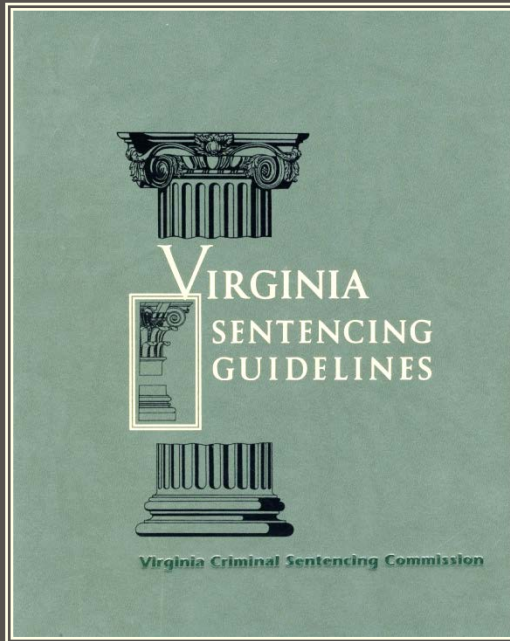




VIRGINIA CRIMINAL SENTENCING COMMISSION



Possible Recommendations for Guidelines Revisions

November 7, 2018

Modifications to the Sentencing Guidelines

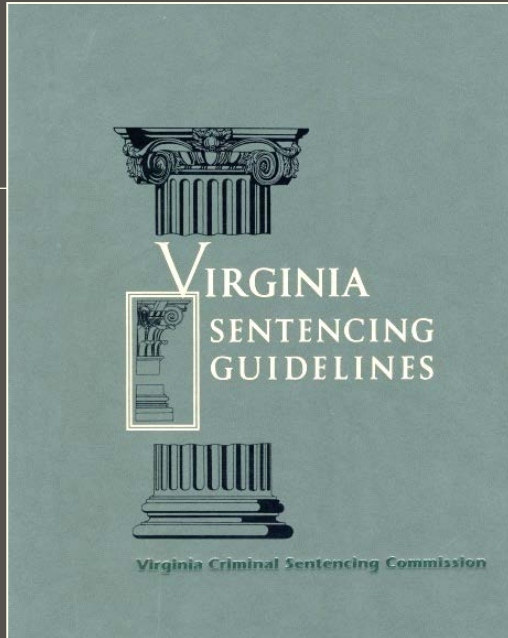
- **The Commission closely monitors the sentencing guidelines system and, each year, deliberates upon possible modifications to the guidelines.**
- **Under § 17.1-806 of the *Code of Virginia*, any modifications adopted by the Commission must be presented in its annual report, due to the General Assembly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



Proposals for Revisions to Existing Guidelines Offenses

- **Proposals are designed to maximize compliance and balance mitigation and aggravation rates to the extent possible.**
- **Current guidelines worksheets serve as the base for scoring historical cases, but the points assigned to those factors may be adjusted and new factors may be added.**
- **Procedure: Is the preference to vote on each proposal separately?**



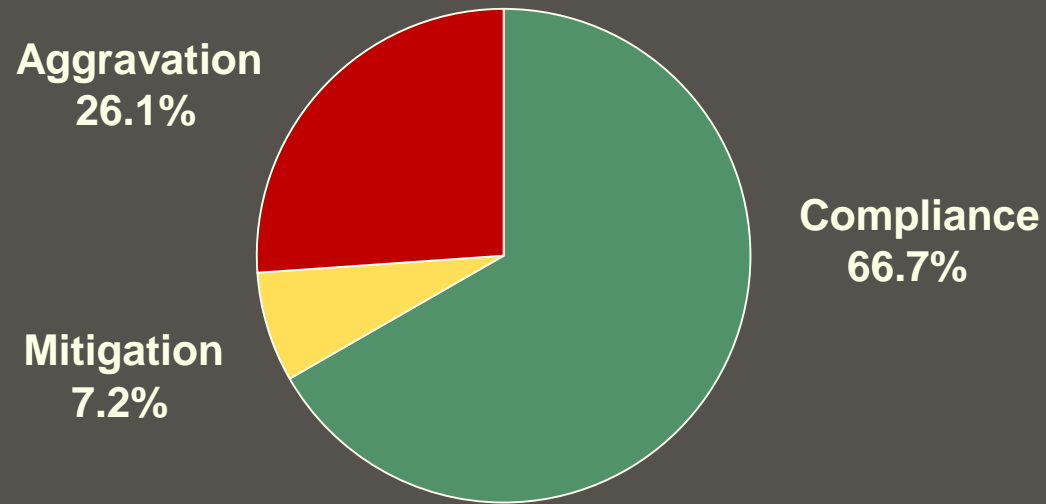


Proposed Recommendation 1:

Revise guidelines for
Sex Offender Registry Violation –
Not Violent Category, 2nd or Subsequent
(§ 18.2-472.1(A))

Compliance with Guidelines for
Sex Offender Registry Violation – Not Violent Category, 2nd or Subsequent
(§ 18.2-472.1(A))

FY2013 – FY2017
Number of Sentencing Events = 153



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.

No changes proposed for Section A

	Did Not Receive Section C Disposition	Received Section C Disposition
Not Recommended for Section C	91.2%	8.8%
Recommended for Section C	19.4%	80.6%

Miscellaneous/Other Section A

Offender Name: _____

◆ **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

Score

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

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

0	
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◆ **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	
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◆ **Victim Injury** _____

Threatened, emotional, physical or serious 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

<p>Primary offense: B, C, D or J: Sex offender registry violation or provide wireless device to or possession of wireless device by prisoner</p> <table border="1" style="width: 100%;"> <tr><th>Years</th><th>Points</th></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	<p>Primary offense: All other offenses</p> <table border="1" style="width: 100%;"> <tr><th>Years</th><th>Points</th></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	
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◆ **Prior Incarcerations/Commitments** _____ If YES, add 4 →

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

Primary offense: _____

Section B - Proposed

Miscellaneous/Other Section B Offender Name: _____

◆ **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 (1count).....	8

Score
▼

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

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

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

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

◆ **Victim Injury** _____

Threatened, emotional, physical or serious 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: SEX OFFENDER REGISTRY VIOLATION (§ 18.2-472.1) OR PROVIDE WIRELESS DEVICE TO/OR POSSESSION OF WIRELESS DEVICE BY PRISONER (§ 18.2-431.1 (A) OR (B))

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

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

◆ **Prior Sex Offender Registry Violations Convictions/Adjudications** _____

Number: 2+ Misdemeanors.....	1
1+ Felonies.....	2

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 _____

Offenders being sentenced for a Sex Offender Registry violation should always be scored as legally restrained.

NEW FACTOR - Only scored when the Primary Offense is a Sex Offender Registry Violation.

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

No changes proposed for Section C

For offenders convicted of this offense and recommended for Section C, compliance with the guidelines is 74% and departures are roughly evenly split above and below the guidelines.

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
J. Provide wireless device to or possession of wireless device by prisoner (1 count)	8	4	2

Score

▼

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

Maximum Penalty: 5, 10 (years) 1

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◆ **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

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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 or serious 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 ▼

Maximum Penalty: Less than 20 (years) 0

20, 30, 40 or more 1

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

Number of Counts: 1 1

2 2

3 3

4 4

5 or more 5

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

Number of Counts: 1 2

2 4

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Compliance with Guidelines for
Sex Offender Registry Violation – Not Violent Category, 2nd or Subsequent
(§ 18.2-472.1(A))

FY2013 – FY2018
Number of Sentencing Events = 169

Dispositional Compliance/Departure Rates		
	Current	As Proposed
Compliance	61.1%	66.3%
Mitigation	8.9%	14.8%
Aggravation	29.0%	18.9%

Note: Worksheets with scoring errors were excluded from the analysis.
Source: Sentencing Guidelines Data System (download May 18, 2018)

Compliance with Guidelines for
Sex Offender Registry Violation – Not Violent Category, 2nd or Subsequent
(§ 18.2-472.1(A))

FY2013 – FY2018
Number of Sentencing Events = 169

Overall Compliance/Departure Rates		
	Current	As Proposed
Compliance	66.9%	69.2%
Mitigation	8.3%	13.6%
Aggravation	24.9%	17.2%

Note: Worksheets with scoring errors were excluded from the analysis.
Source: Sentencing Guidelines Data System (download May 18, 2018)

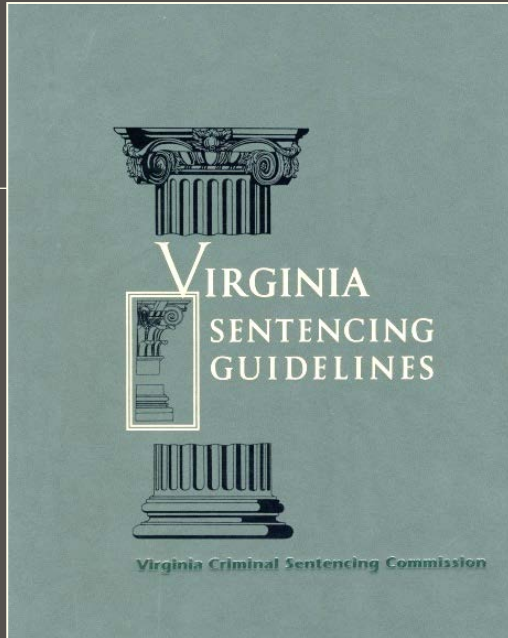
Proposed Recommendation 1
Proposal's Impact on Sex Offender Registry Violations - Violent Category
(§ 18.2-472.1(B))

- If properly scored on current guidelines, offenders categorized as violent who are convicted under § 18.2-472.1(B) for a **2nd or subsequent Sex Offender Registry violation** will always be recommended for an active term of incarceration.
- If properly scored on current guidelines, offenders categorized as violent who are convicted under § 18.2-472.1(B) for a **1st Sex Offender Registry violation** will be recommended for an active term of incarceration in 97.5% of the cases.
 - The proposed factor for Section B will be scored for all Sex Offender Registry violators, but will have next to no impact on the offenders categorized as violent or their guidelines recommendations.

Proposed Recommendation 1

**Revise guidelines for
Sex Offender Registry Violation –
Not Violent Category, 2nd or Subsequent
(§ 18.2-472.1(A))
as proposed**





Proposed Recommendation 2:

Add Possession of Methamphetamine Precursors (§ 18.2-248(J)) to the Schedule I or II Drug 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.**



Possess Methamphetamine Precursors

§ 18.2-248(J)

Enacted by the
2005 General Assembly

§ 18.2-248(J)

Except as authorized in the Drug Control Act (§ 54.1-3400 et seq.), any person who possesses any two or more different substances listed below with the intent to manufacture methamphetamine, methcathinone, or amphetamine is guilty of a **Class 6 felony**:

Liquified ammonia gas, ammonium nitrate, ether, hypophosphorus acid solutions, hypophosphite salts, hydrochloric acid, iodine crystals or tincture of iodine, phenylacetone, phenylacetic acid, red phosphorus, methylamine, methyl formamide, lithium, sodium metal, sulfuric acid, sodium hydroxide, potassium dichromate, sodium dichromate, potassium permanganate, chromium trioxide, methylbenzene, methamphetamine precursor drugs, trichloroethane, or 2-propanone.

Possess Methamphetamine Precursors § 18.2-248(J)

FY2013 – FY2017
Number of Sentencing Events = 213

Disposition	Percent	Median Sentence
No Incarceration	39.9%	NA
Incarceration Up to 6 Months	32.4%	4 Months
Incarceration More than 6 Months	27.7%	1 Year

Data reflect events in which this offense was the primary
(or most serious) offense at sentencing.

Section A - Proposed

Drug/Schedule I/II Section A

Offender Name: _____

◆ **Primary Offense**

A. Possess Schedule I or II drug or First offender violation			
1 count.....	1	Score ▼ <input style="width: 40px; height: 20px;" type="text"/>	
2 counts.....	3		
3 counts.....	8		
B. Sell, distribute, possession with intent, etc., Schedule I or II drug			
1 count.....	12		
2 counts.....	13		
3 counts.....	14		
4 counts.....	15		
C. Manufacture Methamphetamine (1st or 2nd conviction)			
1 count.....	12		
2 counts.....	13		
3 counts.....	14		
4 counts.....	15		
D. Accommodation - Sell, distribute, possession with intent Schedule I or II drug			
1 count.....	5		
2 counts.....	7		
E. Sell, etc., imitation Schedule I or II drug (1 count)		<input style="width: 40px; height: 20px;" type="text"/>	
F. Sell, etc., Schedule I or II drug to minor (1 count)		<input style="width: 40px; height: 20px;" type="text"/>	
G. Possession of methamphetamine precursors (1 count)		<input style="width: 40px; height: 20px;" type="text"/>	



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

Years:	5 - 10.....	1	31 - 42.....	4	<input style="width: 40px; height: 20px;" type="text"/>
	11 - 21.....	2	43 or more.....	5	
	22 - 30.....	3			

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

Years:	Less than 4.....	0	22 - 30.....	3	<input style="width: 40px; height: 20px;" type="text"/>
	4 - 10.....	1	31 - 42.....	4	
	11 - 21.....	2	43 or more.....	5	

◆ **Knife or Firearm in Possession at Time of Offense** _____ If YES, add 2 →

◆ **Conviction in Current Event Requiring Mandatory Minimum Term (6 mos or more)** If YES, add 9 →

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

Years:	Less than 7.....	0	<input style="width: 40px; height: 20px;" type="text"/>
	7 - 26.....	1	
	27 - 48.....	2	
	49 or more.....	3	

◆ **Prior Incarcerations/Commitments** _____ If YES, add 2 →

◆ **Prior Felony Drug Convictions/Adjudications**

Primary offense: B: Possession of Methamphetamine precursors	Primary offense: All other offenses	<input style="width: 40px; height: 20px;" type="text"/>									
Number of Counts	Points										
1.....	3										
2 or more.....	6										
<table border="0" style="width: 100%;"> <tr> <td style="text-align: right;">Number of Counts</td> <td style="text-align: right;">Points</td> </tr> <tr> <td>1 - 2.....</td> <td>1</td> </tr> <tr> <td>3 - 4.....</td> <td>2</td> </tr> <tr> <td>5.....</td> <td>3</td> </tr> <tr> <td>6 or more.....</td> <td>4</td> </tr> </table>			Number of Counts	Points	1 - 2.....	1	3 - 4.....	2	5.....	3	6 or more.....
Number of Counts	Points										
1 - 2.....	1										
3 - 4.....	2										
5.....	3										
6 or more.....	4										

SPLIT FACTOR –
 Offenders convicted of possessing meth precursors will receive higher points for prior drug convictions.
 Those with 2 or more prior felony drug convictions will have enough total points to always be recommended for Section C.

If total is 11 or more, go to Section C.



Section B - Proposed

◆ **Primary Offense**

A. Possess Schedule I or II drug or First offender violation		
1 count	3	Score ▼ 0
2 counts	6	
B. Accommodation - Sell, distribute, possession with intent Schedule I or II drug		
1 count	8	▼
2 counts	9	
C. Sell, etc., imitation Schedule I or II drug (1 count)		4
D. Possession of methamphetamine precursors (1 count)		6

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

Years: 5 - 9	2	▼ 0
10 - 19	3	
20 - 28	4	
29 - 38	5	
39 or more	6	

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

Years: Less than 1	0	▼ 0
1 - 9	2	
10 - 19	3	
20 - 28	4	
29 - 38	5	
39 or more	6	

◆ **Knife or Firearm in Possession at Time of Offense** _____ If YES, add 2 → 0

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

Years: Less than 1	0	▼ 0
1 - 22	1	
23 - 43	2	
44 or more	3	

◆ **Prior Misdemeanor Convictions/Adjudications** (Excludes Traffic)

Number of 1 - 4	1	▼ 0
Counts: 5 - 9	2	
10 or more	3	

◆ **Prior Incarcerations/Commitments**

Primary offense:	Primary offense:	▼ 0
D. Possession of methamphetamine precursors If YES, add 2	All other offenses If YES, add 1	

SPLIT FACTOR – Offenders convicted of possessing meth precursors will receive higher points for having any prior incarcerations/commitments.

If total is 9 or more, recommendation is JAIL 1 day to 3 months.
If total is 12 or more, recommendation is JAIL 3 to 6 months.

Section C - Proposed

Offenders convicted of this offense will be scored the same as those convicted of Sell, etc., imitation Schedule I or II drug.



Drug/Schedule I/II Section C

Offender Name: _____

Primary Offense

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

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

Score

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

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

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

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

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

Primary offense: All other offenses

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

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

2 Year Mandatory Minimum.....13	3 Year Mandatory Minimum.....25	5 Year Mandatory Minimum.....32
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0		
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Firearm in Possession at Time of Offense If YES, add 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

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

0		
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Prior Felony Drug Convictions/Adjudications

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

Number of Counts	Score
2.....	9
3.....	10
4.....	17
5 or more.....	20

Primary offense: All other offenses

Number of Counts	Score
1.....	2
2.....	3
3.....	5
4.....	7
5.....	8
6 or more.....	10

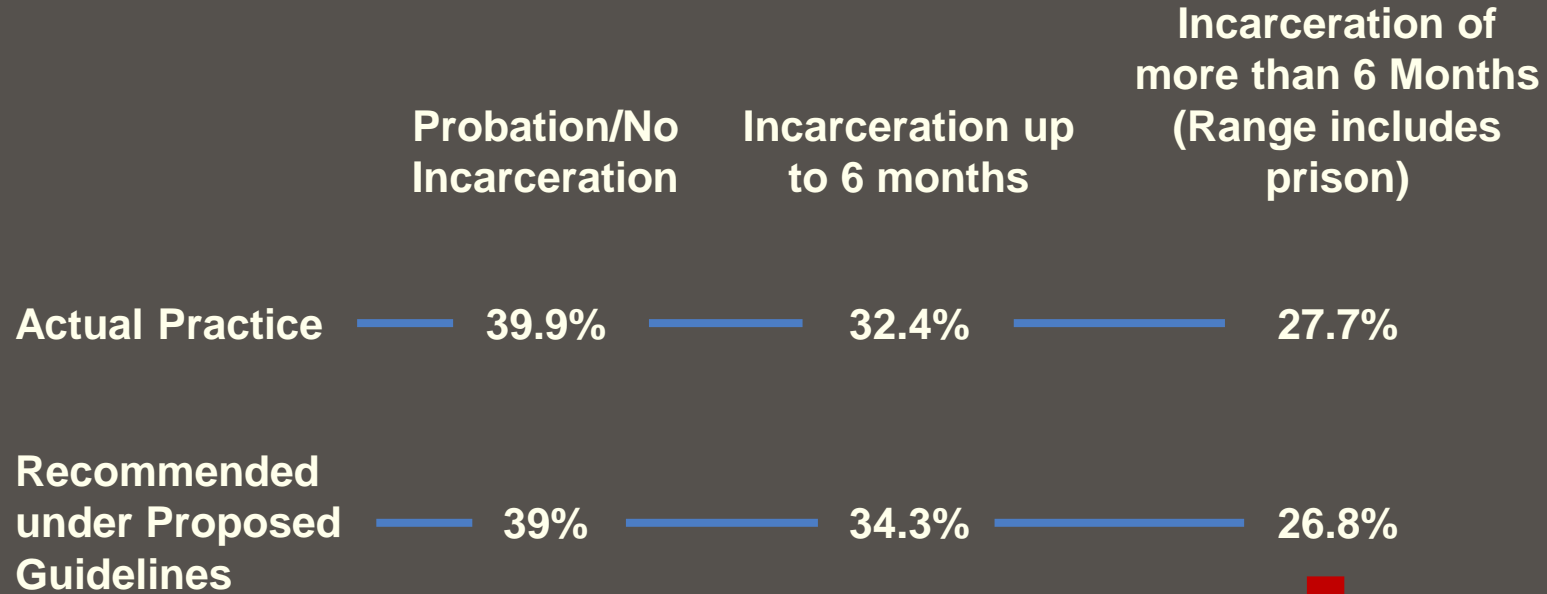
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Prior Felony Convictions/Adjudications Against Person

Number of Counts: 1.....	3	3.....	3
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0		
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Possess Methamphetamine Precursors § 18.2-248(J)

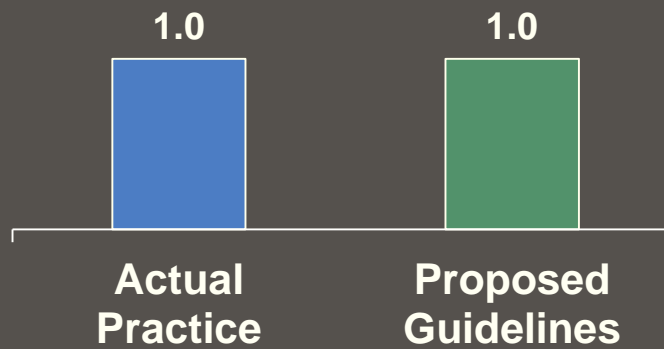


Proposed guidelines are aligned with the actual prison incarceration rate

Possess Methamphetamine Precursors § 18.2-248(J)

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

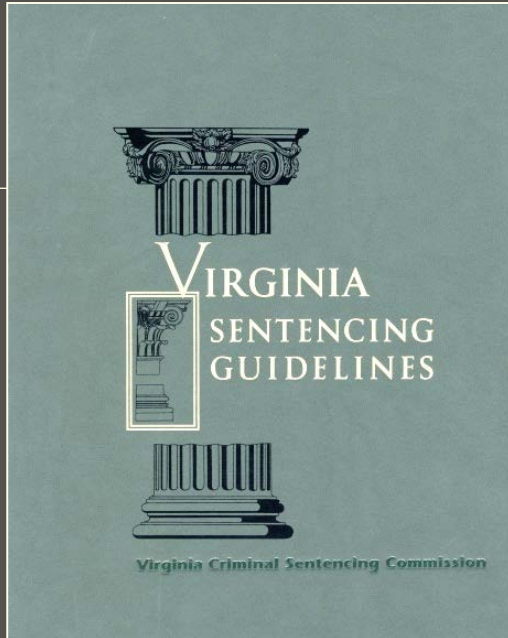
Median Sentence (in years)



Proposed Recommendation 2

**Add Possession of
Methamphetamine Precursors (§ 18.2-248(J))
to the Schedule I or II Drug Guidelines
as proposed**



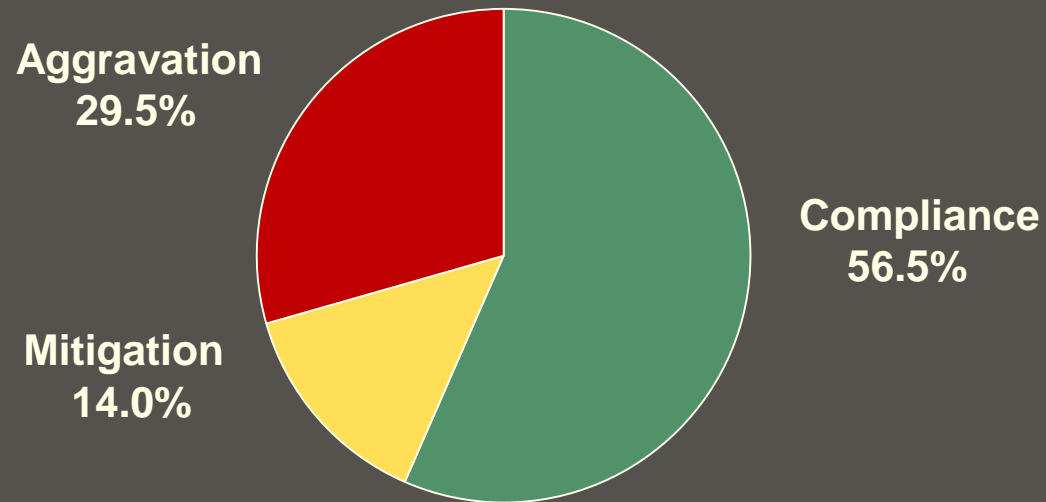


Proposed Recommendation 3:

Revise guidelines for
Child Abuse and Neglect Resulting in
Serious Injury (§ 18.2-371.1(A))

Compliance with Guidelines for Child Abuse and Neglect Resulting in Serious Injury (§ 18.2-371.1(A))

FY2013 – FY2017
Number of Sentencing Events = 214



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.

Note: Guidelines worksheets with scoring errors were excluded from the analysis.
One offender was excluded because a criminal history report could not be located.
Source: Sentencing Guidelines Data System (download May 18, 2018)

Compliance with Guidelines for Child Abuse and Neglect Resulting in Serious Injury (§ 18.2-371.1(A))

FY2013 – FY2017
Number of Sentencing Events = 214

Dispositional Compliance/Departure Rates		Section C Recommendations Compliance/Departure Rates	
Compliance	72.8%	Compliance	57.4%
Mitigation	13.8%	Mitigation	12.4%
Aggravation	13.4%	Aggravation	30.2%

Dispositional compliance is the degree to which judges agree with the type of sanction recommended by the guidelines.

Note: Guidelines worksheets with scoring errors were excluded from the analysis.
One offender was excluded because a criminal history report could not be located.
Source: Sentencing Guidelines Data System (download May 18, 2018)

No changes proposed for Sections A and B

If the guidelines are scored correctly, offenders convicted of child abuse resulting in serious injury will always be recommended for jail or prison.

Miscellaneous/Person & Property ❖ Section A

Offender Name: _____

◆ Primary Offense

A. Burn unoccupied dwelling/church (1 count).....	6
B. Burn occupied dwelling/church (1 count).....	6
C. Burning of personal property, standing grain, etc., value \$500 or more	
1 count.....	2
2 counts.....	6
D. Threatening to bomb, burn or explode (1 count).....	1
E. Threat by letter, communication or electronic message (1 count).....	3
F. Child neglect/abuse, serious injury	
1 count.....	3
2 counts.....	7

G. _____

H. _____

I. _____

J. _____

Score

Miscellaneous/Person & Property ❖ Section B

Offender Name: _____

◆ Primary Offense

A. Burn unoccupied dwelling/church (1 count).....	6
B. Burn occupied dwelling/church (1 count).....	7
C. Burning of personal property, standing grain, etc., value \$500 or more (1 count).....	6
D. Threatening to bomb, burn or explode (1 count).....	6
E. Threat by letter, communication or electronic message (1 count).....	7
F. Child neglect/abuse, serious injury (1 count).....	3
G. Gross, reckless care of child (1 count).....	2
H. Cruelty and injury to child (1 count).....	2
I. Maliciously shoot, throw missile at train, car, etc. (1 count).....	7
J. Damage/destroy any property or monument \$1,000 or more (1 count).....	8

◆ Additional Offenses

◆ Victimization

Primary offense:	Primary offense:
J: Damage/Destroy property \$1,000 or more	All other offenses
Years	Points
5 - 9.....	1
10 - 19.....	2
20 - 29.....	3
30 - 39.....	4
40 or more.....	5

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

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

Score

0

◆ 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

Score

0

Section C - Current

Miscellaneous/Person & Property Section C

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

A. Burn unoccupied dwelling/church (1 count).....	68	34	17
B. Burn occupied dwelling/church			
Completed: 1 count.....	108	54	27
2 counts.....	200	100	50
Attempted or conspired: 1 count.....	(68)	(34)	(17)
2 counts.....	(72)	(36)	(18)
C. Burning of personal property, standing grain, etc., value \$500 or more (1 count).....	32	16	8
D. Threatening to burn, bomb or explode (1 count).....	32	16	8
E. Threat by letter, communication or electronic message (1 count).....	40	20	10
F. Child neglect/abuse, serious injury (1 count).....	32	16	9
G. Gross, reckless care of child (1 count).....	28	14	7
H. Cruelty and injury to child (1 count).....	28	14	7
I. Maliciously shoot, throw missile at train, car, etc. (1 count).....	32	16	8
J. Damage/destroy any property or monument \$1,000 or more (1 count).....	32	16	8

Score
▼

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

Maximum Penalty: 5, 10, 20, 30, 40.....	1
(years) Life.....	5

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

<p>Primary offense: B: Burn <u>occupied</u> dwelling/church</p> <table border="0"> <tr> <th style="text-align: left;">Years</th> <th style="text-align: right;">Points</th> </tr> <tr> <td>Less than 5.....</td> <td style="text-align: right;">0</td> </tr> <tr> <td>5,10.....</td> <td style="text-align: right;">3</td> </tr> <tr> <td>20.....</td> <td style="text-align: right;">6</td> </tr> <tr> <td>30.....</td> <td style="text-align: right;">9</td> </tr> <tr> <td>40 or more.....</td> <td style="text-align: right;">12</td> </tr> </table>	Years	Points	Less than 5.....	0	5,10.....	3	20.....	6	30.....	9	40 or more.....	12	<p>Primary offense: All other offenses</p> <table border="0"> <tr> <th style="text-align: left;">Years</th> <th style="text-align: right;">Points</th> </tr> <tr> <td>Less than 5.....</td> <td style="text-align: right;">0</td> </tr> <tr> <td>5,10.....</td> <td style="text-align: right;">1</td> </tr> <tr> <td>20.....</td> <td style="text-align: right;">2</td> </tr> <tr> <td>30.....</td> <td style="text-align: right;">3</td> </tr> <tr> <td>40 or more.....</td> <td style="text-align: right;">5</td> </tr> </table>	Years	Points	Less than 5.....	0	5,10.....	1	20.....	2	30.....	3	40 or more.....	5
Years	Points																								
Less than 5.....	0																								
5,10.....	3																								
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Less than 5.....	0																								
5,10.....	1																								
20.....	2																								
30.....	3																								
40 or more.....	5																								

◆ Firearm Used or Brandished If YES, add 2 →

◆ Victim Injury

<p>Primary offense: F,G, or H: Offenses with VCC prefix "FAM"</p> <table border="0"> <tr> <th style="text-align: left;"></th> <th style="text-align: right;">Points</th> </tr> <tr> <td>Threatened or emotional.....</td> <td style="text-align: right;">6</td> </tr> <tr> <td>Physical or serious physical.....</td> <td style="text-align: right;">7</td> </tr> <tr> <td>Life threatening.....</td> <td style="text-align: right;">10</td> </tr> </table>		Points	Threatened or emotional.....	6	Physical or serious physical.....	7	Life threatening.....	10	<p>Primary offense: All other offenses</p> <table border="0"> <tr> <th style="text-align: left;"></th> <th style="text-align: right;">Points</th> </tr> <tr> <td>Threatened or emotional.....</td> <td style="text-align: right;">2</td> </tr> <tr> <td>Physical or serious physical.....</td> <td style="text-align: right;">4</td> </tr> <tr> <td>Life threatening.....</td> <td style="text-align: right;">5</td> </tr> </table>		Points	Threatened or emotional.....	2	Physical or serious physical.....	4	Life threatening.....	5
	Points																
Threatened or emotional.....	6																
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Life threatening.....	10																
	Points																
Threatened or emotional.....	2																
Physical or serious 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.....	0
(years) 20, 30, 40 or more.....	1

◆ Prior Felony Convictions /Adjudications Against Person

<p>Primary offense: B: Burn <u>occupied</u> dwelling/church</p> <table border="0"> <tr> <th style="text-align: left;">Number of Counts</th> <th style="text-align: right;">Points</th> </tr> <tr> <td>1.....</td> <td style="text-align: right;">3</td> </tr> <tr> <td>2.....</td> <td style="text-align: right;">4</td> </tr> <tr> <td>3.....</td> <td style="text-align: right;">6</td> </tr> <tr> <td>4 or more.....</td> <td style="text-align: right;">8</td> </tr> </table>	Number of Counts	Points	1.....	3	2.....	4	3.....	6	4 or more.....	8	<p>Primary offense: All other offenses</p> <table border="0"> <tr> <th style="text-align: left;">Number of Counts</th> <th style="text-align: right;">Points</th> </tr> <tr> <td>1.....</td> <td style="text-align: right;">1</td> </tr> <tr> <td>2.....</td> <td style="text-align: right;">2</td> </tr> <tr> <td>3.....</td> <td style="text-align: right;">3</td> </tr> <tr> <td>4.....</td> <td style="text-align: right;">4</td> </tr> <tr> <td>5 or more.....</td> <td style="text-align: right;">5</td> </tr> </table>	Number of Counts	Points	1.....	1	2.....	2	3.....	3	4.....	4	5 or more.....	5
Number of Counts	Points																						
1.....	3																						
2.....	4																						
3.....	6																						
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Number of Counts	Points																						
1.....	1																						
2.....	2																						
3.....	3																						
4.....	4																						
5 or more.....	5																						

Section C - Proposed

Primary Offense _____

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

A. Burn unoccupied dwelling/church (1 count).....	68	34	17
B. Burn occupied dwelling/church			
Completed: 1 count.....	108	54	27
2 counts.....	200	100	50
Attempted or conspired: 1 count.....	(68)	(34)	(17)
2 counts.....	(72)	(36)	(18)
C. Burning of personal property, standing grain, etc., value \$500 or more (1 count).....	32	16	8
D. Threatening to burn, bomb or explode (1 count).....	32	16	8
E. Threat by letter, communication or electronic message (1 count).....	40	20	10
F. Child neglect/abuse, serious injury (1 count).....	32	16	9
G. Gross, reckless care of child (1 count).....	28	14	7
H. Cruelty and injury to child (1 count).....	28	14	7
I. Maliciously shoot, throw missile at train, car, etc. (1 count).....	32	16	8
J. Damage/destroy any property or monument \$1,000 or more (1 count).....	32	16	8

Score
▼

Current factor

Victim Injury _____

Primary offense: F,G, or H: Offenses with VCC prefix "FAM"	Points	Primary offense: All other offenses	Points
Threatened or emotional	6	Threatened or emotional	2
Physical or serious physical	7	Physical or serious physical	4
Life threatening	10	Life threatening	5

Score
▼

Proposed factor

Victim Injury _____

Primary offense: G or H: Reckless Care/Cruelty Child	Points	Primary offense: F: Child Neglect/Abuse	Points	Primary offense: All other offenses A, B, C, D, E, I and J	Points
Threatened or emotional	6	Threatened or emotional	6	Threatened or emotional	2
Physical	7	Physical or Serious Physical.....	12	Physical	4
Life threatening	10	Life threatening	13	Life threatening	5

Score
▼

Current factor

Legally Restrained at Time of Offense _____

If YES, add 2 →

Proposed factor

Legally Restrained at Time of Offense _____

Primary offense: F: Child neglect/abuse	Points	Primary offense: All other offenses	Points
None.....	0	Any legal restraint.....	2
Other than post-incarceration supervision.....	6		
Post-incarceration supervision	8		

Score
▼

Compliance with Guidelines for Child Abuse and Neglect Resulting in Serious Injury (§ 18.2-371.1(A))

FY2013 – FY2017
Number of Sentencing Events = 214

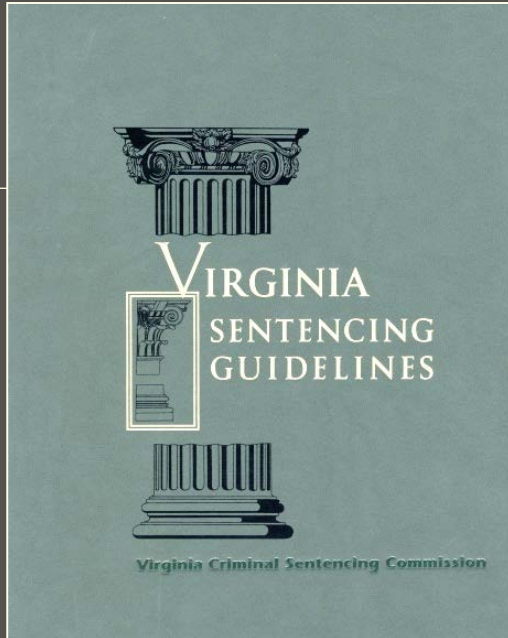
Overall Compliance/Departure Rates		
	Current	As Proposed
Compliance	56.5%	59.3%
Mitigation	14.0%	15.9%
Aggravation	29.5%	24.8%

Note: Guidelines worksheets with scoring errors were excluded from the analysis.
One offender was excluded because a criminal history report could not be located.
Source: Sentencing Guidelines Data System (download May 18, 2018)

Proposed Recommendation 3

**Revise guidelines for
Child Abuse and Neglect Resulting
in Serious Injury (§ 18.2-371.1(A))
as proposed**





Proposed Recommendation 4:

Add DUI after Prior Felony DUI,
Manslaughter or Maiming Conviction
(§ 18.2-266 / § 18.2-270(C,2))
to the Felony Traffic Guidelines

DUI after Prior Felony DUI, Manslaughter or Maiming Conviction

§ 18.2-266 / § 18.2-270(C,2)

**Added by the
2013 General Assembly**

§ 18.2-270(C,2)

A person who has been convicted of §§ 18.2-36.1, 18.2-36.2, 18.2-51.4, 18.2-51.5 or a felony violation of § 18.2-266 shall upon conviction of a subsequent violation of § 18.2-266 be guilty of a Class 6 felony. The punishment of any person convicted of such a subsequent violation of § 18.2-266 shall include a mandatory minimum term of imprisonment of one year and a mandatory minimum fine of \$1,000.

- § 18.2-36.1 Involuntary vehicular manslaughter (DUI)
- § 18.2-36.2 Involuntary watercraft manslaughter (BUI)
- § 18.2-51.4 Maiming, etc., from driving while intoxicated
- § 18.2-51.5 Maiming, etc., from boating while intoxicated
- § 18.2-266 Driving under the Influence

DUI after Prior Felony DUI, Manslaughter or Maiming Conviction § 18.2-266 / § 18.2-270(C,2)

FY2014 – FY2017
Number of Sentencing Events = 139

Disposition	Percent	Median Sentence
No Incarceration	0.0%	NA
Incarceration Up to 6 Months	0.0%	NA
Incarceration More than 6 Months	100.0%	1 Year

**Data reflect events in which this offense was the primary
(or most serious) offense at sentencing.**

**Note: Cases resulting in sentences of less than one year were assumed to be in error and were excluded.
Offenders for whom a criminal history report could not be located were also excluded.
Source: Supreme Court of Virginia - Circuit Court Management System (CMS)**

Section A - Proposed

Offenders convicted of this offense will be scored the same as those convicted of DUI 4th and will always be recommended for Section C.



Traffic/Felony Section A

Offender Name: _____

◆ **Primary Offense** _____

A. DWI - Third conviction within 5 years (1 count)	1
B. DWI - Third conviction within 10 years (1 count)	1
C. DWI - Fourth or subsequent conviction within 10 years, or DWI after prior felony DWI (1 count)	9
D. Habitual Offender: endangerment, second or subsequent, or DWI and declared habitual offender for DWI, involuntary manslaughter (1 count)	9
E. Drive on revoked license after DWI, involuntary manslaughter, or DWI victim permanently impaired (maiming) - endangerment (1 count)	9
F. Drive on revoked license after DWI, involuntary manslaughter, or DWI victim permanently impaired (maiming) and DWI, etc., violation (1 count)	9
G. Drive on revoked license after DWI, involuntary manslaughter, or DWI victim permanently impaired (maiming) - second or subsequent (1 count)	9
H. Hit and run, driver fails to stop and aid victim or hit and run, property damage \$1,000 or more 1 count	1
2 counts	4
I. Disregard police command to stop, endangerment (1 count)	5
J. Driving after forfeiture of license, etc., 3rd offense within 10 Years (1 count)	1

Score

0	
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◆ **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

Score

0	
---	--

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

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

Score

0	
---	--

◆ **Victim Injury** _____

Threatened, emotional, physical or serious	1
Life threatening	2

Score

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

Score

0	
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◆ **Prior Incarcerations/Commitments** _____

Primary Offense: _____ J: Driving, after forfeiture of license Number _____ Score _____ 1 1	Primary Offense: _____ All other offenses If YES, add 1
---	--

Score

0	
---	--

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

No changes proposed for Section B

Offenders convicted of this offense will always be recommended for Section C.

Traffic/Felony Section B

Offender Name: _____

◆ **Primary Offense** _____

A. DWI – Third conviction within 5 years (1 count).....	10	Score ▼ <input style="width: 40px; height: 20px;" type="text"/>
B. DWI – Third conviction within 10 years (1 count).....	10	
C. Hit and run, driver fails to stop and aid victim (1 count).....	10	
D. Hit and run, property damage \$1,000 or more (1 count).....	8	
E. Disregard police command to stop, endangerment (1 count).....	9	
F. Driving after forfeiture of license, etc., 3rd offense within 10 Years (1 count).....	9	

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

Years: 5 - 9.....	2	▼ <input style="width: 40px; height: 20px; text-align: center; border: 1px solid black;" type="text" value="0"/>
10 - 19.....	3	
20 - 29.....	4	
30 - 39.....	5	
40 or more.....	6	

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

Years: Less than 1.....	0	▼ <input style="width: 40px; height: 20px; text-align: center; border: 1px solid black;" type="text" value="0"/>
1 - 9.....	2	
10 - 19.....	3	
20 - 29.....	4	
30 - 39.....	5	
40 or more.....	6	

◆ **Victim Injury** _____

Threatened, emotional, physical or serious.....	2	▼ <input style="width: 40px; height: 20px; text-align: center; border: 1px solid black;" type="text" value="0"/>
Life threatening.....	3	

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

SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE IS C OR D: HIT AND RUN (§ 46.2-894)

◆ **Prior Criminal Traffic Convictions/Adjudications** _____

Number: 0 Felonies: 1 - 4 Misdemeanors.....	1	▼ <input style="width: 40px; height: 20px; text-align: center; border: 1px solid black;" type="text" value="0"/>
5+ Misdemeanors.....	2	
1+ Felonies: 0 Misdemeanors.....	1	
1 - 4 Misdemeanors.....	2	

Section C - Proposed

Offenders convicted of this offense will be scored the same as those convicted of DUI 4th.

Offenders convicted of this offense will receive one point more than those convicted of DUI 4th.

Traffic/Felony Section C

Offender Name: _____

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

	Category I	Category II	Other
A. DWI - Third conviction within 5 years (1 count)	20	10	5
B. DWI - Third conviction within 10 years (1 count)	20	10	5
C. DWI - Fourth or subsequent conviction within 10 years, DWI after prior felony DWI			
1 count	40	20	10
2 counts	48	24	12
3 counts	68	34	17
D. Habitual offender: endangerment, second or subsequent, or DWI and declared habitual offender for DWI, involuntary manslaughter			
1 count	40	20	10
2 counts	48	24	12
3 counts	68	34	17
E. Drive on revoked license after DWI, involuntary manslaughter, or DWI victim permanently impaired (maiming) - endangerment			
1 count	40	20	10
2 counts	48	24	12
3 counts	68	34	17
F. Drive on revoked license after DWI, involuntary manslaughter, or DWI victim permanently impaired (maiming) and DWI, etc., violation			
1 count	40	20	10
2 counts	48	24	12
3 counts	68	34	17
G. Drive on revoked license after DWI, involuntary manslaughter, or DWI victim permanently impaired (maiming) - second or subsequent			
1 count	40	20	10
2 counts	48	24	12
3 counts	68	34	17
H. Hit and run, driver fails to stop and aid victim or hit and run, property damage \$1,000 or more (1 count)	20	10	5
I. Disregard police command to stop, endangerment (1 count)	40	20	10
J. Driving after forfeiture of license, etc., 3rd offense within 10 yrs (1 count)	32	16	8

Score

0

◆ **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
--------------------------------------	---

◆ **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

◆ **DWI Convictions for Current Event**

Primary with additional DWI offense: Habitual offender or Drive on a revoked license (DWI as additional offense)	11
DWI after prior felony DWI, manslaughter, maiming	3
DWI fourth offense, Driving after forfeiture of license, etc., 3rd offense within 10 yrs	2
DWI third offense, Hit and run or Disregard command to stop (with DWI as additional offense)	0

◆ **Victim Injury**

Threatened or emotional	2
Physical, serious	4
Life threatening	5

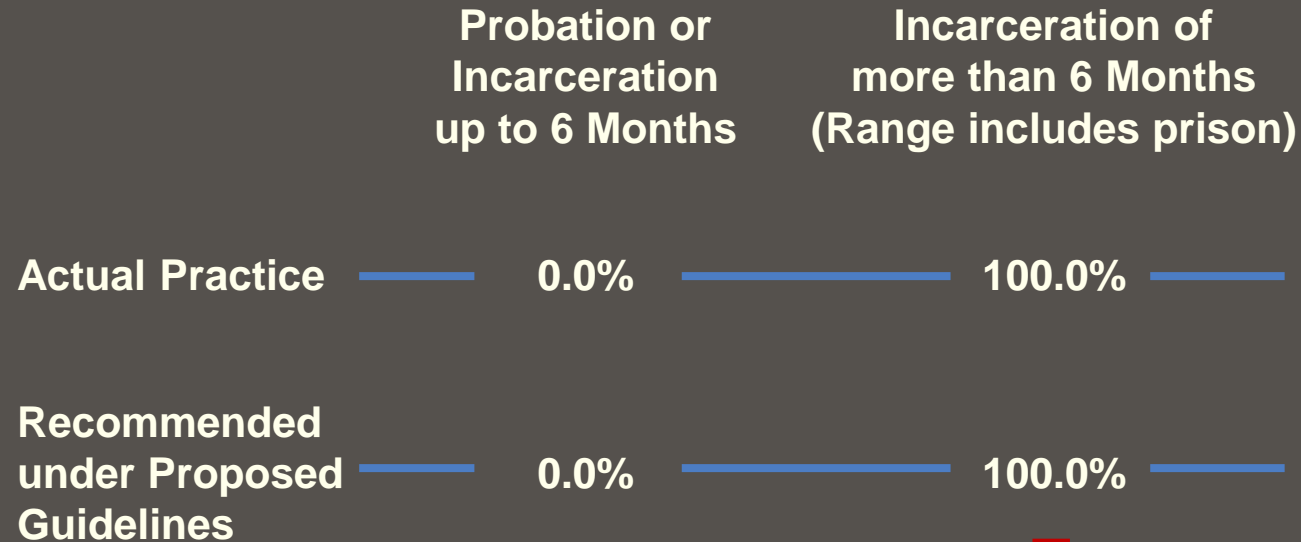
◆ **Prior Convictions/Adjudications** Assign points to the 5 most recent and serious prior record events and total the points

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

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

Number 1	1	4	4
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DUI after Prior Felony DUI, Manslaughter or Maiming Conviction § 18.2-266 / § 18.2-270(C,2)



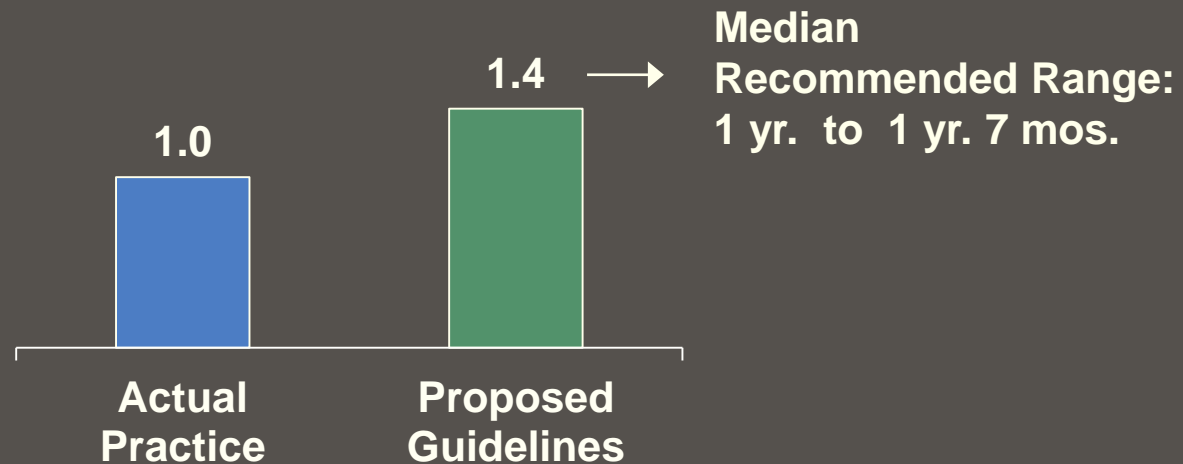
**Proposed guidelines are aligned
with the actual prison
incarceration rate**

Note: Cases resulting in sentences of less than one year were assumed to be in error and were excluded.
Offenders for whom a criminal history report could not be located were also excluded.
Source: Supreme Court of Virginia - Circuit Court Management System (CMS)

DUI after Prior Felony DUI, Manslaughter or Maiming Conviction § 18.2-266 / § 18.2-270(C,2)

Offenders Sentenced to Incarceration of More than 6 Months

Median Sentence (in years)

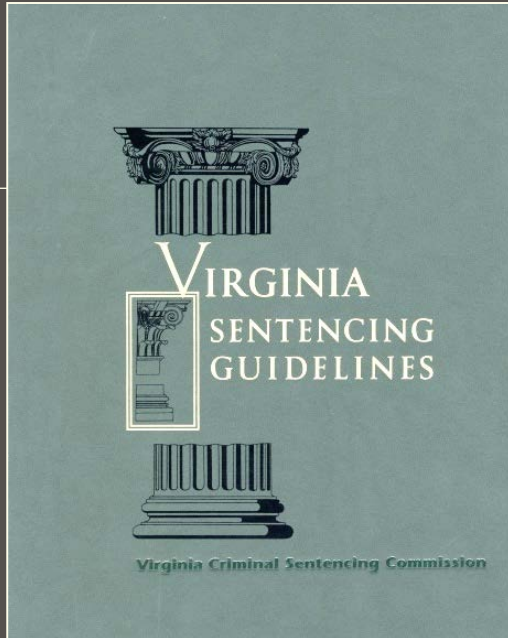


Note: Cases resulting in sentences of less than one year were assumed to be in error and were excluded.
Offenders for whom a criminal history report could not be located were also excluded.
Source: Supreme Court of Virginia - Circuit Court Management System (CMS)

Proposed Recommendation 4

**Add DUI after Prior Felony DUI, Manslaughter or Maiming Conviction
(§ 18.2-266 / § 18.2-270(C,2))
to the Felony Traffic Guidelines
as proposed**





Proposed Recommendation 5:

Amend the Sentencing Revocation Report (SRR) to address administrative removals from the CCAP program

Sentencing Revocation Report (SRR)

- **Removal from CCAP for administrative reasons is scored as a violation of special conditions**
 - No misconduct to score
 - Often for medical reasons
 - Data used in the creation of guidelines did not include administrative discharges from CCAP
- **Defendant must go through a violation hearing to be sentenced. *(This procedural issue can only be addressed by the legislature)***



Sentencing Revocation Report (SRR)

◆ VIOLATION GUIDELINES RECOMMENDATION

Probation/No Incarceration

Incarceration (*Enter Range Below*)

Range to
Years Months Days Years Months Days

Recommendation
Exceeds Revocable Time of

Years Months Days

Probation Violation Guidelines
Do Not Apply (check reason)

— Condition 1 Violation

— Deferred Finding/Sentence ***Do not complete this form***

— Parole Eligible Case

— Revocation Other Than Probation

— Administrative Removal from CCAP



Proposed Recommendation 5

**Amend the Sentencing Revocation Report (SRR) to address
administrative removals from the CCAP programs
as proposed**





VIRGINIA
SENTENCING
GUIDELINES



Virginia Criminal Sentencing Commission