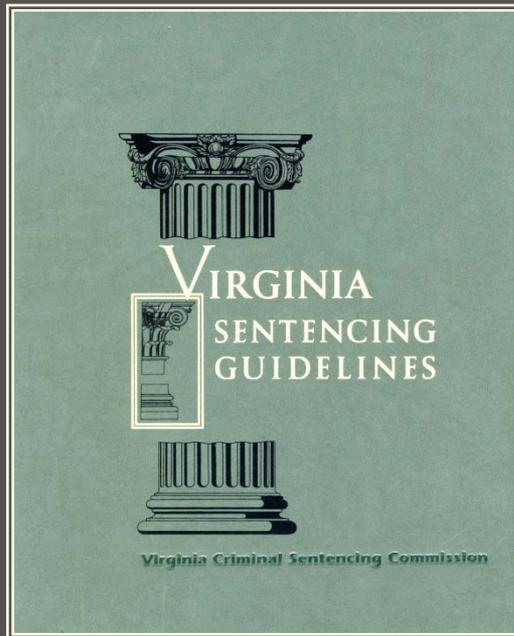




VIRGINIA CRIMINAL SENTENCING COMMISSION



Possible Recommendations for Guidelines Revisions

November 1, 2017

Modifications to the Sentencing Guidelines

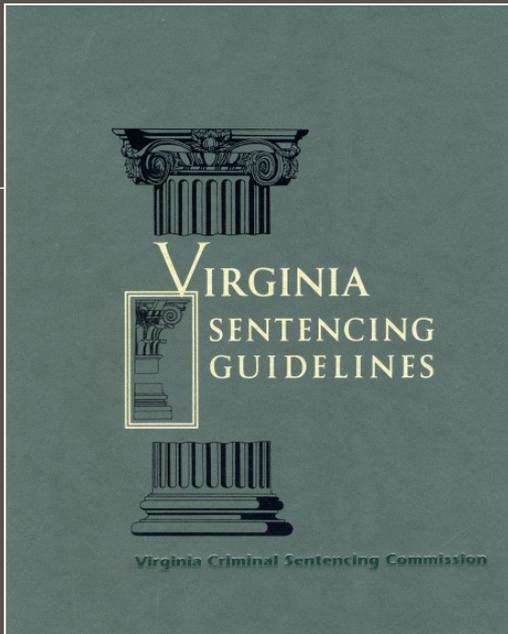
- **The Commission closely monitors the sentencing guidelines system and, each year, deliberates upon possible modifications to the guidelines.**
- **Under § 17.1-806 of the *Code of Virginia*, any modifications adopted by the Commission must be presented in its annual report, due to the General Assembly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



*1 & 2 are Companion
Recommendations*

Proposed Recommendation 1:

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



Proposals for New Guidelines Offenses

- **Proposals reflect the best fit for the historical data.**
- **Proposals are designed to closely match the historical rate of incarceration in prison and jail.**
- **Current guidelines worksheets serve as the base for scoring historical cases, but the points assigned to those factors may be different for the new offense and new factors may be added.**



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

58 Sentencing Events

Disposition	Percent	Median Sentence
No Incarceration	43.1%	NA
Incarceration up to 6 Months	37.9%	3.7 Months
Incarceration of More than 6 Months	19.0%	1.5 Years

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

Section A - Proposed

Weapon/Firearm Section A

Offender Name: _____

◆ Primary Offense _____

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

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

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

Primary offense: **or unlawfully**

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

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

Maximum Penalty (years)	Points
5 - 7	1
8 - 18	2
19 - 28	3
29 - 38	4
39 or more	5

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

Primary offense: **or unlawfully**

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

Maximum Penalty (years)	Points
Less than 1	0
1 - 7	3
8 - 18	4
19 - 28	5
29 - 38	6
39 or more	7

Primary offense: All other offenses

Maximum Penalty (years)	Points
Less than 1	0
1 - 7	1
8 - 18	2
19 - 28	3
29 - 38	4
39 or more	5

0	
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◆ Victim Injury

Threatened, emotional or physical.....1
 Life threatening2

0	
0	

Score unlawfully discharge firearm, etc., in/at occupied building the same as malicious discharge

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

0	
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◆ Prior Convictions/Adjudications Total the maximum penalties for the 5 most recent and serious prior record events

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

0	
---	--

◆ Prior Criminal Misdemeanor Convictions

Primary offense:

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

Number of Counts	Points
1 - 6	1
7 or more	2

Primary offense: All other offenses

Do Not Score

0	
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◆ Prior Incarcerations/Commitments

If YES, add 4

0	
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◆ Legally Restrained at Time of Offense

Primary offense: **or unlawfully**

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

Points	
None	0
Other than post-incarceration supervision	3
Post-incarceration supervision (supervision after incarceration)	6

Primary offense: All other offenses

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

0	
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◆ Type of Additional Offense(s)

Primary offense: **or unlawfully**

A. Maliciously discharge firearm, etc., in/at occupied building
 Additional offense with VCC prefix of WPN or ASL..... 2



If total is 9 or more, go to Section C.

Section B - Proposed

Weapon/Firearm ⇄ Section B

Offender Name: _____

◆ **Primary Offense** _____

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

Score
▼

0	
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H. Unlawfully discharge firearm, etc., in/at occupied building
1 count 8

- 10 - 19.....3
- 20 - 29.....4
- 30 - 39.....5
- 40 or more.....6

▼

0	
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◆ **Additional Offenses** Total the maximum penalties for additional offenses, including counts _____

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

▼

0	
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◆ **Prior Criminal Misdemeanor Convictions** _____

Primary offense E: Carry concealed weapon, 2nd/3rd offense

Number of Counts	Points
1 - 2	1
3.....	2
4 or more.....	3

Primary offense: All other offenses _____

Do Not Score

▼

0	
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◆ **Victim Injury** _____

Primary offense **or unlawfully**
 A. Maliciously discharge firearm, etc., in/at occupied building

	Points
Threatened, emotional or physical	3
Life threatening.....	4

Primary offense: All other offenses _____

	Points
Threatened, emotional or physical	2
Life threatening.....	3

▼

0	
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◆ **Legally Restrained at Time of Offense** _____

If YES, add 1 →

0	
---	--

Score unlawfully discharge firearm, etc., in/at occupied building the same as malicious discharge →

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

Section C - Proposed

Weapon/Firearm ⇄ Section C

Offender Name: _____

◆ **Primary Offense** _____

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

A. Maliciously discharge firearm, etc. in/at occupied building			
Attempted or conspired: 1 count.....	(32)	(16)	(8)
Completed: 1 count.....	80	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

Score

▼

0		
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Prior Record Classification

Category I Category II Other

H. Unlawfully discharge firearm, etc., in/at occupied building

Attempted or conspired: 1 count (32) ... (16) (8)

Completed: 1 count 48 24 12

Threatened or emotional.....	2
Physical.....	4
Life threatening.....	5

0	0	
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◆ **Prior Convictions/Adjudications** Assign points to the 5 most recent and serious prior

Primary offense:		Primary offense: All other offenses	
A. Maliciously discharge firearm, etc., in/at occupied building	Maximum Penalty (years)	Maximum Penalty (years)	
Less than 20.....	0	Less than 20.....	0
20, 30, 40 or more.....	5	20, 30, 40 or more.....	1

Including unlawfully discharge firearm, etc., in/at occupied bldg.

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

Primary offense:		Primary offense: All other offenses	
A. Maliciously discharge firearm, etc., in/at occupied building	Number of Counts	Number of Counts	
1.....	5	1.....	1
2.....	6	2.....	2
3.....	7	3.....	3
4.....	8	4.....	4
5 or more.....	9	5 or more.....	5

Including unlawfully discharge firearm, etc., in/at occupied bldg.

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

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

0		
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Actual versus Proposed Sentences for Unlawfully Discharging a Firearm/Missile in/at an Occupied Building (§ 18.2-279) FY2013-FY2017

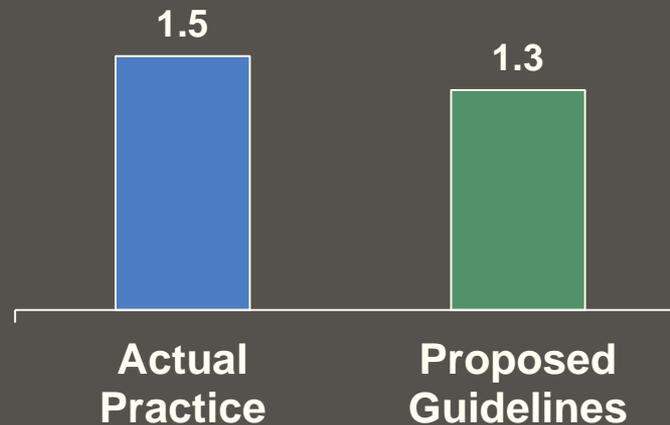


Proposed guidelines are aligned
with the actual prison
incarceration rate

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

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

Median Sentence (in years)

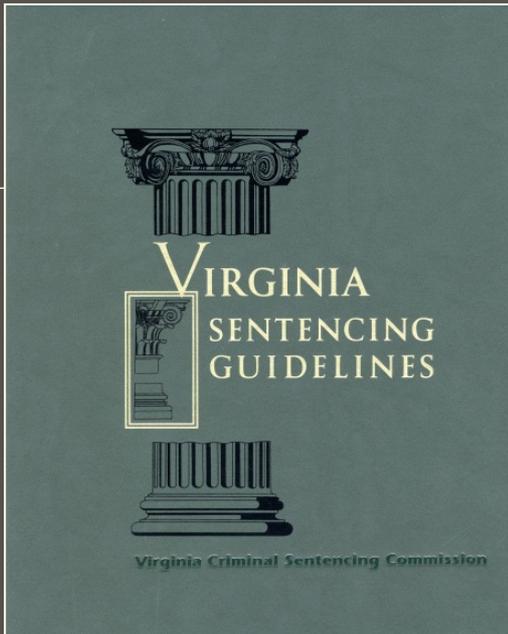


Proposed Recommendation 1

*1 & 2 are Companion
Recommendations*

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





Proposed Recommendation 2:

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

**Compliance with Guidelines for
Maliciously Discharging a Firearm/Missile
in/at an Occupied Building (§ 18.2-279)
FY2013-FY2017**

119 Sentencing Events

	Compliance	Mitigation	Aggravation	Sentencing Events
FY2013	57.9%	5.3%	36.8%	19
FY2014	73.1%	3.8%	23.1%	26
FY2015	73.9%	4.3%	21.7%	23
FY2016	66.7%	10.0%	23.3%	30
FY2017	76.2%	9.5%	14.3%	21
Overall	69.7%	6.7%	23.5%	119

To better reflect judicial sanctioning practices, the Commission recommended revisions to the guidelines for this offense in its *2016 Annual Report*. The General Assembly accepted the recommendation and the changes became effective July 1, 2017 (FY2018).

Section A

Changes Effective July 1, 2017

Maliciously Discharge Firearm, Etc., in/at Occupied Building

Weapon/Firearm Section A

Offender Name: _____

Primary Offense

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

Score

0	
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Primary Offense Remaining Counts

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

Primary offense:

A. Maliciously discharge firearm, etc., in/at occupied building	Points
Maximum Penalty (years)	
5 - 7	2
8 - 18	3
19 - 28	4
29 - 38	5
39 or more	6

Primary offense: All other offenses

Maximum Penalty (years)	Points
5 - 7	1
8 - 18	2
19 - 28	3
29 - 38	4
39 or more	5

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Additional Offenses

Total the maximum penalties for additional offenses, including counts

Primary offense:

A. Maliciously discharge firearm, etc., in/at occupied building	Points
Maximum Penalty (years)	
Less than 1	0
1 - 7	3
8 - 18	4
19 - 28	5
29 - 38	6
39 or more	7

Primary offense: All other offenses

Maximum Penalty (years)	Points
Less than 1	0
1 - 7	1
8 - 18	2
19 - 28	3
29 - 38	4
39 or more	5

0	
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Victim Injury

Threatened, emotional or physical.....	1
Life threatening	2

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

0	
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Prior Convictions/Adjudications Total the maximum penalties for the 5 most recent and serious prior record events

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

0	
---	--

Prior Criminal Misdemeanor Convictions

Primary offense:

E. Carry concealed weapon, 2nd or 3rd offense	Points
Number of Counts	
1 - 6	1
7 or more	2

Primary offense: All other offenses

Do Not Score

0	
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Prior Incarcerations/Commitments

If YES, add 4

0	
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Legally Restrained at Time of Offense

Primary offense:

A. Maliciously discharge firearm, etc., in/at occupied building	Points
None	0
Other than post-incarceration supervision.....	3
Post-incarceration supervision (supervision after incarceration)	6

Primary offense: All other offenses

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

0	
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Type of Additional Offense(s)

Primary offense:

A. Maliciously discharge firearm, etc., in/at occupied building	Points
Additional offense with VCC prefix of WPN or ASL.....	2

If total is 9 or more, go to Section C.

Section B

Changes Effective July 1, 2017

Maliciously Discharge Firearm, Etc., in/at Occupied Building

Weapon/Firearm Section B

Offender Name: _____

◆ Primary Offense

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

Score

0	
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◆ Primary Offense Remaining Counts Total the maximum penalties for counts of the primary not scored above

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

0	
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◆ Additional Offenses Total the maximum penalties for additional offenses, including counts

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

0	
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◆ Prior Criminal Misdemeanor Convictions

Primary offense E: Carry concealed weapon, 2nd/3rd offense

Number of Counts	Points
1 - 2	1
3.....	2
4 or more	3

Primary offense: All other offenses

Do Not Score

0	
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◆ Victim Injury

Primary offense:

- A. Maliciously discharge firearm, etc., in/at occupied building
- | | Points |
|---|--------|
| Threatened, emotional or physical | 3 |
| Life threatening..... | 4 |

Primary offense: All other offenses

	Points
Threatened, emotional or physical	2
Life threatening.....	3

0	
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If total is 10 or more, recommendation is JAIL up to 6 months.

Section C

Changes Effective July 1, 2017

Maliciously Discharge Firearm, Etc., in/at Occupied Building

Weapon/Firearm Section C

Offender Name: _____

____ Prior Record Classification ____

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

Primary Offense

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

Score

0		
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Primary Offense Remaining Counts Assign points to each count of the primary not scored above and total the points

Maximum Penalty: 5, 10 (years).....	1
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Additional Offenses Assign points to each additional offense (including counts) and total the points

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

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Firearm Used or Brandished If YES, add 2

0	0	
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Victim Injury

Threatened or emotional.....	2
Physical.....	4
Life threatening.....	5

0	0	
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Prior Convictions/Adjudications Assign points to the 5 most recent and serious prior record events and total the points

Primary offense:	
A. Maliciously discharge firearm, etc., in/at occupied building	Points
Maximum Penalty (years)	
Less than 20.....	0
20, 30, 40 or more.....	5

Primary offense: All other offenses	
Maximum Penalty (years)	Points
Less than 20.....	0
20, 30, 40 or more.....	1

0		
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Prior Felony Convictions/Adjudications Against Person

Primary offense:	
A. Maliciously discharge firearm, etc., in/at occupied building	Points
Number of Counts	
1.....	5
2.....	6
3.....	7
4.....	8
5 or more.....	9

Primary offense: All other offenses	
Number of Counts	Points
1.....	1
2.....	2
3.....	3
4.....	4
5 or more.....	5

0	0	
---	---	--

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

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

0		
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Section B - Proposed

Weapon/Firearm Section B

Offender Name: _____

◆ **Primary Offense** _____

A. Maliciously discharge firearm, etc., in/at occupied building (1 count).....	7
Discharge firearm from vehicle (1 count).....	8
Possess firearm on school property (1 count).....	7
Possession of sawed-off shotgun (1 count).....	6
Carry concealed weapon, 2nd or 3rd offense (1 count).....	7

Score

INCREASE Primary Offense score for this offense

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

1 count 8

§ 18.2-279. Discharging firearms or missiles within or at building or dwelling house; penalty. — If any person maliciously discharges a firearm within any building when occupied by one or more persons in such a manner as to endanger the life or lives of such person or persons, or maliciously shoots at, or maliciously throws any missile at or against any dwelling house or other building when occupied by one or more persons, whereby the life or lives of any such person or persons may be put in peril, the person so offending is guilty of a Class 4 felony. In the

FY13 - FY17 (most recent data)

If scored correctly: No Victim Injury and an Additional Offense (e.g., assault, vandalism, **resisting arrest**, weapon, **other**)

6 Cases Recommended for Probation – 2 Received Active 6 Month Sentence

◆ **Victim Injury** _____

Primary offense:	
A. Maliciously discharge firearm, etc., in/at occupied building	
Threatened, emotional or physical	Points 3
Life threatening.....	4

Primary offense: All other offenses	
Threatened, emotional or physical	Points 2
Life threatening.....	3

0

◆ **Legally Restrained at Time of Offense** _____ If YES, add 1 → 0

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

**Compliance with Guidelines for
Maliciously Discharging a Firearm/Missile
in/at an Occupied Building (§ 18.2-279)
FY2013-FY2017**

119 Sentencing Events

Overall Compliance

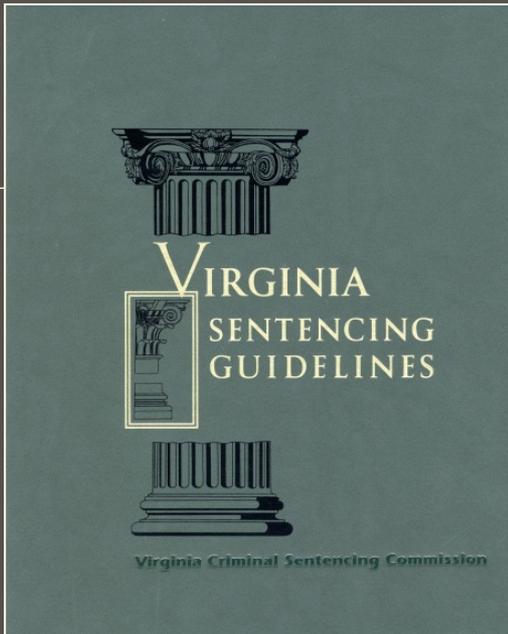
	Based on FY2018 Changes	As Proposed
Compliance	64.7%	63.0%
Mitigation	18.5%	20.2%
Aggravation	16.8%	16.8%

Proposed Recommendation 2

*1 & 2 are Companion
Recommendations*

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





Proposed Recommendation 3:

Add Possession of a Wireless Device by a Prisoner and Providing a Wireless Device to a Prisoner (§ 18.2-431.1) to the Miscellaneous/Other guidelines

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

143 Sentencing Events

Disposition	Percent	Median Sentence
No Incarceration	10.5%	NA
Incarceration up to 6 Months	60.1%	6.0 Months
Incarceration of More than 6 Months	29.4%	9.0 Months

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

Section A - Proposed

◆ **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

Score
▼
0

J. Provide wireless device to or possession of wireless device by prisoner
1 count 2

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

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

0

◆ **Victim Injury** _____

Threatened, emotional or physical	1
Life Threatening	2

0

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

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

Primary offense: B, C, or D: Sex offender registry violation _____ <table border="0"> <tr><td>Years</td><td>Points</td></tr> <tr><td>Less than 6</td><td>0</td></tr> <tr><td>6-64</td><td>1</td></tr> <tr><td>65 or more</td><td>2</td></tr> </table>	Years	Points	Less than 6	0	6-64	1	65 or more	2	Primary offense: All other offenses _____ <table border="0"> <tr><td>Years</td><td>Points</td></tr> <tr><td>Less than 2</td><td>0</td></tr> <tr><td>2-38</td><td>1</td></tr> <tr><td>39 or more</td><td>2</td></tr> </table>	Years	Points	Less than 2	0	2-38	1	39 or more	2
Years	Points																
Less than 6	0																
6-64	1																
65 or more	2																
Years	Points																
Less than 2	0																
2-38	1																
39 or more	2																

0

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

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

Primary offense: B, C, or D: Sex offender registry violation _____ <table border="0"> <tr><td>Points</td></tr> <tr><td>Any legal restraint</td><td>1</td></tr> </table>	Points	Any legal restraint	1	Primary offense: All other offenses _____ <table border="0"> <tr><td>Points</td></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</td><td>5</td></tr> </table>	Points	None	0	Other than post-incarceration supervision	2	Post-incarceration supervision	5
Points											
Any legal restraint	1										
Points											
None	0										
Other than post-incarceration supervision	2										
Post-incarceration supervision	5										

0

SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE IS H OR I: GANG OFFENSE (§ 18.2-46.2)

◆ **Type of Additional or Prior Record Convictions/Adjudications** _____ If YES, add 2 → 0

Violent Additional or Prior Record Convictions/Adjudications

Score provide wireless device to or possession of wireless device by prisoner the same as SOR violation

Possession of wireless device by prisoner – automatic 1 point

Provide wireless device to prisoner – score 1 point if any legal restraint

Section B - Proposed

◆ 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

Score

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J. Provide wireless device to or possession of wireless device by prisoner
1 count 8

Possession of wireless device by prisoner – automatic 1 point

Provide wireless device to prisoner – score 1 point if any legal restraint

Score provide wireless device to or possession of wireless device by prisoner the same as SOR violation

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

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

0	
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◆ Victim Injury

Threatened, emotional or physical	2
Life threatening	3

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

0	
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SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE IS B,C, OR D: SEX OFFENDER REGISTRY VIOLATION (§ 18.2-472.1)

◆ Prior Incarcerations/Commitments _____ If YES, add 1 →

0	
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NEW FACTOR – Score if provide wireless device to or possession of wireless device by prisoner (§ 18.2-431.1) is primary offense

Prior Felony Convictions/Adjudications Against Person – Number of counts

0, 1 count	0
2 or more counts	1

Section C - Proposed

Miscellaneous/Other Section C Offender Name: _____

◆ **Primary Offense** _____ Category I Category II Other

	Prior Record Classification		
	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

Score
 ▼

Prior Record Classification
Category I Category II Other

J. Provide wireless device to or possession of wireless device by prisoner
Attempted, Conspired, Completed: 1 count 8 4 2

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

◆ **Victim Injury** _____

Threatened or emotional	2	↓	<input type="text"/> <input type="text"/> <input type="text"/>
Physical	4		
Life threatening	5		

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

Maximum Penalty: Less than 20 (years)	0	↓	<input type="text"/> <input type="text"/> <input type="text"/>
20, 30, 40 or more	1		

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

Number of Counts: 1	1	↓	<input type="text"/> <input type="text"/> <input type="text"/>
2	2		
3	3		
4	4		
5 or more	5		

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

Number of Counts: 1	2	↓	<input type="text"/> <input type="text"/> <input type="text"/>
2	4		
3	6		
4	8		
5 or more	10		

◆ **Legally Restrained at Time of Offense** _____ If YES, add 2 →

SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE IS H OR I: GANG OFFENSE (§ 18.2-46.2)

◆ **Type of Additional Offense** _____

Violent Additional Offense (as defined in § 17.1-805)		↓	<input type="text"/> <input type="text"/> <input type="text"/>
And Primary is without a Juvenile (MOB1291F5)	12		
And Primary is with a Juvenile (MOB1292F4)	16		

Possession of wireless device by prisoner – automatic 2 points

Provide wireless device to prisoner – score 2 points if any legal restraint



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

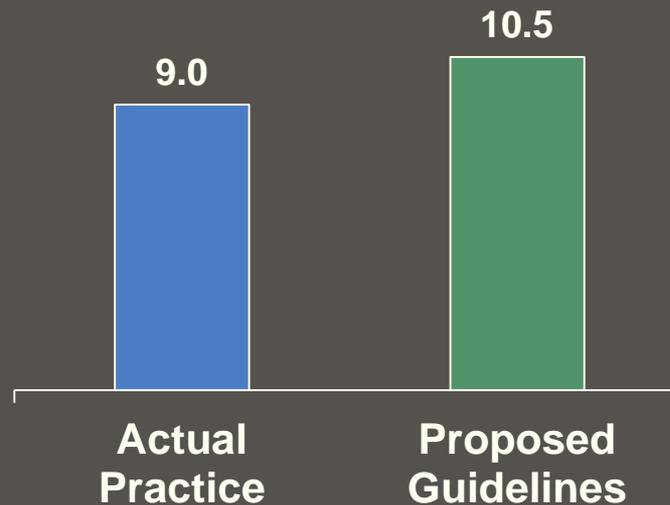


**Proposed guidelines are aligned
with the actual prison
incarceration rate**

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

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

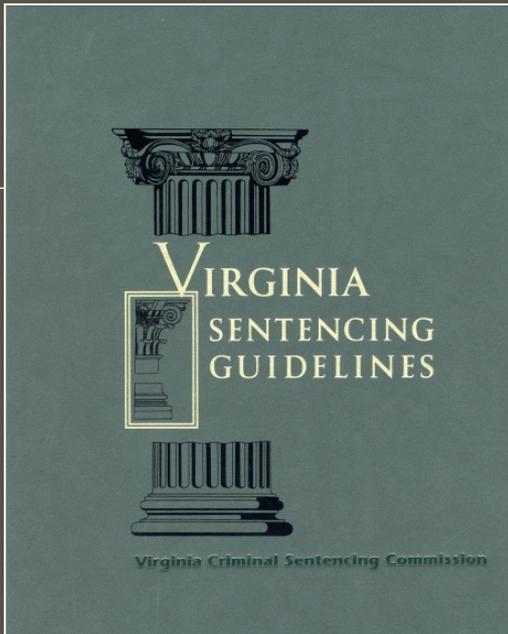
Median Sentence (in months)



Proposed Recommendation 3

**Add Possession of a Wireless Device by a Prisoner and
Providing a Wireless Device to a Prisoner (§ 18.2-431.1)
to the Miscellaneous/Other guidelines
as proposed**



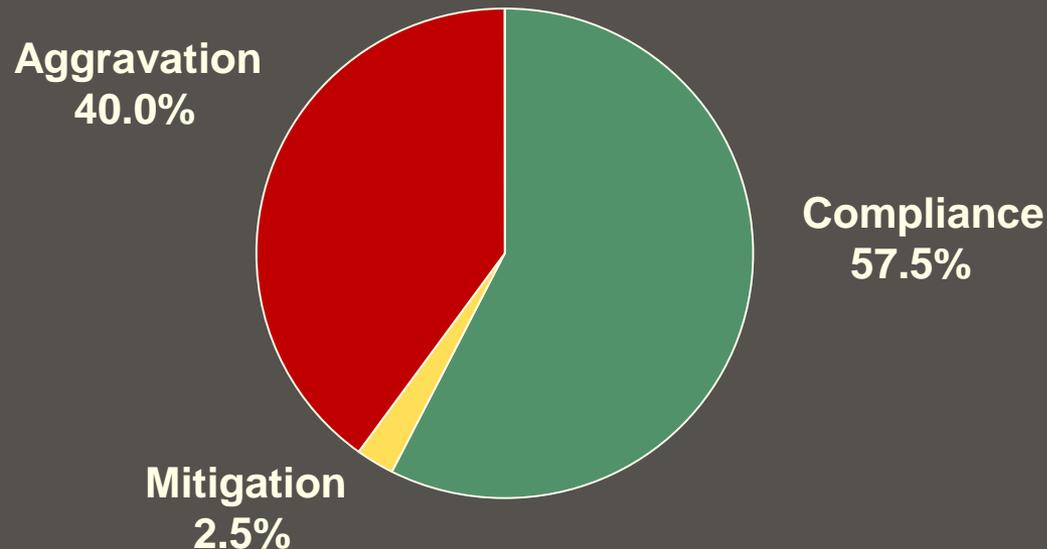


Proposed Recommendation 4:

Revise guidelines for
Abduction with Intent to Defile
(§ 18.2-48,ii)

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

40 Sentencing Events



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

Kidnapping ❖ Section A

Offender Name: _____

Section A

◆ Primary Offense _____ (scores for attempted/conspired offenses are in parentheses)

- A. Felony kidnapping by parent (1 count) 1
- B. Abduction by force without legal justification
Completed: 1 count 4
- C. **No Proposed Changes to Section A Worksheet**
Attempted or conspired: 1 count (3)
- D. Abduction with intent to defile
Completed: 1 count 5
Attempted or conspired: 1 count (4)
- E. Extortion, abduction with intent to gain pecuniary benefit
Completed: 1 count 5
Attempted or conspired: 1 count (4)
- F. Abduct child under age 16
Completed: 1 count 7
Attempted or conspired: 1 count (6)

Score

0	
---	--

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

- Years: Less than 21 0
- 21 - 37 1
- 38 or more 2

0	
---	--

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

- Years: Less than 21 0
- 21 - 37 1
- 38 or more 2

0	
---	--

◆ Prior Felony Conviction/Sentencing and Adjudication Events

- Number: 1 1
- 2 2
- 3 3
- 4 4
- 5 or more 5

0	
---	--

◆ Weapon Used or Brandished _____ If YES, add 1

0	
---	--

If total is 5 or more, recommendation is PRISON.

Section C - Proposed

Kidnapping Section C

Offender Name: _____

◆ **Primary Offense** _____ Category I Category II Other

— Prior Record Classification —

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
Abduct child under age 16			
1 count	476	238	119
2 counts	500	250	125
3 counts	516	258	129

Score 

INCREASE Primary Offense score for this offense

D. Abduction with intent to defile

	Prior Record Classification		
	<u>Category I</u>	<u>Category II</u>	<u>Other</u>
1 count	340	170	85
2 counts	348	174	87
3 counts	352	176	88

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

Maximum Penalty:	Less than 2	0
(years)	2, 3, 4	1
	5	2
	10	4
	20	7
	30	11
	40 or more	15



◆ **Weapon Used or Brandished** _____ If YES, add 14 →

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

40 Sentencing Events

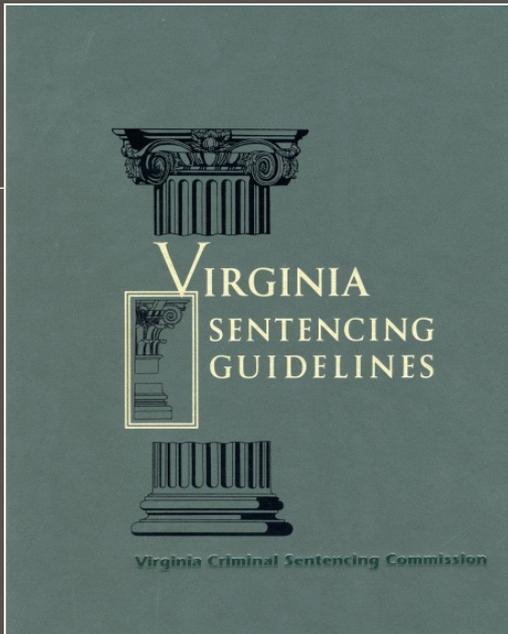
Overall Compliance

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

Proposed Recommendation 4

**Revise guidelines for
Abduction with Intent to Defile (§ 18.2-48,ii)
as proposed**



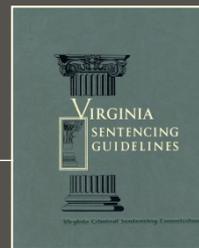


Proposed Recommendation 5:

Amend the Burglary Guidelines when there is an additional offense of attempted or conspired murder

Guidelines for Burglary with a Deadly Weapon

- In 2012, the Commission recommended adding factors to the Burglary worksheets for cases involving completed burglary with a deadly weapon and an additional offense of:
 - Attempted/Conspired **1st degree murder** or
 - Attempted/Conspired/Completed **2nd degree murder, felony murder, or malicious wounding**
- The recommendation, submitted in the Commission's *2012 Annual Report*, was accepted by the 2013 General Assembly. Changes became effective on July 1, 2013.



Subsequent Changes to Burglary Guidelines

- In 2013, the Commission recommended expanding these factors to apply to all sentencing events where burglary is the primary offense. The Commission also recommended adding points in cases where the sentencing event included a conviction for aggravated malicious wounding.
- The 2014 General Assembly accepted these recommendations and changes became effective July 1, 2014.

Burglary/Dwelling ❖ **Section C**

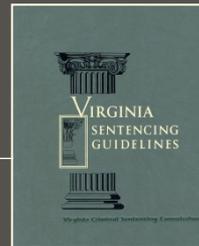
◆ Type of Additional Offense(s)

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



Current Burglary Guidelines

- **Users have expressed concerns regarding the face validity of the factor on Section C for additional offenses with a VCC prefix of “MUR”.**
 - **The same number of points are assigned regardless of whether the victim dies.**
 - **The points exceed the statutory maximum for attempted or conspired first degree murder.**



Proposed

Modify scores for the following factor on Section C of the Burglary guidelines.

Current factor

Burglary/Dwelling ❖ Section C

◆ 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 or Aggravated Malicious Wounding	8			

Attempted Non-Capital, All Conspired, Manslaughter and Voluntary

1st Degree, 2nd Degree, Felony, Attempted Capital

Proposed Factor

Additional Offense of <u>Murder with Statutory Maximum of 40 Years or More</u>	140
<u>Additional Offense of Murder with Statutory Maximum of 20 Years or Less</u>	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 or Aggravated Malicious Wounding	8

**Compliance with Sentencing Guidelines for Burglary
with Additional Offense with VCC Prefix of “MUR”
FY2008 – FY2017
(14 Cases)**

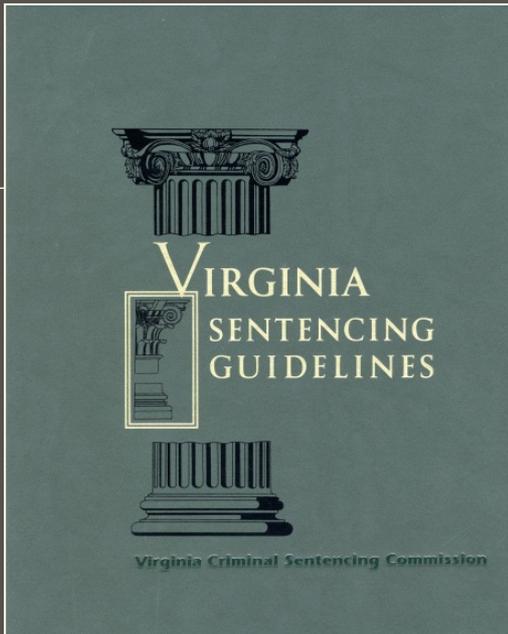
	Current Scores	As Proposed
Compliance	64.3%	64.3%
Mitigation	21.4%	14.3%
Aggravation	14.3%	21.4%

Note: Worksheets with scoring errors were excluded from the analysis.

Proposed Recommendation 5

**Amend the Burglary/Dwelling and
Burglary/Other guidelines
as proposed**





Proposed Recommendation 6:

No longer score probation violations and good behavior violations as additional offenses on the sentencing guidelines

Scoring Probation Violations as Additional Offenses

- **Users have expressed concern that, when a probation violation or good behavior violation is scored as an additional offense, the points do not accurately reflect the sentence given for the violation.**
 - **The belief is that, when combined into one event, the impact of the violation is not adequately weighed by the guidelines.**
- **In addition, the Commission has received feedback from judges regarding an issue of proportionality.**
 - **In some instances, the probation violation guidelines recommend a relatively lengthy sentence for a technical violation, while a probation violation handled alongside a new felony conviction often does not increase the sentencing guidelines recommendation significantly.**

Sentencing Guidelines with Legal Restraint Factor Scored

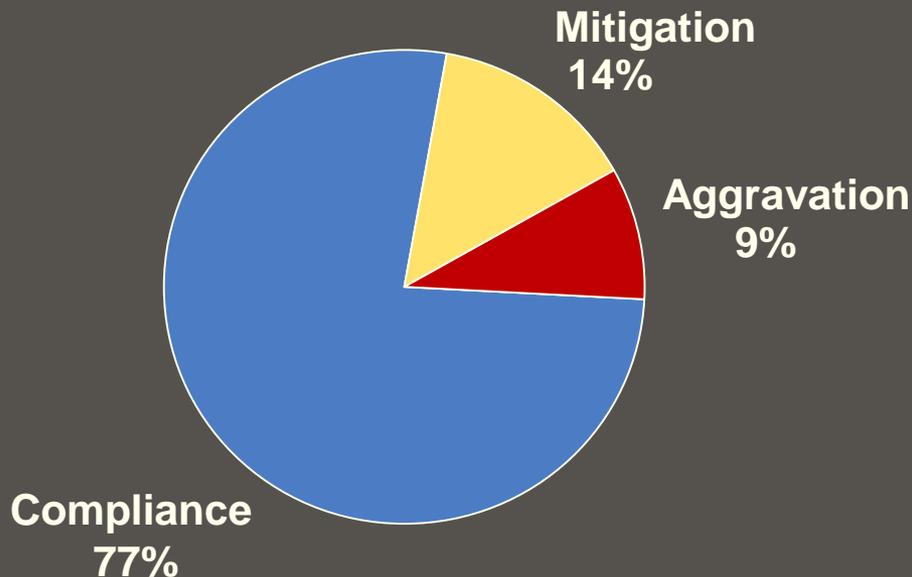
Comparison of Cases With and Without

Probation Violation or Good Behavior Violation Scored as an Additional Offense

FY2007 – FY2017

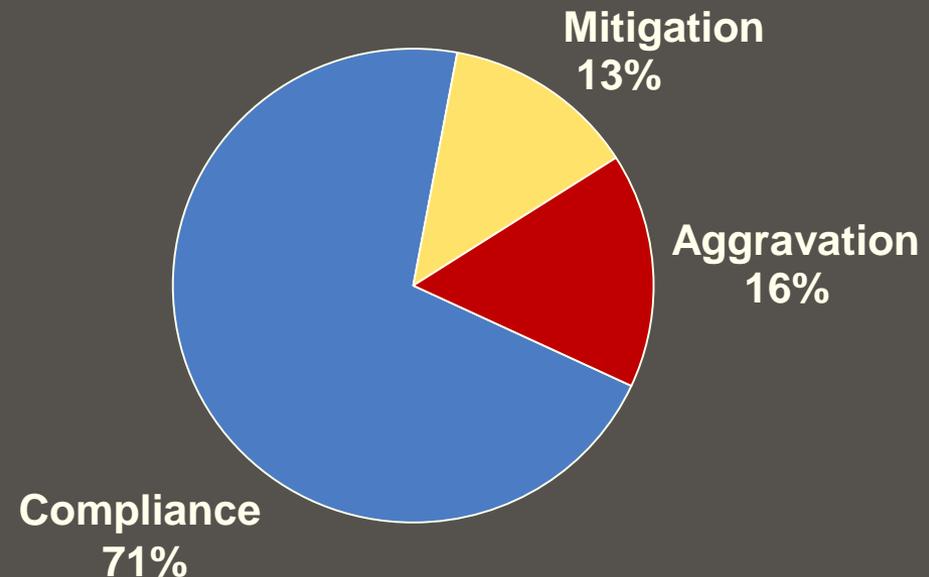
No Probation Violation Scored in Sentencing Event

n = 64,571



Probation Violation Scored as an Additional Offense

n = 3,370



Source: FY2007 – FY2017 Sentencing Guidelines Database
N = 67,980 with legal restraint factor scored (missing in 39 cases)

On Section C, each point is equivalent to a month in the midpoint. Listed below are the minimum and maximum points that would be added for a violation based on the type of new law conviction.

	Probation Violations, Etc., Based on New Offense Handled in Same Sentencing Event as New Felony		Probation Violations, Etc., Based on New Offense Handled Separately
Offense Group (New Law Violation)	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 Months	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%

Source FY2013 – FY2017 Sentencing Revocation Report and Probation Violation Database

¹ Based on a class 6 felony with a five year statutory maximum

² Based on a felony with a statutory maximum of 40 years or more

Proposed Recommendation 6

No longer score probation violations and good behavior violations as additional offenses on the sentencing guidelines





VIRGINIA
SENTENCING
GUIDELINES



Virginia Criminal Sentencing Commission