizes current court data that is available to the public to populate the offender and charge information on the sentencing guidelines forms. The data used by SWIFT does not include any viewable personal identifiers such as social security number or full birth dates. An issue that was quickly brought to the Commission's attention was that the preparation of sentencing guidelines often begins in General District Court; negotiations to reduce counts or modify offenses often begin before cases are certified to Circuit Court. As a result, attorneys wanted the option to search General District Court data for pending felonies and use SWIFT to populate the sentencing guidelines forms. It took over a year to obtain the necessary approval to access General District Court data and in the spring of 2016, this function was added to SWIFT.

A legal case related to Circuit Court data delayed the further implementation of SWIFT. Eventually, on June 29, 2017, the Supreme Court of Virginia decided in the case of *Daily Press, LLC v. Office of the Executive Secretary of the Supreme Court of Virginia* that the Circuit Court Clerks are the custodians of those court records and any request to access the information must be made to each individual clerk. Following that decision, staff from the Supreme Court's Department of Judicial Services and the Sentencing Commission attended the 2017 Fall Regional Meetings of the Circuit Court Clerks. At these meetings, staff presented the four core objectives of SWIFT as they relate to processing sentencing guidelines forms in the 120 Circuit Court Clerk's offices. It was stressed that the four core objectives can only be achieved if court records and sentencing guidelines are linked. If linked, there will be an increase in the accuracy of sentencing guidelines presented to the court. If linked, there will be a seamless automated connection with court orders that satisfies the requirement of § 19.2-298.01 that court orders must be submitted to the Commission. Also, the linkage between the two will result in a decrease in processing time and will eventually eliminate postage and photocopying costs for the Commission and Clerks' offices. However, the benefits of SWIFT cannot be realized until the Commission obtains signed agreements from the Clerks to use circuit court data. Furthermore, some of the efficiencies of SWIFT can only be realized if all participants (i.e., judges, clerks, attorneys and probation officers) embrace the full automation and electronic transfer of sentencing guidelines (Figure 33).

Figure 33

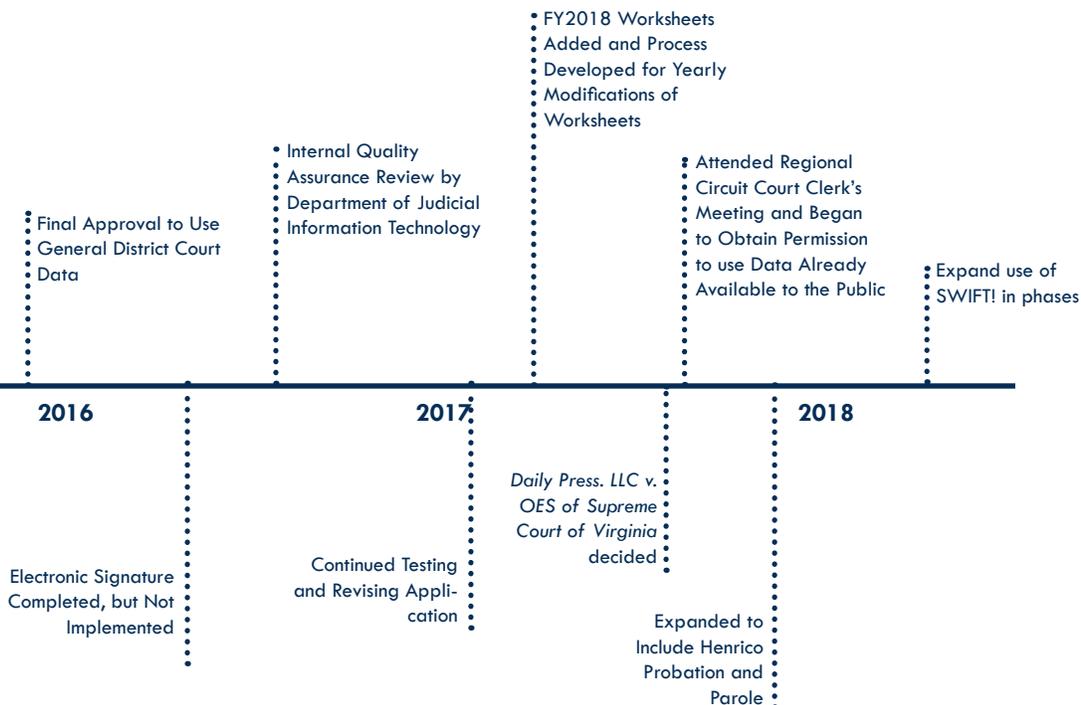
History of SWIFT



Two Circuit Court Clerk's offices do not participate in the Supreme Court's Case Management System. In these jurisdictions, and in other jurisdictions that do not allow access to circuit court data, court staff will continue to submit paper forms to the Commission once SWIFT is fully operational. The probation officers and attorneys for the Commonwealth in these jurisdictions will be required to use SWIFT, but the benefits of using existing data and the efficiencies of electronic file transfer will not be available.

The Commission is aware of the variety of configurations of SWIFT that will be needed to satisfy requirements of the various clerks, judges and attorneys for the Commonwealth. SWIFT was designed by the developers to work with a paper-based system, a paperless system, and a combination of the two, as needed.

While the pilot phase continues, additional components of the application are being designed. The automated transfer of data collected by SWIFT into the Commission's databases is in the testing phase. The implementation of a user management system to ensure that only court officers, Supreme Court employees and Commission staff have access to the application is in development. Users will be required to have a valid log-in and password. The procedure for affixing the electronic signatures of judges has been designed and will be implemented after the judges' component is fully developed and approved by judges of the Circuit Court. As the Commission begins to expand pilot sites and provide electronic copies of worksheets to the court, other components may be needed to fully automate the preparation, transfer and review of sentencing guidelines worksheets.



In 2018, the Commission will begin phasing out PDF worksheets on the website and require users to use SWIFT when preparing sentencing guidelines for the court. Initially, SWIFT will generate a paper worksheet and the current distribution rules and policies will continue. Users in jurisdictions where the Circuit Court Clerk signed the agreement for the use of case data in SWIFT (see figure 34), will be able to populate the worksheets with pending cases from the specific court. Users in jurisdictions where the Clerk has not signed the agreement will still use SWIFT, but will be unable to take advantage of existing court information to populate offender and charge information when preparing the sentencing guidelines.

Figure 34

List of Jurisdictions with Signed Agreements with Circuit Court Clerk (as of November 29, 2017)

SWIFT agreement Signed

Albemarle County	King William County
Alleghany County	Lancaster County
Amherst County	Lee County
Appomattox County	Lynchburg
Augusta County	Madison County
Bath County	Martinsville
Bedford County	Mecklenburg County
Bland County	Nelson County
Bristol	New Kent County
Buena Vista	Newport News
Campbell County	Norfolk
Carroll County	Northampton County
Charles City County	Northumberland County
Charlotte County	Nottoway County
Charlottesville	Orange County
Chesterfield County	Petersburg
Clarke County	Pittsylvania County
Colonial Heights	Portsmouth
Craig County	Powhatan County
Culpeper County	Prince Edward County
Cumberland County	Pulaski County
Danville	Rappahannock County
Dickenson County	Richmond County
Dinwiddie County	Roanoke County
Fauquier County	Rockingham County
Floyd County	Russell County
Franklin County	Scott County
Fredericksburg	Smyth County
Giles County	Spotsylvania County
Goochland County	Stafford County
Grayson County	Staunton
Greene County	Surry County
Greensville County	Tazewell County
Hanover County	Warren County
Henrico County	Washington County
Henry County	Waynesboro
Highland County	Williamsburg
Hopewell	Winchester
Isle of Wight County	Wise County
King and Queen County	Wythe County
King George County	

SWIFT agreement Not Signed

Accomack County	Shenandoah County
Alexandria	Southampton County
Amelia County	Suffolk
Arlington County	Sussex County
Botetourt County	Virginia Beach
Brunswick County	Westmoreland County
Buchanan County	York County
Buckingham County	
Caroline County	
Chesapeake	
Essex County	
Fairfax County	
Fluvanna County	
Frederick County	
Gloucester County	
Halifax County	
Hampton	
Loudoun County	
Louisa County	
Lunenburg County	
Mathews County	
Middlesex County	
Montgomery County	
Page County	
Patrick County	
Prince George County	
Prince William County	
Radford	
Richmond	
Roanoke City	
Rockbridge County	
Salem	

Alexandria and Fairfax do not participate Supreme Court's Case Management System

Overview

Below are a short description and illustration of how SWIFT works today. The Department of Judicial Information Technology and the Sentencing Commission are continuously reviewing the application for enhancements and working with partners to ensure the system works as envisioned. The system is designed to grow in stages and the possibilities for the future are numerous.

After signing into SWIFT, users will acknowledge the terms of service and certify that all of their credentials are correct. The users can then access the specific court needed, Circuit or General District Court, and search for a defendant's name. The system will return a list of all defendants with the identified name who have pending charges in the selected court. The system will identify offenses covered by guidelines, but the user will still need to select the most serious guidelines offense.

The screenshot shows the top navigation bar with the Virginia Criminal Sentencing Commission logo and name. Below the bar are links for 'Search' and 'Logout', and a user status indicator 'Logged in as: Jody Fridley (3653)'. The main content area features a 'Guidelines Search' form with the following fields:

- Record Type: New Drafts
- Court:
- Court Type: Circuit General District
- Guidelines:
- Defendant:
- Date range: to
-

This screenshot shows the same SWIFT interface as above, but with search results displayed. The search form is filled out with 'Alleghany County' for Court, 'Circuit' for Court Type, 'Cover Sheet' for Guidelines, and 'Jones' for Defendant. Below the form, a table displays the search results for 'New-Alleghany County-Circuit'.

Name	Docket no.	Charge	Offense Date	Hearing Date
JONES	5500	PETIT LARCENY SUBQ OFFENSE	2017-08-03	2018-01-08
JONES	5600	GRAND LARCENY	2017-08-04	2018-01-08
JONES	5700	DESTRUCT PROP W/INTENT <\$10...	2017-08-04	2018-01-08

At the bottom of the results table, there are filters: Sentencing Guideline Offense and Probation Violation Offense.

Based on the most serious offense selected, the system will populate the guidelines cover page. Preparers can still modify their selections by using the drop-down list of all pending charges for this defendant. If needed, offenses may be added or modified to reflect an agreed upon offense. The system will require a correct Virginia Crime Code (VCCs) be applied. If VCCs are incorrect, the preparer is responsible for entering the correct VCC. The system will generate a standard offense description based on the VCC entered.

Convictions									
Offense			Counts	VCC			Offense Date		
Primary Offense							Month	Day	Year
GRAND LARCENY ▼			1	LAR -	2359 -	F9	1	7	17
Additional Offense <input type="checkbox"/> + <input checked="" type="radio"/> Manual <input type="radio"/> Drop-Down									
<input checked="" type="checkbox"/> 1.	PETIT LARCENY SUBQ OFFENSE ▼		1	LAR -	2369 -	F6	6	12	17
<input checked="" type="checkbox"/> 2.	DESTRUCT PROP W/INTENT <\$1000 ▼		1	VAN -	2922 -	M1	6	12	17
Primary Offense Code Section §: 18.2-95				Docket Number: CR170000000					

Once the preparers are satisfied with the selection of the primary offense and additional offenses, the system will identify the appropriate worksheets to be completed. Based on the total score on Section A, the system will refer the preparer to either Section B or C. In future additions, the system will assist in selecting the most serious offense based on sentencing guidelines rules and in scoring various factors. However, for now, the preparer is responsible for following the sentencing guidelines rules and selecting the appropriate offense.


**VIRGINIA
CRIMINAL SENTENCING COMMISSION**
Search [Worksheet](#) Logout

Logged in as: Jody Fridley (3653)

Save

Larceny • Section C

Offender Name: [REDACTED]

Primary Offense (counts for attempted/conspired offenses are in parenthesis)		Prior Record Classification		
		Category I	Category II	Other
A. Attempted or conspired larceny				
(1 count)	.....	8	4	2
B. Statutory maximum penalty equals 5 or 10 years				
1 count	.....	20	10	5
2 counts	.....	28	14	7
3 counts	.....	40	20	10
C. Grand larceny auto				
1 count	.....	32	16	8
2 - 3 counts	.....	56	28	14
4 counts	.....	72	36	18
D. Grand larceny from person				
1 count	.....	40	20	10
2 counts	.....	56	28	14
3 counts	.....	68	34	17
E. Grand larceny of a firearm				
1 count	.....	68	34	17
F. Failure of bailee to return animal, aircraft, vehicle or boat				
1 count	.....	28	14	7
G. Larceny of bank notes, checks, etc. or any book of accounts				
1 - 2 counts	.....	32	16	8
3 counts	.....	96	48	24
H. Any other larceny offense with a maximum penalty of 20 years				
1 count	.....	28	14	7
2 counts	.....	44	22	11
3 counts	.....	56	28	14

Score
0

Primary Offense Remaining Counts • Assign points to each count of the primary not scored above and total the points.		
Years	Maximum Penalty	
5, 10	.....	1
20 or more	.....	2

0

Additional Offenses • Assign points to each additional offense (including counts) and total the points.			
Years	Less than 5	.....	0
	5, 10	.....	1
	20	.....	2
	30	.....	3

0

Additional Offenses • Assign points to each additional offense (including counts) and total the points.			
Years	Less than 5	.....	0
	5, 10	.....	1
	20	.....	2
	30	.....	3
	40 or more	.....	5

0

Prior Convictions/Adjudications • Assign points to the 5 most recent and serious prior record events and total the points.		
Years	Maximum Penalty	
Less than 10	.....	0
10, 20	.....	1
30	.....	2
40 or more	.....	3

0

Prior Felony Larceny Convictions/Adjudications			
Counts	1	.....	1
	2	.....	2
	3	.....	3
	4 or more	.....	4

0

Other Prior Felony Property Convictions/Adjudications			
Counts	1	.....	0
	2 - 3	.....	1
	4 or more	.....	2

0

Prior Felony Convictions/Adjudications Against Person			
Counts	1	.....	2
	2	.....	4
	3 or more	.....	6

0

Prior Felony Drug Convictions/Adjudications			
Counts	1 - 2	.....	1
	3	.....	2
	4 or more	.....	3

0

Prior Juvenile Record • If YES, add 3	0
---------------------------------------	---

Legally Restrained at Time of Offense			
Counts	None	.....	0
	Other than parole/post-release, supervised probation or CCCA	.....	3
	Parole/post-release, supervised probation or CCCA	.....	4

0

SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE IS H:EMBEZZLEMENT (§ 18.2-111)

Amount of Embezzlement		
Less than \$28,000	0
\$28,000 - \$89,999	24
\$90,000 or more	30

0

Total Score • See Larceny Section C Recommendation Table for guidelines sentence range.
Then go to Section D Nonviolent Risk Assessment and follow the instructions.

0

Prev Next

SWIFT! will generate paper sentencing guidelines worksheets that are exact replicas of the worksheet in use today.

Once the worksheets are completed, the system will update the recommendation on the front of the cover page. Users will no longer need to refer to the recommendation tables printed in the manual. In cases when a mandatory minimum is higher than the recommendation, the user will need to edit the recommendation to reflect the mandatory time that must be imposed, just as they currently do when preparing the guidelines.

SENTENCING GUIDELINES RECOMMENDATION

Non Guidelines Offense (Primary offense is a non guidelines offense)

Section B

Probation/No Incarceration

Incarceration 1 Day to 3 Months

Incarceration 1 Day to 6 Months

Incarceration 3 to 6 Months

Probation/No Incarceration or Incarceration to 6 Months

Mandatory Minimum: *yyy/mm/ddd*

Section C

Life Sentence

Incarceration (Enter Midpoint and Range Below)

Range Midpoint: *yyy/mm/ddd*

Sentence Range: to

Recommendation Adjusted for Mandatory Minimum

NONVIOLENT RISK ASSESSMENT

Recommended for Alternative Punishment Not Applicable (INELIGIBILITY CONDITIONS marked on Section D)

NOT Recommended for Alternative Punishment

Preparers will always be able to save and retrieve various drafts and decide which one will be submitted to the court. Drafts will not be visible to anyone on the system unless the preparer authorizes or sends a draft to another person. After a case is resolved, drafts will automatically be removed after a defined period. The exact amount of time to retain drafts will be determined during the pilot phases.

Search results: Drafts-Alleghany County ↻

Name	Docket no.	Primary Offense	VCC	Date	Range Midpt.	Sentencing	Drafts
JONES JONES	500	GRAND LARCENY	LAR-2359-F9	08/04/17	001-06-00	01/08/18	2
JONES JONES	500	GRAND LARCENY	LAR-2359-F9	08/04/17	001-06-00	01/08/18	1

The Commission is committed to partnering with all sentencing guidelines users to make SWIFT work in a way that benefits judges, clerks, attorneys, probation officers and the Commission. Any suggestions that will increase accuracy in the preparation of sentencing guidelines or efficiency in the distribution or review of worksheets will be thoroughly reviewed and, if possible, implemented. The Commission is just beginning the automation process and hopes to expand the functions of SWIFT as users become more comfortable using existing court data and more proficient in explaining how guidelines are calculated using an automated system.

Appreciation of Work

Many individuals have devoted countless hours to the development of SWIFT and the Commission looks forward to utilizing their skills to continue building an application that satisfies the needs of all sentencing guidelines users. The Commission would like to thank: Chris Geen (Developer), Daniel McBryde (Records Management IT Manager), Derek Kestner (Records Management Analyst), Esther J. Windmueller (attorney and former Commission Member), Rachel Barrett and Deborah “Jessy” Hamilton (Norfolk Probation & Parole Office), Michelle Marken (Henrico County Assistant Commonwealth’s attorney), Walt Ryan (former Virginia Beach Probation & Parole Officer), and Jeannie Woods (Norfolk Public Defender’s Office). Instrumental in getting this project started were: The Honorable George Schaefer (Norfolk Circuit Court Clerk), Thomas Larsen (Norfolk Chief Deputy Clerk) and The Honorable Robert Humphreys (Virginia Court of Appeals). Many other probation officers, attorneys and IT professionals, too numerous to list, have made significant contributions to this project and the Commission is very appreciative of their suggestions and expertise.

4

RECIDIVISM AMONG FEDERAL PRISONERS

Introduction

During its 2016 Session, the General Assembly adopted legislation directing the Virginia Criminal Sentencing Commission to examine recidivism among certain released federal inmates. Specifically, House Bill 1105 (Chapter 394 of the 2016 Acts of Assembly) directed the Commission to examine recidivism among released federal inmates whose sentences had been retroactively reduced pursuant to Amendments 782 and 788 of the US Sentencing Commission's Guidelines Manual and to calculate the recidivism rate of these offenders for crimes committed in the Commonwealth. The provisions of House Bill 1105 are in effect until January 1, 2018. The legislation requires the Commission to report to the Chairmen of the House and Senate Courts of Justice Committees by December 31 of each year until the directive expires.

As background for the study, the Commission reviewed the federal sentencing guidelines system, with particular focus on Amendments 782 and 788 of the US Sentencing Commission's Guidelines Manual. The Commission also examined recidivism studies completed by the US Sentencing Commission on other federal offender populations. To respond to the legislative mandate, however, the Commission must have a list of federal inmates who received retroactive sentence reductions under Amendments 782 and 788, along with personal identifiers for those individuals. The Commission has taken a number of steps in an attempt to acquire the necessary information. To date, however, the Commission has been denied access to the information needed to complete the study. This chapter of the *2017 Annual Report* documents the Commission's activities in relation to House Bill 1105 (2016). The information contained herein will also be submitted to the General Assembly in a separate report in order to satisfy the reporting requirements of the legislative mandate.

2016 SESSION CHAPTER 394

An Act to direct the Virginia Criminal Sentencing Commission to calculate and report the recidivism rate for certain released federal prisoners.

[H 1105]

Approved March 11, 2016

Be it enacted by the General Assembly of Virginia:

1. § 1. That the Virginia Criminal Sentencing Commission shall calculate annually the recidivism rate of federal prisoners released by the U.S. Bureau of Prisons whose sentences were retroactively reduced pursuant to Amendments 782 and 788 of the U.S. Sentencing Commission's Guidelines Manual for crimes committed in the Commonwealth. The Commission shall make a reasonable attempt to acquire the information necessary to complete the calculation from any available source, including any state or federal entity that has access to such information. The Commission shall report annually to the Chairmen of the House and Senate Committees for Courts of Justice (i) such recidivism rate no later than December 31 for the preceding 12-month period complete through the last day of October or (ii) if the Commission is unable to complete the calculation, any information regarding the recidivism rate of such prisoners as the Commission was able to acquire.

2. That the provisions of this act shall expire on January 1, 2018.

Background

The Anti-Drug Abuse Act of 1986 enacted by Congress established the basic framework of statutory mandatory minimum penalties applicable to federal drug trafficking offenses. The quantities of drugs triggering the mandatory minimum penalties differed for various drugs and, in some cases, for different forms of the same drug (United States Sentencing Commission, 2007). As a result of the 1986 Act, federal law required a five-year mandatory minimum sentence for a first-time trafficking offense involving five grams or more of crack cocaine or 500 grams or more of powder cocaine. A ten-year mandatory minimum sentence applied for first-time traffickers who sold 50 grams or more of crack or 5,000 grams or more of powder cocaine. Because it took 100 times more powder cocaine than crack cocaine to trigger the five-year and ten-year mandatory penalties, this structure was referred to as the “100-to-1 drug quantity ratio” (United States Sentencing Commission, 2007). The United States Sentencing Commission (USSC), which was in the process of developing the initial federal sentencing guidelines in 1986, incorporated the mandatory minimum penalty structure into the guidelines. The USSC also set the guidelines based on the same 100-to-1 ratio for cocaine quantities above and below the mandatory minimum penalty thresholds. As a result, the federal sentencing guidelines were significantly higher for certain offenses involving crack cocaine compared to powder cocaine.

After nearly 20 years of mandatory federal sentencing guidelines, the US Supreme Court, in 2005, issued an opinion that rendered the federal guidelines advisory. This decision led to a series of court cases focused on the 100-to-1 crack-to-powder drug quantity ratio. The US Supreme Court ultimately held that a judge may consider the disparity between the guidelines’ treatment of crack and powder cocaine when determining a sentencing range and that the sentencing judge has the authority to substitute a crack-to-powder drug quantity ratio different than 100-to-1 to avoid that disparity (United States Sentencing Commission, 2015). In 2007, due to ongoing concern about the 100-to-1 crack-to-powder ratio, the USSC lowered the guidelines for crack cocaine offenses processed in federal courts. The USSC subsequently made the reduction applicable retroactively. Incarcerated federal offenders could then submit an application for a sentence reduction and federal courts had the authority to grant reductions in the sentences for federal inmates who had been sentenced under the higher crack cocaine guidelines. The USSC also recommended that Congress revise the mandatory minimum terms required by federal statutes for certain cocaine offenses.

In 2010, Congress enacted the Federal Fair Sentencing Act (FSA), which effectively reduced the 100-to-1 crack-to-powder ratio to 18-to-1. This legislation also removed the mandatory minimum penalty for simple possession of crack cocaine. The USSC incorporated the new 18-to-1 structure into the federal sentencing guidelines and approved the application of the change retroactively. The USSC also revised the guidelines in 2010 to better account for certain aggravating factors and the defendant's role in the offense, as directed by the Congress.

In 2014, following full implementation of the FSA, the USSC took additional steps by reducing the federal sentencing guidelines for all drug types, including crack cocaine, by two levels (Amendment 782 to the Sentencing Guidelines Manual). This change was also approved for retroactive application to federal offenders who had been sentenced under the prior guidelines structure (Amendment 788). Congress did not act to modify or countermand the change, and the amendment became effective on November 1, 2014. Amendment 782 was projected to reduce penalties for new drug cases by an average of 11 months for 70% of drug trafficking offenders (United States Sentencing Commission, Policy Profile, Sensible Sentencing Reform: The 2014 Reduction of Drug Sentences). The USSC also estimated that approximately 40,000 prisoners may be eligible to have their sentences reduced under Amendment 788 by an average of 2.1 years (18.8%). Amendments 782 and 788 are the focus of the directive outlined in House Bill 1105 adopted by the 2016 General Assembly.

Procedures were established for incarcerated federal inmates to apply for a retroactive sentence reduction under Amendments 782/788. In order to receive a reduction in sentence, eligible inmates must submit an application to the appropriate federal court. After considering all relevant factors, including the revised sentencing guidelines, the court determines whether a reduction in the term of imprisonment is warranted and, if so, the length of the sentence reduction that should be given. Courts began hearing motions for retroactive sentence reductions as of November 1, 2014, but no inmates were to be released for a year after the effective date of the amendment. This delay in release provided federal courts time to hear the large number of applications that were expected and carefully consider each case. It also allowed the federal probation system time to prepare for additional offenders to be released to community supervision. Releases of individuals whose sentences were reduced retroactively under Amendments 782/788 began on October 30, 2015. Offenders are not necessarily released to the state in which they apply for a sentence reduction.

Applications for Retroactive Sentence Reductions under Amendments 782 and 788

According to the USSC, as of September 30, 2017, a total of 47,768 federal inmates had submitted applications for a sentence reduction associated with Amendments 782/788 of the US Sentencing Commission’s Sentencing Guidelines Manual. Of those, federal courts have granted sentence reductions in approximately two-thirds of the applications (Figure 35). The remaining one-third were denied. Courts in the Fourth Circuit (which encompasses Maryland, North Carolina, South Carolina, Virginia and West Virginia) heard 7,083 of the total number of applications, granting roughly the same proportion as were approved nationally. In Virginia, federal judges approved a slightly higher proportion of the applications for sentence reductions (69.8%).

Amendments 782 and 788 reduced the federal sentencing guidelines for all drug types by two levels. Of the federal inmates granted retroactive sentence reductions under Amendments 782/788, approximately one-third (31.7%) had been convicted of offenses involving methamphetamine (Figure 36). Inmates who had been convicted of offenses involving powder cocaine and crack cocaine accounted for 28.6% and 19.7% of the granted applications, respectively. Marijuana, heroin, and other types of drugs were associated with smaller proportions of the offenders for whom a sentence reduction was granted.

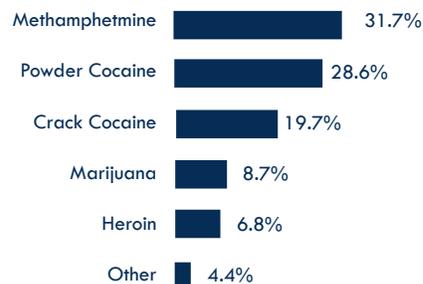
Figure 35
Applications for Retroactive Sentence Reductions under Amendments 782 and 788 of the US Sentencing Commission’s Sentencing Guidelines Manual
November 1, 2014 - September 30, 2017

State	Number of Applications	Granted	Denied
Maryland	756	64.4%	35.6%
North Carolina	2,761	58.6%	41.4%
South Carolina	1,057	72.3%	27.7%
Virginia	2,051	69.8%	30.2%
West Virginia	458	83.4%	16.6%
Fourth Circuit	7,083	66.1%	33.9%
US Total	47,768	64.9%	35.1%

Note: Figures only include applications resolved by the court as of September 30, 2017.

Source: United States Sentencing Commission (2017, October). US Sentencing Commission 2014 Drug Guidelines Amendment Retroactivity Data Report.

Figure 36
Federal Inmates Granted Retroactive Sentence Reductions under Amendments 782 and 788 of the US Sentencing Commission’s Sentencing Guidelines Manual by Drug Type
November 1, 2014 - September 30, 2017



Source: United States Sentencing Commission. (2017, October). US Sentencing Commission 2014 Drug Guidelines Amendment Retroactivity Data Report.

Nationally, for federal offenders for whom a sentence reduction was granted, the average sentence originally imposed (based on guidelines in place prior to Amendments 782 and 788) was 12.0 years (Figure 37). When federal courts granted a sentence reduction, the average reduction was 2.1 years. This is equivalent to a 17.2% reduction of the original sentence. For applications handled in the Fourth Circuit, the offenders had been originally sentenced to a slightly longer prison term on average (13.2 years); however, judges in the Fourth Circuit approved sentence reductions averaging 2.3 years, resulting in a 17.1% reduction of the original sentence, on average. Thus, the percentage reduction in the Fourth Circuit is very close to the national average. In Virginia, federal judges have approved sentence reductions of 16.6% on average.

Figure 37
Retroactive Sentence Reductions Granted under Amendments 782 and 788
of the US Sentencing Commission's Sentencing Guidelines Manual
November 1, 2014 - September 30, 2017

State	Applications Granted	Avg. Existing Sentence (Years)	Avg. Sentence Reduction (Years)	Avg. Sentence Reduction (Percent)
Maryland	482	12.1	2.2	17.9%
North Carolina	1,548	13.6	2.3	16.8%
South Carolina	726	13.4	2.5	18.6%
Virginia	1,374	14.0	2.3	16.6%
West Virginia	381	9.7	1.7	17.3%
Fourth Circuit	4,511	13.2	2.3	17.1%
US Total	30,116	12.0	2.1	17.2%

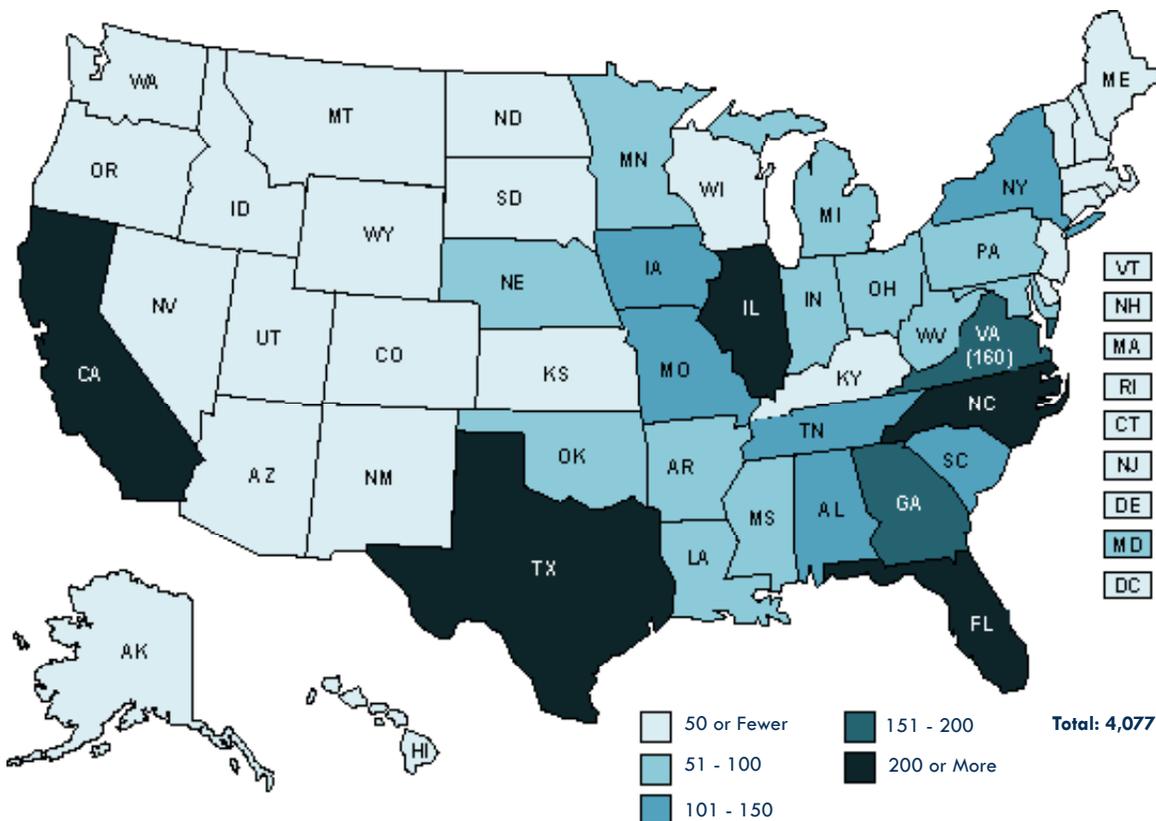
Note: Figures only include applications resolved by the court as of September 30, 2017. Analysis excludes cases that could not be matched back to the original case in the US Sentencing Commission's records and cases in which the length of imprisonment after the reduction could not be determined.

Source: United States Sentencing Commission (2017, October). U.S. Sentencing Commission 2014 Drug Guidelines Amendment Retroactivity Data Report.

Federal Inmates Released based on Retroactive Sentence Reductions Granted under Amendments 782 and 788

Approximately 6,000 federal offenders granted sentence reductions under Amendments 782 and 788 were released between October 30, 2015, and November 2, 2015. This represented the first wave of federal inmates to be released based on retroactive application of these Amendments. According to information provided by the Federal Bureau of Prisons to the Washington Post, approximately one-third of the 6,000 inmates granted reduced sentences were released to Immigration and Customs Enforcement (ICE) for deportation hearings (Horwitz, 2015). The states receiving the largest numbers of federal offenders in this first wave were Texas (578), Florida (295), Illinois (253), and California (229). However, nearly as many (218) were released to the state of North Carolina. Of the federal inmates released in the first wave, 160 were reportedly released to Virginia. Another 150 were discharged to Tennessee. Fewer than 100 inmates were released to each of the remaining states that share a border with Virginia. Figure 38 provides a visual comparison by state. Offenders are not necessarily released to the state in which they apply for a sentence reduction.

Figure 38
Federal Inmates Released based on Retroactive Sentence Reductions under Amendments 782 and 788
(First Wave: October 31, 2015 through November 1, 2015)
By State



Source: The Washington Post (October 7, 2015). The U.S. is set to release thousands of prisoners early. Here's where they're headed. Accessed 5/16/16 from: <https://www.washingtonpost.com/news/post-nation/wp/2015/10/07/the-u-s-is-set-to-release-thousands-of-prisoners-early-heres-where-theyre-headed>

After the first wave of federal inmates in 2015, the USSC estimated that an additional 8,550 federal inmates would be released by November 1, 2016 (Figure 39). Decreasing numbers of inmates were expected to be released in each subsequent year through November 1, 2020. However, a large number of inmates are not expected to be released until after November 1, 2020.

Figure 39
Estimated Number of Federal Inmates Expected
To Be Released
Based on Retroactive Sentence Reductions under
Amendments 782 and 788

Estimated Number of Inmates	Projected Release Date (if Application Granted)
8,550	Nov. 1, 2015 - Nov. 1, 2016
6,938	Nov. 1, 2016 - Nov. 1, 2017
5,473	Nov. 1, 2017 - Nov. 1, 2018
4,177	Nov. 1, 2018 - Nov. 1, 2019
2,909	Nov. 1, 2019 - Nov. 1, 2020
9,350	After Nov. 1, 2020

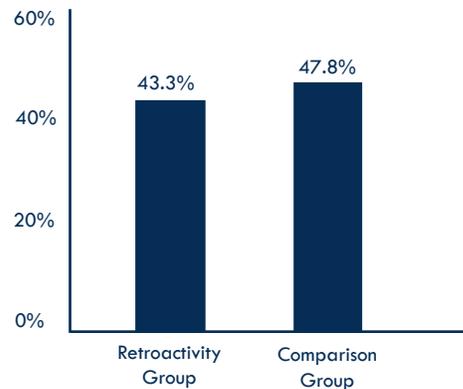
Source: United States Sentencing Commission (2014, July 25). Summary of key data regarding retroactive application of the 2014 drug guidelines amendment.

Previous Studies of Federal Offender Recidivism by the United States Sentencing Commission

The USSC has conducted multiple studies of recidivism among federal offenders. In May 2014, the USSC published a report on recidivism rates of crack cocaine offenders who had been released based on the retroactive application of the 2007 amendment to the US Sentencing Guidelines Manual. As described above, the 2007 change lowered the guidelines for crack cocaine offenses to address concerns about the 100-to-1 crack-to-powder ratio. In conjunction with this change, the USSC made the reduction applicable retroactively. In order to study the impact of retroactive sentence reductions on recidivism rates, the USSC analyzed the recidivism rate for a group of crack cocaine offenders whose sentences were reduced pursuant to retroactive application of the 2007 crack cocaine amendment. The results were compared to the rate of recidivism for a group of offenders who would have been eligible to seek a reduced sentence under the 2007 crack cocaine amendment but were released before the amendment took effect and, thus, served their full prison terms, less good time and other earned credits (US Sentencing Commission, May 2014). Released federal offenders were tracked for five years following discharge. Recidivism was defined as re-conviction for any new offense, re-arrest without case disposition information available, or revocation of probation/parole.

As of June 29, 2011, the federal courts had granted 16,511 motions (64.2% of the applications) for reduced sentences under the 2007 crack cocaine amendment. The recidivism rate for offenders released under the retroactively-applied guidelines change was 43.3%, while the recidivism rate for the comparison group offenders was 47.8% (Figure 40). The difference in recidivism rates was not statistically significant. Differences in the type of recidivism (new arrest versus revocation) were also not

Figure 40
Recidivism Rates among Released Federal Offenders:
Offenders Who Received Retroactive Sentence Reductions under 2007 Crack Cocaine Amendment versus
Offenders Released Prior to 2007 Amendment



Note: Difference is not statistically significant.

Source: United States Sentencing Commission. (2014, May). *Recidivism Among Offenders Receiving Retroactive Sentence Reductions: The 2007 Crack Cocaine Amendments*.

statistically significant. The USSC concluded that there was no evidence that offenders whose sentence lengths were reduced pursuant to retroactive application of the 2007 crack cocaine amendment recidivated at higher rates than the comparison group of crack cocaine offenders released before the effective date of the 2007 amendment (United States Sentencing Commission, May 2014).

In March 2016, the USSC released a broader study of recidivism among federal inmates. This research expanded on the scope of previous USSC recidivism projects. In this study, the USSC examined 25,431 federal offenders released in 2005 and tracked these offenders for eight years post-release. The USSC examined three measures of recidivism: re-arrest (for a new crime or violation of supervised release), reconviction, and re-incarceration. It is important to note that none of these measures are equivalent to the measure of recidivism used for the 2014 study discussed above. Based on the 2016 study, the recidivism rate of federal offenders, as measured by re-arrest, was 42.1% after a five-year follow-up period and 49.3% after an eight-year follow-up period (United States Sentencing Commission, March 2016). After tracking offenders for eight years, individuals whose federal offense involved firearms were most likely to be re-arrested (68.3%), followed by those whose original offense involved robbery (67.3%), immigration (55.7%), drug trafficking (49.9%), larceny (44.4%), and fraud (34.2%).

As of November 16, 2017, the USSC had not completed a study of recidivism among federal inmates whose sentences were reduced pursuant to Amendments 782/788 of the Sentencing Guidelines Manual (adopted in 2014).

Study Mandated by House Bill 1105 (2016) To respond to the legislative mandate established by House Bill 1105 (Chapter 394 of the 2016 Acts of Assembly), the Commission requires a list, in electronic format, of federal inmates who received retroactive sentence reductions under Amendments 782/788 of the US Sentencing Guidelines Manual. This list must include not only the names and release dates of the inmates but also personal identifiers, such as birthdate and social security number. This information is necessary in order to match the records to Virginia's criminal history information system maintained by the Virginia State Police. By matching records to the criminal history information (or "rap sheet") system, the Commission would be able to identify new arrests and convictions associated with federal inmates who were granted reduced sentences under Amendments 782/788.

The Commission has taken a number of steps in an attempt to acquire the necessary

information. An initial request submitted to the Federal Bureau of Prisons in early 2016 was denied. A Freedom of Information Act (FOIA) request was submitted to the Federal Bureau of Prisons in August 2016. The Commission's FOIA request was also denied. A second FOIA request was submitted to the Bureau of Prisons in June 2017. This request was also denied. In rejecting the Commission's FOIA request, the Bureau of Prisons stated that lists or rosters of federal inmates cannot be provided as they would disclose personal information concerning federal inmates and that "disclosure of such lists could threaten the safety and well-being of these individuals." According to the Bureau of Prisons, release of rosters and lists has been determined to be exempt from disclosure pursuant to 5 U.S.C. §§ 552(b)(6), (b)(7)(C) and/or (b)(7)(F). As described in the Bureau's letter, exemption (b)(6) concerns material the release of which would constitute a clearly unwarranted invasion of the personal privacy of third parties. Exemption (b)(7)(C) concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to constitute an unwarranted invasion of the personal privacy of third parties. Exemption (b)(7)(F) concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to endanger the life or personal safety of an individual. Finally, the Bureau of Prisons determined that birthdates, social security numbers, and release dates are maintained in a system of records protected by the Privacy Act. Information subject to the Privacy Act requires written authorization from the subject of the record before it can be released. The Commission determined that obtaining authorization from the thousands of federal inmates released pursuant to Amendments 782/788 is unfeasible. The 2017 response from the Bureau of Prisons is shown in Figure 41.

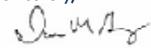
In 2016, the Commission's Director contacted two local law enforcement agencies to determine if either agency had any relevant information about federal offenders released to the community after being granted a reduced sentence under Amendments 782 and 788. Neither agency had the information needed by the Commission.

The Commission also submitted two requests to the US Probation and Pretrial Services division of the federal court system. Nearly all federal offenders released from incarceration who are not subject to deportation must satisfy a period of supervision under a federal probation officer. Therefore, the Commission requested records on federal inmates whose sentences were retroactively reduced under Amendments 782 and 788 who have entered federal probation supervision. As of November 15, 2017, the Commission has not received a response from the US Probation and Pretrial Services agency.

Despite the efforts described above, the Commission has not been given access to the information needed to complete the study mandated by House Bill 1105 (2016).

References

Figure 41
Response of the Federal Bureau of Prisons to the Freedom of Information Act (FOIA) Request
Submitted by the Virginia Criminal Sentencing Commission

	U.S. Department of Justice Federal Bureau of Prisons
September 16, 2017	Central Office 320 First St., NW Washington, DC 20534
The Honorable Edward Hogshire (Ret.) 100 North Ninth Street Richmond, VA 23219	Request Number: 2016-06729
Dear Judge Hogshire:	
<p>This is in response to the above referenced Freedom of Information Act (FOIA) request in which you seek information about individuals released from federal prisons pursuant to Amendments 782 and 788 of the U.S. Sentencing Commission's Guideline Manuals. Specifically, you requested the full name, birthdate, social security number, and release date of all individuals released.</p>	
<p>Lists or rosters of federal inmates cannot be provided as they would disclose personal information concerning federal inmates. Likewise, disclosure of such lists could threaten the safety and well-being of these individuals. Pursuant to 28 C.F.R. 513.34(b), "Lists of Bureau of Prisons inmates shall not be disclosed." Release of rosters and lists has been determined to be exempt from disclosure pursuant to 5 U.S.C. §§ 552(b)(6), (b)(7)(C) and/or (b)(7)(F). Exemption (b)(6) concerns material the release of which would constitute a clearly unwarranted invasion of the personal privacy of third parties. Exemption (b)(7)(C) concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to constitute an unwarranted invasion of the personal privacy of third parties. Exemption (b)(7)(F) concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to endanger the life or personal safety of an individual.</p>	
<p>Insofar as you are requesting the birthdate, social security number, and release date of individuals released, or scheduled to be released, pursuant to Amendments 782 and 788, we have determined that this information is maintained in a Privacy Act protected system of records and requires written authorization from the subject of the record before it can be released. Further, this information would be exempt from disclosure pursuant to 5 U.S.C. §§ 552(b)(6), (b)(7)(C) and/or (b)(7)(F). The written authorization must meet the requirements of 28 C.F.R. §16.41(d). Please resubmit your request, and provide the information identified below. Until such time as this information is received, your request is considered closed.</p>	
<p>Please be advised, we considered your request under the Privacy Act and applicable BOP System of Records Notices, however, we have determined that your request does not meet one of the routine use exceptions provided in the relevant notices.</p>	
<p>Exemption (b)(6) concerns material the release of which would constitute a clearly unwarranted invasion of the personal privacy of third parties. Exemption (b)(7)(C) concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to constitute an unwarranted invasion of the personal privacy of third parties. Finally, exemption (b)(7)(F) concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to endanger the life or personal safety of an individual.</p>	
<p>If you have any questions, you have the right to seek assistance from the undersigned or BOP's FOIA Public Liaison, Mr. C. Darnell Stroble ((202) 616-7750).</p>	
<p>If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account at:</p>	
<p>https://foiaonline.regulations.gov/foia/action/public/home. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." Additionally, you have the right to seek dispute resolution services from BOP's FOIA Public Liaison, Mr. C. Darnell Stroble ((202) 616-7750) or the Office of Government Information Services (OGIS). OGIS offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. The contact information for OGIS is as follows: Office of Government Information, Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.</p>	
<p>Sincerely,  Ian M. Guy, Supervisory Attorney-Advisor for, Ronald Rodgers, Senior Counsel Signed by: IAN GUY </p>	

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5

RECOMMENDATIONS

Introduction

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

Unlike many other states, Virginia's sentencing guidelines are based on analysis of actual sentencing practices and are designed to provide judges with a benchmark that represents the typical, or average, case. Recommendations for revisions to the guidelines are based on the best fit of the available data. Moreover, recommendations are designed to closely match the rate at which offenders are sentenced to prison and jail, meaning that offenders will be recommended for incarceration in approximately the same proportions as offenders who received incarceration sanctions historically.

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

RECOMMENDATION

1

Amend the Miscellaneous sentencing guidelines to add the provision of a wireless device to a prisoner and possession of a wireless device by a prisoner (§ 18.2-431.1) to the sentencing guidelines.

Issue

Currently, Virginia's sentencing guidelines do not cover felony offenses defined in § 18.2-431.1 (providing a wireless device, cell phone, etc., to a prisoner, and possession of a wireless device, cell phone, etc., by a prisoner). Both crimes are Class 6 felonies, with a statutory penalty range of one to five years. The Commission has received input from probation officers indicating that they frequently observe these offenses (particularly possession of a wireless device by a prisoner) and suggesting that the Commission consider adding them to the sentencing guidelines. The Commission conducted a detailed analysis and developed a proposal to incorporate these offenses into the Miscellaneous offense guidelines.

Discussion

Based on analysis of Circuit Court Case Management System (CMS) data from fiscal year (FY) 2013 through FY2017, the Commission has developed a proposal to add offenses, defined in § 18.2-431.1 to the sentencing guidelines. Figure 42 presents the distribution of actual sentencing dispositions for 143 sentencing events from the FY2013-FY2017 CMS data where the primary offense was a felony under § 18.2-431.1. It shows that most of the cases (60.1%) were sentenced to a relatively short term of incarceration lasting up to six months (median sentence of six months). Another 10.5% of cases did not receive an active term of incarceration to serve.

Figure 42

**Sentences for Possession of a Wireless Device by a Prisoner and Providing a Wireless Device to a Prisoner (§ 18.2-431.1)
FY2013 - FY2017
N=143**

Disposition	Percent	Median Sentence
No Incarceration	10.5%	N/A
Incarceration up to 6 months	60.1%	6 Months
Incarceration more than 6 months	29.4%	9 Months

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

Only 29.4% of the cases were sentenced to a term of incarceration of more than six months (median sentence of nine months), which would correspond to a prison recommendation on the sentencing guidelines. For these offenders, Commission staff obtained criminal history reports, or “rap sheets,” from the Virginia State Police so that the offender’s prior record could be scored appropriately on the guidelines worksheets.

Based on this analysis, the Commission recommends adding offenses defined in § 18.2-431.1 to the guidelines, as described below. The proposed guidelines are based on analysis of actual sentencing patterns, including the historical rate of incarceration in prison and jail. In essence, the guidelines are designed to provide the judge with a benchmark of the typical, or average, case given the primary offense and other factors scored. Current guidelines worksheets serve as the starting point for scoring historical cases. Using historical sentencing data, including criminal history information, various scoring scenarios were rigorously tested and compared to ensure the proposed guidelines are closely aligned with judicial sentencing practices in these cases.

A total score of eight or fewer points on the Section A worksheet means that the offender will then be scored on the Section B worksheet to determine if he will be recommended for either probation/no incarceration or jail up to six months. A total score of nine or more points on Section A means that the offender will then be scored on the Section C worksheet to determine the appropriate prison length recommendation. It is important to note that prisoners in possession of a wireless device will automatically be scored for legal restraint because of their incarceration status.

On Section A of the Miscellaneous/Other guidelines, offenders convicted of providing a wireless device to a prisoner or possession of a wireless device by a prisoner as their primary offense will receive two points for one count on the Primary Offense factor (Figure 43). In addition, these offenders will be scored the same as Sex Offender Registry violators on the Prior Convictions/Adjudications factor, using the maximum penalty ranges and corresponding scores from the left-hand box for that factor.

Figure 43
Proposed Section A
Miscellaneous/Other

u Primary Offense	
A. Perjury, falsely swear an oath (1 count)	1
B. Nonviolent sex offender, fail to register, etc., 2nd/subsequent (1 count).....	2
C. Violent sex offender, fail to register or provide false information (1 count).....	2
D. Violent sex offender, fail to register, etc., 2nd/subsequent (1 count).....	2
E. Failure to appear in court for felony offense	
1 count.....	1
2 counts.....	4
F. Escape from correctional facility (1 count).....	7
G. Possession or sale of Schedule III drug or marijuana by prisoner (1 count)	3
H. Participation in offense by/for gang (1 count)	5
I. Participation in offense by/for gang with juvenile member (1 count)	6
J. Provide wireless device to or possession of wireless device by prisoner (1 count).....	2
◆ 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
◆ Victim Injury	
Threatened, emotional or physical	1
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	
Primary offense: B, C, D, or J: Sex offender registry violation or provide wireless device to or possession of wireless device by prisoner	Primary offense: All other offenses
Years	Points
Less than 6.....	0
6-64	1
65 or more.....	2
◆ Prior Incarcerations/Commitments If YES, add 4	
◆ Legally Restrained at Time of Offense	
Primary offense: B, C, D, or J: Sex offender registry violation or provide wireless device to or possession of wireless device by prisoner	Primary offense: All other offenses
Points	Points
Any legal restraint	None.....
1	Other than post-incarceration supervision.....
	2
	Post-incarceration supervision
	5

As mentioned above, prisoners in possession of a wireless device will automatically be scored for Legal Restraint on Section A. They will be scored the same as Sex Offender Registry violators and will receive one point for this factor. Offenders who provide a wireless device to a prisoner, however, will be scored according to the instructions for this factor, and will receive one point if they were legally restrained at the time of the offense. No offender sentenced for a primary offense under § 18.2-431.1 will receive more than one point for Legal Restraint on Section A. Analysis showed that, with these modifications, the proportion of cases recommended to Section C will be closer to the actual proportion of cases receiving a prison disposition.

Section B of the sentencing guidelines determines if an offender will be recommended for either probation/no incarceration or jail up to six months. A total score of ten or more points on the Miscellaneous/Other Section B worksheet means the offender will be recommended for incarceration from one day to six months.

The Commission recommends that offenders convicted of providing a wireless device to a prisoner or possession of a wireless device by a prisoner as their primary offense receive eight points for one count on the Primary Offense factor on the Miscellaneous/Other Section B worksheet (Figure 44). Furthermore, prisoners in possession of a wireless device will score an automatic one point for Legal Restraint on Section B; offenders who provide a wireless device to a prisoner will be scored according to the instructions for this factor and will receive one point if they were legally restrained at the time of the offense. In addition, the Prior Incarcerations/Commitments factor on Section B will now be scored if the offender's primary offense is a felony violation of § 18.2-431.1; the offender will receive one point for this factor if he has served one or more periods of incarceration resulting from a sentence. The Commission also recommends that a new factor be added to the Section B worksheet, to be scored only if the offender's primary offense is a felony violation of § 18.2-431.1. An offender will receive one point for this factor on Section B if he has two or more prior felony convictions/adjudications (including counts) against a person; Appendix E of the sentencing guidelines manual provides a partial listing of applicable felony person crimes. This aspect of the Commission's proposal will increase the probability of an incarceration recommendation in Section B cases where the offender's primary offense is a felony violation of § 18.2-431.1.

Figure 44
Proposed Section B
Miscellaneous/Other

◆ Primary Offense	
A. Perjury, falsely swear an oath (1 count).....	7
B. Nonviolent sex offender, fail to register, etc., 2nd/subsequent (1 count).....	7
C. Violent sex offender, fail to register or provide false information (1 count).....	8
D. Violent sex offender, fail to register, etc., 2nd/subsequent (1 count).....	9
E. Failure to appear in court for felony offense (1 count).....	10
F. Escape from correctional facility (1 count).....	10
G. Possession or sale of Schedule III drug or marijuana by prisoner (1 count).....	7
H. Participation in offense by/for gang (1 count).....	7
I. Participation in offense by/for gang with juvenile member (1 count).....	8
J. Provide wireless device to or possession of wireless device by prisoner.....	8
◆ Primary Offense Remaining Counts <u>Total</u> 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 <u>Total</u> 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
◆ Victim Injury	
Threatened, emotional or physical.....	2
Life threatening.....	3
◆ Legally Restrained at Time of Offense IF YES, add 1	
SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE IS B,C, D OR J: PROVIDE WIRELESS DEVICE TO/OR POSSESSION OF WIRELESS DEVICE BY PRISONER	
◆ 6 Prior Incarcerations/Commitments IF YES, add 1	
SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE IS H OR I: GANG OFFENSE (§18.2-46.2)	
◆ Type of Additional/Prior Record Offense(s) Score factors and enter the total score	
A. Additional Offense of Assault (Felony or Misdemeanor).....	1 <input type="text"/>
B. Prior Juvenile Felony Person Adjudication.....	1 <input type="text"/>
	+ = Total
	Enter A + B
SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE IS J: PROVIDE WIRELESS DEVICE TO OR POSSESSION OF WIRELESS DEVICE BY PRISONER (§ 18.2-431.1)	
◆ Prior Felony Convictions/Adjudications Against Person	
Counts: 0, 1.....	0
2 or more.....	1

As previously mentioned, a total score of nine or more points on the Miscellaneous/Other Section A worksheet means that the offender will then be scored on the Section C worksheet to determine the sentence length recommendation for a term of imprisonment. Primary Offense points on Section C are assigned based on the classification of an offender’s prior record. An offender is scored under Category II if he or she has a prior conviction for a violent felony that has a statutory maximum penalty of less than 40 years. Offenders are classified as Category I if they have a prior conviction for a violent felony with a statutory maximum of 40 years or more.

The Commission’s proposal recommends that, on Section C, an offender convicted of providing a wireless device to a prisoner or possession of a wireless device by a prisoner will receive two points for the Primary Offense factor if the offender’s prior record is classified as Other, four points if he is a Category II offender, or eight points if he is a Category I offender (Figure 45). In addition, prisoners in possession of a wireless device will score an automatic two points for Legal Restraint on Section C; offenders who provide a wireless device to a prisoner will be scored according to the instructions for this factor and will receive two points if they were legally restrained at the time of the offense. No other modifications to the Section C worksheet are necessary to ensure that the sentences recommended by the guidelines accurately reflect historical sentencing practices for these crimes.

Figure 45
Proposed Changes to
Section C Miscellaneous/Other

◆ Primary Offense	Category I	Category II	Other
A. Perjury, falsely swear an oath (1 count).....	12.....	6.....	3
B. Nonviolent sex offender, fail to register, etc., 2nd/subsequent (1 count).....	8.....	4.....	2
C. Violent sex offender, fail to register or provide false info. (1 count).....	8.....	4.....	2
D. Violent sex offender, fail to register, etc., 2nd/subsequent (1 count).....	16.....	8.....	4
E. Failure to appear in court for felony offense (1 count).....	32.....	16.....	8
F. Escape from correctional facility (1 count).....	40.....	20.....	10
G. Possession or sale of Schedule III drug or marijuana by prisoner (1 count).....	32.....	16.....	8
H. Participation in offense by/for gang (1 count).....	84.....	42.....	21
I. Participation in offense by/for gang with juvenile member (1 count).....	104.....	52.....	26
J. Provide wireless device to or possession of wireless device by prisoner (1 count).....	8.....	4.....	2

When developing sentencing guidelines, the Commission’s goal is to match, or come very close to, the historical prison incarceration rate. The proposed guidelines are designed to recommend the same proportion of offenders for a sentence greater than six months as historically received a sentence of more than six months. It is important to note that not all of the same offenders who historically received such a sentence will be recommended for that type of sentence under the proposed guidelines; this is because of the inconsistencies in past sentencing practices for these offenses. The guidelines are designed to bring about more consistency in sentencing decisions. The proposed guidelines recommend that 29.4% of the offenders receive an incarceration sanction of more than six months, which agrees with actual judicial sentencing practices (Figure 46). The proposed guidelines, therefore, are aligned with the actual prison incarceration rate.

Figure 47 compares the projected median sentence (10.5 months) for offenders recommended for an incarceration sanction of more than six months to the actual median sentence (9.0 months) for offenders who received that disposition. Thus, the recommended and actual sentences are closely aligned.

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

Figure 46

**Actual versus Proposed Sentences for Possession of a Cell Phone by a Prisoner and Providing a Cell Phone to a Prisoner (§ 18.2-431.1)
FY2013 – FY2017**

	Actual Practice	Recommended under Proposed Sentencing Guidelines
Probation or Incarceration up to 6 Months	70.6%	70.6%
Incarceration More than 6 Months (Range includes prison)	29.4%	29.4%

Figure 47

**Actual versus Proposed Sentences for Possession of a Cell Phone by a Prisoner and Providing a Cell Phone to a Prisoner (§ 18.2-431.1)
FY2013 – FY2017**



RECOMMENDATION

2

Amend the Weapon/Firearm sentencing guidelines to add the unlawful discharge of a firearm or missile in or at an occupied building (§ 18.2-279) as a covered offense and modify the existing guidelines for maliciously discharging a firearm or missile in or at an occupied building (§ 18.2-279) to better integrate the new guidelines offense.

Issue

Currently, the sentencing guidelines cover the act of maliciously discharging a firearm or missile in or at an occupied building, a Class 4 felony defined in § 18.2-279. However, the guidelines currently do not cover this offense if committed unlawfully (without malice). Unlawful discharge of a firearm or missile in or at an occupied building (also defined in § 18.2-279) is a Class 6 felony, punishable by a term of imprisonment of one to five years, or confinement in jail for not more than 12 months. At the request of guidelines users, the Commission conducted a thorough analysis and developed a proposal to integrate this Class 6 felony into the Weapon/Firearm guidelines. In addition, a slight adjustment in the guidelines for maliciously discharging a firearm or missile in or at an occupied building will allow for a seamless integration of the Class 6 felony as a new guidelines offense.

Discussion

To develop guidelines for the unlawful discharge of a firearm or missile in or at an occupied building (§ 18.2-279), the Commission carefully examined sentencing patterns during the five-year period from fiscal year (FY) 2013 through FY2017. Data from the Circuit Court Case Management System (CMS) yielded a total of 61 offenders for whom this offense was the primary, or most serious offense, at sentencing. For these offenders, Commission staff obtained criminal history reports, or “rap sheets,” from the Virginia State Police so that the offender’s prior record could be scored appropriately on the guidelines worksheets. The Commission’s analysis excluded three offenders because prior record information could not be obtained.

Figure 48 presents the sentencing outcomes for the 58 offenders for whom criminal record information was received from Virginia State Police. During the five-year period examined, 43.1% of the offenders were not given an active term of incarceration to serve after sentencing. An additional 37.9% of the offenders were sentenced to a jail term ranging from one day to six months. For these offenders, the median sentence length was 3.7 months. The remaining 19.0% received a term of incarceration greater than six months. The median sentence in such cases 1.5 years.

The proposed guidelines are based on analysis of actual sentencing patterns, including the historical rate of incarceration in prison and jail. In essence, the guidelines are designed to provide the judge with a benchmark of the typical, or average, case given the primary offense and other factors scored. Current guidelines worksheets serve as the starting point for scoring historical cases. Using historical sentencing data, including criminal history information, various scoring scenarios were rigorously tested and compared to ensure the proposed guidelines are closely aligned with judicial sentencing practices in these cases. Based on this analysis, the Commission recommends adding the unlawful discharge of a firearm or missile in or at an occupied building (§ 18.2-279) to the Weapon/Firearm guidelines, as described below.

Figure 48

**Sentences for Unlawfully Discharging a Firearm/Missile
in/at an Occupied Building (§ 18.2-279)
FY2013 - FY2017
N=58**

Disposition	Percent	Median Sentence
No Incarceration	43.1%	N/A
Incarceration up to 6 months	37.9%	3.7 Months
Incarceration more than 6 months	19.0%	1.5 Years

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

Section A of the sentencing guidelines determines if an offender will be recommended for probation or jail up to six months (in which case, Section B will be completed) or incarceration of more than six months (requiring the completion of Section C). Recommendations for incarceration of more than six months nearly always yield a recommended range that would include a prison term.

On Section A of the Weapon/Firearm guidelines, as proposed, offenders convicted of unlawfully discharging a firearm or missile in or at an occupied building as their primary offense will receive two points on the Primary Offense factor (Figure 49). Several of the remaining factors on Section A are split such that offenders convicted of maliciously discharging a firearm or missile in or at an occupied building (as the primary offense) are scored differently than offenders convicted of other weapon/firearm crimes. The split factors are: Primary Offense Remaining Counts, Additional Offenses, Legally Restrained at the Time of Offense, and Type of Additional Offenses. Under the proposed guidelines, offenders convicted of unlawfully discharging a firearm or missile in or at an occupied building (as the primary offense) will be scored in the same manner as offenders convicted of a malicious discharge (Figure 49). This approach will ensure that the guidelines recommendations for unlawfully discharging a firearm or missile in or at an occupied building will be closely aligned to the actual prison incarceration rate for this offense during the five-year period examined.

Figure 49

Proposed Weapon/Firearm Worksheet
Section A

◆ **Primary Offense** _____

A. Maliciously or unlawfully 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
G. Carry concealed weapon, 2nd or 3rd offense (1 count).....	2

Score
▼
0

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

Primary offense: A. Maliciously or unlawfully discharge firearm, etc., in/at occupied building <table border="0"> <tr> <th>Maximum Penalty (years)</th> <th>Points</th> </tr> <tr> <td>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> </table>	Maximum Penalty (years)	Points	5 - 7	2	8 - 18.....	3	19 - 28	4	29 - 38	5	39 or more.....	6	Primary offense: All other offenses <table border="0"> <tr> <th>Maximum Penalty (years)</th> <th>Points</th> </tr> <tr> <td>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> </table>	Maximum Penalty (years)	Points	5 - 7	1	8 - 18.....	2	19 - 28	3	29 - 38	4	39 or more.....	5
Maximum Penalty (years)	Points																								
5 - 7	2																								
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19 - 28	4																								
29 - 38	5																								
39 or more.....	6																								
Maximum Penalty (years)	Points																								
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

Primary offense: A. Maliciously or unlawfully discharge firearm, etc., in/at occupied building <table border="0"> <tr> <th>Maximum Penalty (years)</th> <th>Points</th> </tr> <tr> <td>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> </table>	Maximum Penalty (years)	Points	1 - 7	1	8 - 18.....	2	19 - 28	3	29 - 38	4	39 or more.....	5	Primary offense: All other offenses <table border="0"> <tr> <th>Maximum Penalty (years)</th> <th>Points</th> </tr> <tr> <td>Less than 1.....</td> <td>0</td> </tr> <tr> <td>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> </table>	Maximum Penalty (years)	Points	Less than 1.....	0	1 - 7	1	8 - 18.....	2	19 - 28	3	29 - 38	4	39 or more.....	5
Maximum Penalty (years)	Points																										
1 - 7	1																										
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1 - 7	1																										
8 - 18.....	2																										
19 - 28	3																										
29 - 38	4																										
39 or more.....	5																										

◆ **Victim Injury** _____

Threatened, emotional or physical	1
Life threatening	2

◆ **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

◆ **Prior Incarcerations/Commitments** _____ **If YES, add 4** → 0

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

Primary offense: A. Maliciously or unlawfully discharge firearm, etc., in/at occupied building <table border="0"> <tr> <th>Points</th> </tr> <tr> <td>None.....</td> <td>0</td> </tr> <tr> <td>Other than post-incarceration supervision</td> <td>3</td> </tr> <tr> <td>Post-incarceration supervision (supervision after incarceration)</td> <td>6</td> </tr> </table>	Points	None.....	0	Other than post-incarceration supervision	3	Post-incarceration supervision (supervision after incarceration)	6	Primary offense: All other offenses <table border="0"> <tr> <th>Points</th> </tr> <tr> <td>None.....</td> <td>0</td> </tr> <tr> <td>Other than post-incarceration supervision</td> <td>2</td> </tr> <tr> <td>Post-incarceration supervision (supervision after incarceration)</td> <td>5</td> </tr> </table>	Points	None.....	0	Other than post-incarceration supervision	2	Post-incarceration supervision (supervision after incarceration)	5
Points															
None.....	0														
Other than post-incarceration supervision	3														
Post-incarceration supervision (supervision after incarceration)	6														
Points															
None.....	0														
Other than post-incarceration supervision	2														
Post-incarceration supervision (supervision after incarceration)	5														

◆ **Type of Additional Offense(s)** _____

Primary offense: A. Maliciously or unlawfully discharge firearm, etc., in/at occupied building <table border="0"> <tr> <th>Points</th> </tr> <tr> <td>Additional offense with VCC prefix of WPN or ASL</td> <td>2</td> </tr> </table>	Points	Additional offense with VCC prefix of WPN or ASL	2	Primary offense: All other offenses Do Not Score
Points				
Additional offense with VCC prefix of WPN or ASL	2			

SCORE THE FOLLOWING ONLY IF PRIMARY OFFENSE AT CONVICTION IS
E: FALSE STATEMENT ON A FIREARM CONSENT FORM (§ 18.2-308.2:2(K))

◆ **Basis of False Statement on Consent Form (listed below)** _____ **If YES, add 3** → 0

Prior felony conviction/juvenile adjudication for crime against person
Other prior felony conviction/juvenile adjudication within 4 years of current offense
Prior domestic assault misdemeanor conviction
Subject to protective order at time of offense

An offender who scores a total of eight points or less on Section A of the Weapon/Firearm guidelines is then scored on Section B, which will determine if he or she will be recommended for probation/no incarceration or a jail term of up to six months. On Section B, as proposed, an offender convicted of unlawfully discharging a firearm or missile in or at an occupied building will receive eight points on the Primary Offense factor (Figure 50). In order to most closely match the historical jail incarceration rate, the Commission also recommends scoring the Victim Injury factor using the same points assigned for injury when the primary offense is the malicious discharge of a firearm or missile in or at an occupied building (Figure 50). The proposed scoring will result in guidelines recommendations that are aligned as closely as possible with the jail incarceration rate observed in the analysis of judicial sentencing practices.

Figure 50

**Proposed Weapon/Firearm Worksheet
Section B**

<p>◆ Primary Offense</p> <p>A. Maliciously discharge firearm, etc., in/at occupied building (1 count)7</p> <p>B. Discharge firearm from vehicle (1 count).....8</p> <p>C. Possess firearm on school property (1 count).....7</p> <p>D. Possession of sawed-off shotgun (1 count).....6</p> <p>E. Carry concealed weapon, 2nd or 3rd offense (1 count).....7</p> <p>F. False statement on firearm consent form (1 count)1</p> <p>G. Possession of firearm, other weapon, explosives or ammunition by convicted felon (1 count).....7</p> <p>H. Unlawfully discharge firearm, etc. in/at occupied building (1 count).....8</p>													
<p>◆ Victim Injury</p>													
<p>Primary offense:</p> <p>A. Maliciously or unlawfully discharge firearm, etc., in/at occupied building</p> <table border="1"> <tr> <td></td> <td style="text-align: right;">Points</td> </tr> <tr> <td>Threatened, emotional or physical</td> <td style="text-align: right;">3</td> </tr> <tr> <td>Life threatening</td> <td style="text-align: right;">4</td> </tr> </table>		Points	Threatened, emotional or physical	3	Life threatening	4	<p>Primary offense: All other offenses</p> <table border="1"> <tr> <td></td> <td style="text-align: right;">Points</td> </tr> <tr> <td>Threatened, emotional or physical</td> <td style="text-align: right;">2</td> </tr> <tr> <td>Life threatening</td> <td style="text-align: right;">3</td> </tr> </table>		Points	Threatened, emotional or physical	2	Life threatening	3
	Points												
Threatened, emotional or physical	3												
Life threatening	4												
	Points												
Threatened, emotional or physical	2												
Life threatening	3												

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

On Section C, as proposed, an offender convicted of a completed act of unlawfully discharging a firearm or missile in or at an occupied building will receive 12 points for the Primary Offense factor if the offender’s prior record is classified as Other, 24 points if he or she is a Category II offender, or 48 points if he or she is a Category I offender (Figure 51). These are comparable to the number of points assigned when the primary offense is discharging a firearm from a vehicle (§ 18.2-286.1). Two of the remaining factors on Section C are split such that offenders convicted of maliciously discharging a firearm or missile in or at an occupied building are scored differently than other offenders. These factors are: Prior Convictions/Adjudications and Prior Felony Convictions/Adjudications Against Person. On Section C, the unlawful discharge would not be scored with the same points as malicious discharge; rather, unlawful discharge will be grouped with all other offenses for scoring on Section C. Analysis of the historical suggests that this approach will result in recommendations that more closely reflect actual sentencing practices in these cases. No other modifications to Section C are necessary under this proposal.

Figure 51

**Proposed Weapon/Firearm Worksheet
Section C**

◆ Primary Offense	Category I	Category II	Other
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. Carry concealed weapon, 2nd or 3rd offense (1 count).....	32.....	16.....	8
F. False statement on consent form (1 count).....	32.....	16.....	8
G. Possession of firearm, other weapon, explosives or ammunition by convicted felon (1 count).....	32.....	16.....	8
H. Unlawfully discharge firearm, etc. in/at occupied building			
Attempted or conspired: 1 count.....(32).....	(16).....	(8)	
Completed: 1 count.....	48.....	24.....	12

When developing sentencing guidelines, the Commission’s goal is to match, or come very close to, the historical prison incarceration rate. The proposed guidelines are designed to recommend the same proportion of offenders for a sentence greater than six months as historically received a sentence of more than six months. It is important to note that not all of the same offenders who historically received such a sentence will be recommended for that type of sentence under the proposed guidelines; this is because of the inconsistencies in past sentencing practices for these offenses. The guidelines are designed to bring about more consistency in sentencing decisions.

As Figure 52 illustrates, the proposed guidelines for unlawfully discharging a firearm or missile in or at an occupied building are expected to result in guidelines recommendations that closely reflect actual dispositions for offenders convicted of this crime. For example, when sentencing these offenders, judges order 19.0% of the individuals to terms of incarceration greater than six months. The proposed guidelines are expected to recommend 19.0% of these offenders for such a disposition. Thus, the recommended incarceration rate will approximate the actual incarceration rate observed during FY2013-FY2017.

The Commission also anticipates that the proposed guidelines will yield sentence length recommendations that approximate judicial sentencing practices for these offenses. For offenders convicted of this offense who received a term of incarceration greater than six months, the median sentence was 1.5 years (Figure 53). Under the proposed guidelines, the median recommended sentence is estimated to be 1.3 years. Thus, the recommended and actual sentences are closely aligned.

Figure 52

Actual versus Proposed Sentences for Unlawfully Discharging a Firearm/Missile in/at an Occupied Building (§ 18.2-279) FY2013 – FY2017

	Actual Practice	Recommended under Proposed Sentencing Guidelines
Probation or Incarceration up to 6 Months	81.0%	81.0%
Incarceration More than 6 Months (Range includes prison)	19%	19%

Figure 53

Actual versus Proposed Sentences for Unlawfully Discharging a Firearm/Missile in/at an Occupied Building (§ 18.2-279) FY2013 – FY2017



Analyzing sentencing patterns for the malicious discharge of a firearm or missile in or at an occupied building in conjunction with the unlawful discharge defined in § 18.2-279 suggests that a modification to the guidelines for the malicious discharge would provide for a better integration of the unlawful discharge as a new guidelines offense. Specifically, when the primary offense is a malicious discharge of a firearm or missile in or at an occupied building, the Commission recommends increasing the score for the Primary Offense factor on Section B from seven to eight points (Figure 54). For the vast majority of offenders convicted of this felony, this change will not affect the guidelines recommendation in any way. This change will affect only those offenders who are scored on Section B, who are not currently recommended for jail incarceration, and whose Section B total score is just below the threshold for a jail recommendation. Based on available data, it is estimated that 1.6% of offenders convicted of maliciously discharging a firearm or missile in or at an occupied building will receive a different guidelines recommendation as a result of this change.

While the proposed change for the malicious discharge of a firearm will affect only a small percentage of cases, it allows for a seamless integration of the new guidelines offense. The proposed increase in the Section B Primary Offense score (from seven to eight points) for offenders convicted of malicious discharge will establish a parity to the Section B recommendations for the two offenses (as described above, a score of eight points is recommended for unlawful discharge). This would prevent any aberrant results whereby the malicious discharge of a firearm or missile in or at an occupied building receives fewer points than an unlawful discharge.

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

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

Figure 54
Proposed Weapon/Firearm Worksheet
Section B

◆ 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.	Carry concealed weapon, 2nd or 3rd offense (1 count) .....7
F.	False statement on firearm consent form (1 count).....1
G.	Possession of firearm, other weapon, explosives or ammunition by convicted felon (1 count) .....7
INCREASE Primary Offense score for this offense	
A.	Maliciously discharge firearm, etc., in/at occupied building (1 count).....8

RECOMMENDATION 3

Revise the sentencing guidelines for abduction with the intent to defile (§ 18.2-48,ii), to better reflect actual judicial sanctioning practices.

Issue

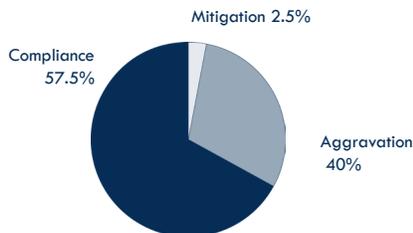
Currently, Virginia’s sentencing guidelines cover the crime of abduction with the intent to defile (§ 18.2-48,ii). This offense is a Class 2 felony with a statutory penalty range of twenty years to life in prison. It is also a Category I offense for characterizing an offender’s prior record on the sentencing guidelines. The overall compliance rate for this offense has been relatively low, with nearly all the departures exceeding the guidelines recommendation. This suggests that the guidelines for this offense need to be refined to better reflect actual judicial sentencing practices.

Discussion

Figure 55 presents compliance and departure rates for 40 sentencing events from FY2013-FY2017 Sentencing Guidelines data where the primary offense at sentencing was abduction with the intent to defile. It shows a relatively low rate of compliance with the guidelines recommendations (57.5%). The aggravation rate (40.0%) is much higher than the mitigation rate (2.5%) in these cases. Compliance with the current guidelines for this offense is substantially below the overall compliance rate and, when judges depart, they are significantly more likely to sentence above the guidelines than below. After extensive analysis of five years of sentencing guidelines data, the Commission has developed a proposal to better sync the guidelines with actual practice in these cases.

Figure 55

Compliance with Guidelines for Abduction with Intent to Defile
(§ 18.2-48, ii)
FY2013 – FY2017
N=40



* Worksheets with scoring errors were excluded from the analysis.

Abduction with the intent to defile as the primary offense at sentencing is covered on the Kidnapping guidelines worksheets. If an offender has a total score of five points or more on the Kidnapping Section A worksheet, he will then be scored on the Section C worksheet to determine the appropriate sentence length recommendation for a term of imprisonment. If the total score on Section A is less than five points, the guidelines recommendation is for probation/no incarceration or incarceration up to six months; there is no Section B worksheet for Kidnapping offenses. An offender convicted of one count of the completed crime of abduction with the intent to defile currently receives five points on the Primary Offense factor on Section A; this automatically results in a prison recommendation. An offender convicted of an attempted or conspired offense, however, receives only four points for one count on the Primary Offense factor on Section A; this does not automatically result in a prison recommendation. The Commission does not propose any changes to the existing Kidnapping Section A worksheet.

Offenders recommended for a prison sanction on Section A are scored on the corresponding Section C worksheet to determine the appropriate sentence length recommendation. Primary Offense points on Section C are assigned based on the classification of an offender's prior record (as defined in § 17.1-805). An offender is scored under Category II if he has a prior conviction for a violent felony that has a statutory maximum penalty of less than 40 years. Offenders are classified as Category I if they have a prior conviction for a violent felony with a statutory maximum of 40 years or more.

Figure 56 presents the proposed changes to the Kidnapping Section C worksheet. The Commission proposes to improve compliance and reduce the aggravation rate by increasing the Primary Offense scores in cases where the primary offense is abduction with the intent to defile. For instance, an offender convicted of one count of abduction with the intent to defile currently receives 74 points for the Primary Offense factor on Section C if the offender’s prior record is classified as Other, 148 points if he is a Category II offender, or 296 points if he is a Category I offender. The proposal increases those scores to, respectively, 85, 170, or 340 points. Similar increases are made when offenders are convicted of two or three counts of the primary offense. In addition, attempted and conspired offenses are scored the same as a completed act on Section C. No other modifications are necessary to ensure that the sentences recommended by the guidelines accurately reflect historical sentencing practices for this offense.

Figure 56
Proposed Weapon/Firearm Worksheet
Section C

◆ Primary Offense	Category I	Category II	Other
A. Other than listed below (1 count).....	24.....	12.....	6
B. Abduction by force without legal justification			
1 count.....	76.....	38.....	19
2 counts.....	100.....	50.....	25
3 counts.....	116.....	58.....	29
C. Extortion, abduction with intent to gain pecuniary benefit			
1 count.....	232.....	116.....	58
2 counts.....	256.....	128.....	64
3 counts.....	272.....	136.....	68
D. Abduction with intent to defile			
1 count.....	296.....	148.....	74
2 counts.....	316.....	158.....	79
3 counts.....	336.....	168.....	84
E. Abduct child under age 16			
1 count.....	476.....	238.....	119
2 counts.....	500.....	250.....	125
3 counts.....	516.....	258.....	129
INCREASE Primary Offense scores for this offense			
D. Abduction with intent to defile			
1 count.....	340.....	170.....	85
2 counts.....	348.....	174.....	87
3 counts.....	352.....	176.....	88

Figure 57 compares compliance and departure rates between the current and proposed scoring methodologies for the abduction with intent to defile cases. The Commission’s proposal increases compliance from 57.5% to 62.5%, and reduces the aggravation rate from 40.0% to 30.0%. The reduction in aggravating sentences will bring sentencing recommendations more in line with judicial sentencing practices for this offense; however, the Commission will closely monitor judicial response to the revised guidelines to determine if further amendments are feasible.

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

Figure 57

**Compliance with Guidelines for
Abduction with Intent to Defile
(§ 18.2-48, ii)
FY2013 – FY2017**

Overall Compliance		
	Current	Proposed
Compliance	57.5%	62.5%
Mitigation	2.5%	7.5%
Aggravation	40.0%	30.0%

RECOMMENDATION 4

Modify the Burglary/Dwelling and Burglary/Other sentencing guidelines to reflect current judicial sentencing practices in cases involving an additional offense of murder or manslaughter and to account for statutory maximum penalties.

Issue

Currently, the Burglary/Dwelling and the Burglary/Other sentencing guidelines include a factor on Section C to account for certain types of additional offenses. Specifically, individuals convicted of burglary as the primary (or most serious) offense who are also being sentenced for a homicide, aggravated malicious wounding, or malicious wounding receive points that increase the prison sentence recommendation for those individuals. Offenders receive points for the specified additional offenses regardless of whether the additional offense is a completed act or an attempted and conspired act. When the additional offense is a completed, attempted, or conspired homicide, however, the same number of points are assigned regardless of whether the victim dies. Moreover, the points assigned on this factor (which are equivalent to months added to the guidelines recommendation) exceed the statutory maximum for attempted or conspired first-degree murder.

Discussion

In 2012, the Commission recommended adding factors to Section C of the Burglary/Dwelling guidelines for cases involving completed burglary with a deadly weapon and an additional offense of:

- Attempted or conspired first-degree murder,
- Attempted, conspired or completed second-degree murder or felony murder,
- Attempted, conspired or completed manslaughter, or
- Attempted, conspired or completed malicious wounding.

While all burglary offenders receive points for accompanying convictions on the Additional Offenses factor, under the 2012 recommended change, individuals convicted of a completed burglary of a dwelling with a deadly weapon would receive more points when the accompanying offense was one of those listed above. These points further increased the prison sentence recommendation for those individuals. The recommendation, submitted in the Commission's *2012 Annual Report*, was accepted by the 2013 General Assembly. The change became effective on July 1, 2013.

In 2013, the Commission recommended expanding the factor to apply to all sentencing events where burglary was the primary offense, not just those involving a dwelling and a deadly weapon. The Commission also recommended adding points in cases where the sentencing event included an accompanying conviction for aggravated malicious wounding. The 2014 General Assembly accepted these recommendations and the changes became effective July 1, 2014.

The current Section C factor is shown in Figure 58. On this factor, offenders receive points ranging from eight up to 140, depending on the specific additional offense. On Section C, each point is equivalent to one month added to the prison sentence recommendation. An offender who receives 140 points on this factor will be recommended for 140 months (11.7 years) of additional prison time.

Figure 58
Current Burglary/Dwelling and Burglary/Other Section C Factor for Type of Additional Offenses

◆ Type of Additional Offense(s)	
Additional Offense with VCC Prefix of "MUR"	140
Additional Offense of Completed Aggravated Malicious Wounding (§ 18.2-51.2).....	55
Additional Offense of Completed Malicious Wounding (§ 18.2-51).....	35
Additional Offense of Attempted/Conspired Malicious Wounding (§ 18.2-51/§ 18.2-22 or § 18.2-26).....	8

When the additional offense is an attempted, conspired or completed homicide, however, the same number of points (140) are assigned on this factor regardless of whether the victim died. Guidelines users have expressed concern that this factor does not differentiate between a victim who dies and a victim who sustains less serious injuries as a result of the offense. Moreover, the points assigned when the additional offense is homicide exceed the statutory maximum for attempted or conspired first-degree murder specified in the Code of Virginia (10 years). Assigning points for an additional offense that equates to more than the statutory maximum penalty has raised concerns among guidelines users and judges.

To address these issues, the Commission recommends revising the factor, as shown in Figure 59. Individuals convicted of burglary as the primary offense who have an accompanying murder offense that carries a statutory maximum penalty of 40 years or more (such as a completed second-degree murder) will continue to receive 140 points on this factor. Under the proposed change, burglary offenders with an accompanying murder/manslaughter offense that carries a statutory maximum penalty of 20 years or less (such as attempted or conspired first-degree murder) will receive 74 points. Assigning this number of points will maintain the current rate of judicial compliance with the guidelines for burglary while falling well within the statutorily-defined maximum penalties.

The Commission will closely monitor judicial response to this change in the guidelines and will recommend adjustments, if necessary, based on judicial practice after the change takes effect.

Figure 59
Proposed Burglary/Dwelling and Burglary/Other Section C Factor

◆ Type of Additional Offense(s)	
Additional Offense of Murder with Statutory Maximum of 40 Years or More	140
Additional Offense of Murder with Statutory Maximum of 20 Years or Less.....	74
Additional Offense of Completed Aggravated Malicious Wounding (§ 18.2-51.2).....	55
Additional Offense of Completed Malicious Wounding (§ 18.2-51).....	35
Additional Offense of Attempted/Conspired Malicious Wounding (§ 18.2-51/§ 18.2-22 or § 18.2-26).....	8

RECOMMENDATION

5

Direct guidelines preparers to no longer score probation or other suspended sentence violations as additional offenses on the sentencing guidelines for felony offenses to reduce inconsistencies in guidelines recommendations for similarly-situated offenders.

Issue

Currently, when the guidelines are being prepared for a felony offense and there is an accompanying probation/suspended sentence violation that will be part of the same sentencing event, the guidelines manual instructs preparers to score the violation as an additional offense based on the statutory maximum penalty of the underlying felony. If the defendant's probation, etc., is revoked for multiple offenses, the revocation is scored as only one count based on the maximum penalty for the most serious underlying offense. Budget language (see Item 42 of Chapter 836 of the 2017 Acts of Assembly) requires that the Sentencing Revocation Report be prepared and reviewed in every case by the court, in addition to the sentencing guidelines for the new offense conviction.

The current policy of scoring probation violations, etc., as additional offenses results in different recommendations for similarly-situated individuals. For example, if an offender is sentenced for a felony and a probation/suspended sentence violation at the same hearing, the violation will be scored as an additional offense and, in most cases, minimally increase the guidelines recommendation. However, if an offender is sentenced for the felony in one hearing and the violation in a separate hearing, the violation is not scored and will not increase the recommendation on the guidelines; when a probation/suspended sentence violation is handled separately from the new conviction, no guidelines apply and the judge will sentence the offender for the violation without the benefit of guidelines.

The practice of sentencing defendants for felonies and probation violations together in one sentencing event varies by region. Moreover, users have expressed concern that when probation violations, etc., are scored as additional offenses, the points do not accurately reflect the sentences that judges are giving for the violation. In addition, some users believe that individuals are given more cumulative time to serve (for the new felony and the violation) when the violation is not included as an additional offense on the sentencing guidelines.

Discussion

In some regions of the state, it is common practice to sentence a new felony together with the probation violation or other suspended sentence violation. In other regions of the state, the normal practice is to keep sentencing hearings for new law violations separate from the probation violation hearings. This process provides sentencing judges with guidelines recommendations only for the new law violations and no recommendations for the probation or other suspended sentence violations. At the separate revocation hearings, judges are required to complete the Sentencing Revocation Report and record the amount of suspended time re-imposed. In another common situation, when the probation obligations are in different jurisdictions than the new felony offense, the revocations are never scored as additional offenses. Judges, attorneys and probation officers have expressed concern that the latter two scenarios result in sentencing discrepancies. The belief is that defendants are given more cumulative time to serve when probation violations are not included as additional offenses on the sentencing guidelines.

The Sentencing Revocation Report (SRR) must be completed for all revocation hearings. When a felony and a probation/suspended sentence violation are handled together in the same hearing, the judge must record the total combined sentence on the sentencing guidelines form then record just the sentence for the violation on the Sentencing Revocation Report. While adding to the responsibilities of the court, this duplicate requirement also causes some confusion. Based on a recent review, the Commission found that it has not received all of the applicable SRRs and, therefore, does not have complete data on the number of revocations of probation, good behavior or suspended sentences based on new law convictions.

Because the data do not permit a direct comparison of sentences given for violations that are part of the same sentencing event as a felony versus sentences given for violations handled in separate hearings, there is limited data to confirm users' concerns that, when probation, good behavior or other suspended sentence violations are scored as additional offenses, the points do not accurately reflect historical sentences for the given violations. The belief is that, when combined into one event, the impact of the violation is not adequately weighed by the guidelines.

The Commission, however, analyzed available data to examine to the extent possible the differences between guidelines scores and the sentences judges impose for probation/suspended sentence violations. The scores for additional offenses on Section C can be used to determine the number of months that are added to the midpoint for a felony probation or suspended sentence violation. On Section C, each point is equivalent to one month added to the midpoint in the sentencing guidelines range.

In the table below, the minimum number of points (equal to months) that are assigned for probation violations, etc., are based on a statutory maximum of five years for the most serious underlying offense. The maximum number of points assigned for violations are based on a statutory maximum of 40 years or more. The table illustrates the lowest and highest number of months, by offense group, that may be added to the sentencing guidelines midpoint for violations handled in the same sentencing event as new felony convictions. For example, on the Assault Worksheet Section C, three months would be added to the midpoint for a violation with a statutory maximum of five years and up to 26 months would be added to the midpoint for a violation with a statutory maximum of forty years or more. When the maximum number of months assigned for additional offenses in combined sentencings are compared to the actual sentences for violations that were handled in separate hearings, the results reveal that judges typically give more time for a violation than the points assigned on the guidelines. For example, the effective sentences from separate sentencing events exceeded the months added to the midpoint in 83% of the cases when the new felony was kidnapping and 78% of the cases if the new felony was a burglary offense (Figure 60).

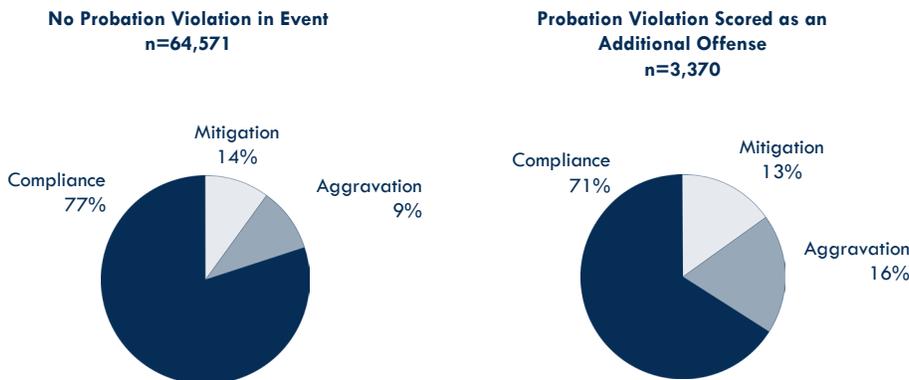
Figure 60
Comparison of Sentencing Guidelines Section C Scores for Additional Offenses with Actual Sentences for Probation/Suspended Sentence Violations

Offense Group (New Law Violation)	Probation Violations, Etc., Based on New Offense Handled in Same Sentencing Event as New Felony		Probation Violations, Etc., Based on New Offense Handled Separately
	Section C - Minimum Score (Months) Added for a Violation 1	Section C - Maximum Score (Months) Added for a Felony Violation 2	Percentage of Sentences Above Maximum Points (Months) Assigned for Violation as an Additional Offense
Assault	3 Months	26 Months	10.8%
Burglary	1 Month	6 Months	78.0%
Drug	1 Month	7 Months	51.2%
Fraud	0	3 Months	74.9%
Kidnapping	1 Month	5 Months	82.5%
Larceny	1 Month	5 Months	64.3%
Murder	4 Months	42 Months	48.4%
Other Sex Assault	5 Months	39 Months	7.0%
Robbery	2 Months	19 Months	51.3%
Traffic	1 Month	5 Months	50.4%
Miscellaneous	1 Month	12 Months	38.6%
Weapons	1 Month	5 Months	67.4%

In practice, the effective sentences from separate hearings are more likely to exceed the months added to the midpoint for violations in combined hearings than represented by Figure 61. The analysis assumes the violations were for original offenses with a statutory penalty of 40 years to life. However, most of the offenders in the Commonwealth are on probation for property offenses with statutory maximums of 20 years or less. Although limited, existing data supports users' concerns that when probation, good behavior and suspended sentence violations are scored as additional offenses, the guidelines do not accurately reflect historical sentences for the given violations.

The proposed change would also have a projected positive impact on concurrence with the sentencing guidelines. The Commission compared two scenarios. First, the Commission identified offenders who were scored on the guidelines as having been on some form of legal restraint at the time they committed the new felony (such as being on probation), but a probation violation was not included in the same sentencing event. Second, the Commission identified offenders who were scored for being legally restrained at the time of the offense for whom a probation violation was included as an additional offense in the same sentencing event. As shown in Figure 61, based on data from fiscal year (FY) 2007 through FY2017, concurrence with the guidelines was higher (77%) for offenders under legal restraint when probation, good behavior or suspended sentence violations were not scored as additional offenses than when violations were scored as additional offenses (71%). This latter scenario also resulted in a higher rate of aggravation departures (sentences above the guidelines). By eliminating the scoring of probation/suspended sentence violations as additional offenses, as proposed in this recommendation, the rate of concurrence among the affected cases is expected to increase to 77% with a comparable decrease in aggravation departures.

Figure 61
Sentencing Guidelines with Legal Restraint Factor Scored:
Comparison of Cases With and Without Probation Violation or
Good Behavior Violation Scored as an Additional Offense
Concurrence with Guidelines Recommendation
FY2007- FY2017



Changing current policy to direct preparers to not score revocations of probation, etc., as additional offenses on sentencing guidelines will result in the consistent sentencing recommendations for similarly-situated offenders (that is, offenders convicted of a new felony who are also facing revocation of their probation/suspended sentence). The sentencing guidelines recommendation will only apply to the new felony. This recommended change will have no impact on court schedules or procedures. Cases involving felonies and probation/suspended violations can continue to be heard together, but the sentencing guidelines submitted for the judge's review will be consistent across the Commonwealth for offenders in court regardless if the violation is handled together with the felony or in a separate hearing unto itself.

APPENDICES

Appendix I

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

Reasons for MITIGATION

Burglary of Dwelling (87 Cases)

	Number	Percent
Plea Agreement	32	36.7%
Judicial discretion (time served, other sentence to serve, consistent with codefendant, etc.)	13	14.9%
Offender is sentenced to an alternative punishment to incarceration	11	12.6%
Offender cooperated with authorities	10	11.5%
Court circumstances or procedural issues	7	8.0%
No Reason Given	7	8.0%
Offender has minimal/no prior record	6	6.9%
Offender's health (mental, physical, emotional, etc.)	6	6.9%
Facts of the case (not specific)	5	5.7%
Financial obligations (court costs, restitution, child support, etc.)	5	5.7%
Offender issues (age of offender, homeless, family issues, etc.)	5	5.7%
Sentence recommended by Commonwealth's Attorney	5	5.7%
Offender has good potential for rehabilitation	4	4.6%
Victim's request	4	4.6%
Illegible written reason	3	3.4%
Sentenced to the Department of Juvenile Justice	3	3.4%
Sentencing guidelines recommendation not appropriate (non-specific)	2	2.3%
Offender needs rehabilitation	2	2.3%
Offender not the leader	2	2.3%
Victim circumstances (drug dealer, etc.)	2	2.3%
Offender has made progress in rehabilitating him/herself	1	1.1%
Offender substance abuse issues	1	1.1%
Property was recovered or was of little value	1	1.1%

Burglary of Other Structure (36 Cases)

	Number	Percent
Plea Agreement	13	36.1%
No Reason Given	9	25.0%
Offender cooperated with authorities	5	13.9%
Judicial discretion (time served, other sentence to serve, consistent with codefendant, etc.)	4	11.1%
Offender has made progress in rehabilitating him/herself	3	8.4%
Facts of the case (not specific)	2	5.6%
Offender has good potential for rehabilitation	2	5.6%
Offender has minimal/no prior record	2	5.6%
Offender is sentenced to an alternative punishment to incarceration	2	5.6%
Sentence recommended by Commonwealth's Attorney	2	5.6%
Financial obligations (court costs, restitution, child support, etc.)	1	2.8%
Guidelines recommendation is too harsh	1	2.8%
Judge had issue with scoring guidelines factor	1	2.8%
Jury sentence	1	2.8%
Offender not the leader	1	2.8%
Sentencing guidelines recommendation not appropriate (non-specific)	1	2.8%
Victim's request	1	2.8%

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

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

Appendix 1

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

Reasons for AGGRAVATION

Burglary of Dwelling (104 Cases)	Number	Percent
Aggravating circumstances/flagrancy of offense	31	30.1%
Plea agreement	31	30.1%
Number of violations/counts in the event	16	15.5%
No reason given	12	11.7%
Aggravating facts	8	7.8%
Degree of victim injury (physical, emotional, etc.)	7	6.8%
Offender has extensive prior record or same type of prior offense	7	6.8%
Offender has poor rehabilitation potential	7	6.8%
Judicial discretion (time served, shock incarceration, consistent with codefendant, etc.)	6	5.8%
Victim circumstances (facts of the case, etc.)	6	5.8%
Victim's request	6	5.8%
Guidelines recommendation is too low	4	3.9%
Extreme property or monetary loss	3	2.9%
Jury sentence	3	2.9%
Offender used a weapon in commission of the offense	3	2.9%
Poor conduct since commission of offense	3	2.9%
Type of victim (child, etc.)	3	2.9%
On probation for a serious offense	2	1.9%
Sentence recommended by Commonwealth's Attorney	2	1.9%
Aggravating court circumstances/proceedings (will resentence if alternative completed, etc.)	1	1.0%
Current offense involves drugs/alcohol (large amount, etc.)	1	1.0%
Failed to follow instructions while on probation	1	1.0%
Mandatory minimum involved in the event	1	1.0%
Offender issues (age of offender, lacks family support, health, etc.)	1	1.0%
Offender needs rehabilitation offered by jail/prison	1	1.0%
Offender violated protective order or was stalking	1	1.0%
Offense involved a high degree of planning/violation of trust	1	1.0%
Sentencing guidelines recommendation is not appropriate	1	1.0%

Burglary of Other Structure (23 Cases)	Number	Percent
Plea agreement	6	26.1%
Aggravating circumstances/flagrancy of offense	4	17.4%
No reason given	3	13.0%
Number of violations/counts in the event	3	13.0%
Offender has extensive prior record or same type of prior offense	3	13.0%
Jury sentence	2	8.7%
Offender has extensive prior record or same type of prior offense	2	8.7%
Judicial discretion (time served, shock incarceration, consistent with codefendant, etc.)	2	8.7%
Offense involved a high degree of planning/violation of trust	1	4.3%
Aggravating court circumstances/proceedings (will resentence if alternative completed, etc.)	1	4.3%
Sentence recommended by Commonwealth's Attorney	1	4.3%
Guidelines recommendation is too low	1	4.3%
Offender failed alternative sanction program	1	4.3%
Offender violated protective order or was stalking	1	4.3%

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

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

Appendix 1

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

Reasons for MITIGATION

Drugs/Schedule I/II (686 Cases)	Number	Percent
Plea Agreement	266	38.7%
No Reason Given	94	13.7%
Offender is sentenced to an alternative punishment to incarceration	86	12.5%
Offender cooperated with authorities	78	11.4%
Judicial discretion (time served, other sentence to serve, consistent with codefendant, etc.)	60	8.7%
Offender has minimal/no prior record	57	8.3%
Court circumstances or procedural issues	51	7.4%
Facts of the case (not specific)	43	6.3%
Sentence recommended by Commonwealth's Attorney	39	5.7%
Offender has made progress in rehabilitating him/herself	35	5.1%
Offender's health	33	4.8%
Behavior positive since commission of the offense	24	3.5%
Current offense involves drugs/alcohol (small amount of drugs)	22	3.2%
Offender needs rehabilitation	17	2.5%
Offender issues (age of offender, homeless, family issues, etc.)	15	2.2%
Offender has good potential for rehabilitation	14	2.0%
Judge had issue with scoring guidelines factor	12	1.7%
Offender's substance abuse issues	9	1.3%
Sentencing guidelines recommendation not appropriate (non-specific)	7	1.0%
Offender not the leader	6	0.9%
Guidelines recommendation is too harsh	4	0.6%
Illegible	3	0.4%
Sequence of events, impact on recommendation	3	0.4%
Financial obligations (court costs, restitution, child support, etc.)	2	0.3%
Jury sentence	2	0.3%
Issue scoring risk assessment	1	0.1%
Judge rounded sentence to whole month or year	1	0.1%

Drugs/Other (56 Cases)	Number	Percent
Plea Agreement	30	40.0%
Offender cooperated with authorities	13	17.3%
No Reason Given	11	14.7%
Court circumstances or procedural issues	9	12.0%
Offender's health (mental, physical, emotional, etc.)	5	6.7%
Offender is sentenced to an alternative punishment to incarceration	4	5.3%
Sentence recommended by Commonwealth's Attorney	4	5.3%
Judicial discretion (time served, other sentence to serve, consistent with codefendant, etc.)	3	4.0%
Offender has made progress in rehabilitating him/herself	3	4.0%
Facts of the case (not specific)	2	2.7%
Offender has minimal/no prior record	2	2.7%
Guidelines recommendation is too harsh	1	1.3%
Issues scoring risk assessment	1	1.3%
Judge thought sentence was in compliance	1	1.3%
Offender has good potential for rehabilitation	1	1.3%
Offender needs rehabilitation	1	1.3%
Sentenced to the Department of Juvenile Justice	1	1.3%
Sequence of events, impact on recommendation	1	1.3%
Violation of probation was for a nonviolent offense	1	1.3%

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

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

Appendix 1

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

Reasons for AGGRAVATION

Drugs/Schedule I/II (695 Cases)	Number	Percent
Plea agreement	216	31.3%
Number of violations/counts in the event	106	15.3%
No reason given	91	13.2%
Offender has extensive prior record or same type of prior offense	86	12.4%
Aggravating circumstances/flagrancy of offense	78	11.3%
Current offense involves drugs/alcohol (large amount, etc.)	53	7.7%
Offender failed alternative sanction program	46	6.7%
Judicial discretion (time served, shock incarceration, consistent with codefendant, etc.)	31	4.5%
Offender has poor rehabilitation potential	27	3.9%
Offender's substance abuse issues	27	3.9%
Sentenced to an alternative	24	3.5%
Aggravating court circumstances/proceedings (will resentence if alternative completed, etc.)	20	2.9%
Poor conduct since commission of offense	19	2.7%
Sentence recommended by Commonwealth's Attorney	17	2.5%
Absconded from probation supervision	13	1.9%
Jury sentence	13	1.9%
Used, etc., drugs/alcohol while on probation	13	1.9%
Offender needs rehabilitation offered by jail/prison	11	1.6%
Degree of victim injury (physical, emotional, etc.)	10	1.4%
Guidelines recommendation is too low	10	1.4%
Child present at time of offense	9	1.3%
New offenses were committed while on probation	9	1.3%
Offender failed to cooperate with authorities	8	1.2%
Sentencing guidelines recommendation is not appropriate	6	0.9%
Failed to follow instructions while on probation	5	0.7%
Prior record not adequately weighed by guidelines	5	0.7%
Failed to report to probation	4	0.6%
Offender issues (age of offender, lacks family support, health, etc.)	4	0.6%
Offender used a weapon in commission of the offense	4	0.6%
Offense involved a high degree of planning/violation of trust	4	0.6%
Type of victim (child, etc.)	3	0.4%
Violent/disruptive behavior in custody	3	0.4%
Failed to follow instructions while on probation	2	0.3%
Illegible written reason	2	0.3%
Mandatory minimum involved in the event	2	0.3%
Number of violations/counts in the event	2	0.3%
Offender issues (age of offender, lacks family support, health, etc.)	2	0.3%
Extreme property or monetary loss	1	0.1%
Financial obligations (court costs, restitution, child support, etc.)	1	0.1%
Judge had issue with scoring guidelines factor	1	0.1%
On probation for a serious offense	1	0.1%
Sentence recommended by Commonwealth's Attorney	1	0.1%
Victim circumstances (facts of the case, etc.)	1	0.1%
Victim's request	1	0.1%
Drugs/Other (91 Cases)	Number	Percent
Plea agreement	34	38.2%
Aggravating circumstances/flagrancy of offense	16	17.9%
Number of violations/counts in the event	14	15.7%
No reason given	13	14.6%
Current offense involves drugs/alcohol (large amount, etc.)	12	13.5%
Offender failed alternative sanction program	6	6.7%
Offender has extensive prior record or same type of prior offense	4	4.5%
Offender has poor rehabilitation potential	4	4.5%
Guidelines recommendation is too low	3	3.4%
Offender needs rehabilitation offered by jail/prison	3	3.4%
Sentence recommended by Commonwealth's Attorney	3	3.4%
Sentenced to an alternative	3	3.4%
Offender used a weapon in commission of the offense	2	2.2%
Offense involved a high degree of planning/violation of trust	2	2.2%
Poor conduct since commission of offense	2	2.2%
Absconded from probation supervision	1	1.1%
Aggravating court circumstances/proceedings (will resentence if alternative completed, etc.)	1	1.1%
Judicial discretion (time served, shock incarceration, consistent with codefendant, etc.)	1	1.1%
Jury sentence	1	1.1%
Offender's substance abuse issues	1	1.1%
On probation for a serious offense	1	1.1%

Appendix 1

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

Reasons for MITIGATION

Fraud (170 Cases)	Number	Percent
Plea Agreement	55	32.5%
Financial obligations (court costs, restitution, child support, etc.)	26	15.4%
Judicial discretion (time served, other sentence to serve, consistent with codefendant, etc.)	25	14.8%
Offender cooperated with authorities	19	11.2%
Facts of the case (not specific)	19	11.2%
No Reason Given	17	10.1%
Court circumstances or procedural issues	13	7.7%
Sentence recommended by Commonwealth's Attorney	11	6.5%
Victim's request	11	6.5%
Offender is sentenced to an alternative punishment to incarceration	10	5.9%
Offender has good potential for rehabilitation	9	5.3%
Offender has minimal/no prior record	9	5.3%
Sentencing guidelines recommendation not appropriate (non-specific)	9	5.3%
Offender's health (mental, physical, emotional, etc.)	8	4.7%
Property was recovered	7	4.1%
Offender issues (age of offender, homeless, family issues, etc.)	6	3.6%
Offender has made progress in rehabilitating him/herself	5	3.0%
Offender needs rehabilitation	5	3.0%
Behavior positive since commission of the offense	4	2.4%
Victim circumstances (drug dealer, etc.)	3	1.8%
Guidelines recommendation is too harsh	3	1.8%
Offender not the leader	3	1.8%
Offender's substance abuse issues	3	1.8%
Sequence of events, impact on recommendation	2	1.2%
Issue scoring risk assessment	1	0.6%
Jury sentence	1	0.6%

Larceny (475 Cases)	Number	Percent
Plea Agreement	166	34.9%
No Reason Given	78	16.4%
Offender is sentenced to an alternative punishment to incarceration	73	15.4%
Offender health (mental, physical, emotional, etc.)	55	11.6%
Judicial discretion (time served, other sentence to serve, consistent with codefendant, etc.)	42	8.8%
Facts of the case (not specific)	35	7.3%
Offender cooperated with authorities	27	5.7%
Court circumstances or procedural issues	25	5.3%
Offender has minimal/no prior record	24	5.1%
Offender has good potential for rehabilitation	21	4.4%
Financial obligations (court costs, restitution, child support, etc.)	20	4.2%
Offender has made progress in rehabilitating him/herself	19	4.0%
Sentence recommended by Commonwealth's Attorney	18	3.8%
Offender issues (age of offender, homeless, family issues, etc.)	13	2.7%
Offender needs rehabilitation	11	2.3%
Property was recovered	10	2.1%
Victim's request	9	1.9%
Behavior positive since commission of the offense	7	1.5%
Judge had an issue scoring guidelines factors	6	1.3%
Offender's substance abuse issues	5	1.1%
Jury sentence	4	0.8%
Sentencing guidelines recommendation not appropriate (non-specific)	4	0.8%
Judge rounded guidelines minimum to nearest whole year	3	0.6%
Sentencing guidelines incorrect/missing	3	0.6%
Current offense involves drugs/alcohol (small amount of drugs)	2	0.4%
Guidelines recommendation is too harsh	2	0.4%
Offender not the leader	2	0.4%
Sentence recommended by Probation Officer	2	0.4%
Victim cannot/will not testify	2	0.4%
Victim circumstances (drug dealer, etc.)	2	0.4%
Offender has minimal/no prior record	2	0.4%
Illegible written reason	1	0.2%
Sentenced to the Department of Juvenile Justice	1	0.2%
Split trial/sentence (combination jury and bench trial)	1	0.2%

Appendix 1

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

Reasons for AGGRAVATION

Fraud (97 Cases)	Number	Percent
Plea agreement	27	27.8%
Aggravating circumstances/flagrancy of offense	16	16.5%
No reason given	14	14.4%
Offender has extensive prior record or same type of prior offense	13	13.4%
Offense involved a high degree of planning/violation of trust	11	11.3%
Type of victim (child, etc.)	11	11.3%
Number of violations/counts in the event	9	9.3%
Sentenced to an alternative	7	7.2%
Judicial discretion (time served, shock incarceration, consistent with codefendant, etc.)	6	6.2%
Jury sentence	5	5.2%
Offender has poor rehabilitation potential	4	4.1%
Aggravating court circumstances/proceedings (will resentence if alternative completed, etc.)	3	3.1%
Guidelines recommendation is too low	3	3.1%
Offender failed alternative sanction program	3	3.1%
Victim circumstances (facts of the case, etc.)	3	3.1%
Poor conduct since commission of offense	2	2.1%
Extreme property or monetary loss	2	2.1%
Offender needs rehabilitation offered by jail/prison	2	2.1%
Victim's request	2	2.1%
Offender failed to cooperate with authorities	1	1.0%
Absconded from probation supervision	1	1.0%
New offenses were committed while on probation	1	1.0%
Aggravating facts	1	1.0%
Child present at time of offense	1	1.0%
Sentence recommended by Commonwealth's Attorney	1	1.0%
Number of violations/counts in the event	1	1.0%
Prior record not adequately weighed by guidelines	1	1.0%
Offender issues (age of offender, lacks family support, health, etc.)	1	1.0%
Degree of victim injury (physical, emotional, etc.)	1	1.0%
Offender violated protective order or was stalking	1	1.0%

Larceny (333 Cases)	Number	Percent
Plea agreement	76	23.1%
Aggravating circumstances/flagrancy of offense	60	18.2%
Offender has extensive prior record or same type of prior offense	57	17.3%
No reason given	44	13.4%
Number of violations/counts in the event	30	9.1%
Extreme property or monetary loss	25	7.6%
Offense involved a high degree of planning/violation of trust	24	7.3%
Sentenced to an alternative	24	7.3%
Judicial discretion (time served, shock incarceration, consistent with codefendant, etc.)	12	3.6%
Offender has poor rehabilitation potential	11	3.3%
Aggravating court circumstances/proceedings (will resentence if alternative completed, etc.)	10	3.0%
Offender used a weapon in commission of the offense	10	3.0%
Guidelines recommendation is too low	8	2.4%
Poor conduct since commission of offense	8	2.4%
Type of victim (child, etc.)	8	2.4%
Jury sentence	7	2.1%
Offender's substance abuse issues	6	1.8%
Offender issues (age of offender, lacks family support, health, etc.)	6	1.8%
Sentence recommended by Commonwealth's Attorney	6	1.8%
Prior record not adequately weighed by guidelines	5	1.5%
Failed to follow instructions while on probation	4	1.2%
Financial obligations (court costs, restitution, child support, etc.)	4	1.2%
Sentencing guidelines recommendation is not appropriate	4	1.2%
Victim circumstances (facts of the case, etc.)	4	1.2%
Absconded from probation supervision	3	0.9%
Degree of victim injury (physical, emotional, etc.)	2	0.6%
New offenses were committed while on probation	2	0.6%
Offender needs rehabilitation offered by jail/prison	2	0.6%
True offense behavior was more serious than offenses at conviction	2	0.6%
Illegible written reason	2	0.6%
2nd/subsequent revocation of defendant's probation	1	0.3%
Aggravating facts	1	0.3%
Child present at time of offense	1	0.3%
Current offense involves drugs/alcohol (large amount, etc.)	1	0.3%
Degree of violence toward victim	1	0.3%
Gang related offense	1	0.3%
Mandatory minimum involved in the event	1	0.3%
Never reported to or removed from probation	1	0.3%
Offender failed alternative sanction program	1	0.3%
Used, etc., drugs/alcohol while on probation	1	0.3%
Victim's request	1	0.3%
Violent/disruptive behavior in custody	1	0.3%

Note: Figures indicate the number of times a departure reason was cited. Because multiple reasons may be cited in each case, figures will not total the number of cases in each offense group.

Appendix 1

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

Reasons for MITIGATION

Miscellaneous/Other (62 Cases)

	Number	Percent
Plea Agreement	30	48.4%
Facts of the case (not specific)	12	19.3%
No Reason Given	8	12.9%
Offender cooperated with authorities	8	12.9%
Court circumstances or procedural issues	6	9.7%
Sentence recommended by Commonwealth's Attorney	5	8.1%
Judicial discretion (time served, other sentence to serve, consistent with codefendant, etc.)	3	4.8%
Offender has minimal/no prior record	2	3.2%
Offender's health (mental, physical, emotional, etc.)	2	3.2%
Current offense involves drugs/alcohol (small amount of drugs)	1	1.6%
Jury sentence	1	1.6%
Offender needs rehabilitation	1	1.6%
Offender needs rehabilitation	1	1.6%
Offender not the leader	1	1.6%

Miscellaneous/Person & Property (43 Cases)

	Number	Percent
Plea Agreement	22	51.2%
Facts of the case (not specific)	7	16.2%
Judicial discretion (time served, other sentence to serve, consistent with codefendant, etc.)	4	9.3%
Sentence recommended by Commonwealth's Attorney	4	9.3%
Court circumstances or procedural issues	3	7.0%
Victim's Request	3	7.0%
Financial obligations (court costs, restitution, child support, etc.)	2	4.7%
No Reason Given	2	4.7%
Offender cooperated with authorities	2	4.7%
Offender has minimal/no prior record	2	4.7%
Offender is sentenced to an alternative punishment to incarceration	2	4.7%
Offender has good potential for rehabilitation	1	2.3%
Offender has made progress in rehabilitating him/herself	1	2.3%
Offender issues (age of offender, homeless, family issues, etc.)	1	2.3%
Offender's health (mental, physical, emotional, etc.)	1	2.3%
Sentencing guidelines incorrect/missing	1	2.3%
Sequence of events, impact on recommendation	1	2.3%

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

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

Appendix 1

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

Reasons for AGGRAVATION

Miscellaneous/Other (27 Cases)	Number	Percent
Plea agreement	9	33.3%
Offender has extensive prior record or same type of prior offense	6	22.2%
No reason given	5	18.5%
Aggravating circumstances/flagrancy of offense	3	11.1%
Guidelines recommendation is too low	2	7.4%
Jury sentence	2	7.4%
Number of violations/counts in the event	2	7.4%
Gang related offense	1	3.7%
Never reported to or removed from probation	1	3.7%
Offender failed to cooperate with authorities	1	3.7%
Offender has poor rehabilitation potential	1	3.7%
Poor conduct since commission of offense	1	3.7%
Sentenced to an alternative	1	3.7%
True offense behavior was more serious than offenses at conviction	1	3.7%
Violated sex offender restrictions	1	3.7%
Violent/disruptive behavior in custody	1	3.7%

Miscellaneous/Person & Property (76 Cases)	Number	Percent
Aggravating circumstances/flagrancy of offense	28	36.8%
Plea agreement	21	27.6%
Degree of victim injury (physical, emotional, etc.)	9	11.8%
Guidelines recommendation is too low	8	10.5%
Type of victim (child, etc.)	8	10.5%
Jury sentence	7	9.2%
Child present at time of offense	6	7.9%
No reason given	4	5.3%
Number of violations/counts in the event	4	5.3%
Offender has extensive prior record or same type of prior offense	4	5.3%
Current offense involves drugs/alcohol (large amount, etc.)	3	3.9%
Offender violated protective order or was stalking	2	2.6%
Sentenced to an alternative	2	2.6%
Victim circumstances (facts of the case, etc.)	2	2.6%
Degree of violence toward victim	1	1.3%
Extreme property or monetary loss	1	1.3%
Judicial discretion (time served, shock incarceration, consistent with codefendant, etc.)	1	1.3%
Mandatory minimum involved in the event	1	1.3%
Never reported to or removed from probation	1	1.3%
Offender failed to cooperate with authorities	1	1.3%
Offender has poor rehabilitation potential	1	1.3%
Offense involved a high degree of planning/violation of trust	1	1.3%
On probation for a serious offense	1	1.3%
Poor conduct since commission of offense	1	1.3%
Sentencing guidelines recommendation is not appropriate	1	1.3%
Victim's request	1	1.3%

Note: Figures indicate the number of times a departure reason was cited.
Because multiple reasons may be cited in each case, figures will not total the number of cases in each offense group.

Appendix 1

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

Reasons for MITIGATION

Traffic (124 Cases)	Number	Percent
Plea Agreement	42	33.9%
No Reason Given	21	16.9%
Facts of the case (not specific)	14	11.3%
Offender has minimal/no prior record	13	10.5%
Offender needs rehabilitation	10	8.1%
Court circumstances or procedural issues	10	8.1%
Judicial discretion (time served, other sentence to serve, consistent with codefendant, etc.)	10	8.1%
Offender is sentenced to an alternative punishment to incarceration	9	7.3%
Offender cooperated with authorities	8	6.5%
Offender's health (mental, physical, emotional, etc.)	8	6.5%
Offender has good potential for rehabilitation	7	5.6%
Sentence recommended by Commonwealth's Attorney	7	5.6%
Judge had issue with scoring guidelines factor	3	2.4%
Jury sentence	3	2.4%
Little or no injury/offender did not intend to harm	3	2.4%
Offender issues (age of offender, homeless, family issues, etc.)	3	2.4%
Financial obligations (court costs, restitution, child support, etc.)	2	1.6%
Victim's Request	2	1.6%
Behavior positive since commission of the offense	1	0.8%
Guidelines recommendation is too harsh	1	0.8%
Judge rounded guidelines minimum to nearest whole year	1	0.8%
Offender's substance abuse issues	1	0.8%
Victim cannot/will not testify	1	0.8%
Victim circumstances (drug dealer, etc.)	1	0.8%

Weapons (84 Cases)	Number	Percent
Plea Agreement	32	38.1%
Facts of the case (not specific)	19	22.6%
Offender has minimal/no prior record	16	19.0%
No Reason Given	9	10.7%
Offender's health (mental, physical, emotional, etc.)	8	9.5%
Weapon was not a firearm	7	8.3%
Judicial discretion (time served, other sentence to serve, consistent with codefendant, etc.)	5	6.0%
Court circumstances or procedural issues	4	4.8%
Offender cooperated with authorities	4	4.8%
Behavior positive since commission of the offense	3	3.6%
Offender has good potential for rehabilitation	3	3.6%
Offender issues (age of offender, homeless, family issues, etc.)	3	3.6%
Offender needs rehabilitation	3	3.6%
Sentence recommended by Commonwealth's Attorney	3	3.6%
Victim cannot/will not testify	3	3.6%
Financial obligations (court costs, restitution, child support, etc.)	2	2.4%
Offender has made progress in rehabilitating him/herself	2	2.4%
Offender is sentenced to an alternative punishment to incarceration	2	2.4%
Victim's request	2	2.4%
Guidelines recommendation is too harsh	1	1.2%
Illegible written reason	1	1.2%
Judge had an issue scoring guidelines factors	1	1.2%
Sentenced to the Department of Juvenile Justice	1	1.2%
Victim circumstances (facts of the case, etc.)	1	1.2%

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

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

Appendix 1

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

Reasons for AGGRAVATION

Traffic (187 Cases)	Number	Percent
Aggravating circumstances/flagrancy of offense	43	23.0%
No reason given	31	16.7%
Offender has extensive prior record or same type of prior offense	30	16.1%
Offender's substance abuse issues	24	12.9%
Plea Agreement	23	12.4%
Current offense involves drugs/alcohol (large amount, etc.)	22	11.8%
Offense involved a traffic accident or reckless driving	20	10.8%
Offender has poor rehabilitation potential	17	9.1%
Degree of victim injury (physical, emotional, etc.)	11	5.9%
Jury sentence	11	5.9%
Aggravating court circumstances/proceedings (resentence if alternative completed)	7	3.8%
Guidelines recommendation is too low	7	3.8%
Offender failed alternative sanction program	7	3.8%
Poor conduct since commission of offense	6	3.3%
Number of violations/counts in the event	4	2.2%
Child present at time of offense	3	1.6%
New offenses were committed while on probation	3	1.6%
Judicial discretion (time served, shock incarceration, consistent with codefendant, etc.)	2	1.1%
Offender failed alternative sanction program	2	1.1%
Offender issues (age of offender, lacks family support, health, etc.)	2	1.1%
Prior record not adequately weighed by guidelines	2	1.1%
Sentence recommended by Commonwealth's Attorney	2	1.1%
Sentenced to an alternative	2	1.1%
Sentencing guidelines recommendation is not appropriate	2	1.1%
Mandatory minimum involved in the event	1	0.5%
Offender failed to cooperate with authorities	1	0.5%
Offender needs rehabilitation offered by jail/prison	1	0.5%
On probation for a serious offense	1	0.5%
Sentence recommended by Probation Officer	1	0.5%
True offense behavior was more serious than offenses at conviction	1	0.5%
Used, etc., drugs/alcohol while on probation	1	0.5%
Victim's request	1	0.5%
Weapons (85 Cases)	Number	Percent
Plea Agreement	38	44.7%
Number of violations/counts in the event	27	31.8%
Offender has extensive prior record or same type of prior offense	10	11.8%
Aggravating circumstances/flagrancy of offense	7	8.2%
No reason given	7	8.2%
Judicial discretion (time served, shock incarceration, consistent with codefendant, etc.)	4	4.7%
Never reported to or removed from probation	4	4.7%
Offender used a weapon in commission of the offense	4	4.7%
Guidelines recommendation is too low	3	3.5%
Offender issues (age of offender, lacks family support, health, etc.)	3	3.5%
Jury sentence	2	2.4%
Mandatory minimum involved in the event	2	2.4%
Prior record not adequately weighed by guidelines	2	2.4%
Aggravating court circumstances/proceedings (resentence if alternative completed)	1	1.2%
Current offense involves drugs/alcohol (large amount, etc.)	1	1.2%
Degree of victim injury (physical, emotional, etc.)	1	1.2%
Illegible written reason	1	1.2%
Offender has poor rehabilitation potential	1	1.2%
Offender's substance abuse issues	1	1.2%
Sentence recommended by Commonwealth's Attorney	1	1.2%
Sentencing guidelines recommendation is not appropriate	1	1.2%
Type of victim (child, etc.)	1	1.2%
Violent/disruptive behavior in custody	1	1.2%

Note: Figures indicate the number of times a departure reason was cited. Because multiple reasons may be cited in each case, figures will not total the number of cases in each offense group.

Appendix 2

Judicial Reasons for Departure from Sentencing Guidelines Offenses Against the Person

Reasons for MITIGATION

Assault (213 Cases)

	Number	Percent
Plea Agreement	80	37.6%
Victim's request	37	17.4%
No reason given	31	14.6%
Court circumstances or procedural issues	26	12.2%
Facts of the case (not specific)	22	10.3%
Offender has minimal/no prior record	16	7.5%
Sentence recommended by Commonwealth's Attorney	16	7.5%
Judicial discretion (time served, other sentence to serve, consistent with codefendant, etc.)	15	7.0%
Little or no injury/offender did not intend to harm	15	7.0%
Offender's health (mental, physical, emotional, etc.)	15	7.0%
Victim cannot/will not testify	14	6.6%
Offender is sentenced to an alternative punishment to incarceration	9	4.2%
Sentenced to the Department of Juvenile Justice	8	3.8%
Behavior positive since commission of the offense	7	3.3%
Offender has made progress in rehabilitating him/herself	6	2.8%
Victim circumstances (drug dealer, etc.)	6	2.8%
Victim circumstances (facts of the case, etc.)	6	2.8%
Offender issues (age of offender, homeless, family issues, etc.)	5	2.3%
Victim's role in the offense	5	2.3%
Guidelines recommendation is too harsh	4	1.9%
Offender cooperated with authorities	4	1.9%
Offender has good potential for rehabilitation	4	1.9%
Offender needs rehabilitation	4	1.9%
Current offense involves drugs/alcohol (small amount of drugs)	3	1.4%
Behavior was positive while in custody	2	0.9%
Offender not the leader	2	0.9%
Sentencing guidelines recommendation not appropriate (non-specific)	2	0.9%
Split trial/sentence (combination jury and bench trial)	2	0.9%
Financial obligations (court costs, restitution, child support, etc.)	1	0.5%
Jury sentence	1	0.5%
Offender's substance abuse issues	1	0.5%
Weapon was not a firearm	1	0.5%

Kidnapping (12 Cases)

	Number	Percent
Plea Agreement	7	58.3%
Court circumstances or procedural issues	2	16.7%
Offender cooperated with authorities	2	16.7%
Victim cannot/will not testify	2	16.7%
Behavior positive since commission of the offense	1	8.3%
Jury sentence	1	8.3%
Offender health (mental, physical, emotional, etc.)	1	8.3%
Offender not the leader	1	8.3%
Sentenced to the Department of Juvenile Justice	1	8.3%
Victim request	1	8.3%

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

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

Appendix 2

Judicial Reasons for Departure from Sentencing Guidelines Offenses Against the Person

Reasons for AGGRAVATION

Assault (159 Cases)

	Number	Percent
Aggravating circumstances/flagrancy of offense	56	35.2%
Plea agreement	38	23.9%
Number of violations/counts in the event	17	10.7%
Degree of victim injury (physical, emotional, etc.)	16	10.1%
Jury sentence	16	10.1%
Offender has extensive prior record or same type of prior offense	16	10.1%
Sentencing guidelines not appropriate	13	8.2%
Degree of violence toward victim	12	7.5%
No reason given	12	7.5%
Offender has poor rehabilitation potential	12	7.5%
Type of victim (child, etc.)	9	5.7%
Guidelines recommendation is too low	5	3.1%
Victim's request	4	2.5%
Aggravating court circumstances/proceedings (will resentence if alternative completed, etc.)	3	1.9%
Child present at time of offense	3	1.9%
Current offense involves drugs/alcohol (large amount, etc.)	3	1.9%
On probation for a serious offense	3	1.9%
Sentenced to an alternative	3	1.9%
Gang-related offense	2	1.3%
Offender issues (age of offender, lacks family support, health, etc.)	2	1.3%
Offense involved a high degree of planning/violation of trust	2	1.3%
Sentence recommended by Commonwealth's Attorney	2	1.3%
Illegible written reason	1	0.6%
Judicial discretion (time served, shock incarceration, consistent with codefendant, etc.)	1	0.6%
Offender violated protective order or was stalking	1	0.6%
Victim circumstances (facts of the case, etc.)	1	0.6%

Kidnapping (30 Cases)

	Number	Percent
Aggravating circumstances/flagrancy of offense	11	36.7%
Plea agreement	6	20.0%
Poor conduct since commission of offense	4	13.3%
Victim's request	4	13.3%
Guidelines recommendation is too low	3	10.0%
Jury sentence	3	10.0%
Offender has extensive prior record or same type of prior offense	3	10.0%
Degree of victim injury (physical, emotional, etc.)	2	6.7%
Degree of violence toward victim	2	6.7%
Number of violations/counts in the event	2	6.7%
Offender has poor rehabilitation potential	2	6.7%
Offense involved a high degree of planning/violation of trust	2	6.7%
Type of victim (child, etc.)	2	6.7%
Aggravating court circumstances/proceedings (will resentence if alternative completed, etc.)	1	3.3%
Facts of the case (sex offense)	1	3.3%
Judge rounded guidelines minimum to nearest whole year	1	3.3%
No reason given	1	3.3%
Offender failed to cooperate with authorities	1	3.3%
Offender used a weapon in commission of the offense	1	3.3%
Offender violated protective order or was stalking	1	3.3%
Sentence recommended by Commonwealth's Attorney	1	3.3%
Sentencing guidelines recommendation is not appropriate	1	3.3%

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

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

Appendix 2

Judicial Reasons for Departure from Sentencing Guidelines Offenses Against the Person

Reasons for MITIGATION

Homicide (21 Cases)

	Number	Percent
Plea Agreement	13	61.9%
Offender cooperated with authorities	5	23.8%
Court circumstances or procedural issues	4	19.0%
Jury sentence	3	14.3%
Facts of the case (not specific)	2	9.5%
Sentenced to the Department of Juvenile Justice	2	9.5%
Financial obligations (court costs, restitution, child support, etc.)	1	4.8%
Judicial discretion (time served, other sentence to serve, consistent with codefendant, etc.)	1	4.8%
Offender has minimal/no prior record	1	4.8%
Offender not the leader	1	4.8%
Sentence recommended by Commonwealth's Attorney	1	4.8%
Victim's request	1	4.8%
Victim's role in the offense	1	4.8%

Robbery (132 Cases)

	Number	Percent
Plea Agreement	44	33.3%
Offender cooperated with authorities	23	17.4%
Facts of the case (not specific)	19	14.4%
Judicial discretion (time served, other sentence to serve, consistent with codefendant, etc.)	18	13.6%
Offender has minimal/no prior record	15	11.4%
Court circumstances or procedural issues	13	9.8%
Offender not the leader	11	8.3%
Offender issues (age of offender, homeless, family issues, etc.)	9	6.8%
Sentenced to the Department of Juvenile Justice	9	6.8%
Offender is sentenced to an alternative punishment to incarceration	8	6.1%
No Reason Given	7	5.3%
Offender has good potential for rehabilitation	7	5.3%
Sentence recommended by Commonwealth's Attorney	7	5.3%
Offender's health (mental, physical, emotional, etc.)	6	4.5%
Weapon was not a firearm	6	4.5%
Jury sentence	5	3.8%
Little or no injury/offender did not intend to harm	5	3.8%
Offender's substance abuse issues	4	3.0%
Offender has made progress in rehabilitating him/herself	3	2.3%
Offender needs rehabilitation	3	2.3%
Judge had an issue scoring guidelines factors	2	1.5%
Victim cannot/will not testify	2	1.5%
Victim's role in the offense	2	1.5%
Behavior positive since commission of the offense	1	0.8%
Guidelines recommendation is too harsh	1	0.8%
Illegible written reason	1	0.8%
Judicial discretion (time served, other sentence to serve, consistent with codefendant, etc.)	1	0.8%
Offender has minimal/no prior record	1	0.8%
Property was recovered	1	0.8%
Split trial/sentence (combination jury and bench trial)	1	0.8%
Victim circumstances (facts of the case)	1	0.8%
Victim's request	1	0.8%

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

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

Appendix 2

Judicial Reasons for Departure from Sentencing Guidelines Offenses Against the Person

Reasons for AGGRAVATION

Homicide (50 Cases)

	Number	Percent
Aggravating circumstances/flagrancy of offense	19	38.0%
Jury sentence	14	28.0%
Plea agreement	10	20.0%
Degree of victim injury (physical, emotional, etc.)	7	14.0%
Number of violations/counts in the event	4	8.0%
Offender has poor rehabilitation potential	4	8.0%
Type of victim (child, etc.)	4	8.0%
Offender's substance abuse issues	3	6.0%
No reason given	2	4.0%
Aggravating court circumstances/proceedings (will resentence if alternative completed, etc.)	2	4.0%
Prior record not adequately weighed by guidelines	2	4.0%
Offender failed to cooperate with authorities	1	2.0%
Poor conduct since commission of offense	1	2.0%
Offense involved a traffic accident or reckless driving	1	2.0%
Aggravating facts	1	2.0%
Sentencing guidelines recommendation is not appropriate	1	2.0%
Judicial discretion (time served, shock incarceration, consistent with codefendant, etc.)	1	2.0%
Offender has extensive prior record or same type of prior offense	1	2.0%
Victim's request	1	2.0%
Degree of violence toward victim	1	2.0%

Robbery (51 Cases)

	Number	Percent
Aggravating circumstances/flagrancy of offense	19	37.3%
Jury sentence	7	13.7%
Plea agreement	7	13.7%
Offender has extensive prior record or same type of prior offense	7	13.7%
No reason given	4	7.8%
Number of violations/counts in the event	5	9.8%
Guidelines recommendation is too low	4	7.8%
Offender has poor rehabilitation potential	3	5.9%
Degree of victim injury (physical, emotional, etc.)	3	5.9%
Offender used a weapon in commission of the offense	3	5.9%
Offender's substance abuse issues	2	3.9%
Judicial discretion (time served, shock incarceration, consistent with codefendant, etc.)	2	3.9%
On probation for a serious offense	2	3.9%
Type of victim (child, etc.)	2	3.9%
Victim's request	2	3.9%
New offenses were committed while on probation	1	2.0%
Child present at time of offense	1	2.0%
Offense involved a high degree of planning/violation of trust	1	2.0%
Sentence recommended by Commonwealth's Attorney	1	2.0%
Current offense involves drugs/alcohol (large amount, etc.)	1	2.0%
Prior record not adequately weighed by guidelines	1	2.0%
Offender was the leader	1	2.0%

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

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

Appendix 2

Judicial Reasons for Departure from Sentencing Guidelines Offenses Against the Person

Reasons for MITIGATION

Rape (20 Cases)

	Number	Percent
Plea Agreement	8	40.0%
Victim's request	6	30.0%
Jury sentence	3	15.0%
Offender has minimal/no prior record	3	15.0%
Victim circumstances (facts of case)	3	15.0%
Court Circumstances or Procedural Issues	2	10.0%
Facts of the case (not specific)	2	10.0%
No Reason Given	2	10.0%
Sentence recommended by Commonwealth's Attorney	2	10.0%
Sentenced to the Department of Juvenile Justice	2	10.0%
Victim cannot/will not testify	2	10.0%
Behavior positive since commission of the offense	1	5.0%
Current offense involves drugs/alcohol	1	5.0%
Judicial discretion (time served, other sentence to serve, consistent with codefendant, etc.)	1	5.0%
Little or no injury/offender did not intend to harm	1	5.0%
Offender health (mental, physical, emotional, etc.)	1	5.0%

Other Sexual Assault (24 Cases)

	Number	Percent
Plea Agreement	11	45.8%
Victim cannot/will not testify	5	20.8%
Court Circumstances or Procedural Issues	4	16.7%
Facts of the case (not specific)	4	16.7%
Offender has good potential for rehabilitation	4	16.7%
Offender health (mental, physical, emotional, etc.)	3	12.5%
Judicial discretion (time served, other sentence to serve, consistent with codefendant, etc.)	2	8.3%
Jury sentence	2	8.3%
Offender has minimal/no prior record	2	8.3%
Victim circumstances (facts of case)	2	8.3%
Victim's request	2	8.3%
Financial obligations (court costs, restitution, child support, etc.)	1	4.2%
Guidelines recommendation is too harsh	1	4.2%
Judge had an issue scoring guidelines factors	1	4.2%
Offender issues (age of offender, homeless, family issues, etc.)	1	4.2%
Sentence recommended by Commonwealth Attorney	1	4.2%

Other Sexual Assault/Obscenity (5 Cases)

	Number	Percent
Facts of the case (not specific)	3	60.0%
Offender is sentenced to an alternative punishment to incarceration	1	20.0%
Sentence recommended by Commonwealth's Attorney	1	20.0%
Jury sentence	1	20.0%
Judge had an issue scoring guidelines factors	1	20.0%
Judicial discretion (time served, other sentence to serve, consistent with codefendant, etc.)	1	20.0%
Offender issues (age of offender, homeless, family issues, etc.)	1	20.0%
Plea Agreement	1	20.0%
Offender has minimal/no prior record	1	20.0%
Victim circumstances (facts of the case, etc.)	1	20.0%

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

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

Appendix 2

Judicial Reasons for Departure from Sentencing Guidelines Offenses Against the Person

Reasons for AGGRAVATION

Rape (33 Cases)

	Number	Percent
Type of victim (child, etc.)	13	39.4%
Aggravating circumstances/flagrancy of offense	12	36.4%
Offender has poor rehabilitation potential	8	24.2%
Jury sentence	7	21.2%
Plea agreement	5	15.2%
Facts of the case (sex offense)	4	12.1%
Guidelines recommendation is too low	3	9.1%
No reason given	1	3.0%
Illegible written reason	1	3.0%
Number of violations/counts in the event	1	3.0%
Aggravating court circumstances/proceedings (will resentence if alternative completed, etc.)	1	3.0%
Sentence recommended by Commonwealth's Attorney	1	3.0%
Offender issues (age of offender, lacks family support, health, etc.)	1	3.0%
Offender has poor rehabilitation potential	1	3.0%
Victim circumstances (facts of the case, etc.)	1	3.0%
Degree of victim injury (physical, emotional, etc.)	1	3.0%
Degree of violence toward victim	1	3.0%

Other Sexual Assault (80 Cases)

	Number	Percent
Aggravating circumstances/flagrancy of offense	23	28.8%
Type of victim (child, etc.)	23	28.8%
Guidelines recommendation is too low	14	17.5%
Plea agreement	14	17.5%
Degree of victim injury (physical, emotional, etc.)	11	13.8%
Number of violations/counts in the event	9	11.3%
Offender has poor rehabilitation potential	9	11.3%
Jury sentence	8	10.0%
Victim's request	5	6.3%
No reason given	4	5.0%
Victim circumstances (facts of the case, etc.)	3	3.8%
Sentence recommended by Commonwealth's Attorney	2	2.5%
Aggravating court circumstances/proceedings (will resentence if alternative completed, etc.)	1	1.3%
Facts of the case (sex offense)	1	1.3%
Failed to follow instructions while on probation	1	1.3%
Illegible written reason	1	1.3%
Offender has extensive prior record or same type of prior offense	1	1.3%
Offense involved a high degree of planning/violation of trust	1	1.3%

Other Sexual Assault/Obscenity (31 Cases)

	Number	Percent
Aggravating circumstances/flagrancy of offense	12	40.0%
Plea agreement	12	40.0%
Facts of the case (sex offense)	5	16.7%
Number of violations/counts in the event	4	13.3%
Offender has poor rehabilitation potential	4	13.3%
Offense involved a high degree of planning/violation of trust	2	6.7%
Type of victim (child, etc.)	2	6.7%
Degree of victim injury (physical, emotional, etc.)	1	3.3%
Degree of violence toward victim	1	3.3%
Guidelines recommendation is too low	1	3.3%
Judge had issue with scoring guidelines factor	1	3.3%
Jury sentence	1	3.3%
Sentence recommended by Commonwealth's Attorney	1	3.3%
Victim circumstances (facts of the case, etc.)	1	3.3%

Appendix 3
Sentencing Guidelines Compliance by Judicial Circuit:
Property, Drug, and Miscellaneous Offenses

BURGLARY OF DWELLING

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	52.9 %	29.4 %	17.6 %	17
2	88.9	8.3	2.8	36
3	81.0	0.0	19.0	21
4	81.8	15.2	3.0	33
5	78.6	0.0	21.4	14
6	75.0	8.3	16.7	12
7	63.6	18.2	18.2	11
8	100.0	0.0	0.0	9
9	76.9	7.7	15.4	13
10	42.9	33.3	23.8	21
11	87.5	6.3	6.3	16
12	76.9	0.0	23.1	26
13	61.9	28.6	9.5	21
14	73.3	6.7	20.0	30
15	68.5	11.1	20.4	54
16	48.0	24.0	28.0	25
17	50.0	20.0	30.0	10
18	70.0	10.0	20.0	10
19	56.3	25.0	18.8	16
20	50.0	12.5	37.5	16
21	66.7	25.0	8.3	12
22	75.0	20.8	4.2	24
23	55.6	33.3	11.1	9
24	81.6	7.9	10.5	38
25	67.6	16.2	16.2	37
26	82.9	7.3	9.8	41
27	87.5	0.0	12.5	24
28	75.0	0.0	25.0	12
29	73.3	6.7	20.0	15
30	25.0	50.0	25.0	8
31	38.9	27.8	33.3	18
Total	70.6	13.4	16.0	649

BURGLARY/OTHER

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	60.0 %	20.0 %	20.0 %	10
2	87.5	6.3	6.3	16
3	100.0	0.0	0.0	5
4	76.5	5.9	17.6	17
5	88.9	11.1	0.0	9
6	100.0	0.0	0.0	1
7	100.0	0.0	0.0	1
8	66.7	33.3	0.0	6
9	91.7	0.0	8.3	12
10	66.7	33.3	0.0	9
11	100.0	0.0	0.0	3
12	77.8	0.0	22.2	9
13	72.7	27.3	0.0	11
14	100.0	0.0	0.0	4
15	77.3	4.5	18.2	22
16	90.9	9.1	0.0	11
17	77.8	22.2	0.0	9
18	33.3	66.7	0.0	3
19	80.0	20.0	0.0	10
20	85.7	0.0	14.3	7
21	100.0	0.0	0.0	6
22	88.9	0.0	11.1	9
23	37.5	25.0	37.5	8
24	81.3	18.8	0.0	16
25	84.4	12.5	3.1	32
26	91.7	8.3	0.0	12
27	95.2	4.8	0.0	21
28	54.5	18.2	27.3	11
29	75.0	12.5	12.5	8
30	83.3	16.7	0.0	6
31	100.0	0.0	0.0	8
Total	81.1	11.5	7.4	312

DRUG/OTHER

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	91.3 %	0.0 %	8.7 %	23
2	91.9	2.7	5.4	74
3	100.0	0.0	0.0	6
4	90.0	5.0	5.0	40
5	80.0	5.0	15.0	20
6	91.7	0.0	8.3	12
7	91.7	8.3	0.0	24
8	83.3	16.7	0.0	6
9	92.0	4.0	4.0	25
10	66.7	8.3	25.0	24
11	83.3	0.0	16.7	12
12	86.2	1.7	12.1	58
13	80.0	5.0	15.0	20
14	84.0	0.0	16.0	25
15	70.6	7.8	21.6	51
16	88.2	5.9	5.9	17
17	84.6	0.0	15.4	26
18	85.7	0.0	14.3	7
19	83.9	3.2	12.9	62
20	87.5	4.2	8.3	24
21	85.7	0.0	14.3	7
22	95.8	0.0	4.2	24
23	84.6	7.7	7.7	13
24	87.8	4.9	7.3	41
25	71.8	20.5	7.7	39
26	92.0	4.0	4.0	50
27	80.4	10.9	8.7	46
28	92.9	3.6	3.6	28
29	84.3	10.8	4.9	102
30	90.1	2.8	7.0	71
31	85.7	7.1	7.1	42
Total	85.6	5.5	8.9	1,019

Appendix 3
Sentencing Guidelines Compliance by Judicial Circuit:
Property, Drug, and Miscellaneous Offenses

SCHEDULE I/II DRUGS

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	71.4 %	6.5 %	22.2%	248
2	92.3	4.2	3.5	403
3	81.1	13.3	5.6	143
4	80.3	13.3	6.4	330
5	82.0	4.5	13.5	133
6	74.4	11.1	14.4	90
7	92.8	4.3	2.9	139
8	85.5	8.1	6.5	62
9	81.5	9.7	8.9	124
10	84.8	7.6	7.6	171
11	77.0	16.4	6.6	61
12	89.6	4.5	5.9	512
13	69.1	22.9	8.0	398
14	78.7	6.7	14.6	465
15	72.2	5.5	22.3	605
16	82.8	11.1	6.1	297
17	78.8	8.8	12.4	137
18	82.5	15.8	1.8	57
19	82.9	12.7	4.4	228
20	85.5	3.5	11.0	200
21	78.9	7.9	13.2	114
22	78.8	11.8	9.4	203
23	82.2	10.6	7.2	236
24	86.2	9.5	4.4	275
25	84.2	11.5	4.3	537
26	88.5	5.2	6.3	696
27	92.5	5.0	2.5	439
28	87.1	4.7	8.1	295
29	87.7	5.1	7.1	253
30	89.0	7.9	3.1	191
31	90.1	6.1	3.8	213
Total	83.3	8.3	8.4	8,256

FRAUD

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	88.8 %	5.2 %	6.0 %	116
2	93.3	1.3	5.3	75
3	83.9	16.1	0.0	31
4	91.2	5.9	2.9	68
5	79.7	11.9	8.5	59
6	79.2	8.3	12.5	24
7	100.0	0.0	0.0	15
8	71.4	28.6	0.0	21
9	84.3	3.9	11.8	51
10	87.8	10.2	2.0	49
11	87.1	9.7	3.2	31
12	90.4	4.8	4.8	83
13	56.3	40.6	3.1	32
14	79.6	9.3	11.1	54
15	82.3	8.6	9.1	186
16	87.0	10.1	2.9	69
17	86.6	10.4	3.0	67
18	92.3	0.0	7.7	26
19	85.6	10.3	4.1	97
20	90.0	5.0	5.0	40
21	88.9	11.1	0.0	36
22	84.4	11.1	4.4	45
23	70.1	22.4	7.5	67
24	86.8	9.2	3.9	76
25	90.2	8.7	1.1	92
26	89.0	7.7	3.3	91
27	95.7	1.4	2.9	69
28	83.3	8.3	8.3	48
29	73.6	13.2	13.2	53
30	79.3	17.2	3.4	29
31	95.8	4.2	0.0	48
Total	85.6	9.2	5.2	1,848

LARCENY

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	78.0%	8.9 %	13.1 %	259
2	86.3	6.6	7.1	241
3	79.5	16.7	3.8	78
4	84.4	9.9	5.7	212
5	82.9	8.5	8.5	117
6	88.9	8.3	2.8	36
7	80.2	15.1	4.8	126
8	84.5	12.7	2.8	71
9	88.5	5.1	6.4	156
10	85.6	4.8	9.6	125
11	87.9	10.3	1.7	58
12	87.3	7.8	4.9	371
13	73.1	20.5	6.4	78
14	79.7	6.4	13.9	202
15	82.5	8.6	9.0	491
16	80.1	13.7	6.2	161
17	81.9	10.7	7.4	149
18	75.0	15.9	9.1	44
19	78.6	13.4	8.0	224
20	90.5	1.6	7.9	126
21	81.8	12.1	6.1	99
22	84.1	8.4	7.5	107
23	78.6	17.5	3.9	280
24	87.9	7.4	4.7	190
25	83.3	13.2	3.4	174
26	93.2	3.6	3.3	337
27	90.0	7.1	2.9	170
28	91.0	6.6	2.5	122
29	87.3	7.2	5.4	166
30	89.6	7.5	2.8	106
31	91.0	4.1	4.9	122
Total	84.5	9.1	6.4	5,198

* The court could not be determined for one event

Appendix 3
Sentencing Guidelines Compliance by Judicial Circuit:
Property, Drug, and Miscellaneous Offenses

TRAFFIC				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	68.8 %	11.7 %	19.5 %	77
2	81.6	6.8	11.7	103
3	80.0	13.3	6.7	15
4	92.6	5.6	1.9	54
5	74.5	5.9	19.6	51
6	70.0	10.0	20.0	30
7	84.6	15.4	0.0	13
8	77.8	14.8	7.4	27
9	77.6	8.6	13.8	58
10	82.6	8.7	8.7	46
11	84.2	10.5	5.3	19
12	85.7	9.1	5.2	77
13	80.8	19.2	0.0	26
14	55.6	0.0	44.4	36
15	77.2	7.0	15.8	114
16	85.1	6.9	7.9	101
17	61.5	3.8	34.6	26
18	78.6	0.0	21.4	14
19	79.4	8.8	11.8	68
20	77.4	1.9	20.8	53
21	89.5	5.3	5.3	19
22	75.6	14.6	9.8	41
23	86.8	9.4	3.8	53
24	85.9	7.7	6.4	78
25	77.4	12.9	9.7	62
26	82.6	5.4	12.0	92
27	87.8	9.8	2.4	41
28	71.0	9.7	19.4	31
29	71.4	7.1	21.4	14
30	70.4	14.8	14.8	27
31	87.0	2.9	10.1	69
Total	79.7	8.1	12.2	1,535

MISCELLANEOUS/OTHER				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	85.7 %	14.3 %	0.0 %	7
2	93.3	6.7	0.0	15
3	66.7	0.0	33.3	3
4	96.2	3.8	0.0	26
5	87.5	0.0	12.5	8
6	60.0	33.3	6.7	15
7	87.5	8.3	4.2	24
8	85.7	0.0	14.3	7
9	100.0	0.0	0.0	5
10	86.7	6.7	6.7	15
11	76.5	17.6	5.9	17
12	34.6	61.5	3.8	26
13	78.8	18.2	3.0	33
14	83.3	8.3	8.3	12
15	76.3	7.9	15.8	38
16	75.0	10.0	15.0	20
17	75.0	25.0	0.0	4
18	100.0	0.0	0.0	2
19	50.0	25.0	25.0	4
20	90.0	0.0	10.0	10
21	66.7	33.3	0.0	3
22	77.8	11.1	11.1	9
23	64.3	35.7	0.0	14
24	92.3	7.7	0.0	13
25	80.6	19.4	0.0	31
26	90.0	0.0	10.0	10
27	100.0	0.0	0.0	5
28	83.3	0.0	16.7	6
29	80.0	20.0	0.0	5
30	69.2	23.1	7.7	13
31	84.6	0.0	15.4	13
Total	78.5	15.0	6.5	413

MISCELLANEOUS/P&P				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	70.0 %	10.0 %	20.0 %	10
2	86.7	0.0	13.3	15
3	100.0	0.0	0.0	2
4	88.9	0.0	11.1	18
5	58.3	25.0	16.7	12
6	83.3	0.0	16.7	6
7	80.0	20.0	0.0	10
8	57.1	28.6	14.3	7
9	75.0	0.0	25.0	12
10	66.7	5.6	27.8	18
11	90.9	0.0	9.1	11
12	87.5	6.3	6.3	16
13	83.3	0.0	16.7	6
14	80.0	0.0	20.0	10
15	69.7	6.1	24.2	33
16	59.3	25.9	14.8	27
17	57.1	28.6	14.3	7
18	50.0	0.0	50.0	4
19	54.5	9.1	36.4	11
20	100.0	0.0	0.0	5
21	100.0	0.0	0.0	6
22	60.0	20.0	20.0	10
23	80.0	13.3	6.7	15
24	87.1	0.0	12.9	31
25	57.9	21.1	21.1	19
26	86.1	5.6	8.3	36
27	87.5	3.1	9.4	32
28	52.9	29.4	17.6	17
29	62.1	6.9	31.0	29
30	63.6	18.2	18.2	11
31	71.4	7.1	21.4	14
Total	74.1	9.3	16.5	460

Appendix 3
Sentencing Guidelines Compliance by Judicial Circuit:
Property, Drug, and Miscellaneous Offenses

WEAPONS

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	63.6 %	13.6 %	22.7 %	22
2	86.0	6.0	8.0	50
3	58.3	25.0	16.7	12
4	85.0	7.5	7.5	40
5	72.4	13.8	13.8	29
6	86.7	13.3	0.0	15
7	81.3	12.5	6.3	16
8	80.0	0.0	20.0	5
9	78.9	10.5	10.5	19
10	60.6	9.1	30.3	33
11	78.6	21.4	0.0	14
12	80.0	5.0	15.0	20
13	67.3	9.6	23.1	52
14	85.7	7.1	7.1	28
15	78.7	17.0	4.3	47
16	67.7	16.1	16.1	31
17	33.3	66.7	0.0	6
18	75.0	25.0	0.0	4
19	78.6	14.3	7.1	14
20	75.0	8.3	16.7	12
21	66.7	33.3	0.0	15
22	60.0	25.0	15.0	20
23	81.5	14.8	3.7	27
24	75.0	8.3	16.7	36
25	80.8	7.7	11.5	26
26	81.5	7.4	11.1	27
27	85.7	7.1	7.1	28
28	85.0	5.0	10.0	20
29	87.5	6.3	6.3	16
30	81.8	9.1	9.1	22
31	85.7	0.0	14.3	14
Total	76.6	11.7	11.8	721

* The court could not be determined for one event

Appendix 4
Sentencing Guidelines Compliance by Judicial Circuit:
Offenses Against the Person

ASSAULT				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	73.9%	15.2 %	10.9 %	46
2	84.6	3.8	11.5	78
3	80.8	11.5	7.7	26
4	82.8	14.9	2.3	87
5	78.1	9.4	12.5	32
6	75.0	9.4	15.6	32
7	70.2	17.5	12.3	57
8	72.7	18.2	9.1	11
9	71.8	12.8	15.4	39
10	70.8	21.5	7.7	65
11	73.7	23.7	2.6	38
12	81.6	10.2	8.2	49
13	70.3	23.0	6.8	74
14	91.5	0.0	8.5	47
15	67.6	17.6	14.7	102
16	81.9	8.4	9.6	83
17	58.8	17.6	23.5	17
18	65.2	17.4	17.4	23
19	61.4	11.4	27.3	44
20	75.0	9.1	15.9	44
21	70.6	23.5	5.9	17
22	76.6	12.8	10.6	47
23	77.4	14.5	8.1	62
24	75.6	13.3	11.1	90
25	76.8	19.5	3.7	82
26	87.5	7.8	4.7	64
27	80.0	13.3	6.7	60
28	78.6	14.3	7.1	42
29	71.9	12.5	15.6	32
30	69.7	12.1	18.2	33
31	80.0	10.0	10.0	40
Total	76.2	13.6	10.2	1564

KIDNAPPING				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	50.0%	0.0%	50.0%	2
2	63.6	9.1	27.3	11
3	0.0	100	0.0	1
4	100	0.0	0.0	3
5	50.0	0.0	50.0	4
6	100	0.0	0.0	1
7	80.0	0.0	20.0	5
8	100	0.0	0.0	1
9	66.7	0.0	33.3	6
10	100	0.0	0.0	9
11	0.0	0.0	100	1
12	100	0.0	0.0	2
13	80.0	20.0	0.0	5
14	50.0	0.0	50.0	4
15	60.0	20.0	20.0	10
16	80.0	10.0	10.0	10
17	50.0	0.0	50.0	4
18	50.0	0.0	50.0	2
19	40.0	20.0	40.0	5
20	100	0.0	0.0	5
21	50.0	50.0	0.0	2
22	100	0.0	0.0	2
23	50.0	0.0	50.0	2
24	60.0	0.0	40.0	5
25	55.6	22.2	22.2	9
26	50.0	50.0	0.0	2
27	100	0.0	0.0	2
28	0.0	0.0	100	1
29	50.0	0.0	50.0	2
30	100	0.0	0.0	1
31	42.9	14.3	42.9	7
Total	66.7	9.5	23.8	126

HOMICIDE				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	0.0%	0.0%	0.0%	0
2	61.5	7.7	30.8	13
3	33.3	41.7	25.0	12
4	100	0.0	0.0	12
5	100	0.0	0.0	7
6	33.3	0.0	66.7	3
7	66.7	16.7	16.7	6
8	50.0	0.0	50.0	6
9	33.3	0.0	66.7	3
10	42.9	14.3	42.9	7
11	87.5	12.5	0.0	8
12	77.8	11.1	11.1	9
13	73.7	10.5	15.8	19
14	75.0	8.3	16.7	12
15	50.0	8.3	41.7	12
16	87.5	0.0	12.5	8
17	50.0	0.0	50.0	2
18	66.7	0.0	33.3	3
19	50.0	10.0	40.0	10
20	50.0	0.0	50.0	8
21	75.0	25.0	0.0	4
22	70.0	10.0	20.0	10
23	50.0	33.3	16.7	6
24	60.0	0.0	40.0	5
25	71.4	14.3	14.3	7
26	50.0	0.0	50.0	6
27	100	0.0	0.0	3
28	100	0.0	0.0	1
29	100	0.0	0.0	1
30	75.0	25.0	0.0	4
31	88.9	0.0	11.1	9
Total	67.1	9.7	23.1	216

* The court could not be determined for one event

Appendix 4
Sentencing Guidelines Compliance by Judicial Circuit:
Offenses Against the Person

ROBBERY				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	55.6%	22.2%	22.2%	18
2	64.5	29.0	6.5	62
3	83.3	16.7	0.0	12
4	71.0	25.8	3.2	31
5	62.5	12.5	25.0	8
6	66.7	25.0	8.3	12
7	73.3	6.7	20.0	15
8	61.5	30.8	7.7	13
9	60.0	26.7	13.3	15
10	66.7	16.7	16.7	6
11	0.0	100	0.0	1
12	86.4	0.0	13.6	22
13	49.1	47.4	3.5	57
14	75.0	17.3	7.7	52
15	65.4	19.2	15.4	26
16	66.7	16.7	16.7	6
17	40.0	20.0	40.0	10
18	47.1	52.9	0.0	17
19	50.0	44.4	5.6	18
20	66.7	25.0	8.3	12
21	25.0	50.0	25.0	4
22	57.1	14.3	28.6	14
23	73.7	21.1	5.3	19
24	78.3	21.7	0.0	23
25	54.5	27.3	18.2	11
26	70.0	20.0	10.0	10
27	87.5	0.0	12.5	8
28	100	0.0	0.0	4
29	60.0	0.0	40.0	5
30	0.0	100	0.0	2
31	90.9	9.1	0.0	11
Total	65.1	25.2	9.7	524

RAPE				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	60.0%	20.0%	20.0%	5
2	75.0	0.0	25.0	8
3	100	0.0	0.0	4
4	100	0.0	0.0	8
5	100	0.0	0.0	2
6	50.0	50.0	0.0	4
7	66.7	0.0	33.3	3
8	50.0	0.0	50.0	2
9	83.3	16.7	0.0	6
10	75.0	12.5	12.5	8
11	75.0	0.0	25.0	4
12	72.7	9.1	18.2	11
13	100	0.0	0.0	2
14	75.0	25.0	0.0	4
15	75.0	15.0	10.0	20
16	40.0	0.0	60.0	5
17	33.3	0.0	66.7	3
18	0.0	100	0.0	1
19	40.0	10.0	50.0	10
20	50.0	0.0	50.0	2
21	66.7	33.3	0.0	3
22	83.3	0.0	16.7	6
23	60.0	20.0	20.0	5
24	75.0	12.5	12.5	8
25	50.0	16.7	33.3	6
26	85.7	14.3	0.0	7
27	80.0	0.0	20.0	5
28	100	0.0	0.0	1
29	42.9	28.6	28.6	7
30	0.0	100	0.0	1
31	72.7	0.0	27.3	11
Total	69.2	11.6	19.2	172

OTHER SEXUAL ASSAULT				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	83.3%	16.7%	0.0%	6
2	73.3	6.7	20.0	15
3	66.7	0.0	33.3	6
4	78.6	14.3	7.1	14
5	60.0	20.0	20.0	5
6	100	0.0	0.0	1
7	50.0	0.0	50.0	4
8	66.7	0.0	33.3	6
9	75.0	0.0	25.0	8
10	81.8	18.2	0.0	11
11	75.0	25.0	0.0	4
12	57.1	21.4	21.4	14
13	40.0	20.0	40.0	5
14	33.3	16.7	50.0	6
15	63.6	0.0	36.4	11
16	70.0	10.0	20.0	10
17	33.3	0.0	66.7	3
18	100	0.0	0.0	2
19	50.0	4.2	45.8	24
20	63.6	0.0	36.4	11
21	100	0.0	0.0	2
22	62.5	0.0	37.5	8
23	25.0	12.5	62.5	8
24	68.8	0.0	31.3	16
25	70.6	23.5	5.9	17
26	70.6	11.8	17.6	17
27	69.2	7.7	23.1	13
28	72.7	0.0	27.3	11
29	54.5	0.0	45.5	11
30	71.4	0.0	28.6	7
31	78.1	3.1	18.8	32
Total	66.2	7.8	26.0	308

Appendix 4
Sentencing Guidelines Compliance by Judicial Circuit:
Offenses Against the Person

OBSCENITY				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	100 %	0.0%	0.0%	1
2	100	0.0	0.0	3
3	0.0	0.0	0.0	0
4	0.0	100	0.0	1
5	100	0.0	0.0	2
6	0.0	0.0	0.0	0
7	0.0	0.0	0.0	0
8	0.0	0.0	100	1
9	100	0.0	0.0	3
10	100	0.0	0.0	2
11	100	0.0	0.0	4
12	100	0.0	0.0	3
13	0.0	0.0	0.0	0
14	0.0	0.0	100	1
15	70.6	5.9	23.5	17
16	62.5	0.0	37.5	8
17	100	0.0	0.0	2
18	100	0.0	0.0	1
19	73.7	0.0	26.3	19
20	100	0.0	0.0	13
21	66.7	0.0	33.3	3
22	50.0	0.0	50.0	8
23	0.0	100	0.0	1
24	72.7	0.0	27.3	11
25	75.0	0.0	25.0	8
26	84.6	7.7	7.7	13
27	80.0	0.0	20.0	5
28	50.0	0.0	50.0	2
29	75.0	25.0	0.0	4
30	50.0	0.0	50.0	4
31	84.6	0.0	15.4	13
Total	76.5	3.3	20.3	153

Appendix 5 Sentencing Guidelines Received by Jurisdiction

COUNTIES				CITIES	
ACCOMACK	66	LANCASTER	27	ALEXANDRIA	222
ALBEMARLE	204	LEE	150	BEDFORD	1
ALLEGHANY	160	LOUDOUN	390	BRISTOL	203
AMELIA	45	LOUISA	88	BUENA VISTA	42
AMHERST	108	LUNENBURG	36	CHARLOTTESVILLE	139
APPOMATTOX	61	MADISON	41	CHESAPEAKE	886
ARLINGTON	489	MATHEWS	21	CLIFTON FORGE	1
AUGUSTA	258	MECKLENBURG	153	COLONIAL HEIGHTS	146
BATH	24	MIDDLESEX	26	DANVILLE	261
BEDFORD	167	MONTGOMERY	285	FAIRFAX CITY	2
BLAND	16	NELSON	58	FREDERICKSBURG	252
BOTETOURT	128	NEW KENT	46	HAMPTON	274
BRUNSWICK	15	NORTHAMPTON	41	HARRISONBURG	229
BUCHANAN	102	NORTHUMBERLAND	45	HOPEWELL	83
BUCKINGHAM	65	NOTTOWAY	64	LEXINGTON	3
CAMPBELL	184	ORANGE	112	LYNCHBURG	446
CAROLINE	108	PAGE	153	MARTINSVILLE	103
CARROLL	229	PATRICK	61	NEWPORT NEWS	480
CHARLES CITY	10	PITTSYLVANIA	168	NORFOLK	1,021
CHARLOTTE	41	POWHATAN	47	NORTON	1
CHESTERFIELD	1,176	PRINCE EDWARD	106	PETERSBURG	86
CLARKE	47	PRINCE GEORGE	66	POQUOSON	2
CRAIG	1	PRINCE WILLIAM	692	PORTSMOUTH	387
CULPEPER	216	PULASKI	178	RADFORD	71
CUMBERLAND	29	RAPPAHANNOCK	9	RICHMOND CITY	854
DICKENSON	81	RICHMOND COUNTY	18	ROANOKE CITY	475
DINWIDDIE	71	ROANOKE COUNTY	260	SALEM	111
ESSEX	31	ROCKBRIDGE	197	SOUTH BOSTON	1
FAIRFAX COUNTY	935	ROCKINGHAM	295	STAUNTON	216
FAUQUIER	196	RUSSELL	191	SUFFOLK	301
FLOYD	49	SCOTT	178	VIRGINIA BEACH	1,143
FLUVANNA	43	SHENANDOAH	36	WAYNESBORO	183
FRANKLIN COUNTY	164	SMYTH	210	WILLIAMSBURG	76
FREDERICK	292	SOUTHAMPTON	132	WINCHESTER	279
GILES	99	SPOTSYLVANIA	445	MISSING	2
GLOUCESTER	134	STAFFORD	470	Total	24,397
GOOCHLAND	26	SURRY	4		
GRAYSON	99	SUSSEX	40		
GREENE	50	TAZEWELL	382		
GREENSVILLE	98	WARREN	202		
HALIFAX	153	WASHINGTON	247		
HANOVER	385	WESTMORELAND	69		
HENRICO	1,019	WISE	251		
HENRY	199	WYTHE	215		
HIGHLAND	9	YORK	143		
ISLE OF WIGHT	87				
JAMES CITY	73				
KING & QUEEN	27				
KING GEORGE	59				
KING WILLIAM	39				