



VIRGINIA CRIMINAL SENTENCING COMMISSION



Judicial Modification of Jury Sentences

April 3, 2017

Requirements Related to Modification of Jury Sentences

§ 19.2-295(B)

§ 19.2-295. Ascertainment of punishment.

- A. Within the limits prescribed by law, the term of confinement in the state correctional facility or in jail and the amount of fine, if any, of a person convicted of a criminal offense, shall be ascertained by the jury, or by the court in cases tried without a jury.

- B. In any case in which a jury has fixed a sentence as provided in this chapter and the sentence is modified by the court pursuant to the authority contained within this chapter, the court shall file with the record of the case a written explanation of such modification including the cause therefor.*

~ Effective July 1, 2007



Requirements Related to Modification of Jury Sentences

§ 19.2-303

§ 19.2-303. Suspension or modification of sentence; probation; taking of fingerprints and blood, saliva, or tissue sample as condition of probation.

After conviction, whether with or without jury, the court may suspend imposition of sentence or suspend the sentence in whole or part and in addition may place the defendant on probation under such conditions as the court shall determine...

If, however, the court suspends or modifies any sentence fixed by a jury pursuant to § 19.2-295, the court shall file a statement of the reasons for the suspension or modification in the same manner as the statement required pursuant to subsection B of § 19.2-298.01...

~ Effective July 1, 2007



Requirements Related to Modification of Jury Sentences

§ 19.2-298.01(B)

§ 19.2-298.01. Use of discretionary sentencing guidelines.

- B. In any felony case, other than Class 1 felonies, in which the court imposes a sentence which is either greater or less than that indicated by the discretionary sentencing guidelines, the court shall file with the record of the case a written explanation of such departure.**



Requirements Related to Modification of Jury Sentences

§ 19.2-298.01(E)

§ 19.2-298.01. Use of discretionary sentencing guidelines.

- E. Following the entry of a final order of conviction and sentence in a felony case, the clerk of the circuit court in which the case was tried shall cause a copy of such order or orders, the original of the discretionary sentencing guidelines worksheets prepared in the case, and a copy of any departure explanation prepared pursuant to subsection B to be forwarded to the Virginia Criminal Sentencing Commission within five days.**

Similarly, the statement required by §§ 19.2-295 and 19.2-303 and regarding departure from or modification of a sentence fixed by a jury shall be forwarded to the Virginia Criminal Sentencing Commission.

~ Effective July 1, 2007



It is uncommon for circuit court judges to modify jury-recommended sentences.

**Felony Sentencing Events Adjudicated by Juries and
Judicial Modification of Jury-Recommended Sentences
FY2012-FY2016**

Fiscal Year	Felony Sentencing Events Adjudicated by Juries	Judge Did Not Modify Jury-Recommended Sentence	Judge Modified Jury-Recommended Sentence
2012	271	78.6%	21.4%
2013	276	84.4%	15.6%
2014	290	82.1%	17.9%
2015	248	80.2%	19.8%
2016	268	85.1%	14.9%
Total	1,353	82.1%	17.9%



242 Sentencing Events



Based on available data, it appears there is some confusion about the statutory requirements.

**Reasons for Judicial Modification
of Jury-Recommended Sentence
Received by the Commission
FY2012-FY2016
(242 Sentencing Events)**

	Percent
No Reason Written	58.7%
Written Reason Only Cites Jury Trial/ Jury Recommendation	12.0%
Other Type of Reason Written (e.g., Upward Departure from Guidelines)	8.7%
Reason for Jury Modification Written	18.6%
Reason is Unclear	1.2%
Additional Information Needed	0.8%
TOTAL	100.0%

In two-thirds of these events, the final sentence was within the guidelines range.



Potential Action Items

- **Ensure all judges are aware of the requirement to file a written explanation when they modify a jury-recommended sentence (§ 19.2-295 / § 19.2-303).**
 - **Continue to emphasize the requirements in pre-bench training.**
 - **Recommend OES communicate requirements during the 2017 statewide judicial conference.**
 - **Recommend OES consider including requirements in the letter to circuit court judges regarding guidelines departure reasons.**
 - **Letter was requested by the Chairman of the House Courts of Justice Committee.**



Potential Action Items

- **Ensure all court clerks are aware of the requirement to forward the explanations filed by judges to the Commission – whether written on the guidelines form or on a separate page (§ 19.2-298.01).**
 - **Letter from the Commission**
- **Send a letter to the judge whenever an explanation required by § 19.2-295 / § 19.2-303 is not received.**
- **Modify the guidelines cover sheet to clarify that it can be used to file the explanations required by § 19.2-295 / § 19.2-303.**



◆ Final Disposition Fill In After Sentence Has Been Pronounced

◆ SENTENCE _____

Total Time Imposed Before Suspension Life Sentence +

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

Total Effective Time to Serve Life Sentence +

<input type="text"/>	<input type="text"/>	<input type="text"/>
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 Sentenced to Time Served

Post Release

Post Release Term § 18.2-10

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

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

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

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

◆ REASON FOR DEPARTURE AND/OR MODIFICATION OF JURY SENTENCE _____

Must be completed pursuant to § 19.2-298.01(B) and/or § 19.2-295 / § 19.2-303

◆ SENTENCING DATE

	Month	-		Day	-			Year
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_____ Judge's Signature

◆ SENTENCING DATE

	Month	-		Day	-			Year
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_____ Judge's Signature

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

After sentencing, send to:

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

